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www.familyfarmalliance.org

VIA FACSIMILE: 202-208-6965 AND CERTIFIED MAIL

August 24, 2009

Daniel M. Ashe
Science Advisor to the Director
U.S. Fish and Wildlife Service
Department of the Interior
1849 C Street NW, Room 3012
Washington, D.C. 20240

RE: Response to August 13, 2009 "Update" Correspondence
Reference No. FWS/D-SCI/R9/041920

Dear Mr. Ashe:

This letter responds to your correspondence dated August 13, 2009 regarding the long overdue response to the Family Farm Alliance's ("Alliance") April 1, 2009 Appeal ("Appeal") under the Information Quality Act ("IQA") Guidelines issued by the United States Fish and Wildlife Service ("FWS"), the Department of the Interior ("DOI"), the Department of Justice ("DOJ"), and the Office of Management and Budget ("OMB"), as well as the Final Information Quality Bulletin for Peer Review ("Final Bulletin") issued by OMB. Your letter completely fails to address the transparency required to resolve the issues the Alliance has raised repeatedly in our prior correspondence.

We draw your attention to these specific points: First, your correspondence inaccurately states the "FWS has exceeded the July 18, 2009 deadline to respond to [the Alliance's] appeal." As noted in your letter, the Alliance's Appeal is dated April 1, 2009. The FWS IQA Guidelines specifically state, "The Director of the FWS or his/her designated representative will make the final decision on the appeal within 60 calendar days from receipt of the appeal in FWS." Your previous letter to me dated April 27, 2009 acknowledges receipt of the Appeal on April 1st; leading to a response deadline of **June 1, 2009** – not July 18th. Thus, the FWS's response is overdue by nearly 3 months already. As you know, the 2008 Biological Opinion is a highly influential scientific assessment and failure to correct its contents sooner rather than later will exacerbate the ongoing hardships being suffered by Alliance members and others subject to its requirements. Your unilateral proposal for an open ended response time not only has no support in the applicable Guidelines, but also will result in further unreasonable delays and intensify the economic and social suffering that real people are facing daily as a result of the faulty analysis, lack of credible, reproducible scientific data and flawed peer review relied upon by the FWS.

Second, your statements regarding the “tardiness” of the FWS’s response to the Alliance’s Appeal are unreasonable. The 2008 Biological Opinion on the Continued Long-Term Operations of the Central Valley Project and the State Water Project (“2008 Biological Opinion”) was disseminated in draft on October 17, 2008 and in final on December 15, 2008. The Alliance’s original Request for Correction (“Request”) was dated December 14, 2008, and filed more than 8 months ago. All of the information required to address the “complex scientific issues” detailed in the Alliance’s Request and reiterated in the Appeal should be *already in the possession* of the FWS and should have been subject to external peer review *prior to dissemination* of the 2008 Biological Opinion, not just in response to the Appeal. Failure to do so is a clear violation of the FWS’s own regulatory requirements and the Final Bulletin.

Third, the FWS is the agency charged with expert knowledge of this highly influential scientific assessment and has been designated responsibility for implementation of the federal Endangered Species Act (“ESA”). The “high quality external review” outlined in your correspondence should have been done before as required by your own regulations. Hence, the proposed post hoc review is no substitute for the requirement that the FWS be able to adequately explain and defend its own decisions in the 2008 Biological Opinion *at the time of dissemination*. Moreover, if the FWS requires an external investigation to “assist” the agency in responding to the “issues” raised in the Alliance’s Appeal, then the 2008 Biological Opinion by definition cannot be the expert opinion of the FWS or be based upon the use of the best available scientific data as required by Section 7 of the ESA. Indeed, your letter is tantamount to a statement that the FWS does not know if the 2008 Biological Opinion meets the applicable tests of the ESA and IQA, or whether it is even defensible. If done correctly, the FWS would have sufficient familiarity with the contents of the 2008 Biological Opinion to be able to respond to our Request and would have sufficiently disclosed the specific data sources used and quantitative methods employed so that it met the standards of reproducibility when issued.

Fourth, the FWS is obligated at all times to ensure that any peer review panel meets the requirements of the IQA Guidelines and the Final Bulletin for independence, expertise, experience, and skills. Using either the Sustainable Ecosystems Institute or “another third party” does not change the ESA and IQA requirements that peer review be conducted in an open and rigorous manner, nor does it relieve the FWS from the mandate to avoid potential conflicts of interest and ensure impartiality and panel balance. The FWS continues to fail to demonstrate that peer review of the 2008 Biological Opinion meets the required standards.

Finally, the consequences of the FWS’s inaction are already immediate and devastating for Alliance members and others. Therefore, the Alliance requests that the 2008 Biological Opinion be withdrawn from the public domain until the FWS can comply with the IQA, the IQA Guidelines and the Final Bulletin. This withdrawal as requested will best “serve everyone’s interest.”

We urge the FWS not to delay withdrawal any longer as the quality of life and many people's livelihoods are at stake here.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Keppen', with a long horizontal flourish extending to the right.

Dan Keppen
Executive Director

cc: (by U.S. Mail w/ letter enclosure)
George Radanovich
Jim Costa
Devin Nunes
Dennis Cardoza
Ken Calvert
Kevin McCarthy
Dianne Feinstein
Nancy Sutley, Council on Environmental Quality
Ken Salazar, Secretary of the Interior
Gary Locke, Secretary of Commerce
Kevin Neyland, Acting Administrator, OIRA
Sam D. Hamilton, FWS Director
Rowan Gould, FWS Regional Director
Ralph O. Morgenweck, Senior Science Advisor
R. Justin Smith, Dept. of Justice
Gary Sawyers
Brenda W. Davis