Congress of the United States
Washington, DC 20515

November 22, 2011

The Honorable Ken Salazar
Secretary of the Interior
Department of the Interior
1849 C St. NW
Mailstop 4428
Washington, D.C. 20240

Dear Secretary Salazar:

We are writing in regard to the proposed rule published December 14, 2010 to list the Dunes Sagebrush Lizard (DSL) as endangered in New Mexico and West Texas under the Endangered Species Act (ESA). Considerable new scientific research has been collected about this species since the initial listing proposal supporting the view that the lizard is not, in fact, endangered.

Given the growing body of evidence, we that ask the Fish and Wildlife Service not list the DSL as endangered or threatened. If the Service feels that it cannot make that determination at this time, then at a minimum, we request that it delay its final decision by at least six months to take into account the rapidly evolving state of facts on the ground.

In addition to conducting new research, local individuals and governments have been undertaking considerable conservation efforts, including Candidate Conservation Agreements with Assurances (CCAA). **A listing of the DSL will kill these voluntary, cooperative programs that will save tax dollars in a time of budget cuts.**

The ESA permits FWS to delay a determination on the listing of a species for an additional six months where there is **sufficient uncertainty as to the relevant science**. We also believe that FWS has an affirmative obligation to the American people – and to the citizens of New Mexico and Texas specifically – to avail itself of that extra time to ensure that the best determination is reached on this critically important issue.

As with all listings, the crux of our concerns is the science underpinning this decision; there simply is not enough available information to credibly argue that the species is declining. There are also important questions about the science on which FWS based this proposed listing. Perhaps most obviously, a paper referenced in the proposed listing contradicts the conclusions drawn by the FWS. The study, by Sias and Snell, shows that the lizard's population actually increased by a factor of 2.4 in areas where oil and gas wells were present compared to an increase by a factor of 1.6 in areas without wells. Yet, FWS asserts that oil and gas wells are detrimental to lizard populations.

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The proposed rule also indicates that the habitat for the DSL is not yet determinable, presumably due to lack of scientific data to make that determination. These types of confusing and contradictory assertions, coupled with the close relationship between the parties involved in the petition process and some employees at FWS call the integrity of the proposed listing into question.

Voluntary and local stewardship is the most effective method of recovery and such programs have been mobilized to protect this species. This past summer, several private entities in Texas financed studies on the DSL and its habitat, and have committed to continue these efforts, if there is additional opportunity. Scientific research conducted during the next field season (April through June) would only add to our understanding of the DSL. The bottom line is that FWS does not have the right science, and the additional six months of study will allow them to evaluate newly available science, enhance our understanding of the lizard and lead to better conservation efforts, if warranted.

As FWS Director Dan Ashe stated in August of this year, "**Ensuring the survival of imperiled species depends on long-term partnerships and landowner participation**." Those efforts should be given adequate time to produce conservation results. The DSL has generated a considerable amount of constructive efforts by landowners and other private stakeholders, who have expended a substantial amount of time and capital in order to study, monitor and stabilize the DSL. These efforts have established a new trust between FWS and local communities that an unwarranted listing would **jeopardize**.

ESA Section 6 reinforces: "the Secretary shall cooperate to the maximum extent practicable with the States." States and local authorities are critical stakeholders in these conservation efforts for the DLS. The State of New Mexico has been heavily involved in efforts to conserve the DSL and other species for many years, and is a partner to the Candidate Conservation Agreement with Assurances (CCAA) that went into effect in 2010. In Texas, the state government and private individuals worked around the clock this summer to create a local DSL conservation plan.

The Bureau of Land Management's New Mexico office also requested more time for the CCAA to succeed, noting that the enrollment of more land could negate the need for a listing. It is imperative that these local efforts be given an opportunity to succeed. Otherwise, these voluntary conservation efforts will be killed, leading to more animosity between the people and their government.

The ranching community in New Mexico signed agreements with FWS to protect over 1.5 million acres with best conservation practices, and the oil and gas industry has similarly enrolled over 800,000 acres of their leases. These voluntary conservation agreements have produced payments by these private sector entities in excess of $2.5 million to invest in DSL conservation projects.

It is important to appreciate that these fees could swell to $3 million per year for the next 3-5 years, producing the conservation financing that FWS itself would otherwise lack if it relied on federal appropriations. In addition, the National Fish and Wildlife Foundation pledged another $400,000 in funding as part of its short grass prairie initiative. All totaled, this private sector

funding compares favorably to the estimated $20 million that regional FWS officials believe may be needed to protect the DSL. Without this private sector participation, there is no reasonable expectation that FWS will have the personnel or the federally appropriated financing needed to perform the conservation projects that may be required in this matter.

Both the growing body of scientific evidence and the good faith conservation efforts of the citizens of New Mexico and Texas stand in stark contrast to the picture painted by the proposed rule, in which FWS declared "the dunes sagebrush lizard is presently in danger of extinction throughout its entire range, based on the immediacy, severity, and scope of the ongoing significant threats to the dunes sagebrush lizard."

Again, we would ask that the Administration decline to list the lizard or at the very least, delay its final listing decision for a minimum of six months in order to resolve the considerable scientific uncertainty surrounding the need for a listing and to allow time for the impact of local conservation programs to be visible. Please keep in mind that we intend to pursue a 12-month halt on this listing through the legislative process as well. Extending the 12-month finding and delaying a listing through legislation would be consistent with the settlement agreement between FWS and select environmental groups earlier this year.

We believe the work that the Fish and Wildlife Service is charged with is important – there is no recovery for an extinct species. Given the gravity of its responsibilities, it is absolutely essential that the Service does not waste its limited resources pursuing or enforcing an unwarranted listing determination. Such a determination is a loss for taxpayers, a loss for our constituents, and a loss for the species that will not be protected because resources have been squandered.

Six more months of study in this matter is not too much to ask to be certain that the right decision is made. Thank you for your prompt attention to this important matter.

Sincerely,

Rep. Steve Pearce, NM-02

Rep. Mike Conaway, TX-11

Rep. Francisco "Quico" Canseco, TX-23

Rep. Randy Neugebauer, TX-19

Rep. Pete Sessions, TX-32

Rep. Dan Boren, OK-02

Rep. Cynthia Lummis, WY-AL

Rep. Rob Bishop, UT-01

Rep. Kay Granger, TX-12

Rep. Jason Chaffetz, UT-03

Rep. Ted Poe, TX-02

Rep. Blake Farenthold, TX-27

Rep. Mac Thornberry, TX-13

Rep. Bill Flores, TX-17

Rep. Don Young, AK-AL

Rep. Kevin Brady, TX-08

Rep. Billy Long, MO-07

Rep. John Culberson, TX-07

CC: Dan Ashe, Director, US Fish and Wildlife Service
Bob Abbey, Director, Bureau of Land Management
Dr. Benjamin Tuggle, Southwest Regional Director, US Fish and Wildlife Service
Jesse Juen, Acting State Director, Bureau of Land Management