



**Western
Watersheds
Project**

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Working to protect and restore Western Watersheds and Wildlife

The Honorable Deborah Haaland
Secretary of the Interior
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Martha Williams
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September 14, 2023

Dear Secretary Haaland and Director Williams:

Western Watersheds Project provides you notice, as required by 16 U.S.C. § 1540(g), that the U.S. Fish and Wildlife Service (“FWS”) is in violation of the Endangered Species Act (“ESA”) because it has failed to determine, within 90 days, whether our petition to list the Kings River pyrg (*Pyrgulopsis imperialis*) under the ESA presents substantial information that listing may be warranted. 16 U.S.C. § 1533(b)(3). FWS has also violated the ESA because it has failed to determine within 12 months of receiving our petition whether the Kings River pyrg warrants protection as a threatened or endangered species. *Id.* If you do not remedy these violations within 60 days, we intend to file suit.

On September 8, 2022, we submitted to you a Rulemaking Petition to List the Kings River pyrg under the Endangered Species Act as an Endangered or Threatened Species and to Concurrently Designate Critical Habitat. Our records reflect that you received the petition no

later than September 14, 2022. The Endangered Species Act (“ESA”) requires that the Secretary must make a finding as to whether such a petition presents substantial information showing listing may be warranted within 90 days of receiving it, to the “maximum extent practicable.” 16 U.S.C. § 1533(b)(3). For our petition, that time expired in December 2022, and yet, you have made no such finding on our petition. In addition, you have failed to make a 12-month finding—due no later than September 14, 2023—whether the Kings River pyrg warrants protection under the ESA. *Id* § 1533(b)(3)(B). Thus, you are in violation of the ESA.

ORGANIZATION GIVING NOTICE

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I. REQUIREMENTS OF THE ESA

The ESA is a comprehensive federal statute declaring that endangered and threatened species are of “esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people.” 16 U.S.C. § 1531(a)(3). The purpose of the ESA is 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).

To that end, the ESA requires the Secretary of Interior to protect imperiled species by listing them as either “endangered” or “threatened.” *Id.* § 1533(a). “The term ‘endangered species’ means any species which is in danger of extinction throughout all or a significant portion of its range[.]” *id.* § 1532(6), while “[t]he term ‘threatened species’ means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” *Id.* § 1532(20). The Secretary of Interior has delegated administration of the ESA to the FWS. 50 C.F.R. § 402.01.

The ESA allows for the FWS to list species on its own initiative or in response to a citizen petition. Where citizens petition to list a species, the ESA provides mandatory, non-discretionary deadlines for findings that the FWS must make so that imperiled species receive the ESA’s substantive protections in a timely fashion. The three required findings, described below, are the 90-day finding, the 12-month finding, and the final listing decision.

Within 90 days of receiving a listing petition, the FWS must “to the maximum extent practicable,” make an initial finding as to 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). This is called a “90-day finding.” If the FWS determines that a petition presents substantial information indicating that listing may be warranted, the agency must promptly conduct a scientific review of the species’ status. *Id.*

Within 12 months of the date that it receives the petition, FWS must make one of three findings: (1) listing is “not warranted;” (2) listing is “warranted;” or (3) listing is warranted but

precluded, provided certain requirements are met. *Id.* § 1533(b)(3)(B). The FWS must publish this “12-month finding” in the Federal Register.

If the FWS’s 12-month finding concludes that listing is warranted, the agency must publish notice of the proposed regulation to list the species as endangered or threatened, along with its complete text, in the Federal Register for public comment. *Id.* § 1533(b)(3)(B)(ii).

Within one year of publication of the proposed regulation, the ESA requires the FWS to render its final determination on the proposal. *Id.* § 1533(b)(6)(A). At such time, the FWS must either list the species; withdraw the proposed listing rule; or, if there is substantial disagreement about scientific data, delay a final determination for up to six months to gather more scientific information. *Id.* §§ 1533(b)(6)(A)(i), and (B)(i). This is known as the final listing decision.

II. Factual Background

The Kings River pyrg, a tiny endemic springsnail, is known to exist only in 13 small, shallow springs in two locations in Humboldt County, Nevada: Thacker Pass, and the adjacent southwestern slopes of the west-facing range front of the Montana Mountains. The species has extremely limited distribution and limited mobility and is thus highly vulnerable to threats including impacts associated with the recently approved Thacker Pass lithium mine, spring modification, drought, livestock grazing, and climate change.

Like other Great Basin springsnails, Kings River pyrg inhabit small, shallow springs (WRC 2018). The 13 desert springs where Kings River pyrg have been found range from 0.41 to 7 meters across, with the majority of the springs 1 to 2 meters across (WRC 2018: 9). The springs’ depth in July 2018 ranged from 0.1 to 13.5 cm (WRC 2018: 9). The species has been found on substrates ranging from cobbles to fine gravel or pebbles to finer sands, as well as on vegetation and submerged branches of shrubs, usually with watercress present (WRC 2018: 10,

11-14). *Pyrgulopsis* springsnails are gill breathing, restricted to perennial waters throughout their life cycle, and have low tolerance for desiccation (Hershler and Liu 2008: 92, Hershler et al. 2014: 694).

All of the 13 springs where Kings River pyrg were found in 2018 are within the hydrographic area where water resources will be affected by the Thacker Pass open-pit lithium mine, which is presently under construction (WRC 2018: 1). For the mine's Environmental Impact Statement ("EIS"), the water consulting firm calculated that the mine would draw down groundwater levels by 10 feet or more in an area that extends approximately 1.4 miles out from the mine project area (BLM 2020a: 2-21, 4-7). The EIS also asserts that springs may experience reduced baseflow or dry up altogether one-mile beyond the 10-foot drawdown contour (BLM 2020a: 4-8, 4-9). Three of the total 13 springs in which the Kings River pyrg is known to exist fall within the 1-mile buffer (BLM 2020a: 4-11, see Figure 7). Additional springs will likely experience other changes to water quality and quantity, including from runoff from chemical dust suppression treatments, and fugitive dust deposition.

All of the Kings River pyrg-occupied springs occur within lands used for livestock grazing, which is known to damage aquatic habitats. Cattle impacts were observed in or near all of the springs where the pyrg was observed during the 2018 surveys. Similarly, many streams where pyrg exist are disturbed by existing roads, or may be disturbed by new roads associated with the Thacker Pass lithium mine. And, non-native crayfish, which pose a threat to the pyrg, were found within three of the springs known to support the species.

In the context of these threats, and in light of the species' limited distribution, drought and climate change pose a serious additional threat to the Kings River pyrg. Drought lowers water levels in rivers, streams, and groundwater (Van Loon 2015: 359). In Nevada, drought is

projected to increase in frequency (McEvoy et al. 2020: 1). As drought frequency increases with climate change, the Kings River pyrg will be at high risk of extinction and indeed, the Nevada Department of Wildlife (NDOW) ranks the pyrg as Extremely Vulnerable to climate change (NDOW 2013a: 20/29).

Further, the species has no regulatory protection whatsoever from these impacts because it is not an endangered species, or even a Bureau of Land Management-listed Sensitive species, and has no state law protections. The Bureau of Land Management approved the Thacker Pass lithium mine with no protections for the Kings River pyrg.

As a result—and to ensure the continued existence of the species—WWP petitioned for the FWS to protect the Kings River pyrg as a threatened or endangered species and designate critical habitat to support it. To date, the FWS has failed to respond at all to WWP’s petition.

VIOLATION OF LAW

FWS has failed to make a finding “within 90 days” of receiving WWP’s petition to list the Kings River pyrg whether WWP’s petition shows that listing the species “may be warranted,” as required by the ESA, 16 U.S.C. § 1533(b)(3)(A). In addition, FWS has failed to make a finding within 12 months of receiving WWP’s petition about whether the Kings River pyrg is warranted, not warranted, or warranted but precluded for protection under the ESA. *Id.* § 1533(b)(3)(B). FWS’ failure to make the required findings violates the ESA and unless FWS corrects this violation within 60 days, WWP intends to file suit in federal court.

This notice letter was prepared based on good faith information and belief after reasonably diligent investigation. If you believe that any of the foregoing is factually erroneous or inaccurate, please notify us promptly.

Sincerely,

s/ Talasi B. Brooks
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