

Supreme Court 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 recently 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 (or 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.



FARMER'S FATE

The house that Peter-bilt

By Brianna Walker
For the Blue Mountain Eagle

This is the house that Peter-bilt.
This is the transmission that quit in the house that Peter-bilt.
This is the tractor that housed the transmission That quit in the house that Peter-bilt.
This is the trailer that attached to the tractor That housed the transmission
That quit in the house that Peter-bilt.
This is the telehandler with the broken horn
That pushed the trailer That attached to the tractor
That housed the transmission That quit in the house that Peter-bilt.
This is the sheep with the lamb just born That crossed the telehandler with the broken horn That pushed the trailer that attached to the tractor That housed the transmission

That quit in the house that Peter-bilt.

This is the maiden all forlorn
That yelled at the sheep with the lamb just born
That crossed the telehandler with the broken horn
That pushed the trailer that attached to the tractor
That housed the transmission
That quit in the house that Peter-bilt.

This is the farmer that grumbled and moaned
That kissed the maiden all forlorn
That yelled at the sheep with the lamb just born
That crossed the telehandler with the broken horn
That pushed the trailer that attached to the tractor
That housed the transmission
That quit in the house that Peter-bilt.

This is the For Sale sign, all new in the morn
That lessened the farmers grumbles and moans
That kissed the maiden, no longer forlorn
That smiled at the sheep with the lamb just born
That crossed the telehandler with the newly-fixed horn
That pushed the trailer that attached to the tractor
That housed the transmission
That quit in the house that Peter-bilt.

Brianna Walker occasionally writes about the Farmer's Fate for the Blue Mountain Eagle.

LETTERS TO THE EDITOR

Previous letters judge man before trial

To the Editor:

Hypocrites united in the previous issue of the local tabloid (one claimed to be a "lawyer" in an April 19, 2016, email to the Grant County Court — heaven forbid she still "practices"). Both missives judge a man before he has even come to trial, and both are full of misquotes and assumptions. They must be aware that attacks against the sheriff are passé and need new targets for their awesome revelations. I was accused of stating that Michael Emry "has acted as a calming influence at community meetings and gatherings." The person quoting this has never attended such meetings and displays total obliviousness of any influence Mr. Emry may have had. "Why do Smith and Kerr fail to see Emry as undesirable and a risk?" Probably because he hasn't been found guilty by a jury of his peers. Now there is an original thought for contemplation. It appears that both letters tout only what they have read in the tabloids of biased unprofessional reporting. Both comments display apathy in finding the truth therefore one can only assume they are being spoon fed slanted information gathered by a media smear professional. The narrowed minded couldn't resist an attack on the sheriff and questioned why he doesn't condemn his "deputies' support" of an accused man before he has been brought to trial. Does this question from the "lawyer" really deserve an answer on her inability to determine the law? Why would the sheriff be moved to respond to the ridiculous? Please, people, if you are going to leap to uninformed and tedious conclusions, at least put some vestige of acumen behind it. You might also note that I did not use names for the meandering minds whose sole purpose appears to be one to create dis-

content. The names never change except when some far-off dirt slinger from New Hampshire feeds preprogrammed tripe into a local tabloid. I hope the editor did a word count on both dogmatic rambles because they may be much longer than my poor 340-word offerings.

Judy Kerr
Canyon City

Editor's note: In a May 11 declaration in support of Michael Emry's request for pretrial release, Kerr wrote, "I know Michael as an even-tempered and peaceful individual who has acted as a calming influence at community meetings and gatherings." Emry's request was denied. He is accused of possession of an unregistered machine gun and possession of a gun with an obliterated serial number after being arrested May 6 in John Day.

Former Chief Sprauve 'has my utmost respect'

To the Editor:

I have heard rumors in Grant County that there are questions about the Granite City Police Department and Chief Nicky A. Sprauve. I want to put these rumors to rest once and for all, so I am making this official statement one time only.

We are not yet up and running. It is a fully legal police department. Nicky A. Sprauve was our chief of police but is now retired and left in good standing. I feel really bad as I heard some of the vicious rumors about Chief Sprauve. He has my utmost respect and trust.

We are presently in between chiefs. If you have more questions, please call Oregon State Police, 503-378-8282, or Oregon State DPSST, 503-378-2100.

Sandy Smith
Mayor
Granite

N.H. man 'has a lot of nerve to badmouth Grant County'

To the Editor:

I would like to answer Brian McDonough's letter (in the June 1 Eagle). Watching Fox news this morning, June 2, it reported two policemen were shot as well as two criminals in New Hampshire.

He has a lot of nerve to badmouth Grant County from all the way across the United States.

We have a great county. We have great people. His example of two bad characters is totally unfair at most. And to badmouth our sheriff is even worse. Glenn Palmer is a fine man who loves our county and its people. He is also a very fine sheriff. He doesn't encourage only law breakers to come to Grant County.

My anger over this letter coming from out of state makes it impossible to comment further.

Joe Clarke
Long Creek

From the burn to Burns

To the Editor:

With regret, we are leaving Grant County, moving from the burn to Burns, after 26 good years enjoying life in Seneca and along Canyon Creek. It's hard to leave our friends and neighbors who have been so good to us and all the businesses and organizations that have been so supportive. We thank you all for enriching our lives. But the Canyon Creek fire has made it too heartbreaking and difficult to stay, so from the black forest to the sagebrush sea we go. Happy trails.

Judith Beaudet Reed and
Robert Reed
Canyon City

WHERE TO WRITE

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Grant County's Weekly Newspaper

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1 YEAR SUBSCRIPTION RATES

(including online access)
Grant County\$40
Everywhere else in U.S.....\$51
Outside Continental U.S.....\$60
Subscriptions must be paid prior to delivery

Periodicals Postage Paid at John Day and additional mailing offices.

POSTMASTER
send address changes to:
Blue Mountain Eagle
195 N. Canyon Blvd.
John Day, OR 97845-1187

USPS 226-340

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