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# Opinion

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## OUR VIEW

# Environmental laws primarily benefit lawyers

The environmental law business continues to flourish, if one considers the number of lawsuits filed each year in federal courts.

Hundreds of environmental lawsuits are filed each year — more than 800 last year alone — indicating the appetite for courtroom combat continues unabated. In the past decade, 7,935 environmental lawsuits were filed in federal courts. About 2,406 of them, or 30 percent, were filed in the 9th Circuit, which includes Oregon, Washington, California, Idaho, Alaska, Montana, Nevada, Arizona, Hawaii and the Pacific territories of Guam and the Mariana Islands.

Last year alone, the number

of environmental lawsuits filed nationwide increased by 60 percent, from 526 to 862.

Although such lawsuits fall into a broad category of natural resource-related issues, the overall trend is clear. Litigants, whether they are private parties, environmental nonprofits or government agencies, apparently believe the courtroom is the place to settle disputes over the Endangered Species Act, the National Environmental Policy Act or other federal laws. And they believe the 9th Circuit offers the most friendly judges to hear their cases.

Karen Budd-Falen, a natural resources lawyer in Cheyenne, Wyo., has followed the growth

in environmental lawsuits for years. Her theory is the current administration is less inclined to battle environmental groups that file suit and instead settle the claims.

Environmental groups disagree with that characterization, saying they have found the administration to be tough negotiators.

The large number of lawsuits seems to indicate otherwise, Budd-Falen says. “They’re more likely to get a favorable settlement with the Obama administration,” she told the Capital Press.

Another aspect of the trend is equally troubling.

Law schools are continuing to produce environmental lawyers who, rather than seeking a

resolution of disputes, prefer to go to court.

“There continues to be an expansion of people coming out of law school who feel litigation is the best tool to advance their environmental views,” Scott Horngren, a natural resources attorney, says.

Nonprofits also benefit from the growth industry. The Center for Biological Diversity, for example, is thriving. According to its 2014 Form 990, which is submitted to the Internal Revenue Service, the organization had total revenues of slightly more than \$14 million for the year and expenses of \$10.2 million. The revenue came from contributions of \$12.9 million and “legal refunds” — from the federal

government and elsewhere for expenses — of \$1.2 million. Any business executive would be pleased to have that sort of balance sheet.

The bottom line, however, is not that lawyers like to sue the government. Rather, it’s that the laws are so flawed that they open the door to litigation as the preferred way to resolve disputes — and provide a generous economic incentive.

It is no secret the Endangered Species Act and accompanying laws are long overdue for revision, for the good of the species needing protections and for farmers, timber operators, ranchers and other landowners.

Until then, lawyers will continue to be their main beneficiaries.

## OUR VIEW

# Harney County's economy held hostage

Residents of Oregon's Harney County have been described as the hostages of the armed protesters who took over the Malheur National Wildlife Refuge Jan. 2.

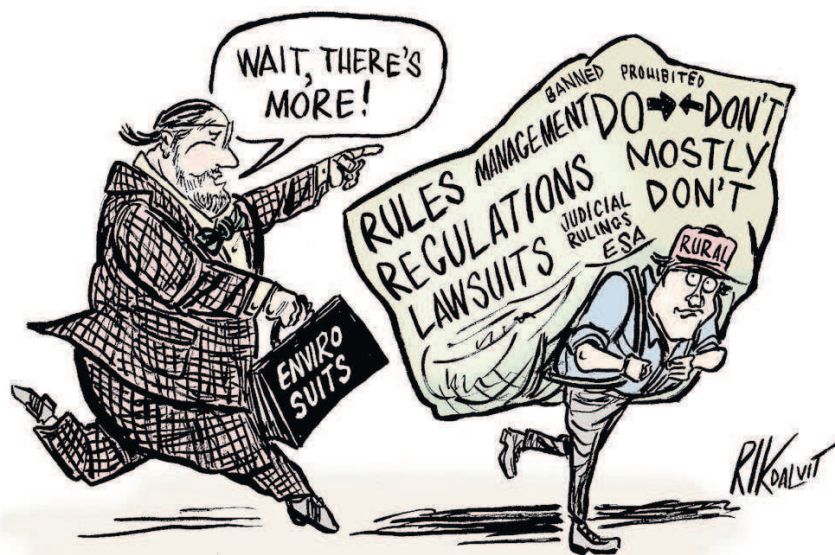
By most accounts the protesters, largely out-of-state agitators, have harassed and generally run roughshod over the local community for three weeks and have worn out their welcome. But the government land management policies that at least partially underpin the protest have held the Harney County economy hostage for 40 years.

Once upon a time, Harney County's economy was strong. Thirty-one percent of the jobs, 768 in all, were in the wood products industry. But since 1978, that number has dropped to 6, according to a recent report from the Oregon Office of Economic Analysis.

And while the rest of the state increased jobs 74 percent since the late 1970s, the number of jobs in Harney County dropped by 10 percent. Since 1980, when the population was 8,314 and the job losses began, the county has lost nearly 1,200 people.

“Relative to the late 1970s — just before the state went into the severe early '80s recession and timber industry restructuring — the number of jobs today in Harney County is 10 percent below back then,” Josh Lehner, the analyst who prepared the report, said. “Clearly, that is a really long time with essentially no growth.”

A lot of things have changed since the 1970s. The timber industry has restructured, and there's more automation in the mills. So, not all of the wood product job losses can be attributed to federal logging policies.



Rik Dalvit/For the Capital Press

But local community leaders and residents say that in a county where more than 70 percent of the land is controlled by the federal government, those policy changes, along with more strict grazing restrictions, increased regulation and the ever-present threat of environmental lawsuits that attend any dealing with government agencies have huge impacts.

“It’s continued rules and regulations that do everything to make it more difficult to make a living, to pay your bills educate your kids, pay your mortgage and lead a good life,” retired rancher Bill Wilber said.

County Judge Steven Grasty said the job losses in the community have led to a general feeling of despair. His friends, neighbors and their families can no longer depend on the natural resource jobs that once sustained the county.

Many of those jobs have been replaced by lower paying service sector jobs supporting tourists and the large

contingent of government workers who manage the public lands.

Government employment now accounts for 40 percent of the jobs in the county. Those jobs are welcomed, and are vital to the community. In many cases, those employees are long-time residents with deep local ties.

Still, there is a sense that something has been lost.

“We believe the wealth of a nation is based on its natural resources,” Grasty said. “We’ve lost access to natural resources, in particular, timber.”

The partner that once encouraged these enterprises has grown distant and unresponsive.

Sooner or later the protesters will decamp the refuge and life in Harney County will return to normal.

But there and in a hundred places across the West, they will still wait for the federal government to loosen its grip.

## Readers' views

### Walden torpedoes Klamath deal

Greg Walden, in his opinion piece “Speaking out for Rural Oregon,” laments the federal government’s overreach into eastern Oregon ranchers’ lives. He talks about “decades of frustration, arrogance and betrayal that has contributed to the mistrust of the federal government.” He talks about decades of his own frustration with the federal government’s treatment of rural Oregonians, and he talks of finding solutions to these issues. I would contend that it is all talk.

Why, Mr. Walden, did you torpedo the Klamath Basin agreement, a perfect example of local control without federal intervention. This agreement was developed over 10 difficult years, solved many of the area’s water allocation issues, and was a great example of local people working out local issues to everyone’s benefit. Here was your chance as a congressman to

enact legislation that would affect positive change for your constituents. But no, your fellow Republicans didn’t want to set a precedent for dam removal even when the dams on the Klamath are antiquated, environmentally disastrous and privately owned, and when nearly every constituency would benefit from their removal. Instead you allowed politics to rule the day and undercut the agreement by introducing a last-minute bill omitting dam removal and adding an unrelated provision to turn over 200,000 acres of federal timberland to two counties.

Now you are using the takeover of a federal facility by armed thugs to enhance your political position as the savior of the wild West from the feds. Your support for these militants’ ideals only helps negate the rule of law and breed insurrection and division across the region. These thugs aren’t even from Oregon. Politics as usual wins out, and you are at the helm.

Gary Wade  
Wade & Rufener  
Orchards Co.  
The Dalles, Ore.

### Constructionism at heart of standoff

The Capital Press’ reporting and commentary of the Ammon Bundy standoff is unfair and a disservice to the newspaper’s readership.

On Jan. 8, the paper referred to the strict constructionist view of the Constitution as a specious theory. That really got my goat. After all, it was the Father of the Constitution, James Madison, who stat-

ed in the Federalist Papers that the federal government is limited in power to only those powers which are expressly enumerated in the Constitution.

At the heart of the Bundy standoff is the clash between strict constructionism and implied powers.

The federal government granted itself implied powers. For centuries, implied powers have been used to justify the ever increasing regulation of the people.

A strict constructionist believes that only the people have the authority to bestow power upon a government.

When government bestows power upon itself, as in the case of implied powers, then such power

is illegitimate because it is not sanctioned by the people.

The ballot box and the legislative process cannot act as a check upon implied powers because the politicians are dependent on the party and not dependent on the people. In short, a government that is not dependent on the people has been degraded from its republican form and is therefore operating outside of the rule of law.

After belittling Bundy, the Capital Press tells the reader that the courts are the proper venue for disagreements with the government.

As an example, the paper cites the Hage family’s legal battles with the federal government. After decades and millions of dollars in legal fees, the Hage family has still not seen justice.

The Capital Press also uses the Hammond family as an example of how the courts work. The editorial staff’s endorsement of the legal system is appalling in light of the court’s application of cruel and unusual punishment in the Hammond case.

It should also be noted that the courts search people without probable cause. One cannot physically get into court without having their rights violated by the entity that is supposed to uphold individual rights. Is it any wonder that Bundy is foregoing the legal system and appealing directly to the people?

To be fair and to serve the reader, it should be stated that the Constitution does not grant the federal government the power to own wildlife areas, recreation areas, parks, or forests. Territories were coerced into accepting federal ownership of these lands as a condition of statehood.

Roger Whitten  
Deer Park, Wash.

## Collaborative efforts needed to save Central Valley's salmon

By JACOB KATZ  
and JOHN BRENNAN  
For the Capital Press

These drought years have been tough on Central Valley salmon. While struggling winter-run Chinook salmon dominate the headlines, the fall-run Chinook that support California’s ocean and inland fisheries have also been hit hard.

We know that all fish need water. But more water alone will not save endangered populations, nor will an over-reliance on hatcheries or the proposed effort to truck fish above Shasta Dam.

To save California’s salmon, we need broader solutions that foster self-sustaining populations and address the entire salmon life cycle. Trap-and-haul and other approaches that rely on taking fish out of the river and putting them in trucks are extremely expensive and cannot, by definition, be self-sustaining.

Real solutions will require fishermen and farmers, water suppliers, urban users, government agencies and environmentalists to take a clear-eyed look at California’s water systems, roll up our collective sleeves and implement practical actions to protect vital

**Guest comment**  
Jacob Katz



salmon runs for the long haul.

We may live in the Internet age, but we still rely on water infrastructure that dates from before the invention of the telephone. California’s water system was built more than a hundred years ago, when rivers and fish were poorly understood.

Fortunately, new research is showing that endangered fish species are not an inevitable consequence of development. To the contrary, the evidence clearly demonstrates that updating our water system with modern scientific tools will help fish and people. The old ways separated species from the environment. The new way integrates fish, wildlife and natural process into design and operation, and will create sustainable water solutions.

Research has revealed that the food to support Central Valley river ecosystems is made on floodplains. Juvenile salmon and other native fish benefit tremendously when given access to these food-rich wetlands. Recent breakthroughs have also shown that farm fields can be

**Guest comment**  
John Brennan



managed to feed fish and bird populations during winter and still be profitably farmed in the summer.

Unfortunately, more than 95 percent of Central Valley floodplains remain inaccessible to fish, cut off from river channels by outdated levees.

Now a collaborative effort among government agencies, conservationists, water suppliers and farmers is working to reconnect the Sacramento River to its largest intact floodplain: the Yolo Bypass.

The effort will get juvenile fish onto floodplain farm fields in winter, allowing them to find abundant food and get stronger on their journey to the sea. This win-win approach will reduce water conflict by enhancing habitat for a suite of endangered species — including endangered salmon and smelt — while sustaining agriculture and improving flood safety for people in and around Sacramento.

Another win-win retrofit is taking place near Knights Landing, where adult winter-run Chinook often take a fatal wrong turn into a maze of drainage

ditches on their way upstream. Farm groups, conservation organizations and government agencies have banded together to make repairs that will prevent fish from straying. Similar projects are planned for the Yolo Bypass next year.

There are also efforts to restore spawning habitat in Battle Creek, near Red Bluff, by investing in stream gauges to monitor conditions and removing several dams so that winter-run Chinook get access to portions of this cold, spring-fed creek. Reintroducing winter-run salmon to Battle Creek is the best opportunity to re-establish a self-sustaining population within its native spawning range.

Real solutions for Central Valley salmon depend on our ability to collaborate and integrate current science into the way we manage California’s water. Only when we work together to build smart, multi-benefit projects that improve river conditions for salmon at every stage of their life cycles will we see real water solutions that support fish and people.

Jacob Katz is Central California director of California Trout, a native fish and watershed advocacy organization. John Brennan farms in Yolo, Colusa and Sutter counties and is an owner of Robbins Rice Co.