

Hicks-Ray Associates



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TO: WESTCAS Membership

FROM: Fred B. Hicks and Tom Ray

SUBJECT: A Tale of Two Species

Since we are playing on the famous Charles Dickens phrase for the “Subject” of this report perhaps we can also add; “it was the best of times; it was the worst of times.” We refer here to how the Federal government is dealing with two endangered species.

“The worst of times” scenario could be applied to the situation being faced by Tombstone, AZ. Tombstone is a community built largely of wood. For the past 130 years, the City has depended upon 25 springs which are connected to the town water supply by a small pipeline. In 2011, the summer monsoon damaged this pipeline and the community is anxious to shore up both the pipes and the various springs before the 2012 monsoon.

Their attempts have been frustrated by the US Forest Service. The area in question is part of the Miller Peak Wilderness Area, established in 1984. Federally designated wilderness areas have strict prohibitions against any kind of mechanized equipment and the Forest Service has interpreted this to preclude even the use of wheelbarrows. This whole issue was further complicated by sightings of the Mexican Spotted Owl which combined the twin issues of a federally designated wilderness area with an endangered species. The upshot is that a job that would take only a very few days using mechanized equipment is now almost impossible.

The City of Tombstone sued the Forest Service to try and expedite permits to allow them to take heavy machinery into the Miller Peak Wilderness area. They lost in the US Supreme Court. In response, the Forest Service flexed its muscles by challenging in court the contention that Tombstone even had water rights to 20 out of the 25 springs in question. The argument that a community of wooden buildings faced a terrible threat from fire had no impact. When asked in court, “what are more important, owls or the people of Tombstone,” the Forest Service Supervisor of the Wilderness area responded, “There is no easy answer to that question.”

To make a long story short, the Tombstone situation came to the attention of the “Jarbridge Shovel Brigade” which is an outgrowth of the Sagebrush Rebellion of yesteryear. The Brigade travelled to Tombstone after receiving permission and

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clarification from the Forest Service that shovels [but not wheelbarrows] were OK. They hiked three miles into the Miller Peak Wilderness and working in temperatures of well over 100 degrees managed to accomplish in three hours what machines could have done in minutes. But the Tombstone pipeline is very far from being repaired.

Perhaps this situation can be worked out. Representative Jeff Flake of Arizona has introduced HR 5791, “The Emergency Water Supply Restoration Act” and the bill has already had a hearing in the Natural Resources Committee. We are betting that our Arizona WESTCAS members will be able to update us on the Tombstone situation in San Diego.

In contrast, the “best of times” scenario could be attached to the decision this week of the US Fish and Wildlife Service not to list the Sand Dune Lizard as an endangered species. [See attached press release]. Senator Cornyn of Texas and Senator Inhofe of Oklahoma had led a determined effort to document the disruption that this designation would have for everything from gas and oil exploration to crucial water pipelines that are being constructed by Texas water agencies.

The Senators also helped to spearhead a real outreach to Fish and Wildlife which offered cooperation from State and Local governments as well as private interests to protect the Sand Dune Lizard. And an agreement was made not to list.

Could this be an example and a harbinger of future cooperation between the Federal government and local stakeholders? Or does the Tombstone situation represent a truer picture of the reality? At the very least, the Sand Dune Lizard issue is a reminder that efforts made to resolve these situations on the front end are vastly preferable to having all party’s dug in and fighting an all out war.

See you in San Diego!