

Ranching standoff trial a test of federal control

By **KEN RITTER**
Associated Press

LAS VEGAS — The ability of the federal government to enforce its own land policies in the West will be tested as a trial begins this week of a Nevada rancher accused of leading a 2014 armed standoff with federal agents in a dispute over cattle grazing.

Federal prosecutors in Nevada have twice before failed to win full convictions at trial of men who had guns during the tense confrontation involving hundreds of protesters who stopped government agents from rounding up cattle belonging to Cliven Bundy.

In opening statements Tuesday prosecutors will accuse the 71-year-old Bundy, sons Ryan and Ammon Bundy, and co-defendant Ryan Payne of enlisting a self-styled militia to defy government authority.

"If they don't convict the Bundys, it will look like the federal government can't enforce its own land policy," said Ian Bartrum, a University of Nevada, Las Vegas, law professor following the case closely. "The Bundys and people like the Bundys have been fighting this battle for decades, and always lost."

The standoff near Bunkerville, Nevada, about 80 miles northeast of Las Vegas, became an iconic moment in a decades-long turf battle between the government agency assigned to manage vast tracts in the Western U.S. and ranchers whose cows graze the land.

Bundy argues that his family has used the same public range for more than a century — even before the 1934 Taylor Grazing Act set federal land policy. He maintains the land belongs to the state,



AP Photo/Rick Bowmer

In this Jan. 4, 2016, file photo, Ammon Bundy, center, one of the sons of Nevada rancher Cliven Bundy, walks off after speaking with reporters during a news conference at Malheur National Wildlife Refuge headquarters near Burns.

not the U.S. Bureau of Land Management.

Defense attorneys say the four men didn't conspire with anyone, didn't wield weapons and didn't threaten anybody. They cast the standoff as a peaceful protest, with no shots fired and no one injured before overreaching government officials abandoned the cattle round-up and went home.

"I think they'll lose again," Bundy attorney Bret Whipple said, pointing to the prosecutorial scorecard after trials that ended in April and August: Two defendants acquitted; two defendants convicted of some charges; two defendants not

free after pleading guilty to misdemeanors to avoid standing a third trial. No one was found guilty of conspiracy.

Acting U.S. Attorney Steven Myhre, the lead prosecutor, declined to comment outside court last week.

During previous trials, he has accused the Bundys of trying to instigate a "range war" against the government. He said federal agents were enforcing federal court orders after Bundy racked up more than \$1.1 million in unpaid fees and penalties letting his cattle graze for decades in what is now Gold Butte National Monument.

The Bundys and Payne have been jailed since early 2016. They remain shackled at the ankles in court, but blow kisses to family members in the audience.

Each man refused to enter a plea, saying he didn't recognize the authority of the government. A magistrate judge entered not-guilty pleas for each.

The men face 15 felony charges that include assault and threats against federal officers, firearms counts, obstruction and extortion. Stacked together, convictions on all charges carry the possibility of more than 170 years in prison.

The April 2014 standoff was a precursor to an early 2016 protest in rural eastern Oregon, where Ryan and Ammon Bundy and Payne led a 41-day takeover of a federal facility and called for the U.S. government to turn over public land to local control.

No one disputed the men occupied the Malheur Wildlife Refuge. But a federal jury in Portland refused to convict Ryan and Ammon Bundy of any crime. Payne pleaded guilty before trial to felony conspiracy to prevent Interior Department employees from doing their jobs, but is fighting to withdraw his plea

and his expected sentence of more than three years in prison.

The proceedings in Las Vegas are shadowed by the Oct. 1 shooting deaths of 58 people at a Las Vegas Strip open-air concert by a man who opened fire with rapid-fire assault-style weapons from the 32nd floor of a high-rise hotel.

The judge agreed after the massacre to delay start of the Bundy trial by three weeks.

Gregg Cawley, a University of Wyoming professor who has written about land protests in the West, said the jury may be skittish about testimony about guns.

"There are going to be jurors who are predisposed to the idea that the simple presence of a gun is a threat," Cawley said. "And the (Oct. 1) shooting will be fresh in their minds. I don't know how you erase that."

Myhre points in court to the fear that outnumbered and outgunned federal agents say they felt during the standoff.

But Myhre couldn't convince juries to convict Eric Parker and Scott Drexler, two defendants photographed during the standoff pointing rifles toward heavily armed federal agents in a dry riverbed below. After two mistrials on felony charges, both men pleaded guilty last month to misdemeanor obstruction of a court order.

Bartrum said the current jury in Las Vegas could follow its predecessors and reject or "nullify" calls to convict the Bundys and Payne in the trial that is expected to last four months.

"In this climate, in Nevada and the West, there's a strong ethos and popular feeling of resentment toward the idea of federal land ownership and overreach," Bartrum said.

Oregon joins bid to collect online sales taxes

By **JAMES NORD**
Associated Press

SIoux FALLS, S.D. — Thirty-five state attorneys general and the District of Columbia this week signed on to support South Dakota's legal bid to collect sales taxes from out-of-state internet retailers.

South Dakota is asking the U.S. Supreme Court to review whether retailers can be required to collect sales taxes in states where they lack a physical presence. The case could have national implications for e-commerce.

South Dakota Attorney General Marty Jackley said in a statement Thursday that Colorado filed a friend-of-the-court brief supporting South Dakota's petition to the high court. The state is seeking to overturn legal rulings issued mostly before the online shopping boom that



AP Photo/James Nord, File

Republican South Dakota Attorney General Marty Jackley speaks after a committee hearing in Pierre, S.D.

hamstringing officials who want to collect sales taxes from out-of-state retailers.

"South Dakota is leading the national fight to bring tax fairness for our local retailers and to help support main street businesses," Jackley said.

The support includes neighboring Iowa, Minnesota, Nebraska, North Dakota and Wyoming. The other states are: Alabama, Arkansas, California, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Washington and Wisconsin.

The brief says the jurisdictions all rely on consumption taxes to fund essential government operations.

States have pushed Congress to address the issue without success, and one estimate put the loss to states at roughly \$26 billion in 2015. South Dakota estimates it loses about \$50 million annually to e-commerce.

"The problem with the physical-presence rule is that it was first conceived of in 1967, two years before the moon landing and decades before the first retail transaction occurred over the Internet," according to the brief.

Some companies such as Amazon have decided to collect state sales taxes despite the precedent.

South Dakota legislators passed a law last year requiring collection of the tax. The law was struck down in September by the state Supreme Court due to precedent. The state had welcomed the defeat so it could try to get the U.S. Supreme Court to take up the case.

It takes four U.S. Supreme Court justices to vote to hear a case, or grant certiorari. Jackley said that he hopes the high court agrees to hear the case and issues a decision by June 2018.

OHA may owe feds \$64 million for payment errors

By **PARIS ACHEN**
Capital Bureau

SALEM — The Oregon Health Authority may owe the federal government up to \$64 million for erroneous payments it made over three years because of an error in the Cover Oregon website, according to OHA.

The failed website, which was used by state agencies but never launched to the public, miscategorized people eligible for both Medicare and Medicaid, according to Gov. Kate Brown's office. The mistake resulted in OHA making \$74 million in overpayments to Coordinated Care Organizations for patients eligible for both Medicare and Medicaid from 2014 to mid-2016. The miscategorization resulted in Oregon receiving excess federal funding for that dual-eligible population.

OHA was able to recoup \$10 million of the overpay-

ments from CCOs in 2016 but lacked a mechanism to recover the excess amounts paid out in 2014 and 2015, said Robb Cowie, an OHA spokesman.

The problem was known for some time but was not publicized until after Patrick Allen took the helm of OHA two months ago. Brown selected the former head of the Department of Consumer and Business Services to lead OHA after former Director Lynne Saxton resigned in August amid a scandal over a conspiracy to plant negative news about a Portland-area Medicaid provider.

When the new leadership took over, employees brought the miscategorization issue to the agency's new chief financial officer, Laura Cali Robison, and identified it as "a problem to be dealt with," Allen said.

"It was one of the echoes of one of the problems with Cover Oregon," he said.

Proposed federal plan could affect Oregon state taxes

By **CLAIRE WITHYCOMBE**
Capital Bureau

SALEM — Oregonians generally could pay more in state income taxes under the new federal tax reform plan unveiled last week by U.S. House Republicans.

The plan faces uncertain prospects, but one proposed change could disproportionately affect Oregonians — its provision largely eliminating federal deductions for state and local income and sales taxes.

For Oregonians, who pay income taxes that are high compared to other states, doing away with most of that deduction could mean higher federal taxes, because there would be more money to tax.

A comparison of personal income tax rates by the Federation of Tax Administrators ranked Oregon with the second highest tax rate, 9.9 percent, behind California.

In 2015, Oregonians deducted about \$5.9 billion in state and local taxes from their federal taxes, according to the nonpartisan Legislative Revenue Office. About \$2.5

billion of that was in property taxes.

Under the GOP plan, taxpayers could still deduct property taxes, but the deduction would be limited to \$10,000.

Oregonians can also deduct their federal taxes from their state taxes in what is called a "rolling reconnect."

"If you pay less in federal taxes, then you have less federal taxes to subtract or deduct from your state taxes," Legislative Revenue Officer Paul Warner said. "That means if you get a \$100 decrease in your federal taxes, that's \$100 less you can decrease from your state taxes."

In the current two-year budget, the amount of tax dollars that state government forgoes due to federal deductions from state taxes is expected to be about \$924 million, Warner said. If federal taxes Oregonians pay are lower, that number could shrink too.

But the proposed changes to deductions may not necessarily mean higher taxes altogether. The bill also proposes a broad range of adjustments to federal taxes, such as increases in the standard

deduction and the child tax credit.

What you pay will depend on a number of factors, including how much you make, where you live, whether you itemize your deductions or opt for the standard deduction, and whether you are planning to buy a new home.

The plan also shrinks the number of individual income tax brackets from seven to four.

The "Tax Cuts and Jobs Act" would also:

- Create a new 25 percent tax rate for pass-through businesses, such as sole proprietorships, partnerships and S corporations.
- Reduce the corporate tax rate from 35 percent to 20 percent.
- Eliminate the estate tax after six years.
- Reduce the loan cap on the home mortgage interest

deduction from \$1 million to \$500,000, and eliminate the benefit altogether for second homes. The bill preserves the \$1 million cap for existing mortgages.

That could affect those who own more than one property and people who buy homes in Oregon's booming metro areas, where home prices are higher, Warner said.

"I think we'll see some adjustments as the process goes on," Warner said.

Oregon relies heavily on the state income tax for its revenue; the impact on state and local deductions and on bonding in the plan was roundly criticized by State Treasurer Tobias Read, a Democrat.

Read's office said in a press release that the plan would also cut access to tax-free bonds that are used to finance affordable housing and other economic development projects in Oregon.

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