

# **This rat is foiling developers' plans to capitalize on a weaker Endangered Species Act**

August 23 2019, by Louis Sahagun

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Credit: CC0 Public Domain

Southern California developers have long sought relief from regulations protecting wildlife, and earlier this month the Trump administration

obliged, formally moving to weaken the federal Endangered Species Act.

But any boon for business could be short-lived—California is stepping in to protect species left vulnerable by federal rollbacks.

The California Fish and Game Commission, for example, recently declared the San Bernardino kangaroo rat a candidate for the state [endangered species list](#), a decision that could create legal obstacles for a 8,407-home development in Rialto.

The panel issued its decision after a [nonprofit group](#), the Endangered Habitats League, argued that intervention was urgently needed to protect the rodent, a federally listed species, from threats including urban sprawl and President Donald Trump's "politicization of federal regulatory agencies."

No one was more astonished by the commission's 4-0 vote than a group of development opponents, who thought they had lost a 10-year effort to bolster protection for the rat. That came after federal biologists reversed themselves in July—concluding that the Rialto development would not be the death knell for the rat—even though the subdivision would cover 1,048 acres of critical habitat.

For Lynn Boshart, 72, whose home overlooks the disputed property, the state's action was a stay of execution.

"We were stunned—then jubilant," Boshart said. "Presenting our case to the commission was an act of desperation after we'd exhausted all other options."

Breaking into a smile, she added, "This fight isn't over after all."

At the center of the fight is a 3-inch-tall rodent that had lost 95% of its habitat by the time it was listed as a federally endangered species a decade ago.

San Bernardino kangaroo rats, named for the way they hop across the ground, have adapted to a sage-and-sand habitat of meandering flood plains, rocky channels, grasslands and low shrubs.

It shares this landscape with an array of predators, including great horned owls, coyotes and snakes. But its biggest long-term threat is habitat fragmentation caused by sand-and-gravel operations, highway construction and new homes.

In 2002, the U.S. Fish and Wildlife Service had designated 33,295 acres as critical habitat for the rat, but by 2018 only 16,000 acres were considered functional, including a portion of Lytle Creek Wash, where the Rialto homes are planned.

"We're not saying don't build that development," Boshart said. "Just scale it back a bit, and move it away from the wash."

While running for president, Trump railed against the Endangered Species Act for stifling development and harming farmers. During a 2015 campaign rally in Fresno, he complained about water regulations designed "to protect a certain kind of 3-inch fish," the delta smelt, which has complicated the pumping of water from the Sacramento-San Joaquin Delta to Central Valley farms.

After months of signaling its intention to weaken federal protections for species, the administration unveiled its rollback on Aug. 12. Among other things, it for the first time will allow federal authorities to take into account the economic cost of protecting a particular endangered species.

Before that action, the Endangered Habitats League had spent months investigating the administration's connections and communications with the Lytle Creek Development Co., based in Irvine.

Through a Freedom of Information Act request, the group learned that Ron Pharris, the company's chairman, had reached out via email on July 12, 2018, to Ian Foley—then a legislative assistant for Rep. Ken Calvert, R-Calif. - asking for help in "moving this important project forward."

Pharris asked Foley to arrange a personal meeting with Assistant Interior Secretary Susan Combs, a Trump appointee who has referred to endangered species listings as "incoming Scud missiles." He planned to use graphs and maps, he said, to "help her better understand the key issues which we have been unable to satisfactorily resolve" with local federal biologists reviewing the environmental impacts of the planned development.

Those biologists, he said, were "NOT using the best available science and information gathered about this project; rather, they seek ways to view the project through the lens of their preconceived belief of what biological conditions on the site 'should' be."

Pharris was particularly worried that they were preparing a "draft biological opinion" that would call for removing as much as one-third of the project's footprint in an effort to protect the rats and their habitat.

On July 26, 2018, Paul Souza, regional director of fish and wildlife's pacific southwest region, sent an email alerting his staff that the developer had bypassed the office and taken its concerns directly to Washington.

"Please make the point that the regional office is prepared to work with the developer," he said, "and find a fair and reasonable solution."

A year later, the service issued a draft biological opinion that said the "proposed action is not likely to jeopardize the continued existence of the San Bernardino kangaroo rat," nor the value of critical habitat in the area.

It pointed out that the developer planned to avoid and conserve at least 892 acres of natural open space, more than half of which would be for the benefit of the rat.

Contacted by the Los Angeles Times, Pharris said: "I just do my thing—and yes, that includes conversations at both the state and federal level."

Combs was unavailable for comment. Souza declined to say whether Combs had contacted him about the project. But in a prepared statement, he said it was not uncommon for interested parties to communicate with senior officials. "We are creating a conservation strategy for the species and expect to finalize our technical review in the weeks ahead," he added.

When the Endangered Habitats League petitioned the California Fish and Game Commission to intervene, the group argued that the Trump administration's politicization of federal environmental agencies threatened the rat's survival.

"State listing is a necessary backstop to the disregard of law and science by federal government agencies under the current administration," said Dan Silver, executive director of the Endangered Habitats League.

In issuing its decision, the state commission declined to endorse Silver's argument about the politicization of federal agencies. But it did agree the rat might be in trouble.

"The fact that the species continues to decline after being federally listed for all these years suggests to me that something about the federal Endangered Species Act may not be working right," said Melissa Miller-Henson, acting executive director of the commission.

The commission's action provides interim protection for the San Bernardino kangaroo rat until a final decision is made on listing within the next year, officials said.

California could soon make other moves to backstop the Trump administration's weakening of environmental laws.

State Senate leader Toni Atkins, a Democrat, has introduced legislation, SB 1, that decrees California will step in and adopt any federal environmental protection the Trump administration attempts to gut.

"This bill's purpose is simple and clear," Atkins said. "It gives the state Fish and Game Commission discretion to safeguard protections for our endangered species rolled back by the current federal administration."

Atkins aims to push her bill through the Legislature before it adjourns for the year in mid-September.

That won't be easy.

"SB 1 is under attack," said Kim Delfino, California program director for the nonprofit Defenders of Wildlife, "by opponents including the California Chamber of Commerce, the California Farm Bureau Federation and big water districts."

To hear the chamber tell it, the bill is a "job killer" that "would negatively impact the growth, employment and investment decisions of almost every major California business."



On Wednesday, seven environmental groups filed a federal lawsuit challenging the Trump administration's rollback of the Endangered Species Act.

In the meantime, conservationists are waiting to see how skirmishes between California and the Trump administration will play out on the ground.

Boshart has recently been leading strolls through the rat's remnant kingdom of buckwheat, yuccas, sage and soft, loose sand on the northern edge of Rialto in San Bernardino County, to win more support for her cause.

"Just after we moved here 12 years ago," Boshart likes to say, "I saw a San Bernardino kangaroo rat stand up on its hind legs and say, 'Hello!' to me. We've been good neighbors ever since."

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Citation: This rat is foiling developers' plans to capitalize on a weaker Endangered Species Act (2019, August 23) retrieved 2 May 2024 from <https://phys.org/news/2019-08-rat-foiling-capitalize-weaker-endangered.html>

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