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California Land Use & Development Law Report

Ninth Circuit Upholds Removal Of Endangered Species Act Protections for Gray Wolves

Over the course of a decade, the U.S. Fish & Wildlife Service's repeated attempts to "delist" a portion of the Rocky Mountain gray wolf population from the Endangered Species Act were rebuffed by the courts. So, the proponents of the delisting turned to Congress. The result was section 1713 of the 2011 Appropriations Act, which directed the Secretary of the Interior to readopt its 2009 delisting rule, without regard to any other statutory or regulatory provision, and without any judicial review. In *Alliance for the Wild Rockies v. Salazar*, decided on March 14, the Ninth Circuit rejected an attempt by environmental groups to enjoin implementation of section 1713.

The plaintiffs, relying on several cases from the 19th century, argued that the law violated the constitutional separation of powers doctrine by infringing on the authority of the federal district court in Montana, which had invalidated the 2009 rule. In rejecting this claim, the court made a critical distinction between a law that directs a court to decide a pending case in a particular way (which is prohibited), and a law that simply changes the standards that apply to a particular subject (which is allowed). The case illustrates the difficulties the U.S. Fish & Wildlife Service has faced in attempting to delist species under the ESA and it also highlights the fine line involved in legislative "fixes" to judicial decisions.

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