

December 1, 2010

Ken Salazar
U.S. Secretary of the Interior
1849 C. Street, NW
Washington, DC 20240

Rowan Gould, Acting Director
U.S. Fish and Wildlife Service
1849 C. Street NW
Washington, DC 20240

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

**RE: Notice of Violations of the Endangered Species Act Concerning the
Arapahoe Snowfly (*Capnia arapahoe*)**

Dear Secretary Salazar and Director Gould,

WildEarth Guardians, The Xerces Society for Invertebrate Conservation, Save the Poudre: Poudre Waterkeeper, Center for Native Ecosystems, Cache la Poudre River Foundation, and Dr. Boris Kondratieff write to inform you that you are in violation of the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544, by failing to take action required by ESA Section 4(b)(3)(A), concerning our petition requesting listing of the Arapahoe Snowfly (*Capnia arapahoe*) (“Snowfly”) as threatened or endangered under the ESA and to designate its critical habitat. 16 U.S.C. § 1533(b)(3)(A). This letter is provided pursuant to the 60-day notice requirement of the citizen suit provision of the ESA. 16 U.S.C. § 1540(g)(2)(C).

According to return receipts and a letter from the U.S. Fish and Wildlife Service (“FWS”) dated April 13, 2010, the Interior Secretary and FWS received our petition by certified mail on April 6, 2010. ESA Section 4(b)(3)(A) and its regulations require that, to the maximum extent practicable, within 90 days of receiving a petition FWS must 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); 50 C.F.R. § 424.14(b). Accordingly, if practicable, the 90-day finding was due on or before July 5, 2010.

It is practicable for the FWS to make an immediate 90-day finding, as our petition and attachments contain substantial information that would convince a reasonable person that the listing of the Snowfly may be warranted and that further investigation in the form of a species status review is required. In its letter to petitioners, FWS indicated that it anticipated responding to our petition in Fiscal Year 2011. To avoid litigation, we request a more specific date to which FWS will commit to issuing this overdue 90-day finding.

If you do not make the required 90-day finding on this listing petition within the next sixty days, we intend to file suit to force you to do so. However, this is not our preference. The purpose of the 60-day notice provision in the ESA is for alleged violators of the law to come into compliance, therefore avoiding the need for litigation. Please contact us if you have any questions or if you would like to discuss this matter. Specifically, please contact us if you would like to propose a specific date by which you will take action on our petition or if you intend to take action by a specific date.

Sincerely,

/s/Nicole J. Rosmarino

Nicole J. Rosmarino, Wildlife Program Director
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303-573-4898

On behalf of:

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