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PODIUM

Fly(t) of Fancy in Southern California

By R. Randy Lee SPECIAL TO THE NATIONAL LAW JOURNAL

EVEN STRANGER than the tale of Gregor Samsa waking up one morning and finding he had turned into an insect is the tale of the fly that woke up and found itself the center of a lawsuit.

Not just any fly, mind you, but the Delhi Sands flower-loving fly, whose only known home is the garbage dumps of California's San Bernardino and Riverside counties. The only fly with the honor of being listed as endangered under our nation's Endangered Species Act, the fly so far has caused a hospital to be moved 250 feet north, nearly closed down a major interstate highway on the grounds that it interferes with the fly's sex life, and prevented a county from relieving traffic jams to preserve a "fly highway" for smooth travel.

Welcome to Southern California, Mr. Kafka. And too bad Hitchcock is dead—he could have made a good horror film, "The Flies," starring U.S. Interior Secretary Bruce Babbitt, with supporting actors from the U.S. Fish and Wildlife Service.

The lawsuit against these agencies, brought by the National Association of Homebuilders, San Bernardino County and the cities of Fontana and Colton, claims the only way "endanger" is relevant to this fly is the way it endangers private and public enterprise.

The fly problem has forced landowners to forgo alterations of their property and to fence in land as a "fly preserve" without being paid just

compensation. It has made many businesses think twice about relocating to the fly's ancestral home, located in an economically distressed area, the Agua Mansa Enterprise Zone.

In an incredible plot twist (thank the Feds, the true masters of irony, not Hollywood), the fly is expected to become extinct soon after the year 2000—no matter what heroic actions are taken to preserve it—according to the Fish and Wildlife Service.

No matter. The cost to San Bernardino County of moving the

planned medical center so far has come to more than \$3.5 million—money that could have paid for the treatment of 24,993 outpatients or 522 inpatients. Since only about eight flies were sighted on the original hospital site, this amounts to spending almost \$500,000 per fly, or \$125,000 a year for the rest of their short, but expensive, little lives.

Thankfully, shortly after the county was ordered to protect the fly's mating habits, either by closing down Interstate 10 during the months of August and September or by reducing the speed limit to 15 miles per hour, the Fish

and Wildlife Service came to its senses and rescinded this demand.

The "information highway" may be getting attention everywhere else, but in San Bernardino County it plays second fiddle to the fly highway. A proposed attempt to relieve traffic congestion at an intersection near the planned hospital, led to an order to preserve a 100-foot-wide strip of land—just in case the fly should get the urge to travel.

The fly has even placed the city of Fontana, population 105,000, in financial jeopardy. The city issued \$10 million in bonds to finalize building infrastructure for Southridge, a mixed-use development on 2,400 acres. Because a two-year survey will be required to determine if the fly is residing anywhere on the land, however, construction has been considerably delayed, raising the possibility that Fontana might be driven to default on the bonds.

"The Fly That Stopped a County"—soon playing near you—is yet another abuse stemming from the Endangered Species Act which, rather than concentrating on saving species that merit saving, throttles private property owners and public officials in worthless endeavors.

On Dec. 6, 1996, pointing to the fact that the fly was both endangered and, as an entomological collectors' item, an object of interstate commerce, the U.S. District Court for the District of Columbia upheld the insect's protection. The matter is now on appeal.

Meanwhile, the court ruling ensures that there will be a blockbuster sequel. ☐



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