

THE DAILY CALLER

The Trump Administration Will Side With Environmentalists And Defend An Obama-Era Policy Before The US Supreme Court

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- The Trump administration will argue on the side of environmentalists before the U.S. Supreme Court.
- Justice Department lawyers will defend an Obama-era Endangered Species Act decision.
- Landowners stand to lose \$34 million if the government is successful.

The Trump administration will defend before the U.S. Supreme Court an Obama-era decision to effectively take control of roughly 1,500 acres of private property in the name of an endangered frog that hasn't been seen in decades.

The Supreme Court will kick off its new term hearing oral arguments over whether or not the U.S. Fish and Wildlife Service (FWS) can designate Louisiana land as critical habitat for the dusky gopher frog, despite it not being seen in the state for more than thirty years.

The plaintiffs, landowner Edward Poitevent and timber company Weyerhaeuser Co., argue FWS can't designate unoccupied, uninhabitable land as critical habitat.

The Endangered Species Act (ESA) gives FWS the authority to designate both "occupied" and "unoccupied" areas as critical habitats.

"[T]his case is an example not of anything wrong with the ESA itself, but with the application of the Endangered Species Act by the Fish and Wildlife Service," Pacific Legal Foundation (PLF) attorney Mark Miller, who is representing the plaintiffs, told E&E News on Friday.

On the other side, the Trump administration Justice Department (DOJ) is defending an Obama administration decision to designate Poitevent's land as critical habitat. DOJ lawyers are siding with environmental activists.

"We've already seen coexistence in Mississippi, and it could happen in Louisiana if Mr. Poitevent had a different set of values where he could recognize the moral duty to protect endangered species," Center for Biological Diversity (CBD) attorney Collette Adkins told Farm Journal in 2017.

“He has values where private property trumps everything else,” Adkins said. CBD finds itself on the side of the Trump administration — an odd pairing. CBD sued the Trump administration to stop the construction of a U.S.-Mexico border wall.

The Trump administration proposed changes to the ESA in July that groups like CBD oppose. The administration’s proposal includes changes to address situations like Poitevent’s, but none of the reforms have been finalized.

Despite efforts to reform the ESA, the Trump administration has decided to continue defending the Obama-era decision on the dusky gopher frog.

The Supreme Court will hear oral arguments with only eight justices since Congress delayed the confirmation vote for Brett Kavanaugh until the end of the week to give the FBI time to investigate sexual assault allegations against the judge.

FWS listed the dusky gopher frog as endangered in 2001 in response to a lawsuit brought by CBD, and the environmental group was also behind litigation that got the Obama administration to target Poitevent’s land.

Even though the frog has not lived on Poitevent’s land for decades, FWS and the government will argue that land has “ephemeral ponds” the animals need to survive should they need to move from their current habitat about 100 miles away in Mississippi.

However, Poitevent’s land has only the “ephemeral ponds” needed to keep the gopher frogs alive. The property would need to be drastically altered. Likewise, designating Poitevent’s land could devalue the property by as much as \$34 million.

The Poitevent’s would need the federal government’s permission to develop the land, which is extremely unlikely. The plaintiffs want to make sure this sort of regulatory takeover can’t happen to other people’s property.

“If the Supreme Court sides with the property owner, it will have struck a small blow for recovering species. It wouldn’t be a complete fix,” PLF attorney Jonathan Wood wrote in a Wall Street Journal op-ed.

“Ultimately, the Endangered Species Act needs reform, so that rare species are assets rather than liabilities for property owners,” Wood wrote.

So far, however, federal courts have sided with the federal government’s designating of Poitevent’s land as critical habitat