



Via Facsimile and Certified Mail, Return Receipt Requested

September 9, 2010

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RE: Sixty Day Notice of Intent to Sue In Connection With Violations of Section 4 of the Endangered Species Act For Failure to Take Action to Prevent a Significant Risk to the Well-Being of the Jollyville Plateau Salamander

Dear Secretary Salazar, Acting Director Gould, Regional Director Tuggle, and Field Supervisor Pine:

This letter serves as official notice under the Endangered Species Act, 16 U.S.C. § 1531, *et seq.*, (“ESA” or Act”) by the Center for Biological Diversity, Save Our Springs Alliance, Noah Greenwald, and other interested parties of their intent to sue Mr. Salazar and the U.S. Fish and Wildlife Service (“FWS”) for failing to “prevent a significant risk” to the “well-being” of the Jollyville Plateau salamander (*Eurycea tonkawae*) by “mak[ing] prompt use of [your] authority” to issue an emergency regulation listing the salamander as threatened or endangered, as required by section 4 of the Act. 16 U.S.C. §§ 1533(b)(3)(C)(iii), 1533(b)(7). This letter is being provided to you pursuant to the 60-day notice requirement of the citizen suit provision of the ESA, to the extent deemed necessary by a court. 16 U.S.C. § 1540(g)(2)(C).

The salamander has long been recognized as critically imperiled due to its limited distribution and its dependence on the Edwards Aquifer for its survival, the quality of which is degraded due to expanding urbanization and development. FWS has failed to list the salamander before now because it has abdicated its duty to administer the ESA listing program and list species in desperate need of the ESA’s protections, resulting in a current backlog of 245 species including the salamander. 74 Fed. Reg. 57804 (Nov. 9, 2009). Now, the salamander’s well-being is in

even graver peril due to a water treatment plant that the City of Austin, Texas, intends to construct in habitat that is critical to the salamander's survival. FWS received a letter from three scientists earlier this year expressing grave concerns about the effects of the water treatment plant to the salamander, and warning that the plant poses a "significant risk" to its survival. FWS has totally ignored the scientists' concerns and failed to take required steps to safeguard the salamander. As demonstrated below, your complete failure to act to protect the salamander's well-being in light of its imperiled status and the significant risk posed by the water treatment plant as reflected by the scientists' letter constitutes a violation of your duty under section 4 of the ESA. 16 U.S.C. §§ 1533(b)(3)(C)(iii), 1533(b)(7).

The Jollyville Plateau Salamander

The Jollyville Plateau salamander was recognized as a species in 2000 (Chippendale, *et al.*, 2000). It is neotonic, meaning that it retains gills and an aquatic lifestyle throughout its life. It inhabits springs, spring-runs, and wet caves that are fed by the Edwards Aquifer. 72 Fed. Reg. 71040 (Dec. 13, 2007). Populations that occur in caves exhibit morphology similar to other cave-dwelling animals, including reduced eyes, a flattened head, and loss of pigmentation. The salamander is limited to a small number of drainages both on and off the Plateau in Travis and Williamson Counties in Texas. *Id.*

In response to a June 13, 2005, petition from Save Our Springs Alliance, FWS determined in 2007 that the Jollyville Plateau salamander warrants listing as a threatened or endangered species but that such listing is precluded, and the species was instead added to the candidate list. 72 Fed. Reg. 71040. FWS reaffirmed this status in the most recent Candidate Notice of Review of November 9, 2009, concluding that the salamander has "a limited distribution and depends on a constant supply of clean water from the Northern Segment of the Edwards Aquifer for its survival" and that primary threats to the species are "degradation of water quality due to expanding urbanization." 74 Fed. Reg. at 57832. Ultimately, however, FWS concluded these threats were only of a "moderate level" because "deformities and deaths of salamanders have been limited in scope to a few localities and only one location may have experienced an extirpation". On this basis, FWS assigned the salamander a listing priority number of 8. *Id.*

Recent genetic work indicates the salamander, which already has a highly-limited distribution, may actually be two species, both of which have very small ranges (Chippendale 2010). In a genetics study of the Jollyville Plateau salamander that "encompasses almost the entire known geographic range of the species and most known localities," Chippendale (2010) concluded that the salamander is actually two distinct entities that differ in their mtDNA as much as currently-recognized species. *Id.* Chippendale (2010) stated:

The divide is most evident based on extensive mt data, for which divergences between the two putative units approach or are comparable to those seen among well-characterized species from the region south of the Colorado River (an ancient barrier to gene flow separating the "northern" group that includes *E. tonkawae* from the species complex south of the river). Nuc sequence markers also appear to provide support for

this split, although we are completing much more extensive sampling for the nuc sequences.

The split divides populations from the Plateau itself with those from lower elevation areas, which corresponds closely with Highway 620. Chippendale (2010).

This division means that *E. tonkawae* is potentially two species, or at least distinct populations, that individually are even more endangered than the entity as a whole. Consistent with this conclusion, Chippendale (2010) concluded “[t]hese preliminary results underscore the need for protection of *E. tonkawae*, especially given its limited range in an area of rapidly increasing urbanization.” *Id.*

The Scientists’ Letter

On April 27, 2010, three scientists with many years of experience in the science and conservation of Jollyville Plateau and other *Eurycea* salamanders sent a letter to FWS, expressing grave concern about the impact of a new water treatment plant to be constructed in Jollyville Plateau salamander habitat. The scientists warned that “[w]e are very much concerned” that construction of the City of Austin’s Water Treatment Plant No. 4 (WP4), with associated intake and transmission tunnels, “pose[s] a major threat to the survival of the species, both in the short and long term.” Letter from Hillis, *et al.* to Zerrenner and Seawell, FWS (Apr. 27, 2010) (Attachment).

The scientists identified five specific concerns with the added threat to the salamander from WP4. Among these concerns was the scientists’ observation that a small test well has already resulted in extirpation of one population of Jollyville Plateau salamanders. *Id.* at 2. The scientists expressed concern that the loss of this population has not been “heeded as a significant warning sign” of a “significant risk” that construction could “puncture[e] a major flow path, and dewater[] critical salamander habitat”. *Id.*

Reflecting in part that the salamander is only a candidate and not yet afforded the full protections of the Act, the scientists also observed that the route of the WP4 tunnels were “not chosen with endangered species conservation in mind” and will “pass directly under the Bull Creek headwaters springs that are primary habitat for the salamander.” *Id.* This route poses a particular risk to the Plateau population that was recently identified as a distinct and potentially separate species, leading the scientists to conclude that WP4 is a threat to “the entire Bull Creek species”. *Id.* at 3; *see also id.* (noting that the findings of Chippendale (2010) “means that the range of that species is even more restricted than what is now recognized, and confined to a very small number of localities”).

Additionally, the scientists expressed concern about substantial resources being spent on WP4 “even though research on risks to salamanders and their habitat is ongoing”, which could bias conclusions about the likely impacts of the plant on the salamander. *See id.* at 2 (“By making a major commitment of resources to this project, there will be pressure on the City’s staff and consultants to conclude that the project does not pose a risk to the salamander.”). Compounding

this problem are doubts about whether ongoing research would be sufficient to predict impacts to the species because of the complexity of karst geomorphology and hydrology. *See id.* (“we are concerned that the current research program may not be adequate to determine risks to salamanders and their habitat”).

That the City of Austin is proceeding rapidly to construct WP4 anyway, with no regard for its impacts or the need for further research, puts the Jollyville Plateau salamander and significant risk. The scientists’ recommendations to FWS – *i.e.*, that it require the City to fully evaluate project alternatives including alternative routes, ask the City not to continue making irreversible commitments of significant financial resources to WP4, and list the salamander as endangered “so as to force necessary conservation measures on the City’s activities”, *id.* at 3 – likewise have fallen on deaf ears.

Violations of the ESA

Accordingly, FWS is hereby notified that construction of the WP4 by the City of Austin poses a significant risk to the well-being of the Jollyville Plateau salamander, and FWS is therefore required to make “prompt use of the authority” to emergency list the species. 16 U.S.C. § 1533(b)(3)(C)(iii). FWS’s failure to take action to prevent this significant risk to the salamander’s well-being is a violation of its duty to prevent this by promulgating an emergency listing rule. *Id.*; *id.* § 1533(b)(7). Should FWS fail to respond to this letter and take action to emergency list the species, we intend to file suit in federal court. Indeed, you should be aware that we are not required to wait for 60 days to elapse before filing suit regarding FWS’s failure to act to prevent an emergency to the Jollyville Plateau salamander. *Id.* § 1540(g)(2)(C) (“No action may be commenced under subparagraph (1)(C) of this section prior to sixty days after written notice has been given to the Secretary; *except that such action may be brought immediately after such notification in the case of an action under this section respecting an emergency posing a significant risk to the well-being of any species of fish or wildlife or plants.*”) (emphasis added.) Accordingly, if we do not hear from you very soon after your receipt of this letter, we intend to file suit to protect this species.

If you have questions about this request, please do not hesitate to contact us. Thank you.

Sincerely,



/s/

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