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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
TUCSON DIVISION**

17 CENTER FOR BIOLOGICAL)
18 DIVERSITY,)
19)
20 Plaintiff,)
21)
22 v.)
23)
24 U.S. FISH AND WILDLIFE SERVICE;)
25 MARTHA WILLIAMS, in her official)
26 capacity as Director of the U.S. Fish and)
27 Wildlife Service; and DEB HAALAND,)
28 in her official capacity as Secretary of the)
U.S. Department of the Interior,)
Defendants.)
_____)

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1
2 1. Plaintiff Center for Biological Diversity (“Center”) brings this case
3 challenging the U.S. Fish and Wildlife Service’s (“Service”) failure to issue final rules on
4 petitions to list the alligator snapping turtle (*Macrochelys temminckii*), Suwannee
5 alligator snapping turtle (*Macrochelys suwanniensis*), Pearl River map turtle (*Graptemys*
6 *pearlensis*), Wright’s marsh thistle (*Cirsium wrightii*), bracted twistflower (*Streptanthus*
7 *bracteatus*), round hickorynut (*Obovaria subrotunda*), Big Creek crayfish (*Faxonius*
8 *peruncus*) and St. Francis River crayfish (*Orconectes quadruncus*); failure to issue a 90-
9 day finding on the petition to list the least chub (*Iotichthys phlegethontis*); and failure to
10 issue required 12-month findings on petitions to list the least chub and the Fish Lake
11 Valley tui chub (*Siphateles bicolor ssp. 4*) as endangered or threatened, in violation of the
12 Endangered Species Act’s (“ESA” or “Act”) nondiscretionary, congressionally mandated
13 deadlines. 16 U.S.C. § 1533(b)(3). The Center also brings this case challenging the
14 Service’s delay in finalizing critical habitat protection for slickspot peppergrass
15 (*Lepidium papilliferum*) and the Barrens topminnow (*Fundulus julisia*). These findings
16 are past the deadlines established by the ESA. The agency’s failures delay crucial,
17 lifesaving protections for these imperiled species, increasing their risk of extinction.

18 2. The alligator snapping turtle is the largest species of freshwater turtle in
19 North America and among the most aquatic. Habitat degradation, historical overharvest,
20 and ongoing capture have caused significant population declines for this species, which
21 ranges across portions of the Southeast and Midwest.

22 3. The Suwannee alligator snapping turtle is a closely related but distinct
23 species from the alligator snapping turtle. The Suwannee snapper is found in its
24 namesake Suwannee River basin in southern Georgia and northern Florida. Like the
25 alligator snapping turtle, it has been harmed by habitat destruction, overharvest, and
26 ongoing capture.

27 4. The Pearl River map turtle is native to the Pearl River system in Mississippi
28 and Louisiana and can live up to 30 years in the wild. Because poor water quality can

1 devastate their populations, map turtles serve as indicators of river health. The turtle is
2 also threatened by its harvest and collection for sale in food, medicinal markets, and the
3 pet trade.

4 5. The Wright's marsh thistle is a wetland plant found in New Mexico that
5 can grow up to eight feet tall. It is threatened by cattle trampling, grazing, non-native
6 plants, oil and gas spills from drilling, mineral mining, municipal and agricultural
7 depletion of groundwater, and drought.

8 6. The bracted twistflower is a rare flower found in Texas. It is imperiled due
9 to land development, grazing by unnaturally abundant white-tailed deer and other
10 herbivores, and increased shade from juniper trees due to fire suppression. There are
11 currently 16 remaining populations of the bracted twistflower, plus one struggling
12 introduced population.

13 7. The round hickorynut is an almost perfectly round mussel with an olive
14 shell and a yellow band. It is threatened by water pollution from urbanization, agriculture,
15 oil and gas drilling, coal mining, coal-fired power plants, increasing stream temperatures,
16 and storm events caused by climate change.

17 8. The Big Creek crayfish and the St. Francis River crayfish are freshwater
18 crustaceans found in the upper St. Francis River watershed in southeastern Missouri.
19 They are threatened by non-native woodland crayfish, which displace native crayfish and
20 interbreed with them, and by heavy-metal contamination of their streams caused by
21 mining.

22 9. The least chub is a small fish found in Utah. It was once widely distributed
23 in Utah's Bonneville Basin but now has only seven wild populations left and about a
24 dozen refuge populations where it has been reintroduced. Significant habitat loss and
25 alteration, as well as competition and predation from non-native species, have driven this
26 species close to extinction.

27 10. The Fish Lake Valley tui chub is a small fish found in Fish Lake Valley,
28 Nevada. Once occurring at several locations, it has been lost from all but one spring

1 system. Significant habitat loss has occurred due to habitat alteration and groundwater
2 development, putting the fish at risk of extinction. The sole remaining habitat of the tui
3 chub is jeopardized by groundwater over-pumping, which threatens to dry up the springs
4 that the fish relies on.

5 11. The slickspot peppergrass is a flowering sagebrush-steppe plant found only
6 in southwestern Idaho. There are about 90 occurrences of slickspot peppergrass on Earth,
7 and most of them are in degraded and low-quality habitat. It is threatened by agriculture,
8 mining, urban sprawl, livestock grazing, and invasive species.

9 12. The Barrens topminnow is a colorful fish found in only a handful of
10 streams on the Barrens Plateau in middle Tennessee. The topminnow has experienced
11 significant habitat loss from stream degradation due to nearby livestock pastures, climate
12 change, and drought. It is also vulnerable to invasive western mosquitofish—the
13 aggressive mosquitofish outcompetes and eats topminnow eggs and young.

14 13. Accordingly, petitions were submitted to the Service to extend the
15 substantive protections of the ESA to the species at issue in this complaint (the Service
16 voluntarily initiated a review of the status of the Big Creek crayfish and St. Francis
17 crayfish) by listing them as “endangered” or “threatened.” Defendants have abrogated
18 their duty to ensure that the alligator snapping turtle, Suwannee alligator snapping turtle,
19 Pearl River map turtle, Wright’s marsh thistle, bracted twistflower, round hickorynut, Big
20 Creek crayfish, St. Francis River crayfish, least chub, Fish Lake Valley tui chub,
21 slickspot peppergrass, and Barrens topminnow are timely protected to avoid further
22 decline and an increased risk of extinction, in violation of Section 4 of the ESA.

23 14. Plaintiff brings this lawsuit for declaratory and injunctive relief, seeking an
24 Order declaring that the Service violated the ESA by failing to timely finalize eight
25 proposed rules and failing to issue one 90-day finding, two 12-month findings, and two
26 critical habitat designations for the 12 species in this Complaint, and directing the Service
27 to finalize their overdue rules and issue the 90-day finding, 12-month findings, and
28 critical habitat designations by a date certain.

1 **JURISDICTION**

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

7 16. Plaintiff provided Defendants with 60-days' notice of the ESA violations
8 for the least chub and Fish Lake Valley tui chub by a letter dated November 15, 2022
9 (received November 21, 2022), and notice for the alligator snapping turtle, Pearl River
10 map turtle, and bracted twistflower by a letter to the Service dated December 1, 2022
11 (received December 19, 2022). The Barrens topminnow was noticed in a letter dated
12 August 15, 2022. The remaining species were noticed in a letter dated May 12, 2022,
13 (received May 17, 2022). Defendants have not remedied the violations set out in the
14 notices and an actual controversy exists between the parties within the meaning of the
15 Declaratory Judgment Act, 28 U.S.C. § 2201.

16 17. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because
17 Plaintiff resides in this judicial district.

18 **PARTIES**

19 18. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a national, non-
20 profit conservation organization that works through science, law, and policy to protect
21 imperiled wildlife and their habitat. The Center is incorporated in California and
22 headquartered in Tucson, Arizona, with offices throughout the United States. The Center
23 has more than 89,000 members throughout the country.

24 19. The Center brings this action on behalf of its organization, and its staff and
25 members who derive ecological, recreational, aesthetic, educational, scientific,
26 professional, and other benefits from these 12 species and their habitats. Plaintiff's
27 interests in protecting and recovering these species and their habitats are directly harmed
28 by the Service's failure to issue timely findings.

1 20. For example, Center member Merrilee Malwitz-Jipson has concrete plans
2 to visit the Apalachicola River in the fall of 2024 to observe alligator snapping turtles in
3 the wild. Her recreational interests in observing these turtles are harmed by the Service's
4 delay in finalizing protections for them, as are her moral and educational interests in
5 alligator snappers.

6 21. Merrilee Malwitz-Jipson's recreational tourism business is also harmed by
7 the Service's delay in finalizing protections for the Suwannee alligator snapping turtle.
8 Mrs. Malwitz-Jipson lives on 18 acres alongside the Santa Fe River, a tributary of the
9 Suwannee River. She has requested that the Santa Fe River Project establish and
10 document breeding grounds for Suwannee alligator snapping turtles. She enjoys taking
11 photographs and videos of these turtles. Mrs. Malwitz-Jipson's recreational tourism
12 business has become a landmark eco-tourist destination. Her customers enjoy seeing
13 Suwannee alligator snapping turtles. She is often sought out to discuss the harms local
14 rivers face and works to raise attention to the perils facing the Santa Fe River to protect
15 the waterway and native species like the Suwannee alligator snapping turtle. Mrs.
16 Malwitz-Jipson's interests in this species are therefore harmed by the lack of protections
17 for these turtles.

18 22. The economic, aesthetic, and recreational interests of Center member Will
19 Harlan, Senior Campaigner and Scientist at the Center, are harmed by the Service's delay
20 in finalizing its rule for the Pearl River map turtle. Mr. Harlan is a herpetologist who
21 wrote a national bestselling book about turtles and has economic concerns about their
22 welfare and survival. He has visited Pearl River map turtle habitat and recreated there. He
23 enjoys hiking, swimming, and exploring the Pearl River near the Pearl River Wildlife
24 Management Area in Louisiana. He has spent much of his time searching for turtles of
25 the Southeast.

26 23. Center member Michael Robinson, Senior Conservation Advocate at the
27 Center, resides in New Mexico and is professionally and aesthetically harmed by the
28 Service's delay in finalizing protections for the Wright's marsh thistle. Mr. Robinson has

1 concrete plans to visit the habitat of this plant in 2023. He has dedicated his career to
2 protecting rare and vulnerable species, with a special interest in those found in the
3 Southwest. Mr. Robinson has worked on projects to protect Wright's marsh thistle from
4 various threats, including drafting comments to the Service supporting the agency's
5 designation of critical habitat to the plant but explaining why the designation fell short.
6 Mr. Robinson's interests in the Wright's marsh thistle are harmed by the Service's failure
7 to finalize the proposed rule for this plant.

8 24. Mr. Robinson is also professionally and aesthetically harmed by the
9 Service's delay in finalizing protections for the bracted twistflower. He has concrete
10 plans to search for this flower and to visit its habitat in Texas in September 2023.

11 25. Center member Tierra Curry, Senior Scientist and Director of the Saving
12 Life on Earth Campaign at the Center, regularly swims, kayaks, and snorkels in the
13 habitat of the round hickorynut, where she enjoys looking for freshwater mussels and
14 mussel shells. She regularly visits Buck Creek and the Rockcastle River, which are near
15 her home in the Cumberland River watershed. She has looked for round hickorynut
16 mussels in the Barren, Elk, Green, Kanawha, Kentucky, Red, and Redbird rivers. She
17 visited these habitats in the summer and fall of 2022 and plans to return in Summer 2023.
18 Her recreational interests in this mussel are harmed by the Service's delay.

19 26. Ms. Curry also works to conserve species like the Barrens topminnow. She
20 has observed the fish in captivity and intends to look for it if/when the captive population
21 is restocked at the Barrens Topminnow National Wildlife Refuge. Her professional and
22 moral interests are harmed by the Service's delay in finalizing critical habitat for this fish.

23 27. Center member Dr. Chris Taylor is a crayfish expert who has dedicated his
24 professional career to the conservation of native crayfish. He currently has graduate
25 students working near Big Creek crayfish and St. Francis River crayfish habitat in Wayne
26 County, Missouri, and anticipates future research projects in the upper St. Francis River
27 drainage that include these species. Dr. Taylor's professional work is harmed by the
28 Service's delay in protecting these native crayfish in that if their ranges or populations are

1 reduced by current threats, he will be unable to study their biology and disseminate that
2 information to other scientists and the public.

3 28. Patrick Donnelly, member and Great Basin director at the Center, has
4 visited the habitat of the Fish Lake Valley tui chub and the least chub on numerous
5 occasions. Mr. Donnelly visited Fish Lake Valley and observed the area around McNett
6 Ranch at least a dozen times across 2020-2022. While the ranch itself is private property,
7 Mr. Donnelly has surveyed the adjacent public lands for rare species and has derived
8 scientific, aesthetic, and spiritual benefits from the wetlands created by the springs at
9 McNett Ranch. He intends to make repeat visits to Fish Lake Valley in spring of 2023 to
10 observe rare plant species and the wetlands near McNett Ranch. He has also visited the
11 habitat for the least chub in Snake Valley on several occasions, including in 2018 and
12 2021. Mr. Donnelly has surveyed the McNett Ranch springs for proper functioning
13 condition, as well as for the least chub and other rare species. Mr. Donnelly has plans to
14 return to Snake Valley in the summer of 2023, to check on the condition of the wetland
15 habitat at these springs and attempt to observe least chubs. Mr. Donnelly has a personal
16 connection with these fishes and the aquatic systems they inhabit, and he would be
17 harmed if these species were to go extinct due to groundwater over-pumping.

18 29. Center member Patrick Kelly, Idaho Director for Western Watersheds
19 Project, has concrete plans to look for slickspot peppergrass plants inhabiting the area just
20 south of his home in Boise, Idaho. He has a strong interest in the local botany of the arid
21 and semi-arid regions of the Snake River valley and in the many rare and endemic plants
22 that grow in these unique landscapes. Ongoing threats to slickspot peppergrass, especially
23 those presented by livestock grazing, harm his interests in this species.

24 30. Defendants' violations of the ESA's nondiscretionary mandatory deadlines
25 have delayed the ESA's protections for these 12 species, harming the Center's members'
26 interests in them. These injuries are actual, concrete injuries that are presently suffered by
27 the Center's members, are directly caused by Defendants' acts and omissions, and will
28

1 continue unless the Court grants relief. The relief sought would redress these injuries.
2 The Center and its members have no other adequate remedy at law.

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

7 32. Defendant MARTHA WILLIAMS is the Director of the Service and is
8 charged with ensuring that agency decisions comply with the ESA. Defendant Williams
9 is sued in her official capacity.

10 33. Defendant DEB HAALAND is the Secretary of the U.S. Department of the
11 Interior and has the ultimate responsibility to administer and implement the provisions of
12 the ESA. Defendant Haaland is sued in her official capacity.

13 **STATUTORY FRAMEWORK**

14 **The Endangered Species Act**

15 34. The Endangered Species Act, 16 U.S.C. §§ 1531-1544, is “the most
16 comprehensive legislation for the preservation of endangered species ever enacted by any
17 nation.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978). Its fundamental purposes
18 are “to provide a means whereby the ecosystems upon which endangered species and
19 threatened species depend may be conserved [and] to provide a program for the
20 conservation of such endangered species and threatened species.” 16 U.S.C. § 1531(b).

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

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

1 37. ESA section 9 prohibits, among other actions, “any person” from causing
2 the “take” of any protected fish or wildlife without lawful authorization from the Service.
3 *Id.* §§ 1538(a)(1)(B), 1539; see also *id.* § 1532(19) (defining “take”). Other provisions
4 require the Service to “develop and implement” recovery plans for listed species, *id.* §
5 1533(f); authorize the Service to acquire land for the protection of listed species, *id.* §
6 1534; and authorize the Service to make federal funds available to states to assist in the
7 conservation of endangered and threatened species, *id.* § 1535(d).

8 38. The ESA defines a “species” as “any subspecies of fish or wildlife or
9 plants, and any distinct population segment of any species of vertebrate fish or wildlife
10 which interbreeds when mature.” *Id.* § 1532(16). A “distinct population segment” of a
11 species is also known as a “DPS.” When considering whether a population segment
12 qualifies as a DPS under the Act, Service policy requires the agency to determine
13 whether the population is “discrete” and “significant.” If the Service determines that a
14 population segment is both discrete and significant, then the population qualifies as a
15 DPS and meets the ESA’s definition of a “species” that may be classified as threatened or
16 endangered.

17 39. A species is “endangered” when it “is in danger of extinction throughout all
18 or a significant portion of its range.” *Id.* § 1532(6). A species is “threatened” when it is
19 “likely to become an endangered species within the foreseeable future throughout all or a
20 significant portion of its range.” *Id.* § 1532(20).

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

27 41. To ensure the timely protection of species at risk of extinction, Congress set
28 forth a detailed process whereby citizens may petition the Service to list a species as

1 endangered or threatened. In response, the Service must publish a series of three
2 decisions according to statutory deadlines. First, within 90 days of receipt of a listing
3 petition, the Service must, “to the maximum extent practicable,” publish an initial finding
4 as to whether the petition, “presents substantial scientific or commercial information
5 indicating that the petitioned action may be warranted.” *Id.* § 1533(b)(3)(A). This is
6 known as the “90-day finding.” If the Service finds in the 90-day finding that the petition
7 does not present substantial information indicating that listing may be warranted, the
8 petition is rejected and the process concludes.

9 42. If the Service determines that a petition does present substantial
10 information indicating that listing “may be warranted,” the agency must publish that
11 finding and proceed with a scientific review of the species’ status, known as a “status
12 review.” *Id.*

13 43. Upon completing the status review, and within 12 months of receiving the
14 petition, the Service must publish a “12-month finding” with one of three listing
15 determinations: (1) listing is “warranted”; (2) listing is “not warranted”; or (3) listing is
16 “warranted but precluded” by other proposals for listing species, provided certain
17 circumstances are met. *Id.* § 1533(b)(3)(B).

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

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

25 **FACTUAL BACKGROUND**

26 **Alligator snapping turtle**

27 46. Built like a tank and often covered in camouflaging algae, the alligator
28 snapping turtle is known for its spiked shell, its strong, beaked jaws, and its worm-like

1 tongue, which it uses to lure fish. Early in the 20th century, alligator snapping turtles were
2 plentiful in river systems draining into the Gulf of Mexico, from the waterways and lakes
3 of the Midwest to the swamps and bayous of Florida, Louisiana, and Texas.

4 47. Habitat degradation, historical overharvest, and ongoing capture have
5 caused significant population declines in the once-abundant turtle.

6 48. Harvesting turtles is particularly damaging because turtles have low
7 fertility, low egg and hatchling survival, and delayed maturity. This means their survival
8 depends on adult turtles having many opportunities to mate over a long period of time.

9 **Suwannee alligator snapping turtle**

10 49. Like the alligator snapping turtle, the Suwannee alligator snapping turtle is
11 a prehistoric-looking freshwater turtle known for its spiked shell, large claws, and strong,
12 beaked jaws. Historically, alligator snappers were considered a single species, but the
13 Suwannee alligator snapping turtle was recently recognized as a distinct species.

14 50. The turtle's habitat faces destruction and degradation from agriculture,
15 urban expansion, logging, and mining. It faces a predicted 95% decline in 50 years, and
16 modeling predicts the species will continue to decline over the next 50 years under all
17 scenarios, even if threats decrease. The turtle is also threatened by illegal harvest, fishing
18 bycatch, nest predation by predators, and climate change.

19 **Pearl River map turtle**

20 51. The Pearl River map turtle is only found in creeks and rivers within the
21 Pearl River drainage in Mississippi and Louisiana. It can live up to 30 years in the wild.
22 Map turtles are often called "sawbacks" for the ridges along their backs that can form
23 small spikes.

24 52. The Pearl River map turtle was once considered to be the same species as
25 Pascagoula map turtle, but scientists later determined that the two are separate species.
26 Although the Service found that the Pascagoula map turtle does not currently warrant
27 protection under the ESA, it proposed to list the Pascagoula map turtle, Alabama map
28 turtle, Barbour's map turtle, and the Escambia map turtle due to their physical resemblance

1 to the Pearl River map turtle. Because of their intricate shells, map turtles are popular in
2 the pet trade and are susceptible to illegal collection.

3 53. The Pearl River map turtle is also threatened by habitat loss and
4 degradation from dams, floodplain clearing, and river channelization.

5 **Wright's marsh thistle**

6 54. The Wright's marsh thistle is a wetland plant found almost exclusively in
7 New Mexico. Historically it was found in southern Arizona, and in Sonora and
8 Chihuahua, Mexico, but is now found in eight widely separated locales in southern New
9 Mexico, down from 10 locations where it was originally found in the state. One of the
10 two recently lost populations dried up, and the wetland supporting the other population
11 was converted into a golf course. It is also found in one locale in West Texas, down from
12 two historic locales in Texas where it is now extirpated.

13 55. The plant likes boggy soils. It requires water-saturated and alkaline soils,
14 full sunlight, and a diversity of other plants to attract pollinators.

15 56. The Wright's marsh thistle's persistence in its surviving locales is
16 threatened by cattle trampling and grazing, non-native plants, unnaturally prolific native
17 plants that shade out the thistle, oil and gas spills from drilling, mineral mining,
18 municipal and agricultural depletion of groundwater, and drought.

19 **Bracted twistflower**

20 57. The bracted twistflower is a flower from the mustard family found in
21 Texas. It is an herbaceous plant with lavender petals. The twistflower has specific soil
22 requirements that are met only near the edge of Glen Rose and the Edwards formation in
23 Central Texas, and in areas with grasses, junipers, and oaks that provide a mix of sun and
24 shade.

25 58. It has been waiting for protection since 1975 when the Smithsonian
26 Institution identified it as imperiled.

27 59. The isolation of the flower's various populations causes low genetic
28 diversity and resiliency.

1 **Round hickorynut**

2 60. The round hickorynut is a mussel found in the Great Lakes and the
3 Midwest and southeastern United States.

4 61. The round hickorynut has lost 78% of its populations, and only four
5 populations out of 65 are ranked as having high resiliency.

6 62. Mussels improve water quality by filtering small particles from the water as
7 they eat and breathe. They reproduce by making lures that look like fish, crayfish, or
8 worms; when their host fish attempt to prey upon the lures, the mussels release their
9 fertilized eggs onto the fish's gills. Juvenile mussels develop on the gills before dropping
10 off to begin life on their own.

11 63. The southeastern United States is the world center of freshwater mussel
12 diversity, but the region has already lost 23 species to extinction. Nearly 70% of mussels
13 are at risk of extinction due to historical collection to make buttons out of mussel shells.
14 They are also threatened by dams and water pollution.

15 **Big Creek Crayfish and St. Francis River Crayfish**

16 64. The Big Creek crayfish and St. Francis River crayfish are both found in a
17 single watershed in southeastern Missouri. They live in the upper St. Francis River
18 watershed, upstream from Wappapello Dam. Both crayfish are one to two inches long
19 and require pools with low water speed, shallow water depth, and low turbidity.

20 65. The St. Francis crayfish is a darker shade of brown than the Big Creek
21 crayfish and prefers life under small rocks or shallow burrows in swiftly moving streams,
22 while the Big Creek crayfish prefers pools and backwater areas.

23 66. Both crayfish are imperiled by non-native woodland crayfish, which can
24 displace the native crayfish as well as interbreed with them. Woodland crayfish have led
25 to a reduction, and in some areas a total displacement, of native crayfish. The St. Francis
26 River and Big Creek crayfishes are also threatened by pollution and heavy-metal
27 contamination of their streams caused by lead mining.

28 //

1 **Least chub**

2 67. The least chub is a small, gold-colored minnow endemic to Utah and
3 restricted to Utah's part of the ancient Bonneville Basin. This fish is typically less than
4 2.5 inches long and has evolved to survive in the extreme spring habitats of the
5 Bonneville Basin. First described in 1872, it is the only species in its genus, *Iotichthys*.

6 68. The least chub has experienced dramatic population and distribution
7 declines throughout its range. It has been extirpated from the majority of historic habitats
8 where it once existed and currently persists in only seven wild populations along the
9 Wasatch Front, the Sevier River basin, and the Utah West Desert. Many of the extant
10 populations are small and fragmented. In addition, there are 12 to 14 least chub refuge
11 populations, primarily in the northern portion of the Bonneville Basin. Least chub have
12 also been introduced to four other sites, but these sites do not qualify as refuge
13 populations. Least chubs are yet to be captured post-stocking at three of the four sites.

14 69. Planned water withdrawals to support human population growth in Cedar
15 City, Utah threaten several remaining least chub populations. Cedar City is seeking rights
16 to build a pipeline to withdraw up to 15,000 acre-feet per year of groundwater from Pine
17 Valley and is planning to withdraw water from Wah Wah and Hamlin Valleys. These
18 three valleys are hydrologically connected to Snake Valley and the Sevier Desert Basin,
19 which contain four of the remaining seven wild populations of least chubs.

20 70. The main threats to the least chub populations are water withdrawal and
21 diversion, nonnative fish and invasive plants, drought and climate change, stochastic
22 disturbance and population isolation, oil and gas development, urban development,
23 livestock grazing, and the cumulative effects of various threats.

24 **Fish Lake Valley tui chub**

25 71. The Fish Lake Valley tui chub is a small, olive-colored subspecies of tui
26 chub found in Fish Lake Valley, Esmeralda County, Nevada. It inhabits isolated marsh
27 and spring outflow systems and has been extirpated from all but one location within its
28 historic range.

1 72. Its current distribution is limited to a single spring and outflow system,
2 whereas it was previously found in several locations in the Valley. The loss of habitat
3 within its former range is attributed to the alteration of habitats and groundwater
4 development. The last remaining population is immediately and severely threatened by
5 the over-appropriation of groundwater due to agriculture, potentially compounded by in-
6 situ impacts from grazing and aquatic plant encroachment.

7 73. The tui chub is also threatened by groundwater development from the
8 geothermal energy sector, rapidly developing and water-intensive lithium mining
9 interests, and to a lesser extent, oil and gas prospecting. Other threats include invasive
10 species, stochastic events, and climate change.

11 **Slickspot peppergrass**

12 74. Slickspot peppergrass is a plant in the mustard family found only in
13 southwestern Idaho in Ada, Canyon, Gem, Elmore, Payette, and Owyhee counties.

14 75. The plant occurs in areas with an elevation of 2,490 feet to 5,407 feet.
15 Slickspot peppergrass occurs in areas known as “slick spots.” These are microsites that
16 collect rain and snowmelt. Few species are adapted to survive in slick spots, but slickspot
17 peppergrass is well adapted to these microsites or areas directly adjacent to them.

18 76. There are only about 90 occurrences of slickspot peppergrass on Earth.
19 Most are in degraded and low-quality habitats, with few plants. Slickspot peppergrass
20 suffers the highest known elimination rate of any Idaho plant species. It is threatened by
21 agriculture, mining, urban sprawl, livestock grazing, and invasive species.

22 **Barrens topminnow**

23 77. The Barrens topminnow is a small fish found in central Tennessee, in clear
24 spring-fed streams on the Barrens Plateau in Cannon, Coffee, and Warren counties. The
25 Barrens topminnow grows to four inches long, has flashy coloration, and swims near the
26 water’s surface, where it preys on mosquito larvae and other insects.

27 78. The topminnow’s range includes headwater streams in the Duck and Elk
28 River watersheds, which are part of the Tennessee River drainage, and the Caney Fork

1 watershed in the Cumberland River drainage. The topminnow has suffered a 70% range
2 loss due to predation by introduced mosquitofish, loss of riparian vegetation to pasture,
3 and climate change, which is causing severe drought and storm events in the Southeast.
4 One of the topminnow's springs has dried up three times since 2006, and fish were
5 rescued by scientists and held until the creek flow returned.

6 **Listing Petition and Response**

7 **Alligator snapping turtle**

8 79. On July 11, 2012, the Service received the Center's petition to list the
9 alligator snapping turtle as endangered or threatened under the ESA. On July 1, 2015, the
10 Service published a positive 90-day finding that the petition presented "substantial
11 scientific or commercial information indicating that the petitioned action may be
12 warranted." 80 Fed. Reg. 37,571 (July 1, 2015).

13 80. On March 16, 2016, the Center filed suit to compel the Service to issue a
14 12-month finding for the alligator snapping turtle. The Center and the Service reached a
15 stipulated settlement that the Service would publish a 12-month finding for the turtle by
16 September 30, 2020.

17 81. On November 9, 2021, the Service published a 12-month finding that
18 proposed to list the alligator snapping turtle as a threatened species. 86 Fed. Reg. 62,434
19 (November 9, 2021). The deadline for finalizing this rule has passed.

20 **Suwanee alligator snapping turtle**

21 82. On July 11, 2012, the Service received the Center's petition to list the
22 Suwanee alligator snapping turtle as endangered or threatened under the ESA. On July
23 1, 2015, the Service published a 90-day finding that the turtle's status warranted further
24 review. 80 Fed. Reg. 37,568 (July 1, 2015).

25 83. On September 1, 2015, the Center submitted further information to the
26 Service describing new studies that could lead to taxonomic differentiation of the single
27 species into multiple entities. 86 Fed. Reg. 18,018 (April 7, 2021)

28

1 84. On April 7, 2021, the Service published a 12-month finding that proposed
2 to list the turtle as a threatened species. *Id.* The deadline for finalizing this rule has
3 passed.

4 **Pearl River map turtle**

5 85. On April 20, 2010, the Service received the Center’s petition to list the
6 Pascagoula map turtle. Since then, the Pascagoula map turtle was determined to be two
7 similar yet distinct species—the Pascagoula map turtle and the Pearl River map turtle. 86
8 Fed. Reg. 66,626 (November 23, 2021).

9 86. On January 21, 2020, the Center filed a lawsuit to compel the Service to
10 publish its overdue 12-month finding for the Pearl River map turtle. The Center and the
11 Service reached a stipulated settlement that the Service would publish a 12-month finding
12 by October 29, 2021.

13 87. On November 23, 2021, the Service published a 12-month finding that
14 proposed to list the Pearl River map turtle as a threatened species. 86 Fed. Reg. at 66,626.
15 The deadline for finalizing this rule has passed.

16 **Wright’s marsh thistle**

17 88. The Service received a petition to list the Wright’s marsh thistle as
18 threatened or endangered under the ESA in 2008. In 2010, the Service published a 12-
19 month finding that listing this plant as endangered or threatened was warranted but
20 precluded by higher priority actions. 75 Fed. Reg. 67,925 (November 4, 2010).

21 89. The Service placed Wright’s marsh thistle on the candidate list. *Id.* A
22 candidate species qualifies for protection as an endangered or threatened species but
23 receives no protection while it waits for the Service to promulgate a regulation listing the
24 species.

25 90. On September 29, 2020, the Service published a proposed rule to list
26 Wright’s marsh thistle as a threatened species under the ESA and proposed designating
27 159 acres of critical habitat for the plant. 85 Fed. Reg. 61,460 (September 29, 2020). The
28 deadline for finalizing this rule has passed.

1 **Bracted twistflower**

2 91. On July 1, 1975, the Service accepted a report from the Smithsonian
3 Institution that included the bracted twistflower as a petition to list the plant under the
4 Act. The species remained a candidate for listing until 2021, when the Service published
5 a 12-month finding proposing to list the bracted twistflower as a threatened species. 86
6 Fed. Reg. 62,668 (November 10, 2021).

7 92. The Service proposed to designate 1,606 acres (650 hectares) of critical
8 habitat for the bracted twistflower. *Id.* The deadline for finalizing this rule has passed.

9 **Round hickorynut**

10 93. On April 20, 2010, the Service received the Center’s petition to list the
11 round hickorynut as threatened or endangered under the ESA. On September 27, 2011,
12 the Service issued a partial 90-day finding that the petition to list the round hickory nut
13 presented “substantial scientific or commercial information indicating that listing may be
14 warranted.” 76 Fed. Reg. 59,836 (September 27, 2011).

15 94. On September 29, 2020, the Service issued a 12-month finding that
16 proposed to list the mussel as threatened under the ESA. 85 Fed. Reg. 61,384 (September
17 29, 2020). It proposed to designate 921 river miles of critical habitat for the mussel. *Id.*
18 The deadline for finalizing this rule has passed.

19 **Big Creek crayfish and St. Francis crayfish**

20 95. On its own initiative, the Service undertook a status review of the Big
21 Creek crayfish and St. Francis River crayfish. On September 17, 2020, the Service
22 published a proposed rule to list both crayfish as threatened under the ESA and proposed
23 to designate 1,069 river miles in critical habitat for the Big Creek crayfish and 1,043 river
24 miles for the St. Francis River crayfish. 85 Fed. Reg. 58,192 (September 17, 2020).

25 96. On April 27, 2021, the Service re-opened the comment period for its
26 proposed rule. 86 Fed. Reg. 22,127 (April 27, 2021). The deadlines for these final rules
27 have passed.

28

1 **Least chub**

2 97. On September 30, 2021, the Service received the Center’s petition to list
3 the least chub as endangered or threatened under the ESA. The Service has yet to issue
4 either the 90-day finding or 12-month finding in response to the Center’s petition, as
5 required by the ESA. The deadlines for both findings have passed.

6 **Fish Lake Valley tui chub**

7 98. On March 23, 2021, the Service received a petition to list the Fish Lake
8 Valley tui chub as endangered or threatened under the ESA. On August 23, 2022, the
9 Service published a positive 90-finding that the petition presents “substantial scientific or
10 commercial information indicating that the petitioned actions may be warranted.” 87 Fed.
11 Reg. 51,635 (August 23, 2022).

12 99. Because the Service found that the petition may be warranted in its 90-day
13 finding, its 12-month finding was due one year after receipt of the Center’s petition. The
14 deadline for publication of the 12-month finding has passed.

15 **Slickspot peppergrass**

16 100. On April 9, 2001, the Service received a petition to list slickspot
17 peppergrass as threatened or endangered under the ESA. After being placed on the
18 candidate list, on July 15, 2002, the Service published a proposed rule to list slickspot
19 peppergrass as an endangered species. 67 Fed. Reg. 46,441 (July 15, 2002). Instead of
20 finalizing its rule, the Service re-opened and extended the comment period for its rule and
21 subsequently withdrew its proposed rule.

22 101. On September 19, 2008, the Service reinstated its original July 15, 2002
23 rule to list slickspot peppergrass as an endangered species under the Act. 73 Fed. Reg.
24 54,345 (September 19, 2008). The Service determined the species warranted a
25 designation of threatened status instead of endangered. 81 Fed. Reg. 55,058 (August 17,
26 2016). On August 17, 2016, the Service published a final rule to list slickspot peppergrass
27 as threatened under the Act. *Id.* In its final rule, the Service explained that it would soon
28 finalize a critical habitat designation for this species. *Id.*

1 102. On July 23, 2020, four years after listing slickspot peppergrass, the Service
2 published a revised proposed rule to designate 42,129 acres of critical habitat to slickspot
3 peppergrass. 85 Fed. Reg. 44,584 (July 23, 2020). The deadline for finalizing this rule has
4 passed.

5 **Barrens topminnow**

6 103. The Barrens topminnow was first proposed for listing in 1977 and
7 subsequently placed on the candidate list. 47 Fed. Reg. 58, 454 (December 30, 1982). In
8 1996, the topminnow was removed from the list of candidate species. 61 Fed. Reg. 7596
9 (February 28, 1996). On April 20, 2010, the Service received the Center’s petition to list
10 barrens topminnow as endangered or threatened under the ESA.

11 104. On September 27, 2011, the Service published a positive 90-day finding
12 that the petition to list the topminnow “presents substantial scientific or commercial
13 information indicating that listing may be warranted.” 76 Fed. Reg. 59,836 (September
14 27, 2011). On January 4, 2018, the Service published a proposed rule to list the
15 topminnow as an endangered species. 83 Fed. Reg. 490 (January 4, 2018). On October
16 21, 2019, the Service finalized the proposed rule and listed the Barrens topminnow as
17 endangered under the Act. The Service’s rule stated that critical habitat would be
18 designated in the near future. *Id.* The Service was required to designate critical habitat for
19 the topminnow one year after listing. The deadline for finalizing this rule has passed.

20 105. Until Defendants timely finalize these eight proposed listing rules, publish
21 the two 12-month findings and the one 90-day finding, and issue the two critical habitat
22 designations, the alligator snapping turtle, Suwannee alligator snapping turtle, Pearl River
23 map turtle, Wright’s marsh thistle, bracted twistflower, round hickorynut, Big Creek
24 crayfish, St. Francis River crayfish, least chub, Fish Lake Valley tui chub, slickspot
25 peppergrass, and Barrens topminnow will continue to lack necessary protections under
26 the Act.

1 **CLAIMS FOR RELIEF**

2 **Violation of the ESA for Failure to Publish a Timely Final Rule for the alligator**
3 **snapping turtle**

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

6 107. The ESA requires the Service to publish a final listing rule one year after it
7 publishes a 12-month finding with a listing determination. Defendants failed to perform
8 their nondiscretionary duty to publish a timely final rule for the alligator snapping turtle
9 in violation of the ESA. 16 U.S.C. § 1533(b)(3)(B).

10 **Violation of the ESA for Failure to Publish a Timely Final Rule for the Suwannee**
11 **alligator snapping turtle**

12 108. Plaintiff re-alleges and incorporates all allegations set forth in the preceding
13 paragraphs.

14 109. The ESA requires the Service to publish a final listing rule one year after it
15 publishes a 12-month finding with a listing determination. Defendants failed to perform
16 their nondiscretionary duty to publish a timely final rule for the Suwannee alligator
17 snapping turtle in violation of the ESA. *Id.*

18 **Violation of the ESA for Failure to Publish a Timely Final Rule for the Pearl River**
19 **map turtle**

20 110. Plaintiff re-alleges and incorporates all allegations set forth in the preceding
21 paragraphs.

22 111. The ESA requires the Service to publish a final listing rule one year after it
23 publishes a 12-month finding with a listing determination. Defendants failed to perform
24 their nondiscretionary duty to publish a timely final rule for the Pearl River map turtle in
25 violation of the ESA. *Id.*

26 **Violation of the ESA for Failure to Publish a Timely Final Rule and Critical Habitat**
27 **Designation for the Wright's marsh thistle**

1 112. Plaintiff re-alleges and incorporates all allegations set forth in the preceding
2 paragraphs.

3 113. The ESA requires the Service to publish a final listing rule with a critical
4 habitat designation one year after it publishes a 12-month finding with a listing
5 determination. Defendants failed to perform their nondiscretionary duty to publish a
6 timely final rule and critical habitat designation for the Wright's marsh thistle, in
7 violation of the ESA. *Id.*

8 **Violation of the ESA for failure to Publish a Timely Final Rule and Critical Habitat**
9 **Designation for the bracted twistflower**

10 114. Plaintiff re-alleges and incorporates all allegations set forth in the preceding
11 paragraphs.

12 115. The ESA requires the Service to publish a final listing rule with a critical
13 habitat designation one year after it publishes a 12-month finding with a listing
14 determination. Defendants failed to perform their nondiscretionary duty to publish a
15 timely final rule and critical habitat designation for the bracted twistflower, in violation
16 of the ESA. *Id.*

17 **Violation of the ESA for Failure to Publish a Timely Final Rule and Critical Habitat**
18 **Designation for the round hickorynut**

19 116. Plaintiff re-alleges and incorporates all allegations set forth in the preceding
20 paragraphs.

21 117. The ESA requires the Service to publish a final listing rule with a critical
22 habitat designation one year after it publishes a 12-month finding with a listing
23 determination. Defendants failed to perform their nondiscretionary duty to publish a
24 timely final rule and critical habitat designation for the round hickorynut, in violation of
25 the ESA. *Id.*

26 **Violation of the ESA for Failure to Publish a Timely Final Rule and Critical Habitat**
27 **Designation for the Big Creek crayfish**

1 118. Plaintiff re-alleges and incorporates all allegations set forth in the preceding
2 paragraphs.

3 119. The ESA requires the Service to publish a final listing rule with a critical
4 habitat designation one year after it publishes a 12-month finding with a listing
5 determination. Defendants failed to perform their nondiscretionary duty to publish a
6 timely final rule and critical habitat designation for the Big Creek crayfish in violation of
7 the ESA. *Id.*

8
9 **Violation of the ESA for Failure to Publish a Timely Final Rule and Critical Habitat
Designation for the St. Francis River crayfish**

10 120. Plaintiff re-alleges and incorporates all allegations set forth in the preceding
11 paragraphs.

12 121. The ESA requires the Service to publish a final listing rule with a critical
13 habitat designation one year after it publishes a 12-month finding with a listing
14 determination. Defendants failed to perform their nondiscretionary duty to publish a
15 timely final rule and critical habitat designation for the St. Francis River crayfish in
16 violation of the ESA. *Id.*

17
18 **Violation of the ESA for Failure to Publish Timely 90-Day Finding for the Least
Chub and a 12-Month Finding for the Least Chub**

19 122. Plaintiff re-alleges and incorporates all allegations set forth in the preceding
20 paragraphs.

21 123. The ESA requires the Service, “to the maximum extent practicable,” to
22 publish an initial finding as to whether the petition, “presents substantial scientific or
23 commercial information indicating that the petitioned action may be warranted.” 16
24 U.S.C. § 1533(b)(3)(A). Defendants failed to publish a timely 90-day finding for the least
25 chub.

26 124. The ESA requires the Service to publish a 12-month finding within 12
27 months of receiving a petition to list a species under the Act. Defendants failed to
28

1 perform their nondiscretionary duty to publish a timely 12-month finding with a proposed
2 rule for the least chub, in violation of the ESA. 16 U.S.C. § 1533(b)(3)(B).

3 **Violation of the ESA for Failure to Publish a Timely 12-Month Finding for the Fish**
4 **Lake Valley Tui Chub**

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

7 126. The ESA requires the Service to publish a 12-month finding within 12
8 months of receiving a petition to list a species under the Act. Defendants failed to
9 perform their nondiscretionary duty to publish a timely 12-month finding with a proposed
10 rule for the Fish Lake Valley tui chub, in violation of the ESA. 16 U.S.C. §
11 1533(b)(3)(B).

12 **Violation of the ESA for Failure to Publish a Timely Critical Habitat Designation**
13 **for slickspot peppergrass**

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

16 128. The ESA requires the Service to publish a critical habitat designation
17 concurrently with listing or provide notice that it is extending its designation deadline.
18 Defendants failed to perform their nondiscretionary duty to publish a timely final rule for
19 slickspot peppergrass in violation of the ESA. 16 U.S.C. § 1533(a)(3)(A)(i).

20 **Violation of the ESA for Failure to Publish a Timely Critical Habitat Designation**
21 **for Barrens topminnow**

22 129. Plaintiff re-alleges and incorporates all allegations set forth in the preceding
23 paragraphs.

24 130. The ESA requires the Service to publish a critical habitat designation
25 concurrently with listing or provide notice that it is extending its designation deadline. In
26 this case, the Service extended the one-year period for critical habitat designation and has
27 still failed to perform its nondiscretionary duty to publish a timely critical habitat
28 designation for barrens topminnow within one year of listing, in violation of the ESA. *Id.*

1 **REQUEST FOR RELIEF**

2 WHEREFORE, Plaintiff respectfully requests that the Court enter judgment
3 providing the following relief:

- 4 1. Declare that Defendants have violated the ESA by failing to issue timely
5 final rules for the alligator snapping turtle, Suwannee alligator snapping
6 turtle, Pearl River map turtle, Wright’s marsh thistle, bracted twistflower,
7 round hickorynut, Big Creek crayfish, and St. Francis River crayfish, by
8 failing to issue a 90-day finding for the least chub and 12-month findings
9 for the least chub and Fish Lake Valley tui chub, and by failing to timely
10 finalize critical habitat designations for slickspot peppergrass and Barrens
11 topminnow;
- 12 2. Provide injunctive relief compelling Defendants to publish the final rules,
13 12-month findings and 90-day finding, and critical habitat designations at
14 issue in this complaint in the Federal Register by a date certain;
- 15 3. Retain continuing jurisdiction to review Defendants’ compliance with all
16 judgments and orders herein;
- 17 4. Grant Plaintiff its reasonable attorneys’ fees and costs as provided by the
18 ESA, 16 U.S.C. § 1540(g)(4); and
- 19 5. Provide such other relief as the Court deems just and proper.

20
21 Respectfully submitted and dated this 7th day of March, 2023.

22
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Pro Hac Vice Admission Pending

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