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11 **UNITED STATES DISTRICT COURT**  
12 **EASTERN DISTRICT OF CALIFORNIA**

13 CENTER FOR BIOLOGICAL  
14 DIVERSITY

15 Plaintiff,

16 v.

17 DEB HAALAND, Secretary of the Interior,  
18 *in her official capacity*; and

19 MARTHA WILLIAMS, Director,  
20 U.S. Fish & Wildlife Service, *in her*  
21 *official capacity*,

22 Defendants.

No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**INTRODUCTION**

23 1. Plaintiff Center for Biological Diversity (“Center”) brings this case challenging the  
24 U.S. Fish and Wildlife Service’s (“Service”) failure to determine whether the Temblor legless  
25 lizard (*Anniella alexanderae*) warranted protection as endangered or threatened, in violation of  
26 the Endangered Species Act’s (“ESA” or “Act”) nondiscretionary, congressionally mandated  
27 deadlines. 16 U.S.C. § 1533(b)(3). The Service’s failure delays crucial, lifesaving protections for  
28 these imperiled lizards, increasing their risk of extinction.

2. The Temblor legless lizard is a rare, sand-swimming lizard endemic to the  
southwestern San Joaquin Valley in central California. It is found nowhere else on Earth. The

1 Temblor legless lizard is a microhabitat specialist that needs specific moisture levels and loose,  
2 sandy soil in its habitat to survive. Due to widespread oil and gas development in its native  
3 habitat, the Temblor legless lizard is now restricted to a few fragmented habitat patches within an  
4 exceedingly narrow range less than 125 miles long on the east side of the Temblor Mountains.  
5 The Temblor legless lizard (pictured below) is at risk of extinction due to multiple significant  
6 threats, particularly oil and gas drilling operations and climate change.



16 *Temblor legless lizard. Photo by Alex Krohn*

17 3. The Center submitted a petition (attached hereto as Exhibit A) to the Service on  
18 October 20, 2020, to list this species as “endangered” or “threatened” under the ESA. Defendants’  
19 failure to comply with their nondiscretionary duties to complete review of the petition deprives  
20 the Center of a timely determination on its petition and the Temblor legless lizard of the statutory  
21 protections that are necessary for its survival and recovery.

22 4. The Center brings this lawsuit for declaratory and injunctive relief, seeking an  
23 Order declaring that the Service is in violation of the ESA by failing to make the required 12-  
24 month finding on the Center’s petition to list the Temblor legless lizard and directing the Service  
25 to publish its overdue 12-month listing determination by a date certain.

26 **JURISDICTION AND VENUE**

27 5. This Court has jurisdiction over this action pursuant to 16 U.S.C. §§ 1540(c), (g)  
28 (ESA citizen suit provision) and 28 U.S.C. § 1331 (federal question). This Court has authority to

1 issue declaratory and injunctive relief pursuant to 16 U.S.C. § 1540(g) (ESA); U.S.C. §§ 2201-  
2 2202 (Declaratory Judgment Act); and 5 U.S.C. § 706 (Administrative Procedure Act, “APA”).

3 6. Plaintiff provided Defendants with 60 days’ notice (attached hereto as Exhibit B)  
4 of the ESA violation, as required by 16 U.S.C. § 1540(g)(2)(A), by a letter to the Service dated  
5 November 17, 2021 (received November 22, 2021). Defendants have not remedied the violations  
6 set out in the notice and an actual controversy exists between the parties within the meaning of the  
7 Declaratory Judgment Act, 28 U.S.C. § 2201.

8 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1) because the  
9 lizard’s habitat is in this district, and a substantial part of the violations of law by Defendants  
10 occurred in this district.

11 **PARTIES**

12 8. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a national, non-profit  
13 conservation organization that works through science, law, and policy to protect imperiled  
14 wildlife and their habitat. The Center is incorporated in California and headquartered in Tucson,  
15 Arizona, with offices throughout the United States, including Washington, D.C. The Center has  
16 approximately 18,765 members in California, including in areas where the historic and existing  
17 remaining habitats of the Temblor legless lizard are found.

18 9. The Center and its members have deep and long-standing interests in the  
19 preservation and recovery of imperiled species, including the Temblor legless lizard and its  
20 habitat, and in the full and effective implementation of the ESA. The Center’s members include  
21 individuals with scientific, professional, educational, recreational, aesthetic, moral, and spiritual  
22 interests in the Temblor legless lizard, and who visit and appreciate the habitat of the species for a  
23 broad range of reasons. Plaintiff’s interests in protecting and recovering this species are directly  
24 harmed by the Service’s failure to issue timely findings on their petition to list the lizard.

25 10. The Center’s members include individuals who regularly visit areas that are  
26 occupied or were formerly occupied by the Temblor legless lizard, and who seek to observe or  
27 study the lizard in their natural habitat. Plaintiff’s members derive recreational, spiritual,  
28 professional, scientific, educational, and aesthetic benefit from these activities, and intend to

1 continue to use and enjoy these areas in the future.

2 11. For example, in the past few years, Center member Dr. Shaye Wolf, Climate  
3 Science Director for the Center's Climate Law Institute, has visited potential habitat areas and  
4 conducted research to protect the Temblor legless lizard and its habitat. She was the lead author  
5 of the California ESA listing petition for the Temblor legless lizard, helped draft Plaintiff's  
6 federal ESA petition, and has worked on challenges to drilling projects in California that threaten  
7 the species. Dr. Wolf has concrete plans to search for the Temblor legless lizard in spring of 2022  
8 in Fresno County with U.C. Berkeley and Bureau of Land Management biologists who are  
9 conducting population surveys for the lizard. She cares deeply about the conservation of this  
10 unique species in the wild because she derives scientific, educational, esthetic, moral, spiritual,  
11 and conservation benefits from observing the species. Ongoing threats from rampant oil and gas  
12 development and the threats of the escalating climate crisis on the future existence of this lizard  
13 and its habitat harm her interests in preserving the species and the ecological integrity of its  
14 habitat.

15 12. Defendants' violation of the ESA's nondiscretionary mandatory deadlines has  
16 delayed the implementation of statutory ESA protections for the Temblor legless lizard and its  
17 habitat, making the conservation of this species more difficult. These injuries are actual, concrete  
18 injuries that are presently suffered by the Center's members, are directly caused by Defendants'  
19 acts and omissions, and will continue unless the Court grants relief. The relief sought by Plaintiffs  
20 would redress these injuries. The Center and its members have no other adequate remedy at law.

21 13. Defendant DEB HAALAND is the Secretary of the U.S. Department of the  
22 Interior and has the ultimate responsibility to administer and implement the provisions of the  
23 ESA. The Secretary of the Interior has delegated administration of the ESA to the U.S. Fish and  
24 Wildlife Service. 50 C.F.R. § 402.01(b). Defendant Haaland is sued in her official capacity.

25 14. Defendant MARTHA WILLIAMS is the Director of the U.S. Fish and Wildlife  
26 Service, the agency within the Department of the Interior charged with implementing the ESA for  
27 the species at issue in this suit. Defendant Williams is charged with ensuring that agency  
28 decisions comply with the ESA and is sued in her official capacity.

**STATUTORY FRAMEWORK**

**The Endangered Species Act**

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

16. The ESA provides a suite of substantive and procedural legal protections that apply to species once they are listed as endangered or threatened. *Id.* § 1533.

17. For example, section 4(a)(3) of the Act requires the Service to designate “critical habitat” for each endangered and threatened species. *Id.* § 1533(a)(3). In addition, ESA section 7(a)(2) requires all federal agencies to “insure” that their actions do not “jeopardize the continued existence” of any endangered or threatened species or “result in the destruction or adverse modification” of any listed species’ “critical habitat.” *Id.* § 1536(a)(2).

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

19. The ESA defines a “species” as “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” *Id.* § 1532(16). A species is “endangered” when it “is in danger of extinction throughout all or a significant portion of its range.” *Id.* § 1532(6). A species is “threatened” when it is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” *Id.* § 1532(20).

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

7           21.     To ensure the timely protection of species at risk of extinction, Congress set forth a  
8 detailed process whereby citizens may petition the Service to list a species as endangered or  
9 threatened. *Id.* § 1533(b)(3) In response to such a petition, the Service must publish a series of  
10 three decisions according to statutory deadlines. First, within 90 days of receipt of a listing  
11 petition, the Service must, “to the maximum extent practicable,” publish an initial finding as to  
12 whether the petition “presents substantial scientific or commercial information indicating that the  
13 petitioned action may be warranted.” *Id.* § 1533(b)(3)(A). This is known as the “90-day finding.”  
14 If the Service determines in the 90-day finding that the petition does not present substantial  
15 information indicating that listing may be warranted, the petition is rejected, and the process  
16 concludes.

17           22.     If, however, as in this case, the Service determines that a petition does present  
18 substantial information indicating that listing “may be warranted,” the agency must publish that  
19 determination in its 90-day finding and proceed with a scientific review of the species’ status,  
20 known as a “status review.” *Id.*

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

26           24.     If the Service determines that listing is “warranted,” the agency must publish that  
27 finding in the Federal Register along with the text of a proposed regulation to list the species as  
28 endangered or threatened and must take public comments on the proposed listing rule. *Id.* §



1 1533(b)(3)(B)(ii).

2 25. Within one year of publication of the proposed listing rule, the Service must  
3 publish in the Federal Register the final rule implementing its determination to list the species. *Id.*  
4 § 1533(b)(6)(A). This is known as a “final listing rule.”

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

## 10 **FACTUAL BACKGROUND**

### 11 **Temblor Legless Lizard**

12 27. The Temblor legless lizard is a sand-swimming lizard endemic to a small portion  
13 of the southwestern San Joaquin Valley in central California. The lizard’s preferred habitat is  
14 alkali desert scrub with warm, loose, sandy soil with leaf litter for burrowing, hunting, resting,  
15 mating, and development of all its life stages. If the soil is too dry, the lizard’s recently shed skin  
16 could stick to the new skin posing issues with feeding that can lead to starvation. If the soil has  
17 too much clay or adobe, the lizard cannot penetrate the soil deep enough for survival and clay  
18 could plug their nostrils resulting in death. Due to its ecological requirements for high sand  
19 friction for burrowing and specific moisture levels, the lizard is considered a microhabitat  
20 specialist. Extensive soil disturbance resulting from oil and gas development and urban  
21 development have rendered much of its historical habitat no longer suitable causing localized  
22 population extinctions.

23 28. The Temblor legless lizard is restricted to an exceedingly small range along the  
24 eastern side of the Temblor Mountains estimated at only 1,720 square kilometers. A large  
25 majority of its habitat within this range has already been degraded or destroyed by human  
26 impacts, namely, development. It is currently found in just four locations on Earth: three of the  
27 four are on private lands and three are also within oil field boundaries.

28

1           29.     The lizard’s habitat in two of the privately owned locations consists of fragmented  
2 patches within the Midway-Sunset and McKittrick oil fields. Midway-Sunset is the largest oil  
3 field in Kern County, with heavy drilling activity, totaling more than 25,000 active and idle wells.

4           30.     A third patch of lizard habitat exists in a privately-owned 5-acre parcel on the Palo  
5 Prieto Conservation Bank in the foothills of the Temblor Mountain Range.

6           31.     The only other location where the lizard has been detected is the protected Pleasant  
7 Valley Ecological Reserve, which is surrounded by the Pleasant Valley oil field and adjacent to  
8 the Coalinga and Gujarral Hills oil fields.

9           32.     Thus, the Temblor legless lizard is immediately threatened by the destruction of its  
10 habitat due to operations conducted for oil and gas development. The construction of oil and gas  
11 facilities causes soil compaction, changes in soil moisture levels, and removal of plant cover and  
12 the leaf-litter layer which, as previously stated, make it increasingly difficult for this species to  
13 survive. Oil spills, wastewater spills, and the release of chemicals caused by facilities’ continued  
14 operation adversely affect habitat suitability by contaminating habitat and altering soil moisture  
15 levels. Furthermore, this species is highly sensitive to noise and light generated by oil and gas  
16 drilling operations that negatively affect their ability to hunt.

17           33.     Other threats to the Temblor legless lizard include climate change, wildfires,  
18 invasive species, and habitat loss from urban development and the construction of large-scale  
19 solar projects.

## 20 **Listing Petition and Response**

21           34.     On October 20, 2020, the Center petitioned the Service to list the Temblor legless  
22 lizard as threatened or endangered under the ESA.

23           35.     On June 17, 2021, the Service issued a positive 90-day finding that the petition to  
24 list the Temblor legless lizard presented “substantial scientific or commercial information  
25 indicating” that listing the Temblor legless lizard may be warranted “due to potential threats  
26 associated with...[o]il and gas development, urbanization, habitat fragmentation, and industrial  
27 solar projects...and climate change and wildfires.” 86 Fed. Reg. 32,241, 32,242 (June 17, 2021).

28           36.     Although Defendants issued a 90-day finding for this species, they had a



1 mandatory duty to publish their 12-month finding for the Temblor legless lizard by October 20,  
2 2021. Defendants have not done so.

3 37. Until Defendants publish the legally required 12-month listing determination and  
4 final listing rules, the Temblor legless lizard will face ongoing threats to its existence and  
5 continued degradation of its habitat caused by Defendants' failure to provide necessary  
6 protections under the Act.

7 **CLAIM FOR RELIEF**

8 **Violation of the ESA for Failure to Publish a Timely 12-Month Listing Determination**  
9 **for the Temblor Legless Lizard**

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

12 39. Where the Service finds that listing of a species "may be warranted," the ESA  
13 requires the Service to publish a "12-month finding" with a listing determination within one year  
14 of receiving a listing petition. After finding that listing "may be warranted" for the Temblor  
15 legless lizard, Defendants failed to perform their nondiscretionary duty to publish a timely 12-  
16 month listing determination on Plaintiff's petition to list the Temblor legless lizard as endangered  
17 or threatened, in violation of the ESA. 16 U.S.C. § 1533(b)(3)(B).

18 **REQUEST FOR RELIEF**

19 WHEREFORE, Plaintiff respectfully requests that the Court enter judgment providing the  
20 following relief:

- 21 1. Declare that Defendants have violated the ESA by failing to issue a timely 12-  
22 month listing determination in response to the petition to list the Temblor legless  
23 lizard;
- 24 2. Provide injunctive relief compelling Defendants to publish in the Federal Register  
25 a 12-month listing determination on the petition to list the Temblor legless lizard  
26 by a date certain;
- 27 3. Retain continuing jurisdiction to review Defendants' compliance with all  
28 judgments and orders herein;

- 1 4. Grant Plaintiff its reasonable attorneys' fees and costs as provided by the ESA, 16
- 2 U.S.C. § 1540(g)(4); and
- 3 5. Provide such other relief as the Court deems just and proper.

4 Respectfully submitted and dated this twenty-third day of March 2022.

5  
6 /s/ Margaret A. Coulter

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