Landowners turn the Fifth into sharp-pointed sword

by Florence Williams

When Brandi and Venice Child purchased 500 acres in southern Utah in 1990, they had grand plans to build a campground and resort. Brandi Child, 64, figured his lake could serve as the centerpiece for the trailer park. A lake in the desert — what an asset.

On a clear winter morning, Child began bulldozing one brush near the lake. Shortly after, the U.S. Corps of Engineers threatened to fine him $25,000 for manipulating a wetland without a permit. Luckily, Child hadn't done much damage and he quickly restored the area.

Still reeling from his run-in with the Corps, he received an unexpected visit from the U.S. Fish and Wildlife Service. Unknown to the Childs, their oasis was home to a small, rare colony of Orinews houdrae, otherwise known as the Kuhl amphibian. Living on 20 acres of the Childs' property, the one-inch-long mollusk was recently listed under the Endangered Species Act.

"The U.S. government is like a gorilla," says Child, whose voice registers a permanent growl. "They told me if I killed one, I'd be fined $50,000. They told me I couldn't know anywhere or pasture cows. We can't even walk across the land."

Benefit of his campground dream and prevented from making the land profitable, Brandi is suing the United States. He hopes to take his case all the way to the U.S. Supreme Court, and in the process recoup his investment and help evict the Endangered Species Act.

The first leg of his suit challenges the authority of the U.S. Fish and Wildlife to regulate Child's land. If he wins that, his case will then become one of the first to challenge the act by seeking compensation.

His weapon: the "takings" provision of the Constitution's Fifth Amendment. "No shall private property be taken for public use, without just compensation."

Once used to justify compensation for such government intrusions as roads, dams and pipelines, that clause has reached new stature as landowners like Child prove increasingly successful in court. Although winning a "regulatory" taking is difficult, recent successes have inspired a multitude of instances.

"Any practicing attorney is likely to have at least two clients interested in takings because anyone who owns more than a quarter acre is frustrated by regulations," says Calvin Ragsdale, a private attorney in Green River, Wyo.

Takings cases are popping up everywhere:
- In Montana, a rancher says grizzly kills of his cattle amount to a taking.
- In California and Wyoming, ranchers demand compensation for a fence that elk and antelope take from their grazing allotments.
- In Washington and Oregon, property owners are challenging zoning regulations, and timber companies are gearing up to challenge the spotted owl and the recently designated marbled murrelet.
- Perhaps the best known case in the West is Nevada rancher Wayne Hage's contention that the Forest Service has "taken" his property by reducing the cows allowed to graze public land under his federal permit (HCN, 9/9/91). Dozens of suits are sure to follow.

The takings suits have sent a chill down the spine of planners and environmentalists, traditionally favored by the courts as guardians of the public good.

The takings provision has emerged as a critical battleground in the conflict between land development and environmental protection. Congress and state legislatures, as well as the courts, have begun wrestling with its newfound sig-

continued on page 11
Dear friends,

Perfume policy
Several members of the High Country News staff and editorial board are considering the possibility of creating a new perfume line. We have had several requests from readers who are interested in purchasing fragrances that reflect the natural beauty and indigenous culture of the West. Our goal is to create a line of perfumes that will be both aesthetically pleasing and environmentally friendly.

Welcome, Zachary
If his initial action is any guide, Zachary Lamont is anything but an aimless poltroon. He demonstrated this on Tuesday morning, Jan. 26, by refueling the van for his father, Paul Lamont, HCN’s assistant editor, to drive his mother, Lyn Cooke, to the hospital in Delta, 20 miles down the road. Instead, Zachary was born eight years old, in the back seat of a Toyota Corolla, parked just off the main street of Beachville, near the old-young North Fork Medical Clinic. Fortunately, Mgr. O’Shaughnessy, a midwife, was along for the ride, and she helped deliver the baby. The only near mishap occurred when a very little baby hiccups the car door open as if she could be of help, although split lip, who was leaning out the window.

The board of our newspaper is pleased to announce the appointment of Emily Swanson as the new editor. Emily was a long-time subscriber to and supporter of HCN. She is a native of Nevada and has extensive experience in journalism.

Mother of all potlucks
After 10 years of roaming the West in search of stories for a board meeting and potluck, the board and staff of High Country News have become comorons. We are pleased to announce that High Country News will be moving to a new location in Carson City, effective on January 31, 2023.

Reaching out
In order to expand our readership and reach a wider audience, we are planning to launch a new online edition of HCN. This edition will be available exclusively on our website and will feature articles from the print edition, as well as additional content and multimedia features.

Condolences
Our condolences to the family of Virginia Sheen, deceased. She was a long-time subscriber to and supporter of HCN. Virginia was a tireless advocate for the cause of conservation and was a true friend to the HCN staff.

— Ed Marston, for the staff
Hopi-Navajo settlement runs aground

FLAGSTAFF, Ariz. - A large working ranch central to the proposed Hopi-Navajo land settlement is no longer for sale, and settlement participants are looking at a contingency plan.

The CO Bar Ranch, north of Flagstaff, is owned by members of the Babbitt family, but they have decided not to sell.

"We are in the ranching business and plan on staying in it," said William Cordas-English, D-Ariz., president of the CO Bar Ranch and manager for Babbitt Ranches. A cousin of Interior Secretary Bruce Babbitt, Cordas-English said he could not say why the family suddenly pulled the ranch off the market.

"All I can say is that the owners of the CO Bar look forward to livestock production in northern Arizona for many years into the future," he said.

Although the ranch was never officially for sale, parties to the negotiations said owners have let it be known for a year that selling the spread was a distinct possibility.

After 18 months of secret talks, a complicated plan to end the decades-old Hopi-Navajo land dispute came to light last November. The deal proposed taking about 500,000 acres of public and private land around Flagstaff, giving the land plus $15 million to the Hopi Tribe, 75-year leases on 500,000 acres of public and private land, and the entire ranch would have been incorporated into the Hopi reservation except for 35,000 acres granted to the Navajos.

Hopi Beryl Biegel of the Navajo Tribe said the CO Bar is an "essential part of the agreement in principle." But he added that he had not been informed that the Babbit ranch was no longer for sale.

"My people are selling me that it's still on the table," he said. But people like (Arizona Rep.) Jon Kyl are saying that's against the whole settlement anyway.

Kyl, a Republican, said he had been informed. "Our manager was out of the settlement on Jan. 12, at the end of a public hearing sponsored by Sen. John McCain, R-Ariz. He said McCain and Rep. Jamie Baugh, D-Ariz., were also told that day. No one, however, can recall who first knew that the ranch was no longer for sale.

A spokesman for a regional conservation group confirmed that the complicated land settlement agreement was unraveling. Roger Clark, a vice president of the Grand Canyon Trust, said without the ranch "it means they're back to square one. As far as I know the negotiating team has no contingency plan."

Federal mediator Harry McGuire, who has facilitated the negotiations, said Jan. 24 that no one had told him the CO Bar Ranch was out of the settlement loop. His first concern was how the tribes would react.

What would be "very bad," McGuire said, is if the CO Ranch is pulled off the market now, only to be sold later. Indians could perceive this "as an artificial device to circumvent their will."

The ranch land was originally purchased by two Babbitt brothers, Will and David, fresh off the train from Ohio in 1886. It has remained with the Babbit family ever since. "It's been in the family over 100 years," reflected James E. Babbit, brother of Bruce Babbitt. "So there's a lot of sentimental value (tied up with the CO Bar Ranch) to a lot of people in the family. The room on those are real deep."

During his Interior secretary confirmation hearings in January, Bruce Babbitt told members of Congress that he would not sell his shares of the CO Bar Ranch to avoid any potential conflict of interest regarding the land settlement.

Mary Tolan
Free-lance reporter Mary Tolan has been following this story in Flagstaff, Arizona.

Salmon need to swim

Barging minnows around hydroelectric dams is not a substitute for normal migration and could even harm the fish, a review panel says. Conservationists call the report the "smoking gun" that proves that barging young salmon is a biological fraud (impeding Snake River salmon listed under the Endangered Species Act. The "Findings confirm what we've been saying for years," said Ed Chuney, a salmon advocate with the Northwest Resource Information Center in Eagle, "barging salmons out a Rube Goldberg hoop," he said AP.

Chuney's group said in January it planned to sue the federal agencies and Idaho Fish and Game to stop the barging, a practice that began in the late 1970s. The report came from the Ad Hoc Transportation Review Group, which was chosen by a coalition of state, federal and tribal fish and game agencies. The Snake River sockeye salmon is listed as endangered, and two Idaho chloralkali runs are designated as threatened.

Utah ferrets out reintroduction plan

A ferret reintroduction project that was restored to northeastern Utah by 1994, Biologists from federal and state agencies are working on a plan to release 50 of the vicious animals on 46,000 acres in Uintah County's Covey basin. Once thought to be extinct, ferrets were found and later captured in Monroe, Wyo., in the mid-1980s. A controversial captive-breeding program was set up by the state to release 45 of the endangered animals to the wild in 1991. Jordan Peterson, manager of the Utah Division of Wildlife Resources, says that in his state ferrets will be designated a "non-experimental experimental population." That definition under the Endangered Species Act means that ferrets must co-exist with commercial activities in the area, including the production of coal and natural gas and water livestock grazing.

Peterson says continued existence should not be a problem ferrets; those primarily on prairie dogs are not native to the area. The Utah working group on ferrets hopes to achieve an endangered population of 80 by 2009.

Slipping through BLM cracks

Grace Budkowski, a self-styled "military watchdog" who was digging through Bureau of Land Management files when she discovered a bombshell: a 1990 Navy report that admiral's bombs had been dropped on thousands of acres of public land outside the range, Budkowski knew the danger had not been revealed to the public until 1989, during a clandestine cleanup operation known as "Ugly Baby," because she had helped blow the whistle on that event. During the 11-year period the report sat in a file, "Somebody could have gone out there and gotten killed," she told the Reno Gazette Journal. "We're sorry and we're glad no one was hurt."

For the fish

Endangered fish species surviving below Grand Gorge dam on the Green River could flourish once again. The U.S. Fish and Wildlife Service is recommending "delisting" dam operations as part of a recovery program for four native species the Colorado River, squawfish, the humpback chub, the razorback sucker and the bonytail chub. All are federally listed as endangered, Next April the Bureau of Reclamation, which manages the dam in southwestern Wyoming, will begin releasing water to match historic, pre-dam flows. Neatly conditions on the river were once based on seasonal rhythms that caused wide fluctuations of flow and temperature. It was under these conditions that the four species evolved throughout the Colorado River basin. Under the lowwater program, the Bureau of Reclamation will begin a five-year research program to examine other changes in its operation at Grand Gorge.

UCM will end at Biosphere 2

Biosphere 2, the $150 million giant greenhouse and tourist attraction north of Tucson, Ariz., is running out of gas. Home to eight crew members and 3,153 acres of plants and lab equipment, Biosphere promoters hoped to create a self-sustained, self-sufficient living environment (IUCN, 1175962). But oxygen depletion, apparently caused by a lack of oxygen in the soil, has forced four of eight crew members to take special medication for altitude sickness. At one point the oxygen content of the Earth's atmosphere was 21 percent. The oxygen level now inside Biosphere 2 is 15 percent, which is comparable to oxygen levels in some high altitude Andes or Himalayan villages. That low point occurred in January, when the Biosphere crew received pumped in oxygen levels in the low 17 percent. Since then the crew's oxygen levels have dropped another 3.6 percent, which is equivalent to oxygen levels in some high altitude Andes or Himalayan villages. That low point occurred in January, when the Biosphere crew received pumped in oxygen levels in the low 17 percent. Since then the crew's oxygen levels have dropped another 3.6 percent.

That's our fear, too. Ecologic over $31 billion in video rentals and sales in the last two weeks of 1992, the president of Warner Home Video told the L.A. Times, "This country is consuming movies like there is no tomorrow."
Utah county sweeps away old guard

The winds of change are blowing through Grand County, Utah, and Charlie Peterson is one man who hopes they will blow in his direction. "I'm the newest newcomer," says Peterson, a three-year Moab resident who runs a computer store, will be joined on the Feb. 24 ballot by a carpenter, a nurse, a sandwich-store owner, a former Park Service biologist and others hoping to ride a wave of anti-incumbent sentiment. They were the top vote-getters in a primary field of 24.

In November, angry residents swept out their embattled three-member county commission and voted to replace it. Under the new system, elections will be non-partisan for a seven-member county council. Five council members will run by district, and two will run at-large. No member may serve more than seven years.

"It's exciting," says Bill Hadden, 42, another candidate. "People were really depressed about politics around here. It was absolutly controlled by the good old boys. All of a sudden, people said, 'No more!' It's like a dam burst."

Residents had grown increasingly aware of trouble in the former commission, ranging from nepotism to alleged mismanagement of funds. In addition, many of the town's newcomers felt odds against the commission's views on local environmental issues.

Three of the seven commissioners have been long-time residents who were related to almost everybody in town," says John Fogg, an insurance agent and president of the local chamber of commerce. "They didn't respond to anyone and just did whatever they want."

The former commissioners appointed immediate family members to county positions and contracted work to businesses in which they had interests. But Norm Shriver, a photographer who helped form Grand County Citizens for Better Government, says the commissioners reached a new low last spring when they ignored the recommendations of a citizens' advisory council and hired an insider to head a key promotional post.

Bill Hadden says other issues were the commission's tax oversight of a plan to clean up uranium mill tailings from a site along the Colorado River, its poor management of the county's solid waste and its boostering of the Book Cliffs Road. The proposed highway would cost taxpayers up to $100 million (UCHC, 11/26/92). Another point of controversy was the commission's apparent unwillingness to plan for Moab's future in the face of rapid development.

Former Grand County commissioners have long held vehement anti-wilderness views. In 1980, the commissioners personally bulldozed a road through a roadless area in order to disqualify it for federal wilderness status.

But Ken Davey, a local TV and newspaper reporter, says environmental concerns were not the main issue. "The commissioners were decisively rejected by the voters, and it had nothing to do with endangered species or grazing fees," he wrote in a local editorial. "The commissioners lost the vote because people didn't trust them to do the job."

Nevertheless, the recall could not have succeeded without the overwhelming support of the town's newer residents, many of whom are urban migrants, retirees and recreationalists. They are a very different constituency from the traditional residents of the town. Moab was founded by Mormon pioneers in 1876 and until recently dominated by ranching and uranium mining.

"I think the (former) commission represented a very narrow slice of political viewpoints in the valley," says Susan Uleary, an espresso cart owner who recently moved from Seattle. "But more and more of us are moving in, and that good-old-boy network won't suffice because it doesn't address our concerns."

Such support heeded Hedden, who was a big winner in the Jan. 3 primary. "I have all these really interesting liberal folks supporting me and those people weren't here 10 years ago. Now it's okay to talk about protecting air and water even if it means sacrificing some stuff."

In fact, adds Hedden, in six of the county's seven races, newcomer candidates appear to be leading their old-guard opponents.

"It's like a breath of fresh air," says Sam Taylor, a Moab native who has published the Moab Times-Independent for 36 years. "It's the first time I've seen people excited about self-governance. It's the end of an era."

— Florence Williams

HOTLINE
Utah Gov. Michael Leavitt with-drew his state from consideration as a temporary site for a high-level nuclear waste dump Jan. 13, thereby ending a controversy in San Juan County (ICH, 9/20/91). Last spring by a 2-1 vote, county commissioners accepted $10,000,000 from the Department of Energy to study a local monitored retrievable storage facility (MRS). Leavitt said he stopped in because he feared a temporary dump would become permanent if a long-term repository at Yucca Mountain, Nev., failed to open. Leav-itt's decision underscores the Department of Energy's inability to find a volunteer county to house the wastes by 1998. That's the year Congress ordered the agency to relay 110 nuclear utilities of their spent fuel rods and other radioactive debris. In a letter written to Congress Dec. 17, Energy Secretary James Watkins asked

for legislation allowing the DOE to store the nuclear waste on military bases and possibly at weapons plants in Savannah River, S.C., and Idaho Falls, Idaho.

The ban stays

The New Mexico cattle and sheep industries want state Land Commis-sioner Jim Baca to allow the killing of producers such as coyotes on state land. The New Mexico Wood Growers Inc. and the New Mexico Cattle Growers Association asked Baca to lift a ban he issued last month barring Animal Damage Control from conducting activities on 9,000 acres of state trust land. But Baca told The New Mexican the ban would stay in place. ADC is a "rigid organization that has2


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be careless in the West," said Baca, who reportedly is under consideration for a federal job — directing the Bureau of Land Management.

Florence Williams
Blackfoot River Valley may get huge mine

Two mining companies want to build a huge cyanide heap-leach gold mine on land owned by Montana Sen. Max Baucus in Montana's scenic Blackfoot River Valley.

But the senator's stand against mining reform leads environmentalists to charge that he cuts a better deal for himself than for his constituents.

The 1872 Mining Act allows companies to mine minerals from federal land, paying only a minimal patent fee and no royalties on extracted minerals. Baucus has voted against reforms of this act every time.

Plans for the mine show a massive heap-leaching facility covering up to 15 square miles. The mining companies, Phelps Dodge and Canyon Resources corporations, have assessed the site in the Blackfoot Valley site as 0.025 ounces of gold per ton of rock, which is high quality by today's standards. They expect to excavate 2.08 million tons, making a mile-wide pit producing more than $1 billion worth of gold.

Although the mining pit is slated for state land, it will need adjacent land to process the excavated rock. Sen. Baucus owns that nearby land, as a partner in a family company. According to John Bauscek, manager of the company, a lease has been signed with the mining companies that includes royalties on any gold that is mined.

Environmentalists were quick to point out the contradiction between profits Baucus stands to gain from the mine and his votes against meaningful reform of the 1872 Mining Act.

"What's good for the Baucus family should be good for America," says Jim Jensen of the Montana Environmental Information Center. But Baucus sees a basic difference.

Since public lands are managed under the "multiple use" philosophy, he says, mining should be encouraged in order to benefit local communities. Giving companies cheap land and free minerals provides jobs, Baucus says.

But the senator isn't the only one concerned about the welfare of communities. "The upper Blackfoot already has two firms in the system," says Bruce Farling of the Clark Fork Coalition. The Blackfoot River, the setting of Norman Maclean's novel A River Runs Through It, is still healing from years of mining and logging in the drainage. Farling and other environmentalists fear the new mine could make the damage permanent.

The town of Lincoln, six miles downsteam from the Blackfoot mine, will also be profoundly changed if the mine moves in next door, Farling points out. The town has worked hard to free itself from dependence on resource extraction by fostering tourism and recreation.

"It's really sad what's going to happen to Lincoln with the influx of 200 hard-rock miners and their families," Farling says. "They managed to get away from the boom-and-bust industries without too much pain, and Phelps Dodge would put them right back there."

For more information contact Bruce Farling, Clark Fork-Prospect Oyster Coalition, P.O. Box 7973, Missoula, Montana 59807.

Jack Thordike is a free-lance writer in Missoula, Montana.

Nevada fences out hot waste, for now

The nation's first low-level radioactive waste dump has been closed after 30 years. Nevada Gov. Bob Miller ordered U.S. Ecology to stop accepting nuclear waste at its facility in Beatty, Nevada, on Jan. 1.

That was the deadline for closing the dump under the Low-Level Radioactive Waste Act of 1980, which mandated that states accept low-level radioactive waste or enter into a compact with other states to build a suitable dump for radioactive garbage such as contaminated laboratory gear, medical isotopes, clothing and tools used in nuclear reactivity.

"The day has finally come when we can stop being the dumping ground for the nation's commercial radioactive waste," Miller said. He vowed to continue the battle to keep the nation's first high-level nuclear waste dump from coming to Yucca Mountain, 10 miles east of Beatty.

Radioactive waste from medical and research facilities in Nevada will now go to a U.S. Ecology dump near Hasbrouck, Wash., which has agreed to accept waste from states in the Rocky Mountain compact — Nevada, Colorado, New Mexico and Wyoming — in addition to states in the Northwest compact.

The new year's deadline in the Low-Level Radioactive Waste Act has brought panic to producers, principally hospitals, medical labs, universities and research facilities, many of which now have nowhere to send their hot trash.

Most compacts and states have fallen well behind schedule for opening their dumps.

The facility once accepted low-level radioactive waste from around the country is in Barnwell, S.C. Because it enjoys a virtual monopoly, the Chernobyl facility can now jack up disposal costs, the Las Vegas Review-Journal reported. Companies that paid $60,000 for disposing of a 500-cubic-foot load in Beatty, will have to pay from $180,000 to $500,000 to dump the same load in Barnwell. South Carolina charges an access fee that accounts for more than two-thirds of the cost. The money goes to reduce the state deficit.

Over the next year, the 4.7 million cubic feet of radioactive waste at the Beatty site will be covered with a 12-foot layer of soil. The site will be monitored for at least the next 100 years, the life expectancy of the radionuclides in the waste materials.

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Developers in green clothing

"Our goal is to destroy, to eradicate the environmental movement," says "wise one" advocate Ron Arnold. One way to do that is by slaying the dragon — by forming new groups that sound green but aren't. The National Wetlands Coalition, for example, is actually a collection of real estate and oil and gas companies dedicated to weakening wetlands protection laws.

Its founder, Jay Haar, president of the National Wildlife Federation. One of the coalition's members is the International Council of Shopping Centers. The Endangered Species Reform Coalition, he points out, is a lobbying group that wants to end the Endangered Species Act, and the American Forest Resource Alliance, a conglomerate of 350 timber and logging companies, seeks less protection of ancient forests so they can cut more trees. Arnold heads the Center for the Defense of Free Enterprise in Bellevue, Wash.
HOTLINE

Aluminium workers and cancer

For James Brewer, a 49-year-old former employee stricken with cancer, the results of a three-year study on worker health at the Kaiser Aluminum and Chemical Corporation plant in Tacoma, Wash., came as no surprise. The corporation's report Dec. 18 confirmed that workers are dying of leukaemia and lymphoma at five times the national average. The report examined the health records of 830 workers over a 25-year period and found that eight men died of leukaemia and lymphoma when only 1.5 deaths would be expected.

The company's report comes more than 10 years after Dr. Samuel Milham, now a retired state epidemiologist, began studying worker health in the plant. "The company wouldn't help me, but the union did, so I took blood from 20 guys before theirs," Milham says. Back then he found abnormal white blood cell counts in many of the workers. But Kaiser turned down his request for further studies, he says. In its report, the company maintains no connection exists between the high cancer toll and workplace conditions.

Cities writhe cloud in Colorado

Former Agriculture Secretary Edward Madigan intervened to block the staff of Colorado's Arapaho-Roosevelt National Forest from securing water for fish habitat. Madigan was allegedly pressured by Sen. Hank Brown, R-Colo., along with 10 other senators from Western states, on behalf of the cities of Boulder, Greeley, Fort Collins and Loveland. The cities flexed their political muscle after the national forest tried to reduce the amount of water allowed in their special-use water permits. Brown told the Greeley Tribune that the Forest Service was "literally asking to exact water from the municipalities for renewing the permits." In October, Madigan directed the regional forester to reissue the permits without any restrictions to benefit fish in streams. A Forest Service employee, who asked not to be identified, said that the secretary's directive was "inconsistent with the law." Several court cases over the last 18 years have upheld the Forest Service's authority to

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A decorated historical photo

In the east, as you know, we have the historic city of Boston. In the west, we have the historic city of San Francisco. The two cities are connected by the historic old west trail.

To the south, we have the historic city of New Orleans. And to the north, we have the historic city of Seattle.

Our current political situation is complex, with various factions vying for power. The current president, Bill Clinton, has faced criticism for his handling of various issues, including health care and the environment.

The environment is a pressing issue, with concerns over climate change and the impacts of human activity on natural habitats. The government is working on new policies to address these issues, but there is much debate and disagreement.

Overall, the current political landscape is characterized by complexity, with many factors at play. It remains to be seen how the situation will unfold in the future.
PUBLIC LANDS
County, N.M., writes plan that mandates countywide multiple use and traditional actions with county.
Yes your hear from some real preciuous, David Hart, 1/16/92, p. 9. Oklahomas in
site firsts tough opposition.
Attorney seeks to shelve land man-
gers power, Florence Wilson, 2/24/92, p. 10. Karen Build win county town that help Western ranchers fight the federal govern-
ment.
Groups seek to de-nationalise the public
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ig Nature Monument in New Mexico.
Malpelo group lobbies hard, rejects industry money, Candace Burns, 6/15/92, p. 5. In Malo.

Was 'One' movement launched attack
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Beef: The Rise and Fall of the Cattle Culture Should this dam rise, or fall?
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Taking the Fifth ...

Continued from page 1.

Significance. At the center of the takings debate is the question of how the government justly should pay for the use of public resources. Clean Water Act. That definition, now under revision, included thousands of acres of land not previously considered sensitive. It generated a major clash between the law and landowners reluctant to modify their activities.

When the northern spotted owl was listed as an endangered species in 1990, timber industry and environmentalists found themselves caught between two frontiers. As attorney Ragsdale laments, "Now every county in Oregon has a planning and zoning commission." The proliferation of regulations in rural areas is driving the property rights movement. It first arose in the rural East and has now caught on everywhere. In the last two years, the number of organizations specializing in property rights has increased exponentially, according to Tom Dodd, a member of the Maryland-based Land Rights Letter. Corcoran's 1992 directory lists 54 property rights groups, many with such sunny names as the Alliance for Oregon, Fairness to Land Owners Committee and Communities for Great Oregon.

"As soon as we opened the doors (last year) we had an onslaught," says Michelle Marcella, an attorney who directs the Washington, D.C.-based, non-profit Defenders of Property Rights. "The need (among landowners) is overwhelming...We're certainly not advocating dirty air or water, but property rights are supreme. They are linked to freedom and liberty.

As it happened, a conservative political movement was waiting for the angry property owners. Led by Ronald Reagan, former Attorney General Edwin Meese and former Vice President Dan Quayle, the White House was prepared to work with every landowner prohibited from building a hotel or clearing a forest. The state told them they could do anything they wanted, and the federal government in a regulatory takings case, the Court of Federal Claims in 1989 awarded $150 million to a company that had been barred from surface mining its coal reserves in Wyoming. The court has also awarded $1.5 million to filmmakers who believed they had been prevented from filming in wetlands.

This year, between 120 and 150 takings cases sit before the court, up from 69 last year and 52 the year before. Of the pending cases, between 20 and 30 involve wetlands, says Robert Melo, an attorney-advisor with the Congressional Research Service. State legislators have entered the Fifth Amendment fray as well. Last year, Arizona, Washington and Oregon all passed private property protection laws, based largely on Reagan's executive order and geared toward state regulatory agencies (HJCN, 2/25/92). One has been challenged. If a petition drive launched by the Sierra Club in Arizona is successful, that state's law will have to pass muster with the voters in a 1994 ballot before it can go into effect.

"We can't even walk across the land."
Utah landowner Brandt Child

"I can't build a house but I can cut the trees down?" says a Flabbergasted Tom Dodd, 61. He says if he hired a lawyer...continued on next page

Tortoises, cattle race toward court

Angered by a federal plan to reduce cattle on public land occupied by the endangered desert tortoise, 35 ranchers in southern Nevada have retained attorney Karen Budd. Budd, a fifth generation resident of Wyoming, is best known for her arguments that public lands ranchers "own" their federal grazing leases (HJCN, 2/25/92).

In the case of the desert tortoise, which gained federal protection in 1990, Budd hopes to either overturn the Bureau of Land Management's plan or see that ranchers are paid for decreasing their herds. "There is no scientific proof that cattle are a threat," Budd says. The grazing reductions, begun last March, are part of the BLM's new management plan for grazing allotments in southern Nevada. The plan recommends a shorter season and fewer cattle.

Terry Weil, of the BLM's Carson City office, says the agency heads to plan on the opinion of U.S. Fish and Wildlife Service biologists whose data show that when cattle graze, tortoises suffer. Live- stock and tortoises can be compatible, he says, "but only under the restrictions the agency has put in effect."

Incensed by the decision, ranchers formed the Desert Livestock Association last year and appealed the agency's decision. Association secretary Mark Robinson says the U.S. Fish and Wildlife Service study is inconclu- sive. "They only said the tortoise may be damaged." The BLM spokesman says the agency will rule on the appeal March 1.

Because the BLM adhered strictly to the law in formulating its grazing plan, most observers say the appeal will fail. That means the issue will be headed for court, which is exactly where the ranchers and Budd want it. "It will definitely become a takings case," says Robinson. According to Budd, the case is classic: An agency acting in accordance with the environmental law limits the use of public land; the affected party appeals the decision in administrative court, loses, and then seeks compensation in an U.S. trial court.

If any scenario materializes — and even environmentalists admit it is possible — Budd and the ranchers say the legal showdown could shoot a Fifth Amendment arrow through the heart of the Endangered Species Act.

Shahn Towers
Taking the Fifth ...

continued from previous page

ber contractor, he’d net only $600 a~d
still wouldn’t have a ... Florence Williams
was a staff reporter for High Country
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Taking the Fifth
continued from previous page

ry takings, the Supreme Court has ruled

invasion of the rights of other property

owners. For the costs of complying with mini-

mum wage laws, or landlords who must

mate regulation.

way for a highway, in cases of regulato-

her neighbors’ land.

James Burling.

would be absurd, for


Echeverria envision a future in which

land is treated not as individual castles

around a core, but as cooperating units

of larger natural and economic systems.

In fact, says Echeverria, it is inevitable

that a crowded Earth will, and should,

demand more of each of its citizens.

I think this (environmental back-

lash) is sort of a burp,” he says, “an

anarchistic movement appealing to the

myth of the Boone frontier, which is not

what we have anymore. That’s the ques-

tion we are listing some ground, but a

more balanced view will prevail eventu-

ally.”

Meanwhile, in Kanab, Utah, Brandi
Child expects his case to be the next
great test of the Fifth Amendment.

Whether it makes it to the higher courts

remains to be seen. Until then, over

3,200 species await federal listing for

protection. Many of them are bound to

live on private property, and many

landowners are bound to grow disgrun-

ted.

For a list of property rights groups, contact

Land Rights Letter, P.O. Box 358, Sharpsburg,

MD 21782 (301/777-7165).

For more information on pending

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Federation to 1 Natural History, 111 \l
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The American Planning Association

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Lucas decision. Its address is 1313 E. 60th St.,

Chicago, IL 60637 (312/955-9100).

Until recently, Florence Williams was a

staff reporter for High Country

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sation if he had not had the right to

build in the first place — if building on

the barrier island was prohibited prior to

1966 in “background nuisance laws”

(which is unlikely). Scalia then remind-

ed the final determination to the South

Carolina Supreme Court.

Scalia’s opinion also indicated the

majority’s receptivity in future cases

where only a portion of the property

has lost value. Environmentalists, planners,

and other friends of regulation were dis-

couraged. “Justicia Scalia has set land-

use takings law back at least 100 years...,”

said Dan Mandelker, a law professor

at Washington University in an analysis

for the American Planning Association.

Auburton’s Echeverria called it a “radical shift” in takings law.

He also bemoaned the lack of guidance from the

Court on how it might view future
cases. The Lucas decision would only

increase case-by-case litigation because of its

lack of specificity on “background princi-

ples” specific to each case. Echeverria

firmly maintains that compensation under

the Fifth Amendment should be

confined to “rare and extreme” situa-

tions.

Professor Spet, in a recent paper on

of what has energized people is the

Lucas case,” says Steven Quarles, a pri-

vate Washington, D.C., attorney who

hopes to represent the timber industry

over endangered species. “New cases

will likely test the limits of Lucas.”

One big case being handled by the

Portland firm Haggard and Kirrley

involves seven large landowners within

the Columbia River Gorge National

Recreation Area. Recent open-space reg-

ulations prevent landowners from

logging their land. The same firm is rep-

resenting a private timber company with

a case involving the spotted owl, and a

case in which another small company

says the state “took” its water rights when

it prohibited the company from conver-

ting to a new industry because of re-

zoning.

Many predict the Endangered Species Act will be the next great fron-

tier of takings litigation. “The problem

with the Endangered Species Act is that

there is no compromise written into

the law,” says Quarles. “That leaves regula-

tors a very stark choice, and it’s not hard

to find a case where property value gets

wiped out.”

Environmentalists still have reason

to be hopeful. They say a new adminis-

tration may help extinguish a movement

that previous regimes did so much to

inflame. Vice President Al Gore stated

publicly that he disagreed with the

Lucas decision. President Clinton will have

the option of rescinding Reagan’s 1988

executive order on takings. He may also,

if the choooses, replace the chief justice

of the U.S. Court of Federal Claims.

In the long run, the strongest property rights supporters, Republican


Craig, R, and others will perseverre,

observers say it is unlikely any takings

legislation will pass muster in the new

Congress. More states, however, are

likely to follow Alaska in the pursuit of

property rights bills. Bills were attempt-

ed in 27 states last year; three were

passed.

Legal experts like Joe Spet and John

Echeverria envision a future in which

land is treated not as individual castles

around a core, but as cooperating units

of larger natural and economic systems.

In fact, says Echeverria, it is inevitable

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High Country News - February 8, 1993 - 13
THE ROSETTA BROCHURE
Reading a government document is often like deciphering a foreign language. Terms of Environment, Glossaries, Abbreviations and Acronyms is a 44-page brochure from the Environmental Protection Agency that helps crack the code. It defines the most commonly used terms that appear in EPA publications, news releases and other documents. We learn, for example, that "overtaxed" (overstressed medical waste) is "waste too large for plastic bags or standard containers, and that "monotennial" refers to densely packed and nondiversifiable materials. More useful are abbreviations and acronyms that pick through the agency's alphabet soup. For a copy, write Editorial Services Division, Office of Communi-cations, Education and Public Affairs, A-107, EPA, Washington, DC 20460. Suggestions for future editions are also welcome, we're told.

HUFF HEMP
Canadian marijuana, or marihuana, has been outlawed in the United States for more than 50 years as a dangerous drug. But for thousands of years hemp has been the world's premier agricultural crop, used to make rope, paper, textiles, varnish, oil, medicine and food and used in religious ceremonies. In a report of the underground 1985 classic, The Emperor Wears No Clothes, author and hemp crusader Jack Herer argues that Canadian could once again become the world's most valuable renewable resource — as well as the solution to the greenhouse effect, deforestation, the energy crisis and world hunger.

Herer says U.S. Department of Agriculture data show that one acre of hemp can produce as much paper pulp as 4-1/2 acres of timber. Hemp could also replace about 70 percent of all wood-pulp paper, chemical feedstocks in plastic, and substitute for petrochemicals in curries, inns, paint, lubricating oil, animal feed and even electrical production. Herer says hemp is the ben on hemp to what he calls a 1976-era conspiracy by DuPont Corporation, which wanted to make way for its newly patented plastics. What Herer doesn't mention is has commercial use of hemp can be illegalized without legalizing marijuana. As a Reagan-era USDA official confesses in a Numbers Interview with Herer, even if hemp could be saved, the world will never happen until they find a way to grow it "without that narcotic top."


— Steve Hitchcock

BRING BACK THE WEST
The Western Literature Association invites papers, readings and other presentations on "Ruminating the West" as its 28th annual meeting in Wichita, Kan., Oct. 7-9, 1993. Other topics suggested include the Great Plains, Inuit of Alaska, teaching Western literature, and Frederick Jackson Turner's works and his closing frontier. Each paper is limited to 15 minutes' reading time. Submit manuscripts of no more than 10 double-spaced pages and a 125-word abstract by June 15 to Diane Hinchman — Stev~ Affair, The University of Montana, Missoula, MT 59812 (406/545-4652).

A FRANK DISCUSSION
A symposium on "Vision of the Future: The Four Seasons" — River of No Return Wilderness takes place March 25-27 at the Center on the Grove in Boise, Idaho. The symposium will address management of the largest wilderness area in the lower 48 states through presentations, panels and small group discussions. Ideas generated by the meeting will help form the agenda for upcoming Forest Service planning sessions. To start people thinking, pre-registrants will receive a booklet about future possibilities that contains the ideas of over 20 conserva-tion and special interest organizations. A group of diverse speakers includes Ceres Rose for Multiple Use, Wilderness Watch, Idaho Fish and Game, the Idaho Outfitters and Guides Association and The Wilderness Society. For more information call Ken Wurting, U.S. Forest Service Wilderness Coordinator for the PC Basin Region (208/756-5131), or Ed Krumpel, head of the Wilderness Research Center at the University of Idaho (208/883-2500), or write Frank Church — River of No Return Wilderness Symposium, Box 729, Salmon, ID 83467.

A RIDGE TOO FAR
Bigger isn't always better, at least not according to opponents of the proposed Sana Fe Ski Area expansion. Currently under Forest Service consideration, the expansion would include construction of parking lots and another chair lift to provide access to "glade skiing" in the Big Tesuque Basin, The Ski Area Com-mittee Coalition (SACC), a multi-cultural local group, opposes proposed development into the relatively untouched Tesuque area.

The group says development will compromise soil, air and water quality, as well as disrupt a mountain of sacred Tesuque Pueblo sites. SACC also predicts increased pollution and overdevelopment and calls for a wildlife transport system from Sana Fe with a limit on daily attendance. The Forest Service addresses these concerns in its Santa Fe Master Plan Environmental Impact Statement, and will release a draft EIS on the expansion by spring 1993. But environmentalists are worried because Tree-Engineering Inc., the company hired by the Forest Service to compile the EIS, has worked on the planning for 25 other ski resorts, and all were successfully expanded. For more information, contact SACC at P.O. Box 110, Sana Fe, NM 87504, or Lori Osterndor, District Ranger, Embudo Ranger District, P.O. Box R, Embudo, NM 87520.

DEAD AND DYING TREES
On national forest lands, dead or dying trees cover an area the size of New Jersey, Delaware and Maryland. These trees, dead and fire-charred alike, need to be spotlighted. "Thus begins National Forest Health: Nature's Voice's Save Our Forests, a report issued in December by the National Forest Products Industry, a lobbying group. It defines forest rehabilitation, in essence, as fire in the near future, as cutting more trees, and it blames Congress for hamstringing the decline of publicly owned forests by steadily cutting logging over the past three years. Although Congress approved the cutting of a 2.2 billion board-foot of "salvage" timber in 1991, the report says this "did not even scratch the surface of what needs to be done." The report's authors, who are not identified, else other ecologists that exist besides logging, and they note the need for fire and diverse tree species. They also forewarn a future when their timber industry won't "receive the amount of timber it once did off the nation- al forests." But they insist only salvage log- ging can mitigate the national forests, those who disagree are "painfully misguided.


— Paul Larson
A unique ecumenism
at Snoqualmie Falls

by The Rev. Jon Magnuson

In the darkness of one early morning last July, an 18-year-old, a fugitive fleeing from state police, jumped to his death off the 270-foot cliff edge of Snoqualmie Falls. On an August afternoon, with the prayers of a Jesuit priest and a spokesman for the Snoqualmie Indian spiritual leader, a small group of native and non-native friends walked to that same cliff edge and, in a quiet ceremony, scattered ashes of a deeply loved wife, nurse and mother into the cascading river water tumbling over the granite rock face.

Such events continue to remind us that Snoqualmie Falls, apart from being one of Washington state's most popular tourist attractions, is an ordinary landscape.

In 1991, Puget Sound Power and Light Company applied to the Federal Energy Regulatory Commission for a 40-year relicensing to operate its hydroelectric facility, which produces less than 1 percent of the total power sold to its consumers. The private company would divert an additional 60 percent of river flow from the falls. The proposal involves major blasting of the falls' rock face and considerable alteration of the natural river bank.

This initiative for federal approval and licensing sparked the beginning of a regional public debate and marked the falls as a battleground for a fascinating, troublesome and emotional collision of values and perspectives.

For years, Snoqualmies Indian people have felt that the sacred nature of the falls, the site of their creation story, has been compromised. Having become aware of Puget Power's plans, they approached local church leaders for support. These bishops and denominational executives, in a 1987 apology to native people, pledged support in recovering and protecting "sacred teachings" that earlier Christian missionary traditions once helped diminish or destroy. The Snoqualmie Falls Preservation Project, a coordination of the tribe's and religious community's preservation efforts, has now gained increased recognition with the support of the Moun- taineers, the Northwest Rivers Council, Seattle's Audubon Society and Washington Trout.

Two special notes of reflection are helpful in framing a better understanding of the dilemma. First, the future of Snoqualmie Falls is a question of conscience and sensitivity that rightly belongs at the center of public discourse. It's not, as some suggest, a simple business or engineering problem.

On a deeper, fundamental level, the struggle essentially reflects a collision of paradigms and world views.

The most universal of all modern religious, economic, has been pitted against the religious and spiritual values of one small, fragile Indian tribe. As the river is a public, not a private, resource, any appropriate resolution should be found from a deepening of public conscience.

Secondly, the struggle to preserve Snoqualmie Falls might be seen as what James Hillman calls an effort to "recover the world's soul." Hillman, a prominent psychologist and social critic, soberly observes that the great majority of our churches have become personalized, private and sentimentalized. A shift needs to move religion and psychology, Hillman maintains, from saving the soul of the individual to saving the soul of the world. The challenge of protecting the stunning beauty and religious significance of Snoqualmie Falls remains for us in the Northwest an unusual opportunity: a chance to protect a place where the power of an ancient people's prayers are still lifted up in the falls' mists, where people from all cultures are drawn and invited to pass through to other realities. The falls need to be left as pristine as possible ... additions of museums, turbines and dynamiting of its rock face are invasive and obscene.

For those involved in the preservation efforts, it's a reminder of theologian Matthew Fox's conviction that one of the ways creation protects herself is to ensure that native peoples all over the Earth continue to survive in spite of technological society's efforts to exterminate them. Fox prophesies that indigenous people are here to "bring back the Earth." Ron Adams, director of the Falls Preservation Project, states forthrightly, "Indians are not the message, they are the messengers."

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Armed ecosystem managers build roads through wildlands

by Jack Thorndike

DIXIE, Idaho — Throughout last summer, sporadic news accounts told of Earth First!ers and federal agents locked in a tense standoff somewhere on Idaho’s Nez Perce National Forest. Activists were trying to stop the Forest Service from building 145 miles of logging roads in the isolated 50-square-mile Mallard-Cove roadless area. Four had been arrested, and many claimed harassment by 25 federal agents wearing camouflage and carrying guns.

Back in Missoula, Mont., we heard that the Earth First!ers were using their standard tactics of civil disobedience and “monkeywrenching” — intentionally damaging machinery. The Forest Service responded by bringing in their “Level Four” agents, a special team experienced in dealing with Earth First!, and by closing off the area where the roads were being built.

Frustrated by the story, I drove to Dixie, Idaho, on July 31, a tiny town on the edge of the disputed roadless area.

Established during the Civil War, Dixie now finds itself at the center of an unprotected wildlife corridor wedged between three designated wilderness areas. Though the town now boasts only 25 residents, it once was home to 5,000 gold miners, five saloons and a baseball team. Most residents these days are retirees.

The town’s gathering spot is the Lodgepole Pine Cafe where owners Judy Willis and Jim Miller said the commotion had led to lots of conversation, but a dropoff in business.

“For the Forest Service police, Miller motioned discreetly toward a mournful-looking man sitting at a corner table. “That’s one of them over there,” he said.

Wearing a red cap and a pink shirt, the newcomer sat motionless without a book to read. It seemed impossible for an undercover agent to keep a low profile in a small cafe with five tables and no lunch counter.

At the other end of the town’s main street are the lodge and stables of an outfitting company which Emmett Smith has run since the 1970s. Smith guides clients into the Mallard-Cove wilderness, and he worries about the fate of his business.

“Once the area is roaded and logged, I can’t provide a wilderness experience for my clients,” he said. “How long I can keep operating depends on how quick they need the timber.”

District Ranger Ed Wood sat on the hot seat last summer. Interviewed at his office 20 miles from Dixie, he seemed disconcerted by the turmoil that had overtaken his district. Wood said the Forest Service should be allowed to proceed after the completion of field studies, two environmental impact statements and public participation.

The stakes are high. Last year’s ouster of Northern Region Forest John Mammra sent a clear message to forest managers throughout the hierarchy: Get the cut out or get transferred. With most of the district’s timber already cut, environmentalists say, logging Mallard-Cove became critical to maintaining timber output.

Wood was generous with biological data, showing off two 300-plus-page environmental impact statements, and saying, “I hope you’ll read these.” Of his agency’s Level Four agents, he would only say, “Level Four Forest Service law enforcement officers have the full range of authority and can carry personal protection devices.”

A public information officer on loan from another forest wasn’t much help either, declining to answer three of seven questions. He also refused to share a videotape that was lying on the floor in Wood’s office called “Earth First!, A Primer.” A production of the USDA.” Wood said that viewing facilities were not available that weekend, but he encouraged me to arrange a viewing at the regional office in Missoula. No one in that office had ever heard of the video.

I decided to check out the Earth First! encampment, which lay at the edge of a meadow at the edge of the roadless area. The 12 protesters seemed to surprisingly high spirits despite some arrests and despite their failure to stop the logging schedule. Roads were going in on time. Activists watched from the sidelines as the Forest Service transformed a complex ecosystem into the beginnings of a tree farm.

Then, in a surprising break from the rounds of demonstration and confrontation, the mostly young people said they were undertaking a new strategy — a potluck supper with the people of Dixie. None of the locals showed up.

“We wanted to show the townspeople that we’re serious,” Earth First!er Jake Krailick said. “That we’ll be back next year and the year after.”

After the failed potluck, some Earth First!ers went across the street to the Lodgepole Pine Cafe and bought some beer for men who were building the road. After a while the workers bought the activists a round.

With the Level Four agents effectively keeping the Earth First!ers from monkeywrenching, Plan B for the activists dictated more emphasis on public relations. Besides trying to build links with local people, Earth First!ers increased their visibility by demonstrating at the office of the district ranger and hanging banners over local roads.

Another goal was to attract legal support, and that strategy bore fruit in late August when five mainstream conservation groups sued the Forest Service over logging Mallard-Cove.

When it came to making common cause with the people of Dixie, however, Earth First!ers were hamstrung by their reputation. Many perceived Earth First!ers as attacking society rather than attacking inappropriate timbering on public land.

“What they believe in is all right,” said outfitter Emmett Smith. “But I’m against monetary damage to private property.”

In any case, the Earth First!ers aren’t giving up on Mallard-Cove. “It’s going to be one of our major campaigns in the country,” says Bill Haskins of Earth First.

The Forest Service will resume road construction on June 15, by which time Earth First! expects to have another encampment set up near Dixie, with activists coming from as far away as Maine, Colorado and California.

“We’re going to take up right where we left off last summer,” Haskins says.

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