

WILD Equity

INSTITUTE

*Building a healthy and sustainable global community for people
and the plants and animals that accompany us on Earth*

February 17, 2011

Ken Salazar
Secretary of the Interior
U.S. Department of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240
FAX: 202-208-6950

Rowand Gould, Acting Director
U.S. Fish and Wildlife Service
1849 C Street, N.W.
Washington, D.C. 20240

SENT VIA FAX AND CERTIFIED MAIL

RE: 60-day Notice of Intent to Sue for Violations of the Endangered Species Act

Dear Mr. Salazar and Mr. Gould:

On behalf of the Wild Equity Institute (“Wild Equity”), this letter serves as a 60-day notice of intent to sue the United States Fish and Wildlife Service (“FWS”) for violations of the Endangered Species Act, 16 U.S.C. §§1531-1544 (“ESA”). Wild Equity contends that the FWS is violating the ESA by failing to process Wild Equity’s petition to list the Franciscan Manzanita, *Arctostaphylos franciscana*, pursuant to the mandatory timeframes specified by the ESA and its implementing regulations. This letter is provided pursuant to the citizen suit provision of the ESA, to the extent such notice is deemed necessary by a court. 16 U.S.C. §1540(g).

Background.

The Franciscan Manzanita is a low, spreading to ascending evergreen shrub in the heath family (Ericaceae). It has oblanceolate leaves (longer than wide, wider toward the tip), relatively larger and more reddish fruits than Raven’s manzanita that are 6 to 8 millimeters (0.24 to 0.32 inch) wide, and relatively larger urn-shaped corollas that are 5 to 7 millimeters (0.2 to 0.28 inch) long. By comparison, the Raven’s Manzanita has round leaves, a prostrate growth habit that persists in cultivation, smaller fruits that are 4 to 5 millimeters (0.15 to 0.19 inch) wide, and nearly spherical flowers that are 4 to 5 millimeters (0.15 to 0.19 inch) long (USFWS 2003).

The Franciscan Manzanita existed historically in three populations in San Francisco. But by 1947, the last plant in the wild was lost to development. Fortunately, cuttings from this plant were preserved and the species survived in botanical gardens. Originally petitioned for Endangered Species Act protection by the Smithsonian Institution in 1975, and proposed for listing by the Fish and Wildlife Service in 1976, 41 Fed. Reg. 24524, 24541 (June 16, 1976), the species was nonetheless never protected under the Endangered Species Act.

In 2009, a single Franciscan Manzanita plant was discovered in the Presidio, near Doyle Drive. This single plant is near historical occurrences of the species. This plant was threatened by road

construction projects, but negotiations resulted in a translocation of the plant. The plant is now located in an undisclosed location within the Presidio.

Although the single wild plant has been removed from immediate threat, the species as a whole remains in jeopardy: and it is currently not protected under federal or state law as an endangered species. On December 14, 2009, Wild Equity submitted a petition to the Fish and Wildlife Service requesting that the Service list the species as a federally endangered plant on an emergency basis, and to simultaneously designate critical habitat for the species. This is an essential step in the recovery of the species, because the Endangered Species Act provides for the creation of a recovery plan and prioritizes federal funding for recovery actions. It is also essential because currently the last plant in the wild is provided no legal protection from harm.

The ESA Listing Process.

The petition was submitted under the provisions of the ESA, 16 U.S.C. §§1531 et seq., 50 C.F.R. 424.14, and the APA, 5 U.S.C. §533. As a petition to list a species as endangered, the Service is required to process this petition within a predetermined time frame as defined by CFR 424.14(b), to the maximum extent practicable. The regulations require FWS to make a finding within 90 days of receipt of this petition as to whether a finding of 'endangered' may be warranted. The finding shall be promptly published in the Federal Register. 50 CFR 424.14(b)(1). Within 12 months of receiving this petition, FWS is required to find that this petition is not warranted, is warranted, or warranted but precluded, and shall promptly publish notice of such intention in the Federal Register. 50 CFR 424.14(b)(3).

On January 26, 2010, the Service acknowledged receipt of Wild Equity's petition. While the Service rejected listing the species on an emergency basis, the Service claimed that "we have secured funding to make an initial finding in Fiscal Year 2010 as to whether your petition contains substantial information indicating that the action may be warranted." On August 4, 2010, the Service published a finding in the Federal Register indicating that listing the Franciscan Manzanita "may be warranted." 75 Fed. Reg. 48294 (Aug. 10, 2010). Thus, the Fish and Wildlife Service is required to complete a status review of the species by December 14, 2010, i.e., within 12-months of the initial filing of Wild Equity's petition.

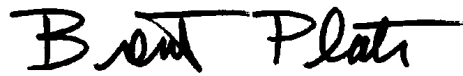
It is now February 17, 2011. To date the Service has failed to issue a 12-month finding on Wild Equity's petition, and despite repeated inquiries by phone and email about the status of this petition, no publication date for this finding has been made. The finding is now, at a minimum, over 60-days late. Because preventing extinction of such a rare species is ultimately a race against time, the Service's failure to process Wild Equity's listing petition jeopardizes the recovery of the entire species.

Wild Equity's members are vitally concerned about and actively involved in the protection of the Franciscan manzanita and its habitats. Our members enjoy observing, restoring and protecting the Franciscan Manzanita and its habitats in San Francisco, and anxiously await opportunities to continue this recovery work with the Service as a conservation partner. But all of these aesthetic, recreational, and scientific interests in the Franciscan manzanita are put at risk so long as the Service continues to delay processing Wild Equity's ESA listing petition for the species.

If the Service does not act within sixty days to correct the above violations, Wild Equity plans to pursue legal action. An appropriate corrective action would be to immediately issue a 12-month finding and proposed rules listing the Franciscan Manzanita as endangered under the ESA, with appropriate concurrent proposed designation of critical habitat.

If you have any questions, or would like to discuss this matter further, please contact me at the contact information listed on this letterhead.

Sincerely,

A handwritten signature in black ink that reads "Brent Plater". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Brent Plater