

Environmentalists Sue Feds Over Development in Crucial AZ Bird Habitat

Friday, May 27, 2016

By Miriam Wasser

A coalition of Arizona-based environmental groups filed a federal lawsuit this week against the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service for issuing a permit for a massive development project near the city of Benson that the groups say will devastate the San Pedro River and harm the millions of migratory birds and endangered species that rely on it.

At the center of the lawsuit is a federal regulation that requires the Army Corps to consult with FWS about any potential harm a development project might have on endangered species before green-lighting a project — a regulation the plaintiffs contend the two government agencies did not follow.



Plaintiffs in the lawsuit say the development project would adversely affect western yellow-billed cuckoos. Courtesy U.S. Fish and Wildlife Service

“The Army Corps and FWS have failed in their responsibility to consider the effects of this project on endangered species and their habitats,” says Robin Silver, a co-founder of the Center for Biological Diversity, one of the plaintiffs in the case. “But we’ll force them to do so with this lawsuit.”

According to the suit, the proposed development, the Villages at Vigneto, is slated to include 28,000 residential units, commercial buildings, golf courses, vineyards and orchards, resorts, and an extensive road and utility

network, and could “balloon” the population of Benson from its current 5,000 inhabitants to more than 75,000.

Building and sustaining it would require tremendous amounts of water. In a press release, the plaintiffs contend that the project “is forecast to increase groundwater pumping from approximately 800 acre-feet to as high as 13,000 acre-feet per year [as well as] increase storm water runoff, flooding, and destructive sediment accumulation in the river.”

Chris Eaton, is an attorney with Earthjustice, the environmental law firm representing the plaintiffs in court.

“It would just be sucking more and more ground water out and, eventually drying up the river and degrading critical habitat,” Eaton argues. He says scientists estimate the development project would increase the demand for water 15-fold, in an important ecosystem that’s already overburdened.”

The San Pedro River is the last free-flowing (i.e., undammed) river in the American Southwest. It flows from far-northern Mexico into Arizona, meeting up with the Gila River near the town of Winkelman. According to the Nature Conservancy, it sustains 84 species of mammals, 14 species of fish, and 41 species of reptiles and amphibians.

And birds. Many, many, many birds.

The 143-mile river is considered one of the most important corridors for migratory songbirds in the nation. The U.S. Bureau of Land Management calls it “something of a natural highway” and a premier destination to spot rare avian species.”

In 1996, the American Bird Conservancy recognized it as the first “Globally Important Bird Area” in North America.

To put that significance into perspective, the plaintiffs point out that nearly 45 percent of the 900 bird species in North America use the San Pedro River’s habitat corridor at some point in their lives.

The area sustains a number of endangered or threatened species: jaguar, ocelot, western yellow-billed cuckoo, southwestern willow flycatcher, lesser long-nosed bat, and northern Mexican garter snake.

The lawsuit focuses on the question of whether the government did its due diligence before granting the permit, but development in the region has a controversial history.

Between 2000 and 2014, the 8,200-acre area cited in the suit was owned by Whetstone Partners LLP, a developer that planned to build a community of 20,000 housing units called Whetstone Ranch. After the company applied for the Army Corps building permit in 2003, the Fish and Wildlife Service and the Environmental Protection Agency advised against it.

Rather than deny the permit, the Army Corps got Whetstone to agree to reduce the amount of desert wash area it planned to fill in, from 70 acres to 51 acres. Over the EPA’s objections, the Army Corps issued the permit in 2006.

The project never broke ground. In 2014, Whetstone sold the land and the permit to a different developer, El Dorado Benson LLC, which simultaneously purchased an additional 4,139 acres of undeveloped adjacent land.

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Robin Silver/Center for Biological Diversity

According to the lawsuit, the Army Corps, in conjunction with the FWS, now needs to re-evaluate the permit.

Not only is the El Dorado development plan different from (and larger than) Whetstone's, but there's new data on the environmental impact.

"There have been new species listed, we have a better understanding of how development could effect the flow of San Pedro River, [and] we have a much better understanding of the hydrology of the area and what sort of affects ground water pumping would have on it," says Eaton, the plaintiffs' attorney. These facts alone, he argues, "require the Army Corps to go back and talk to FWS to make sure the permit won't have adverse effects."

Spokesmen for both the Army Corps and FWS tell New Times that as a matter of policy, their agencies don't comment on pending litigation, though the Army Corps' Dave Palmer writes in an e-mail that when the Corps issued the permit in 2006, it had

"completed all reviews and consultations as required by law and concluded the federal action would not have a significant impact on the human environment [and] listed species or designated critical habitat."

Center for Biological Diversity co-founder Robin Silver is confident his side will prevail.

"They've been caught red-handed," Silver says. "There's no question — the law is clear."

Eaton notes that the regional FWS office sent a letter to the Army Corps about the project in July 2015, reminding the agency that it has a statutory responsibility to consult with Fish and Wildlife about potential impacts.

"So at least the regional office agrees with us," he says with a chuckle.

Eaton says the defendants now have 60 days to respond to the complaint, at which point the lawsuit will proceed and the court will schedule a briefing.

"We're pretty optimistic," he adds.