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Frogs 1, landowners 0: Courts rule St. Tammany land vital to endangered species

BY Faimon A. Roberts III
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It's been roller-coaster week for Edward Poitevent, a local landowner and developer.

Poitevent owns some of the land in St. Tammany Parish where Helis Oil & Gas Co. is building its controversial well. And the state Supreme Court handed him and the company another victory on Wednesday, declining to reconsider an appeal by parish officials and others trying to block the project.

But on Thursday, the courts dealt Poitevent a setback. The U.S. Fifth Circuit Court of Appeals denied an appeal filed by Poitevent and others in another land case, ruling that 1,500 acres in the eastern portion of St. Tammany are critical habitat for an endangered frog species, even though none of the frogs live there and none have in more than five decades.

The ruling Thursday affirmed an earlier one by U.S. District Judge Martin Feldman, who said the federal government had not overreached when it designated the St. Tammany land as critical habitat for the frogs.



In this Sept. 27, 2011 file photo, a gopher frog is seen at the Audobon Zoo in New Orleans.

Contacted Thursday about the 5th Circuit's decision, Poitevent deferred all questions to his attorney, Richard Stanley, who did not return a call for comment.

An attorney for the Center for Biological Diversity, which joined in the suit opposing Poitevent's petition, hailed the decision as a win for the diminutive frog, which used to live throughout Louisiana, Mississippi and Alabama. Residing mostly underground, the frogs require special, temporary ponds to reproduce, making them especially vulnerable to habitat loss.

"This important ruling is good news for these endangered frogs that desperately need room to recover," said Collette Adkins, of the Center for Biological Diversity.

The frog, known as the dusky gopher, was officially listed as endangered in 2001, when there may have been fewer than 100 of them left.

Then, in 2012, the U.S. Fish and Wildlife Service designated 6,400 acres, including about 1,500 in eastern St. Tammany Parish, as critical habitat for the frogs's recovery.

Poitevent sued, pointing out that no dusky gopher frogs have lived on the property in more than 50 years, and that there are currently no plans to restore them to the area. Designating the area as critical habitat would prevent him from developing or selling the land and could cost him several million dollars, he argued.

But two of the three appeals court judges disagreed, ruling that the Endangered Species Act affords broad discretion in designating critical habitat to the U.S. Fish and Wildlife Service.

"In sum, the Landowners have not established that the Service interpreted the (Endangered Species Act) unreasonably," wrote Judge Stephen A. Higginson, on behalf of himself and Judge Thomas Reavley.

In her dissent, Judge Priscilla Owen said there was a "gap in reasoning of the majority opinion that cannot be bridged."

The decision would allow the government to impose restrictions on private land on the flimsiest of premises, setting aside "vast portions" of the United States as "critical habitat."

She also zeroed in on the government's reliance on the presence of "ephemeral ponds," which are necessary for the frogs to breed, but otherwise do not provide habitat for them. Those ponds would only be suitable for the frogs "with significant transformation and then, annual maintenance," which would rely on the cooperation of the private landowner and could not be enforced by the federal government.

"The majority opinion's holding is unprecedented and sweeping," Owen wrote.

No decision has been made on whether to appeal the decision to entire 5th Circuit bench or the U.S. Supreme Court, but Adkins said she hoped other landowners took notice.

"I think private landowners should take this as a signal to work cooperatively with the Fish and Wildlife Service to try to save endangered species that they may have," she said.