

Ruling thwarts tyranny of regulators

We’ve been hearing a lot since the passing of Justice Antonin Scalia about how the country isn’t being served by an eight-member, divided Supreme Court. Well, the surviving brethren served the country well, issuing an unanimous opinion giving property owners the right to challenge in court regulatory determinations that their properties are subject to the Clean Water Act.

In U.S. Army Corps of Engineers v. Hawkes Co., the question of judicial review rests on whether a determination by the U.S. Army Corps of Engineers that it has jurisdiction over property under the Clean Water Act is a final agency action subject to challenge, or merely an opinion a property owner can consider and disregard, albeit at future peril.

The court rightly found that such a determination is a statement of the government’s intention to take action if disobeyed and is subject to judicial review.

Hawkes Co. planned to mine peat moss on wetland property it owned in Minnesota. After numerous meetings with the company and visits to the site, the Corps concluded that there was a significant nexus between the site and the Red River of the North, waters of the U.S. as defined by the Clean Water Act, some 120 miles away.

It made a jurisdictional determination that a permit would be required before the company could move forward.

According to the Corps, this left Hawkes with only three options. It could abandon the project. It could perform the expensive and time-consuming environmental impact studies and apply for a permit. It could ignore the determination and proceed with the project and defend itself if (when) the Environmental Protection Agency — the muscle in these cases — prosecuted.

What it could not do is contest the determination in court. According to the Corps, its jurisdictional determination was not a final government action under the Administrative Procedures Act because it neither compelled Hawkes to do anything, nor restricted its actions.

That contorts both logic and the language. No one in their right mind would go forward with a project without a permit and face the possibility of ruinous fines and legal expenses. No one would go to the trouble and expense of getting a permit and then challenge the thing in court.

Without the right to judicial review, landowners really had no choice but to forget the project or submit.

That’s how the court saw it. Writing for the court, Chief Justice John Roberts said landowners “need not assume such risks while waiting for EPA to ‘drop the hammer’ in order to have their day in court.”

The Corps must now be ready to demonstrate a solid scientific basis that private property has a “significant nexus” with waterways protected by the Clean Water Act before it can require a permit.

The burden of proof must always rest with the regulator. Landowners should not evade justified regulation but must be able to thwart the tyranny of being forced to submit to the arbitrary will of the bureaucracy.

EDITORIAL

Voice of the Chieftain



Pam Royes tells our story

It’s sometime in the early 80s in the back of the Bookloft in Enterprise. Judy is making coffee and selling cookies. I’m running from front to back selling a book, catching a story or catching up on the food coop, the ski run, Grace Bartlett’s local history class; or I’m calling Dr. Scharf about mushrooms or fielding a phone call from Bob Chrisman telling me that he has more lambs on the ground in Wallowa than I have on Alder Slope.

And there is a parade of young kids coming in for a cookie or a spot in the children’s corner in the “loft.” The kids that day—or some day—are named Fox and Breeze, Prairie and Gabe, Luke and Hope, and there are most likely all the moms—Luana, Sara, and Pam, and maybe a dad or two. And the “Woolly Boys”—we thought the name was for face hair until we learned they were from Sedro-Woolley, Washington—who sometimes worked for McClarans and sometimes made some of the beautiful willow furniture that is still around and many times brought fiddle and banjo into the Bookloft and just played. Any time of day.

They’re all carrying dirt and news from Imnaha, Cow Creek, Tulley Creek and Snake River. The old-timers in the room—Max Bauer and Chuck Gavin and Jack Finch, look up and smile at the kids and moms and remember a rancher in that country, a grange and a dance, and the Bridge School where Jack and his wife taught and held court for years. Jack’s remembering taking kids from the Imnaha School to New York and Broadway. Max remembers a dance he and Gerry Homan played at “Lake” on the Imnaha in the 30s, before the War. And Chuck remembers Kenneth Johnson and



MAIN STREET
Rich Wandschneider

the other sheep ranches in Snake River Country, the Wilsons and the “Basque-oes” who started herding and ended up owning bands of sheep themselves.

Sara and Mike were on the Lower Imnaha—or maybe they were living in that place along the Imnaha Highway at about milepost 18, with the Woolley boys often houseguests. Luana and her crew were wandering the country horseback and Skip and Pam might have been in a house along the Imnaha by then—the years, places, and people do get jumbled up some. But I remember them all singly and in various combinations with and without June and Little Lisa, Curly and others who needed a bathroom and a phone—if cell phones were even ideas then they weren’t ours—a place to change a diaper or park a kid, and have a cup of coffee.

We all knew little bits of each other—what we gleaned shopping and working at the Food Coop, or maybe working together on a ranch, living in the same house or in tipis at the Sale Yard. (I learned that Pam was from North Dakota; Pam learned I’m from Minnesota; she brought me Jello salad one day.) And we—the young newcomers to the country—could talk places and even some of the old names of ranchers, sheepherders, and storekeepers with Chuck and Max and Jack. Sometimes we got the old stories from them—Chuck liked it that

many of the young folks rode; he said he had enough backpacking in the War and anyway, if God would have wanted us backpacking he wouldn’t have invented horses.

He knew the Johnsons well, knew their sheepherders and knew that Skip and Pam worked for them, so they had that to share. Max made music with some of the newcomers, and rollicked us with stories of his famous mother, Ethel Wade and her purple hats and black Ford Mustang. Jack had stories of Imnaha and Alaska.

But we didn’t know the details of each other’s lives. In her new book, Temperance Creek: A Memoir, Pam tells us details of hers. We learn what we didn’t know about how she and Skip met and lived horseback for four years in some of the most spectacular country in the world, Snake River Country. About sheepherders, sourdough, mountain oysters...

I’m not going to say anything more of her life or the book, because the book is so good and you should just read it. You should read it if you were alive in the 70s and had big dreams that you didn’t chase—or did. You should read it if you are one of the few of our elders at that time who are still with us. See what we were thinking and doing while you were wondering what hippies were and whether we newcomers were them. You should read it if you just want a good honest yarn about regular, tough, people growing up in hard, beautiful, country.

Pam Royes will be signing copies of her new book at the Josephy Center Thursday, June 16 at 7:00 p.m.

Columnist Rich Wandschneider lives in Joseph.

Trail will build community

To the Editor:

Before moving to Wallowa County, my husband, Paul and I had the pleasure of living along a non-motorized trail for a couple years. It was 50 feet from our back door and used by community members of all ages, including us. We walked, jogged, and rode our bikes on it daily. It connected 2 communities together and provided both a safe commuting route and recreation space. Now that we have children who are learning to ride bikes, we are reminded of all the families we watched utilizing this trail. The kids were safe from cars while wobbling along on their bikes, plus their entire family got exercise. When the opportunity to develop a similar trail along the Joseph Branch Rail Line materialized in our community, I became excited, particularly for our community’s kids. We saw first-hand how the linear nature of a trail fostered community interactions. While we have amazing trails in the wilderness, this trail

LETTERS to the EDITOR

will be of a different nature. One easily accessible that allows all ages, particularly elderly and youth, to bike, ride horses, jog, hike, commute, and push strollers along without worrying about automobiles.

On February 9th, 2016, the Wallowa Union Railroad Authority (WURA) unanimously approved the concept design for the 63 mile Joseph Branch Rail with Trail, a design developed by Oregon State Parks, Eastern Oregon University, and the Joseph Branch Trail Consortium. WURA also approved to move forward with a pilot project between Joseph and Enterprise, a 6 mile trail segment. The Joseph Branch Trail Consortium (JBTC), the group working closely with WURA on developing this pilot project, is a 501c3 non-profit made up of volunteer citizens from both Wallowa and Union

Counties, of which I am a member.

I commend WURA for moving forward with this community project. The railroad corridor is a public asset, owned by all of us. The trail will not cost the local taxpayers anything. And the access to recreation is free. Funding for the trail is being sought through grant money, money set aside for trail development. Let’s get those dollars working for our community. The JBTC is working with WURA and the landowners between Enterprise and Joseph to develop the management and maintenance plan for the trail. More information can be found at JosephBranchTrail.org. A public meeting to update the community on the trail development will be held Thursday, June 23rd at 6:30PM at the Cloverleaf Hall in Enterprise. All interested community members are encouraged to attend.

Penny Arentsen
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Joseph

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