

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

BIODIVERSITY CONSERVATION ALLIANCE, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. ) Civil No. 04-2026 (GK)  
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 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' MOTION FOR SUMMARY JUDGMENT ON PLAINTIFFS' FOURTH,  
FIFTH, AND SIXTH CAUSES OF ACTION AND MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT**

**I. INTRODUCTION**

Pursuant to Fed. R. Civ. P. 56(c) 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 respectfully request summary judgment on Plaintiffs' Fourth, Fifth and Sixth causes of action in Plaintiffs' Second Amended Complaint. These are straightforward "missed deadline" claims against a federal agency that has ignored statutory deadlines. Specifically, Defendants have failed to make "90-day findings," that is findings on whether the Plaintiffs' petitions to list the Gunnison's prairie dog, Black Hills mountainsnail and Uinta mountainsnail present substantial scientific or commercial information indicating that the petitioned action may be warranted within the mandatory 12 month timeframe provided for in Section 4(b)(3) of the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1533(b)(3). These substantial information

findings, commonly referred to as 90-day findings, are due within 90 days of petition receipt, to the “maximum extent practicable,” 16 U.S.C. § 1533(b)(3)(A), but in no event within more than 12 months of petition receipt. 16 U.S.C. § 1533(b)(3)(B). 90-day findings are a crucial first step in the process of determining whether these three imperiled species will be listed under the ESA. It is only once a species is listed does the species and the ecosystems upon which it depends begin to receive protection under the ESA.

## **II. 90-DAY AND 12-MONTH FINDINGS UNDER THE ENDANGERED SPECIES ACT**

Congress enacted the ESA to provide “a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved” and “to provide a program for the conservation of . . . endangered and threatened species.” 16 U.S.C. § 1531(b). The Supreme Court has noted that “[t]he plain intent of Congress in enacting this statute was to halt and reverse the trend toward species extinction, whatever the cost. This is reflected not only in the stated policies of the Act, but in literally every section of the statute.” Tennessee Valley Auth. v. Hill, 437 U.S. 153, 184 (1978).

However, the ESA does nothing to protect a species unless that species is first listed under the Act as an endangered or threatened species. Congress characterizes ESA Section 4, which establishes the process for listing a species, as “[t]he cornerstone of effective implementation of the [ESA].” S. Rep. No. 418, 97th Cong., 2d Sess., p. 10 (1982). See also H. Rep. No. 567, 97th Cong., 2d Sess., p. 10 (1982) reprinted in 1982 U.S.C.C.A.N. 2807, 2810 (“The listing process under Section 4 is the keystone of the [ESA].”).

Section 4 provides two methods to list a species as endangered or threatened. First, the United States Fish and Wildlife Service (FWS), acting pursuant to the authority of the Secretary

of Interior, may determine on its own initiative that a species merits listing. 16 U.S.C. § 1533(a)(1). Alternatively, the ESA allows interested persons to petition FWS to list a species. 16 U.S.C. § 1533(b)(3). This Motion involves the latter method.

Once FWS receives a petition from an interested person to list a species as endangered or threatened, Section 4 imposes several deadlines on the agency. First, FWS must review the petition and within 90 days “to the maximum extent practicable,” make a finding as to whether the petition presents “substantial scientific or commercial information indicating that the petitioned [listing] may be warranted.” 16 U.S.C. § 1533(b)(3)(A). If FWS’s “90-day finding” is positive, that is if the petition indicates that listing may be warranted, then FWS must then issue a second finding within twelve (12) months of receiving the listing petition, , commonly referred to as a “12-month finding.” 16 U.S.C. § 1533(b)(3)(B). In the 12-month finding FWS must reach one of three conclusions with regard to the listing petition: listing of the species under the ESA is (1) warranted; (2) not warranted; or (3) warranted but precluded by other listing proposals which require immediate attention. Id.

### **III. BACKGROUND INFORMATION ON THE GUNNISON’S PRAIRIE DOG, BLACK HILLS MOUNTAIN SNAIL AND UINTA MOUNTAIN SNAIL.**

Gunnison’s prairie dogs are roughly one foot in length and golden brown in color. They are social, colonial animals that have historically inhabited high desert and mountainous grasslands in New Mexico, Arizona, Colorado, and Utah. Over the past century, however, Gunnison’s prairie dogs have disappeared from the vast majority of their former range, and where they remain today they are significantly fewer in number.

Gunnison’s prairie dogs are a keystone species. Gunnison’s prairie dogs serve as prey for a variety of other animals. Further, their complex burrow networks create refuge for a multitude

of associated mammals, birds, and reptiles, and their clipping, grazing, and other activities above ground alter soil and plant characteristics to create unique habitat for other species.

Aside from the important role that Gunnison's prairie dogs play in the ecosystem where they are found, they have also drawn scientific attention by the sophistication of their communication system. Researchers have concluded that this communication system is the most complex of any non-human animal ever studied.

Despite these beneficial qualities, Gunnison's prairie dogs are increasingly beset by a variety of human-induced threats to their continued existence. As a result they have disappeared from four of the eight Arizona counties in which they were historically found and have also lost substantial acreage from their range in New Mexico and Colorado. Moreover, where Gunnison's prairie dogs remain, their "towns" are often small and widely scattered. Few large complexes remain in existence.

Plaintiffs Forest Guardians, Center for Biological Diversity and Center for Native Ecosystems submitted a petition to list the Gunnison's Prairie Dog as endangered or threatened on February 23, 2004. Defendants received this petition to list the Gunnison's prairie dog over a year ago. On October 14, 2004 the FWS sent a letter to Dr. Nicole Rosmarino of Forest Guardians indicating that it is likely that the FWS will not initiate a "substantial information" review on the Gunnison's Prairie Dog petition in FY 2005 without a court order.

The Black Hills mountainsnail is a critically imperiled land snail species found only in the forests of the Black Hills, an isolated mountain range located in western South Dakota and northeastern Wyoming. As an isolated mountain ecosystem, the Black Hills are especially vulnerable to environmental degradation. However, little has been done to stem the tide of ecological damage and many species unique to the region face the possibility of extinction.

White in color with reddish-brown markings, the Black Hills mountainsnail, also known as the Cooper's rocky mountainsnail, is the largest species of mountainsnail found in the Black Hills. The Black Hills mountainsnail plays an integral part in the Black Hills ecosystem. Land snails, such as the Black Hills mountainsnail, contribute substantially to nutrient recycling by breaking down plant litter and animal waste. In turn, they serve as prey for a variety of small mammals, reptiles, amphibians, birds, and insects.

The specialized habitat requirements of the Black Hills mountainsnail make it an excellent indicator of general ecosystem health. The Black Hills mountainsnail requires moist soils with high calcium levels. It is thus most often found in high-quality forested riparian habitat, and is highly sensitive to reductions in the quality of this habitat. Moreover, the Black Hills mountainsnail is physically incapable of migrating; although members of the species live from 2-6 years, they typically journey no more than 20 feet from their place of birth during their lifetime. This combination of slow movement and vulnerability to habitat disturbances means that the Black Hills mountainsnail provides an ideal window into the overall health of the Black Hills ecosystem. Determining the health of Black Hills mountainsnail colonies thus aids in assessing ecosystem restoration projects, gauging the status and health of other species, and measuring the effects of land management activities.

The Black Hills mountainsnail's range and habitat have undergone significant declines in the past century. Today, only 32 Black Hills mountainsnail populations are known to exist. Moreover, the Black Hills mountainsnail is not found in abundance at the majority of these colonies. On the contrary, at 18 of these colonies the Black Hills mountainsnail was found to be rare or uncommon. Of the 32 Black Hills mountainsnail populations known to exist, 20 are

located on land managed by the United States Forest Service, while three additional colonies are found on land managed by other government entities.

Plaintiffs Biodiversity Conservation Alliance, Center for Native Ecosystems and Jeremy Nichols submitted a petition to list the Black Hills mountainsnail as endangered or threatened on September 24, 2003. Both Defendants received this petition to list the mountainsnail by September 30, 2003, more than one year ago.

The Uinta mountainsnail is the rarest unprotected snail species in the country, found in northeastern Utah. Only one population of Uinta mountainsnail is known to exist, and this population inhabits an area less than one acre in size. The lone Uinta mountainsnail colony is found on federal property, along Hominy Creek in the Ashley National Forest.

To assist the Uinta mountainsnail in overcoming the threats to its habitat, Plaintiff Utah Environmental Congress submitted a petition to list the Uinta mountainsnail as endangered or threatened on August 21, 2001. Defendants received this petition to list the Uinta mountainsnail on August 29, 2001, more than one year ago.

#### **IV. ARGUMENT**

Plaintiffs move for summary judgment on their Fourth, Fifth and Sixth Causes of Act: that Defendants are in violation of their statutory mandate by failing to issue 90-day findings on the Gunnison's prairie dog, Black Hills mountainsnail and Uinta mountainsnail listing petitions within one year of receiving these petitions.

##### **A. SUMMARY JUDGMENT STANDARD**

Fed. R. Civ. P. 56 provides for the entry of summary judgment if "there is no genuine issue of material fact and . . . the moving party is entitled to judgment as a matter of law." Fed.

R. Civ. P. 56(c). When the moving party has demonstrated that there is no material issue of fact for trial, the “adverse party may not rest upon the mere allegations or denials of the adverse party’s pleadings, but ... must set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). Summary judgment is not “a disfavored procedural shortcut” but “an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action.” Celotex Corporation v. Catrett, 477 U.S. 317 (1986).

#### **B. STANDARD OF REVIEW**

Because the ESA does not contain an internal standard of review, this Court’s review is governed by the Administrative Procedure Act (“APA”). Gerber v. Norton, 294 F.3d 173, 178 fn.4 (D.C. Cir. 2002) (citing Cabinet Mountains Wilderness v. Peterson, 685 F.2d 678, 685 (D.C. Cir. 1982)). Under the APA’s applicable standard, the reviewing court is directed to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). In interpreting the ESA, where, as here, Congress has “directly spoken” to the issues at hand, the court must give effect to that plain intent without affording any deference to a contrary agency interpretation. Chevron v. Natural Resources Defense Council, 467 U.S. 837, 843 (1984).

#### **C. STANDING AND NOTICE**

Plaintiffs do not anticipate that Defendants will challenge Plaintiffs’ standing or notice but Plaintiffs are nevertheless obligated to submit sufficient information to establish that Plaintiffs have standing to assert these claims. The familiar standard for standing of environmental organizations in environmental citizen suits is (1) their members have standing to sue in their own right; (2) the interests at stake are germane to each organization’s purpose; and (3) neither the claim asserted nor the relief requested requires their members to participate

directly in the lawsuit. See Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977). Plaintiffs have established the facts necessary to prove each of these elements. See Plaintiffs Statement of Material Facts Not in Genuine Dispute (Plaintiffs' Facts ) at ¶¶ 10-21. Similarly, Plaintiffs provided the notice required by 16 U.S.C. § 1540(g)(2)(C). See Plaintiffs' Fact at ¶¶ 3, 6, 9.

**D. PLAINTIFFS ARE ENTITLED TO SUMMARY JUDGMENT ON THEIR FOURTH, FIFTH AND SIXTHS CAUSES OF ACTION**

Plaintiffs are entitled to summary judgment because the ESA imposes a mandatory duty on FWS to issue a 90-day finding within 12 months of receiving a petition to list a species and it has been more than 12 months since FWS received the petitions to list the Gunnison's prairie dog, Black Hills mountainsnail and Uinta mountainsnail. When FWS receives a petition from an interested person to list a species as endangered or threatened, Section 4(b)(3)(A) of the ESA directs the agency to make a substantial information finding on whether the listing may be warranted "[t]o the maximum extent practicable, within 90 days after receiving [the] petition." 16 U.S.C. § 1533(b)(3)(A). The ESA's "maximum extent practicable" language provides FWS with a degree of flexibility in the timing of making 90-day findings. However, the ESA's plain language also places a cap on this flexibility by imposing a non-discretionary duty to make a 90-day finding within 12 months of receiving a petition. 16 U.S.C. § 1533(b)(3)(A)&(B).

The rigid deadline for the 12-month finding thus prevents FWS from delaying the 90-day finding indefinitely, as the 90-day finding is a statutorily-required step on the way to the 12-month finding. If the FWS was able to indefinitely avoid making a 90-day finding, the mandatory requirement to make a 12-month finding within 12 months would be eviscerated.

The Ninth Circuit reached this precise conclusion in Biodiversity Legal Foundation v. Badgley, 309 F.3d 1166 (9th Cir. 2002). There, as here, plaintiff environmental organizations

sued FWS for failure to issue a 90-day finding within 12 months of receiving listing petitions. The Ninth Circuit held that the only “logical” interpretation of the ESA’s two listing deadlines in Section 4(b)(3) requires FWS to issue a 90-day finding and, if appropriate, a 12-month determination both within one year of receipt of the petition. *Id.* at 1175. The Ninth Circuit held that the mandatory 12 month deadline for a finding pursuant to 16 U.S.C. § 1533 (b)(3)(B) constrains FWS’ discretion to delay a 90-day finding beyond 12 months after receipt of a listing petition. Biodiversity Legal Found. v. Badgley, 309 F.3d at 1175.

Case law in this Court and other courts also supports this reading of the ESA. In American Lands Alliance v. Norton, the Court noted that “even if it is not practicable to issue a substantial [information] finding within ninety days of the petition being filed, [FWS] must complete the preliminary substantial information finding within twelve months, the time deadline by which 16 U.S.C. § 1533(b)(3)(B) must be complied with.” American Lands Alliance v. Norton, 242 F. Supp. 2d 1, 8 fnt. 7 (D.D.C. 2003), vacated in part by American Lands Alliance v. Norton, Civil Action No. 00-2339 (RBW), 2003 U.S. Dist. LEXIS 26321 (D.D.C. May 13, 2003) (citing Biodiversity Legal Found. v. Babbitt, 63 F. Supp. 2d 31 (D.D.C. 1999)).<sup>1</sup> Similarly the district court in the Southern District of California concluded, “[i]f the discretion inherent in the 90-day finding is permitted to unleash the second requirement of a 12-month finding, the rest of the statute which rests, not on definitive time lines but on the completion of subsequent steps, would be subject to the complete discretion of the agency.” Southwest Center v. Babbitt, Civ. No. 98-1785-J (S.D. Cal. Oct. 28, 1999) (Slip Opinion Attached as Exhibit 4). As such, the

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<sup>1</sup> Although on reconsideration American Lands Alliance was subsequently vacated in part, the portion of the original opinion cited above was never called into question. Rather, the vacatur stemmed from FWS’s prior issuance of a warranted but precluded finding made on the agency’s own initiative which mooted the action. See American Lands Alliance v. Norton, Civil Action No. 00-2339 (RBW), 2003 U.S. Dist. LEXIS 26321 (D.D.C. May 13, 2003) at \*8-10.

court held "the only internally consistent interpretation of the plain language of the 90-day finding and the 12-month is that Congress intended to give some room in the initial processing of the [petitions], but intended to cap that discretion by imposing a 12-month requirement." Slip Op. at 9 ("The discretion inherent in the 90-day finding must be curtailed to accord with the ultimate time-limit imposed by the 12-month finding").

Fundamental rules of statutory interpretation also dictate that FWS must make a 90-day finding within 12 months of the receipt of a petition. "It is an elementary canon of construction that an interpretation which gives effect to all sections of a statute is preferred." Biodiversity Legal Found. v. Badgley, 309 F.3d at 1175; Colautti v. Franklin, 439 U.S. 379, 392 (1979). Here, "[t]he only way to give effect to both deadline provisions [in ESA §§ 4(b)(3)(A) and 4(b)(3)(B)] is to apply the twelve-month deadline to both [90-day findings and 12-month findings]." Biodiversity Legal Found. v. Badgley, 309 F.3d at 1175.

Furthermore, if FWS is permitted to delay the 90-day finding indefinitely, the agency is effectively permitted to avoid the listing process altogether. See Biodiversity Legal Found. v. Babbitt, 63 F.Supp.2d at 34-35 (discussing evidence that it was FWS' practice "to ignore citizen petitions, precisely in order to avoid starting the 12-month clock"). To allow such an evasion of the entire listing process would undermine Congressional intent. Before the 1982 amendments to the ESA, the Act did not contain deadlines for FWS' response to citizen petitions. Unlimited in its discretion, FWS failed to respond to such petitions. See H.R. Rep. No. 567, 97th Cong., 2d Sess. at 11. In response, Congress amended Section 4 of the ESA with the explicit intent to include deadlines that would ensure that petitions were ushered through the listing process in a timely manner. Congress intended the 1982 amendments to "replace the Secretary's discretion with mandatory, nondiscretionary duties." H.R. Conf. Rep. No. 835, 97th Cong. 2d Sess., at 20;

see also American Lands Alliance, 242 F. Supp. 2d at 10-11 (explaining high priority that Congress afforded to listing petitions).

Had Congress intended to tie the 12-month finding deadline to the day that FWS makes its 90-day finding, it could have done so. For example, Congress tied the publication of a final listing rule to the date of publication of the proposed listing rule, and not to receipt of the petition. 16 U.S.C. § 1533(b)(6)(A). In contrast, Congress chose instead to start the clock for both the 90-day finding and the 12 month finding on the date that FWS receives the petition. 16 U.S.C. § 1533(b)(3). “[Where] Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” Rodriguez v. United States, 484 U.S. 522, 525 (1987) (quoting Russello v. United States, 464 U.S. 16, 23 (1983)). Thus, Congress intended a mandatory deadline for 90-day findings so that FWS could not use its failure to make a 90-day finding as a tool to avoid the mandatory 12 month finding requirement and thus completely defeat the citizen petition listing process.<sup>2</sup>

Moreover, allowing FWS to avoid the listing process would not only undermine Congressional intent; it could have dire consequences for the important interests that Congress sought to protect in the ESA. The citizen petitions here and the applicable deadlines concern the

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<sup>2</sup> The Tenth Circuit's decision in Biodiversity Legal Foundation v. Babbitt, 146 F.3d 1249 (10th Cir. 1998) does not apply to Plaintiffs' motion. The Tenth Circuit's ruling did not address the legal question of the limits of FWS's discretion in making the initial petition finding -- the issue presented in this case. In Biodiversity, plaintiffs were challenging the authority of FWS to rely on its Listing Priority Guidelines to delay an initial petition finding on the Columbia sharp-tailed grouse petition beyond 90 days. The court ruled that FWS has discretion to apply the Guidelines and discretion to take longer than 90 days to make the finding. 146 F.3d at 1255. In contrast, the current case does not challenge the legality of the Guidelines, FWS's reliance on the Guidelines, or whether FWS may take longer than 90 days to make the initial finding. As stated above, the "to the maximum extent practicable" language gives FWS some limited flexibility but the Tenth Circuit never addressed the issue of whether the flexibility is legally cut off after 12 months.

protection of three species, one of which is on the brink of extinction while the other two may be on the brink. The possibility of losing these species forever magnifies the significance of the statutory deadlines. A species may be able to wait only so long for legal protection, and if that deadline passes redress is impossible.

This is not an idle concern. A report by Plaintiff Center for Biological Diversity published in May 2004 details that administrative delay in providing ESA protection to vanishing species occurred for 77% of the species that became extinct in the U.S. since the ESA was enacted in 1973. Some 83 species have gone extinct while waiting for legal protection. See Ex. 5 (Extinction and the Endangered Species Act, K. Suckling, R. Slack, and B. Nowicki, Center for Biological Diversity, May 1, 2004), at 2 (“There were lengthy delays in the listing process for 83 (77%) of the species that became extinct: 29 of these species became extinct before a listing process was initiated, 42 became extinct during a delay in the listing process, and eleven listed species became extinct after a delay in the listing decision. . . . Listing petitions were routinely ignored to the detriment of the species: 17 species became extinct while their listing petition was under a long-delayed review.”).

In sum, the ESA requires that Defendants make 90-day findings within 12 months of the submission of interested persons’ petitions to list species. It is undisputed that it has been more than 12 months since Defendants received Plaintiffs’ petitions to list the Gunnison’s prairie dog, Black Hills mountainsnail and Uinta mountainsnail and that Defendants have not made 90-day findings for these three listing petitions. See Plaintiffs Facts at ¶¶ 1,2,4,5,7&8. Defendants are thus in violation of ESA Section 4(b)(3) and Plaintiffs are entitled to summary judgment for these violations.

**E. PLAINTIFFS ARE ENTITLED TO AN INJUNCTION ORDERING DEFENDANTS TO ISSUE SUBSTANTIAL INFORMATION FINDINGS ON THE GUNNISON'S PRAIRIE DOG, BLACK HILLS MOUNTAINSNAIL AND UINTA MOUNTAINSNAIL LISTING PETITIONS WITHIN 30 DAYS OF THE COURT'S ORDER**

In addition to declaratory relief that Defendants are in violation of their mandatory duty to issue 90-day findings, Plaintiffs respectfully request the Court provide injunctive relief ordering FWS to issue 90-day findings for the Gunnison's Prairie Dog, Black Hills mountainsnail and Uinta mountainsnail petitions within 30 days of ruling on this motion. In Forest Guardians v. Babbitt, 174 F.3d 1178, 1193 (10th Cir. 1999) the Tenth Circuit observed that courts have ordered FWS to comply with its statutory obligations under the ESA within between 5 and 120 days. The Court then held that the proper remedy in Section 4 cases is an order compelling FWS to comply "as soon as possible without regard to the Secretary's other priorities under the ESA." Id. This holding is consistent with the Ninth Circuit's ruling in Biodiversity Legal Foundation v. Badgley, which affirmed the district court's refusal to grant FWS further time to issue mandatory Section 4 findings because the court "had no discretion to consider the Service's stated priorities." Biodiversity Legal Found. v. Badgley, 309 F.3d at 1178.

Several courts have required FWS to issue a 12-month finding, which generally are more involved than 90-day findings, within 30 days. See Biodiversity Legal Found. v. Badgely, 284 F.3d 1046, 1057 (9th Cir. 2002); see also Center for Biological Diversity v. Norton, 163 F.Supp.2d 1297, 1301 (D.N.M. 2001) (requiring 12-month finding be made within 30 days of

court's order); Save our Springs v. Babbitt, 27 F. Supp. 2d 739, 749 (WD Tex. 1997)(court orders FWS to make a listing determination on remand within 30 days).<sup>3</sup>

Requiring FWS to produce three 90-day findings within thirty days is not an unreasonable demand. For such a finding, the ESA only requires that FWS make an initial determination whether the petition itself “presents substantial scientific or commercial information indicating that the petitioned action may be warranted.” 16 U.S.C. § 1533(b)(3)(A). FWS has recognized previously that making a substantial information finding is “not a tremendous undertaking.” Biodiversity Legal Found. v. Babbitt, 63 F. Supp. 2d at 35. In fact, in Center for Biological Diversity v. Morgenweck, 351 F. Supp. 2d 1137, 1142-1144 (D.Colo. 2004) the court held that FWS has improperly solicited outside information for a 90-day review when FWS must limit its 90-day finding review to the petition itself and information already in FWS's files. See also Moden v. U.S. Fish and Wildlife Service, 281 F. Supp. 2d 1193, 1204 (D.Or. 2003)(“ ‘Petition Management Guidance’ manual directs the FWS to make a “substantial” finding on the information submitted with the petition”). Permitting FWS to further delay responding to Plaintiffs’ listing petitions will continue to undermine the statutory framework of the ESA, violate Congressional intent in establishing firm listing deadlines, and risk the Gunnison’s prairie dog, Black Hills mountainsnail and Uinta mountainsnail edging closer to extinction.

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<sup>3</sup> This Court gave the FWS 60 days to issue a 12-month finding on remand for the Lynx. Defenders of Wildlife v. Babbitt, 958 F. Supp. 670, 685, and n.1 (D.D.C. 1997). Again, a 12-month finding is usually more involved than a 90-day finding.



