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Arizona Master Planned Community/Endangered Species Act: Environmental Organizations Notice of Intent to Sue for Alleged Violations

Arkansas Environmental, Energy, and Water Law Blog

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EARTHJUSTICE on behalf of a number of environmental organizations has sent a Notice of Intent to Sue ("Notice") to the U.S. Army Corps of Engineers ("Corps"), United States Department of the Interior and the United States Fish and Wildlife Service alleging violations of the Endangered Species Act ("ESA") in regards to a new master planned community of 28,000 housing units and related commercial and other infrastructure in Benson, Arizona.

The Notice alleges ESA violations for a failure to reinstate ESA consultation on a Section 404 Clean Water Act permit that had been issued by the Corps to Whetstone Partners LLP in 2006 that was subsequently transferred to El Dorado Benson, LLC in 2014.

The March 8th Notice alleges that since the Corps originally issued the Section 404 permit:

- The United States Fish and Wildlife Service has listed new species under the ESA and designated and proposed new critical habitat for listed species that may be affected by the action
- New information reveals that the action may affect listed species in a manner and to an extent not previously considered
- The proposed development authorized by the permit has been modified in a manner that causes effects on listed species not previously considered

By way of summary, the Notice concludes that:

... the Corps and FWS have failed to reinstate ESA Section 7 consultation on the permit, in violation of ESA regulations. 50 C.F.R. § 402.16. And by continuing to authorize the Section 404 permit without reinstating consultation, the Corps has failed to insure that the permit is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat or proposed critical habitat, in violation of ESA Section 7(a). 16 U.S.C. § 1536(a)(2), (4).

Moreover, continuing to authorize the permit prior to the completion of reinstated consultation constitutes a violation of ESA Section 7(d), which prohibits the "irretrievable commitment of resources" pending completion of consultation. 16 U.S.C. § 1536(d). This letter constitutes notice required by Section 11(g) of the ESA, 16 U.S.C. § 1540(g), prior to commencement of legal action.

[Click here to download a copy of the Notice.](#)