



**ADVOCATES** for the **WEST**  
Public Interest Environmental Law

January 16, 2009

**BY CERTIFIED MAIL -- RETURN RECEIPT REQUESTED**

Jeffrey Foss  
Field Supervisor  
Snake River Fish and Wildlife Office  
1387 S. Vinnell Way, Room 368  
Boise, Idaho 83709

Rowan W. Gould, Acting Director  
U.S. Fish and Wildlife Service  
Main Interior Building  
1849 C Street N.W.  
Washington, D.C. 20240

Dirk Kempthorne, Secretary  
Department of the Interior  
Main Interior Building  
1849 C Street N.W.  
Washington, D.C. 20240

Re: **Sixty-Day Notice of Intent to Sue for Violations of Endangered Species Act  
Relating to 12-Month Findings on Petition to List Pygmy Rabbit  
(*Brachylagus idahoensis*)**

Dear Secretary Kempthorne, and Messrs. Gould and Foss:

Pursuant to the citizen suit provision of the Endangered Species Act ("ESA"), 16 U.S.C. § 1540, Western Watersheds Project hereby gives notice of its intent to file suit for violations of Section 4(b)(3)(B) of the Endangered Species Act. This section requires the Secretary to issue a so-called 12-month finding within 12 months of receiving a petition that is found to present substantial information indicating that listing a species under the ESA may be warranted.

On January 8, 2008, the Service issued a 90-day finding under Section 4(b)(3)(A) concluding that listing the pygmy rabbit under the ESA may be warranted, and the Service commenced a status review at that time. This 90-day finding came after the United States District Court for the District of Idaho reversed and remanded the Service's earlier negative 90-day finding as arbitrary and capricious. See *Western Watersheds Project v. Norton*, CV 06-00127-S-EJL, 2007 WL 2827375 (D. Idaho September 26, 2007).

Pygmy Rabbit 60-Day Notice Letter

July 5, 2005

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Over 12 months has passed since the Service issued its positive 90-day finding, and the Service has failed to comply with ESA Section 4(b)(3)(B). You are hereby put on notice that Western Watersheds Project intends to file a lawsuit to enforce the ESA's 12-month finding requirement.

Western Watersheds Project has prepared this notice based on good faith information and belief after reasonably diligent investigation. However, if any of the foregoing is factually erroneous or inaccurate, please notify me promptly to avoid unnecessary litigation. Moreover, the U.S. Supreme Court and other courts have often noted that the purpose behind the 60-day notice requirement of the ESA and other statutes is to encourage settlement discussions among parties and avoid potential litigation. In that spirit, I encourage you to contact Western Watersheds Project to seek an amicable resolution of this matter. Appropriate contact information is listed below.

Jon Marvel  
Executive Director  
Western Watersheds Project  
PO Box 1770  
Hailey, Idaho 83333  
(208) 788-2290

Likewise, please feel free to contact me (or have your attorneys, if any, contact me), at the address and number on the letterhead above.

Sincerely,

Todd C. Tucci  
Attorney for Western Watersheds Project

cc: Lawson Fite, DOJ  
Deborah Ferguson, AUSA