

# ENDANGERED SPECIES AND WILDLIFE – MITIGATION AS RISK MANAGEMENT

---

Christine Fernandez Owen, Shareholder, Clean Law PC  
Brooke M. Wahlberg, Partner, Nossaman LLP

January 28, 2019



## Introduction

- How Mitigation Can Arise
- Recent Guidance
- Forms of Mitigation
- Mitigation Land Suite of Documents
- Impact on Development of Renewable Projects
- Common Issues

## How Mitigation Can Arise

- Federal and state wildlife laws
- Conditions to other approvals (State/County use permits, BLM ROW, etc.)
- Voluntarily

## Federal Wildlife Laws

- Endangered Species Act (ESA), Bald and Golden Eagle Protection Act (BGEPA), Migratory Bird Treaty Act (MBTA)
  - Minimization and mitigation a criterion of ESA section 10(a)(1)(B) permits
  - Incidental Take Permits and Habitat Conservation Plans
- Mitigation, while not required, often a component of ESA section 7 consultations
  - Concurrences and Biological Opinions (Example: desert tortoise mitigation, FHWA bat program)
- Mitigation can be a component of ESA section 4(d) rules (listings)
  - Example: Lesser Prairie Chicken WAFWA program

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Endangered Species and Wildlife - Mitigation as Risk Management

Also available as part of the eCourse

[2019 Renewable Energy Law eConference](#)

First appeared as part of the conference materials for the  
2019 Renewable Energy Law session

"Endangered Species and Wildlife - Mitigation as Risk Management"