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Opinion

Our View

Antiquities Act must be repealed

The problem is the Antiquities Act of 1906. Intended to protect unique and historic sites — antiquities — it has instead been used by president after president to gild their environmental reputation.

We urge President Barack Obama to resist that temptation as he approaches the end of his administration.

Now being promoted by a variety of special interests — hiking shoe companies and environmental extremists among them — is a 2.5 million-acre proposal in remote southeastern Oregon. Called Owyhee Canyonlands, the area represents nearly half of Malheur County, where raising cattle and growing onions are among the major economic activities.

Should Obama accede to the urging of the extremists, he would call into question the proposition that our forefathers fought so hard to preserve. They believed — and so has every great American leader — that the people's duly elected representatives in Congress should debate and decide what the government shall do. As the head of the executive branch, the president shall carry out the laws that Congress passes.

Capital Press File

A sign posted in Jordan Valley opposes the Owyhee Canyonlands National Monument in Malheur County, Ore. Jordan Valley is nearly surrounded by the proposed monument.

They believed in a government of the people, by the people and for the people — not for the noisiest special interests.

If Obama were to establish a national monument in Malheur County — a stroke of his pen is all that is needed — he would again demonstrate his administration's contempt for all Oregonians and especially those who live in Malheur County. In effect, he would also be thumbing his nose at the democratic process.

By our light, any national monument created through the use of the Antiquities Act is a travesty and an affront. That any president can, through his signature, take away the rights of local citizens, many whose families have lived and worked in the area for five generations, just illustrates that the problem is the Antiquities Act.

Currently a coalition of Indian tribes is pushing for a 1.9 million-acre national monument in Southern Utah called Bears Ears. The entire Utah congressional delegation opposes it, as does the governor, yet it is still under consideration by the Obama administration.

Another proposal, to nearly double the size of the Cascade-Siskiyou National Monument in Southern Oregon is also being pushed, over the objections of many who live and work there.

Such proposals rely on the Antiquities Act to make an end-run around the democratic process. In effect, those who support such proposals are saying local residents don't matter and that even Congress has no business intervening.

If any other such law existed that provided the president with unilateral and unchecked powers, Congress would — and should — repeal it.

Congress would insist that its members, who are elected by the voters, must retain the power to designate national monuments.

We urge President Obama to resist the urge to invoke the Antiquities Act to designate more national monuments. That job rightfully belongs to Congress.

As importantly, we urge Congress to repeal the Antiquities Act, for the good of the land, and the good of the people.

Our View

Many rural Americans seek less attention from Washington, D.C.

In an interview earlier this month with Capital Press reporter Eric Mortenson, Secretary of Agriculture Tom Vilsack said Democrats deserved the shellacking they took in rural areas in the past election because they ignored rural issues.

"We as a party have not spent enough time in rural areas," he said.

With all due respect to Vilsack, many farmers and ranchers think the Democrats, or more accurately the Obama administration, has spent all too much time on rural issues, to their detriment.

We've always liked Vilsack on a personal level. His commitment to agriculture can be traced back to his days as governor of Iowa. He's a decent, honorable guy in a town with too many disingenuous politicians and inflated egos.

But as the only member of the Obama cabinet who has served throughout both terms, Vilsack has to be seen as a full-fledged member of the administrative state.

As many farmers and ranchers see it, the administrative state is the problem.

The federal government holds more than half the land in the West. The economic and civic fabric of rural communities depends on trees cut from the forest, livestock grazed on the range and minerals gleaned from mining claims. All of this has become increasingly more difficult over the last eight years, and many in the rural West believe their livelihoods, their very way of life, are in the hands of bureaucrats controlled by interests outside their communities.

Here are some egregious examples from the last eight years:

• The Department of Labor has tried to extort confessions from Oregon blueberry growers for alleged violations and deprive them of due process. It tried to devise labor rules that would have made it all but impossible for kids growing up on the farm to work on the farm.

• The Food and Drug Administration has devised food safety rules that do more to drive producers out of business than they do to make food safer.

• The administration has made it difficult to get legal foreign workers by creating more regulatory hoops in the H-2A guestworker visa programs.

• In reworking the "Waters of the U.S." rule, the EPA and the Corps of Engineers greatly expanded their jurisdiction over private lands.

• The Forest Service and BLM have policies and rules that discourage logging, building fuel loads and facilitating wildfires that further endanger rural communities and economies.

Secretary of Agriculture Tom Vilsack. Courtesy USDA

Though we are loath to offer political parties advice, we think the Democrats err in believing that they can win rural votes by offering more programs to cure the ills bureaucrats perceive infect rural America.

It's not a comprehensive list.

Though we are loath to offer political parties advice, we think the Democrats err in believing that they can win rural votes by offering more programs to cure the ills bureaucrats perceive infect rural America.

And here we come back to Vilsack, who correctly observed that rural Americans want the same things urban and suburban Americans want.

They want a country they're proud of, they want to make a good living, give back and take part in their communities.

In many instances, the best way to help make that happen is to get out of the way.

'Swampbuster' lawsuit faces an uphill battle

By DAVID GANJE
For the Capital Press

Guest comment
David Ganje

Congress passed the Food Security Act of 1985. Under the Swampbuster provisions of this Act the USDA may make determinations as to whether certain lands qualify as wetlands and whether wetlands which have been manipulated qualify as converted wetlands.

The Act passed during the Reagan administration was written to oppose the conversion of wetlands into cropland. The 8th U.S. Circuit Court of Appeals has previously ruled that a person found to have converted wetlands into cropland may become ineligible to receive farm program payments from the federal government. Some of these wetlands are what I call cattail swamps. I spent part of my youth hunting in them.

Overreaching by the USDA in Swampbuster and wetlands decisions and rulemaking is a genuine issue. Proposed legislation filed this year in Congress is intended to address some of these challenges.

Faced several years ago with a wetlands designation for part of their land, South Dakota farmers Arlen and Cindy Foster challenged the USDA's decision that certain of their acreage was a wetlands.

These bureaucratic proceedings took over five years. The USDA based its decision, in part, on a comparable wetlands site some 30 miles away from the Fosters' property in Miner County. Wetland regions in the U.S. include the Prairie Potholes of both North and South Dakota as well as other states.

When the Foster case was later ruled upon by the U.S. District Court for South Dakota, the Fosters were unable to provide the court with substantial evidence that the USDA wetlands decision-making process was wrong. The district court said that "plaintiffs (the Fosters) have not shown, beyond a bare assertion, that the range of rainfall shared by both locations or the differences in the depth of the potholes renders the (USDA comparison) site insufficiently 'local.'"

The trial judge also stated that the Fosters did not challenge the USDA expert testimony about rainfall averages on the land.

The Fosters then appealed this decision to the 8th U.S. Circuit Court of Appeals. The appeals court in its decision upheld the district court and ruled that the original USDA agency decision was a reasonable interpretation of USDA regulations and that courts should give deference to the "informed discretion of responsible federal agencies."

The Fosters have now filed a petition to have the case heard by the U.S. Supreme Court. Unfortunately for the Fosters, weak facts make bad law. The Foster case, in my view, will not be accepted by the U.S. Supreme Court.

Although the Foster Petition to the Supreme Court presents important arguments about agency authority to make decisions and about a court's deference to an agency decision, the court will also look at the underlying facts of the case before it.

The facts of the Foster case are not strong. Because the Supreme Court may not hear the case, however, does not mean that the issues raised by the Fosters are without grounds.

Overreaching by the USDA in Swampbuster and wetlands decisions and rulemaking is a genuine issue.

Proposed legislation filed this year in Congress is intended to address some of these challenges. The sponsors of the filed bill argue that the new law would ensure more timely decisions by the USDA; would make the appeals process more efficient for a landowner/farmer and would improve government transparency in providing information to landowners and farmers affected by the Swampbuster process.

The intention behind the current Swampbuster law has merit, but I am reminded of what my father said about raising me. "David, my intentions with you were good. It is the outcome that is questionable."

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