



Montana Shooting Sports Association

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Asserting the Rights of Gun Owners in Montana

EXHIBIT 14
DATE 1.25.05
HB 286

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January 22, 2002

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Dear Sir,

It is our understanding that the U.S. Fish and Wildlife Service (FWS) Finding by which the Black-tailed Prairie Dog (hereinafter PD) was determined to be "warranted but precluded" for listing as a threatened or endangered species under the Endangered Species Act (ESA) is coming up for annual review and reconsideration. We wish this letter to be considered as official comment upon this annual review and reconsideration.

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In general, we object to the Finding that PDs are actually warranted for listing. We observe that the FWS has relied too heavily on the assertions and claims of the petitioner, the National Wildlife Federation (NWF). In doing so, the FWS has replaced its responsibility to apply honest and accurate science to this issue with the advocacy which constitutes the position of the petitioner. Specifically, the USFWS has relied far too heavily on the assertions made by petitioner in their petition without verifying these assertions with scientific data – without sufficient fact checking.

Throughout the finding, there are hedge terms used that demonstrate the FWS lacks certainty or scientific proof. For example, the Finding (as published in the Federal Register of February 4, 2000) uses the phrase "we believe" about 32 different times. We assert that an issue as consequential to various stakeholders as the listing of ten million animals, occupying vast areas of many states, as threatened or endangered must be done according to hard facts and proof, not merely someone's belief. These facts and proof must be able to be stated as facts, not the simple reiteration of the wishes and beliefs of the petitioner wildlife advocates. Such a decision needs to be based on real science, not wishful pseudo-science.

Allow me to discuss some specific areas of real concern about the ongoing position of FWS that PDs are warranted for listing.

1. There are no adequate benchmarks to document the historic range and habitat of PDs. In much of its publicity pushing PD listing, the petitioner NWF claims that PDs now occupy only 1% of their historic habitat (Denver Post, January 06, 2002). This assertion is repeated by the FWS in its Finding. Although there is little doubt that many acres of historic PD towns have been tilled into cropland, and some acreage has been lost to human habitation, there is actually no census data whatsoever to validate current claims of PD habitat and range a century, two centuries or five centuries ago. It's all guesswork.

For example, the "A SPECIES CONSERVATION PLAN FOR THE BLACK AND WHITE-TAILED PRAIRIE DOGS IN MONTANA" (the Montana Prairie Dog Conservation Plan of 1999, adopted by the Montana Department of Fish, Wildlife and Parks) points out on page 10, "The original abundance of prairie dogs in Montana is unknown. Despite the reputation for occurring in incredible numbers, many 19th century Montana journalists recorded very little about prairie dogs. The Lewis and Clark journals probably contain the best accounts of prairie dog colonies in Montana. Lewis and Clark reported that prairie dog colonies along the Missouri River were common, some were 3 to 7 miles long, and that their last encounter with prairie dogs was at the Three Forks of the Missouri (Burroughs 1961).

While this makes for an interesting tale, it is hardly scientific information or accurate census data upon which it may be validly concluded that we have lost 99% of historic PD habitat. We object to the unsupported and unsupportable premise in the Finding that PDs currently occupy only 1% of their historic range.

2. The data we have now suggests significantly higher numbers of PDs extant than the lowball estimates of the petitioner NWF that seem to be the primary basis for the Finding. For example, recent inventory of habitat by the Colorado Division of Wildlife suggests much more extensive extant PD habitat in that state than the amount considered by FWS in its decision to award PDs (and NWF) the "warranted" status. As with estimates of the historic range and habitat of PDs, the numbers used for the current range and habitat are somewhere between guesswork and blind acceptance of the assertions made by petitioner and wildlife advocate NWF in its petition to list. Although a lot of more accurate census and habitat measurement has been done since the first FWS decision to call PDs warranted for listing, the truth is that we still don't have complete and reliable numbers for PD habitat extent, although the more we look, the more we learn that PDs are much more numerous than the numbers upon which the original Finding is based. We object to designation of PDs as "warranted" for listing based on inexact and lowball estimates of current numbers.

3. Much weight is given to the effects of plague on PD populations. While there is little doubt that plague constitutes a potential threat to PDs, we certainly challenge the use of the plague threat as any proper basis for listing PDs. First, we do not believe that the ESA contemplates giving governmental agencies the power to determine which species will prevail as a Darwinian success in the natural environment. No doubt there is an ongoing conflict between PDs and the plague bacillus (one species against

another), but the ESA does not contemplate making the FWS the final arbiter of which species ought to be given an advantage over others. Second, although the NWF and the FWS point back to the earliest noticed effects of plague on PD populations, there is no proof whatsoever that these first observations constitute the first occurrence of that phenomenon. This is similar a child's view that the Universe began with their first conscious memories. The finding states in its conclusion. "Plague is a new phenomenon in North American ecosystems." With the same scientific validity, one might just as well state that microbes only happened since the microscope was invented. Much is made of the presumption that plague is a new and artificial factor in PD populations, and one for which the FWS must regulate and compensate, only because the FWS has not yet demonstrated an earlier existence of the phenomenon. This is not science.

So, we object to factoring plague into the listing decision because it is an intervention into the natural order and among species not supported by the ESA, and because there is no proof that plague is not a naturally-occurring phenomenon. It may be that the rise and fall of PD numbers because of plague is as natural as the ebb and flow of the tides, not exactly something the FWS is obliged to rush to fix.

4. It is a strange mindset indeed that would assert that inadequate regulation is a threat, especially coming from a governmental agency. There is absolutely no limit to the mischief that could be done to the liberties of the people under this theory. Of course, the regulations contemplated are not regulations to regulate PDs, but to regulate people. The theory that government must step in to regulate people who are inadequately regulated – that if a regulatory vacuum can be identified it must be filled - is indeed novel, and is inconsistent with the republican and limited form of government mandated by our constitution and especially asserted in the Tenth Amendment thereto. While it is not surprising that a government agency would think this way, it is at best a bit strange, and at worst dangerous. We object to the application here of the theory that a regulatory void is a threat that must be corrected with government intervention.

5. Synergistic effects. In its rush to sweep PDs into its wide regulatory loop, the authors of the Finding are indeed grasping at straws. It is hard to imagine locating a more classic example of a non sequitur than this statement from the Finding: "The synergistic effect of various factors adversely influencing black-tailed prairie dog populations are largely unknown. Nevertheless, these influences are considered a moderate threat..."

This is, apparently, what passes for science in this Finding. Allow me to offer a semantic equivalent, but in different words: "Because we don't know what it is, and can't identify or describe it, it must be really bad." We object to the use of such obvious nonsense masquerading as science.

6. In the conclusion of the Finding, which justifies the "warranted" status for PDs, FWS states: "Overutilization via recreational shooting is considered a threat of low

magnitude. Local populations may be impacted by shooting; however, significant rangewide population declines due to this factor are not likely.”

All the other extant “threats” to PDs listed in the finding are listed as “moderate magnitude”. Of all the threats, the only one listed as “low magnitude” is recreational shooting. Notwithstanding this, the ONLY regulatory effort being pushed by states, in response to the FWS finding, that is so strict that it carries potential court-imposed fines and jail time for compliance failure, is recreational shooting. So, PD hunters are the only ones who can go to jail for failure to protect PDs. We object to this effective discrimination and criminalization against a particular class of people, PD hunters, with only the most flimsy justification.

7. Finally, we object to the notion that the ESA was intended to apply to a species that numbers over ten million examples in 11 U.S. states, not to mention uncountable PDs in Canada and Mexico. We do not believe that PDs are on the brink of extinction or in need of protection forced upon the several states by the federal government, whether by an actual listing of PDs, or by the threat to list them if the states don't get with the program and do under state law and with state money those corrective and protective things the federal agencies would like to see done. We believe the use of the ESA by the FWS under these circumstances constitutes an abuse of power and responsibility.

For all of these reasons, we recommend that the FWS drop its “warranted” designation of Black-tailed Prairie Dogs, and forego for the indefinite future any further consideration of listing this species as either threatened or endangered.

Sincerely yours,

Gary Marbut
President

Cc: Senator Conrad Burns
Representative Dennis Rehberg
Gale Norton, Secretary of the Interior
Montana Department of Fish, Wildlife and Parks
MT FWP Commission
Mountain States Legal Foundation
Montana Shooting Sports Association members
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