



July 29, 2021

Via Electronic and Certified Mail

Debra Haaland, Secretary of the Interior
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Martha Williams, Acting Director
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RE: Sixty-day Notice of Intent to Sue for Violations of the Endangered Species Act

Dear Secretary Haaland and Acting Director Williams:

The Center for Biological Diversity (“Center”) provides this 60-day notice of intent to sue the U.S. Department of the Interior and U.S. Fish and Wildlife Service (“Service”) for violating the Endangered Species Act, 16 U.S.C. §§ 1531-1544 (“ESA”) resulting from the Service’s failure to issue required 90-day and 12-month findings on the Center’s petition to; 1) list Long Valley speckled dace (scientifically recognized but yet to be formally described) as endangered; and 2) list the Amargosa Canyon and Owens Valley speckled dace populations as endangered distinct population segments (“DPS”). These findings are past deadlines established by the ESA. The Center provides this letter according to the 60-day notice requirement of the citizen suit provision of the Act. *Id.* §1540(g)(2)(C).

The Center for Biological Diversity is a national, nonprofit conservation organization with more than 1.7 million members and online activists dedicated to the protection of endangered species and wild places, including Amargosa Canyon speckled dace, Long Valley speckled dace, and Owens speckled dace.

BACKGROUND

Speckled Dace in Death Valley

Three unique populations of speckled dace which inhabit the Death Valley region of California are critically imperiled and yet have no current or proposed protection under the Endangered Species Act. The Amargosa Canyon speckled dace, Long Valley speckled dace, and Owens Valley speckled dace are small, minnow-like fish. While speckled dace widely range in western

drainages from British Columbia to Sonora, the unique and isolated Death Valley speckled dace populations live in rare freshwater streams and springs which serve as oases in the otherwise dry environments of Amargosa Canyon, Long Valley, and Owens Valley, California. All are under imminent threat due to excessive groundwater pumping.

Other threats to these speckled daces include habitat alteration for agricultural use, river channelization, vegetation clearing, livestock grazing, off-road vehicles, and recreational development of hot spring water sources. Introduced fish, crayfish, and bullfrogs prey upon and compete with speckled dace, and invasive plants, such as saltcedar, severely alter spring and riparian habitats along the Amargosa River. Changes in precipitation, snow, and runoff in the Death Valley region due to climate change will result in reduced stream flows and inadequate aquifer recharge to sustain many of the streams and springs which speckled dace rely on.

Amargosa Canyon Speckled Dace

Amargosa Canyon speckled dace are confined to the Amargosa Canyon reach of the Amargosa River and its tributary Willow Creek. Their range has been constricted by excessive groundwater extraction for agriculture, rural residential development, and urbanization, which reduces surface flow in the Amargosa River. The stream habitats of the Amargosa Canyon speckled dace, located in the Amargosa River and its tributaries south of Tecopa, are under imminent threat due to excessive groundwater extraction.

Long Valley Speckled Dace

Long Valley speckled dace has been identified by genetic analysis as a separate subspecies, which scientists have yet to formally describe. Long Valley speckled dace formerly occurred in warm springs throughout the isolated Long Valley volcanic caldera, east of Mammoth Lakes. Geothermal energy development in Long Valley subsequently altered the hydrology of hot springs. Dace have been eliminated from Hot Creek, Little Alkali Lake, and various isolated springs and ponds in Long Valley. The sole remaining population in Whitmore Hot Springs was thought to be stable in 2009, but 2019 surveys failed to locate any of fish. This last population of Long Valley speckled dace in the wild may no longer exist, leaving one population in a managed refuge.

Owens Valley Speckled Dace

Owens Valley speckled dace historically occupied most small streams and springs in the Owens Valley, but groundwater extraction eliminated many spring habitats. Speckled dace persist in three locations in northern Owens Valley, including irrigation ditches in Round Valley and near Bishop, but the only native habitats they still occupy are several isolated springs in Fish Slough. Further groundwater depletion threatens the springs at Fish Slough.

The Center's Listing Petition

On June 8, 2020, the Center petitioned the Service to expand the listing of the Ash Meadows speckled dace to include speckled dace populations in Amargosa Canyon and Owens Valley, California. The Center's petition was based on the best available scientific information showing that these populations are the same subspecies as the Ash Meadows speckled dace. In addition, the Center's petition requested the Service to list the Long Valley population of speckled dace as endangered, as a separate subspecies. Alternatively, the Center's petition requested the Service to

list each of the Amargosa Canyon, Owens Valley, and Long Valley speckled dace populations as endangered distinct population segments (“DPSs”)

The Service’s April 12, 2021 Letter

On April 12, 2021 the Service wrote to the Center stating that the portion of the petition concerning the Long Valley speckled dace meets the regulatory criteria for petitions under 50 C.F.R. § 424.14(c). The Service, however, also wrote that it was “unable to process your request for the speckled dace populations in Amargosa Canyon and in Owens Valley because this portion of your request does not qualify as a petition under 50 C.F.R. § 424.14(c), as it is missing one or more of the required elements for petitions.”

The Service’s letter specifically identified three “missing elements”: 1) “a detailed narrative justifying the recommended administrative action that contains an analysis of the information presented”; 2) “information to establish whether the subject entity is a ‘species’ as defined in the [ESA]”; and 3) “copies of the notification letters or electronic communications that the petitioner provided to State agencies...” The Service explains that it is “not currently aware of any definitive conclusions within the scientific community” regarding whether the Amargosa and Owens populations are part of the Ash Meadows speckled dace subspecies, and that a pending 5-year review would be “considering all relevant information.”

The Service also refused to consider the Center’s alternative request to list the Amargosa Canyon and Owens Valley speckled dace as DPS, stating that “we assume you are stating that they be considered as DPSs of the Ash Meadows speckled dace,” which “would first require they be determined to be members of the Ash Meadows speckled dace subspecies.” Here too, the Service stated that the 5-year review “may provide information that will allow us to answer these taxonomic questions.”

The Ash Meadows Speckled Dace 5-Year Review

In July 2021, the Service issued the 5-year review for the Ash Meadows speckled dace. Despite the Service’s assurances in the April 12 letter, the 5-year review did not resolve any taxonomic questions.

The 5-year review acknowledges multiple scientific studies, including a study conducted for FWS in 2018 (Baumsteiger and Moyle), concluding that the Ash Meadows, Amargosa Canyon, and Owens Valley populations should be considered one subspecies or that alternatively, DPS should be designated in each basin. The Service nonetheless dismissed these conclusions in the 5-year review, reasoning that “the suggested taxonomy is not yet formally revised” and “has not reached consensus in the peer-reviewed literature.” The Service states that “[d]epending on the outcome of future taxonomic research . . . the Service may need to consider evaluation of the status of these forms,” but the 5-year review does not identify any specific action in relation to the Amargosa and Owens Valley speckled dace populations, thus leaving those fish without any ESA protections.

ENDANGERED SPECIES ACT VIOLATIONS

In response to a petition to list a species under the Endangered Species Act, Section 4 of the Act requires the Secretary to determine within 90 days whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted (“90-day finding”) and to determine within 12 months whether the listing is warranted, not warranted, or warranted but precluded (“12-month finding”). 16 U.S.C. §1533(b)(3)(A), (B).

Long Valley Speckled Dace

The Service’s April 12 letter acknowledges that the Center’s petition concerning the Long Valley speckled dace is valid, and that the agency is “moving forward with processing the petition finding for the Long Valley speckled dace.” The Service, however, has yet to issue either the 90-day finding or 12-month finding in response to the Center’s petition as required by the ESA.

Amargosa Canyon and Owens Valley Speckled Dace

The Service’s April 12 letter states that if the Amargosa Canyon and Owens Valley populations are determined to be the same entity as the listed Ash Meadows speckled dace, then those populations would be “automatically” evaluated as part of that listed entity, “rather than as new entities for which to consider listing.” The Center acknowledges that *if* the Amargosa and Owens Valley populations are recognized by the Service as part of the Ash Meadows subspecies, then a petition would not be necessary. The Service, however, refused such recognition in the July 2021 5-year review, and provides no clear timeline for ever revisiting the decision.

The Center’s petition also included the alternative request that the Service list each of the Amargosa Canyon, Owens Valley, and Long Valley speckled dace populations as endangered DPS. The Service’s April 12 letter acknowledges the DPS request, but states that it cannot be processed because the agency “assume[d] [the Center was] suggesting they be considered members of the Ash Meadows speckled dace subspecies,” and these populations have not been determined to be members of Ash Meadows speckled dace.

The Center’s petition, however, requested DPS consideration in the *alternative* to recognizing the populations as part of the listed Ash Meadows subspecies. If the Amargosa and Owens populations are part of Ash Meadows, they are then part of a listed species that is protected “wherever found” and DPS has no relevance. Accordingly, the Center’s petition regarding DPS was made with respect to speckled dace at the species level (*Rhinichthys osculus*) *not* the Ash Meadows subspecies level (*Rhinichthys osculus nevadensis*). The Service’s refusal to consider the DPS portion of the Center’s petition is thus arbitrary, and failure to timely issue the 90-day finding or 12-month finding in response to the DPS portion of the Center’s petition is unlawful.

Notice Provided to Local Agency

The Service’s April 12 letter claims petitioners did not provide required notice to the relevant state agency. Petitioners provided 30-day notice to the California Department of Fish and

Wildlife, the relevant state agency, on April 21, 2020. Petitioners have electronic evidence that the 30-day notice was submitted on June 8, 2020 to the Service with the listing petition.

In failing to issue these required findings, the Service has abrogated its duty to ensure that Amargosa Canyon, Long Valley, and Owens Valley speckled dace are protected in a timely manner to avoid further decline and an increased threat of extinction, in violation of Section 4 of the ESA. If the Secretary does not make the required finding or contact us to develop a timeline for making this finding within the next 60 days, we intend to file suit to enforce the Act.

Please contact me if you have any questions or if you would like to discuss this matter.

Sincerely,

/s/ Camila Cossío

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