

AG-OPS LAW UNCONSTITUTIONAL

The Oregon Court of Appeals has ruled that the state's controversial "Earth First! law" is unconstitutional.

The appeals court ruled Oct. 28 in favor of the Eugene-based Civil Liberties Defense Center (CLDC), finding that the "Interference with Agricultural Operations" statute (ORS 164.887) violates the U.S. Constitution's equal protection clause.

The "ag-ops" statute is derisively called the "Earth First! law" by opponents who say it unfairly targets protesters and activists in violation of the First Amendment. The 2003 law has been used almost exclusively against protestors, the CLDC attorneys charged. Working on the case were CLDC director Lauren Reagan, Misha Dunlap English and Kenneth Kreushner.

CLDC board member and local attorney Marianne Dugan said, "Virtually all of the prosecutions under the Ag-Ops statute were against forest protesters — notably the Biscuit Timber Sale protesters — and it was a very thinly veiled attack on such protesters due to the nature of their 'speech' expressed during those protests."

The ag-ops charge was also used recently against 27 activists who were arrested this summer while protesting logging in the Elliot State Forest.

This case began in 2005 when Regan represented environmentalists arrested for protesting the Biscuit timber sale in southern Oregon. Regan argued that the agricultural operations law violated the constitution. The judges agreed, ruling that an exception in the statute "makes it inapplicable to an individual involved in a labor dispute. What that exception has done is make the determination of what is illegal conduct based on the content of what the individual has to say when disrupting an agricultural operation." The judges ruled that "this violates the equal protection clause of the United States Constitution."

The state then appealed the decision, and the CLDC won that appeal when the Appellate Court upheld the decision. The judges also found that Oregon's ag-ops law "does raise serious constitutional questions." They wrote in their opinion that the law applies to conduct that occurs "on the property of another person who is engaged in agricultural operations," and has no exception for people who are guests or invited on that property.

Under the wording of the law, an attorney for an environmental group who went to a company's headquarters to participate in legal proceedings could be "guilty of attempting to obstruct an agricultural practice — even if the attorney is invited to the headquarters." The judges add, "Other examples are limited only by a creative litigant's imagination."

"This is a major victory for activists and the CLDC alike and has been many years in the making," said Dugan. — *Camilla Mortensen*

news Briefs

DOES SOLAR MAKE SENSE IN EUGENE?

Prospects of a green local solar industry have gotten a lot of media hype lately. But do solar panels even make sense in cloudy, hydropowered Eugene?

Solar panels take energy to produce, generating carbon pollution that contributes to global warming. A widely cited recent study showed the panels take up to about three years to recoup that initial carbon cost in carbon savings.

But that was in sunny Spain. Eugene averages about a third less sunshine per year, according to solar radiation maps. Less sunshine in Eugene could lengthen the solar carbon payback in Eugene to about five years.

Even that number may be conservative. Most energy use here is in the dark and colder winter months when the sun rarely shines. In the winter there's up to five times less sunshine in Eugene than in Spain.

The Spain study also assumes the solar panel is replacing mostly electricity generated with fossil fuels. In Eugene about 80 percent of electricity is hydropower. That's bad for fish, but it doesn't contribute to global warming. Factor in the hydro, and you get a possible solar carbon payback of almost 20 years in Eugene.

In terms of carbon reduction, a far better option than solar panels here may be simply walking, biking or taking the bus to work, according to carbon calculations. Never mind the expensive solar array; skip driving for a day in Eugene, and you'll save the rough carbon dioxide equivalent of turning out all the lights in your house for two months. — *Alan Pittman*

COUNTY VOTES TO FUND TIMBER GROUP

Lane County Commissioners voted last week to rejoin the Association of O&C Counties, a group that has been harshly criticized by conservationists for holding closed, secretive meetings, and for advocating for logging Oregon's old-growth forests.

The vote to pay the AOCC almost \$37,000 of county funds in dues reverses a decision made last spring, to stop funding the group in order to pressure the AOCC to switch its focus from clearcut and old-growth logging to sustainable forest practices.

Doug Heiken of Oregon Wild, who served on the county's Timber and Wood Products Advocacy Task Force said, taking into account back dues, "That's about \$75,000 of public money to fund what amounts to the Flat Earth Society of Western Oregon." The AOCC has also been referred to by environmentalists as the "Association of Old-growth ClearCuts."

"Many thanks to Commissioners Pete Sorenson and Rob Handy for trying to save county money by keeping us out of the AOCC and for their efforts to find new and better ways to reauthorize the Secure Rural Schools legislation," Heiken said.

"We're enablers. We're not going to get them to change their minds if we give them their money," Handy said. "They're still looking at cutting old growth as a way to regenerate the economy even though that analysis has been refuted," he said.

Handy said he would like to see Lane County go the direction of the Siuslaw National Forest, which he said focuses on sustainable projects like selective thinning of second growth trees. The Siuslaw is "actually getting projects on the ground, employing people on resource lands, keeping money local," he said.

Commissioner Fleenor was the swing vote on the recent AOCC vote, which passed 3-2. He had voted against funding the AOCC during the previous vote last May. Commissioners Bill Dwyer and Faye Stewart voted in favor of AOCC membership each time. Despite Lane County's lack of dues, Faye Stewart continued to serve as a member of the AOCC board while Lane County was not paying to support the organization. "They haven't kicked me out," Stewart said at last week's commissioners' meeting.

Fleenor says his vote "was based upon the principle that we should at least let an organization know we're unhappy and make suggestions for positive changes before pulling our support."

Oregon Wild and other groups have expressed concern over the AOCC's lack of transparency in decision making. The historically timber-lobbying association has made decisions that could affect public lands in closed meetings. In response to AOCC president and Douglas County Commissioner Doug Robertson's question in the *R-G* this week: "Would I be welcome at an

IT'S ABOUT TIME

BY DAVID WAGNER



There's no point in waiting to roll up the hoses to put them away for the season. They won't be needed until next summer. Emptying them of water first makes them easier to handle and preserves them from freezing damage.

Notice that the winter annuals have already sprouted, some natives, but in town the exotic ones are ubiquitous. Stake out patches of common chickweed. Until it begins blooming sometime late January, chickweed is a fine green. Its fresh, nutty flavor is a treat. A single line of hairs up the stem distinguishes it from any other weed. Beware of foraging where herbicides might have been used.

As the broadleaf trees drop their leaves, the mosses and ferns on the tree trunks have greened up. Watch the spore cases develop on the licorice ferns. They are clustered in white dots this month; as the spores mature, the dots will become bright yellow mounds. After spores are shed in early spring, the mounds turn brown. Mosses have the same cycle of winter activity, producing new green, leafy shoots in late fall and shedding spores in late spring.

The sword ferns on the ground appear to be doing nothing. New fronds came up last spring and shed spores in late summer. However, they are storing energy all winter, the advantage of being evergreen. If you have too-large sword ferns in your yard, you can dwarf them by cutting the fronds now. The fronds will be only two thirds as long next year.

David Wagner is a botanist who has worked in Eugene for more than 30 years. Every year he makes the Willamette Valley Nature Calendar, available this month at Down to Earth and the UO Museum of Natural and Cultural History. Reach him at fernzenmosses@me.com

