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Long chance at listing for Palouse earthworm

Natural resource consultant says worm could be case study for Endangered Species Act

By Holly Bowen, Daily News staff writer

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Michael Bogert said the chances of the giant Palouse earthworm becoming an official endangered or threatened species could be about as likely as seeing the worm itself.

Bogert, a University of Idaho College of Law graduate, was counselor to former U.S. Interior Secretary Dirk Kempthorne and is a former regional administrator of the U.S. Environmental Protection Agency.

He is currently stationed in Washington, D.C., as senior counsel for Crowell and Moring's Environment and Natural Resources Group.

He spoke about the elusive worm Saturday morning at a breakfast in Moscow hosted by the Farm Bureaus of Latah and Whitman counties.

The giant Palouse earthworm presents a unique dilemma for the region, Bogert said.

Only a few specimens of the worm have ever been found, the most recent on Paradise Ridge in 2008. Conservation groups have sought for several years to have the worm listed as an endangered or threatened species.

"Having to deal with a listed species on the Palouse is not something we're used to dealing with," Bogert said.

The first petition filed by area conservation groups in 2006 to get the worm listed on the Endangered Species Act was rejected by the Fish and Wildlife Service based on lack of data about the worm and its habitat. A subsequent court appeal by the groups also was unsuccessful.

The Friends of the Palouse and the Center for Biological Diversity filed a new petition in June that asserts the worm's habitat stretches through the Palouse and into the Columbia River drainage region.

However, the Fish and Wildlife Service did not respond to the petition in the maximum 90 days after it was filed. Bogert said he checked the federal register on Friday, and the FWS still had not responded.

He said the conservation groups filed a 60-day notice of intent to sue on Dec. 14 in reaction to the agency's non-response.

Bogert said President Barack Obama's administration has more enthusiasm for the Endangered Species Act than that of former President George W. Bush, so it's not easy to say whether the second petition will eventually be rejected.

"The legal issue is simply because we can't find (the worms), and they're scarce, does that automatically mean they warrant protection under the Endangered Species Act?" he said.

He said if the worm is listed as an endangered species, the government would determine its critical habitat and require all people to avoid disturbing that habitat.

But, he added, "every decision by the federal government that private people would disagree with, they have the ability to take it to court."

Bogert said given the scarcity of data about the worm and its habitat needs, it could become an interesting case study of standards for the Endangered Species Act's 90-day initial review process.

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