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Opinion

Our View

States should have say in creation of national monuments

Two Idaho lawmakers want to make changes in the Antiquities Act, the 1906 legislation that gives the president authority to create national monuments on public lands by proclamation.

They believe — rightfully, we think — that local people should have some say in such actions.

The authority to create national monuments comes with few restrictions. The president, "in his discretion," can designate almost any piece of federally owned land a national monument for "the protection of objects of historic and scientific interest."

Although the act makes mention of protecting historic and prehistoric structures, there is no statutory definition or limit on what may be found to be of historic or scientific interest. Presidents have used the act to preserve wild areas.

It's easier than establishing a wilderness area, or a national park — both of which require congressional approval — but can impose similar restrictions on how the land can be used.

Sen. Mike Crapo and Rep. Raul Labrador, both Republicans from Idaho, have introduced legislation in their respective chambers that would require approval by both Congress and the affected state legislature before a president can declare a new national monument.

We doubt any president, let alone the current chief executive, would give up even this limited unilateral power to rule by decree without a bill that passes with a veto-proof majority. It's unlikely one exists for this measure.

The effort is not without precedent. The Antiquities Act has twice been modified.

In 1943 President Franklin Roosevelt established the Jackson Hole National Monument, an unpopular proclamation in Wyoming. In 1950 when Congress enlarged Grand Teton National Park, that legislation altered the Antiquities Act to require congressional approval for the creation or expansion of national monuments in Wyoming.

After President Jimmy Carter proclaimed national monuments incorporating 56 million acres in Alaska, Congress passed the Alaska National Interest Lands Conservation Act. The act requires that Congress approve the creation of any new national monument in Alaska larger than 5,000 acres.

We would not argue that the Antiquities Act has not preserved legitimate cultural treasures. We might not have the Grand Canyon in its current state had Theodore Roosevelt not protected it by making it first a national monument.

Our problem is geography. More than half the land in the West is owned by the federal government, in contrast to 4 percent of the land east of the Rockies. These proclamations have a disproportionate impact here.

In the day when Manifest Destiny was official policy, settlers were encouraged by the government to come West to cut timber, mine minerals and graze livestock. The livelihoods of local families and communities depend on access to public lands.

The restrictions on the use of public lands are already significant. Western farmers, ranchers and timbermen rightfully fear the additional restrictions these proclamations can impose.

It seems that they should have at least the same consideration afforded the people of Wyoming.

Our View

Congress must avoid future port disaster

Here's a headline from the year 2020: "Longshore workers, port operators at impasse." And here's what the story will say: "A months-long work slowdown at West Coast container ports has backed up traffic, costing agricultural exporters billions of dollars in delayed and lost business, as the longshore workers union and the port operators delay negotiating a new contract."

For that matter, you can take any of the headlines the Capital Press has run during the past nine months about problems at West Coast container ports and recycle them. When the new five-year contract expires, exporters and their customers will have a sense of deja vu. All they will have to do is look at the stacks of backed-up containers and their profit-and-loss statements to see the damage done.

During the past year, both the International Longshore and Warehouse Union, which represents 13,000 West Coast dock workers, and the Pacific Maritime Association, which represents port operators and shipping lines, have amply demonstrated their inability to negotiate a new contract in a timely manner.

The financial damage to all shippers — but especially agricultural exporters — has been in the billions of dollars and put companies at risk of losing their overseas customers.

The problem at the docks was not a strike; rather it was a convoluted ILWU-choreographed Kabuki dance in which both sides knew they had to reach an agreement, but not before putting the screws to all of their customers. Only after President Barack Obama belatedly sent his labor secretary to take part in the talks did the sides magically reach an agreement.

Rik Dalvit/For the Capital Press

That's nonsense. The minute the old contract expired last year, both sides knew they would have to negotiate a new agreement. They knew an agreement would require give-and-take on the part of both sides. But they dawdled for months as union members slowed port traffic to a near-standstill.

Such drama may be OK for backwater operations, but for West Coast container ports, which handle hundreds of thousands of incoming and outgoing containers a year, it is unacceptable. The financial damage is unacceptable, and the child-like behavior is unacceptable.

Only Congress can make sure this never happens again. It can place the ports under the Railway Labor Act and prevent the union from taking any labor action detrimental to the timely and efficient flow of containers through the ports.

Railroad workers and airline employees are already included in the law. It's time to add the port workers.

This nation cannot afford any more needless and costly drama at the ports. Congress needs to do the right thing and fix this threat to the U.S. economy.

Another disaster awaits inaction. Even a dysfunctional Congress would have to agree.

Readers' views

Don't negotiate away national forest access

When did we come to the point in Eastern Oregon that we found ourselves negotiating our access to public lands for timber harvest, and why is this an acceptable model for our elected officials?

The answer lies directly under our noses, but for the fact that a great deal of us don't know it exists.

Collaboration and the bringing together of "interested" parties to negotiate projects is killing our individual rights each and every day.

The Grant County court, as one example, has decided to align itself with the financial interest of Iron Triangle and its ability to realize a profit from the "stewardship contract" given throughout the county. In order to move forward with getting its projects completed, they must keep the Forest Service happy.

The newly appointed forest supervisor for Malheur National Forest made this very clear in early February when he informed the American Forest Resources Council that any interference or preventing the Forest Service from performing road closures will jeopardize timber outputs on the forest.

That, my friends, is where we have come as a region and where the Forest Service has come to as an agency. You don't support what we want to do, we'll break you, period, end of story. So, what other choice do these companies have? Either Hells Canyon Preservation Council litigates a timber project if it's not closed afterwards, or the Forest Service simply does not allow the project because you can't keep the public shut up about it.

This isn't just in Grant County, it's throughout the Eastern Oregon counties and the only way to address it is to tell the commissioners that our motorized access is not to be negotiated.

We're being held hostage, friends. Who stands up and says enough is enough?

John D. George
Bates, Ore.

Oppose all foreign trade treaties

Do you believe we will benefit with the passage of the Trans Pacific Partnership or the Transatlantic Trade and Investment Partnership treaties? This is not free or fair trade, as they lead us to believe. It is a means to destroy our form of limited government, our sovereignty and merge us into the EU.

Under the jurisdiction of their tribunals, Country of Origin Labels that are legal in the U.S. would be denied so we could not call for labeling of Vietnamese catfish.... We would be denied our firearms and eventually property ownership.

If you think this is just a story, do some research. Even some of our legislators who are not in the group of 35 committed to pass these treaties are denied access to the full context of these treaties. But those organizations/corporations furthering this agenda have special passwords to the full information.

The TPN promotional group has a goal to implement these treaties in 2015. For a year or more I have been contacting my legislators, but I am only one and it takes all of us to voice our concerns and hold them accountable. The New American magazine has information about this at www.thenewamerican.com.

We are not paying attention to the destructive forces attacking our nation and freedoms. The people in Europe are rising against their control. We can stop it now in our nation by contacting our legislators, voicing our concerns and holding them accountable. We owe it to our freedom, future, nation and our posterity.

Mrs. M.A. Novak
Yamhill,Ore.

We must keep fighting ESA regs that deepen California's drought

By JAMES S. BURLING
For the Capital Press

Guest comment
James S. Burling

California's historic drought shows no sign of letup. Snowpack is described as "dismally meager" as the state's prolonged dry spell drags into a fourth year.

Unfortunately, there is also no end in sight to federal fish-before-people policies that have made the drought's effects more severe.

This became clear after the U.S. Supreme Court, a few weeks back, declined to hear challenges to Endangered Species Act regulations that have withheld millions of gallons of water from human use and sent it directly out to sea.

In a misguided strategy to protect habitat for the Delta smelt — a three-inch fish on the ESA list — the U.S. Fish and Wildlife Service has sharply curbed the operations of the state and federal water projects in California over the past seven years. As less water has been pumped south from Northern California and the Sierra, water rates have spiked in Los Angeles, Orange and San Diego counties. Vast stretches of farmland have been fallowed. Thousands of farm jobs disappeared.

And the regulations aren't even working: The smelt population keeps evaporating.

After the 9th U.S. Circuit Court of Appeals upheld these destructive policies last year, a group of San Joaquin Valley farmers and a number of water districts appealed to the Supreme Court. Even though the court accepts only a small percentage of appeals, there was surprise — even shock — that the justices wouldn't come to the state's aid.

However, this setback must not lead to surrender. The ESA water cutbacks are so damaging to the economy, so ineffective as environmental policy — and so wrong as a matter of law — that the legal campaign against them must go on.

Success takes time

In fact, that's how litigation against entrenched environmental policies often proceeds. However misguided they are, overturning them takes time and tenacity.

My organization, Pacific Legal Foundation — a watchdog for sensible environmental policies — knows this first hand.

We've won quite a few victories at the Supreme Court. But almost every one came on the third, fourth or fifth try. On questions ranging from the scope of Clean Water Act regulations, to the right to challenge governmental takings, to the need for fairness in environmental-mitigation demands, we've had to keep knocking at the Supreme Court's door before the justices finally agreed to hear the issues and rule in our favor.

Three principles

Persistence is just as essential in fighting ESA policies that rob millions of Californians of water. It will be necessary to keep going back to the courts — and ultimately to the Supreme Court — to establish three basic principles:

• **ESA officials must not ignore human beings.** The California water cutoffs were implemented with no regard for their effects on the economy. Yet the government's own protocols say economic consequences have to be considered when ESA regulations are drafted.

The Supreme Court should force ESA regulators to follow their own rules and stop ignoring the health and welfare of society.

•**ESA regulations must be "prudent," not oppressive.** In upholding the smelt water reductions, the 9th Circuit said that ESA-listed species must receive "the highest of priorities," even at "the sacrifice of … many millions of dollars in public funds."

But this was based on a controversial Supreme Court precedent from 1978 — Tennessee Valley Authority v. Hill — which is clearly outdated. In TVA, the Supreme Court said species protection takes precedence over all other priorities, "whatever the cost." However, Congress later amended the ESA to insist that key regulations must be "reasonable and prudent."

It is time for the Supreme Court to acknowledge that TVA, with its radical bias against common sense, has passed its shelf life.

• **ESA policies must help, not hurt, protected species.** The feds' strategy to aid the smelt (and protected salmon, too) actually hurts other ESA-listed species. The pumping reductions have withheld water not just from cities and farms, but also from imperiled species such as the San Joaquin kit fox and the Western screech owl.

A bedrock rule of medicine is, "First, do no harm." The Supreme Court should hold ESA regulators to the same standard: They must avoid skewed strategies that "help" some species only at the cost of injuring others.

At PLF, we will be looking for cases across the country that allow us to litigate these three important issues, with the aim of getting them to the nation's highest court.

The protection of species is important, but so is the protection of jobs and the economy. PLF will continue to fight for that principle of reasonable balance until it is embraced by the courts and implemented by the bureaucracy.

James S. Burling is Director of Litigation with Pacific Legal Foundation. PLF represented San Joaquin Valley farmers who challenged the Endangered Species Act water cutoffs in federal court.