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Opinion

Editorial Board

Editor & Publisher
Joe Beach

Managing Editor
Carl Sampson

opinions@capitalpress.com | CapitalPress.com/opinion

Our View

Court hands Fish and Wildlife dangerous new powers

The Washington Supreme Court last week greatly expanded the power of the state’s Department of Fish and Wildlife to regulate construction far from the water’s edge in the name of protecting fish.

We agree with critics who say the court has handed the department unlimited authority that will trample private property rights.

The court unanimously ruled last week against five counties that had sued the department. Plaintiffs alleged Fish and Wildlife had overstepped its authority by requiring local governments to get permits from the agency to build and maintain bridges that span but do not touch water.

Counties argued the rules unlawfully extended Fish and Wildlife’s authority beyond the water’s edge. The counties argued that the rules could justify stopping projects based on considerations such as climate change. The counties said they didn’t



Don Jenkins/Capital Press File
A U.S. flag waves atop the Temple of Justice in Olympia, where the Washington Supreme Court has given the state Department of Fish and Wildlife broad new powers over projects near rivers and streams.

want to have to obtain a permit from Fish and Wildlife every time they repaved a bridge, repaired a guardrail or repainted white lines.

But Fish and Wildlife argued that when the Legislature passed the state’s Hydraulic Code 75 years ago that it gave the department authority to police construction to protect fish

habitat.

The court agreed, and in the process it stretched the common use of the English language to new limits.

Writing for the court, Justice Susan Owens said Fish and Wildlife can require permits for upland projects and doesn’t have to be absolutely certain the project will affect fish, only reasonably certain.

Owens reached her conclusion by employing a novel new interpretation of a key word in the original law. The code gives Fish and Wildlife authority over projects that “will” alter waterways. Owens says the word “will” — which in normal usage signifies an inescapable certainty — is synonymous with “may” — the expression of a mere possibility.

“And we defer to the department’s expertise in determining which projects meet that standard,” she wrote.

While her colleagues quibbled with Owens’ tortured linguistics, they nonetheless agreed with her

conclusion.

“The jurisdiction has become unlimited,” Citizens Alliance for Property Rights lobbyist Cindy Alia said. “Fish and Wildlife’s jurisdiction can go clear to the mountaintop.”

Past attempts to get the Legislature to limit the department’s authority to projects that actually touch water have gone nowhere, and those who would like to see changes made see little chance that it will happen.

That’s too bad. The problem with legislative bodies, both state and federal, is that they too often leave too much of the detail work to the unelected and largely unaccountable administrative state. Even the most benign of bureaucrats can’t resist the urge to expand its authority. The list of projects that “may” impact fish, as determined by the department’s expertise, is incalculable.

Unrestricted authority in the hands of the bureaucracy is a recipe for tyranny.

Our View

Ranchers get a biological ultimatum

There was a time when Americans could expect their federal government to offer service that was both even-handed and helpful. Even timely.

They may not have gotten it, but at least the expectation was there.

That has changed, for many of those who now work in government, and for those who depend on the government to treat them fairly.

An article on the front page of the Capital Press last week illustrates that change. It’s not that the U.S. Forest Service wanted to force ranchers whose cattle graze on the Malheur National Forest to accept a biological opinion that would dictate the conditions. The Forest Service produced the 335-page document just as ranchers were preparing to turn out their cattle on the 1.7 million-acre forest. The catch: they couldn’t move their cattle until they agreed to the biological opinion.

The ranchers, who pay about \$200,000 for the use of 111 allotments, saw the situation is an ultimatum, and it was. By producing the biological opinion at the last moment, that conclusion was inescapable.

The Forest Service, however, maintains that the reason for the tardiness of the document is that it is short-handed. No doubt some staffers are also

tied up in legal matters, such as defending against environmental lawsuits filed under the federal Endangered Species Act.

The ESA is a law that allows environmental groups to sue federal agencies over more 1,661 populations of fish, wildlife and plants currently listed as threatened or endangered. In the case of the Malheur National Forest, the population of steelhead was the subject of the biological opinion. It should be noted that, according to the Forest Service, 4,500 to 20,000 steelhead live in streams and rivers within the national forest for part of their life cycle. It should also be noted that sport fishermen around Oregon reported catching more than 15,000 summer and winter steelhead in the 2017-18 season. The fish is not exactly on the verge of extinction.

As it is now written, the ESA is little more than a hammer that environmentalists can use to drive ranchers off federal land, stop all types of development and raise money. Only a few populations have been taken off the list, often over the objections of environmental groups.

Because of this poorly written law, federal agencies such as the Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service and National Marine Fisheries Ser-

vice are short-staffed. When President Richard Nixon signed the ESA into law in the 1970s he probably had no idea it would become a litigation generator that turned scientists and land managers into defendants. Instead of doing their jobs, they are being dragged into court.

But there’s also an “embedded bureaucracy” in the federal government that, instead of carrying out the law, carries out its own agenda, according to U.S. Rep. Greg Walden, R-Ore. The Malheur National Forest is in his congressional district.

“Some of this has been going on for decades and there’s a lot of momentum behind it,” he said.

All of which is illustrated by the biological ultimatum — er, opinion — delivered to ranchers last May. The ranchers could have rejected it and been without summer grazing for the year, or they could have accepted it. Even with tighter restrictions on grass height, having a place to graze is better than the alternative of buying hay.

Had the biological opinion been delivered in a timely manner that would allow a thoughtful analysis, the ranchers would have felt as though they were being treated in an even-handed and helpful manner.

As it it turned out, the treatment was neither.

Letter to the editor

Why are farmers and ranchers regulated by city people?

It is an amazing thing to me that city people because of their numbers control how we are supposed to operate — even though they are unable to run a city!

Since we are a minority as we represent less than 2 percent of the population and are feeding the other 98 percent, we are one of the most efficient industries, so why don’t you just leave us alone? We were doing fine until you city people and environmentalists decided that we needed to be regulated and told that we are not taking care of the land and the animals on that land.

Since you people decided that you know best, you started with Alar being used in apple orchards and it was bad for you. That created a major economic problem for the apple farmers. And it was determined that you would have to eat a truckload of apples a day before it could be harmful.

And then someone decided that the spotted owl needed protection and couldn’t survive except in old growth timber. Well, we have proven that that was another untruth. So since we cannot log or graze we now have major fires!

However, now some of you who live outside cities and in nature are finding out how the mismanagement of our forests by the Forest Service and environmentalists has now destroyed your houses and property. Now we have a forest of sticks that needs to be harvested within a year, not done.

The new approach by the same people who created these problems is now saying we need more money to solve this problem. I would say fire all of these people and hire someone who knows what they are doing, log and graze and the income will be incoming rather than outgoing.

And the latest hare-brain idea by the environmentalists is to bring wolves in from Canada, which are no more native than elk. The cattlemen and farmers were smart enough to know why they had virtually been eliminated — because they are predators. So here again they are going to force the people who are trying to make a living and are feeding the 98 percent who have to pay the price so that the people in the city can have a good feeling.

The ironic part of this stupidity is that it is a mandate of the Washington Department of Fish and Wildlife to protect the game we hunt and that can be controlled by people who buy hunting licenses, which is income for the department.

The wolves in Yellowstone have killed more than 7,000 elk but they saved some trees, as the elk are not rubbing their antlers on them. The wolves, however, have found that cattle are easier to hunt and taste better, while you city dwellers could care less that the cattlemen are taking it in the shorts without any recourse. And since it is the idea of environmentalists I think they should pay all of the costs for the rancher for depredation and all management costs — such as for hiring more people, loss of income and weight, plus other costs such as helicopters to hunt wolves — since they have so much money to spend on lawyers.

Their next idea is to introduce the grizzly bear. Another predator! It looks like this may be stopped. However, “take out the dams” will never die.

This reason I am writing this in that hopefully some people who live in the cities will look and realize that our so-called environmentalists are not the good guys! If you want to find a real environmentalist, talk to a farmer or rancher.

My suggestion to all farmers and ranchers is that you need to join your local Farm Bureau, as I do not know of anyone else that can or that will help you when you need it.

Don Young
83-year-old retired cattleman
Sunnyside, Wash.

Cattle graze in Oregon’s Malheur National Forest. Ranchers in the area are frustrated by grazing restrictions associated with a new biological opinion for steelhead.

Mateusz Perkowski/Capital Press

