

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

WILDEARTH GUARDIANS,

Plaintiff,

vs.

DOUG BURGUM, in his official capacity as
Secretary of the U.S. Department of the Interior;
BRIAN NESVIK, in his official capacity as
Director of U.S. Fish and Wildlife Service, and
UNITED STATES FISH AND WILDLIFE SERVICE;

Defendants.

Civil No. 26-2937

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

INTRODUCTION

1. Recent studies show freshwater fish are among the world's most rapidly declining species—suffering the highest extinction rate worldwide among vertebrates.¹ Despite that grim reality, the U.S. Fish and Wildlife Service (the Service) is continuing to withhold federal protections for the critically imperiled Pecos pupfish – a small, inland fish endemic to the Pecos River watershed – in violation of the Endangered Species Act's (ESA) mandatory 12-month deadline. 16 U.S.C § 1533(b)(6)(A). The Service itself already proposed listing the Pecos pupfish as a threatened species and designating critical habitat protections under the ESA based on its most

¹ See e.g., Noel M. Burkhead, Extinction Rates in North American Freshwater Fishes, 1900-2010, 62 BIOSCIENCE 798, 798 (2012): “In the twentieth century, freshwater fishes had the highest extinction rate worldwide among vertebrates. The modern extinction rate for North American freshwater fishes is conservatively estimated to be 877 times greater than the background extinction rate for freshwater fishes (one extinction every 3 million years). Reasonable estimates project that future increases in extinctions will range from 53 to 86 species by 2050.”

recent review of what the best available science showed about this particular species' plight back in November 2024. Proposed Rule, Threatened Species Status With Section 4(d) Rule for Pecos Pupfish and Designation of Critical Habitat, 89 Fed. Reg. 92744 (Nov. 22, 2024) (hereinafter, "Proposed Listing Rule for the Pecos pupfish"). Since January 2025, however, the administration has substantially reduced federal agency staffing and resources while undertaking regulatory initiatives to weaken existing ESA protections—leaving hundreds of species to languish in legal limbo as they continue to await overdue listing determinations.

2. As an endemic inhabitant of the Pecos River and the adjacent waters of New Mexico and Texas, the Pecos pupfish has evolved to adapt to conditions that other fish may find inhospitable. The species is small, measuring between 1 and 2 inches, and found in all manner of shallow waters, from wetlands to the region's unique sinkholes to slow-moving riffles off the river's mainstem. But despite its ability to adapt to a variety of habitats, the Pecos pupfish now faces conditions beyond its adaptability: habitat loss and fragmentation, water quality degradation, and the encroachment of the invasive sheepshead minnow are pushing this species to the brink. Already, two of the nine known populations of the Pecos pupfish have been extirpated, and these conditions are projected to worsen over the coming years due to climate change, expanding urban development and increasing oil and gas production, further threatening Pecos pupfish habitat.



Photo Credit: Service

3. The ESA sets out a nondiscretionary timeline for the Service to make the now-overdue final finding, and the Service's failure to meet the deadline delays crucial protections for the Pecos pupfish, increasing the risk of its extinction. Guardians brings this lawsuit for declaratory and injunctive relief, seeking an order declaring that the Service violated section 4(b)(6)(A) of the ESA, 16 U.S.C. § 1533(b)(6)(A), by failing to timely issue a final listing rule for the Pecos pupfish and directing the Service to issue the final rule by a certain date.

JURISDICTION

4. This Court has jurisdiction over this action pursuant to 16 U.S.C. § 1540(c), (g) (ESA citizen suit provision), which waives the Defendants' sovereign immunity, and 28 U.S.C. § 1331 (federal question). This Court has the authority to issue declaratory and injunctive relief. 16 U.S.C. § 1540(g); 28 U.S.C. §§ 2201–2202.

5. Guardians provided Defendants with 60 days' notice of the ESA violation alleged in this complaint, as required by 16 U.S.C. § 1540(g)(2)(C), with a letter sent to the Secretary of the Interior, Doug Burgum, and the Service's Director, Brian Nesvik, via certified mail that was received on June 18, 2026. The Defendants have not remedied the violations set out in the notice, and an actual controversy exists between the parties.

6. Venue is proper in this Court under 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e) because Defendants reside in the district and a substantial part of the events giving rise to Guardians' claims occurred in this district.

PARTIES

7. Defendant U.S. FISH AND WILDLIFE SERVICE is the agency within the Department of the Interior charged with implementing the ESA for terrestrial and non-anadromous fish species like the Pecos pupfish. The Secretary of the Interior has delegated administration of the ESA to the U.S. Fish and Wildlife Service. 50 C.F.R. § 402.01(b).

8. Defendant BRIAN NESVIK is the Director of the U.S. Fish and Wildlife Service and is charged with ensuring that agency decisions comply with the ESA. Defendant Nesvik is sued in his official capacity.

9. Defendant DOUG BURGUM is the Secretary of the U.S. Department of the Interior and has the ultimate responsibility to administer and implement the relevant provisions of the ESA. Defendant Burgum is sued in his official capacity.

10. The three Defendants listed above are collectively referred to in the remainder of this complaint as "the Service."

11. Plaintiff WILDEARTH GUARDIANS is a nonprofit conservation organization

dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West. Guardians' primary office is located in Santa Fe, New Mexico, and has been advocating for endangered species in the state since its inception in 1989. Guardians has over 209,000 members, many of whom have a vested interest in the watersheds of New Mexico, and preserving species endemic to them.

12. Guardians brings this action on behalf of its staff and members who derive ecological, recreational, aesthetic, educational, scientific, professional, and other benefits from this species and its habitats. Guardians' members and staff regularly visit and recreate within Pecos pupfish habitat, including the publicly accessible Bottomless Lake State Park, the BLM Overflow Wetlands Area of Critical Environmental Concern (ACEC), and the Bitter Lake National Wildlife Refuge, and intend to continue doing so in the future. They value the opportunity to observe the Pecos pupfish and its habitat and derive aesthetic, recreational, educational, scientific, and professional benefits from the species' continued existence in the wild.

13. Guardians has an active endangered species protection campaign, with a geographical focus on flora and fauna endemic to the Western United States. Guardians also has a Wild Rivers campaign, dedicated to protecting the waterways of the American West by advocating for instream flow protections and river habitat restoration. In 2025, Guardians documented oil and gas spills across New Mexico, in part to protect the water quality of waterways such as the Pecos River.

14. Guardians first petitioned the Service to protect the Pecos pupfish on June 18, 2007, requesting that the species be listed as endangered under the ESA. Guardians invested significant organizational resources in preparing this petition and in submitting detailed, timely

comments to the Service in response to the Service's 2024 proposed rule to list the Pecos pupfish as threatened and to designate critical habitat, along with a species-specific section 4(d) rule.

Proposed Listing Rule for the Pecos pupfish, 89 Fed. Reg. 92744.

15. The Service's unlawful delay increases the risk of further decline and loss of Pecos pupfish populations and habitat before the protections associated with a final listing determination take effect, thereby harming Guardians' members' concrete interests in observing, studying, enjoying, and conserving the species.

16. The requested relief would redress these injuries by requiring the Service to comply with the ESA's mandatory deadline and complete the listing process Congress prescribed for the Pecos pupfish. An order establishing a date certain for the Service's final determination would remedy Guardians' procedural injury and eliminate the ongoing unlawful delay.

STATUTORY FRAMEWORK

17. The ESA is comprehensive legislation that recognizes endangered and threatened species are of "esthetic, ecological, historical, recreational, and scientific value to the nation and its people." 16 U.S.C. § 1531(a)(3). The ESA aims "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved [and] to provide a program for the conservation of such endangered species and threatened species." *Id.* § 1531(b).

18. The ESA has a suite of substantive and procedural legal protections that apply to species once they are listed as endangered or threatened. For example, Section 4 of the ESA requires the Service to designate "critical habitat" for each endangered and threatened species. *Id.* § 1533(a)(3). Section 7 requires all federal agencies to ensure that their actions do not "jeopardize the continued existence" of any endangered or threatened species or "result in the

destruction or adverse modification” of any listed species’ critical habitat. *Id.* §1536(a)(2).

Section 9 prohibits the unauthorized “take” of endangered fish and wildlife, 16 U.S.C. § 1538(a)(1), and section 4(d) authorizes the Service to extend appropriate protections to threatened species, *id.* § 1533(d); *see also id.* § 1532(19) (defining “take”). Here, the Service’s proposed rule included a species-specific section 4(d) rule to protect the Pecos pupfish. 89 Fed. Reg. 92744.

Other provisions require the Service to “develop and implement” recovery plans for listed species, *id.* § 1533(f); authorize the Service to acquire land for the protection of listed species, *id.* § 1534; and authorize the Service to make federal funds available to states to assist in the conservation of endangered and threatened species, *id.* § 1535(d).

19. To obtain these protections, a species must be listed as endangered or threatened. *Id.* at § 1533(a)(1).

20. The ESA defines a “species” as “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” *Id.* § 1532(16). A species is “endangered” when it “is in danger of extinction throughout all or a significant portion of its range.” *Id.* § 1532(6). A species is “threatened” when it is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” *Id.* § 1532(20).

21. The ESA requires the Service to determine whether any species is endangered or threatened based on:

- a. the present or threatened destruction, modification, or curtailment of its habitat or range;
- b. overutilization for commercial, recreational, scientific, or educational purposes;
- c. disease or predation;
- d. the inadequacy of existing regulatory mechanisms; or
- e. other natural or manmade factors affecting its continued existence.

Id. § 1533(a)(1).

22. To ensure species at risk are protected in a timely manner, Congress allowed a petition process whereby an interested party may petition the Service to list a species as threatened or endangered. *Id.* § 1533(b)(3). Once a citizen petition has been filed, the Service is subject to non-discretionary deadlines that require it to publish up to three decisions. These decisions are known as the 90-day finding, the 12-month finding, and the final listing decision.

23. First, within 90 days of receipt of a listing petition, the Service must, “[t]o the maximum extent practicable,” publish an initial finding “as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted.” *Id.* § 1533(b)(3)(A). This is known as the ‘90-day finding.’ If the Service finds in the 90-day finding that the petition does not present substantial information indicating that listing may be warranted, the petition is rejected and the process concludes. If the Service determines that a petition presents substantial information indicating that listing “may be warranted,” *id.*, the agency must publish that finding and proceed with a scientific review of the species’ status, known as a “status review.”

24. Upon completing the status review, and within 12 months of receiving the petition, the Service must issue its second decision, a “12-month finding” with one of three listing determinations: (1) listing is “not warranted”; (2) listing is “warranted”; or (3) listing is “warranted but precluded” by other proposals for listing species, provided certain circumstances are met. *Id.* § 1533(b)(3)(B). Should the Service determine listing is warranted and not precluded by other listings, it must publish the finding as a proposed regulation to list the species as endangered or

threatened and to designate critical habitat for the species, which begins a public comment period. *Id.* § 1533(a)(3)(A), (b)(3)(B)(ii).

25. Within one year after publication of a proposed regulation to list a species, the Service must publish either a final regulation implementing the proposal, a finding that revision of the regulation is not warranted, or notice that the one-year period is being extended pursuant to the limited circumstances specified by the ESA. *Id.* § 1533(b)(6)(A)-(B).

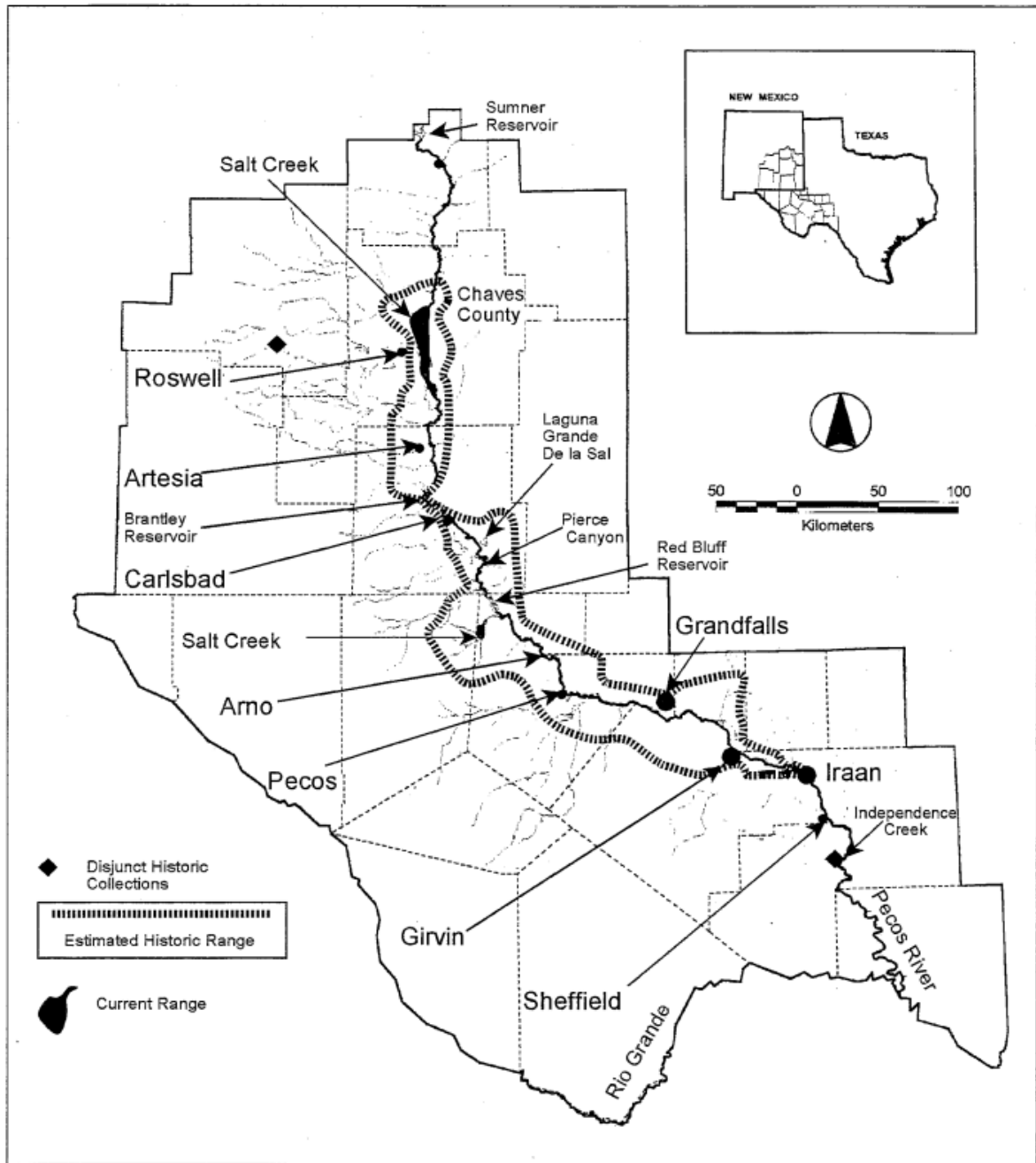
26. If the Service finds substantial disagreement regarding the listing decisions prior to the final listing determination, the agency may extend the 12-month deadline by 6 months to allow it time to solicit further information. *Id.* § 1533(b)(6)(B)(i). However, before the end of the 6-month extension, the Service must publish a final rule or a decision stating that the species does not warrant listing, with justification.

FACTUAL BACKGROUND

I. *The Pecos Pupfish*

27. The Pecos pupfish (*Cyprinodon pecosensis*) is a small, stalwart fish, measuring just 1.1 to 1.8 inches at full size. The species often ranges from grey to brown but can develop an iridescent blue coloration. Pecos pupfish are considered euryhaline, meaning they are capable of surviving in a wide range of salinities. In addition to adapting to varied salinities, the Pecos pupfish can adjust to a wide range of water temperatures and dissolved oxygen levels. The Pecos pupfish historically occupied an area from just above Bitter Lake National Wildlife Refuge in Chaves County, New Mexico, in the north, to south of the mouth of Independence Creek in Crockett and Terrell Counties, Texas, in the south. However, of the nine Pecos pupfish population units observed since 1992, two have been extirpated, and without intervention, the rest of the species faces the threat of

extinction.



28. The Pecos pupfish prefers to live in still waters and is therefore often found only in shallow habitats. In addition to slow-moving riffles and side stems of the Pecos River, the Pecos pupfish can be found in adjacent pools, wetlands, and sinkholes. Because the Pecos pupfish lives in both the main river and smaller water bodies fed by springs, the species requires sufficient

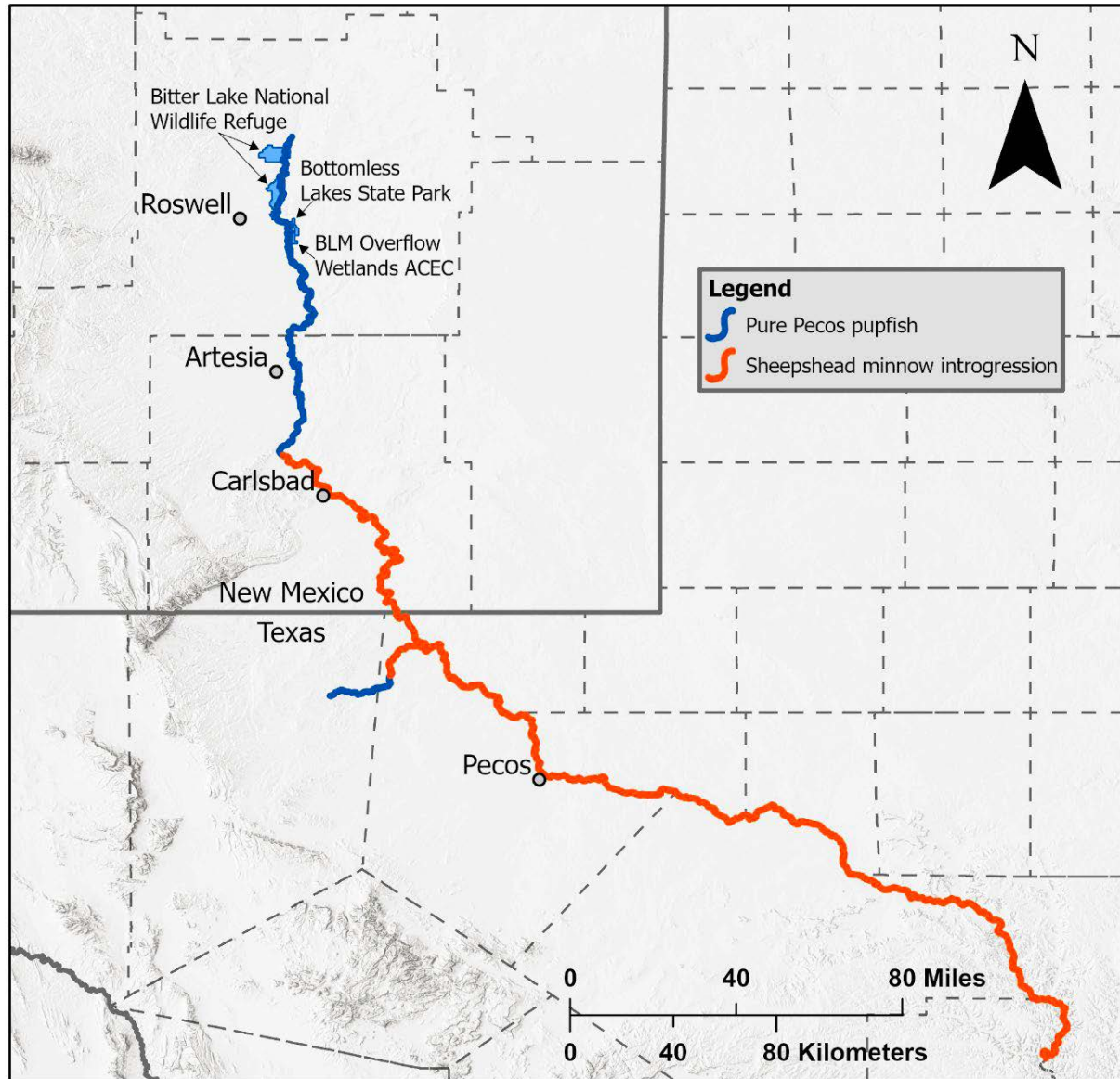
surface water to maintain river flow and a healthy groundwater supply to sustain subterranean streams. The species is particularly vulnerable to changes in water availability, as it typically occupies smaller pools or sinkholes, where many populations are entirely isolated from one another, limiting gene flow and preventing populations from seeking alternative habitats.

29. The Pecos pupfish completes its entire life cycle in approximately one year, with each life stage dependent on specific environmental conditions. The species matures at just a few months of age, with spawning occurring from May through September, peaking in late June through July when water temperatures consistently reach 86°F. Female Pecos pupfish carefully lay just one egg at a time by attaching each to the required substrate, and lay only about ten in a day. During colder months, the Pecos pupfish becomes dormant and unable to respond to environmental threats such as water loss or exposure to toxic spills, making them subject to significant mortality when such events occur.

30. While able to withstand a range of water conditions, the Pecos pupfish remains vulnerable to other environmental changes. The Service regards the introgression of non-native sheepshead minnows, alongside habitat loss and degradation, as the most pressing threats facing the Pecos pupfish, and predicts that both dangers will become more harmful in the coming years. The species has already seen a marked decline in recent decades. As of 2023, eight of 66 known Pecos pupfish habitats have been confirmed as extirpated, and only 21 of those sites could be confirmed as remaining in existence.

31. The Service believes that two Pecos pupfish populations no longer exist, i.e., have been extirpated, due to incursion by the non-native, introduced sheepshead minnow. The sheepshead minnow once only populated brackish coastal waters of the Gulf and Atlantic coast,

but was introduced to the Pecos River in the late 1980s in bait-bucket transfers. The sheepshead minnow is not only larger than the Pecos pupfish, and therefore often able to outcompete it for resources, but the sheepshead minnow also readily interbreeds with the Pecos pupfish. The interbreeding between the species quickly causes a total loss of genetically pure Pecos pupfish, often within five to seven years of the Sheepshead's incursion. The only means of preventing sheepshead minnow incursion is to limit their spread through the use of barriers and by preventing their transfer through bait buckets. Since 1999, the New Mexico State Game Commission and the Texas Parks and Wildlife Department have attempted to enforce state fishing regulations prohibiting the use of sheepshead minnows as bait, but the introgression has already spread across a significant portion of the Pecos pupfish range.



32. Habitat loss is another significant threat to Pecos pupfish and largely results from the loss of surface and groundwater, causing habitats to dry up. The Pecos pupfish's access to surface water has been negatively impacted by developments on the Pecos River, including dams, off-channel diversions, and other construction that increases channelization. Channelization is the process by which a river becomes straighter, deeper, and faster due to human development, rather than meandering. Channelization speeds up water flow, which reduces streambank seepage

(meaning water has less time to seep into surrounding soil because it is moving through so quickly) that in turn can reduce groundwater recharge. Channelization also increases water temperature and can eliminate the shallow marshes, streams, and pools that develop off the river's mainstem and comprise Pecos pupfish habitat.

33. Surface water availability is also predicted to decline due to increasingly severe droughts driven by climate change.

34. With surface water diversions capped by existing water rights, rising water demand means increased groundwater use. Groundwater feeds sinkholes, springs, wetlands, and pools that Pecos pupfish occupy, though which specific aquifers feed these habitats is not well known. Groundwater pumping in Texas has increased to support rapidly expanding fracking operations, and demand for groundwater is rising for agricultural and municipal uses as well. Already, groundwater depletion has led to multiple marshes, playas, and spring ponds disappearing, a trend that will only intensify as projected water use rises and supply diminishes.

35. Habitat loss from surface- and groundwater depletion contributes to fragmentation that reduces connectivity among Pecos pupfish populations. With populations unable to interact, each isolated group is more vulnerable to threats such as sheephead incursions and less able to withstand events like droughts because they cannot settle into new habitats. Fragmentation and isolation increase the likelihood that each Pecos pupfish population will be extirpated.

36. While Pecos pupfish are incredibly hardy to changing water conditions, water quality remains a significant threat facing the population. Much of the Pecos pupfish's range is considered impaired due to water quality issues stemming from Polychlorinated biphenyls (PCBs), oil, and gas contamination. Contamination is also increasing as fracking becomes more common

in the Pecos pupfish range.

37. In addition to reducing water availability, climate change is projected to raise water temperatures, potentially beyond the Pecos pupfish's thermal tolerance. Although Pecos pupfish can withstand temperatures far higher than most fish species, they are currently surviving at the high end of their temperature range, especially during the hottest parts of the year when water temperatures reach the species' thermal maximum. The average temperature of the Pecos River basin has already risen by 1.1° C (2° F) between 1970 and 2020 and is likely to continue rising. Channelization also contributes to rising temperatures, as channelized water tends to warm more quickly than unaffected rivers. Temperature increases are especially likely to affect Pecos pupfish populations that reside in shallow habitats lacking freshwater input or are isolated from connected habitats where the fish could seek refuge.

38. Unfortunately, the conditions of the Pecos pupfish populations are projected to worsen significantly in the foreseeable future. If projections follow the hottest and driest future path, by 2100 smaller streams would be expected to dry entirely during the hottest parts of the year, causing local fish kills and potentially leading to a total loss of Pecos pupfish from multiple locations including Bitter Creek, Salt Creek in New Mexico, and Salt Creek in Texas, which would result in the species being entirely lost from Texas. Even under the most optimistic future scenario with minimal temperature increases and precipitation decreases, the Salt Creek, Texas unit is projected to decline to low condition and remain at risk of extirpation.

II. Listing Petition and Response

39. The Service first recognized the threats facing the Pecos pupfish in 1982, when the species was identified as a Category 2 candidate in the Review of Vertebrate Wildlife and later

elevated to a Category 1 candidate in 1989. 47 Fed. Reg. 58454 (Dec. 30, 1982); 54 Fed. Reg. 554 (Jan. 9, 1989).

40. In 1998, the Service proposed listing the Pecos pupfish as an endangered species without critical habitat on January 30, 1998. 63 Fed. Reg. 4608 (Jan. 30, 1998). On March 17, 2000, the Service withdrew the proposed rule to list the Pecos pupfish as an endangered species, citing a conservation agreement developed by state and federal agencies as sufficient to protect the species' viability. 65 Fed. Reg. 14513 (Mar. 17, 2000).

41. On June 18, 2007, WildEarth Guardians petitioned the Service to list the Pecos pupfish as an endangered species as part of a multi-species petition to list 475 species in the Service's Southwest Region. On December 16, 2009, the Service issued a positive 90-day finding that the petition presented information indicating that the listing of the Pecos pupfish may be warranted and initiated a status review. 74 Fed. Reg. 66,866. (Dec 16, 2009).

42. On February 27, 2020, after the Service failed to issue the required 12-month finding on the petition, another conservation organization filed suit to enforce the Service's statutory deadline under 16 U.S.C. § 1533(b)(3)(B). The parties subsequently reached a settlement requiring the Service to submit a 12-month finding on the Pecos pupfish petition to the Federal Register by December 1, 2024. *See* 89 Fed. Reg. 92744, 92746 (Proposed Listing Rule for the Pecos pupfish).

43. Finally, on November 22, 2024, the Service published a proposed rule to list the Pecos pupfish as a threatened species with a species-specific Section 4(d) Rule and to designate critical habitat. *See* 89 Fed. Reg. 92744 (Proposed Listing Rule for the Pecos pupfish). The proposed critical habitat totals 136.12 river miles and 26,555.54 acres in Chaves and Eddy

Counties, New Mexico, and Culberson and Reeves Counties, Texas. *Id.* The Service determined that federal listing for the Pecos pupfish was warranted primarily due to introgression of the sheepshead minnow, loss and decline of surface and ground waters, degradation of water quality, and habitat loss and fragmentation, all of which are exacerbated by the ongoing and expected effects of climate change.

44. Thus, more than forty years after the Service first recognized that the Pecos pupfish may warrant ESA protection, nearly twenty years after Guardians petitioned to list it, and nearly two years after the Service itself concluded that listing is warranted and proposed federal protections, the Pecos pupfish remains unprotected under the ESA. In the absence of critical ESA protections, habitat loss, fragmentation, and degradation have worsened, while continued threats from nonnative species introgression and climate change have also grown more dire, resulting in further population declines and range contractions for this ecologically valuable native fish.

CLAIM FOR RELIEF

Violation of the ESA for Failure to Issue a Timely Final Listing Rule for the Pecos pupfish

45. Guardians re-alleges and incorporates all allegations set forth in the preceding paragraphs.

46. With limited exceptions not relevant here, when the Service publishes a proposed rule to list a species as endangered or threatened, the ESA requires the agency to publish a final listing determination within 12 months of the proposal's publication. 16 U.S.C. § 1533(b)(6)(A).

47. Because the Service published its proposed listing rule on November 22, 2024, and did not invoke the limited six-month extension authorized by 16 U.S.C. § 1533(b)(6)(B)(i), nor did it publish the findings required to invoke such an extension, the Service's deadline to make

and publish its final determination expired on November 22, 2025.

48. Defendants have not made the statutorily required final determination for the Pecos pupfish.

49. Defendants failed to perform their nondiscretionary duty to timely publish the final listing rule in violation of the ESA. 16 U.S.C. § 1533(b)(6)(A).

REQUEST FOR RELIEF

WHEREFORE, Guardians respectfully requests that the Court enter judgment providing the following relief:

1. Declare that the Service violated the ESA by failing to issue a timely final listing rule for the Pecos pupfish;
2. Provide injunctive relief compelling the Service to publish the final listing determination required by the ESA by a date certain;
3. Retain continuing jurisdiction to review the Service's compliance with all judgments and orders issued in this case;
4. Grant Guardians its reasonable attorneys' fees and costs as provided by the ESA, 16 U.S.C. § 1540(g)(4); and
5. Provide such other relief as the Court deems just and proper.

Respectfully submitted September 8, 2026.

A handwritten signature in black ink, appearing to read "Jennifer Schwarz". The signature is fluid and cursive, with the first name "Jennifer" and last name "Schwarz" clearly distinguishable.

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