



July 26, 2018

Sent via electronic and certified U.S. Mail

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RE: Sixty-day Notice of Intent to Sue for Violations of the Endangered Species Act Relating to a Petition to List the Shasta Salamander as a Threatened or Endangered Species

This letter serves as a sixty-day notice of intent to sue the U.S. Fish and Wildlife Service (“Service”), on behalf of the Center for Biological Diversity (“Center”), pursuant to the Endangered Species Act (“Act”)¹, for failure to make a 12-month finding for the Shasta salamander (*Hydromantes shastae*), Samwel Shasta salamander (*Hydromantes samweli*) and Wintu Shasta salamander (*Hydromantes wintu*). Specifically, the Service violated and continues to be in violation of Section 4 of the Act, 16 U.S.C. § 1533, which requires the Service to make a final determination of whether a species warrants designation as threatened or endangered within 12 months of receiving a petition for listing. This letter is provided pursuant to the sixty-day

¹ 16 U.S.C. § 1531, *et seq.*; 50 C.F.R. § 402, *et seq.*

notice requirement of the citizen suit provision of the Act, to the extent such notice is deemed necessary by a court.²

On July 11, 2012, the Service received a petition from the Center for Biological Diversity requesting that the Shasta salamander be listed as threatened or endangered under the Endangered Species Act. On September 18, 2015, the Service issued a 90-day finding that there was substantial scientific or commercial information indicating that listing the Shasta salamander (*Hydromantes shastae*) as endangered or threatened may be warranted.³ Nearly three years later, the Service still has not issued a 12-month finding for the salamander.

In April, 2018 a scientific study was published⁴ that splits the Shasta salamander into three species. And on April 23, 2018 the Center submitted a letter to the Service, along with a copy of the scientific paper, to make the Service aware of this new information. The study results in the Shasta salamander (*Hydromantes shastae*) being rediagnosed and restricted to the eastern portion of its former range, as well as the identification of two new allopatric species. The paper formally describes two new species, the Samwel Shasta salamander (*Hydromantes samweli*) and the Wintu Shasta salamander (*Hydromantes wintu*). The Wintu Shasta salamander is restricted to a very narrow central portion of what was originally recognized as the already small range of the Shasta salamander. The Samwel Shasta salamander is restricted to the western and north-central portions of the originally recognized range of the Shasta salamander. Because all three species constitute the populations previously petitioned for listing as a single species, the Service should make a 12-month finding on all three of these species.

In its initial review of our petition to list the Shasta salamander under the ESA, the Service determined that there was substantial information to support the petition's claim that the species is threatened due to its isolated populations and genetic vulnerability.⁵

When the Service receives a petition to list a species as endangered or threatened, the ESA requires the Service to “make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted” within 90 days of receiving the petition.⁶ If the petition is found to present substantial scientific and commercial information indicating the petitioned action may be warranted the Service must “promptly commence a review of the status of the species”⁷ and “[w]ithin 12 months after receiving the petition” it must make a finding that the listing is: 1) warranted; 2) not warranted; or 3) warranted but precluded by higher priority listing activities.⁸

² See 16 U.S.C. § 1540(g).

³ 80 Fed. Reg. 56423 (Sept. 18, 2015).

⁴ Bingham, R.E., Papenfuss, T.J., Linstrand III, L. and D.B. Wake. 2018. Phylogeography and Species Boundaries In the *Hydromantes shastae* Complex, With Description of Two New Species (Amphibia; Caudata; Plethodontidae). Bull. Mus. Comp. Zool., 161(10): 403-427.

⁵ U.S. Fish and Wildlife Service. 2015. 90-Day Finding to List the Shasta Salamander as a Threatened or Endangered Species Under the Act. Federal Docket No. FWS-R8-ES-2015-0115.

⁶ 16 U.S.C. § 1533(b)(3)(A).

⁷ *Id.*

⁸ *Id.* § 1533(b)(3)(B).

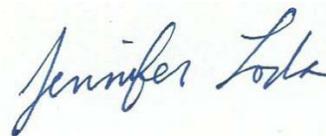
Because the Service received the Center's petition to list the Shasta salamander on July 11, 2012, the Service's 12-month finding was due on or before July 11, 2013. The Service has yet to publish a 12-month finding in the Federal Register, meaning the decision is more than five years overdue.

In 2016, the U.S. Fish and Wildlife Service developed a seven-year National Listing Workplan, which was intended to prioritize the agency's workload based on the needs of candidate and petitioned species. According to this workplan⁹, the Shasta salamander is not scheduled to receive a 12-month finding until 2022, which would be nine years late. Even that timeline appears to be unreliable as some decisions that were previously scheduled to occur have not happened to date.¹⁰

Even a decision in 2022 would likely be too late to ensure these species' survival. One of the major threats to these salamanders and their habitats – the planned raising of the height of Shasta dam and the level of Shasta Lake – is expected to begin construction in late spring or summer 2020, according to the Bureau of Reclamation.¹¹ The project received \$20 million in funding for preconstruction activities in 2018 and the Bureau of Reclamation expects to award a construction contract by December 2019.¹² Raising the dam would result in the inundation and loss of salamander habitat, as the lake level could rise as much as 20 feet higher in years when the lake is full.

Consequently, the Service is in violation of Section 4 of the ESA and has abandoned its duty to ensure that endangered and threatened species are afforded protections in a timely manner, thereby avoiding further decline and increased risk of extinction.¹³ The Service will continue to be in violation of the law until it publishes a 12-month finding of the Shasta salamander, Samwel Shasta salamander and Wintu Shasta salamander.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Loda". The signature is written in a cursive style and is positioned above the typed name and title.

Jennifer Loda
Amphibian and Reptile Staff Attorney
Center for Biological Diversity

⁹ U.S. Fish and Wildlife Service, National Listing Workplan: 7-Year Workplan (2016 Version), *available at* <https://www.fws.gov/endangered/esa-library/pdf/Listing%207-Year%20Workplan%20Sept%202016.pdf>

¹⁰ For example, the Cedar Keys mole skink, Neuse River waterdog and Carolina madtom were all scheduled to receive 12-month findings by the end of fiscal year 2017, but none have received 12-month findings to date.

¹¹ Arthur, Damon. June 20, 2018. Construction Contract to Raise Shasta Dam Expected Next Year. Redding Record Searchlight, *available at* <https://www.redding.com/story/news/2018/06/20/construction-contract-raise-height-shasta-dam-expected-next-year/718253002/>

¹² *Id.*

¹³ See 16 U.S.C. § 1533(b)(3)(B).

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