

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

ROCKY MOUNTAIN ELK FOUNDATION
and the PROPERTY AND ENVIRONMENT
RESEARCH CENTER,

Plaintiffs,

v.

U.S. DEPARTMENT OF THE INTERIOR
and U.S. FISH AND WILDLIFE SERVICE,

Defendants.

Case No. 2:25-cv-00029-DWM

**DECLARATION OF ELIZABETH
MACLIN**

I, Elizabeth Maclin, declare that the following statements are true and correct to the best of my knowledge and belief.

1. I am Acting Deputy Assistant Director for the Ecological Services Program of the U.S. Fish and Wildlife Service (“FWS”), an agency of the U.S. Department of the Interior (“DOI”), located in Washington, D.C. I have served in this position since February 10, 2025. In my capacity as the Acting Deputy Assistant Director for the Ecological Services Program, I am responsible to the Acting Assistant Director of the Ecological Services, Director of the FWS, and to the Secretary of the Interior for the administration of the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544, which includes the development of regulations and policies related to ESA implementation such as the final rule challenged in this case.
2. I am familiar with the final rule that the Department of the Interior promulgated in 2024 reinstating at 50 C.F.R. §§ 17.31(a) and 17.71(a) the option to apply general protective regulations (also referred to as the 4(d) blanket rule option) for threatened species under

section 4(d) of the ESA. See 89 Fed. Reg. 23919 (Apr. 5, 2024) (“Section 4(d) Blanket Rules”).

3. I am submitting this declaration in support of the Federal Defendants’ Motion to Stay the lawsuit filed by the Rocky Mountain Elk Foundation and the Property and Environmental Research Center challenging the Section 4(d) Blanket Rules.
4. FWS is reconsidering the 2024 revisions to the Section 4(d) Blanket Rules and has already drafted a proposed rule to rescind the blanket rule option for newly listed threatened species. FWS has transmitted the draft to OMB for interagency review. The rule now appears on OMB’s Regulatory Dashboard, “List of Regulatory Actions Currently Under Review,” available at <https://www.reginfo.gov/public/jsp/EO/eoDashboard.myjsp>.
5. Several Executive Orders that the President signed in January and February have prompted FWS to re-evaluate a number of its ESA regulations, including the Section 4(d) Blanket Rules. First, on January 20, 2025, President Donald Trump signed Executive Order 14154, “Unleashing American Energy.” Section 3(b) of that Executive Order requires agency heads to begin implementing action plans to suspend, revise, or rescind all agency actions identified as unduly burdensome under the order. Second, on February 19, 2025, FWS was directed to review its regulations for consistency with statutory text through Executive Order 14219, “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative.” The order requires review of various classes of regulations, and section 2(a)(iii) specifically requires review of any “regulations that are based on anything other than the best reading of the underlying statutory authority or prohibition.”
6. On February 3, 2025, Secretary of the Interior Burgum issued Secretarial Order 3418 (“S.O. 3418”), implementing EO 14154 in his Department. Section 4(b) of that Secretarial Order requires a plan to “suspend, revise, or rescind” the 2024 Section 4(d) Blanket Rules. FWS staff immediately initiated a process to implement the EO and S.O. 3418.

7. To consider the policies and priorities in the above-referenced Executive Orders, as well as recent caselaw, FWS has concluded that its 2024 revisions to Part 17, such as the Section 4(d) Blanket Rules, warrant further analysis through rulemaking.
8. FWS has prepared a timeline for reconsidering the Section 4(d) Blanket Rules, including development of a proposed rule, adherence to all requirements of the Administrative Procedure Act and completion of internal legal, management, and policy-level review, comment, and response. FWS has already submitted the proposed rule to OMB for review under Executive Order 12866, and OMB has posted it to its Regulatory Dashboard with a June 27, 2025, received date, beginning the 90-day interagency review period provided under EO 12866. FWS anticipates transmitting the proposed rule to the Federal Register no later than October 31, 2025. Under EO 12866, OMB may take up to 90 days to review a draft rule. Should OMB complete the interagency review process in less than 90 days, FWS would transmit the proposed rule to the Federal Register earlier, as immediately as practicable upon conclusion of the OMB process.
9. FWS will provide at least 30 days for public comment on the proposed rule, and to allow for any public outreach advisable, including, for instance, webinars for Tribes, the public, and interested stakeholders, as the agency provided for the 2024 rulemaking. FWS will then consider and respond to public comment, prepare a draft final rule, and anticipates submitting the draft final rule to OMB by August 1, 2026, for its 90-day interagency review period. FWS anticipates transmitting the final rule to the Federal Register following the conclusion of the OMB process, no later than October 31, 2026, or earlier should the OMB process conclude in less than 90 days.
10. During this rulemaking, whenever FWS proposes or finalizes listing a species as a threatened species, it will concurrently address through rulemaking a species-specific 4(d) rule for the species, including any Section 9(a) prohibitions for that species. FWS expressly retained this “option to promulgate species-specific section 4(d) rules” in the 2024 Blanket Rule, 89 Fed. Reg. at 23919, and it commits to exercise that discretion now.

This declaration is made pursuant to 28 U.S.C. § 1746. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 8th day of August, 2025.

**ELIZABETH
MACLIN** Digitally signed by
ELIZABETH MACLIN
Date: 2025.08.08
09:16:20 -04'00'

Elizabeth Maclin
Acting Deputy Assistant Director for Ecological Services
U.S. Fish and Wildlife Service