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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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November 30, 2011

The Honorable Ken Salazar
Secretary of the Interior
Department of the Interior
1849 C Street NW
Mailstop 4428
Washington, DC 20240

Dear Secretary Salazar:

We are writing in regard to the upcoming decision in December on whether to list the Dunes Sagebrush Lizard (DSL) under the Endangered Species Act (ESA). The MDL settlement agreement permits you to delay a final listing decision for six months if there is a dispute between the scientific data relating to the biological health of the species. It is our understanding that there is a significant level of dispute regarding this issue.

In our view, the proposed listing of the Dunes Sagebrush Lizard is not supported by adequate population viability evidence. Rather, it is based on a survey methodology (known as "presence/absence" surveys) that does not yield reliable population numbers or reliable information on population viability. The "absence" of DSL when a site with a historic "presence" finding is resurveyed does not warrant a conclusion that DSL are not present. The data shows that DSL—which often retreat underground as a defense mechanism—may be detected on some days, but not on others, during presence/absence surveys. Moreover, recent presence/absence surveys continue to find DSL in new locations.

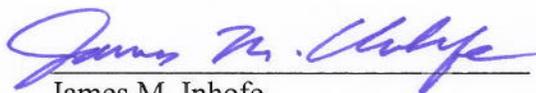
The following studies by large research universities are examples of the scientific disputes that have been brought to our attention:

- A. An August 10, 2011 review by New Mexico State University of the science cited and used in the FWS December 14, 2010 proposed listing notice for the DSL notes:
 - The statement of a 40% loss of DSL habitat is not scientifically defensible and was based on a "misuse and misrepresentation" of data compiled in a 1985 study. The methodology and data in that 1985 study actually do not allow its use to determine whether a loss of DSL habitat has occurred.
 - Specific habitat requirements for DSL have not been quantified in the published scientific literature and agency reports.

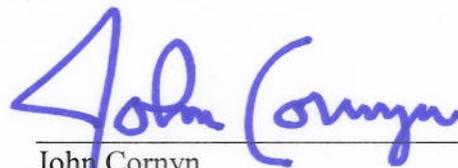
- The literature cited in the FWS's December 2010 proposed listing provides questionable estimates of DSL abundance. To provide robust estimates of species abundance and occupancy, estimates of detection probability are needed.
 - Recently published and ongoing research appears to provide a substantive improvement over the shortcoming of previous efforts and may provide more robust estimates regarding DSL habitat occupancy and measures of abundance.
 - FWS's statements of inadequate regulatory protections are not supported by actual on-site monitoring or ground survey data.
- B. An October 21, 2011 review by scientists at Texas Tech of the purported science cited by FWS in its December 2010 proposed listing of the DSL states:
- Contrary to the conclusion reached by FWS that the DSL population is vulnerable to extinction, the DSL population research conducted in 2007 and 2009 demonstrates that the DSL is NOT showing characteristics expected of an endangered species in terms of limited genetic diversity or structure. Moreover, these recent studies indicate that there is geographic structure in the genetics of the three groups of DSL indicating long periods of survival within such groups which does not indicate a need for captive breeding and reintroductions. The Texas Tech scientists conclude that the new research and available data does not support the hypothesis that the DSL merits listing as an endangered species.
 - The available literature does not provide the type of data necessary to support the conclusions in the proposed listing regarding habitat loss caused by oil and gas production activities.
 - There is considerable uncertainty as to the abundance of DSL throughout Texas and New Mexico in part due to a lack of systemic, long-term research on specific populations or in particular geographic regions. The lack of suitable data precludes a reasonable assessment of DSL population trends. A recent study in 2011 suggests that DSL abundance may have been previously underestimated.
 - The available data on the effects of anthropogenic factors (chemicals and pollutant introduced by oil and gas activities) on the DSL is limited and prevents a robust assessment of actual risk to the DSL. More extensive research, better experimental design, and sampling of environmental media for potential toxicants and effects on habitat characteristics are needed to clearly identify potential risk factors. The vast majority of information available on DSL is in the form of reports to state and federal agencies and has not been published in the primary literature and subjected to rigorous peer review.

Given these disputes in the scientific data relating to the merits of a listing, we request that you delay the final listing decision for six more months while the scientific community continues its important work.

Sincerely,



James M. Inhofe
Ranking Member
Committee on Environment and Public Works



John Cornyn
United States Senator