



March 28, 2019

*Sent via email and FAX*

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Dear Messrs. Bernhardt and Frazier and Mses. Everson and Lueders,

**RE: Sixty-day Notice of Intent to Sue for Violations of the Endangered Species Act  
Relating to the U.S. Fish and Wildlife Service's Failure to Make a 90-Day  
Determination on a Petition to List Arizona Eryngo (*Eryngium sparganophyllum*).**

This letter serves as a 60-day notice of intent to sue the Secretary and U.S. Fish and Wildlife Service (together, hereafter "FWS") from the Center for Biological Diversity and Maricopa Audubon Society pursuant to the citizen suit provision of the Endangered Species Act,

16 U.S.C. § 1540(g), for failing to make a required “90-day finding” on our April 2, 2018, Petition to FWS to protect Arizona eryngo (*Eryngium sparganophyllum*) under the Endangered Species Act.

### **I. The Petition to the U.S. Fish and Wildlife Service to Protect Arizona Eryngo (*Eryngium sparganophyllum*) under the Endangered Species Act**

Arizona eryngo, also called ribbonleaf button snakeroot, (*Eryngium sparganophyllum*), is an extremely rare plant in the carrot family that can grow to be more than five feet tall with cream-colored spherical flower heads in large, open inflorescences. The plants grow only in a rare specific type of permanently wet desert spring habitat called a “ciénega.” *Eryngium* now survives at just two sites in the United States in southern Arizona. These two sites are in the Lewis Springs Ciénega within the Bureau of Land Management’s (“BLM’s”) San Pedro Riparian National Conservation Area, and at La Cebadilla Ciénega in Tucson.

Arizona eryngo is under severe threat of imminent extinction due to habitat degradation from declining groundwater levels, drought, climate change, and BLM’s chronic failure to control trespass cattle along the San Pedro River. The Arizona Native Plant Advisory Group ranks Arizona eryngo as one of the most endangered plants in the State of Arizona. No mechanisms short of Endangered Species Act (“ESA”) protection exist to protect Arizona Eryngo from extinction.

On April 23, 2018, FWS acknowledged “receipt of Arizona eryngo petition on April 2, 2018,”<sup>1</sup> however, FWS qualified this acknowledgement with the statement, “We’ve evaluated your April 2, 2018, petition and the supporting information you provided via regular mail. Given that we received all required documents on April 9, 2018, the 90-day period now ends on July 8, 2018.”

Now after one year from filing our Petition, you have failed even to issue your first required response, the 90-day finding. Your blatant disregard for a mandatory deadline and your delay in protecting this critically endangered plant have allowed Arizona eryngo to move significantly closer to extinction. During your illegal delay, Arizona eryngo has moved closer to extinction because its habitat continues to be destroyed by (1) uncontrolled and increasing local groundwater pumping in spite of peer reviewed hydrologic modeling showing the San Pedro River going dry in the not too distant future,<sup>2</sup> and (2) by BLM’s chronic failure to control

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<sup>1</sup> Email, from Jason M. Douglas, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, Arizona Ecological Services Office, Tucson, Arizona 85745, Email: [jason\\_dougl@fws.gov](mailto:jason_dougl@fws.gov); to Ms. Tierra Curry, Senior Scientist, Center for Biological Diversity, Portland, OR 97211, [tcurry@biologicaldiversity.org](mailto:tcurry@biologicaldiversity.org); April 23, 2018.

<sup>2</sup> Simulated groundwater and surface water conditions in the Upper San Pedro Basin 1902-2105 Preliminary Baseline Results, Task 1 Report for December 2010 Contract Prepared for Friends of the San Pedro River and The Walton Family Foundation, Lacher Hydrological Consulting, Tucson, Arizona, June 2011.; Hydrological Conditions and Evaluation of Sustainable Groundwater Use in the Sierra Vista Subwatershed, Upper San Pedro Basin, Southeastern Arizona, Scientific Investigations Report 2016-5114, Version 1.2, Gungle, B., J. B. Callegary, N.V. Paretti, J.R. Kennedy, C.J. Eastoe, D.S. Turner, J.E. Dickinson, L.R. Levick, and Z.P. Sugg, U.S. Geological Survey, February 2017.; and Interim Update to Sierra Vista Subwatershed Pumping and Artificial Recharge Rates in the Upper San Pedro Basin Groundwater Model, Prepared for The Nature Conservancy, Lacher Hydrological Consulting, Tucson, Arizona, February 2018.

trespass cattle.<sup>3</sup> In addition, since filing of our April 2, 2018, Petition, BLM has proposed to reintroduce cattle into its San Pedro Riparian National Conservation Area<sup>4</sup> and local groundwater pumping in the Sierra Vista area, including by Fort Huachuca has increased.<sup>5</sup>

## II. FWS' Duty to Respond to the Petition

FWS maintains ongoing duties with respect to imperiled species and the critical habitat necessary for their survival and recovery. The ESA [Section 4(a)(1)] requires that the Secretary determine whether any species is an endangered species, and “concurrently with making a determination...that a species is an endangered species, designate any habitat of such species which is then considered to be critical habitat.” [Section 4(a)(3)(A)]

The ESA [Section 4(b)(3)(A)] requires “[t]o the maximum extent practicable, within 90 days after receiving the petition...the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted.” The ESA [Section 4(b)(3)(B)] also requires that “[w]ithin 12 months after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings:...not warranted...warranted...precluded.”

FWS has failed in its Duty to Respond.

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<sup>3</sup> Correspondence from: CBD Conservation Chair Robin D. Silver, M.D.; To: BLM Tucson Resource Area Manager Jesse Juen; SUBJECT: ( 1.) Bureau of Land Management (BLM) negligence in allowing the destruction of archaeological sites by trespass cattle within the San Pedro River Riparian National Conservation Area (NCA); (2.) Failure of recovery of large sections of the NCA owing in good part to BLM intransigence in accommodating continuing grazing by trespass cattle. April 14, 1997.; Correspondence from Robin Silver ([rsilver@biologicaldiversity.org](mailto:rsilver@biologicaldiversity.org)); To: Bill Childress ([bill\\_childress@blm.gov](mailto:bill_childress@blm.gov)); SUBJECT: Illegal trespass cattle grazing continues/are still present within the SPRNCA. December 8, 2005.; Correspondence from: Tucson Field Office Manager Patrick Madigan on behalf of the BLM Arizona State Director, Elaine Zielinski; TO: Dr. Robin Silver, Center for Biological Diversity; SUBJECT: (1) Receipt of e-mail to Bill Childress dated Dec. 8, 2005, (2) unauthorized cattle grazing by cows owned by American operators. as well as cows that wander over the Mexican border through breeches in the international boundary fence continues to be an issue...unauthorized grazing by livestock has been occurring periodically with the SPRNCA since it was established in 1988, (3) impoundment notice in place, January 26, 2006.; Email correspondence, From: Robin Silver ([rsilver@biologicaldiversity.org](mailto:rsilver@biologicaldiversity.org)) ; To: Claire Crow ([ccrow@blm.gov](mailto:ccrow@blm.gov)); SUBJECT: widespread trespass cattle grazing in the SPRNCA...in the St. David Cienega, Lewis Springs and beyond. June 14, 2016.; Personal communications by Center from Biological Diversity with volunteer surveyors from the 2017, The Nature Conservancy San Pedro Riparian National Conservation Area Wet/Dry Survey, 2018.; Stromberg, Dr. Juliet, et al. 2018. Correspondence from Dr. Juliet Stromberg, to BLM Arizona State Director Raymond Suazo, RE: “...retain the ecological integrity and scientific value of the San Pedro Riparian National Conservation Area (SPRNCA) through continued livestock exclusion...”; March 20, 2018.

<sup>4</sup> San Pedro Riparian National Conservation Area, Draft Resource Management Plan and Environmental Impact Statement, U.S. Department of Interior Bureau of Land Management Gila District Office, June 2018.

<sup>5</sup> Arizona Department of Water Resources' Wells 55 Registry, <https://new.azwater.gov/gis> ... “ADWR Data Downloads” ... “Wells 55 Registry,” March 25, 2019.; Fort Huachuca Yearly Groundwater Pumping Totals for Calendar Years 2012 – 2018, Fort Huachuca Pubic Affairs Office, March 2019.

**III. FWS' Ongoing Failure to Issue a 90-Day Finding on the Arizona Eryngo Listing Petition Violates the Endangered Species Act. This correspondence fulfills our Notice requirement to enter federal court should you continue to violate the law.**

FWS is in violation of the Endangered Species Act by failing to issue a 90-day Finding in response to our April 2, 2018, Petition. Even FWS acknowledges that the 90-day Finding was due at least by July 8, 2018.<sup>6</sup> This notice is provided pursuant to the ESA's citizen suit provision on behalf of Center for Biological Diversity and Maricopa Audubon Society. If FWS does not remedy this violation within the next 60 days, we intend to file suit in federal court.

Please contact me should you have any questions or if you would like to discuss this matter by Phone, 602-799-3275; Email: [rsilver@biologicaldiversity.org](mailto:rsilver@biologicaldiversity.org); or Mail: P.O. Box 1178, Flagstaff, AZ 86002.

Thank you for your cooperation.

Sincerely,



Robin Silver, M.D.  
Co-Founder and Board Member

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<sup>6</sup> Email, from Jason M. Douglas, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, Arizona Ecological Services Office, Tucson, Arizona 85745, Email: [jason\\_douglas@fws.gov](mailto:jason_douglas@fws.gov); to Ms. Tierra Curry, Senior Scientist, Center for Biological Diversity, Portland, OR 97211, [tcurry@biologicaldiversity.org](mailto:tcurry@biologicaldiversity.org); April 23, 2018.