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10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF ARIZONA**  
12 **TUCSON DIVISION**

13 Center for Biological Diversity, a non-  
14 profit organization,

15 Plaintiff,

16 v.

17 U.S. Fish and Wildlife Service; Brian  
18 Nesvik, in his official capacity as  
19 Director of the U.S. Fish and Wildlife  
20 Service; Doug Burgum, in his official  
capacity as Secretary of the U.S.  
Department of the Interior

21 Defendants.

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

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

22  
23 **INTRODUCTION**

24 1. Plaintiff Center for Biological Diversity (the “Center”) brings this case  
25 challenging the U.S. Fish and Wildlife Service’s (“Service”) failure to issue a final listing  
26 rule for the Quitobaquito tryonia in violation of the Endangered Species Act’s (“ESA” or  
27 “Act”) nondiscretionary, congressionally mandated deadline. The Service’s failure to  
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1 meet the ESA deadline for the Quitobaquito tryonia delays lifesaving protections for the  
2 species, thereby increasing its risk of extinction.

3 2. The Quitobaquito tryonia is a small, freshwater springsnail found solely in  
4 Organ Pipe Cactus National Monument, Arizona, in one of the driest spots of the Sonoran  
5 Desert. Two of its four populations have already been extirpated, and the remaining two  
6 populations are at risk of extirpation because of habitat loss and degradation.

7 3. Plaintiff brings this lawsuit for declaratory and injunctive relief, seeking an  
8 Order declaring that the Service violated section 4(b)(6)(A) of the ESA, 16 U.S.C. §  
9 1533(b)(6)(A), by failing to timely issue a final listing rule for the Quitobaquito tryonia  
10 and directing the Service to issue the final rule by a date certain.

### 11 **JURISDICTION**

12 4. This Court has jurisdiction over this action pursuant to 16 U.S.C. § 1540(c),  
13 (g) (ESA citizen suit provision) and 28 U.S.C. § 1331 (federal question). This Court has  
14 authority to issue declaratory and injunctive relief pursuant to the ESA, 16 U.S.C. §  
15 1540(g); 28 U.S.C. §§ 2201–2202; and 5 U.S.C. § 706(2).

16 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(c), (e) because  
17 Plaintiff resides in this judicial district and a substantial part of the events or omissions  
18 giving rise to the Center’s claims occurred in this district.

### 19 **PARTIES**

20 6. Plaintiff Center for Biological Diversity is a national, non-profit  
21 conservation organization that works through science, law, and policy to protect  
22 imperiled wildlife and their habitat. The Center is incorporated in California and  
23 headquartered in Tucson, Arizona, with offices throughout the United States. The Center  
24 has more than 101,000 active members throughout the country.

25 7. The Center brings this action on behalf of its members who derive  
26 recreational, educational, scientific, professional, and other benefits from the  
27 Quitobaquito tryonia and its habitat. Plaintiff’s’ members’ interests in protecting and  
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1 recovering the species and its habitat are directly harmed by the Service’s failure to  
2 timely publish a final listing rule, delaying critical protections under the ESA that can put  
3 the Quitobaquito tryonia on a path to recovery.

4 8. For example, Center member Dennis Caldwell is an aquatic biologist,  
5 conservationist and artist based in Tucson. An Arizona native, Mr. Caldwell has a  
6 lifelong passion for the natural world and has been involved in various local conservation  
7 efforts including the Quitobaquito Rio Sonoyta Working Group, a tri-national group of  
8 advocates and scientist from Mexico, the United States, and the Tohono O’odham Nation  
9 with a common goal of saving the aquatic species of the Quitobaquito border region. The  
10 area features two isolated aquatic habitats in close proximity, the Rio Sonoyta on the  
11 Mexican side of the border and Quitobaquito spring on the U.S. side. Both sites are the  
12 traditional lands of the Tohono O’odham people and the historical habitat of  
13 Quitobaquito tryonia. Mr. Caldwell has been involved on both sides of the border  
14 building conservation ponds and helping to rehabilitate Quitobaquito ponds after leaks  
15 and low hydrological flows have threatened the habitat over the last five years. Mr.  
16 Caldwell has presented at numerous public and scientific events on the plight of  
17 Quitobaquito wildlife. Any delay in listing Quitobaquito tryonia harms his ability to raise  
18 awareness of the Quitobaquito springs and the species that depend on this unique habitat,  
19 an oasis in the heart of the driest, hottest part of North America. Mr. Caldwell has  
20 professional, economic, moral, and recreational interests in protecting the Quitobaquito  
21 tryonia and its habitat. He has concrete plans to return to the Quitobaquito tryonia’s  
22 habitat in June 2026 to evaluate water levels and the aquatic species’ ecosystems at the  
23 driest point in the year. Mr. Caldwell’s professional interests in protecting this species is  
24 harmed by the Service’s delay. It also frustrates his conservation work, harms  
25 relationships between the Mexican and Tohono O’odham partners, and harms his  
26 recreational interests by lessening his experience in nature knowing that the species and  
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1 its habitat remain unprotected. Every day that this species continues to be ignored by the  
2 Service makes it harder for him to do his conservation work.

3 9. Defendants' violation of the ESA's deadline has delayed ESA protections  
4 for the Quitobaquito tryonia. This inaction harms Plaintiff's members' interests in the  
5 tryonia by permitting the species' continued trajectory toward extinction, thereby  
6 decreasing the likelihood that the Center's members will encounter the species as part of  
7 their personal and professional excursions. These injuries are actual, concrete injuries  
8 presently suffered by the Center's members, are directly caused by Defendants' acts and  
9 omissions, and will continue unless the Court grants relief. The relief sought would  
10 redress these injuries by providing ESA protection for the Quitobaquito tryonia, thus  
11 promoting its conservation and recovery. Plaintiff and its members have no other  
12 adequate remedy at law.

13 10. Defendant U.S. Fish and Wildlife Service is the agency within the  
14 Department of the Interior charged with implementing the ESA for the Quitobaquito  
15 tryonia. The Secretary of the Interior has delegated administration of the ESA to the  
16 Service. 50 C.F.R. § 402.01(b).

17 11. Defendant Brian Nesvik is the Director of the Service and is charged with  
18 ensuring that agency decisions comply with the ESA. Defendant Nesvik is sued in his  
19 official capacity.

20 12. Defendant Doug Burgum is the Secretary of the U.S. Department of the  
21 Interior ("Secretary") and has the ultimate responsibility to administer and implement the  
22 provisions of the ESA. Defendant Burgum is sued in his official capacity.

### 23 **STATUTORY FRAMEWORK**

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25  
26 13. The Endangered Species Act, 16 U.S.C. §§ 1531–1544, is "the most  
27 comprehensive legislation for the preservation of endangered species ever enacted by any  
28 nation." *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978). Its fundamental purposes

1 are “to provide a means whereby the ecosystems upon which endangered species and  
2 threatened species depend may be conserved [and] to provide a program for the  
3 conservation of such endangered species and threatened species.” 16 U.S.C. § 1531(b).

4 14. The ESA defines a “species” as “any subspecies of fish or wildlife or  
5 plants, and any distinct population segment of any species of vertebrate fish or wildlife  
6 which interbreeds when mature.” *Id.* § 1532(16).

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

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

18 17. If the Service determines that the species is not endangered throughout all  
19 of its range, the ESA requires the agency to examine whether it is endangered or  
20 threatened throughout any “significant portion” of its range. *Id.* §§ 1532(6), (20).

21 18. The Service must base all listing determinations “solely on the basis of the  
22 best scientific and commercial data available.” *Id.* § 1533(b)(1)(A).

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

6 20. If the Service determines that a petition presents substantial information  
7 indicating that listing “may be warranted,” the agency must publish that finding and  
8 proceed with a scientific review of the species’ status, known as a “status review.” *Id.*

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

14 22. If the Service determines that listing is “warranted,” the agency must  
15 publish that finding in the Federal Register along with the text of a proposed regulation to  
16 list the species as endangered or threatened and to designate critical habitat for the  
17 species. *Id.* § 1533(a)(3)(A), (b)(3)(B)(ii). Within one year of publication of the proposed  
18 listing rule, the Service must publish in the Federal Register the final rule implementing  
19 its determination to list the species and designate critical habitat. *Id.* § 1533(b)(6)(A).

20 23. If the Service instead issues a finding that listing the species is “not  
21 warranted,” the process concludes, and that finding is a final agency action subject to  
22 judicial review. *Id.* § 1533(b)(3)(C)(ii).

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

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1 extirpated from both of these locations because of a loss of continuous water flow in the  
2 springs.



Quitobaquito Springs. Photo Credit: Russ McSpadden

16  
17 31. Diversion of surface water, drought, groundwater pumping for agriculture,  
18 and climate change have led to a decline in spring discharge at Quitobaquito springs, and  
19 a loss of much of the aquatic vegetation and habitat that the species requires.

20 Quitobaquito tryonia's survival depends on the Quitobaquito springs continuous flow of  
21 water and adequate groundwater levels.

22 32. Compounding these threats, the construction of the border wall has led to  
23 drilling of wells and the pumping of millions of gallons of groundwater near  
24 Quitobaquito Springs, further imperiling the Quitobaquito tryonia's habitat.

25 33. On June 25, 2007, the Service received the petition to list the Quitobaquito  
26 tryonia as threatened or endangered under the ESA. The petition documented threats to  
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1 the Quitobaquito tryonia, primarily habitat degradation and habitat loss from diversion of  
2 surface water and pumping of groundwater for agriculture, climate change, and drought.

3 34. After litigation to compel the 90-day finding, the Service published a 90-  
4 day finding for the Quitobaquito tryonia, determining that the petition presented  
5 substantial scientific information indicating that listing may be warranted because of the  
6 “present or threatened destruction, modification, or curtailment of its habitat or range,  
7 resulting from groundwater pumping and loss of free flowing water.” 74 Fed. Reg.  
8 66866-66894 (Dec. 16, 2009).

9 35. In 2019, the Center notified the Service of its ESA violations due to the  
10 Service’s delay in publishing a 12-month finding for the tryonia and other species.

11 36. The Center filed a lawsuit in 2020 to compel the Service to issue its  
12 overdue 12-month finding for the Quitobaquito tryonia and other species. *See Ctr. for*  
13 *Biological Diversity v. Bernhardt*, No. 1:20-cv-00573-EGS (D.D.C.).

14 37. In response to the Center’s lawsuit, the Service published a proposed rule to  
15 list the Quitobaquito tryonia on September 13, 2023, determining that the species is in  
16 danger of extinction throughout its range. 88 Fed. Reg. 62727 (Sept. 13, 2023).  
17 Highlighting the urgency of the situation, the Service found that listing the species as  
18 endangered and that threatened is not appropriate because “[t]wo of the four known  
19 populations have already become extirpated” and that both remaining populations are  
20 “vulnerable to catastrophic and stochastic events.” *Id.* at 62734.

21 38. The Service found that the primary risk factors affecting the status of the  
22 tryonia are the “reduction of spring discharge,” “effects of climate change,” and “spring  
23 modification.” *Id.* at 62730. And that as a result of “groundwater withdrawals and  
24 drought” the tryonia’s habitat has declined and continues to decline “through the present  
25 day.” *Id.* In its proposed rule to list Quitobaquito tryonia as an endangered species under  
26 the ESA, the Service also proposed to designate 6,095 square feet (566 square meters) of  
27 critical habitat for the tryonia. *Id.*  
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**REQUEST FOR RELIEF**

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

4 1. Declare that Defendants violated the ESA by failing to issue a timely final  
5 listing rule;

6 2. Provide injunctive relief compelling Defendants to publish a final rule listing  
7 the Quitobaquito tryonia as endangered under the ESA by a date certain;

8 3. Retain continuing jurisdiction to review Defendants' compliance with all  
9 judgements and orders herein;

10 4. Grant Plaintiff its reasonable attorneys' fees and costs as provided by the ESA,  
11 16 U.S.C. § 1540(g)(4); and

12 5. Provide such other relief as the Court deems just and proper.

13 Respectfully submitted and dated this 28<sup>th</sup> day of May 2026.  
14

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