



Via E-mail and Certified Mail - Return Receipt Requested

January 24, 2013

Ken Salazar, Secretary
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240
exsec@ios.doi.gov

Bridget Fahey, Endangered Species Chief
U.S. Fish and Wildlife Service
Mountain-Prairie Region
134 Union Blvd.
Lakewood, CO 80228
Bridget_Fahey@fws.gov

Dan Ashe, Director
U.S. Fish and Wildlife Service
1849 C Street NW
Washington, DC 20240
Dan_Ashe@fws.gov

Re: Notice of Intent to Sue for Failure to Issue a 12-month Finding for the Eastern DPS of the Boreal Toad as Required by the Endangered Species Act (FWS–R6–ES–2012–0003)

Dear Sirs and Madam:

This letter serves as official notice by the Center for Biological Diversity and Rocky Mountain Wild of our intent to sue the U.S. Fish and Wildlife Service and Ken Salazar, Secretary of the U.S. Department of the Interior, for failing to make a required 12-month finding on the Eastern Distinct Population Segment (“DPS”) of the boreal toad (*Anaxyrus boreas boreas*) in violation of Section 4 of the Endangered Species Act (“ESA”). 16 U.S.C. § 1533(b)(3)(B). This letter is being provided to you pursuant to the 60-day notice requirement of the citizen suit provision of the ESA. 16 U.S.C. § 1540(g)(2)(C).

In response to a petition to list a species as threatened or endangered, the ESA requires the Secretary to determine to the maximum extent practicable within 90 days whether the petition “presents substantial scientific or commercial information indicating that the petitioned action may be warranted” (“90-day finding”). 16 U.S.C. § 1533(b)(3)(A). The ESA also requires that the Secretary make a finding on whether listing is warranted “within 12 months after receiving a petition that is found . . . to present substantial information indicating that the petitioned action may be warranted” (“12-month finding”). 16 U.S.C. § 1533(b)(3)(B).

On May 25, 2011, the Center for Biological Diversity, Rocky Mountain Wild, and Biodiversity Conservation Alliance filed a petition to list a DPS of the boreal toad. The agency issued a positive 90-day finding for the Eastern DPS of the boreal toad on April 12, 2012. 77 Fed. Reg. 21920. The 12-month finding for this DPS was due on May 25, 2012. Accordingly, the agency

is in violation of the law and has abrogated its duty to ensure that protection of endangered species occurs in a timely manner.

The Eastern DPS of the boreal toad cannot afford any additional delay from the agency. This unique population of toads is in steep decline due to a deadly fungal disease and habitat destruction. Protection under the Endangered Species Act is the best way to address these threats.

If within the next 60 days the agency does not make the required finding or contact us to develop a timeline for making this finding, we intend to file suit. Please contact us if you have any questions or if you would like to discuss this matter.

Sincerely,



Collette L. Adkins Giese
Herpetofauna Staff Attorney
Center for Biological Diversity
8640 Coral Sea St. NE
Minneapolis, MN 55449-5600
cadkinsgiese@biologicaldiversity.org
651-955-3821

D. Noah Greenwald
Endangered Species Program Director
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211
NGreenwald@biologicaldiversity.org
503-484-7495

Matt Sandler
Staff Attorney
Rocky Mountain Wild
1536 Wynkoop Street, Suite 303
Denver, CO 80202
matt@rockymountainwild.org
303-546-0214 x 1

cc: Terry Ireland, Fish and Wildlife Biologist: Terry_Ireland@fws.gov