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ALM

JUDGE IS LEERY ABOUT LAST-MINUTE LAND SALE

By **Todd Woody**

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The Wilson administration's rush to acquire land for a radioactive waste dump in the dying hours of the Bush presidency has been met with a skeptical reception from U.S. District Judge Marilyn Hall Patel.

The judge today will consider environmentalists' move to halt the eleventh-hour sale of federal land in Southern California's **Ward Valley** on the grounds that the transfer will harm the imperiled desert tortoise. If she agrees, or delays a ruling for any reason, the sale will come under the control of incoming Interior Secretary Bruce Babbitt, an environmentalist.

At a procedural hearing Friday, Patel rejected the environmentalists' request to postpone today's hearing on a preliminary injunction until after Bill Clinton takes the oath of office. But she seemed especially dubious of the Wilson administration's sudden need to buy land for a project long mired in disputes over its safety.

"What's the big worry to have this transfer take place right now?" Patel asked attorneys for the California Department of Health Services, the agency overseeing the project. "The state of California hadn't raised this matter as an urgent issue until a few days ago. What's the big hurry? Why can't you wait [until the endangered species issues are resolved]?"

Elisabeth Brandt, the department's deputy director and chief counsel, told Patel that bringing the Clinton administration up to speed would cause an unacceptable delay.

"You are trying to educate me in a few days, why can't you do that with them?" interjected Patel.

Well, Brandt said, a new administration involves a whole new cast of characters, some of whom "respond to political pressures."

"You're not suggesting that all this is political?" Patel inquired. "I thought we were dealing with the [endangered species] statute."

When Brandt attempted to recite the convoluted history of the low-level radioactive waste facility and the necessity of completing the land transfer to meet federal obligations, Patel responded, "Why didn't you come to me a year ago? Six months ago? Four months ago?"

Environmentalists contend that fears that the Clinton administration would scuttle the transfer led Gov. Pete Wilson to persuade Interior Secretary Manuel Lujan Jr. to short-circuit the transfer process and sell the land to the state on Jan. 7. The next day, environmentalists, arguing that Lujan violated the Endangered Species Act, obtained a temporary order stopping the sale.

For their part, attorneys for U.S. Ecology, the prospective dump operator, have accused the environmentalists of manipulating the endangered species law to derail the dump.

Patel herself took note of the passions underlying the case. Glancing at the crowded courtroom, she remarked. "Such interest in procedural matters. This is pretty dull stuff."

Although they lost their motion to delay today's hearing, plaintiffs attorneys Michael Lozeau and Hannah **Bentley**, both San Francisco solo practitioners, succeeded in keeping Patel focused on the issue of whether Lujan violated the Endangered Species Act by missing a statutory deadline to identify the desert tortoise's critical habitat. State and federal biologists consider **Ward Valley** -- in San Bernardino County -- part of a high-quality habitat for the tortoise, which was listed as a threatened species in 1990.

Describing Lujan's compliance with the law as the sole issue in the case, Patel denied motions by U.S. Ecology and two other groups to join the suit.

U.S. Ecology attorney Karl Lytz, a San Diego partner at Los Angeles' Latham & Watkins, said Friday that his client would consider appealing Patel's ruling.

If Patel denies the environmentalists' motion for a preliminary injunction today, the Bush administration will have less than 24 hours to complete the transfer. But if the judge issues an injunction, attorneys say, she'll open the door to a major endangered species fight that could affect development throughout the Southwest.

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