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# Rebels with a Lost Cause

feature article - December 10, 2007 by Ray Ring

**A movement of property-rights lawyers emerged from the sagebrush in the 1970s to fight a wave of environmental regulations. They are still fighting in courtrooms across the West, but their role remains ambiguous.**

Bill Jennings, a veteran fisheries activist in Stockton, Calif., remembers the Christmas season of 2004 as "a nightmare." He adds: "It was absurd."

He's talking about how some of the West's most powerful farmers tried to throw off the yoke of environmental law. Like countless similar battles, this one came down in a courtroom, in a case titled *Tulare Lake Basin Water Storage District, et al., v. The United States*.

For decades, the farmers had diverted rivers and dried up a huge lake to grow hundreds of thousands of acres of crops south of Stockton, resulting in catastrophic losses of fish and birds. Finally, during a 1990s drought, wildlife agencies invoked the Endangered Species Act and withheld some irrigation water, trying to save vanishing populations of chinook salmon and Delta smelt. That triggered the farmers' lawsuit.

The farmers demanded payment for surrendering the water. They claimed that the government's environmental action violated the U.S. Constitution's Fifth Amendment, which holds that no property shall be taken without compensation. They found a sympathetic listener in Judge John Paul Wiese, at the U.S. Court of Federal Claims in Washington, D.C. In a surprising series of rulings, Judge Wiese ordered the government to pay the farmers as much as \$26 million. Many believed that if the feds filed an appeal, a higher court would overturn the rulings. But five days before Christmas, the George W. Bush administration settled the case and agreed to pay \$16.7 million.

The *Tulare* outcome hit like a thunderbolt. The farmers' lawyer, Roger Marzulla of the D.C.-based lawfirm Marzulla & Marzulla, told *Greenwire*, "This is the first time (the government has) been required to pay for anything" related to enforcing the Endangered Species Act. The West's leading anti-green congressman at the time, Calif. Rep. Richard Pombo, R, could barely control his glee. "This case should spell profound change for conservation policy," he told the *Washington Post*. A California water official, in the *Los Angeles Times*, called it "a devastating setback for the environment."

If the logic of the *Tulare* rulings spread, enforcement of many environmental laws might cost the government billions. And if the government preferred not to pay, the laws would be castrated.

More striking, Marzulla & Marzulla stood among a battalion of lawfirms dedicated to challenging environmental

laws. The movement had its roots in the West and appeared to be making progress on many fronts, firing a barrage of lawsuits and claiming a run of important victories in the late 1990s and early 2000s. They'd rolled back regulations covering not only endangered species, but also cattle grazing, commercial development and many other activities. They even seemed to be on the brink of redefining government employees as criminal "racketeers."

"I think this fight is going to get a lot meaner ..." predicted Andrew Lloyd, a lawyer for Pacific Legal Foundation, another firm leading the charge, in California's *West County Times* in January 2005. He and others envisioned more lawsuits and more big victories.

These days, the anti-regulation lawyers still portray themselves as wizards, shooting bolts of legal lightning at the government agencies and power-hungry environmentalists who oppress them and their clients. In press releases, news and opinion articles and speeches, they boast about carrying out a crucial role.

To get a better sense of their role, I explored the legal battlefields and visited some of the movement's key Western lawfirms. I found a group of people who believe strongly in freedom and individual rights.

But their record includes some recent big defeats, and their conviction arguably outweighs their influence. I found that they may indeed be legal wizards, but more in the mode of a Wizard of Oz: They're full of sound and fury out front, but if you pull back the curtain, they're not so formidable.

**ENVIRONMENTAL REGULATION** became a formidable force in the decade and a half that began in 1964. During that time, Congress and state legislatures passed a torrent of new laws protecting wilderness and endangered species, requiring the study of environmental impacts, setting tough standards for clean water and air, and applying limits to grazing, mining, logging and driving on public lands.

The regulations poked at some peoples' livelihoods and chafed against their beliefs, especially in the West, the region with the most public land. So they began to hire lawyers to fight back. The ragtag resistance grew into a movement with the 1973 founding of Pacific Legal Foundation, headquartered in Sacramento, Calif. It's a nonprofit lawfirm, following the model of older, liberal nonprofit firms, such as those associated with the American Civil Liberties Union and environmental groups.

Oil and tobacco corporations, chamber of commerce groups, and rightwing billionaires such as Joseph Coors (a Colorado beer baron), Richard Mellon Scaife (a Pittsburgh heir to the Mellon banking, oil and aluminum empire), and John Simon Fluor (a California mining, nuclear and oil baron) poured millions of dollars into launching Pacific Legal Foundation and similar nonprofit lawfirms across the country.

The most famous is Mountain States Legal Foundation, founded in Denver in 1976. Mountain States has helped launch two lawyers - James Watt in the early 1980s and Gale Norton in the early 2000s - to tenures as secretaries of the Interior. Each used the cabinet post to push general deregulation and the commercial uses of federal lands.

The movement has grown to include the D.C.-area Institute for Justice, which describes itself as "a merry band of litigators," run by William "Chip" Mellor, formerly of Mountain States Legal. Dozens of lawyers in private practice also jumped into the fray. Roger Marzulla is among the most prominent, as is Karen Budd-Falen, a

specialist in ranchers' cases based in Cheyenne, Wyo. Both of them also had stints with Mountain States Legal. These lawyers share similar or identical goals, they're related to each other through overlapping resumes and backers, and they file briefs supporting each other's cases. Many of them got to know each other while working for Ronald Reagan, when Reagan was California's governor in the 1970s, or when he was president during the 1980s. They're also tied in with the libertarian, property-rights think tanks, such as the Cato Institute.

Those in the movement and those who study it call it by various names, including the Freedom-Based Public Interest Law Movement, or just the property-rights lawyers. For Westerners, the most accurate term would be Sagebrush Rebel lawyers: They're entwined with the angry rebellion that began in 1979, when many Western legislatures claimed authority over federal land, and continues today in local flare-ups against the feds.

The lawyers, and their clients, have some legitimate complaints. Environmental laws, especially in their infancy in the 1970s and 1980s, did tend toward bullying and unrealistic expectations. For instance, the Clean Water Act, the Clean Air Act, and other laws vowed to catalog and choke off hundreds of thousands of pollution sources within a few years. Anyone who didn't cooperate was subject to penalties.

"The game of politics is largely a struggle for control of the initiative," says Gregg Cawley, head of the political science department at the University of Wyoming, in a book he wrote about the Sagebrush Rebellion. Environmentalists had the initiative at the start as they set up their enforcement strategy. Then the anti-regulation forces rose up and took the lead.

"We realized we needed to counter what the liberal, socialist (environmental) groups were doing," says James Watt, who earned his law degree in his home state at the University of Wyoming. Watt served as the first boss of Mountain States Legal, running it until 1980, when Reagan picked him to be secretary of Interior.

"Environmentalists - I'm not talking about the members of the groups, I'm talking about the leaders - were really not concerned about the environment. They were concerned about the form of government we would have." They wanted big government that was too intrusive on individuals' freedom, Watt says.

While Watt held the throne at Interior, he supported ranching, mining and logging. Though he resigned after only 33 months atop Interior, he's a Sagebrush hero. Now retired and shuttling between homes in Arizona and Wyoming, Watt still talks a fiery game. The battle rages on, he says, because environmentalists and their allies in government are still too "dictatorial" ... (they) should work with the users, the locals who will benefit from using these public lands."

Mountain States Legal scored another apparent political victory in 2001, when Gale Norton became George W. Bush's Interior secretary. She'd worked for the lawfirm in the early 1980s, and though she was less abrasive than Watt, her ideology echoed his during her tenure at Interior.

But Norton and Watt left little lasting imprint on the ground - nothing on the scale of the bedrock environmental laws, nothing even as noticeable as President Bill Clinton's environmental legacy, which includes the restoration of Western wolves and 23 new or expanded national monuments, orchestrated by Interior Secretary Bruce Babbitt.

Watt quit amid controversy over his frank manner of speaking, and Congress and environmentalist lawsuits stalled many of his policies. "Watt was certainly noticeable as a symbol, he did personify the Sagebrush Rebellion and the takeover (of Interior) by Western resource industries, but surprisingly little happened" during his reign, says Charles Wilkinson, a University of Colorado law professor who served as a Clinton adviser and has authored 13 books about law and natural resource issues.

Norton, who left Interior in 2006 and is now with Shell Oil in Denver, has a one-dimensional legacy: oil and gas drilling, which, thanks to the federal backing she provided, goes whole-hog in industry sweet spots around the Rocky Mountains. Still, "she was an unimportant secretary of Interior," Wilkinson says, "because the public-lands policy of this administration is being made by Vice President Dick Cheney, not the secretary's office." Cheney, with his longtime roots in the oil industry, by many accounts wields more power than President Bush. "It didn't matter who was secretary of Interior."

**IN THE NATION'S COURTROOMS**, the Sagebrush Rebel lawyers win and lose more cases than can fit in any magazine story. The lawyers believe they're generally doing good work. But their impact is as unclear as it was in the Department of Interior.

The mission of Mountain States Legal Foundation is summed up by the title of William Perry Pendley's latest book: *Warriors for the West: Fighting Bureaucrats, Radical Groups, and Liberal Judges on America's Frontier*. Pendley has been the firm's president and chief lawyer for 18 years. His staff includes about a half-dozen other lawyers, headquartered in a small office park in suburban Denver, across from an insurance agency, a dentist and Pilates Plus. An American flag on a tall pole marks the building's entrance, with a plaque that says "Old Glory."

Inside the headquarters there are more plaques engraved with names: Rocky Mountain family oil companies (Yates, Kennedy, McMurry, Anschutz, Dugan), notable ranching operations (Page Land and Cattle Co.), loggers and an aircraft-tour company. They're some of the donors who support Mountain States' work, most of which is done on a pro bono basis - for free, or a relatively small cost to clients.

At his desk several weeks ago, Mountain States Legal's Pendley wore a blue Oxford shirt, gray slacks, and black cowboy boots. He had a short, brush haircut, pale blue eyes, chiseled face. He'd decorated his office with mementoes of his five years in the Marine Corps and several years in the Reagan administration, along with mining and cowboy knickknacks and samples of his kids' artwork. Born and raised in Cheyenne, son of a union pipefitter, Pendley has college degrees in political science and economics, as well as a University of Wyoming law degree. He's 62 years old and no longer works seven days a week; an evangelical Christian, he takes Sundays off.

Asked whether his religious beliefs come into his law practice, Pendley says yes: "Some of it is, 'What would the Lord do? How do you treat human beings?' " But his religion, he says, doesn't determine which cases he takes to court. His book talks about "environmental elitists sitting in their glass towers in New York City and San Francisco, their ivory towers in prestigious colleges," and warns they're a "juggernaut" trying to destroy local cultures and economies in the West.

Pendley is a kind of modern Western celebrity. He appears on TV and radio talk shows, rural libraries circulate his book, and he's a popular speaker at conventions of mining and ranching groups. When Mountain States Legal presses a lawsuit, it creates excitement in the press and affected communities, due in part to Pendley's

reputation as well as the Norton/Watt connection. The firm's biggest win, according to Pendley, was a 1995 U.S. Supreme Court ruling against affirmative action in highway contracts.

Among its environmental cases, Mountain States won a \$2 million settlement for a New Mexico landowner who handled wastewater from oil and gas wells; the feds gave him permission to dump the wastewater in potholes on federal land and then withdrew it, causing him to lose his business. The federal claims court ruled in 2001 that it was an unfair taking, and eventually the government grudgingly paid him.

But overall, in the dozens of environmental cases Pendley profiles in his book, Mountain States Legal has lost far more often than it's won.

The environmental cases tend to be especially difficult. They're almost always three-sided: The rebels sue the government and then environmentalist lawyers jump in, or environmentalists sue the government - demanding tough regulations - and the rebels jump in. They have to climb mountains of administrative records and find their way through the fog of environmental laws, which often contain contradictory phrases meant to placate different interests.

"It's very difficult to sue the government and win these kinds of cases" - whether the plaintiff is a rebel or an environmentalist, says law professor Wilkinson. In an analysis of all lawsuits filed against the U.S. Forest Service from 1989 to 2002, on the basis of the 1976 National Forest Management Act, the plaintiffs won only 28 percent of the time, for instance. "The courts give heavy deference to the government agencies," Wilkinson says.

In cases with wide implications, Mountain States Legal has tried to block Clinton's wolves and monuments, discourage the Colorado Division of Wildlife's lynx-reintroduction effort, overturn a ban on oil drilling in a million acres of national forest along Montana's Rocky Mountain Front, and kill a public-access law that says anyone can walk stream banks on private property in Montana. Representing oil companies and off-road drivers and ranchers and other property-rights advocates, Mountain States Legal lost all those court cases.

I'm after more than win-loss statistics, though; I'm interested in the psychology. After losing one case, Pendley vowed: "We'll keep tilting at this windmill until we find a way to go to court and win." When I ask him if he sees himself as a Don Quixote figure, he says no. But he adds, "We take the impossible cases - the cases no one else will take. If these were easy cases, private attorneys would be representing these people," because private attorneys look for "slam dunks" and easy payoffs. He repeats the image: "We're really on a *Mission Impossible* challenge," he says - an attitude that makes any victory noteworthy. Listening to himself, he laughs, and calls himself "an eternal optimist."

**KAREN BUDD-FALEN** bases her law practice in a remodeled house in downtown Cheyenne. A tall rosebush hides her firm's sign. To find her, you have to know where she is. And ranchers around the West do: She's a member of a prominent Wyoming ranch family, the Budds, and her husband, Frank Falen, comes from a prominent Great Basin ranch family. Her father-in-law, John Falen, was featured on the cover of a 1991 Newsweek, with cowboy hat and horse, beside the headline, *The War for the West: Fighting for the Soul of America's Mythic Land*. She and her husband have law degrees from the University of Wyoming.

Sitting in her office several weeks ago, she wore blue eye shadow and a yellow dress with a whimsical pattern of sheriff's badges and tiny cowboy boots. She talks of growing up on her family's ranch outside a wisp of a town, Big Piney, doing chores when she was tiny: "Driving the feed truck for my dad in the winter, I'd be on my knees on the seat, and my sister would be down on the floor working the pedals, and my dad would be on the back (pitching off hay for cattle) - if you made the truck jerk when you put it into gear, it knocked him off the back, and you'd get into real trouble."

She comes across as pleasant but headstrong, and admits to getting impatient when she worked in the bureaucracy of Watt's Department of Interior and in the late-1980s Mountain States Legal Foundation. During her time at Mountain States, she says, she had to get every lawsuit approved by the nonprofit's directors, and they preferred cases that would help them raise money.

"I like making decisions and then acting on it," Budd-Falen says. "I'm really cause-oriented, I really believe in ranchers and farmers and what they do. That's the reason I went to law school. I don't love the law. To me, the law is the way I'm helping the people I love."

Over the years, Budd-Falen has represented ranchers who've challenged grazing regulations everywhere in the West. She says she's not sure of her win-loss record. She's proud of two rulings by the appeals court in Denver: She forced the feds to do more analysis when designating critical habitat for endangered species, meaning commercial activities must be taken into account. But she lost two lawsuits trying to block wolves in the Southwest. For several years, she's attacked the Grand Canyon Trust's purchases of ranchers' grazing permits in Utah - that group's campaign to reduce grazing through business deals - and she's lost two rounds in that case.

Budd-Falen says her most important environmental case involved Frank Robbins, a wealthy Alabaman who bought several big Wyoming ranches and got into a dispute with the federal Bureau of Land Management. The agency's local staffers cited Robbins for many violations of grazing regulations, characterizing him as a scofflaw, but he says they were merely trying to force him to accept a road easement across his land. Budd-Falen tried a novel tactic: She sued the staffers as individuals, invoking RICO, an anti-racketeering law; basically, she cast them as gangsters seeking to extort Robbins.

In racketeering cases, plaintiffs can collect big payments from defendants, so a victory could've ruined the staffers' personal finances. Budd-Falen appeared close to that spectacular win in 2006, when the court of appeals in Denver OK'd the basis of the claim, meaning the case could be tried on the facts. If every federal staffer enforcing regulations could be charged as a racketeer, then no staffer would risk enforcing anything.

That notion was too much even for the Bush administration: Its lawyers appealed to the U.S. Supreme Court. Though conservative Republican presidents appointed seven of the nine Supreme Court justices, last spring the court ruled unanimously against Budd-Falen on the racketeering question. The high court said the racketeering law wasn't intended to expose federal employees to extortion charges whenever they push the envelope with regulations and that fear of such charges "could well take the starch out of regulators who are supposed to bargain and press demands vigorously on behalf of the government and the public."

Robbins says he spent more than \$1 million on his nine-year battle against the feds, and now he's going to sell

his ranch and move. Even "liberals ought to be outraged," Robbins says. "I think employees of the federal government should be accountable. As long as the apathy continues, the government gets bigger and bigger."

Budd-Falen calls the Robbins case "the most frustrating thing I've been through."

**PACIFIC LEGAL FOUNDATION**, the biggest Sagebrush Rebel lawfirm, employs about 30 lawyers and an equal number of support staff, and is headquartered in Sacramento, in a tinted-glass building neighbored by tech companies. At the landscaped entrance, a tiny electric-powered waterfall sings over mossy boulders. On its Web site, Pacific Legal vows to battle the "tyranny engendered by overzealous bureaucracies, government red tape, ignorance or indifference of our courts and elected officials, and a complex maze of laws and regulations that are strangling our personal and professional lives."

Rob Rivett has been with the firm for 32 years and is now the president. A clock on his office wall bears the goofy, grinning faces of the Three Stooges. Every hour, it sounds the Stooges' chant of triumph over other people's foolishness, *Nyuk Nyuk Nyuk*.

Pacific Legal's biggest win against environmental regulations came in a 1987 Supreme Court case, *Nollan v. California Coastal Commission*. That case also involved a kind of extortion: The coastal commission had tried to force a homeowner to grant public access across a beach, in return for permission to build a bigger house. In a five-to-four ruling, the Supreme Court held it was an unconstitutional taking. That was a major inspiration for the movement.

"We're trying to *establish* and *shake* the law," Rivett says. "A lot of what we do takes time to prevail, and the point is, we just don't give up."

But Pacific Legal's next big Supreme Court win - a 2006 case challenging federal regulations on private wetlands - has had murkier repercussions: Judges in other wetlands cases and the relevant agency, the Army Corps of Engineers, continue to protect wetlands that Pacific Legal thinks do not merit protection.

And in another heralded environmental case, *Alesea Valley Alliance v. Evans*, Pacific Legal claimed victory prematurely. Representing Oregon developers and farmers against streamside regulations, Pacific Legal sought to redefine what a species is, claiming that hatchery-raised salmon are identical to dwindling wild salmon. Although biologists scoff at that the notion - it would also mean that breeding programs alone could preserve all kinds of rare animals and plants - U.S. District Judge Michael Hogan in Oregon ruled in Pacific Legal's favor in 2001, on technical legal grounds. The victory, however, was short-lived: Federal agencies dragged their feet in changing salmon policies, and environmentalists filed countersuits. This year, Judge Hogan said his ruling had been misinterpreted, and the feds can show preference to wild fish. And a judge in Washington ruled, flat out, that hatchery fish can't be counted toward population goals.

Pacific Legal has appealed those rulings. Meanwhile, the salmon runs are still protected. "We have essentially the same regulatory result we had (before *Alesea*)," says Damien Schiff, a Pacific Legal lawyer handling environmental cases.

In other Endangered Species Act cases, Pacific Legal has found it nearly impossible to knock species off the list of protected wildlife, losing lawsuits on cave bugs, the California tiger salamander, the southwestern arroyo toad, the Puget Sound orca and 15 California vernal-pool species. The lawyers have occasionally whittled down the sizes of critical habitats, but even that can be grueling.

Consider how two tiny desert fish - the spikedace and loach minnow - have fared in the courtroom eddies: Both fish were put on the endangered species list in 1986. Environmentalists then demanded the designation of critical habitat, so in 1994 the feds designated 254 miles of rivers and streams. Then Budd-Falen forced the government to re-evaluate, enviros sued over that, and in 2000 the feds came back with more than three times the original critical habitat (898 miles). Both sides returned to court, and this year the feds reduced the total to 522 miles - still more than twice the original amount. So Pacific Legal has filed another suit.

The battle over critical habitat for two other high-profile species - the southwestern willow flycatcher and the Mexican spotted owl - has had the same frustrating pattern in court: Victories by Sagebrush Rebel lawyers have ironically led to even bigger habitat designations. The legal arguments seem endless.

**THE CASE OF THE MOST FAMOUS SAGEBRUSH REBEL** rancher, Nevadan E. Wayne Hage, has dragged on in various courts for 17 years. The skirmish began when the government yanked Hage's grazing permits because he allegedly ignored regulations; Hage demanded compensation, but his side hasn't gotten it yet. He died last year, and his most ambitious contention - that he actually owned the federal land - has been tossed out.

Meanwhile, similar lawsuits - filed by one of Hage's neighbors, Benjamin J. Colvin, and a New Mexico ranch couple - have gone badly. The feds had also charged them with overgrazing and canceled their permits. Judges dismissed the Colvin case last year, upholding the federal government's actions. In the other case, the New Mexico Supreme Court said this year that the ranchers are "attempting to wage a battle lost at the turn of the (19th) century ..."

Silver-haired Ladd Bedford, a private-practice lawyer based in a San Francisco penthouse, says he's put about \$2 million worth of hours and associated costs directly into the Hage case and been paid no more than \$500,000 by Hage's family and Stewards of the Range, a Boise group run by one of Hage's daughters.

The Hage case "is a metaphor for the property-rights movement falling off its tracks," says John Echeverria, head of the Environmental Law Policy Institute at Georgetown University in D.C., who often opposes the Sagebrush Rebel lawyers. "The participants in the (Hage) case don't seem to be willing to admit that the case has collapsed."

But nowhere are the movement's reversals more stunning than in the wake of the *Tulare Lake Basin* ruling in California. Other farmers, under federal pressure to modify their irrigation for the benefit of endangered fish, have hired the Marzulla lawfirm to press similar lawsuits demanding compensation. Three of those cases have been shot down. First, in Klamath, Ore., a hotbed of rebellion, Roger Marzulla represents farmers demanding \$1 billion for surrendering water to salmon. But Court of Claims Judge Francis M. Allegra, in rulings in 2005 and 2007, found that most of the Klamath farmers' claims of property rights in their federal irrigation water were a "fantasy." Judge Allegra dismissed that case.

In *Stockton East Water District v. United States*, Court of Claims Judge Christine Odell Cook Miller ruled against Marzulla last year and this year, holding that the government doesn't have to pay two California water districts to surrender water for fish in the San Francisco Bay Delta ecosystem. She cited "the competing needs of a rapidly growing population in a historically arid region and the mitigation of damage to the ecosystem," and said, "tossing the problem into the litigation hopper is breathtakingly ineffective."

Most relevant, Judge Wiese - the same judge who ruled for the *Tulare* farmers - has done "an about-face," says Echeverria. That happened in a water case Marzulla pressed for the Casitas Municipal Water District in California. Judge Wiese ruled in March that the government doesn't owe those farmers any money for making changes to help steelhead trout. Wiese said a Supreme Court ruling that upheld planning regulations in the Lake Tahoe area influenced his turnaround.

All three of those water cases are also being appealed.

Marzulla, who is blind, graduated first in his class at the University of Santa Clara law school, hiring people to read lawbooks to him and listening to lawbooks on tape. He ran Mountain States Legal from 1981 to 1983, and then was in charge of all environmental litigation at Reagan's Justice Department. He blames "the anti-property rights movement, primarily environmentalist forces" for his losses in the water cases: Green lawyers "launched an extensive campaign" of legal briefs that confused the judges.

**OFTEN WHEN SAGEBRUSH REBEL LAWYERS LOSE**, they complain that the judges were biased or underestimated the malevolence of government regulations. Again and again, Mountain States' Pendley, for instance, writes that judges are "ridiculous" when they rule against him.

But in many of the key cases that Pendley and his cohorts lost, the judges were appointed by President Reagan. If those judges are biased, it's more likely to be in favor of the Sagebrush Rebellion.

"Lawyers like these develop a portfolio of cases, which they present to the courts and to the public as horror stories about regulation - 'Here's my client who was just trying to do something perfectly reasonable and in came the government saying, in a ridiculous way, 'You can't do that,' " says Mark Tushnet, a Harvard University law professor who has studied the movement. "Of those cases, a few will actually come across as horror stories ... and either the government will cave in during negotiations or the court will rule in their favor. But that's a small portion of the group of cases these people assemble. They win some, and they lose quite a few that they have presented to the public in exactly the same terms. Because of their ideological predisposition, they see horror stories more frequently than the rest of us would."

They also ignore some property-rights horror stories. They've filed very few lawsuits on behalf of ranchers who are up against oil and gas companies who drill on their land. The Sagebrush Rebel lawyers also rarely represent people who say their property rights are harmed by (a) new gravel pit or feedlot or megadairy or racetrack next door. In the West that Pendley portrays in his book, no one lives in a city or suburb plagued by growth; no one wishes for land-use planning; no rancher or logger ever sides with any environmentalist.

Buzz Thompson, a Stanford University law professor who often favors property rights, says these lawfirms "will win a case like the *Tulare case*, and it's never clear to me that those victories really accomplish much. They have won a victory for that particular person, but given how unique the cases tend to be, it is very difficult to

generalize out to other cases. They frequently have not changed the face of the law in a way that would reallocate power between the government and private-property owners."

The Sagebrush Rebel lawyers say they're helping to preserve rural jobs and ways of life. Their opponents say those jobs are often a form of denial. "They create a false and desperate hope that (rural communities) can evade environmental protection, and that false hope leads to great controversy, people want to fight and fight and not accept it," says Kieran Suckling, head of the Center for Biological Diversity, which applies lawsuit pressure from the green side. "There's always that hope - big-tree logging will come back, and we'll be able to put cows back on the range - and as long as (the locals) have that in the back of their minds, they're not going to move forward."

Even the lawyers occasionally acknowledge that their movement struggles. Pendley says that little has changed; the government agencies are still too insensitive. "Getting anyone to make big changes is really hard," says Budd-Falen. "Sometimes I think it doesn't matter who's president and in Congress. The bureaucracy is so huge, it just eats you alive." But they hope to hit home runs in the realigned Supreme Court, which is far more conservative than it was a few years ago: A key Bush appointee, John Roberts, is now chief justice, and Pacific Legal's Schiff says, "I think things are looking in our favor there."

**JOHN SHULER DROVE A BREAD TRUCK** for 15 years, ran a feed store for 20 years, and then bought his dream, a 2,200-acre ranch along Montana's Rocky Mountain Front. He raised sheep and cattle. There were lots of grizzly bears in the area, including some that had been moved there by wildlife agencies because they'd gotten into trouble elsewhere. Shuler had to do more and more intensive management, rounding up his sheep at the end of every day and keeping them in his yard at night. Even so, he kept losing sheep to the grizzlies.

One snowy autumn night in 1989, Shuler heard a disturbance. The sheep were going nuts. He came out on the porch in his underwear, and saw four grizzlies in his yard. He grabbed a rifle and waded in, shot one bear, wounded it, and all the bears fled. Next morning, he tracked down the wounded bear. He says that it charged him, and he defended himself and put it out of its misery.

The U.S. Fish and Wildlife Service charged Shuler with illegally killing an endangered species; he faced possible fines of more than \$10,000. Mountain States Legal's Pendley heard about it, and got in touch. Pendley and another Mountain States lawyer came to Shuler's place, and as Shuler puts it, they "got their hands dirty," reconstructing the events, gathering evidence.

Shuler lost in a federal administrative hearing - the judge ruled that he should've hung back and let the grizzlies do their thing. So Mountain States took it to regular federal court, and lost. The feds offered to let Shuler off with a fine of just a few thousand dollars, but he refused because, he says, "The bear was robbing me." After eight years of that battle, in an appeals court, Mountain States won the case.

But the feds refused to cover Mountain States' legal bills. Pendley - saying he'd put in \$225,000 worth of time and associated costs - went back to court again, asking for payment. The courts held that because the Fish and Wildlife Service's actions were "substantially justified," no payment was necessary. Mountain States got nothing for its work representing Shuler.

Shuler says he got charged by another grizzly in 1997 and had to shoot it with a shotgun. Then he got sick, sold his ranch and moved to a warmer climate. Today he lives on five acres on the outskirts of Montrose, Colo. He's 68 years old, and you can find him opening the gate in a local stockyard, where he makes a few dollars selling goats. He says Mountain States Legal Foundation is "tremendous." He also says he thinks the battle against environmental regs has gone basically nowhere. The feds, he says, still favor predators over ranchers.

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