



July 23, 2014

Secretary Sally Jewell  
U.S. Dept. of the Interior  
1849 C Street, NW  
Washington, DC 20240

Dan Ashe, Director  
U.S. Fish and Wildlife Service  
1849 C Street, NW Room 3331  
Washington, DC 20240

**Sixty Day Notice of Intent to Sue Under the Endangered Species Act**

You are hereby notified that Western Watersheds Project and Cottonwood Environmental Law Center (collectively, “WWP”) intend to file a lawsuit against the U.S. Fish and Wildlife Service (“Service”) pursuant to the citizen suit provision of the Endangered Species Act (ESA), 16 U.S.C. Section 1540(g) for violations of the ESA, 16 U.S.C. §1533 *et seq.* WWP will file suit in 60 days unless the violations described in this notice are remedied.

The name, address, and phone number of the organizations giving notice of intent to sue are as follows:

Western Watersheds Project  
126 South Main Street, Suite B2  
Hailey, ID 83333  
(208) 788-2290  
Travis@Westernwatersheds.org



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**The Fish and Wildlife Service Has Violated the ESA by Failing to Prepare a Recovery Plan for the Winkler Pincushion Cactus.**

The Winkler Pincushion cactus (*Pediocactus winkleri*) was listed as a “threatened” species under the ESA in 1998. 63 Fed. Reg. 44587 (1998). Threats to the Pincushion cactus include collection and habitat disturbances by mining, ORVs, and cattle grazing. *Id.*

Pursuant to Section 4(f) of the ESA, the “Secretary shall develop and implement [recovery] plans . . . for the conservation and survival of endangered and threatened species . . . unless he finds that such a plan will not promote the conservation of the species.” 16 U.S.C. § 1533(f). In preparing recovery plans, the Secretary is to give priority to those listed species that “are most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity.” 16 U.S.C. § 1533(f)(1)(A). The Service has violated the ESA by failing to prepare a recovery plan for the Winkler Pincushion.



In the Service’s *Recovery Planning Guidance* (updated June, 2010), the Agency explains that the development and implementation of recovery plans is important because it spells out the variety of actions needed to achieve recovery: “without a plan to organize, coordinate and prioritize the many possible recovery actions, the effort may be inefficient or even ineffective.” The *Guidance* states that the prompt development and implementation of recovery plans “ensures that recovery efforts target limited resources effectively and efficiently into the future.” According to the *Guidance*, Recovery Plans are supposed to be a “roadmap” for species recovery and are “one of the most important tools” to ensure sound decision making throughout the recovery process.

Pursuant to the Service’s *Recovery Planning Guidance*, recovery planning in accordance with Section 4(f) of the ESA involves three phases:

- Phase One is the preparation of a recovery outline that spells out how and by whom a recovery plan is to be developed. The *Guidance* states that recovery outlines are to be completed within 60 days of listing.
- Phase Two is the planning phase, which involves the writing of the recovery plan, including solicitation and incorporation of comments via peer review and public comment. Under the ESA, each recovery plan shall include:
  - (1) a description of site-specific management actions necessary to achieve the recovery goal;
  - (2) measurable criteria (which, when met, would result in a determination that the species be delisted); and
  - (3) an estimate of the time and costs required to carry out the measures needed to achieve the recovery goal and intermediate steps towards that goal.



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- Phase Three includes implementation and monitoring of the recovery actions called for in the draft plan, and adaptation of strategies if necessary.
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On December 6, 2007, the Service completed Phase One of the recovery planning process by preparing a recovery outline for Winkler Pincushion, ten years after the initial listing of the cactus. The Recovery Plan Production Schedule found within the recovery outline states that a final plan would be completed in September 2009.

Western Watersheds Project may properly resort to this timeline to demonstrate undue delay in preparing the recovery plan. *Friends of the Wild Swan v. Ashe*, 2014 WL 1870370 at \*2 (D. Mont. 2014) (citation omitted). The Service's *Recovery Planning Guidance* states that final recovery plans "should be completed within 2.5 years of listing." The Service has still not completed a final recovery plan, and the draft (1995) is now nearly two decades old.

To the best of our knowledge, the Service has not initiated the remaining Phases of recovery planning or completed a final recovery plan for the Winkler Pincushion, putting the species at risk of continued impacts.



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If the ESA violations described above are not cured within 60 days, WWP will file suit for declaratory and injunctive relief, as well as attorney and expert witness fees and costs. WWP hopes that this will be unnecessary and that the Service will instead endeavor to provide meaningful recovery planning for the Winkler pincushion that is already long overdue.

Sincerely,

JOHN MEYER, Executive Director  
Cottonwood Environmental Law Center