

# Demands by standoff leaders defy logic and law, authorities say

By Les Zaitz

The Oregonian/OregonLive

BURNS — Occupiers of the Malheur National Wildlife Refuge for three weeks have made sweeping demands that local and federal authorities say are both brazen and unrealistic.

They want immediate freedom for imprisoned local ranchers. They want federal deeds voided and private owners to take over the property. They want the county to control the refuge. They want federal grazing permits vacated, leaving ranchers free to graze as they choose. And they say they won't go until they get their way.

Interviews with lawyers, ranchers, federal authorities and others make clear: Little of what they want is likely to happen for reasons that include legal principle, basic property rights, economic forces and cost. Federal authorities also say the occupiers are making demands that fly in the face of the U.S. Constitution.

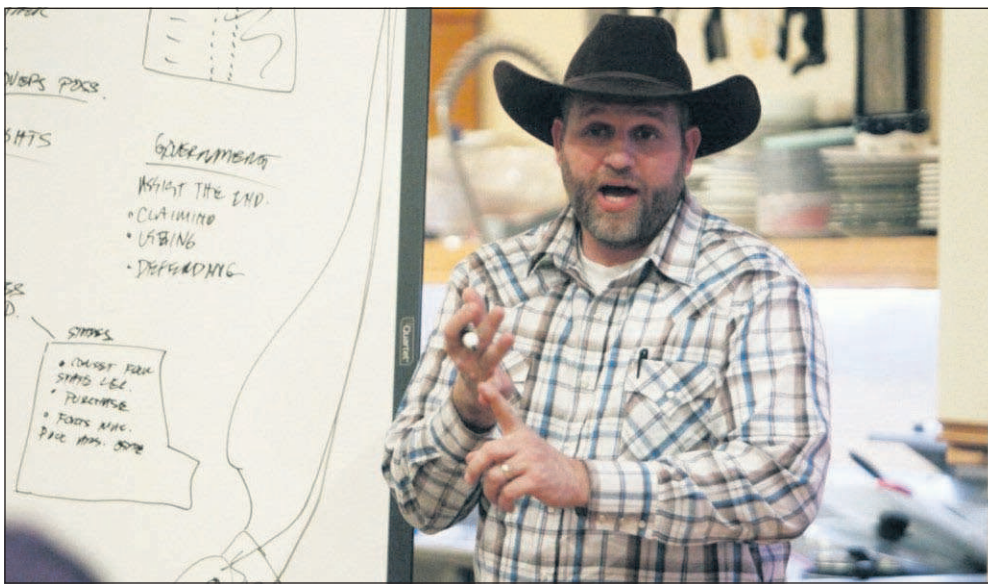
## Federal land control

A bedrock claim of the small group led by Arizona businessman Ammon Bundy is that the Constitution limits federal ownership of land. As a result, they say, the federal government is violating Article 1, Section 8, Clause 17 by illegally holding about 76 percent of Harney County.

But scholars say Bundy and his followers are misreading the Constitution.

"You have to read the entire document and not just the clauses and provisions that you think support your case," said Elizabeth Wydra, chief counsel of the nonprofit Constitutional Accountability Center, which monitors legal application of the Constitution.

The provision cited by Bundy and others is "mostly about the District of Columbia and the idea that there would be the neutral place for



The Oregonian/Mark Graves

**Ammon Bundy, the main public face of the occupation of the Malheur National Wildlife Refuge, speaks to local ranchers and community members at Crystal Crane Hot Springs Jan. 18.**

the government to be located instead of in an area belonging to a particular state. It's really hard for me to see how that relates to their claims."

The more important provision, Wydra and others said, is Article IV, Section 3, Clause 2 — known as the "Property Clause": "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."

In a 1976 ruling, the U.S. Supreme Court confronted the point Bundy is trying to assert. New Mexico state officials tried to keep wild burros that they had seized from federal land. The officials claimed what the Oregon occupiers claim — that the Constitution strictly limits what property the federal government can own or control.

State officials argued in *Kleppe v. New Mexico* that Congress had no power over public lands without state consent. "This argument is without merit," the Supreme Court ruled.

State officials confused a constitutional provision focused more narrowly on how the federal government oversees land it acquires from

a state with the unlimited powers granted to the federal government under the Constitution's Property Clause, the court said.

That clause trumps all, the court ruled.

## Unwinding federal ownership

Bundy and other leaders of the refuge takeover nonetheless assert that the federal government is out of bounds in Harney County.

They plan to rectify ownership by voiding all deeds in the county that transferred land to the federal government. This would affect lands managed by the U.S. Bureau of Land Management, the U.S. Forest Service and the U.S. Fish & Wildlife Service.

One challenge they face is that much of the federal ownership dates to territorial days, so there's no earlier owner. Homesteaders subsequently claimed some of the land, but the federal government still retained millions of acres in Harney County. Over time, the government has bought or traded other parcels.

The Burns Paiute Tribe would perhaps have the most distinct claim to much of the county — by treaty, it never

gave up its interest in tribal lands across the Great Basin. Tribal members did cede what was once the Malheur Indian Reservation, accepting compensation. The federal government subsequently sold that land to private interests, so it's not clear whether that land would be part of Bundy's calculation.

The refuge occupiers have provided few details on exactly how a land transfer would work. Would a rancher who sold land to the government simply get the land back or would the rancher have to refund what the government paid for the land?

The Harney County Committee of Safety, a group of six local residents founded at the instigation of Bundy and other occupiers, has been identified as among those who would help with the transfers.

"We do not have a concrete plan to transfer the lands away from the feds," said Burns businessman Tim Smith, a committee member. "Everything is still on the table except the status quo of leaving the vast majority of land within the fed jurisdiction."

Smith himself was given title to 10 acres of federal land in 2010, but didn't respond to

written questions about what would become of the land under Bundy's plans.

## Federal grazing rights

The occupiers advocate voiding grazing permits issued by the U.S. government as well.

Voiding grazing rights, though, would be a vexing development in a region where many ranchers count on using public lands to feed livestock.

Occupiers say ranchers would revert to "historic" use of that land to continue grazing. What they seemed to have overlooked is that their plan calls for private ownership of the same high desert expanses that the federal government now rents at subsidized cost to the ranchers. They haven't answered how ranchers would graze on what becomes private land.

Ranchers say the idea wouldn't work in any event. Bundy's claim to want to restore economic vitality to the county doesn't match the disruption his notions would cause for ranchers reliant on public grazing allotments.

The occupiers haven't addressed what they would do about mining and water rights issued by the federal government.

## Hammonds freed

Bundy told the FBI that his group's primary demand is immediate freedom for the Burns area ranchers Dwight Hammond Jr. and his son, Steven.

The father and son returned to federal prison Jan. 4 to serve the remainder of five-year sentences. They were convicted in federal court in Pendleton in 2012 of arson for fires that burned federal land. A federal judge initially reduced their sentences from what the law required, saying the punishment was too harsh. An appellate ruling later declared that to be wrong, and the Hammonds last October faced a second sentencing.

Bundy's claim for the Hammonds stems in part from his view of the Constitution. Since the federal government shouldn't own the land it does in Harney County, according to Bundy, it also lacked authority to prosecute the Hammonds. He and other occupation leaders want the Hammonds brought home immediately.

That's not as easy as turning a key in a cell door at the Los Angeles-area prison holding the Hammonds.

"Inmates are sometimes released from incarceration due to a sentence being vacated by the court, an executive order of clemency, or through a compassionate release/reduction in sentence," the U.S. Bureau of Prisons said in a statement.

A presidential pardon could instantly free them from prison and clear their convictions. For this to happen immediately would take circumvention of the normal years-long process used by the White House to consider pardons.

Bundy himself acknowledged to the FBI that he didn't expect this to happen.

President Obama could commute the Hammonds' sentences. That could lead to an immediate release but not exoneration.

The U.S. Department of Justice may have mechanisms to go to court to vacate the convictions and dismiss the sentencing order. But the Justice Department appealed the original sentence and U.S. Attorney Billy Williams in Oregon not long ago publicly justified the convictions.

The Bureau of Prisons itself could try releasing the men, but that would require convincing a federal judge that a compassionate reason existed to do so. The process likely wouldn't happen fast and wouldn't clear the Hammonds of the convictions.

© Oregonian Publishing Co. Reprinted with Permission.

Start your new year our right  
with a fresh set of tires



Terramax H/T

Starting at \$89<sup>99</sup>

We also have a new  
series of tires!

Back Country  
All Terrain

- Advanced noise reduction
- Aggressive shoulder
- Open tread
- Waved siping
- wear-resistant tread compounds

Road Control  
NW-3

- Specially designed grooves
- 3D Siping
- Advanced tread compound
- Noise reduction
- All-season performance







Backed by our  
Best Tire Value Promise

551 W Main • John Day • 541-575-1346