

From the Los Angeles Times

Judge Bars Big Bear Condos, Cites Harm to Eagles

Jurist orders \$1.3-million penalty, saying developer harmed eagle habitat.

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A Los Angeles federal judge has killed a luxury condominium project at Big Bear Lake and fined the developer \$1.3 million for violating the federal Clean Water Act.

U.S. District Judge Manuel L. Real said the developer of the Marina Point Project also violated the Endangered Species Act by harming nearby bald eagle habitat. Using unusually strong language in a ruling issued late Monday, Real said the developer "continually exhibited a lack of good faith in complying (or failing to comply) with" the Clean Water Act.

Robert Crockett, a lawyer for developer Irving Okovita, said he would ask Real to rehear the case or failing that, said he would challenge the ruling, which he called factually flawed, before the U.S. 9th Circuit Court of Appeals.

But the environmentalists who opposed the project expressed confidence that the ruling would be upheld.

"We are very happy with the opinion," said attorney Adam Keats of the Center for Biological Diversity. "Big Bear still has its iconic bald eagles, but just barely. For their health and the lake's health, we need to come to grips with the fact that some forms of development, like this intensive lakeshore condominium project, are inappropriate."

"We're thrilled about the decision," said Sandy Steers, the activist from the tiny town of Fawnskin who led opposition to the development. "It has been a long struggle over five years."

In 2004, Okovita filed a federal racketeering suit against Steers and three employees of the U.S. Forest Service Robin Eliason, Scott Eliason and Gene Zimmerman charging that they had illegally conspired to block his project. The suit was filed after U.S. District Judge Robert Timlin issued a preliminary injunction blocking the project. (The case was later transferred to Real.) Steers and the Forest Service workers asserted that Okovita sued to retaliate against them.

The suit raised eyebrows in legal and law enforcement circles because it was believed to be the first time the Racketeer Influenced and Corrupt Organizations Act known as RICO had been used against Forest Service workers.

Forest Service Employees for Environmental Ethics, an Oregon-based public interest group, organized support for Steers and the Forest Service employees, helping arrange pro bono lawyers Frank Fraley of Los Angeles and David Greene of the First Amendment Project of Oakland to represent them.

Shortly after the suit came to light, the California attorney general's office said the suit was an improper use of the courts "by powerful interests against private citizens to suppress legitimate 1st Amendment activity."

Last year, Real dismissed the lawsuit and imposed \$267,000 in sanctions against Foley & Lardner and two lawyers in its San Diego office for filing a frivolous lawsuit.

Developer Okovita hired new lawyers from Latham & Watkins in Los Angeles to wage a legal battle against the environmental challenge filed by the Friends of Fawnskin and the Center for Biological Diversity, but they were no more successful.

Real ruled for the environmentalists on all the major issues.

In addition to blocking the project, Real ordered the developer to perform remedial work to try to correct some of the damage done to the lake particularly to wetlands.

The proposal called for 132 luxury condominiums, a 175-slip marina and tennis courts. It was to be built on 12.5 acres on Grout Bay on the north shore of Big Bear Lake. Bald eagles, which are listed as threatened on the federal endangered species list, spend winters in the area, perching in pine trees and swooping down to the lake to feed on fish.

Real said that the developer took several actions that were harmful to the lake and to the bald eagles. He noted that in July 2003, the Army Corps of Engineers issued a cease and desist order on the project.

Three months later, the corps issued an order requiring the developer to complete remedial work by Dec. 1, 2003, ahead of the winter arrival of the bald eagles. Real said the developer failed to comply.

"The work they performed left the shoreline vulnerable to erosion from wind and precipitation, and the straw they placed on the site provided insufficient protection. As a result, by the middle of 2004 the lakebed had experienced substantial erosion, and by the time the major rains began in December 2004, the erosion of dirt and rocks into the lake had gotten much worse."

Then, Real wrote, the developer ignored a mandate from the corps to repair the erosion damage, repair a silt curtain in the lake and limit dredging. "They did next to nothing to prevent further erosion or ameliorate the damage they had already caused but continued to direct their energies" toward the condominium project.

"This damage, which remains today, has affected the bald eagle population," which was "rapidly dwindling" by the winter of 2005, Real wrote. "The defendants' dredging and grading activities not only impact the eagles' shallow water habitat which works to evict their primary prey but they deepen the lakefront as well which makes it more difficult for them to see the prey that remain. In short, the project has significantly degraded the bald eagles' habitat," Real wrote.

The judge also said the developer violated the Clean Water Act by actions, which included depositing fill and dredged soil over all the wetlands.

Moreover, the judge said the developer's past violations and "their apparent contempt" for corps regulations "suggest a strong likelihood of future violations" unless he blocked the project.

Crockett, the developer's lawyer, said that Real had the "facts wrong in several respects," including statements that the developer did not obtain two necessary permits.

But Bernice Conn and Michael A. Geibelson, the Los Angeles attorneys who represented the environmental groups at trial without charging a fee, said: "We're confident the judge carefully considered all the evidence. We believe he reached the correct result. We are very proud to have helped these two organizations protect Big Bear Lake and the bald eagle."