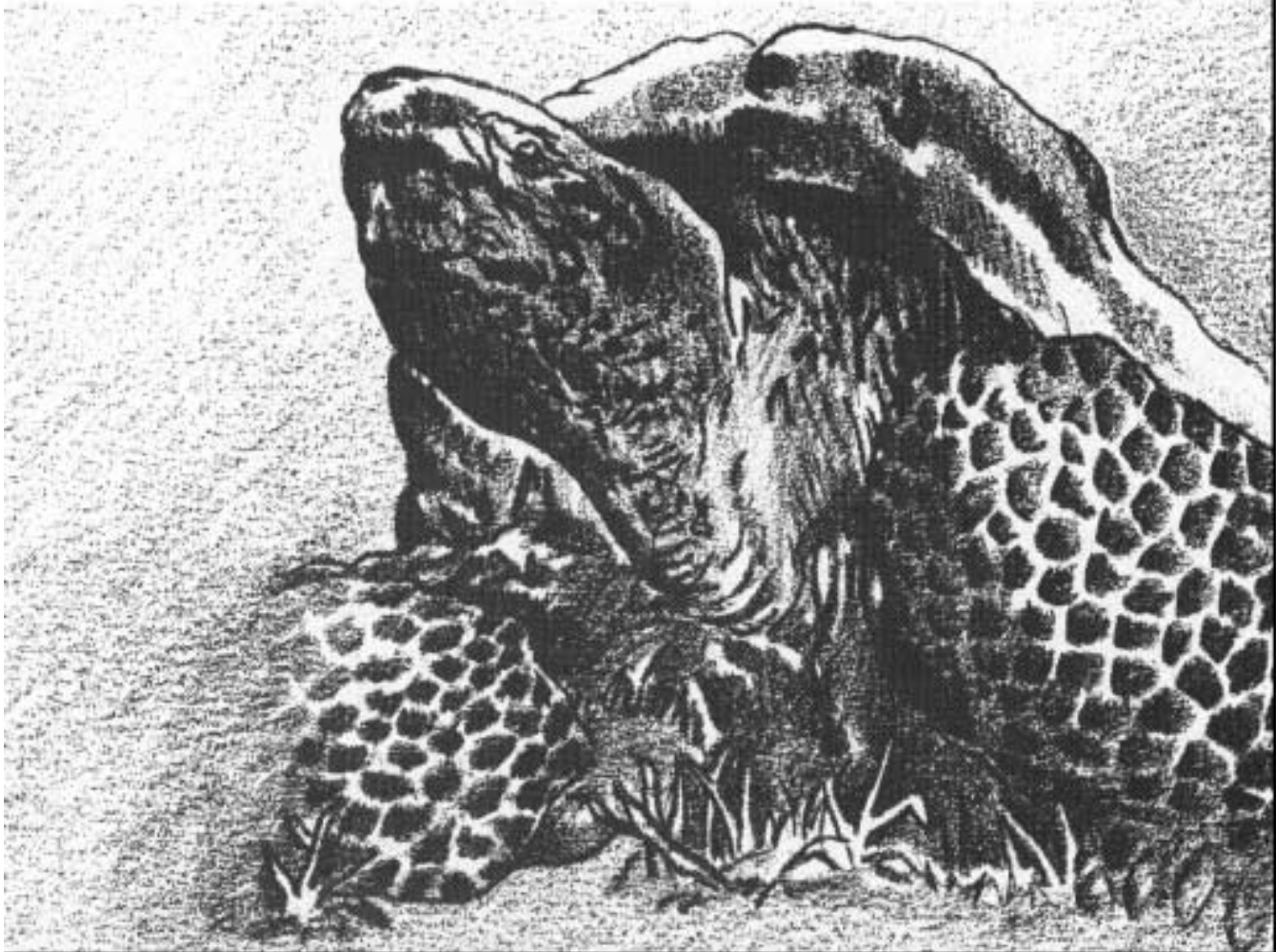


CREATE & DESTROY

*Though noble in its goals, the Endangered Species Act
has become an active threat to the social and
economic well-being of Western ranchers.*

by Barbara LaBarbara



Ranchers in southern Nevada have been stopped from using their federal land allotments six months of the year . . . Cattle grazing "may" be detrimental to the Desert Tortoise . . . Catron County, New Mexico ranchers were told to remove their cattle, and miners to close their mines. Their activities "may" adversely affect 14,000 threatened elk in the area. . . . The timber industry in Catron County watched as their activities were reduced by 60 percent in the name of the Mexican Spotted Owl. Catron County revenues plummeted from \$9.3 million to \$3.5 million.

The federal government and their environmental friends can halt your operation. They can take your property. They do it under the guise of endangered species, wetlands and water quality control.

The law says you cannot adversely modify endangered species habitat. If grazing, etc., is determined to do that and you, knowingly or unknowingly, proceed to graze the property, you can be arrested for a criminal violation.

For his own protection, Dave Fisher, a rancher from Barstow, Calif., strives to keep abreast of new government regulations. He spends two days a week serving on 11 different committees such as the Bureau of Land Management (BLM) California District Grazing Board. Fishers ranching operation has been stopped from running stocker calves or operating in the manner it has for more than a century. The government will not allow him to exercise his ephemeral (seasonal) rights because of the Desert Protection Bill. His perennial preference (perpetual) rights allow him to barely maintain his base cow herd.

Fisher believes the government's tactics are environmental extortion. Karen Budd, an attorney from Wyoming, agrees. "This is true harassment of the worst kind," Budd says. "They are using the Endangered Species Act to eliminate use of federal lands, not to protect the species. We are talking about eliminating an entire ranching culture in southern Nevada."

Budd is representing 32 ranchers in southern Nevada who are appealing a BLM decision which claims livestock grazing is detrimental to the Desert Tor-

toise. The decision states ranchers must remove livestock from grazing areas between February 15 and June 1- the best grazing time for the desert.

Scientific data supports the ranchers. Tortoise survive on cow dung and eat the lower part of plants while cattle eat the upper part. However, if the decision stands, many ranchers will go out of business.

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-Karen Budd

The little property ranchers own becomes worthless without federal grazing lands. They will not be compensated for the loss of their water rights or improvements. The ranch is required to own the water on federal land allotments. If ranchers remove their cattle from federal land, they will not be able to make beneficial use of the water. After five years of non-use, the water rights revert to the government.

"Historically, cattle have been grazing in that area for 200 years," says Budd. "If cattle were destroying tortoise habitat, they would have been gone by now."

The Private Property Act (PPA) which supports the Fifth Amendment says you have to be paid for a taking,

However, ranchers in southern Nevada do not want to be paid. They want to be left alone to raise their cattle. Yet the PPA is extremely important.

Kathleen Hartnett, director of private lands, National Cattlemen's Association, says NCA will encourage the reintroduction of the PPA in 103rd Congress. It passed the Senate in the last session but the House failed to act on it. PPA forces agencies to prepare a written, three-part analysis of potential impact whenever they propose an action or a regulation. Currently they don't do that.

A recent Supreme Court decision regarding property rights gives hope to farmers and ranchers. Justice Antonin Scalia wrote: "When the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking."

The law states when a taking occurs, no questions are asked, the landowner is compensated. When a partial taking occurs, questions have to be asked. Some of the questions set down by the Supreme Court could become guidelines — Has the land use in question been there a long time? Does the land use have basic social importance in the community? Overall, it states the government has to be careful in denying you use of any part of your property.

The Audubon Society sees a different picture. A recent article in its magazine contends there are "harmful" secondary activities taking place in 63 percent of the nation's 472 wildlife refuges (89 million acres). Those "harmful" activities include mining, military exercises, powerboating, cattle grazing, farming, logging and hunting. One refuge alone reported 20 different "harmful" activities ranging from fishing to jet-skiing.

It appears the Clinton Administration, under the guidance of Vice President Gore, will be leaning toward the view of the Audubon Society.

Bruce Babbit, Clinton's appointed Secretary of Interior, is not likely to share cattlemen's views on the importance of private property rights. He was chairman of the League of Conservation Voters who opposed the PPA on the grounds it was an anti-environmental bill.

The Department of the Interior houses the BLM and National Wildlife Refuge agencies. The Forest Service, which also deals with private property rights, is an agency of the Department of Agriculture. Long before we saw a changing administration, we saw a change in the type of people entering the natural resources arena.

Today we are dealing with a new generation of people who did not grow up in rural areas or with responsibility for natural resources. The government, in par-

ticular, has hired people who lack experience in managing resources. These people have degrees and are textbook schooled on how to manage a living, growing, changing world.

Robert J. Taylor, Director of Wildlife Ecology, California Forestry Association, recently did a case study on Barriers to Effective Regulation of Growth in the West. It is a scientist's view of the listing process and other features of the Federal Endangered Species Act.

"The reasons for this sorry state of affairs are several," wrote Taylor. "Many (endangered species) list petitions are initiated by biologists in the employ of state and federal agencies who lack adequate training for independent research. The vast majority of biologists who originate listing proposals are not top-flight scientists.

"The other major source of listing petitions is second-class universities. Second-string biologists at these institutions find it easy to carve out a secure re-

Case Study: Catron County, N.M.

"Federal agencies were having a significant impact on our economy," says Catron County Manager Danny Fryar. "County revenues dropped from \$9.3 million to \$3.5 million. They were putting our county out of business. Until it hit our timber industry nobody paid much attention. It was then we developed a land planning committee to find out if we had any rights."

The committee consisted of local citizens, all volunteers, from different industries in Catron County. There were farmers, ranchers, loggers, miners and business people.

They found the federal government cannot take local control. It is mandated to protect the citizens through custom, culture and economic stability. That became Catron County's weapon.

The county developed a 250-page Comprehensive Land Plan. In such a plan custom and culture must be defined. The committee did surveys throughout the county. They interviewed "old timers" and had more than a century of historical data.

Economic stability was threatened by the Mexican Spotted Owl, 14,000 elk, a Willow Flycatcher bird, and most recently the Grass Hawk and two species of minnows. Of course there are any number of endangered plants.

Only after the county's one sawmill was forced to close, putting 28 percent of the county's working people out of work, did they discover past logging practices had increased spotted owl populations.

With the help of Western New Mexico University, the committee verified how many animal units per month (AUM) of cattle were needed, how many board feet of lumber had to be sawed, and how many ounces of gold had to be mined for economic stability. It became clear cattle, elk, timber and mining were all important to the economy.



JAMES L. FLY PHOTO

the economy.

It has taken a year to implement the Land Plan which requires the federal government and environmentalists to work jointly with the county.

"We are standing up to and stopping federal abuse by implementing federal law," says James Catron, attorney for three county governments in New Mexico. "We do not anticipate any lawsuits over this. The law is on our side and they know it."

Catron County's Comprehensive Land Plan has become a model for other counties that are watching their revenues disappear.

search niche by becoming the world's expert . . . on a single species. Some wildlife programs are made up primarily of such scientists.

"Couple this with the failure of the Endangered Species Act to require rigorous peer review and you have a recipe for error."

Taylor believes the problems with the Endangered Species Act cannot be managed without first understanding environmental biologists. With few exceptions they are serious, conscientious, shy people, the kind that entered convents five hundred years ago, went on missions to Africa at the turn of the century, and joined the Peace Corps during the 1960s. Today, such people become environmental biologists.

In his study, Taylor stated these people are idealists in the strict sense; the world of abstractions comes easier and is more comfortable to them than the world of people. They tend to have been spoiled as children and believe their values should be society's values.

In the 1960s higher education changed for the worse in two ways, Taylor says: standards for scientific training relaxed, particularly in biology, and political correctness became substitutable for rigorous thinking. Society began to pay serious attention to environmental issues and listen to environmental biologists.

"The consequence is these inept biologists have found themselves elevated to a kind of priesthood. A fairly typical attitude of environmental biologists today is that the preservation of wilderness is an ethical and moral matter. A religious mandate.

"I have become saddened," says Taylor. "This has all become so common it is no longer even perceived as a problem. Unfortunately, the Endangered Species Act has served as a magnet for this class of biologists. The Endangered Species Act is neither practical nor workable in its current form."

Tom Brumleve has watched the changes and become the victim of the government under the guise of the Endangered Species Act. He has been on his Mt. Diablo, Calif., ranch nearly 40 years. He has been fighting the Califor-

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—Robert J. Taylor



nia State Parks over the use of his land since 1985 when the Park Service embarked on a "general plan" for Mt. Diablo.

It all started when his written 10-year lease was up. He had a verbal guarantee of renewal. The personnel at the Park Service has changed and nobody remembers the verbal agreement. To further complicate matters, new Park Service personnel do not see cows as "natural."

In August of 1992, he and Don Murphy, director of State Parks and Recreation, spent several hours together and reached a workable agreement. They went to lunch with three California Assemblymen - Bill Baker, David Knowles and Bill Hoge. The agreement was signed in front of these three "credible" witnesses.

Brumleve waited several weeks for the formal contract to arrive from Murphy's office. It never came. When it was time to have the contract ratified at a park commission meeting, he saw it for the first time. It bore no resemblance to the original agreement. He had been double-crossed.

Instead of 7,500 acres of grazing land for 10 years, it was for 5,000 that were to be phased out in 10 years. Also, among other things, the grazing fee was

greatly increased. Brumleve demanded to know how they could renege on the original agreement. Their response was, "It doesn't matter what the original agreement was, this is the way we stand now."

Even though the Park Service has defined the situation to fit their agenda, Brumleve has not given up. He has a lot of support and is hoping for legal assistance from organizations fighting the same type of government takeover.

One word of advice from him is, "Always have it in writing." His experience has convinced him there is no honor, honesty, or organizational conscience in government agencies.

Even though Brumleve feels the bureaucratic agencies are not answerable to anyone, Hartnett says each agency person in the field has somebody to answer to, even if they discourage you from going higher. The Public Lands Council and the NCA can supply a chain of command to anyone who asks.

As the federal government takes control of more private property, Karen Budd, the Utah-based National Federal Lands Conference and others are working with county governments to stop the trend. They are currently working with more than 100 counties in the West.

To begin with, county governments need a comprehensive land plan which recognizes, reaffirms, defines and pledges to defend those prior rights, equitable estates, private property rights and protectable interests held by individuals in federal and state lands.

Under rights affirmed by existing laws, the county has a partnership in the management of federal and state lands, ensuring the maintenance of its tax base and protecting local economic stability.

Existing law states local custom, culture and economic stability must be protected. Using those laws, Catron County has become a model for comprehensive land planning. (See sidebar story on previous page.)

Environmental activists have stated the county land planning process is a most serious threat to their agenda and must be stopped at all costs.

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