



**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED AND E-MAIL**

August 17, 2006

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Pete Gober  
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**Re: Notice of Intent to File Suit Over Violations of Section 4 of the  
Endangered Species Act With Regards to a 2006 Negative 90-day Finding  
Over the Petition to List the Gunnison's Prairie Dog.**

Dear Secretary Kempthorne, Director Hall, and Supervisor Gober:

Pursuant to the citizen suit provision of the Endangered Species Act ("ESA"), 16 U.S.C. § 1540(g)(2), this letter serves as a sixty day notice on behalf of Forest Guardians, Center for Native Ecosystems, Biodiversity Conservation Alliance, Habitat Harmony, Inc., Public Employees for Environmental Responsibility, Wildlands Conservation Alliance, Jews of the Earth, Reverend Jacqueline Ziegler, the following biologists: Dr. Con Slobodchikoff, Jennifer Verdolin, Dr. Ana Davidson, Dr. David Lightfoot, Bob Luce (the former coordinator of the Interstate Prairie Dog Team), and other interested parties of intent to sue the U.S. Fish and

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Wildlife Service (“FWS”) over violations of the ESA in regards to the February 7, 2006 90-day finding that the February 2004 petition to list the Gunnison’s prairie dog (*Cynomys gunnisoni*) as threatened or endangered under the ESA did not present substantial scientific information indicating listing may be warranted (71 Fed. Reg. 6241-6248, hereinafter “negative 90-day finding”). The negative 90-day finding, which was authored by staff of the South Dakota Field Office of the FWS, under supervision of Pete Gober, Field Supervisor, and signed by Marshall P. Jones, Acting Director of the FWS, was issued under the authority of Secretary of the Interior Gale Norton, who subsequently resigned and was replaced by Secretary Dirk Kempthorne (hereinafter “Secretary”).

## **BACKGROUND**

### **1. The 90-day Finding**

Regulations implementing the ESA require the Secretary of the Interior through the FWS, to the maximum extent practical, within 90-days of receiving a petition to list a species as threatened or endangered under the ESA, make a finding as to whether the petition presents substantial scientific information indicating that listing may be warranted. 50 CFR § 424.14(b)(1). This is referred to as the “90-day finding.” If the Secretary makes a positive 90-day finding by determining that a petition presents substantial scientific information indicating the petitioned action may be warranted, the Secretary is required to commence a rigorous review of the species’ status and make a determination as to whether listing is warranted. This second determination is called a 12-month finding. If the Secretary makes a negative 90-day finding, the petition is rejected and no further review is conducted.

At the 90-day finding stage, the Secretary is required to determine only whether a petition presents substantial scientific information indicating the petitioned action may be warranted. Regulations implementing the ESA define “substantial information” as “that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.” 16 USC § 1534(b)(3)(A) and 50 CFR § 424.14(b)(1). The Secretary does not critically analyze petitions, conduct additional research, or make a determination as to whether listing under the ESA is warranted at the 90-day finding stage. As the Secretary explained in the negative 90-day finding regarding the petition to list the Gunnison’s prairie dog:

We [the FWS] do not conduct additional research to make a 90-day finding, nor do we subject the petition to rigorous critical review. Rather, as the Act and regulations contemplate, in coming to a 90-day finding, we acknowledge the petitioner’s sources and characterizations of the information unless we have specific information to the contrary.

Our 90-day findings consider whether the petition states a reasonable case for listing on its face. Thus, our finding expresses no view as to the ultimate issue of whether the species should be listed. We reach a conclusion on that issue only after a more thorough review of the species’ status.

71 Fed. Reg. 6241.

## **2. The Gunnison's prairie dog**

The Gunnison's prairie dog is one of five species of prairie dog found in North America (the others being the Utah (listed as threatened), Black-tailed, White-tailed, and Mexican (listed as endangered)). The current distribution of the Gunnison's prairie dog is centrally found in the "Four Corners" region of northern Arizona, southwestern Colorado, northwestern New Mexico, and southeastern Utah. Recent estimates have found that 27% of potential Gunnison's prairie dog habitat occurs in Arizona, 25% in Colorado, 45% in New Mexico, and 3% in Utah.

The Gunnison's prairie dog plays an important role in its ecosystem, acting as a keystone species by serving as a prey base and creating habitat for other species. Prairie dog colonies host a high diversity of vertebrate, invertebrate, and plant species, at levels sometimes markedly higher than that of surrounding grasslands. Several studies have found that more than 100 vertebrate species are associated with prairie dog populations. The most recent review of prairie dog associated species found that of the 208 species observed on or near prairie dog colonies, nine were considered to be dependent on prairie dogs and their colonies. Of those, the significant decline of the burrowing owl is partially attributed to prairie dog control, while a reduction in nesting populations of ferruginous hawks is in part due to the drastic reduction in abundance of prairie dogs. Another 20 species benefit from opportunistic use of prairie dog colonies, while 117 species have life history characteristics indicating that the benefit from prairie dogs and their colonies.

Habitat loss and destruction, sylvatic plague, poisoning, and shooting all threaten the Gunnison's prairie dog population. Sylvatic plague is the current principle threat to the species. Of all cases of sylvatic plague reported in the U.S., 80% have occurred within the Gunnison's range. In recent years, plague has devastated prairie populations in large regions of northern Arizona. In the 1980s, an extensive prairie dog complex was nearly eliminated by plague in north-central New Mexico. The Gunnison's prairie dog has yet to recover, surviving in only scant numbers to this day, from a plague outbreak in the 1960s, which eliminated over 600,000 acres of prairie dogs in a 60-mile swath in Colorado.

Poisoning efforts throughout the 20<sup>th</sup> century (particularly the early to mid 1900s) have had staggering impacts on prairie dogs. From 1915 to 1964, 47 million acres (including all four states within which the Gunnison's is found) of prairie dog habitat was poisoned. While poisoning does not take place at the same rates as those found in the mid 1900s, the federal government remains involved in the distribution and application of poisons in prairie dog habitat upon request.

The Gunnison's prairie dog population has declined dramatically throughout the 20<sup>th</sup> century. By 1960, an estimated 98% of prairie dog occupied areas had been lost (Marsh 1984;

Miller et al. 1994). Like other prairie dog species, the Gunnison's prairie dog habitat has also suffered from massive loss. Continuing loss of habitat, as a result of ever growing urban sprawl and activities such as oil and gas operations, remains a significant threat to the Gunnison's prairie dog. Furthermore, the Gunnison's prairie dog continues to be subjected to rampant shooting. Although there are spring closures on shooting of prairie dogs in Arizona and Utah, loopholes exist for agricultural operators and outside of the spring closure season there is no bag limit. While there are restrictions for shooting black-tailed prairie dogs, there are no such restrictions for the Gunnison's in Colorado and New Mexico. While New Mexico refuses to monitor or attempt to keep track of shootings, Colorado's monitoring program indicates massive numbers of Gunnison's prairie dog are shot each year. In 2002, over 200,000 prairie dogs were shot in the Gunnison's prairie dog's range in Colorado.

### **3. The Petition to List the Gunnison's prairie dog**

On February 23, 2004, Forest Guardians, as well as 73 individuals, realtors, homebuilders, religious organizations, small business owners, and conservation organizations submitted a petition to list the Gunnison's prairie dog as a threatened or endangered and designate critical habitat pursuant to the ESA and the Administrative Procedures Act ("APA"). The petition, which was over 100 pages long, drew upon over 170 sources of scientific information. Among other things, the petition called upon the Secretary and the FWS to list the Gunnison's prairie dog as threatened or endangered under the ESA because of significant population declines, habitat loss and degradation, ongoing threats to habitat, overutilization due to shooting, unrestricted poisoning, threats attributed to disease, inadequate regulatory mechanisms, and other factors including drought.

There is overwhelming scientific consensus that this species merits listing under the Endangered Species Act, which was demonstrated in Forest Guardians' listing petition. We suspect the weighty scientific evidence in support of listing is why FWS mentioned in the 90-day finding that the agency will continue to monitor the status of this species:

We will work with the States where information is currently unavailable to develop information that will assist in determining and monitoring the status of Gunnison's prairie dog. Once those results are available we will reevaluate the status of Gunnison's prairie dog.

See 71 Fed. Reg. 25 at 6241.

### **4. The Negative 90-day Finding**

In the negative 90-day finding regarding the petition to list the Gunnison's prairie dog as a threatened or endangered species, the Secretary, through the FWS, concluded that the petition does not present substantial scientific and commercial data indicating that listing may be warranted.

#### **a. Dramatic decline of habitat and colonies.**

The negative 90-day finding acknowledges that the Gunnison's prairie dog habitat dramatically decreased from 1916 to 1961, with an approximate 95% reduction in habitat (24 million acres to 1 million acres). 71 Fed. Reg. at 6243. The negative 90-day finding also acknowledges that habitat has been decreasing overall from an approximate total of 1 million acres of habitat in 1961 to approximately 387,000 acres as of 2005. On a state-wide basis, Arizona and Colorado have seen minimal increases since 1961 (from 445,000 to approximately 535,000 acres for Arizona<sup>1</sup> and 115,650 to 174,224 acres in Colorado<sup>2</sup>). 71 Fed. Reg. at 6244. However, FWS acknowledges that Utah and New Mexico have seen serious declines (335,000 to 9000 acres in New Mexico and 100,000 to 4000 acres in Utah). 71 Fed. Reg. at 6243.

Overall, the Gunnison's prairie dog habitat has declined from 1 million acres in 1961 to anywhere from approximately 722,000 acres (according to FWS) to approximately 200,000-335,600 acres (according to information presented in the petition) as of 2005 (studies estimating populations between 2002 and 2005). This reflects a 23% to 80% reduction in habitat over the past few decades. However, FWS distorts the overall decline by stating that "the species' range have declined significantly in a historic sense, but may have been relatively more stable in some States in recent decades." 71 Fed. Reg. 6244. First, the FWS analysis of habitat in Arizona is questionable at best and certainly unsupported because there is no explanation for how it came to the numbers it did. See *infra* note 1. However, more importantly, it is suspect to say that the populations in Colorado and Arizona are "stable." Colorado has seen a reduction in acres of habitat from 439,000 to 174,200 in the last 15 years. It is unquestionable that a 60% decline in Colorado is not "stable."

While FWS recognizes that "it is apparent that the Gunnison's prairie dog occupied habitat has declined range-wide" it never acknowledges that reduction of 95% of its range from 1916 to 1961 and another loss of 23-80% reduction since 1961 shows that the population is in significant and threatening decline. Moreover, FWS also assessed and considered "site-specific" estimates in its conclusion regarding current population trends. See 71 Fed. Reg. 6244- 45. Six of the seven site-specific estimates indicate declines in the Gunnison's population. Of the six declining populations, four of the six have seen 99% to 100% reduction. Of the remaining two sites, one has seen declines from 15,569 acres in 1980 to 770 acres in 2003 (95% reduction) and the other has seen declines from >12,000 acres in 1984 to >6000 acres in 2005 (50% reduction).

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<sup>1</sup> It should be noted that the numbers identified in Table 1 on page 6244 for Arizona do not comply with the numbers offered in the text on the previous page. It is unclear where these numbers come from or how they were generated. USFWS states that occupied habitat in 2005 for non-tribal lands is estimated at 100,000 acres and that 50% of potential habitat is on tribal lands or another 100,000 acres. This would place the total acreage at 2005 at 200,000 acres, far fewer than the estimated 535,000 acres identified in Table 1. Furthermore, it is unclear how USFWS reached 435,000 acres for 1961, when on the previous page it identifies 10,000 acres of occupied habitat on non-tribal lands in 1961 and the statement that habitat has remained the same on tribal land since 1961 (i.e. 100,000 acres).

<sup>2</sup> Note that the estimate for the state of Colorado documented an increase from 115,650 in 1961 to 439,000 acres in 1990. However, since 1990, the habitat has dramatically decreased to 174,224 acres. 71 Fed. Reg. at 6244.

Furthermore, FWS acknowledges that sylvatic “plague can result in devastating population effects to individual populations and colonies.” 71 Fed. Reg. at 6244. FWS bases this finding on the fact that all site-specific estimates of colony numbers for Gunnison’s prairie dog show significant declines. *Id.* at 6244-45 and Table 3. Not only do the site-specific estimates indicate serious declines, but they also indicate that these declines can take place in a very short time frame. For example, 75 colonies found in Flagstaff, AZ in 2000 declined to 14 colonies a year later. *Id.* In Moreno Valley, NM, after two plague epizootics between 1984 and 1987, the population experienced 99.5% mortality from a population with approximately 11,000 acres of occupied habitat in 1984. *Id.* at 6244-45 and Table 2.

Despite recognizing the dramatic declines, witnessed at the site-specific colony level, site-specific habitat level and the range-wide habitat level, FWS nonetheless dismisses the petition on each listing factor, finding that it does not present substantial scientific information that listing may be warranted. In an attempt to justify its finding, FWS piecemeals its analysis concerning potential threats without ever acknowledging the current status of the species or revisiting its assessment of the dramatic loss of Gunnison’s prairie dog occupied habitat and loss of site-specific colonies in light of the identified threats.

**b. Present or threatened destruction, modification, or curtailment of the species’ habitat or range.**

In a surprising manner, FWS seems to entirely remove from its memory the preceding discussion concerning the ongoing loss of habitat. While recognizing that the Gunnison’s prairie dog has lost over 95% of its habitat from 1916 to 1961 and another 23-80% loss of the remaining 5% since 1961, FWS trudges on in its dismissal of the petition by addressing the first factor in a manner that focuses exclusively on what it doesn’t know. FWS states that while urban sprawl “may have adverse impacts on some Gunnison’s prairie dog populations at a local scale, we do not have substantial information that it causes range-wide population declines.” 71 Fed. Reg. 6245. Despite recognizing that there has been significant range-wide loss of habitat, FWS fails to acknowledge the ongoing loss in light of this underlying fact. In fact, nowhere in its discussion of listing factor A does it acknowledge what it previously acknowledged regarding range-wide estimates---that the population and its habitat are in significant decline.

To avoid any real probing review, FWS takes, paragraph by paragraph, each potential threat to habitat and finds that while they acknowledge that a relationship exists between the threat (i.e. poor rangeland management including overgrazing and resultant growth of noxious weeds, oil and gas leases, road construction) that the threat of these influences on the Gunnison’s prairie dog is unquantifiable or does not indicate an impact range-wide. See *Id.* at 6245-46. While FWS does acknowledge that it has “significant information available in [its] files indicating that generally smaller, more isolated populations are more vulnerable to extirpation. [And] [i]n addition, isolation of colonies may also reduce the chance or recolonization after extirpation,” it goes on to conclude that such information does not constitute “substantial scientific information” indicating that listing may be warranted. *Id.* at 6246. FWS’s finding that the petition’s assertion that small colony size, in and of itself, in the absence of plague, threatens

the species, contradicts FWS's own information and acknowledgements. FWS fails to provide any support for its findings in the face of the information it acknowledges.

**c. Presence of disease or predation**

While FWS acknowledges that “[i]nformation in [their] files supports the assertions made in the petition regarding sylvatic plague,” and that “[q]uantitative data indicate[s] that plague has caused population declines in recent years at many well-studied sites throughout the range of Gunnison’s prairie dog” the FWS goes on to state that “range-side population trends may or may not follow this pattern” and that they “are unaware of any information at the landscape level that definitively suggests range-wide population declines caused by plague.” See *Id.* at 6246-47. FWS’s conclusion that the petition does not support substantial scientific information that plague is a threat to the prairie dog such that listing may be warranted is unsupported and contradicts its own findings as well as those presented in the petition.

FWS states that declines documented in Tables 2 and 3 are attributed to the plague yet without any rationale goes on to state that no “patterns” can be drawn to the landscape level. *Id.* at 6247. However, FWS applies an incorrect standard when it states that information does not “definitely” indicate range-wide population declines due to the plague. A definitive or conclusive standard is not appropriate at the 90-day finding. The standard is a low threshold that focuses on whether each factor may, alone or in combination with the other factors, indicate that listing may be warranted.

Beyond applying the wrong standard, the conclusion made in the 90-day finding is unsupported and contradicts the findings presented in the 90-day finding. FWS makes the following statements regarding the threat posed by the plague:

- “We are unaware of any information at the landscape level that definitively suggests range-wide population declines caused by plague, although some reports indicate significant amounts of recently unoccupied habitat, and many specific sites have experienced at least temporary reductions to extirpation or near extirpation.” *Id.* at 6247 (emphasis added).
- “Once established in an area, plague becomes persistent and periodically erupts, with the potential to eventually extirpate or nearly extirpate entire colonies.” *Id.* (emphasis added).
- Plague is present throughout “100 percent of the Gunnison’s prairie dog’s range.” *Id.*
- “[T]he Gunnison’s typically occurs at higher densities [than the white-tailed prairie dog] and is less widely dispersed on the landscape, allowing for more frequent transmission of the disease from one individual to another.” *Id.*
- “Tables 2 and 3 note declines due to plague at numerous sites throughout the range of the species.” *Id.* (emphasis added).
- “In the few sites where Gunnison’s prairie dog populations have been monitored after plague, only one population may have increased after the plague outbreak, but it is a very small fraction of pre-plague abundance.” *Id.* (emphasis added).

- “We recognize that sylvatic plague has been and continues to be the major mortality factor for Gunnison’s prairie dog at specific sites....” *Id.*

These statements indicate that the plague is a significant, and in fact, the major threat to the species, that it has affected populations throughout its range, that the populations have not bounced back after outbreaks, and that significant declines have been attributed to the plague. Yet despite all of this information, FWS merely states that the information concerning the impact on the overall status “remains unclear.” While more information will always be helpful in further defining and determining how plague affects the species, the information is far from “unclear” and certainly is substantial to find that the species is significantly threatened by plague and is suffering serious declines and at times local extirpations of colonies and broad landscape-level impacts. Consequently, there is more than enough information in the petition and the 90-day finding to indicate that disease is a significant threat and listing may be warranted.

**d. Inadequacy of existing regulatory mechanisms**

FWS dismisses concerns regarding state regulatory mechanisms pertaining to the shooting of prairie dogs noting that the States have regulations in place but the “impacts resulting from these regulations or lack thereof are difficult to quantify.” *Id.* at 6247. Again, FWS applies a more demanding threshold than that required at the 90-day finding. FWS refers to a WAFWA noting that the Working group “concluded that just active management and development of a comprehensive conservation strategy for the species and its habitat are needed to conserve the species.” *Id.* at 6247-48. FWS believes that the report supports their finding that adequate regulatory mechanisms are in place. However, the statement cited by FWS contradicts this position noting that a comprehensive conservation strategy is necessary to conserve the species. Such a strategy is not yet in place, nor is there evidence it will be fully funded, enforceable, or effectively reduce threats to the survival of this species. FWS cannot permissibly rely upon a strategy that is not yet established in its determination that existing regulatory mechanisms are adequate.

**e. Other natural or manmade factors affecting the Gunnison’s continued existence**

FWS agrees with the findings presented in the petition regarding the devastating impact of chemical control agents on Gunnison’s prairie dog populations. While FWS is correct in noting that “the extent of impacts to the species likely has not continued to the same degree as in earlier years,” and that it is unaware of large-scale poisoning underway (See *Id.* at 6248), the reduction of poisoning from historic times is likely primarily due to the small, fragmented remaining Gunnison’s acreage. Further, the petition quantifies a significant, continued involvement of the federal government itself in poisoning. For example, from 1993-2001, the federal “Wildlife Services” within the U.S. Department of Agriculture applied enough poison to control over 16,000 acres of Gunnison’s prairie dogs in Arizona, a state which currently contains approximately 100,000 acres of GPDs. FWS has refused to acknowledge the continuing threat posed by chemical control agents.



FWS also dismisses the threat of drought, alone and in association with pesticide use, on the basis that no information regarding a direct relationship between drought and range-wide populations is available. *Id.* Yet, the petition demonstrates that, while drought is a naturally occurring dynamic in the range of the GPD, other anthropogenic factors, such as livestock grazing and oil and gas impacts, are likely exacerbating the negative impacts of drought on Gunnison's prairie dogs. For example, in 2001, the Arizona Game and Fish Department cited drought as the cause of significant decline of Gunnison's prairie dogs in Aubrey Valley, perhaps the largest remaining Gunnison's prairie dog complex.

### **VIOLATIONS OF THE ESA**

For the foregoing reasons, the negative 90-day finding regarding the petition to list the Gunnison's prairie dog as a threatened or endangered species under the ESA is illegal and we intend to sue the Secretary of the Interior, the Director of the Fish and Wildlife Service, and Supervisor Gober after 60 days for these illegalities if they are not ameliorated through the issuance of a new 90 day-finding in the interim.

#### **Violation of 16 USC § 1533(b)(3)(A) and 50 CFR § 424.14(b)(1).**

The scientific information presented in the petition demonstrates that the Gunnison's prairie dog faces significant threats to its existence such that listing the Gunnison's prairie dog may be warranted. The Secretary has violated the ESA's mandatory duties by (1) failing to limit review to the petition and documents already in the FWS's files; (2) failing to apply the substantial information" standard; (3) failing to apply the significant portion of range standard; (4) considering voluntary and/or future measures; and (5) ignoring, misconstruing, and/or subverting scientific information.

Of particular concern is the Secretary's failure to properly and reasonably assess whether the petition presented substantial scientific information indicating listing may be warranted when it abandoned its draft positive 90-day finding conclusion that there is substantial scientific information indicating that sylvatic plague threatens the species, in response to political direction from Washington, D.C. to issue a negative 90-day finding.

Furthermore, the Secretary has ignored, misconstrued, and/or subverted substantial scientific information presented in the petition to list the Gunnison's prairie dog that would lead a reasonable person to believe that listing may be warranted:

- FWS failed to review and/or address all the scientific information, including the severe and ongoing threats posed by sylvatic plague and unregulated poisoning, and the significant range-wide declines suffered by this species, presented in the petition to list the Gunnison's prairie dog as a threatened or endangered species in determining whether the petition presented substantial scientific information indicating listing may be warranted;

- FWS ignored, misconstrued, and/or subverted substantial scientific information presented in the petition and readily available in its files indicating that the Gunnison's prairie dog has suffered from dramatic declines and has failed to support its finding that populations are stable;
- FWS ignored, misconstrued, and/or subverted substantial scientific information presented in the petition and readily available in its files indicating that an additional loss of 23-80% of habitat since 1961 (on top of the 95% loss up to 1961) does not indicate that the Gunnison's prairie dog populations is in significant and threatening decline;
- FWS ignored, misconstrued, and/or subverted substantial scientific information in the petition and readily available in its files indicating that continued loss of habitat from urban sprawl, oil and gas activities, and other activities does not threaten the Gunnison's prairie dog;
- FWS ignored, misconstrued, and/or subverted substantial scientific information in the petition and readily available in its files indicating that no patterns can be drawn between the significant declines attributed to sylvatic plague seen at the site-specific level for Gunnison's prairie dog colonies and declines in the overall range-wide population;
- FWS improperly found that existing regulatory measures are, and have been, adequate to protect the Gunnison's prairie dog from threats associated with shooting and chemical control. FWS recognized that "development of a comprehensive conservation strategy for the species and its habitat are needed to conserve the species." Nevertheless, FWS improperly relied on promised and future management actions that may or may not be voluntary, of unknown effectiveness, and lack secure funding.
- FWS improperly found that chemical control does not pose a significant threat to the current status of the Gunnison's prairie dog, despite unregulated poisoning, the intersection of this threat with those posed by plague, shooting, and habitat destruction, and the federal government's direct involvement in provisioning massive amounts of poisons to private parties to kill prairie dogs, as well as killing prairie dogs itself. In addition, FWS improperly found that drought does not pose a threat to prairie dogs, despite a state agency attributing loss of prairie dogs to drought.
- Overall, FWS did not properly assess whether the petition and information readily available in its files presented "substantial scientific information" indicating that listing of the Gunnison's prairie dog may be warranted. The ESA requires that FWS determine whether a species is threatened or endangered based on any of the five (5) factors enumerated in 16 U.S.C. § 1533(a)(1)(A) – (E). In evaluating these five factors for the 90-day finding, FWS applied the wrong legal standards applicable under the ESA. The ESA requires FWS to consider whether a "reasonable person" would "believe that the measure proposed in the petition may be warranted." 50 C.F.R. § 424.14. In issuing

- the negative 90-day finding, FWS improperly imposed an illegally higher standard of evidence.
- Overall, FWS failed to consider whether the Gunnison's prairie dog is in danger of extinction "throughout all or a significant portion of its range," as required under the ESA. 16 U.S.C. § 1532(6).

For at least these reasons, in issuing its 90-day finding, FWS violated its non-discretionary duties under the ESA. FWS's 90-day finding was and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the ESA within the meaning of the Administrative Procedure Act. 5 U.S.C. §§ 706(2). We appreciate your time and attention to this matter. If you believe any of the above information is incorrect, or if you would like to discuss the matter further, please contact me.

Sincerely,

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Nicole J. Rosmarino, Ph.D.  
Forest Guardians

cc: Jerry M. King  
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