



Appeals court won't re-hear the 'dusky gopher frog' case

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Advocates for an endangered species of frog have won a victory in a case that's headed for the U.S. Supreme Court.

A federal appeals court in New Orleans has refused to revive an environmental case involving the "dusky gopher frog."

Last year, a three-judge panel of the 5th U.S. Circuit Court of Appeals rejected a Louisiana business's attempt to keep the federal government from listing its timberland as essential for the frog's future.

On Monday the full court voted 8-6 against re-hearing the case.

The frogs now live in some parts of Mississippi but once were found in Alabama and Louisiana as well. Environmentalists say the Louisiana land in question contains a type of pond essential to the species' survival.

The case next goes to the Supreme Court.

The majority offered no comment Monday. Judge Edith Jones wrote a strongly worded 30-page dissent on behalf of the six-member minority.

Among her arguments: the habitat in question contains one, but not all, of the features deemed necessary for the dusky gopher frog's survival.

Jones said the appeals court's majority applied federal law incorrectly and the landowner should not be prohibited from developing land where the frog cannot "naturally live and grow."

"She agreed with us that non-habitat can never be critical habitat," said Reed Hopper, an attorney for the Pacific Legal Foundation, which represents landowner Markle Interests LLC. He confirmed that a Supreme Court appeal is planned.

The majority opinion in last June's 2-1 panel decision was by Judge Stephen Higginson, who wrote that the federal government acted within the Endangered Species Act, the National Environmental Protection Act and the Constitution.

An environmental group was quick to applaud Monday's development.

Collette Adkins, a Center for Biological Diversity attorney, said the land in question contains a network of "ephemeral ponds" that dry up in the summer, leaving them free of fish that might eat the frogs' eggs.

The ponds on the Louisiana land are within “hopping distance” of each other and are vital to the species.

She said in a telephone interview that making the area suitable for the frog would require thinning a canopy of pines. The network of ponds, however, is “the treasure that cannot be easily re-created.”

Adkins said in a news release that landowners should end their legal challenges and cooperate with habitat restoration and reintroduction of the frog in Louisiana.