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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

| | | |
|---|---|----------------------------|
| Black Hills Dipper, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Case No. 1:04CV01293 (RJL) |
| |) | |
| Gale Norton, Secretary of the Interior, |) | |
| et al., |) | |
| |) | |
| Defendants. |) | |

**DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT
FOR INJUNCTIVE AND DECLARATORY RELIEF**

Defendants Gale Norton, Secretary of the Interior and Steven Williams, Director, U.S. Fish and Wildlife Service, by and through their undersigned counsel, hereby answer and assert defenses to the claims and allegations made in Plaintiffs' Complaint for Injunctive and Declaratory Relief.

INTRODUCTION

1. The first sentence of Paragraph 1 constitutes Plaintiffs' characterization of their lawsuit, to which no response is required. The allegations in the second sentence constitute conclusions of law, to which no response is required. Defendants admit the allegations in the third sentence.

JURISDICTION AND VENUE

2. The first sentence of Paragraph 2 constitutes Plaintiffs' characterization of their lawsuit, to which no response is required. The allegations in the second sentence constitute conclusions of law, to which no response is required.

3. The allegations in Paragraph 3 constitute conclusions of law, to which no response is required.

4. Regarding the allegations in the first sentence of Paragraph 4, Defendants admit that certain decisions made in the District of Columbia affected the agency action described in the Complaint, but deny that such actions were a "substantial part of the events or omissions giving rise to the claims in this case as well as the violation of the mandatory duty. . . ." Defendants admit the allegations in the second sentence, and aver that Defendants Norton and Williams both have their official offices in the District of Columbia. The allegations in the third sentence constitute conclusions of law, to which no response is required.

5. Regarding the allegations in the first sentence of Paragraph 5, Defendants admit that they received a letter from Plaintiffs on July 16, 2003. The remaining allegations in the first sentence constitute Plaintiffs' characterization of the letter, which speaks for itself and is the best evidence of its contents. Any allegations contrary to its plain meaning are denied. Regarding the allegations in the second sentence, Defendants admit that more than sixty days have passed since

they received the July 16, 2003 letter.

PARTIES

6. Regarding the allegations in the first sentence of Paragraph 6, Defendants admit the Black Hills Dipper is a gray and brown aquatic songbird roughly fifteen to twenty centimeters in length, whose name derives from its characteristic bobbing movements, but deny that the species is a proper plaintiff in this action. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in the second, third, and fourth sentences of Paragraph 6 and on that basis deny the allegations.

7. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 7 and on that basis deny the allegations.

8. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 8 and on that basis deny the allegations.

9. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 9 and on that basis deny the allegations.

10. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 10 and on that basis deny the allegations.

11. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 11 and on that basis deny the allegations.

12. Defendants admit the allegations in the first sentence of Paragraph 12. With respect to the allegations in the second sentence, Defendants aver that the Secretary shares responsibility for implementation of the ESA with the Secretary of Commerce, depending upon the species at issue, and admit that the Secretary bears responsibility for making the 90-day determination with respect to the petition to list the Black Hills Dipper.

13. Defendants admit the allegations in the first sentence of Paragraph 13. Regarding the allegations in the second sentence, Defendants admit that Mr. Williams has been designated certain responsibilities under the Endangered Species Act (“ESA”), including reviewing and approving proposed listing determinations.

STATUTORY FRAMEWORK

14. The allegations in Paragraph 14 constitute Plaintiffs’ characterization of provisions of the ESA, 16 U.S.C. §§ 1531(b), 1533(b)(3)(A), which speak for themselves and are the best evidence of their contents. Any allegations contrary to their plain meaning are denied.

15. The allegations in Paragraph 15 constitute Plaintiffs’ characterization of a provision of the ESA, 16 U.S.C. § 1533(b)(3)(A), which speaks for itself and is the best evidence of its contents. Any allegations contrary to its plain meaning are denied.

16. The allegations in Paragraph 16 constitute Plaintiffs’ characterization of a provision of the ESA, 16 U.S.C. § 1533(b)(3)(B), which speaks for itself and is the best evidence of its contents. Any allegations contrary to its plain meaning are denied.

17. The allegations in Paragraph 17 constitute conclusions of law, to which no response is required.

BLACK HILLS DIPPER

18. Defendants admit the allegations in the first, second, and third sentences of Paragraph 18. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in the fourth sentence, and on that basis deny the allegations.

19. Defendants admit the allegations in the first sentence of Paragraph 19. Defendants deny the allegations in the second sentence. Regarding the allegations in the third sentence,

Defendants admit that logging, livestock grazing, mining, road construction, water diversions, and land development has occurred in the Black Hills ecosystem for over a century, but deny that the ecosystem is “on the verge of collapse.” Defendants deny the allegations in the fourth sentence.

20. Regarding the allegations in the first sentence of Paragraph 20, Defendants admit that the largest portion of the Black Hills, or 1.2 million acres, is within the Black Hills National Forest, which is managed by the U.S. Forest Service. Defendants admit the allegations in the second sentence of Paragraph 20.

21. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 21, and on that basis deny the allegations.

22. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in the first, second, third, fifth, and sixth sentences of Paragraph 22, and on that basis deny the allegations. Defendants deny the allegations in the fourth sentence.

23. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in the first, third, and fourth sentences of Paragraph 23, and on that basis deny the allegations. Regarding the allegations in the second sentence, Defendants admit that high silt concentrations may smother aquatic insects of the type on which the dipper feeds.

24. Regarding the allegations in the first sentence of Paragraph 24, Defendants admit that livestock grazing adversely affects riparian habitat, but Defendants aver that they are without information or knowledge sufficient to form a belief as to whether livestock grazing threatens the habitat of the Black Hills Dipper, and on that basis deny the remaining allegations. Defendants admit the allegations in the second and third sentences. Regarding the allegations in the fourth

sentence, Defendants admit, based upon information obtained from the U.S. Forest Service, that 1,146,113 acres of the Black Hills National Forest are in active grazing allotments under permit.

25. Regarding the allegations in the first sentence of Paragraph 25, Defendants admit that some logging that occurs near creeks or streams results in sedimentation of streams by leaving large areas of soil unprotected against erosion, but Defendants aver that they are without information or knowledge sufficient to form a belief as to whether logging reduces the habitat of the Black Hills Dipper, and on that basis deny the remaining allegations. Regarding the allegations in the second sentence, Defendants admit that there are logging projects currently underway in the Black Hills, but deny that there are “many” such logging projects. Defendants are without information or knowledge sufficient to form a belief as to the remaining allegations in the second sentence, and on that basis deny the allegations. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in the third sentence, and on that basis deny the allegations.

26. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 26, and on that basis deny the allegations.

27. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in the first and third sentences of Paragraph 27, and on that basis deny the allegations. Defendants admit the allegations in the second sentence.

28. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 28, and on that basis deny the allegations.

29. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 29, and on that basis deny the allegations.

PETITION TO LIST THE BLACK HILLS DIPPER

30. Defendants admit the allegations in Paragraph 30.

FIRST CLAIM FOR RELIEF
(ESA Section 4(b)(3)(A))

31. In response to Paragraph 31, Defendants hereby incorporate their responses to each allegation in the Complaint as set forth in this Answer.

32. Defendants admit the allegations in Paragraph 32.

33. The allegations in Paragraph 33 constitute conclusions of law, to which no response is required.

(ALTERNATIVE) SECOND CLAIM FOR RELIEF
(APA UNREASONABLE DELAY)

34. In response to Paragraph 31, Defendants hereby incorporate their responses to each allegation in the Complaint as set forth in this Answer.

35. The allegations in Paragraph 35 constitute conclusions of law, to which no response is required.

36. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 36, and on that basis deny the allegations.

37. The allegations in Paragraph 37 constitute conclusions of law, to which no response is required.

PLAINTIFFS' PRAYER FOR RELIEF

The remainder of the Complaint constitutes Plaintiffs' request for relief, to which no response is required.

GENERAL DENIAL

Defendants deny each and every allegation in the Complaint not specifically admitted, denied or qualified herein.

DEFENSES

1. Venue is more appropriate in another jurisdiction.

Dated: October 4, 2004

Respectfully submitted,
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