

Louisiana landowner appeals gopher frog ruling

By JANET McCONNAUGHEY,
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NEW ORLEANS (AP) — A Louisiana landowner has appealed a federal judge's decision that part of a tree farm where an endangered burrowing frog was last seen in 1965 is necessary for the animal's recovery.

Pacific Legal Foundation attorney Reed Hopper filed the notice of appeal in federal court on Tuesday, two business days after U.S. District Judge Martin Feldman ruled that that U.S. Fish and Wildlife officials were within the law in declaring 1,544 acres in Louisiana as "critical habitat" for dusky gopher frogs.

Feldman rejected arguments that the agency should have prepared an environmental impact statement and failed to adequately consider the possible economic impact.

Hopper, who represents Markle Interests LLC., said in an email that two other landowners — PF Monroe Properties LLC, owned by the Poitevent family, and Weyerhaeuser Co., which owns about 5 percent of the land and leases the rest — also plan to appeal. They have until Oct. 21 to go to the 5th U.S. Circuit Court of Appeals, he wrote.

In his ruling, Feldman wrote, "The Court has little doubt that what the government has done is remarkably intrusive and has all the hallmarks of governmental insensitivity to private property. The troubling question is whether the law authorizes such action and whether the government has acted within the law. Reluctantly, the Court answers yes to both questions."

Hopper said Tuesday that he had no comment beyond a blog post Friday. It said Feldman "acknowledged" that the Endangered Species Act "appears to go too far but suggested that is a matter for Congress to address and not the courts. We disagree. The Courts have the duty to hold the line on runaway government."

Fish and Wildlife also listed 5,000 acres in Mississippi as critical habitat for the 3½-inch-long frogs, but nobody challenged that decision. Most is federal land. It was unable to identify critical habitat in Alabama, where the frogs once also lived, Feldman noted.

An estimated 100 to 200 adults now live in a few spots in Mississippi, with fewer than 900 in zoos around the country.

The Center for Biological Diversity, which intervened in the suit, says 98 percent of the frog's natural habitat has disappeared for various reasons, including drought and urban sprawl.

"As the court's order makes clear, the law required the Service to protect all the gopher frog's remaining essential habitat. We'll fight this appeal to make sure these landowners don't interfere with the survival and recovery of these highly endangered frogs," attorney Collette L. Adkins Giese wrote in an email Tuesday.