



February 29, 2008

SENT VIA CERTIFIED MAIL AND FACSIMILE

Dirk Kempthorne
Secretary of the Interior
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Washington, D.C. 20240
Fax: 202-208-5048

H. Dale Hall
Director, U.S. Fish and Wildlife Service
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Fax: 202-208-6965

Benjamin Tuggle, Ph.D.
Southwestern Regional Director, U.S. Fish and Wildlife Service
P.O. Box 1306
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RE: Notice of Intent to Sue for Violation of the Endangered Species Act Regarding Finding that Recovery Plan Will Not Promote the Conservation of the Jaguar (*Panthera onca*)

Dear Secretary Kempthorne, Director Hall and Regional Director Tuggle:

On behalf of the Center for Biological Diversity (“the Center”), I write to notify you of violations of Section 4 of the Endangered Species Act (“ESA”) in connection with the finding that a recovery plan for the jaguar (*Panthera onca*) will not promote the conservation of the species. This letter is 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).

The jaguar is the largest cat native to North America and the third largest cat globally. The species developed from an evolutionary progenitor in North America, *Panthera onca augusta*, which began to colonize South America approximately 600,000 years ago, but then lost its northernmost range – which originally extended to Washington, Nebraska and Maryland – sometime in the last 15,000 to 100,000 years. Exquisitely camouflaged for concealment in dapple shade or waving grasslands through its black rosettes set on a golden background, at the time of European colonization of North America the jaguar ranged from California to the Carolinas. Today, however, jaguars in the United States are only found in southern New Mexico and Arizona.

The Center is a non-profit corporation with over 40,000 members and offices in Arizona, New Mexico, California, Oregon, and Washington, D.C. The Center is dedicated to the preservation, protection, and restoration of biological diversity, native species and ecosystems through science,

John Buse • Staff Attorney

policy, education, and environmental law. The Center's mailing address is PO Box 710, Tucson, Arizona 85702-0710.

As the Center has noted in its prior notice letter of July 13, 2006, the Secretary of the Interior ("Secretary") and the U.S. Fish and Wildlife Service ("Service") have failed to develop and implement a recovery plan for the jaguar, which was formally listed as an endangered species within the United States in 1997 (jaguars outside the United States had been recognized as endangered in 1969). 62 Fed. Reg. 39147. In August 2007, the Center filed a lawsuit in Federal District Court for the District of Arizona (*Center for Biological Diversity v. Kempthorne, et al.*, CV-07-372-TUC JMR). That suit included, among other things, the claim that the Secretary had violated the ESA and the Administrative Procedure Act ("APA") by failing to develop and implement a recovery plan pursuant to section 4(f) of the ESA.

In a finding dated December 21, 2007, Regional Director Tuggle concluded that development of a formal recovery plan at this time for the jaguar would not promote the conservation of the species. This finding was signed by Director Hall on January 7, 2008. The Center subsequently agreed that this finding rendered moot the Center's recovery plan claim in the current jaguar lawsuit, and indicated that it would bring a new challenge to the finding.

Accordingly, the Center is providing notice that it intends to challenge the January 7, 2008 finding that a recovery plan will not promote the conservation of the jaguar by filing a new lawsuit and/or filing an amended or supplemental complaint in the existing District of Arizona action, *Center for Biological Diversity v. Kempthorne, et al.*, CV-07-372-TUC JMR.

Section 4(f)(1) of the ESA requires that "[t]he Secretary shall develop and implement plans (hereinafter in this subsection referred to as 'recovery plans') for the conservation and survival of endangered species and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species." 16 U.S.C. § 1533(f)(1). In approving the January 7, 2008 finding, however, the Secretary failed to offer a coherent explanation as to why development and implementation of a recovery plan would not promote the recovery of the jaguar, failed to utilize the best available scientific information regarding jaguar conservation, and failed to provide public notice and an opportunity for public review and comment on the finding. By adopting the January 7, 2008 finding, the Secretary and the Service violated the ESA, 16 U.S.C. § 1533(f), and the APA, 5 U.S.C. §§ 701-706. This violation constitutes a failure of the Secretary to perform a non-discretionary act or duty under the ESA, 16 U.S.C. § 1540(g)(1)(C), and agency action that is arbitrary, capricious, or otherwise not in accordance with law in violation of the ESA and the judicial review provisions of the APA, 5 U.S.C. §§ 701-706.

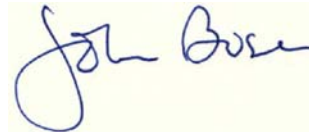
If the Secretary does not act within 60 days to correct these violations of the ESA, the Center will pursue litigation on this matter in federal court. We will seek injunctive and declaratory relief, and legal fees and costs regarding these violations. Should you have any further information or questions, please feel free to contact me at (323) 533-4416.

Notice of Intent to Sue re Finding that Recovery Plan Will Not Promote Jaguar Conservation

February 29, 2008

Page 3

Sincerely,

A handwritten signature in blue ink, reading "John Buse", is centered on a light yellow rectangular background.

John Buse

Staff Attorney

Center for Biological Diversity