



Owl decision is delayed until June 2

Hearing date set for effort to halt species 'delisting'

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PHOENIX — The pygmy owl will stay “delisted” at least until June 2, a federal judge decided Monday.

U.S. District Judge Susan Bolton declined environmentalists’ requests to put a temporary hold on the federal government’s mid-April decision to remove the cactus ferruginous pygmy owl from the endangered-species list.

Bolton set a June 2 hearing here on a request from the Center for Biological Diversity and Defenders of Wildlife for an injunction blocking the delisting for a longer period.

Bolton’s reasoning was that environmentalists couldn’t prove that any new development in owl habitat is imminent.

Six developments — four on the Northwest Side, one near Sahuarita and one near Apache Junction — have all been freed from federal reviews of their effects on the owl by the delisting.

But they still must get their federal Army Corps of Engineers permits processed.

On Monday, corps project manager Robert Dummer said one development,

Preserve at Dove Mountain, will “take awhile” to get a permit. He referred inquiries about the rest to another corps project manager, Marjorie Blaine, who was out of town Monday.

The delisting also has voided past federal decisions setting land-conservation requirements for 16 other developments. But those requirements would remain for developments with local government agreements to conserve land. Authorities have said they don’t know how many projects fall in each category.

Mike Senatore, a Defenders of Wildlife attorney, told Bolton that the group is concerned that land disturbance could occur between now and the time of the injunction hearing.

“‘Maybe it could happen’ doesn’t seem to be enough for a court . . . to grant a temporary restraining order,” Bolton replied. “Why not set this for a preliminary injunction hearing in the future? What’s going to happen? Are there bulldozers at the ready that you know of?”

Later, Senatore, speaking by phone from his Washington, D.C., office, acknowledged that he couldn’t say that the developments could proceed before an injunction hearing.

“You hit the nail on the head,” Norm

James, the attorney for the Southern Arizona Home Builders Association, told Bolton. “A temporary restraining order is an emergency proceeding, where the wrecking ball is getting ready to hit the building.”

Afterward, James said he wasn’t surprised by Bolton’s ruling.

Perhaps open-space set-asides could be revoked on land saved outside a development site, he said, “but if it’s in the middle of a project, and it’s already zoned and the homes built, how do you go backward and undo it?”

But Daniel Patterson, a Center for Biological Diversity ecologist, said his group “will be doing some looking around” for projects that could start blading of desert vegetation between now and June 2.

“I think most people who have lived in Arizona for a long time know that developers can’t be trusted,” Patterson said. “These biological opinions are up in the air. The listing doesn’t exist. It leaves the pygmy owl in real danger between now and June 2.”