



Holsinger Law, LLC
Lands, wildlife and water law

***Endangered Species issues in
the West: the good, the bad
and the ugly***

Kent Holsinger



Recovery Credits and Offsite Mitigation

- July 31, 2008 USFWS Guidance
- Lessons learned at Fort Hood, Texas
- Colorado Agriculture's alternate proposal to draft oil and gas rules
- August 15, 2008 USFWS proposed revisions to Section 7?



Lawsuits to List Species under the ESA

Species	Filed	U.S. District Court	Plaintiffs
Gunnison sage grouse Scheduling conference July 11, 2007; admitted pro hac vice; ruling on intervention expected Aug. 3, 2007	11/14/06	D.C.	Forest Guardians, Center for Native Ecosystems, Center for Biological Diversity, PEER, Sagebrush Sea, San Miguel County
Greater sage grouse Summary judgment motions filed	7/14/06	ID	Western Watersheds Project
Black-tailed prairie dog Intervention granted June 4, 2007	2/7/07	CO	Forest Guardians, Center for Native Ecosystems, Biodiversity Conservation Alliance, Rocky Mountain Animal Defense
Gunnison prairie dog July 2, 2007 Settlement: FWS to conduct status review by Feb. 8, 2008	12/13/06	D.C.	Forest Guardians, Center for Native Ecosystems, PEER, Wildlands Conservation Alliance, Jews of the Earth
Mountain Plover Admin. record due Aug. 1, 2007; motion to change venue to Colorado filed June 8, 2007.	11/16/06	Southern District CA	Forest Guardians, Biodiversity Conservation Alliance



Lawsuits to List Species under the ESA

55 Species in 28 states	Aug. 28, 2007; NOI	?	Center for Biological Diversity	Filed formal notice of intent to sue Interior for the “political interference” and “illegal decisions” with 55 species November 15, 2007 – CBD filed two lawsuits, one for 13 species and another for 7 species
206 Species in the Mountain Prairie Region (08CV00472)	July 24, 2007 petition March 19, 2008 suit	D.C.	WildEarth Guardians	90-day finding due Oct. 30, 2007 Nov. 8, 2007 filed NOI for failing to issue finding Filed suit over failure to issue a 90 day finding. Currently, Plaintiffs seek to amend original complaint re: rejection of emergency petition filed for 32 of the species.
475 Species in the American SW (08CV00472)	March 19, 2008	D.C.	FG	Filed suit for failure to issue a finding. Currently, Plaintiffs seek to amend original complaint re: rejection of emergency petition filed for 32 of the species.
Western Ark Project (13 species)	Petitions filed Oct. 9, 2008	n/a	Petitioners : WildEarth Guardians	Eight petitions to list 13 species. All petitions attribute in part climate change as a threat.
Mountain pika	Petition filed Oct. 2, 2007 Suit filed August, 2008	?		Global warming cited as threat.

Blanketing the West



PLATE 20 PRAIRIE DOGS

PRAIRIE DOGS — These sandy-colored squirrels live in extensive colonies of underground burrows. Conspicuous with their diurnal feeding and barked alarm calls. All species are vulnerable to human persecution because of an exaggerated and often unwarranted reputation as pests. The four species are distinguished by the color of their back and tail tip.

GUNNISON'S PRAIRIE DOG *Cynomys gunnisoni* ♂ 320–390mm, 40–60mm, 460–1300g; ♀ 310–340mm, 50–60mm, 465–750g



Has a gray tail tip with a white border. Head and back are sandy-colored, belly is white. Lives in colonies that are smaller than other prairie dogs, with less modified mounds and more vegetation between holes. Contact call between individuals is a raspy chatter. Hibernates from October or November until March or April. Lives in montane valleys and high plateaus in the southern Rockies.

WHITE-TAILED PRAIRIE DOG *Cynomys leucurus* ♂ 350–390mm, 40–70mm, 850–1650g; ♀ 320–370mm, 50–60mm, 705–1050g



A buff or gray-colored prairie dog with a white tail tip. Has a dark brown spot above the eye and on the cheek. Contact call between individuals is a laughing bark. Typically hibernates from October to April. Lives in mountain meadows. May venture into semidesert areas in the north of the range.

UTAH PRAIRIE DOG *Cynomys parvidens* ♂ 300–370mm, 50–60mm, 460–1250g; ♀ 290–370mm, 50–60mm, 410–790g



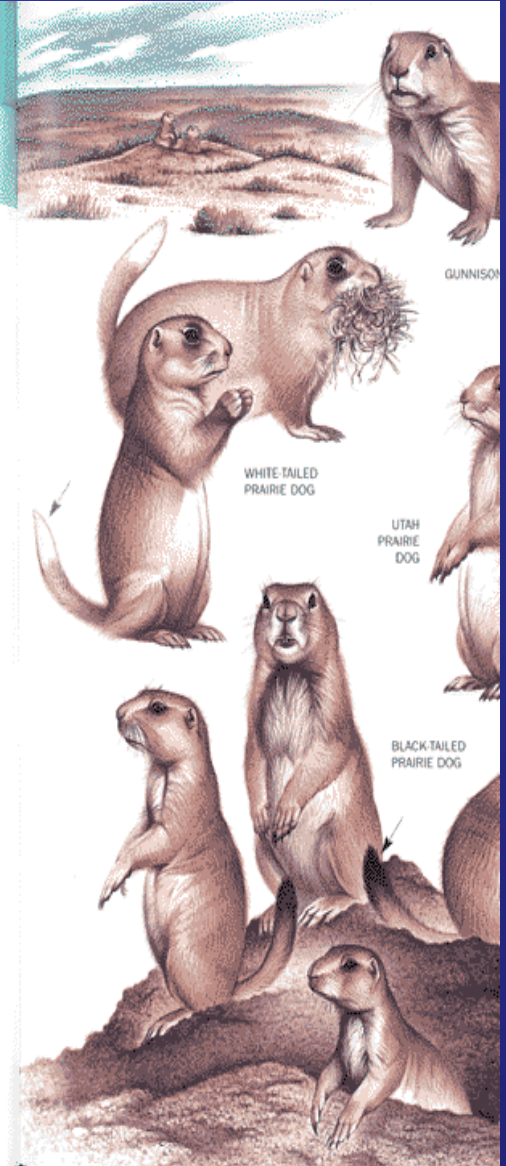
A reddish or cinnamon-colored prairie dog with a white tail tip. Burrow entrances are marked by a mound of dirt. Hibernates in winter. Endangered because widespread human persecution has driven them out of 90% of their historic range. Now limited to grasslands and flat plains in southern Utah.

BLACK-TAILED PRAIRIE DOG *Cynomys ludovicianus*

♂ 360–430mm, 70–90mm, 575–1490g; ♀ 340–400mm, 60–90mm, 765–1030g



A large prairie dog with a black tail tip. Contact call between individuals is a "we-oo." Burrow entrances are surrounded by a large mound of dirt shaped into domes. Dormant in winter, but does not truly hibernate, and can be seen above ground on warm winter days. Clips vegetation very short around colonies for an unobstructed view. Lives at high densities where not persecuted. Prefers shortgrass to mid-grass prairies.





Place-name Listings:

Specious Subspecies and Dubious DPS's

- Western sage grouse, Eastern sage grouse, Greater sage grouse, Mono sage grouse, Gunnison sage grouse
- Gunnison prairie dog, Utah prairie dog . . .
- New Mexico meadow jumping mouse, Preble's meadow jumping mouse, bear lodge meadow jumping mouse . . .
- Sleeping Ute milk-vetch, Deseret milk-vetch, Coachella Valley milk-vetch . . .
- New Mexico springsnail, Idaho springsnail . . .
- Sacramento checkerspot butterfly
- Salt Creek tiger beetle
- Sonoran Desert bald eagle
- Alabama sturgeon
- Louisiana black bear



The “Ecosystem Approach” to listings under the ESA

- September 30, 2008 USFWS proposal to list 48 species in Kauai
 - a “newly developed, ecosystem-based approach” to listings and critical habitat designations
- Wild Earth Guardians’ petitions and lawsuits to list 681 plant and animal species in the West
- The “Western Ark” project: 13 species in the West
 - NM meadow jumping mouse in NM and CO; Sprague’s Pipit (bird) in MT, ND, SD, NE, CO, KS, OK, TX, NM, AZ, and LA; Chihuahua scurfpea (plant) in NM and AZ; Wright’s marsh thistle (plant) in NM; Jimenez Mountain Salamander in NM; Sonoran desert tortoise in AZ; white-sided jack rabbit in NM; 6 freshwater mussels in TX, OK, and NM



The Usual Suspects:

- Wild Earth Guardians (formerly Forest Guardians and Sinapu)
- Center for Native Ecosystems
- Center for Biological Diversity
- Western Watersheds Project



Climate Change and Listings Under the ESA: An Inconvenient Truth meets the Perfect Storm?

- USFWS listed the polar bear as threatened on May 15, 2008, 4(d) Rule, (six lawsuits filed)
- Efforts to list seals, penguins, mountain pika . . .
- August 15, 2008 USFWS proposed revisions to Section 7

Staffing-up for Global Warming

classifieds

STAFF ATTORNEY – CLIMATE PROTECTION

The Center for Biological Diversity seeks a full-time Staff Attorney to work as part of our Climate, Air and Energy Program. The Center is a national nonprofit organization dedicated to protecting endangered species and wild places through science, policy, education, and environmental law. The Center's Climate, Air and Energy Program works to protect endangered species and ecosystems by reducing greenhouse gas pollution and improving management for species most threatened by the climate crisis. The program has initiated a number of cases to enforce existing state and federal laws that already address global warming, as well as implementing administrative projects to protect species most at risk, such as petitions to list species such as the polar bear, penguins, and reef-building corals under the Endangered Species Act due to global warming. The attorney will be responsible for developing, managing and litigating cases as well as engaging in policy advocacy, interacting with local, state and federal agencies, other environmental organizations and the public, and doing media outreach. Some travel required. Requirements for the position include three years' civil litigation experience, excellent research, writing, and oral advocacy skills, a demonstrated commitment to environmental protection, scientific literacy, an ability to manage a litigation docket and work with other lawyers and staff members as a part of an effective team, and a strong work ethic. Familiarity with the Endangered Species Act, Clean Air Act, National Environmental Policy Act, California Environmental Quality Act, and scientific literature on climate change preferred. Salary for the Staff Attorney position is

commensurate with other nonprofit organizations and includes an excellent vacation and benefits package. Position to be located in our San Francisco Bay Area office, with some possibility for alternate locations depending on experience. Please send a cover letter, résumé, references, and writing sample via e-mail (no paper) to attorneyjob@biologicaldiversity.org "Attn: Attorney Job." Position open until filled. No telephone calls, please.

GLOBAL WARMING CAMPAIGNER – CENTER FOR BIOLOGICAL DIVERSITY

Applicant must be a proven self-starter and highly motivated with the ability to generate publications, media and political and grassroots support for the Center's campaign to address global warming. Applicant must have substantial experience in political or environmental issue campaigns and be able to work in a team atmosphere. Global Warming Campaigner will be responsible for: Working with Center members and others to generate grassroots support for legislation and other actions to address the climate crisis. Working with conservation and other allies to garner further support and activism. Working with the Climate, Air and Energy Program Director and others to develop and implement an aggressive communications strategy: Determining opportunities to generate substantial media coverage, especially in regard to plant and animal species threatened by global warming. Directing communication via phone and e-mail with Internet, print, radio, and television. Writing, editing and distributing fact sheets, reports, press releases and other campaign material. Determining campaign gaps and helping to fill them. Developing and working closely with Center staff to implement

Internet communication strategies. Essential qualities and skills desired: Passion for protecting planet Earth, strong writing ability, strong public speaking and presentation ability, common sense and ability to make decisions quickly and independently, experience working with media, experience with technical research and communication, experience in conservation work, take direction well, work well with others, solid computer skills in word processing and database management, and ability to travel. Salary and Benefits: Salary \$35,000-\$50,000 depending on experience. Excellent benefits are included. Location: Position to be located in Tucson, Ariz., San Francisco or Sacramento, Calif., or Washington, D.C. Please e-mail résumé and cover letter to: campaignerjob@biologicaldiversity.org.



Holsinger Law, LLC

lands, wildlife and water law

104 Broadway, 3rd Floor

Denver, CO 80203

(303) 722-2828

kholsinger@holsingerlaw.com