

NEIL LEVINE  
ATTORNEY AT LAW

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August 22, 2003

**VIA FACSIMILE AND CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

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

Director Steven Williams  
U.S. Fish & Wildlife Service  
18th and C Streets, N.W.  
Washington, D.C. 20240

Re: 60-Day Notice Letter Of Intent to Sue on Critical Habitat Designation for 15  
Central Valley Vernal Pool Plants and Animals

Dear Ms. Norton and Mr. Williams:

On behalf of the Butte Environmental County, Defenders of Wildlife, and other interested parties, we hereby provide notice of our intent to sue the Secretary of Interior and the United States Fish and Wildlife Service (collectively "FWS") for violations of the Endangered Species Act, 16 U.S.C. §§ 1531-1544 ("ESA") and the Administrative Procedure Act. Specifically, FWS failed to perform non-discretionary duties required by ESA and has acted in a manner that is arbitrary, capricious, and not in accordance with law in designating critical habitat for 11 vernal pool plants and 4 fairy shrimp animals. 68 Fed. Reg. 46684 (August 6, 2003). This letter provides notice of our intent to sue on this critical habitat designation pursuant to the 60-day notice requirement of the citizen suit provision of the ESA to the extent such notice is deemed necessary by a court. See 16 U.S.C. § 1540(g).

The final rule excluded 466,504 acres from the approximately 1.7 million acres included in the Proposed Rule. Those acres excluded from the designation were found in National Wildlife Refuges and National Fish Hatcheries lands, State lands, military lands, tribal lands and lands covered by Habitat Conservation Plans. Such areas were excluded based on consideration of the "economic impact and other relevant factors." See 16 U.S.C. § 1533(b)(2). FWS also excluded areas based on the definition of "critical habitat" and the existence of "special management considerations." See, e.g., 68 Fed. Reg. at 46710 (Skunk Hollow). Late in the administrative process, over 500,000 of additional acres were excluded based on economic

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1400 GLENARM PLACE, SUITE 300  
DENVER, COLORADO 80202  
PH: 303-996-9611; FAX: 303-623-8083

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impacts. This exclusion eliminated all critical habitat in Butte, Madera, Merced, Sacramento and Solano counties.

The final designation violated the ESA and APA in several ways. In excluding all lands within the five counties, FWS did not fully consider the economic benefits of designating critical habitat, as the ESA requires. FWS also did not analyze the economic costs of designating critical habitat within the five counties. The unprecedented action of excluding five counties, in their entirety, from the final designation based on economics is not supported by the administrative record. The exclusion of all or a large portion of critical habitat areas for certain species violates the ESA's mandatory duty. Moreover, the exclusion of lands based on economic impacts is contradicted by FWS's own contention in the final rule that a critical habitat designation has little, if any, impact of land management and regulatory mechanisms. Further, the final rule also excludes areas subject to Habitat Conservation Plans that are only in draft form and other inadequate management plans.

If FWS does not act within sixty days to correct the above violations, and publish a new final critical habitat designation for these 15 species, the parties identified above intend to pursue legal action. An appropriate remedy would be to immediately issue a new final rule. If you have any questions, or would like to discuss this matter further, please contact us at your earliest convenience.

Sincerely,

Neil Levine  
Larry Sanders

cc: John Ashcroft, Attorney General