



1 (“ESA”), 16 U.S.C. §§ 1531-1544, to challenge the Secretary of the Interior’s (“Secretary”) and  
2 the U.S. Fish and Wildlife Service’s (“FWS”) (collectively “Defendants” or “FWS”) failure to  
3 make a mandatory finding on whether the highly-imperiled Shasta salamander (*Hydromantes*  
4 *shastae*) should be listed as threatened or endangered under the ESA. 16 U.S.C. § 1533(b)(3)(B).  
5 The Shasta salamander is experiencing ongoing threats to its existence.

6 2. To obtain federal safeguards and habitat protections, Plaintiffs submitted to FWS  
7 a petition to list the Shasta salamander as “endangered” or “threatened” pursuant to the ESA.  
8 FWS made an initial, 90-day finding that the petition presented substantial information showing  
9 that listing the species “may be warranted.” 16 U.S.C. § 1533(b)(3)(A); *see also* 80 Fed. Reg.  
10 56423 (Sept. 18, 2015). FWS was therefore required to determine whether listing this species as  
11 “endangered” or “threatened” is “warranted” within 12 months of receiving the petitions, yet it  
12 has failed to make the requisite finding to date. 16 U.S.C. § 1533(b)(3)(B). Defendants are  
13 therefore in violation of the ESA. *Id.*

14 3. To remedy these violations, Plaintiffs seek declaratory relief to affirm that  
15 Defendants are in violation of the ESA by failing to make 12-month finding on the petition,  
16 along with injunctive relief that establishes dates certain for Defendants to determine if listing  
17 this species as endangered or threatened is warranted. Compliance with the nondiscretionary  
18 deadlines of the ESA is necessary to ensure the continued existence and recovery of this species  
19 in the wild.

### 20 **JURISDICTION**

21 4. The Court has jurisdiction over this action pursuant to 16 U.S.C. §§ 1540(c) and  
22 (g)(1)(C) (action arising under the ESA’s citizen suit provision), 5 U.S.C. § 702 (review of  
23 agency action under the APA), and 28 U.S.C. § 1331 (federal question jurisdiction).

24 5. The Court may grant the relief requested under the ESA, 16 U.S.C. § 1540(g); the  
25 APA, 5 U.S.C. §§ 701-706; and 28 U.S.C. §§ 2201 and 2202 (declaratory and injunctive relief).



1 EPIC's advocacy utilizes community organizing, public education, collaboration, and litigation  
2 and submits substantive comments on projects that would negatively impact public and private  
3 forestlands. EPIC maintains an office in Arcata, California. Most of EPIC's 15,000 members and  
4 supporters live in northern California.

5 11. Plaintiffs have members who visit areas where Shasta salamander is known to still  
6 occur. Plaintiffs' members use these areas for observation of these species and other wildlife; for  
7 research; nature photography; aesthetic enjoyment; and recreational, educational, and other  
8 activities. Plaintiffs' members derive professional, spiritual, and economic benefits from these  
9 species and their habitats. Those members have concrete plans to continue to travel to and  
10 recreate in areas where they can observe these species and will continue to maintain an interest in  
11 these species and their habitats in the future.

12 12. In addition to submitting a petition to list this species under the ESA, Plaintiffs  
13 and their members have participated in conservation efforts. For example, Plaintiffs have  
14 campaigns to protect biodiversity and to raise awareness about the environmental impacts from  
15 human activities, including impacts to imperiled species. Likewise, the Plaintiffs are actively  
16 engaged in efforts to protect native plants and animals from the effects of climate change.  
17 Protecting the species at issue under the ESA would further these campaigns.

18 13. Plaintiffs' conservation efforts are prompted by the concern that the Shasta  
19 salamander is at serious risk of extinction. Defendants' failure to comply with the ESA's  
20 nondiscretionary deadline for issuing 12-month findings on these species deprives them of  
21 statutory protections that are vitally necessary to their survival and recovery. Until these species  
22 are protected under the ESA, Plaintiffs' interest in their conservation and recovery is impaired.  
23 Therefore, Plaintiffs' members and staff are injured by Defendants' failure to make a timely  
24 determination as to whether listing these species is warranted, as well as by the ongoing harm to  
25 the species and their habitats in the absence of such protections. The injuries described above are  
26 actual, concrete injuries presently suffered by Plaintiffs and their members, and they will

1 continue to occur unless this Court grants relief. These injuries are directly caused by  
2 Defendants' inaction, and the relief sought herein – an order compelling listing decisions for  
3 these species – would redress these injuries. Plaintiffs and their members have no other adequate  
4 remedy at law.

5 14. Defendant RYAN ZINKE is the Secretary of the United States Department of the  
6 Interior and is the federal official in whom the ESA vests final responsibility for making  
7 decisions and promulgating regulations required by and in accordance with the ESA, including  
8 listing and critical habitat decisions. Secretary Zinke is sued in his official capacity.

9 15. Defendant UNITED STATES FISH AND WILDLIFE SERVICE is the agency  
10 within the Department of the Interior that is charged with implementing the ESA for most  
11 terrestrial species as well as ensuring prompt compliance with the ESA's mandatory listing  
12 deadlines.

### 13 **LEGAL BACKGROUND**

14 16. The ESA is a comprehensive federal statute declaring that endangered and  
15 threatened species are of "esthetic, ecological, educational, historical, recreational, and scientific  
16 value to the Nation and its people." 16 U.S.C. § 1531(a)(3). Accordingly, the purpose of the ESA  
17 is to "provide a means whereby the ecosystems upon which endangered species and threatened  
18 species depend may be conserved, [and] to provide a program for the conservation of such  
19 endangered species and threatened species ...." *Id.* § 1531(b).

20 17. To this end, section 4 of the ESA requires the Secretary to protect imperiled  
21 species by listing them as either "endangered" or "threatened." *Id.* § 1533(a). A "species"  
22 includes "any subspecies of fish or wildlife or plants, and any distinct population segment of any  
23 species of vertebrate fish or wildlife which interbreeds when mature." *Id.* § 1532(16).

24 18. The ESA's conservation measures apply only after the Secretary lists a species as  
25 threatened or endangered. For example, section 7 of the ESA requires all federal agencies to  
26 ensure that their actions do not "jeopardize the continued existence" of any listed species or  
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1 “result in the destruction or adverse modification” of a listed species’ “critical habitat.” *Id.* §  
2 1536(a)(2). Section 9 of the ESA prohibits, among other things, “any person” from intentionally  
3 taking listed species or incidentally taking listed species without a lawful authorization from the  
4 Secretary. *Id.* §§ 1538(a)(1)(B) and 1539. Concurrently with listing, the Secretary must designate  
5 the species’ critical habitat, which includes areas that are essential to the conservation of the  
6 species. *Id.* §§ 1532(5)(A) and 1533(a)(3)(A). Other provisions of the ESA require the Secretary  
7 to “develop and implement” recovery plans for listed species, authorize the Secretary to acquire  
8 land for the protection of listed species, and make federal funds available to states to assist in  
9 their efforts to preserve and protect listed species. *Id.* § 1533(f), § 1534, and § 1535(d).

10 19. To ensure the timely protection of species that are at risk of extinction, Congress  
11 set forth a detailed process whereby citizens may petition the Secretary to list a species as  
12 endangered or threatened. The process includes mandatory, non-discretionary deadlines that the  
13 Secretary must meet so that imperiled species receive the ESA’s substantive protections in a  
14 timely fashion. The three required findings, described below, are the 90-day finding, the 12-  
15 month finding, and the final listing determination. The Secretary has delegated responsibility for  
16 making these findings to FWS.

17 20. Upon receiving a listing petition, FWS must “to the maximum extent practicable,  
18 within 90-days” make an initial finding as to whether the petition “presents substantial scientific  
19 or commercial information indicating that the petitioned action may be warranted.” *Id.* §  
20 1533(b)(3)(A). If FWS finds that the petition does not present substantial information indicating  
21 that listing may be warranted, the petition is rejected and the process ends.

22 21. If FWS instead determines that a petition does present substantial information  
23 indicating that listing may be warranted, then the agency must conduct a full scientific review of  
24 the species’ status. *Id.* Upon completion of this status review, and within 12 months from the  
25 date that it receives the petition, FWS must make one of three findings: (1) listing is “not  
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1 warranted”; (2) listing is “warranted”; or (3) listing is “warranted but precluded” by other  
2 pending proposals for listing species, provided certain requirements are met. *Id.* § 1533(b)(3)(B).

3 22. If FWS’s 12-month finding concludes that listing is warranted, the agency must  
4 publish notice of the proposed regulation to list the species as endangered or threatened in the  
5 Federal Register for public comment. *Id.* § 1533(b)(3)(B)(ii). Within one year of publication of  
6 the proposed regulation, the ESA requires FWS to render its final determination on the proposal.  
7 *Id.* § 1533(b)(6)(A). At such time, FWS must either list the species, withdraw the proposed  
8 listing rule, or, if there is substantial disagreement about scientific data, delay a final  
9 determination for up to six months in order to solicit more scientific information. *Id.* §§  
10 1533(b)(6)(A)(i) and 1533(b)(6)(B)(i).

11 23. Because the ESA does not safeguard a species facing extinction until it is  
12 formally listed as endangered or threatened, it is critical that FWS meticulously follow the ESA’s  
13 listing procedures and deadlines so that such species are protected in a timely manner.  
14 Defendants have regularly ignored these statutory procedures and have missed statutory listing  
15 deadlines, leading to litigation to correct these deficiencies.

#### 16 **FACTUAL BACKGROUND**

17 24. The Shasta salamander is a small lungless salamander whose range is restricted to  
18 a single county in California. These salamanders are excellent climbers, their webbed toes  
19 allowing them to climb sheer, slippery rock surfaces. To aid in climbing on steep slopes, they  
20 curl their tail tip forward and place it on the ground as the hind foot is lifted. The salamanders lay  
21 and brood eggs in moist caves during summer and crawl out into the open at night during rains in  
22 fall, winter, and spring.

23 25. The Shasta salamander (*Hydromantes shastae*) was considered a single species  
24 until the publication of an April 2018 scientific study splitting it into three species based on  
25 mitochondrial DNA analysis. The paper reclassifies the Shasta salamander (*Hydromantes*  
26 *shastae*) as being restricted to populations found in the eastern portion of its former range, while  
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1 formally describing two new species, the Samwel Shasta salamander (*Hydromantes samweli*),  
2 and Wintu Shasta salamander (*Hydromantes wintu*).

3         26. Prior to its reclassification as three species, the Shasta salamander already had the  
4 smallest known range of any Pacific Northwest amphibian, endemic to a very small portion of  
5 the Cascade range near the human-made Shasta Lake, in Shasta County, California. The three  
6 reclassified species, by definition, inhabit even smaller zones within that range, and are thus even  
7 more vulnerable to extinction. Although genetically distinct, the Shasta salamander, Samwel  
8 Shasta salamander, and Wintu Shasta salamander (collectively “salamanders”) are  
9 morphologically cryptic (indistinguishable from one another), reliant on the same habitat, and  
10 face the same threats.

11         27. The construction of Shasta Dam in 1949 is the greatest historical impact suffered  
12 by the salamanders. The dam substantially raised the level of a smaller lake at the site,  
13 submerging a portion of the species’ historical habitat. The creation of what is now called the  
14 Shasta Reservoir led to continued threats to the salamanders, including constantly expanding  
15 recreational development along the shoreline area. The species are further threatened by plans to  
16 raise the level of Shasta dam by 18 ½ feet, which would raise the level of Shasta Reservoir by  
17 20.5 feet, further flooding the salamanders’ already restricted habitat. In addition to the direct  
18 flooding of additional salamander habitat, the salamanders are threatened by the expected upland  
19 shift of the housing, businesses, roads, and recreational development that are currently along the  
20 Reservoir’s shoreline.

21         28. Plans to raise the level of Shasta dam pose an imminent threat to the survival of  
22 the salamanders. Design and pre-construction activities to raise the Shasta dam and enlarge the  
23 Shasta Reservoir are currently ongoing, following Congressional approval of \$20 million in  
24 Water Infrastructure for Improvements to the Nation Act funding for the project in March 2018.  
25 The Bureau of Reclamation plans to award construction-related contracts to raise the Shasta dam  
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1 in December 2019, to start construction in the spring or summer of 2020, and complete the  
2 project by February 2024.

3 29. The salamanders are also threatened by existing and proposed limestone  
4 quarries, timber harvesting and associated road construction, wildfire, especially in the form of  
5 post-fire erosion in their habitats, and climate change.

6 30. The Shasta salamander is listed as “threatened” by the State of California pursuant  
7 to the California Endangered Species Act. The state has not yet adjusted its listing to  
8 acknowledge the new classification of the Shasta salamander as three unique species.

9 31. The Center submitted a petition to FWS on July 11, 2012, to list the Shasta  
10 salamander as endangered or threatened under the ESA due to the ongoing threats to its  
11 existence. Now recognized as three species, the Shasta salamander, Samwel Shasta salamander,  
12 and Wintu Shasta salamander constitute the populations of the species that was the subject of the  
13 petition.

14 32. FWS issued a 90-day finding on the Center’s petition to list the Shasta salamander  
15 on September 18, 2015. The finding concluded that the Center’s petition presented substantial  
16 scientific or commercial information indicating that listing the Shasta salamander may be  
17 warranted. 80 Fed. Reg. 56,423 (Sept. 18, 2015). FWS was required to make a 12-month finding  
18 as to whether listing the Shasta salamander is warranted by July 11, 2013, but it has not made  
19 this mandatory finding to date, a violation of the ESA. 16 U.S.C. § 1533(b)(3)(B).

20 **CLAIM FOR RELIEF**

21 Violation of the ESA: Failure to Make a Timely 12-Month Finding for the Shasta  
22 Salamander, Samwel Shasta Salamander, and Wintu Shasta Salamander

23 33. Plaintiffs re-allege and incorporate by reference the allegations made in all  
24 preceding paragraphs.

25 34. FWS’s failure to make a timely 12-month finding on the Center’s petition to list  
26 the Shasta salamander, now recognized to encompass the Shasta salamander, Samwel Shasta  
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1 salamander, and Wintu Shasta salamander, as endangered or threatened species violates the ESA,  
2 16 U.S.C. § 1533(b)(3)(B), and/or constitutes agency action that has been “unlawfully withheld  
3 or unreasonably delayed” within the meaning of the APA. 5 U.S.C. § 706(1).

4 **REQUEST FOR RELIEF**

5 Plaintiffs respectfully request that the Court enter Judgment for Plaintiffs providing the following  
6 relief:

7 A. Declare that Defendants violated the ESA and/or APA by failing to issue timely  
8 12-month findings as to whether listing the Shasta salamander, Samwel Shasta salamander, and  
9 Wintu Shasta salamander is warranted;

10 B. Order Defendants to issue, by dates certain, findings as to whether listing the  
11 Shasta salamander, Samwel Shasta salamander, and Wintu Shasta salamander is warranted, 16  
12 U.S.C. § 1533(b)(3)(B);

13 C. Grant Plaintiffs their attorneys’ fees and costs in this action as provided by the  
14 ESA, 16 U.S.C. § 1540(g)(4), and/or the Equal Access to Justice Act, 28 U.S.C. § 2412; and

15 D. Provide such other and further relief as the Court deems just and proper.  
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17 Respectfully submitted and dated this 29th day of November, 2018.  
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