August 11, 2022

Via Electronic and Certified Mail

Deb Haaland, Secretary of the Interior
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240
exsec@ios.doi.gov

Martha Williams, Director
U.S. Fish and Wildlife Service
1849 C Street NW, Room 3331
Washington, DC 20240-0001
martha_williams@fws.gov

RE: Sixty-day Notice of Intent to Sue for Violations of the Endangered Species Act

Dear Secretary Haaland and Director Williams:

The Center for Biological Diversity (“the Center”) provides this 60-day notice of intent to sue the U.S. Department of the Interior and U.S. Fish and Wildlife Service (“the Service”) for violating the Endangered Species Act, 16 U.S.C. §§ 1531-1544 (“ESA”), resulting from the Service’s failure to finalize rules for two distinct population segments of the lesser prairie chicken (Tympanuchus pallidicinctus). These findings are past the deadlines established by the ESA. The Center provides this letter according to the 60-day notice requirement of the ESA’s citizen suit provision. Id. §1540(g)(2)(C).

The Center is a national, nonprofit conservation organization with more than 1.7 million members and online activists dedicated to the protection of endangered species and wild places, including the lesser prairie chicken and their grassy ecosystems.

SPECIES BACKGROUND AND THREATS

The Lesser Prairie Chicken (Tympanuchus pallidicinctus) is found in southeastern Colorado, southwestern Kansas, the panhandle of northwestern Oklahoma, east-central New Mexico and the northeastern and southwestern corners of the Texas Panhandle. Kansas has the largest population of lesser prairie chickens, but the bird’s habitat is highly fragmented. Like other western grouse, male lesser prairie chickens engage in a unique and elaborate (and sometimes viewed as comical) communal breeding display each spring to attract females. Both males and females congregate at breeding grounds where the males strut (“dance”), vocalize (“boom”) and physically confront other males to defend their territories and court females. The male repertoire
includes displaying bright yellow eye combs, inflating red air sacs, flutter-jumping, cackling, and foot-stomping. Conservation of breeding grounds as well as other areas needed by lesser prairie chickens is vital to their survival.

Because lesser prairie chickens are exceedingly vulnerable to birds of prey, they instinctively stay away from vertical structures that raptors utilize as perches, including trees and, more recently, powerlines, telephone poles, and drilling rigs. As a result of these increasingly common manmade structures, the birds have a rapidly diminishing number of places to live. The lesser prairie chicken’s decline has also been fueled by the degradation and fragmentation of the vast southern Great Plains through conversion to cropland, grazing of cattle, and oil and gas development, as well as drought and high temperatures linked to global warming.

**ENDANGERED SPECIES ACT VIOLATIONS**

In response to a petition to list a species under the ESA, Section 4 requires the Service to determine within 90 days whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If the Service makes a “may be warranted” finding, it must then determine within 12 months whether the listing is warranted, not warranted, or warranted but precluded by higher-priority listing actions (“12-month finding”). 16 U.S.C. § 1533(b)(3)(A), (B). If the Service determines that listing is warranted, the agency must publish that finding in the Federal Register along with the text of a proposed regulation to list the species as endangered or threatened and take public comments on the proposed listing rule. Id. § 1533(b)(3)(B)(ii). Within one year of publication of the proposed listing rule, the Service must publish in the Federal Register the final rule implementing its determination to list the species. Id. § 1533(b)(6)(A).

The ESA defines a “species” as “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” Id. § 1532(16). A “distinct population segment” of a species is also known as a “DPS.” When considering whether a population segment qualifies as a DPS under the Act, Service policy requires the agency to determine whether the population is “discrete” and “significant.” If the Service determines that a population segment is both discrete and significant, then the population qualifies as a DPS and meets the ESA’s definition of a “species” that may be classified as threatened or endangered.

On October 12, 1995, the Center for Biological Diversity’s predecessor organization, Biodiversity Legal Foundation, petitioned the Service to list the lesser prairie chicken as endangered or threatened under the ESA. The Center and partners submitted a second petition in 2016. In November 2016, the Service published a positive 90-day finding that the petition to list the lesser prairie chicken presents “substantial scientific or commercial information indicating that the petitioned actions may be warranted.” 81 Fed. Reg. 86,315 (November 30, 2016).

In 2019, the Center filed a lawsuit challenging the Service’s failure to timely determine whether the lesser prairie chicken warrants protection under the Act. On June 1, 2021, the Service published a proposed rule to list two distinct population segments (“DPS”) of the lesser prairie-chicken under the Act. The Service proposed to list the Southern DPS as endangered and the
Northern DPS as threatened. The Center submitted comments on that rule on September 1, 2021, including incorporating by reference the 213 pages of comments and studies pertaining to the lesser prairie chicken that the Center had submitted to the Service on April 28, 2021. The Service has failed to timely finalize the proposed rule for both the Southern DPS and Northern DPS of the lesser prairie-chicken.

The Service has abrogated its duty to ensure that the Southern DPS and Northern DPS of the lesser prairie chicken are timely protected, in violation of Section 4 of the ESA. If the Secretary does not timely finalize this rule or contact us to develop a timeline within the next 60 days, the Center intends to file suit to enforce the Act.

Please contact me if you have any questions or if you would like to discuss this matter further.

Sincerely,

/s/Camila Cossío
Camila Cossío
Center for Biological Diversity
P.O. Box 11375
Portland, OR 97211
cossio@biologicaldiversity.org