March 28, 2019

Sent via email and FAX

David Bernhardt,
Acting Secretary of the Interior
U.S. Department of the Interior
Washington, D.C. 20240
FAX: 202-219-2374
exsec@ios.doi.gov

Gary Frazier
Assistant Director for Endangered Species
U.S. Fish and Wildlife Service
Washington, D.C. 20240
gary.frazier@fws.gov

Margaret Everson
Principal Deputy Director, Exercising
the Authority of the Director
U.S. Fish and Wildlife Service
Washington, D.C. 20240
Margaret_Everson@fws.gov

Amy Lueders
Regional Director
U.S. Fish and Wildlife Service
Southwest Region
Albuquerque, NM 87102
FAX: 505-248-6910
amy_lueders@fws.gov

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


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,”¹ 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,² and (2) by BLM’s chronic failure to control

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¹ Email, from Jason M. Douglas, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, Arizona Ecological Services Office, Tucson, Arizona 85745, Email: jason_dougls@fws.gov; to Ms. Tierra Curry, Senior Scientist, Center for Biological Diversity, Portland, OR 97211, tcurry@biologicaldiversity.org; April 23, 2018.

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

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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3 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); To: Bill Childress (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 breaches 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) ; To: Claire Crow (ecrow@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.


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. 6 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; 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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6 Email, from Jason M. Douglas, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, Arizona Ecological Services Office, Tucson, Arizona 85748, Email: jason_dougls@fws.gov; to Ms. Tierra Curry, Senior Scientist, Center for Biological Diversity, Portland, OR 97211, tcurry@biologicaldiversity.org; April 23, 2018.