

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

GENERAL LAND OFFICE OF THE STATE
OF TEXAS,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF THE
INTERIOR, THE HONORABLE DEB
HAALAND in her official capacity as
Secretary of the Interior, UNITED STATES
FISH AND WILDLIFE SERVICE, MARTHA
WILLIAMS in her official capacity as Acting
Director of the United States Fish and Wildlife
Service, and AMY LUEDERS in her official
capacity as Southwest Regional Director of the
United States Fish and Wildlife Service,

Defendants.

Case No. 6:22-CV-00044

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

THEODORE HADZI-ANTICH
ROBERT HENNEKE
CONNOR MIGHELL (*Application for
Admission Pending*)
TEXAS PUBLIC POLICY FOUNDATION
901 Congress Avenue
Austin, Texas 78701
Telephone: (512) 472-2700
Facsimile: (512) 472-2728

Attorneys for Plaintiff

I. INTRODUCTION

1. The defendants named above (collectively, the “Federal Defendants” or the “Service”) have disobeyed the vacatur and remand orders of the Fifth Circuit and this court by continuing to violate the Endangered Species Act (the “ESA”) and its implementing regulations. Once again, the Federal Defendants have used an impermissibly stringent standard to deny the 90-day Petition to remove the Golden-Cheeked Warbler (the “Warbler”) from the ESA list of endangered species. Accordingly, Plaintiff General Land Office of the State of Texas (“TXGLO”) files this Complaint seeking declaratory judgment and injunctive relief.

II. PARTIES

2. Plaintiff TXGLO is the oldest state agency in Texas and, among other things, is charged with maximizing revenues from Texas public lands dedicated to the Permanent School Fund. TXGLO derives those revenues by selling public school lands and leasing their mineral rights, which flow to the Permanent School Fund under the Texas Constitution. *See* Tex. Const. Art. VII § 5(g). TXGLO also owns and maintains state veterans’ homes that provide care and dignity for veterans, their spouses, and Gold Star parents, as well as state veterans’ cemeteries to honor those who have served. TXGLO owns or maintains public school lands which contain Warbler habitat. The federal government undermines TXGLO’s ability to maximize revenues by imposing restrictions due to Warbler population or habitat on TXGLO property, lowering the property’s market value and subjecting TXGLO to onerous, costly, and time-consuming ESA review. Delisting the Warbler will therefore provide immediate relief for TXGLO.

3. Defendant United States Department of the Interior (“Interior”) is a department-level agency of the United States. Congress has charged Interior with administering the ESA for terrestrial species.

4. Defendant United States Fish and Wildlife Service (the “FWS” or the “Service”) is a bureau of Interior. The FWS has responsibility for the day-to-day administration of the ESA, including listing and delisting terrestrial species and designating their critical habitat.

5. Defendant Deb Haaland is the Secretary of the Interior. She oversees Interior’s administration of the ESA.

6. Defendant Martha Williams is the Acting Director of the FWS. She oversees the Service’s administration of the ESA.

7. Defendant Amy Lueders is the Southwest Regional Director of the FWS. She oversees the Service’s administration of the ESA in a region that includes the State of Texas.

III. JURISDICTION AND VENUE

8. Plaintiff brings this action under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706, and the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1540(g)(1)(A).

9. This court has subject matter jurisdiction pursuant to 5 U.S.C. §§ 701-706 (APA); 28 U.S.C. § 2201 (Declaratory Judgment Act); and 16 U.S.C. §§ 1540(g)(1)(A) and (C) and (g)(2)(A) and (B) (ESA citizen suit provisions).

10. Pursuant to the citizen suit provisions of ESA, Plaintiff sent a 60-day notice of intent (“NOI”) to sue the Federal Defendants over their respective failures to comply with the ESA and the orders of the Fifth Circuit and this Court. The NOI was sent to the Federal Defendants on October 11, 2021, and was received by the last of them on October 12, 2021. A copy of the NOI is included in Exhibit A. A copy of the receipts showing delivery of the NOI is included in Exhibit B. Accordingly, Plaintiff has complied with the 60-day notice requirements of the ESA.

11. The relief requested is authorized by 28 U.S.C. § 2201 (declaratory judgment), 28 U.S.C. § 2202 (injunctive relief), 5 U.S.C. §§ 701-706 (APA), and 16 U.S.C. § 1540(g) (ESA citizen suit provision).

12. This Court also has jurisdiction pursuant to 28 U.S.C. § 1331, which grants the district courts “original jurisdiction of all civil actions arising under the . . . laws . . . of the United States,” and 16 U.S.C. § 1533(b)(3)(C)(ii) (authorizing judicial review of negative 90-day findings made under the ESA).

13. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(e)(1) because a substantial part of the events or omissions giving rise to the claims occurred in this district, a substantial part of the property that is the subject of the action is situated in this district, or the plaintiff resides in this district. In addition, venue is appropriate under 16 U.S.C. § 1540(g)(3)(A) because the violation occurred in this district. Venue is appropriate also under 5 U.S.C. § 703.

14. An actual, justiciable controversy exists between the parties within the meaning of 28 U.S.C. § 2201.

15. The federal Government has waived sovereign immunity in this action pursuant to 5 U.S.C. § 702 and 16 U.S.C. § 1540.

16. Plaintiff TXGLO has exhausted all administrative remedies, the Federal Defendants’ action is final and ripe for review, and Plaintiff has standing because it is injured in fact because of the Federal Defendants’ denial of the 90-day Petition, which continues the burdens of the ESA on Plaintiff’s properties located in Texas, and this court has the power to redress that injury by vacating the denial of the 90-day Petition and providing the requested declaratory and injunctive relief.

IV. LEGAL BACKGROUND

A. **Endangered Species Act and Implementing Regulations**

17. Congress passed the ESA to protect species vulnerable to extinction and conserve the ecosystems upon which endangered and threatened species depend. *See* 16 U.S.C. § 1531(b). Before a species receives full protection under the ESA, it must be listed as “threatened” or “endangered.” A “threatened” species is “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” 16 U.S.C. § 1532(20). An “endangered” species is “in danger of extinction throughout all or a significant portion of its range.” 16 U.S.C. § 1532(6). The government determines whether to list a species based on certain factors using the “best scientific and commercial data available.” 16 U.S.C. § 1533(b)(1)(A).

18. Under regulations in effect on the date the 90-day Petition was filed by the Plaintiff, a species was to be listed if it was endangered or threatened based on any one or a combination of these factors:

- 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 continuing existence. 50 C.F.R. § 424.11(c)(1)–(5) (2014).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.