

**BEFORE THE
WASHINGTON STATE
DEPARTMENT OF FISH AND WILDLIFE**

IN THE MATTER OF THE APPEAL OF

KELLIE & CHRIS GREER

Petitioners,

v.

WASHINGTON DEPARTMENT OF

FISH AND WILDLIFE,

Respondent.

CASE NO. AH-18-001

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND FINAL ORDER**

An administrative hearing was held before Mark Ebbeson, Administrative Hearings Officer, on March 23, 2018, at the Natural Resources Building, 1111 Washington Street SE, Olympia WA 98501. A second day of hearing was held on April 6, 2018, at the Attorney Generals Office, 800 Fifth Ave., Suite 2000, Seattle WA 98104.

Patricia Thompson, Washington Department of Fish and Wildlife (Department/WDFW) wildlife biologist and WDFW wildlife rehabilitation and falconry manager, appeared in person on behalf of the Department. The Department was represented by Michael Young, Assistant Attorney General. Mr. Young appeared in person. Kellie Greer and Chris Greer, Petitioners, appeared in person. Alan Karp, attorney, appeared in person on behalf of the Petitioners.

Witnesses appeared in person on March 23, 2018 for the Petitioners, including: Kellie Greer, Katie Greer and Tan Tran. Patricia Thompson appeared in person for the Department and gave testimony on March 23, 2018. Other Department witnesses appeared by telephone on March 23, 2018 including: Officer Trent Weidert, Washington Department of Fish and Wildlife (WDFW); Officer Glen Steffler, WDFW; and Sara Penhallegon,, Director, Center Valley Animal Rescue

1 (CVAR). On April 6, 2016, Kellie Greer; Chris Greer; and Patricia Thompson testified in person.

2 The purpose of the hearing was to determine whether the Department of Fish and
3 Wildlife properly required forfeiture of a live raccoon, which had been in the Petitioners'
4 possession and care for several years, and whether the raccoon will now be returned to the
5 Petitioners' care and possession.
6

7 The Department submitted Exhibits 1 through 18. All eighteen proposed exhibits were
8 admitted but over the objections of the Petitioners to entry of proposed Exhibits 9 and 15.
9 Petitioners' proposed exhibits A through Z, and proposed supplemental exhibit AA and second
10 proposed supplemental exhibits BB through HH were all admitted.

11 After considering the sworn testimony of the parties and the exhibits, I now make the
12 following:
13

14 15 FINDINGS OF FACT 16

17 THE GENERAL BACKGROUND FACTS:

- 18 1. The Greer family's actions in taking Mae, the raccoon, from the wild and treating her
19 as a pet provided both benefits to the raccoon and family but also came with serious
20 costs to the raccoon and increased risks to her human caretakers and others.
21
- 22 2. Under the Greers' care, Mae's life span was extended beyond the three years which is
23 the typical lifespan of a raccoon in a wild environment. In extending her life, the
24 raccoon was protected from any attack by other animals. She got easy access to a
25 regular but an excessive and unhealthy food supply. She had a comfortable home life
26 with a controlled climate in the Petitioners' residence, where she was tamed and got

1 cuddling from her caretakers and others that visited. When taken away from the
2 Greers, the raccoon faces a very different daily life and an uncertain future that may
3 include euthanasia while the Greers mourn the loss of their beloved pet.

- 4 3. The costs to the raccoon and risk to others was also increased by the Greer family
5 taking and keeping this raccoon as a pet. Mae lost her life as a wild raccoon with the
6 Greer family decision to make her a pet. The raccoon was tamed by the Greers
7 thereby losing the raccoons natural fear of humans, likely making her more
8 aggressive and dangerous in situations where she interacted with humans such as
9 when she is seeking food when she was hungry. The raccoon was not taught by a
10 raccoon parent and has not properly learned many of the activities of daily life needed
11 by a wild raccoon. The raccoon has lost the chance to have offspring or forage
12 properly for its own food. Little close mingling with other raccoons existed at the
13 Greer home. Mae had limited contact with other raccoons through fencing until she
14 was taken by the state and placed in a rehabilitation facility where she shared an
15 enclosure with another raccoon. Mae's diet was not properly limited by the Greers
16 and she became so obese that she could not properly climb. A stricter weight loss
17 regime was successful in her losing weight after the state seized her. Her weight loss
18 now allows her to climb like a raccoon. Proper health care was not consistently
19 provided by the Greer family for Mae. The raccoon broke a tooth to its root thereby
20 creating a painful condition for Mae, which was not treated as the Greers' felt the cost
21 of treatment to be beyond their means thereby leaving the raccoon untreated until
22 taken by the state and the dental treatment then provided. This raccoon, like other
23 raccoons, is
24
25
26

1
2 susceptible to roundworm diseases including Baylisascaris Procyonis, which is passed
3 through raccoon feces and can infect humans, seriously affecting a human digestive
4 tract, other organs of the body, not uncommonly the brain. The transmission of
5 disease to humans and other animals from raccoons is a legitimate worry and is
6 increased when the raccoon regularly interacts as a pet with humans.
7

8 OTHER FACTS:

- 9 4. On June 21, 2010, Kellie Greer and her daughter, Katie Greer, came upon two
10 recently born raccoons in Cottage Grove Park, in West Seattle, near their home. The
11 raccoons were newly born and so young that their eyes were still closed. The
12 raccoons appeared abandoned by their mother, who was not in sight. A raccoon had
13 been killed by a vehicle in the nearby vicinity and may have been the raccoons'
14 mother. Given the absence of the mother and the helpless condition of the raccoons,
15 Ms. Greer feared that the young raccoons would likely be injured or kill.
16
17 5. Kellie and Katie Greer waited several hours at this site but the raccoons' mother did
18 not reappear.
19
20 6. Assuming the raccoons' mother was not returning, Kellie Greer then transported the
21 two raccoons to her home to try to protect and care for the two baby raccoons and
22 keep them alive.
23
24 7. Despite the efforts of Mr. and Mrs. Greer that first night, one of the two baby
25 raccoons died.
26
27 8. Both Kellie and Chris Greer, the Petitioners, seem to have initially recognized that
caring for a wild raccoon raised problems for themselves as untrained care providers

1 thereby creating risks to the raccoon. They sought assistance from professionals in
2 wild animal rehabilitation in taking and caring for the raccoon for its return to the
3 wild. Their initial efforts were not successful in finding a rehabilitation facility for the
4 raccoon. The Greers contacted around a fifteen rehabilitation facilities in the first two
5 weeks after bringing the raccoon home. The contacted programs either did not take
6 raccoons, were already full of their quota of raccoons, or advised euthanasia was best
7 for the raccoon. The Greers also contacted the Department for help but were only
8 directed back to many of the same rehabilitation facilities by agency staff. For several
9 months, the Greers unsuccessfully continued to seek placement of the raccoon, which
10 they named Mae, in state licensed animal rehabilitation programs and even attempted
11 placement in rehabilitation facilities in adjoining states. As time progressed, Mae was
12 tamed in the Greer home. The family chose to make her a household pet. The
13 raccoon was litter trained and fed cat food and people food. Mae was allowed to play
14 with the family cats and physically interacted with the Greers, including frequent
15 handling and cuddling with the Greers and other visitors. While inside, the raccoon
16 regularly slept on the family furniture and had a window perch established for her.
17 Mae's life was quite different from that of a wild raccoon. This raccoon was regularly
18 taken outside on walks in a harness and leash and regularly interacted with family
19 members and outsider pets and people. The raccoon was not aggressive and no
20 attacks or injuries occurred, other than a few scratches to the Greers when the raccoon
21 was resistive to caging her to go to the veterinarian. The Greers provided fencing in
22 the backyard to allow the raccoon to be outside during the day and inside at night.
23
24
25
26

1 Toys were provided to the raccoon for play. Contact between the raccoon and
2 friends and neighbors was welcomed . No plan was made to work towards releasing
3 the raccoon into the wild. The Petitioners determined to keep the raccoon as a family
4 pet and the raccoon was tamed and habituated to easily interact with other people and
5 animals. The Greers' backyard was enclosed and a pond was provided in that area for
6 the raccoon. The Greers took the raccoon on family camping trips and hunting trips
7 and neighborhood walks. In interacting with others, the Greers readily allowed access
8 to Mae. The Petitioners took no steps to verify their legal status with WDFW in
9 permanently keeping a wild animal in their home. When asked about authority to
10 possess Mae, they frequently and incorrectly reported they acted as sub-permittees for
11 Wolftown , a wildlife rehabilitation provider.
12

- 13
14 9. In late 2010, Chris Greer initially had contacted Wolftown, a rehabilitation provider
15 for the state located on Vashon Island. In a phone conversation between the
16 Wolftown owner and Mr. Greer, a miscommunication seems to have occurred. The
17 miscommunication and its related misunderstanding led Mr. Greer to tell his family
18 and others that the family had been given sub-permittee status by Wolftown, thereby
19 allowing the family to legally keep the raccoon in their home. However, Wolftown
20 did not actually establish any sub-permittee status for the Greer household. The
21 required annual reports from Wolftown to the Department clearly report that
22 Wolftown had no sub-permittees. No written application to be a sub-permittee was
23 ever completed by the Petitioners. The Petitioners did not receive any paperwork
24 from the Department, which licenses rehabilitation permittees, or from Wolftown
25 itself, indicating the Petitioners had been granted sub-permittee status as a wild
26

1 animal rehabilitation provider. Department regulations require that sub-permittees
2 have permit related paperwork available for inspection but this never occurred.
3 Department regulations require inspections of sub-permittee facilities but home Greer
4 home was never inspected., nor was any of the required animal rehabilitation training
5 provided to the Petitioners. The Petitioners met only rarely Wolftown and discussed
6 little of substance. Likely few and possibly none of the multiple required standards
7 for permittees or sub-permittees, enacted to assure proper care of the housed animals,
8 existed in the Greer home. Under these circumstances, no reasonable animal caretaker
9 could believe that they were a qualifying permittee or sub-permittee. Contact between
10 Wolftown and the Petitioners remained rare over several years. Wolftown ceased its
11 operations in 2014, with no notice given to Petitioners of the ending of this business.
12 Such failure to notify an actual sub-permittee that their sponsoring permittee was
13 ceasing business would be so highly unusual and improper that it strains credulity.
14 Wolftown not notifying the Greers of its ending animal rehabilitation business is
15 consistent with Wolftown *not* having actually made the Greers sub-permittees. The
16 Greers admit that they never had the required rehabilitation permit or any other
17 written authorization for possessing a raccoon, which is required also indicating that
18 they were not permittees or sub-permittees. It is also noteworthy that the Greers took
19 no actions to verify their sub-permittee status and requirements from Wolftown, the
20 Department's staff, or to seek information on rehabilitation permittees and sub-
21 permittee requirements available on the Department website.
22
23
24

25 10. There was no contact between the Greers and Wolftown after that business closed.

26 Any reasonable sub-permittee, losing all contact with their sponsoring permittee,
would have sought contact to clarify their status but this was not done by the Greers.

1 Instead, they chose to continue claiming their possession of the raccoon was tied to
2 Wolftown. by inaccurately claiming sub-permittee status with accompanying
3 authorization to keep a raccoon in their home.
4

5 11. Over the years prior to November 18, 2017, when the Greers went camping or
6 hunting and in their home, they had interactions with various police officers,
7 including enforcement officers of the Department of Fish and Wildlife. The
8 conversations were usually brief, if at all, regarding the legality of their possession of
9 the raccoon. The issue of ownership of the raccoon was generally not discussed by
10 the Greers or the officers. The Greers did not communicate by action or statement
11 that they claimed legal ownership of the raccoon. None of the officers took any
12 affirmative actions or made any statements to the Petitioners that the ownership of
13 their raccoon, a state owned and managed wild animal, was transferred to the Greers.
14

15 12. On November 18, 2017, the Petitioners' were traveling with the raccoon in their
16 vehicle and stopped for gasoline at Grand Coulee, Washington. While at this
17 gasoline station, Mr. Greer put the raccoon in her harness with a leash and took her
18 for a walk at the station. An enforcement officer for WDFW, Glenn Steffler, drove
19 into the gas station and observed the raccoon being walked like a pet dog. Officer
20 Steffler spoke briefly with Mr. Greer. The possession of the raccoon by the Greers, a
21 wild animal owned by the state, led Officer Steffler, to inform the Greers that they
22 needed a permit for the raccoon. The officer was assured by Mr. Greer that they had a
23 valid permit for Mae. However, no such permit actually existed.
24

25 13. Officer Steffler was not satisfied with the assurance by Mr. Greer that he had the
26 proper permit to possess the raccoon.

- 1 14. On either November 20, 2017 or November 21, 2017, Officer Stefler checked with
2 the records staff at the Department's headquarters in Olympia, Washington. The
3 Department records' staff verified that no permit allowing the Greer family to possess
4 a raccoon had ever been issued by the Department or any licensed rehabilitation
5 permittee.
6
- 7 15. On November 24, 2017, the question of raccoon being possessed by Mr. and Mrs.
8 Greer without a proper permit or other legal authority was transferred to WDFW
9 enforcement staff located in King County. This was done to have further
10 investigation or action taken in the county where the Greer family resided.
11
- 12 16. After the case was sent to King County, WDFW Officer Trent Weidert made an
13 unannounced visit to the Greer home on November 26, 2017. In doing so, Officer
14 Weidert was aware that the Greers had a raccoon in their home without any permit.
15 Despite contrary testimony, Officer Weidert made this visit with the likelihood that
16 he would be seizing the raccoon as it was being kept as a pet without legal authority
17 to do so.
18
- 19 17. When Officer Weidert arrived at the Greer home that afternoon, he was in his
20 officer's uniform and equipment. He was without a search warrant. Officer Weidert's
21 unexpected arrival unnerved Kellie Greer when she answered the officer's knock on
22 her front door. Officer Weidert first asked regarding Mr. Greer, who was not present.
23 Officer Weidert announced he was there to speak about the raccoon. Kellie Greer
24 then asked if the officer wished to come in and see the raccoon. Officer Weidert went
25 through the front door and stopped upon seeing the raccoon on the family sofa. The
26 raccoon behaved in a proper and peaceful manner during the officer's visit.

1 Mrs. Greer also admitted they kept the raccoon although they knew that they lacked
2 legal authority to do so. Prior to entering the residence of Kellie Greer and Chris
3 Greer, the officer had not informed Kellie Greer that she could refuse his entry to her
4 residence. The officer also failed to inform Ms. Greer that she could ask him to leave
5 the residence at any time. At the time of asking if the officer wished to see the
6 raccoon, Ms. Greer was not aware of her right to deny entry to the officer or to ask
7 him to leave at any time of her choosing.
8

9 18. Based on the Petitioners' continuing possession and control of a wild animal without
10 legal authority, Officer Weidert seized the raccoon from Ms. Greer.

11 19. No criminal charges have been referred against either Kellie Greer or Chris Greer for
12 their taking, transporting and/or possession of the raccoon. The Department gave
13 written warnings to both Kellie Greer and Chris Greer but took no further action.
14

15 20. On that same day, after the seizure of the raccoon by Officer Weidert,, the raccoon
16 was taken to PAWS (Progressive Animal Welfare Society) in Lynnwood WA. PAWS
17 management was subsequently unwilling to continue care for the raccoon as the
18 program felt that euthanasia of the raccoon may be needed and management did not
19 wish their staff to be involved in that type of procedure in this type of case as it
20 creates stress for staff. Further, PAWS felt the circumstances of this case could
21 become highly publicized with a backlash against their rehabilitation program. PAWS
22 only provided temporary care for the raccoon until December 6, 2017.
23

24 21. The raccoon was transferred from PAWS to the Center Valley Animal Rescue
25 (CVAR), in Quilicene WA on December 6, 2017. The raccoon was housed in a
26

1 fenced outdoor area with limited human contact. The raccoon shares this space with
2 another raccoon. After an initial period of adjustment, the two raccoons appear to
3 have bonded and are interacting in a positive manner. The raccoons' living area is
4 cleaned daily. The staff at CVAR are considering using Mae as an educational animal
5 in their program allowing her to be a permanent resident. However, if problems do
6 occur or reoccur in her behavior, then Mae may also be considered for euthanasia by
7 CVAR.
8

9 22. In providing for this raccoon, CVAR staff initially noted her obesity and they began
10 carefully managing her diet. The raccoon has subsequently lost significant weight,
11 which has now improved her ability to climb like a wild raccoon. Further medical
12 care has been provided allowing prior flea problems, roundworm issues, and
13 depression to be addressed. CVAR also provided the delayed dental care for Mae by
14 removing the painful broken tooth which had been broken to the pulp. With
15 the treatments provided by CVAR, the raccoon is living a healthier life.
16

17 23. Licensed wild animal rehabilitators in this state, including CVAR, provide services
18 with the hope of rehabilitating sick or injured wildlife so they can return to the wild,
19 and to appropriately deal with animals that cannot be returned to the wild. Animals in
20 rehabilitation are housed where they are not subject to public viewing, display,
21 disturbance, access, or exhibit, or in the proximity to domestic animals and
22 unnecessary human contact including noise. Such housing is to make their living
23 conditions closer to that in the wild. This benefits animals both physically and
24 psychologically. A limited exception to these strict requirements exist when an
25 animal is used for educational purposes.
26

1 24. CVAR staff, the Petitioners and the Department all agree that Mae's living as a pet in
2 the Greer's household for over seven years removes her for consideration of release
3 in the wild. The raccoon's taming and past habituation in the Greer's home makes it
4 highly unlikely that she has sufficient ability to survive in the wild. Specifically, the
5 raccoon is unable to recognize and obtain proper food in the wild. She also lacks the
6 ability to select appropriate mates and reproduce or to properly recognize potential
7 dangers to herself from people, cars, dogs, and predators.

9 25. Following the Department's seizure of the raccoon, the Greer family filed a lawsuit in
10 Thurston County Superior Court asking the court to affirm their ownership of the
11 raccoon and return of the raccoon to their home.

12 26. On January 28, 2018, the Thurston County Superior Court entered a
13 Stipulation and Agreed Order Dismissing Matter Without Prejudice and
14 Remanding For Adjudicative Hearing, under docket no. 17-2-06464-34. That
15 court order provides, in relevant part,
16

17 **STIPULATION**

18 Plaintiffs Kellie Greer and Chris Greer, through attorney Adam P.
19 Karp, and Defendants State of Washington and Washington
20 Department of Fish and Wildlife, stipulate that this matter be
21 DISMISSED WITHOUT PREJUDICE without fees or costs and,
22 otherwise, with no waiver of position implied or intended by either.
23 The parties have agreed to proceed with an adjudicative proceeding
24 before the WDFW Administrative Hearings Officer Mark Ebbeson
25
26

1 in accordance with the Washington Administrative Procedures
2 Act.

3
4
5
6 **ORDER**

7 Based on the foregoing Stipulation, the Court ORDERS,
8 ADJUDGES, AND DECREES:

- 9 1. This matter shall be DISMISSED WITHOUT PREJUDICE and
10 with no fees or costs to either party. Instead, the matter shall be
11 REMANDED to the WDFW Administrative Hearings Officer
12 Mark Ebbeson for an adjudicative hearing in accordance with
13 the Washington Administrative Procedure Act.
14

15
16 **CONCLUSIONS OF LAW**

- 17 1. The Washington Department of Fish and Wildlife seized a raccoon from the home of
18 Kellie Greer and Chris Greer on November 26, 2017. The Department determined
19 that Mr. and Mrs. Greer unlawfully possessed that raccoon without permit
20 and seized the raccoon under Revised Code of Washington (RCW) 77.15.800 and
21 Washington Administrative Code (WAC) 220-450-030(17)(a).
22
23 2. That seizure was later challenged by the Petitioners in Thurston County Superior
24 Court. The court dismissed the matter without prejudice and remanded the matter to
25 WDFW for an administrative hearing to be held in accordance with the Washington
26 Administrative Procedures Act (APA). Jurisdiction to conduct this administrative
hearing is established.

1 3. Wildlife, fish, and shellfish are the property of the state. RCW 77.04.012 states in
2 relevant part,

3
4 **Wildlife, fish, and shellfish are the property of the state.** The
5 commission, director, and the department shall preserve, protect,
6 perpetuate, and manage the wildlife and food fish, game fish, and shellfish
7 in state waters and offshore waters. (Emphasis added).
8

9 4. Raccoons, such as Mae, are defined as a “wild animal” under WAC 220-440-020,
10 being a species of the class Mammalia whose members exist in Washington in a wild
11 state. Therefore, this raccoon is part of the wildlife owned by the state and managed
12 by the WDFW. Such wildlife, including raccoons, can only be legally taken and
13 possessed under a WDFW permit under Washington Administrative Code (WAC)
14 220-450-030(1). Such permit which was never obtained by the Greers and, therefore,
15 they lacked legal authority to possess this raccoon at all times.
16

17 5. The hearing record establishes that no one in WDFW has ever intended or acted to
18 transfer ownership of this raccoon to the Greer family or given any permission for
19 taking, transporting, possessing or caring for the raccoon.
20

21 6. On June 21, 2010, when Kellie Greer and her daughter came upon two baby raccoons
22 apparently abandoned by their mother, Kellie Greer acted with the intent to save the
23 raccoons' lives by taking them home and caring for them until animal rehabilitation
24 providers could care the raccoons. Such an intent to temporarily care for the infant
25 raccoons to save their lives is understandable and laudable. Later that night, one baby
26 raccoon died in the care of the Green family. Efforts started the next day, by the

Greers, to find placement of the baby raccoon in a permitted wild animal rehabilitation facility. Efforts were not immediately successful. Some of these contacted facilities failed to accept raccoons, others were rejected as they would euthanize the raccoon, which was not acceptable to the Greer family, or the facility was already full with its quota of rehabilitating raccoons. Despite the Greer family's claim that they were unable to find a wild animal rehabilitation facility to accept the raccoon, the Department persuasively testified that openings were available at that time and continued through the years. Instead of continuing their efforts, the Greer family changed their intentions and relationship with the raccoon. The Greers' intent for the raccoon changed from being a wild animal that they wished to save to a desire to maintain the raccoon in their home as a pet. The Greer family now argues that the failure of the state to adequately fund sufficient wild animal rehabilitation programs to a level so immediate care could be provided to Mae constitutes abandonment of the raccoon and allows the Greer family to possess and transfer ownership of the wild raccoon to the family. However, the WDFW has no control over the legislatures' funding amounts regarding its programs. Many state agencies, including WDFW, recognize that provided funding from the legislature is sometimes inadequate to meet the needs of their programs. Agency staff and the Petitioners must cope with such realities. As the Washington State Supreme Court noted in *City of Ellensburg v. State*, 118 Wn.2d 709, 715, 826 P.2d 1081 (1992), "Legislatures often provide laudable programs but may fail to fund them adequately or may decline to fund them at all. The decision to create a program as well as whether and to what extent to fund it is strictly a legislative prerogative." The Greer's decision to claim the raccoon as their

1 own cannot stand or be established based on their view of inadequate legislative
2 action.

3 7. The Petitioners also claim the legal ownership and possession of the raccoon on
4 principles of adverse possession of personal property (replevin). Adverse possession
5 requires the persons having possession to have the intent to claim and hold the
6 property against the lawful owner and all others. Such claim must be open and
7 notorious so the owner and others having an interest have knowledge of the claim.
8 The Greers repeatedly claimed to hold their raccoon as a sub-permittee of a
9 rehabilitation program and thus possessed with state approval. Such claim was not
10 correct and the state was not aware of their ownership claim. Their claim was not
11 open and notorious for purposes of adverse possession. Further, adverse possession
12 may not be acquired against the state. *McCleary v. State Dep't of Game*, 91 Wn.2d
13 647 591 P.2d 778 (1979). Further, in *Gorman IV v. City of Woodinville*, 175 Wn.2d
14 68, 72, 283 P.3d 1082 (2012). The court stated, "... under RCW 4.16.160, the statute
15 for adverse possession may not be acquired against the state...acting in its
16 governmental capacity." WDFW was acting in its government and sovereign capacity
17 in managing the state's wildlife when it seized the raccoon from the Greer family.
18 The challenge to the seizure of the raccoon and retention by the state on grounds of
19 adverse possession fails.
20
21
22

23 8. The Petitioners also challenge the state's actions as violating both the state and
24 federal constitutional requirements regarding equal protection under the law. The
25 petitioners' urge that the statutes and differing treatment involving falconers and
26 game farms establish a violation of equal protection provisions of the state and

federal Constitutions. An opportunity to be heard on these matters was presented and

1 argued at the administrative hearing. However, the constitutional arguments of the
2 Petitioners cannot be considered in this venue. As an agency hearings officer, I am
3 part of the executive branch of government. I am not part of the judicial branch. As
4 an Administrative Hearings Officer in the executive branch of government, I am
5 given only that authority granted by the legislature in statute or impliedly impliedly
6 authorized from the statutory delegation of authority. *In re Impoundment of Chevrolet*
7 *Truck*, 148 Wn.2d 145, 60 P.3d 53 (2002), WDFW has not been granted the power to
8 decide the constitutionality of the statutes and programs at issue. Such Constitutional
9 review authority rests exclusively in the judiciary and cannot be ruled upon in this
10 administrative hearing. *See, Bare v. Gorton*, 84 Wn.2d 380, 526 P.2d 379 (1974).

11
12 9. The Petitioners also challenge the seizure of the raccoon on principles of laches.

13 Laches is an equitable doctrine where a claim or action of a party is barred when that
14 party has failed to take timely action or make a claim in a timely fashion. The
15 Petitioners feel their possessing this raccoon for over seven years establishes a laches
16 defense to the state's seizure of Mae. In this case, the provisions of RCW 4.16.160
17 provides the time limit for pursuing action. However, the statute provides that no
18 right predicated upon a lapse of time may be asserted against the state. Further,
19 WDFW action in this case the state moved quickly after the unpermitted status of the
20 raccoon was discovered by staff. Under these circumstances and with no time limit
21 for state action under the intent or literal language of RCW 4.16.160, the Petitioners
22 have no right to return of the raccoon on equitable principles of laches.

23
24
25 10. The Petitioners also urge that the raccoon should be returned on principles of

26 equitable estoppel based upon the unfairness of the WDFW knowingly allowing the

Greers to possess the raccoon for over seven years then seizing Mae on November 26,

1 2017. The doctrine of equitable estoppel is guided on the principle “that a party
2 should be held to a representation made or position assumed where inequitable
3 consequences would otherwise result to another party who has justifiably and in good
4 faith relied thereon.” *Wilson v. Westinghouse Elec. Corp.*, 85 Wash.2d 78, 81 (1975).
5 In considering equitable estoppel, it is not favored against the government. *See Finch*
6 *v. Matthews*, 74 Wash.2d 161, 169, 443 P.2d 833 (1968). Each element of equitable
7 estoppel must be established by clear, cogent, and convincing evidence, not just the
8 preponderance of evidence. In claiming equitable estoppel against the Department,
9 the Petitioners must also establish all of the elements by the required standard of
10 proof: (1) a party’s admission, statement or act inconsistent with its later claim; (2)
11 action by another party in reliance on the first party’s act, statement or admission; (3)
12 injury that would result to the relying party by allowing the first party to contradict or
13 repudiate the prior act, statement or admission. *Robinson v. Seattle*, 119 Wash.2d
14 34,82, 830 P.2d 318, cert. denied, 121 L.Ed. 2d 598, 113 S.Ct. 676 (1992). In seeking
15 to use equitable estoppel against the government, an additional two elements must be
16 established by clear and convincing evidence; equitable estoppel must be necessary to
17 prevent a manifest injustice, and the exercise of governmental functions must not be
18 impaired. The Petitioners fail to meet the requirements for equitable estoppel relief.
19 The WDFW made no prior statements, admissions nor did they take any prior actions
20 inconsistent with the seizure. In fact, the Petitioners inaccurately stated to WDFW
21 enforcement agents and others that they were a sub-permittee authorized to have a
22 raccoon. Such a misleading and inaccurate statement from the Petitioners led to
23 acceptance of their possession by others and thus cannot be attributed to the agency.
24
25
26

Further, the fact that the Greers had chosen to keep it as a pet for seven years while

1 wrongly claiming to be permitted to have the required permit to possess the raccoon,
2 makes the subsequent seizure much less than a manifest injustice. The Greers
3 interactions with WDFW prior to the seizure did not include any statements,
4 admissions or actions regarding the status of the raccoon, so no reliance by the Greers
5 was established. The required elements of equitable estoppel have not been
6 established by clear and convincing evidence. The claim of equitable estoppel is not
7 established under these circumstances.
8

9 11. The Petitioners also seek the return to the raccoon as a remedy for an improper
10 search by the WDFW enforcement officer on November 26, 2017, in violation of the
11 standards established in *State v. Ferrier*, 136 Wn.2d 103 (1998). In *Ferrier*, police
12 had conducted a “knock and talk” with the resident in a private dwelling for the
13 purpose of inducing the resident to consent to a search of that residence for illegal
14 drugs and to avoid the necessity of the police obtaining a search warrant. The court
15 ruled the search was invalid as the resident was not informed by the officers, prior to
16 their entry into the dwelling, that: (1) consent to enter could be lawfully refused; (2) if
17 consent was given, that it could be revoked at any time; and (3) the scope of the
18 consent given may be limited. Based on the illegal search, criminal charges against
19 the resident were dropped but the illegal drugs confiscated in the search were
20 retained. Many of these same facts are present in the seizure of Mae from the Greers.
21 The WDFW officer made an unannounced visit to the residence of Mr. and Mrs.
22 Greer on November 26, 2017. The officer had already verified the Greer family had
23 no permit authorizing their possession of the raccoon and that the raccoon was not
24 imported from outside Washington State. The officer sought to enforce RCW
25
26

1 77.04.012, which establishes that the all wild animals are the property of the WDFW.
2 Further, WDFW officers may seize wildlife without a warrant if they have probable
3 cause to believe that the animal was taken or possessed in violation of Department
4 statutes or rules. RCW 77.15.085. The officer went to the Greer home to confirm the
5 animal's presence and, if present, for its seizure. The officer was armed and in full
6 uniform and equipment when he knocked on the door, which was answered by Mrs.
7 Greer. Mrs. Greer was alone and somewhat unnerved by the unannounced visit by
8 the armed officer in his full uniform with his focus on the raccoon. Mrs. Greer asked
9 if the officer wished to see Mae and the officer agreed and entered the dwelling to do
10 so. The officer entered that dwelling without informing Ms. Greer that she could
11 legally deny his entry or end his visit at any time or that consent to entry could be
12 limited. In that visit, the officer seized the raccoon for the state but issued only
13 warnings with no criminal charges filed for any statutory violations. By failing to
14 explain her rights to Ms. Greer, prior to the officer entering her residence, the WDFW
15 failed to meet the requirements of *Ferrier*. No criminal charges were filed against the
16 Greers but they received warnings from the officer. Also, in accordance with police
17 actions in *Ferrier*, the illegally held property in the possession of the Greers, the
18 raccoon, was seized and retained by WDFW. The WDFW seizure and ongoing
19 retention of the raccoon by the state is not prohibited under *Ferrier*.

20
21
22
23 12. The Greers also have argued that if they are not the owners of the raccoon, they
24 cannot have the raccoon returned to them then they may claim a possessory retention
25 lien as an involuntary bailee. Such a bailment relationship requires the possessors
26

1 to hold property in trust for another. The Petitioners claim to be bailees for Mae and
2 thereby entitled to compensation from the state to pay them for their time, trouble, and
3 expense in supporting the raccoon in their home. However, such voluntary actions by
4 the Greer family in illegally taking the wild animal for their permanent possession and
5 deciding to make it a household pet resulted in their misappropriation of the property of
6 the state by the Greers and requires a denial of this claim. I also am guided and note
7 that in such cases when wildlife is seized back from those having wrongful possession,
8 the costs of any seizure or holding of wildlife may be charged **against** them, the exact
9 opposite of this claim. WAC 220-450-030(17). Lastly, neither the WDFW statutes,
10 WDFW regulations, nor the Administrative Procedures Act or Model Rules in WAC
11 chapter 10-08, provide authority for administrative hearings officers to order payment
12 of such a monetary claim as part of this hearing process.
13
14

15 13. While the initial and laudable aim of the Petitioners in 2010 was to save the
16 raccoon's life, the intent changed to a desire and subsequent actions to keep this wild
17 animal as a pet contrary to RCW 77.04.012, the statute which establishes that wild
18 animals are the property of the state. The Greer family acted illegally in taking the
19 raccoon without the permit required by WAC 220-450-030(1) and subsequently
20 possessing the raccoon while misrepresenting to the world their status in illegally
21 possessing this wild animal. The Greer family claimed to be sub-permittees of
22 Wolftown, a permitted animal rehabilitation program. However, the Greer family
23 have not established the claimed sub-permittee status. The Greer family have no
24 written records to back this claim. The records of Wolftown directly state that the
25 program had no sub-permittee. The WDFW has no records showing a sub-permittee
26

1 status for the Greer family. The Greer family have no training to be sub-permittees
2 and have not attempted to create a program for the raccoon that meets the regulatory
3 requirements for the care of wild animals. Further, the business contacts between
4 Wolftown and the Greer family were rare and limited. Neither Wolftown, while it was
5 in business, nor the Greer family acted in the business manner and frequency of a
6 permittee and sub-permittee. Finally, the Greer family continued to claim to be sub-
7 permittees of Wolftown for years after that facility and its program ceased operations.
8 The actions and representations of the Greer family misrepresented their true status
9 and hid their lack of any authority to have taken, transported, and continued possessing
10 this wild raccoon. When the state discovered the Greer family actually lacked the
11 claimed sub-permittee status, the state action in seizing the raccoon and retaining it
12 was proper under RCW 77.15.085. In summary, the Greers lack a permit from WDFW
13 to possess the raccoon at issue in this case. The Greers do not operate a WDFW-
14 permitted wildlife rehabilitation facility and have never been a sub-permittee of any
15 facility. In this hearing process, the Greer family has presented a number of arguments
16 urging that the raccoon be returned to their home. None of those arguments is
17 successful in seeking return of the raccoon as discussed above. The state's actions in
18 seizing the raccoon and returning it to state control are *affirmed*.

19
20
21
22 13.No one disputes that this raccoon is not a candidate for a successful rehabilitation
23 and return to the wild given its long-term residence as a pet with the Greer family. As a
24 general matter, any animal placed into a rehabilitation program, such as the state's
25 placement of the raccoon at PAWS, then at CVAR, is limited to a maximum of
26 eighteen months. WAC 220-450-170(2).Wildlife tamed by or habituated to humans

1 while at a permitted facility or sub-permittee facility must be humanely euthanized
2 within 180 days of acquisition to protect the public and to protect the animal from
3 human abuse. WAC 220-450-170(2). However, a primary permittee may retain live,
4 non-releasable wildlife for display and education with Department authorization under
5 WAC 220-450-170(1)(b) which states,
6

7 **1. Wildlife rehabilitation—Disposition of nonreleasable and habituated,**
8 **imprinted, and tamed wildlife.**

9 (1) A primary permittee may retain live, nonreleasable wildlife for the
10 purposes of:...

11 (b) Display and education, if the permittee possesses valid USFWS
12 permits and written authorization from the department.

13 (i) Wildlife tamed by, imprinted on, or habituated to humans before
14 admission to the primary permittee's facility can be retained for education
15 if the department authorizes this in writing. The department will make
16 such determinations on a case-by-case basis.

17 (ii) Permittees must house wildlife used for educational purposes
18 separately and out of sight of wildlife in rehabilitation.

19 (iii) Wildlife retained for education purposes may not be used for
20 orphan imprinting or companionship for wildlife in rehabilitation.

21 As noted above, under WAC 220-450-170(1)(b)(i), the Department may authorize this
22 raccoon, who was tamed and habituated to humans, to be retained for education. The
23 hearing record establishes that this raccoon has successfully bonded with the Greers
24 and generally interacts well with strangers. Although all wild animal lack the multiple
25 generations of domestication necessary to truly be considered safe, this raccoon does
26 have seven years of unique daily interactions in the Greer home without major
incident. In recognition of these unique circumstances, the WDFW staff are hereby
directed to issue the written authorization that this raccoon can be retained for
educational purposes. If the CVAR facility is unable or unwilling to keep this raccoon
for educational purposes, the Department is to be notified of this fact and is then
instructed to make reasonable and timely efforts to find another animal rehabilitation

1 facility that can accept the raccoon for educational purposes.


2 14.The Petitioners have stated that they would make any changes to their home and
3 lifestyle to effectuate the return of Mae to their home. As citizens in this state, the
4 Greers have the right to take the necessary steps to meet the requirements to establish
5 their home as an animal rehabilitation facility and then potentially seek the return of the
6 raccoon. Although this option would require substantial time, effort and resources to be
7 successful, the Greers have this opportunity. The decision to pursue that permit is their
8 decision..
9

10
11
12 From the foregoing Findings of Fact and Conclusion of Law, NOW THEREFORE
13

14
15 FINAL ORDER

16 IT IS HEREBY ORDERED that the seized property, a live raccoon, which had been in
17 the Petitioners' possession and care for several years, was appropriately seized and shall
18 remain the property of the state. The raccoon is currently placed at CVAR and is being
19 considered for being used for educational services. On behalf of the Department, under
20 WAC 220-450-170(1)(b)(i), I authorize this raccoon, who was tamed and habituated to
21 humans, to be retained for educational purposes. If the CVAR facility is unable or
22 unwilling to keep this raccoon for educational purposes, the Department is to be promptly
23 notified of this fact and is instructed to make reasonable and timely efforts to find another
24 animal rehabilitation facility in this state that can accept the raccoon for educational
25 purposes.
26

1
2 DATED at Olympia, Washington this 3rd day of May 2018.
3

4 
5
6 Administrative Hearings Officer
7

8
9 **POST HEARING REMEDIES**

10 A final order may be appealed by filing a petition for judicial review with the superior
11 court as provided for in RCW 34.05.514. A petition for judicial review of an order shall be filed
12 with the court and served on the agency, the office of the attorney general, and all parties of
13 record within thirty days after service of the final order. RCW 34.05.542.

14 Within ten days after the service of a final order, any party may file a petition for
15 reconsideration, stating the specific grounds upon which relief is requested. RCW 34.05.470(1).
16 No petition for reconsideration may stay the effectiveness of an order. RCW 34.05.470(2). If a
17 petition for reconsideration is timely filed, and the petitioner has complied with the agency's
18 procedural rules for reconsideration, if any, the time for filing a petition for judicial review does
19 not commence until the agency disposes of the petition for reconsideration if, within twenty days
20 from the date the petition is filed, the agency does not either: (a) Dispose of the petition; or (b)
21 serve the parties with a written notice specifying the date by which it will act on the petition.
22 RCW 34.04.470(3).

23
24 **CERTIFICATE OF SERVICE**

25 I hereby certify that I have this day served a copy of this document upon all parties of
26 record in this proceeding by mailing a copy thereof, properly addressed with postage paid, to
each party to the proceeding and to that party's attorney or authorized agent.

Dated at Olympia, Washington on the 3rd day of May 3, 2018.

23 
24
25 Representative – Washington Department of Fish and Wildlife
26