

Minor Victories Do Not Support an Award of Fees Under California's Private Attorney General Doctrine

July 11, 2011 by David J. McMahon

In [Center for Biological Diversity v. California Fish and Game Commission](#), 2011 DJDAR 6499 (2011), the [California Court of Appeal for the First District](#) rendered a decision clarifying an issue that comes up frequently under California's so-called "[private attorney general doctrine](#)."

An environmental organization, the [Center for Biological Diversity](#) (the "Center"), filed suit challenging the [California Fish and Game Commission's](#) refusal to designate the [American pika](#) as eligible for endangered species protection under [California's version of the Endangered Species Act](#).

The Center filed a petition for [writ of administrative mandate](#).

The trial court, after a contested hearing, granted the writ petition and ordered the Commission to reconsider the matter due to the potential that the trial court utilized an incorrect standard to review the Commission's decision.

Pursuant to the order, the Commission did reconsider its earlier ruling and reached the same decision. Upon application, the court awarded the Center significant fees and costs under [Code of Civil Procedure Section 1021.5](#). The trial court awarded fees to the Center in the sum of \$257,675 and \$886.43 in costs.

The Court of Appeal reversed the decision of the lower court to award fees and costs.

The appellate court noted that Section 1021.5 provides that a court may award attorney fees to a successful party in any action which has resulted in the enforcement of an **"important right affecting the public interest."**

The Court of Appeal noted, however, that the action must also result in significant benefits to the general public or a large class of persons. Minor revisions or rewordings are not sufficiently significant to support an award under Section 1021.5. The appellate court specifically noted that at best, the Center only achieved a minor victory which did not support the award of almost \$258,000 in fees and costs.