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# ENVIRONMENT

## ENDANGERED SPECIES

Van Ness Feldman has extensive experience representing a broad range of client interests with respect to the Endangered Species Act (ESA). The firm's attorneys and public policy professionals are renowned for their skill in navigating the myriad intricacies involved with the implementation of the Act through a combination of experience including: acting as attorneys for the Department of the Interior and other government agencies; participating in Congressional debates over the Act as staff to the committees with oversight responsibility for the law or for individual Members of Congress; litigating the Act on behalf of private sector clients; and by providing counsel on complying with the ESA in the most timely and cost-effective manner possible.

The firm's approach centers on resolving ESA matters in a manner that both accommodates and balances clients' economic demands with the objectives of the Act in a way that avoids public conflict. When necessary, Van Ness Feldman has a strong track record of litigating to protect clients' rights or to improve a negotiating position with the agencies charged with implementation.

## REGULATORY COUNSELING

Van Ness Feldman counsels clients on ESA issues pertaining to project planning, development, and regulatory compliance. Representation involves both "traditional" ESA regulatory compliance, as well as the identification of alternative options for resolving ESA conflicts in a manner that benefits both client operations and particular species.

**Pre-Regulatory Counseling.** Van Ness Feldman assists clients in identifying potential ESA problems in advance of regulatory developments and in planning their projects to avoid or minimize ESA impacts.

**ESA Section 7 Compliance Issues.** Van Ness Feldman represents clients before the action agencies with whom they are working undertake formal and informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries on a wide variety of § 7 compliance issues, including the development of biological assessments and biological opinions, responses to "jeopardy opinions," development of reasonable and prudent alternatives, and development of incidental take statements.

**Habitat Conservation Plans.** The firm counsels clients on, and participate in, the development of ESA § 10(a) habitat conservation plans and applications for incidental take permits.

**Recovery Plans.** Van Ness Feldman represents clients in the development of single and multi-species recovery plans, including multi-state plans requiring coordination of federal, state and local interests.

**Critical Habitat Designation.** The firm provides counsel on the effects of critical habitat designation and represents clients in the designation process.

**Listing and Delisting Species.** Van Ness Feldman advises clients on, and participates in, the process for adding and removing species from the lists of threatened and endangered species, and evaluates the probable impacts of species reclassifications.

## CONGRESSIONAL REPRESENTATION

Van Ness Feldman has an exceptionally strong reputation for representing clients before Congress on

matters such as obtaining federal appropriations to assist in compliance with ESA requirements; lobbying for amendments to address specific aspects of the ESA or its application to specific fact situations; and participating in major debates over the reauthorization of the Act itself. For example, Van Ness Feldman has been instrumental in establishing the [Pacific Salmon Restoration Fund](#) and achieving substantial multi-year appropriations to assist the four Pacific Coast states in their effort to conserve threatened and endangered salmonids.

### **ESA LITIGATION**

The development of a defensible ESA compliance program requires an acute appreciation for the likely issues that may arise in any future litigation and the ability to foresee, identify, address, and then, if necessary, defend against any challenge.

Van Ness Feldman prides itself on being able to provide clients with this type of strategic judgment and, when necessary, provide aggressive representation in the courts. The firm has appeared on cases involving endangered and threatened species in U.S. District Court in California, Oregon, Washington, and Washington, DC, and has argued ESA cases in the Ninth, Eighth, and DC Circuits, including filing amicus curiae briefs with the U.S. Supreme Court. The firm also has represented electric utility interests in complex ESA litigation involving the operation of the Federal Columbia River Power System, as well as ESA litigation involving the operation of the Missouri River.

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