



January 28, 2009

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Acting Director
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VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

RE: Notice of Violation of Section 4(b)(3)(A) of the Endangered Species Act Relating to Petition to List the Sonoran Desert Tortoise as Endangered or Threatened

Dear Secretary and Director,

WildEarth Guardians and Western Watersheds Project write to inform you that you are in violation of the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544, by failing to take action required by ESA Section 4(b)(3)(A), concerning our petition to list the Sonoran Desert tortoise (*Gopherus agassizii*) as an endangered or threatened species and to designate its critical habitat. 16 U.S.C. § 1533(b)(3)(A). This letter is provided pursuant to the 60-day notice requirement of the citizen suit provision of the ESA. 16 U.S.C. § 1540(g)(2)(C).

According to a letter from the U.S. Fish and Wildlife Service (Service) dated November 26, 2008, the Service received our petition by certified mail on October 15, 2008. ESA Section 4(b)(3)(A) and its regulations require that, to the maximum extent practicable, within 90 days of receiving a petition the Service must make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. 16 U.S.C. § 1533(b)(3)(A); 50 C.F.R. § 424.14(b). Accordingly, if practicable, the 90-day finding was due on or before January 13, 2009.

It is practicable for the Service to make an immediate 90-day finding on our petition to list the Sonoran Desert tortoise, as our petition contains substantial information warranting full consideration for ESA listing. Indeed, our petition and attachments number more than 150 pages. They include a statistical analysis of population trends across the range, which indicates a 51% decline in monitored Sonoran Desert tortoise populations since 1987. The petition clearly demonstrates multiple threats that qualify this tortoise for ESA protection under 16 U.S.C. § 1533(a)(1)(A-E).

If you do not make the required 90-day finding on this listing petition within the next sixty days, WildEarth Guardians and Western Watersheds Project intend to file suit to force you to do so. However, this is not our preference. The purpose of the 60-day notice provision in the ESA is to allow violators of the law to come into compliance, therefore avoiding the need for litigation. Please contact us if you have any questions or if you would like to discuss this matter. Specifically, please contact us if you would like to propose a specific date by which you will take action on our petition or if you intend to take action by a specific date.

Our preference would be to avoid lawsuits over ESA findings altogether, instead working out reasonable schedules with the Service's staff for petition findings, listing proposals, and final listing rules. About 80% of the nation's imperiled species are not yet protected under the ESA. Because of our groups' keen interest in obtaining federal protection for many of these species, a cooperative relationship between the Service and our organizations could save our groups and the government substantial time and money.

Sincerely,

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