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15 **UNITED STATES DISTRICT COURT**
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

17 CENTER FOR BIOLOGICAL)
18 DIVERSITY,)

19 Plaintiff,)

20 v.)

21 U.S. FISH AND WILDLIFE)
22 SERVICE; MARTHA WILLIAMS, in)
23 her official capacity as Principal Deputy)
24 Director of the U.S. Fish and Wildlife)
25 Service; and DEB HAALAND, in her)
26 official capacity as Secretary of the U.S.)
27 Department of the Interior,)

28 Defendants.)

Case No. 2:21-cv-08660

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 **INTRODUCTION**

2 1. Plaintiff Center for Biological Diversity (“Center”) brings this case
3 challenging the U.S. Fish and Wildlife Service’s (“Service”) failure to determine
4 whether the Santa Ana speckled dace (*Rhinichthys osculus ssp.*) and the Long
5 Valley speckled dace (*Rhinichthys osculus ssp.*) warrant protection as endangered
6 or threatened species, in violation of the Endangered Species Act’s (“ESA” or
7 “Act”) nondiscretionary, congressionally mandated deadlines. 16 U.S.C. §
8 1533(b)(3). The agency’s failure delays crucial, lifesaving protections for these
9 imperiled fish, increasing their risk of extinction.

10 2. The Santa Ana speckled dace is a tiny fish endemic to a handful of
11 southern California river systems. It is found nowhere else on earth. Due to the
12 widespread destruction of their native habitat, Santa Ana speckled dace now
13 occupy only remnants of their historical range and are largely restricted to
14 headwater tributaries. The Santa Ana speckled dace is at risk of extinction due to
15 multiple significant threats, including urban development, impacts from dams,
16 and climate change.

17 3. The Long Valley speckled dace is a tiny fish endemic to the Long
18 Valley volcanic caldera, east of Mammoth Lakes, in Mono County, California.
19 Long Valley speckled dace are adapted to spring habitats. They have largely
20 disappeared from suitable habitats, including Hot Creek, Little Alkali Lake, and
21 various isolated springs and ponds in Long Valley. The Long Valley speckled
22 dace is at risk of extinction due to multiple significant threats, including urban
23 development, impacts from river channelization, and climate change.

24 4. The Center brings this lawsuit for declaratory and injunctive relief,
25 seeking an Order declaring that the Service is in violation of the ESA by failing to
26 make required 12-month findings and directing the Service to publish their
27 overdue 12-month listing determinations for the Santa Ana speckled dace and
28 Long Valley speckled dace by a date certain.

1 **JURISDICTION**

2 5. This Court has jurisdiction over this action pursuant to 16 U.S.C. §
3 1540(c), (g) (ESA citizen suit provision) and 28 U.S.C. § 1331 (federal question).
4 This Court has authority to issue declaratory and injunctive relief pursuant to the
5 ESA, 16 U.S.C. § 1540(g); 28 U.S.C. §§ 2201-2202; and 5 U.S.C. § 706(2).

6 6. Plaintiff provided Defendants with 60-days' notice of the ESA
7 violation, as required by 16 U.S.C. § 1540(g)(2)(A), by a letter to the Service
8 dated July 19, 2021 (Santa Ana speckled dace notice) and a letter to the Service
9 dated July 30, 2021 (Long Valley speckled dace notice). Defendants have not
10 remedied the violations set out in the notices and an actual controversy exists
11 between the parties within the meaning of the Declaratory Judgment Act, 28
12 U.S.C. § 2201.

13 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)
14 because Defendants reside in this judicial district and a substantial part of the
15 violations of law by Defendants occurred in this district.

16 **PARTIES**

17 8. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a national,
18 non-profit conservation organization that works through science, law, and policy
19 to protect imperiled wildlife and their habitat. The Center is incorporated in
20 California and headquartered in Tucson, Arizona, with offices throughout the
21 United States, including in Washington, D.C. The Center has more than 81,000
22 active members throughout the country, including approximately 18,765
23 members in California, where the historic and remaining habitats of the Santa
24 Ana and Long Valley speckled dace are found.

25 9. The Center and its members have deep and long-standing interests in
26 the preservation and recovery of imperiled species, including the Santa Ana and
27 Long Valley speckled daces and their habitats, and in the full and effective
28 implementation of the ESA. The Center's members include individuals with

1 scientific, professional, educational, recreational, aesthetic, moral, and spiritual
2 interests in the Santa Ana and Long Valley speckled daces, and who use the
3 habitat of these species for a broad range of reasons. Plaintiff's interests in
4 protecting and recovering these species are directly harmed by the Service's
5 failure to issue timely 12-month findings on the petitions to list the Santa Ana
6 speckled dace and the Long Valley speckled dace.

7 10. The Center's members include individuals who regularly visit areas
8 that are occupied or were formerly occupied by Santa Ana and Long Valley
9 speckled dace and seek to observe or study these fish in their natural habitat.
10 Plaintiff's members derive recreational, spiritual, professional, scientific,
11 educational, and aesthetic benefit from these activities, and intend to continue to
12 use and enjoy these areas in the future.

13 11. For example, Center member Ileene Anderson, Deserts Director and
14 Senior Scientist for the Center's Urban Wildlands Program, visits the Santa Ana
15 speckled dace's habitat for professional projects and spends time in the area for
16 personal and recreational reasons. She regularly visits the Santa Ana speckled
17 dace's habitat within the upper Santa Ana River watershed, including the streams
18 and tributaries of this watershed. Most recently, she looked for Santa Ana
19 speckled dace at Lytle Creek and the Tujunga Wash stream in Los Angeles. She
20 enjoys visiting the Angeles and San Bernardino National Forests and looking for
21 Santa Ana speckled dace in the streams and creeks of these forests.

22 12. Center member Ileene Anderson also cares deeply about the Long
23 Valley speckled dace and often looks for them in the wild. Most recently, in
24 October 2021, she was performing field work in the Long Valley area and looked
25 for the Long Valley speckled dace along the Hot Creek geological site. She was
26 unable to find any dace, which caused her worry and stress regarding the future of
27 the species and the impact its extirpation has on her professional goals and
28 projects in the Long Valley area.

1 13. The above-described interests of the Center’s members in these
2 species and their habitat depends upon their conservation in the wild. Yet, unless
3 they are promptly listed under the ESA, the Santa Ana and Long Valley speckled
4 dace will remain unprotected by the Act and may go extinct. Accordingly, the
5 Center submitted petitions to the Service to extend the substantive protections of
6 the ESA by listing these species as “endangered” or “threatened.” Defendants’
7 failure to comply with their nondiscretionary duties under the ESA deprives the
8 Santa Ana and Long Valley speckled dace of statutory protections that are
9 necessary for their survival and recovery.

10 14. The Center and its members are injured by Defendants’ failure to
11 publish timely 12-month findings. Defendants’ failure to act has delayed the
12 application of the ESA’s protections to the Santa Ana and Long Valley speckled
13 dace, making the conservation of these species more difficult. These injuries are
14 actual, concrete injuries that are presently suffered by the Center’s members, are
15 directly caused by Defendants’ acts and omissions, and will continue unless the
16 Court grants relief. The relief sought would redress these injuries. The Center and
17 its members have no adequate remedy at law.

18 15. Defendant U.S. FISH AND WILDLIFE SERVICE is the agency
19 within the Department of the Interior charged with implementing the ESA for the
20 species at issue in this suit. The Secretary of the Interior has delegated
21 administration of the ESA to the Service. 50 C.F.R. § 402.01(b).

22 16. Defendant MARTHA WILLIAMS is the Principal Deputy Director
23 of the U.S. Fish and Wildlife Service and is charged with ensuring that agency
24 decisions comply with the ESA. Defendant Williams is sued in her official
25 capacity.

26 17. Defendant DEB HAALAND is the Secretary of the U.S. Department
27 of the Interior and has the ultimate responsibility to administer and implement the
28 provisions of the ESA. Defendant Haaland is sued in her official capacity.

1 **STATUTORY FRAMEWORK**

2 **The Endangered Species Act**

3 18. The Endangered Species Act, 16 U.S.C. §§ 1531–1544, is “the most
4 comprehensive legislation for the preservation of endangered species ever enacted
5 by any nation.” *TVA v. Hill*, 437 U.S. 153, 180 (1978). Its fundamental purposes
6 are “to provide a means whereby the ecosystems upon which endangered species
7 and threatened species depend may be conserved [and] to provide a program for
8 the conservation of such endangered species and threatened species.” 16 U.S.C. §
9 1531(b).

10 19. The ESA has a suite of substantive and procedural legal protections
11 that apply to species once they are listed as endangered or threatened. *Id.* §
12 1532(16) (defining “species”). For example, section 4(a)(3) of the Act requires
13 the Service to designate “critical habitat” for each endangered and threatened
14 species. *Id.* § 1533(a)(3).

15 20. In addition, ESA section 7(a)(2) requires all federal agencies to
16 ensure that their actions do not “jeopardize the continued existence” of any
17 endangered or threatened species or “result in the destruction or adverse
18 modification” of any listed species’ critical habitat.” *Id.* §1536(a)(2).

19 21. ESA section 9 prohibits, among other actions, “any person” from
20 causing the “take” of any protected fish or wildlife without lawful authorization
21 from the Service. *Id.* §§ 1538(a)(1)(B), 1539; see also *id.* § 1532(19) (defining
22 “take”). Other provisions require the Service to “develop and implement”
23 recovery plans for listed species, *id.* § 1533(f); authorize the Service to acquire
24 land for the protection of listed species, *id.* § 1534; and authorize the Service to
25 make federal funds available to states to assist in the conservation of endangered
26 and threatened species, *id.* § 1535(d).

27 22. The ESA defines a “species” as “any subspecies of fish or wildlife or
28 plants, and any distinct population segment of any species of vertebrate fish or

1 wildlife which interbreeds when mature.” *Id.* § 1532(16). A “distinct population
2 segment” of a species is also known as a “DPS.” When considering whether a
3 population segment qualifies as a DPS under the Act, Service policy requires the
4 agency to determine whether the population is “discrete” and “significant.” If the
5 Service determines that a population segment is both discrete and significant, then
6 the population qualifies as a DPS and meets the ESA’s definition of a “species”
7 that may be classified as threatened or endangered.

8 23. A species is “endangered” when it “is in danger of extinction
9 throughout all or a significant portion of its range.” 16 U.S.C. § 1532(6). A
10 species is “threatened” when it is “likely to become an endangered species within
11 the foreseeable future throughout all or a significant portion of its range.” *Id.* §
12 1532(20).

13 24. The ESA requires the Service to determine whether any species is
14 endangered or threatened because of any of the following factors: (A) the present
15 or threatened destruction, modification, or curtailment of its habitat or range; (B)
16 overutilization for commercial, recreational, scientific, or educational purposes;
17 (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms;
18 or (E) other natural or manmade factors affecting its continued existence. *Id.* §
19 1533(a)(1).

20 25. To ensure the timely protection of species at risk of extinction,
21 Congress set forth a detailed process whereby citizens may petition the Service to
22 list a species as endangered or threatened. In response, the Service must publish a
23 series of three decisions according to statutory deadlines. First, within 90 days of
24 receipt of a listing petition, the Service must, “to the maximum extent
25 practicable,” publish an initial finding as to whether the petition “presents
26 substantial scientific or commercial information indicating that the petitioned
27 action may be warranted.” *Id.* § 1533(b)(3)(A). This is known as the “90-day
28 finding.” If the Service finds in the 90-day finding that the petition does not

1 present substantial information indicating that listing may be warranted, the
2 petition is rejected and the process concludes.

3 26. If, as in this case, the Service determines that a petition does present
4 substantial information indicating that listing “may be warranted,” the agency
5 must publish that finding and proceed with a scientific review of the species’
6 status, known as a “status review.” *Id.*

7 27. Upon completing the status review, and within 12 months of
8 receiving the petition, the Service must publish a “12-month finding” with one of
9 three listing determinations: (1) listing is “warranted”; (2) listing is “not
10 warranted”; or (3) listing is “warranted but precluded” by other proposals for
11 listing species, provided certain circumstances are met. *Id.* § 1533(b)(3)(B). This
12 is known as a listing determination.

13 28. If the Service determines that listing is “warranted,” the agency must
14 publish that finding in the Federal Register along with the text of a proposed
15 regulation to list the species as endangered or threatened and take public
16 comments on the proposed listing rule. *Id.* § 1533(b)(3)(B)(ii).

17 29. Within one year of publication of the proposed listing rule, the
18 Service must publish in the Federal Register the final rule implementing its
19 determination to list the species. *Id.* § 1533(b)(6)(A). This is known as a “final
20 listing rule.”

21 30. If the Service finds there is substantial disagreement regarding the
22 sufficiency or accuracy of the available data relevant to a listing determination,
23 the Service may extend this one-year period by six months to solicit additional
24 data. *Id.* § 1533(b)(6)(B)(i). However, before the expiration of that six months,
25 the Service must publish either a final regulation or a notice of withdrawal. *Id.* §
26 1533(b)(6)(B)(ii)-(iii).

1 **FACTUAL BACKGROUND**

2 **Santa Ana Speckled Dace**

3 31. The Santa Ana speckled dace is a small, freshwater fish. Historically,
4 it was distributed throughout several river systems in Southern California,
5 including the Santa Ana, Los Angeles, San Gabriel, and San Yacinto Rivers.

6 32. Today, the Santa Ana speckled dace only occupies remnants of its
7 historical range. Santa Ana speckled dace have been eliminated from most of the
8 Los Angeles River basin, including tributaries Little Tujunga Creek, Pacoima
9 Creek, and Santa Anita Canyon Creek. They have also disappeared from most of
10 the Santa Ana River basin, including the middle reaches of the Santa Ana River,
11 and tributaries Mill Creek, East Twin Creek, Santiago Creek, Silverado Canyon,
12 Harding Canyon, and San Antonio Creek. Speckled dace no longer live in the San
13 Jacinto River, South Fork San Jacinto River, or tributaries Herkey Creek and
14 Strawberry Creek.

15 33. Santa Ana dace are threatened by dams, reservoirs, and water
16 diversions because these systems lead to stream diversions that isolate them.
17 There are seven dams and numerous water-diversion facilities on the Southern
18 California rivers where the dace lives. Dams and diversions both deplete stream
19 flows and isolate fish populations. Reservoirs and dams also favor introduced
20 species that prey upon and compete with dace.

21 34. Other threats include river channelization and other flood control
22 measures that harm the species migration patterns, urbanization, roads, runoff
23 from agriculture into speckled dace habitat, mining, pollution, and climate
24 change.

25 35. Santa Ana speckled dace remain in small, fragmented populations in
26 only about one-fourth of their historical range and are restricted mainly to
27 headwater tributaries within national forests.

28

1 **Long Valley Speckled Dace**

2 36. The Long Valley speckled dace is a small, freshwater fish.
3 Historically, it was found within the Long Valley volcanic caldera east of
4 Mammoth Lakes in Mono County, including in Hot Creek and isolated springs
5 and ponds.

6 37. Today, the Long Valley speckled dace only occupies remnants of its
7 historical range. The last remaining population found within its native range, in
8 Whitmore Hot Springs, has disappeared, based on survey results conducted in
9 2019 that failed to locate any dace. This former habitat has been developed and is
10 now a recreational swimming pool.

11 38. Long Valley speckled dace are threatened by geothermal energy
12 development; dams and water diversions, especially surface water diversions;
13 habitat alteration, including recreational development of their water sources and
14 habitat, urban development, and rural development; livestock grazing; disease;
15 predation; and climate change.

16 39. Long Valley speckled dace may now be extirpated from the wild.
17 They appear to only exist in a refugium managed by the California Department of
18 Fish and Wildlife Service.

19 **Listing Petition and Response**

20 40. Due to these threats and others, on May 11, 2020, the Center
21 petitioned the Service to list the Santa Ana speckled dace as threatened or
22 endangered under the ESA. At the request of the Service, the Center submitted
23 supplemental support for the Santa Ana petition on May 18, 2020. On June 8,
24 2020, the Center also petitioned to list the Long Valley speckled dace as
25 threatened or endangered under the ESA.

26 41. On June 17, 2021, the Service issued a positive 90-day finding that
27 the petition to list the Santa Ana speckled dace presented “substantial scientific or
28 commercial information indicating that the petitioned actions may be warranted.”

1 Specifically, the Service found that the species may be a distinct population
2 segment and that listing may be warranted due to various human-induced threats.
3 86 Fed. Reg. 32,241-32,243 (June 17, 2021). Some of the threats the Service
4 included in their 90-day finding are threats from: dams, reservoirs, water
5 diversions, barriers to migration and movement, roads, pollution, mining,
6 concentrated recreational use, off-road vehicle use, predation, drought, wildfires,
7 flooding, introduced species, climate change, and population fragmentation.
8 Further, the Service found that the petition presented “substantial scientific or
9 commercial information indicating that existing regulatory mechanisms may be
10 inadequate to fully ameliorate the identified threat.” *Id.*

11 42. Although Defendants issued a 90-day finding, they had a mandatory
12 duty to publish their 12-month finding by May 11, 2021. Until Defendants
13 publish the legally required 12-month listing determination and final listing rule,
14 the Santa Ana speckled dace will continue to lack necessary protections under the
15 ESA.

16 43. On September 29, 2021, the Service issued a positive 90-day finding
17 that the petition to list the Long Valley speckled dace presented “substantial
18 scientific or commercial information indicating that the petitioned actions may be
19 warranted.” Specifically, the Service found that the Long Valley speckled dace
20 may warrant endangered species listing due to various threats. 86 Fed. Reg.
21 53,937.

22 44. Although Defendants issued a 90-day finding, they had a mandatory
23 duty to publish their 12-month finding by June 8, 2021. Until Defendants publish
24 the legally required 12-month listing determination and final listing rule, the Long
25 Valley speckled dace will continue to lack necessary protections under the ESA.
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1 **CLAIMS FOR RELIEF**

2 **Violation of the ESA for Failure to Publish a Timely 12-Month Listing**
3 **Determination for the Santa Ana speckled dace**

4 45. Plaintiff re-alleges and incorporates all allegations set forth in the
5 preceding paragraphs.

6 46. If, as in this case, the Service finds that listing may be warranted, the
7 ESA requires the Service to publish a “12-month finding” with a listing
8 determination within one year of receiving a listing petition. Defendants failed to
9 perform their nondiscretionary duty to publish a timely 12-month listing
10 determination on the petition to list the Santa Ana speckled dace as endangered or
11 threatened, in violation of the ESA. 16 U.S.C. § 1533(b)(3)(B).

12 **Violation of the ESA for Failure to Publish a Timely 12-Month Listing**
13 **Determination for the Long Valley speckled dace**

14 47. Plaintiff re-alleges and incorporates all allegations set forth in the
15 preceding paragraphs.

16 48. If, as in this case, the Service finds that listing may be warranted, the
17 ESA requires the Service to publish a “12-month finding” with a listing
18 determination within one year of receiving a listing petition. Defendants failed to
19 perform their nondiscretionary duty to publish a timely 12-month listing
20 determination on the petition to list the Long Valley speckled dace as endangered
21 or threatened, in violation of the ESA. 16 U.S.C. § 1533(b)(3)(B).

22 **REQUEST FOR RELIEF**

23 WHEREFORE, Plaintiff respectfully requests that the Court enter
24 judgment providing the following relief:

- 25 1. Declare that Defendants have violated the ESA by failing to issue a
26 timely 12-month listing determination in response to the petitions to
27 list the Santa Ana speckled dace and Long Valley speckled dace;
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2. Provide injunctive relief compelling Defendants to publish in the Federal Register 12-month listing determinations on the petitions to list the Santa Ana speckled dace and Long Valley speckled dace by a date certain;
3. Retain continuing jurisdiction to review Defendants’ compliance with all judgments and orders herein;
4. Grant Plaintiff its reasonable attorneys’ fees and costs as provided by the ESA, 16 U.S.C. § 1540(g)(4); and
5. Provide such other relief as the Court deems just and proper.

Respectfully submitted and dated this 2nd day of November, 2021.

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