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## Legal group criticizes species protection plan

by Brian Melley

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SACRAMENTO A conservative legal group threatened Monday to sue the federal government over its plans to protect four dozen endangered species in California, ranging from peninsular bighorn sheep to the tiny robust spineflower.

The Pacific Legal Foundation notified the U.S. Fish and Wildlife Service and National Marine Fisheries Service that it would file suit in 60 days, claiming the agencies failed to meet requirements of the Endangered Species Act when they set out to protect 16 animal and 32 plant species. Advance notice is required before filing endangered species lawsuits.

Based on a favorable ruling in U.S. District Court in Fresno that overturned habitat protection for the Alameda whipsnake last year, the foundation said the agencies underestimated the economic impact of protection and didn't properly follow the rules to protect habitat.

"They speculated instead of determining what areas are essential to the conservation of the species," said attorney Reed Hopper.

The legal foundation, representing business groups, farmers and developers in the case, said its lawsuit would ultimately bring back jeopardized plants and animals, a claim dismissed by environmentalists.

"Only the Pacific Legal Foundation is cynical enough to argue that taking away habitat protection will help endangered species," said Kieran Suckling, of the Center for Biological Diversity, which has appealed the whipsnake case. "This lawsuit is all about paving California and clearing the way for massive development."

Under the Endangered Species Act, the federal government is required to map out land that is essential to a plant or animal's survival and recovery.

The so-called critical habitat designation has been a hot topic for business interests, environmentalists and the federal government.

Environmentalists have sued to force the government to identify habitat to protect species while developers and farmers have sued to remove or alter the designation, which can crimp logging, mining and large-scale development projects.

The government, meanwhile, has said habitat designation pales in comparison to the protection afforded once a species is listed as endangered or threatened. The Fish and Wildlife Service has blamed litigation for creating a backlog of petitions to protect other species and for diverting funds that could be used for other protection efforts.

"We could put more resources into recovery if we didn't have to spend those resources on critical habitat," said spokesman Al Donner.

Donner said it was premature to respond to the lawsuit notice, but said it would soon unveil a 60-year plan to help restore more than 30 protected vernal pool species, including several on the list targeted in the lawsuit notice.

Only a quarter of protected species nationwide have critical habitat designated, Donner said. But the Center for Biological Diversity puts that figure closer to a third and said a study of government data shows that species in critical habitat areas are recovering twice as fast.

While most of the endangered species would sound foreign to the av-

erage nature lover -- from the tide-water goby, a finger-long fish, to Hoover's spurge, a plant that blossoms in the remains of spring puddles -- environmentalists argue that their survival bodes well for the health of the planet.

Hopper said he hopes the lawsuit will have ramifications beyond the Golden State, forcing the agency to change the way it designates habitat for the protection and recovery of species, but Suckling predicted it would fail.

The whipsnake case is currently before the 9th U.S. Circuit Court of Appeals, which ruled this summer in favor of environmentalists in a case involving critical habitat for northern spotted owls. They also won a case before a federal judge involving the desert tortoise.