

'Try to listen instead of forming a rebuttal'

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disconnect between urban and rural. It's a division on display as armed men occupy the Malheur National Wildlife Refuge headquarters in Harney County and demand the federal government release area ranchers Dwight and Steven Hammond and turn over all federally managed land to the states, counties or private ranchers.

Many people living in Portland and other urban centers mock the occupiers as "Y'all Qaeda" and ridicule their beliefs. They rail about "welfare cowboys" receiving "subsidized" grazing fees on federal land.

Meanwhile, rural residents, farming and ranching groups and elected officials have criticized the occupiers' actions. But they say the underlying anger about lost economic opportunity in the rural West is real.

U.S. Rep. Greg Walden, who represents Eastern Oregon in Congress, said the thread tying the Hammond family's case with the occupiers' demands is "decades of frustration, arrogance and betrayal that has contributed to the mistrust of the federal government."

In Portland and other urban centers, that connection isn't so clear.

"Because it's not on their radar," said John Morgan, an economic development, civic and leadership planner and consultant who works with rural communities.

Harney County, where federal and state agencies manage about 75 percent of the land, has 1,200 fewer people and 10 percent fewer jobs than it did in the late 1970s. The number of logging and mill jobs in the county went from 768 in 1978 to just 6 in 2014, according to state figures.

Meanwhile, the state's urban areas, especially Portland and surrounding Multnomah County, have grown dramatically. With its 14,000 employees, OHSU alone has nearly twice as many people as Harney County. Intel, the computer chip manufacturing company based in Hillsboro, employs about 18,000 people.

Yet the wheat, timber, wine, livestock and other agricultural products pouring out



Photos by Eric Mortenson/Capital Press

Streetcars, MAX trains, bicyclists and cars crowd Portland's South Waterfront district. The contrast with rural Oregon's wide-open spaces make it difficult to explain the context of the militia occupation at the Malheur National Wildlife Refuge.

Online

• To see Rep. Greg Walden's speech on the U.S. House floor, go to www.capitalpress.com.

• To read rancher Keith Nantz's opinion piece, go to <https://www.washingtonpost.com/posteverything/wp/2016/01/08/im-an-oregon-rancher-heres-what-you-dont-understand-about-the-bundy-stand-off/>

• To read rancher Paul Schwennesen's opinion piece, go to http://www.huffingtonpost.com/paul-schwennesen/the-stetson-rebellion-and_b_8949070.html

of rural Oregon are crucial to cities, Morgan said. City shipping, trucking, processing, professional service and retail jobs depend on them.

"The resource economy is intrinsically tied to the prosperity of the rest of the state," he said. "You couldn't have urban prosperity without the fact that Oregon is still a resource economy. Intel can only take us so far."

Getting that point across to city dwellers isn't easy.

"They're more than happy to try and regulate what happens to the Columbia River Gorge because they see it as their playground, without stopping to understand the

(economic) impact," Morgan said.

But the Hammond case — they were ordered to serve additional prison time for burning BLM land — and the wildlife refuge occupation may have opened the conversation. Walden made an impassioned speech in Congress about "federal overreach in the West" that was well-received and widely shared on social media.

Rancher Keith Nantz, manager and partner of the Dillon Land and Cattle Co. south of The Dalles, Ore., wrote an opinion piece on the issue for the Washington Post that received more than 4,200

reader comments.

In his piece, Nantz said management decisions are being made by people "four to five generations removed from food production" and who "don't quite understand our industry."

"In every part of my business, I try to find a balance between economics, mother nature and our culture," Nantz wrote. "I know that if we don't treat our land properly, we will go out of business by our own hands."

"But all too often, I'm not given the autonomy to do so. I'm given rules, not a conversation about how ranchers and government officials and environmentalists might be able to work together. That's an approach that fails everyone."

Nantz said online comments ranged from "absolute opposite ends of the spectrum." The issue now has the national stage, he said, and producers should not let the conversation die off. Farmers and ranchers are getting better at networking, he said, and must continue to engage the



With attention focused on the group occupying the Malheur National Wildlife Refuge, Oregon cattle rancher Keith Nantz wrote an opinion piece for the Washington Post to explain ranching, grazing and the struggle to make a living in the rural West.

public and explain what they do without being combative.

"We need to utilize the momentum we have right now," Nantz said. "We need to capitalize on this movement."

Nantz said one of the tips in the book, "The 7 Habits of Highly Effective People" is to "first understand before being understood."

"We all have to live here in this great state and this great country," he said. "We need some balance. Try to listen instead of forming a rebuttal. We can actually find answers to conflicting views."

Portland attorney Tim Bernasek, who heads an agricultural practice group for the Dunn Carney Allen Higgins & Tongue law firm, said he's seeing increased urban curiosity about rural life.

He said city dwellers should understand farmers and ranchers are intelligent people who are drawn to agriculture because it's a calling, often a family legacy and a lifestyle preference.

He said their career choice is analogous to that of teachers, who are likewise drawn to their jobs.

"They could make more money doing something else," he said.

Paul Schwennesen, a Harvard-educated Air Force veteran who raises grass-fed beef in Arizona, wrote a piece for the Huffington Post in which he described Western reaction to the Harney County situation as "deeply American."

He said "urban elites" at both ends of the political spectrum have dismissed the standoff as ridiculous, and miss the point of it.

"Like good Tories haugh-

tily renouncing tea dumping in Boston 'Harbour,' we may be shocked to find that the ragamuffins are not only saying something important, but that their message is striking a chord, Schwennesen wrote.

"What they are saying is that the federal government is too bloated, too heavy-handed, and too corrupt, and that it is most spectacularly evident on the rugged rangelands of the West."

In a phone interview, Schwennesen said reaction to his piece "split along the urban-rural divide."

He said the ground level issue is federal management of the overwhelming majority of the resource base in the West. Bureaucratic paralysis is the inevitable result when "one decision maker gets to make the decisions over a gigantic public resource," he said.

"I think a lot of what's going on here is that the free market and capitalism really aren't thriving out West," Schwennesen said.

"While not all rural blight is the result of federal oversight, it's a big piece of the puzzle that goes unquestioned today," he said.

If Cargill or Monsanto owned the majority of the land and people were denied opportunity to make a living, all hell would break loose, he said.

"I am an optimist at the end of the day," Schwennesen said. "I do think logic prevails. The best I can hope to do is put out facts, and put them out in such a way that it's not just ideological posturing."

"There's more to the issue than meets the preconceived eye."

Federal agencies may come after ranchers to collect payments for unpaid grazing fees

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ranchers in grazing lawsuits.

While the penalties would not be criminal, serious breaches of grazing contracts may effectively end a rancher's ability to release livestock onto public lands. It's similar to a contractor who has previously defaulted on an agreement and is excluded from bidding on government projects, Hornegren said.

"The real risk is they'll be unable to graze on the allotment for which they're not paying and it's possible they could be disqualified from acquiring any allotments in the future," he said.

Federal agencies may also come after ranchers to collect payments for unpaid grazing fees, he said.



Stock photo

While the penalties would not be criminal, serious breaches of grazing contracts may effectively end a rancher's ability to release livestock onto public lands.

Ranchers and federal agencies usually resolve minor contract disputes without actually voiding such deals, Hornegren said. "Breaches happen on both sides."

Federal officials may not treat one missed payment as

a serious issue, but tearing up a contract and refusing to pay at all would probably be considered a material breach, he said.

Members of the armed protest group have cited examples of ranchers refusing to pay

grazing fees without consequence, such as Cliven Bundy of Nevada, who continues to graze on public land even though the government claims he owes more than \$1 million to the U.S. Bureau of Land Management.

Federal officials backed off from seizing Bundy's cattle in 2014 after an armed standoff, and his son, Ammon, is currently leading the occupation in Oregon.

Hornegren said he'd advise ranchers against relying on that case in their decision-making and instead work through administrative and legal processes if they disagree with restrictions on grazing permits.

"Withholding payment is a risky strategy for a rancher to try to make the point the BLM

is not managing the range appropriately," he said.

Rancher Travis Williams said he's considering the protesters' proposal primarily because the money raised by the federal government from grazing fees doesn't benefit Harney County tax revenues.

If he does withhold grazing fees, Williams said he doesn't want to "freeload" and instead would make payments into an escrow account, with the money intended for the county.

Though he doesn't want to jeopardize his ranch, Williams doesn't believe that ranchers "collaborating" with federal agencies has produced needed changes in land management.

Refusing to pay grazing fees would likely be more effective, he said. "That's the only way we're going to get

anything done."

Shawn Mace, president of the Harney County Stockgrowers Association, said his organization does not endorse illegal activity against the federal government, which reflects the view of the Oregon Cattlemen's Association.

Some ranchers may feel a need to stand against the federal government to protect their way of life, but Mace said it's unclear what purpose refusing to pay grazing fees would achieve.

Mace said he prefers to concentrate on his job of ranching.

"Public grazing is vital to the survival of Harney County ranchers," he said. "I don't see this as a real issue. Why would we bite the hand that feeds us?"

Judge issued injunction barring government from interfering with Hage's access to water rights

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spanned more than two decades.

In the Nevada case recently reviewed by the 9th Circuit, U.S. District Judge Robert Jones said government officials entered into a "literal, intentional conspiracy" against Hage that "shocks the conscience" and justifies an injunction prohibiting the agencies from continuing the behavior.

That ruling sprang from a lawsuit that the federal government brought against Hage's estate, accusing his ranch of trespassing by allowing its cattle to graze on public land.

The case backfired against the government when the judge agreed with Hage's counterclaims, which alleged

that the agencies unlawfully refused to renew his grazing permits.

While there's no right to graze on federal land, the judge held that the government violated administrative law when it refused to renew his grazing permits for reasons unrelated to proper rangeland usage.

Jones found that the government "vindictively" withheld the permits because Hage made a note on a grazing contract refusing to waive his rights, which would not have affected the substance of the agreement.

Because of the note, the government took the "nonsensical position" that the permit application hadn't been properly completed, and stopped allowing Hage to graze his cattle beginning in 1993, the judge said.

The government also tried to transfer water rights owned by Hage and encouraged another rancher to apply for grazing permits on allotments traditionally used by Hage, Jones said.

The agencies retaliated against people who sold cattle to Hage to pressure them to cease doing business with him or to prevent them from testifying in the lawsuit, he said.

Jones ruled that Hage held water rights in streams on public land, which offered a valid defense against most of the government's accusations of trespassing.

It's reasonable for cows to incidentally graze within a half-mile of Hage's water rights as they cross federal land, the judge said.

"It is not fair to say that cattle must be taken to the

shore of a stream, kept there and watched constantly until they drink, and then taken off the land," Jones said. "The testimony at trial was uncontested that cattle cannot be made to drink on command in this way."

The judge issued an injunction that barred the government from interfering with Hage's access to water rights and ordered the agencies to renew his grazing permits, among other provisions.

That ruling has now been reversed by the 9th Circuit, which held that Jones ignored longstanding legal precedent in his opinion.

Ownership of water rights does not give a rancher the right to graze livestock on federal property, though he can divert water from a stream on such

land, the appeals court held.

As for the due process rights related to Hage's grazing permits, the 9th Circuit held that the statute of limitations on such claims had run out.

The appellate court rejected the judge's finding that the statute of limitations hadn't expired because the government's refusal to permit grazing was a continuing violation of his rights.

The 9th Circuit sent the case back for reconsideration by a different federal judge due to Jones' "bias," "prejudgment" and "animus toward the federal agencies."

Mark Pollot, the attorney for Hage's estate, said he plans to challenge the 9th Circuit's ruling, either by asking for reconsideration by a larger

panel of appellate judges or by requesting a review from the U.S. Supreme Court.

The possibility of the Supreme Court weighing in on the case is likely because the 9th Circuit's ruling is contrary to other legal precedents that prohibit interference with water rights, he said. "It really does undermine the basis of Western water law."

The three-judge panel that ruled against Hage also misinterpreted a legal precedent related to grazing and water rights, he said.

Water rights don't allow for unlimited grazing on government land, but they do allow incidental usage of rangeland by livestock as it travels to a water source, Pollot said. "That's not a generalized grazing right."