

Dunes Sagebrush Lizard/Endangered Species Act: Texas Attorney General Files Action Challenging Listing



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10/08/2024

The Texas Attorney General (“AG”) on behalf of the State of Texas filed a September 23rd Complaint and Petition for Review (“Complaint”) in the United States District Court (Western District of Texas) against the United States Fish and Wildlife Service (“Service”) alleging violation of the Endangered Species Act (“ESA”). See Civil Action No. 7-24-cv-233.

The Complaint challenges the legality of a final administrative rule entitled:

Endangered and Threatened Wildlife and Plants; Endangered Species Status for the Dunes Sagebrush Lizard (“Final Rule”).

The Final Rule was promulgated by the Service on May 20th, 2024, at 89 Fed. Reg. 43, 748.

AG argues that the Dunes Sagebrush Lizard (“DSL”) should not be listed pursuant to the ESA because:

- Failure to rely on the best scientific and commercial data available when it designated the species as endangered.
- Lack of information about the range-wide population size.
- Reliance on a habitat model to indirectly estimate the population and viability.
- Made inaccurate and arbitrary assumptions about the current status of the species.
- Acknowledged the species still occupies much of its range and may persist over the next several decades.
- Fails to adequately consider existing voluntary conservation efforts such as:
 - Texas Conservation Plan for the Dunes Sagebrush Lizard.
 - 2020 Candidate Conservation Agreement with Assurances.
- Vague due to a failure to provide the public with adequate guidance regarding activities that can and cannot occur within the large geographic range.
- The Service’s habitat quality classification improperly relies on arbitrary metrics about oil and gas development.
- Conclusion that frac sand mining poses a serious risk is arbitrary and lacks factual basis.

The Complaint notes that the DSL overlaps with the Permian Basin, which is described as the highest producing oil field in the United States.

The Complaint requests that the Court declare that the Final Rule violates the ESA and the Administrative Procedures Act. It further asks that the Final Rule be deemed arbitrary, capricious, and an abuse of discretion and not in accordance with law and otherwise contrary to Constitutional rights and powers.

AG requests that the Final Rule be vacated.

A copy of the Complaint can be downloaded [here](#).