

Developers lose verdict to tortoises

By Mary Manning
SUN Staff Writer

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The U.S. Court of Appeals upheld the emergency listing of the Mojave Desert tortoise Wednesday, denying a preliminary injunction sought by Nevada, Las Vegas and developers.

The 18-page decision said Interior Secretary Manuel Lujan Jr. acted properly to protect the tortoises vanishing from their homelands in Southern California, Southern Nevada and parts of Southern Utah by issuing the emergency listing Aug. 4.

"More troubling is appellants's contention that the secretary acted irrationally by including the Nevada portion of the Mojave population," the decision said.

Nevada, the city and developers claimed there was no proof that tortoises within the state suffered from an upper respiratory disease apparently cutting down populations in Southern California.

"Appellants face a heavy burden in establishing that the secretary acted irrationally by including Nevada but not including the Arizona Sonoran population in the listing," the decision said. "Since the agencies have great discretion to treat a problem partially, we would not strike down the listing if it were a first step toward a complete solution, even if we thought it 'should' have covered both the Mojave and Sonoran populations."

A District Court decision already denied the Nevada governments and developers relief. The Appeals Court reaffirmed that decision.

"So the tortoise has won," said Michael Bean of the Environmental Defense Fund, one of the organizations that petitioned the federal government to issue the emergency declaration. That emergency listing expires April 2, but the government is expected to ask for a permanent listing.

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The Appeals Court decision appeared more supportive of the federal government's actions than the District Court's decision, Bean said.

"This is the end of the line for the plaintiffs," he said, adding, however, that they could go back to District Court for trial.

But attorney Nick Niarchos, representing Summa Corp., said all legal remedies would be explored.

"We think we're going to have a settlement," he said, referring to negotiations that have continued for more than a month.

"We're pursuing research funds and a number of other legal avenues," he said, but would not elaborate.

Terry Murphy, representing Southern Nevada Home Builders Association, said attorneys had not reviewed the decision yet.

"We have not had a chance to talk to our attorneys (in Washington, D.C.)," she said.

In testimony at a U.S. Fish and Wildlife Service hearing last month, the Southern Nevada Home Builders Association said that a two-year slowdown in new home construction will result in a temporary loss of construction and related jobs.

Clark County is trying to develop a habitat plan that will preserve areas for tortoises to survive, but that solution could take two years.

Nevada Attorney General Brian McKay was out of town and could not be reached for comment.

"We have not received a copy of the ruling," said McKay spokesperson Sandra Chereb.