



PACIFIC LEGAL FOUNDATION

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July 11, 2012

Dr. Benjamin N. Tuggle
Regional Director
U.S. Fish and Wildlife Service, Region 2
P.O. Box 1306
Albuquerque, NM 87103-1306

Hon. Ken Salazar
Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Dear Dr. Tuggle and Mr. Salazar:

Please find enclosed a Petition to Delist the gypsum wild-buckwheat, and Downlist the black-capped vireo, the Kuenzler hedgehog cactus, the lesser long-nosed bat, and the Tobusch fishhook cactus under the Endangered Species Act. Please confirm that your office has received and is evaluating this Petition.

Sincerely,

A handwritten signature in dark ink, appearing to read "Daniel A. Himebaugh", with a long horizontal line extending to the right.

DANIEL A. HIMEBAUGH
Staff Attorney

Enclosure

**BEFORE THE UNITED STATES DEPARTMENT
OF THE INTERIOR AND THE UNITED STATES
FISH AND WILDLIFE SERVICE**

In the Matter of the Petition to
delist the gypsum wild-buckwheat
and downlist the black-capped vireo,
the Kuenzler hedgehog cactus, the
lesser long-nosed bat, and the
Tobusch fishhook cactus under the
Endangered Species Act

**PETITION OF PACIFIC LEGAL FOUNDATION, JIM CHILTON,
NEW MEXICO CATTLE GROWERS' ASSOCIATION, NEW
MEXICO FARM & LIVESTOCK BUREAU, NEW MEXICO
FEDERAL LANDS COUNCIL, AND TEXAS FARM BUREAU TO
DELIST THE GYPSUM WILD-BUCKWHEAT AND DOWNLIST
THE BLACK-CAPPED VIREO, THE KUENZLER HEDGEHOG
CACTUS, THE LESSER LONG-NOSED BAT, AND THE TOBUSCH
FISHHOOK CACTUS UNDER THE ENDANGERED SPECIES ACT**

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INTRODUCTION

Pursuant to 16 U.S.C. § 1533(b)(3)(A) and 50 C.F.R. § 424.14, Pacific Legal Foundation, Jim Chilton, New Mexico Cattle Growers' Association, New Mexico Farm & Livestock Bureau, New Mexico Federal Lands Council, and Texas Farm Bureau petition the United States Department of the Interior and the United States Fish and Wildlife Service (Service) to delist the gypsum wild-buckwheat and downlist the black-capped vireo, the Kuenzler hedgehog cactus, the lesser long-nosed bat, and the Tobusch fishhook cactus. The Service recommended these status changes upon completion of five-year status reviews undertaken for each species. *See* U.S. Fish and Wildlife Service, *Gypsum Wild Buckwheat 5-Year Review: Summary and Evaluation* (2007) (attached as Appendix (App.) A); U.S. Fish and Wildlife Service, *Black-capped Vireo 5-Year Review: Summary and Evaluation* (2007) (attached as App. B); U.S. Fish and Wildlife Service, *5-Year Review Kuenzler's Hedgehog Cactus* (2005) (attached as App. C); U.S. Fish and Wildlife Service, *5-Year Review: Summary and Evaluation [Lesser Long-nosed Bat]* (2007) (attached as App. D); U.S. Fish and Wildlife Service, *Tobusch Fishhook Cactus 5-Year Review: Summary and Evaluation* (2010) (attached as App. E); *see also* 16 U.S.C. § 1533(c)(2) (requiring status review of each listed species at least once every five years).

IDENTITY OF PETITIONERS

Pacific Legal Foundation (PLF) is a nonprofit, tax-exempt corporation organized under the laws of California for the purpose of litigating matters affecting the public interest. Representing the views of thousands of supporters nationwide, PLF is an advocate of balanced and effective environmental regulation. PLF has previously submitted petitions, like this one, to reclassify species under the Endangered Species Act where the best scientific and commercial information available indicates that species are improperly classified.

Jim Chilton is co-owner of Chilton Ranch in Arivaca, Arizona. Mr. Chilton grazes cattle in the Montana Allotment, a portion of the Coronado National Forest thought to be within the range of the lesser long-nosed bat.

New Mexico Cattle Growers' Association (NMCGA) is an association organized for the purpose of advancing and protecting the cattle industry of New Mexico. NMCGA has members throughout the State of New Mexico impacted by the Endangered Species Act, and advocates on their behalf on numerous issues relating to regulation under the Endangered Species Act.

New Mexico Farm & Livestock Bureau (NMFLB) is an independent, non-governmental, voluntary organization of farm and ranch families united for the purpose of analyzing agricultural problems and formulating actions to promote the well-being of agriculture in New Mexico. NMFLB represents the

views of its members who are impacted by various environmental laws, including regulations promulgated under the Endangered Species Act.

New Mexico Federal Lands Council (NMFLC) is a non-governmental, nonprofit organization that represents the views of allotment owners and multiple-use proponents of New Mexico's public lands. NMFLC believes that any actions that affect land management, including regulations under the Endangered Species Act, should be based on sound science and public input.

Texas Farm Bureau (TFB) is a nonprofit membership organization serving as the voice of Texas agriculture, promoting agriculture as a viable, long-term domestic source of food, fiber, and fuel. TFB has adopted numerous policies addressing the need to balance conservation of endangered species with effective agricultural practices in the State of Texas.

It is each petitioner's position that species which are protected under the Endangered Species Act ought to be reclassified (*i.e.*, delisted or downlisted) according to the best scientific and commercial information available.

ANALYSIS

Gypsum wild-buckwheat

In 2007, the Service completed a five-year review recommending that the gypsum wild-buckwheat (*Eriogonum gypsophilum*) be removed from the list of threatened species. *See* App. A at 20. The Service's review concluded:

Threats [to gypsum wild-buckwheat] identified at the time of listing and in the recovery plan are no longer deemed significant; and two new populations have been discovered which add to an estimated population between 11,000 and 18,000 plants. The Service recommends that gypsum wild buckwheat be removed from the list of threatened species as long as a Recovery Management Agreement with BLM is in place

App. A. at 19. It does not appear that the Service published notice of its completed review for the gypsum wild-buckwheat in the Federal Register. Notwithstanding its recommendation to delist the gypsum wild-buckwheat, the Service has not made this status change. Petitioners hereby request the Service to delist the gypsum wild-buckwheat, as recommended by the Service's 2007 status review.

Black-capped vireo

In 2007, the Service completed a five-year review recommending that the black-capped vireo (*Vireo atricapilla*) be removed from the list of endangered species and downlisted to threatened status. *See* App. B at 24.

The Service's review concluded:

Based on the information in this review, the current overall threat level to the black-capped vireo is less in magnitude than it was at the time the species was listed. This is based on some threats decreasing in magnitude, the reconsideration of magnitude to certain threats, and the effects of conservation measures on the major threats to the species.

App. B at 22. It does not appear that the Service published notice of its completed review for the black-capped vireo in the Federal Register.

Notwithstanding its recommendation to downlist the black-capped vireo, the Service has not made this status change. Petitioners hereby request the Service to downlist the black-capped vireo, as recommended by the Service's 2007 status review.

Kuenzler hedgehog cactus

In 2005, the Service completed a five-year review recommending that the Kuenzler hedgehog cactus (*Echinocereus fendleri* var. *kuenzleri*) be removed from the list of endangered species and downlisted to threatened status. *See* App. C at 14. The Service's review concluded:

Kuenzler's hedgehog cactus should be proposed for reclassification from endangered to threatened. The known range of this cactus consisted of a single population of approximately 200 individuals when listed as endangered. . . . In reality, Kuenzler's hedgehog cactus exists across a much broader geographic range in several populations that total several thousands of individual plants and probably exceeds the 5,000 plants required for downlisting in the recovery plan.

App. C at 14. It does not appear that the Service published notice of its completed review for the Kuenzler hedgehog cactus in the Federal Register. Notwithstanding its recommendation to downlist the Kuenzler hedgehog cactus, the Service has not made this status change. Petitioners hereby request the Service to downlist the Kuenzler hedgehog cactus, as recommended by the Service's 2005 status review.

Lesser long-nosed bat

In 2007, the Service completed a five-year review recommending that the lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*) be removed from the list of endangered species and downlisted to threatened status. *See* App. D at 43. The Service's review concluded:

Information generated since the listing of the [lesser long-nosed bat] indicates that [it] is not in imminent danger of extinction throughout all or a significant portion of its range. . . . The [lesser long-nosed bat] should be proposed for reclassification from endangered to threatened. Concurrently, a special rule as outlined in section 4(d) of the [Endangered Species Act] should be promulgated exempting the prohibition for take for [livestock grazing and prescribed burning].

App. D at 28-30. It does not appear that the Service published notice of its completed review for the lesser long-nosed bat in the Federal Register. Notwithstanding its recommendation to downlist the lesser long-nosed bat, the Service has not made this status change. Petitioners hereby request the Service to downlist the lesser long-nosed bat, as recommended by the Service's 2007 status review.

Tobusch fishhook cactus

In 2010, the Service completed a five-year review recommending that the Tobusch fishhook cactus (*Sclerocactus brevihamatus* ssp. *tobuschii*) be removed from the list of endangered species and downlisted to threatened status. *See* App. E at 41. The Service's review concluded: "In consideration of the greater known range and larger, currently stable population of Tobusch

fishhook cactus, we believe it is no longer in danger of extinction throughout all or a significant portion of its range.” App. E at 40. It does not appear that the Service published notice of its completed review for the Tobusch fishhook cactus in the Federal Register. Notwithstanding its recommendation to downlist the Tobusch fishhook cactus, the Service has not made this status change. Petitioners hereby request the Service to downlist the Tobusch fishhook cactus, as recommended by the Service’s 2010 status review.

CONCLUSION

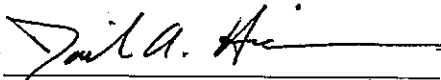
Under Section 4 of the Endangered Species Act, the Secretary of the Interior is required to issue a determination within 90 days of receiving a petition as to “whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted.” 16 U.S.C. § 1533(b)(3)(A). Within 12 months of receiving a petition that presents action that may be warranted, the Secretary is required to make a final decision on the action and promptly issue the finding in the Federal Register. 16 U.S.C. § 1533(b)(3)(B). Petitioners expect the Service to act on this Petition in accordance with all statutory deadlines.

For the foregoing reasons, PLF, Jim Chilton, NMCGA, NMFLB, NMFLC, and TFB request that the Secretary promptly complete the petitioned delisting and downlistings as recommended by the Service's status reviews.

DATED: July 11, 2012.

Respectfully submitted,

M. REED HOPPER
DANIEL A. HIMEBAUGH
Pacific Legal Foundation

By 
DANIEL A. HIMEBAUGH