



---

Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

---

## Fish And Wildlife Seeks Flight From Endangered Condor Suit

By **Joyce Hanson**

Law360 (September 4, 2019, 8:40 PM EDT) -- A U.S. government agency wants a California federal court to toss a suit over a development project's potential threat to critically endangered condors, saying Native American and environmental activists wrongly claim the birds and their habitat are "traditional cultural properties."

The U.S. Fish and Wildlife Service contends that, contrary to claims by the Wishtoyo Foundation, a nonprofit dedicated to preserving the history and culture of the Chumash tribe, and the Center for Biological Diversity, condors and their habitat do not meet the requirements for listing as traditional cultural properties on the National Register of Historic Places.

As a wild animal, the condor doesn't fit the definition of an "object" under the National Historic Preservation Act, the agency asserted in its motion to dismiss. The Department of the Interior's regulations define an object as a material thing of functional, aesthetic, cultural, historical or scientific value that may be movable yet is related to a specific setting or environment, according to the agency.

"The condor does not meet this definition for several reasons," the agency said in its Friday motion. "In the first place, as a species — which is the sense in which Wishtoyo uses the term — the condor is not a 'material thing.' It is an intangible grouping, with traits that remain fixed even as its composition changes over time. In this way, the condor is like a political party or a football team, with a mutable membership but a unitary existence."

On July 9, **the government asked the court to dismiss** the case on the grounds that there's no evidence the Tehachapi Uplands Multiple Species Habitat Conservation Plan would impact tribal cultural traditions tied to the bird. The challenged plan authorizes a luxury resort development in a portion of Tejon Ranch, a large area of private land northwest of Los Angeles that is a designated habitat for condors and a culturally significant site for local tribes.

On Aug. 15, however, U.S. District Judge Cormac J. Carney denied the July 9 motion to dismiss **the original April 25 complaint** as moot in light of the plaintiffs' July 30 filing of a first amended complaint that added Tejon Ranchcorp and Tejon Mountain Village LLC as intervening defendants.

The U.S. Fish and Wildlife Service approved the conservation plan in 2013, including the permanent protection of about 135,000 acres of "crucial but privately held condor habitat," according to the agency's Friday motion. The agency subsequently issued an incidental take permit to Tejon Ranch that authorizes the nonlethal take of four condors over the course of 50 years under the Endangered Species Act, according to the agency.

But the Wishtoyo Foundation and Center for Biological Diversity plaintiffs claim in their court filings that the plan violates the National Historic Preservation Act, as the government failed to take into account the cultural significance of the condor to local Native American tribes.

"The service violated the NHPA when it approved the [conservation plan], issued the incidental take permit, and issued the record of decision without taking into account, evaluating or attempting to mitigate the effects of these approvals on the California condor; condor nests; tribal cultural and

tribal sacred landscapes, sites, burial grounds and viewsapes, of which the cultural and religious function and significance to tribes are dependent on the presence of the condor," according to the amended complaint.

Representatives for the parties did not immediately respond to requests for comment Wednesday.

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

The government is represented by Brad C. Leneis of the DOJ's Environment and Natural Resources Division.

Wishtoyo is represented by in-house counsel Jason Weiner.

Tejon Ranchcorp and Tejon Mountain Village are represented by Charles L. Coleman III of Holland & Knight LLP.

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

--Additional reporting by Sophia Morris and Darcy Reddan.

---

All Content © 2003-2020, Portfolio Media, Inc.