



United States Department of the Interior



FISH AND WILDLIFE SERVICE Mountain-Prairie Region

IN REPLY REFER TO:
FWS/R6
ES

MAILING ADDRESS:
P.O. Box 25486, DFC
Denver, Colorado 80225-0486

STREET LOCATION:
134 Union Boulevard
Lakewood, Colorado 80228-1807

APR 04 2006

Mr. Jeremy Nichols
Biodiversity Conservation Alliance
P.O. Box 1512
Laramie, Wyoming 82073

Dear Mr. Nichols:

This responds to your January 26, 2006, 60-day notice of intent to sue over our 90-day finding on your petition to list the Black Hills population of American dipper in South Dakota under the Endangered Species Act (ESA). You indicate that our "negative 90-day finding" determination is a violation of 16 USC § 1534(b)(3)(A) and 50 CFR § 424.14(b)(1) and you allege that our decision is arbitrary and capricious and, therefore, in violation of the Administrative Procedure Act.

We carefully assessed the best scientific and commercial information available to determine that your petition to list the Black Hills population of American dipper was not substantial. We applied the criteria set forth in our *Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act*, 61 FR 4722 (February 7, 1996) (DPS Policy) and found that the dipper population in the Black Hills was not a listable entity. Therefore, the threat factors for determining if the species meets the ESA's definition of an endangered or threatened species were not examined. We believe this finding is appropriate at the 90-day finding stage, is based on the best scientific and commercial information available, and is consistent with our DPS Policy and our 1996 Petition Management Guidance.

We will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding, and we will reconsider this determination in the event that new information becomes available.

Sincerely,

ACTING

Deputy Regional Director

bcc: ES/Pierre, SD
DJacobsen/DOI Solicitor
RO rf
ES file, rf

ES/CDavis:lab:04/03/2006:{I:\WP\AmericanDipper\NOIRresponse.doc}

FIELD STATIONS ROUTING SLIP

RECEIVED

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U.S. FISH & WILDLIFE SERVICE

Ecological Services Offices

- Bismarck, ND MS 62410
- Bismarck, ND/MO River Coordinator MS 61150
- Cheyenne, WY MS 61411
 - Cody Suboffice MS 61412
- Colorado River Recovery MS 65115
- Grand Island, NE MS 64412
- Grand Junction, CO MS 65412-GRJCT
- Helena MS 61130
 - Billings Suboffice MS 61131
 - Kalispell Suboffice MS 61132
- Gray Wolf Recovery Coordinator MS 61130
- Grizzly Bear Recovery Coordinator MS 61140
- Black-Footed Ferret Conservation Ctr. MS 65417
- Lakewood, CO MS 65412-LKWD
- Manhattan, KS MS 64411
- Pierre, SD MS 64413
- West Valley City, UT MS 65411

Other Offices

- Regional Solicitor's Office MS USDI-SOL-CO

ATTENTION: Pete Goben FROM: Chuck Davis

DATE: 4/4/06

CONCUR: _____

COMMENTS: _____

