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Unique Wildflower Protection Restored

By [josh](#) on June 10, 2011

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Graham's penstemon.

Photo by

Susan Meyer.

Unique Wild Flower Protection Restored

Judge rules that US Fish and Wildlife acted “capriciously” in claiming threats were no longer present

Denver, CO— Yesterday US District Court judge Walker D. Miller sided with conservation groups and ordered the US Interior Department to reconsider a decision denying Endangered Species Act protection to a wildflower found only in parts of Utah and Colorado. The wildflower, Graham's penstemon, is threatened by oil and gas drilling, oil shale mining, off-road vehicles, and grazing. Conservationists had earlier sought ESA protection but were turned down by the Bush administration.

The court ruled that the Bush administration decision not to list Graham's penstemon as threatened was “arbitrary and capricious.” The court reinstated the 2006 proposed rule to add Graham's penstemon to the endangered species list and ordered the agency to make a new, final decision on the flower's protection.

"The court's decision makes it clear that FWS cannot set aside science and avoid full consideration of the multiple threats that incrementally push a species closer to extinction," said Meg Parish, attorney for the conservation groups.

Graham's penstemon is a strikingly beautiful wildflower in the snapdragon family that only occurs on oil shale outcrops in the Uinta Basin of northeastern Utah and northwestern Colorado. The penstemon was first considered for Endangered Species Act protection in 1975, when the Smithsonian drafted the first list of plants to be protected under the Act. After nearly 30 years without action, and with drilling threats mounting, conservation groups formally petitioned the Service to protect the penstemon in 2002.

"This is great news for Graham's penstemon. There's widespread habitat destruction going on throughout Utah and Colorado's Uintah Basin, the only area on earth this beautiful wildflower can be found. The Fish and Wildlife Service will now have the chance to do what they should have done in December 2006 – give Graham's penstemon the protection it needs under the Endangered Species Act," said Megan Mueller, Conservation Biologist with Center for Native Ecosystems.

In today's ruling, the court also found the Fish and Wildlife Service failed to consider the best available science showing the threat posed by oil and gas development, livestock grazing, and off-road vehicles.

"Proper multiple use management of public lands requires a balanced approach. In Utah's Uinta Basin, that balance has been tremendously skewed. The American people must demand that its government officials act with honesty and integrity, and that they solely use the best available science in making natural resource decisions without undue influence by other policies, agendas or interests. Yesterday's decision is a step in that direction," said Tony Frates, Conservation Co-chair of the Utah Native Plant Society.

Background

In January 2006, the Fish and Wildlife Service proposed to protect Graham's penstemon under the Endangered Species Act after years of advocacy by conservationists. Worried that this might slow down oil and gas drilling or oil shale mining, the Bureau of Land Management responded by assembling a "Penstemon 'No Listing' Team" which campaigned against protection. In response, in December 2006, the Fish and Wildlife Service reversed course and announced that threats were no longer present. Earthjustice filed suit to challenge FWS's decision on behalf of Center for Native Ecosystems, Utah Native Plant Society, Colorado Native Plant Society, and Southern Utah Wilderness Alliance in 2008. The court's decision yesterday recognizes that the Fish and Wildlife's about-face was not justified by the facts.

A high resolution [image of Graham's penstemon](#) is available for download on our website. Photo credit = Susan Meyer.

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