

High Country News

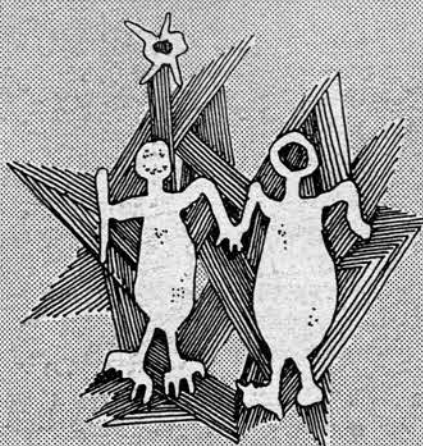
February 8, 1993

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A Paper for People who Care about the West

One dollar and fifty cents

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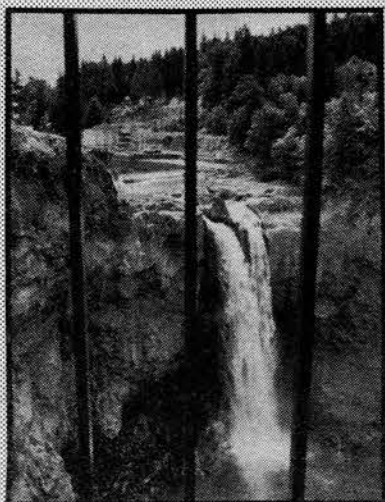
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Landowners turn the Fifth into sharp-pointed sword

by Florence Williams

When Brandt and Venice Child purchased 500 acres in southern Utah in 1990, they had grand plans to build a campground and resort. Brandt 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 some 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. Unbeknownst to the Childs, their oasis was home to a small, rare colony of *Oxytoma haydeni*, otherwise known as the Kanab ambersnail. Living on 20 acres of

the Childs' property, the one-inch-long mottled 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 mow anywhere or pasture cows. We can't even walk across the land."

Bereft of his campground dream and prevented from making the land profitable, Brandt 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 eviscerate 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. "Nor 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 imitators.

"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 the forage that elk and antelope take from their grazing allotments.

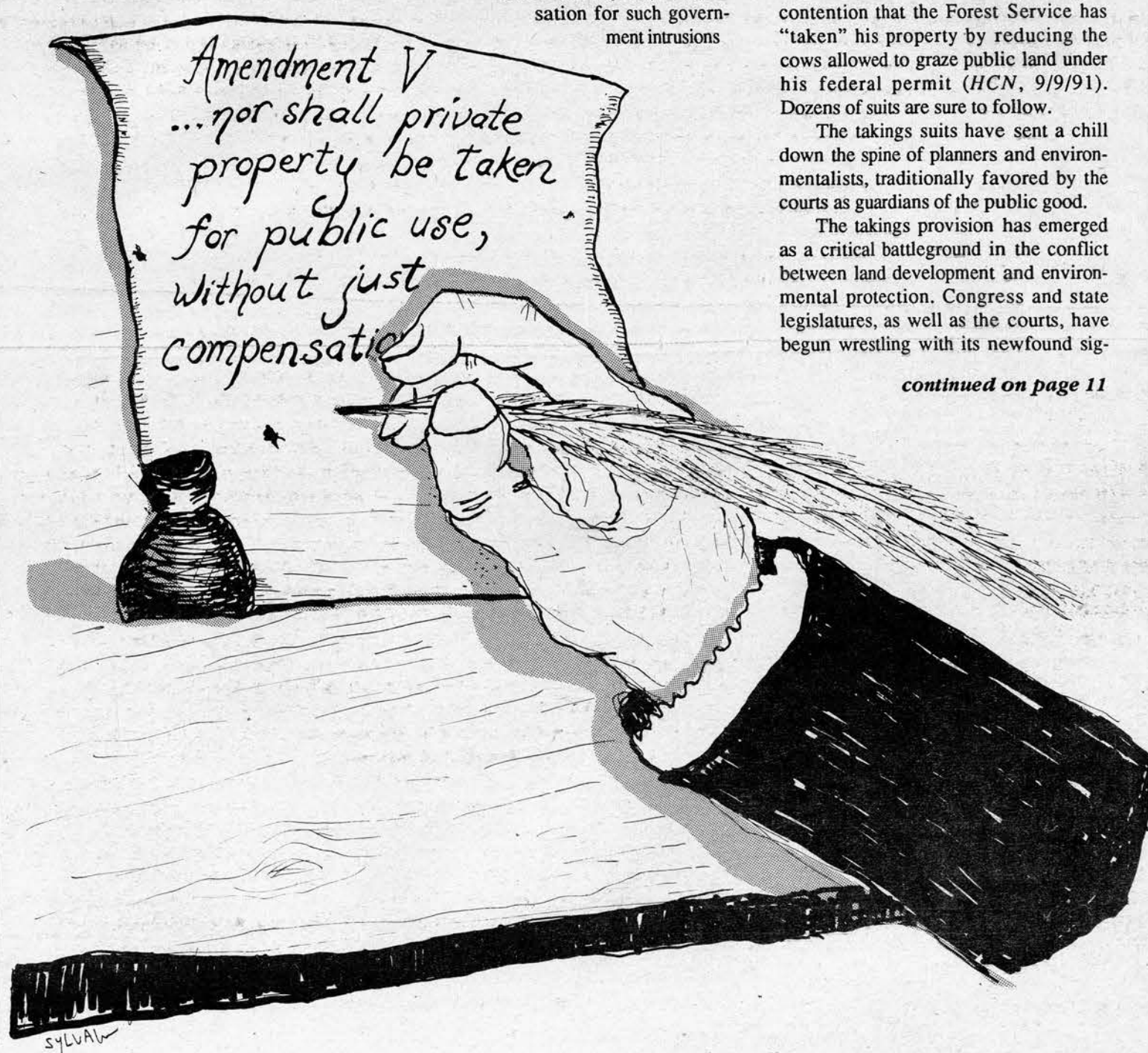
- In Washington and Oregon, property owners are challenging zoning regulations, and timber companies are gearing up to challenge the spotted owl and the recently designated marbled murrelet.

- 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-

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HIGH COUNTRY NEWS

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Dear friends,

Perfume policy

Several issues ago, *High Country News* announced that it would no longer accept perfumed advertisements. That provoked a strong letter of commendation from Gary Weiss of Bad Dog Ranch in Oakley, Utah:

"I totally support your institutional policy of not accepting perfume strip ads. I understand from my mayor, who is also the postmaster in Oakley (pop. 525), that these things have made his life a living hell. Perhaps if I tell him of your decision, he will revise his opinion that you are a bunch of Communists trying to steal his cows and land."

seurs. We remember the great food readers brought to the Salt Lake City potluck several years ago. We remember the bookish and yet enthusiastic potluck at the Elliott Bay bookstore in Seattle. We remember the winter Santa Fe potluck at the Audubon Center, when the jam-packed room was suddenly plunged into darkness by a power failure. Such is the unflappable nature of *HCN* readers, that conversation faltered only for a second, and then resumed as if nothing had happened.

Those were memorable events, but they were eclipsed by the potluck held at the Foresta Institute on the Washoe Pines Ranch

outside of Carson City, Nevada, on January 23. At its peak, 132 people were in the Will James Lodge, which is roughly double the usual number.

At some of our potlucks, staff and board play family-hold-back, but not this time. Each person came as if she or he had been charged with feeding the entire group.

The end was also not the normal 10 p.m. This potluck was still roaring along at midnight. In the Great Basin, where distances are measured in hundreds of miles, people don't spend



Welcome, Zachary

If his initial action is any guide, Zachary Larmer will have an impatient, let's-get-it-done personality. He demonstrated this on Tuesday morning, Jan. 26, by refusing to wait for his father, Paul Larmer, *HCN*'s assistant editor, to drive his mother, Lisa Cook, to the hospital in Delta, 20 miles down the road.

Instead, young Zachary was born right there, in the back seat of a Toyota Cressida, parked just off the main street of Hotchkiss beside the not-yet-open North Fork Medical Clinic. Fortunately, Meg O'Shaughnessy, a midwife, was along for the ride, and she helped deliver the baby.

The only near mishap occurred when a little old lady passerby yanked the car door open to ask if she could be of help, almost spilling Lisa, who was leaning on the door, onto the street.

After the birth, the car lurched back into motion, now holding four people instead of three, and proceeded to the Delta County Memorial Hospital, where Zachary weighed in at 8 pounds, 6 ounces.

Mother of all potlucks

After 10 years of roaming the West in search of the perfect setting for a board meeting and potluck, the board and staff of *High Country News* have become connois-

hours in a car in order to make a cameo appearance. There were readers from Las Vegas, five hours to the south; and from Baker, near Great Basin National Park, eight or so hours to the east; and from Plumas County, California, several hours to the west.

There was also a time traveller: Marta Adams, who worked for *HCN* in the summer of 1973, when the paper was based in Lander, Wyo., and who is now an environmental attorney in Carson City. She has been reading *HCN* for an even 20 years.

Attendance was buoyed by both Citizen Alert and the Sierra Club's Toiyabe Chapter, which scheduled their board meetings so members could attend the potluck.

The *High Country News* board chose to meet in Carson City in order to launch the Great Basin Project and its regional editor, Jon Christensen. Jon organized the board meeting and potluck, with help from his spouse, photographer Kit Miller, her mother, Maya Miller, and her brother, Eric McClary, who provided the meeting and potluck sites at the Foresta Institute, and a special homebrew, Great Basin Celebration Ale, made for the occasion.

Others who helped were Marla Painter of the Rural Alliance for Military Accountability; Bob Fulkerson of Citizen Alert; Jim Claybrook; Judith Winzeler of

the Nevada Humanities Committee; and Glenn Clemmer of the Nevada Natural Heritage Program; and the Nevada Conservation Forum.

The Great Basin Project is supported by a special fund-raising drive. We wish to thank John Livermore and Public Resource Associates, Margaret Norman, the University of Nevada's Mountain and Desert Research Fund, the Nevada Humanities Committee, Dan Cohen, Susanna Moore and Brian Bloom, Jean Hardisty, Fred Euphrat, Bill Thornton, Dave Livermore of the Great Basin Field Office of the Nature Conservancy, the Funding Exchange and the High Country News Research Fund for financial support.

Prior to the evening potluck, the board of the High Country Foundation spent Saturday pondering the paper's 1992 financial results, adopting a 1993 budget, discussing with staff various ongoing and new projects, and electing new officers. There was also a brief ceremonial event: thanks to the generosity of *HCN*'s readers, and thanks to a large effort by the board, led by Andy Wiessner, the new *High Country News* building is now owned outright by the paper.

The operating financial news was also strong, with expenses of \$607,000, which includes the \$75,000 final pay-down of the new building, more than offset by income of \$628,000. Next year's budget proposes expenses of \$639,000 and income of \$651,000.

HCN closed the year with 12,250 subscribers, up from 11,066 in 1991. It expects to end 1993 with 14,000 subscribers.

For comparison's sake, *HCN* had 3,633 subscribers at the end of 1984, and a budget of \$104,000.

Board members at the meeting were outgoing president Michael Ehlers of Boulder, Colo.; incoming president Karil Frohboese of Park City, Utah; Andy Wiessner of Denver, Colo.; Victoria Bomberry of Forestville, Calif. who is now studying at Stanford; Maggie Coon from Seattle, Wash.; Judy Donald from Washington, D.C.; Tom France from Missoula, Mont.; Sally Gordon from Buffalo, Wyo.; Judy Jacobsen from Boulder, Colo.; Geoff O'Gara from Lander, Wyo.; Jim Ruch from Flagstaff, Ariz.; and Farwell Smith from McLeod, Mont. Other officers for next year are Maggie Coon, vice president for fund-raising; Geoff O'Gara, vice president for board development; Sally Gordon, secretary; and Dan Luecke, who will continue as treasurer.

Reaching out

Expanded resources mean expanded obligations, and part of the meeting was spent discussing how the information published in *HCN* can both reach larger audiences and be accessible to researchers, activists and others, months and years after the original publication. At present, a complete file of *HCNs* is available in only a few places, and the lack of an integrated index makes the information difficult to find.

Among the strategies discussed was to put all 23 years of *High Country News* on an electronic medium, such as a CD-ROM or electronic data base; to compile collections of *HCN* articles on subjects such as logging, mining and the public range into college readers for use in classrooms; to redo some *HCN* articles into radio news briefs; and to spawn mini-*HCNs* around the West to provide natural resource coverage to local communities.

Condolences

Our condolences to the family of Virginia "Dinny" Secor Stranahan on her passing. Dinny was a long-time subscriber to and supporter of *High Country News*.

— Ed Marston, for the staff

WESTERN ROUNDUP

Hopi-Navajo settlement runs aground

FLAGSTAFF, Ariz. — A large working ranch central to the proposed Navajo-Hopi land settlement is no longer for sale (HCN, 12/14/92).

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 Cordasco, president of the CO Bar Ranch and manager for Babbitt Ranches. A cousin of new Interior Secretary Bruce Babbitt, Cordasco said he could not tell 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 say its 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, and thereby settling all outstanding lawsuits. In addition, Navajos living on what is called Hopi Partition Land would have received 75-year leases.

The CO Bar Ranch private lands were to have been purchased by the Navajos,

then transferred to the Hopis. The ranch covers 384,000 acres and includes 122,637 acres of private land, 131,314 acres of state land and 130,500 acres of U.S. Forest Service land. In the proposed agreement, the Hopis would have gained grazing rights to the federal and state land, and the entire ranch would have been incorporated into the Hopi reservation except for 35,000 acres granted to the Navajos.

Duane Beyal 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 Babbitt ranch was no longer for sale.

"My people are telling me that it's still on the table," he said. "But people like (Arizona Rep.) Jon Kyl are saying that it's not. But we know he's against the whole settlement anyway."

Kyl, a Republican, said he had been informed that the CO Bar Ranch 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. Karan English, 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 agreement was unravelling. 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 McCue, the magistrate given the herculean task of mediating a land settlement, 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," McCue 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 Babbitt clan ever since. "It's been in the family over 100 years," reflected James E. Babbitt, 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 roots out there are real deep."

During his Interior secretary confirmation hearings in January, Bruce Babbitt told members of Congress that he would 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.

HOTLINE



Michael Wickes/Wild World Productions

Wolves and Colorado

Does Colorado have the right habitat for wolves? An upcoming \$50,000 study by the U.S. Fish and Wildlife Service hopes to find out. Introduced in Congress by Rep. David Skaggs, D-Colo., the bill authorizes a 12- to 18-month search for remote areas that include what wolves prefer to eat — deer and elk. Michael Robinson, director of Sinapu, a group dedicated to wolf restoration in Colorado, hopes the agency will find that Colorado can be included in its Northern Rocky Mountain Wolf Recovery Plan. The plan recommends bringing wolves to Yellowstone National Park, central Idaho and Glacier National Park. Robinson said when Sinapu originally asked the U.S. Fish and Wildlife Service to add Colorado to the plan, the agency said it could not without collecting data in Colorado. But it also could not collect data unless Colorado was part of the wolf recovery plan. Robinson says, "We found ourselves in a catch-22." The U.S. Fish and Wildlife Service is now deciding which university will conduct the study.

HOTLINE

Salmon need to swim

Barging salmon 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 jeopardizing Snake River salmon listed under the Endangered Species Act. The "findings confirm what we've been saying for years," said Ed Chaney, a salmon advocate with the Northwest Resource Information Center in Eagle. "Barging salmon is a Rube Goldberg hoax," he told AP. Chaney's group said in January it planned to sue the National Marine Fisheries Service 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, while two Idaho chinook runs are designated as threatened.

Utah ferrets out reintroduction plan

Black-footed ferrets might be restored to northeastern Utah by 1994. Biologists from federal and state agencies are working on a plan to release 50 of the sinuous animals on 46,000 acres in Uintah County's Coyote basin. Once thought to be extinct, ferrets were found and later captured in Meeteetse, Wyo., in the mid-1980s. A controversial captive-breeding program allowed the state to release 45 of the endangered animals to the wild in 1991. Jordan Peterson, mammals program coordinator for Utah, says that in his state ferrets will be designated a "non-essential 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 winter livestock grazing. Peterson says coexistence should not be a problem since ferrets, which prey primarily on prairie dogs, are nocturnal animals. The Utah working group on ferrets hopes a free-ranging population of 80 can be established.

Slipping through BLM cracks

Grace Bukowski, a self-styled "military watchdog" in Nevada, was digging through Bureau of Land Management files when she discovered a bombshell: a 1980 Navy report that admitted stray bombs had been dropped on thousands of acres of public land outside practice ranges in Nevada. Bukowski knew that 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 nine years the report sat in a file, she said, "Somebody could have gone out there and gotten killed." "Our managers did miss that sentence in the Navy report," a BLM spokeswoman admitted to the *Reno Gazette-Journal*. "We're sorry and we're glad no one was hurt."

For the fish

Endangered fish species surviving below Flaming Gorge dam on the Green River could flourish once again. The U.S. Fish and Wildlife Service is recommending "refinement" of 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. Natural conditions on the river were once bound to 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 recovery program, the Bureau of Reclamation will begin a five-year research program to examine other changes in its operation at Flaming Gorge.

Ill wind 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 3.15 acres of plants and lab equipment, Biosphere promoters hoped to create a self-contained, self-sufficient living environment (HCN, 11/16/92). But oxygen depletion, apparently caused by a reaction in the soil, has forced four of eight crew members to take special medication for altitude sickness. At sea level, the oxygen content of the Earth's atmosphere is 21 percent. The oxygen level now inside Biosphere 2 is 15 percent, which resembles conditions on a 14,000-foot mountain, reports AP. Team physician Roy Walford said the crew won't be in peril until oxygen levels drop below 13.6 percent, which is equivalent to oxygen levels in some high Andean and Himalayan villages. That low point occurred in January, when the Biospherians received pumped-in oxygen. Oxygen loss inside Biosphere 2 is the most recent problem; organizers earlier were said to be sneaking in food.

BARBS

That's our fear, too.

Ecstatic over \$1 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 is running for a spot in the county's brand-new form of government.

Once considered the kiss of death in Grand County politics, being a newcomer has become an asset. Peterson, who runs a computer store, will be joined on the Feb. 9 ballot by a carpenter, a nurse, a sandwich-store owner, a former Park Service biologist and others hoping to ride a wave of anti-incumbency sentiment. They were the top vote-getters in a primary field of 24.

In November, angry residents swept out of power 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 two consecutive terms.

"It's exciting," says Bill Hedden, 42, another candidate. "People were really depressed about politics around here. It was absolute control 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 at odds with the commission's views on local environmental issues.

"All the past commissioners have been long-time residents who were related



Jim Stiles

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 Shrewsbury, 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 Hedden says other issues were the commission's lax 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 boosting of the Book Cliffs Road. The proposed highway would cost taxpayers up to \$100 million (*HCN*, 11/2/92). 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 recreationists. 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 Ulery, 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 heartens Hedden, who was a big winner in the Jan. 5 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.

Moab's political hard-right, still reel-

ing from the blow to its power, now concedes that it must respond to the changing needs of the community. Although many of the favored conservative candidates lost the primary, those who remain tout a moderate line.

"I was opposed to the new form of government," says Dan Holyoak, a third-generation Mormon Moabite running for one of the two at-large seats, "but I decided to run to see if I can make it work. I think I can work with environmentalists even though I may have feelings that are different. All views should be heard."

But Jimmie Walker, a former county commissioner who now serves on the road district board, expects the ideological war to continue. "Environmental obstructionists orchestrated this whole thing. They were scared because they had never been able to do a number on the commissioners in their lock-up of land. That is what this is all about ... We'll need to get four of the seven seats."

Another candidate, Delbert Oliver, 64, promises to hold the old line. "Since I am a long-time resident, I think I have a lot of support in the Mormon community," says Oliver, a rancher and real estate agent. "Without me or others with the same attitude, we could see a lot of anti-development sentiment. I certainly will align myself with others who have been here a long time. I think it will be difficult to operate the county with seven different people."

Whichever faction holds the majority on the new county council, Moab will likely remain a town of lively exchange. The difference is that some of that exchange will now occur in the county's governing body, where it belongs, say reformers. Discussion and debate will replace a monolithic and unaccountable system.

"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 rejects nuclear dump

Utah Gov. Michael Leavitt withdrew 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 (*HCN*, 9/21/91). Last spring by a 2-1 vote, county commissioners accepted \$100,000 from the Department of Energy to study a local monitored retrievable storage facility (MRS). Leavitt said he stepped in because he feared a temporary dump would become permanent if a long-term repository at Yucca Mountain, Nev., failed to open. Leavitt's decision underscores the Department of Energy's inability to find a volunteer county or tribe to house the wastes by 1998. That's the year Congress ordered the agency to relieve 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 Commissioner Jim Baca to allow the killing of predators such as coyotes on state land. The New Mexico Wool 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 "rogue organization that has outlived its usefulness in the West," said Baca, who reportedly is under consideration for a federal job — directing the Bureau of Land Management.

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 patenting fee and no royalties on extracted minerals. Baucus has voted against reform 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 ore in the Blackfoot Valley site at .025 ounces of gold per ton of rock, which is high quality by today's standards. They expect to excavate 208 million tons, making a mile-wide pit producing more than \$1 billion worth of gold.

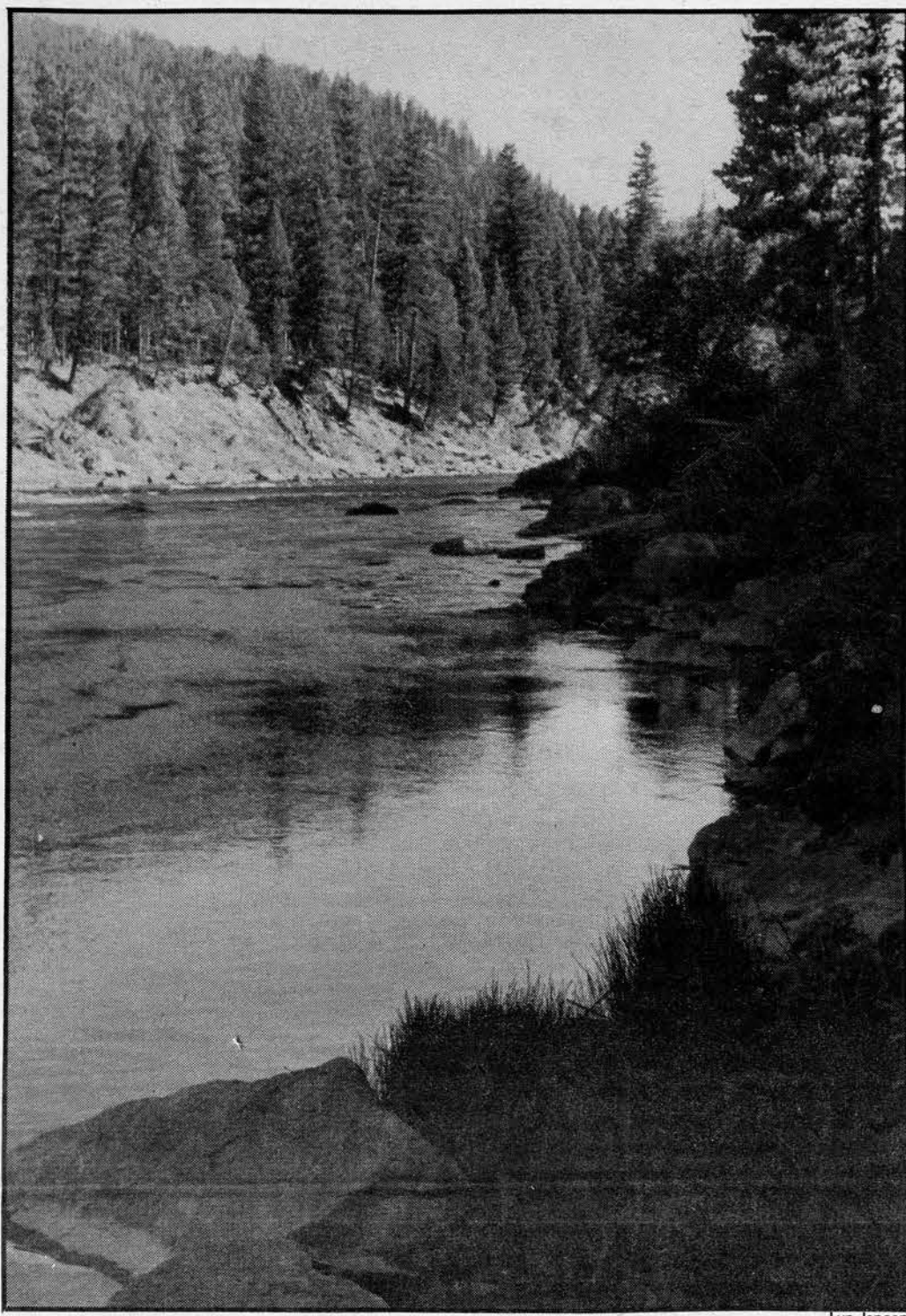
Though the mining pit is slated for state land, it will need adjacent land to process the excavated rock. Sen. Baucus owns that nearby land, as a partner in a family company. According to John Baucus, manager of the company, a lease has been signed with the mining companies that includes royalties on 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 Americans," 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 lots of metals in the system," says Bruce



The Blackfoot River in Montana

Lyn Jensen

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 downstream 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-Pend Oreille Coalition, P.O. Box 7593, Missoula, MT 59807.

— Jack Thorndike

Jack Thorndike 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, Nev., on Jan. 1.

That was the deadline for closing the dump under the Low-Level Radioactive Waste Act of 1980, which mandated that states store their own 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 reactors.

"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 now will go to a U.S. Ecology dump near Hanford, 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 only facility now accepting low-level radioactive waste from around the country is in Barnwell, S.C. Because it

enjoys a virtual monopoly, the Chem-Nuclear facility can now jack up disposal costs, the *Las Vegas Review-Journal* reports. Companies that paid \$60,000 for disposing of a 500-cubic-foot load in Beatty, will have to pay from \$180,000 to \$300,000 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.

— Jon Christensen

HOTLINE

Developers in green clothing

"Our goal is to destroy, to eradicate the environmental movement," says "wise use" advocate Ron Arnold. One way to do that is by sleight of hand — 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, points out Jay Hair, president of the National Wildlife Federation. One "wetlands" member is the International Council of Shopping Centers. The Endangered Species Reform Coalition, he points out, is a lobbying group that wants to gut 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.



Brian Kennedy/Hungry Horse News

Granite Park Chalet

Back to the bushes

Faced with a state order to stop dumping bathroom waste down a mountainside, Glacier Park Superintendent Gil Lusk closed two popular backcountry chalets. Built 80 years ago by the Great Northern Railroad and accessible only by foot or horse, Granite Park Chalet and Sperry Chalet were visited by 200 people a day during the summer season. Then every fall the Park Service dumped the accumulated human waste off nearby cliffs. Concessionaire Lanny Luding told the *Hungry Horse News*, "In 1969 we put a man on the moon, but in 1990 we still can't come to grips with a good crapper." The Park Service said that short summers and an expensive \$2.5 million remodeling job mean the chalets must close for at least two years. Meanwhile, former chalet waitress and manager Kathy Larson-Phillips has begun a letter-writing campaign. She's urging Congress and the Park Service to keep the chalets open and to allocate emergency funds to pay for better bathrooms. "The chalets are on the national register of historic buildings," Larson-Phillips says. "They're national treasures." In any case, says her husband, Wayne Phillips, the waste problem won't go away when the chalets close. "There's still going to be 200 people a day hiking back there," he says. "If they don't have a toilet, they'll use a bush."

HOTLINE

Aluminum 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 leukemia 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 leukemia 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 their shifts," Milham says. Back then he found



Montana Chamber of Commerce

Wild horse roundup in Montana

protect stream flows through special-use permits. According to Darrell Knuffke of The Wilderness Society, another permit holder on the Arapaho-Roosevelt forest recently agreed to the kind of stream-flow requirements the critics refused. Eleanor

Lawrence R. Leavitt agreed. "The forces of nature had caused a clear and imminent economic crisis for the Duckwater Shoshones," he wrote. "Their cattle could not compete with the wild horses for what little sustenance the land was able to provide."

Because the BLM was unable or unwilling to conduct a roundup in the area at the time, the judge ruled that the Shoshones were justified in taking the law into their own hands.

Turbulent Mt. Graham

The controversial telescope project on Arizona's Mt. Graham faces a strong new adversary: wind. According to University of Arizona astronomer Neville Woolf, the third and final telescope must be built 236 feet high to get above air turbulence and offer optimal visual clarity.

"That's not true," says Steve Emerine, a public information officer for the University of Arizona, the major sponsor of the observatory. Emerine says all sites have been rated "good or excellent" despite some wind problems. "We don't have any

intention of building a 236-foot tower any place," he says. Nonetheless, Emerine says the university intends to move the telescope to another site on Mt. Graham that is calmer and infringes less on the habitat of the endangered Mt. Graham red squirrel. Environmentalists oppose the move. "It's a bait and switch that's ripping off the public and making fools of (project) supporters," charges the Audubon Society's Robin Silver. He says the new site would fragment a major habitat area for the squirrel. The Sierra Club Legal Defense Fund, whose past lawsuits against the project are now under appeal, says it will file a new lawsuit if the Forest Service allows the University of Arizona to build on the alternate site (HCN, 9/9/91).

Cheeky protesters cleared

Three Earth First! members charged with "mooning" Forest Service law officers were acquitted in federal court in Idaho Jan. 14. U.S. District Judge William F. Nielsen said the government failed to prove that the mooners threatened motorists when they dropped their pants in front of law enforcement officers, reports AP. The incident occurred last August during a demonstration against the construction of logging roads in the Cove and Mallard roadless areas in northeastern Idaho near Dixie (see p. 16). The trial of Vincent Collins, Erik Ryberg, and Allison Slater, all of Missoula, Mont., centered on whether the three posed a hazard by exposing themselves too close to a blind curve. Another protester's photograph of the mooning used in the trial showed clearly that those charged were not in the road. Judge Nielsen ruled that the mooning was "stupid and ill-advised," but said the government didn't prove the demonstration made driving unsafe.

OFF THE WALL



LOGGERS HAVE LEFT A FEW TREES IN THIS NATIONAL FOREST TO BID FAREWELL TO THE ENVIRONMENTAL PRESIDENT

Bruce Beattie

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 wield clout 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 extort water from the municipalities for renewing the permits." In October, Madigan directed the regional forester to re-issue 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 16 years have upheld the Forest Service's authority to

Towns, a Forest Service lands director, said, "Our position is to issue long-term permits that will comply with the secretary's policy and law." Environmentalists are expected to pressure the Clinton administration to overturn the decision.

Wild horse wranglers win

A U.S. District Court judge in January found four Western Shoshone defendants not guilty on charges of "using a helicopter to hunt with the intent to capture or kill wild horses." The charges stemmed from an August 1990 roundup of 77 wild horses near the Duckwater Indian Reservation in Nevada on public land also grazed by reservation cattle. The defendants readily admitted the facts in the case. According to the Western Shoshone National Council, headed by defendant Raymond Yowell, the mustangs were overgrazing the range and the BLM refused to reduce the herd. So the council hired a helicopter and wranglers to round up the horses, which were then shipped to Texas for slaughter. Capturing or killing wild horses is illegal under the Wild Free-Roaming Horse and Burro Act. The wranglers hired for the roundup pleaded guilty to the charges last year. But the Shoshone defendants contended that their "actions were justified under the legal doctrine of necessity." U.S. Magistrate Judge

OFF THE WALL

Pick the greatest "Safety Hazard" in our National Forests



A ☐



B ☐



... or C ☐

Adam Duerk



ADVOCACY GROUPS

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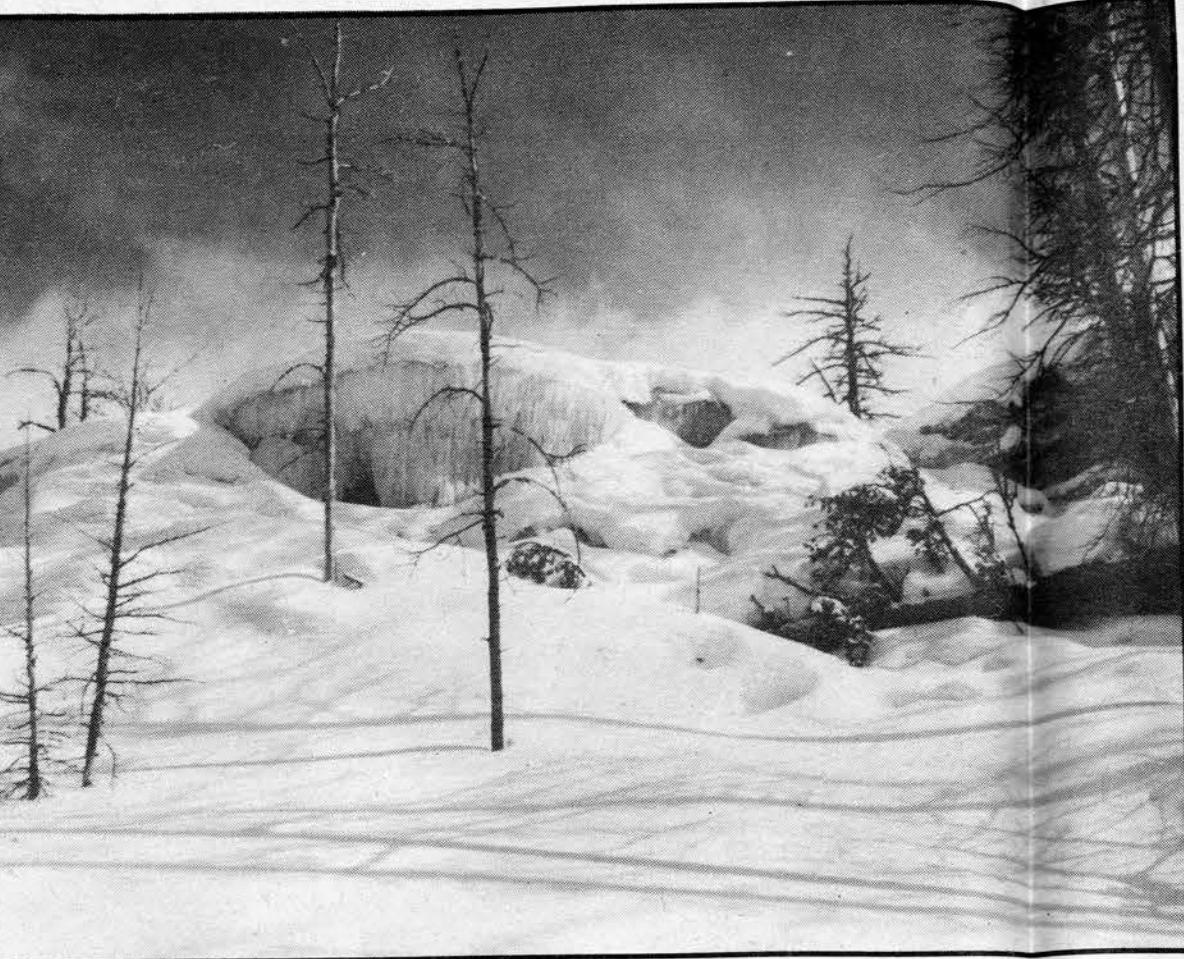
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Chaco

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Branch, lean

as a bone

winter conspires you

into the sparest

mapping of shadow.

Dana L. McCrossin

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Ann and Myron Sutton

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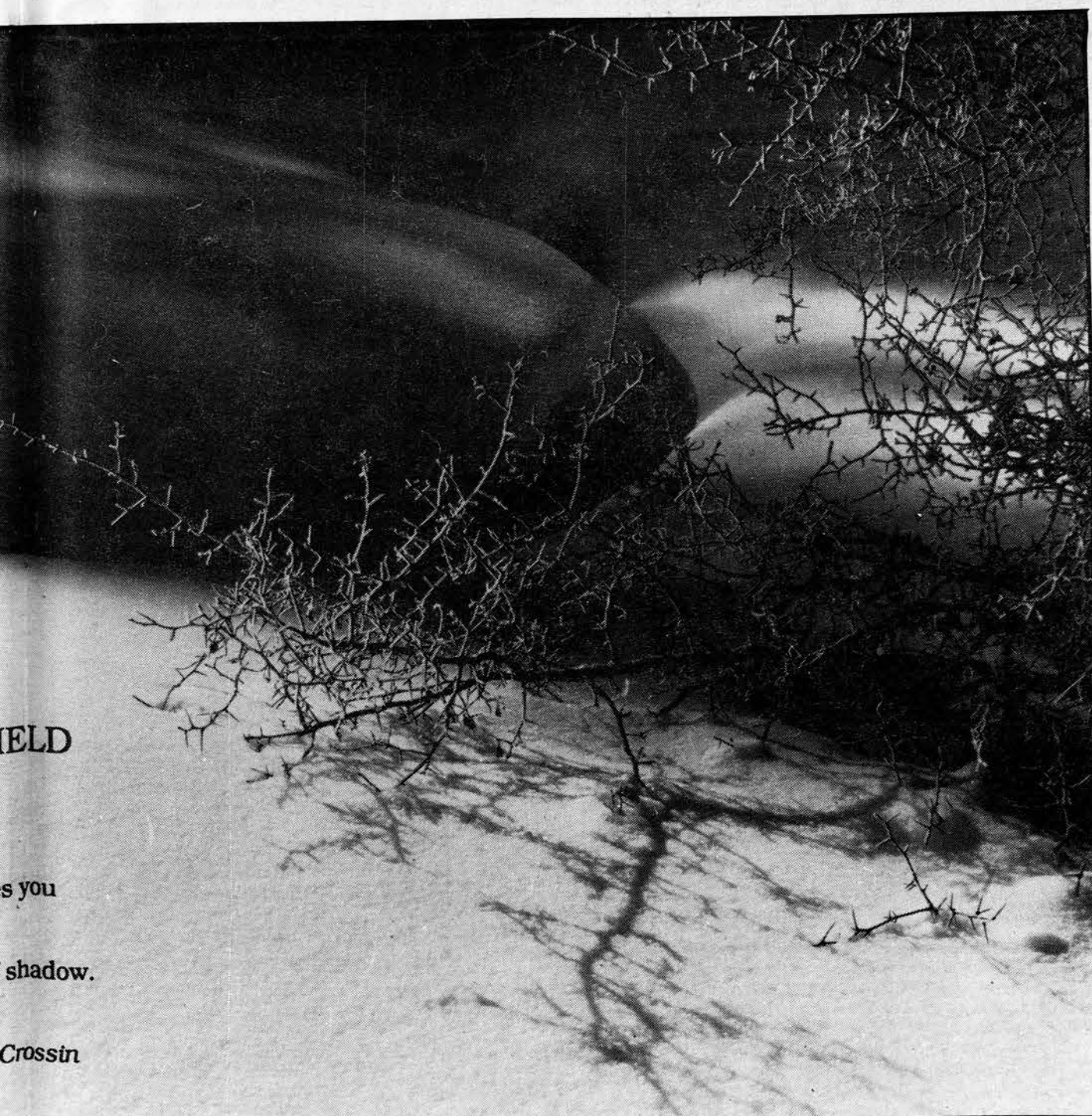
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Taking the Fifth ...

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nificance. At the center of the takings debate is the question of how much police power the state may use in securing public resources.

Fueling the debate is a recent spate of government regulations, particularly for environmental protection. In 1989, the administration expanded its definition of wetlands protected under the 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 communities and corporations faced their greatest challenge to logging-on-demand. In addition, exploding populations in some rural areas like Jackson Hole, Wyo., and Park City, Utah, have created a demand for stronger planning and zoning. Western developers like Brandt Child find themselves caught between two frontiers.

As attorney Ragsdale laments, "Now every county in Wyoming 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 protecting the development rights of property owners has increased exponentially, according to Ann Corcoran 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 America, Fairness to Land Owners Committee and Communities for a Great Oregon.

"As soon as we opened the doors (last year) we had an onslaught," says Nancie Marzulla, 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 push to deregulate industry fit nicely into the demands of people like Brandt and Venice Child. For if government had to pay every landowner prohibited from building a hotel or clearing a forest, regulating private property would be impossible.

John Echeverria, an Audubon Society attorney fighting the property rights movement, points to what Charles Fried, the U.S. solicitor general from 1985 to 1989, wrote in a recent memoir: "Attorney General Meese and his young advisors ... had a specific, aggressive, and, it seemed to me, quite radical project in mind: to use the takings clause of the Fifth Amendment as a severe brake upon federal and state regulation of business and property ... if the government labored under so severe an obligation there would be, to say the least, much less regulation."

To this end, the Reagan administration in 1988 issued an executive order

requiring all federal agencies to draft guidelines in order to assess the "takings implications" of new regulations. Environmentalists and some legal scholars said the cumbersome requirement gave landowners legal protection far beyond what the constitution grants.

"(The executive order) may well be the innovation that finally paralyzes the federal government," said one critic, Jim McGelfish, a senior attorney at the Environmental Law Institute.

Ideological underpinnings of these policies can be traced to Richard Epstein, a libertarian legal scholar at the University of Chicago. His seminal 1985 treatise, *Takings: Private Property and the Power of Eminent Domain*, claimed that even taxation is an unconstitutional taking of property.

But the greatest legacy of the pro-takings team will be the federal justices appointed by Reagan and Bush. According to Audubon's Echeverria, the two presidents appointed two-thirds of all federal judges, including 12 of 15 on the U.S. Court of Federal Claims, where many takings cases are heard. The terms of most of the court's justices will not expire until 1997.

In the biggest judgment against the

69 last year and 52 the year before. Of the pending cases, between 20 and 30 involve wetlands, says Robert Meltz, an attorney-advisor with the Congressional Research Service.

State legislatures have entered the Fifth Amendment fray as well. Last year, Arizona, Washington and Delaware all passed private property protection laws, based largely on Reagan's executive order and geared toward state regulatory agencies (*HCN*, 8/23/92). One has been challenged: If a petition drive launched

if they let down their vigilance for too long. How did this happen? Where were the counterattacks?

"Maybe we should have lobbied for claims courts appointments," reflects Tom Lustig of the National Wildlife Federation in Boulder. "It just wasn't a priority."

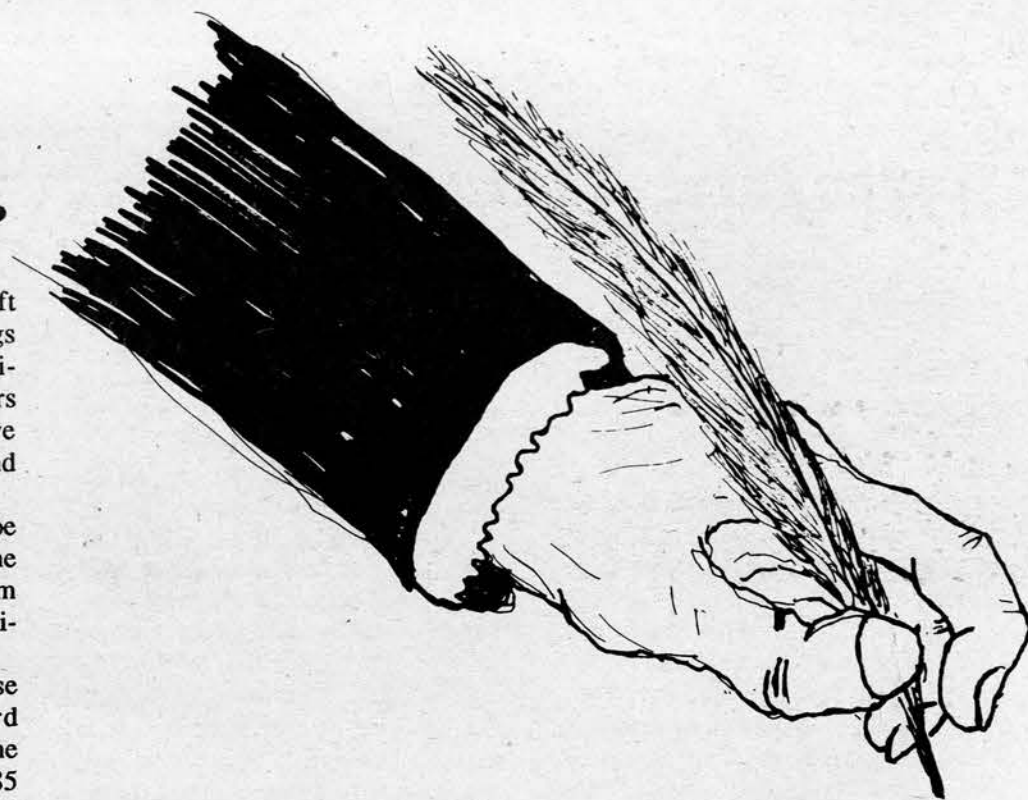
Says Audubon's Echeverria, "(The private property movement) has been a very coherent and well-organized conservative onslaught. It has academics, sophisticated legal work and the wise-use grass-roots component. The conservation community has not been watching or focusing on it ... The environmental community, in part because of its great success, has not done a good job to make its message clear to the majority of Americans."

Echeverria may be right: The compelling stories of small landowners, subject to rules that seem neither fair nor just, drive the movement that seeks to dismantle otherwise sensible regulations.

Tom and Doris Dodd are a case in point. In 1983, they bought a secluded 40-acre wooded lot near Hood River, Ore., for their future retirement. In 1988, after Tom Dodd had left his job in Texas and filed for a building permit, they found out the land had been "re-zoned" as primary forest three years earlier. No one had bothered to tell them that homes would not be allowed in the new zone because of fire hazard. The state told them they could, however, cut the trees down and still receive some value from the land.

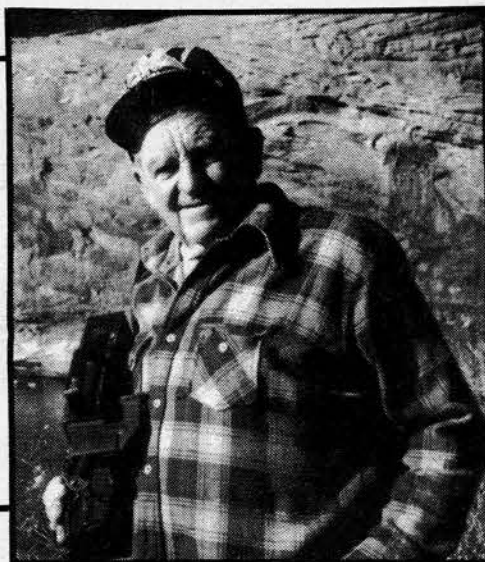
"I can't build a house but I can cut the trees down?" says a flabbergasted Tom Dodd, 61. He says if he hired a tim-

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"We can't even walk across the land."

Utah landowner
Brandt Child



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 preserves in Wyoming. The court has also awarded large judgments to developers prevented from filling in wetlands.

This year, between 120 and 150 takings cases sit before the court, up from

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.

With the sudden and potentially devastating emergence of the takings clause, some environmentalists wonder

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 (*HCN*, 2/24/92).

In the case of the desert tortoise, which gained federal protection in 1989, Budd hopes either to 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 hurt tortoises," 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 Woolsey, of the BLM's Carson City office, says the agency based its plan on the opinion of U.S. Fish and Wildlife Service biologists whose data show that when cattle graze, tortoises suffer. Livestock and tortoises can be compatible, he says, "but only under the restrictions that 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 Marlee Robinson says the U.S. Fish and Wildlife Service study is inconclusive. "They only said the tortoise may be damaged." A 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 a U.S. federal claims court.

If that 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 and still wouldn't have a place to live. Dodd appealed to the county for a variance or a land exchange. He lost.

The Pacific Legal Foundation, based in Sacramento, Calif., agreed to provide free legal assistance to the Dodds. They sued the county in Oregon lower court, and lost. They appealed their case before the state appeals court, and lost.

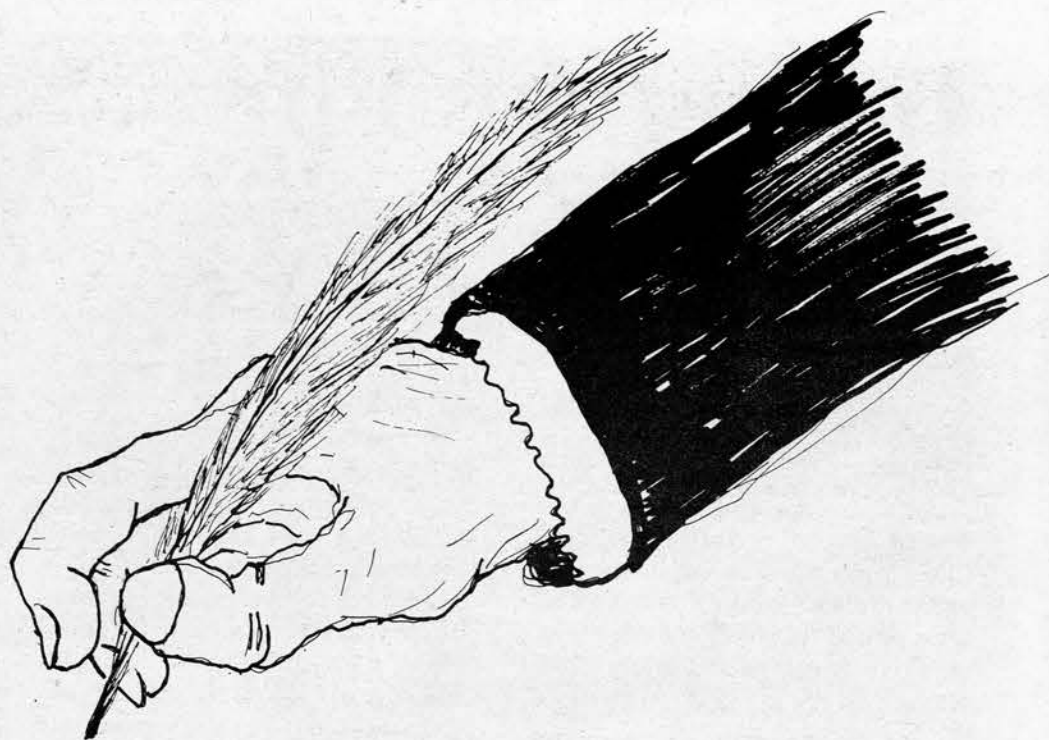
"Now we have gray hair," says Tom Dodd. "I put in 140 missions in North Vietnam to defend the Constitution of the United States, and now they've ripped my life apart." Recently, the state Supreme Court agreed to hear their case. Because the property has not been rendered totally without value, there are few successful precedents. But such a case, known as a "partial taking," is ripe for the U.S. Supreme Court, says attorney James Burling.

Would the Rehnquist court award the Dodds compensation? Until recently, there was no clear indication. The legal history of takings is a quagmire of rulings. While compensation must always be granted in cases of a physical taking by the government, such as a right of

says Joseph Sax, a legal scholar at the University of California at Berkeley. In fact, laws based on preserving species or ecosystems or natural processes sit directly at odds with laws that protect, and even encourage, property boundaries, ownership and development.

These forces collided in the U.S. Supreme Court last summer. In 1986, David Lucas bought two lots for nearly \$1 million on a barrier island off the coast of South Carolina. In 1988, the state passed the Beachfront Management Act, designed to curb development in ecologically sensitive areas and in areas that might pose a storm hazard. Lucas, prohibited from building, claimed he suffered a total loss and was entitled to compensation. Lucas won in trial court, but the state Supreme Court reversed the decision, ruling that the state did not have to pay because it had exercised "legitimate police power" in protecting public safety.

In a split decision, the U.S. Supreme Court judged that the South Carolina act was *not* a legitimate exercise of power. Writing for the majority, Justice Antonin Scalia said that any total depletion of value should be compensated. The only reason Lucas shouldn't receive compen-



the case's philosophical implications, lamented Scalia's rejection of the state's authority to protect natural systems. "(The decision) correctly perceives the ecological worldview as presenting a fundamental challenge to established property rights; and it wrongly rejects that challenge. That is the significance of the *Lucas* decision."

Still rejoicing, an army of property rights attorneys, including many in the West, are rolling up their sleeves. "A lot

to be hopeful. They say a new administration 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 he chooses, replace the chief justice of the U.S. Court of Federal Claims.

In Congress, one of the strongest property rights supporters, Republican Sen. Steve Symms of Idaho, chose not to run in 1992. Although Idaho Sen. Larry Craig, R, and others will persevere, observers say it is unlikely any takings legislation will pass muster in the new Congress. More states, however, are likely to follow Arizona in the pursuit of property rights bills. Bills were attempted in 27 states last year; three were passed.

Legal experts like Joe Sax and John Echeverria envision a future in which land is treated not as individual castles behind a moat, 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 backlash) is sort of a burp," he says, "an anachronistic movement appealing to the myth of the Boone frontier, which is not what we have anymore. There's no question we are losing some ground, but a more balanced view will prevail eventually."

Meanwhile, in Kanab, Utah, Brandt 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 disgruntled.

For a list of property rights groups, contact the *Land Rights Letter*, P.O. Box 568, Sharpsburg, MD 21782 (301/797-7455).

For more information on pending legislation, contact the National Wildlife Federation, 1400 16th Street NW, Washington, DC 20036 (202/797-6853).

The American Planning Association published a series of analyses of the *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 News*. She now free-lances from Steamboat Springs, Colorado.



"I can't build a house,
but I can cut
the trees down?"

Tom Dodd

way for a highway, in cases of regulatory takings, the Supreme Court has ruled on a case-by-case basis, though generally in favor of the government.

The Supreme Court has long recognized the "tough luck" factor of legitimate regulation. It would be absurd, for example, to compensate factory owners for the costs of complying with minimum wage laws, or landlords who must install fire alarms. The court has also accepted the police power of government to prevent property owners from invading the rights of other property owners. For example, one landowner may not fill in a lake that would flood her neighbors' land.

While some government actions may adversely affect private property, some actions increase its value. Property owners must always assume some risk. But the court has an obligation also to protect landowners from undue burdens imposed by the state. The question is, where do new regulations for the sake of nature fit into existing standards?

With the crowding of rural landscapes and the emergence of conservation biology and policy, different sets of rights inevitably bump into each other,

sation is if he had not had the right to build in the first place — if building on the barrier island was prohibited prior to 1986 in "background nuisance laws" (which is unlikely). Scalia then remanded 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 discouraged. "Justice 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.

Audubon's Echeverria called it a "radical shift" in takings laws. He also bemoaned the lack of guidance from the Court as to how it might view future cases. The *Lucas* decision would only increase case-by-case litigation because of its emphasis on "background principles" specific to each case. Echeverria firmly maintains that compensation under the Fifth Amendment should be confined to "rare and extreme" situations.

Professor Sax, in a recent paper on

of what has energized people is the *Lucas* case," says Steven Quarles, a private 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 Haglund and Kirtley involves seven large landowners within the Columbia River Gorge National Recreation Area. Recent open-space regulations prevent landowners there from logging their land. The same firm is representing 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 right when it prohibited the company from converting to a new industry because of re-zoning.

Many predict the Endangered Species Act will be the next great frontier of takings litigation. "The problem with the Endangered Species Act is that there is no compromise written into the law," says Quarles. "That leaves regulators a very stark choice, and it's not hard to find a case where property value gets wiped out."

Environmentalists still have reason

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UNIQUE PROPERTY FOR SALE — The old Cokedale Boardinghouse is for sale. Located in the National Historic District of Cokedale (7 miles west of Trinidad) at an elevation of 6,500 ft., this lovely old house has 10 bedrooms, 5 complete bathrooms, an immense living-dining room, spacious country kitchen, 2 upstairs parlors, 5 woodstoves and a greenhouse. An established apple orchard and fully developed organic gardening terraces complete the property. Located one mile from Trinidad Lake State Recreation Area and 40 miles from Cuchara Valley Resort, this house has enormous potential as a Bed & Breakfast, Country Inn or multi-family lodge. Pictures available upon request. \$69,000. Bill or Genie Durland, P.O. Box 308, Cokedale, CO 81032, 719/846-7480.

ENVIRONMENTAL FIELD REPRESENTATIVE

Mineral Policy Center, a national non-profit environmental organization, seeks a Field Representative or "Circuit Rider" for campaign to control environmental damage from hardrock mining/oil development. The position is a technical expert and community organizer working with communities concerned about mining impacts.

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Send cover letter, complete résumé, "short" writing sample, salary requirement to: C/R Search, Mineral Policy Center, 1325 Massachusetts Ave., N.W., Suite 550, Washington, D.C. 20005. Closing date: Feb. 23. No calls, please.

Mineral Policy Center is an Equal Opportunity Employer that supports progressive hiring practices. (1x2b)

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ORGANIZER. Public Employees for Environmental Responsibility. Description: Recruit membership and facilitate state and federal employee participation nationwide. Plan and coordinate campaigns that advance the objectives of PEER. Promote activism amongst government employees. Salary: Negotiable, depending on experience, plus benefits. Extensive experience in a state or federal natural resource agency or an environmental protection agency. Grass-roots organizing experience is helpful. Must have a background or be capable of learning to work with media as a media spokesman. Must be prepared to travel extensively. To apply, send letter of interest, résumé, writing sample and references to PEER Job Opening, Box 428, Eugene, OR 97440. Deadline: March 15, 1993. (1x2b)

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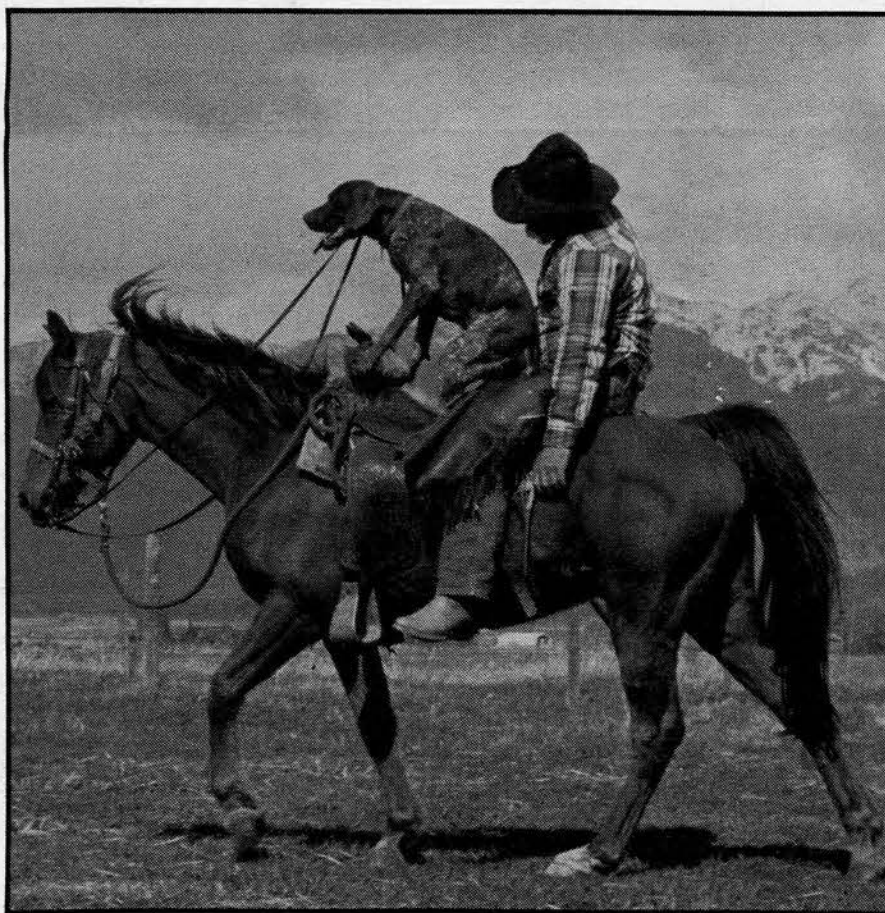
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Vol. 25, No. 2

BULLETIN BOARD

FLAWED IN OREGON

The Wilderness Society has blasted the Bureau of Land Management's six proposed management plans for the 2.5 million acres it administers in western Oregon. George Frampton, president of The Wilderness Society, said what the agency hopes to do is based "on seriously flawed assumptions." The 43-page analysis focuses on ecosystem management, wildlife species at risk, fish habitat, timber supply and economic impacts. It particularly criticizes the BLM's attempt to maintain biological diversity through a land-use classification scheme. The scheme assumes old-growth conditions can be created through timber management, and it allows for the cutting of 44,000 acres of old growth in the next 10 years. The BLM's plans are also attacked for allowing logging on highly eroded lands and building 1,000 more miles of logging roads. In addition, the report finds economic assumptions of the draft plans questionable since the BLM chose 1984-1988 as its baseline, a time of historically high logging levels. Nineteen recommendations conclude the report to "help restore the integrity of a badly degraded ecosystem."

Forests in Distress: A Critique of the Bureau of Land Management's Draft Plans for Western Oregon is free from The Wilderness Society, Oregon Office, 610 SW Alder, Suite 915, Portland, OR 97205 (503/248-0452).

— John Rosapepe

THE ROSETTA BROCHURE

Reading a government document is often like deciphering a foreign language. *Terms of Environment: Glossary, 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 "oversized regulated medical waste" is waste too large for plastic bags or standard containers, and that "cementitious" refers to densely packed and nonfibrous friable materials. More useful are abbreviations and acronyms that pick through the agency's alphabet soup. For a copy, write Editorial Services Division, Office of Communications, Education and Public Affairs, A-107, EPA, Washington, DC 20460. Suggestions for future editions are also welcome, we're told.

HIGH ON HEMP

Cannabis sativa, or marijuana, 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 reprint of the underground 1985 classic, *The Emperor Wears No Clothes*, author and hemp crusader Jack Herer argues that *Cannabis* 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 acres of timber.

Hemp could also replace about 70 percent of all wood-pulp paper, chemical feedstocks in plastic, and substitute for petrochemicals in carpets, linens, paint, lubricating oil, animal feed and even electrical production, he says. Herer traces the ban on hemp to what he calls a 1930s-era conspiracy by the DuPont Corporation, which wanted to make way for its newly patented plastics. What Herer doesn't explain is how commercial uses of hemp can be legalized without legalizing marijuana. As a Reagan-era USDA official comments in a nervous interview with Herer, even if hemp could save the world, it will never happen until they find a way to grow it without "that narcotic top."

HEMP/Queen of Clubs Publishing, 5632 Van Nuys Blvd., Van Nuys, CA 91401. Oversize paper: \$14.95. 182 pages, with maps, illustrations and scores of reprints.

— Steve Hinchman

BRING BACK THE WEST

The Western Literature Association invites papers, readings and other presentations on "Reimagining the West" at its 28th annual meeting in Wichita, Kan., Oct. 7-9, 1993. Other topics suggested include the Great Plains, literature of Kansas, teaching Western literature, and Frederick Jackson Turner and his closing of the 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 Quantic, president, Western Literature Association, English Department, Wichita State University, Wichita, KS 67260-0014 (316/689-3130 or 316/788-1192).



Allen Messick/West Yellowstone News

HOT TOPIC

Ten years after its first major wilderness fire conference, the University of Montana will again host a three-day symposium focusing on fire in parks and wilderness. The March 30-April 1 get-together features fire managers, educators and researchers from around the nation speaking on everything from the virtues of prescribed fire to restoration of burned lands. Rep. Bruce Vento, D-Minn., who chairs the House Subcommittee on Parks and Public Lands, is the keynote speaker. A series of post-symposium tours will visit different burned areas around the state to give those interested a first-hand look and a chance to talk with area fire managers. For more information, write #1970 Conferences and Institutes, Center for Continuing Education, The University of Montana, Missoula, MT 59812 (406/243-4623).

A FRANK DISCUSSION

A symposium on "Visions of the Future" for the Frank Church - 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 conservation and special interest organizations. A group of diverse sponsors includes Grass Roots for Multiple Use, Wilderness Watch, Idaho Fish and Game, the Idaho Outfitters and Guides Association and The Wilderness Society. For more information call Ken Wotring, U.S. Forest Service Wilderness Coordinator for the FC-RONR Wilderness (208/756-5131), or Ed Krumpke, head of the Wilderness Research Center at the University of Idaho (208/885-7428), 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 Santa 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 Containment Coalition (SACC), a multi-cultural local group, opposes proposed development into the relatively untouched Tesuque drainage. The group says development will compromise soil and water quality, as well as disrupt a number of sacred Tesuque Pueblo sites. SACC also predicts increased pollution and overcrowding and calls for a shuttle transport system from Santa 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 in spring 1993. But environmentalists are worried because Sno-Engineering Inc., the company hired by the Forest Service to complete 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 1101, Santa Fe, NM 87504, or Lori Osterstock, District Ranger, Española Ranger District, P.O. Box R, Española, NM 87532.

DEAD AND DYING TREES

"On national forest lands, dead or dying trees cover an area the size of New Jersey, Delaware and Maryland. These brown, dead and fire-charred acres all need to be rehabilitated." Thus begins *National Forest Health: Nature Won't Save Our Forests*, a report issued in December by the National Forest Products Industry, a lobbying group. It defines forest rehabilitation, at least in the near future, as cutting more trees, and it blames Congress for hastening the decline of publicly owned forests by sharply curtailing logging over the past three years. Although Congress approved the cutting of a record 2 billion board-feet 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, allude to other choices that exist besides logging, and they note the need for fire and diverse tree species. They also foresee a day when their timber industry won't "receive the amount of timber it once did off of the national forests." But they insist only salvage logging can reinvigorate the national forests; those who disagree are "sadly misinformed."

National Forest Products Association, 1250 Connecticut Ave., NW, Washington, D.C. 20036. Paper: 30 pages, graphs.

— Paul Larmer



ESSAY

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 Suquamish 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 no ordinary landscape.

In 1991, Puget Sound Power and Light Company applied to the Federal Energy Regulatory Commission for a 40-year relicense 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, Snoqualmie 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 Mountaineers, 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 religions, economics, 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 haunting 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 ... addi-

tions of museums, turbines and dynamiting of its rock face are intrusive 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."

Jon Magnuson, Lutheran campus pastor at the University of Washington in Seattle, can be reached at 206/685-8196.



Snoqualmie Valley Historical Society

Snoqualmie Falls in the early 20th century

REPORTER'S NOTEBOOK

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 up to 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.

Intrigued 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 in the middle of an unprotected wildlife corridor wedged between three designated wildernesses. Though the town now boasts only 25 residents, it once was home to 5,000 gold miners, five tent 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.

"It's mostly older people who think their campers will get monkeywrenched or something," Judy Willis said. Jim Miller characterized Earth First! people this way: "(They) use the phone, buy some beer and they're all real polite."

As 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



Earth First! tree-sitter in Idaho's Nez Perce National Forest

Earth First!

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 Forester John Mumma sent a clear message to forest managers throughout the hierarchy: Get the cut out or get transferred. With most of the district's timber base 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 in 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 Krielick 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 beers 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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