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Lawsuit challenges "habitat"
designations for fish
species in New Mexico and Arizona

PLF News Release

Sacramento, CA: September 12, 2007: The federal government acted illegally when it designated vast stretches of riverbeds in New Mexico and Arizona as "critical habitat" for two species of fish found throughout the Southwest - the spikedace and loach minnow. So argues a lawsuit announced today by Pacific Legal Foundation. The resulting land use restrictions create flood dangers for landowners, among other problems, according to PLF attorneys and their clients.

Filed on behalf of the Coalition of Arizona/New Mexico Counties for Stable Economic Growth, and the New Mexico Cattle Growers' Association, the lawsuit contends that the United States Fish and Wildlife Service - the agency responsible for the March 21, 2007, habitat designation - did not follow the requirements of the Endangered Species Act when it set aside more than 500 miles of riverbed in Arizona and New Mexico. Landowners face flood risks because of the restrictions.

"Along hundreds of miles of streams and rivers, the federal government has essentially prohibited landowners from making improvements on their own private property - in the name of protecting two fish species," said Schiff. "But this command violates the Endangered Species Act itself in some basic ways. The regulators haven't clearly identified physical and biological features in the designated areas that are essential for the species' conservation. And they have ignored their legal duty to consider the economic impact of the designation."

"Because the illegal regulations severely restrict private property owners, they pose flood dangers for ranchers and other rural landowners who can't shore up riverbanks or dredge streams and rivers to stop the buildup of silt," explained Schiff.

"[D]esignation of critical habitat for the spikedace and loach minnow and other species has hampered efforts for bank stabilization to improve water quality and water delivery," writes Howard Hutchinson, executive director of the Coalition of Arizona/New Mexico Counties and chair of the Catron County (NM) Water Advisory Board, in a declaration accompanying the lawsuit. "The result has been continued deterioration of riparian areas, increased down stream silting, flooding, and reduction of delivery of water." The designations will also limit ground-water pumping, maintenance and improvement of diversion structures, bridges and roads, as well as hindering efforts to counter the invasion of Salt Cedar in rivers and streams, according to Hutchinson.

Counties that are members of the Coalition, and in which the restrictions are imposed, include Catron and Hidalgo in Eastern New Mexico and Apache, Gila, Graham, and Greenlee in Arizona.

The case, filed in the United States District Court for the District of New Mexico, is titled, *Coalition of Arizona/New Mexico Counties for Stable Economic Growth, et. al. v. United States Fish and Wildlife Service*.

The complaint is available at [PLF's website](#).

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Pacific Legal Foundation is the oldest and largest public interest legal organization dedicated to property rights, limited government, and a balanced approach to environmental protection.

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