

August 13, 2019

Here Today, Gone Tomorrow? Rules Changing How Endangered Species Act is Applied

Litigation

Environmental

In a move seen to be helpful to business, the federal government is changing regulations related to how the Endangered Species Act is applied. The changes, announced yesterday by the Interior Department, and virtually certain to be challenged in court by environmental advocacy groups, are expected to become effective by mid-September 2019.

The Interior Department's announcement noted that the changes are required to increase "transparency and effectiveness" under the act, as well as ease the regulatory burden on landowners and developers.

The changes will impact how species are listed on the endangered and threatened species list, including a new definition of "the foreseeable future" when considering listing a species as threatened and the removal of the agency's stated prohibition from considering economic factors when making a listing determination.

The new rules will also change how a species' "critical habitat" is defined, requiring unoccupied areas to show at least one of the features that are essential for the survival and recovery of the species. Finally, they will impact the nature and timing of consultation by other federal agencies with the Secretaries of Interior and Commerce, known as "interagency consultation."

The announcement is likely welcome news to businesses and communities often affected by the act, including ranchers, miners, developers, farmers and other landowners. The new rules are expected to help reduce some of the complexity and burden associated with obtaining permits to develop lands in areas with protected species.