

THE LITIGATOR

MOUNTAIN STATES LEGAL FOUNDATION

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Saving the Last Cattle Drive

We hit the trail to learn what it takes to move cattle across Wyoming's grizzly country

Sean Paige



You can talk to Wyoming rancher Charles Price all day about the fine points of raising cattle, or maybe two days. With his down-to-earth manner, you'd probably never guess that you're also talking to a PhD in nuclear engineering who formerly worked on some of the most advanced energy technologies in the world.

But that's generally the way ranchers are, contrary to the swaggering Hollywood caricature. They're plainspoken, polite, reticent almost to a fault. Most betray little of the remarkable skill and tenacity it takes to live this life, and to keep a ranch going that's been in the family for four, five, or even six generations.

Price could brief you on the pros and cons of nuclear breeder reactors. But he much prefers to talk about his real passion—breeding and raising some of the world's finest beef in Wyoming's Upper Green River Valley. Raising livestock in this majestic but rugged landscape, where mountain men and American Indians held raucous rendezvous in the 1840s, may not be nuclear science. But it isn't as simple as it may seem to urban dwellers and coastal elites, whose working knowledge of beef starts and ends at a McDonald's drive thru.

Hundreds of miles away, on the urban end of the supply chain, beef comes neatly wrapped and packaged in paper or cellophane, often between a bun, complete

with all the fixings. But it originates here, in rural Wyoming, where Price and other local ranchers are trying desperately to keep their traditions, and traditional ways of feeding the world, alive.

I was there in June with MSLF colleagues to see the famed Upper Green River Drift, believed to be America's oldest and longest-running cattle drive. It didn't disappoint. There it was, like something out of the movies—a mooing mass of cattle plodding along, with whistling cowboys and tireless cattle dogs in pursuit. But it's not a movie set. It's not a historic reenactment. It's the real deal, an honest-to-goodness, good old-fashioned cattle drive, still alive and kicking up dust in the 21st century American West.

Our journey began on a six-lane Denver freeway, and we reached our borrowed cabin, high in the Wind Rivers, at the end of a rough dirt road. The mountain cabin was spectacular in a rustic, rough-hewn sort of way, with massive timbers that the owners themselves harvested, milled, and assembled, Lincoln log-style. The requisite moose head was there, too, sternly glaring down on us. Cell service was impossible to find, even if we walked to the edge of a clearing and frantically waived our phones above our heads. At an elevation of 9,000 feet it gets cold, even in June. The cabin's heating came from a monster wood stove that looked like an old tugboat boiler.

Some kind soul had stuffed the stove to the gunnels with split wood, sparring us some initial hard labor. And it roared to life with the help of an explosive concoction called “diesel sawdust,” which I wouldn’t recommend for use at home. Severed from civilization as we were, and with no gadgets to comfort us, we turned to other forms of entertainment, like watching lawyers split wood. And two broken ax handles later, they really seemed to be getting the hang of it.

We rose the next morning to the dark and the cold, because the stove had gone out. And we counted our blessings for indoor plumbing. We used another luxury item, the 1980s-era microwave, to heat dark black coffee, just like the real cowboys drink, before piling groggily into the SUV for our winding and rutted ride down to the rendezvous point.

The first of many eye-openers for us was the brutally long hours these cowfolk keep, with workdays that begin and end with the sun below the horizon. The day required a 4 a.m. reveille in order to reach a 5:30 am rendezvous with Price at the “end of the oil” (meaning the end of paved road), where the Bridger-Teton National Forest begins.

The skies were somewhat brighter, but the sun still wasn’t up, when we met Price. Even in the morning half-light it’s hard not to notice a brown sign, emblazoned with a massive grizzly paw, warning all who pass there to be “bear aware.”

This is grizzly country, lest anyone forget.

Life on the Trail

Tagging along with Price and fellow ranchers in the Green River Cattle Association offers a crash course in seeing things through a rancher’s watchful eyes. Where I see only a mooing mass of burgers and steaks, he sees calves who’ve been separated from the heifers, or vice versa. He sees when an animal is physically sound, or not. He scans the tree lines for stragglers. He cautions his guests against sudden moves that would spook the herd. These cattle can tolerate trucks, dogs, and horses; but not so much, gawkers from the city with loud voices, video cameras and whirring drones.

"This is grizzly country, lest anyone forget."

It quickly became apparent to this “city slicker” that ranching isn’t one skill but many. Today’s rancher also must be part-time mechanic, veterinarian, geneticist, weather forecaster, botanist, chemist, and technologist. Generations of sustainable ranching prove their credentials as excellent naturalists and conservationists. To succeed in the business of ranching, he or she must also stay tuned to global and national trends in the agricultural market.

It also takes a master logistician to pull off a cattle drive of this scale. Involved are roughly 6,000 cattle,



Livestock killings by grizzlies and other predators account for 10-20% of the ranchers’ losses each year

belonging to a dozen different families or “outfits,” some of whom have been doing this annually since the 1890s. Cattle must be nudged, prodded, and cajoled up to 80 miles. It’s a long but gradual march, done in phases, usually in the cool of the morning. Driving the animals too far in the heat of the day would harm them.

The herds and their mounted handlers cross a patchwork of public and private lands, using a network of overpasses, bridges, trails, and roads, paved and primitive. Some outfits are moving cattle for 12 to 14 days, depending on conditions. Those traveling the farthest can spend nearly a month on The Drift, before the livestock reach the summer allotments.

There the animals will be watched through the summer months by range riders, who keep predators at bay, as best they can, and move them from pasture to pasture to avoid overgrazing. When summer turns to fall, the process is reversed, as cattle “drift” back to lower elevations, instinctively prodded by the oncoming winter. There they are gathered, counted, sorted, and in some cases shipped to market.

The Green Extremists’ Lawsuit

Sadly, today’s ranchers also need to have familiarity with laws and courts, given how frequently public lands disputes and other matters of life or death to a cattle outfit can end in litigation. That’s what brought MSLF lawyers and our rancher-clients together on this June weekend—a court case, which could impact the fate not just of these ranchers, but of all ranchers who rely on public lands grazing.

The case, *Center for Biological Diversity v. Bernhardt*, could determine whether ranchers and federally protected grizzly bears can continue to coexist on the federal grazing allotments where these herds are headed. At issue is whether documented problem bears can be removed by the state of Wyoming, when repeated cases of predation occur, as has been the accepted practice since the 1970s. Otherwise these lands will essentially become a grizzly bear buffet, where open season is declared on domestic livestock and ranchers can figuratively and literally be eaten out of house and homestead.

The balance between profit and loss, survival or financial ruin, has always been precarious for ranchers. But the growing toll grizzlies and wolves are taking on these ranchers, and the determined efforts of organized anti-grazing groups to use grizzly protection as a pretext for running them off their federal allotments, is pushing some families to the brink. This at a time when they confront a host of COVID-19-related supply chain challenges.

A lawsuit filed by green extremists is pushing ranching families to the brink.

The State of Wyoming compensates ranchers for these losses, when the kills can be documented and confirmed. That isn't always easy, however, given the vastness, ruggedness, and remoteness of the terrain. Documented problem bears currently can be removed by state officials. But such steps are taken reluctantly, and only under the care and expertise of wildlife officials. Now anti-grazing groups, in a radical reversal from long accepted practice, are pushing to effectively ban the removal of problem bears. It would almost certainly make use of these allotments untenable—and that's exactly what the anti-grazing groups are aiming for.

Killings that used to be rare are today alarmingly common, accounting for 10-20% of the losses these ranchers suffer in a summer. And there's little hope that those rising fatality figures will fall, as grizzly bear and wolf numbers continue to rise.



(L-R) Wyoming rancher Charles Price, with MSLF attorneys Brian Gregg and Cody Wisniewski

Rather than recognize a fully recovered grizzly population as a conservation success story, environmental extremists have opposed the government's repeated efforts to delist the species and hand more management responsibilities back to the states. These groups keep moving the goal posts, keeping their donor base alarmed by painting a ridiculously dire picture of realities on the mountain.

The extremists' first run at a radical new "no take" rule prohibiting bear management came in the form of a



Cattle moving along on the Upper Green River Drift

preliminary injunction, aimed at suspending all lethal removals until the delisting debate is finally settled. MSLF successfully beat back that effort, when a federal judge agreed with us that continuing with current grizzly management practices, pending resolution of a related suit, posed no threat to the species.

Love of the Land

The ranchers we met on The Drift are great lovers of the land and the wildlife. They just want to coexist peacefully with the grizzly bears. They want federal protections lifted, as required by law, in recognition that the grizzly bear population's recovery goals have not just been met but exceeded. They want responsibility for managing the animals returned to the states, so they can continue to use their summer pastures without losing so many animals to wolves and grizzly bears that they go out of business.

If the extremists win in court and open season is declared on domestic livestock, these pastures would likely no longer be suitable for grazing, which could strike a mortal blow to those ranching families and ranch workers who depend on the summer range to make their business work and to keep America fed.

Ranching in the American West can seem like a solitary endeavor, suited only to the "rugged individualists" of popular lore. But success here also depends on ties to family and community—a word that one continually hears, but rarely sees, in urban America. What many describe as an "industry" is, at this end of the supply chain, largely a family affair, often spanning six or seven generations.

Outfits running The Drift often consist of extended family and neighbors working side by side. A time-honored tradition of mutual assistance spans the valley, with friends and associates gamely chipping-in and sharing burdens that might overwhelm any one family. It's a tradition that also will be lost if The Drift goes way.

MSLF doesn't intend to let that happen. Like rangers riding to the rescue in an old western, our attorneys are fighting for justice on behalf of these ranching families.

Sean Paige is the Director of Communications for Mountain States Legal Foundation.



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Ranching Families Need Your Help!



Wyoming cattle rancher Albert Sommers's ranch won the Leopold Conservation Award in 2012 for remarkable environmental stewardship. But green extremists aren't satisfied. Their lawsuit could make it impossible for Albert and other ranchers to continue the Upper Green River Drift cattle drive, and could put them out of business. Help us fight the green extremists' lawsuit.



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HELP SAVE THE CATTLE DRIVE

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A green pickup truck is parked in a grassy field. In the background, there are rolling hills and mountains under a cloudy sky. The truck is viewed from the rear, showing its bed and tailgate.

A Brush with Death

**Green radicals worked to destroy my family's ranch.
And a potentially deadly act of mechanical sabotage
remains unexplained.**

Mike Hanley

In addition to my work as a rancher, I am a published author. I have been writing for many years, but this is the most difficult writing I've ever done. The story of how environmental extremists and government agencies both worked to destroy my family's ranch is hard to put into words. But nonetheless, it's a story that needs to be heard.

At a permittee meeting in Boise some years ago, Jon Marvel, founder of the environmentalist group, Western Watersheds Project (WWP), made a presentation about what he wanted the Trout Springs Allotment, which I grazed, to look like. He described, as an example, land where the riparian and uplands were in harmony with the environment.

When Marvel finished, I told him how much I enjoyed his presentation because that was my private land, not BLM land. I concluded, "If BLM would let me manage my Trout Springs Allotment the way it should be managed, in 10 years it would look just like that and without added expense to the taxpayers."

When the meeting closed, Marvel told me, "This was your day," with a tone of voice that felt threatening. He followed me to my car with Dr. Chad Gibson, my mother and my wife as witnesses, pointed his finger about an inch from my chest and warned, "Whatever it

takes to get rid of you and your cows!" I asked, "How should I take that Jon?" He replied, "However you want."

From that point on, strange things began to happen. Livestock gates were opened, fences were cut, and then I was falsely reported for trespassing.

The summer of 2008 was a nightmare. One day I saw Marvel's assistant on the allotment and asked her who the people with her were. She told me they were her volunteers. "Are these the ones opening the gates and cutting my fences?" I asked. She didn't answer.

Things escalated even further. One day I took my pickup to nearby Juniper Mountain to ride for cattle. I left the pickup attached to the trailer which was lawfully parked on some federal land.

The next morning, I unhooked the trailer. My wife and I took off in the pickup. As we came to the Highway 95 junction west of Marsing, Idaho, I stepped on the brake to disengage the cruise control. It didn't budge.

"I'm going to have to make the turn," I told my wife. Linda shouted, "Don't, you'll roll it ... nobody's coming." We shot through the intersection with me stomping on the pedal. It gave eventually, and I regained control.

When I took my truck to a mechanic, they found a welding rod positioned to fall and stop the pedal from being engaged. In other words, it had been sabotaged. We had the police check it out, but no charges were ever filed. While we were unable to prove who was responsible, we had our suspicions.

It didn't stop there. Soon after, WWP filed an injunction to stop me from grazing on the Trout Springs Allotment, and they succeeded.

Marvel told me they had filed the injunction to remove my cattle from Trout Springs as close to my moving date as possible so that it would be impossible for me to find an alternative place to graze.

I asked him who "they" were, but he didn't answer. He was no doubt disappointed when he learned that I had leased pasture on the nearby South Mountain Allotment and taken my cattle there.

"When I took my truck to a mechanic, they found a welding rod positioned to fall and stop the pedal from being engaged. In other words, it had been sabotaged."

Sadly, Marvel and his gang weren't my only enemies. The year before, the BLM had burned trees in the South Mountain Allotment, destroying the boundary fence.

My son fixed our portion of the assigned boundary, but the BLM did not repair theirs, although they said they would since they had destroyed it. Because they weren't fenced in, my cattle—as well as other ranchers' cows—went into the neighboring Upper Cliffs Allotment, which was closed to grazing at the time.

The BLM charged me with trespass, but the agency did not charge the other ranchers. My grazing permit was cancelled in 2009. I appealed but my appeal was unsuccessful, sadly. Even worse, it seems I made myself a target of the agency's bureaucrats.

At that point I figured it was time to pass the ranch along to the next generation. So, in 2013, I transferred my private land to my daughter and son-in-law, John and Martha Corrigan.

Although my permit was gone, the underlying grazing preference for the permit was still attached to our



Mike Hanley (L) with MSLF attorney Brian Gregg. After Mike passed the family ranch to his daughter, Martha Corrigan, and her husband, the family learned the government had revoked their grazing preference years earlier without notice.

private land, which meant my daughter and son-in-law were first in line to receive a new permit.

The BLM agreed that John and Martha were fully qualified to receive a grazing permit but refused to give them one. Why? Because the agency said our grazing preference somehow disappeared automatically without any notice back in 2009.

The agency had never done this to a rancher before, despite the permit/preference system being in place for 80 years.

In reality, I was being punished for standing up to the BLM's mismanagement of the public lands. They had marked me as a target.

With the stroke of a pen, our fourth-generation ranching operation died thanks to a technicality invented by BLM, who wanted to make an example of me.

The BLM bureaucrats finished what Marvel and the other radical green activists at WWP had started. Almost overnight, they stole what we had worked so hard to build.

My family and I have been used as a pawn to destroy the ranching culture and heritage that we have worked all our lives to pass along.

My family has filed an appeal in an effort to win back our grazing rights. Property rights are a sacred guarantee of our Constitution. But my story should be a sober warning to everyone.

Mountain States Legal Foundation came to my family's defense, and its work must continue. We need a strong defense of property rights in this country. After all, if the government can wipe out my property rights with the stroke of a pen, they could do the same to you.

Mike Hanley is a rancher, author, and artist working and living near the Oregon/Idaho border. MSLF represents his family in the case Corrigan v. Bernhardt.



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SECOND AMENDMENT VICTORY

New Mexico Lawsuit Ends

New Mexico Gov. Michelle Lujan Grisham has ended special restrictions on firearms retailers originally implemented during coronavirus shutdowns, after MSLF got into the fight. Second Amendment advocates celebrated this important victory in the battle over gun owners' rights.

MSLF filed a lawsuit in the federal district court of New Mexico on April 10, 2020, challenging the closure order for gun retailers and repair shops, on behalf of the National Rifle Association, Second Amendment Foundation, Firearms Policy Coalition, and the New Mexico Shooting Sports Association, along with various gun retailers and individuals.

Previously, in response to the coronavirus outbreak, Grisham had issued emergency shutdown orders for all firearms retailers. Days later, on March 28, the U.S. Dept. of Homeland Security issued a memorandum classifying those businesses as essential, but Grisham's order remained unchanged.

"Gov. Grisham overstepped her constitutional limits when she attempted to restrict New Mexicans' right to keep and bear arms," said Cody Wisniewski, MSLF's lead attorney on the case.



New Mexico gun control advocate, Gov. Michelle Lujan Grisham, backed down from her gun store shutdown after MSLF filed a federal lawsuit.

MSLF agreed to voluntarily dismiss the case after gun retailers, ranges, and repair facilities were permitted to substantially reopen in the state.

"We are prepared to spring back into action should Gov. Grisham attempt to reclose firearm retailers and infringe on the natural rights of New Mexicans again," Wisniewski said.

To support MSLF's fight to defend the Second Amendment, visit mslegal.org