

Ruling may 'endanger' species law

■ **ENVIRONMENT:** Supreme Court wants to preserve rights of claimants harmed by efforts to protect fish

By Richard Carelli
The Associated Press

A government lawyer met persistent challenges Wednesday as he urged the Supreme Court to rule that a major environmental law lets people sue only to seek more — not less — protection for endangered species.

"We should be very cautious about receiving an argument that undermines the usual neutrality of law that we have in this country," Justice Anthony M. Kennedy told the Justice Department's Edwin Kneedler. Kennedy accused him of advocating "a one-way law."

Other justices joined in criticizing the Clinton administration's view of private lawsuits against the government the Endangered Species Act allows. It was unclear whether the justices will reach a definitive ruling.

The decision will be announced by July.

Much of Wednesday's 60-minute argument session focused on procedural flaws claimed in a lawsuit about economic harm alleged to have been suffered from efforts to protect two endangered species of fish.

Kennedy was Kneedler's most frequent interrogator, but Chief Justice William Rehnquist and Justice Sandra Day O'Connor also voiced skepticism.

The administration wants the Supreme Court to uphold rulings that said people who suffer economic harm as a result of efforts to protect endangered species don't have the proper legal standing to sue concerning how the federal law is enforced.

Two Oregon ranchers and two state irrigation districts who cited an estimated \$75 million worth of damage in 1992 contended they're entitled to such a challenge.

"Congress made no distinction," Riverside, Calif., lawyer Gregory Wilkinson argued for the ranchers and irrigation districts. "This project is in our back-

yard. It is critical to our farms and businesses."

Courthouse doors shouldn't be closed to everyone but environmentalists when enforcement disputes arise, he said.

But Kneedler argued that private lawsuits are allowed only to contest "violations" of the environmental law, which he defined as "actions that harm the species."

The ranchers and districts could sue under other federal laws, but not under the Endangered Species Act, he said.

Kneedler also argued that the ranchers and irrigation districts sued the wrong defendant — Secretary of Interior Bruce Babbitt, rather than the federal Bureau of Reclamation, an agency under his jurisdiction.

If the high court agrees, the case likely would be sent back to lower courts to fashion a new complaint.

During a drought four years ago, the government cut off irrigation water to farms and ranches near Oregon's Lost River to help preserve two species of fish, the Lost River sucker and the shortnose sucker.

Officials had determined that the Bureau of Reclamation's operations at Klamath project reservoirs in Southern Oregon and Northern California might jeopardize the two species' continued existence.

Without water, ranchers had to sell cattle they couldn't feed, and farmers saw crops die in their fields, Wilkinson said.

A federal judge threw out the lawsuit in 1993, ruling that ranchers Brad Bennett and Mario Giordano and the Horsefly and Langell Valley irrigation districts lacked standing.

The 9th U.S. Circuit Court of Appeals upheld the dismissal last year.

Although the Endangered Species Act authorizes "any person" to sue the government, the lower courts said the ranchers and irrigation districts didn't show that their concerns fell "within the zone of interests to be protected or regulated."

Those rulings "go well beyond the bounds of any standing decision of this court," Wilkinson told the justices.

Man's mine investment good as gold

■ **MINER:** Cottage Grove resident unearths nostalgia, adventure at Cascades' Evening Star

By Bob Keefer
The Register-Guard

Two years ago, Dick Secord bought himself a gold mine.

An otherwise ordinary machinist living in Cottage Grove, Secord didn't just buy a bunch of shares on paper issued by a bank or mutual fund or corporate gold-mining venture in South Africa.

No, Secord bought the actual mine, sagging timbers, rusting ore carts and all.

Named the Evening Star, Secord's mine sits high in the Cascade foothills, about a two-hour drive on mostly bad roads from his home in the valley.

At first, he bought the mine — as funny about numbers as most miners, he declines to say what it cost him, his father and some other partners — for the sheer romance, the idea of owning and saving an actual piece of Lane County history. But gradually, he says, it dawned on him that there might be enough gold left in the Evening Star that a man could make a living operating it as a mine.

So the 43-year-old Secord quit his job with the timber company, began studying up on hard-rock mining, took a mine safety course, started hanging out with any retired miners he could find and told his wife, Laura, to start cashing in their savings accounts.

He wanted to be a gold miner, he said. He wanted to run the Evening Star.

For the last 11 1/2 years, that's what he's done.

"We were total idiots when we first went in," said Secord, who is walking cautiously along a pitch-black drift, as the mine tunnels are called, on the Evening Star's 600 level, stepping over abandoned cart track, pointing out holes in the floor big enough to trap a man's

leg.

"It's not so hard to go in and mine a new tunnel," he said. "Going in and reopening an old mine, that's something else. You don't want half the mountain falling in on you. When you're in old tunnels, the first thing you don't want to do is reach up and pull a loose rock out."

Wiry of build and easygoing in manner, Secord looks more like a logger than a miner. Balding and bearded, he wears heavy denim pants, plain work shirt, wide suspenders and a broad-brimmed hard hat.

But the hard hat carries a headlamp with a thick cord snaking down his back to a rechargeable battery in a tool belt pouch. In his hand he's carrying a geologist's pick with which he taps carefully at the walls as he ventures deeper into the mountain.

The mine itself is cool and drippy, slippery underfoot in places and dark as night. Flashlight beams seem sucked and discarded. Heavy timbers, some of them so rotten that Secord can easily plunge a pocket knife into the wood up to its hilt, support the ceiling. Inexplicably, moths line the wall in places, even hundreds of feet into the tunnel.

As we near the end of the level drift, breathing gets noticeably harder.

"We're about a point and a half lower than 22 percent oxygen here," Secord says. "It's a problem when you're working back here, drilling. You need more fresh air. That's a hazard, and you can feel it."

Secord judges the air quality by how it feels to breathe. There are more scientific methods. "You can use a 'bug' — a tin can with a candle in it. Or you can get a meter. It will start beeping if you go below 22 percent." He pauses. "That's something we have yet to purchase."

Imagine the Evening Star as a series of horizontal lines on a page. The top of the page is up-

Each line is a "drift," or tunnel, following a vein of gold deposits through the interior of a small mountain that sits somewhere — Secord would prefer to remain vague about its exact location — in the historic Bohemia Mining District.

The drifts are identified by number, according to their distance, in feet, straight down from the top of the mountain. Thus, the Evening Star has a 600 drift, the one we're on.

It also has a 300, a 400, in which Secord has installed salvaged track and is actively digging ore, a 900, a 1,050 and a 1,200. All are wandering, horizontal tunnels connected here and there by "raises," vertical shafts that are lined with ancient-looking wooden ladders worn by countless feet and tool chutes. Secord has climbed some of them; mostly, he leaves them alone. "Escape routes," he said. "I hope we never need them."

Even after two years, Secord still hasn't explored the entire Evening Star. The lower levels of the mine were once accessible by an elevator that's now defunct. There's an entire ore cart track down there, if only you could get it out, along with cars; but cave-ins and uncertain timbering have kept Secord to the upper levels.

Secord loves the old stuff he finds in the mine. As we walk the drift, he points out old wooden water tanks, rusting tools, pieces of ore cart track. He's found drill steels and oil cans, old stove parts, tobacco cans, a trolley wheel, even a clothes iron.

Secord thought he might get his first money out of the Evening Star in less than a year. It's been two so far and no paycheck, yet.

"I worked all those years in a shop where everything's at your fingertips. What might take you an hour in the shop takes you all day up here. Laying rail. Jee-sus Christ! Me and my dad sat there with a pile of rails and a rail bender and a pile of spikes."

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