



August 20, 2014

Via Certified Mail Return Receipt Requested

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Dr. Benjamin Tuggle
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Southwest Regional Office
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RE: Notice of Intent to Sue the State of New Mexico for Violations of the Endangered Species Act Related to its Administration, Distribution, and Regulation of Water in the Rio Grande Basin in New Mexico

Dear State Engineer Verhines, Chairman Dunlap, Director Lopez, Members Crower, Sanchez, Sanchez, Wilcox, Harris, Anderson and Thorpe, Secretary Jewell, Director Ashe and Regional Director Tuggle:

In accordance with the 60-day notice requirement of Section 11(g) of the Endangered Species Act (“ESA” or “Act”), 16 U.S.C. § 1540(g), you are hereby notified that WildEarth Guardians (“Guardians”)

intends to bring a civil action against the State of New Mexico (“State”), through the above-named officials¹, for violating section 9 of the ESA, 16 U.S.C. § 1538 and its implementing regulations, 50 C.F.R. § 402 *et seq.*, by causing ongoing and imminent future “take” of the endangered Rio Grande silvery minnow (*Hybognathus amarus*) and Southwestern willow flycatcher (*Empidonax traillii extimus*) as a result of the State’s administration, distribution, and regulation of the waters in the Rio Grande in New Mexico. *See* 16 U.S.C. §§ 1538(g).

Specifically, the State has failed to act and/or authorized and endorsed past and on-going water management actions by the Middle Rio Grande Conservancy District (“District”), including diversions of water from the Rio Grande that deplete flows and dewater the river, having the effect of harming, harassing, wounding, and killing silvery minnows and willow flycatchers. Further, the State’s administration, distribution and regulation of water in the Rio Grande basin in New Mexico or lack thereof causes significant habitat modification and degradation resulting in actual death and injury of silvery minnows and willow flycatchers by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering. *See Babbitt v. Sweet Home Chapter of Communities for a Greater Oregon*, 516 U.S. 687 (1995); *Palila v. Hawaii Dept. of Land & Natural Resources*, 649 F.Supp. 1070 (D. Haw. 1986, *aff’d* 852 F.2d 1106 (9th Cir. 1988); 50 C.F.R. §17.3. Accordingly, such action and failure to act by the State represents “take” of the listed species.²

As asserted in Guardians’ notices submitted to the U.S. Bureau of Reclamation (“Reclamation”), on May 13, 2013, February 4, 2014 and May 9, 2014 and in its lawsuit filed on July 24, 2014 in the federal district court³, Reclamation has the discretionary authority to re-operate dams and diversion structures in the Middle Rio Grande to reduce water deliveries to the District for the benefit of the silvery minnow and willow flycatcher and the failure to do so has and will continue to result in “take” of the listed species in violation of section 9 the ESA. However, independent of Reclamation exercising its duties under the ESA, the State has and continues to authorize and fails to regulate diversions and depletions within the Middle Rio Grande resulting in the ongoing and imminent “take” of silvery minnows and willow flycatchers. Guardians provides this notice to the State of its separate and independent violations of section 9 of the ESA.

I. ESA Requirements

In 1973, Congress enacted the Endangered Species Act to provide “a program for the conservation of . . . endangered species and threatened species” and “a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.” 16 U.S.C. § 1531(b). In enacting the statute, the plain intent of Congress was “to halt and reverse the trend towards species extinction, whatever the cost.” *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 184, 98 S.Ct. 2279 (1978).

Under the mandates of the Act, the Secretary of the Interior is responsible for promulgating regulations listing “endangered” and “threatened” species of animals and plants based on specific criteria

¹ The State Engineer and Interstate Stream Commission are charged with the administration, distribution, regulation and conservation of waters within the state. *See* NMSA §§ 72-2-1, 72-2-9 and 72-14-3.

² The State’s water management actions are described in more detail in Part III of Reclamation’s Amended Joint Biological Assessment (“BA”) of January 2013.

³ On July 24, 2014, Guardians filed Case No. 1:14-cv-00666 in the U.S. District Court in the District of New Mexico pursuant to Guardians notices.

listed in section 4(a)(1), and to designate “critical habitat” for the listed species. 16 U.S.C. § 1533. Section 9 of the ESA prohibits the “take” of all listed endangered species. 16 U.S.C. § 1538(a)(1)(B). The term “take” means “to harass, harm, . . . wound, kill, trap, [or] capture” an endangered species. *Id.* § 1532(19).

The terms “harass” and “harm” are further defined in the ESA’s implementing regulations. “Harass” means “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.” 50 C.F.R. § 17.3. “Harm” means “an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.” *Id.* Congress intended to define ‘take’ “in the broadest possible manner to include every conceivable way” in which any person could ‘take’ or attempt to ‘take’ any fish or wildlife.” *See Babbitt*, 515 U.S. at 704.

It is also unlawful for any “person” to “cause [an ESA violation] to be committed,” and thus the ESA prohibits a governmental agency from authorizing any activity resulting in take. *See* 16 U.S.C. § 1538(g); *see also, e.g., Strahan v. Coxe*, 127 F.3d 155, 163 (1st Cir. 1997). “The ESA’s prohibition against “takes” governs both the actions, and failure to act, by all “persons,” including any “officer, employee, agent, department, or instrumentality of . . . any State.” *Aransas Project*, 930 F.Supp.2d at 726; 16 U.S.C. § 1532(13).

The ESA provides two separate means for allowing “take” of a protected species notwithstanding the prohibition of section 9: first, if the U.S. Fish and Wildlife Service (“Service”) issues biological opinion and incidental take statement (“ITS”) under section 7(b)(4)(B), 16 U.S.C. §1536(b)(4)(B), and, second, if the Service issues a habitat conservation plan (“HCP”) and incidental take permit (“ITP”) pursuant to section 10, 16 U.S.C. §1539(a). Without either a valid ITS or HCP/ITP from the Service covering the activity’s take of an endangered species, an action agency is not authorized to “take” or jeopardize *any* members of that species.

The ESA provides for citizen enforcement of the provisions of the Act. To enforce the “take” prohibition of section 9, 16 U.S.C. § 1538(g), “any person may commence a civil suit on his own behalf . . . to enjoin any person, including the United States and any other governmental instrumentality or agency, who is alleged to be in violation of any provision of the this chapter.” 16 U.S.C. §1540(g)(1)(A). An injunction under section 9 of the ESA can be warranted upon a showing of “a reasonably certain threat of imminent harm” to a listed species. *See Forest Conservation Council v. Rosboro Lumber Co.*, 50 F.3d 781, 784 (9th Cir. 1995).

II. Listed Species Negatively Impacted by the State’s Administration, Distribution and Regulation of Water in the Middle Rio Grande

A. Rio Grande Silvery Minnow (*Hybognathus amarus*)

The Rio Grande silvery minnow is a “small, relatively heavy-bodied minnow, round to ovate in cross-section, with moderately small eyes and a small, slightly oblique mouth.” *See Rio Grande Silvery Minnow Recovery Plan*, First Revision 2010 (Originally Approved on July 8, 1999) at 5. Adults reach about 4 inches in length and exhibit a light greenish-yellow color. *Id.* The silvery minnow is a “pelagic

spawner that produces thousands of semibuoyant, non-adhesive eggs that passively drift while developing.” *Id.* at 6. Reproduction in the silvery minnow is triggered by and corresponds with high or peak spring flows that historically occurred in May or June as a result of snowmelt runoff. *Id.* at 7.

The silvery minnow was historically one of the most abundant and widespread species in the entire Rio Grande, occurring from Espanola, New Mexico to the Gulf of Mexico and in much of the Pecos River. *Id.* at 15. The silvery minnow has been extirpated from more than 95% of its historical range and today only occupies a 174-mile stretch of the river in the middle Rio Grande from Cochiti Dam and Elephant Butte Reservoir.⁴ *Id.* at 2.

The Service listed the Rio Grande silvery minnow as "endangered" under the ESA in 1994 and designated critical habitat for the entire reach of the Middle Rio Grande in 1999. *See* 59 Fed. Reg. 36988 (7/20/94); 64 Fed. Reg. 36,274 (7/6/99). Pursuant to section 4(f) of the ESA, the Secretary of the Interior developed a recovery plan for the silvery minnow in 1999 and revised it in 2010. *See* 75 Fed. Reg. 7625 (2/22/10). The decline of the Rio Grande silvery minnow is attributable to the “destruction and modification of its habitat due to dewatering and diversion of water, water impoundment, and modification of the river (channelization)” among other factors. 2010 *Recovery Plan* at 2.

On May 6, 2013, the Service issued a draft “recommendation for water needed to support a wild silvery minnow population in the Middle Rio Grande” whereby a self-sustaining population could be achieved (“Hydrologic Objective”). *See U.S. Fish and Wildlife Service’s Hydrologic Objective* dated May 6, 2013 at 1. The Service’s recommendations are based on “the best available scientific and commercial information on the relationship between average density of silvery minnows measured over 20 years and associated hydrologic variables measured during those same years.” *Id.* Although the Hydrologic Objective focuses on the relationship between success of the silvery minnows and flow conditions, implementing the recommended flows in the Rio Grande would also benefit the flycatcher and help support flycatcher habitat and breeding territories.

The Service’s Hydrologic Objective focuses on two life stages of the silvery minnow reproduction (Age 0 Strategy) and survival (Age 1+ Strategy). The Service reports that 95% of the silvery minnow population in the Middle Rio Grande is of the Age 0 class. *Id.* Reproduction of the silvery minnow is directly tied to the peak discharge including timing of flow, flow duration and flow magnitude. *Id.* The Service reached the following conclusions:

1. “Higher magnitude flow in spring results in more silvery minnows in fall.” *Id.* at 2. The following table shows the average densities of silvery minnow found in the fall based on the magnitude of flow in the spring:

Rate of Flow (cubic feet per second)	Average Density in Fall (silvery minnow/100m ²)
2500	~ 1.0
3300	~ 1.5
5400	~ 5.0

⁴ The silvery minnow was reintroduced into the Rio Grande near Big Bend, Texas in 2008. This population is considered “a nonessential, experimental population under section 10(j) of the ESA (73 FR 74357).” 2010 *Recovery Plan* at 16.

2. “Duration of overbank flooding (i.e., days of peak discharge > 2,500 cfs at Central gage) results in more silvery minnows.”⁵ *Id.* at 3.

Duration of Overbank Flooding (in excess of 2500 cfs at the Central gauge in NM)	Average Density in Fall (silvery minnow/100m ²)
15 days	~ 1.0
28 days	~ 1.5
68 days	~ 5.0

3. “Successful spawning, percent hatch, and rate of development is optimal in early to late May.” *Id.*

These correlations found by the Service indicate that for silvery minnows to successfully reproduce, the species needs high magnitude flows, for a longer duration that occur in the spring (ideally in May).

The Service also recommends “measures should be taken to reduce the extent and duration of drying.” *Id.* The Service found that similar to the relationship between peak flow and successful reproduction in the minnow “there is a significant relationship between the magnitude of flow measured at San Acacia Gage and the abundance of silvery minnows surveyed in fall.”⁶ *Id.* The following table shows the relationship between duration of low flow and number of silvery minnow:

Duration of Low Flow Days (i.e. <150 cfs at San Acacia gage in summer or <300 cf in winter)	Average Density in Fall (silvery minnow/100m ²)
98 days	~ 1.5
63 days	~ 3.0

Likewise, a correlation can be found between magnitude of river drying (i.e. miles of river drying or days <150 cfs at San Acacia gage in summer or <300 cfs in winter) and the decreases in density of silvery minnows:

Magnitude of River Drying	Average Density in Fall (silvery minnow/100m ²)
42 miles	~ 1.5
30 miles	~ 3.0

Id.

⁵ The “Central gage” is more formally known as USGS Station No. 08330000, Rio Grande at Albuquerque, New Mexico and is located at Latitude 35°05'21", Longitude 106°40'50.5" in Bernalillo County, New Mexico.

⁶ The “San Acacia gage” is also know as USGS Station No. 08354900, Rio Grande Floodway at San Acacia, New Mexico and is located at Latitude 34°15'23", Longitude 106°53'27" in Socorro County, New Mexico.

The Service's Hydrologic Object emphasizes that peak flows in May, of a certain magnitude and duration, and base flows in the river for the remainder of the summer are crucial to prevent significant habitat modification actually killing the minnow by impairing essential behavior patterns such as breeding, feeding or sheltering. The State's authorization of diversions and dewatering of the Rio Grande from March through October of each year and failure to regulate such diversions is contrary to the needs of the endangered silvery minnow and has and will continue to result in "take" of the listed species.

B. Southwestern willow flycatcher (*Empidonax traillii extimus*)

The Southwestern willow flycatcher is a small migratory bird approximately six inches long, weighing about half an ounce. *See* 2002 *Southwestern Willow Flycatcher Final Recovery Plan* dated August 30, 2002 at 4. "It has a grayish-green back and wings, whitish throat, light grey-olive breast, and pale yellowish belly." *Id.* The willow flycatcher inhabits the streamside and wetland thickets of New Mexico, Arizona, west Texas, and southern portions of Nevada, Utah, California, and Colorado. *Id.* at 7. The willow flycatcher's breeding habitat includes "patchy to dense riparian habitats along streams or other wetlands, near or adjacent to surface water or underlain by saturated soil." *Id.* at 11.

On February 27, 1995, the Service listed the Southwestern willow flycatcher as endangered pursuant to section 4 of the ESA and designated critical habitat on July 22, 1997. *See* 60 Fed. Reg. 10694 (2/27/95); 62 Fed. Reg. 39129 (7/22/97). The Service revised the critical habitat designation for the flycatcher on January 3, 2013. *See* 78 Fed. Reg. 343 (1/3/13). At the time of listing, the known flycatcher population was estimated between 300 and 500 pairs. *Id.* In its listing rule, the Service found that the Southwestern willow flycatcher is endangered by loss of habitat and population declines resulting in substantial part from human impacts on the species and its critical habitat. *Id.* These include adverse modifications of riparian habitat necessary for the breeding and successful reproduction of the flycatcher as a result of human development, channelization, changes in surface water hydrologic regimes, introduction of alien species, and other activities. *Id.* In 2002, the Secretary of the Interior released a recovery plan setting forth the measures necessary to recover the species. *See* 2002 *Southwestern Willow Flycatcher Final Recovery Plan*. The recovery plan indicates that the most severe loss of flycatchers and their habitat occurred in the Rio Grande valley. *Id.* at 31.

Flycatchers arrive on their breeding grounds in late April and May and the peak flows that benefit the minnow also promote flycatcher nesting habitat and breeding territories. Spring peak flows and base flows in the Rio Grande during the irrigation season are key factors for protecting and restoring habitat for the Southwestern willow flycatcher. The State's authorization of diversions and dewatering of key reaches of the Rio Grande during the irrigation season is directly contrary to the needs of the endangered Southwestern willow flycatcher in the middle Rio Grande and has and will continue to result in "take" of the listed species.

III. The State's Administration, Distribution and Regulation of Water in the Middle Rio Grande Has Caused and Continues to Cause "Take" of Listed Species

The State, through the Office of the State Engineer, has a statutory duty to supervise the waters of the state, including the measurement, appropriation and distribution thereof, as well as the apportionment of waters in the state according to licenses issued by him and his predecessors and the adjudication of the courts. *See* NMSA §§72-2-1 and 72-2-9. Similarly, through the authority of the Interstate Stream

Commission, the State's authority includes the investigation of water supply, and developing, conserving and protecting the waters and stream systems of the State. *See* NMSA §72-14-3.

The State has and continues to authorize the District to divert substantial amounts of water from the Rio Grande between March 1 and October 31 of each year. At certain times of the year, the District's diversions deplete flows and dewater the river to such an extent that they have the effect of harming, harassing, wounding, and killing silvery minnows and willow flycatchers. In addition, such diversions cause significant modification and degradation of habitat resulting in death and injury of silvery minnows and willow flycatchers by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. *See Babbitt*, 516 U.S. 687; *Palila*, 649 F.Supp. 1070; 50 C.F.R. §17.3. The State's authorization of diversions that reduce or eliminate flows in the Rio Grande and its failure to act to ensure maintenance of critical habitat to support silvery minnow and willow flycatchers has and will continue to cause "take" of the listed species in violation of section 9 of the ESA.

In addition, the State has and continues to authorize activities that create depletions to the Rio Grande to such an extent that they have the effect of harming, harassing, wounding, and killing silvery minnows and willow flycatchers. These activities include but are not limited to: 1) the transfer of water from irrigation to non-irrigation purposes and from downstream to new upstream locations, and 2) approving transfers without imposing and/or enforcing the necessary "dry up covenants" on the transfer from location. Such transfers deprive the river of flows between the transfer from and transfer to locations as well as increase depletions to the system. The State's policies regarding water transfers fail to ensure that no net increase in depletions occur to the Rio Grande, having the effect of significantly reducing flows in the river to the extent that they result in the modification of habitat necessary to maintain essential behavioral patterns, including breeding, feeding, or sheltering. Accordingly, the State's act of approving water transfers and its failure to act to prevent net increase in depletions or impacts in transfer reach has and will continue to cause "take" of the listed species in violation of section 9 of the ESA.

Further, the State refuses to order shutdown of the District's illegitimate Water Bank that causes additional diversions and depletions from the Rio Grande. In 1997, the State asserted in a letter to the District that it would not approve operation of the Water Bank until the District submits "proof of beneficial use" ("PBU") of its water rights to the State. The State's authorization is necessary to prove that operation of the Water Bank will not create new depletions to the river. The original PBU was due to the State on August 20, 1935; the District has continued to thwart its responsibility to provide PBU to the State for 80 years. Despite the fact that the District has still not provided such evidence to the State, the State continues to be unwilling to shutdown the Water Bank until submission and approval of the PBU. Such actions and failures to act by the State continue to "harm" the silvery minnow and willow flycatcher in violation of the "take" provision in section 9 of the ESA.

IV. The State's Authorization, Distribution and Regulation of Water in the Middle Rio Grande are Subject to Liability under Section 9 of the ESA

The State does not currently have any incidental take coverage that would exempt it from the "take" prohibition of section 9 of the ESA. The State is not authorized to "take" *any* members of the listed species under an existing valid ITS or HCP/ITP issued by the Service. Therefore, any "take" resulting from the State's action or failure to act to authorize, distribute and regulate water management activities within the State of New Mexico will subject the State to liability under section 9 of the ESA.

Over the past 15 years, the State has fallen under the umbrella of the past consultations between the Reclamation, the U.S. Army Corps of Engineers (“Corps”), the District and the Service. As one of the non-federal parties to the consultation that resulted in the March 17, 2003 biological opinion⁷ (“2003 BO”), the State has benefitted over the past decade from incidental take coverage to insulate it from liability under section 9 of the ESA. This incidental take coverage was contingent on the consulting parties’ implementation of the 2003 BO, its RPA, ITS, reasonable and prudent measures (“RPMs”), and terms and conditions that were in effect until February 28, 2013. Upon expiration of the 2003 BO, any ITS permitting take incidental to the proposed action also became invalid. Thus, the State continues to authorize, distribute and regulate water diversions from the Rio Grande at its own peril and subject to liability under section 9 of the ESA.

Even assuming the *Reinitiation Notice* provision of the 2003 BO extended the opinion past its expiration, the 2003 BO and its ITS have been invalidated by: 1) Reclamation and the State’s ongoing failure to implement the RPA required by section 7(a)(2) of the ESA to prevent jeopardy to the minnow and flycatcher; 2) Reclamation and the State’s failure in 2013 to comply with the level of take specified in its ITS or reinitiate consultation with the Service; 3) Reclamation and the State’s ongoing failure to implement the RPMs and non-discretionary term and conditions of the ITS; and 4) Reclamation and the State’s ongoing failure to reinitiate consultation with the Service upon a) exceeding the permitted level of take in the ITS and b) modifying an essential element of the RPA in a way not previously considered by the 2003 BO. Therefore, until the Service issues a new biological opinion, the State remains without a valid permit to take any individual silvery minnow or willow flycatcher during the 2014 irrigation season and beyond.

Furthermore, the State’s current consultation (Consultation #02ENNM00-2013-F-0033) with the Service via Reclamation does not include Reclamation’s discretionary authority to re-operate dams and diversion structures in the Middle Rio Grande, nor does it include Reclamation’s authority to reduce water deliveries to the District for the benefit of the silvery minnow or willow flycatcher. This failure by Reclamation to consult with the Service over the full scope of its discretionary authorities is in violation of section 7(a)(2) of the ESA. The current consultation is thereby arbitrarily and impermissibly narrow in scope and thus no valid and existing ITS exempts Reclamation or the District from the ESA’s prohibition against the “take” of the listed species.⁸

Finally, the State has no exemption to the “take” prohibition under section 10 of the ESA, 16 U.S.C. §1539(a). The State has never prepared nor has the Service approved a HCP for the State’s activities in the Middle Rio Grande and the Service has not issued an ITP to the State. Therefore, the State authorization, distribution and regulation of water in the Rio Grande Basin is at its own peril as to liability under section 9 of the ESA.

⁷ Biological and Conference Opinions on the Effects of Actions Associated with the Programmatic Biological Assessment of the Bureau of Reclamation’s Water and River Maintenance Operations, U.S. Army Corps of Engineers’ Flood Control Operation, and Related Non-Federal Actions on the Middle Rio Grande, New Mexico (Consultation #2-22-03-F-0219).

⁸ See Guardians’ Notices for additional explanation of our claims against Reclamation.

V. Violations of Section 9 of the ESA

Guardians hereby puts the State on notice that it will promptly seek judicial relief if the State fails to remedy the ongoing and imminent future⁹ violations of the ESA and its implementing regulations. 16 U.S.C. §§ 1538(g).

Guardians hereby provides notice that the State is violating section 9 of the ESA, 16 U.S.C. § 1538(g), and its implementing regulations by causing ongoing and imminent future “take” without a permit authorized by law of the endangered Rio Grande silvery minnow and/or Southwestern willow flycatcher as the result of the State’s administration, distribution, and regulation of water in the Rio Grande Basin in New Mexico.

Guardians hereby provides notice that it will also claim that the State has no section 9 coverage for incidental take of silvery minnows at the current time because the 2003 BO has expired; the federal and non-federal parties to the 2003 BO have failed: (1) to implement the RPA as required by section 7(a)(2) of the ESA to prevent jeopardy to the listed species, (2) to comply with the level of take specified in the 2013 ITS, and (3) to implement the RPMs and non-discretionary terms and conditions of the ITS; and the State’s consultation with the Service through Reclamation does not encompass the full scope of Reclamation’s discretionary authority. Therefore, since the ongoing section 7(a)(2) consultation is arbitrary and impermissibly narrow in scope, there is no valid ITS that exempts the State from the take prohibition in section 9 of the ESA.

VI. Noticing Party

WildEarth Guardians is a non-profit, public interest, environmental advocacy, and conservation organization. Guardians’ mission is to protect and restore wildlife, wild rivers, and wild places in the American West. Guardians has over 43,000 members and activists, many of whom live, work, and recreate in areas affected by the ESA violations described herein. Guardians and its members have a substantial interest in the conservation and recovery of the Rio Grande silvery minnow, Southwestern willow flycatcher, and other listed species in the middle Rio Grande and are adversely affected by the State’s failure to protect the listed species and their habitat in compliance with the ESA.

The name, address and telephone number of the party giving this notice is as follows:

WildEarth Guardians
516 Alto Street
Santa Fe, New Mexico 87501
(303) 884-2702
jpelz@wildearthguardians.org

⁹ See *Colorado Environmental Coalition v. Office of Legacy Management*, 819 F.Supp.2d 1193, 1220 (D. Colo. 2011) (finding Plaintiff’s pre-suit notice under the ESA was effective as to future agency actions, where the letter contained sufficient description of the challenged activities, some of which occurred after the notice letter was sent).

VII. Conclusion

One of the purposes of the ESA's citizen suit provision, 16 U.S.C. § 1540(g), is to encourage discussions among parties in order to avoid potential litigation. We encourage the State to seriously consider the concerns detailed in this notice and ask that you discuss with us the steps the State may taken going forward to remedy these legal violations and to avert the need for litigation. Towards this end, we would be happy to meet with the State to discuss the issues raised in this notice letter. However, if the aforementioned violations of the ESA are not remedied within 60 days of the date of this letter, we intend to file a citizen's suit in federal court seeking preliminary and permanent injunctive relief, declaratory relief, and attorneys' fees and costs concerning these violations.

If you believe any of the above information is incorrect, have any additional information that might help avoid litigation, or wish to discuss this matter further, please feel free to contact me at the phone or email address listed above.

Sincerely,

Jen Pelz
Wild Rivers Program Director

cc: Governor Martinez
Attorney General Gary King