

**Butte Environmental Council * California Native Plant Society
Defenders of Wildlife * San Joaquin Raptor and Wildlife Rescue Center**

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**Court Invalidates U.S. Fish and Wildlife Service's Exclusion of Nearly 900,000
Acres of Vernal Pool Critical Habitat**

Developers Efforts to Strip Protections Rejected

Sacramento, CA -- Yesterday, Federal District Court Judge William B. Shubb issued a major ruling overturning the U.S. Fish and Wildlife Service's (FWS) decision to omit 900,000 acres in 11 counties from its 2005 final rule designating critical habitat for 15 imperiled vernal pool plants and animals. Vernal pools are seasonal wetlands found throughout California. Judge Shubb also rejected industry's attempt to overturn the protections for more than 800,000 acres that FWS did protect as critical habitat.

The court agreed with the six conservation organizations involved in the case that FWS failed to look at whether its decision to eliminate critical habitat protections for vernal pool grasslands in Butte, Fresno, Madera, Merced, Monterey, Placer, Sacramento, Shasta, Solano, Stanislaus, and Tehama counties affected the future recovery of the vernal pool species.

In sending FWS back to the drawing board, Judge Shubb accepted the central argument of the conservation organizations that in excluding vernal pool critical habitat within 11 California counties, FWS continued its long history of failing to consider the essential importance of such designation to the ultimate recovery of the vernal pool species. With more than 90 percent of California's vernal pool wetlands already destroyed, meaningful habitat protection is essential to ensuring that the species not only avoid extinction, but recover to the point where they can be taken off the endangered species list. FWS has 120 days to issue a new critical habitat rule.

"This is a big victory in the longstanding effort to protect and recover vernal pool grasslands," stated Kim Delfino, California program director of Defenders of Wildlife. "This decision makes it clear that Fish and Wildlife Service cannot ignore the recovery needs of species when designating critical habitat."

The court also rejected almost every single argument by the building industry's challenge to FWS's decision to designate more than 858,846 acres of vernal pool grasslands as critical habitat. Ironically, the court did agree with the builders that FWS failed to explain adequately why it excluded UC Merced and a Highway 99 project in Tehama County from critical habitat—both of which were 11th hour exclusions directed by Department of Interior political appointee, Julie Macdonald. Macdonald—a civil engineer by training—was recently the subject of a major expose in the *Washington Post* for her consistent rejection of staff scientists' recommendations

to protect imperiled wildlife. Macdonald has a history of improper meddling in vernal pool issues, and a previous critical habitat rule had to be redone after she inserted economic analysis that vastly exaggerated the potential costs of designation.

“We are elated that the court rejected the challenge to FWS’s decision to designate more than 800,000 acres of vernal pool grasslands as critical habitat,” stated Barbara Vlamis, executive director of the Butte Environmental Council. “At least for those grasslands, the developers will have to ensure that their projects will not undermine the future recovery of these 15 imperiled plants and animals.”

This recent decision is only the latest in a decade long effort to protect vernal pool grasslands under the Endangered Species Act. In August 2003, the Bush Administration issued a final critical habitat rule for vernal pools in which it excluded more than one million acres and six counties on economic grounds. In January 2004, the conservation groups successfully challenging the 2003 rule resulting in the court ordering FWS to reconsider its exclusions. In August 2005, FWS issued its new final rule excluding nearly 900,000 acres of grasslands. In December 2005, the conservation organizations filed suit challenging FWS’s exclusion of the five counties.

“As vernal pool grasslands are ripped up, they are replaced by sprawl,” stated Carol Witham of the California Native Plant Society. “Designating vernal pool grasslands as critical habitat will not stop sprawl, but it will make developers and local governments think hard about how their land use decisions impact the future recovery of these unique 15 imperiled plants and animals.”

The court ordered FWS to reconsider its decision to exclude the nearly 900,000 acres and eleven counties and issue a new critical habitat rule in 120 days. The current critical habitat designation of more than 800,000 acres of vernal pool grasslands remains intact.

“Now that FWS must consider the benefits to the recovery of the 15 vernal pool plants and animals from designating critical habitat, we believe that the Fish and Wildlife Service will no longer be able to justify its decision to exclude half the vernal pool critical habitat acreage,” stated Lydia Miller of the San Joaquin Raptor and Wildlife Rescue Center.

Protein-rich invertebrates and crustaceans, as well as the roots and leaves of vernal pool plants provide an important seasonal food source for waterfowl as well as other non-migratory bird species. According to the California Academy of Sciences, Pacific Flyway migratory birds and 19 percent of all wintering waterfowl in the continental United States take respite in vernal pools.

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