



Cattle graze in Eastern Oregon. An Oregon ranching couple has not persuaded the U.S. Supreme Court to review their lawsuit accusing the U.S. Bureau of Land Management of violating a deal that traded water for grazing rights.

U.S. Supreme Court declines appeal of lawsuit against BLM

By MATEUSZ PERKOWSKI
Capital Press

The U.S. Supreme Court will not review a lawsuit filed by an Oregon ranching couple who claim the federal government shortchanged them in a water deal.

Jesse and Pamela White originally filed a complaint in 2014 accusing the U.S. Bureau of Land Management of violating an agreement by reducing the number of their cattle allowed to graze on federal property in Oregon's Malheur County.

According to their lawsuit, the Whites were permitted to graze an additional 1,400 "animal unit months" — enough forage to sustain a cow-calf pair for a month — to compensate for 20 reservoirs built by BLM that im-

peded their water rights.

After a dispute with the agency, the couple tried to enforce their water rights, leading BLM to declare the grazing agreement void.

However, the lawsuit alleged the agency never removed or retrofitted the reservoir structures to fully restore the Whites' water rights, despite cutting their grazing levels.

A federal judge dismissed their complaint in 2015 and that ruling was upheld last year by the 9th U.S. Circuit Court of Appeals, which found that it can't compel the BLM to increase the AUMs because it wasn't an action required under federal law.

While the nation's highest court has now decided against reviewing the case, it may not mark the end of the dispute,

which originated in the 1960s with the installation of BLM's reservoirs.

If there are any next steps in the case, they will likely involve the enforcement of water rights through the Oregon Water Resources Department, said Alan Schroeder, an attorney representing the Whites.

With the Supreme Court staying out of the case, it's effectively precluded the restoration of the 1,400 AUMs allowed under the deal, he said.

Though federal courts can't enforce the water-for-grazing deal, that doesn't stop the ranchers from pursuing their state water rights, Schroeder said.

The couple have long been caught in the middle as BLM and the OWRD have pointed fingers at each other in the dispute, he said.

Court approves killing barred owls for spotted owl protection

By MATEUSZ PERKOWSKI
Capital Press

Killing barred owls to help threatened spotted owls isn't prohibited by an international treaty aimed at protecting migratory birds, according to a federal appeals court.

Since 2013, the U.S. Fish and Wildlife Service has shot barred owls as part of an ongoing study to see if their removal will mitigate the decline of spotted owls, which are smaller and more sensitive to habitat disturbances.

Friends of Animals and Predator Defense, two animal rights groups, filed a lawsuit accusing the government of violating the Migratory Bird Treaty Act, which implements international agreements to prevent the extinction of bird species.

While that statute permits the killing of migratory birds for scientific purposes, the plaintiffs argued that provision only applies to studying birds of the same species. Under the law, the Fish and Wildlife Service cannot kill barred owls to study the effects on spotted owls, since they're different species, according to the plaintiffs.

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Associate Press File

An appeals court has approved the removal and study of barred owls to make way for the spotted owl, which is listed as threatened under the Endangered Species Act.

The plaintiffs are disappointed by the ruling, which sets a troubling precedent not only for barred owls and spotted owls but for other inter-species conflicts, said Michael Harris, legal director for Friends of Animals.

"We don't really have a structure to deal with this, and it's something we need to figure out," he said.

Private timber companies have already shown that removing barred owls will help spotted owls, so the Fish and Wildlife Service's research is unnecessary, Harris said.

"It's about getting the public to stomach the shooting of the bird," he said.

Also, if the agency were to make killing barred owls an official policy — rather than calling it an experiment — it would have a harder time passing muster under the Migratory Bird Treaty Act, he said.

It's not clear that spotted owls would be declining due to competition from barred owls if the West hadn't lost so much old growth forest habitat due to logging, Harris said.

The plaintiffs would prefer the government concentrate on preserving the threatened species' habitat rather than making a scapegoat of the barred owl, he said. "You've got to let nature, at some point, work itself out."

Since the Fish and Wildlife Service's study began, the agency has killed nearly 1,150 barred owls in Oregon's Coast Range and Klamath Basin, as well as Washington's Cle Elum area and California's Hoopa Valley.

Early analysis of the removals hasn't yielded any statistically significant results, said Robin Bown, a biologist with the agency. However, the amount of data collected is still relatively small.

"The more years you have, the more confident you get," Bown said.

Since the removals began, it does appear more spotted owls are "hanging on" in areas without barred owls than in control areas where they're present, she said.

However, this correlation is largely anecdotal at this point, she said.

Studying the effect of barred owl removal is time-consuming because once adults are shot, their children can soon re-invade a site, so opening habitat to spotted owls takes time, Bown said.

Establishing a longer trend line is necessary to isolate the impacts of weather and prey availability on spotted owl survival from the effects of barred owl removal, she said.

The study aims to see if spotted owls not only survive but reproduce, Bown said.

The agency is also studying the "recruitment" of new spotted owl generations to sites where barred owls have been removed, she said. "That's the one that takes the longest."

If the research confirms that killing barred owls meaningfully helps spotted owls, the agency will move on to form a long-term strategy for managing the more aggressive species, Bown said.

It's not currently known how this management plan will look, but the current study will provide a scientific foundation for preserving spotted owls, she said.



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