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Federal judge rejects species law

By JENNIFER BOWLES AND DAVID SEATON / The Press-Enterprise
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In a ruling that could stall Riverside County's growth plan, a federal judge ruled Thursday that a key part of the nation's endangered species law was crafted illegally.

Agencies that enforce the Endangered Species Act said they hadn't yet reviewed the decision by U.S. District Judge Emmet Sullivan and weren't sure of its consequences.

Sullivan, in a 47-page ruling, said "flagrant violations" were committed when the Clinton administration first adopted the so-called "no surprises policy" in 1994 without public input.

"The public has consistently been denied the opportunity to be notified of substantive changes to regulations enforcing the ESA (Endangered Species Act), and to weigh in on decisions likely to have significant effects on public resources," the Washington, D.C., jurist said.

The policy was built into habitat conservation plans as a way to give developers assurances that once they comply with a plan, they won't have to face further building restrictions or fees, even if new species are listed or more habitat is required to protect a species.

"This is a real win to allow recovery for species and give assurances back to the species," said Leeona Klippstein, executive director of the Pasadena-based Spirit of the Sage Council, one of the suit's plaintiffs. The coalition advocates for species protection throughout the United States.

The judge essentially told the U.S. Department of Interior to revise the policy in a way that would include the public's voice. In addition, he invalidated a companion policy that set forth circumstances in which "no surprises" assurances could be revoked.

It wasn't immediately clear how the ruling would impact western Riverside County's multi-species habitat conservation plan, now awaiting a permit from the United States Fish and Wildlife Service. The plan, several years in the making, is part of an overall growth proposal seeking to balance species protections and new homes and new highways to accommodate a population that will double to 3 million by 2020.

Such habitat plans - there are 407 across the nation - carve out protected habitat for species listed under the Endangered Species Act while allowing other land used by them to be destroyed for new construction.

"At this point, we have yet to assess what this means," said Jim Bartel, field supervisor for the Fish and Wildlife Service's Carlsbad office, which is reviewing the county's plan.

But an attorney for the environmentalists said it wouldn't be prudent for the agency to issue a permit to the county any time soon.

"It would be foolhardy to close that deal until this issue is resolved," said Eric Glitzenstein in a telephone interview from Washington.

Developers are already planning to appeal the decision.

Borre Winckel, executive director of the Riverside County Chapter of the Building Industry Association, said the clause is essential because it gives builders some confidence that environmental rules won't suddenly change.

"We might as well throw the (multi-species plan) away, and everything we've done for all those years, if we don't get the 'no surprises' clause," Winckel said.

The ruling on Thursday was disappointing but not surprising, he said. The building industry's legal defense foundation has already filed the necessary paperwork to start an appeal, Winckel added.

Riverside County Supervisor Marion Ashley said he thinks the county's plan may not be hurt by the ruling because it seeks to protect 146 species, far more than are listed on the threatened or endangered list today.

The county's plan takes into account even plentiful species such as the bobcat and coyote, he pointed out.

"I think we're in better shape than a lot of plans are going to be because we protect the 146," Ashley said. "We're not bulletproof, but at least we've got some armor."

Setting aside land to protect plants and animals is crucial to planning for where new highways will go as the county's traffic problems worsen, Ashley said.

Under the current system that requires permits from state and federal officials for every endangered species, it could take 25 years to get a new highway built, he said.

But some property owners, farmers and developers have sued to stop Riverside County's plan. Opponents fear it will lower property values and eventually require taxpayer help to buy the targeted 150,000 acres for conservation.

Ashley said all the opposition reinforces for him that the county is doing the right thing.

"I don't think we're going to be deterred," he said.

Online at:

http://www.pe.com/localnews/inland/stories/PE_News_Local_species12.f395.html