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Endangered Species Act/Proposed Data Center: Center for Biological Diversity Petitions U.S. Fish and Wildlife Service to List Birmingham Darter

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The Center for Biological Diversity ("CBD") submitted to the United States Fish and Wildlife Service ("Service") pursuant to Section 4(b) of the Endangered Species Act ("ESA") a Petition to protect the Birmingham darter ("BD") as a threatened or endangered species.

Additional petitioners and supporters include:

- Alabama Rivers Alliance
- Black Warrior Riverkeeper
- The People's Justice Council

The Petition argues that only six populations of the fish remain in a single creek system outside Birmingham, Alabama and faces an imminent threat by one of the United States' largest proposed data centers.

The ESA provides a process in which petitions can be filed to list a species as endangered or threatened. The ESA requires that the Service (or the National Marine Fisheries Service for most marine species) must make a finding within 90 days of receiving a petition (to the extent practicable) as to whether or not there is substantial information indicating that the petition's listing may be warranted.

If this preliminary finding is positive, a status review is conducted. Within one year of receiving the petition, the Service must make a further finding that the listing either is or is not warranted.

The BD is described as a small, colorful fish that dwells in streams flowing over carbonate rock and can be distinguished from other members of the species complex by morphological, genetic, and geographic separation. They are stated to be the southernmost members of the *E. chermocki* complex, are only known from six populations. Such populations are stated to be all within Valley Creek or its tributaries in Jefferson County, Alabama.

The CBD Petition argues that BD faces threats to its survival. It states that Fivemile Creek population is now believed to be either extirpated or greatly reduced as a result of ongoing limestone quarrying. Further, the Little Blue Creek population is stated to be presently imperiled by the proposed construction

of a hyperscale data center near Bessemer, Alabama. The data center project is stated to be close to approval by the Bessemer City Council.

CBD alleges:

... This population is considered fairly robust at present—its loss would be devastating for Birmingham darter viability. However, there is no evidence that the developers of the proposed Bessemer data center plan to take any steps to prevent harm to this creek or its native fauna.

Previously referenced activities stated to cause the species to be threatened by certain ESA listing factors:

- Habitat loss and degradation due to groundwater depletion, urbanization, and pollution.
- Inadequate and often poorly enforced state and federal regulatory mechanisms which continue to permit discharge of pollutants and overconsumption of water for industrial uses.

A copy of the Petition can be found [here](#).