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January 8, 2015

Via CMRRR # 9314 7699 0430 0009 5858 02

The Honorable Sally Jewell
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Via CMRRR # 9314 7699 0430 0009 5871 03

Benjamin Tuggle, Ph.D.
Southwest Regional Director
U.S. Fish and Wildlife Service
500 Gold Avenue, S.W.
Albuquerque, NM 87102

Via CMRRR # 9314 7699 0430 0009 5859 70

The Honorable Daniel M. Ashe
Director
U.S. Fish and Wildlife Service
1849 C Street, N.W.
Washington, DC 20240

Re: Sixty-day notice of intent to sue for violation of section 4(b)(3)(B) of the Endangered Species Act, based on a failure to make a 12-month finding on whether to delist the Hualapai Mexican vole.

Dear Secretary Jewell, Director Ashe and Regional Director Tuggle:

On behalf of Mohave County, Arizona and American Stewards for Liberty, we are informing you of our intent to file a civil suit against the U.S. Fish and Wildlife Service (“Service”) pursuant to the citizen suit provision of the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g). This letter is being provided to you pursuant to the 60-day notice requirement of the citizen suit provision. Specifically, the basis for the intended lawsuit is that the Service has failed to timely make its required 12-month finding regarding the status of the Hualapai Mexican vole pursuant to ESA § 4(b)(3)(B).

Factual Background:

The Hualapai Mexican vole is a mouse-sized rodent that, at the time of its listing as endangered in 1987, was thought to exist only in Arizona’s Hualapai Mountains and potentially the Music Mountains and Prospective Valley. On August 23, 2004, the Arizona Game and Fish Department filed a petition with the Service to delist the Hualapai Mexican vole. Pursuant to ESA § 4(b)(3)(A), the Service was required to make a finding within 90 days as to whether the petitioned action may be warranted. On May 15, 2008, the Service announced its 90-day finding that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted.¹ Since the positive 90-day finding in 2008, however,

¹ 73 Fed. Reg. p. 28094 (May 15, 2008).

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the Service's only other published action involving the vole has been a five-year status review that included 13 other species and subspecies.² This five-year status review does not mention the positive 90-day finding and only generally solicits comments on the classification of the 14 species that are subject to the review.

Legal Background:

Section 4 of the ESA authorizes individuals to petition the Secretary of the Interior to list, downlist, or delist a species. Once a petition has been filed with the Service, the Service is obligated to respond.³ As stated in ESA § 4(b)(3)(A):

To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of Title 5, to add a species to, or to remove a species from, either of the lists published under subsection (c) of this section, the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If such a petition is found to present such information, the Secretary shall promptly commence a review of the status of the species concerned. The Secretary shall promptly publish each finding made under this subparagraph in the Federal Register.

If at this "90-day finding" stage the Service makes a positive determination that delisting may be warranted, ESA § 4(b)(3)(B) obligates the Service to

"[w]ithin 12 months after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the petitioned action may be warranted, ...make one of the following findings:

- (i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the Federal Register.
- (ii) The petitioned action is warranted, in which case the Secretary shall promptly publish in the Federal Register a general notice and the complete text of a proposed regulation to implement such action in accordance with paragraph (5).
- (iii) The petitioned action is warranted, but that--(I) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action . . . is precluded by pending proposals to determine whether any species is an endangered species or a threatened species, and (II) expeditious progress is being made to add qualified species to either of the lists published under subsection (c) of this section and to remove from such lists species for which the protections of this chapter are no longer necessary, in which case the Secretary shall promptly publish such finding in the Federal Register, together with a description and evaluation of the reasons and data on which the finding is based.

² 75 Fed. Reg. 15454 (Mar. 29, 2010).

³ The Secretary has delegated its authority under the ESA to the Service.

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Once a proposed rule has been issued in conjunction with a positive 12-month finding, ESA § 4(b)(6)(A)(i)(I) requires that the Service, within one-year of the date of publication of the proposed regulation, publish the final regulation to implement its determination to delist the species.

ESA § 11(g) gives an express right for any person to “commence a civil suit on his own behalf ... against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under [Section 4] which is not discretionary with the Secretary.” Therefore the ESA allows citizen suits for failures of the Service to meet its obligations under Section 4. The Service’s failure to reach a 12-month finding on the vole is such an instance.

Interests of the Parties:

Protection of the Hualapai Mexican Vole and its associated habitat, both confirmed and potential, adversely affects essential communications, ranching, recreation and economic development within Mohave County. Protection measures (in particular grazing restrictions and limitations) on the County’s Hualapai Mountain Park result in lost revenue.

Protective measures for the Hualapai Mexican Vole have the potential to contribute to loss of property and life. Above the County’s Hualapai Mountain Park is one of the County’s communication sites. This site provides communications for various types of communication, including services for emergency response in instances of wild land fires, missing persons, and injury. The operator managing the communication site must obtain approval from the Bureau of Land Management prior to route or emergency maintenance. Moreover there is a restriction on maintenance from October through March. These restrictions therefore require the operator to travel on substandard and dangerous roads in order for the operator to comply with the maximum outage time required by operator’s contract with Mohave County.

Area ranchers who have grazing allotments in the Hualapai Mountain area report similar restrictions. Ranchers are coping with restrictions on road and stock tank maintenance, limitation on animal units allowed in some areas, and grazing exclusions in other areas. The Cane Spring Ranch’s allotment specifically excludes the Pine Flat area because of potential vole habitat, regardless of the fact that a 1999 trapping effort conducted by the Arizona Department of Game and Fish did not capture a vole or detect sign of vole. According to the Cane Springs Ranch, the ranches grazing levels in Unit A are restricted to a very low utilization of 20%.

Mohave County’s Hualapai Mountain Park is one of the County’s prime destinations for tourists and residents. Maintenance of facilities, particularly roads and trails, is essential for a safe and satisfying recreational experience. Requiring approval prior to maintenance due to the vole’s potential occurrence within the Park interferes with the County’s ability to properly maintain the Park.

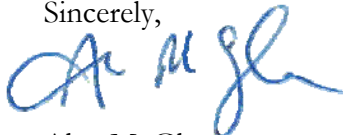
Conclusion:

In May 2008, the Service determined that, based on the Arizona Department of Fish and Game’s petition, delisting of the vole may be warranted. The Service has not published the subsequent 12-month finding it

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was required to make in accordance with Section 4(b)(3)(B).⁴ Pursuant to ESA § 11(g), Mohave County and American Stewards for Liberty intend to commence a civil suit based on the Service's failure to make its required 12-month finding. If the Service does not make the required finding for the Hualapai Mexican vole within the next sixty days, we intend to file suit.

Sincerely,



Alan M. Glen
Sedgwick LLP

⁴ The Spring 2014 Unified Agenda (compiled by the Regulatory Information Services Center) did include an entry by the Service that the Service would be publishing a 12-month finding with proposed rule to delist the vole in August 2014. However, as of September 1, 2014, the 12-month finding remains outstanding.