



November 18, 2014

Sent via Email and Certified Mail Return Receipt Requested

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Re: Notice of Violation of the Endangered Species Act for Failing to Make Required Finding on the Colorado Checkered Whiptail (*Aspidoscelis neotesselata*) Found in the Mountain-Prairie Region (Region 6)

On behalf of the Center for Biological Diversity, we hereby provide notice, pursuant to Section 11(g) of the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g)(2)(A)(i), that the United States Fish and Wildlife Service (“FWS”) is in violation of Section 4(b)(3) of the ESA, 16 U.S.C. § 1533(b)(3), for failing to make the required finding on the Colorado Checkered Whiptail (*Aspidoscelis neotesselata*), which is included in the Center’s July 11, 2012 petition.¹

The Center for Biological Diversity (the “Center”) is a national, nonprofit conservation organization with more than 800,000 members and online activists dedicated to the protection of endangered species and wild places. The Center and its members are concerned with the conservation of imperiled species, including amphibians and reptiles, and the effective implementation of the ESA.

BACKGROUND

Scientists estimate that about 25 percent of the nation’s amphibians and reptiles are at risk of extinction, yet only 67 of the approximately 1,400 U.S. species protected under the Endangered Species Act are amphibians and reptiles. To ensure that the nation’s most vulnerable

¹ The FWS’s failure to make the required findings also constitutes agency action unlawfully withheld or unreasonably delayed or arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law within the meaning of the Administrative Procedure Act (“APA”). 5 U.S.C. §§ 706(1) & 706(2)(A).

amphibians and reptiles secure the life-saving protections of the ESA, on July 11, 2012, the Center for Biological Diversity submitted a petition to list 53 amphibian and reptiles species. The petition asks the FWS to protect six turtles, seven snakes, two toads, four frogs, 10 lizards and 24 salamanders under the ESA. A copy of the petition, along with a list of the petitioned species, is available here:

http://www.biologicaldiversity.org/campaigns/amphibian_conservation/pdfs/Mega_herp_petition_7-9-2012.pdf. One species included in the July 11, 2012 petition -- Colorado Checkered Whiptail (*Aspidoscelis neotesselata*) -- is found within the Southeast Region (Region 4) of the FWS and covered by this notice letter.

All of these petitioned species have been classified as G1, G2 or G3 by NatureServe or are included on the IUCN's Red List as Near Threatened or worse, and they are facing threats to their survival, such as habitat loss, pollution, introduced predators and climate change. Backed by hundreds of scientific articles, the 450-page petition details the status of, and threats to, the petitioned animals, demonstrating the urgent need for their federal protection.

ESA VIOLATION

In response to a petition to list a species as threatened or endangered, the ESA requires that the Secretary to "the maximum extent practicable" within 90 days determine "whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted." 16 U.S.C. § 1533(b)(3)(A) ("90-day findings"). The ESA also requires that the Secretary within 12 months determine whether listing is warranted, not warranted, or warranted but precluded. 16 U.S.C. § 1533(b)(3)(B) ("12-month findings").

The Center filed its petition on July 11, 2012, and over two years have passed without the FWS making the required 90-day or 12-month finding on the species covered in this notice letter. Accordingly, FWS is violating Section 4 of the ESA and failing to ensure that protection of endangered species occurs in a timely manner thereby avoiding further decline and increased risk of extinction.

CONCLUSION

The Colorado Checkered Whiptail is at risk and deserves a prompt status review by the U.S. Fish and Wildlife Service. Continued delay is harming prospects for the survival and recovery of this highly imperiled reptile. This delay is contrary to law, especially given the importance Congress has assigned to the protection of ESA listed species.

Within sixty days, if FWS does not act to correct the violation described in this letter or agree to discuss with us a schedule for completing the overdue finding, the Center will pursue litigation against the agency. If you have any questions, or would like to discuss, please contact us.

Sincerely,



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Center for Biological Diversity

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