



PIMA NRCDC NEWSLETTER

Fall, 2020

3241 Romero Rd, Tucson, AZ 85704

Questions, contact Chris Postel, clerk.pimanrcd@gmail.com

From the Chair by Jim Chilton

OVERREACHING WOTUS REGULATIONS DELETED

The U.S. Corps of Engineers and the Environmental Protection Agency wrote the 2015 Waters of the United States Regulations (WOTUS). The rules classified any dry wash with more than 12 inches of sand in the bottom as a Navigable Water of the United States. That made it subject to extensive permitting requirements for disturbance of a wash by any land owner.

I believe that the 2015 WOTUS rules and regulations were overreaching. They erected pointless and scientifically unsupportable barriers to good management. They threatened farmers, ranchers, businessmen, and landowners with huge fines and/or jail if they did not seek and receive expensive and time consuming permits when their management needs involved impacting a dry wash. The new Navigable Waters Protection Rule promulgated by the current Administration has eliminated the dry wash provision. It has set farmers, ranchers and other land owners free from the heavy hand of government on private land where dry washes used to be highly regulated.

BORDER WALL UPDATE

For years the Pima Natural Resource Conservation District (PNRCD) has advocated for a Border Wall on the south end of the District. With our gratitude for the cooperators' persistence and President Trump's steadfast commitment to national security, the federal government has awarded Fisher Industries a contract to build a 42-mile, 30-foot high bollard-style fence along the international boundary. The wall stretches from the east boundary of the Tohono O'Odham Reservation to Nogales, Arizona, and then, past Nogales on east to Mount Washington.

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Although the PNRCD has not been the sole advocate for U.S. Homeland Security's decision to build an effective border barrier, the PNRCDs' comments, resolutions and Congressional out-reach over the last decade have helped bring about a strong positive outcome for Pima County ranchers and farmers. The fence, in conjunction with parallel roads and 24/7 patrolling, should dramatically decrease numbers of drug smugglers, criminals, sex traffickers, and undocumented persons traveling through District farms and ranches.

We recognize with dismay that the border along the Tohono O'Odham Reservation will continue to be a serious problem for the Tohono O'Odham people when border crossers enter their homeland. Then, it becomes our PNRCD problem and a problem for this entire United States when drugs and gang members use this unfenced section to cross from the Reservation into the PNRCD District.

Your responses to the cooperator questionnaire will assist us in working with NRCS's Local Work Group initiative to identify and rank our natural resource issues. Could you please mail your cooperator questionnaire to: 3241 Romero Rd, Tucson, AZ 85705 or scan/email to our clerk's email address: clerk.pimanrcd@gmail.com.

Stay Safe,

Jim

Observations on a Petition to Delist a Species by Cindy Coping

According to wildlife biologist and retired attorney Dennis Parker, the worst flaws in the Endangered Species Act (ESA) can be fixed by removing the word, “negative” from Section 4. A listing or critical habitat designation usually begins with a citizen petition. The U.S. Fish and Wildlife Service (Service) must decide within 90 days whether the petition is warranted. Section 4(b)(3)(C)(ii) states that a petition supporter can sue to overturn a “negative” or “not warranted” finding.

The word, “negative” implies that the law prohibits judicial challenges to “junk science” positive findings. A petition’s opponents may only sue under the Administrative Procedure Act (APA). Plaintiffs must prove the agency contradicted itself, abused authority, or strayed from the intent of Congress. As a result, when the Service makes a scientifically unsound “warranted” finding, junk science becomes the law.

Importantly, the ESA’s authorization of judicial review for “not warranted” listing petitions also applies to delisting petitions. For example, the Service issued a “not warranted” finding on a petition to delist the Bone Cave harvestman, a Texas cave bug. Under the ESA, the petitioners brought a scientific, evidence-based challenge against the negative finding.

Six years and two lawsuits after the Service published its first “not warranted” finding for the petition, the petitioners won in court. The Service at long last has opened a public comment period on a “warranted” finding for the petition to delist.

The Service’s third and latest finding summary states,

“On June 2, 2014, we received a petition, ... requesting that the endangered Bone Cave harvestman be delisted due to recovery and error in information

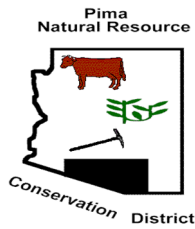
On June 1, 2015, the Service published a 90-day finding [that delisting was not warranted]. On December 15, 2015, the American Stewards of Liberty, [et al.] challenged the June 1, 2015, 90-day finding in Federal district court. The Service [decided a second time that the delisting petition was not warranted].

On October 5, 2017, the [petitioners again] challenged the May 4, 2017, 90-day finding in Federal district court. On March 28, 2019, the court vacated the 2017 90-day finding and remanded that 90-day finding to the Service.”...

“Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating the petitioned action may be warranted for the Bone Cave harvestman”

In conclusion, the ESA allows judicial review of “not warranted” findings on petitions to list species and also on petitions to delist them. That allows for long-delayed evidentiary review of “junk science” in existing regulations. Meanwhile, the word “negative” forces innocent people suffer for decades under pointless, economically crushing regulations. By removing the word “negative,” Congress could prevent junk science from becoming law in the first place.

On January 22, 2019, the Pima NRC D passed a resolution recommending the word “negative” be removed from the Endangered Species Act, Section 4(b)(3)(C)(ii).



Pima Natural Resource Conservation District Cooperator Questionnaire Fall, 2020

Which of the following items would help you as a District Cooperator?
Rank your top 5 choices with "1" being the most important. Final rankings will help determine funding availability for future conservation projects.

- | | |
|--|--|
| <input type="checkbox"/> Low stress livestock handling
<input type="checkbox"/> Livestock nutrition
<input type="checkbox"/> Grazing management planning
<input type="checkbox"/> Noxious plant and pest control
<input type="checkbox"/> Livestock water developments
<input type="checkbox"/> Prescribed burning
<input type="checkbox"/> Relationships with agencies
<input type="checkbox"/> Protection of historic sites
<input type="checkbox"/> Creation of fish habitat
<input type="checkbox"/> Managing small acreage properties
<input type="checkbox"/> Other (describe) _____ | <input type="checkbox"/> Livestock reproduction
<input type="checkbox"/> Plant identification
<input type="checkbox"/> Rangeland monitoring
<input type="checkbox"/> Soil erosion control
<input type="checkbox"/> Irrigation system, design & install
<input type="checkbox"/> Flood <input type="checkbox"/> Sprinkler <input type="checkbox"/> Drip
<input type="checkbox"/> Grant writing & funding sources
<input type="checkbox"/> Protection of archaeological sites
<input type="checkbox"/> Creation of wildlife habitat
<input type="checkbox"/> Zoning, land use plans, ordinances, etc
<input type="checkbox"/> Equipment Rental Needs _____ |
|--|--|

When completed, please scan/email: clerk.pimanrcd@gmail.com or mail to the address below:

Pima NRC D
3241 N. Romero Rd
Tucson, Az 85705

Cooperator: _____
 Address: _____

Last updated on: September 11, 2020

Email: _____

AACD Update by Cindy Coping, Pima NRCD Supervisor

The [Arizona Association of Conservation Districts](#) (AACD) is a nonprofit organization that unifies and supports Arizona's 32 Natural Resource Conservation Districts (NRCDs) and 10 Tribal Soil and Water Conservation Districts (SWCDs). All 42 Districts are members with representation on the Board of Directors. The AACD provides expertise that a typical NRCD with \$13,245 of annual State funding and an all-volunteer Board of Supervisors would find challenging to muster. Beginning in 2018, the [AACD developed a 5-Priority Strategy](#), (see <https://bit.ly/344xGUd>) briefly summarized as follows:

1. Provide assistance to assess resource conservation needs, District-wide, for each District. Map and incorporate the comprehensive assessments into a statewide GIS portal for conservation planning.
2. Support the Education Centers with K-12 programs and adult workshops, e.g, Beginning Farmer and Rancher Workshops, Drought Planning, etc. Support research, e.g., quantifying the benefits of brush management on rangelands. AACD also has developed comprehensive District Supervisor and Clerk training programs, which are accessible through the AACD website.
3. Support District outreach and recruitment of new cooperators. This is achieved through educational workshops along with the recently upgraded [AACD website](#) (<https://www.aacd1944.com/>), social media (Facebook, Instagram) and a new magazine, *ConserveAZ*.
4. Provide technical and financial support to the Districts. The AACD seeks out major funding opportunities and works with partners including the National Association of Conservation Districts, BLM, NRCS and others to achieve landscape-scale results. AACD provides professional assistance with archaeological clearances, grant writing, planning, and contract management.
5. Provide direct District support. Between January and September of 2020, AACD helped various Districts write 13 grant proposals, 7 of which were funded, 3 were rejected, and 3 more awaiting a decision. That is a far better rate of success than is typically seen by grant writers.



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