

Old-Growth Legal Wars

YOU CAN'T SEE THE FOREST FOR
THE LAWSUITS

Oregon's 30-year "Ancient Forest War" has seen scores of lawsuits, big and small, yielding hundreds of court opinions and orders. From Judge Dwyer's iconic 1991 spotted owl bombshell ("The argument that the mightiest economy on Earth cannot afford to preserve old growth forests for a short time, while it reaches an overdue decision on how to manage them, is not convincing today. It would be even less so a year or a century from now.") to lesser-known injunctions that have protected the rare plants and invertebrates that make up the forest's web of life, the courts have said unequivocally that environmental laws mean what they say.

In passing laws like the National Forest Management Act and Endangered Species Act, Congress decided that protecting water, fish and wildlife are more important than the jobs that could be had by cutting down the huge, old and increasingly rare trees. These laws supplemented and, in some cases, supplanted earlier 20th century statutes that emphasized economic development of the Western federal estate. The legal tension created by the older pro-logging laws versus the newer forest protection rules has bedeviled a generation of federal forest managers.

The most beleaguered have been those who work for the Bureau of Land Management responsible for managing western Oregon's 2.5 million acres of O&C lands (named after a federal land grant made, and subsequently revoked, to finance building a railroad from Oregon to California). The source of their angst is the 1937 O&C Act. That law was one of the first to define a multiple-use mission for federal forests by requiring that BLM protect watersheds, provide for recreational uses, while also cutting timber at levels that can be sustained. Western Oregon counties, which get 50 percent of the cash when O&C timber is cut, have long promoted a logging-first agenda for O&C forests. So, too, has the timber industry.

In a "If you can't beat 'em, join 'em" strategy, about 10 years ago the timber industry began filing its own lawsuits to enforce what it believes is the O&C Act's logging mandate. The first case was of the "sue-and-settle" variety, in which the industry sued to give protective cover to the Bush administration to do what it wanted to do anyway — undo President Clinton's Northwest Forest Plan that protects O&C old-growth forests. That strategy fizzled when the Bush team decided to break the Endangered Species Act, which allowed the newly elected Obama folks to walk away from the sue-and-settle deal. Thus ended WOPR ("Western Oregon Plan Revision"), which had threatened to triple O&C logging levels.

Understandingly, the timber industry was not pleased with WOPR's stillborn demise. If at first you don't succeed ... and so another lawsuit followed. This one was designed to compel BLM to sell the "full" amount of timber that industry believes the O&C Act requires. The timber plaintiffs filed in the D.C. federal court, where they found a sympathetic judge in Richard Leon (Leon, a G.W. Bush appointee, is best known for ruling that NSA's bulk collection of telephonic records is an unconstitutional invasion of privacy). In mid-2013, Judge Leon ruled that the O&C Act requires BLM to sell the maximum amount of timber sustainable under its land-use plans, marking a clear legal victory for O&C Act traditionalists.

Timber's victory proved short-lived. Last week, the D.C. Circuit Court threw out the case on a legal technicality, one that environmentalists have become all too familiar with themselves. The appeals court ruled that the timber industry has no standing to bring suit because the lumber mills failed to prove that any economic distress they have or will suffer is due to timber sales BLM doesn't sell. So many other factors, like log exports and the crash in new housing demand, contribute to a mill's profitability that the court ruled it's all but impossible to pin the blame on low BLM logging levels.

Which begs the question — if the O&C Act is unenforceable, can the old-growth trees in our woods now be allowed to live out their natural lives? That's the standing issue most Oregonians care about. ■

Andy Stahl is executive director of Forest Service Employees for Environmental Ethics (FSEEE).



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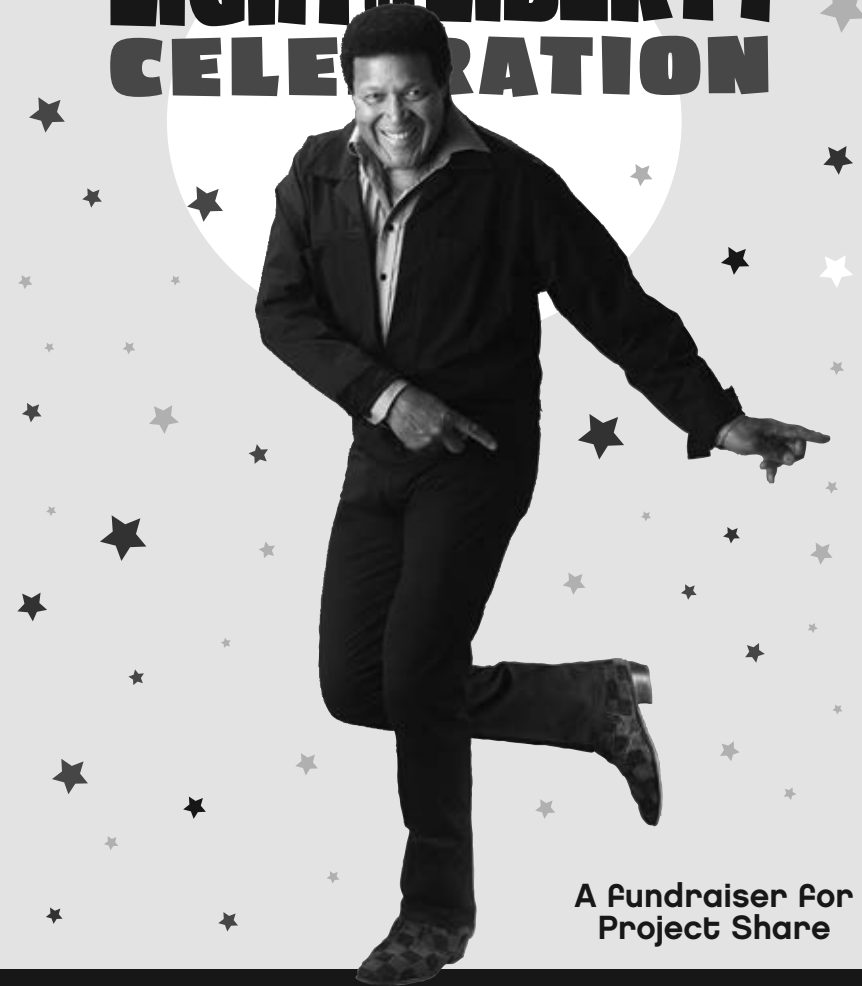
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