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Via Email

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Field Supervisor
U.S. Fish & Wildlife Service
Arizona Ecological Services Office
9828 North 31st Avenue, #C3
Phoenix, Arizona 85051-2517

Re: Comments on Jaguar Draft Recovery Plan (Panthera onca) dated December 20, 2016

These comments, submitted on behalf of the Pima Natural Resource Conservation District, the Santa Cruz Natural Resource Conservation District, the Coalition of Arizona / New Mexico Counties, Apache County, Arizona Cattle Growers Association (ACGA), Southern Arizona Cattlemen's Protective Association (SACPA), Cochise-Graham Cattle Growers Association, Dave and Judy Efnor, Jim Chilton, and Cynthia P. Coping respond to the U.S. Fish & Wildlife Service's (USFWS) December 19, 2016, solicitation of such on its Jaguar Draft Recovery Plan (*Panthera onca*) dated December 20, 2016.

To refresh the USFWS's memory, the membership of the Coalition of Arizona / New Mexico Counties includes the Arizona Counties of Cochise, Gila, Graham, and Navajo, and the New Mexico Counties of Catron, Chaves, Eddy, Harding, Hidalgo, Lincoln, McKinley, Rio Arriba, Roosevelt, and Sierra, along with representation from the timber, farming, livestock, mining, small business, sportsman and outfitter industries.

To further refresh the USFWS's memory, the Southern Arizona Cattlemen's Protective Association is an organization of cattle ranchers in Pinal, Pima and Santa Cruz Counties; the Cochise-Graham Cattle Growers Association is an organization of ranchers in Cochise and Graham Counties; and the Arizona Cattle Growers Association is a statewide association representing cattle ranchers.

To also refresh the USFWS's memory, as two subdivision agencies of the Arizona State Land Department, the Pima Natural Resource Conservation District (PNRCD) and the Santa Cruz Natural Resource Conservation District (SCNRCD) are each one of thirty-two Arizona Conservation Districts specifically recognized by the State of Arizona as having special expertise in the fields of land, soil, water and natural resources management within its respective boundaries. A.R.S. 37-1054(A). Additionally, ten more NRCDs are organized under Tribal law. Thus, forty-two Natural Resource Conservation Districts (NRCDs) currently cover the entire state. The purpose of these NRCDs is defined in Arizona statute (A.R.S. 37-1001) as follows:

> *"to provide for the restoration and conservation of lands and soil resources of the state, the preservation of water rights and the control and prevention of soil erosion, and thereby to conserve natural resources, conserve wildlife, protect the tax base, protect public lands and protect and restore this state's rivers and streams and associated riparian habitats, including fish and wildlife resources that are dependent on those habitats, and in such manner to protect and promote the public health, safety and general welfare of the people."*

To further refresh the USFWS's memory, the PNRCD et al. has previously filed timely comments and attachments thereto at each juncture of the Jaguar critical habitat and recovery planning process. Additionally, the PNRCD has previously provided the USFWS with then-new and important scientific information relevant to the historic record of jaguar presence in both Arizona and New Mexico in response to the USFWS's erroneous characterization thereof. Of specific relevance to the Jaguar Draft Recovery Plan here, are the PNRCD et al.'s response of August 14, 2012, to the *"Recovery Outline for Jaguar (Panthera onca)* issued by the USFWS on April 16, 2012, and, PNRCD's et al. September 23, 2010 response to a letter received from the USFWS dated June 19, 2012.

Because of the radical departure from sound science, policy, Endangered Species Act interpretation and the clear and present danger to national and citizen security this current Jaguar Draft Recovery Plan actually represents, and because virtually every previous comment, attachment, and scientifically verifiable fact the PNRCD et al. has previously provided to the USFWS has been utterly ignored by the USFWS in the development and publishing of this current draft recovery plan for the jaguar, each of the PNRCD et al.'s previous comments, attachments and other communications to and from the USFWS relative to the jaguar are hereby incorporated by reference into the comments presented herein.

The PNRCD et al. takes this unprecedented step here because all on whose behalf these comments are submitted view such as their collective duty to fully reveal, by use of clear and convincing evidence, just how unlawful, scientifically baseless, irresponsible, outrageously wasteful of taxpayer dollars, and insidiously threatening to both the future of the Endangered Species Act and national and citizen security the USFWS's so-called approach to Jaguar "recovery" truly and actually is. Each of these subjects is addressed in the context of the comments that follow below.

The Preparation of this Draft Recovery Plan for the Jaguar is Unlawful Because the USFWS Refused and Continues to Refuse to Fulfill Its Mandatory ESA Obligation to Cooperate with the PNRCD and SCNRCD to Resolve Water Issues in Concert with the Development of a Recovery Plan for the Jaguar that Includes Lands and Waters Within the PNRCD's and SCNRCD's Boundaries

Section 2 (c) 2 of the Endangered Species Act states in its entirety as follows:

> "*It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species."*

As stated previously, because the PNRCD and SCNRCD are Arizona State Agencies specifically charged with, among their other natural resources duties, the preservation of water rights within their geographical boundaries (A.R.S. 37-1001) and because the PNRCD and the SCNRCD are also recognized by the State of Arizona as having special expertise in the fields of land, soil, water and natural resources management within those boundaries (A.R.S. 37-1054(A)), the USFWS has a ***mandatory duty*** under Section 2(c)2 of the ESA to cooperate with the PNRCD and the SCNRCD to resolve water issues ***before*** mandating the dedication of other people's water rights for use as "water for jaguars" every 20 km. (12.4 mi.) across vast areas of southern Arizona located within the PNRCD's and the SCNRCD's boundaries. (p. ix) Nonetheless, the USFWS proffers this draft recovery plan in the continuing absence of any effort on its part to fulfill its statutorily mandated obligation to cooperate with the PNRCD and the SCNRCD to resolve these extremely important water rights and water use issues before doing so.

When asked previously *why* it was refusing to cooperate with the PNRCD under the ESA and refusing to coordinate with the PNRCD under NEPA, the USFWS refused to answer under claim of absolute attorney / client privilege. (*See:* PNRCD et al. comments of August 14, 2012, October 8, 2012, July 30, 2013, plus attachments to each, incorporated herein by reference thereto). Accordingly, the PNRCD et al. can only conclude that the USFWS is of the position that mandatory requirements of the ESA do not apply to it or its development of this draft recovery plan for the jaguar.

This issue is made all the more prescient by the fact that in this draft recovery plan for the jaguar, the USFWS is now also taking the unilateral position that the words "conservation" and "recovery" can be conflated for purposes of expanding its interpretation of the critical habitat and recovery plan authority afforded it under the Endangered Species Act. For example, the draft recovery plan at p. 89 states, in essence, that this recovery plan and the establishment of the NRU (Northern "Recovery" Unit), including border lands of Arizona and New Mexico within it, is, in and of itself, now "essential" to the conservation of the jaguar as a species – despite the fact that this recovery plan is neither a legally binding nor self-implementing document, and despite the further fact that it is also subject to arbitrary change by bureaucratic whim. (Draft Recovery Plan at p. 1, 2).

Nonetheless, as this draft recovery plan plainly reveals, despite clear and mandatory direction by Congress of the opposite, the USFWS has once again refused and is continuing to refuse to

cooperate with the PNRCD and the SCNRCD under Section 2(c)2 of the Endangered Species Act to resolve this "water for jaguars," water resource issue in concert with that plan's development and implementation within the PNRCD's and the SCNRCD's boundaries. Moreover, as this draft recovery plan also reveals, the USFWS is not cooperating with either the Arizona Department of Water Resources or its equivalent agency in New Mexico (Office of the State Engineer) on water and water right issues in this plan's development either.

Instead, the USFWS, by use of this draft recovery plan, is now of the stated position that "shared water sources" within the PNRCD's and SCNRCD's boundaries, and across the vast swaths of Arizona and New Mexico it has designated as critical habitat for jaguars, pose an "indirect threat" to the conservation or survival of the jaguar as a species that could be exacerbated by altered prey and water availability resulting from future changes in climate (Draft Recovery Plan at p. 1) – despite the fact that, by its own estimate, this entire area of Arizona and New Mexico combined is capable of carrying a grand total of just 6 jaguars (sex unspecified) (Draft Recovery Plan at p. 38), or, a figure representing less than one one-hundredth of 1% of the jaguar's range-wide population. (AGFD October 19, 2012 comments, incorporated herein in entirety by reference thereto). Accordingly, because the USFWS failed to fulfill its mandatory duty under Section 2 of the ESA to cooperate with the PNRCD and the SCNRCD to resolve these serious water rights and water use issues in concert with the development of this draft recovery plan for the alleged conservation of the jaguar, this draft recovery plan must be immediately withdrawn.

The Draft Recovery Plan for the Jaguar Must also be Withdrawn Because (1) It is Unlikely to Benefit Jaguars in Arizona and New Mexico and (2) Because It Relies on Misrepresentation and Opinion for Its Development Rather Than Solely the Best Scientific Information Available as is Required by the Endangered Species Act

One may reasonably ask, given the preceding facts, just *how* the jaguar could possibly qualify as a species that is likely to be benefited range-wide by the development of a recovery plan for it in Arizona and New Mexico, as is required by Section 4(f) of the Endangered Species Act (ESA), where, in fact, no scientifically verifiable record of breeding exits and only lone, transient male jaguars are occasionally and peripherally occurrent?

Moreover, one may also reasonably ask how designating critical habitat and appropriating the water resources of others can possibly be viewed as "essential" to the conservation of the jaguar as a species, as is also required by Section 4 of the ESA, when, in fact, the jaguar is known to reside and breed in no less than 18 other countries, and the area over which the USFWS has actual, legal jurisdiction represents less than 1% of the jaguar's actual range as a species and less than .01% of its range-wide population at most?

Finally, one may further reasonably ask how a recovery plan, such as this one for the jaguar, can possibly become the authoritative source on the overall biology, status of, and threats to jaguars, as the USFWS claims (Draft Recovery Plan, at p. 1, 2), when such is, in actuality, neither a legally binding nor self-implementing document that is subject to arbitrary change by bureaucratic whim at any time?

As shown below, the answers to these questions are, taken together, actually quite simple: engage in recovery planning before designating critical habitat, reject the ESA's requirement of use of solely the best scientific information available, and then replace that requirement with use of speculation, misrepresentative modeling, out-right falsity, opinion, and imposition of philosophy / theology to facilitate the squandering of at least ***$605,648,000 in U.S. taxpayer money over the course of the next 50 years***. (Draft Recovery Plan at p. XV).

While the USFWS claims that the expenditure of at least this much U.S. taxpayer money is necessary to help "recover" the jaguar range-wide by focusing its spending on the southwestern United States and northern Mexico, this argument actually holds no water. This is because the USFWS's actual, legal jurisdiction is limited to lands found within the boundaries of the United States and its Territories (Draft Recovery Plan at p. V) and does not include Mexico nor any of the other 17 sovereign nations the USFWS nevertheless claims must meet its "recovery" goals *before* the jaguar can be de-listed in the United States. (Draft Recovery Plan at p. xv, 2, 3, 4, 81-90).

Moreover, according to the USFWS, de-listing in the United States, which represents less than 1% of the jaguar's actual range as a species, and less than .01% of its range-wide population, but which the USFWS nevertheless misrepresents as providing habitat "essential" to the jaguar's range-wide existence as a species, cannot even be possibly considered until the status of the jaguar changes to that of "Least Concern" south of central Mexico for at least 15 years under an international nongovernmental organization (NGO), the IUCN's, Red list criteria. (Draft at p. xiii, xiv, 81, 82).

There are a number of major problems with this approach, not the least of which is the USFWS's outright ceding of United States sovereignty and authority over its southern border to an international NGO to decide, based on the status it accords jaguars south of the Northern Recovery Unit, when jaguars can be de-listed in the United States. (Draft Recovery Plan at p. xiii). This, the USFWS claims, is "necessary" -- despite the fact that the jaguar is neither listed as endangered or threatened by the NGO to which the USFWS would, by use of this recovery plan, nonetheless cede such authority to. Instead, as the USFWS admits, the IUCN lists the jaguar as "Near Threatened." (Draft Recovery Plan, p. 83).

A second major problem with this approach is that habitat critical or "essential" to the jaguar's conservation or existence as a species, as shown previously by both the PNRCD et al. and the AGFD in multiple comments on the jaguar recovery plan outline and critical habitat, does not exist in either Arizona or New Mexico under any scientifically credible definition of that term, any more than the development this draft recovery plan for Arizona and New Mexico can be rationally viewed as likely to benefit the conservation of jaguars *as a species*.

This is because, as previously pointed out to the USFWS by the Arizona Game & Fish Department (AGFD), there are no scientifically verifiable breeding records of jaguars in Arizona, and, as also pointed out by the New Mexico Department of Fish & Game (NMDFG), there is no record of jaguars ever breeding in New Mexico either. Moreover, as previously pointed out by PNRCD et al., there is not even a single record of any naturally-occurring female jaguar from New Mexico -- ever. (*See:* AGFD comments to USFWS on designation of critical habitat for the

jaguar, dated October 19, 2012 and August 8, 2013, Menke and Hayes (2003), PNRCD et al. comments dated August 14, 2012, all incorporated in their entirety herein by reference thereto; *See also:* David Brown email to Terry Johnson, January 27, 2011, and Emil McCain / David E. Brown Q & A dated August 21, 2007, attached).

Nonetheless, according to the USFWS (Draft Recovery Plan at p. 2), it is developing this recovery plan for the jaguar because, in 2010, it made a new determination that development of a recovery plan would "contribute to jaguar conservation" and that, therefore, a recovery plan should be prepared. The USFWS claims it made this determination in response to lawsuit over its 2007 determination that development of a formal recovery plan for the jaguar would not promote its conservation. In that suit, according to the USFWS, the court remanded decision regarding recovery planning back to the USFWS. (Draft Recovery Plan at p. 1).
The facts, however, reveal that the court actually remanded *two* of its decisions back to the USFWS for reconsideration: that designating critical habitat for the jaguar was not prudent and that development of a recovery plan was not likely to benefit the jaguar.

Also unmentioned by the USFWS in this Draft Recovery Plan, is the further fact that it decided its development of a recovery plan for the jaguar would "contribute" to jaguar conservation fully three years ***before*** it determined that designating critical habitat for jaguars in Arizona and New Mexico would be "essential" to the conservation or existence of the jaguar as a species. In other words, the USFWS determined that a recovery plan for jaguars in the southwestern United States was likely to benefit the jaguar ***before*** it even investigated or assessed whether habitat critical or essential to the jaguar's survival as a species even existed within the boundaries of its legal jurisdiction (i.e., Arizona and New Mexico).

Although the Arizona Game & Fish Department (AGFD) did not address the issue of juxtaposition raised above, the AGFD *did* address the issue of the USFWS's erroneous equation of the term "essential" with "recovery," in its August 8, 2013, comments pertaining to designation of critical habitat. According to the AGFD in those 2013 comments:

> "In the proposed rule, the authors concede that the evidence that jaguar occupied AZ/NM is limited, and therefore alternatively analyzed whether the area designated as critical habitat is "essential" to the conservation of the jaguar as authorized under 16 U.S.C. 1532(A)(ii). The FWS contends that the critical habitat is essential because (1) the jaguar has used this area since 1996; (2) the area contains features that comprise suitable habitat and it (3) contributes to the species' persistence in the United States, which is important to range expansion. The problem with this explanation is that it falls short of establishing that the area is essential to the conservation of the species. The proposed rule equates 'essential' with recovery; in other words, the designation of critical habitat in an area outside the area occupied by the jaguar must be necessary to the recovery of the jaguar. The record indicates that what happens in AZ/NM may be important for the few males who wander into Arizona, but is not 'essential' to conservation of the species."

Further unmentioned by the USFWS (Draft Recovery Plan at p. 1, 2), are the facts that the USFWS was actually sued by one of its collaborators, the Center for Biological Diversity; that the USFWS failed to defend itself against that lawsuit; that the USFWS and the plaintiffs falsely represented a non-peer reviewed and unscientific conference presentation to the court as if it were a peer-reviewed, journal-published scientific study and represented another, produced by its adversary in that case, no less, as being scientifically credible when it was not; and, finally, that the court actually ordered the USFWS to focus its re-examination primarily on the principal biological constituent elements within the defined area that are essential to the conservation of the species relative to prudency of designating critical habitat, rather than ordering it to either designate critical habitat or to engage in immediate recovery plan development.

The USFWS, however, did not attempt to focus on the principal biological constituent elements within the defined area that are essential to the jaguar's conservation as a species, despite such being the matter of first priority as directed by the court. In fact, as shown in the final rule designating critical habitat for the jaguar in Arizona and New Mexico, the USFWS could not do so because it could not identify even one biological feature from which any possible focus on "principal biological constituent elements" could possibly be developed, either by direction of the court or per requirement of the Endangered Species Act. (79 FR 1257 et seq., March 5, 2014). Nonetheless, the USFWS misrepresents that actual, legally-binding finding contained in the final rule designating critical habitat as encompassing both a physical *and* biological feature (at p. ix) for purpose of use in this legally-nonbinding document that this draft recovery plan represents.

Again, according to the AGFD in its October 19, 2012, comments (incorporated herein in entirety by reference thereto):

> "AGFD concurred with decisions by USFWS in 1997 and 2006 that designation of critical habitat for the jaguar would not be prudent (62 FR 39147, July 22, 1997 and 71 FR 39335; July 12, 2006). We considered the justification presented then to be logical and solidly based on science. As such, we were disappointed that USFWS chose not to reinforce those arguments when a court order entered in Center for Biological Diversity v. Kempthorne, CV 07-372-TUC JMR and Defenders of Wildlife v. Hall, CV08-335 TUC JMR (D. Ariz., 2009) directed USFWS to determine whether designation of critical habitat for the jaguar is prudent by January 8, 2010. In this ruling, the court ordered USFWS to focus on the principal biological constituent elements within the defined area that are essential to conservation of the species. However, instead of attempting to return to the court with a refined analysis, USFWS determined that designation of critical habitat for the jaguar in AZ-NM would be beneficial to the species (75 FR 1741; January 13, 2010) and include the areas of AZ-NM in which jaguars have been documented since 1996. The current proposal uses information from 1962 until present (a 50-year time-frame), which is not consistent with the 2010 notice."

Moreover, according to the PNRCD et al. in its September 23, 2010, letter to Mr. Steve Spangle of the USFWS (incorporated herein in entirety by reference thereto):

"According to the Fish & Wildlife Service, *Center for Biological Diversity v. Kempthorne*, 607 F. Supp. 2d 1078, 1081 (D. Ariz. 2009), is the federal district court decision the Service was required to follow in reaching its finding that designating critical habitat for the jaguar in the United States was prudent (see attachment). It has been subsequently demonstrated, however, that the court in *Kempthorne* erred in reaching that decision. The court in *Kempthorne* erred because it mistook, and then heavily relied on, a conference presentation made without disclosure of the underlying, necessary data on which it was based, Boydston and Lopez-Gonzales (2005), for a journal published scientific article representing the best scientific information or evidence available relative to the prudence of designating critical habitat for the jaguar in the United States.

According to the court in *Kempthorne*:

> "As to the importance of fringe populations, a 2005 journal article published by Erin Boydston and Carlos Lopez-Gonzales concluded that "[r]ange expansion could help prevent genetic isolation and extinction of northern Jaguars and also increase chance for long-term survival of this species in the face of global anthropogenic change." The same authors concluded that habitat exists in the United States to support both male and female, and therefore presumably jaguar reproduction."
>
> *Kempthorne*, 607 F. Supp. 2d at 1090-91.

The Boydston and Lopez-Gonzales (2005) contribution, however, misrepresented to the court as being both journal published [and] the best scientific information available, has been found to be neither. In actuality, the Boydston and Lopez-Gonzales (2005) contribution, so heavily relied on by the court . . . consisted merely of a conference presentation of modeling results and conclusions – unaccompanied by the necessary scientific data on which those results and conclusions were based – made at the "Connecting mountain islands and desert seas" conference held in Tucson, Arizona, on May 11-14, 2004. In short, because the Boydston and Lopez-Gonzales (2005) results and conclusions are not capable of replication (no availability of underlying data), those results and conclusions do not qualify as scientific evidence. As a result, the court in *Kempthorne* erred as a matter of law when it treated those results and conclusions as admissible scientific evidence of considerable and persuasive evidentiary weight nonetheless."

As clearly shown by the PNRCD in September 23, 2010, letter and attachments to Mr. Steve Spangle of the USFWS, the Boydston and Lopez-Gonzales (2005) conference presentation was not published by Boydston and Lopez Gonzales, was not subjected to peer review prior to its merely editorial reiteration by the Rocky Mountain Research Station (RMRS) (September 23,

2010, letter at p. 3), and did, in fact, rely on assumption and hearsay rather than solely scientifically verified occurrences of jaguars to inflate the number of so-called jaguar "records" it used for purposes of jaguar habitat modeling in both Arizona and New Mexico.

According to the PNRCD in September 23, 2010 letter (at p. 4):

> "Boydston's and Lopez-Gonzales's (2005) modeling approach is also separately and fundamentally flawed by its basis on the unscientific assumption that a viable and reliable scientific model of jaguar occupancy can be created from a sparse and highly unreliable dataset that is neither comparable in time nor gives any indication of how many individuals it may represent. Moreover, contrary to the liberal approach to suitable jaguar habitat modeling taken by Boydston and Lopez Gonzales (use of 40+ jaguar "accounts" for purpose of suitable habitat modeling in Arizona alone) and other computer modelers of "suitable jaguar habitat" to date (i.e., CBD, Robinson et al. 2006), use of unverified accounts of jaguars as if those accounts were actual "occurrence records" of jaguars for modeling and/or mapping of suitable jaguar habitat purpose is misrepresentative, irresponsible and unscientific. Using unverified accounts of jaguars to establish the "urgency" of implementing conservation planning for the jaguar in the United States by subjectively assigning varying degrees of confidence or reliability to those accounts, as Grigione et al. (2009) do, is similarly misrepresentative, irresponsible and unscientific."

In point of fact, Boydston and Lopez Gonzales (2005) used 59 supposed "accounts" of jaguars in Arizona (53) and New Mexico (6) for modeling jaguar habitat purpose, all of which were falsely posited as "records." Verifiable records of jaguars in Arizona, however, or those supported by the existence of jaguar parts or photographs, only amount to 15 (Brown and Lopez Gonzales, 2000), and, of that number, only 7 actually have reliable validity and sufficient location data to allow for scientifically credible modeling. (Coping, "Jaguar Literature Review,", 2017, attached). The remaining 38 so-called jaguar accounts for Arizona, falsely represented by Boydston & Lopez Gonzales (2005) as jaguar "records," simply do not exist other than in the form of unreliable and unavailable hearsay uncited to actual source.

Neither for New Mexico does Boydston's and Lopez Gonzales's (2005) claim of use of verifiable jaguar records actually hold up. There, Boydston and Lopez Gonzales (2005) used 6 records of male jaguars, 5 of which are recognized as scientifically verified by the New Mexico Department of Game & Fish. However, only 2 of those verified records actually have sufficiently accurate location data for the purpose of scientifically credible habitat modeling. (Coping, 2017).

Despite its obvious scientific shortcomings, Boydston and Lopez Gonzales (2005) does nonetheless conclude, as did Menke and Hayes (2003) of the New Mexico Department of Game & Fish before it, that New Mexico does not provide viable habitat for female jaguars. (Draft Recovery Plan at p. 36, 37). Had the USFWS brought these actual facts to the attention of the

court in *Kempthorne,* it is highly likely that the court's decision in that case would have been far different than it was regarding both the prudency of designating critical habitat or the benefit of developing a recovery plan for the jaguar in either Arizona or New Mexico.

But this the USFWS did not do. Instead, the USFWS doubled down on deception by allowing the court to further believe that unscientific jaguar habitat modeling results and maps developed by its supposed adversary in *Kempthorne*, the Center for Biological Diversity (Robinson et al. 2006), separately qualified as scientifically credible replacements for Menke's and Hayes' (2003) results developed for the New Mexico Department of Game & Fish and the State of New Mexico.

Moreover, the USFWS also failed to mention to the court in *Kempthorne*, and neglects to do so once again in this draft recovery plan, the further fact that Robinson et al.'s (2006) modeling methodology, like that employed by Boydston and Lopez Gonzales (2005) before it, is fatally flawed by its basis on the unscientific assumption that a viable and reliable scientific model of jaguar occupancy in New Mexico can be created from a sparse and highly unreliable dataset that is neither comparable in time nor gives any indication of how many individuals it may actually represent. Neither does the USFWS mention anywhere in this draft recovery plan that the Robinson et al. (2006) "effort" is, in fact, also fatally, scientifically flawed because Robinson et al. (2006) actually relied on unverified jaguar accounts, or rank hearsay, and then wrongly posited such as jaguar occurrence "records," to falsely inflate the number of jaguars it used to model so-called suitable habitat for jaguars in New Mexico.

Here, the facts reveal that Robinson et al. (2006) wrote this report for the Center for Biological Diversity. The facts also reveal that Robinson et al. (2006) based its modeling methodology relative to the existence of suitable jaguar habitat in New Mexico on 18, allegedly "documented" jaguar "occurrence records" from New Mexico and 6 alleged "documented" "occurrence records" from adjacent eastern Arizona, all of which were assumed by Robinson et al. (2006) in the absence of evidence, or, in the face of substantial evidence contradicting that assumption, to be of naturally occurring jaguars.

The facts further reveal, however, that only 5 verified or "documented" jaguar "occurrence records" – not 18 as falsely posited by Robinson et al. (2006) – are actually "documented" or supported by the existence of physical evidence in New Mexico (Brown and Lopez Gonzales, 2000; Menke and Hayes, 2003), and that only 2 of those records actually have sufficiently reliable location data to allow for scientifically credible habitat modeling and / or mapping of jaguar habitat purpose. (Coping, 2017).

One may reasonably wonder at this juncture just *how* the unscientific and misrepresentative report and maps provided by Robinson et al. (2006) came to replace the results developed by Menke and Hayes (2003) for NMDFG and the State of New Mexico? This question is made all the more germane in view of the fact, as stated previously, that there is, in fact, no known record of any naturally occurring female jaguar from New Mexico – ever.

As it turns out, the answer to this question is as deeply disturbing as it is both enlightening and highly instructive.

According to Robinson et al. (2006 at p. 2), in April of 2005, the Center for Biological Diversity was granted authority by Mr. William Van Pelt of the Arizona Game & Fish Department (AGFD) to write a jaguar habitat status report and accompanying maps for New Mexico as official replacements for the report and maps developed by Menke and Hayes (2003) on behalf of the NMDFG for the state of New Mexico that had previously been submitted to the Jaguar Conservation Team. Also, according to Robinson, the Center for Biological Diversity was authorized to write this replacement report and maps, not by NMDGF or the State of New Mexico, but, instead, by an employee of the Arizona Game & Fish Department, Mr. Van Pelt of AGFD, more than a year after the NMDFG had submitted its jaguar habitat status report and accompanying maps to the Jaguar Conservation Team in July of 2003. (Menke and Hayes, 2003).

Further, according to Robinson, this authorization by an employee of the AGFD to do so occurred only after the Center for Biological Diversity and some other like-minded members of the Jaguar Conservation Team's habitat subcommittee voiced belated objection to the Menke and Hayes (2003) report and its maps, in August of 2004, or more than a year *after* the submission of the Menke and Hayes (2003) report to the team. These objectors, according to Robinson, objected to the Menke and Hayes (2003) report because it allegedly used criteria different from that which the Center for Biological Diversity and its allies had agreed to and because the Menke and Hayes (2003) report did not identify any suitable habitat for the jaguar in New Mexico.

Through public record request of the AGFD, PNRCD et al. now know that although Mr. Van Pelt and Mr. Terry Johnson (who was then Endangered Species Coordinator for AGFD) knew that authorizing the Center for Biological Diversity to write the Robinson et al. (2006) report would violate an existing MOA (Memorandum of Agreement) between the AGFD and NMDFG covering this very subject matter, the AGFD nevertheless proceeded to quietly pay the Center for Biological Diversity $999.99 – or one center under the radar of public bid – to write an "official" replacement report and maps for those previously submitted to the Jaguar Conservation Team by Menke an Hayes (2003) for NMDGF and the State of New Mexico, and did so, extraterritorially, in the apparent absence of either the Arizona Game & Fish or New Mexico Fish & Game Commissions' knowledge and in the further absence of any vote or other form of parliamentary procedure involving other Jaguar Conservation Team members. (*See:* PNRCD et al. letter of September 23, 2010 to Spangle, at pp. 6- 9, incorporated herein by reference thereto, for further details).

In essence, the answer to the question of *how* Robinson et al. (2006) came to replace Menke and Hayes (2003) is simple: two employees of the AGFD quietly facilitated the payment of $999.99, or one cent under the radar of public bid, to the Center for Biological Diversity to essentially misrepresent and misuse unreliable data to model suitable jaguar habitat for New Mexico to reach results radically different from, and as substitutes for, the results reached by Menke and Hayes (2003) for the State of New Mexico.

Of course, these facts were not presented to the *Kempthorne* court by the USFWS either. Instead, the USFWS withheld these facts from the court in *Kempthorne*, as is clearly evidenced

by that court's further, unwitting extension of scientific validity to Robinson et al. (2006) exercise in its decision in that case.

Had the *Kempthorne* court been aware of the incontestable facts presented above, it is highly doubtful that it would have ruled in the manner it did relative to the prudency of designating critical habitat for jaguars in either Arizona or New Mexico in the first place. Nor is it likely that this so-called draft recovery plan would even exist, given the USFWS's less than scientifically credible reliance in large part on Robinson et al. (2006) for justification of including southwestern New Mexico within its "Northern Recovery Unit."

In point of fact, the draft recovery plan currently before us misrepresents the results and maps provided by Robinson et al. (2006) as being "scientifically" supportive of at least four of its key propositions: as providing a better understanding of habitats and habitat linkages that have been or might be used by jaguars in the Northern Recovery Unit (p. 34); as identifying potential habitat for jaguars in New Mexico (p. 35); as indicating that approximately one half of New Mexico is suitable habitat for jaguars (p. 36); and, for the proposition that the greatest threat to the integrity of jaguar habitat in the U.S. today is likely to be heavily-traveled, multiple-lane highways, such as interstates 25, 10 and 40 in New Mexico (p. 36).

Use of misrepresentation also characterizes the USFWS's less than scientifically credible reliance on Boydston and Lopez Gonzales (2005) in this draft recovery plan for justification of including southeastern Arizona within its "Northern Recovery Unit" as well. Here, the draft recovery plan misrepresents Boydston and Lopez Gonzales (2005) as providing scientific support for at least six of its key propositions: as "documenting" jaguar presence in arid areas (pp. xi, 30); that range expansion to the north of eastern Sonora could help prevent genetic isolation and extinction of "these" northern jaguars the face of global anthropogenic change (p. 14); as providing a better understanding of habitats and habitat linkages that have been or might be used by jaguars in the Northern Recovery Unit (p. 34); as estimating the potential geographic distribution of jaguars in the southwestern U.S. and northwestern Mexico (p. 36); as showing that eastern Sonora appears capable of supporting male and female jaguars with potential range expansion into Arizona (p. 36); and, for the proposition that the availability of areas meeting females' environmental requirements may be an important factor limiting the distribution of northern jaguars (p. 37).

In sum, the facts presented above not only clearly warrant the immediate withdrawal of this draft recovery plan, but also clearly warrant immediate, full and thorough investigation of it and the designation of critical habitat on which it depends, by the Solicitor General of the Department of the Interior and by the United States Congress as well.

Further, and separately warranting of close scrutiny by the Solicitor General and the U.S. Congress, is the USFWS's extensive misuse of Hatten (2005), McCain and Childs (2008), and Grigione et al. (2007, 2009) as "scientific support" for justification and development of this so-called draft recovery plan for the jaguar. This is because, as also clearly shown by the PNRCD et al. on numerous occasions in previous comments, letters, and attachments (all incorporated in entirety herein by reference thereto), the results of all three of these efforts are fatally, scientifically flawed by similar misuse of unreliable jaguar records and / or insufficient location

data (Hatten et al. 2005; Grigione et al. 2007), baiting of male jaguars by use of zoo-obtained scent of female jaguars in heat (McCain and Childs 2008), and /or misrepresentation of hearsay accounts of jaguars as scientifically verifiable jaguar "records" by use of opinion generated from unscientific Delphi process use (Grigione et al. 2009). (Coping, 2012, "Summary of Jaguar Occurrences; 2017).

First, while Hatten et al. (2005) used 25 "historic jaguar sightings" to model jaguar habitat in Arizona, as stated previously, only 7 verifiable jaguar records in Arizona actually have sufficiently specific and reliable location data to allow for scientifically credible jaguar habitat modeling. (Coping, 2017). Moreover, Hatten et al.'s (2005) reliance on Brown (1983) and Brown and Lopez Gonzales (2001) is also fatally flawed because both have been conclusively shown by thorough review to be riddled with inaccuracies and use of unsupported speculation and, in the former instance, by any provision of baseline comparison. (Coping, 2017).

Although the USFWS is well aware of the fatal scientific shortcomings of Hatten et al. (2005) through previous provision of numerous comments and attachments (including Coping, 2012) by PNRCD et al., it has completely ignored virtually all of those comments and attachments to date. Indeed, as the following citations to Hatten et al. (2005) graphically show, the FWS continues to ignore the PNRCD et al.'s submissions, and continues to misrepresent Hatten et al. (2005) as providing credible scientific support for no less than 11 of this Draft Recovery Plan's key propositions: as providing a better understanding of habitats and habitat linkages that have been or might be used by jaguars in the NRU (p. 34); as identifying a minimum of 21% of the land area of Arizona as potential jaguar habitat (p. 34); as showing that the apparent preference of jaguars for scrub grasslands might reflect the use of travel corridors from the Sierra Madre Occidental of Mexico into southeastern Arizona rather than a preferred vegetation type (p. 35); as indicating that river valleys might provide travel corridors for jaguars, along with higher prey densities, cooler air, and denser vegetation than surrounding habitats (p. 35); as evidence suggesting that perhaps the most important factor explaining jaguars' apparent preference for rugged terrain is the "abundance" of water in mountainous areas of southeastern Arizona – which is directly contradicted by ADWR (2015) at p. 56 (p. 35); as identifying a great deal of potential jaguar habitat along the Mogollon Plateau (p. 35); as showing that jaguar distribution patterns over the last 40 years suggest that southeastern Arizona is the most likely area for future jaguar occurrence in the U.S. (p. 35); as supporting the even more unscientific mapping exercise of Robinson et al. (2006) in New Mexico (p. 36); as the methodology used, but with some modifications and using even a larger number of unreliable jaguar observations, by Sanderson and Fisher (2011 and 2013) to create a jaguar model for the NRU (p. 38); as support for the hypothesis that current land uses, notably urban expansion around Phoenix and Tucson, mining, and Interstate 10 are limiting jaguar movement into central Arizona, thus necessitating leaving the door open for expansion or reconfiguration of the NRU in the future (p. 74); and, as establishing that habitat conditions suitable for jaguars include vegetative cover, access to water, and freedom from persecution (Appendix "C" at p. 11).

This same pattern of misrepresentation, with an added touch of deception, continues with the USFWS's egregiously misplaced reliance on McCain and Childs (2008) in this draft recovery plan. Here, while the USFWS cautions that McCain's and Childs's (2008) estimation of range size for the jaguar in Arizona "may not be typical" because of the small number of locations for

this single male and because of the potential influence of their use of female jaguar scat at some camera traps at various times throughout their research (Draft Recovery Plan at p. 16), it fails to mention the most pertinent fact about McCain's and Childs's (2008) use of scent baiting at all.

That fact, long-known to the USFWS through comments provided by the PNRCD et al. previously, and supplemented by those provided once again here, is that beginning in 2004, McCain and Childs (2008) liberally used zoo-obtained scat of female jaguars ***in heat***, both to lure this unfortunate male jaguar to their camera traps and, subsequently, to lure him to capture by snare at least twice, which led, directly, to his shamefully unlawful, untimely and unfortunate death in 2009. (*See:* Tony Davis article of April 2, 2009, excerpted from the Administrative Record of jaguar critical habitat, C000157-161, attached). The USFWS fails to mention this salient fact or the further salient fact that McCain and Childs (2008) artificially located this unfortunate lone, transient male jaguar within their study area in southern Arizona for a period of years by use of this unscientific methodology in the jaguar's futile search of a female that did not exist. Nor does the USFWS mention that McCain and Childs (2008) failed to document this sexual scent-baiting activity in their statement of methodology. Nor does the USFWS mention anywhere in this so-called draft recovery plan that at least two and possibly three other jaguars from the jaguar's northernmost breeding population in Mexico were also needlessly killed as the direct result of their inept capture and handling by so-called jaguar "researchers." (*See:* Wagner December 11, 2012 article, and Southwest Jaguars May 21, 2014 article also attached).

Neither does the USFWS mention anywhere in this draft recovery plan the fact that Mr. McCain was subsequently prosecuted and pled guilty, after plea bargaining, to the federal misdemeanor charge of illegally "taking" the jaguar in Arizona (Macho B), in 2009. (*See:* L.A. Times news article, May 14, 2010, attached). Nor does the USFWS mention anywhere in this draft recovery plan the further fact that Mr. McCain was barred in the future from being employed or involved in any project or job involving large wild cats as part of that plea agreement. (*Id.*).

This, of course, is not news to the USFWS. In fact, the language used at page 16 of this draft recovery plan is precisely the same as that used previously by the USFWS in its 2012 Recovery Outline at page 9. Nor is it news to the USFWS that the PNRCD et al. previously and directly commented on this same, exact language in its August 14, 2012, comments (incorporated herein in entirety by reference thereto) when it stated at page 2 of those comments the following:

> "What the Service doesn't mention, however, is the critically relevant fact that the "female jaguar scat" used at these camera-traps was actually scat from captive female jaguars ***in heat*** **–** a fact that is subject to the taking of judicial notice, a fact that explains how this baiting could have influenced the observed range of that lone, male jaguar, and a fact that precludes extension of scientific validity to any conclusion reached relative to the jaguar's naturally-occurring residency in the United States."

Further unmentioned by the USFWS in this draft recovery plan is the additional and highly relevant fact that McCain and Childs (2008) does not even mention their wide-spread use of female jaguar in heat sexual scent baiting to locate and lure this unfortunate, lone male jaguar to their camera traps in either the methodology they used or, for that matter, anywhere else in their

2008 publication. This fact alone scientifically discredits and completely disqualifies the so-called evidence of resident jaguars in the southwestern United States and implications for conservation that McCain and Childs (2008) and the USFWS nevertheless claim are supported by the data gathered by this "research."

Nonetheless, the draft recovery plan continues to falsely misrepresent McCain and Childs (2008) as providing credible, scientific data in support of no less than 12 of its key propositions: as documenting the presence of jaguars in arid areas, including thorn-scrub, desert-scrub and lowland desert in the southwestern U.S. (p. xi, 30); as establishing jaguar use of three different mountain ranges over an area extending 47 miles north of the U.S. – Mexico international border and 39 miles east to west (p. 10); as establishing jaguars using areas of rugged mountains to flat lowland desert floor in the southwestern U.S. (p. 10); as support for the unsupported claim that female jaguars with young are proof that there was once a breeding population of jaguars in Arizona (p. 11); as estimating a jaguar's home range in Arizona at 525 square miles by use of camera traps (p. 16); for positing 524.7 square miles as a specific home range size for one male jaguar in Arizona (p. 18, table 1); as support for the claim that anthropogenic activity (e.g., urbanization, roads and land development, and border fence construction to deter illegal human immigration and terrorism threats) may negatively affect jaguars moving through from Mexico into the United States (Polisar et al. 2014, Appendix "C" at p. 9); as documenting jaguar presence in semi-tropical thorn-scrub in the northern recovery unit (Appendix "C" at p. 10); as establishing jaguar use of desert valleys (Appendix "C" at p. 11); for the proposition that Macho B's (the jaguar taken by McCain in 2009) presence was naturally persistent (Appendix "C" at p. 12); for the proposition that the jaguar population in Sonora is critical to any naturally-occurring re-establishment population of jaguars in the U.S. (Appendix "C" at p. 14); and, as providing scientifically credible data for modeling densities of jaguars in the U.S. portion of the northern recovery unit (Appendix "E" at pp. 3, 24, 30, 35, 38 (Sanderson and Fisher (2013)).

This same pattern of misrepresentation continues with Grigione et al. (2007). Although Grigione et al. (2007) identify 20 reports of jaguars from Arizona as "reliable," as shown previously and again here (Coping, 2017), only 8 actually are reliable for habitat modeling. Moreover, although Grigione et al. (2007) claims it followed the system developed by Girmendonk (1994), review by Coping (2012, 2017) proves that Grigione et al. (2007) did not.

Further, Grigione et al. (2007) also misrepresents Hoffmeister (1986) to support its additional claim of the existence of a former breeding population of jaguars in Arizona. In point of fact, however, Hoffmeister (1986) neither supports nor stands for that claim. Instead, Hoffmeister (1986 at p. 519) actually states: "*Supposedly* a female with two cubs were taken in the Grand Canyon area, and a female and a cub were taken at the head of Chevelon Creek, Coconino County," and further states (at p. 520) that those reports are *not based on preserved specimens*. Finally, despite Grigione et al.'s further representation to the contrary, neither AGFD nor NMDGF recognize the existence of any scientifically verifiable jaguar breeding record in either Arizona or New Mexico.

Nonetheless, in the draft recovery plan, the USFWS cites Grigione et al. (2007) and McCain and Childs (2008) for the proposition that female jaguars with young are "proof" that there was once

a breeding population of jaguars in Arizona (at p. 11), despite the lack of mooring of that claim to any verifiable scientific evidence whatsoever.

Moreover, beginning with its inordinate reliance on Grigione et al. (2009), the USFWS drops any pretense of this draft recovery plan's mooring to the practice of sound science altogether. Instead the USFWS, through use of this draft recovery plan, replaces the ESA's requirement of use of *solely* the best scientific information available with nothing more than *opinion* derived from Delphi process consensus further imposes use of the equally unscientific but pronouncedly philosophical / theological "principles" of conservation biology as the actual basis for both its content and development – not by use of its own recovery plan guidelines, but by use of 2010 "interim" guidelines developed by the National Marine Fisheries Service (NMFS) incorporating those principles' use (p. 71, 75, 143, 172).

These facts are graphically illustrated at pages 37 – 40 of the draft recovery plan in the form of the USFWS's improper reliance on Grigione et al.'s (2009) construction of a "blueprint" of priority conservation areas for jaguars, ocelots, and jaguarundis in the U.S. – Mexico border region as both the framework and the nuclear basis of its content. According to the USFWS, for purposes of this draft recovery plan's development, use of scientifically verified records of jaguars for either Arizona or New Mexico – or *solely* the best scientific information available -- is neither necessary nor required. Instead, that requirement is replaced by a "compilation of reliable sightings," posited as "Class I jaguar sightings" based solely on the ***opinions*** of 29 "scientists and conservationists" generated by Grigione et al. (2009), and augmented by the USFWS in 2011 by responses to questionnaires including corridors and connectivity (p. 33), through use of the pronouncedly unscientific Delphi deliberative process.

This kumbaya (for lack of a better word) consensus by opinion process led to the acceptance of 20 "Class I jaguar sightings" for Arizona and 8 for New Mexico by Grigione et al. (2009), which then used these opinion-derived numbers for GIS-based jaguar habitat modeling -- despite the facts that only 8 of these newly-minted "Class I jaguar sightings" for Arizona and only 3 for New Mexico actually have reliable enough location data and are actually supported by sufficient physical evidence to allow for scientifically credible jaguar habitat modeling purpose. Grigione et al.'s (2009) and the USFWS's shameful abuse of the actual practice of science and sound scientific methodology in developing this draft recovery plan, however, doesn't stop there.

Instead, as the draft recovery plan also plainly reveals, these 29 "participants" were asked by Grigione et al. (2009) to provide, and provided, information on the distribution of the jaguar and each of the other two species (i.e., ocelots and jaguarundis) as well as being asked to delineate and describe specific areas in the border region where historical and recent "sightings" have occurred (which resulted in the 20 so-called "Class I sightings" for Arizona and the 8 for New Mexico mentioned above) (p. 37). After that exercise was completed, this same group was then asked to identify important habitat areas, dispersal corridors, required or existing underpasses, and to characterize habitat areas and corridors (p. 37).

Next, each participant was also asked to delineate "Cat Conservation Units" and "Cat Conservation Corridors" for their area of knowledge onto maps. These "units" were defined – based solely on opinion – as habitat areas "important to the long-term survival of a species, often

where populations are currently located or areas likely to support ***relocated populations***." These "units" were then "ranked" by connectivity between the unit and other habitat area, habitat quality, size, hunting of felids, hunting of prey, population status, threats from roads, effectiveness of protection, and human density in ***and around*** the unit (p. 37).

Corridors were defined (or more properly stated, "opined") as strips of habitat connecting otherwise isolated units that had "documented" (now meaning merely written down) Class I sightings. These "units" were then "ranked" by "continuity of connectivity," habitat quality, width, length, hunting of felids, hunting of prey, gaps / ***barriers***, threats from roads, effectiveness of protection, and human density in ***and around*** the corridor. (p. 37).

Each of the participants was then asked to rank these factors by importance from 1 (most important) to 9 (least important) for each species. All resulting units and corridors were ranked into "prioritization categories" of very high, high, and moderate conservation importance, and, if there was only one unit or corridor in a bioregion, it was given a priority of very high (p. 37) – based on nothing more than assumption and opinion obtained by use of this pronouncedly unscientific exercise.

Nonetheless, Grigione et al. (2009), based on the use of this decidedly unscientific exercise, concludes that the U.S. – Mexico border fence presents a challenge, both in terms of survival and movement, to jaguars trying to reach the U.S. (Draft Recovery Plan at p. 37), or the areas of southeastern Arizona and southwestern New Mexico that the USFWS has designated as critical habitat (in 2014) "essential" to the jaguar's existence as a species by misuse of precisely the same, unscientific methodology. (p. 40). Moreover, the USFWS doubles down on opinion to identify "essential" international corridors for jaguars between the southwestern United States and Mexico, which it then attempts to sanitize by use of GIS modeling provided by Stoner et al. (2015) in this draft recovery plan (p. 39).

The data laundering performed by Stoner et al. (2015) provides even further, important example of just how counterfeit, insidiously unscientific and breathtakingly absurd this draft recovery plan actually is. In fact, Stoner et al. (2015) used "electrical circuit theory," no less, to theoretically model jaguar movements between habitat patches identified by Sanderson et al. (2013) who, as previously shown, relied on nothing more than opinion to identify those habitat patches in the first place.

Nonetheless, the USFWS misrepresents Stoner et al. (2015) as providing scientific justification for at least seven of this draft recovery plan's key propositions: as providing a better understanding of habitats and habitat linkages that have been or might be used by jaguars (p. 34); as a basis for predicting jaguar corridors and locations where jaguar movement may be obstructed by transportation infrastructure (p. 39); as the basis for identifying locations where construction of "jaguar crossings" on Arizona State Routes 82 and 83 at a cost of $15,488,000 are needed (p. 107, 108, 145); as defining the minimum size of habitat blocs needed to support a breeding population of jaguars in each bloc (p. 40); as the basis for mapping of habitat connectivity and roadways of interest not only in the U.S. (p. 187, Fig. 4), but throughout the remainder of the NRU as well (p. 188, 189, 190, 191, Figs. 5, 6, 7, 8, respectively); as identifying two primary jaguar corridors or "linkages" going from the Sonora Core Area to the

U.S. border (p. 89); and, as specifically identifying and mapping three "essential" jaguar corridors crossing the U.S. – Mexico border at the Pajarito, and Patagonia / Huachuca Mountains in southern Arizona, and, the Peloncillo mountains in Arizona and New Mexico (p. 39, p. 187, fig. 4, p. 188, fig. 5, p. 189, fig. 6).

Further, the USFWS claims in this draft recovery plan that minimal to no human population, no stable night-time lighting, no major roads (p. 41), and a permeable U.S. – Mexico border fence (p. 44, 55) are also essential components of these international jaguar corridors or "trans-border linkages" identified and mapped by Stoner et al. (2015).

According to the USFWS, these areas of the NRU encompassing southeastern Arizona and southwestern New Mexico (and the NRU itself, for that matter) are "essential" to the existence or conservation of the jaguar as a species based on Grigione et al. (2009) and Stoner et al. (2015) as augmented by the USFWS's equally unfounded reliance on the "principles of conservation biology" (p. 75). The USFWS reaches this determination despite Sanderson's and Fisher's (2013) conclusion, notwithstanding its use of this same unscientific methodology, that the Borderlands sub-unit of the NRU in Arizona and New Mexico is capable of a maximum carrying capacity of *just 6 jaguars* (sex unspecified), or less .01% of the jaguar's range-wide population, *collectively*. (Sanderson and Fisher, 2013 at p. 41)

In sum, the Delphi process employed by the USFWS both in the development of this recovery plan and its designation of critical habitat for jaguars in southeastern Arizona and southwestern New Mexico is nothing more than opinion masquerading as "science." Moreover, that process can be best described as "Delphi Black Magic," as former endangered species coordinator for the AGFD, Terry Johnson, aptly labels it (*See:* Johnson email dated January 27, 2011, attached), and as the PNRCD et al. reiterates in agreement with that appropriate description here.

Accordingly, because Delphi process opinion is not science, both this draft recovery plan and the rule designating critical habitat for the jaguar in the southwestern United States derived from its unscientific misuse must be immediately withdrawn. Moreover, because the principles of conservation biology are not science either, as is clearly revealed below, and because use of the Delphi process and imposition of the principles of conservation biology are inextricably joined at the hip, both that rule and this draft recovery plan must be immediately withdrawn for this added reason as well.

The Draft Recovery Plan Must Also be Withdrawn Because the Principles of Conservation Biology Are Philosophical / Theological in Nature and do Not Qualify as Scientific Data Per Requirement of the Endangered Species Act

As shown previously herein, the USFWS imposed the use of the so-called fundamental "principles of conservation biology," joined at the hip with the use of "Delphi process opinion," as the nuclear basis and framework for the development of this draft recovery program for the jaguar. In point of fact, use of Delphi process opinion is so rooted in practice to the USFWS's overarching imposition of the so-called principles of conservation biology as the basis for this

draft recovery plan's framework and development, both in 2012 Recovery Outline (at p. 20) and in the current draft recovery plan before us (at p. 72), that the two are inextricable.

Moreover, the principles of conservation biology, like Delphi opinions, are not, and do not qualify as, scientific data. Rather, the principles of conservation biology, like Delphi opinions, are entirely speculative, value-laden beliefs that cannot be described as scientific data at all. This is because those principles conversely rely on key assumptions and incorporation of a variety of emerging interdisciplinary perspectives in the social sciences for their existence. (Conservation Biology, Stanford Encyclopedia of Philosophy, Thu Nov 25, 2004; Conservation Biology, Vol. 18, No. 5, 1180-1190, October 2004; PNRCD et al. comments of August 14, 2012).

Further, because assumptions and perspectives (i.e., emerging interdisciplinary perspectives in the social sciences) are, in fact, speculation by definition, and because use of speculation cannot serve as a basis for triggering the ESA's protections, the USFWS's use of these so-called "principles" as the biological or scientific basis for developing this draft recovery plan is precluded by the ESA.

That the speculative nature of "conservation biology" presents a huge, if not entirely fatal, scientific credibility problem, is acknowledged by the conservation biology community itself. While, on the one hand, the ESA demands that science specify all actions taken under the ESA, on the other hand, "[t]hirty years later, a haphazard mix of science and societal values continues to drive biodiversity conservation (Czech and Krausman 2001), and setting quantitative objectives for imperiled species remains contentious, even for well-studied species like Pacific Salmon (Peery et al. 2003)." (BioScience, October 2005, Vol. 55, No. 10: 835-849). Further, "[c]onservation biology is confronted with the pitfalls such as: lack of exploration in underlying mechanism, too few or no field experiment[s], no control experiment in the field; consequently, the theoretic frame of the science branch is not sound." (*Status quo, challenges and strategy in Conservation Biology*, Biodiversity Science, 2009, Volume 17, Issue (2): 107-116).

Moreover, "[a]lthough relatively simple in concept, it is remarkably difficult in practice to justify appropriate thresholds for representation, resilience, and redundancy (the three Rs) – a problem central to quantitative objective setting." (Bioscience, October 2005, at p. 847). "One of the remaining challenges in conservation objective setting is to document the benefits of successful efforts and the consequences of mistakes. Currently, we have few examples that can verify either. Conservation biologists must advance the science of objective setting so that we can objectively assess the outcomes of these efforts. This is critical if we are to effectively link science with government policy in a way that can survive the tests of the courts." (*Id.*).

The latter is wishful thinking, however, because the three Rs of conservation biology are actually much more representative of theological practice by virtue of their rooting in value-laden beliefs than any semblance of connection to the practice of actual science. Indeed, central to the theology of conservation biology is the belief that a substantial number of its principles – including the three Rs the USFWS has improperly used as the framework for developing this draft recovery plan – "are not simply empirical facts or theoretical predictions, but are desired outcomes based on value-laden beliefs." (Conservation Biology, Volume 18, No. 5, October

2004 at p. 1181; *The Gospel According to Conservation Biology*, June 1, 2007, Robert H. Nelson, Philosophy and Public Policy Quarterly).

In short, the USFWS's reliance on the so-called principles of conservation biology, associated Delphi process generated opinion, and misrepresentation thereof as suitable substitutes for both actual scientific practice and the actual scientific record of jaguar presence in Arizona and New Mexico, is neither responsible nor scientifically credible. Nor is that reliance consistent with the ESA's requirement that the USFWS rely ***solely*** on the best scientific information available when designating critical habitat or developing recovery plans thereunder. By choosing to ignore that requirement, as it did before in designating critical habitat, and as it does again here in the development of this draft recovery plan for the jaguar, the USFWS exposes itself not only to possible ESA challenge, but to additional Establishment Clause challenge as well.

That the USFWS has, in fact, done so, both then and now, is evidenced by September 13, 2012, letter to "interested parties" written by Mr. Steve Spangle of the USFWS (incorporated herein in entirety by reference thereto):

> "Our identification of areas proposed for critical habitat designation was informed by the Recovery Outline for the jaguar that was recently completed by a Service-assembled, binational team of scientists. The team relied on a scientific population viability analysis and habitat viability analysis for the jaguar in the northern extent of its range in Mexico and the U.S."

As shown graphically in previous comment section relative to "habitat viability analysis," and by the following relative to "population viability analysis" (PVA), neither of these "analyses" can possibly be described, as Mr. Spangle nevertheless attempts to do, as being either "scientific" or "scientifically developed in nature."

Instead, as this draft recovery plan admits, the reliability of the PVA developed specifically for the "Borderlands" subunit of the NRU is at best "questionable" because some of the input parameters used by Miller (2013, 2014), were "estimated" based on "assumptions" (p. 43), expert "opinion" and use of limited data (p. 97), or in the absence of any scientific data at all (p. 43). These facts alone render the Miller (2013, 2014) PVA for the Borderlands subunit unreliable, unscientific and therefore unfit for use here by ESA definition.

Nonetheless, the USFWS attempts to sanitize or launder its misguided use of opinion and theology under the guise of "Population Viability Analysis" or PVA computer modeling performed by Miller (2013, 2014) in the "U.S. – Mexico Borderland Secondary Area" as "scientific" justification for the many claims it makes, and actions it proposes as "essential" to the survival of the jaguar as a species in this draft recovery plan. For example, the USFWS cites Miller (2013) as reporting that establishment of a jaguar population in the Mexico and U.S. portions of the Borderlands Secondary Area depends on three basic aspects: 1) a demographically robust core source population in Sonora, 2) suitable habitat in northern Sonora to maintain jaguars in the long-term and provide key dispersal corridors to the international border, and 3) ***a permeable border between the Mexico and U.S. portions of the Borderlands Secondary Area*** (p. 43, 44).

The USFWS reaches this conclusion relative to border permeability despite the fact that the Miller (2013) analysis conversely shows that conditions are not currently favorable for establishing a long-term viable population of jaguars in the northernmost (U.S.) portion of the so-called Borderlands Secondary Area, most likely due to low numbers of jaguars of jaguars in the Mexico portion of the Borderlands Secondary Area, relatively low levels of jaguar dispersal across the U.S. – Mexico border, and habitat-mediated limitations to long-term robust population growth in the U.S. portion of that area (p. 44). Moreover, the USFWS reaches this conclusion despite the further fact that Miller (2013) also reports that it is likely existing jaguar populations within the NRU as a whole, like the northernmost of which that is found 140 miles south of the U.S. in Sonora, are currently and can remain viable in the future (p. 44).

Nonetheless, despite these findings, both the USFWS and Miller (2013) oppositely *speculate* that jaguar "populations" in the "northern reaches" of the NRU, or in the U.S. portion of the Borderlands Secondary Area, may be able to expand and become important contributors to metapopulation viability if suitable habitat remains available in sufficient quantity to support a breeding population of adults over time (p. 44). There are several fatal facts, however, that directly refute these speculations, not the least of which is the previously stated fact that there is no verifiable scientific evidence that any "population" of jaguars exists or ever existed in this area. (*See:* Coping, 2017, attached).

Moreover, there is no evidence of any actual jaguar population (or one containing females) within 140 miles of the U.S. – Mexico border. Instead, as both the PNRCD et al. and the AGFD have iterated and reiterated on numerous occasions, only lone, transient, male jaguars have been recorded occasionally on the U.S. side of the international border with Mexico over the course of more than fifty years, and there is absolutely no scientific evidence, whatsoever, that any of those lone, male transients have contributed anything genetically to so-called "metapopulation viability."

Further, lack of any scientifically verified breeding records of jaguars in either Arizona or New Mexico, no record of any naturally-occurring female jaguar from New Mexico ever, and no more than a handful of likely naturally-occurring females from Arizona – the last of which occurred in 1949 – conclusively shows, based <u>*solely*</u> on the best scientific information available, that jaguars are, at most, of barely peripheral, rather than "secondary," occurrence in either of these states. (*Id.*).

In seeming recognition of these irrefutable facts, the USFWS states at page 89 of the draft recovery plan that "[i]t may be possible to recover jaguars in the NRU even if no breeding population occurs in the Borderlands Secondary Area," before qualifying that conclusion with the speculation that "evolutionary and adaptive capacity of the species may require recolonization of the Borderlands Secondary Area" "under some future climate conditions." (p. 89). While the first part of this conclusion is in keeping with the best scientific information available, the second is not because it is impossible to "recolonize" an area that lacks scientific evidence of colonization by jaguars in the first place. Moreover, the second part of this qualification relating to climate change is actually nothing more than sheer speculation refuted

by the best scientific information available. (*See:* PNRCD comments & attachments of August 14, 2012).

Nonetheless, based on nothing more than the use of opinion and value-laden beliefs, the USFWS speculates that the so-called Borderlands Secondary area is "essential" to the jaguar's survival as a species because individuals dispersing to that area "occupy habitat that serves as a buffer to zones of regular reproduction and are potential colonizers of vacant range, thereby maintaining normal demographics, as well as allowing for possible range expansion," and because, additionally, "populations at the edge of a species' range, such as those in the NRU, play a role in maintaining the total genetic diversity of a species." (p. 89). The USFWS then concludes, by use of this incredibly circular and speculative argument, that trans-border connectivity in the Borderlands Secondary Area is an important or essential component of jaguar recovery in the NRU because "consideration of the spatial and biological dynamics that allow this unit to function and that benefit the overall unit is prudent." (p. 89).

As stated previously, however, there is no scientific evidence indicating that any of the occasional, lone male, transient jaguars that have visited either Arizona or New Mexico have ever played even a minimal role in "maintaining the total genetic diversity" of the jaguar as a species. (*See:* AGFD comments of October 19, 2012). Nor are "spatial and biological dynamics" scientific data, any more than the concept of "trans-border connectivity" is, regardless of how "prudent" for use in this draft recovery plan the USFWS believes either to be. Accordingly, both the USFWS's identification of the Borderlands as an area of "secondary" importance to jaguar survival (p. 76 – 77) and subsequent identification of three corridors of U.S. – Mexico "trans-border connectivity" (p. 89, Figure 4) based on the same use of nothing more than opinion and speculation does not withstand even minimal scientific scrutiny.

Similarly, for the reasons plainly stated above, conducting further, periodic population viability analyses in the so-called Borderlands Secondary Area as new information is acquired (p. 97) will do absolutely nothing to remedy these fatal, scientific shortcomings. Accordingly, the **$250,000** in taxpayer money the USFWS proposes to spend on this decidedly unscientific endeavor over the course of the next 45 years at the rate of $25,000 every five years until 2061 (p. 124) is also precluded by the ESA because, as conclusively shown herein, that expenditure is based on nothing more than opinion and value-laden beliefs (i.e., principles of conservation biology) falsely posited by the USFWS in this draft recovery plan as "science."

In sum, for these additional factual reasons, this Draft Recovery Plan for the jaguar must be immediately withdrawn. Moreover, as shown below, this Draft Recovery Plan must also be immediately withdrawn because it presents a clear and present danger to the security of the United States and its citizens as well.

The Draft Recovery Plan Must be Immediately Withdrawn and Critical Habitat Rule Underpinning Must Be Vacated Because the Unimpeded Trans-Border Corridors Identified in Both Present a Clear and Present Danger to the Security of the United States and Its Citizens in the Absence of Scientific Support

As shown conclusively above, the supposed need for unimpeded trans-border corridors or linkages is based on nothing more than opinion joined at the hip with imposition of value-laden beliefs, rather than based solely on the best scientific information available as the ESA actually requires. Moreover, because the alleged need for such unimpeded "trans-border linkages" or corridors is unlikely to facilitate the presence of any more than six jaguars (sex unspecified), or less than .01% of the jaguar's range-wide population, over the course of the next fifty years according to the USFWS's own estimate, this draft recovery plan's attempt to establish such linkages anyway cannot be rationally described as either necessary or essential to the recovery of the jaguar or the jaguar's overall survival as a species.

Indeed, the USFWS admits as much in this draft recovery plan when it states that "conditions are not currently favorable for establishing a long-term viable population of jaguars in the northernmost portion of the NRU, most likely due to low abundance of jaguars in the Mexico portions of the Borderlands Secondary Area, relatively low levels of dispersal across the U.S. – Mexico border, and habitat-mediated limitations to long-term robust population growth in the U.S. portion of the NRU" (p. 44). Moreover, as the USFWS also admits, "[i]t may be possible to recover jaguars in the NRU even if no breeding population occurs in the Borderlands Secondary Area" (p. 89). Accordingly, by the USFWS's own admissions, neither this recovery plan nor the designation of critical habitat for jaguars in Arizona and New Mexico can possibly be described as either "necessary" or "essential" to the survival of the jaguar as a species.

Since unimpeded trans-border linkages or corridors are admitted by the USFWS as being neither necessary nor essential to jaguar recovery or survival, one might reasonably ask at this point *why* the USFWS is attempting to persist in establishing them anyway? The PNRCD et al. submits that the answer to this question is unavoidably simple: that the actual purpose of these corridors is not to perpetuate jaguars through "connectivity," as the USFWS claims repeatedly in this draft recovery plan, but is, in fact, to perpetuate open border political policy, through the backdoor, by abuse of the ESA through the imposition of this decidedly unscientific draft recovery plan. Moreover, as shown graphically below, the USFWS's attempt to do so by use of this draft recovery plan presents a clear and present danger to both the security of the United States and to the security of its citizens.

This is because, according to the USFWS, at least two or more trans-border linkages (p. v, 82, 89), that are non-overlapping in geographical scope (p. 80) and that are sufficient to allow natural jaguar dispersal clear of impediments and sufficiently protected within the corridor such that jaguar passage is attainable (p. xiii), *will be maintained* throughout the Borderlands Secondary Area (p. 82,104). Moreover, the USFWS also states that it will use agency policies and regulations, including those pertaining to transportation, land use, and landowner agreements in the U.S. and Mexico sufficient to ensure landscape (= border) permeability (p. 82, 104, 133, 137, 138,139), and that it will further implement strategies for "mitigating impediments" in the corridor as one of the many conditions that must occur before delisting of the jaguar in the

United States can even occur (p. 88, 89) – not at its discretion, but at the discretion of the nongovernmental organization, the IUCN, it also attempts to cede U.S. authority over its southern border to by use of this supposedly "legally non-binding" document (p. xii).

Further, according to the USFWS, among the "impediments" requiring "mitigation" prior to any consideration of delisting are those posed by the construction and maintenance of border infrastructure including pedestrian and vehicle fences, towers, and roads; illegal activities; law enforcement response to illegal activities in the form of increased human presence, vehicles, and night-time lighting (p. 37, 41, 46, 54, Appendix C, pp. 92-93); and, any other activity that the USFWS and its IUCN partner might view as diminishing the permeability of the border between the United States and Mexico (p. 44).

Among the latter, the USFWS also identifies additional "threats" to jaguars in these unimpeded international corridors (and other areas of Arizona and New Mexico as well) that may require mitigation as specifically including: shared water resources (p. 1), changes in numbers or distribution of species preyed upon by jaguars (p. 1), mining (p. 74), human development (p. xii), the presence of both state and interstate highways (p. 36, 40), urban expansion (Appendix C, p. 92-93), large landscapes dominated by cattle ranching without large, livestock-free areas set aside for jaguars and prey (*Id.* at p. 92), hydrocarbon extraction (*Id.* at p. 93), reservoirs (*Id.* at p. 93), agricultural crops (*Id.* at p. 92-93), and, direct killing of jaguars (*Id.* at p. 93) – although this has not occurred, except by so-called jaguar "researchers," in over thirty years.

To "safeguard" these unimpeded international corridor, "trans-border linkages" from all of the threats and impediments it identified above (p. 101), the USFWS also seeks to establish "community vigilance groups" to monitor and "protect" jaguars in Arizona and New Mexico (p. 109, 110, 149, and explained on p. 48-49 as currently implemented in Mexico). If the USFWS's actual intent was to appropriately delegate authority to monitor and protect jaguars, however, then (as shown succinctly above) it would have specifically identified the NRCDs of Arizona and SWCDs (soil & water conservation districts) of New Mexico as the actual entities most uniquely and directly qualified to perform those tasks in this draft recovery plan.

But this, the USFWS does not do. Instead of even mentioning the NRCDs and SWCDs, or those agencies of state government most uniquely qualified to actually monitor and protect jaguars, anywhere in this draft recovery plan, the USFWS opts to indulge instead in the creation of non-governmental "community vigilance groups" that are neither accountable to anyone nor uniquely qualified to perform either of these tasks. Nonetheless, the USFWS plans to force taxpayers to gift these non-governmental vigilante groups **$12,954,000** at the rate of at least $254,000 / year for the next five years, and at the further rate of at least $51,000 / year for no less than five such vigilante groups in Arizona and New Mexico (p. 120, 121, 149).

Moreover, the USFWS proposes all of the above while failing to mention at all in this draft recovery plan that Fort Huachuca -- the home of the U.S. Army Intelligence Center and the U.S. Army Network Enterprise Technology Command (NETCOM / 9th Army Signal Command, no less – is located no more than a stone's throw away from and in the direct path of one of the major unimpeded trans-border linkages it identifies in this draft recovery plan as "essential" to jaguars (p. 187, Fig. 4, attached). Nor does the USFWS mention the further fact that nothing

more than a 4-strand barbed wire, international boundary fence actually exists in Fort Huachuca's immediate vicinity.

Neither does the USFWS mention anywhere in this draft recovery plan the additional facts that the "trans-border linkage" corridor it would establish in the immediate vicinity of Fort Huachuca is, in fact, already a major corridor for both drug and illegal immigration smuggling operations, or that the Mexican drug cartels are now working with jihadists dangerously close to the NETCOM / 9th Army Signal Command's headquarters as well. (*See:* Judicial Watch reports, attached). Nor does the USFWS mention that another of the corridors it identifies, that west of Nogales, is also already a major corridor for both drug and illegal immigration smuggling operations. Nonetheless, this draft recovery plan threatens the very existence of the centuries-old ranches located there by attempting to take those ranches' ability to use the "shared" waters they developed and by setting aside vast swaths of their ranges as "livestock-free areas" ostensibly for use by jaguars and their prey exclusively.

In effect, the USFWS claims by use of this draft recovery plan that the establishment of at least two, unimpeded trans-border linkage corridors that could possibly benefit a maximum of just 6 jaguars (sex unspecified) in Arizona and New Mexico combined – where jaguars have never been verified to have bred or resided more than transiently – outweighs national and private citizen security. Nonetheless, the USFWS claims that these trans-border linkage corridors are essential to the survival of the jaguar as a species in Mexico and each of the other 17 other sovereign nations stretching into South America where jaguars *do* actually breed and reside.

As shown herein, the USFWS's claim of necessity of unimpeded U.S. / Mexico trans-border linkage corridors for the jaguar is utter nonsense unsupported by even a scintilla of solely scientific information or scientific evidence derived therefrom. As also shown clearly herein, the USFWS is attempting to use this claim and this draft recovery plan not to perpetuate jaguars, but to perpetuate globalist, open borders political policy for at least the next fifty years by its unconscionable ceding of authority, and thus our sovereign right to secure and protect our southern border from illegal invasion, to an international nongovernmental organization (the IUCN) as the means to affecting that very outcome.

Accordingly, this draft recovery plan must be immediately withdrawn because it also presents a clear and present danger to the security of the United States and its citizens while providing absolutely no benefit essential to the survival of the jaguar as a species.

Conclusions

As shown clearly herein, the draft recovery plan for the jaguar must be immediately withdrawn because it fails to comport with the ESA's requirement of basis on *solely* the best scientific information available, the ESA's requirement of cooperation with the PNRCD and SCNRCD in its development, and the ESA's further requirement that the jaguar must likely be benefited in terms of range-wide survival as a species by virtue of recovery plan development. As shown conclusively above, this draft recovery plan fails to meet each and every one of these requirements of the ESA.

As further shown conclusively herein, this draft recovery plan for the jaguar must also be immediately withdrawn because it presents a clear and present danger to national and citizen security while providing absolutely no benefit that can be reasonably described as either necessary or essential to the jaguar as a species. As shown clearly in the comments presented above, the draft recovery plan presents such clear and present danger by attempting to prioritize open borders for jaguars over national security, by its ceding of United States authority and control over two or more areas of its southern international border to an international NGO, and, by creating community vigilante groups to enforce and perpetuate that prioritization.

As also shown clearly above, one of the unimpeded trans-border linkage corridors misidentified as "essential" to jaguar survival instead presents a clear and present danger to United States security because it is located in the direct path of, and no more than a stone's throw away from, Fort Huachuca -- home of the U.S. Army Intelligence Center and the U.S. Army Network Enterprise Technology Command (NETCOM) / 9th Army Signal Command, no less. Another, west of Nogales, while also currently a major corridor of drug and illegal smuggling, additionally threatens the existence of centuries-old ranches in that area by attempting to take those ranches' ability to use the shared waters they developed and by setting aside vast swaths of their ranges as "livestock-free areas" ostensibly for use by jaguars and their prey exclusively.

Further, this draft recovery plan must also be immediately withdrawn because, as the USFWS well knows, a moratorium or freeze now exists on its proposal or finalizing of any new regulations. Nor can the USFWS claim that this draft recovery plan is immune to this moratorium by offering the excuse that such is a "legally non-binding document," because first, the Congressional Review Act (CRA) of 1996 includes guidance documents such as this within its definition of what a rule is, and second because, as also clearly shown in comment, the USFWS oppositely seeks to use this draft recovery plan not only to cede U.S. sovereignty and control over its southern international border, but also in a highly regulatory manner – as both the authoritative source of scientific information on jaguars and to trigger a plethora of new regulatory activities.

Finally, this draft recovery plan must also be immediately withdrawn because the Executive Order on Border Security and Immigration Enforcement Improvements of January 25, 2017 directs the Secretary of Homeland Security to invoke the Secure Fence Act of 2006 (Public Law 109 367) to facilitate the immediate securing of our southern international border, thus eliminating all of the open, unimpeded trans-border linkage corridors on which this draft recovery plan otherwise depends for its existence.

As also shown conclusively by the overwhelming evidence presented herein and in attachment, the Secretary has every justification to do so without need of any "mitigation," whatsoever, to properly address the immediate, clear and present danger to national and citizen security this unscientific and sovereignty-ceding draft recovery plan for the jaguar truly and actually represents.