

## Flores Court Rejects Legislature's Funding Plan

**O**n April 26<sup>th</sup>, U.S. District Court Judge Raner C. Collins ruled that recently enacted legislation to address the needs of English language learners was insufficient to comply with the Court's judgment or federal law. That means that after six years, the Legislature still has not complied with the judgment that was issued in January 2000 and which requires the state to enact a funding system for English language learners (ELLs) in Arizona's public schools that is not arbitrary and inadequate.

The most recent round of litigation began when the Legislature enacted House Bill 2064 on March 3<sup>rd</sup> and submitted it to the Governor for her signature. Instead of signing the legislation, the Governor informed the Legislature that she would allow it to become law without her signature so that the Court could rule on its legality. At the same time, she noted the many deficiencies with the legislation including the fact that it required school districts to use federal funding

for ELL programs despite clear statutory language that federal funds were to be used to supplement the state's obligations and not supplant them.

Judge Collins established an accelerated briefing schedule and heard arguments on April 3<sup>rd</sup>. Lawyers for Superintendent of Public Instruction Tom Horne, Speaker of the House Jim Weiers and President of the Arizona Senate Ken Bennett defended the legislation on the grounds that Arizona school districts had received massive amounts of new funding since the judgment was entered in 2000, even though virtually none of that funding had been designated for ELLs. They additionally contended that they didn't know how much it would cost to fund ELL programs over and above the new school funding that had been added in the previous six years and therefore it was appropriate to require school districts to prove any additional amounts necessary. However, the legislation offset any needs claimed by a school district with federal

funding received by the school district and any desegregation funding generated by local taxpayers to address judicially or administratively mandated desegregation issues.

All in all, the new legislation increased funding for ELL students by only \$77 per student. The previous funding level was \$355 per ELL and it was increased to \$432 per ELL in HB 2064. Judge Collins held that the \$77 increase was totally arbitrary and not related in any way to the cost of educating ELLs. He noted that the increased amount didn't even match the funding level in a cost study the state performed 18 years ago. That cost study was later disavowed by the state, just like the one performed in 2004 which determined that funding levels needed to be increased by approximately \$1,000 per ELL student.

Judge Collins then determined that the legislation illegally offset federal funding and violated express provisions of federal law that allow

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## ***CENTER RECEIVES GRANT FROM WALLACE FOUNDATION OF ARIZONA***

**T**he Center is very pleased to announce that it was recently awarded a \$60,000 grant from the Wallace Foundation of Arizona. The grant is for two years and will support the resources needed to study and begin addressing a change within our Child Protective Services (CPS) and court systems so that children who grow up in foster care are better prepared for a successful adult life.

Today, children who grow up in Arizona foster care are not equipped to transition out of the program and into an independent life. They are much more likely to face health and mental health problems, homelessness, joblessness, low educational attainment, substance abuse problems and incarceration. Adolescent children who spend their teenage years in group homes exhibit the highest level of risk.

The project will include a focus study of children between 12 and 18 years of age who are living in group settings and identify the barriers that exist to their transitioning to successful adult lives. The project will evaluate the role of schools, child welfare and the juvenile courts and identify policies, programs and support that will be needed to help these children transition out of foster care. The study will be followed by the development of legislative proposals and judicial guidelines to address the barriers that were identified.

The Center expresses its gratitude to the Wallace Foundation of Arizona for supporting this important work.

### ***THANK YOU***

The Center would like to thank LEXIS-NEXIS for its continuing grant of computerized legal research services.

We would also like to thank the Lodestar Foundation for its recent capacity-building grant.

## Center files Lawsuit Challenging 404 Permit In West Valley

In March, the Center filed and served a lawsuit that challenges the permit issued by the Army Corps of Engineers ("the Corps") for Festival Ranch, a master-planned community to be built in the Phoenix West Valley. The Complaint alleges that in granting a permit for Festival Ranch, the Corps failed to adequately evaluate the environmental impacts of the proposed project as required by the National Environmental Protection Act (NEPA) and the Clean Water Act (CWA). Although the lawsuit specifically challenges the Festival Ranch permit, its focus extends to the entire West Valley, where more than a dozen similar projects are at various stages of the permitting and approval process.

The lawsuit was filed on behalf of White Tanks Concerned Citizens, Inc. (WTCC), a grassroots organization devoted to protecting and preserving the White Tank Mountains and the surrounding area in Maricopa County. As Kim Beneli, a Director of WTCC explains, "if and when all of these projects are built out, the West Valley will be the size Phoe-

nix is now – yet as it considers the permit for each of these developments, the Corps refuses to consider the cumulative impact that these projects will have on the entire area."

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*Kim Beneli, WTCC*

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The proposed Festival Ranch project is situated at the base of the White Tank Mountains and abuts the eastern banks of the Hassayampa River. The developer plans to build a ~ 16 square mile master-planned residential community on a site encompassing 787 acres of jurisdictional waters of the United States. It is the largest residential subdivision proposed to the Corps in Arizona.

WTCC and the Center are not the only ones to urge the Corps to require meaningful environmental planning be-

fore approving all of the proposed new developments. Other federal agencies, such as the Environmental Protection Agency and the Fish and Wildlife Service, have repeatedly urged the Corps to undertake a thorough evaluation to assess the potential impacts that the burgeoning development will have on the entire area's air and water quality. The Corps rejected those requests, however, and instead concluded that the permit, and resulting master-planned community, would not have "significant impact" on the environment.

As the EPA cautioned the Corps in a letter, "Through our permitting programs, the federal government is playing a central role in the transformation of the Town of Buckeye from a relatively undeveloped landscape into a large suburban community." Federal law requires that the environmental impacts of that transformation be fully evaluated, and that evaluation is what the action filed seeks—nothing more and nothing less.

## ***CENTER'S ANNUAL DINNER TO BE HELD ON MAY 6<sup>TH</sup>***

**T**he Center's annual fundraising dinner is going to be held on May 6<sup>th</sup> at the Pointe Hilton Squaw Peak Resort. This year's event will once again include a silent and live auction. We're also pleased to have E. J. Montini as our featured speaker at the dinner. Montini has been a columnist at the Arizona Republic for many years. He is no stranger to controversy having frequently written about Sherriff Joe Arpaio, immigration, politics and any number of other topics that have earned him both praise and vilification. That's why he's such a perfect match for the Center, no stranger to controversy itself.

We will also be presenting our Public Interest Award at the dinner to Michael and Janet Valder. Mike and Janet are true agents of social change having worked tirelessly on behalf of any number of good causes. They have been instrumental in supporting Arizona's Clean Elections Act, Valley Interfaith and their own Arizona Social Change Fund that provides grants to Arizona non-profit organizations. Many of

you will be familiar with Possibility Sundays at the Valders' house celebrating social change issues and organizations.

This is the Center's only fundraising event of the year in the Phoenix area so please make every effort to attend and join the fun. Tickets are \$150 each and are available by contacting the Center at (602) 258-8850. If you'd like to attend but the ticket price is too steep, please let us know. We have a limited number of tickets available at no cost.

### ***Flores decision***

*(Continued from page 1)*

federal funds to be used only for supplementing the state's funding obligation. Likewise, Judge Collins determined that requiring school districts to use desegregation funds for ELLs would have the effect of causing school districts to violate court desegregation orders and administrative agreements with the federal government.

Finally, the Judge held that the legislation's attempt to

terminate funding for ELLs after two years violated the Equal Education Opportunities Act. That is the Act upon which the judgment in the Flores case is based and which requires states to take appropriate action to help children overcome language barriers so they can participate to the same extent as other students in public education. The Judge noted that the state has an obligation to provide that assistance and help those children until they actually overcome their language barriers and become proficient in English.

Predictably, Superintendent Horne, Speaker Weiers and President Bennett have all vowed to appeal the Court's decision. The legal maneuvering will cause ELLs to attend a public school system without the programs and associated funding to which they are entitled for another year. Horne, Weiers and Bennett have already appealed Judge Collin's previous orders imposing fines on the state for failure to comply with the judgment and succeeded in securing a stay of those orders from the 9<sup>th</sup> Circuit Court of Appeals while their appeals are being processed. The 9<sup>th</sup> Circuit has accelerated the case for disposition and arguments will be heard in San Francisco the week of July 24.

## *Center Challenges Black River Land Exchange Again —This Time in Federal Court*

**O**n January 31, 2006, the Center filed a lawsuit in federal district court challenging a proposed land exchange in the Greer area known as the Black River Land Exchange (BRLE). The lawsuit, brought on behalf of the Greer Coalition, Inc. and the Center for Biological Diversity, seeks declaratory and injunctive relief for violations of the National Environmental Policy Act and the Federal Land Policy and Management Act.

The BRLE is a proposal to exchange 337.2 acres of federal land north of Greer for 400 acres of private land in Apache and Greenlee counties. The federal land being proposed for exchange is located near Greer, Arizona and is currently part of the Apache-Sitgreaves National Forest. The private land consists of three parcels of land. These include two parcels of land located on the West Fork of the Black River known as the Rancho Alegre parcel and the Thompson Ranch parcel and a parcel of land located on the upper Blue River known as the Blue River Ranch parcel.

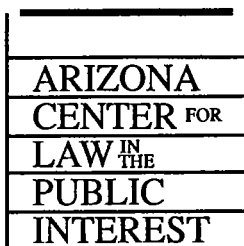
When the proposed exchange was first announced in October 2002, a number of Greer residents expressed concern that the exchange will lead to the development of the property that is currently federal land and is located in the heart of Greer. However, in evaluating the BRLE, the Forest Service first refused to consider the impact that development of the exchanged land would have on the surrounding area. The Forest Service claimed that any future development of the property was speculative because the proponent of the exchange had provided the agency with a non-binding written statement that he has no current plans to develop the property. The Center successfully appealed the first “finding of no significant impact” at the administrative level.

On remand, the Forest Service prepared a revised Environmental Assessment which purported to have considered the potential development of the federal properties. However, in the revised EA, the Forest Service made no effort to actually examine the environmental impacts of that de-

velopment because “any future uses would occur within the constraints of applicable Federal and State laws....” Thus, the Forest Service concluded that the exchange would have “no significant impact” on the environment.

As the Center pointed out in a subsequent appeal, any development, even regulated development, will have environmental impacts; NEPA requires federal agencies to consider all environmental impacts of their actions, regardless of whether those impacts may be subject to regulation.

In the lawsuit, the Center asserts that the Forest Service cannot attempt to pass off its responsibility to fully evaluate the environmental impacts of its decision to approve the land exchange by blindly relying upon the state and local regulations to mitigate or minimize the environmental impacts of the reasonably foreseeable development. Its effort to do so was an improper abdication of its responsibilities under NEPA and renders its environmental analysis arbitrary and capricious and contrary to law.



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