

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BIODIVERSITY CONSERVATION ALLIANCE, et al.,)
)
 Plaintiffs,)
)
 v.) Civil No. 04-2026 (GK)
)
 GALE NORTON, et al.,) Next Deadline: July 20, 2005
) Defendants')
) Combined opposition and)
 Defendants.) cross-motion for summary)
) judgment on the fourth,)
) fifth, and sixth causes)
) of action)
)

**PLAINTIFFS' STATEMENT OF MATERIAL FACTS NOT IN GENUINE DISPUTE TO
ACCOMPANY PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON
PLAINTIFFS' FOURTH, FIFTH AND SIXTH CAUSES OF ACTION**

Pursuant to Fed. R. Civ. P. 56 and LCvR 56.1, Plaintiffs Biodiversity Conservation Alliance, Center for Biological Diversity, Forest Guardians, Center for Native Ecosystems, Utah Environmental Congress, Colorado Native Plant Society, Steve L. O'Kane, Jr, and Jeremy Nichols submit the following statement of material facts about which there is no genuine issue or dispute.

1. The U.S. Fish and Wildlife Service ("FWS") received Plaintiffs' Forest Guardians, Center for Biological Diversity, and Center for Native Ecosystems, among others, petition to list the Gunnison's prairie dog (Gunnison's prairie dog petition) on February 25, 2004, which is more than 12 months ago. Defs.' Answer to Second Am. Compl. ("Answer") at ¶ 50.
2. FWS has not issued a finding pursuant to 16 U.S.C. § 1533(b)(3)(A) (90-day finding) for the Gunnison's prairie dog petition. See Answer at ¶ 99.

3. By letter dated July 29, 2004, Plaintiffs Forest Guardians and Center for Native Ecosystems informed Defendants of their intent to sue regarding FWS's failure to issue a 90-day finding on the Gunnison's prairie dog petition. See Answer at ¶ 51. Defendants received this July 29, 2004 letter more than sixty days before Plaintiffs filed this suit. See Id.
4. FWS received Plaintiffs Biodiversity Conservation Alliance, Center for Native Ecosystems, and Jeremy Nichols, among others, petition to list the Black Hills mountainsnail (Black Hills mountainsnail petition) by September 30, 2003, which is more than 12 months ago. Answer at ¶ 65.
5. FWS has not issued a 90-day finding for the Black Hills mountainsnail petition. See Answer at ¶ 105.
6. By letter dated January 13, 2004, Plaintiffs Biodiversity Conservation Alliance, Center for Biological Diversity, Center for Native Ecosystems, and Jeremy Nichols informed Defendants of their intent to sue regarding FWS's failure to issue a 90-day finding on the Black Hills mountainsnail petition. See Answer at ¶ 66. Defendants received this January 13, 2004 letter more than 60 days before Plaintiffs filed this suit. See Id.
7. FWS received Plaintiff Utah Environmental Congress petition to list the Uinta mountainsnail (Uinta mountainsnail petition August 29, 2001, which is more than 12 months ago. Answer at ¶ 71.
8. FWS has not issued a 90-day finding for the Uinta mountainsnail petition. See Answer at ¶ 109.
9. By letter dated July 13, 2004 Plaintiffs Biodiversity Conservation Alliance, Center for Native Ecosystems, and Utah Environmental Congress informed FWS of their intent to sue regarding FWS's failure to issue a 90-day finding on Uinta mountainsnail petition.

See Answer at ¶ 72. Defendants received this July 13, 2004 letter more than sixty days before Plaintiffs filed this suit. See Id.

10. Plaintiff Forest Guardians has an organizational interest in having FWS issue a 90-day finding for their Gunnison's prairie dog petition, which Forest Guardians spent resources on preparing. See Exhibit (Ex.) 1, (Dec. of Dr. Nicole J. Rosmarino) at ¶¶ 4, 7.

11. Protection of the Gunnison's prairie dog and its habitat is germane to the purpose of Forest Guardians. Id. at ¶¶, 3,4. See also <http://www.fguardians.org/fg/aboutus.htm> (Forest Guardians' mission statement is: "In our work, we aim to: Protect and restore the native biological diversity and watersheds of the American Southwest; educate and enlist citizens to support protection of the forests, rivers, deserts and grasslands of this arid region; advocate for the principles of conservation biology in plans to restore degraded ecosystems and watersheds; enforce and strengthen environmental laws; support communities in efforts to protect their land and to practice and promote sustainable use of natural resources.")

12. Forest Guardians' member Dr. Nicole J. Rosmarino has educational, scientific, aesthetic, spiritual, civic and conservation interest, and will continue to have these interests, in the Gunnison's prairie dog and its habitat. Ex. 1 at ¶¶ 2-13.

13. Harm to these interests are traceable to FWS' failure to make a 90-day finding for the Gunnison's prairie dog and would be remedied, in part, by FWS making of a 90-day finding. Id.

14. Plaintiff Biodiversity Conservation Alliance (BCA) has an organizational interest in having FWS issue a 90-day finding for their Black Hills mountainsnail petition, which BCA spent resources on preparing. See Ex. 2, (Dec. of Jeremy Nichols) at ¶¶ 7, 11.

15. Protection of the Black Hills mountainsnail and its habitat is germane to the purpose of BCA. Id. at ¶¶ 1,2 11.

16. BCA member, Jeremy Nichols, who is also an individually named Plaintiff, has educational, scientific, recreational, aesthetic, emotional, spiritual, family, and conservation interests, and will continue to have these interests, in the Black Hills mountainsnail and its habitat. Ex. 2 at ¶¶ 1, 3 – 7, 10 - 15.

17. Harm to these interests are traceable to FWS' failure to make a 90-day finding for the Black Hills mountainsnail and would be remedied, in part, by FWS making of a 90-day finding.

Id.

18. Plaintiff Utah Environmental Congress (UEC) has an organizational interest in having FWS issue a 90-day finding for their Uinta mountainsnail petition. See Answer at ¶ 71.

19. Protection of the Uinta mountainsnail and its habitat is germane to the purpose of UEC. See Ex. 3 (Dec. of Chad Hamblin) at ¶ 2. See also <http://www.uec-utah.org/mission/mission.htm> (UEC's mission statement is: "Reclaiming and acting upon our ancestral responsibility to the land, the Utah Environmental Congress brings people together to engage in genuine protection of living forest systems that provide islands of refuge in Utah's desert country.")

20. UEC member Chad Hamblin has water quality and quantity, recreational, hunting, family, aesthetic, scientific, spiritual, professional, educational, moral and conservation interests, and will continue to have these interests, in the Uinta mountainsnail and its habitat. Ex. 3 at ¶¶ 2- 10.

21. Harm to these interests are traceable to FWS' failure to make a 90-day finding for the Uinta mountainsnail and would be remedied, in part, by FWS making of a 90-day finding. Id.

Respectfully submitted,

/s
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