

THE UNION DEMOCRAT

D.C. judge tosses lawsuit involving county supervisor's cattle over protections for Sierra Nevada frogs and toads

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Alex MacLean The Union Democrat

A federal judge in Washington, D.C., has dismissed a lawsuit filed by the California Cattlemen's Association that challenged the U.S. Fish and Wildlife Service's designation of 1.8 million acres in 16 Sierra Nevada counties as critical habitat for three amphibian species.

U.S. District Court Judge Trevor McFadden issued his decision on Wednesday that stated the association failed to establish that any of its members suffered injury from the designation as opposed to regulations that were put in place before it went into effect.

The lawsuit's dismissal comes nearly five years after the service listed the mountain yellow-legged frog and Sierra Nevada yellow-legged frog as endangered and Yosemite toad as threatened, which ignited heated debate locally because Tuolumne and Calaveras were among the counties with land targeted for designation as critical habitat for the species.

According to the opinion, the association staked its claims on declarations by Tuolumne County Supervisor Sherri Brennan, who operates Brennan Ranch in Sonora and has been a member of the association for more than 30 years.

The opinion stated that Brennan's grazing allotment in Eagle Meadow in the Stanislaus National Forest were among the places designated as critical habitat.

Brennan reportedly claimed that the pending critical habitat led to costly delays in the process of obtaining her 2017 grazing permit from the U.S. Forest Service, reduced the maximum amount of plant materials her cattle could consume in Eagle Meadow, limited the number of cattle that could graze on the allotment, and imposed burdensome monitoring requirements.

Brennan could not be reached for comment.

McFadden, however, ruled that the association failed to provide enough proof that the modifications to Brennan's permit were a direct result of the pending critical habitat designation that had yet to become final.

Conservation groups that intervened in the lawsuit to defend the critical habitat designation hailed the dismissal of the lawsuit as a victory for the imperiled frogs and toads in a joint press release issued on Thursday.

“Public-lands ranchers’ private interests should not dictate critical habitat designation these sensitive amphibians need to survive,” said Talasi Brooks, staff attorney for the Idaho-based Western Watersheds Project, which intervened in the suit. “The ranchers did not show how the critical habitat designation here has any effect on their grazing operations.”

The Center for Biological Diversity, based in Tucson, Arizona, and Central Sierra Environmental Resource Center, based in Twain Harte, also defended the habitat protections in the lawsuit.

Jenny Loda, a biologist and attorney with the Center for Biological Diversity, said the judge’s decision means the frogs and toads won’t be a “robbed” of needed habitat protection by the livestock industry and attorneys at the Pacific Legal Foundation, who filed the lawsuit on behalf of the California Cattle-men’s Association.

“This win gives them a fighting chance at recovery,” she said.

All three species were once abundant in the Sierra Nevada, but have declined over the decades and are now found mostly on public lands at high elevations, including streams, lakes, ponds, and meadow habitats located in national forests and parks.

The conservation groups say in the press release that the Sierra Nevada and mountain yellow-legged frogs have declined “about 90 percent throughout the mountain range due to habitat destruction and degradation, disease, predation by nonnative trout, livestock grazing, climate change and pesticides.”

However, a 2016 study found that the abundance of Sierra Nevada yellow-legged frogs specifically in Yosemite National Park increased seven-fold over a 20-year period between 1993 and 2012 based on more than 7,000 frog population surveys.

Ranchers have also cited multiple studies conducted by researchers at the University of California, Davis, have shown there are no clear direct or indirect impacts from livestock grazing on Yosemite toad populations.

The association and its lawyers at the Pacific Legal Foundation said they were disappointed but stand firm in their belief that the service is skirting a federal law intended to protect small businesses and local governments from overly burdensome regulations.

Oliver Dunford, an attorney for the Pacific Legal Foundation, said in an interview Thursday that dismissal of the suit shows the federal government can “evade scrutiny by imposing restrictions before the critical habitat is finalized.”

Dunford said they attempted but were unable to find people who were impacted after the designation was finalized in August 2016.

“We didn’t have direct evidence that the earlier restrictions were put in place with the intention of ultimately designating critical habitat, but it is an issue that has come up often where the government imposes regulations, later identifies land as critical habitat, and then says you’re too late to challenge anything because your injury occurred earlier,” he said.

Kirk Wilbur, spokesman for the California Cattlemen's Association, said that they will need to consult with their co-plaintiffs and attorneys before making any decisions on what to do next with regard to the lawsuit.

The association plans to continue pressing the federal Fish and Wildlife Service to abide by the Regulatory Flexibility Act, which requires federal agencies to examine the impacts of proposed regulations on "small entities" before imposing them.

Such an analysis was not completed by the service for the critical habitat designation because the service argued that only federal agencies would be required to ensure that any action they take doesn't have an adverse impact on the designated critical habitat, and federal agencies are not considered "small entities."

Wilbur said the service "routinely" violates the Regulatory Flexibility Act when designating critical habitat, but the other agencies do not. He also took issue with the Center for Biological Diversity's characterization of the lawsuit as an attempt by the livestock industry at "robbing" the frogs and toads of critical habitat.

"This was never an attempt to 'rob' these threatened and endangered amphibians of their habitat," he said. "Rather, it was an effort to force a federal agency to comply with federal law, to examine the economic impacts of their actions on small businesses and rural communities, and to mitigate for those economic challenges if possible."

The 16 counties containing land that was designated as critical habitat for the frogs and toads are Tuolumne, Calaveras, Lassen, Plumas, Sierra, Nevada, Placer, El Dorado, Alpine, Amador, Mariposa, Madera, Mono, Fresno, Tulare and Inyo.

About 502,000 acres in Tuolumne County, roughly 35 percent of its total acreage, was part of the designation.

Hundreds of people attended an event in 2013 at the Mother Lode Fairgrounds in Sonora hosted by Congressman Tom McClintock, R-Elk Grove, where he grilled federal officials on the then-proposed designation.

Congressman Devin Nunes, R-Tulare, also attended the event and told the lively standing-room-only crowd that such designations are "just the beginning before they come and take your jobs away."