



April 22, 2019

*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 Siskiyou Mountains 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, Klamath Siskiyou Wildlands Center, Cascadia Wildlands, and Environmental Protection Information Center (“conservation groups”), pursuant to the Endangered Species Act<sup>1</sup>. Specifically, the Service violated and continues to be in violation of Section 4(b)(3) of the ESA, 16 U.S.C. § 1533(b)(3), for failing to make the required findings in response to the conservation groups’ petition to list the Siskiyou

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

Mountains salamander (*Plethodon stormi*) under the ESA.<sup>2</sup> This letter is provided pursuant to the sixty-day notice requirement of the citizen suit provision of the ESA, to the extent such notice is deemed necessary by a court.<sup>3</sup>

The Center for Biological Diversity is a national, nonprofit conservation organization with more than 1.4 million members and online activists dedicated to the protection of endangered species and wild places. The Center and its members are concerned with the conservation of imperiled species, including the Siskiyou Mountains salamander, and the effective implementation of the Endangered Species Act.

Klamath Siskiyou Wildlands Center is a non-profit organization with a mission to protect and restore the biodiversity and wild areas of the Klamath-Siskiyou region of southwest Oregon and northwest California. KS Wild promotes science-based land and water conservation through policy and community action.

Cascadia Wildlands envisions vast old-growth forests, rivers full of salmon, wolves howling in the backcountry, and vibrant communities sustained by the unique landscapes of the Cascadia bioregion. Cascadia Wildlands defends and restores Cascadia's wild ecosystems and is sustained by the support of 10,000 members and supporters across the country.

Environmental Protection Information Center is a community-based, nonprofit organization dedicated to the protection and restoration of the watersheds, biodiversity, native species, and natural ecosystems of the North Coast of California. EPIC uses an integrated science-based approach, combining public education, citizen advocacy, and strategic litigation.

## **BACKGROUND**

The Siskiyou Mountains salamander is a long-bodied, short-limbed terrestrial salamander, brown in color with a sprinkling of white flecks. The species only occurs in old-growth forests in the Klamath-Siskiyou region of southern Oregon and Northern California; it has the second-smallest range of any western Plethodontid salamander.

There are two distinct populations of the Siskiyou Mountains salamander separated by the Siskiyou Mountains crest — a larger northern population in the Applegate River drainage in Oregon and a small southern population in California's Klamath River drainage. Most known Siskiyou Mountains salamander locations are on U.S. Forest Service and U.S. Bureau of Land Management lands.

The Siskiyou Mountains salamander is particularly vulnerable to human impacts due to its narrow range, specific habitat requirements and low reproductive rate. The salamander's ideal habitat is stabilized rock talus in old-growth forest, especially areas covered with thick moss. Mature forest canopy helps maintain a cool and stable moist microclimate. Logging is thus a

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<sup>2</sup> The FWS's failure to make the required findings also constitutes agency action unlawfully withheld or unreasonably delayed or arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law within the meaning of the Administrative Procedure Act ("APA"). 5 U.S.C. §§ 706(1) & 706(2)(A).

<sup>3</sup> See 16 U.S.C. § 1540(g).

primary threat to the survival of the Siskiyou Mountains salamander, and it is particularly threatened by federal land-agency plans to ramp up logging in southern Oregon.

Conservation groups first petitioned for protection of the salamander under the Endangered Species Act in 2004. To prevent the species' listing, the Bureau of Land Management ("BLM") and U.S. Fish and Wildlife Service signed a conservation agreement in 2007, intended to protect habitat for 110 high-priority salamander sites on federal lands in the Applegate River watershed. In 2008 the Fish and Wildlife Service denied protection for the salamander based on this conservation agreement and old-growth forest protections provided by the Northwest Forest Plan.

Under the Northwest Forest Plan, the BLM and U.S. Forest Service were required to survey for the Siskiyou Mountains salamander, and other rare species, and designate protected buffers from logging where salamanders were found. But the Western Oregon Plan Revision adopted by the BLM in 2016 undermines the habitat protections of the 2007 salamander conservation agreement, and will substantially increase logging in western Oregon.

The increased threat of logging led the conservation groups to submit a petition to the Service on March 12, 2018, requesting that the Siskiyou Mountains salamander be listed as threatened or endangered under the Endangered Species Act.

### **LEGAL VIOLATION**

When the Service receives a petition to list a species as endangered or threatened, the Endangered Species Act ("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.<sup>4</sup> 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"<sup>5</sup> 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.<sup>6</sup>

Because the Service received the conservation groups' petition to list the Siskiyou Mountains salamander on March 12, 2018, the Service's 90-day finding was due on or before June 10, 2018 and its 12-month finding was due on or before March 12, 2019. The Service has yet to publish a 90-day finding or a 12-month finding for the Siskiyou Mountains salamander in the Federal Register.

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.<sup>7</sup> The Service will continue to

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<sup>4</sup> 16 U.S.C. § 1533(b)(3)(A).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* § 1533(b)(3)(B).

<sup>7</sup> *See* 16 U.S.C. § 1533(b)(3)(B).

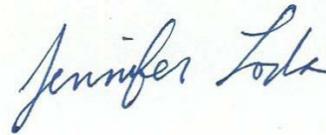
be in violation of the law until it publishes a 90-day finding and 12-month finding for the Siskiyou Mountains salamander.

### **CONCLUSION**

The Siskiyou Mountains salamander is at risk and deserves a prompt status review by the U.S. Fish and Wildlife Service. Continued delay is harming prospects for the survival and recovery of this highly imperiled species. This delay is contrary to law, especially given the importance Congress has assigned to the protection of ESA listed species.

Within sixty days, if FWS does not act to correct the violation described in this letter or agree to discuss with us a schedule for completing the overdue findings, the conservation groups will pursue litigation against the agency. If you have any questions, or would like to discuss, please contact us.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Loda". The signature is written in a cursive style and is centered below the word "Sincerely,".

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