

THE LITIGATOR

MOUNTAIN STATES LEGAL FOUNDATION

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Grizzlies in the Grand Canyon?

Environmental activists' latest scheme puts property owners and the public at risk... and puts bears in harm's way

Some environmental groups just never give up trying to make things harder for property owners. But recently, Western farmers and ranchers won a major legal victory, one that resonates for all Americans who value property rights.

The case is called *Center for Biological Diversity v. Haaland*. It was initiated by an anti-growth environmental group called the Center for Biological Diversity (CBD). You need to know about CBD because they are known for litigating against private property rights, especially against ranching and farming.

With their latest lawsuit, CBD tried to gain significant new power to lock up vast areas of federally managed land, even private land, through endless litigation. Their hope was to gain the power to sue over species' recovery plans—starting with the grizzly bear. CBD even tried to force the federal government to restore grizzlies to the Grand Canyon area. Watch out, tourists!

Fortunately, the United States District Court for the District of Montana saw through CBD's power grab. Attorneys with Mountain States Legal Foundation intervened in the case, challenged CBD directly in court, and exposed their faulty case for what it was. In the end, the judge called

CBD's legal arguments "circular and therefore unpersuasive."

Because ranchers and farmers across the American West would have potentially lost the use of millions of acres of federally managed grazing lands, a loss in this case would have financially devastated the very individuals who are critical to our nation's food supply chain. By suing to cripple farming and ranching, CBD showed their true colors. Our nation's food supply chain takes a back seat to their anti-growth agenda.

This victory came just in time.

Like other environmentalist groups, CBD frequently files lawsuits to delay the implementation of policies they don't like. Had they succeeded here, CBD would have gained countless new opportunities to file such lawsuits by increasing the bureaucratic morass in Washington D.C., thus locking up species management and the land those species may (or may not) inhabit for years or even decades in federal court. While this case directly involved the grizzly bear in the lower 48 states, a loss in this case would have opened the floodgates for new litigation over hundreds of other species as well.

The ruling was cheered by our clients, Wyoming Stock Growers' Association, Wyoming Farm Bureau

Federation, and Utah Farm Bureau Federation.

"In recent years, it appears that the radical environmental community sees every action by a federal natural resource agency as an invitation to litigation," said Jim Magagna, Executive Vice President of the Wyoming Stock Growers Association. "This attitude only serves to discourage local collaboration that truly fosters species recovery and protection while maintaining viable ranching operations that provide wildlife habitat while supporting vibrant local communities."

Environmental activists tried to gain significant new power to lock up vast areas of federally managed land. They even tried to force the federal government to restore grizzlies to the Grand Canyon area.

Thanks to this significant victory, state and federal agencies can continue to tailor species recovery efforts in a manner that's most efficient and effective. Recovery plans won't be locked up in the same vicious cycle of unending litigation. That's not just important for ranchers and farmers whose livelihoods and fortunes depend on a functional and predictable public process; it also benefits the species being recovered. And isn't that what self-styled grizzly advocates say they want?

CBD has appealed their loss, but MLSF will continue fighting in court to ensure they do not gain the power they seek to control the land and the lives of the American people.

Key Facts

Case: *Center for Biological Diversity v. Haaland*

Court: U.S. Court of Appeals for the Ninth Circuit

Who's Fighting for You?



William E. Trachman recently joined MLSF as Associate General Counsel after serving in the Trump Administration. He is our lead attorney for this case.

What's at Stake:

Environmental activists are suing for vast new powers to push forward with their anti-growth agenda. They do not respect your property rights and want greater control over public lands. We are fighting them in court to uphold your rights.



Related News: Grizzly Kills Experienced Montana Outdoorsman

A 40-year-old backcountry guide, Charles "Carl" Mock, went fishing on April 15 but never made it back home. He was attacked by a grizzly bear, while fishing along the Madison River a few miles north of the town of West Yellowstone.

After the attack, Carl managed to use his cell phone to call 911, and emergency personnel transported him to a hospital in Idaho Falls. He underwent multiple emergency surgeries, but, tragically, Carl didn't survive the severe bite injuries to his head and body.

The attack took place outside the borders of Yellowstone National Park. Carl had worked within the park as a guide for many years, leading people on tours. He knew his way around the area, was experienced in the wilderness, and was carrying bear repellent spray on the day of the attack. Evidence indicates he used the repellent in a futile attempt to defend himself.

"They knew he had for sure launched off his mace because there was even mace on his clothes," his father told *The Billings Gazette* while reflecting on the tragedy. "He just lived to help people."

State wildlife officials later shot and killed the 400-plus-pound bear after it repeatedly charged them near the scene of the original attack.

Feds Took Our Land & Our Dream

My Family Has Spent 30 Years Trapped in Bureaucratic Purgatory



Robin Ray

Imagine you and your family were leasing a home for many years—a home where you raised your children, a place where you all felt safe and loved. This was a home where you created many fond family memories, and everything was good. You had a signed, long-term legal contract, and every month you paid your rent on time.

Then one day, the landlord knocked on the door and said you and your family had to leave your home and be gone within 36 hours!

How would you feel? What would you do?

This is the story of what happened to my family. But the “landlord” who took it away from us wasn’t an unscrupulous individual that we could fight through conventional means. It was a massive, faceless, unaccountable government bureaucracy, the Bureau of Land Management (BLM). We’ve been fighting the BLM for nearly 30 years over a decision of grave importance to a family-owned mining business we have in California’s Mojave National Preserve.

Our story began in 1948 when my grandfather claimed the Cima Cinder Mine, out in the Mojave Desert between Baker and Primm. He and his wife and their children lived and worked there. My grandpa, Emerson Ray, and his wife, my grandma, Fay Ray, their young children, and other

supportive friends and relatives built their desert home with their own hands. It was a home filled with sweet smells of homemade bread and baked beans. If you were a fly on the wall, you would hear singing, children giggling, shrieking, and dogs barking in the happy reverie of family life.

They worked hard bringing business to the fledgling desert community. Discovery, opportunity, and hard work were the order of the day. The



Robin Ray and her family turned to MSLF for help

necessary equipment was acquired to get the job done. The proper paperwork, claims fees, and other documentation were filed with appropriate authorities.

The future looked bright for the Cima Cinder Mine. The American Dream was alive and well!

Trouble on the Horizon

The dream began to hit roadblocks in 1991 when our family applied for a patent on the mine with BLM. Getting a patent would mean that, after having worked the claims and paid fees on it for almost four decades, we would finally own the land.

Many changes were happening in and around the area at the time, culminating in the 1994 creation of the Mojave National Park as part of the California Desert Protection Act. This put many area mines out of business. But the Cima Cinder Mine was one of the oldest working mines in the area, and it was grandfathered in, or so the theory went.

Traditionally, the full patent comes in two halves. When both halves are approved, the final patent is granted. The BLM approved the first half in 1992. After the first half was approved, my family sought to get the second half approved. We waited . . . and waited . . . and waited as the BLM declined to act, leaving my family trapped in a hellish bureaucratic purgatory.

Then, on August 10, 1999, while the patent application was still pending with the BLM, the National Park Service abruptly shut down the mine, ordering our family to immediately leave the home and business we had built over many years. We felt deceived. All those years of hard work, the mine, and our beloved home were taken away. There was no due process for us.

"With the stroke of a pen, the American Dream was gone."

With the stroke of a pen, the American Dream was gone. If the BLM had granted the second half of the patent, the park service could not have made my family leave our home and business. If the BLM had rejected the patent, the family could have appealed, forcing the agency to provide a legal rationale. But by simply doing nothing and making the family wait, officials paved the way for the government to shut down the operation of the mine and force my family to leave!

Since the mine closed, the house still stands, but rats, spiders, and snakes have moved in. Vandals have gone into the house with their spray paint and marked up the walls. The windows of the house have been shot out, and the once loving family home lies in ruins. The mining equipment that once helped provide the cinders for cinderblock sits rusting and



Robin's uncle, Monte Ray, looks over the rusting equipment at the family cinder mine. The business his parents worked so hard to build and maintain now lies in ruins.

rotting in the desert like the carcass of a large dinosaur. It makes me wonder if this neglect is what the National Park Service had in mind when they forced us to leave.

Refusing to Give Up... Or Give In

Many would think that my family would just throw in the towel and fade away, which is what most people do when confronting the insurmountable force a federal agency can wield. Instead, we fought on. With the help of the Mountain States Legal Foundation, we finally—in 2020—forced the BLM to answer the 1992 request for the second half of the patent!

What response did we receive after decades of waiting? The BLM came back with a mostly “no,” but a partial “yes,” in typically inscrutable fashion. They rejected most of the acreage for which a patent was sought. But they granted a patent on a small sliver of acreage, which the agency must have known was insufficient to reopen the mine. Even so, the grant of a partial patent is at least a decision, and a decision opens up an opportunity for appeal, raising the possibility that justice and fairness might still prevail.

MSLF has challenged the BLM's wrongful drawing of mine boundaries, noting the agency's misrepresentation of the law and complete failure



Riddled with bullet holes and broken glass, vandals have ransacked the property and left it exposed to the elements. The government forced the family to abandon their home and business where so many special memories were created. Pictured top right: Monte Ray with his daughter, Michele Bennett.

to consider basic facts that are vital to an accurate understanding of the situation. The government's long-delayed decision was irrational, capricious, and in violation of the Administrative Procedure Act. MSLF wants the agency to go back to the drawing board and come back with a more carefully considered decision on the patent application, considering facts it ignored the first go-round.

"That's the least the Rays are owed after the prolonged indifference and disdain the government showed towards the Rays," says MSLF's lead attorney on the case, David McDonald, who's been fighting for justice for our family. "The Rays waited for nearly three decades to get an answer from the BLM on their patent application, and now that we've finally forced the government to respond, it gave them a slap in the face," David adds. "By filing this complaint, we're making a statement that not even the federal government can get away with treating people this way."

Standing on Principle

Why should my family's story resonate with other Americans?

The first reason is that politicians come and go, but government bureaucracy lives on. Every citizen has a right to due process under the law. If we do not have due process, we are at risk of becoming a nation of chaos.

The second is that any of us can become the victims of bureaucratic misconduct. We know, and Mountain States Legal Foundation knows, if it happens to one family, it can and does happen to others.

My family's story reminds us that, in spite of the time, energy, and resolve that it takes, we need to keep fighting for our rights!

Robin Ray lives in Southern California. She and her family continue to fight for their property, thanks to the legal assistance made possible by MSLF supporters.



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Zachary Fort

The governor of New Mexico reversed a gun store shutdown order after we filed a lawsuit on his behalf.



Robin Ray

Her family has fought for thirty years for their property rights and legacy. Property rights are vital for all Americans.

Mountain States Legal Foundation is a non-profit, 501(c)3 organization. Please send your tax-deductible gift along with this form in the pre-addressed envelope. Thank you for defending liberty!

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The Hypocrisy of Justice Amy Coney Barrett's Critics

There seems to be a lot of lingering bitterness on the Left about Amy Coney Barrett's confirmation as the newest Supreme Court Justice—a choice Mountain States Legal Foundation cheered due to her impeccable credentials and strict adherence to the U.S. Constitution.

Sen. Sheldon Whitehouse (D-RI) and two other congressional Democrats recently demanded that Barrett recuse herself from a case, *Americans for Prosperity Foundation v. Rodriguez*. In this case AFP is challenging intrusive California donor disclosure rules that appear to be designed to discourage and intimidate those who financially support conservative organizations or causes disliked by that state's left-leaning rulers. Because AFP actively supported Barrett's confirmation, the three Democrats claim Barrett couldn't possibly rule impartially in the case.

Have such standards of recusal applied to left-leaning Justices who were endorsed by the ACLU or other liberal groups, which later brought cases before the Court? No, of course not.



Justice Amy Coney Barrett

Justice Barrett, class act that she is, hasn't stooped to calling out her critics for their hypocrisies and double standards. It just affirms that she's not lacking in the judicial temperament the job requires, even if the same can't be said for her perpetually disgruntled and temperamental critics.

To support MSLF's fight to defend your constitutional rights, visit mslegal.org