

THE GREAT OZ and THE JUDGE

A radical enviro and a federal jurist team up for unbelievable adventures.

Words by Judy Boyle. Illustration by John Bardwell.

ONE OF THE MOST POPULAR FILMS IN HISTORY IS “THE WIZARD OF OZ.” IT’S A FANTASY, OF COURSE, BUT BASED ON HUMAN TRAITS. IN AN OPENING SCENE, WE MEET A FLIMFLAM MAN WHO EVENTUALLY MORPHS INTO THE SELF-APPOINTED GREAT OZ, RULER OF A SURREAL LAND. TO MAINTAIN POWER, HE PULLS STRINGS AND TURNS WHEELS FROM BEHIND A CURTAIN UNTIL FINALLY EXPOSED AS A FRAUD. THE CON-MAN CHARACTER, AS NAMED BY THE AUTHOR, L. FRANK BAUM, IS PROFESSOR MARVEL.

THE STORY OF OZ CONTAINS PLENTY OF BIZARRE AND SCARY SCENES, BUT IT’S JUST FICTION. NOW, HERE’S A STORY THAT SOUNDS LIKE FICTION BUT IS, SADLY, TRUE—AND PLENTY SCARY.—ED.

Once upon a time, long ago, there was a unique concept called Equal Justice. Justice was blind with balanced scales to equally weigh facts and make unbiased decisions. Constitutional law and property rights were actually taught in schools, and educated the attorneys who became the people’s judges. Back then, Americans believed in the justice system and thought it a legitimate way to redress grievances. They considered it their right to an unbiased court and Due Process was genuinely recognized, understood, and applied by all their judges.

Today, in certain federal courtrooms, those original American jurisprudence concepts no longer apply—especially in cases dealing with environmental laws. Some judges have become rulers over their own kingdoms, retaining jurisdiction for years in cases unlucky enough to be before them. Their rulings have become quite predictable, based on past actions. They are the judges sought by radical environmental groups in a process known as “judge shopping.” Filing an environmental case within a certain federal judge’s district has shown, time and again, to increase the odds for a successful outcome. Becoming friends with the judge’s clerk adds even more to the odds of that judge using specific portions of your legal brief in his decision.

Finding a friendly judge not only allows the “nonprofit” environmental groups to win their arguments and advance their agenda, but showers their organizations with taxpayer

dollars. Whenever environmentalists win against a federal agency, the federal treasury is forced to shell out hundreds of millions of dollars each year to these green organizations in “attorney fees.” When private citizens lose a lawsuit, they must pay the preservationist group’s attorney fees. On the rare occasion that the nonprofit organization loses, it is usually exempted from paying any attorney fees. No fairness involved here.

In Idaho, the livestock-hating Western Watersheds Project (WWP) has hit the jackpot repeatedly in Federal District Judge Lynn Winmill’s courtroom. Judge Winmill is WWP’s sugar daddy who very seldom rules against them, often incorporating pieces of WWP’s briefs to justify his decisions. WWP files so many cases with Judge Winmill that

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his court calendar stays quite full. Sometimes, he has to give a case to another federal judge and that is when the comparison of a green bias glares brightly. To show an attempt at a balanced decision, Judge Winmill once ruled against WWP. The Bureau of Land Management (BLM) wanted to control a dense stand of juniper to improve sage grouse habitat. WWP sued to prevent this commonsense action. The entire case became a moot issue as Judge Winmill’s ruling to allow juniper control came after the area had already burned in a wildfire.

WWP’s Jon Marvel is the self-appointed “ruler” of federal lands where ranchers have grazed their livestock for generations—long before the existence of federal land-management agencies, or even state governments. The partnership between the feds and western ranchers was approved and encouraged by Congress through the Taylor Grazing Act, the Homestead Act, and numerous other laws. Marvel’s single-minded vision of a livestock-free western landscape supposedly comes from an argument with a ranching neighbor. Marvel, an architect by trade, shows no regard for property rights, rural custom and culture, generations of ranching, fairness, or existing vested rights and certainly has no concept of cowboy principles. He appears to be a bitter, angry individual who lashes out at anyone who “interferes” with his concept that he alone knows what is best for the West.

Marvel seems to relish the role of harming families with mental anguish, destroying lifelong dreams of passing on the family ranch to the next generation, forcing individuals to lose their incomes and futures. He seemingly enjoys making life as miserable as possible for hardworking people whose very business depends on their positive stewardship caring

for and protecting the environment and wildlife.

Assisting in this viciously cruel method of forcing

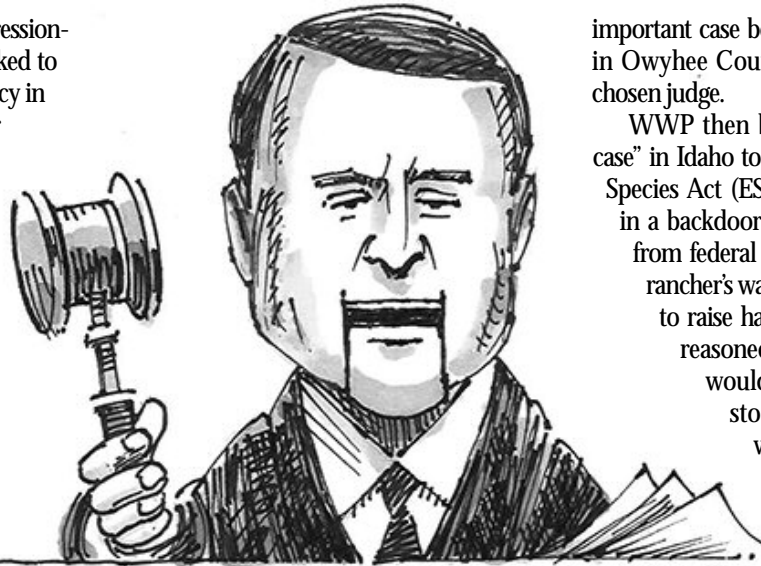
families from their chosen way of life, is a federal judge who grew up on a dairy farm. Perhaps it was a philosophy developed at Harvard University where Judge Winmill received his law degree, or the mentoring from a liberal law professor after returning to Idaho, or influence from Idaho Gov. Andrus upon appointment as a state court district judge, or his clerk’s friendship with a preservationist bragged about by a WWP staffer that has allowed this unholy alliance to be cemented.

During President Bill Clinton’s first term,

the sole Democrat in the Idaho congressional delegation, Larry LaRocco, was tasked to find a judicial candidate to fill a vacancy in Idaho's Federal District Court. After several names were rejected by the Republican members of the delegation because of the candidates' known environmental leanings, LaRocco offered Lynn Winmill's name. Winmill had no prior history with crucial environmental cases so, with reservations, the rest of the delegation agreed to support his nomination. Easily confirmed, Judge Winmill immediately showed his bias, deciding in the first

important case before him to restrict grazing in Owyhee County. WWP had secured its chosen judge.

WWP then began searching for a "test case" in Idaho to use the federal Endangered Species Act (ESA) against private property in a backdoor attempt to remove grazing from federal lands. It decided to attack a rancher's water right to cripple his ability to raise hay for his cattle. The enviros reasoned the lack of sufficient feed would force the sale of the livestock. Therefore, those cattle would not be grazing the next summer on



"Pay no attention to that man behind the curtain"

- Actor, Frank Morgan
of *The Great Oz*, 1939

federal lands. WWP needed a victim with no political connections, few assets or funds, who had not dealt with ESA issues or attorneys, someone who could be used and abused to further WWP's agenda of eliminating ranching. It settled on taking out the Verl Jones ranch located close to the Montana border, a few miles from Challis, Idaho.

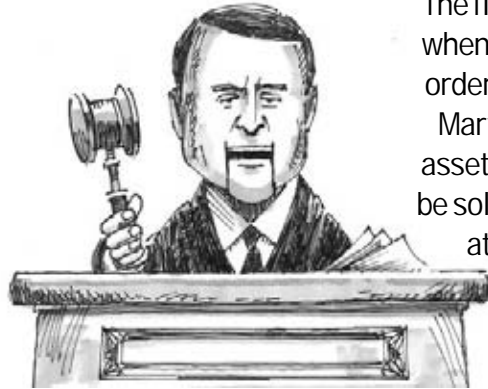
Verl was born on the family homestead in 1916. His formal education was limited but his on-the-ground experience with the natural world surpassed any Ph.D. level. The two most important things in Verl's life were his family and his ranch. In 2001, WWP sued Verl. He was 85 years old and had no idea what a Notice of Intent to Sue under ESA meant. In 1961, Verl had hand dug several miles of ditch around a rocky mountain-side in order to use his state-recognized water right from Otter Creek. This backbreaking work allowed him to develop additional hay fields, increase his cattle herd, and support his growing family of seven children. Wildlife also enjoyed the improved habitat during the late fall, winter, and early spring seasons.

WWP claimed Verl's water diversion caused harm to the endangered bull trout, although none existed in Otter Creek. While WWP did not present evidence that the use of Verl's water right actually resulted in injury to the listed fish, Judge Winmill ordered Verl to stop irrigating his hay fields and to pay WWP's attorney fees of over \$36,000. Without water, the family lost 100 tons of hay production yearly, were forced to reduce their cattle herd, and created enormous stress as the family tried to deal with reduced income and huge legal fees from the court battles. The final blow for Verl came when Judge Winmill ordered him to give WWP a list of all assets which were to be sold to pay WWP's attorney fees. It was simply too much and Verl died.

The Jones' case was brought to the attention of Pacific Legal Foundation and its Seattle attorney, the late Russell Brooks, agreed to take their case on appeal to the 9th Circuit court. Mr. Brooks successfully convinced the panel of judges to overturn Judge Winmill's decision. The 9th Circuit judges ruled that actual evidence of a species being harmed must be presented, not just alleged, before a judge can legally order an injunction.

Judge Winmill's decisions seldom reach

the 9th Circuit court. Usually, WWP sues a federal agency and the agency settles. The harm done to the grazing permittees is by reductions of time and numbers. Grazing was reduced in the Curlew National Grasslands of southeast Idaho after WWP sued, with Judge Winmill agreeing that livestock created a "threat" to sage grouse, a species not listed under ESA. In southern Idaho, WWP again



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used sage grouse with Judge Winmill slashing grazing in an area with lush grass production. The area burned during the 1,000-square-mile wildfire of 2007, effectively eliminating sage grouse and their habitat for many years. (See RANGE, Fall 2007, "All Creatures Lost—Large and Small.")

A little farther to the west in Owhyee County, Judge Winmill decided to blame cattle for eating the forage to less than six inches along the creeks of rugged South Mountain, despite the fact that large herds of deer and elk roam there. He ordered immediate reduction of the BLM grazing allotments of Tim Lowry and Mike Stafford from their accustomed four months to just six weeks. The judge told the ranchers they could easily buy hay to feed their cattle during the summer and fall months.

Using wolves to damage ranchers grazing in the Sawtooth National Recreation Area (SNRA), Judge Winmill ordered U.S. Fish & Wildlife Service (FWS) to stop harming, harassing, or killing the predators when they attacked livestock. Wolves were reintroduced in Idaho in 1995 as an "experimental, non-essential" population. Under the special ESA rule, ranchers are given the right to kill wolves attacking livestock. FWS has authority to remove livestock-killing wolves. Although grazing was recognized as an authorized and legitimate use in the congressional act creating the SNRA, Judge Winmill reasoned that wolves are more valuable and must be protected over livestock, regardless of adminis-

trative rules or federal laws.

In November 2007, Judge Winmill again agreed with WWP and denied sheep rancher Mick Carlson of Riggins, Idaho, the use of his U.S. Forest Service winter grazing allotment. This time the issue was nonlisted bighorn sheep. Judge Winmill admitted that there is no documented scientific proof that domestic sheep pass disease to the wild sheep but he still sided with WWP to cripple another longtime rancher. The future of domestic sheep grazing on federal land is now in serious jeopardy if there are any bighorns within miles.

Today, the fate of western users of federal lands twists in the wind with Judge Winmill's December 2007 decision ordering FWS to reconsider listing sage grouse. Once again, Judge Winmill appears to have cut and pasted WWP's brief into his ruling. Over the years, FWS has denied WWP's many listing petitions by repeatedly finding the species do not warrant listing. Not only ranchers but recreationists, miners, energy companies, future transmission lines and transmitter sites will face serious restrictions with a listing.

Private property owners will be prey to individual lawsuits, such as the one faced by Verl Jones, if a sage grouse is harmed or killed on their lands. Instead of welcoming and sheltering the bird, landowners will live in fear of having them on their property.

These are only a handful of cases in which WWP and Judge Winmill have teamed up to harm the real caretakers of the land—western ranchers. No attorney, who may someday have a client before Judge Winmill, dared to be quoted for this article. No rancher could afford such a risk either. Federal judges are appointed for life but the Founding Fathers never envisioned biased federal judges making law. The Founders carefully crafted provisions to separate executive, legislative, and judicial powers, expecting each branch to respect the Constitution. Unfortunately, the Judicial Branch too often stretches its power to become as overbearing as King George. Congress does have oversight on federal judges but rarely acts. When constitutional restraints are ignored, all rights are endangered. Will Congress continue to fiddle as the rule of law and the Constitution are eroded by imperial federal judges? ■

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