

U.S. House of Representatives  
Committee on Oversight and Government Reform,  
Subcommittee on the Interior  
“Barriers to Endangered Species Act Delisting Part 1”  
April 20, 2016  
Rayburn House Office Building Room 2154

My name is Karen Budd-Falen. I grew up as a fifth generation rancher and have an ownership interest in my family owned ranch west of Big Piney, Wyoming. I am also an attorney emphasizing in private property and environmental litigation (including the Endangered Species Act). I represent the citizens, local businesses, private property owners and rural counties and communities who live with threatened or endangered species listing decisions--even though those decisions are not recovering species because of a broken system that these landowners, rural communities and private businesses did not create.

The U.S. Fish and Wildlife Service (“FWS”) characterizes the purpose of the Endangered Species Act (“ESA”) “to protect and recover imperiled species and the ecosystems upon which they depend.” Emphasis added. According to the FWS website, last visited on April 4, 2016, there are a total of 2258 plant and animal species on the threatened or endangered species list<sup>1</sup>. Of these, only 791 currently have designated critical habitat. There are also 59 species on the “candidate species” list; 72 more species proposed to be listed; and 1377 species that have been petitioned for listing, uplisting or critical habitat designation with the petition under review by the FWS. Although the “mega-species settlement agreement” of July 12, 2011, was supposed to curb listing petitions to allow the FWS to catch-up on its backlog, just since the mega-species settlement agreement was signed by the Court, 65 more listing petitions have been filed including 135 additional species<sup>2</sup>.

In stark contrast, according to the FWS “delisting report,” only 63 species have been removed from the endangered species list. See Exhibit 1. Breaking down that figure, 19 species were removed from the ESA list because of an error in the original data, 10 species went extinct and only 34 out of 2258 were recovered. That is a .0150 success rate.

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<sup>1</sup> Specifically there are 898 U.S. plants, 694 U.S. animals, 3 foreign plants and 663 foreign animals on the list.

<sup>2</sup> On the pending listing petitions alone, the Center for Biological Diversity is responsible for filing 44 of them including 583 species; WildEarth Guardians is responsible for filing 32 petitions including 716 species; and other environmental groups such as the Defenders of Wildlife, Natural Resources Defense Council, Friends of Animals and others have filed 31 petitions including 44 species.

The FWS data base also includes species for which conservation efforts or conservation agreements are in place that preclude the need for listing. Seventy species are on that list. See Exhibit 2.

There are a total of 1434 species with recovery plans according to the FWS data base. While that may seem like a major accomplishment, the number and rate of recovery planning has significantly decreased in the last 20 years. For example, 843 species<sup>3</sup> were covered by a recovery plan from 1990 through 1999; 235 species were included in a recovery plan from 2000 through 2009 and only 177 species have been included in a recovery plan from 2010 through today.

## **I. OVERVIEW OF THE ENDANGERED SPECIES ACT**

The ESA is “the most comprehensive legislation for the preservation of endangered species ever enacted.” See Tennessee Valley Authority v. Hill, 437 U.S. 153, 180 (1978). The goal of the Act is “to provide for the conservation, protection, restoration, and propagation of species of fish, wildlife, and plants facing extinction.” Wyoming Farm Bureau Federation v. Babbitt, 199 F.3d 1224, 1231 (10<sup>th</sup> Cir. 2000), citing S. Rep. No. 93-307, at 1 (1973) and 16 U.S.C. § 1531(b). Under the ESA, a threatened species means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant part of its range, see 16 U.S.C. § 1532 (20); and an endangered species means any species which is in danger of extinction throughout all or a significant portion of its range other than insects that constitute a pest whose protection would present an overwhelming and overriding risk to man. 16 U.S.C. § 1532(6).

### **A. Listing**

Anyone can petition the FWS or NOAA<sup>4</sup> (collectively “FWS”) to have a species listed as threatened or endangered. 16 U.S.C. § 1533. Listing decisions are to be based on the “best scientific and commercial data available.” 16 U.S.C. § 1533(b)(1)(A). However, there is no requirement that the federal government actually count the species populations prior to listing. There are no economic considerations included as part of the listing of a threatened or endangered species.

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<sup>3</sup> Of these 843 species however, 453 were included in the Hawaii plants and birds recovery plans.

<sup>4</sup> The National Oceanic and Atmospheric Administration (“NOAA”) is responsible for the ESA with regard to marine and anadromous species.

The listing process is also based on very specific time frames as set forth in the Act. If the FWS fails to meet any of these time frames, litigation can occur. See Exhibit 3. During the listing process alone, there are eight separate points where Federal Court litigation can be filed against the FWS. Id.

### **B. “Take” is Prohibited**

Once a species is listed as threatened or endangered, prohibitions against “take” apply. 16 U.S.C. § 1540. “Take” means to harass, harm, pursue, hunt, shoot, wound, kill, capture, or collect, or attempt to engage in such conduct. 16 U.S.C. § 1532(19). “Harm” within the definition of “take” means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing breeding, sheltering or feeding. 50 C.F.R. § 17.3. Harass in the definition of “take” means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering. 50 C.F.R. § 17.3. If convicted of “take,” a person can be liable for civil penalties of \$10,000 per day and possible prison time. 16 U.S.C. § 1540(a), (b).

### **C. Critical Habitat Designation**

Once a species is listed as threatened or endangered, the FWS must “to the maximum extent prudent and determinable,” concurrently with making a listing determination, designate any habitat of such species to be critical habitat. Id. at § 1533(a)(3). Originally, critical habitat (“CH”) included “specific areas” see 16 U.S.C. § 1532(5)(A) and must be “defined by specific limits using reference points and lines found on standard topographic maps of the area.” 50 C.F.R. § 424.12(c); see also § 424.16 (CH must be delineated on a map). For “specific areas within the geographical area occupied by the [listed] species,” the FWS may designate CH, provided such habitat includes the species’ “primary constituent elements” (“PCEs”) which are 1) the “physical or biological features;” 2) that are “essential to the conservation of the species;” and 3) “which may require special management considerations or protection.” 16 U.S.C. § 1532(5)(A)(I); 50 C.F.R. § 424.12(b).

CH must also be designated on the basis of the best scientific data available, 16 U.S.C. § 1533(b)(2), after the FWS considers all economic and other impacts of proposed CH designation. New Mexico Cattle Growers Assoc. v. United States Fish and Wildlife Service, 248 F.3d 1277 (10th Cir. 2001) (specifically rejecting the “baseline” approach to economic analyses); but see Arizona Cattle Growers Association v. Salazar, 606 F.3d 1160 (9th Cir. 2010) (adopting the baseline or incremental impacts approach). CH may not be designated when information sufficient to perform the required analysis of the impacts of the designation is lacking. 50 C.F.R. § 424.12(a)(2). The FWS may

exclude any area from CH if it determines that the detriments of such exclusion outweigh the benefits, unless it determines that the failure to designate such area as CH will result in extinction of the species concerned. 16 U.S.C. § 1533(b)(2). This is called the “exclusion analysis.”

Between 2012 and 2016, the Obama Administration issued four new final regulations and two new policies significantly expanding the size, reach and management of critical habitat. These regulations and policies were issued in a piecemeal fashion, which significantly limited the public’s ability to understand the full impacts of the new regulations.

Those new regulations and policies include:

- Final Rule, Implementing Changes to the Regulations for Designating Critical Habitat, February 11, 2016 --- includes “the principals of conservation biology” as part of the “best scientific and commercial data available.” Conservation biology was not created until the 1980s and has been described by some scientists as “agenda-driven” or “goal-oriented” biology.
- Final Policy on Interpretation of the Phrase “Significant Portion of its Range,” July 1, 2014 --- with regard to threatened or endangered species listing, rather than listing species within the range where the problem lies, all species throughout the entire range will be listed as threatened or endangered.
- Final Regulations Implementing Changes to Regulations for Designating Critical Habitat, February 11, 2016 — based upon the principals of conservation biology, including indirect or circumstantial information, the FWS will initially consider designation on both occupied and unoccupied habitat, INCLUDING habitat with POTENTIAL PCEs for breeding, sheltering and feeding. In other words, not only is the FWS considering habitat that is or may be used by the species at the present time, the FWS will consider habitat with the potential to develop PCEs sometime in the future. There is no time limit on when such future development of PCEs will occur or what types of events have to occur so that the habitat will develop PCEs (global warming/cooling/other events, etc.). The FWS will then look outside occupied and unoccupied habitat to decide if potential habitat will develop PCEs and should be designated as critical habitat now. Additionally, the FWS has determined that critical habitat can include temporary or periodic habitat, ephemeral habitat, potential habitat and migratory habitat, even if that habitat is currently unusable by the species.

- Final Rule “Revised Implementing Regulations for Requirements to Publish Textual Description of Boundaries of Critical Habitat,” May 1, 2012 --- the FWS will no longer publish the legal descriptions or GIS coordinates for critical habitat, rather it will only publish maps of the critical habitat designation in the Federal Register, rather than any textual descriptions on the habitat locations.
- Final Rule, Revisions to the Regulations for Impact Analysis of Critical Habitat, August 28, 2013 --- economic analysis for critical habitat will include ONLY economic costs attributable SOLELY to the proposed critical habitat designation and will exclude any cost that could be attributed to both species listing and critical habitat designation. This rule substantially reduces the costs of critical habitat because the FWS can claim that almost all costs are based on the listing of the species because if not for the listing, there would be no need for critical habitat.
- Final Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act, February 11, 2016 — related to the August 13, 2013 rule described above, the FWS has determined that while completing the economic analysis is mandatory, the consideration of whether habitat should be excluded based on economic considerations is discretionary. In other words, under the new policy, the FWS is no longer required to consider whether areas should be excluded from critical habitat designation based upon economic costs and burden (i.e. exclusion analysis is discretionary).
- Final Rule, “Definition of Destruction or Adverse Modification of Critical Habitat,” February 11, 2016 --- the problem with these new rules is what it means if private property (or federal lands) are designated as critical habitat. Even if the species is not present in the designated critical habitat, a “take” of a species can occur through “adverse modification of critical habitat.” For private land, that may include stopping stream diversions because the water is needed for downstream critical habitat for a fish species, or that haying practices such as cutting or management of invasive species to protect hay fields are stopped because it will prevent the area from developing PCEs in the future that may support a species. It could include stopping someone from putting on fertilizer or doing other crop management on a farm field because of a concern with runoff. Designation of an area as critical habitat (even if that area does not contain PCEs now) will absolutely require more federal permitting (i.e. section 7 consultation) for things like crop plans, or conservation plans or anything else requiring a federal permit. Under this new regulation, “adverse modification of critical habitat” can include “alteration of the quantity or quality” of habitat including causing

“significant delays” in the capacity of the habitat to develop PCEs in the future, over time.

#### **D. Recovery Planning**

Once a species is listed, the FWS is mandated to develop a recovery plan. 16 U.S.C. § 1533(f). However, while the requirement to write the plan is mandatory, the ESA provides no time frame in which a recovery plan is to be developed. Without such time frame, there is very little opportunity to force the FWS to complete a recovery plan.

Recovery plans must incorporate, at a minimum, (1) A description of site-specific management actions necessary to achieve recovery of the species; (2) Objective, measurable criteria which, when met, would result in a determination that the species be removed from the list; and (3) Estimates of the time and costs required to achieve the plan's goal. See Exhibit 4.

#### **E. Candidate Conservation Agreements with or without Assurances**

Another way to protect species and keep them off the ESA list is through the development of Candidate Conservation Agreements (“CCA”) and Candidate Conservation Agreement with Assurances (“CCAA”). A CCA or a CCAA is a formal agreement between the Service and one or more parties to address the conservation needs of proposed or candidate species, or species likely to become a candidate, before it becomes listed as endangered or threatened. Landowners voluntarily commit to conservation actions that will help stabilize or restore the species with the goal that listing will become unnecessary.

#### **F. Section 7 Consultation**

Once a species is listed, for actions with a federal nexus, ESA section 7 consultation applies. Section 7 of the ESA provides that “[e]ach Federal agency [must] in consultation with and with the assistance of the Secretary [of the Interior], insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary. . . to be critical . . . .” 16 U.S.C. § 1536(a)(2). The first step in the consultation process is to name the listed species and identify CH which may be found in the area affected by the proposed action. 50 C.F.R. § 402.12(c-d). If the FWS determines that no species or CH exists, the consultation is complete. If there are species or CH in the area, the FWS must approve the species or habitat list. Id. Once the list is approved, the action agency must prepare a Biological Assessment or Biological Evaluation (“BA”). Id. The contents of the BA are at the discretion of the agency, but must evaluate the potential effects of the

action on the listed species and critical habitat and determine whether there are likely to be adverse effects by the proposed action. Id. at § 402.12(a, f). In doing so, the action agency must use the best available scientific evidence. 50 C.F.R. § 402.14(d); 16 U.S.C. §1536(a)(2). Once complete, the action agency submits the BA to the FWS. The FWS uses the BA to determine whether “formal” consultation is necessary. 50 C.F.R. § 402.12(k). The action agency may also request formal consultation at the same time it submits the BA to the FWS. Id. at § 402.12(j-k). During formal consultation, the FWS will use the information included in the BA to review and evaluate the potential effects of the proposed action on the listed species or CH, and report these findings in its biological opinion (“BO”). 50 C.F.R. § 402.14(g-f). Unless extended, the FWS must conclude formal consultation within 90 days, and must issue the BO within 45 days. Id. at § 402.14(e); 16 U.S.C. § 1536(b)(1)(A).

If the BO concludes that the proposed action will jeopardize any listed species or adversely modify critical habitat, the FWS’s BO will take the form of a “jeopardy opinion” and must include any reasonable and prudent alternatives which would avoid this consequence. 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.14(h). If the BO contains a jeopardy opinion with no reasonable and prudent alternatives, the action agency cannot lawfully proceed with the proposed action. 16 U.S.C. § 1536(a)(2). If the BO does not include a jeopardy opinion, or if jeopardy can be avoided by reasonable and prudent measures, then the BO must also include an incidental take statement (“ITS”). 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(I). The ITS describes the amount or extent of potential “take” of listed species which will occur from the proposed action, the reasonable and prudent measures which will help avoid this result, and the terms and conditions which the action agency must follow to be in compliance with the ESA. Id.; see Bennett v. Spear, 520 U.S. 154, 170 (1997). See Exhibit 5.

## **G. Habitat Conservation Plans**

Once a species is listed, ESA section 10 applies on private land, even if there is no federal nexus. In order to avoid the penalties for “take” of a species including modification of critical habitat, and still allow the use and development of private land, the ESA authorizes the FWS to issue ITSs to private landowners upon the fulfillment of certain conditions; specifically the development and implementation of habitat conservation plans (“HCPs”). 16 U.S.C. § 1539. A HCP has to include (a) a description of the proposed action, (b) the impact to the species that will result from the proposed action, (c) the steps that the applicant will take to minimize any negative consequences to the listed species by the proposed action, (d) any alternatives the applicant considered to the proposed action and why those alternatives were rejected, and (e) any other measures that the FWS may deem necessary for the conservation plan. 16 U.S.C. § 1539(a)(2)(A). Once a HCP is presented, the FWS must make certain findings before it can issue an ITS. Those findings include

(a) that the taking of the species is incidental to the proposed action, (b) that the proposed action implements a lawful activity, (c) that the applicant, to the maximum extent possible, will minimize and mitigate any negative impacts to the listed species, (d) that the HCP is adequately funded, (e) that the taking will not appreciably reduce the survival and recovery of the species, and (f) any other measures deemed necessary will be carried out. 16 U.S.C. § 1539(a)(2)(B). As a practical matter, mitigation means that the applicant will either fund programs supporting the listed species or will provide or set aside land. See Exhibit 6.

## **II. BARRIERS TO ENDANGERED SPECIES ACT DELISTING AND SPECIES RECOVERY**

### **A. It is a Matter of Priority**

The first barrier to delisting species is simply the fact that it is not a priority for the FWS to develop recovery plans and move species off the list. As shown by the statistics above, only .0150 percent of the listed species have been recovered. Informing this statistic is the fact that only a little over one-half of the species on the list are even included in a recovery plan and the rate of species now being included in a recovery plan has significantly dropped. For example, in the 1990s, 843 species were included in a recovery plan; in the 2000s 235 species included in a recovery plan; and from 2010 to the present 177 species have been included in a recovery plan. I would argue that shows that development of recovery plans is dropping in priority for the FWS.

I would also argue that there may be some valid reasons that development of recovery plans is slipping in priority with the federal government. The first problem is the fact that the Act establishes no time frame to develop a recovery plan. All the Act mandates that one be developed; no time frame is given, meaning any legal enforcement of the failure to develop a recovery plan in a timely manner has to be done through the Administrative Procedure Act's waiver that federal courts can "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). This type of litigation is difficult to bring and the federal courts do not have any type of consistent determination regarding how long an "unreasonable delay" is.

In contrast, the ESA contains very strict time frames for listing species and designating critical habitat. See Exhibit 3. Violation of those time frames has, and will continue, to result in significant litigation (resulting in significant payment of attorney's fees to environmental groups bringing such litigation). The federal courts have held that the time frames in the ESA are mandatory, despite the budgetary constraints or other timing issues of the federal agencies. Given that, I believe that the significant litigation being brought by special interest environmental plaintiffs is forcing the FWS to put recovery planning on



the back-burner just simply so the FWS can keep up with the litigation demands.

If fact, the FWS's documents prove that litigation is driving the agency's priorities, not sound science or administrative determinations. For example, a memorandum prepared by the Assistant Director for Ecological Services of the FWS in May 20, 2014, states that the priorities of the FWS will be to focus on court-ordered and settlement deadlines. To focus on that litigation, FWS states that "we do not plan to carry out the following . . . non-MDL findings and proposed rules, or recovery plan revisions." See Exhibit 7.

In other cases, the FWS has denied requests for extensions of time to comment on ESA 10(j) rules or has stated that certain activities have not been done because of the requirement imposed by litigation deadlines. See Exhibit 8. In other examples, both the Lesser Prairie Chicken listing and the failure of the FWS to update the Mexican wolf recovery plan were based on the deadlines that had been set through litigation that did not give the FWS enough time to complete its analysis.

### **B. Failure to Set Recovery Goals**

Even if the FWS does not have time to complete full blown recovery plans, it would take little for the agency to set species number goals or habitat goals so that States and private landowners would have an objective to manage for. In other words, if the FWS has sufficient information to know that a species population is in decline and can determine that such decline is such a problem to warrant listing, the FWS should be able to determine how many species are required so the population is eligible for delisting. Such information should be included in the listing decision itself so that the public, as well as State agencies and other organizations, can have some idea of the scope and magnitude of the problem and can have a goal toward which they can work to alleviate the concern. In other words, even if a complete recovery plan is not developed, the FWS should be able to give landowners, the public and State agencies a target species number and a target of the amount and type of habitat that is necessary to start toward recovery of the species.

### **C. Difficulty in Developing CCAs and CCAAs**

Although there have been some success stories using the development of CCAs and CCAAs to keep species from being listed (such as the dunes sagebrush lizard), more success could be had if the process to develop CCAAs and CCAs was not so regulatorily burdensome, expensive and time-consuming. As Exhibit 2 shows, there are only 70 CCAAs or CCAs in existence that have either justified species' delisting or have kept an impaired species on the ESA list. As have been stated before, if the goal is to recover species, this number should not be so low.

There are several issues with the development of CCAAs and CCAs which keep them from being developed and implemented to recover species. First, as was experienced with the CCAAs developed related to the sage grouse, the FWS policies or requirements for the holder of a CCAA or CCA changed depending on the FWS region in charge. The greater sage grouse is a species that covers 165 million acres across 11 western states and three different regions of the FWS. Each of those different regions had different requirements regarding the type of entity that could hold a CCAA or CCA, how the quality of the sage grouse habitat could be assessed, and the privacy considerations given to landowners who enrolled for a CCAA or CCA. While I recognize the vast differences in types of landscape over 11 Western states, this is one species and it should be assumed that its habitat needs should be the same whether that species is in Wyoming or Oregon. However, because the proponents of the CCAAs were dealing with different FWS regions, the rules changed, so the proponents could not take the work in one region and apply it to their situation. That problem significantly added to the time and expense for state and local governments to develop their sage grouse CCAAs.

A second problem with the CCAAs and CCAs is that often they are single-species focused rather than ecosystem focused. This problem was extremely problematic in developing the numerous CCAAs for the sage grouse. The sage grouse is called a “predicator species,” meaning that the health of the species directly correlates to the health of the rangeland. Those FWS regional offices that went “out on a limb” (a quote from the FWS) and tried to create CCAAs that looked at the health of the ecosystem, and worked with the landowners who would be managing their private property under the CCAA, seemed far more successful because landowners understood that the activities they were agreeing to under the CCAA were good for the land. In fact, of all the CCAAs and CCAs I have assisted in developing, the ones that focus on ecosystem health rather than single species management seem to be more successful.

Another example of CCAAs that have been implemented to protect threatened or potentially endangered species is the Rangewide Plan for the Lesser Prairie Chicken (“LPC”). The LPC Rangewide Plan includes five states, each including part of the 182,843 square mile range of the LPC. The Plan took three years to write and included countless meetings and data analysis. Despite the FWS’s approval of the Rangewide Plan and the CCAAs that were based on the Plan, in April, 2014, the FWS listed the LPC as threatened. Litigation occurred by both State governments, industry groups and private landowners on one side who wanted to give the LPC Rangewide Plan the opportunity to work, and environmental groups who wanted the LPC uplisted to endangered on the other side. With regard to whether the listing decision could be delayed to determine if the lands conserved through the various CCAAs would protect the species, the FWS determined that it could not delay the listing decision based upon a litigation settlement agreement (the Multi-species settlement agreement of 2011). Thus, rather than focusing on the on-

the-ground management and protection of the species, the FWS decision was driven by litigation deadlines. On February 29, 2016, the Federal District Court for the Western District of Texas vacated the LPC listing decision because the FWS had failed to adequately consider whether the Rangewide Plan complies with the FWS requirements in the Policy for Evaluation of Conservation Efforts When Making Listing Decisions, 68 Fed. Reg. 15100-02 (March 28, 2003) (“PECE Policy”). As of yet, an appeal of that decision to the Fifth Circuit Court of Appeals has not been filed.

In sum, although the title of this hearing is “Barriers to Delisting,” what is truly happening is that species are simply not being recovered. Whether that recovery is by delisting because affirmative action has not been taken to remove the species from the list or because of the low priority and lack of incentives to develop management plans to keep species from being listed, the reality is that species conservation is suffering. Regardless of the Administration, litigation under the ESA is exponentially increasing which is driving more species to be listed<sup>5</sup>. Because the ESA allows for the recovery of attorney’s fees, I would argue that ESA litigation is a business decision that is shutting down the FWS from implementing the entirety of the ESA.

Should you have any questions, please do not hesitate to contact me.

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<sup>5</sup> A review of the Center for Biological Diversity’s (“CBD”) website shows that solely related to ESA, the following cases have been filed: 20 cases in 2016; 26 cases in 2015; 28 cases in 2014; 29 cases in 2013. With regard to the WildEarth Guardians litigation related solely to the ESA: 5 cases have been filed in 2016; 11 cases filed in 2015; 11 cases filed in 2014; 4 cases filed in 2013.

**Committee on Oversight and Government Reform  
Witness Disclosure Requirement – “Truth in Testimony”  
Required by House Rule XI, Clause 2(g)(5)**

Name:

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1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2012. Include the source and amount of each grant or contract.

NONE

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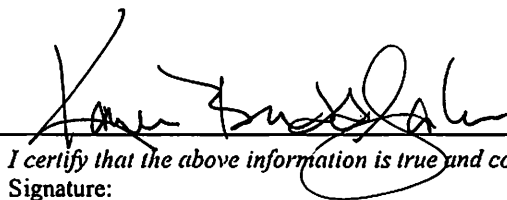
2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

NONE

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3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2012, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

NONE

  
I certify that the above information is true and correct.  
Signature:

4/15/16  
Date:

# KAREN BUDD-FALEN

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## PROFESSIONAL EXPERIENCE

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BUDD-FALEN LAW OFFICES, L.L.C., CHEYENNE, WYOMING.

*Attorney at Law, 6/92 to Present*

Co-Owner of a multi-attorney law firm specializing in federal lands, endangered species, clean water and natural resources law. Attorneys in my firm represent both local governments and private individuals to protect private rights and community stability on private and federal lands.

DRAY, MADISON AND THOMSON, CHEYENNE, WYOMING

*Attorney at Law, 3/89 to 6/92*

Senior associate in general practice law firm, specializing in federal lands, endangered species, natural resources, administrative law and general land use planning. Assisted clients in all phases of federal administrative appeals, litigation and negotiation.

MOUNTAIN STATES LEGAL FOUNDATION, DENVER, COLORADO

*Attorney at Law, 8/87 to 12/88*

Staff attorney for public interest foundation specializing in natural resources, environmental, public land, and administrative law. Extensive public speaking, agency testimony, client contact and oral advocacy involved. Represented clients with interests in grazing, timber, and oil and gas.

WYOMING STATE HOUSE OF REPRESENTATIVES, CHEYENNE, WYOMING

*Intern, 1/85 to 3/85; 1/87 to 3/87; and 1/89 to 3/89*

Drafted legislation and amendments for four House standing committees with jurisdiction over agriculture, wildlife, recreation, transportation and tourism issues. Wrote press releases, speeches and position statements.

SOLICITOR'S OFFICE, BRANCH OF WATER AND POWER, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C.

*Law Clerk, 5/86 to 8/86*

Provided technical, legal and political advice on Bureau of Reclamation law as applied in specific situations. Wrote legal and factual case descriptions for the U.S. Department of Justice to use in defending Interior suits.

ASSISTANT SECRETARY, LAND AND MINERALS MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C.

*Special Assistant, 2/82 to 8/84*

Provided technical and political expertise on federal land and wilderness issues. Designed and managed three bureau-wide task management computer systems. Advised the Secretary on appointments to national and local advisory boards. Communicated with congressional committees.

## EDUCATION

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UNIVERSITY OF WYOMING COLLEGE OF LAW, LARAMIE, WYOMING

*Juris Doctor, May, 1987*

UNIVERSITY OF WYOMING, LARAMIE, WYOMING

*Bachelor of Arts, Journalism August, 1979; Bachelor of Arts Political Science, May, 1982*

## PROFESSIONAL QUALIFICATIONS

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- Admitted to Practice - State of Wyoming, U.S. District Court for the District of Wyoming, 1987; Supreme Court State of Wyoming, 1987; U.S. Court of Appeals for the Tenth Circuit, 1990; U.S. Court of Federal Claims, 1990; Court of Appeals for the Federal Circuit, 1995; U.S. Court of Appeals for the Ninth Circuit, 1998; Supreme Court of the United States, 1999; U.S. District Court for the District of Nebraska, 2003; U.S. District Court for the District of Columbia, 2004; U.S. Court of Appeals for the Seventh Circuit, 2004; U.S. Court of Appeals for the D.C. Circuit, 2006; U.S. Court of Appeals for the Eighth Circuit, 2007; State of New Mexico, 2016

## PROFESSIONAL HONORS

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- Honorary Chapter Degree - Frontier Chapter Future Farmers of America, 2011, 2012, 2013.
- Individual of the Year - Arizona and New Mexico Coalition of Counties for Stable Economic Growth, 2011.
- Bud Eppers Memorial Award - New Mexico Public Lands Council, 2005.
- “Always There Helping” – New Mexico Cattle Growers Association, 2003.
- Wyoming Agriculture Hall of Fame - Wyoming Livestock Journal, 2001.
- Founding Fathers Award – Arizona and New Mexico Coalition of Counties for Stable Economic Growth, 1999.
- Who’s Who: 20 For the Future -- *Newsweek*, September 30, 1991.

## PUBLICATIONS AND CONGRESSIONAL TESTIMONY

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- *Field Hearing on Regulatory Burdens Placed on the Livestock Industry*, Committee on Oversight and Government Reform, Evanston, Wyoming, August 6, 2015.
- *Legislative Hearing on H.R. 435 (Hastings); H.R. 4317 (Neugebauer) and H.R. 4318 (Huizenga)*, Committee on Natural Resources, Washington D.C., April 8, 2014.
- *Oversight Hearing on “A Washington, D.C. Based Bureaucratic Invention with Potential Water Conservation and Property Rights Impacts: The National Blueways Order,”* U.S. House of Representative Committee on Natural Resources, Washington D.C., 2013.
- *Oversight Hearing on “Threats, Intimidation and Bullying by Federal Land Managing Agencies,* Subcommittee on Public Lands and Environmental Regulation, Washington, D.C., October 29, 2013.
- *Oversight Hearing on “The Endangered Species Act: How Litigation is Costing Jobs and Impeding True Recovery Efforts,”* U.S. House of Representative Committee on Natural Resources, Washington D.C., 2011.
- Select Committee on Federal Natural Resource Management, Wyoming State Legislature, Douglas Wyoming, 2011.
- *Task Force on Improving the National Environmental Policy Act*, U.S. House of Representatives Committee on Resources, Field Hearing, Rio Rancho, New Mexico, 2005.
- *Oversight Hearing on the Endangered Species Act’s Impact in New Mexico*, Committee on Resources, Clovis, New Mexico, 1998.
- *Oversight Hearing on Livestock Grazing Policies on National Forests*, Committee on Resources, Subcommittee on Forest and Forest Health, Washington D.C., 1997.
- *Protecting Community Stability and Local Economics: Opportunities for Local Government Influence in Federal Decision and Policy-Making Processes*, Rowman and Littlefield, 1996.
- *The Right to Graze Livestock on the Federal Lands: The Historical Development of Western Grazing Rights*, Idaho Law Review, 1993-1994.

## AT-LARGE APPOINTMENTS AND ACTIVITIES

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- Wyoming Water Development Commission; Four-year term appointment by Wyoming Governor and Confirmation by Wyoming State Senate, 2012.
- Board of Directors; Wyoming Natural Resources Foundation, 2012.
- Coach, Future Farmers of America Agriculture Issues Career Development Event, National Champions 2010; 2012.

Delisting report				
	Date First Listed	Date Delisted	Species Name	Reason Delisted
1	7/24/2003	7/24/2003	Deer, Columbian white-tailed ( <u>Odocoileus virginianus leucurus</u> ) - Douglas County DPS	Recovered
2	8/30/1999	9/15/2011	Snake, Lake Erie water ( <u>Nerodia sipedon insularum</u> ) - subspecies range clarified	Recovered
3	5/22/1997	8/18/2005	Sunflower, Eggert's ( <u>Helianthus eggertii</u> )	Recovered
4	3/10/1997	4/14/2006	Pygmy-owl, cactus ferruginous ( <u>Glaucidium brasilianum cactorum</u> ) - AZ pop.	Original Data in Error - Not a listable entity
5	9/13/1996	4/26/2000	Trout, coastal cutthroat ( <u>Oncorhynchus clarkii clarkii</u> ) - <u>Umpqua R.</u>	Original Data in Error - Taxonomic revision
6	6/16/1994	6/16/1994	Whale, gray ( <u>Eschrichtius robustus</u> ) - except where listed	Recovered
7	10/18/1993	3/23/2015	Chub, Oregon ( <u>Oregonichthys crameri</u> ) - Entire	Recovered
8	12/14/1992	9/24/2010	Snail, Utah valvata ( <u>Valvata utahensis</u> )	Original Data in Error - New information discovered
9	12/14/1992	9/5/2007	Springsnail, Idaho ( <u>Pyrgulopsis idahoensis</u> )	Original Data in Error - Taxonomic revision
10	1/7/1992	3/11/2016	Bear, Louisiana black ( <u>Ursus americanus luteolus</u> ) - Entire	Recovered
11	9/20/1991	5/28/2013	No common name ( <u>Gahnia lanaiensis</u> ) -	Original Data in Error - Taxonomic revision
12	7/19/1990	10/7/2003	Woolly-star, Hoover's ( <u>Eriastrum hooveri</u> )	Recovered
13	4/5/1990	12/4/2013	Sea lion, Steller ( <u>Eumetopias jubatus</u> ) - Eastern DPS	Recovered



	Date First Listed	Date Delisted	Species Name	Reason Delisted
14	4/17/1989	6/14/2013	<u>Shagreen, Magazine Mountain (Infectarius magazinensis) - Entire</u>	Recovered
15	9/26/1986	2/28/2000	<u>Shrew, Dismal Swamp southeastern (Sorex longirostris fisheri)</u>	Original Data in Error - New information discovered
16	9/3/1986	11/28/2011	<u>Snake, Concho water (Nerodia paucimaculata) - Entire</u>	Recovered
17	4/29/1986	6/18/1993	<u>Globeberry, Tumamoc (Tumamoca macdougallii)</u>	Original Data in Error - New information discovered
18	9/5/1985	2/18/2011	<u>Daisy, Maguire (Erigeron maguirei)</u>	Recovered
19	7/31/1985	3/4/2013	<u>Squirrel, Virginia northern flying (Glaucomys sabrinus fuscus) - Entire</u>	Recovered
20	6/11/1985	1/7/2016	<u>Sucker, Modoc (Catostomus microps) - Entire</u>	Recovered
21	8/27/1984	2/23/2004	<u>Broadbill, Guam (Myiagra freycineti)</u>	Extinct
22	8/7/1984	2/11/2016	<u>Frankenia, Johnston's (Frankenia johnstonii)</u>	Recovered
23	5/18/1984	6/19/2006	<u>Agave, Arizona (Agave arizonica)</u>	Original Data in Error - Not a listable entity
24	2/17/1984	2/6/1996	<u>Bidens, cuneate (Bidens cuneata)</u>	Original Data in Error - Taxonomic revision
25	7/13/1982	9/22/1993	<u>Pennroyal, Mckittrick (Hedeoma apiculatum)</u>	Original Data in Error - New information discovered
26	9/17/1980	8/27/2002	<u>Cinquefoil, Robbins' (Potentilla robbinsiana)</u>	Recovered
27	4/30/1980	12/4/1987	<u>Gambusia, Amistad (Gambusia amistadensis)</u>	Extinct
28	12/7/1979	9/22/1993	<u>Cactus, spineless hedgehog (Echinocereus triglochidiatus var. inermis)</u>	Original Data in Error - Not a listable entity
29	12/6/1979	10/1/2003	<u>Barberry, Truckee (Berberis (=Mahonia) sonnei)</u>	Original Data in Error - Taxonomic revision
30	11/28/1979	6/24/1999	<u>Cactus, Lloyd's hedgehog (Echinocereus lloydii)</u>	Original Data in Error - Taxonomic revision
31	10/11/1979	11/27/1989	<u>Hedgehog cactus, purple-spined (Echinocereus engelmannii var. purpureus)</u>	Original Data in Error - Taxonomic revision
32	7/27/1979	6/4/1987	<u>Alligator, American (Alligator mississippiensis) - Entire</u>	Recovered

	Date First Listed	Date Delisted	Species Name	Reason Delisted
33	7/5/1979	9/2/2011	<u>Coneflower, Tennessee purple (Echinacea tennesseensis)</u>	Recovered
34	4/10/1979	10/28/2008	<u>Seal, Caribbean monk (Monachus tropicalis)</u>	Extinct
35	5/27/1978	9/14/1989	<u>Milk-vetch, Rydberg (Astragalus perianus)</u>	Original Data in Error - New information discovered
36	3/9/1978	5/5/2011	<u>Wolf, gray (Canis lupus) - Northern Rocky Mountain DPS</u>	Recovered
37	12/18/1977	11/22/1983	<u>Treefrog, pine barrens (Hyla andersonii) - FL pop.</u>	Original Data in Error - New information discovered
38	12/8/1977	2/23/2004	<u>Mallard, Mariana (Anas oustaleti)</u>	Extinct
39	9/12/1977	4/1/2014	<u>Lizard, Island night (Xantusia riversiana) - Entire</u>	Recovered
40	6/14/1976	1/9/1984	<u>Pearlymussel, Sampson's (Epioblasma sampsoni)</u>	Extinct
41	6/14/1976	2/29/1984	<u>Turtle, Indian flap-shelled (Lissemys punctata punctata)</u>	Original Data in Error - Erroneous data
42	4/28/1976	8/31/1984	<u>Butterfly, Bahama swallowtail (Heraclides andraemon bonhotiei)</u>	Original Data in Error - Act amendment
43	12/30/1974	3/9/1995	<u>Kangaroo, eastern gray (Macropus giganteus)</u>	Recovered
44	12/30/1974	3/9/1995	<u>Kangaroo, red (Macropus rufus)</u>	Recovered
45	12/30/1974	3/9/1995	<u>Kangaroo, western gray (Macropus fuliginosus)</u>	Recovered
46	6/4/1973	10/12/1983	<u>Sparrow, Santa Barbara song (Melospiza melodia graminea) -</u>	Extinct
47	10/13/1970	1/15/1982	<u>Pupfish, Tecopa (Cyprinodon nevadensis calidae)</u>	Extinct
48	6/2/1970	5/23/2012	<u>Crocodile, Morelet's (Crocodylus moreletii) -</u>	Recovered
49	6/2/1970	9/12/1985	<u>Dove, Palau ground (Gallicolumba canifrons)</u>	Recovered
50	6/2/1970	8/25/1999	<u>Falcon, American peregrine (Falco peregrinus anatum)</u>	Recovered
51	6/2/1970	10/5/1994	<u>Falcon, Arctic peregrine (Falco peregrinus tundrius)</u>	Recovered
52	6/2/1970	9/12/1985	<u>Flycatcher, Palau fantail (Rhipidura lepida)</u>	Recovered
53	6/2/1970	9/21/2004	<u>Monarch, Tinian (old world flycatcher) (Monarcha takatsukasae) -</u>	Recovered
54	6/2/1970	9/12/1985	<u>Owl, Palau (Pyrroglaux podargina) -</u>	Recovered
55	6/2/1970	12/17/2009	<u>Pelican, brown (Pelecanus occidentalis) - except U.S. Atlantic coast, FL, AL</u>	Recovered

	Date First Listed	Date Delisted	Species Name	Reason Delisted
56	6/2/1970	2/4/1985	<u>Pelican, brown (Pelecanus occidentalis) - U.S. Atlantic coast, FL, AL</u>	Recovered
57	3/11/1967	9/2/1983	<u>Cisco, longjaw (Coregonus alpenae)</u>	Extinct
58	3/11/1967	7/25/1978	<u>Duck, Mexican (Anas diazi) - U.S.A. only</u>	Original Data in Error - Taxonomic revision
59	3/11/1967	8/8/2007	<u>Eagle, bald (Haliaeetus leucocephalus) - lower 48 States</u>	Recovered
60	3/11/1967	3/20/2001	<u>Goose, Aleutian Canada (Branta canadensis leucopareia)</u>	Recovered
61	3/11/1967	9/2/1983	<u>Pike, blue (Stizostedion vitreum glaucum)</u>	Extinct
62	3/11/1967	12/12/1990	<u>Sparrow, dusky seaside (Ammodramus maritimus nigrescens)</u>	Extinct
63	3/11/1967	12/16/2015	<u>Squirrel, Delmarva Peninsula fox (Sciurus niger cinereus) - Entire, except where experimental</u>	Recovered

**Totals:**

Recovered	34
Original Data in Error	19
Extinct	10

NOT LISTED OR DELISTED SPECIES DUE TO CONSERVATION AGREEMENT

Scientific Name	Common Name	Reason for Removal/Withdrawl (Removal/Withdrawl Date)	Type of Species
<a href="#">Thymallus arcticus</a>	Arctic grayling Upper Missouri River DPS	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (August 20, 2014)	Freshwater Fish
<a href="#">Cimicifuga arizonica</a>	Arizona bugbane	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (October 30, 2001)	
			Plant
		Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (October 20, 2000)	
<a href="#">Lupinus aridus ssp. ashlandensis</a>	Ashland Lupine	12-month Not Warranted Petition Finding: Due in part to Conservation Efforts (February 07, 2003)	Plant
<a href="#">Erigeron basalticus</a>	Basalt daisy	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (December 06, 2007)	Plant
<a href="#">Pseudanophthalmus major</a>	Beaver Cave beetle entire	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (October 11, 2006)	Insect
<a href="#">Opuntia X multigeniculata</a>	Blue Diamond cholla	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (October 30, 2001)	Plant
<a href="#">Phacelia stellaris</a>	Brand's phacelia	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (November 22, 2013)	Plant
<a href="#">Fallicambarus gordonii</a>	Camp Shelby burrowing crayfish	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (May 11, 2005)	Freshwater Crustacean
<a href="#">Castilleja christii</a>	Christ's paintbrush	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (November 21, 2012)	Plant
<a href="#">Astragalus oophorus clokeyanus</a>	Clokey's egg-vetch	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (October 25, 1999)	Plant
<a href="#">Polycstenium williamsiae</a>	Combleaf	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (February 28, 1996)	Plant
<a href="#">Nerodia erythrogaster neglecta</a>	Copperbelly water snake Illinois, Kentucky, and Indiana south of 40 degrees north latitude	Withdrawal: Included in a conservation agreement precluding the need to list (January 29, 1997)	Snake/Reptile
<a href="#">Cicindela albissima</a>	Coral Pink Sand Dunes tiger beetle	Withdrawal: Included in a conservation agreement precluding the need to list (October 02, 2013)	Insect
<a href="#">Gila bicolor vaccaceps</a>	Cow Head tui chub entire	Withdrawal: Included in a conservation agreement precluding the need to list (October 11, 2006)	Fish
<a href="#">Downingia concolor brevior</a>	Cuyamac Lake downingia	Withdrawal: Included in a conservation agreement precluding the need to list (February 06, 1997)	Plant

NOT LISTED OR DELISTED SPECIES DUE TO CONSERVATION AGREEMENT

Scientific Name	Common Name	Reason for Removal/Withdrawl (Removal/Withdrawal Date)	Type of Species
<a href="#">Cymopterus deserticola</a>	Desert cymopterus	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (February 28, 1996)	Plant
<a href="#">Sceloporus arenicolus</a>	Dunes sagebrush lizard	Withdrawal: Included in a conservation agreement precluding the need to list (June 19, 2012)	Lizzard/Reptile
<a href="#">Pyrgulopsis notidicola</a>	Elongate mud meadows Springsnail	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (November 21, 2012)	Snail/Mullusk
<a href="#">Phrynosoma mcallii</a>	Flat-tailed horned lizard	Withdrawal: Included in a conservation agreement precluding the need to list (July 15, 1997)	Lizzard/Reptile
<a href="#">Ursus americanus floridanus</a>	Florida black bear	12-month Not Warranted Petition Finding: Due in part to Conservation Efforts (December 08, 1998)	Bear
<a href="#">Dalea tentaculoides</a>	Gentry's indigobush	12-month Not Warranted Petition Finding: Due in part to Conservation Efforts (September 27, 2005)	Plant
<a href="#">Symphyotrichum georgianum</a>	Georgia aster	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (September 18, 2014)	Plant
<a href="#">Allium gooddingii</a>	Goodding's onion	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (October 30, 2001)	
			Plant
<a href="#">Astragalus anserinus</a>	Goose Creek milkvetch	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (October 20, 2000)	
		Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (October 08, 2015)	Plant
<a href="#">Penstemon grahamii</a>	Graham beardtongue	Withdrawal: Included in a conservation agreement precluding the need to list (August 06, 2014)	Plant
<a href="#">Pseudanophthalmus pholeter</a>	Greater Adams Cave beetle	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (December 08, 2005)	Insect
<a href="#">Centrocercus urophasianus</a>	Greater sage-grouse entire	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (October 02, 2015)	Bird
<a href="#">Centrocercus urophasianus</a>	Greater sage-grouse Columbia basin DPS	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (October 02, 2015)	Bird
<a href="#">Centrocercus urophasianus</a>	Greater sage-grouse Bi-State	Withdrawal: Included in a conservation agreement precluding the need to list (April 23, 2015)	Bird
<a href="#">Horkelia hendersonii</a>	Henderson's horkelia	12-month Not Warranted Petition Finding: Due in part to Conservation Efforts (February 07, 2003)	Plant

NOT LISTED OR DELISTED SPECIES DUE TO CONSERVATION AGREEMENT

Scientific Name	Common Name	Reason for Removal/Withdrawl (Removal/Withdrawl Date)	Type of Species
<a href="#">Pseudanophthalmus holsingeri</a>	Holsinger's Cave Beetle	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (May 11, 2005)	Insect
<a href="#">Pediocactus paradigmeyi</a>	Kaibab plains cactus	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (October 25, 1999)	Cactus/Plant
<a href="#">Iotichthys phlegathontis</a>	Least chub	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (August 26, 2014)	
		Withdrawal: Included in a conservation agreement precluding the need to list (July 29, 1999)	Fish
<a href="#">Pseudanophthalmus catorycetes</a>	Lesser Adams Cave beetle	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (December 08, 2005)	Insect
<a href="#">Polites mardon</a>	Mardon skipper	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (September 04, 2012)	Insect
<a href="#">Oncorhynchus mykiss ssp.</a>	McCloud R. redband trout	McCloud R. redband trout	Fish
<a href="#">Clarkia lingulata</a>	Merced clarkia	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (September 19, 1997)	Plant
<a href="#">Cordylanthus nidularius</a>	Mt. Diablo bird's-beak	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (February 28, 1996)	Plant
<a href="#">Ambrysus funebris</a>	Nevares Spring naucorid bug (=Furnace Creek)	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (October 08, 2015)	Insect
<a href="#">Coccoloba rugosa</a>		Withdrawal: Included in a conservation agreement precluding the need to list (March 04, 1997)	Plant
<a href="#">Polemonium pectinatum</a>		Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (February 28, 1996)	Plant
<a href="#">Hazardia orcuttii</a>	Orcutt's hazardia	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (November 22, 2013)	Plant
<a href="#">Sidalcea covillei</a>	Owens Valley checkermallow	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (February 28, 1996)	Plant
<a href="#">Astragalus cusickii var. packardiae</a>	Packard's milkvetch	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (December 05, 2014)	Plant
<a href="#">Limnanthes gracilis parishii</a>	Parish's meadowfoam	Withdrawal: Included in a conservation agreement precluding the need to list (February 06, 1997)	Plant

NOT LISTED OR DELISTED SPECIES DUE TO CONSERVATION AGREEMENT

Scientific Name	Common Name	Reason for Removal/Withdrawl (Removal/Withdrawal Date)	Type of Species
<a href="#">Abronia alpina</a>	Ramshaw Meadows sand-verbena	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (October 08, 2015)	Plant
<a href="#">Collomia rawsoniana</a>	Rawson's flaming trumpet	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (February 28, 1996)	Plant
<a href="#">Oncorhynchus clarkii virginalis</a>	Rio Grande cutthroat trout	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (October 01, 2014)	Fish
<a href="#">Euphydryas anicia cloudcrofti</a>	Sacramento Mountains checkerspot Butterfly	12-month Not Warranted Petition Finding: Due in part to Conservation Efforts (September 02, 2009)	Insect
<a href="#">Euphilotes pallescens arenamontana</a>	Sand Mountain blue butterfly entire	12-month Not Warranted Petition Finding: Due in part to Conservation Efforts (May 02, 2007)	Insect
<a href="#">Dudleya blochmaniae insularis</a>	Santa Rosa Island dudleya	Withdrawal: Included in a conservation agreement precluding the need to list (July 31, 1997)	Plant
<a href="#">Dudleya blochmaniae brevifolia</a>	Short-leaved dudleya	Withdrawal: Included in a conservation agreement precluding the need to list (October 07, 1996)	Plant
<a href="#">Lotus argophyllum adsurgens</a>	Silver, San Clemente Island hosackia	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (February 28, 1996)	Plant
<a href="#">Calochortus persistens</a>	Siskiyou Mariposa lily	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (October 08, 2015)	Plant
<a href="#">Potentilla basaltica</a>	Soldier Meadows Cinquefoil	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (August 02, 2013)	Plant
<a href="#">Urocitellus endemicus</a>	Southern Idaho ground Squirrel	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (October 08, 2015)	Squirrel
<a href="#">Dudleya sp.</a>	Sp. nov. ined. (munchkin) dudleya	Withdrawal: Included in a conservation agreement precluding the need to list (July 31, 1997)	Plant
<a href="#">Paysonia stonensis</a>	Stones River bladderpod	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (October 25, 1999)	Plant
<a href="#">Eriogonum argophyllum</a>	Sulphur Springs buckwheat	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (October 20, 2000)	Plant
<a href="#">Pseudanophthalmus inexpectatus</a>	Surprising Cave beetle	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (December 06, 2007)	Insect
<a href="#">Vulpes velox</a>	Swift fox U.S. pop.	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (January 08, 2001)	Fox
<a href="#">Rorippa subumbellata</a>	Tahoe yellow cress	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (October 08, 2015)	Plant



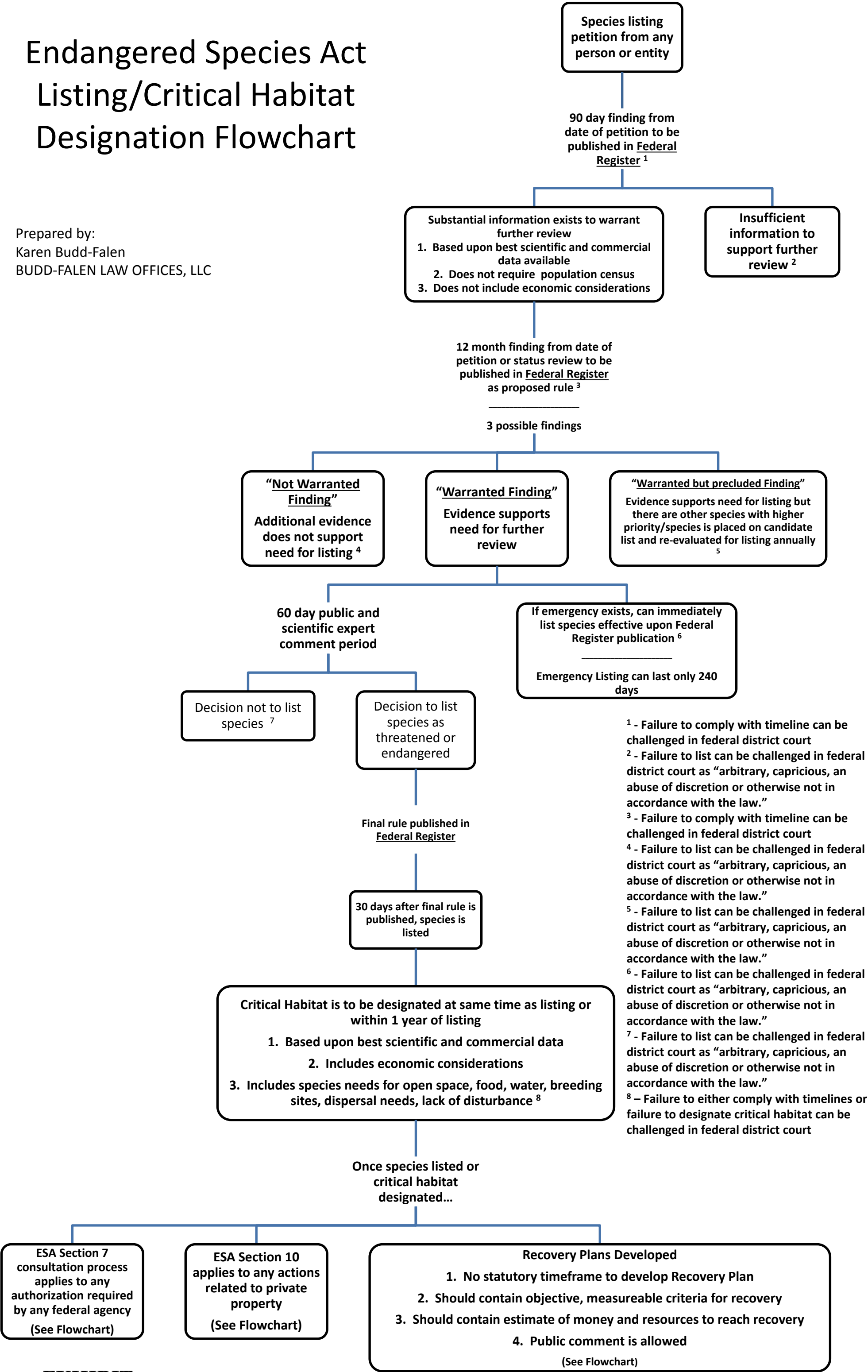
NOT LISTED OR DELISTED SPECIES DUE TO CONSERVATION AGREEMENT

Scientific Name	Common Name	Reason for Removal/Withdrawl (Removal/Withdrawal Date)	Type of Species
<a href="#">Delphinium variegatum thornei</a>	Thorne's royal larkspur	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (February 28, 1996)	Plant
<a href="#">Calochortus umpquaensis</a>	Umpqua mariposa Lily	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (October 20, 2000)	Plant
<a href="#">Synthyris ranunculina</a>	[Unnamed] kittentails	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (February 28, 1996)	Plant
<a href="#">Zaitzevia thermae</a>	Warm Springs Zaitzevian riffle beetle	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (December 06, 2007)	Insect
<a href="#">Nysius wekiuicola</a>	Wekiu bug	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (October 26, 2011)	Insect
<a href="#">Delphinium viridescens</a>	Wenatchee larkspur	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (February 28, 1996)	Plant
<a href="#">Penstemon scariosus albifluvis</a>	White River beardtongue	Withdrawal: Included in a conservation agreement precluding the need to list (August 06, 2014)	Plant
<a href="#">Aliciella caespitosa</a>	Wonderland Alice-flower	Candidacy Removal/Reclass: Included in a conservation agreement precluding the need to list (September 12, 2006)	Plant



# Endangered Species Act Listing/Critical Habitat Designation Flowchart

Prepared by:  
Karen Budd-Falen  
BUDD-FALEN LAW OFFICES, LLC



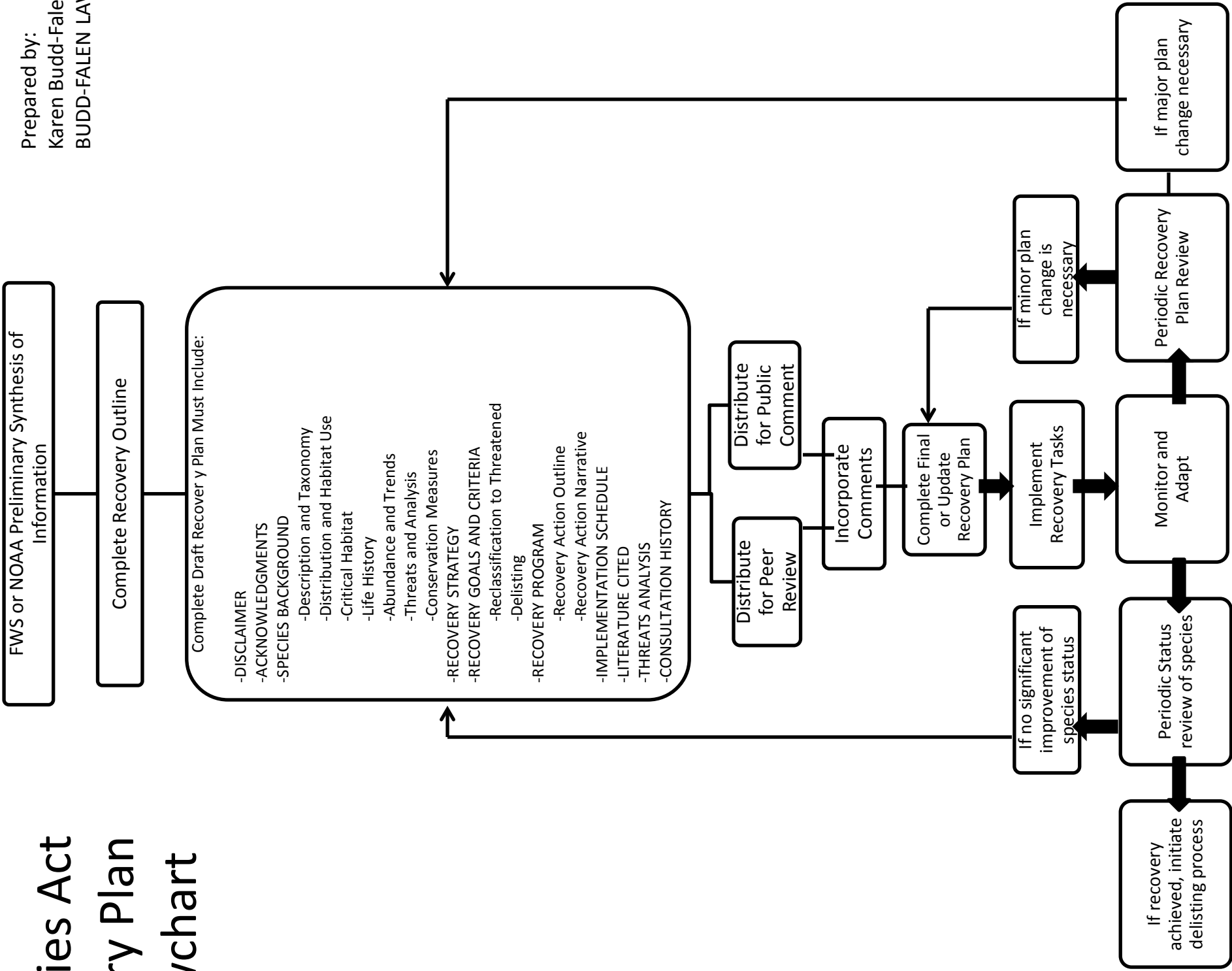
<sup>1</sup> - Failure to comply with timeline can be challenged in federal district court  
<sup>2</sup> - Failure to list can be challenged in federal district court as "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law."  
<sup>3</sup> - Failure to comply with timeline can be challenged in federal district court  
<sup>4</sup> - Failure to list can be challenged in federal district court as "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law."  
<sup>5</sup> - Failure to list can be challenged in federal district court as "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law."  
<sup>6</sup> - Failure to list can be challenged in federal district court as "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law."  
<sup>7</sup> - Failure to list can be challenged in federal district court as "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law."  
<sup>8</sup> - Failure to either comply with timelines or failure to designate critical habitat can be challenged in federal district court

# Endangered Species Act

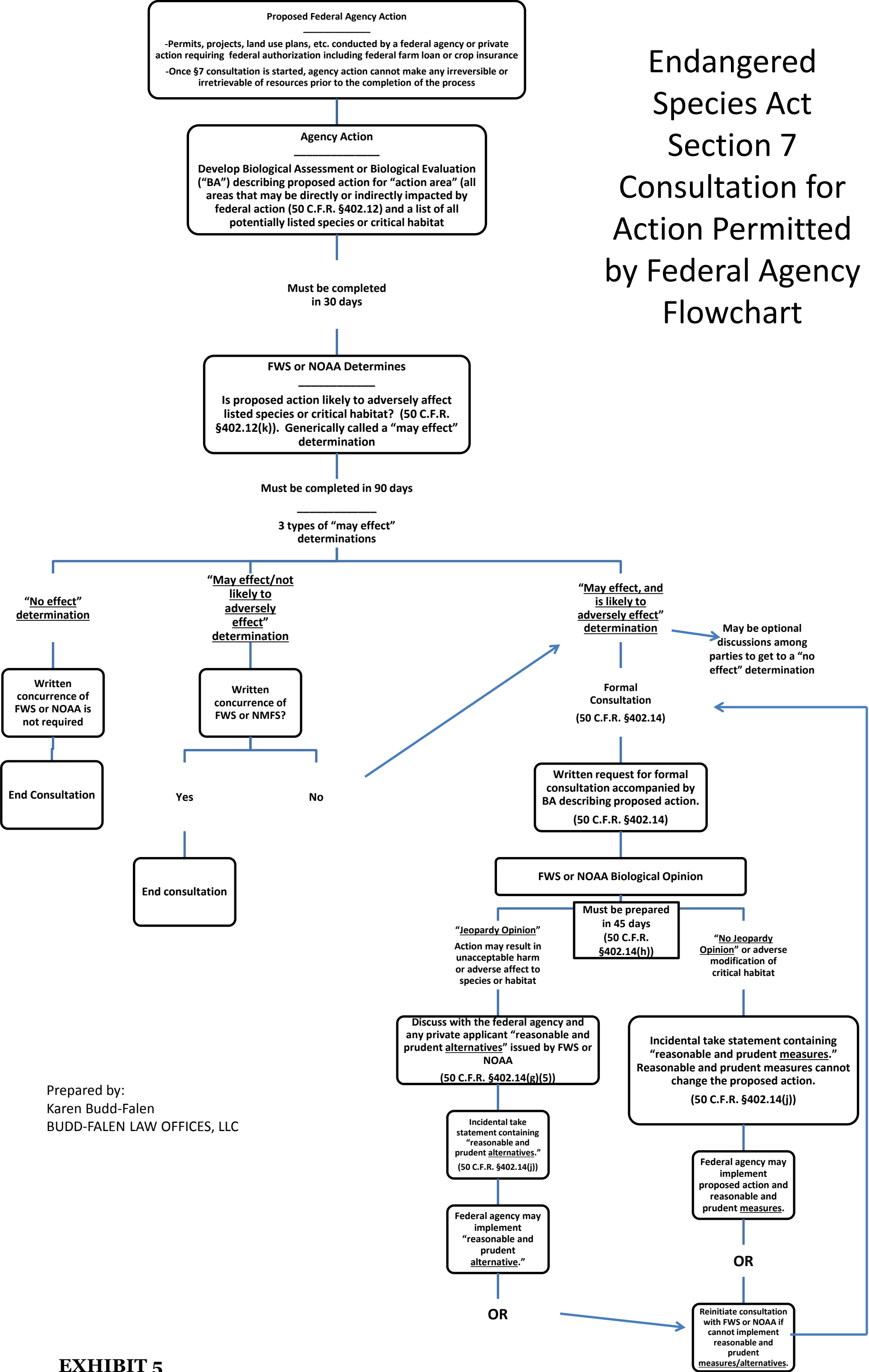
## Section 4 Recovery Plan

### Preparation Flowchart

Prepared by:  
Karen Budd-Falen  
BUDD-FALEN LAW OFFICES, LLC



# Endangered Species Act Section 7 Consultation for Action Permitted by Federal Agency Flowchart



Prepared by:  
Karen Budd-Falen  
BUDD-FALEN LAW OFFICES, LLC

Project with no federal agency action but involves potential take of listed species or adverse modification of critical habitat

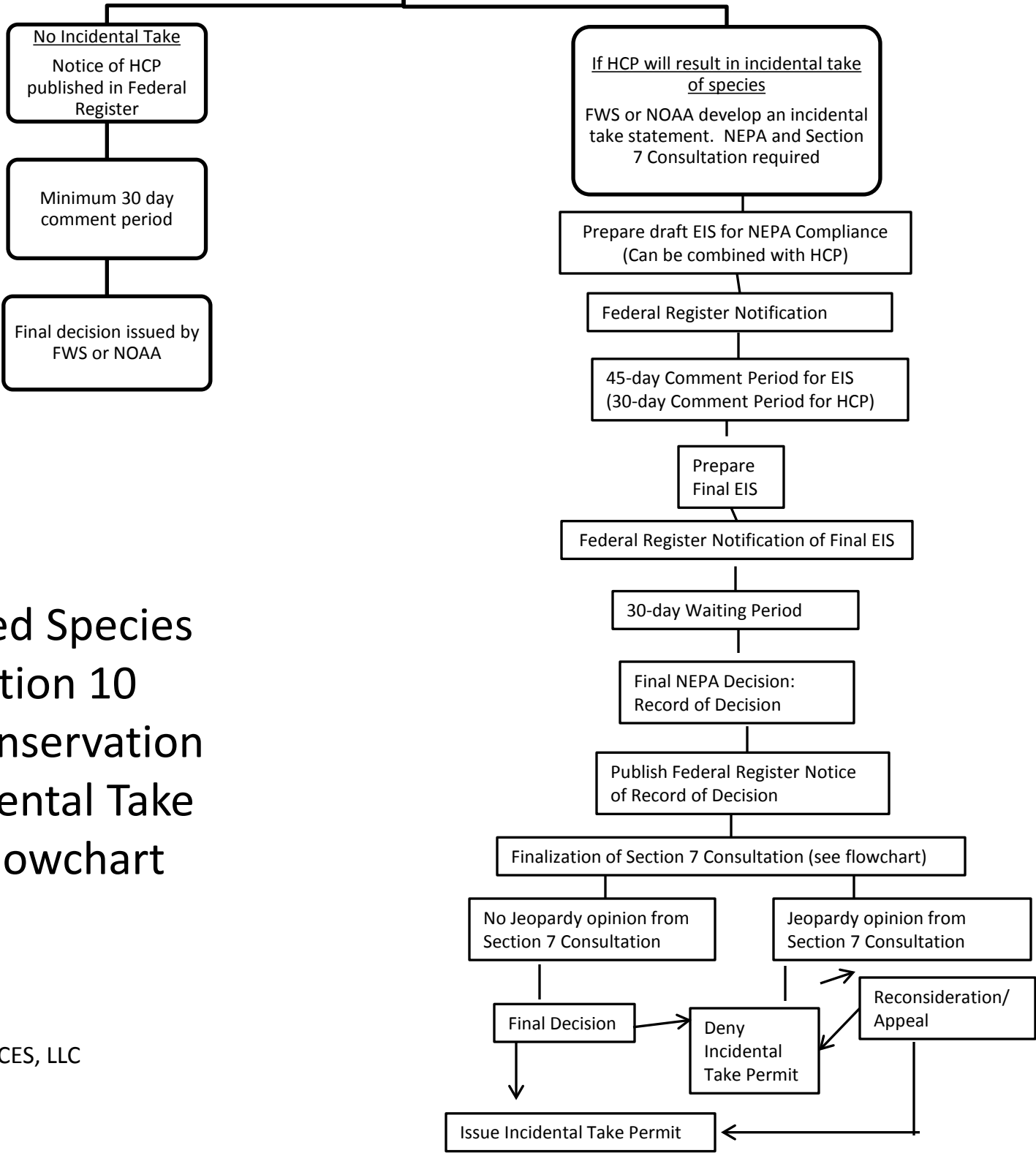
Five conditions for a Habitat Conservation Plan (HCP):

- The taking will be incidental to otherwise legal land use activities
- The private applicant will minimize and mitigate the impacts of taking
- The applicant will ensure that adequate funding will be provided for the HCP and procedures to address unforeseen circumstances
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild
- Any additional measures required by FWS and NOAA will be met and FWS and NOAA have received assurances that the plan will be implemented

HCP must include:

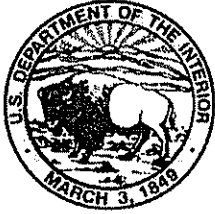
- Assessment of impacts likely to result from the proposed taking of listed species or habitat modification
- Measures that the permit applicant will undertake to monitor, minimize, and mitigate for such impacts, the funding available to implement such measures, and the procedures to deal with unforeseen or extraordinary circumstances
- Alternative actions to the taking that the applicant analyzed, and the reasons why the applicant did not adopt such alternatives
- Additional measures that the FWS or NOAA may require
- Biological goals and objectives, which define the expected biological outcome for each species covered by the HCP
- Adaptive management, which includes methods for addressing uncertainty and monitoring and feedback to biological goals and objectives
- Monitoring for compliance, effectiveness and effects of HCP implementation
- Permit duration which is determined by the time-span of the project and designed to provide the time needed to achieve biological goals and address biological uncertainty.

2 possible outcomes



Endangered Species  
Act Section 10  
Habitat Conservation  
Plan/Incidental Take  
Permit Flowchart

Prepared by:  
Karen Budd-Falen  
BUDD-FALEN LAW OFFICES, LLC



In Response Reply To:  
FWS/R8/AES

## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Pacific Southwest Region  
2800 Cottage Way, Suite W-2606  
Sacramento, California 95825



MAY 20 2014

### Memorandum

To: Regional Director, Pacific Southwest Region  
Sacramento, California

From: Assistant Regional Director, Ecological Services

Subject: Ecological Services Workload Prioritization /s/ Michael Fris

Consecutive years of reduced funding for the Ecological Services Program have had a meaningful impact in Region 8. Workload associated with sections 4, 7, and 10 of the Endangered Species Act (ESA) is greater than our resources can address. To compound this problem, we anticipate the demand for ESA permitting, listing, and recovery work will increase in the coming years as the housing market improves, natural resource needs increase, and listing petitions rise. We expect this increase in workload to occur while renewable energy permitting remains a high priority for the Administration and Department of Interior. Given decreased staff resources and budgets, it behooves us to craft a strategy for prioritizing workload. Ultimately, we need a long-term strategy which may entail shifting resources throughout our region to ensure that staffing is commensurate with our priority assignments. As we formulate this long-term strategy, this memorandum will guide deployment of our resources in the short term.

Regionally, our top priorities include Department of Interior initiatives, preservation of health and human safety, and workload required to meet our legal mandates. Our highest priorities also include continued implementation of Landscape Conservation Cooperatives and the surrogate species concept. Specific priorities encompass Tribal trust responsibilities, Klamath water operations projects (including the hydroelectric settlement agreement), the Desert Renewable Energy Conservation Plan, the Bay-Delta Conservation Plan, the Central Valley Project Operations and Criteria Plan, issues of national security, projects related to flood prevention, projects related to fire risk reduction, and communicating with the public through external affairs. While these priorities comprise our regional focus, they do not provide the fine-scale sideboards to determine how offices should prioritize projects, and they do not all apply to each office within Region 8. Thus, each office will need to prioritize its own workload within their specific geographic priorities, and using surrogate species as the measure of success.

Among the remaining workload, we will focus on projects with a high conservation benefit. Whenever possible, we will place the highest priority on projects where big conservation gains can be achieved with relatively little effort through the solid work of our partners. When conservation value and programmatic priority are equal, projects will enter a queue to be addressed on a first-come, first-served basis. Streamlined, programmatic approaches (landscape scale) will be prioritized ahead of individual projects.

Action agencies and applicants can reduce permit processing timeframes by producing well-prepared biological assessments and habitat conservation plans. For priority projects we cannot accomplish due to budget shortfalls, reimbursable dollars may enable us to hire temporary or term employees to work on the project from start to finish. Reimbursable dollars should only be accepted when a project would otherwise be a priority, but would go unfunded due to budget shortfalls.

Based on limited staff resources, we anticipate that we will not be able to meet regulatory timeframes with some degree of frequency. This includes ESA section 7 timeframes for issuing biological opinions (135 days) and timeframes for issuing ESA section 4 findings (e.g., 90-day findings and 12-month findings). Finally, there are a number of items we simply won't be able to do. These items are discussed below, by Ecological Services Program.

### **Section 7 and Section 10**

Our primary focus will continue to be Departmental and agency priorities, as well as projects where we foresee having the biggest conservation benefit. Departmental and agency priority projects include the DRECP, high-profile renewable energy projects, Klamath, BDCP, and OCAP as well as projects necessary for health and human safety or national security and those for which we have court-ordered or settlement obligations. Among section 10 projects, we will prioritize those regional HCP development efforts for which we think the applicants are committed to expeditiously completing the plan and which are most promising in terms of positive conservation outcomes. Our section 7 priorities will focus on those projects that are designed with species conservation in mind and projects where we can achieve the greatest conservation outcome for the resources expended in working on the project. We will pursue programmatic consultations if there are expected long-term conservation and workload benefits.

To focus our efforts and attention on priorities, we foresee rarely or not doing Safe Harbor Agreements, general technical assistance, and CCAAs and CCAs. We will step away from the lead role on most intra-Service consultations for non-Ecological Services programs. Those programs have been delegated the authority to complete their own section 7 consultations; we are committed to providing those programs with the tools they need to support their own determinations.

As the economic recovery continues, we anticipate that HCP and consultation workload associated with urban development will increase. We must be prepared to prioritize projects. We will not be able to complete all projects in a timely manner. Sometimes our partners have assisted with funding, which helps us complete these requests in a more timely manner (streamlined MOU with FS, agreements with Caltrans and the Corps). To enable Federal land management agencies to reduce the risk of catastrophic wildfire, we will continue to engage these partners on fire-related consultations. We have recently reaffirmed our commitment to the Streamlined Consultation process in the Northwest Forest Plan area, and will continue to seek consensus and efficiencies in these consultations.

## **Listing and Recovery**

Our primary (and perhaps only) focus will be on meeting court-ordered and settlement deadlines for findings, including findings for reclassifications. We will also put resources toward completing litigation-driven recovery plans, and for other recovery plans we will continue to implement our work activity guidance for FY13-FY17, ensuring that the pace of plan development is commensurate with staffing levels. Recovery implementation will be focused on critically imperiled species and will be primarily in the form of Service staff working with partners to identify and fund recovery actions.

With few exceptions, we do not plan to carry out the following activities: uplisting rules, downlisting rules, post-delisting monitoring plans, petition responses, CNORs, non-MDL findings and proposed rules, or recovery plan revisions. Five-year reviews will not be done, although abbreviated reviews may be completed if sufficient resources are available.

## **Contaminants**

Our main priority will be maintaining spill response planning and preparedness capabilities with our field offices as well as our Federal and State partners. Another priority will be to ensure new case development and support in our Natural Resource Damage Assessment & Restoration (NRDAR) program. For restoration activities of our on-going existing NRDAR cases, implementation and support will continue as these funds are non-appropriated and derived from settlements.

With the exception of our current On-Refuge Investigation program activities, all contaminant investigation activities are no longer being implemented (unless funding/support is provided to us from our partners or stakeholders). In addition, technical assistance provided on contaminant issues to other Service Programs (i.e., Consultation, Recovery, Listing, Refuges, Fisheries, etc.) will be significantly reduced. Some technical assistance may be provided on a case-by-case basis for high-priority issues, and in such cases cost-sharing with the requesting program will be sought. . Specific Service issues that will be affected include:

- Clean Water Act regulatory reviews (water quality standards, TMDLs, etc.)
- Listing support reviews (five-factor analyses, 90-day reviews, delisting, etc.)
- Mining-related NEPA reviews
- Pre-acquisition Environmental Site Assessments (Level II and Level III)
- Recovery support reviews (recovery plans, 5-year reviews, etc.)
- Refuge Pesticide Use Proposal reviews
- Refuge Cleanup reviews (EECAs, PASIs, etc.)

## **Conservation Planning Assistance**

We will continue to focus our efforts on Departmental and agency priorities, including the Secretarial Determination for the Klamath settlement agreement, and water operations associated with the Klamath hydroelectric facilities and the Central Valley Project Improvement Act. Our

field offices have been and will continue to rely on reimbursable funding from our Federal partners for work on Fish and Wildlife Coordination Act reports. It is imperative that these funds be sufficient to fully support staff, and we will prioritize projects based on the amount of funds, Departmental and agency priorities, and conservation benefit. We will continue work on FERC reviews insofar as the available funding allows, which will likely entail stepping away from involvement with some FERC projects (except Klamath).

We will not or rarely be reviewing and commenting on other agencies NEPA documents, unless we have agreed to be a Cooperating or Participating agency. Our involvement with Bald and Golden Eagle Act permitting will be minimal, and will largely depend on the priority given to individual projects.

cc:

R8 All ES Project Leaders





# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Post Office Box 1306  
Albuquerque, New Mexico 87103



In Reply Refer To:  
FWS/R2/ARD-ES/059044

DEC 15 2014

Ms. Mary Darling  
University of Arizona Tech Park  
9040 South Rita Road, Suite # 2350  
Tucson, Arizona 85747

Dear Ms. Darling:

Thank you for your letter dated December 1, 2014, requesting, on behalf of Cochise County and the City of Sierra Vista, an extension of the comment period on the final Environmental Impact Statement (EIS) for the Proposed Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf (*Canis lupus baileyi*). The final EIS was published November 25, 2014, for a 30-day public review. We appreciate your intent to provide comments on the final EIS and draft Record of Decision (ROD). Because of the widespread interest in the final EIS and the Service's draft ROD, we have provided a convenient avenue for submitting comments through the Federal eRulemaking Portal: <http://www.regulations.gov>. As you know, we are constrained by time limits placed upon us by the stipulated settlement agreement reached in *Center for Biological Diversity v. Jewell*, Case No. 12-cv-1920 (August 2013). Pursuant to that agreement, the Service must submit to the Federal Register a final 10(j) determination on or before January 12, 2015. Therefore, we intend to adhere to the 30-day period established by Council for Environmental Quality regulation (<https://ceq.doe.gov/nepa/regs/ceq/1506.htm#1506.10>) before a final decision on the proposed action can be made.

Thank you for your continuing interest in the Mexican Wolf Recovery Program. Should you have further questions, please contact Sherry Barrett, Mexican Wolf Recovery Coordinator, at 505-761-4748; or Michelle Shaughnessy, Assistant Regional Director for Ecological Services at 505-248-6671.

Sincerely,

Regional Director