Congress of the United States
Washington, DC 20515

March 30, 2009

The Honorable Ken Salazar, Secretary
Department of the Interior
1849 C Street, N.W.
Washington DC 20240

Dear Secretary Salazar:

The FY09 omnibus spending measure recently passed by Congress and signed into law by the President contained extraneous language unrelated to appropriations that would allow the Department to overturn a portion of recent regulations issued in December 2008 affecting consultation under the Endangered Species Act (ESA). We believe the action was ill advised. We urge you to complete your review of these regulations as soon as practicable and to reinstate the consultation provision so the Act can both protect wildlife and the men and women who make a living from the land.

While the ESA's goal of protecting species and habitats is commendable, the fact remains that current implementation of the ESA regulations often require many years of study and impenetrable layers of red tape before action is possible. As you are well aware, this has caused immeasurable damage throughout the United States, produced crippling regulatory droughts in states such as California, and generally made it more difficult for farmers and ranchers to reliably run their operations throughout the West. The December regulations sensibly limited an action agency's obligation to consult for climate change impacts—if an action was determined by the federal government to have no effect—and represented a modest, common sense streamlining of requirements.

Consultation

In situations where a proposed federal action is determined to have "no effect" on a species listed under the ESA, the December 2008 regulations relieve the action agency from the duty to consult with the Fish and Wildlife Service (FWS). "No effect" determinations are usually only made for actions that will not harm a species. It is also important to note that the FWS often provides information at the front end of the review process. Therefore, streamlining the consultation requirement means that there is no expected effect on a listed species. Additional review by the FWS will not provide new information and simply overburdens the agency. Relieving the Fish and Wildlife Service (FWS) of the duty to be involved in actions least likely to impact a listed species will free-up its scarce resources to address more of the actions that are likely to "take" species. The public will be able to test the "no effect" decisions of action agency scientists in the same way it currently does FWS decisions.

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In an environment of limited resources, this consultation focus will benefit conservation of wildlife. It makes sense for the federal government to use all available government resources to accomplish its mission.

Climate Change

The regulation also limits consultation under the ESA for the effects of an individual project on climate change. The authors of the ESA never contemplated that legislation to conserve wildlife would be used to regulate greenhouse gases (GHGs). In our view, any regulatory response to discharges of greenhouse gases should be part of climate change legislation. Moreover, there is broad consensus in the scientific community that it is difficult to link the GHG effects of a single project to the overall concentration of gasses in the atmosphere. We believe it is eminently sensible for the regulation of conduct affecting GHGs to await forthcoming Congressional direction on the question.

We urge you to complete your review of the December rule at the earliest possible date and reinstate the consultation provisions from the rule. As Members of Congress, we hope you will join us in working to protect species conservation and making the most of scarce federal resources.

Sincerely,

Betty Markey

Eldon Gallegly

Walley Herger

M.C.