

1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 DISTRICT OF COLUMBIA

3
4 BIODIVERSITY CONSERVATION)
5 ALLIANCE, et al.)
6 Plaintiffs,)
7 v.)
8 GALE NORTON, Secretary of the)
9 Department of Interior, et al.)
10 Defendants.)

Case No. 04-cv-02026

11
12 Declaration of Elizabeth H. Stevens

13
14 I, Elizabeth H. Stevens, declare as follows:

- 15
16 1. I am the Acting Assistant Director for Endangered Species of the U.S. Fish and Wildlife
17 Service (Service), an agency of the U.S. Department of the Interior (Department), located
18 in Washington, D.C. In my capacity as Acting Assistant Director, I am responsible to the
19 Director of the Fish and Wildlife Service, the Assistant Secretary for Fish and Wildlife
20 and Parks at the Department of the Interior (Assistant Secretary), and the Secretary of the
21 Interior for the administration of the Endangered Species Act (ESA), 16 U.S.C. § 1531 et
22 seq., including making recommendations regarding the listing of species and designation
23 of critical habitat.
24
25
26 2. The Service received Plaintiff's petition to list as threatened or endangered the Uinta
27 mountainsnail, *Oreohelix eurkeensis uinta*, on August 21, 2001; the Black Hills
28 mountainsnail, *Oreohelix cooperi*, on September 24, 2003; and the Gunnison's prairie

1 dog, *cynomys gunnisoni*, on February 23, 2004. The Service responded to the petition on
2 September 22, 2003, informing the petitioners that the Service did not have Fiscal Year
3 (FY) 2003 funds to process a petition finding [I have no record that we responded to
4 petitions or NOI; according to complaint, we never responded to NOI, it's silent on
5 petitions]. Since the receipt of the petitions, it was not been practicable for the Service to
6 make petition findings for these species. Funding and work necessary to make these
7 findings have been precluded by court orders or court-approved settlement agreements,
8 and actions related to emergency listings and other higher priority actions.

- 10
11
12 3. The Service recognizes its responsibilities under the ESA, and intends to complete the
13 90-day finding, and if substantial, the 12-month finding for these petitioned species.
14 Based on current funding and workload projections, the Service believes that for the
15 Uinta mountainsnail, it can begin work immediately/this fiscal year and complete the 90-
16 day finding by November 7, 2005, and if substantial, a 12-month finding by September
17 12, 2006. Also, for the Gunnison's prairie dog, the Service believes that it can complete
18 the 90-day finding by January 26, 2006, and if substantial, a 12-month finding by
19 November 17, 2006. Lastly, for the Black Hills mountainsnail, the Service believes that
20 it can complete the 90-day finding by April 14, 2006, and if substantial, a 12-month
21 finding by January 19, 2007. This declaration sets forth in more detail why it was not
22 practicable for the Service to make these findings these past few years (§§XX-§§XX), our
23 workload outlook for FY 2005 and 2006 (§§XX-§§XX) and describes in detail the tasks that
24 we will undertake and the process that we will follow once we begin working on the 90-
25 day and 12-month findings (§§XX-§§XX).
26
27
28

1
2 4. [do we need to explain why we didn't get to the petitions in the past? These next 2
3 paragraphs might be antagonizing?] It has not been practicable for the Service to make
4 petition findings for these species since these petitions were submitted. Budgetary
5 constraints, workload, and staffing considerations have precluded the Service from
6 proceeding with a petition finding for these species in fiscal years (FY) 2001 through
7 2005. Numerous court orders and court-approved settlement agreements have caused the
8 Service to spend much of its budget for FYs 2001-2005 on court-ordered listing actions.
9 What little remaining funds left after complying with these court orders and court-
10 approved settlement agreements was spent on high priority listing actions such as work
11 related to emergency listings.
12
13
14
15

16 5. The Service cannot spend more than it has been allocated without violating the Anti-
17 Deficiency Act. The Service allocates its funds on actions that have the highest priority:
18 first, complying with court orders and court-approved settlement agreements; second,
19 emergency listings; and third, other high priority actions. Complying with court orders
20 and court-approved settlement agreements consumes virtually the entire budget allocated
21 to the Service. The Service also expends some of its listing funds for basic program
22 management and support, and litigation-related activities. Funding for litigation-related
23 activities is necessary because the Service faces an extensive section 4 litigation
24 workload, including lawsuits and notices of intent to sue (NOIs) in almost every Region.
25 Litigation support includes assembling administrative records for challenged listing
26 decisions, drafting declarations, responding to discovery requests, and reviewing legal
27
28

1 filings. Similarly, funding to undertake administrative and program management tasks is
2 necessary because many such tasks are required to run the Listing Program. These tasks
3 include responding to and drafting correspondence (including responses to petitions);
4 developing, defending, and implementing the Listing Program budget; and providing
5 management oversight of personnel in the Listing Program. The Service has had to
6 reduce a variety of essential administrative tasks such as coordination, training, and
7 policy development not directly related to managing our ability to meet the demands of
8 litigation and court-ordered deadlines.
9
10
11

12 **I. The Service's Budget and Workload for Fiscal Years 2003-2005**

13 6. [do we need to explain past budget history? Back to FY 2001 for Uinta?] FY 2003: The
14 Service did not have sufficient funding to begin work on the Uinta mountainsnail or
15 Black Hills mountainsnail petitions in FY 2003. On February 20, 2003, the President
16 signed into law the FY 2003 Omnibus Appropriations Act (Omnibus Act), which
17 appropriated funding to many Federal agencies and programs, including the Service's
18 program for completing listing and critical habitat rules pursuant to Section 4 of the ESA
19 (Listing Program), for the period from October 1, 2002, through September 30, 2003
20 (P.L. 108-7). Through the Omnibus Act, Congress specified that the Service could not
21 spend more than \$9,077,000 on Listing Program actions in FY 2003.¹ Of that total,
22
23
24

25 ¹ [delete footnote?] The Appropriations Committee Report also contained a table showing that Congress
26 intended for \$9,077,000 of the Service's resource management account to be used for Listing Program activities.
27 Although the Department attempts to follow the programmatic appropriation levels in the Committee Report, it is
28 not legally bound to do so, and can spend funds for purposes other than those contemplated in the Committee Report

1 Congress also specified that the Service could not spend more than \$6 million on
2 designating critical habitat for already-listed species. This \$6 million is often referred to
3 as 1117 funding. Due to Court Orders and Settlement Agreements, the Service exhausted
4 all its \$6 million funds for designating critical habitat for already listed species; in fact
5 the Service had to request relief from the courts to delay the deadlines for many of the
6 designations in to later fiscal years. Court orders, court-approved settlement agreements
7 and high priority listing actions, and essential program management and support virtually
8 consumed the remaining portion of the Service's \$9.077 million appropriation outside of
9 the \$6 million Congressionally imposed cap for critical habitat. The amount remaining,
10 outside of the \$6 million critical habitat 1117 funding, is referred to as 1111 funding. See
11 FY 2003 budget table.
12
13
14
15

- 16 5. In addition, in FY 2003, the Service conducted several listing actions. The Service
17 worked on 90-day petition findings for the Bromus, 4 skippers, and the Cerulean warbler.
18 These three petition findings were some of the oldest petitions that the Service had not
19 yet addressed, and were received before the Uinta mountainsnail and Black Hills
20

21
22 (called "reprogramming" funds), as long as doing so would not cause the Service to exceed a statutory spending
23 limit. The intended FY 2003 Listing Program appropriation level of \$9,077,000 contained in the Appropriations
24 Committee report was subject to an across-the-board cut of 0.65%, and was therefore reduced to \$9,018,000.
25 However, since the across-the-board cut did not apply to spending limits, the Service was allowed to reprogram
26 funds up to the total \$9,077,000 spending limit on listing funds. To ensure that the Service had as much funding as
27 possible to comply with the existing court orders and settlement agreements, it reprogrammed funding from other
28 resource management accounts to the Listing Program account up to the total spending limit (see Attachment #5).

1 mountainsnail petitions. Also in FY 2003, the Service conducted work on a proposed
2 listing for the southwest Alaskan Distinct Population Segment of the northern sea otter
3 (otter). The proposed listing rule for the otter was Region 7's top priority action [mention
4 that under LPG, listings higher priority than petition findings?], and the Service permitted
5 work on this action in order to maintain listing work and staff in that Region. Similarly,
6 the Cerulean warbler 90-day finding was Region 3's top priority, in addition to being a
7 relatively inexpensive action and a relatively old petition (again, the Cerulean warbler
8 petition was received before the Uinta and Black Hills mountainsnail petitions).
9
10

- 11
12 6. FY 2004: For FY 2004, the President requested an increase of \$3,209,000 over the
13 amount previously requested in FY 2003 for the Service's Listing Program. This
14 increase, which brought the total amount requested to \$12,286,000, included \$8,900,000
15 for critical habitat for already-listed species. As requested by the President, Congress
16 appropriated \$8,900,000 for critical habitat work in FY 2004 (Pub. L. No. 108-108 (Nov.
17 10, 2003). However, a number of factors have continued to dramatically increase the
18 amount of funding needed for judicially mandated critical habitat work. Most
19 significantly, budget shortfalls in FY 2003 compelled the Service to defer a significant
20 amount of work from FY 2003 into FY 2004 at an estimated cost of \$2,000,000. In many
21 instances, the courts that ordered that work have made it clear that they will not
22 countenance any additional requests for extensions of deadlines set forth in orders and
23 settlement agreements. Moreover, in the time since the President's FY 2004 Budget was
24 formulated, the Service has received several additional court orders requiring the Service
25 to perform critical habitat work in FY 2004. See FY 2004 budget table.
26
27
28

1
2
3 7. [do we need justifications as to why greater sage grouse and CA gnatcatcher higher
4 priority? Enough to say grouse older petition] In addition to Court Orders and Court-
5 approved settlement agreements, the remaining funds outside of the critical habitat cap
6 were virtually completely spent on high priority actions. One high priority action the
7 Service included in FY 2004 was the 90-day and 12-month findings for the greater sage-
8 grouse (petitions received July 2, 2002; March 24, 2003; and December 29, 2003).
9
10 Though this action was not a court ordered action, the Service treated it as a court ordered
11 action. The Service received a court order to make a 90-day petition finding for the
12 eastern sage-grouse. While conducting the 90-day finding, the Service found that the
13 evidence did not support a separation of the greater sage-grouse into eastern and western
14 subspecies. 69 Fed. Reg. 933, 936 (Jan. 7, 2004). The Service had not yet responded to 3
15 petitions (of which 2 were overdue and older than the Black Hills mountainsnail petition)
16 on the greater sage-grouse. In our 90-day finding for the eastern sage-grouse, the Service
17 committed to respond to the listing petitions for the greater sage-grouse within 90 days,
18 and to make a 12-month finding within 12 months, if required. Having made this public
19 commitment, and given the history of litigation involving various populations of sage-
20 grouse, the Service accorded the same priority to these petition findings as it would to a
21 court-ordered petition finding. Also, the Service conducted work on the California
22 gnatcatcher listing in response to a court order on the species critical habitat designation
23 (cite case). Though the court order was only for the proposed designation for the species,
24 the Service treated work on the final designation also as a court order because of a
25 mistake in the court order which cited the same date of April 11, 2003 as both the
26
27
28

1 deadline for the final and proposed designation. In order to best determine if critical
2 habitat should continue to be designated and finalized for the California gnatcatcher, the
3 Service conducted work on the taxonomy of the species.
4

5
6 8. FY 2005: On December 8, 2004, Congress passed the Consolidated Appropriations
7 Act, 2005, and appropriated \$16,175,000 for the endangered species listing program (P.L.
8 108-447). Congress further specified that not more than \$11,400,000 of the appropriation
9 for the listing program shall be used for the designation of critical habitat.
10

11
12 10. For FY 2005, all of the 1111 funds, the funds remaining outside of the 1117 critical
13 habitat cap, have been identified for Court Orders or Court-approved settlement
14 agreements. See paragraphs 13-16 for a list of work required by court order or court-
15 approved settlement agreement in FY 2005 that use 1111 or 1117 funds. However,
16 Congress also allows that the 1117 funding can be used for listing actions. Recently, the
17 Service identified listing actions, such as petition findings, that can be conducted with
18 1117 funding ["discretionary memo" available as attachment?]. In previous fiscal years,
19 the Service has been precluded from using 1117 funding for anything other than critical
20 habitat work because court orders and court-approved settlement agreements virtually
21 consumed the entire allocation for 1117 funding.
22
23

24
25 11. [need to be sure that our statements for candidate species consistent w/ candidate part of
26 suit] The Service intends, with these remaining 1117 funds, to address some of its
27 candidate species (species which are warranted for listing but have been precluded by
28

1 higher priority actions) and its oldest petitions. For the candidate species, the Service
2 will address the anchialine pool shrimp, which has an LPN of 1, and the Georgia pigtoe
3 and interrupted rocksnail, which have an LPN of 2.² There are six petitions that are older
4 than the August 21, 2001 Uinta mountainsnail; 11 petitions older than the September 24,
5 2003 Black Hills mountainsnail petition (but received after the Uinta mountainsnail
6 petition), and XX petitions that are older than the February 23, 2004 Gunnison's prairie
7 dog petition (but received after the Black Hills mountainsnail petition).
8
9

- 10
11 12. With the available FY 2005, the Service is currently working on making petition findings
12 for the Uinta mountainsnail and the six petitions received before the Uinta mountainsnail
13 petition (these six outstanding petitions are for the Yellowstone National Park Bison
14 herd; *Usnea longissima*; the Long-tailed duck; 4 subspecies of *Pseudocopaedoes eunus*;
15 the southeastern snowy plover and wintering piping plover; and the northern water
16 snake). The Service, in FY 2005, also intends to conduct several petition findings
17 received after the Uinta mountainsnail but received before the Black Hills mountainsnail.
18 (The petitions received between these two mountainsnails are: the Kokanee DPS; three
19 invertebrates; Andrew's dune scarab; Anacapa deer mouse; Longnose sucker; Berry Cave
20 salamander; Mexican garter snake; Northern pocket gopher; American dipper, Black
21 Hills DPS; Dakota skipper; and Weiku bug) In order for the Service to balance it's
22
23

24
25 ² The Georgia pigtoe and interrupted rocksnail was upgraded to an LPN 2 in the May 11, 2005 CNOR, but these 2
26 species co-occur in the Service's Region 4, which has a lower listing-related workload than Region 6, where the 3
27 petitioned species and the Parachute Penstemon in this suit occurs; the Service is also able to obtain some funding
28 efficiency by conducting work for the pigtoe and rocksnail simultaneously because they occupy the same area and
habitat.

workload amongst all these petition findings, in addition to other listing and critical habitat actions required already by court order or court-approved settlement agreement (see paragraph 13 and 14), the Service intends to conduct the petition findings for the Black Hills mountainsnail and the Gunnison's prairie dog shortly in FY 2006 with the staggered dates that the Service has requested.

II. Workload Considerations

13. For the remainder of FY 2005, the Service is required to perform the following listing actions in compliance with other court orders or settlement agreements involving XX listing actions and XX species. The list below also includes actions that must be started in FY 2005 in order to meet court-ordered deadlines in FY 2006. Attachment XX also provides a table of all of these listing actions and their estimated costs.

		Submit to
	<u>1 Final Listing Packages for 1 Species</u>	<u>Fed. Register</u>
1.	1 Species: SW Alaskan DPS of northern sea otter	N/A*
	* The Service published the proposed listing on 2/11/04, and anticipate the final listing rule to be submitted to the Federal Register shortly	

		Submit to
	<u>3 Proposed Listing for 3 Species</u>	<u>Fed. Register</u>
1.	1 Species: Gunnison sage grouse	9/2005*
2.	1 Species: Graham's penstemon	12/9/2005**
3.	1 Species: Arctic Grayling	4/2006***
	* Date offered in March 4, 2005 declaration to the Court	
	** A settlement agreement is currently being finalized for this deadline.	
	*** A settlement agreement is currently being finalized to make a final determination by 4/16/2007. A proposed listing, if applicable, may be needed approximately one year before the final determination is due.	

		Submit to
	<u>3 Final Listings & Critical Habitat Designations for 6 Species</u>	<u>Fed. Register</u>
1.	4 Species: 2 springsnails, assiminae, & amphipod	8/1/2005
2.	1 Species: Salt Creek tiger beetle	9/30/2005
3.	1 Species: Gila chub	10/21/2005

1
2 13 Final Critical Habitat Designations for 15 Species

Submit to
Fed. Register

3	1.	1 Species: CA tiger salamander, Central	8/10/2005
4	2.	1 Species: Bulltrout	9/15/2005
5	3.	1 Species: Western snowy plover	9/20/2005
6	4.	1 Species: Southwestern willow flycatcher	9/30/2005
7	5.	1 Species: Arkansas River Shiner	9/30/2005
8	6.	1 Species: San Jacinto crownscale	10/1/2005
9	7.	1 Species: Spreading navarretia	10/1/2005
10	8.	4 Species: Island foxes	11/1/2005
11	8.	1 Species: California red-legged frog	11/30/2005
12	10.	1 Species: Thread-leaved Brodiaea	11/30/2005
13	11.	1 Species: Coachella Valley milk-vetch	11/30/2005
14	12.	1 Species: Kootenai River sturgeon	12/1/2005*
15	13.	0 Species: CA tiger salamander, Sonoma	12/1/2005

16 * The Service has requested an extension of this date as part of its Motion for
17 Reconsideration

18 17 Proposed Critical Habitat Designations for 24 Species

Published/
Submit to
Fed. Register

19	1.	2 Species: Spikedace/Loachminnow	8/31/2005
20	2.	1 Species: mountain yellow-legged frog, southern CA DPS	9/1/2005
21	3.	1 Species: Rota bridled white-eye	9/7/2005
22	4.	1 Species: Alameda whipsnake	10/1/2006
23	5.	3 Species: Fender's blue butterfly, Willamette daisy, and Kincaid's lupine	10/15/2005
24	6.	1 Species: Willoway monardella	10/30/2005
25	7.	1 Species: Brauton's milk-vetch	11/1/2005
26	8.	1 Species: Lyon's Pentachaeta	11/1/2005
27	9.	1 Species: Canada lynx	11/1/2005
28	10.	3 Species: St. Andrew, Perdido Key & Chocawatchee beach mice	11/15/2005*
29	11.	1 Species: Laguna skipper	11/30/2005
30	12.	1 Species: 1 Piping plover- wintering	12/8/2005
31	13.	1 Species: Northern spotted owl	12/15/2005
32	14.	1 Species: Alabama beach mouse	1/18/2006*
33	15.	2 Species: Holmgren's & Shivwits milk-vetches	3/17/2006
34	16.	2 Species: Suisun's thistle and soft bird's beak	4/11/2006
35	17.	1 Species: Yardon's piperia	early 2006**

36 * Date offered in December 17, 2005 declaration to the Court

37 ** Per Settlement Agreement, this is due by 10/5/2006, however, the Service is
38 already conducting work on this and anticipates completing this much earlier.

Submit to

3 12-Month Findings for 3 Species

Fed. Register

1. 1 Species: Gentry's indigobush

9/15/2005

1. 1 Species: Cicurina cueva

12/8/2005

1. 1 Species: Yellowstone cutthroat trout

2/14/2006

14. Region 6 (the Region responsible for these three petition findings), is responsible for a substantial number of listing actions discussed above in paragraph 13 (court ordered actions). For most of these actions, Region 6 is the lead Region responsible for the action, but for some of these actions another Region is the lead Region responsible for the action while Region 6 assists. Region 6 will also be making a statutorily overdue petition finding not required by court order as discussed in paragraph 11. Below is a summary table of the actions required by Region 6 for the remainder of FY 2005.

Species	Action	Due to Federal Register
Bulltrout	Final Critical Habitat Designation	9/15/2005
Salt Creek tiger beetle	Final listing & Critical Habitat Designation	9/30/2005
Arkansas River Shiner	Final Critical Habitat Designation	9/30/2005
Southwestern willow flycatcher	Final Critical Habitat Designation	9/30/2005
Gunnison sage grouse	Proposed listing	9/2005
Canada lynx	Proposed Critical Habitat Designation	11/1/2005
Kootenai River sturgeon	Final Critical Habitat Designation	12/1/2005
Graham's penstemon	Proposed listing	12/9/2005
Yellowstone cutthroat trout	12-month finding	2/14/2006
Holmgren's & Shivwits milk-vetches	Proposed Critical Habitat Designation	3/17/2006
Arctic Grayling	Proposed listing (to meet deadline for final determination)	4/2006
Yellowstone National Park Bison herd	90-day finding (petition received in 2001)	Statutorily overdue

15. For the first 7 months of FY 2006 (before the Service plans to complete the 90-day finding for the Black Hills mountainsnail on April 14, 2006), the Service is required to complete the following listing actions in compliance with other court orders or settlement agreements, in addition to the actions listed above in paragraph 13, involving XX listing

1 actions and XX species. The below list does not include many listing related actions that
2 must be completed after April 2006.

3
4 1 Final Listing for 12 species

- 5 1. 12 Species: Hawaiian picture-wing flies

Submit to
Fed. Register
3/24/2006

6
7 2 12-Month Findings for 4 Species

- 8 1. 2 Species: Agave and Solanum
2. 2 Species: Roundtail and headwater chubs

Submit to
Fed. Register
2/25/2006
4/6/2006

9
10 6 90-Day Findings for 6 Species

- 11 1. 1 Species: Mexican garter snake
12 2. 1 Species: FL scrub jay (uplisting)
13 3. 1 Species: mussentuchit gilia
14 4. 1 Species: American dipper
15 5. 1 Species: Douglas County pocket gopher
16 6. 1 Species: Island Marble butterfly

Submit to
Fed. Register
12/16/2005
1/15/06
1/19/2006*
1/20/2006
2/3/2006
2/5/2006

17 * A settlement agreement is currently being finalized for this deadline.

- 18 16. Of the above actions listed in paragraph 15, Region 6 is responsible for the 90-day
19 petition findings for the mussentuchit gilia, due January 19, 2006; the American dipper,
20 due January 20, 2006; and the Douglas County pocket gopher, due February 3, 2006.

21
22 **Completion of a 90-day Finding and 12-month Finding**

- 23 17. 90-day Finding: The Act requires that the Service make a finding on whether a petition to
24 list, delist or reclassify a species presents substantial scientific or commercial information
25 to demonstrate that the petitioned action may be warranted. 16 U.S.C. 1533(b)(3)(A).
26 This finding is to be made within 90 days of receiving the petition, to the maximum
27 extent practicable. For the three petitions in this suit, the Field Office needs to review the
28

1 petition and submit its recommendation, in the form of a draft petition finding and
2 Federal Register notice, to the Regional Office; the Regional Office then reviews that
3 recommendation. Upon completion of the Regional Office's review, the Regional
4 Solicitor's Office conducts its legal review. The Regional Director then approves the
5 draft documents, after which the Region must seek the concurrence of any other affected
6 Region, and forward the documents to the Washington Office. In Washington, the draft
7 documents are reviewed for biological adequacy and national policy consistency by the
8 Division of Conservation and Classification (DCC). Prior to the review by the Assistant
9 Director for Endangered Species, the Service's Office of Policy and Directives
10 Management (PDM) conducts a technical review of the draft Federal Register notice for
11 format. The documents may be sent back to the Field or Regional Offices for additional
12 work or revisions at any point in the review process. Once signed by the Director, the
13 notice is submitted to the Federal Register and usually published within 3 days. In order
14 to ensure that we produce a biologically and legally sound finding, the Service will need
15 the entire 90 day time period allowable under the ESA.
16
17
18
19
20

- 21 18. [not necessary since Ps brief only requesting 90-day finding dates?] 12-month Finding: If
22 ~~we find that the spider petition presents substantial information to indicate that listing~~
23 ~~may be warranted, the Service must next commence a review of the status of the species~~
24 ~~in order to identify its conservation status and determine if the species warrants listing as~~
25 ~~a threatened or endangered species under the ESA, 16 U.S.C. § 1533(b)(3)(A). The~~
26 ~~status review involves obtaining and reviewing all the available information on the~~
27 ~~species. During a status review, the Service's Field Office must obtain the best scientific~~
28

1 and commercial information; solicit information from the public during one or more
2 public comment periods; conduct a literature search; contact species experts and ask them
3 to provide information concerning the species, the species' habitat, or the threats faced by
4 the species; contact and solicit information from other Service Regional and Field Offices
5 in the species' range; contact and solicit information from Federal, State, county, foreign,
6 tribal, and other agencies with jurisdiction over, or involvement in, the species or its
7 habitat or threats facing the species; compile and analyze all of the information gathered
8 from these disparate sources; and prepare a draft finding.

9
10
11
12 19. — Based upon the status review, the Field Office makes a recommendation that the listing is
13 warranted, not warranted, or warranted but precluded by other pending listing actions. If
14 the recommendation is that listing is warranted, the Field Office also drafts a proposed
15 rule to list the species. The proposed rule builds on the status review and incorporates the
16 substantive and procedural requirements of the Endangered Species Act and its
17 implementing regulations and policy. The Field Office submits its recommendation to the
18 Regional Office. The Regional Office reviews the Field Office's recommended petition
19 findings (and proposed rule if applicable), and gets concurrence from the Regional
20 Solicitor's Office. Upon approval by the Regional Director, the draft documents are then
21 forwarded to the Washington Office. As with the 90-day finding, DCC reviews the draft
22 documents for biological adequacy and consistently with national policy and PDM
23 conducts a technical review of the draft Federal Register notice and proposed rule, if
24 applicable, for format. If a proposed rule is included with the petition finding, the
25 Department of the Interior's Office of Regulatory Affairs (ORA) conducts a final
26
27
28

1 regulatory review prior to publication in the Federal Register. The documents may be
2 sent back to the Field or Regional Offices for additional work or revisions at any point in
3 the review process. Once signed by the Director, and cleared by ORA if required, the
4 notice and proposed rule, if there is one, are submitted to the Federal Register for
5 publication.
6

7
8 20. In order to be assured that any 12-month finding is made on the basis of the best available
9 scientific and commercial data, we will need to analyze the status of the species. As part
10 of the status review, the Service must also seek to identify, obtain, and review all
11 available information on the spider. At least one public comment period of 60 days will
12 be provided, and the Service will need to adequately address the extensive and technical
13 comments and information that we expect to receive regarding this 90-day finding. We
14 will incorporate comments and other information from the status review, as well as
15 responses to those comments, into the draft 12-month finding. We anticipate that, after
16 completing the status review and addressing all the comments received and review
17 completed by the Regional Office, the draft finding will then be sent on to the
18 Washington Office for review, signature, and submission to the Federal Register by
19 December 20, 2005.
20
21
22
23

24 21. The work required to complete and review the 12-month finding is significant. Based
25 upon the description above in paragraphs ### ##, the Service anticipates that it would need
26 ### months (including the public comment period) to complete the 12-month finding
27 without affecting the quality of the analysis or reducing public participation. The Service
28

1 requests ~~this time to complete all of the necessary work to ensure that we make a 12-~~
2 ~~month finding that is both biologically and legally sound.~~

3
4 **Conclusion**

5
6
7 22. Because of its tremendous workload, the Service has planned to complete the petition
8 findings for these 3 petitioned species in a staggered schedule; the planned dates for these
9 3 petitions correlate with all the other outstanding petition findings that the Service will
10 be conducting. For the Uinta mountainsnail, the Service plans to complete the 90-day
11 finding by November 7, 2005, and if substantial, a 12-month finding by September 12,
12 2006. Also, for the Gunnison's prairie dog, the Service believes that it can complete the
13 90-day finding by January 26, 2006, and if substantial, a 12-month finding by November
14 17, 2006. Lastly, for the Black Hills mountainsnail, the Service believes that it can
15 complete the 90-day finding by April 14, 2006, and if substantial, a 12-month finding by
16 January 19, 2007.

17
18
19
20 23. This declaration is made pursuant to 28 U.S.C. § 1746. I declare under penalty of perjury
21 that the foregoing and accompanying Attachments are true and correct to the best of my
22 current knowledge.

23
24
25 Executed in Washington, D.C., on this ____ day of July, 2005.

26
27
28 _____
Elizabeth H. Stevens
Case No. 04-cv-02026

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Attachment 1 - Table of All FY 2005 Listing and Critical Habitat Actions