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Steve Collector

Sagebrush Rebellion II

Some rural counties seek to influence federal land use

by Florence Williams

Until a year ago, Catron County, N.M., population 2,500, was a quiet, isolated rural Western community. The cattle and timber industries accounted for most of the tax base, with the bulk of land in the arid county owned by the federal government. So when the Forest Service announced it wanted more elk and fewer cattle, and that it also intended to cut timber sales to protect the Mexican spotted owl, people got mad.

"The problem was that our civil rights were being violated," says Richard Manning, a cattle rancher and one of a growing number of Western activists arguing that federal grazing permits confer a constitutionally protected property right.

Manning, who is heralded by his peers in the cattle industry as a "rawhide American hero," did more than complain. In the summer of 1990, he talked

his local county commissioners into drafting emergency ordinances designed to protect the county's cattle heritage and limit the power of federal officials.

"No one ever heard of Catron County until we passed the ordinances," Manning told a rapt audience of 300 ranchers in Colorado earlier this month. "Within 24 hours, Washington, D.C., knew where Catron County was."

Catron County is no longer alone. In just the last half year, dozens of counties in Montana, Wyoming, New Mexico, Utah, Nebraska and California have begun quietly codifying their frustrations into local laws that could hinder the way the federal government administers the public lands and resources in these counties.

"A quarter of the counties in the West are involved," estimates Karl Hess, the Las Cruces-based planning consultant who helped Catron write the county plan that goes hand in hand with the new ordinances. "Eight months ago, this didn't exist."

The new ordinances and land-use

plans attempt to weaken the Endangered Species Act, the Clean Water Act, the Wild and Scenic Rivers Act, the Wilderness Act and the National Forest Management Act by stating that local governments must approve all federal actions in their counties. Codes create criminal sanctions for federal officials who violate county demands.

For example, forest rangers in Catron County, and now elsewhere, can be arrested for "arbitrarily" reducing a rancher's cattle on public land.

"The ordinances scared the hell out of us," says Mike Gardner, a Forest Service district ranger in Reserve, the county seat. "I've got small children. It would be tough to tell my kids why I'm being arrested. It was intimidating."

They say permits are property

The assumption underlying the ordinances is that grazing permits are the "intangible" property of the permittee. Manning and his followers say the number of cattle allowed on a federal permit directly affects the value of a private ranch.

Federal agencies insist that grazing permits have always been a privilege, not a right, and that the government makes the decisions on public land. In fact, the U.S. Justice Department and the Office of General Counsel for the Forest Service quickly reacted to Catron's ordinances by saying they are

null and void, and threatened to prosecute county officials if the local laws were enforced.

"The county cannot in any way prescribe or dictate land management functions undertaken by the Forest Service..." wrote agency attorney James Perry to Catron County Commissioner Buddy Allred.

Says Wilderness Society attorney Jim Norton: "The (ordinances) are really almost silly because they're so illegal and unconstitutional. They're only trying to intimidate federal officials and browbeat them into putting up more timber, grass and mining than they otherwise would."

County officials elsewhere seem confused. In Granite County, Wyo., which passed the same ordinances this winter, county attorney Al Bradshaw says he's not even sure whether the ordinances are legal. "I guess that since it hasn't been tested, it's kind of shaky water whether it would be upheld."

Manning summed up Catron County's experimental approach: "If there's no law that says you can't do it, do it." He says the courts have yet to rule on the county's legal arguments, and even if they lose court battles, the anti-government sentiment sweeping the counties may yet start a revolution.

As many as 45 rural counties in six states are currently drafting Catron's ordinances into their own emergency

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Attorney seeks to shackle land managers' power

"First and foremost, I'm a rancher's daughter," says Karen Budd, the 33-year-old public lands attorney responsible for the current wave of county ordinances sweeping the West.

She comes from a tight-knit family. Her father, Dan Budd, is a conservative Republican who serves in the Wyoming legislature. Uncle Bob Budd heads the Wyoming Stockgrowers Association. Frank Falin, Budd's husband, grew up on a large ranch in Nevada. He's now in law school studying public lands law.

At a recent meeting of ranchers in Steamboat Springs, Colo., Budd arrives flanked by her family, who have driven south from Wyoming to hear her speak.

"This is my father-in-law on the cover," she says, waving a recent copy of *Newsweek* before a crowd of 300. In the same issue Budd is listed as one of the top 20 "movers and shakers" in the West.

But Budd says she is not after self-promotion. What she wants is to bring the federal government to its knees.

"My parents own a ranch," explains the blonde, curly-haired, fifth-generation Wyomingite. "It's a medium-size ranch, not a corporation, just dad and his brother. I saw it eroding." Budd does not mean physically eroding; she means her family's control of the land.

"It used to be you'd sit down with the local (ranger) and take care of any problems you had on a local level. Now, they just tell you what to do."

Budd says ranchers are losing their ability to influence range and other public land decisions that affect them. "We want a fair fight. We just want our ranch protected."

Groomed by a three-year stint in James Watt's Interior Department, followed by University of Wyoming law school and an 18-month tenure at Watt's Mountain States Legal Foundation, Budd stands ready for battle.

Her weapons are the courts. She hopes to test the local ordinances she has written for some 45 Western counties demanding equal status with the feds on public land decisions there.

In her thriving private practice, Budd also represents some of the most controversial figures to emerge from the public land in a decade. One client from Nevada, Wayne Hage, is suing the Forest Service because it confiscated his cattle after he refused to reduce their numbers on his grazing allotment (*HCN* 9/9/91). With Budd's help, Hage argues that his federal permit amounts to private property and cannot be taken away without due process or compensation.

The so-called "takings" argument fuels Budd's fires. Grazing permits, she says, are a form of "intangible" private property because they are intertwined with the value of a private ranch. She advises her audiences to call their federally leased allotments their "ranch," because "you have a ranch unit. You cannot operate one without the other."

Budd also says the allotments represent an "investment-backed expectation," meaning if you put money into maintaining the allotment with fences, ditches, and so on, then you must be compensated if the government lowers its value by removing cattle.

Budd also represents Catron County, N.M., rancher Richard Manning in a suit designed to force the Forest Service to use consistent guidelines across different states when writing allotment management plans. Her client Budd Eppers hopes to go to the Supreme Court testing the legal principle of the "split estate," meaning mineral, grazing and water rights can pass to heirs even if the land belongs to the government.

She often cites Executive Order No. 12630, signed by President Reagan in 1988. The order says federal agencies must consider the effects of their decisions on private property. She wants "economic impact studies" done for decisions affecting grazing land.

These arguments anger some federal attorneys, who say the Supreme Court has already ruled in support of

judges in claims courts. For example, government officials tried to limit the number of turkeys a farmer could have on his land. "The claims court found it a taking to regulate 38 percent of his property away," she says.

Late last year, two courts directed the government to compensate a Wyoming coal company more than \$150 million because the Interior Department barred mining in a protected area.

The ideas of Budd and her colleagues are certainly catching on. According to the *New York Times*, the U.S. Claims Court received 52 filings based on the takings argument last year, the most in a decade.

Whether Budd's "custom and culture" argument or the "intangible" private property argument will hold up in court remains to be seen. Budd current-



Christopher Tomlinson

Public lands attorney Karen Budd

the government's authority over its lands.

"Our position on grazing permits is that they are a form of federal privilege," says Department of Agriculture attorney Charles Lennehan in Denver. "The Court has upheld that they are not compensable in taking."

Says Forest Service attorney Mary Ann Joca in Sante Fe: "I consider these non-issues. Permits are not private property." As for Executive Order 12630, Joca says it is not subject to judicial review (meaning it is not a law, just a directive) and even if it were, most Forest Service regulations predate it.

"(Budd) has these bizarre theories," continues Joca. "She gets people to believe they have ancient rights pre-dating national forests. It's a little sad because she gets these guys all psyched up. I give her credit for creativity."

Budd admits some arguments push the legal limits. She says a Forest Service attorney even tried to get her disbarred, but failed.

Recently, some court decisions favorable to Budd's cause have been made by Reagan- and Bush-appointed

ly has several cases pending against the Bureau of Land Management and Forest Service in federal courts, including one on the custom and culture argument in western Colorado. There, she argues that a regional forest plan cuts too many timber jobs and thus endangers the area's heritage.

"At some point, the courts will determine how sound the (county) ordinances are," says Agriculture Department attorney Lennehan.

"If a county were to get so aggressive that they were to conflict with what the Forest Service is doing on federal land, then the supremacy clause will probably kick in," he says, referring to the clause of the Constitution giving the federal government primacy over state and local laws. "But I don't want to overstate the certainty of the situation."

Budd says she has the law on her side. But colleague Karl Hess says winning is not the issue. "It's like when Rosa Parks refused to move to the back of the bus. It was a statement of human dignity and the rights of the individual. And it started a revolution."

—F.W.

Sagebrush Rebellion II ...

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interim land-use plans, says consultant Hess, a libertarian and free-market proponent.

While Hess wrote the county plans, which stress among other things a distaste for the federal government, the ordinances themselves were written by Karen Budd, a Wyoming attorney and one-time special assistant in James Watt's Interior Department.

She's waging a war

"You're kidding yourself if you think there's not a war going on for the West," the Wyoming-born Budd tells her audiences of ranchers. "The war is about philosophy. Your county commissioners can protect your rights a lot better than the federal government can."

Budd and Hess say they want greater local control over decisions made on federal lands. Hess says he would prefer to see most federal lands revert to private ownership altogether.

"Government is harmful to our environment, and dangerous to individuals, families and communities," says Hess, a former Forest Service employee. "It is making it impossible for communities to exist."

Some observers and participants compare the movement to the "Sagebrush Rebellion" of the late 1970s and early 1980s, whose backers demanded that the government turn over its land to state or private hands.

But the county movement goes beyond trying to influence public land decisions, says Wyoming rancher and activist Dick Hiser, who is trying to get his native Carbon County to enact a similar plan.

"Many things on the horizon from the federal government are going to have an impact on private property," speculates Hiser. He says the Endangered Species Act and other laws restrict certain private land uses. "We need to safeguard and strengthen ourselves on the homefront."

"This is really a more sophisticated Sagebrush Rebellion," notes Larry Mehlhaff of the Sierra Club in Wyoming.

Son-of-Sagebrush has some environmentalists worried. "The scary thing is they want to butcher environmental protection," says Scott Groene, an attorney with the Southern Utah Wilderness Alliance. "It's disconcerting to have elected officials trying to do that."

Assisting in the county planning movement is an organization based in Bountiful, Utah, called the National Federal Lands Conference. Run by ideologues who have stated they hope to dismantle the environmental movement, its motto is John Adams' "property must be sacred or liberty cannot exist."

One of the conference's advisors, Ron Arnold, also heads the Center for

the Defense of Free Enterprise in Bellevue, Wash. "We're going to run the environmentalists out of business," he said in a recent *Time* magazine interview (see story page below).

The National Federal Lands Conference has given seminars throughout the West with Karen Budd and Karl Hess. A recent meeting in Steamboat Springs, Colo., attracted nearly 300 ranchers. The organization also distributes materials and publishes strategies for defeating environmentalists, whom it calls "entrenched radicals."

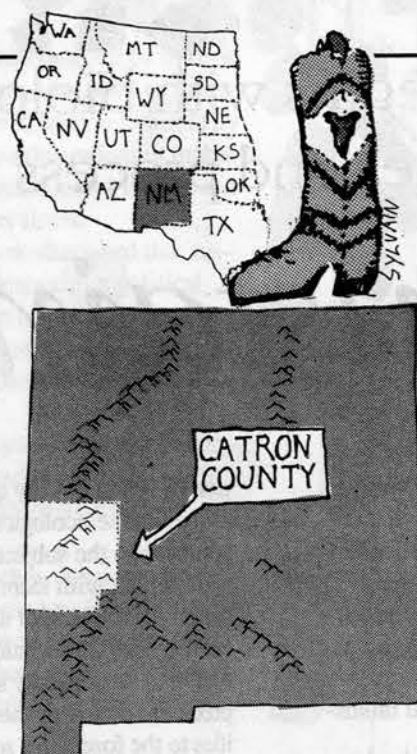
The movement appears most popular in states with pending wilderness bills, such as California, Montana and Utah. In Beaverhead County, Mont., Commissioner Robert Peterson told the local newspaper: "Any wilderness is killing us. It takes away our timber and hurts our whole economy."

The Utah Association of Counties, long known for its anti-wilderness stance, has asked Hess and his consulting firm, The Land Center, to draft plans like Catron's for eight counties in the state. But Utah's Office of Planning and Budget, responsible for assisting counties in preparing land-use plans, hopes to water down the attempt.

"We don't think this is the right approach to be used for comprehensive planning," says state planning director Brad Barber. "We're not supportive of these interim plans. They're not very useful, and don't provide real direction or planning for the future. We don't want to have a predetermined agenda."

Salt Lake City attorney Ralph Becker, who consults for federal agencies, agrees. "These plans by The Land Center are policy statements, not planning. In no way do they resemble planning," he says.

Indeed, many residents of Grand County, Utah, home to the town of Moab, say they are horrified by the rhetoric in their county's draft plan. Included in the draft document, lifted almost word-for-word from Catron County, are statements that support the controversial 1872 Mining Law, demand a weaker definition of wetlands, and



condemn the designation of wilderness.

As an alternative to following federal guidelines for protecting endangered species, Grand County commissioners also propose writing their own guidelines.

Hess admits the planning documents are not traditional. "It's simply to empower people at the county level to preserve values they deem important."

Karen Budd argues that such unconventional measures are necessary to gain local control of resources and preserve the "heritage" of commodity production in the West.

She says existing federal regulations contain provisions for local governments to participate in public land planning. The best way to do this is for the locals to codify their definition of "custom and culture," she says.

Protecting "custom and culture"

"NEPA (the National Environmental Policy Act) says the government must use all practicable means to protect our national heritage," explains Budd. "Most people think of Indian bones and dinosaurs, but it could be just any use that's occurred over long periods of time. Wouldn't five generations of ranching be a form of custom and culture?"

Budd says if counties define their custom and culture through these plans, then the federal agencies must work with them and respect their needs. In fact, she says the counties and feds have equal standing. "Only in this way," she says, "can a local government fight to protect its economic base and the private property and rights of its citizens."

The federal land managers in Catron County disagree. They say the existing channels of communication, such as the public hearing process of NEPA, are adequate for airing the county's concerns. "All they had to do was come and talk to us," says Gila National Forest planner Delbert Griego. "We are not a faceless institution."

But forest ranger Gardner concedes the Catron plan has made him more aware of the county's needs. "Dealing with the county is a little tense, but I go to every county commission meeting now." Gardner also says he hasn't cut any grazing permits since the ordinances passed.

When Catron County rancher Manning speaks to crowds of rural Westerners, he stresses the power of local law and political activism. He says the movement is more than county-level planning, that it must have the force of numbers to be successful.

In Steamboat Springs, Colo., ranchers have packed a conference room at the Sheraton to hear Manning, Karl Hess and Karen Budd. Perched on the coat racks sit dozens of cowboy hats.

"Our constitution as we know it is being arbitrarily and capriciously changed through policies and regulations," says the tall, slightly bent Manning.

"If you don't lock your custom and culture into law," he tells them, "you're through, you're history. We've been asleep too long."

In Steamboat, where ranchers say a recent Forest Service approval of a new ski development will hurt them, Dick Manning receives a standing ovation.

Florence Williams is a staff reporter for *High Country News*.

Film maker attacks HCN at cattlemen's meeting

In Glenwood Springs, Colo., last week, *High Country News* became the report instead of the reporter.

At the annual meeting of the Holy Cross Cattlemen's Association, Roger Brown from nearby Gypsum got up to present selections from his proposed documentary about ranching. Instead, he announced to the 100 ranchers in the room that he had just learned of "hostile elements" in the audience.

"It has come to my attention that there are reporters here from *High Country News* and *Buzzworm*," began Brown. "They are no friend to us and therefore I'm not going to show this video here."

He got an immediate response. A grandfatherly looking man raised his hand: "Look here, our meetings have always been open to the public. The press is always welcome here. We've got nothing to hide."

Others also spoke, telling their guest that he had just shot himself in the foot. During a break, several people apologized to us, saying they were embarrassed and hoped we didn't think all ranchers were like Brown. At the same time, a few who knew *High Country News* said that they agreed with Brown and that HCN was no friend of ranching. They hadn't really enjoyed the paper, they said, since founder Tom Bell left in 1974.

As for the embryonic video, its title is "Western Ranching: A Culture in Crisis." We hear it responds directly to Audubon's recent documentary, "The New Range Wars," and uses some of the same footage. Brown proposes to do two one-hour videos. The first would describe a fifth-generation ranching family and the second explores the issues related to grazing.

Ironically, a week later, on Feb. 16, HCN publisher Ed Marston found himself paired on a two-person panel on public land grazing with Bud Gates, another promoter of Brown's video.

The panel took place in Grand Junction, Colo., at the annual meeting of Club 20, a regional chamber of commerce for western Colorado.

Gates showed the video without any reference to his fellow panelist.

— F.W.

Groups seek to de-nationalize the public lands

Several organizations lead the movement to make sure county land-use plans protect ranching, logging and mining. One is the National Federal Lands Conference, a Bountiful, Utah-based group, which wields private property rights as a sword to strike at environmentalists and federal government officials. The personalities behind the National Federal Lands Conference include some of the most radical members of the anti-environmentalist "wise-use" movement.

Wayne Hage, a Nevada rancher and proponent of private property rights on federal land (HCN, 9/9/91), is past president of the lands conference. Dick Manning, a Catron County, N.M., rancher, is a vice president of the organization and a leading proponent of using county planning to fight federal regulations. Wyoming attorney Karen Budd serves on the advisory board.

Charles Cushman, an advisor to the lands conference, calls himself a "tank commander" who leads a "tactical guerrilla force." Cushman, who heads both the 16,000-member National Inholders Association and the Multiple-Use Land Alliance, boasts 1.4 mil-

lion names on his mailing list, including everyone with a permit to graze cattle on federal land, *Time* reports.

Ron Arnold, another lands conference advisor, co-founded the Center for the Defense of Free Enterprise in Bellevue, Wash., and was recently categorized by *Outside* magazine as a "bitter philosopher." He has said, "The environmental movement is a rich, powerful menace to society, and we intend to destroy it."

Budd, Cushman and New Mexico rancher Budd Eppers, also on the lands conference advisory board, were named the top three business and industry "movers and shakers" in "The War for the West" last year by *Newsweek*.

Cushman, whose biographical information notes his "rent-a-riot" nickname, actively protests protection for the northern spotted owl. Last year, he sent a 6-foot-9, 320-pound logger with a chainsaw to see Rep. Ron Wyden, D-Ore. The logger wore a sandwich board that read, "I want to be retrained. I want to be Congressman Wyden's brain surgeon," *Newsweek* reported.

The non-profit lands conference mails its magazine and materials to

more than 3,000 people. In 1991, says executive director Ruth Kaiser, the organization brought in around \$90,000 by selling "how-to" materials, subscriptions to its monthly *Federal Lands Update* and holding conferences. Although the conference is not a membership organization, it accepts sponsorships, beginning at \$75 annually. National Federal Lands Conference can be reached at P.O. Box 847, Bountiful, UT, 84011-0847.

While the lands conference develops ideology, a group called The Land Center provides the nuts and bolts expertise of the county-planning movement. Karl Hess, Ron White and Alex Thal, who own The Land Center, write land-use plans at the county level that attempt to weaken federal authority governing public land.

Hess, an environmental policy analyst with a Ph.D. in range ecology, is also a senior associate with the Seattle-based Foundation for Research on Economics and the Environment.

The Land Center can be reached at P.O. Box 4221, University Park Branch, Las Cruces, NM 88003.

— Melinda Merriam,
HCN intern