

Farmers Who Disputed Frog-Focused Habitat Lose Suit

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WASHINGTON (CN) – Nearly 2 million acres designated as critical habitat for three imperiled frog species survived a court challenge Wednesday by California farmers.

The Fish and Wildlife Service had designated the land in 2016 under the Endangered Species Act to protect two high-altitude species — the mountain yellow-legged frog and the Sierra Nevada yellow-legged frog — as well as Yosemite toads.

But the California Cattlemen's Association, the California Wool Growers Association and the California Farm Bureau Federation filed suit a year later, saying the designation severely burdened ranchers and farmers in the area.

U.S. District Judge Trevor McFadden, elevated to the bench in June 2017 by President Donald Trump, dismissed the suit Wednesday, however, for lack of standing.



A mountain or Sierra Nevada yellow-legged frog.
(Rick Kuyper/USFWS)

Conservationists with the Center for Biological Diversity intervened in the case to help protect the designation. Calling Wednesday's ruling "a huge victory," CBD biologist and attorney Jenny Loda said the livestock industry "won't be robbing them of habitat protections they desperately need."

"These frogs and the Yosemite toad have disappeared from most of the Sierra lakes and streams where they once lived," Loda said in an email. "This win gives them a fighting chance at recovery."

The farm groups argued that Fish and Wildlife Service had excluded them from consultations required under the Endangered Species Act, but Judge McFadden determined that Section 7 of the law requires only federal agencies to participate in consultations.

“The Cattlemen claim that their participation is important because consultations could cause the Forest Service to ‘pull’ their permits ... but they have cited no authority requiring that they participate in the consultations,” the 16-page ruling says.

The groups failed to persuade McFadden that the Regulatory Flexibility Act required the agency to undertake a regulatory flexibility analysis, given how the designation would affect landowners, ranchers and farmers.

Citing precedent, McFadden noted that, although their participation in the consultations “may have been prudent,” the groups “cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly pending.”

The three farming groups were represented by the Pacific Legal Foundation. Foundation attorney Oliver Dunford called the ruling disappointing.

“We’ll continue to look for opportunities to challenge the government’s ability to avoid scrutiny by imposing restrictions in advance of critical-habitat designations while later claiming that no injuries have been caused by the designations themselves,” Dunford said in an email. “We continue to consider our options in this case.”

A representative for the Department of Justice declined to comment.