



August 27, 2007

**SENT VIA FAX AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

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

H. Dale Hall, Director  
U.S. Fish and Wildlife Service  
1849 C Street, N.W.  
Washington, D.C. 20240

Fax: 202-208-5048

Fax: 202-208-6965

**RE: Sixty-day Notice of Intent to Sue for Failure to Respond to Petition to List the Giant Palouse Earthworm (*Driloleirus americanus*) as Endangered and Failure to Issue a 12-Month Finding**

Dear Secretary Kempthorne and Director Hall:

This letter provides you with 60 days notice that the Center for Biological Diversity, the Palouse Prairie Foundation, the Palouse Audubon Society, the Friends of the Clearwater, Steve Paulson, David Hall and O. Lynne Nelson ("Petitioners") intend to sue the U.S. Department of the Interior, the Secretary of the Interior and the U.S. Fish and Wildlife Service (collectively "the Service") for violating Section 4 of the Endangered Species Act ("ESA"), 16 U.S.C. § 1533, and its implementing regulations, in failing to issue a 90-day finding or a 12-month finding regarding Petitioners' petition requesting threatened or endangered listing for the Giant Palouse Earthworm (*Driloleirus americanus*). This letter is issued pursuant to the 60-day notice requirement of the citizen suit provision of the ESA. 16 U.S.C. § 1540(g).

Congress enacted the ESA to ensure the protection and conservation of threatened and endangered species. 16 U.S.C. § 1531(b). The fundamental express purpose of the ESA is to conserve endangered and threatened species and the ecosystems upon which they depend. *Id.* To achieve this purpose, the statute requires the Service to list species of plants and animals that are facing extinction as either "threatened" or "endangered." 16 U.S.C. § 1533(c)(1). Upon receiving a petition to list a species, the Service has approximately 90 days to 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)(1). Twelve months after receipt of the petition, the Service must make one of three determinations: 1) listing is not warranted, 2) listing is warranted, or 3) listing is warranted but presently precluded by other pending proposals for listing species, provided other circumstances are met. 16 U.S.C. § 1533(b)(3)(B). If the Service determines that listing a species is warranted, it must then promptly publish in the Federal register a proposed rule to list the species. 16 U.S.C. § 1533(b)(5).

On August 18, 2006, Petitioners submitted a formal petition to the Service requesting the listing of the Giant Palouse Earthworm as a threatened or endangered species under the ESA, and to designate critical habitat for the Giant Palouse Earthworm. In addition, the petition requested an emergency listing and emergency critical habitat designation. In a letter to petitioners dated October 2, 2006, the Service acknowledged receiving the petition on August 30, 2006.

Accordingly, a 90-day finding was due on or about November 28, 2006 and a 12-month finding was due on or about August 30, 2007.

The petition outlined in explicit detail the catastrophic decline of the Giant Palouse Earthworm population since it was first described in 1897. The species is endemic to the rich, deep soil and native vegetation of the imperiled grassland habitat of the Palouse bioregion and is particularly vulnerable to habitat loss due to its narrow geographic range. Habitat degradation has also increased the vulnerability of this species to disturbance regimes and weather, such as flooding, drought, and erosion.

This species' massive decline can be attributed to the nearly total conversion of its native Palouse prairie habitat to commercial crop production. The Palouse prairie is currently one of the most imperiled ecosystems in the United States. The less-than 1% native Palouse prairie that remains faces many threats, including invasive species, disease, pesticide drift, and agricultural and suburban development.

In 1897, this species was described as "very abundant." Today, however, sightings of the species are extremely rare. The only recent confirmed sighting of this earthworm was made on May 27, 2005, by a University of Idaho researcher. Previously, it had not been sighted since 1988, and the sole reported sighting prior to 1988 was in 1978. A further indication of the species' rarity is documented by the research done by Fauci and Bezdicek. In 2002, these researchers surveyed for earthworms at 46 Palouse sights without one collection of the Giant Palouse Earthworm. Since the petition was submitted, there have been no sightings of this rare species.

The Giant Palouse Earthworm was listed as vulnerable in 1996 on the IUCN Red List of Threatened Species. This listing indicates that the Giant Palouse earthworm is capable of becoming Critically Endangered or even Extinct in a very short period.

There are currently no federal, state, or local regulations that can be applied to directly protect the Giant Palouse Earthworm or its habitat. Since the petition was filed, county, federal and state management of the giant Palouse Earthworm and its habitat has been revealed to be inadequate to protect the species from extinction. The Idaho Transportation Department has made the decision to not even consider this species in its Environmental Impact Statement for the expansion of Highway 95, (US 95, Thorncreek Road to Moscow, Stage 1, DHP-NH-4110(156) Key No. 9294), although several of the routes being considered for this federally-funded re-construction will negatively affect habitat associated with the Giant Palouse Earthworm's continued survival. In addition, the counties continue to permit suburban developments in the rare potential habitats associated with this species.

The Service has not published a 90-day finding or a 12-month finding for the Giant Palouse Earthworm petition despite the fact that over 12 months have passed since the Service received the petition. In *Biodiversity Legal Foundation v. Badgley*, 309 F.3d 1166 (9<sup>th</sup> Cir. 2002), the Ninth Circuit explicitly held that 90-day and 12-month findings on a citizen petition to list a species under the ESA must in all cases be made within 12 months of receipt of the petition. As a result, the Service is currently in indisputable violation of the ESA, 16 U.S.C. § 1533. Accordingly, we suggest that the Service remedy its violations of the ESA by promptly publishing a positive 90-day finding.

This letter puts you on statutory notice that we intend to file suit in federal court to remedy these ESA violations. We will seek injunctive and declaratory relief and legal fees and costs regarding these violations. If you have any intention of making the required 90-day finding or 12-month finding within the next two months please inform us immediately. If you have any questions, wish to discuss this matter, or feel the notice is in error, please contact me at 415-436-9682 ext. 302.

The Center for Biological Diversity is a non-profit corporation with over 32,000 members and offices in California, Arizona, New Mexico, Oregon, and Washington, D.C. The Center is dedicated to the preservation, protection, and restoration of biological diversity, native species and ecosystems through science, policy, education, and environmental law. Friends of the Clearwater, a recognized non-profit organization since 1987, defends the Idaho Clearwater Bioregion's wildlands and biodiversity through a Forest Watch program, litigation, grassroots public involvement, outreach, and education. The Palouse Prairie Foundation promotes preservation and restoration of native Palouse Prairie ecosystems in Latah and Whitman Counties (in Idaho and Washington), through public awareness, education, literature resource, encouraging responsible local seed production, and acting as a leader or consultant in Palouse Prairie restoration efforts. The Palouse Audubon Society is the Palouse Chapter of the National Audubon Society, and has a membership of over 400 people. Its goal is to educate and raise the level of public awareness for birds and wildlife and their habitat needs. David E. Hall, O. Lynne Nelson, and Steve Paulson are individuals committed to the preservation of this rare species.

Members and staff of the petitioning organizations reside in the Palouse bioregion, and regularly use areas within the Giant Palouse Earthworm's habitat for recreational, wildlife viewing, scientific, and educational purposes, and intend to continue to use and enjoy these areas for these purposes. The Petitioners bring this notice on their own behalf and on behalf of their members and staff who have been, and will continue to be, harmed by the Service's failure to process the listing petition and to adequately protect the Giant Palouse Earthworm and its habitat.

Sincerely,



Justin Augustine

On behalf of the Center for Biological Diversity, the Palouse Prairie Foundation, the Palouse Audubon Society, the Friends of the Clearwater, Steve Paulson, David Hall and O. Lynne Nelson.

cc: