

Cover Story: 'Wetlands' send man up the river irony of case against environmentalist William Ellen, accused of violating wetlands regulations in Maryland wildlife sanctuary project

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By Richard Minitier

William Ellen, a lifelong conservationist, is about to become the fourth man to go to prison for filling federal wetlands -- unless President Bush pardons him. Federal wetlands policy is coming under increasing fire from property owners who fear they are losing control over their land and may share Ellen's fate. They see him not as a criminal but as a victim of regulatory complexity.

William Ellen sits in his kitchen, savoring his last few days as a free man. Tall and lean, the 47-year-old environmental consultant looks like a young George Bush. Within a few days, he'll begin serving a six-month term at a federal penitentiary in Petersburg, Va.

His crime? "Ellen knowingly filled wetlands without any federal authorization," says Assistant U.S. Attorney Jane F. Barrett, who helped prosecute Ellen. "It was a premeditated environmental crime."

It's not so simple, says Ellen. "I was hired to create wetlands" (a bureaucratic term that includes swamps, bogs, marshes and sometimes simply soggy ground). A lifelong conservationist, he opposes indiscriminate hunting, donates to the environmental group Greenpeace and sports a World Wildlife Fund sticker on the bumper of his Chevrolet Blazer.

But Ellen stepped into political quicksand when he agreed in 1987 to create 10 duck ponds on Maryland's Eastern Shore as the part-time project manager of a proposed hunting preserve and wildlife sanctuary owned by Paul Tudor Jones II, a Wall Street trader. Jones later ducked a federal trial by agreeing to pay \$ 2 million in fines and restitution.

Ellen's pending prison sentence has its roots in a larger political agenda. "No net loss of wetlands" was probably President Bush's most famous environmental pledge. On the campaign trail in 1988, Bush hoped to harvest green votes by addressing the concerns of environmentalists that the nation's wetlands were vanishing at an increasing rate. The claim was debated by some scientists, but a presidential campaign is no place for nuance.

Bill Ellen had the misfortune of running afoul of regulators eager to give maximum impact to Bush's pledge. Environmental bureaucrats rapidly changed the wetlands rules by which Ellen had to play.

Ellen had the double misfortune of being hauled before a jury on charges that, until very recently, would have been settled with at most a fine, not imprisonment. But in the late 1980s, following a long campaign by environmental activists, federal prosecutors began seeking prison sentences for individuals who committed technical violations of environmental regulations.

"These are not wholly victimless crimes," says Barrett, who has more than 15 years' experience prosecuting environmental crimes. Everyone suffers from water and air pollution. "People should go to jail for these crimes," she says, "or else it becomes nothing more than a cost of doing business. It might be true that five years ago Ellen wouldn't have to go to jail. But we're living in a different world now."

That different world was in part the creation of the men Bush chose to implement his wetlands policy. They were confirmed environmentalists: William K. Reilly, administrator of the Environmental Protection Agency; Robert Grady, deputy assistant to the president and executive associate director of the Office of Management and Budget; and Michael Deland, chairman of the president's Council on Environmental Quality.

Acting on the promise of the self-proclaimed "environmental president," these top officials, along with regulators at four agencies, produced by March 1989 a new manual for interpreting wetlands rules. The manual made the legal interpretation of wetlands far more elastic (at times land that is dry almost year-round has been regulated as "wetlands").

The effect was to double the amount of land subject to federal control. Because it merely imposed a broader interpretation of existing rules, the manual was promulgated without the public comment period required when new rules are written.

The new manual caught landowners off guard. Suddenly another 100 million acres became jurisdictional wetlands (on top of an existing 100 million). That's an area almost the size of California, the nation's third-largest state. The newly regulated lands included some 70 million acres of privately owned farms, according to the Department of Agriculture's Soil Conservation Service, one of the four federal agencies regulating wetlands.

Some parts of the country were hit harder than others. In all, more than 75 percent of the usable land in Alaska and 40 percent of the land in drought-stricken California were deemed wetlands.

Owners of newly designated wetlands found that most uses of their, land suddenly were strictly regulated, if not forbidden, without any compensation.

"Everywhere I've traveled," Reilly admitted a year later to the conservation group American Farmland Trust, "I heard a local wetlands horror story."

Though a political backlash in Congress eventually forced the president's men to amend their wetlands regulations, those acquainted with the career of Bush's EPA chief were not surprised by a policy that some described as nationwide zoning.

As executive director of Laurance Rockefeller's Task Force on Land Use and Urban Growth in 1973, Reilly helped write a report that urged policymakers to use environmentalism as a stalking-horse for federal land-use controls.

The trick was to assert federal control without compensating owners for the uses they would lose. The constitutional requirement to pay owners for such governmental "takings" had traditionally been a powerful constraint.

"It is time that the U.S. Supreme Court re-examine its precedents that seem to require a balancing of public benefit against land value loss ... and declare that, when the protection of natural, cultural, or aesthetic resources or the assurance of orderly development are involved, a mere loss in land value is no justification for invalidating the regulation on land use," Reilly's 1973 report said.

It was Reilly's 1989 regulations that put Uncle Sam on a collision course with William Ellen. Ellen was hired by Jones in August 1987 to develop "Tudor Farms" -- the \$ 7 million project on Jones's 3,272 acres in Dorchester County, Md.

The plan called for the construction of 10 freshwater duck ponds on a site so dry that workers ended up, as federal safety regulations mandated, spraying water to keep the dust down. Before work ground to a halt a year and a half later, Ellen had planted acres of crops and ground cover meant to attract ducks, geese and other migratory waterfowl. \$ TThe plan "was to create duck heaven," says Ellen. The ponds would be regulated with hidden pumps. In the fall, the water level would rise and cover adjacent fields so the ducks could swim into them, feeding free from predators.

Ellen, uncomfortable building a hunting lodge for the well-to-do, insisted that Jones make certain compromises. Migratory ducks were not to be hunted. Whenever Jones wanted to hunt, the ponds would be cleared of wild ducks and, in their place, penraised, specially marked ducks would be released. Jones readily agreed. Indeed, when Jones and his guests did not eat the ducks they shot, the birds were cleaned and shipped by refrigerated truck to a Baltimore Salvation Army homeless shelter. "At least 1,000 people were fed this way," says Ellen.

"If we had built it a year earlier," he adds, "we would have won national awards' "

While working on the project, Ellen consulted frequently with local, state and federal agencies, obtaining 38 permits in the process. The oversight agencies he consulted included the Soil Conservation Service, the Army Corps of Engineers, Maryland's Department of Natural Resources and Dorchester County's Zoning and Planning boards, all of which approved Tudor Farms at some point. To supervise the day-to-day operations and ensure that no wetlands were filled, he hired two former Natural Resources employees with experience drawing state maps that delineated wetlands from uplands.

Among Ellen's many consultations with permit-granting agencies were extensive discussions in February 1988 with a Corps of Engineers official about the steps Ellen would need to take to avoid violating federal wetlands rules. The official handed Ellen a "cease and desist order" and recommended that he make certain changes in operating procedure. These included putting a special, rake-edge attachment on his bulldozers and purchasing a \$ 120,000 mechanical carrying device designed for moving dirt in wetlands. Alex Dolgas, a Corps official, approved Ellen's changes in procedure in June 1988. Dolgas would later testify that Ellen had violated the agreement.

After working closely with officials for two years, Ellen finally found himself caught in the cross fire of a Washington policy battle over the technical meaning of "wetlands." According to the 1987 rules for wetlands enforcers, about 84,000 acres of Dorchester County were considered wetlands.

When the Bush team went to work in 1989, more than 259,000 acres suddenly became wetlands - a more than 200 percent increase. That meant nearly all of Dorchester County was considered wetlands.

The Corps issued another cease and desist order for work at the site Feb. 15, 1989, mailing the document to Jones's New York office. Almost a week went by before Jones faxed a copy to Ellen. Ellen immediately called the Corps, asking for a site review. If the Corps's intent was to save wetlands, Ellen asked, why wasn't he notified immediately? According to prosecutor Barrett, the Corps telephoned Ellen about the time it mailed the letter to Jones.

On March 3, 1989, Dolgas and Jim Brewer, a wetlands expert with the Soil Conservation Service, visited the site. After an extensive half-day walk throughout the property, they ordered Ellen to stop work. It was a Friday morning that Ellen will never forget.

"We walked back to what we call the management complex," he recalls. "I had contractual obligations there, to make sure the job was done. We were behind schedule. I had architects screaming at me. I had contractors threatening daily fines;" says Ellen, fighting hard to keep his voice even.

Ellen told Corps officials he would comply with "every aspect" of the Corps's order, except that he wanted to continue work on the management complex, an almost 3-acre site where foundations had been laid for two houses and a kennel. This area had previously been defined as uplands by the Soil Conservation Service, meaning it didn't fall under federal jurisdiction. "I'd be happy to shut down," Ellen says he told Dolgas, "but I have to be sure you're right, because the man standing next to you Brewer, a month earlier, found that there were no wetlands being filled."

Ellen offered to have an environmental study completed within 48 hours to determine if the management site in fact contained wetlands. Dolgas didn't like what he heard. "He would not take that. He got in a huff and jumped back in his truck and left," says Ellen. Dolgas did not return repeated phone calls from Insight.

Later that day, Ellen hired Associate Professor M. Stephen Ailstock of Anne Arundel Community College, an expert in aquatic ecology, to perform the survey. Despite a severe snowstorm, he completed his survey over the weekend.

Sunday morning, Ellen had second thoughts and telephoned an order to the foreman to stop work. But he was too late. In the interim, two trucks had deposited their loads of clean fill dirt on the management complex site. (Dolgas later testified that he had to give the contractors the order to stop work.)

Ellen also hired James Perry, a wetlands mapper with the Virginia Institute of Marine Science, to visit the site and give him a second opinion. Perry and Ailstock both found that a tabletop-sized wetland had inadvertently been covered with dirt on the management site. Work stopped.

Ellen never returned to the site. On the basis of the cease and desist order and the two loads of dirt, federal officials indicted him.

Ellen said the Justice Department offered to reduce the charges against him if he would testify against Jones. He refused. "I didn't think we had done anything wrong," he said. The Justice Department refuses to comment on any proposed deal.

Meanwhile, Jones was accused by prosecutors of failing to adequately supervise Ellen. He chose to plea-bargain. A conviction might have cost him his Wall Street trading license. He was socked with a \$ 1 million fine, a \$ 1 million donation to the National Fish and Wildlife Foundation to help the nearby Blackwater Wildlife Refuge, 18 months on probation, a permanent, binding agreement not to develop his property (thereby lowering its resale value) and a court order not to hunt waterfowl for 18 months. ("That's as close as you can come to restitution for them the ducks ;" said U.S. District Judge Frederic N. Smalkin.)

In May 1990, Ellen was charged with six counts of violating Section 404 of the Clean Water Act of 1972 by knowingly filling wetlands without a federal permit. He was tried in U.S. District Court in Baltimore in December 1990; a jury found him guilty on five of six counts in January 1991.

Among the many curiosities of the section of the Clean Water Act that Ellen was convicted of violating is the fact that nowhere does it even mention the word "wetlands."

The 1972 statute mentions only "navigable waters of the United States." The legislation was written to safeguard major waterways and municipal water supplies from toxins in dredge or fill material. "It was not the original intent of Congress to enact a wetlands protection statute, but a water quality act," says Bernard N. Goode, former chief of the wetlands regulatory office of the Army Corps of Engineers.

The whole body of wetlands regulations depends on a 1975 case before the U.S. Court of Appeals for the District of Columbia Circuit, *Natural Resources Defense Council vs. Callaway*, which said the meaning of "navigable waters" could be extended to include areas like swamps and bogs that are adjacent to navigable waters. Once the distinction between navigable and nonnavigable waters had been dispensed with, judges essentially gave regulatory agencies a free hand to develop their own criteria for defining wetlands. The result is that a statute designed to protect rivers has been extended to regulate more than 200 million acres of what laymen might call dry land.

But public perception often lags behind legal theory "Those people in the courtroom in Baltimore thought Ellen had filled in the Everglades," says Peggy Reigle, a property rights activist who lives near Tudor Farms.

A further distinction in the original Clean Water Act, between pollutants and nonpollutants, has since been erased by the courts. The act prohibited the "discharge" of "any pollutant" without a permit. The two loads of dirt that Ellen allowed to be deposited on the site were completely nontoxic, federal officials readily concede. However, dumping dirt is considered a "discharge" into a federally protected wetland, according to a 1983 case, *Avoyelles Sportsmen's League vs. Marsh*, in which the 5th U.S. Circuit Court of Appeals ruled that a "discharge" may include a "redeposit" of soil onto the same site from which it had been removed.

Thus, the original language covering the discharge of toxins into navigable waters now prohibits disturbing the soil of certain lands.

"In 99 percent of the cases that the Corps regulates, there is no threat of a true pollutant getting into drinking water," says former Justice Department attorney Mark L. Pollot. "Most often, the pollutant in question is dirt, and usually dirt dumped on the same land it was dug from."

In essence, Ellen is being imprisoned for moving dirt.

The chief point of contention at Ellen's trial concerned whether he knew that areas where the work proceeded without the Corps's permits were wetlands. The EPA defined wetlands in 1977 as "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions."

But the definition has been the subject of many interpretations.

The 1989 interpretation contained in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands relied on a rule of thumb, that if land has at least two of the following characteristics, it is a wetland: 1) if it contains water at least seven consecutive days (since changed to 21 days) per year within at least 21 inches of the ground surface; 2) if it has at least one of 7,000 "indicator species" growing on it (some of which, such as sweet gum trees, grow on uplands as well as wetlands); 3) if it is a hydric soil, earth that is chemically changed by water, usually with a peat, muck or mineral base.

Since the land on which Ellen was working is not a hydric soil, federal officials claimed the temporary presence of water as well as blackened tree leaves found on the site indicated wetlands. Ellen testified that he had hired an expert to walk the area in question and that the two could not find any "indicator species." Charles Rhodes, an EPA expert on wetlands, suggested they weren't able to find blackened leaves because earthworms tend to eat these leaves.

Noting that wetlands rules are not as clear as the government contended, Judge Smalkin wrote in his preliminary findings that wetlands "are very difficult even for experts in the field to agree upon. (The fact that a government employee says a permit is required does not necessarily make it so.)"

That wasn't the only point on which the judge seemed to have some difficulty following the prosecution's argument. Another had to do with the duck ponds that Ellen helped to create. The fine point of law on which Ellen was convicted was knowingly filling wetlands without a permit. It is in fact legal to fill wetlands with Army Corps of Engineers approval, though the Corps makes it extremely arduous and expensive to do so. Typically, the permittee will agree to create wetlands several times larger than the amount filled.

At Ellen's sentencing hearing April 15, 1991, he contended that the duck ponds he helped to create mitigated any harm done to wetlands by the dirt that was dumped. The Environmental Protection Agency's Rhodes said that even though Ellen made new ponds, the environment was, on the whole, worse off.

How? Tudor Farms "was designed to attract a large amount of waterfowl," Rhodes testified. "And before the restoration plan was implemented by the Corps after Ellen's work was stopped, all the fecal material was geared to be discharged right into the wetlands, whereas now it is actually

designed to go through, like a treatment system, through the wetlands. So that would have been a negative impact."

This prompted a question from Smalkin: "Are you saying that there is pollution from ducks, from having waterfowl on a pond -- that pollutes the water?"

The result was this exchange between the expert and the judge: "Your honor," Rhodes said, "when you concentrate a large number of ducks -- "

"Have you ever been on the Eastern Shore?" Smalkin asked.

"Yes, your honor."

"Aren't there ponds naturally that have large concentrations of ducks and geese?"

"Yes, your honor."

"Are they polluted?"

"Your honor, a lot of those are tidally flushed."

"A lot of them aren't"

"Yes, your honor."

"Aren't there a lot of freshwater ponds?"

"Yes, your honor."

"And is it against the law to have ducks and geese on them?"

"No, your honor," said Rhodes.

The Corps's restoration plan mentioned by Rhodes involved dynamiting a 400-yard-long channel to connect the ponds to the salty waters of the Chesapeake Bay.

Besides convicting him for the dump truck incident, the jury found Ellen guilty of four counts relating to the spirit of his agreements with the Corps. Two of these involved the creation of a dirt road. One was for a day's work done by a bulldozer without the proper attachment on its blade; the last was for allowing dirt from a pond excavation to spill onto land the Corps considered wetlands. At sentencing, prosecutors claimed Ellen destroyed 86 acres of wetlands.

Though prosecutors asked for a prison term of 33 months, Smalkin gave Ellen the minimum sentence allowed under federal guidelines: six months in prison and four months' home detention, followed by one year of "supervised release."

When Ellen goes to prison, he will leave his wife without financial support and his two sons, ages 2 and 4, without a father.

"At the moment, I have no idea how I can pay all the bills. There's no way I can make enough" says his wife, Bonnie.

Ellen says his legal bills are in the hundreds of thousands, most of which were picked up by Jones. The balance has devastated Ellen, who has depleted his savings and emptied his retirement fund.

Ellen is in many ways an unlikely environmental villain. A man of no great means, he lives in Mathews, Va., a coastal town without a traffic light.

A wetlands regulator for the Virginia Marine Resources Commission in the early 1970s, he has worked as an environmental consultant for 20 years in Virginia and Maryland. A veteran, Ellen served with the Marine Corps in Vietnam, mostly near Da Nang. His tour ended as the Viet Cong rocket attacks kicked off the 1968 Tet Offensive.

He met Bonnie at the Mathews County Humane Society. Ellen says that when his dog was taken there by mistake, "I went to pick my dog up and ended up picking up Bonnie." They were married in November 1986 and moved into a small, tinroofed farmhouse on a saltwater inlet -- a wetland by any definition. "The house still isn't finished," says Bonnie.

From their home, the Ellens run Wildcare, a state-licensed, federally approved nonprofit organization that nurses injured animals back to health and returns them to the wild. They have saved more than 2,000 hawks, egrets, deer and other animals. Bonnie tells of saving two bald eagles. She recently freed a red-tailed hawk trapped in an old icehouse by climbing down about 15 feet into the tunnel-like structure, armed with only a towel to protect her from the hawk's talons.

But such details are at best an irrelevancy to the federal prosecutors who tried the case. (Indeed, Ellen's environmental expertise weighed heavily against him in court; he, above all, should have known better, prosecutors argued.)

"I can't think of one case when some white-collar defendant didn't have at least one redeeming quality," says Barrett. "But it's really beside the point."

Barrett says that although the government appealed for a heavier prison term, "I don't think that six months is an inappropriate sentence." She points out that the same judge gave equally stiff penalties to two other environmental criminals recently. In neither case, Barrett says, was she required to prove environmental harm.

Ellen appealed to the U.S. Court of Appeals for the 4th Circuit. His lawyer argued that he had been convicted based on rules put into effect by the wetlands manual promulgated in March 1989, while the offenses on which he was tried had occurred earlier.

This is known as an *ex post facto* argument, meaning people can't be convicted for violating laws or regulations passed after their actions. The trial testimony of the government's wetlands expert's -- that the areas affected were in fact wetlands -- was improperly based on the 1989 interpretation of the regulations, his attorneys argued.

The distinction between regulations and the interpretation of regulations was critical in the opinion of the appellate court. Barrett says that the prosecutors, anticipating such a challenge, were careful "only to charge Ellen for damaging areas that would be wetlands under the 1987 manual." Ellen disputes this claim.

The three-judge panel, which ruled against Ellen on April 2, said it was beside the point whether the expert testimony was based on the manual issued after his crimes.

"Interpretive rules," the court explained, "simply state what the administrative agency thinks the statute means, and only 'remind' affected parties of existing duties." The court accepted the government's contention that the regulation itself hadn't changed, only the regulators' interpretation of it. Therefore, Ellen wasn't entitled to a reversal on ex post facto grounds.

Ellen also struck out with an appeal to the Supreme Court, which notified him Oct. 5 that it wouldn't hear the case. Barring a last-minute presidential pardon, he was to begin serving his prison sentence by the end of November.

If Ellen wants to know what to expect in prison, he can ask Ocie and Carey Mills. The Florida father and son have the distinction of being the first people sent to prison for violating federal wetlands regulations. Each served a 21-month sentence, completed in November 1990. Ocie Mills had planned to build a home for his son on a quarter-acre lot near a bay in Santa Rosa County, Fla. After approval from state authorities, the Millses dumped 19 loads of clean fill on the property. They were arrested and convicted of filling wetlands without a federal permit.

John Pozsgai, a refugee from the 1956 Hungarian uprising, was the next landowner to receive a stiff sentence. A self-employed truck mechanic in Morrisville, Pa., Pozsgai was found guilty of 41 violations of the Clean Water Act. Although this was his first offense, he was fined \$ 202,000 and sentenced to three years' imprisonment followed by five years of probation. He also was ordered by the court to restore his property -- not to what it was -- but to pristine condition. When he bought the land, it was home to almost 7,000 used tires and rusting car parts. He had hauled away the junk, but he dumped clean fill dirt on the site without federal permits. This mistake landed him in a federal penitentiary in Allenwood, Pa.

Pozsgai's sentence "is the longest unsuspended jail term in the history of the United States for any environmental crime," says Paul Kamenar, who represents Pozsgai pro bono, "including the dumping of extremely toxic and hazardous waste and cases where people were even injured and killed."

These prison sentences and high fines for wetlands violations are not unconnected. EPA Administrator Reilly was able to boast during the Republican National Convention this summer that "this administration has prosecuted more environmental criminals than in the whole previous history of the EPA combined," which may have been his goal from the outset.

A Dec. 12, 1990, EPA memo, for example, asked all regional administrators to produce a "cluster" of new wetlands cases to be announced in an April 1991 "'wave' of publicity ... to provide an early deterrent to potential violations which might otherwise occur during the 1991 spring and summer construction season."

Barrett insists that the government went after Ellen for traditional, prosecutorial reasons.

"Ellen is not a victim," she says. He "was not picked out as a whipping person. He has done wrong. He has violated a law." It's a white-collar criminal mind-set, she adds, to feel that no harm was done because the convict didn't use a gun. Most such defendants "think they're victims," she says.

Despite Reilly's claims, and a few well-publicized convictions, some critics maintain that the Bush administration's environmental enforcement lacked teeth. "Jones was allowed to escape with a single negligence plea, and Ellen received only six months' incarceration," writes Jonathan

Turley, a professor at George Washington University, in a recent study of environmental enforcement.

Turley's study, released to the press in October through the office of Rep. Charles Schumer, a New York Democrat, accuses the Bush Justice Department of "a policy of nonenforcement" and a failure to send more individuals to prison for environmental crimes.

Former Justice Department attorney Pollot takes the opposite view. The career members of the Justice Department's Environmental Crimes Section who served as the anonymous sources in Turley's study tend to seek unusually strong penalties, he says: "These people all have delusions that they're Elliot Ness."

Another former Justice Department official, William G. Laffer, says what critics call "nonenforcement" is simply good sense. Seeking felony convictions for crimes that can be deterred with fines means more difficult and costly prosecutions. "Most of those wetlands cases were prosecuted for personal, ideological reasons," Laffer says, "and landowners were punished disproportionately."

That's certainly the view of property rights activist Peggy Reigle, who this fall mounted a campaign to have Ellen pardoned by President Bush. Once the New York Daily News's vice president for finance, she retired with her husband to Maryland's Eastern Shore and now heads the Fairness to Land Owners Committee, a grass roots property rights group. So far, she has gathered a 2-foot stack of petitions, with thousands of signatures. "At least one from every state in the union, except Arkansas," she says.

It's an uphill battle. Bush, who famously criticized Michael Dukakis's prisoner furlough policies, has pardoned only one man during his term: Douglas Bruce Fenimore, a masked gunman who walked out of the First National Bank of Tucson, Ariz., with \$ 3.3 million. Bush set Fenimore free in May 1989 in order to win his cooperation in a case (jurors refused to believe Fenimore's testimony and the government lost the case).

Lending Reigle a hand is Clint Bolick, director of litigation at the Institute for Justice, a public interest legal group. Bolick wrote to White House Counsel C. Boyden Gray and Attorney General William Barr. Imprisoning Ellen for a "technical" and "minor" infraction, Bolick wrote, "is extremely harsh given Ellen's efforts to comply with the regulatory maze surrounding wetlands." Neither official has responded yet, says Bolick, but several congressmen have joined the effort, including Reps. Jimmy Hayes, a Louisiana Democrat; Don Young, an Alaska Republican; and Bill Emerson, a Missouri Republican. All have been critics of maximal wetlands regulation.

Republican Rep. Herbert H. Bateman, who serves Ellen's Virginia district, has pitched in as well.

Barrett, for one, rejects the idea of a pardon. "As a law enforcement person, I think it would send entirely the wrong message," she says.

Ellen, meanwhile, is fast becoming a hero to property rights activists like Reigle. Unlike the prosecutors, they look at his environmental credentials and say, if he can be convicted, anyone can.

For his part, Ellen suspects that his boss, Paul Tudor Jones, was the original target for the prosecutors and that he was in the wrong place at the wrong time. Standing outside his house, his two boys playing near some wild ducks, Ellen says, "I don't think they were after me. I'm a small fish in a large, large ocean."

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