

NEW DETAILS WARBLER LAWSUIT

State agency sues U.S. to end longtime warbler protections

Land commissioner wants songbird taken off endangered list.

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Injecting state government into a long-running battle of development versus preservation, Texas Land Commissioner George P. Bush sued the federal government Monday in an attempt to remove a Central Texas songbird from the endangered species list.

The federal lawsuit argues that special habitat protections, including development restrictions, are no longer necessary because the golden-cheeked warbler's population has recovered since the bird was listed as endangered almost 27 years ago.

"Leaving a species on the endangered list after its recovery is not only ineffective, it's irresponsible," Bush said. "The restoration of the golden-cheeked warbler population is a success story worth celebrating by removing it from the endangered list and restoring the rights of Texas landowners to effectively manage our own properties."

If successful, the lawsuit would open a broad swath of Central Texas land – including western Travis County – to increased development and road building.

Travis Audubon will continue to defend the bird's status as endangered, said Joan



Removing the warbler from the endangered species list could spur development. CONTRIBUTED BY CITY OF AUSTIN CHANNEL 6

Marshall, executive director. "Once again the golden-cheeked warbler is in the cross-hairs of people who have deep pockets and a desire to increase development of warbler habitat," Marshall said.

"The endangered bird's habitat diminishes each year in fast-growing Central Texas. The birds' survival depends on people being willing to stand up to these repeated threats."

Filed in Austin federal court, the lawsuit seeks an order invalidating the warbler's designation as an endangered species, arguing that a 2015 Texas A&M University study concluded that there are 19 times more warblers spread over a habitat that is five times larger

than was known when the bird was listed as endangered.

The study shows that warbler protections are based on a "fundamental misunderstanding" of the bird's population, the lawsuit said.

The A&M study also formed the basis of a 2015 petition that sought to remove endangered species protections for the golden-cheeked warbler that had been filed by former state Comptroller Susan Combs and property-rights organizations.

The U.S. Fish and Wildlife Service, which enforces the Endangered Species Act, rejected the petition last year, saying an agency analysis determined that the warbler is not recovering and that 29

percent of the bird's nesting habitat had been lost from 1999 to 2011.

"Due to ongoing, widespread destruction of its habitat, the species continues to be in danger of extinction throughout its range," the agency said.

In addition, the American-Statesman has reported that other biologists have criticized the Texas A&M study, finding methodology mistakes that led federal regulators to conclude that it overpredicted the number of warblers by as much as tenfold.

The lawsuit was prepared by the Texas Public Policy Foundation, a conservative think tank based in Austin, on behalf of the General Land Office, which oversees property that includes warbler habitat.

Ted Hadzi-Antich, senior attorney for the foundation's Center for the American Future, said federal regulators should not be allowed to rely on the Endangered Species Act "to protect individual species without considering the impacts on the overall human environment."

"Otherwise, the act becomes a general, federal land use planning tool that effectively keeps humans out of the environment," he said. "Congress never intended that result."

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