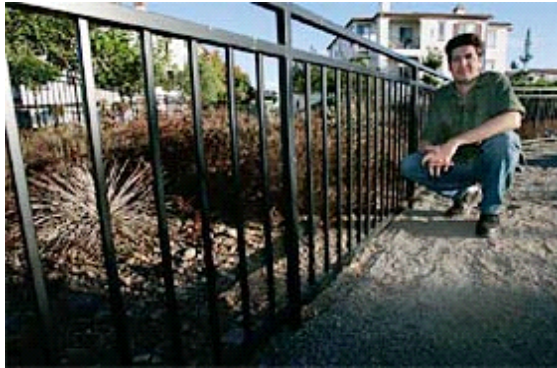


Ruling orders portion of blueprint be revised

By Mike Lee

UNION-TRIBUNE STAFF WRITER

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JOHN GIBBINS / Union-Tribune

David Hogan of the Center for Biological Diversity knelt by the last vernal pool left at a developed site in Mira Mesa.

A U.S. District Court judge shot a hole through San Diego's once-heralded blueprint for balancing development and ecological needs yesterday, setting a precedent for legal challenges to similar programs nationwide.

Senior Judge Rudi Brewster ruled that federal approvals for the city's plan virtually guaranteed development, but “would permit monumental destruction” of several protected species that live in vernal pools, or temporary wetlands.

He ordered the U.S. Fish and Wildlife Service to stop current or projected development on such sites and revise its conservation plan for seven species in San Diego.

- [Read the court decision \(PDF\)](#)

Brewster's ruling also criticized the city's “vague and noncommittal” funding assurances for its initiative, though it was not immediately clear how officials would resolve this issue.

The injunction against some development was rendered in San Diego and came about eight years after some environmentalists filed a lawsuit.

It heartened conservationists, even though they said much of the habitat they sued to protect has been paved over.

“In the past, the agencies have been a little more willing to let political expedience rather than biological necessity make decisions, and I think that the court recognized that,” said Daniel Rohlf of Portland, Ore., a lawyer for the plaintiffs.

San Diego's blueprint and others like it are known as habitat conservation plans. Congress authorized them in 1982 as a way to meet certain requirements of the federal Endangered Species Act.

The plans allow for the expansion of homes, roads and businesses while setting aside land where threatened and endangered species live.

During the past quarter-century, some 675 such blueprints have been adopted nationwide, and two more are being prepared in other parts of San Diego County.

“This decision will almost certainly increase legal scrutiny on other similar plans, and locally it will be used to improve plans that are still in the works,” said David Hogan, urban wildlands director for the Center for Biological Diversity in San Diego.

The center was one of 14 national, state and local environmental groups that challenged the city's portion of a document formally known as the Multiple Species Conservation Program.

Other local jurisdictions, including San Diego County, have related agreements but weren't targeted by the suit.

Representatives for the mayor's office and the Fish and Wildlife Service said they had not seen the judge's order, which was made public late Friday afternoon, and could not comment.

The federal agency is likely to appeal the ruling.

Efforts to reach development groups that had defended the habitat plan in court were unsuccessful.

“What we are looking for is the preservation of the (plan),” Donna Morafcik, spokeswoman for the Building Industry Association of San Diego County, said earlier this week.

Much of the San Diego program remains untouched by the ruling, which focused on seven vernal-pool species out of several dozen that are covered by the agreement between the Fish and Wildlife Service and the city.

The affected species include the San Diego fairy shrimp, the Otay Mesa mint and the San Diego button celery.

They are of particular concern to environmentalists because they live almost entirely on lands within the city's conservation planning area. Only Southern California's Mediterranean climate supports the specific habitat needed by these species, and court records show that 97 percent of it has been destroyed.

Brewster was convinced by such arguments, even though he seemed to understand that skeptics would question why development should have to work around a handful of species unknown to most people.

“If this type of destruction is treated on a case-by-case basis as an unimportant loss, it does not take long before life on this planet is in jeopardy,” he said.

Even by the standards of environmental litigation, the lawsuit has had a tortured existence. Brewster is the third judge on the case, which has an administrative record of more than 80 volumes.

Despite all the legal wrangling, Brewster didn't find a lot of ambiguity.

“The species are left in a 'heads I lose, tails you win' position that substitutes inadequate conservation measures in the place of the strict conservation and recovery standards of the (Endangered Species Act),” the judge said.

While Brewster is unlikely to be the last jurist to rule on the issue, he answered an important national question: How aggressive should the Fish and Wildlife Service be when it trades damage to some habitat for protection of other habitat?

A fundamental issue is whether San Diego's habitat plan should have been designed to help species fully recover, or if it can meet the less-demanding standard of not jeopardizing the species' continued existence.

“This is a key legal question of interest to conservation advocates and economic interests alike,” Rohlf said in a recent paper for the American Bar Association.

Andrew Hartzell, a lawyer for the Building Industry Association in the case, said before yesterday's ruling that he believes it's unfair to make habitat plans bear the entire burden of getting plants and animals off the federal protection list.

Hogan, the conservationist, said Brewster got it right.

“This decision may set an important precedent because the government has previously disregarded its obligation to use these plans to further recovery of the listed (species),” Hogan said.

Habitat conservation plans have become wildly popular since the late 1990s. That's when San Diego city and county officials signed their pieces of the historic Multiple Species Conservation Plan.

“This is a momentous occasion, the first time this has ever been done and a national model,” Bruce Babbitt, then secretary of the U.S. Department of the Interior, proclaimed in 1997 when San Diego County supervisors approved the framework.

Business boosters and property owners typically embrace the blueprints because they come with assurances that the government can't demand more concessions later.

The arrangements also appeal to government agencies because they can consolidate the protection of numerous species into one agreement instead of dealing with them piecemeal.

Certain conservationists laud the documents.

“Multispecies planning efforts are positive things because they allow this sort of comprehensive view of open space and development,” said Michael White, a biologist with the Conservation Biology Institute, a nonprofit research group in Encinitas.

“The other thing that the planning has done is allowed an enormous amount of (state and federal) money to be funneled into the county that otherwise wouldn't be here,” White said.

In San Diego's case, however, Brewster was not impressed by the city's “unlikely funding plan” and he chastised the Fish and Wildlife Service for approving it.

▪ Mike Lee: (619) 542-4570; mike.lee@uniontrib.com