

Feds reissue permit for 28,000-home development near San Pedro River

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The Army Corps of Engineers has given a green light to a developer that plans to build a 28,000-home development near the San Pedro River in southern Arizona, reissuing a permit that was suspended in response to a legal challenge by environmental groups.

The federal agency's decision won't end the long-running fight over the proposed development known as Villages at Vigneto.

Stu Gillespie, a lawyer with Earthjustice, said the conservation groups that he represents plan to amend their suit to challenge the revised permit later this month.

"The Corps has not remedied the fatal flaws in its decision-making process. Its revised analysis contains even more contradictions and conclusory assertions than the prior flawed analysis," Gillespie said in an email. "As a result, the Corps reissued the same permit for the Villages at Vigneto without ever analyzing the impacts of the proposed development on the San Pedro River. That's downright inadequate and contrary to the law."

The Corps issued a modified permit to the developer, El Dorado Benson LLC, on July 26, said Dave Palmer, a spokesperson for the Army Corps. He said that occurred after the Corps' Los Angeles district office issued a finding of "no significant impact" for a Clean Water Act permit.

The dredge-and-fill permit enables builders to fill in desert washes during construction. It's known as a Section 404 permit, referring to a provision of the Clean Water Act that regulates the discharge of dredged or fill material into rivers, streams or wetlands.

It's the second time the federal government has suspended and then reinstated the permit in response to legal challenges.

The federal government's approval of the development has come under additional scrutiny after a former U.S. Fish and Wildlife Service official said earlier this year that he reversed his position under pressure from a higher-up in the Trump administration. The whistleblower's account emerged along with the revelation that the company's founder and chairman, Mike Ingram — a donor to the Republican Party and many Republican candidates — had [personally raised the issue](#) with then-Deputy Interior Secretary David Bernhardt.

Bernhardt is now the Interior secretary.

Arizona Democratic Rep. Raúl Grijalva, who chairs the U.S. House Natural Resources Committee, responded by announcing that his committee will investigate the decision-making

process on the development. In July, Grijalva wrote to Bernhardt requesting documents and communications on the subject.

Retired Fish and Wildlife Service official Steve Spangle spoke out in newspaper interviews in April, revealing how he changed his determination concerning the potential effects of the development's mitigation plan on endangered species.

Foes: Project would draw water from river

The Army Corps previously notified the developer in February, after [environmental groups sued](#), that the agency was [suspending the permit](#) while officials considered possible "corrections and clarifications."

The Corps reinstated the permit last month after consulting with officials at the Fish and Wildlife Service. In a June letter, supervisor Jeff Humphrey at the Fish and Wildlife Service's Arizona Ecological Services Office [told the Army Corps](#) that his office had reevaluated the matter and that Spangle's allegations "do not change our previous determinations regarding the effects of the Corps' actions on listed species."

Plans for the proposed 12,000-acre development near Benson include homes, a resort, commercial space and four golf courses. The development would be large enough for about 70,000 new residents, and would rely on groundwater, which also feeds the San Pedro River, one of the last remaining undammed rivers in the Southwest.

Opponents fear the development would deplete groundwater and reduce the flow of the river, harming an oasis that supports migratory birds and a rich variety of animals from salamanders to bobcats.

The federal permit allows the developer to fill desert washes on 51 acres during construction. To compensate for those 51 acres, which are considered "waters of the United States," government documents say the developer has proposed mitigation measures to "enhance" 144 acres along the west bank of the river.

Federal officials are required under the Endangered Species Act to consider potential impacts to threatened or endangered species including the Southwestern willow flycatcher, the Western yellow-billed cuckoo and the northern Mexican garter snake.

In 2016, the Army Corps of Engineers requested an informal consultation with the Fish and Wildlife Service on the Corps' determination that the development's mitigation plan likely wouldn't jeopardize the federally listed species.

Spangle initially told the Corps that his office disagreed. He said a full biological assessment would be needed to analyze the direct and indirect effects of the development, including how groundwater pumping would affect the river.

But Spangle said he received an unusual call in 2017 from a lawyer at the Interior Department's headquarters, who told him that a "very high-ranking" political appointee believed he had made an incorrect decision, and that he would be "wise to reconsider it."

Spangle said the call led him to reverse his decision, allowing a narrower review that streamlined the permit process. Spangle has said what occurred "smacks of political interference."

Gillespie represents groups including the Lower San Pedro Watershed Alliance, the Center for Biological Diversity, the Sierra Club, the Tucson and Maricopa Audubon Society and the Cascabel Conservation Association. They have argued in their lawsuit that the Army Corps violated federal law by refusing to analyze the effects of drawing down the water table.

As the groups update their legal case, Gillespie said they will bring new claims related to the "improper political interference" that Spangle revealed.

"The case is very much alive and will be kicking into gear now," Gillespie said.

Attorney: Permit has 'always been valid'

The Army Corps originally issued the permit for the development in 2006.

Scottsdale-based El Dorado Holdings bought the property in 2014. The Corps later suspended the permit in 2016 after opponents sued to challenge the process.

That suit was dismissed and in October 2018 the Corps reissued the permit. The agency suspended the permit again in February after the latest lawsuit by environmental groups.

Lanny Davis, a lawyer representing El Dorado, noted that the Corps has now reinstated the same permit that was issued back in 2006.

"The permit has never been altered legally since 2006. The legal status of it has never changed," Davis said. "It's always been valid."

As for conservationists' concerns about the San Pedro River, Davis pointed out that officials at the Arizona Department of Water Resources reviewed the development plan and determined there is a sufficient water supply.

"We are confident that we have developed an environmentally sensitive plan for the Villages at Vigneto," Davis said.

He said the development will bring jobs and prosperity to the Benson area.

The Washington attorney started representing El Dorado in March, acting as a media spokesperson. He has a history of managing crises for high-profile clients. Davis recently defended President Donald Trump's former attorney, Michael Cohen. In the 1990s, he defended President Bill Clinton during multiple scandals.

Davis said despite Spangle's account of feeling pressured, the Fish and Wildlife Service took a second look at the issue and stood by its 2017 determination.

"His own colleagues took another look at the request of the Army Corps," Davis said. "The decision on the merits, on the facts, was reconfirmed."