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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

JCS

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9 WILD EQUITY INSTITUTE, a non-profit  
10 corporation,

11 Plaintiff,

12 v.

13 KEN SALAZAR, in his official capacity as  
14 Secretary of the Interior; and the UNITED  
15 STATES FISH AND WILDLIFE SERVICE,  
16 an agency of the United States Department of  
17 the Interior,

18 Defendants.

CV 11 2904

Case No.:

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. This lawsuit concerns the Franciscan manzanita (*Arctostaphylos franciscana*), a subtly charming flowering shrub endemic to San Francisco. The entire Franciscan manzanita wild population consists of one individual plant, making the species extremely vulnerable to extinction. In this action, plaintiff WILD EQUITY INSTITUTE ("WEI") challenges Secretary of the Interior KEN SALAZAR and the UNITED STATES FISH AND WILDLIFE SERVICE (collectively "the Secretary") for violating Section 4 of the Endangered Species Act ("ESA" or "the Act") 16 U.S.C. § 1531 *et seq.* Specifically, the Secretary has failed to make a 12-month finding on the Wild Equity Institute's petition to list the Franciscan manzanita as threatened or endangered under the ESA within the timeframe mandated by the Act. 16 U.S.C. § 1533(b)(3)(B).

//

1           2.       The Franciscan manzanita’s tragic history is filled with heroic acts by famous  
2 botanists striving to keep the species alive. In 1906, Alice Eastwood—one of California’s  
3 pioneering women botanists—rescued the Franciscan manzanita specimens first used to  
4 identify the species from the California Academy of Sciences as fires driven by the San  
5 Francisco earthquake ravaged the Academy’s collections. As the Franciscan manzanita’s last  
6 known wild habitats were being destroyed, Lester Rowntree and James Roof—two more of  
7 California’s pioneering botanists—both evaded earth-moving equipment to wrest the wild  
8 plants from harm’s way. These plants were sent to botanical gardens, and for the next sixty  
9 years no one saw the plant in the wild.

10           3.       But on October 16, 2009 a botanist driving newly-cleared areas within the Doyle  
11 Drive construction project made an unusual observation: he saw a manzanita on the side of the  
12 road, in the middle of an area where construction was about to begin. He relayed his findings to  
13 National Park Service and Presidio Trust staff, who then raced to the scene and discovered that  
14 the plant was a Franciscan manzanita: the first to be seen in the wild since 1947.

15           4.       A collaborative effort was then launched to move the plant to a more secure area  
16 in the Presidio, where the plant now resides. However, because the plant was considered extinct  
17 in the wild it was never granted full Endangered Species Act status. Even at this moment, the  
18 individual plant, which comprises the entire known wild population of the species, could be  
19 harmed without consequence under federal endangered species laws.

20           5.       On December 14, 2009, WEI filed an emergency petition with the Secretary to  
21 add the Franciscan manzanita to the list of endangered species subject to federal protection  
22 under the ESA and to concurrently designate critical habitat for the species. The Secretary  
23 received the listing petition on December 23, 2009, but by letter dated January 26, 2010, the  
24 Secretary notified the Wild Equity Institute that the petition “does not indicate that an  
25 emergency situation exists,” even though the last wild plant of an entire species was in the path  
26 of a multi-billion dollar road construction project. See Exhibit A. Nonetheless, the Secretary  
27 also stated that he had “secured funding to make an initial finding in Fiscal Year 2010 as to  
28 whether your petition contains substantial information indicating that the action may be

1 warranted.” *Id.* This finding is called a “90-day finding,” because it is required by the ESA  
2 within 90-days of receipt of a petition to list a species as endangered or threatened. 16 U.S.C. §  
3 1533(b)(3)(A); 50 C.F.R. 424.14(b)(1).

4 6. On August 10, 2010—231 days after he received WEI’s emergency petition to  
5 list the Franciscan manzanita—the Secretary issued a 90-day petition finding, and concluded  
6 that the petition contained substantial information indicating that the listing of the Franciscan  
7 manzanita may be warranted. 75 Fed. Reg. 48294.

8 7. The 90-day petition finding triggered a requirement that the Secretary make a 12-  
9 month finding on the petition no later than December 23, 2010, 12-months after receipt of the  
10 Wild Equity Institute’s petition. 16 U.S.C. § 1533(b)(3)(B); 50 C.F.R. 424.14(b)(3).

11 8. However, it is now over 17-months since the Secretary received WEI’s petition  
12 and he still has not made this finding.

13 9. In response to a 60-day notice filed by WEI, the Secretary explained by letter  
14 dated March 24, 2011 that he “anticipated submitting our 12-month finding for this species to  
15 the Federal Register by late summer 2011.” Exhibit B.

16 10. Yet on May 10, 2011, the Secretary filed a proposed settlement agreement in a  
17 separate ESA lawsuit in the United States District Court for the District of Columbia. The  
18 settlement agreement included a document called “Listing and Critical Habitat Work Plan for  
19 FY 2011 and 2012.” Exhibit C. Although dozens of findings are proposed in the work plan for  
20 this and next fiscal year covering over a hundred species, completing the Franciscan  
21 manzanita’s legally required 12-month finding is not on the Secretary’s work plan for either  
22 fiscal year. *Id.*

23 11. WEI brings this lawsuit to enforce the ESA’s mandatory 12-month deadline to  
24 make a finding on the petition to list the Franciscan manzanita and compel the Secretary to  
25 determine whether listing the Franciscan manzanita as endangered is warranted. 16 U.S.C. §  
26 1533(b)(3)(B); 50 C.F.R. 424.14(b)(3).

27 //

28 //

1 **II. JURISDICTION AND VENUE**

2 12. The Court has jurisdiction over this action pursuant to 16 U.S.C. §§ 1540(c) &  
3 (g) (action arising under the ESA and citizen suit provision), 28 U.S.C. § 1331 (federal  
4 question), 5 U.S.C. § 702 (right of review under the Administrative Procedure Act (“APA”)),  
5 and 28 U.S.C. § 1361 (mandamus).

6 13. As required by 16 U.S.C. § 1540(g), WEI provided the Secretary with written  
7 notice of the violations alleged herein more than 60 days prior to commencement of this action.  
8 In spite of such notice, the Secretary has failed to remedy his ESA violations.

9 14. Venue lies in this judicial district pursuant to 28 U.S.C. § 1391(e) and 16 U.S.C.  
10 § 1540(g)(3)(A).

11 15. The San Francisco or Oakland Division of this judicial district is the proper  
12 assignment by virtue of Civil L.R. 3-2(d).

13 **III. PARTIES**

14 16. Plaintiff WILD EQUITY INSTITUTE (“WEI”) is a non-profit organization  
15 based in San Francisco, California. WEI unites the grassroots conservation and environmental  
16 justice movements into a powerful force that builds a healthy and sustainable global community  
17 for people and the plants and animals that accompany us on Earth. WEI accomplishes this by  
18 working on projects that highlight and redress the inequitable relationships across our human  
19 communities while improving our relationship to the lands in which we live. WEI brings this  
20 action on its own institutional behalf and on behalf of its members, board, and staff, some of  
21 whom regularly enjoy and will continue to enjoy observing and studying, and attempting to  
22 observe and study, the Franciscan manzanita.

23 17. WEI’s members, board, and staff include numerous individuals with a broad  
24 range of scientific, professional, educational, recreational, aesthetic, moral, and spiritual  
25 interests in the Franciscan manzanita. In addition, WEI’s members, board, and staff  
26 continuously enjoy the biological, scientific, research, educational, conservational, recreational,  
27 and aesthetic values of the species’ habitat in San Francisco, including the Presidio where the  
28 individual plant is now found. WEI’s use and enjoyment of the Franciscan manzanita and its

1 habitat are entirely dependent upon the recovery of the species and the existence of a healthy  
2 and sustainable Franciscan manzanita population in the wild.

3 18. WEI board member Stan Kaufman regularly hikes in the Presidio and other areas  
4 with historical occurrences of the Franciscan manzanita, enjoys looking for and seeing the plant  
5 in its natural habitat in these areas, and will continue to do so regularly. Mr. Kaufman most  
6 recently attempted to view the last wild plant in the Presidio near Inspiration Point from a trail  
7 near where the plant was relocated. He has also viewed the species in several botanical gardens  
8 and nurseries where specimens are found, including the Regional Parks Botanical Garden in  
9 Tilden Regional Park, the U.C. Berkeley Botanical Garden, the Strybing Arboretum, and the  
10 Yerba Buena Nursery in Woodside, California. Mr. Kaufman also owns a Franciscan  
11 manzanita plant and preserves it in his home garden. Mr. Kaufman believes that the extinction  
12 of the Franciscan manzanita in the wild for a second time will harm his aesthetic, recreational,  
13 educational, and environmental interests in the manzanita and the Bay Area environment as a  
14 whole. He relies on WEI to advocate for and protect his interest in the Franciscan manzanita.

15 19. WEI member Barbara Beth regularly hikes in the Presidio and other areas with  
16 historical occurrences of the Franciscan manzanita. Ms. Beth lives in proximity to the last  
17 individual wild plant and believes the existence of the plant near her residence adds value to her  
18 home environment. Ms. Beth enjoys looking for and seeing the plant in its natural habitat, and  
19 will continue to do so regularly. Ms. Beth most recently attempted to view the species in the  
20 Presidio near Inspiration Point from a trail near where the plant was relocated. Ms. Beth  
21 believes that extinction of the Franciscan manzanita in the wild for a second time will harm her  
22 aesthetic, recreational, educational, and environmental interests in the manzanita, her interests in  
23 her home, and her interests in the Bay Area environment as a whole. She relies on WEI to  
24 advocate for and protect her interest in the Franciscan manzanita.

25 20. Concerned that the Franciscan manzanita could go extinct in the wild a second  
26 time without protection from the ESA, WEI submitted a petition to list the species as  
27 endangered under the ESA. Unless the Franciscan manzanita is promptly protected under the  
28 ESA, harm to the species is not prohibited by federal law, and the recovery planning and critical

1 habitat protections so essential to the species' conservation cannot be implemented. Therefore,  
2 absent the actions requested by the Wild Equity Institute's petition, the Franciscan manzanita is  
3 likely to become extinct in the wild, once again. Therefore, WEI's members, board, and staff  
4 are injured by the Secretary's failure to prepare a timely 12-month finding, a finding that is  
5 legally required by the ESA. This injury caused by Secretary's failure to comply with the ESA  
6 is actual, concrete, and imminent. The Secretary's failure to comply with the ESA's deadlines  
7 for processing the Franciscan manzanita petition deprives the species of statutory protection  
8 vitally necessary to its survival. The relief requested will fully redress the injury.

9 21. Defendant KEN SALAZAR is the Secretary of the Interior and is sued in his  
10 official capacity. Mr. Salazar has the ultimate responsibility to enforce and implement the ESA  
11 provisions.

12 22. Defendant UNITED STATES FISH AND WILDLIFE SERVICE is the agency  
13 within the Department of the Interior that is charged with implementing the ESA for most  
14 species, including the Franciscan manzanita, as well as ensuring prompt compliance with the  
15 statute's mandatory listing deadlines.

#### 16 **IV. LEGAL AND FACTUAL BACKGROUND**

##### 17 **A. The Endangered Species Act**

18 23. Congress enacted the ESA "to provide a program for the conservation  
19 of...endangered species and threatened species" and "a means whereby the ecosystems upon  
20 which endangered species and threatened species depend may be conserved." 16 U.S.C. §  
21 1531(b). The statute defines a species as "endangered" if it is in "danger of extinction  
22 throughout all or a significant portion of its range" and "threatened" if it is "likely to become an  
23 endangered species within the foreseeable future...." 16 U.S.C. § 1532(6), (20).

24 24. When a species is listed by the Secretary as threatened or endangered several  
25 statutory protections apply. For example, Section 7 of the ESA requires all federal agencies to  
26 "insure" that their actions neither "jeopardize the continued existence" of any listed species nor  
27 "result in the destruction or adverse modification" of a species' critical habitat. 16 U.S.C. §  
28 1536(a)(2). Section 9 of the ESA prohibits, among other things, "any person" from

1 intentionally taking listed plants from federal lands or in violation of state laws without a permit  
2 from the Secretary. 16 U.S.C. §§ 1538(a)(1)(B), 1539. The ESA requires the Secretary to  
3 “develop and implement” recovery plans for listed species, 16 U.S.C. § 1533(f), authorizes the  
4 Secretary to acquire land for the protection of listed species, 16 U.S.C. § 1534, and makes  
5 federal funds available to states to assist in their efforts to preserve and protect threatened and  
6 endangered species, 16 U.S.C. § 1535(d).

7 25. Because the race against extinction is ultimately a race against time, Congress set  
8 forth a specific and time-sensitive process in the ESA whereby citizens may petition the  
9 Secretary to list a species as endangered or threatened, and the Secretary must respond to these  
10 petitions. The process includes mandatory, non-discretionary deadlines that the Secretary must  
11 meet, so that species in need of protection do not languish in administrative purgatory.  
12 Specifically, the Secretary must make three required findings in response to a listing petition: a  
13 90-day finding, a 12-month finding, and a final listing determination.

14 26. **The 90-day finding.** Upon receipt of a listing petition, “to the maximum extent  
15 practicable, within 90-days” the Secretary must make an initial finding as to whether the  
16 petition “presents substantial scientific or commercial information indicating that the petitioned  
17 action may be warranted.” 16 U.S.C. § 1533(b)(3)(A); 50 C.F.R. 424.14(b)(1). If the Secretary  
18 finds that the petition *does not* present substantial information indicating that listing may be  
19 warranted, the petition is rejected and the listing process ends.

20 27. **The 12-month finding.** If, on the other hand, the Secretary determines that a  
21 petition *does* present substantial information indicating that listing may be warranted, the  
22 Secretary must then conduct a full scientific review of the species’ status. 16 U.S.C. §  
23 1533(b)(3)(A); 50 C.F.R. 424.14(b)(3). Upon completion of this status review, and within 12-  
24 months from the date that he received the petition, the Secretary must make one of three  
25 findings: (1) listing is not warranted; (2) listing is warranted; or (3) listing is warranted, but  
26 presently precluded by other pending proposals for listing species, provided certain  
27 circumstances are present. 16 U.S.C. § 1533(b)(3)(B); 50 C.F.R. 424.14(b)(3). The 12-month  
28

1 deadline for making this finding is legally obligatory. There is no mechanism by which the  
2 Secretary can extend the deadline for making his 12-month finding.

3       **28. The Listing Determination.** If the Secretary’s 12-month finding concludes that  
4 listing is warranted, the Secretary must then publish notice of the proposed regulation to list the  
5 species as threatened or endangered in the Federal Register for public comment. 16 U.S.C. §  
6 1533(b)(3)(B)(ii); 50 C.F.R. 424.14(b)(3)(ii). Within one year of the publication of the  
7 proposed regulation, the ESA requires the Secretary to render his final determination on the  
8 proposal. 16 U.S.C. § 1533(b)(6)(A); 50 C.F.R. 424.17(a)(1). At such time, the Secretary must  
9 either list the species, withdraw the proposed listing rule or, if there is substantial disagreement  
10 about scientific data, delay a final determination for up to six months to solicit more scientific  
11 information. 16 U.S.C. § 1533(b)(6)(A)(i); 50 C.F.R. 424.17(a)(1).

12       **29.** It is critical that the Secretary follow scrupulously the ESA’s listing procedures  
13 and deadlines if species are to be protected in a timely manner, because the ESA does not  
14 protect a species until it is formally listed as either endangered or threatened.

15 **B. The Franciscan Manzanita**

16       **30.** The Francisco manzanita is a rare manzanita endemic to San Francisco, which  
17 means it is only naturally found in this City. It is a low, spreading to ascending evergreen shrub  
18 in the heath family (Ericaceae). It has oblanceolate leaves (longer than wide, wider toward the  
19 tip), and compared to the Raven’s manzanita—which itself an endangered species endemic to  
20 San Francisco— it has relatively larger, more reddish fruits that are 6 to 8 millimeters (0.24 to  
21 0.32 inch) wide, and relatively larger urn-shaped corollas that are 5 to 7 millimeters (0.2 to 0.28  
22 inch) long.

23       **31.** The species existed historically in only three known areas in San Francisco: (1)  
24 the former Laurel Hill Cemetery; (2) the former Masonic Cemetery (near Lone Mountain); and  
25 (3) Mount Davidson, in the south-central part of the City. Nearly all historical localities in San  
26 Francisco were outcrops of serpentine except for Mount Davidson, which suggests limited  
27 historic and prehistoric distribution and only local abundance.



1           32.     By 1947, the last plant in the wild was lost to development. Fortunately,  
2 cuttings from this plant were preserved and the species survived in botanical gardens.

3           33.     The species was originally petitioned for ESA protection by the Smithsonian  
4 Institution in 1975, and proposed for listing by the United States Fish and Wildlife Service  
5 (“FWS”) in 1976. 41 Fed. Reg. 24524, 24541 (June 16, 1976). However, for reasons probably  
6 related to the presumed extinction of the species in the wild, no final listing rule was ever  
7 published and the species was never protected under the ESA.

8           34.     Fortunately, in late 2009 an incredible discovery was made: a single plant was  
9 found in the Presidio of San Francisco, more than six decades after all wild populations were  
10 thought to have been lost. This single plant is near historical occurrences of the species and its  
11 discovery breathes new hope into reintroduction and recovery efforts for the species.

12           35.     The Franciscan manzanita can be propagated through cuttings with moderate  
13 difficulty. Once established they can thrive with little maintenance. The species is able to  
14 establish on a wide range of substrates, including dune sand and on other non-natural substrates  
15 for the species. The species has good soil adaptability and a high potential for reintroduction on  
16 various substrates, and sets viable seed that can be propagated as well. Therefore, it is highly  
17 likely that the species can be recovered: if protections for the species are promptly put in place.

18           36.     The individual found in the Presidio also appears to exhibit spontaneous rooting,  
19 a reproductive strategy heretofore unknown in the species. This unique plant therefore has  
20 unmatched conservation value for potential propagation success.

21           37.     Threats to the Franciscan manzanita are many, ranging from the very local  
22 (urban development) to the global (climate change). Other threats include unregulated trade in  
23 the commercial market, human disturbance, susceptibility to various plant diseases, and off-  
24 leash dog walking in the Presidio and other areas where the plant may be reintroduced or  
25 restored.

26           38.     There are currently no existing regulatory mechanisms to protect the Franciscan  
27 manzanita. Although the FWS worked in collaboration with other entities to move the  
28 individual plant away from the footprint of a development plan, the plant is still at risk of gong

1 extinct in the wild and the FWS has failed to take the necessary steps to protect the species from  
2 extinction.

### 3 **C. The Endangered Species Act Listing Petition**

4 39. On December 14, 2009, WEI filed an emergency petition with the Secretary to  
5 add the Franciscan manzanita to the list of endangered species subject to federal protection  
6 under the ESA and to concurrently designate critical habitat to ensure the species' survival.  
7 According to the Federal Register, the Secretary received the listing petition on December 23,  
8 2009. 75 Fed. Reg. 48294 (August 10, 2010).

9 40. But by letter dated January 26, 2010, the Secretary notified the Wild Equity  
10 Institute that the petition "does not indicate that an emergency situation exists," even though the  
11 last wild plant of an entire species was in the path of a multi-billion dollar road construction  
12 project. Exhibit A. Nonetheless, the Secretary also stated that he had "secured funding to make  
13 an initial finding in Fiscal Year 2010 as to whether your petition contains substantial  
14 information indicating that the action may be warranted." *Id.* This finding is called a "90-day  
15 finding," because this finding is required by the ESA within 90-days of receipt of a petition to  
16 list a species as endangered or threatened. 16 U.S.C. § 1533(b)(3)(A); 50 C.F.R. 424.14(b)(1).

17 41. On August 10, 2010—231 days after he received WEI's emergency petition to  
18 list the Franciscan manzanita—the Secretary issued a 90-day petition finding, and concluded  
19 that the petition contained substantial information indicating that the listing of the Franciscan  
20 manzanita may be warranted. 75 Fed. Reg. 48294.

21 42. The 90-day petition finding triggered a requirement that the Secretary make a 12-  
22 month finding on the petition no later than December 23, 2010, 12-months after receipt of the  
23 Wild Equity Institute's petition. 16 U.S.C. § 1533(b)(3)(B); 50 C.F.R. 424.14(b)(3).

24 43. However, the Secretary has missed the deadline provided by the ESA for the 12-  
25 month finding. The 12-month finding was due by mid-December 2010.

26 44. By letter dated February 17, 2011, WEI notified the Secretary that he had  
27 violated Section 4 of the ESA, 16 U.S.C. § 1533, by failing to determine within 12 months of  
28 receipt of WEI's listing petition whether listing the Franciscan manzanita as endangered is

1 warranted. WEI advised the Secretary that it intended to file suit to enforce the ESA's  
2 mandatory listing deadlines.

3 45. In response to this 60-day notice, the Secretary explained by letter dated March  
4 24, 2011 that he "anticipated submitting our 12-month finding for this species to the Federal  
5 Register by late summer 2011." Exhibit B.

6 46. However, according to the Secretary's Listing and Critical Habitat Work Plan for  
7 Fiscal Year 2011 and 2012, the Franciscan manzanita listing petition will not be processed in  
8 this or the next fiscal year. Exhibit C. This work plan was submitted to the United States  
9 District Court for the District of Columbia on May 10, 2011, as part of a stipulated settlement  
10 agreement resolving the Secretary's other delinquent ESA findings. Stipulated Settlement  
11 Agreement at Exhibit C, *WildEarth Guardians v. Salazar (In re Endangered Species Act*  
12 *Section 4 Deadline Litigation)*, No. 10-mc-00377-EGS, MDL No. 2165 (D.D.C. May 10, 2011).  
13 Although dozens of findings are proposed in the work plan for this and next fiscal year covering  
14 over a hundred species, completing the Franciscan manzanita's legally required 12-month  
15 finding is not on the Secretary's work plan for either fiscal year.

16 47. The Secretary has yet to issue a 12-month finding for WEI's petition to list the  
17 Franciscan manzanita as endangered under the ESA.

## 18 **V. CLAIMS FOR RELIEF**

### 19 **First Claim for Relief**

#### 20 **(Failure to Make a Timely 12-Month Finding)**

21 48. WEI re-alleges, as if fully set forth herein, each and every allegation alleged in  
22 the preceding paragraphs.

23 49. The Secretary's failure to make a timely 12-month finding on WEI's petition to  
24 list the Franciscan manzanita as endangered violates the ESA. 16 U.S.C. §§ 1533(b)(3)(B) &  
25 1540(g). The Secretary's failure to perform his mandatory, non-discretionary duty also  
26 constitutes agency action "unlawfully withheld or unreasonably delayed" within the meaning of  
27 the APA, 5 U.S.C. § 706(1). Additionally, and/or alternatively, the Secretary's failure to  
28

1 comply with this provision is arbitrary and capricious, an abuse of discretion, not in accordance  
2 with law, and a failure to observe proper procedure under the APA, 5 U.S.C. § 706(2).

3 **VI. PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs respectfully request that this Court enter judgment providing the  
5 following relief:

6 1. Declare that the Secretary has violated the ESA and/or the APA by failing to  
7 issue a timely 12-month finding in response to WEI's petition to list the Franciscan manzanita as  
8 endangered;

9 2. Order the Secretary to issue a determination as to whether listing the Franciscan  
10 manzanita is warranted, 16 U.S.C. § 1533(b)(3)(B);

11 3. Award WEI its costs of litigation, including reasonable attorney's fees; and

12 4. Grant WEI such other relief as the Court deems just and proper.

13  
14  
15 DATED: June 14, 2011



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23 bplater@wildequity.org  
24  
25  
26  
27  
28

# Exhibit A



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

Pacific Southwest Region  
2800 Cottage Way, Suite W-2606  
Sacramento, California 95825

**JAN 26 2010**

Mr. Brent Plater, Executive Director  
Wild Equity Institute  
PO Box 191695  
San Francisco, California 94119

Dear Mr. Plater:

This letter is in regard to your petition dated December 14, 2009, which requested that the U.S. Fish and Wildlife Service (Service) emergency list the Franciscan or San Francisco manzanita, (*Arctostaphylos franciscana*) as an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). You further requested the Service list the species as endangered if we determined an emergency listing was not warranted and to designate critical habitat concurrent with listing. Your petition was received on December 20, 2009.

Under the provisions of section 4 of the Act, we must first make an initial finding as to whether or not a petition to add a species to the endangered species list presents substantial information indicating that the requested action may be warranted. Section 4(b)(3)(A) of the Act provides that, to the maximum extent practicable, this finding be made within 90 days. If this initial finding concludes that the petition presents substantial information indicating that the requested action may be warranted, then section 4(b)(3)(B) gives the Service 1 year from the date the petition was received to either: decide that the petitioned action is not warranted; decide that the petition action is warranted, but precluded; or decide that the petitioned action is warranted, and promptly publish a proposed rule.

While we have not made a decision on whether the petition presents substantial information that the petition action may be warranted, we have looked at the immediacy of possible threats to the species to determine if emergency listing may be warranted at this time. Our initial review of your petition does not indicate that an emergency situation exists for the San Francisco manzanita. If at any time the conditions change, and we later determine that emergency listing is warranted, an emergency rule may be developed.

We are required to complete a significant number of listing and critical habitat actions in Fiscal Year 2010, pursuant to court orders, judicially approved settlement agreements, and other statutory deadlines. However, we have secured funding to make an initial finding in Fiscal Year

TAKE PRIDE  
IN AMERICA 

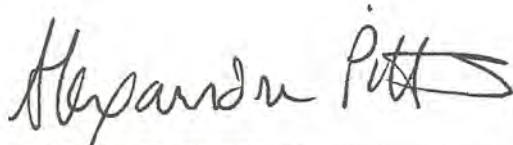
Mr. Brent Plater

2

2010 as to whether your petition contains substantial information indicating that the action may be warranted.

If you have any questions concerning this matter, please contact Andy DeVolder, Region 8 Classification Coordinator, at (916) 414-6464.

Sincerely,

A handwritten signature in black ink that reads "Alexander Pitt". The signature is written in a cursive style with a large, sweeping flourish at the end.

Regional Director

cc:

Susan Moore, FWS, Sacramento, CA,  
Karen Leyse, FWS, Sacramento, CA  
Karen Anderson, FWS, Arlington, VA  
Doug Krofta, FWS, Arlington, VA  
Andy DeVolder, RO, Sacramento, CA

# Exhibit B





# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington, D.C. 20240



March 24, 2011

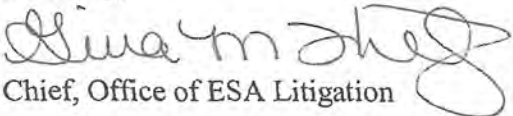
Brent Plater  
Wild Equity Institute  
P.O. Box 191695  
San Francisco, CA 94119

Dear Mr. Plater:

On February 24, 2011, we received your letter dated February 17, 2011, providing notice of your intent to sue regarding Endangered Species Act (ESA) violations related to our 12-month finding for the Franciscan Manzanita. Region 8 of the U. S. Fish and Wildlife Service (Pacific Southwest Region) is the lead office for the Franciscan Manzanita. We anticipate submitting our 12-month finding for this species to the *Federal Register* by late summer 2011.

We appreciate your interest in conserving the Franciscan Manzanita. If you have any questions concerning this matter, please contact Gina Shultz at (703) 358-2478.

Sincerely,

  
Chief, Office of ESA Litigation

TAKE PRIDE  
IN AMERICA 

# Exhibit C

RO	Species	Action	FR Date
1	7 yellow-faced bees ( <i>Hylaeus anthracinus</i> , <i>H. assimulans</i> , <i>H. facilis</i> , <i>H. hiliaris</i> , <i>H. kuakea</i> , <i>H. longiceps</i> , and <i>H. mana</i> )	12m	FY 2011
1	Black-footed albatross	12m	FY 2011
1	Dusky tree vole	12m	FY 2011
1	Giant palouse earthworm	12m	FY 2011
1	Kokanee-Lake Sammamish population	12m	FY 2011
2	2 Texas shiners ( <i>Cyprinella</i> sp. , <i>C. lepida</i> )	12m	FY 2011
2	3 South Arizona plants ( <i>Erigeron piscaticus</i> , <i>Astragalus hypoxylus</i> , <i>Amoreuxia gonzalezii</i> )	12m	FY 2011
2	3 Texas moths ( <i>Ursia furtiva</i> , <i>Sphingicampa blanchardi</i> , <i>Agapema galbina</i> )	12m	FY 2011
2	5 Central Texas mussels (Texas fatmucket, golden orb, smooth pimpleback, Texas pimpleback, and Texas fawnsfoot)	12m	FY 2011
2	Anacroneuria wipukupa (Stonefly)	12m	FY 2011
2	Cactus ferruginous pygmy owl	12m	FY 2011
2	Grand Canyon cave pseudoscorpion	12m	FY 2011
2	Northern leopard frog	12m	FY 2011
3	Frigid ambersnail	12m	FY 2011
3	Oklahoma grass pink ( <i>Calopogon oklahomensis</i> )	12m	FY 2011
4	Berry Cave salamander	12m	FY 2011
4	Gopher tortoise	12m	FY 2011
4	Ozark chinquapin	12m	FY 2011
4	Puerto Rico harlequin butterfly	12m	FY 2011
4	Striped newt	12m	FY 2011
6	2 CO plants ( <i>Astragalus microcymbus</i> , <i>A. schmolliae</i> )	12m	FY 2011
6	3 Mountain invertebrates (Bearmouth Mountainsnail, Byrne Resort Mountainsnail, and Meltwater Lednian Stonefly)	12m	FY 2011
6	5 UT plants ( <i>Astragalus hamiltonii</i> , <i>Eriogonum soledium</i> , <i>Lepidium ostleri</i> , <i>Penstemon flowersii</i> , <i>Trifolium friscanum</i> )	12m	FY 2011
6	5 Wyoming plants (Yellowstone sand verbena, <i>Abronia ammophila</i> involved in MDL litigation; <i>Agrostis rossiae</i> , <i>Astragalus proimanthus</i> , <i>Boechere Arabis pusilla</i> (Fremont County rockcross), <i>Penstemon gibbensii</i> )	12m	FY 2011
6	Fisher	12m	FY 2011
6	Leatherside chub	12m	FY 2011
8	California golden trout	12m	FY 2011
8	Mohave ground squirrel	12m	FY 2011
8	Mojave fringe-toed lizard	12m	FY 2011
8	Mount Charleston blue butterfly	12m	FY 2011
8	Tehachapi slender salamander	12m	FY 2011
8	Western gull-billed tern	12m	FY 2011
4	Coqui llanero	12m/PLPCH	FY 2011
1	2 Idaho snowflies (straight snowfly, Idaho snowfly)	90d	FY 2011
1	Franklin's bumble bee	90d	FY 2011
1	Sand verbena moth	90d	FY 2011
2	Prairie chub	90d	FY 2011
2	Spot-tailed earless lizard	90d	FY 2011
2	Texas kangaroo rat	90d	FY 2011

RO	Species	Action	FR Date
3	Golden-winged warbler	90d	FY 2011
4	404 species	90d	FY 2011
4	Bay skipper butterfly	90d	FY 2011
4	Bay Springs salamander	90d	FY 2011
4	Smooth-billed ani	90d	FY 2011
4	Southeast snowy and wintering piping plover	90d	FY 2011
4	Spring Pygmy sunfish	90d	FY 2011
5	American eel	90d	FY 2011
5	Eastern small-footed bat/Northern long-eared bat	90d	FY 2011
6	Arapahoe snowfly	90d	FY 2011
6	Gila Monster (Utah population)	90d	FY 2011
6	Utah prairie dog	90d	FY 2011
6	Wild plains bison	90d	FY 2011
7	Red knot (subspecies <i>roselaari</i> )	90d	FY 2011
8	10 Great Basin butterflies (Baking Powder Flat blue butterfly, Mono Basin skipper, bleached sandhill skipper, Railroad Valley skipper, Carson Valley silverspot, Railroad Valley skipper, Carson Valley wood nymph, Steptoe Valley crescent spot, Mattoni's blue butterfly, and White River Valley skipper)	90d	FY 2011
8	32 species of Pacific Northwest mollusks	90d	FY 2011
8	42 species of Great Basin springsnails	90d	FY 2011
8	6 Nevada dune beetles (Hardy's aegialian scarab, Sand Mountain serican scarab, Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's dune scarab)	90d	FY 2011
8	Leona's little blue butterfly	90d	FY 2011
8	Spring Mountains acastus checkerspot butterfly	90d	FY 2011
8	Unsilvered fritillary butterfly	90d	FY 2011
8	Vernal pools CH (Vernal pool fairy shrimp and vernal pool tadpole shrimp)	90d, CH	FY 2011
4	Leatherback CH revision	90d/12m, CH	FY 2011
3	Ozark hellbender	FL/CITES	FY 2011
8	Casey's June Beetle	FLFCH	FY 2011
4	Altamaha spiny mussel	FLFCH	FY 2011
4	Georgia pigtoe, interrupted rocksnail, and rough hornsnail	FLFCH	FY 2011
4	5 Southeast fishes (Cumberland Darter, Rush Darter, Yellowcheek Darter, Chucky Madtom, and Laurel Dace)	FLPCH	FY 2011
6	3 Colorado plants (DeBeque phacelia, Parachute penstemon, Pagosa skyrocket)	FLPCH	FY 2011
1	Slickspot peppergrass	PCH	FY 2011
3	Sheepnose/spectacle case	PL	FY 2011
2	Dunes sagebrush lizard (was Sand dune lizard)	PL	FY 2011
3	Rayed bean/snuffbox	PL	FY 2011
2	2 Arizona springsnails ( <i>Pyrgulopsis bernardina</i> , <i>P. trivialis</i> )	PLPCH	FY 2011
4	8 Gulf Coast mussels (round ebonyshell, southern kidneyshell, narrow pigtoe, southern sandshell, fuzzy pigtoe, Choctaw bean, tapered pigtoe, Alabama pearlshell)	PLPCH	FY 2011
1	23 Oahu species + 99 plants	PLPCH, rPCH	FY 2011
1	Marbled murrelet	rFCH	FY 2011

RO	Species	Action	FR Date
2	Mexican wolf	12m	FY 2012
4	Spring pygmy sunfish	12m	FY 2012
4	Bay skipper butterfly	12m	FY 2012
6	Arapahoe snowfly	12m	FY 2012
6	Platte River caddisfly	12m	FY 2012
8	10 Great Basin butterflies (Baking Powder Flat blue butterfly, Mono Basin skipper, bleached sandhill skipper, Railroad Valley skipper, Carson Valley silverspot, Railroad Valley skipper, Carson Valley wood nymph, Steptoe Valley crescent spot, Mattoni's blue butterfly, and White River Valley skipper)	12m	FY 2012
8	14 aquatic mollusks (Tall pebblesnail, Diminutive pebblesnail, Nerite pebblesnail, Potem pebblesnail, Shasta Springs pebblesnail, Nugget pebblesnail, Columbia Dusksnail, Masked dusksnail, Canary dusksnail, Basalt juga, Cinnamon juga, Knobby Rams-horn, Goose Valley pebblesnail, Hat Creek pebblesnail)	12m	FY 2012
8	5 Railroad Valley springsnails ( <i>Pyrgulopsis aloba</i> , <i>P. anatina</i> , <i>P. lockensis</i> , <i>P. papillata</i> , and <i>P. villacampae</i> )	12m	FY 2012
8	6 Nevada dune beetles (Hardy's aegialian scarab, Sand Mountain serican scarab, Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's dune scarab)	12m	FY 2012
8	Spring Mountains acastus checkerspot butterfly	12m	FY 2012
1	I'iwi ( <i>Vestiaria coccinea</i> )	90d	FY 2012
2	2 Arizona talussnails (Rosemont talussnail, Sonoran talussnail)	90d	FY 2012
2	2 Sky Island plants ( <i>Graptopetalum bartramii</i> , <i>Pectis imberbis</i> )	90d	FY 2012
2	Aztec gilia	90d	FY 2012
5	Bicknell's thrush	90d	FY 2012
6	White-tailed ptarmigan ( <i>Lagopus leucura</i> )	90d	FY 2012
8	Eagle Lake trout	90d	FY 2012
8	San Bernardino flying squirrel	90d	FY 2012
1	Slickspot peppergrass	FCH	FY 2012
4	5 Southeast fishes (Cumberland Darter, Rush Darter, Yellowcheek Darter, Chucky Madtom, and Laurel Dace)	FCH	FY 2012
6	3 Colorado plants (DeBeque phacelia, Parachute penstemon, Pagosa skyrocket)	FCH	FY 2012
3	Rayed bean/snuffbox	FL	FY 2012
2	Dunes sagebrush lizard (was Sand dune lizard)	FL	FY 2012
3	Sheepnose/spectaclecase	FL	FY 2012
4	Coqui llanero	FLFCH	FY 2012
2	2 Arizona springsnails ( <i>Pyrgulopsis bernardina</i> , <i>P. trivialis</i> )	FLFCH	FY 2012
4	8 Gulf Coast mussels (round ebonyshell, southern kidneyshell, narrow pigtoe, southern sandshell, fuzzy pigtoe, Choctaw bean, tapered pigtoe, Alabama pearlshell)	FLFCH	FY 2012
1	23 Oahu species + 99 plants	FLFCH, rFCH	FY 2012
2	Jaguar	PCH	FY 2012
1	21 Big Island species	PL	FY 2012
1	29 Maui-Nui species + 108 plants CH; 2 birds CH	PL/PCH, rPCH	FY 2012
1	South Puget Prairie ecosystem (mazama pocket gophers (8 subspecies), Taylor's checkerspot, streaked horned lark, and Mardon skipper)	PLPCH	FY 2012
1	Umtanum buckwheat and White Bluffs bladderpod	PLPCH	FY 2012

RO	Species	Action	FR Date
2	2 Texas plants (Texas golden glade cress and Neches River rose-mallow)	PLPCH	FY 2012
2	4 Arizona plants ( <i>Echinomastus erectocentrus</i> var. <i>acunensis</i> , <i>Erigeron lemmonii</i> , <i>Pediocactus peeblesianus fickensisiae</i> , <i>Sphaeralcea gierischii</i> )	PLPCH	FY 2012
2	4 Texas salamanders (Salado, Georgetown, Jollyville Plateau, Austin blind salamanders)	PLPCH	FY 2012
2	5 Southwest aquatics (Diamond Y springsnail, phantom cave snail, phantom springsnail, Gonzales springsnail, diminutive amphipod)	PLPCH	FY 2012
2	Jemez Mountains salamander	PLPCH	FY 2012
2	Lesser prairie-chicken	PLPCH	FY 2012
3	Grotto sculpin	PLPCH	FY 2012
4	2 Arkansas mussels (neosho mucket and rabbitsfoot)	PLPCH	FY 2012
4	2 Tenn R. mussels (fluted kidneyshell and slabside pearlymussel)	PLPCH	FY 2012
4	3 Southern Florida plants (Florida semaphore cactus, shellmound apple cactus, Cape Sable thoroughwort)	PLPCH	FY 2012
4	Florida bonneted bat	PLPCH	FY 2012
5	Diamond darter	PLPCH	FY 2012
6	Coral Pink Sand Dunes tiger beetle	PLPCH	FY 2012
6	Gunnison sage-grouse	PLPCH	FY 2012

12-month findings will be completed in accordance with this plan where the 90-finding determined the petition presented substantial information indicating the petitioned action may be warranted.