



Working to Protect Native Species and Their Habitats

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**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

July 13, 2004

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

Steven A. Williams, Director
U.S. Fish and Wildlife Service
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 failure to grant emergency listing status to Uinta mountainsnail (*Oreohelix eurekaensis uinta*), to make a 90-day finding, and to make a 12-month finding, all of which constitute violations of the Endangered Species Act.

Dear Secretary Norton and Director Williams:

Pursuant to the citizen suit provision of the Endangered Species Act ("ESA"), 16 U.S.C. § 1540, Biodiversity Conservation Alliance, Center for Native Ecosystems, the Utah Environmental Congress, and other interested parties hereby give notice of our intent to file suit for violations of section 4(b) of the Endangered Species Act. This section, among other things, requires that the Secretary, within 90 days of receiving a citizen listing petition, make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. 16 U.S.C. § 1533(b)(3)(A). It requires that the Secretary, within 12 months of receiving a citizen listing petition that is found to present substantial information indicating that the petitioned action may be warranted, make a determination of warranted, not warranted, or warranted but precluded. 16 U.S.C. § 1533(b)(3)(B). Section 4(b)(7) applies to any emergency posing a significant risk to the well being of any species of fish, wildlife, or plant. 16 U.S.C. § 1533(b)(7).

On August 21, 2001, the Utah Environmental Congress submitted a formal petition to list Uinta

mountainsnail (*Oreohelix eurekaensis uinta*) as a threatened or endangered species under the ESA. According to a September 17, 2001 letter from Regional Director Ralph Morgenweck, the Secretary received the petition on August 29, 2001. Accordingly, the 90-day finding was due on or about November 28, 2001.

Since the petition was filed in 2001, threats to Uinta mountainsnail have not dissipated and recent conversations with biologists from the Ashley National Forest, which manages the Uinta mountainsnail and its habitat, indicate the species continues to be imminently threatened with extinction.

For starters, the Uinta mountainsnail is known to exist in only one population, which inhabits an area less than an acre in size. The snail is thus inherently vulnerable to local, small-scale weather and other natural events; a single fire, severe storm, severe winter, or severe drought in this one habitat could destroy the species. Compounding this inherent vulnerability, a June 29, 2004 discussion with Ashley National Forest biologist Bob Christensen indicates the U.S. Forest Service has taken entirely inadequate steps to ensure protection of the snail and its habitat and as a result, the snail is imminently threatened with extinction, strongly indicating emergency listing under the ESA is required.¹ A recent conversation with Mr. Christensen revealed the following:

- Although the Forest Service has constructed an electric fence around the only known population of the Uinta mountainsnail, this fence has been knocked down and not yet been repaired, leaving the snail vulnerable to trampling by domestic livestock. While Mr. Christensen indicated the Forest Service would repair the fence soon, the fact that the agency has been unable to maintain a simple fence and has clearly demonstrated that repairing the fence is not a high priority, is a strong indication of the agency's lack of commitment in preventing the extinction of the Uinta mountainsnail. In addition, it is unclear whether the Forest Service's enclosure has even encompassed an adequate amount and quality of habitat to allow the Uinta mountainsnail to persist in the long-term.
- A prescribed burn is still being planned near the only known population of the Uinta mountainsnail. While Mr. Christensen indicated the Forest Service would avoid the population during the burning, this is little consolation for the Uinta mountainsnail. If the Forest Service were to lose control of a prescribed burn, the Uinta mountainsnail could instantly become extinct. An unexpected gust of wind could easily direct a prescribed burn in the wrong direction, wiping out the snail forever.

In addition, the U.S. Forest Service still has no mechanisms in place explicitly to ensure protection of the Uinta mountainsnail and its habitat. The Ashley National Forest has not amended its land and resource management plan to adopt enforceable measures that ensure protection and has not otherwise formally adopted any other measures that ensure the snail is protected. Although the Forest Service has been in the process of developing a conservation agreement with the U.S. Fish and Wildlife Service regarding

¹ Mr. Christensen can be reached at (435) 781-5232

the Uinta mountainsnail, this agreement has yet to be finalized and adopted into the Ashley National Forest's Land and Resource Management Plan. Until such time as this agreement is finalized and becomes enforceable through adoption in a Land and Resource Management Plan, there is no regulatory mechanism in place to prevent the extinction of the Uinta mountainsnail.

In terms of monitoring, Mr. Christensen indicated he had observed the snail last year and plans on visiting the snail this year. However, no formal monitoring plan has been adopted by the U.S. Forest Service and it is unclear whether or not Mr. Christensen's viewing of the snail is adequate to detect negative impacts and respond appropriately to protect the snail. Although we applaud Mr. Christensen's observations, there is no indication that the only known population of the snail is being adequately monitored.

In letters dated September 17, 2001 and October 3, 2001, the U.S. Fish and Wildlife Service rejected emergency listing of the Uinta mountainsnail on the basis that the U.S. Forest Service would take appropriate conservation measures. While these measures were never explicitly defined or referenced in either of the letters, it is clear that this assessment was in error. Thus, the Secretary has failed to act under the provisions of 16 U.S.C. § 1533(b)(7) and 50 C.F.R. § 424.20 with regards to the issuance of an emergency listing rule when an emergency posing a significant risk to the well being of any species of fish, wildlife, or plant is present.

This letter puts you on statutory notice that we intend to file suit in Federal District court to remedy these violations. If you have any intention of making the required findings within the next two months, or issuing an emergency listing rule with the next two weeks, or if you believe any information in this letter is in error, please inform us immediately.

Sincerely,

Jeremy Nichols
Endangered Species Program Director
Biodiversity Conservation Alliance
PO Box 1512
Laramie, WY 82073

cc: Jacob Smith, Executive Director, Center for Native Ecosystems
Stephanie Tidwell, Executive Director, Utah Environmental Congress
Ralph Morgenweck, Region 6 Director, U.S. Fish and Wildlife Service
Jay Tutchton, University of Denver Environmental Law Clinic