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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 CENTER FOR BIOLOGICAL)
DIVERSITY,)
12)
Plaintiff)
13 v.)
14 KEN SALAZAR, in his official capacity as)
Secretary of the Interior; and UNITED)
15 STATES FISH AND WILDLIFE)
SERVICE, an agency of the United States)
16 Department of the Interior,)
17 Defendants.)
18)

Case No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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I. INTRODUCTION

1. In this action Plaintiff, CENTER FOR BIOLOGICAL DIVERSITY (“the Center”), challenges the failure of Defendants, KEN SALAZAR, Secretary of the Interior, and the UNITED STATES FISH AND WILDLIFE SERVICE (the “Service”) (collectively “Defendants”) to take required action on seven separate petitions (collectively “Petitions”) to list species found in the western United States: 1) the Mount Charleston blue butterfly (*Icaricia shata charlestonensis*); 2) the California golden trout (*Oncorhynchus mykiss aguabonita*); 3) the Mojave fringe-toed lizard (*Uma scoparia*); 4) the Amargosa Toad (*Bufo nelsoni*); 5) 42 species of Great Basin springsnails (*Pyrgulopsis sp. and Tryonia sp.*); 6) the Tehachapi slender salamander (*Batrachoseps stebbinsi*); and 7) the Mohave ground squirrel (*Spermophilus Mohavensis*) (collectively “Petitioned Species”) as endangered or threatened under the Endangered Species Act, 16 U.S.C. §§ 1531-1544 (“ESA”). Plaintiff asks this Court to order Defendants to comply with the mandatory, non-discretionary deadlines set forth by the ESA for the processing of citizen petitions to list species and afford them the protection they deserve.

2. Through this action, Plaintiff seeks an order declaring that Defendants’ failure to complete their statutorily-mandated duty to process the Petitions is a violation of the ESA and the Administrative Procedures Act (“APA”), 5 U.S.C. § 706. Plaintiff further seeks an order requiring Defendants to make the required findings on the Petitions by a date certain.

II. JURISDICTION AND VENUE

3. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal question), 2201 (declaratory relief), and 2202 (injunctive relief); 16 U.S.C. § 1540(c) and (g) (action arising under the ESA and citizen suit provision); and 5 U.S.C. § 702 (Administrative Procedure Act). As required by the ESA, 16 U.S.C. § 1540(g), Plaintiff furnished Defendants with written notice regarding the violations alleged in this Complaint more than sixty days ago. Defendants have failed to remedy the alleged violations in that time. An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201.

1 against the unlawful “take” of listed species in section 9 of the ESA. 16 U.S.C. §§ 1536(a)(2),
2 1538.

3 12. The listing process can begin either by citizen petition or by internal Service
4 processes. In either case, a strict timeline applies once the process is initiated.

5 13. To the maximum extent practicable, within ninety days of receiving a petition to
6 list a species, the Service must make a determination as to whether the petition “presents
7 substantial scientific or commercial information indicating that the petitioned action may be
8 warranted,” and publish that finding in the Federal Register. 16 U.S.C. § 1533(b)(3)(A).

9 14. Within one year of receiving a petition, the Secretary must issue a “twelve-
10 month finding” making one of three determinations: (1) that the listing is “warranted,” in which
11 case the Service must also publish a proposed rule to list the species; (2) that the listing is “not
12 warranted,” in which case no further action is taken; or (3) that the listing is “warranted but
13 precluded” by other listing actions of higher priority. 16 U.S.C. § 1533(b)(3)(B). The 12-
14 month finding is mandatory; there is no mechanism by which the deadline to make the finding
15 may be extended. So while the ESA provides the Secretary with some very limited flexibility
16 as to the making of the initial 90-day finding on the petition, the Secretary must comply with
17 the mandatory 12-month finding deadline for making one of the above listed determinations.

18 15. Within one year of the publication of a proposed rule to list a species, the ESA
19 requires the Secretary to render a final determination on the proposal. 16 U.S.C. §
20 1533(b)(6)(A)(i). At this point, the Secretary may list the species, withdraw the proposal, or, if
21 there is substantial disagreement about the scientific data involved, delay a final determination
22 for up to six months to solicit more scientific information. 16 U.S.C. § 1533(b)(6)(A)(i) &
23 (B)(i). In any case, the Secretary must make a formal finding within one year of the initial 12-
24 month finding. 16 U.S.C. § 1533(b)(6)(A).

25 16. Where the Secretary has made a final determination to list a species as
26 threatened or endangered, it must, to the maximum extent determinable, concurrently render a
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1 final decision concerning the designation of critical habitat for the species. 16 U.S.C. §
2 1533(a)(3) & (b)(6)(C).

3 17. In addition to these mandated procedures, the Secretary has discretion to issue a
4 regulation at any time to prevent an “emergency posing a significant risk to the well being of
5 any species.” 16 U.S.C. § 1533(b)(7). Such an emergency regulation remains in effect for up
6 to 240 days, at which time the Secretary must issue a final rule to continue the protection. *Id.*

7 18. It is critical for the Service, which has been delegated the Secretary’s
8 responsibilities for listing under the ESA, to scrupulously follow the listing procedures and
9 deadlines set forth by the ESA if species are to be protected in a timely manner; none of the
10 ESA’s protections operate to protect a species until the species is formally listed as threatened
11 or endangered by the publication of a final rule in the Federal Register.

12 **V. FACTUAL BACKGROUND**

13 **A. Mount Charleston blue butterfly**

14 19. A petition to the Secretary requesting listing of the Mount Charleston blue
15 butterfly as threatened or endangered under the ESA was received by the Secretary on October
16 20, 2005. The Mount Charleston blue butterfly is a distinctive subspecies of the wider ranging
17 Shasta blue butterfly and is observed only at high elevations in the Spring Mountains, located
18 approximately 25 miles (40 kilometers (km)) west of Las Vegas in Clark County, Nevada.
19 Habitat destruction and modification are primarily threats to the Mount Charleston blue
20 butterfly.

21 20. The Secretary has missed each deadline provided by the ESA for processing the
22 petition. On May 30, 2007, nineteen months after the petition for listing on the Mount
23 Charleston blue butterfly was submitted, the Secretary issued a 90-day finding. Notice of 90-
24 day Petition Finding, 72 Fed. Reg. 29933 (May 30, 2007). The 90-day finding determined that
25 “the petition presents substantial scientific or commercial information indicating that listing the
26 Mr. Charleston blue butterfly may be warranted.” *Id.*

1 21. On October 20, 2006, the deadline for a 12-month finding for the petition
2 passed. By letter dated December 14, 2009, the Center notified the Secretary that he had
3 violated section 4 of the ESA, 15 U.S.C. § 1533(b)(3)(B), by failing to make a 12-month
4 finding on the petition as required by the ESA. The Center advised the Secretary that it
5 intended to file suit to force the ESA’s mandatory listing deadlines.

6 22. The Secretary has yet to issue a 12-month finding for the petition to list the
7 Mount Charleston blue butterfly as threatened or endangered under the ESA.

8 23. If Defendants do not act to process the petition and protect the Mount Charleston
9 blue butterfly, the species will continue its spiral towards extinction. Although this tragedy is
10 entirely preventable, Defendants inexplicably refuse to act.

11 **B. California golden trout**

12 24. A petition to the Secretary requesting listing of the California golden trout as
13 threatened or endangered under the ESA was received by the Secretary on October 23, 2000.
14 Notice of 90-day Petition Finding and Initiation of Status Review, 67 Fed. Reg. 59241, 59241
15 (Sept. 20, 2002). The California golden trout is the State Fish of California and native only to
16 two high-altitude watersheds in California’s rugged Sierra Nevada Mountains. Threats to the
17 California golden trout include habitat degradation and hybridization with non-native rainbow
18 trout.

19 25. The Secretary has missed each deadline provided by the ESA for processing the
20 California golden trout listing petition. On September 20, 2002, close to two years after the
21 petition was submitted, the Secretary issued a 90-day finding. Id. The 90-day finding
22 determined that “the petition presents substantial information indicating that the listing of the
23 California golden trout may be warranted.” Id.

24 26. On October 16, 2001 the deadline for a 12-month finding for the petition to list
25 the California golden trout passed. By letter dated December 14, 2009, the Center notified the
26 Secretary that he had violated section 4 of the ESA, 15 U.S.C. § 1533(b)(3)(B), by failing to
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1 make a 12-month finding on the petition as required by the ESA. The Center advised the
2 Secretary that it intended to file suit to force the ESA's mandatory listing deadlines.

3 27. The Secretary has yet to issue a 12-month finding for the petition to list the
4 California golden trout as threatened or endangered under the ESA.

5 28. If Defendants do not act to process the petition and protect the petitioned
6 species, the California golden trout will continue its spiral towards extinction. Although this
7 tragedy is entirely preventable, Defendants inexplicably refuse to act.

8 **C. Mojave fringe-toed lizard**

9 29. A petition to the Secretary requesting listing of the Armargosa River population
10 of the Mojave fringe-toed lizard as threatened or endangered under the ESA was received by
11 the Secretary on April 10, 2006. Notice of 90-day Petition Finding and Initiation of a Status
12 Review, 73 Fed. Reg. 1855, 1856 (Jan. 10, 2008). Threats to the Mojave fringe-toed lizard
13 include habitat destruction and modification by extensive Off-Highway Vehicle use.

14 30. The Secretary has missed each deadline provided by the ESA for processing the
15 petition to list the Amargosa River population of the Mojave fringe-toed lizard. On January 10,
16 2008, seventeen months after the petition was submitted, the Secretary issued a 90-day finding.
17 Id. The 90-day finding determined that "the petition presents substantial scientific or
18 commercial information indicating that listing [the Amargosa River population of the Mojave
19 fringe-toed lizard] may be warranted." Id.

20 31. On August 10, 2007, the deadline for a 12-month finding for the petition passed.
21 By letter dated December 14, 2009, the Center notified the Secretary that he had violated
22 section 4 of the ESA, 15 U.S.C. § 1533(b)(3)(B), by failing to make a 12-month finding on the
23 petition as required by the ESA. The Center advised the Secretary that it intended to file suit to
24 force the ESA's mandatory listing deadlines.

25 32. The Secretary has yet to issue a 12-month finding for the petition to list the
26 Armargosa River population of the Mojave fringe-toed lizard as threatened or endangered
27 under the ESA.

1 33. If Defendants do not act to process the petition and protect the petitioned
2 species, the species will continue its spiral towards extinction. Although this tragedy is entirely
3 preventable, Defendants inexplicably refuse to act.

4 **D. Amargosa Toad**

5 34. A petition to the Secretary requesting listing of the Amargosa toad as threatened
6 or endangered under the ESA was received by the Secretary on February 27, 2008. The
7 Amargosa toad is endemic to Oasis Valley in southern Nye County, Nevada. Threats to the
8 Amargosa toad include present or threatened destruction, modification, or curtailment of the
9 Amargosa toad's habitat or range, including threats to habitat by proposed Federal land sales
10 and development projects on private land.

11 35. The Secretary has missed each deadline provided by the ESA for processing the
12 petition to list the Amargosa toad. On September 10, 2009, nineteen months after the petition
13 was submitted, the Secretary issued a 90-day finding. Notice of 90-day Petition Finding and
14 Initiation of Status Review, 74 Fed. Reg. 46551 (Sept. 10, 2009). The 90-day finding
15 determined that “the petition presents substantial scientific or commercial information
16 indicating that listing [the Amargosa toad] may be warranted.” Id.

17 36. On February 27, 2009, the deadline for a 12-month finding for the petition
18 passed. By letter dated December 14, 2009, the Center notified the Secretary that he had
19 violated section 4 of the ESA, 15 U.S.C. § 1533(b)(3)(B), by failing to make a 12-month
20 finding on the petition as required by the ESA. The Center advised the Secretary that it
21 intended to file suit to force the ESA’s mandatory listing deadlines.

22 37. The Secretary has yet to issue a 12-month finding for the petition to list the
23 Amargosa toad as threatened or endangered under the ESA.

24 38. If Defendants do not act to process the petition and protect the petitioned
25 species, the Amargosa toad will continue its spiral towards extinction. Although this tragedy is
26 entirely preventable, Defendants inexplicably refuse to act.

27 **E. 42 Species of Great Basin Springsnails**

1 39. A petition to the Secretary requesting listing of 42 species of Great Basin
2 Springsnails as threatened or endangered under the ESA was received by the Secretary on
3 February 17, 2009. This springsnails, which depend on desert springs in California, Nevada
4 and Utah for survival, are threatened by groundwater withdrawal, spring diversion, and
5 livestock grazing.

6 40. The Secretary has missed the deadlines provided by the ESA for processing the
7 petition to list 42 species of Great Basin springsnails. On May 17, 2009 the deadline for a 90-
8 day finding for the petition passed. By letter dated December 14, 2009, the Center notified the
9 Secretary that he had violated section 4 of the ESA, 15 U.S.C. § 1533(b)(3)(B), by failing to
10 make a 90-day finding on the petition as required by the ESA. The Center advised the
11 Secretary that it intended to file suit to force the ESA's mandatory listing deadlines.

12 41. The Secretary has yet to issue a 90-day finding for the petition to list 42 species
13 of Great Basin Springsnails as threatened or endangered under the ESA.

14 42. If Defendants do not act to process the petition and protect the petitioned
15 species, the species will continue its spiral towards extinction. Although this tragedy is entirely
16 preventable, Defendants inexplicably refuse to act.

17 **F. Tehachapi slender salamander**

18 43. A petition to the Secretary requesting listing of the Tehachapi slender
19 salamander as threatened or endangered under the ESA was received by the Secretary on
20 February 28, 2006. The Tehachapi slender salamander is believe to have only two populations,
21 one in Caliente Canyon in the southern Sierras and the other in the Tehachapi Mountains of
22 California. The salamander is threatened by development, road construction, mining, livestock
23 grazing, and flood-control projects.

24 44. The Secretary has missed each deadline provided by the ESA for processing the
25 petition to list the Tehachapi slender salamander. On April 22, 2009, almost three years after
26 the petition was submitted, the Secretary issued a 90-day finding. Notice of 90-day Petition
27 Finding and Initiation of Status Review, 74 Fed. Reg. 18336 (Apr. 22, 2009). The 90-day
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1 finding determined that “the petition presents substantial scientific or commercial information
2 indicating that listing the Tehachapi slender salamander may be warranted.” Id.

3 45. On February 28, 2007, the deadline for a 12-month finding for the petition to list
4 the Tehachapi slender salamander passed. By letter dated December 14, 2009, the Center
5 notified the Secretary that he had violated section 4 of the ESA, 15 U.S.C. § 1533(b)(3)(B), by
6 failing to make a 12-month finding on the petition as required by the ESA. The Center advised
7 the Secretary that it intended to file suit to force the ESA’s mandatory listing deadlines.

8 46. The Secretary has yet to issue a 12-month finding for the petition to list the
9 Tehachapi slender salamander as threatened or endangered under the ESA.

10 47. If Defendants do not act to process the petition and protect the petitioned
11 species, the Tehachapi slender salamander will continue its spiral towards extinction. Although
12 this tragedy is entirely preventable, Defendants inexplicably refuse to act.

13 **G. Mohave ground squirrel**

14 48. A petition to the Secretary requesting listing of the Mohave ground squirrel as
15 threatened or endangered under the ESA was received by the Secretary on September 19, 2005.
16 The Mohave ground squirrel is threatened by destruction and degradation of habitat from
17 development, military activities, livestock grazing and Off-Highway Vehicle use.

18 49. The Secretary has missed the deadlines provided by the ESA for processing the
19 petition to list the Mohave ground squirrel. On December 19, 2005 the deadline for a 90-day
20 finding for the petition passed. By letter dated December 14, 2009, the Center notified the
21 Secretary that he had violated section 4 of the ESA, 15 U.S.C. § 1533(b)(3)(B), by failing to
22 make a 90-day finding on the petition as required by the ESA. The Center advised the
23 Secretary that it intended to file suit to force the ESA’s mandatory listing deadlines.

24 50. The Secretary has yet to issue a 90-day finding for the petition to list the
25 Mohave ground squirrel as threatened or endangered under the ESA. Because of Defendants’
26 failure to make the required 90-day finding in a timely manner, it is now impossible for
27 Defendants to comply with the mandatory 12-month finding deadline for the petition.

1 51. If Defendants do not act to process the petition and protect the petitioned
2 species, the Mohave ground squirrel will continue its spiral towards extinction. Although this
3 tragedy is entirely preventable, Defendants inexplicably refuse to act.

4 **VI. CLAIM FOR RELIEF**

5 **First Claim for Relief**

6 **(Failure to Make a Timely 12-Month Finding on** 7 **Petition to List Mount Charleston Blue Butterfly)**

8 52. Each and every allegation set forth in this Complaint is incorporated herein by
9 reference as if set forth in full.

10 53. The Secretary's failure to make a timely 12-month finding on the petition to list
11 the Mount Charleston blue butterfly as threatened or endangered violates the ESA. 16 U.S.C.
12 §§ 1533(b)(3)(B) & 1540(g). The Secretary's failure to perform his mandatory, non-
13 discretionary duty also constitutes agency action "unlawfully withheld or unreasonably
14 delayed" within the meaning of the APA, 5 U.S.C. § 706(1). Additionally, and/or alternatively,
15 the Secretary's failure to comply with this provision is arbitrary and capricious, an abuse of
16 discretion, not in accordance with law, and a failure to observe proper procedure under the
17 APA, 5 U.S.C. § 706(2).

18 **Second Claim for Relief**

19 **(Failure to Make a Timely 12-Month Finding on** 20 **Petition to List California Golden Trout)**

21 54. Each and every allegation set forth in this Complaint is incorporated herein by
22 reference as if set forth in full.

23 55. The Secretary's failure to make a timely 12-month finding on the petition to list
24 the California golden trout as threatened or endangered violates the ESA. 16 U.S.C. §§
25 1533(b)(3)(B) & 1540(g). The Secretary's failure to perform his mandatory, non-discretionary
26 duty also constitutes agency action "unlawfully withheld or unreasonably delayed" within the
27 meaning of the APA, 5 U.S.C. § 706(1). Additionally, and/or alternatively, the Secretary's
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1 failure to comply with this provision is arbitrary and capricious, an abuse of discretion, not in
2 accordance with law, and a failure to observe proper procedure under the APA, 5 U.S.C. §
3 706(2).

4 **Third Claim for Relief**

5 **(Failure to Make a Timely 12-Month Finding on**
6 **Petition to List Mojave Fringe-toed Lizard)**

7 56. Each and every allegation set forth in this Complaint is incorporated herein by
8 reference as if set forth in full.

9 57. The Secretary’s failure to make a timely 12-month finding on the petition to list
10 the Mojave fringe-toed lizard as threatened or endangered violates the ESA. 16 U.S.C. §§
11 1533(b)(3)(B) & 1540(g). The Secretary’s failure to perform his mandatory, non-discretionary
12 duty also constitutes agency action “unlawfully withheld or unreasonably delayed” within the
13 meaning of the APA, 5 U.S.C. § 706(1). Additionally, and/or alternatively, the Secretary’s
14 failure to comply with this provision is arbitrary and capricious, an abuse of discretion, not in
15 accordance with law, and a failure to observe proper procedure under the APA, 5 U.S.C. §
16 706(2).

17 **Fourth Claim for Relief**

18 **(Failure to Make a Timely 12-Month Finding on**
19 **Petition to List Amargosa Toad)**

20 58. Each and every allegation set forth in this Complaint is incorporated herein by
21 reference as if set forth in full.

22 59. The Secretary’s failure to make a timely 12-month finding on the petition to list
23 the Amargosa toad as threatened or endangered violates the ESA. 16 U.S.C. §§ 1533(b)(3)(B)
24 & 1540(g). The Secretary’s failure to perform his mandatory, non-discretionary duty also
25 constitutes agency action “unlawfully withheld or unreasonably delayed” within the meaning of
26 the APA, 5 U.S.C. § 706(1). Additionally, and/or alternatively, the Secretary’s failure to
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1 comply with this provision is arbitrary and capricious, an abuse of discretion, not in accordance
2 with law, and a failure to observe proper procedure under the APA, 5 U.S.C. § 706(2).

3 **Fifth Claim for Relief**

4 **(Failure to Make a Timely 90-Day Finding on**
5 **Petition to List 42 Species of Great Basin Springsnails)**

6 60. Each and every allegation set forth in this Complaint is incorporated herein by
7 reference as if set forth in full.

8 61. The Secretary’s failure to make a timely 90-day finding on the petition to list 42
9 species of Great Basin springsnails as threatened or endangered violates the ESA. 16 U.S.C. §§
10 1533(b)(3)(A) & 1540(g). The Secretary’s failure to perform his mandatory, non-discretionary
11 duty also constitutes agency action “unlawfully withheld or unreasonably delayed” within the
12 meaning of the APA, 5 U.S.C. § 706(1). Additionally, and/or alternatively, the Secretary’s
13 failure to comply with this provision is arbitrary and capricious, an abuse of discretion, not in
14 accordance with law, and a failure to observe proper procedure under the APA, 5 U.S.C. §
15 706(2).

16 **Sixth Claim for Relief**

17 **(Failure to Make a Timely 12-Month Finding on**
18 **Petition to List Techachapi Slender Salamander)**

19 62. Each and every allegation set forth in this Complaint is incorporated herein by
20 reference as if set forth in full.

21 63. The Secretary’s failure to make a timely 12-month finding on the petition to list
22 the Techachapi slender salamander as threatened or endangered violates the ESA. 16 U.S.C. §§
23 1533(b)(3)(B) & 1540(g). The Secretary’s failure to perform his mandatory, non-discretionary
24 duty also constitutes agency action “unlawfully withheld or unreasonably delayed” within the
25 meaning of the APA, 5 U.S.C. § 706(1). Additionally, and/or alternatively, the Secretary’s
26 failure to comply with this provision is arbitrary and capricious, an abuse of discretion, not in
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1 accordance with law, and a failure to observe proper procedure under the APA, 5 U.S.C. §
2 706(2).

3 **Seventh Claim for Relief**

4 **(Failure to Make a Timely 90-Day Finding on**
5 **Petition to List Mohave Ground Squirrel)**

6 64. Each and every allegation set forth in this Complaint is incorporated herein by
7 reference as if set forth in full.

8 65. The Secretary’s failure to make a timely 90-day finding on the petition to list the
9 Mohave ground squirrel as threatened or endangered violates the ESA. 16 U.S.C. §§
10 1533(b)(3)(A) & 1540(g). The Secretary’s failure to perform his mandatory, non-discretionary
11 duty also constitutes agency action “unlawfully withheld or unreasonably delayed” within the
12 meaning of the APA, 5 U.S.C. § 706(1). Additionally, and/or alternatively, the Secretary’s
13 failure to comply with this provision is arbitrary and capricious, an abuse of discretion, not in
14 accordance with law, and a failure to observe proper procedure under the APA, 5 U.S.C. §
15 706(2).

16 **VII. PRAYER FOR RELIEF**

17 FOR THESE REASONS, Plaintiff respectfully request that the Court:

18 1. Declare that Defendants are in violation of their mandatory duty under the ESA
19 to make, and to publish in the Federal Register, a 12-month finding on the petition to list the
20 Mount Charleston blue butterfly;

21 2. Provide preliminary and permanent injunctive relief compelling Defendants to
22 publish in the Federal Register a 12-month finding on the petition to list the Mount Charleston
23 blue butterfly by a date certain;

24 3. Declare that Defendants are in violation of their mandatory duty under the ESA
25 to make, and to publish in the Federal Register, a 12-month finding on the petition to list the
26 California golden trout;

27 4. Provide preliminary and permanent injunctive relief compelling Defendants to
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1 publish in the Federal Register a 12-month finding on the petition to list the California golden
2 trout by a date certain;

3 5. Declare that Defendants are in violation of their mandatory duty under the ESA
4 to make, and to publish in the Federal Register, a 12-month finding on the petition to list the
5 Mojave fringe-toed lizard;

6 6. Provide preliminary and permanent injunctive relief compelling Defendants to
7 publish in the Federal Register a 12-month finding on the petition to list the Mojave fringe-toed
8 lizard by a date certain;

9 7. Declare that Defendants are in violation of their mandatory duty under the ESA
10 to make, and to publish in the Federal Register, a 12-month finding on the petition to list the
11 Amargosa toad;

12 8. Provide preliminary and permanent injunctive relief compelling Defendants to
13 publish in the Federal Register a 12-month finding on the petition to list the Amargosa toad by
14 a date certain;

15 9. Declare that Defendants are in violation of their mandatory duty under the ESA
16 to make, and to publish in the Federal Register, a 90-day finding on the petition to list 42
17 species of Great Basin springsnails;

18 10. Provide preliminary and permanent injunctive relief compelling Defendants to
19 publish in the Federal Register a 90-day finding on the petition to list 42 species of Great Basin
20 springsnails by a date certain and a 12-month finding by a date certain thereafter;

21 11. Declare that Defendants are in violation of their mandatory duty under the ESA
22 to make, and to publish in the Federal Register, a 12-month finding on the petition to list the
23 Tehachapi slender salamander;

24 12. Provide preliminary and permanent injunctive relief compelling Defendants to
25 publish in the Federal Register a 12-month finding on the petition to list the Tehachapi slender
26 salamander by a date certain;

27 13. Declare that Defendants are in violation of their mandatory duty under the ESA
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1 to make, and to publish in the Federal Register, a 90-day finding on the petition to list the
2 Mojave ground squirrel;

3 14. Provide preliminary and permanent injunctive relief compelling Defendants to
4 publish in the Federal Register a 90-day finding on the petition to list the Mohave ground
5 squirrel by a date certain and a 12-month finding by a date certain thereafter;

6 15. Retain continuing jurisdiction to review Defendants' compliance with all
7 judgments and orders herein;

8 16. Make such additional judicial determinations and enter such additional orders as
9 may be necessary to effectuate the foregoing;

10 17. Award Plaintiffs their costs of litigation, including reasonable attorneys' fees;
11 and

12 18. Provide such other relief as the Court deems just and proper.

13
14 Respectfully submitted,

15
16 DATED: February 17, 2010

17 /s/ Matthew D. Vespa
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