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MUST HAVE THEM IN GROUPS
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THE DELHI SANDS FLY

Picture

I consider myself an environmentalist, but this is offensive to me. . . . This is not some sylvan glen. . . . This is not a lion, tiger or a bear. Or even an owl. This is a fly.

—Julie Biggs, city attorney, Colton, California¹

On September 23, 1993, the Delhi sands flower-loving fly was listed in the *Federal Register* as an endangered species, the first fly to be listed as such. However, the fly's scarcity and size (at approximately one inch long, it is one of the largest flies in North America) have failed to impress those in California who see the fly as an impediment to growth and progress.

The U.S. Fish and Wildlife Service (FWS) has concluded that the fly is endemic to Delhi sands, a fine-grained strata that once covered about forty square miles. Most of this original habitat area was destroyed by agricultural conversion in the 1800s. The remaining fragments of suitable habitat continue to be destroyed by the construction of homes, businesses, and associated roads and infrastructure. This extensive habitat loss and degradation have reduced the fly's range by more than 97 percent. Only five populations of the fly still exist. All are on privately owned land, and all are threatened by urban development activities.

The fly's small colony sizes and fragmented habitat make it especially vulnerable to random fluctuations in annual weather patterns, availability of food, and other environmental stresses. Small colony size also leads to loss of genetic variability, reducing the ability of the small populations to respond successfully to environmental stresses. Finally, small populations

exhibit increased inbreeding, which can allow the expression of deleterious recessive genes (“inbreeding depression”).

Only fifty-seven public comments were received on the FWS’s proposal to list the fly. Of these, nine supported the listing, forty-six opposed the listing, and two were neutral. In addition, a petition containing forty-eight signatures opposed the listing.

The listing was opposed by the City of Rialto, the Board of Supervisors for the County of San Bernardino, the Riverside County Farm Bureau, the Riverside Habitat Conservation Agency, the Agua Mansa Industrial Growth Association, and four elected officials. One conservation organization and eight individuals supported the listing.

The opposition to the listing of the fly reflects the concern that this action will have serious negative impacts on the local economy. The concern is not unjustified: Federal authorities forced San Bernardino County to spend almost \$4 million to move the “footprint” of a new hospital by 250 feet in order to preserve a few acres of fly habitat and create a corridor allowing the insect to move to nearby dunes. Neither the county nor neighboring private landowners have received any compensation for what they regard as a “taking” of their property. The Agua Mansa Enterprise Zone, an industrial development project expected to create 20,000 jobs over fifteen years, remains stalled on the drawing board because it would destroy prime fly habitat.

DISCUSSION

Deep ecologists such as Arne Naess have argued that an adequate environmental ethic must include a commitment to local autonomy and decentralization. In this case, deep ecology’s commitment to local autonomy seems to conflict with its commitment to biospherical egalitarianism since local opinion was overwhelmingly against the federal government’s decision to list the fly as an endangered species. Such conflicts—which moral philosophers often call *dilemmas*—are hardly unique to deep ecology: Even hard-core anthropocentrists can find themselves confronted with conflicting duties. But dilemmas may be especially common in environmental ethics for the simple reason that most scholars in the field propose an expansion of the moral community, with the result that there are more duties and interests between which conflicts may arise.

Much of the opposition to listing the fly as an endangered species was based on the negative impact the listing will have on local and regional eco-

logic growth. The FWS responded to this criticism by explaining its legal mandate under the Endangered Species Act (ESA) as follows: “In accordance with 16 U.S.C. 1533 (b)(1)(A) and 50 CFR 424.11 (b), listing decisions are made solely on the basis of the best scientific and commercial data available. . . . [E]conomic considerations have no relevance to determinations regarding the status of species.” In this regard, the ESA differs in an interesting way from the Occupational Safety and Health Act (OSHA). By statute and by U.S. Supreme Court ruling under the statutes, OSHA is required to consider economic impacts when formulating rules to protect human workers from occupational injury and disease. Under the ESA, as currently interpreted, the FWS is forbidden to consider such impacts.

Finally, the Delhi sands fly case raises an interesting constitutional issue. The U.S. Constitution reserves to the states and to the people all powers not explicitly granted to the federal government. In the case of the ESA, the constitutionality of the law is grounded in Congress’s authority to regulate interstate commerce. In its legal challenge to the listing of the fly as an endangered species, the National Association of Home Builders asserted that since the fly exists only within the state of California and has never been traded across state lines, the federal government had no constitutional authority to protect it. The Supreme Court denied the builders’ challenge and made the following argument in defense of FWS’s listing:

[When] a species becomes extinct, . . . [it] has a substantial effect on interstate commerce by diminishing a natural resource that could otherwise be used for present and future commercial purposes. . . . Plants and animals that are lost through extinction undoubtedly have . . . what economists call an “option value”—the value of the possibility that a future discovery will make useful a species that is currently thought of as useless. To allow even a single species whose value is not currently apparent to become extinct therefore deprives the economy of the option value of that species. . . . [I]t is impossible to calculate the exact impact that the loss of the option value of a single species might have on interstate commerce. In the aggregate, however, we can be certain that the extinction of species and the attendant decline in biodiversity will have a real and predictable effect on interstate commerce.²

QUESTIONS

1. Like Case 8: Matinicus Island, Case 9: Taking Lake Tahoe, and Case 16: The Grand Staircase, this case raises questions about the roles of

local and national authority. What role should local and regional opinion play in environmental policy decisions? Does effective environmental protection necessarily promote centralized regulatory decision making?

2. What role should economic considerations play in environmental decisions? Are economic considerations less important when protecting endangered species than when protecting human employees? Would RCBA (risk-cost-benefit analysis) be a useful analytic tool in this case? Opponents of the FWS listing can easily estimate the economic costs of protecting the fly: Lost jobs and stalled construction have relatively clear values. How could proponents of the listing calculate the value of the fly? And how could the Supreme Court ever calculate the future "option value" of the fly to interstate commerce?

3. Reread Julie Biggs's chapter-opening statement. Is her apparent preference for "charismatic megafauna" morally justified? Would the issues or proper resolution of this case be any different if the endangered species were a large mammal or an attractive bird? Does the Delhi sands fly deserve the same kind of concern as the mountain gorilla (see Case 1: Gorilla Rangers)?

4. The fly's small range and population make it particularly susceptible to extinction because of natural events, such as variation of weather patterns. According to the scientist quoted in Case 26: Tasmanian Tigers, humans have an especially strong duty toward those species that human activity has threatened. Since humans are responsible for reducing the Delhi fly's range and population, do humans now have a special obligation to attempt to save the species from such natural occurrences?

5. Have the landowners who have been unable to develop their property because of the Delhi fly's listing suffered a "taking" in the sense explained in Case 9: Taking Lake Tahoe? If so, are they entitled to compensation?

6. The argument of the Supreme Court seems to be this: Since at some point in the future the Delhi sands fly might be found to have a value that would make it an object of interstate commerce, Congress's authority to regulate interstate commerce applies to it right now, even though it is not an object of such commerce. Taking this argument at its face value, is there any part of the natural, social, or personal world to which it cannot be applied?

NOTES

1. *Washington Post*, April 4, 1997, A1.
2. *National Association of Home Builders v. Babbitt*, 130 F.3d 1041, 1053-54 (D.C. Cir. 1997).

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