



April 13, 2022

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RE: Sixty-day Notice of Violation of the Endangered Species Act: Failure to Issue a 12-Month Finding on a Petition to List the Thick-Leaf Bladderpod

Secretary Haaland and Director Williams,

This letter serves as a sixty-day notice from the Center for Biological Diversity, Montana Native Plant Society, and the Pryors Coalition (collectively, “the Center”) of our intent to sue the U.S. Fish and Wildlife Service (“FWS”) pursuant to the Endangered Species Act (“ESA”), 16 U.S.C. § 1533(b)(3)(D)(ii) for the agency’s failure to issue a 12-month finding regarding the Center’s petition to list¹ the thick-leaf bladderpod (*Physaria Pachyphylla*). The Center provides this letter to you pursuant to the 60-day notice requirement of the citizen suit provision of the ESA. 16 U.S.C. § 1540(g)(2)(C).

I. Requirements of the ESA

Section 4 of the ESA provides the process by which FWS must add species to the list of threatened or endangered species (“list”). 16 U.S.C. § 1533. Within 90-days of receipt of a petition to list a species FWS must determine “whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted.” 16 U.S.C. § 1533(b)(3)(A). If FWS finds that the petition is supported by “substantial information”, it must determine whether listing is warranted within 12-months after receiving the petition. 16 U.S.C. § 1533(b)(3)(B). Findings must be published in the Federal Register. *Id.*

The Center, Montana Native Plant Society and the Pryors Coalition submitted a petition to list the thick-leaf bladderpod on March 11, 2021. Submission was accepted by FWS on the same date. Thus, the FWS’s 12-month finding deadline was March 11, 2022. 16 U.S.C. § 1533(b)(3)(B). On February 8, 2022, FWS announced a positive 90-day finding and intent to begin a full status review. The FWS is currently in violation of its 12-month finding deadline.

¹Tamara Strobel, Peter Lesica, Dick Walton, *Petition to List the Thick-leaf bladderpod (Physaria Pachyphylla) as a Threatened or Endangered Species under the Endangered Species Act and to Concurrently Designate Critical Habitat* (March 11, 2021), <https://www.regulations.gov/document/FWS-R6-ES-2021-0117-0003>.

II. Thick-leaf bladderpod

The thick-leaf bladderpod is a rare, tiny, yellow-flowered vascular plant found only in the Pryor Desert at the base of the Pryor Mountains in Montana. The thick-leaf bladderpod currently occupies an area recognized by the Bureau of Land Management (BLM) as an Area of Critical Environmental Concern (ACEC) specifically because of the presence of rare plants, including the thick-leaf bladderpod.

Within the Pryor Desert, the thick-leaf bladderpod often grows in a globally rare plant community called the *Atriplex-nuttallii/Artemisia spinescens* shrubland. The thick-leaf bladderpod exists only in a highly specific ecological niche, where the climate is very arid and the soil is calcareous. The thick-leaf bladderpod often occurs in cryptobiotic soil crusts, which presumably help the plant establish under the exposed, arid conditions. . This species' unique requirements are likely why it is concentrated in such a small area of the Pryor Desert. There are likely only nine documented subpopulations of the plant. It is highly unlikely that there will be any new discoveries of additional populations outside the Pryor Foothills due to the unique substrate and specific habitat requirements of the plant. With such a small population the loss of any plants could be detrimental to the continued survival of the species.

Indeed, the BLM has designated the plant as a “sensitive species” and the Montana Natural Heritage Program has listed it as a “species of concern.” These designations are for native species that are at high risk of extirpation on account of declining population trends, threats to their habitats, or restricted distribution.

Primary amongst the dangers currently posed to this species are gypsum mining and exploration, invasive plants, and off-road vehicles (ORV). Heavy machinery activity and digging associated with gypsum mining and exploration leads to soil compaction and alteration. This destroys the cryptobiotic soil crust where the thick-leaf bladderpod often grows, as well as individual plants. Once destroyed, cryptobiotic soil can take up to a hundred years to recover, significantly altering the environment around the thick-leaf bladderpod, most likely to its detriment.

The irrevocable harm done to the soil surface by gypsum mining and exploration will kill a large population of the thick-leaf bladderpod plants and will also prevent the plant from reestablishing. Additionally, improvements to existing roads for mining exploration would increase the threat of invasive plants and increase contaminative ORV activity.

In 2015, the Regional Management Plan approved by BLM's Billings Field Office recommended the area be closed to mining due to its large concentration of sensitive plant species, including the thick-leaf bladderpod. This recommendation, sadly, has not been approved: the future of the thick-leaf bladderpod remains in grave danger.

Only by listing the thick-leaf bladderpod under the ESA can necessary protections be provided for the species' conservation. Additionally, the listing would conserve a unique and concentrated area host to sensitive species.

III. The FWS' Violations of the ESA

The FWS failed to comply with its duty under 16 U.S.C. § 1533(b)(3)(B) to issue a 12-month finding on the Center's petition to list the thick-leaf bladderpod. On March 11, 2021, the Center petitioned to list the thick-leaf bladderpod. This petition described the threats to the thick-leaf bladderpod's continued existence, such as gypsum mining, invasive plants, and off-road vehicles.

In response to the Center's petition, on February 8, 2022, FWS issued a positive 90-day finding where it concluded that the Center's petition presented "substantial scientific or commercial information" indicating that listing the thick-leaf bladderpod "may be warranted." 87 Fed. Reg. at 7,079 (February 8, 2022). However, FWS failed to follow up with the 12-month finding. 16 U.S.C § 1533(b)(3)(B).

The ESA required FWS to issue its 12-month finding by March 11, 2022. The FWS failed to do so. This dereliction of duty further endangers the thick-leaf bladderpod and is a violation of the ESA. Any further delay by FWS puts this imperiled species at greater risk for extinction. It is the practice of the Center to pursue negotiations whenever possible. Accordingly, we invite the FWS to contact us to discuss resolving the issues raised in this notice. If the FWS does not contact us, or act within 60 days to correct its ESA violations, we will pursue litigation to protect the thick-leaf bladderpod.

Sincerely,



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