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# the Government Bird

By Robert E. Gordon Jr.  
Special to the Review-Journal

*[Editorial Note: Occasionally an article in the public domain—such as this opinion printed in the Las Vegas Review Journal—is of great interest to most of us who read Watchbird. The following article reflects one learned person's opinion of big government's attitude. You may agree or not. S.D.]*

Just when you thought the government had managed to regulate everything it could, federal bureaucrats set out to prove you wrong. The U.S. Fish and Wildlife Service has warned ranchers that they could be prosecuted for "taking" an endangered species if one kind of wild bird lays an egg in the nest of another kind. According to the Endangered Species Act "taking" means to "harass, harm, pursue, hunt,

shoot, wound, kill, trap, capture or collect or attempt to engage in any such conduct" and is punishable with penalties as high as \$50,000 and jail terms of up to a year.

The birds in question in this instance are the Southwestern Willow Flycatcher and the Brown-headed Cowbird. The flycatcher, a federally endangered species, typically nests in willows and other trees along river banks in New Mexico, Arizona, Texas and southern parts of California, Nevada and Utah. According to the wildlife service, this flycatcher can be distinguished from other non-endangered subspecies of willow flycatchers because, "Rather than the crisp, sneezy 'fitz-bew' of the northerly subspecies, (it) sings a more protracted, slurred 'fitz-za-bew,' with a burry 'bew' syllable." The cowbird is an unusual but extremely common bird which is found across the country, in circumstances ranging from Western ranches to my own little patch of suburbia in Virginia. Cowbirds are unusual because rather than build a nest, lay eggs and rear their young like other birds, cowbirds sneak into other birds' nests, push out an egg and replace it with an egg of their own. That is the extent of cowbird parenting. The incubation period of a cowbird egg is 10 days, so it usually hatches before its unfortunate foster siblings do. The cowbird chick typically dominates the nest, taking most if not all the food and even pushing the other baby birds out.

Cowbirds are known to parasitize the nests of the Southwestern Willow Flycatcher, which is not only bad news for the endangered flycatcher but also for cowboys. This March, Jennifer Fowler-Propst of the Fish and Wildlife Service sent a memorandum to the U.S. Bureau of Reclamation warning, "to avoid the likelihood of adverse effects (on the flycatcher) in the form of a take, the Service strongly recommends that livestock be removed from (flycatcher) areas by April 15 or as soon as possible thereafter." The penalty would be applied to individuals who hold a permit to graze on lands administered by the Bureau of Reclamation which, like other federal land holding agencies, has allowed private parties to graze by permit. The

ranchers affected by this memorandum, although appealing the wildlife service's actions, have pulled out.

The theory behind the wildlife service's action is that cowbirds follow cows, which go near flycatcher nests. The cowbirds then deposit eggs in the nest. The eggs then hatch and subsequently "take" a flycatcher's offspring. According to Bill Moore with New Mexico's Department of Agriculture, one problem with the service's reasoning is that it "has no data to substantiate a relationship between brown-headed cowbird parasitism rates and range livestock grazing." Yet, even if the service had data proving the association, there is a more profound problem: Fish and wildlife officials are threatening to bring charges against private parties because a species of native wildlife continues to do exactly what it has always done. Before the demise of buffalo, the cowbird used to be known as the buffalo bird. It is likely that in order for the buffalo bird to follow the ever-roaming buffalo herds, it had to parasitize other birds' nests rather than building its own. This is no new phenomenon. However, what is extraordinary and radical is the idea that a private party should be responsible for damage done by wildlife owned by government, which is, in a well-established area of law, not responsible for wildlife damage itself.

If one didn't know better, it would appear that wildlife service's proscriptions for protecting the flycatcher are designed to destroy ranching. The agency has some political cover as it can claim it was forced to take action in response to legal pressure from a group called the Forest Guardians. The Forest Guardians are a New Mexico-based group making a hobby of filing notice of intent to sue ranchers under the Endangered Species Act. In meetings with affected parties the Forest Guardians stated that a buffer zone with a 12-mile radius is needed between cattle and flycatcher nests. The forest service has taken the more "reasonable" position that a 5-mile cattle free buffer zone around nests is needed from April through September.

If implemented, the consequences of the forest service's concept policy could spell utter devastation for many

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ranches. The time during which the service wants buffer zones around nesting sites is coincidentally the same time in which cows have calves and the time during which year-old cows—yearlings—gain their weight, as the nutritional value of forage is at its peak. Additionally, because willow flycatchers often nest near river banks, the area put out of bounds contains all the water. Putting water out of bounds to Southwestern ranchers from spring through summer and into early fall is equivalent to conducting heart transplant surgery without a replacement.

If any ranch could survive the federally imposed pincers of drought and starvation it would certainly get squeezed out by the sheer size of the buffer zone. Just how big is an area with a 5-mile radius? Seventy-eight and one-half miles. And just how big is 78 square miles? Habitat set aside for a single flycatcher nest would be 1.14 times the size of our nation's capitol, which has more than 600,000 residents.

If the U.S. Fish and Wildlife Service continues to pursue this policy the results are worse than just putting federal grazing permit ranchers in the welfare line. What the service considers a "taking" applies equally to private property, which means that private land ranches that have flycatchers could be prosecuted as well—even if the cowbirds didn't parasitize a nest. All that is required is to "attempt to engage" which means a cow would simply have to stick her nose into the buffer zone. Theoretically, the wildlife service might be able to challenge ranching in an area where there wasn't even a flycatcher nest to parasitize if it claimed that the area was historically flycatcher habitat but ranchers were forcing the bird out. Sounds extreme? Did you hear the one about the lady who sued because her coffee was hot? Furthermore the cowbird parasitizes more than 250 bird species, which include, according to the wildlife service, other endangered birds like the Least Bell's Vireo, Kirtland's Warbler, Puerto Rican Yellow-shouldered Black Bird and Florida Sea Side Sparrow.

Cowbirds are causing problems across the country, and in many

instances there is a documentable relationship with some human activity other than ranching. One study has shown that camp sites attract cowbirds. Should we be locking up campers? Another study demonstrates that cowbirds are attracted to bird feeders. In fact, according to an authority on Texas birds, "feeders by suburban homes in the hills west of Austin are currently feeding such a heavy population of Brown-headed Cowbirds that the two great central Texas specialties—the Black-capped Vireo and the Golden-cheeked Warbler—are finding it ever more difficult to raise their own young." In other words, suburban homeowners in the Austin area who have bird feeders should, under the wildlife service's current logic, be prosecuted for "taking" the federally endangered Golden-cheeked Warbler and Black-capped Vireo.

Yet, suburban Austinites need have no fear. Clearly the wildlife service's actions are political and not really about conserving endangered species. What the service's actions really reflect is the convergence of the elitist and urban environmental establishment's ignorant anti-rural bigotry and the federal government's insatiable appetite for land use control. And, just in case you get the notion that the simple answer is to knock off any cowbird parasitizing the nest of an endangered species, be forewarned. The cowbird is protected by the Migratory Bird Treaty Act which is administered by none other than the U.S. Fish and Wildlife Service. If you kill a cowbird, the service could seek penalties of up to \$2,000 and a jail term of up to two years.

There may be yet a third and more apt name for the buffalo bird or cowbird, one which more accurately reflects the bird's character—the government bird. It imposes itself on other people, saps the fruit of their labors and in the process ends up destroying those who are productive and trying to build a life and home for their families. Surely none of this is what conservation really needs. 

Robert E. Gordon Jr. is executive director of the National Wilderness Institute, a non-profit corporation located in Alexandria, Va.

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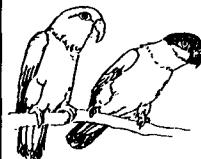
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