

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY,
1411 K St. NW, Suite 1300
Washington, D.C. 20005,

Plaintiff,

v.

U.S. FISH AND WILDLIFE SERVICE,
1849 C Street, NW
Washington, D.C. 20240,

MARTHA WILLIAMS, in her official
capacity as acting Director of the U.S. Fish
and Wildlife Service,
1849 C Street, NW
Washington, D.C. 20240,

and

SECRETARY OF THE U.S. DEPARTMENT
OF THE INTERIOR,
1849 C Street, NW
Washington, D.C. 20240,

Defendants.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Case No.:

INTRODUCTION

1. This action challenges federal defendants' unlawful reclassification of the American burying beetle under the Endangered Species Act ("ESA" or "the Act"), 16 U.S.C. §§ 1531–1544, from "endangered" to "threatened." *See* "Reclassification of the American Burying Beetle from Endangered to Threatened with a Section 4(d) Rule, 85 Fed. Reg. 65,241 (Oct. 15, 2020) ("Down-Listing Rule" and "4(d) Rule"). Defendants' reclassification eliminates key substantive protections for this species, which is still endangered, survives in a small portion of its vast historic range, faces the same dire threats that led to its listing in 1989, and is now at even

greater risk of extinction due to climate change. As the defendants acknowledged, one of few surviving populations of the species will likely be gone from the southern Great Plains, a focus of recovery efforts and a significant portion of the species' range, within just 19 years.

2. The American burying beetle (also hereinafter “the beetle”) was “once ubiquitous” across 35 eastern U.S. states and three Canadian providences. 54 Fed. Reg. 29,652 (July 13, 1989) (“1989 Listing Rule”). However, during the early-to-mid-20th century, the species disappeared from over 90 percent of its range.

3. This drastic decline, recognized by the federal government as “one of the most disastrous” of any insect, prompted defendant U.S. Fish and Wildlife Service (“the Service”) to list the American burying beetle as an “endangered species” in 1989. Endangered status afforded the species the full scope of the ESA’s substantive protections. At the time, only two disjunct natural populations were known to exist in Oklahoma and Rhode Island.

4. Once it gained protection as an endangered species, the American burying beetle was able to survive the extinction threat, but this threat has not dissipated. Increased recovery efforts led to surveys that located some additional populations. However, as the Service has also acknowledged, those additional populations are just as precarious. The additional populations face the same threats that led to the species’ listing as endangered, which are being exacerbated by the existential threat of climate change.

5. In 2015, the Independent Petroleum Association of America (also known as the “IPAA”) petitioned to de-list the America Burying Beetle, citing delays and restrictions to the oil and gas industry due to the presence of the beetle.

6. In response to the IPAA’s de-listing petition, the Service published a proposed rule to down-list (and not de-list) the American burying beetle from endangered to threatened, as

“all populations [remain] exposed to a combination of risk factors” and thus the species had not recovered. 84 Fed. Reg. 19,013, 19,024 (May 3, 2019). Even as the agency implicitly acknowledged that the species remained at risk, the Service proposed to reduce protections for the beetle based on false claims that threats to the species have been reduced or eliminated. The down-listing was opposed as premature by American burying beetle experts.

7. Despite the opposition from the scientific community, the Service reclassified the American burying beetle as “threatened” in 2020 and issued the 4(d) Rule. 85 Fed. Reg. 65,241.

8. The 4(d) Rule eliminates key substantive protections that have helped the beetle stave off extinction and survive the ongoing destruction and fragmentation of the species’ dwindling habitat.

9. The American burying beetle remains “in danger of extinction throughout all or significant portion of its range,” 16 U.S.C. § 1532(6), and thus the Down-Listing Rule and 4(d) Rule violate the ESA and the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) (“APA”). To remedy these violations, plaintiff asks this Court to order defendants to vacate the Down-Listing Rule and 4(d) Rule and reinstate the beetle’s proper and lawful status as a fully protected, “endangered” species under the ESA.

JURISDICTION AND VENUE

10. Plaintiff brings this action pursuant to the ESA citizen-suit provision, 16 U.S.C. § 1540(g), which waives defendants’ sovereign immunity. As required by 16 U.S.C. § 1540(g), plaintiff provided defendants with its notice of intent to sue, which was received by defendants on January 22, 2020. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. §§ 2201-2202 (declaratory judgments and further relief); 16 U.S.C. §

1540(c) (district court jurisdiction), 16 U.S.C. § 1540(g)(1)(C) (action arising under the ESA citizen-suit provision), and 5 U.S.C. § 702 (Administrative Procedure Act).

11. Venue in this Court is proper pursuant to 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e) because this civil action is brought against agencies of the United States, and against officers and employees of the United States acting in their official capacities under the color of legal authority; because a substantial part of the events giving rise to the claim occurred in the District of Columbia; and because no real property is involved in this action. Plaintiff also maintains an office in this judicial district.

PARTIES

12. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (the “Center”) is a non-profit organization that is dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center is incorporated in California and headquartered in Tucson, Arizona, with additional offices in California, Colorado, Florida, Hawai’i, Nevada, New York, North Carolina, Oregon, Virginia, Washington, Washington, D.C., and La Paz, Mexico. The Center has more than 84,000 active members, including members within the American burying beetle’s current and historic range. The Center and its members have a long-standing interest in conserving native species and have consistently advocated for the conservation and protection of native species, including the American burying beetle.

13. Plaintiff, both organizationally and on behalf of its members, has deep and long-standing interests in the preservation and recovery of imperiled species, including the American burying beetle. To further these goals, plaintiff supports strong and effective protections for the species and has participated in various administrative and legal proceedings and public comment opportunities to protect and recover the American burying beetle.

14. Plaintiff has members who live near and/or visit areas in and around: the Red River in the southern Great Plains; the Arkansas River in the Great Plains; the Flint Hills in Oklahoma; Block Island in Rhode Island; and Loess Canyons, the Sandhills, and the Niobrara River in Nebraska. Plaintiff's members engage in these areas for their recreational, scientific, and aesthetic interests, including viewing and photographing American burying beetles in their natural habitat. Plaintiff's members have interests in the recovery of the American burying beetle, which are being and will be negatively impacted by the reclassification of the American burying beetle from endangered to threatened. Plaintiff's members have visited and plan to continue to visit in the future areas where the American burying beetle still survives in the Red River in Oklahoma. Plaintiff's members plan to pursue their interests in conservation and recovery of the American burying beetle.

15. Plaintiff's interests in conserving and recovering the American burying beetle are harmed by defendants' reclassification of the beetle as a "threatened species." Specifically, plaintiff's professional, spiritual, aesthetic, and recreational interests have been and will continue to be injured as the American burying beetle will continue to decline without full protection as an endangered species under the ESA. As such, the Down-Listing Rule and 4(d) Rule diminish the opportunities of plaintiff and its members to view and otherwise enjoy the American burying beetle.

16. Plaintiff also has an interest in the effective and lawful implementation of the ESA. Plaintiff is injured by defendants' premature reclassification of the American burying beetle as a threatened species and by the arbitrary-and-capricious 4(d) Rule, which undermine both the agency's effective and lawful implementation of the ESA as well as the conservation of endangered and threatened species.

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