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United States Senate

WASHINGTON, DC 20510-0606

July 30, 2007

The Hon. Dirk Kempthorne
Secretary
U.S. Department of the Interior
1849 C St., NW
Washington, D.C. 20240

Dear Secretary Kempthorne:

I am writing in regards to correspondence I requested from you on the proposed delisting of the Preble's meadow jumping mouse in August of 2006. Upon careful review of these correspondences, the information paints what appears to be a troubling picture of a coordinated effort on behalf of U.S. Fish and Wildlife Service (FWS) staff to retain the listed status of the Preble's regardless of what the best available science tells us.

The delisting petitions on Preble's were based on significant increases in known numbers and range. Both the States of Colorado and Wyoming have called for the immediate delisting of Preble's based on this data and taxonomic error. Many local governments also support delisting. It appears that FWS has chosen to ignore population and range data despite roughly 100 pages of data on the subjects submitted in the delisting petitions and publication in a peer-reviewed journal. This is illustrated in an e-mail correspondence between FWS officials in March of 2005. I have not included the specifics of this correspondence at this time because the Department has claimed this correspondence is privileged, but I would be happy to provide further details upon request.

The original delisting rule was based solely on the genetic and taxonomic review of Dr. Rob Roy Ramey. It appears that following the original delisting recommendation that Fish and Wildlife Service staff then embarked upon an aggressive campaign to discredit Dr. Ramey, ignoring that listing was based largely on the review of only four adult specimens of mice. With help from interested parties in academia, and perhaps environmental groups, FWS employed and funded an agency ally, USGS researcher Dr. Tim King, to protect Preble's listed status. After this, FWS staff influenced what was to be an "independent review" of the genetic and taxonomic issues related to Preble's.

It appears that FWS staff set their minds on rebutting Ramey whatever the cost. FWS staff were threatened and angered by Ramey's results. This is displayed in a Jan. 21, 2005 email from Preble's Recovery Team Leader Bruce Rosenlunt to University of Colorado Professor Andrew Martin: "I was going to include something with the e-mail on Ramey, but I did not want to make it seem I was mad as hell. To lower my blood pressure, I wrote a letter and sent it to the recovery team. Most of the Preble's Recovery Team was also mad, but Rob has a very strong following north of Cheyenne."

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On October 28, 2004 Rosenlund also e-mailed Dr. Ramey's superior at the Denver Museum of Nature and Science (DMNS) complaining about national press embarrassing the FWS. In this email Rosenlund seemed to imply Ramey was pro-development, blustered that Ramey was not meeting deliverables and threatened to withhold funds from the DMNS. By spring, the FWS was writing press releases for the DMNS on the publication of Ramey. "Here is my suggestion of what I would like to get out today. Appreciated your help on this and want to maintain a positive public image on this." Rosenlund stated in a email to Stuckey in May of 2005. Later, in June of 2005, Rosenlund admitted that Ramey's manuscript met the FWS target "ahead of schedule."

Based on my research it appears that FWS staff may have encouraged others to exert pressure on the DMNS about Ramey's work. In e-mail correspondence to a consultant often employed to do Preble's trapping, FWS staff said, "Carron: Thanks again for your time and effort you have devoted to the DMNS Preble's issue. . . ." (Rosenlund to Carron Meaney, July 3, 2006.) Meaney had previously threatened Ramey in e-mail correspondence, "there are a lot of people who question your approach and have concerns about working with the museum in the future. I love the DMNS, and am very concerned to watch the alienation your behavior has wrought between the museum and the biology community." This concerning behavior was noted in the Vincent Carroll article, *On Point: The mouse that roared*, Published in April of 2006 in the Rocky Mountain News.

Following this the FWS turned to sympathizers in academia for help justifying the Preble's listing. "Sorry to hear there is so much bad news. Thanks for the Excel info. I can't advocate for one, or two or three or however many species based on mtDNA and a poorly designed morphological study." (Andrew Martin responding to Rosenlund, Jan 21, 2005.) Three days later, Martin again wrote to Rosenlund, "Hi any chance agency or non-profit folks are considering funding a genetic study of zapus that is independent of the Ramey group? . . . If this is on the burner, please consider us."

Less than two weeks after the above correspondence, Region 6 FWS staff communicated, "Since the Preble's has now published and the reality of what we need to accomplish is now coming into focus, we're starting to think more seriously about this USGS study." To perform the study the FWS enlisted, Dr. Tim King of the USGS, to refute the previously published work. Dr. King's one-sided history of splitting into subspecies and distinct population segments (DPSs) has been seriously questioned by his peers, in particular as it related to Maine Atlantic salmon. Newspaper reports suggest Dr. King refused to release, and may have altered, crucial data to support his findings. Here, Dr. King's work has been hotly criticized for bias in sampling, misrepresentations and inexplicable conclusions.

This situation is problematic for numerous reasons.

I see a waste of tax payers dollars:

I have reviewed correspondence between FWS staff that shows them scrambling to reallocate funds from other programs to cover the cost of King's review. These emails show willingness by staff to go to almost any lengths to provide funding for the unnecessary review. In addition I understand that this review went far beyond original

cost estimates eventually costing taxpayers hundreds of thousands of dollars. I have not included the specifics of these correspondences at this time because the Department has claimed the correspondence is privileged.

I see a violation of Interagency Policy on Peer Review:

Soliciting King's review was in violation of the FWS's Interagency Policy on Peer Review. The FWS violated its own peer review policy by commissioning Dr. Tim King to conduct, at public expense, yet additional review of Ramey outside of the comment period of the proposed listing.

I also see items that some could view as collusion with outside environmental interest groups:

As King's budget escalated, so too did the communications between FWS staff, environmental groups, academia and biologists with vested interests in Preble's listed status. In November of 2004 FWS employee Wiley passed along the Ramey work to environmental litigants, the Center for Native Ecosystems. Then on August 9, 2004, Jacob Smith of the Center for Native Ecosystems requested a meeting with the FWS regarding a 12-month finding for Preble's. Wiley replied that the FWS would set something up.

It appears Wiley may have gone so far as to have arranged for King to update the FWS's allies on King's progress. "What is the audience seeking an update?" asked King of Wiley, Aug. 16, 2005. Preble's Recovery Team Leader Bruce Rosenlund alluded to a meeting with undisclosed "parties," and offered to send a misleading request for Preble's samples to the recovery team. Rosenlund to Mary Jennings, May 19, 2005.

FWS kept the USGS study under wraps. But on January 3, 2006, Wiley writes to King: "[T]he word is out!! I'm amazed it stayed under wraps this long." Later in May of 2006 it appears that Tim King actually solicited positive comments on his views on Preble's from other splitters. Environmental groups were in touch with King too. On July 21, 2006 Sylvia Fallon with NRDC corresponded with King about the possibility of genetic standards in listing decisions.

I am also concerned about misleading request for Preble's Samples:

"Seems like this could be a real bombshell as written. On the other hand, may be a good way to open the door on the USGS genetics study." (FWS employee Rosenlund to Mary Jennings, May 19, 2005.) Alluding to a meeting with undisclosed "parties," Rosenlund offered to send a misleading request for Preble's samples to the recovery team under the guise that there had been some confusion about certain Preble's samples.

Upon review of numerous correspondences I am concerned that outside influences may have been exerted in the Preble's Review Panel.

The FWS campaign culminated in what was supposed to be an independent panel review of Ramey and King's work. But FWS staff seems to have colluded with King and

academia to influence even the review process. FWS staff had behind-the-scenes contact and communication with the panel chosen to review Ramey's work. In April, the Sustainable Ecosystems Institute (SEI) seemed to be ringing alarm bells with FWS staff over a high-level meeting held in Washington on genetics and listing decisions. (Wiley to Mary Henry, April 26, 2005). Wiley didn't want to get his SEI "contact" "in trouble" for spreading the word.

Perhaps using their "contacts" at SEI, the FWS tried to push through a stacked panel review of King's work compared to Ramey. "Per Ralph's [Morgenweck] direction, please let our panelists know that they should stand down." This from a Oct 20th 2005 email between Julie Lyke to P. Plage, S. Wiley. There is further evidence of collusion in a email between Plage and Hopi Hoekstra on Jan. 20, 2006. It looks as though some interested parties in academia wanted to influence the Preble's decision. Hoekstra, one of the researchers that works on listed subspecies of beach mice, suggested a kindred spirit, Sacha Vignieri, that CU's Martin had also blessed. This was indicated in a communication from Hoekstra to Plage on Januray 22, 2006. On March 3, 2005, Alabama researcher Michael Wooten asked the FWS for information on the status of delisting Preble's and noted that the people that work on listed subspecies of beach mice were watching closely. Later, Martin wrote to Vignieri, copying King and Hafner about the SEI panel and his desire to get one of them to represent "our arguments." Martin to Vignieri, June 20, 2006.

In addition FWS staff crafted an agenda for the SEI meeting and passed it along to Tim King. (Wiley to King, June 7, 2006.) Perhaps in response to the FWS agenda, the SEI panel changed it's agenda from equal time on the agenda to almost 2:1 in favor of the critics of Ramey. The panel also applied a double standard as to who could participate in the review with more deference to the critics of Ramey.

Apparently due to complaints from Dr. King, a panelist was removed from the SEI panel based on fears he would be sympathetic to the Ramey work (Dr. Eric Routman of San Francisco State University). But another panelist, Dr. Scott J. Steppan, remained on the panel despite his history of collaborator with Dr. Jim Patton.

The panel review on Preble's was a model of selective interpretation. The SEI panel claimed Ramey's work was "based on insufficient data to support their suggestions for taxonomic change," yet ignored the weak inference and small sample size used originally by Krutzsch (1954) to describe this subspecies (measurements of only 3 skulls and comparisons of only 4 skins). The panel criticized Ramey for using museum samples, but King admitted, "we have previously extracted DNA from 60-year old samples . . . and from numerous dried [Preble's] ear punches provided by the Colorado Natural Heritage Program." King admitted this in a correspondence to Robert Mark Timm on Sept. 13, 2005.

The SEI panel also failed to acknowledge that Dr. Krutzsch no longer supports his original subspecies description; ignored that a study across the entire *Zapus* genus had already been conducted by Jones (1981) that examined specimens from 123 collections, totaling almost 9,900 individuals and concluded that: "There is no evidence of any population of Zapus hudsonius being sufficiently isolated or distinct to warrant

subspecific status" (pages V and 303 from Jones 1981). Finally, SEI ignored a review of both Ramey and Kings work commissioned by the State of Wyoming that heavily favored Ramey's work. Crandall and Marshall (2006).

Perhaps the SEI panel was sensitive to academia's fear of the Crandall work. On the first of June, 2006, Andrew Martin wrote to King, and copied Vignieri, Hafner & Wooten, "[T]he Crandall report apparently commissioned by the State of Wyoming is interesting and contradicts, in very specific terms, the King et al. study. I have two questions: First, why was the Crandall report commissioned? And what the @#$%$#@ is going on?" Martin to King, June 1, 2006. This independent review of the Ramey and King data sets was conducted by internationally known population geneticists.

Prominent on the FWS Preble's web page is Dr. King's work and the SEI panel review. Crandall and Marshall (2006) is nowhere to be found. Also conspicuously absent from the FWS web page are:

- Crandall, K.A. (2006) Advocacy dressed up as scientific critique, Animal Conservation. 9:250–251

- Ramey, R.R. J.D. Wehausen, H.P. Liu, C.W. Epps, and L. Carpenter (in press), How King et al. (2006) define an "evolutionary distinct" mouse subspecies: a response. Molecular Ecology.

- Ramey, R.R., J.D. Wehausen, H.P. Liu, C.W. Epps, and L. Carpenter (2006) Response to the report: Evaluation of Scientific Information Regarding Preble's Meadow Jumping Mouse (prepared by the Sustainable Ecosystems Institute). Submitted the FWS (Aug. 2006).

- Ramey, R.R., J.D. Wehausen, H.P. Liu, C.W. Epps, and L. Carpenter. (2006) Response to Vignieri et al. (2006): Should hypothesis testing or selective post hoc interpretation of results guide the allocation of conservation effort? Animal Conservation. 9:244-247.

- Emma Marris, the species and the specious, Nature (Mar. 2007)

I am not sure why these items are absent but it would seem that these items should be available.

Perhaps emboldened by their ability to silence the best available information, FWS staff began to explore outsourcing their review of Preble's population and range to their allies at SEI. (Susan Linnear to M. Stempe, Aug. 3, 2006.) Wiley kept Tim King informed all the way. "See bold text below [proposing SEI review Preble's population, range and potential for DPS status] I think our folks are likely to be interesting [sic] in pursuing this more . . . let's keep talking." (Wiley to King, Aug. 3, 2006.)

Preble's was listed because the FWS concluded there was a loss of populations over a significant portion of its range. Post-listing surveys have shown Preble's to be quite

common. In fact, the number of sites known to be occupied by Preble's has increased over 400% (from 29 sites to more than 132 sites -- and counting).

Recently, the journal Nature published an article on controversy related to genetic and taxonomic status. Emma Marris, *The species and the specious*, Nature, 250 (Mar. 2007). Interestingly, the article explained that polar bears are not considered a species separate from grizzly bears. As you know, polar bears appear quite different than grizzly bears. They are located in dramatically different habitats and rely on different food sources. By contrast, Preble's (a listed subspecies) is physically indistinguishable from other subspecies of meadow jumping mice. In addition, the other so-called subspecies of meadow jumping mice reside in similar habitats, rely on similar food sources, and exhibit no known behavioral differences.

The contrast between Preble's and polar bears points to the need for sound policy for listing decisions. Accordingly, I urge you to use the disagreement on Preble's as an opportunity to ensure questionable subspecies with little or no quantifiable physical differences cannot be listed under the ESA.

State and federal governments are spending more on the Preble's meadow jumping mouse than over 1,135 species of wolves, whales, bighorn sheep, trout, tortoise, squirrels, snakes, birds, beetles and butterflies. "Funds for endangered species are very limited. Why would you want to spend these precious resources on taxa that are originally based on weak data and do not hold up to scientific scrutiny." K.A. Crandall, Advocacy dressed up as scientific critique, Animal Conservation (2006).

The FWS is long past its statutory deadline to act on the Preble's delisting. Now, as a result of a lawsuit filed by the State of Wyoming, the Department of Interior will issue a decision by October 31st. In addition I understand that the Department of Interior is looking into allegations that political influence was used when determining the listing status of several species including the Preble's Meadow Jumping Mouse. As the Department goes through this process I would hope that they look to see if political rationale was used to prevent the delisting of the Preble's Meadow Jumping Mouse.

The distribution, abundance and trends of Preble's support delisting regardless of taxonomic status. However, Crandall et al. (2006) constitutes the best available science on Preble's genetics and Jones (1981) constitutes the best available science on taxonomy. Accordingly, I urge you to issue a final rule delisting Preble's based on data error. I would also like you to look into any possible violations of Department of Interior policy as they relate to this case.

I appreciate your assistance with this matter.

Sincerely,

Wayne Allard

Wayne Allard
United States Senator