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Short-Cut Conundrum

Pinal County tries to seize control of environmentally sensitive land to protect a road--in apparent violation of federal protections

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Paul Schwennesen, with wife, Sarah, and daughter, Katherine: "What's the supposed public benefit? Lionel Ruiz and a few residents have a quick, easy way to get to Florence?"

A rancher's efforts to close a corridor across the San Pedro River has prompted Pinal County officials to try to seize the property through eminent domain--an action that has conservation groups upset.

The property in question, near Dudleyville, is a lush area of cottonwoods and willows, a bird-migration corridor and critical habitat for the endangered Southwestern willow flycatcher. It is also a federally held conservation easement with prohibitions against motorized traffic.

However, the corridor offers back-road access to the county seat at Florence. Critics of the county action say that officials want to keep the crossing open for the convenience of one of Pinal County Supervisor Lionel Ruiz--who lives in Dudleyville--at a cost, so far, of at least \$50,000 in taxpayer money.

Ruiz maintains that the community of Dudleyville has demanded the dirt-road crossing remain open.

On Feb. 28, the Center for Biological Diversity sent a letter of "intent to sue" over the county action, claiming it was a

violation of the Endangered Species Act and the Clean Water Act.

More than a decade ago, ranchers Jean and Eric Schwennesen bought 215 acres to venture into the grass-fed beef business and holistic-resource management. Their son, Paul, now ranches there with his wife, Sarah, and their toddler. (See "Tales From the Outskirts," July 5, 2007.)

To protect the riparian area, the elder Schwennesens sold a conservation easement to the Nature Conservancy in 1996. In 1997, that easement--which specifies that public access be restricted to nonmotorized traffic such as birdwatchers, hikers and horses--was transferred to the Bureau of Land Management.

The Schwennesens bought the property from George Gordon, who, a few years earlier, had signed an agreement with Pinal County, temporarily allowing vehicles across the river until the county replaced a bridge, on Romero Road to the north, that had been washed out by flooding.

"When the bridge washed out, George said, 'Let's do something,'" said his widow, Rose, in a phone interview. George Gordon died in 2001.

However, locals began dumping trash, drinking, four-wheeling and firing guns in the area.

"My husband put up a sign asking people not to park at the river bottom. People didn't believe anybody could own the river bottom," she said. "They feel it's their right to take their four-wheelers anywhere they want. We never thought about closing it, because it was convenient for us. But we'd go through the garbage to find out who was dumping, and George would get the deputies after them."

The Gordons sold their land to the Schwennesens and moved to New Mexico, in part because of the problems at the crossing, Rose said.

The highway easement with the county was supposed to end on Dec. 31, 1995, but it contained a provision that extended automatically each year, pending written cancellation by either the county or the landowner.

Fast-forward to 2007. The Schwennesens, fed up with off-roaders, learned from the county that it had no plans to fix the bridge. However, there is a well-maintained public road that crosses the river a few miles north--a route known as the ASARCO crossing, named for the nearby mining-company operation.

Paul Schwennesen contacted the county to see if there would be any objections if he terminated the temporary easement.

"Public works said to go ahead," he said. "Then in August, we received a letter from the county saying that the county wanted to keep the road open. We knew something was afoot. The county was suddenly more interested in this than it had been before."

On Dec. 31, 2007, the Gordon agreement legally ended. "Rather than wait until someone crashed into a tree, we just blocked the road off and posted signs to contact the county or the BLM," Schwennesen said he left an open gate around the barrier for emergency traffic.

Pinal County responded by hiring the Phoenix law firm of Miller Kramer--eminent- domain specialists--to seize the crossing.

On Jan. 30, the Superior Court in Florence took the "historically unprecedented" step of opening the right of way with a temporary restraining order, according to court documents filed by the Schwennesens' attorney.

"The court rushed this through. It's absurd," Schwennesen said. "What's the supposed public benefit? Lionel Ruiz and a few residents have a quick, easy way to get to Florence?"

In February, the three-member Pinal County Board of Supervisors--Sandie Smith, David Snider and Ruiz--approved resolutions establishing the San Pedro road as a county road and authorizing eminent-domain proceedings.

As payment, the county has on deposit \$26,100--less than half the land's value, according to the Schwennesens, who have not accepted the money.

Meanwhile, the Schwennesens and the Center for Biological Diversity are waiting to see what action, if any, the BLM

will take against the county.

"If nothing happens, we'll go to court," said Robin Silver, the center's founder, noting that the BLM has "been silent" on other environmental issues affecting the San Pedro River.

The current situation--in which a private landowner entered into a contract with the federal government to protect an area, and a local county government violated that contract--appears to be "precedent setting."

Tom Collazo, associate state director for the Nature Conservancy, agreed. "In Arizona, I'm not aware of any other instances like this ... to encumber a conservation easement by eminent domain. We certainly have never seen that here."

Tom Dabbs, Gila River district manager for the BLM, said that while the matter has been referred to BLM attorneys and the federal agency's state director, the BLM opposes the county action. "They (the Schwennesens) do have a valid conservation easement that restricts motorized use."

He said the BLM recently met with the county to suggest alternate routes across the river, but that the county expressed a preference for the Dudleyville crossing.

County supervisor Ruiz said that a federal agency told the county it couldn't use the ASARCO crossing or rebuild the Romero Road bridge, because both areas were also part of the flycatcher habitat.

But Jeff Humphrey, spokesman for the U.S. Fish and Wildlife Service, said he couldn't find any evidence of such a communication with the county, and that in general, endangered-species issues have not "stopped a bridge from going forward."

Ruiz said: "Once this thing settles down, we're going to have a community meeting and ask the people to be better stewards by picking up what's out there. Not that many people use the crossing, but some do. It's 50 miles from the crossing to downtown Florence. If you go through Oracle, it's 82 miles. It's a good shortcut, but mostly, people just enjoy taking drives out there."