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US OK'd Illegal Construction On Condor Habitat, Activists Say

By **Darcy Reddan**

Law360 (April 25, 2019, 8:11 PM EDT) -- Native American and environmental activists sued the federal government Thursday to halt a conservation plan that allows for a luxury resort development that they claim will jeopardize the home of the critically endangered California condor.

The Wishtoyo Chumash Foundation and the Center for Biological Diversity told a California federal court that a conservation plan approved by the U.S. Fish and Wildlife Service jeopardizes an area the agency previously designated as critical habitat for the condor at Tejon Ranch in Kern County, California. They also said the plan undermines the cultural significance of the birds to local tribes.

"We think the Service's decision overlooking condors as traditional cultural properties under the National Historic Preservation Act and it was a terrible decision," counsel for the Center for Biological Diversity, John T. Buse, told Law360 Thursday. "It avoided their duty to consult with tribes and tribal representatives on condors and basically allowed them to avoid dealing with this development's effects on condors as a result."

The Tejon Ranch region was acquired by the Tejon Ranch Co. in 1912, 60 years after the U.S. government removed Native Americans from the land to allow settlers during the California gold rush, the complaint says.

In 1997, Tejon Ranch Co. sued FWS seeking to block the release of condors into the wild and the dispute was settled under seal, culminating with the conservation plan. Thursday's complaint alleges the agency approved the Tehachapi Uplands Multiple Species Habitat Conservation Plan and issued an incidental take permit, which allows non-federal entities undertaking otherwise lawful projects that might result in the take of an endangered or threatened species.

The Tejon Ranch Co. and the FWS agreed to the conservation plan in 2005 and released a draft of the plan in 2012 after the company had requested permits for 141,886 of its 270,365 acres.

The complaint says the plan was put in place to facilitate Tejon Ranch Co.'s mountain village luxury resort that would require 5,533 acres and an additional 1,773 acres of vegetation, totaling 8,817 acres. In 2013, the FWS gave Tejon Ranch Co. a 50-year, renewable incidental take permit for roughly 145,000 acres of Tejon lands.

The groups claim the conservation plan encompasses the condor habitat in the Tejon region and would hamper the tribes use of sacred sites, which are dependent on the condor's presence.

The complaint notes that aside from its endangered status, the condor holds religious significance to tribes in the Tejon Ranch region including the Chumash, Kitanemuk and Yowlumne Tejon Indians.

The activists allege that FWS violated the National Historic Preservation Act by approving the plan and issuing the ITP and claims that the effects on the condor and sacred tribal landscapes were never considered.

Representatives for FWS did not return a request for comment on Thursday.

The Center for Biological Diversity is represented by in-house counsel John T. Buse.

Wishtoyo is represented by in-house counsel Jason Weiner.

Counsel information for the government was not available Thursday.

The case is Wishtoyo Foundation et al v. U.S. Fish and Wildlife Service, case number 2:19-cv-03322, in the U.S. District Court for the Central District of California.

--Editing by Amy Rowe.

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