

California's 9th Circuit Court Upholds Designation for Vernal Pool Critical Habitat

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Critical habitat designation for vernal pools was upheld in the 9th Circuit Court of California this August. The decision in the case, Home Builders Association of Northern California v. United States Fish and Wildlife Service, maintains the designation of 858,000 acres of land in California as critical habitat for fifteen vernal pool species.



This is the second challenge that the Vernal Pool Critical Habitat Designation Plan of 2005 has withstood. In each case, Home Builders raised 5 technical challenges to the designation. The Butte Environmental Council and other conservation groups intervened as defendants in support

of the Service's designation, first at the district court and again in appeals. Both courts have now upheld the designation, finding that none of the technical challenges had merit.

Vernal pools are unique ecosystems that can seem devoid of life and activity for much of the year. However, observers of the landscape that in summer and fall seems empty are astounded at the explosion of life that follows the spring rains. Because of their isolation from streams and rivers and their dependence on seasonal water fall, vernal pools are usually devoid of fish and therefore safe nurseries for the frogs and crustaceans that have filled this biological niche in the landscape. Migratory birds flock to the newly created ponds and the flora that surrounds them thrives in the high salinity and acidity soils.

Many vernal pool species are endangered and survive only in the relatively few remaining vernal pool habitats that remained after the rapid development of the last century. The Critical Habitat Designation of 2005 addresses the needs for a comprehensive effort to protect what vernal pool habitat remains.

Critical habitat is a term in the Endangered Species Act. It identifies geographic areas that contain features essential for the conservation of a threatened or endangered species and may require special management considerations or protection. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands. Rather, critical habitat designations ensure that the Service is consulted during the permitting process to ensure that federal agencies that undertake, fund or permit activities that may affect critical habitat take action to ensure that they activities do not adversely modify or destroy designated critical habitat.

Many species will benefit from the court's decision to uphold the critical habitat designation, including 4 crustaceans and 11 plants that depend on vernal pool habitat for their survival. The designation applies to 35 counties in California and one in Southern Oregon.