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**Via Certified, Signature-Required Priority Mail**

August 14, 2012

Mr. Steve L. Spangle  
Field Supervisor  
Arizona Ecological Services Office  
U.S. Fish & Wildlife Service  
2321 West Royal Palm Road, Suite 103  
Phoenix, AZ 85021-4951

***Re: PNRCD Response to “Recovery Outline for Jaguar (*Pantera onca*)” Issued April 16, 2012, and Letter from the Service dated June 19, 2012***

Dear Mr. Spangle,

By this letter and its attachments, the Pima Natural Resource Conservation District (PNRCD), an Arizona State agency of natural resource management jurisdiction, responds to and offers comments on the “Recovery Outline for the Jaguar (*Pantera onca*)” issued by the Fish & Wildlife Service on April 16, 2012. The Pima NRC D also takes this opportunity to respond to your letter of June 19, 2012, signed for you by Jean A. Calhoun, in response to the PNRCD’s request for more specific information about the approximate range of current jaguar residency claimed by the Service in the United States. Both are specifically addressed below.

In addition to these specific comments, the PNRCD also takes this opportunity to provide the Service with new and important information relevant to both the historic record of jaguar presence in Arizona and the characterization thereof by Brown (1983). Further, the PNRCD takes note of and directs the Service’s attention to false and misrepresentative claims published to the Service by Johnson, Van Pelt and Stuart, in footnote of their 2011 *Jaguar Conservation Assessment For Arizona New Mexico and Northern Mexico* cited by the Service in its April, 2012, jaguar recovery outline.

Finally, the PNRCD also takes the opportunity presented here to further protest and document for the administrative record the Service’s continuing refusal to coordinate with the

PNRCD under NEPA, to cooperate with the Pima NRC under the ESA, and the Service's continuing refusal to provide the PNRCD with any reason for refusing to do either, under claim of absolute attorney-client privilege (see attached), in the development of both the recently released jaguar recovery outline and the soon-to-come draft proposal of critical habitat for it.

***A. Neither the Letter of June 19, 2012, Nor the Jaguar Recovery Outline of April 16, 2012, Provide Any Scientific Data Supportive of the Service's Claim That Jaguars Currently Reside in the United States***

Recent, documented sightings of four or five jaguars, two of which occurred over a decade and a half ago, are not scientific evidence of past or current jaguar residency in the United States. Neither does the sighting of a single male jaguar in the Whetstones on one occasion in 2011 constitute such evidence. Nor do these sightings of lone, transient males suggest that any area in the United States provides habitat essential to the jaguar's existence as a species either at the time of its listing or today.

Yet, according to Ms. Calhoun of the Service, these "sightings" nevertheless constitute the scientific basis for the Service's 2010 determination that designation of critical habitat for the jaguar in the United States was prudent. Instead, these sightings – both individually and collectively – are consistent with the historic scientific record of *peripheral*, transient, male jaguar presence over time in this area. In short, these sightings are not scientific evidence of the jaguar's alleged residency in the United States.

Moreover, neither can the Service rely on McCain and Childs (2008) for support of its speculation that jaguars currently reside in the United States as naturally occurring residents. Although the title of that 2008 work – *Evidence Of Resident Jaguars (Pantera onca) In The Southwestern United States And The Implications For Conservation* – indicates otherwise, as the Service acknowledges in recovery outline, the baiting methodology employed by McCain and Childs (2008) in at least a part of the area studied casts doubt on that evidence.

According to the Service, "[b]ecause female jaguar scat was used at some camera traps at various times throughout their research [McCain and Childs (2008)], it is unknown whether or how this could have influenced the observed range of the jaguar in this study." (Recovery Outline at p. 9). 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.

Simply put, because the methodology of studying jaguar residency employed by McCain and Childs (2008) included attraction and artificial location of jaguars by use of potent, jaguar-specific, sexual scent baiting, the Service, cannot claim, as it attempts to do both in June 19 letter and April 16 outline that McCain and Childs (2008) nonetheless provides reliable scientific evidence of "naturally occurring" resident jaguars in the United States. If the opposite were in

fact the case – that such baiting had no effect on this or any other jaguar’s habits, movements or presence in the area -- then it would be reasonable to expect additional jaguar “sightings” in that area of the United States after this baited jaguar’s (Macho B’s) demise in 2009.

This has not been the case, however. Instead, the recovery outline cites no further indication of jaguar presence within this area of the United States since that animal’s unfortunate death in 2009. Thus, the best scientific and commercial information available does not support any claim of current residency of naturally-occurring jaguars in the area north of the border in Arizona studied by McCain and Childs (2008), or in any other area north of the border for that matter.

As a result, none of the 12,386 square miles of the Service’s “Northwestern Recovery Unit” already identified in this recovery outline as occurring in the United States qualifies as a “secondary area” essential to the existence of the jaguar as a species. Instead, because none of this country north of the border connects core areas (as every other “secondary area” does), because there is no evidence of current jaguar residency in this area, because the few breeding records existent for Arizona (3) are more than 100 years old (and may or may not be of animals of naturally-occurring in origin), and because no record of a naturally-occurring female jaguar or record of jaguar breeding exists for New Mexico, jaguars are “peripheral” – not “secondary” -- in their occurrence in this area of the United States.

***B. Class II Sightings Are Not Occurrence Records and the Concepts and Principles of Conservation Biology Are Not Scientific Data***

Representing unverified observations of jaguars in the absence of physical evidence (Class II observations) as reliable “occurrence records,” as this outline attempts to do (at p. 14), is neither responsible nor scientific. Instead, as stated in previous comment, such an approach is irreconcilably flawed by its basis on the unscientific assumption that a viable and reliable scientific model of jaguar critical habitat 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.

Such approach is also irreconcilably flawed by its reliance on kill site, rather than point of initial encounter, to establish both location and habitat of hunted jaguars for modeling of suitable or critical habitat purpose. As shown in attachment, some of these chases went on for days, covered many miles, and included more than one mountain range (see treatment of Colcord jaguar presented in attachment). Therefore, the Service is precluded by the ESA from relying on any models based in whole or in part on the inclusion of unverified, and thus unreliable, Class II observations, and kill site location and habitat derived there from, in designating any critical habitat for the jaguar in the United States. (*see*: PNRCD’s previous September 23, 2010 comments, attached).

Moreover, the Service’s identification of a “northwestern recovery unit” for the jaguar in this recovery outline that includes 12,386 square miles of Arizona / New Mexico, apparently based on nothing more than answers to a questionnaire the Service sent out to jaguar experts,

equally offends the ESA. This is because questionnaire answers are opinions, not scientific data, and therefore form an improper basis for triggering the protections of the Endangered Species Act. Subjecting those opinions to change by subsequent consensus, as appears to be the case here, does not remedy but only compounds that scientific infirmity.

Equally offensive to sound science and the ESA is the Service's claim in recovery outline that the IPCC's (2007) report is "unequivocal" in representing the best scientific and commercial information available relative to climate change or "global warming." Such is not the case. Instead, the IPCC has recently admitted (on June 27, 2012) that its past reports were flawed and a recently journal-published study by Steirou and Koutsoyiannis (2012) shows that 50% of warming claimed by the IPCC is false. (see attachments). Accordingly, the Service cannot rely on IPCC (2007), or the conclusion reached by the American Society of Mammologists based there on, to support its speculations about climate change and the possible effects of "global warming" on essential habitat for jaguars under the ESA because, as shown herein and attachment, that information is both inaccurate and unreliable.

Similarly, the outline's attempt to develop a recovery strategy for the jaguar in the United States based on the concepts and principles of "conservation biology" is also precluded by the ESA. This is because an irreconcilable difference also exists between the Service's use of the concepts and principles of conservation biology and the ESA's Section 4 requirement that it rely solely on the best scientific data available in designating critical habitat for the jaguar. Simply put, concepts and principles, by definition, are not scientific data.

Rather, both the concepts and principles of conservation biology are philosophical or theological, and not scientific in nature, because of their reliance on assumptions and incorporation of a variety of emerging interdisciplinary perspectives in the social sciences. (Conservation Biology, Stanford Encyclopedia of Philosophy, Thu Nov 25, 2004; Conservation Biology, Vol. 18, No. 5, 1180-1190, October 2004). Because assumption is, in fact, speculation, and because speculation cannot serve as a basis for triggering the ESA's protections (*Bennett v. Spear*, 520 U.S. 152, 176-77 (1997)), use of these concepts and principles as the biological or scientific basis for designating critical habitat for the jaguar in the United States is precluded by the ESA.

Moreover, because philosophy (i.e., emerging interdisciplinary perspectives in the social sciences) is not scientific data, the ESA precludes the use of the concepts and principles of conservation biology in developing critical habitat for the jaguar in the United States on that basis as well.

That these scientific shortcomings of conservation biology are, in fact, very serious is acknowledged by the conservation biology community itself. Although the ESA demands that science specify when a species is in need of federal protection, "[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). "Conservation biology is confronted with the pitfalls such as: lack of exploration in underlying mechanism, too few or no field experiment, 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).

That such scientific infirmity extends to the three principles of conservation biology specifically identified for use in this recovery outline, is similarly recognized by the conservation biology community. “[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. . . . 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.” (Bioscience, October 2005 at p. 847).

Scientifically verified assessment of those outcomes is also imperative if the Service is to avoid separate Establishment Clause challenge, and test of the courts, over its use of the principles of redundancy, resiliency and representation in developing both critical habitat and a recovery strategy for the jaguar in the United States. Because the principles of conservation biology, as shown above, are currently belief-driven and imposed almost exclusively in the absence of verified scientific example, those principles are neither scientific nor representative of the best scientific data or information available. They are, however, pronouncedly theological in nature.

Central to the theology of conservation biology, is the belief that a significant number of its principles (including the three Rs) “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). Among those value-laden beliefs is the belief that human alteration of natural ecosystems is invariably negative (Id.) and that “biodiversity,” whatever that term may actually mean, is invariably “good.” (*The Gospel According to Conservation Biology*, June 1, 2007, Robert H. Nelson, Philosophy and Public Policy Quarterly).

In short, the Service’s reliance on theology (i.e., the principles of conservation biology), assumption, opinion, consensus building, and unverified sightings to develop critical habitat for the jaguar in the United States is neither responsible nor scientific. Nor is that reliance consistent with the ESA’s requirement that the Service rely solely on the best scientific data available when designating critical habitat there under. By choosing to ignore that requirement, as it does in this recovery outline, the Service arbitrarily and capriciously exposes itself not only to possible ESA challenge, but additional Establishment Clause challenge as well.

***C. New and Important Information Relevant to Both the Record of Jaguar Presence in Arizona and the Characterization Thereof by Brown and Lopez-Gonzales***

In July, 2012, the Pima NRCDC received a captioned photograph of Red Harris and a jaguar taken by Mr. Harris west of Rio Rico in Arizona from Mr. George R. Proctor (USFS, retired) of Patagonia, Arizona. According to Mr. Proctor, the photograph (see copy attached) was given to him directly by Mr. Harris several years ago and the caption on it was written by Mr. Harris. That caption reads as follows:

“Lloyd F Harris (Red  
Thanksgiving day 1949  
west of Rio Rico AZ”

The importance of this photograph and its caption lies in the difference in the date of this jaguar’s taking as reported on this photograph by Mr. Harris, Brown (1983), and Brown and Lopez-Gonzales (2001), respectively. According to Brown (1983) and Brown and Lopez-Gonzales (2001), this male jaguar was taken on November 23, 1939 (Thanksgiving Day), in Ramanote Canyon, Atascosa Mountains, Arizona. Ramanote Canyon is located to the west of Rio Rico. According to the caption on the photograph given by Mr. Harris to Mr. Proctor, however, this jaguar was taken on Thanksgiving Day 1949, or November 24, 1949.

This new information is both important and relevant because, in addition to the inconsistencies, inaccuracies and omissions documented in attachment (see attachment), it casts further doubt on the reliability of Brown’s (1983) conclusion that records of jaguars killed in Arizona and New Mexico between 1900 and 1980 show a decline characteristic of an over-exploited resident population when plotted over 10-year intervals. Clearly, if Brown (1983) is ten years off on when this jaguar was actually taken, as appears to be the case here, and cannot identify even the year in which others were killed, then it must also follow that his plotting of jaguars killed in Arizona and New Mexico at 10-year intervals is also off and that his conclusion reached there from (i.e., a decline characteristic of an over-exploited resident population is shown) is unreliable. In short, absent evidence proving the opposite – that the Harris jaguar was killed in 1939 and 1949 and that other kills are at the least identified to the years of their occurrence, the Service is precluded by the ESA from relying on Brown (1983) because, as things now stand, that work, as graphically shown in attachment, is both speculative and unreliable.

Similarly, this new information casts doubt on those suggestions about resident populations by McCain and Childs (2008) and Grigione et al. (2007), repeated in the recovery outline, that cite Brown (1983) for support.

***D. False and Misrepresentative Statements Published to the Service by the Authors of the 2011 Jaguar Conservation Assessment For Arizona, New Mexico And Northern Mexico***

Another serious problem which requires addressing here, is that false and misrepresentative statements published by the authors of this 2011 Jaguar Conservation Assessment that have found their way into this recovery outline. Specifically, in footnote 13 of that assessment, the authors attempt to entirely discount previously submitted, September 23, 2010 comments on the jaguar, to which the PNRCD was a party, based in large part on the claim that the supporting documentation for those comments' challenges of the 1963 Penrod and 1964 Culbreath jaguar records was "not available" to AGFD.

That claim, however, is patently false. Instead, as shown in attachment (see attachment), a complete package of those September 23, 2010 comments and their supporting documentation was emailed to Mr. Larry Voyles, Director of AGFD, on October 11, 2010. Therefore, contrary to the claim of those authors, the documentation supporting the September 23, 2010 comments was, in fact, made available to AGFD in October of 2010. As a result, these authors are left with no legitimate excuse for falsely publishing the opposite to the Service in the 2011 jaguar assessment they wrote for AGFD.

Nor do these authors have any legitimate excuse for misrepresenting to the Service what the September 23, 2010 comments actually state – not infer – about the little, imported female jaguar Mr. Prock allowed to escape in New Mexico during the 1972-73 hunts. According to the authors of AGFD's 2011 assessment: "Parker referenced an August 5, 2010 personal communication from Prock from which Parker inferred that a small female jaguar (and perhaps others) released in the 1972-73 NM hunts had not been killed."

That statement is also patently false. Contrary to these AGFD authors' claim, the comments make no inferences. Instead, the September 23, 2010 comments plainly state what Mr. Prock actually said in that August 5, 2010, interview in Texas: that this little female, turned loose and rejected by the hunter, was not recaptured.

Similarly, those comments also plainly state – not infer – what Mr. Prock actually reported about other escapees: that every now and then a jaguar did get away from him on a hunt, but not often. According to Mr. Prock, this usually occurred when a jaguar made it onto land where he wasn't allowed to follow it. As a result, the AGFD authors' misrepresentation of these comments to the Service as inferences, rather than statements, is also wholly inaccurate and equally without basis in fact or excuse.

Further misrepresentative and inaccurate, is these authors' subsequent claim, made immediately following the sentence quoted above, that "[b]ased on Prock's comments, Parker asserted the 1963-64 AZ jaguars taken by Penrod and Culbreath should be rejected as legitimate records. At one point, Parker seemed to imply that a small female jaguar Prock released in the 1972-73 NM hunts escaped and might be the 78 lb female that Penrod killed in AZ in 1963." The September 23, 2010 comments, however, are not written in the context misrepresented to the Service by those authors but instead, when viewed in their actual context, reveal no inference or implication of the sort.

In their actual context, the September 23, 2010 comments reveal that Mr. Prock was of the specific, expert opinion that neither the Penrod nor Culbreath jaguars were naturally-occurring and that both had plenty of help getting to where they got to in Arizona. Those

comments then go on to immediately state that Mr. Prock's expert opinion about the origin of these jaguars is particularly relevant because it provides question of those records, *in addition to* the question presented by the oddity their presence out of habitat referred to by Brown and Lopez-Gonzales (2000), that makes those records unreliable for critical habitat mapping purpose (i.e., the Penrod jaguar is the only record of a jaguar to our knowledge taken out of habitat in spruce-fir forest above 9,500' in elevation, while the Culbreath jaguar was also taken out of habitat for that time of the year -- in high pine forest in January).

Contrary to the false impression published to the Service by the authors of this 2011 assessment, the little, imported female released during the 1972-73 New Mexico hunts is neither mentioned nor discussed in the section of comment relevant to Mr. Prock's opinion about the origins of the Penrod and Culbreath jaguars and why that opinion is highly relevant. Thus, any "implication," seeming or otherwise, that the little female and the Penrod jaguar are one and the same is clearly the false creation of the authors of this 2011 assessment alone.

That such is the case is further proven by the fact, unmentioned by those same authors, that Mr. Prock's expert opinion about the Penrod and Culbreath jaguars as reported in previous comment is, in actuality, not only consistent with, but corroborated by, new, important and highly relevant information about Mr. Prock they themselves provide in this same, 2011 assessment.

According to the 2011 assessment:

"In the White Mountains of east-central AZ, in 1963, a hunter (T. Penrod) killed a small female and in 1964 a government trapper (R. Culbreath) killed a male (Brown and Lopez-Gonzales 2001). AGFD law enforcement officers speculated one or both of the jaguars had been imported for "canned hunts" (hunts involving release of captive animals) by C.J. Prock, a guide who was investigated for canned hunts involving other species of wildlife. The premise was that the Penrod and Culbreath jaguars had escaped from Prock hunts but the jaguar case could not be made (R. Kohls personal communication; R. Thompson personal communication). Prock, who did not guide Penrod or Culbreath, later asserted he had "never let a jaguar get away in Arizona and that is the whole truth" (Brown and Thompson 2010). However, Prock did lead three successful jaguar hunts in southern AZ in 1958-59 and was fined in 1964 in U.S. District Court in Phoenix AZ for violating the Lacey Act by importing mountain lions into AZ and turning them loose for canned hunts (see: Dean 1974; Jones 1974; W. Swank personal communication). Because of the circumstances, all jaguars taken on hunts guided by C.J. Prock were dropped from the occurrence record for AZ years ago (AGFD unpublished data; Brown and Lopez-Gonzales 2001)."

Footnote 11, 2011 Jaguar Conservation Assessment.

Thus, in footnote 11, we learn for the first time that AGFD law enforcement officers involved in the 1964 case presumed the Penrod and Culbreath jaguars were imported by Mr. Prock. This highly relevant revelation casts further doubt on the reliability of the Penrod and Culbreath jaguar records and therefore, per the caution of Brown and Lopez-Gonzales (2000), precludes their use for the purpose of modeling of jaguar critical habitat. Importantly, this highly relevant information is not indicated in any previously published information we have examined to date. Nor was it provided by AGFD to the PNRCD for viewing in response to proper public records request.

Neither is the reliability of either the Penrod and Culbreath jaguar records resolved by these authors' less than satisfactory resort to citation to "Brown and Thompson (2010)" for support of the claim that Mr. Prock later asserted that he had "never let a jaguar get away in Arizona and that is the whole truth." This is because, first, the citation for this quote stated by these authors, Brown and Thompson (2010), is not identified among the "literature cited" by them in this assessment and therefore is not verifiable, and, second, because even if entirely correct, Mr. Prock's alleged assertion says nothing about the little female jaguar he stated he did let go, and others he stated did get away from him, in New Mexico.

Nor does this statement, even if entirely correct, necessarily mean that Mr. Prock did not release or cause the release of any imported jaguars in Arizona because, in our interview experience with him, that would be viewed by Mr. Prock as an entirely different subject from letting a jaguar "get away" on a hunt. In short, it is entirely possible based on the timing of the killings of the Penrod (1963) and Culbreath (1964) jaguars – after Mr. Prock's arrest but before his conviction – that both were intentionally released in Arizona as a means of avoiding the filing of further charges against Mr. Prock.

That imported jaguars were apparently intentionally released into southeastern Arizona by the Lee brothers, and therefore didn't "get away" from them on a hunt, illustrates that point. In footnote 12 of the assessment, we also learn for the first time of an importantly relevant 2008 email subject to PNRCD's previous public record request but also withheld from the PNRCD's viewing by AGFD. The relevance of this footnote to the unreliability of jaguar records currently being used by the Service to model critical habitat for the jaguar in the United States is clear and therefore is presented for the administrative record in its entirety:

12 T.B. Johnson: In a January 2008 email, D. Robertson said that world-famous lion and jaguar hunter Dale Lee had confided to him long ago over a campfire in the Chiricahua Mountains (southeastern AZ) that Dale Lee and his brother [Clell] had "gone down to Guatemala for the Guatemalan government ... and brought back a litter of jungle cats [jaguars], nurtured them to a survivable state, and turned them loose in that area (Twixt Wilcox [sic] and the Chiricahuas [sic].)" Robertson said Lee had sworn him to secrecy and he was only making a "public statement" because Lee "passed in the 1980s" and, now that he was in his own "twilight years," he "felt it was time to say something." To date, I have not found corroborating evidence for Robertson's comments.

Footnote 12, 2011 Jaguar Conservation Assessment

Thus, we learn that jaguars of foreign origin were not only released by jaguar hunters in Arizona for the purpose of immediate hunting, but apparently “seeded” or released in Arizona with the view of creating a population to hunt in the future. While this critically important revelation introduces yet another huge element of doubt highly relevant to the reliability of the jaguar records the Service is currently using to model critical habitat for the jaguar in the United States, incredibly, the Service’s recovery outline doesn’t even mention it.

Instead, we see in the recovery outline that the Service is continuing to act arbitrarily and capriciously despite its receipt of this new, important and highly relevant information by persisting on using the Penrod and Culbreath jaguar records while ignoring all evidence of their unreliability, and, “class II” sightings for which no physical evidence or actual reliability exist, as the “scientifically reliable” basis, no less, from which critical habitat can be accurately modeled for the jaguar in the United States. As shown herein, that continuing practice is irresponsible, unscientific, and contrary to the ESA’s requirement that the Service rely solely on the best scientific data available in designating critical habitat for the jaguar in the United States.

***E. The Service’s Continuing Refusal to Coordinate with the PNRCD under NEPA, to Cooperate with the PNRCD under the ESA, and Its Continuing Refusal to Provide the PNRCD with any Reason for Refusing to Do Either Under Claim of Absolute Attorney-Client Privilege***

Finally, the PNRCD also takes the opportunity afforded here to strongly protest and document for the administrative record the Service’s continuing refusal to coordinate with the PNRCD on the development of critical habitat for the jaguar under NEPA, its continuing refusal to cooperate with the PNRCD on that matter under the ESA, and its continuing refusal to provide the PNRCD with any reason for refusing to do either under claim of absolute attorney-client privilege. (See attachments).

While the recovery outline (at p. 45) recommends that the Service collaborate with the Departments of Transportation, regional transportation authorities, landowners, Department of Homeland Security, county planning offices, and others to voluntarily include jaguar conservation in their plans and activities, such collaboration has not been extended to the PNRCD by the Service despite the PNRCD’s status as a local state agency of resource management jurisdiction that develops natural resource management plans in Pima County, Arizona. Instead, the Service’s relationship with the PNRCD regarding the development of critical habitat for the jaguar in the United States has been anything but collaborative or cooperative. (see attachments).

This is despite the fact, as the PNRCD now learns from the recovery outline (p. 15) that, based on answers to a questionnaire sent out by the Service, water for jaguars must be made available within 10 km (6.2 miles) year round for “high quality” jaguar habitat to exist in the American Southwest. At the least, this requirement raises further and important water resource

issues, which in turn, *requires* the Service to cooperate with the PNRCD to resolve those water resource issues in concert with developing critical habitat for the jaguar under Section 2(c)(2) of the ESA. Nonetheless, despite such clear direction by Congress, the Service has refused and is continuing to refuse to cooperate with the PNRCD to resolve water resource issues associated with the designation of critical habitat for jaguars in direct and continuing violation of Sec. 2(c)(2) of the ESA.

Similarly, the Service has refused and is continuing to refuse to coordinate with the PNRCD under NEPA in the development of the EIS for this critical habitat designation despite clear direction from Congress in NEPA to the contrary. 42 U.S.C. 4332, Sec. 102(1)(c)(v) and Sec. 102(1)(D)(iii).

Finally, when asked by the PNRCD why the Service was refusing to cooperate or coordinate with the PNRCD in the development of critical habitat for the jaguar, the Service refused to offer any explanation under claim of absolute attorney-client privilege. (see attachments). The PNRCD strongly objects to this wholly uncooperative behavior and disputes its basis in law. As a result, the PNRCD, through elected State Representatives, has caused these issues to become the matter of currently pending requests for formal Arizona Attorney General opinions.

#### ***F. Conclusions***

As shown herein and attachment, the Service's April 2012 Recovery Outline for the Jaguar lacks scientific credibility. Its use of unreliable records of jaguars, including the Penrod and Culbreath jaguars, while ignoring the mounting evidence of the unreliability of these and other records provided by AGFD (2011) and herein, and its use of "sightings" for which no physical evidence actually exists in modeling critical habitat for the jaguar in the United States is both irresponsible and scientifically untenable.

Similarly, this outline's use of the "principles" of conservation biology as the basis for developing a recovery plan for the jaguar is also irresponsible and unscientific because, as shown herein and attachment, those principles are actually representative of a theology or philosophy and not a biological science. Accordingly, the Service opens itself to Establishment Clause challenge by relying on and attempting to governmentally impose these "principles" nonetheless. Moreover, as also shown herein, there is no scientific evidence supporting the Service's and the recovery outline's speculation that jaguars were at the time of their listing, or are now, residential in their occurrence within the United States.

Further, development of specific requirements for the jaguar in this recovery outline, including the identification of 12,386 square miles of jaguar habitat in Arizona and New Mexico alleged as essential to jaguar's existence as a species, and water for jaguars every 6.2 miles within that area, during the worst economic recession since 1929, no less, and based on nothing more than answers to a questionnaire the Service sent out to experts (9 of 11 respondents to that questionnaire also authored this recovery outline), and apparent subsequent subjection of those opinions to change by consensus (i.e., use of the "Delphi Technique"), is also irresponsible and

unscientific. It is also an approach, like the others recounted above, that is contrary to the requirement placed on the Service by Section 4 of the ESA that it rely solely on the best scientific data available.

Use of this approach also separately offends the ESA because although, here, water resources issues are further raised that require active collaboration between the Service and PNRCD to resolve in concert with the development of critical habitat for the jaguar under Sec. 2(c)(2) of the ESA, the Service has refused and is continuing to refuse to do so. That failure to abide by this separate requirement of the ESA is only exacerbated by the Service's refusal to cooperate with the PNRCD without provision of any reason under claim of absolute attorney-client privilege.

In closing, for the many reasons, facts and new and highly relevant information provided the Service herein and in attachment, the PNRCD once again strongly urges the Service to reevaluate and reverse its determination that the designation of critical habitat is prudent for the jaguar in Arizona and New Mexico where, in actuality, the best scientific information / evidence available shows that male jaguars occur only as transients, females and breeding do not occur, and habitat "essential" to the jaguar's existence as a species clearly does not exist under any scientifically credible definition of that term.

Sincerely,

Dennis Parker  
Attorney at Law  
Representing the Pima Natural Resource Conservation District (PNRCD)

cc: Pima NRCD Board of Directors

