

The *Litigator*

Over \$100 Million in Projects To Go Forward

TEAM OBAMA AND ENVIROS DEFEATED

In mid-December 2009, MSLF celebrated a ruling by a Pennsylvania federal district court that barred the U.S. Forest Service from implementing a settlement agreement entered into by U.S. Attorney General Eric Holder with environmental groups, prohibited the agency from conducting studies on the use of privately owned oil, gas, and mineral (OGM) rights beneath the Allegheny National Forest (ANF), and lifted a moratorium by the agency on oil and gas drilling in the ANF. The ruling, which followed the June 2009 filing of a lawsuit, three days of hearings in late August in Erie, Pennsylvania, and post-hearing briefing, vindicates Minard Run Oil Company, the nation's oldest family-owned oil company, and the Pennsylvania Oil and Gas Association (POGAM), which brought the suit and are represented by MSLF. MSLF argued that the U.S. Forest Service's agreement, following a 2008 lawsuit by the groups, to do National Environmental Policy Act (NEPA) studies is illegal. The federal district court agreed.

MSLF's victory in obtaining a preliminary injunction strikes down an attempt by the Obama Administration to curtail development of Marcellus Shale, slaps aside a frivolous lawsuit by environmental groups—for which the Obama Administration awarded them \$20,000 under the Equal Access to Justice Act (EAJA)—and sharply limits the National Environmental Policy Act to the intent of Congress. Most importantly, the decision allows over \$100 million in planned economic activity and the jobs that go with them to go forward.



The 500,000-acre ANF in Elk, Forest, McKean, and Warren Counties is comprised of land purchased by the Forest Service in the 1920s; however, because the Forest Service bought only the surface, most (93%) of the OGM rights there are privately owned. Under current Pennsylvania law, owners of OGM rights may enter upon another's surface to access their property and to remove it, but they must exercise their rights with "due regard" for the surface owner's interests. That the United States owns the surface of the ANF does not change the law, which was recognized in 1980 by

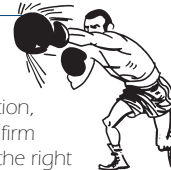
a Pennsylvania federal district court and in 2009 by the Pennsylvania Supreme Court. Finally, Forest Service policy, manuals, and regulations, as well as federal law, provide likewise. This means that any proposed use of OGM rights in the ANF does not trigger NEPA—the law used by environmental groups and activist judges to stop major federal actions that they oppose. Under NEPA, whatever gets studied gets studied to death!

In early 2009, development of OGM rights in the ANF ended when the Obama Administration rushed to settle a sweetheart lawsuit by environmental groups. The groups alleged that NEPA applied to the use of privately owned OGM rights in the ANF and that no one could use his rights until and unless the Forest Service had complied with NEPA. Attorney General Eric Holder agreed to: apply NEPA to OGM rights; adopt a moratorium on any use of those rights to prepare for applying NEPA; and, award the groups \$20,000 in attorneys' fees. The

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MOUNTAIN
STATES
LEGAL
FOUNDATION

Executive Offices:
2596 South Lewis Way
Lakewood, Colorado 80227

303-292-2021
Fax 303-292-1980

www.mountainstateslegal.org

impact on the region was "devastating." Employees were laid off, projects were stopped, companies faced bankruptcy, and school district funds were eroded. Oil was not produced and sent to the refineries, which also faced layoffs.

In its pre-Christmas ruling, the district court held that the Settlement Agreement was illegal; had caused "irreparable harm," including "significant financial losses," the possibility that companies "may be forced out of business," and the loss of "enjoyment or possession of land"; yielded equities that favored oil and gas operators; and, was contrary to the public interest of "preventing unreasonable interference with private property rights." Thereupon, the court enjoined implementation of the Settlement Agreement including preparation of a NEPA document, enforcement of the drilling ban, and processing of all proposed use of privately owned OGM rights in any manner other than that authorized by the federal court in 1980.

SOUTHWEST CATTLEMEN FIGHT ENVIROS

Two large agricultural groups whose members' ability to earn livelihoods and use their private property will be affected adversely by designation of a species of prairie dog as eligible for listing under the federal Endangered Species Act (ESA) are fighting an attempt by an environmental group to reverse a U.S. Fish and Wildlife Service (FWS) decision. The Arizona Cattle Growers' Association and the New Mexico Cattle Growers' Association filed a friend of the court brief with the Arizona federal district court arguing that the FWS's decision not to list the Gunnison prairie dog in Arizona and New Mexico is factually and legally correct. The environmental group argues that the decision is based upon a flawed March 2007 interpretation, by the U.S. Department of the Interior Solicitor, of the phrase in the



ESA, "significant portion of [a species'] range."

On February 5, 2008, the FWS issued a 12-month finding regarding the petition to list the Gunnison prairie dog as a threatened or endangered species in which the agency found that the species was not endangered or

threatened in all of its range. It also found that the species in central and south-central Colorado and north-central New Mexico warrants listing, but that listing is precluded by higher priority actions. Thus, the FWS found that listing is

not warranted in the species' "prairie" range and is warranted, but precluded, in its "montane" range.

In March 2009, WildEarth Guardians sued, arguing that the 2007 opinion, on which the FWS relied, incorrectly interprets the ESA.

DOUBLE YOUR MSLF GIFT! TELL THE BOSS

Did you know that you might be able to double your gift for free? Thousands of companies match their employee's charitable contributions. Matching gifts play a key role in helping MSLF fight its court battles. Please ask if your employer has a matching

gift program. Contact your human resources or personnel department to see if your company will match your gift to MSLF. Then, each time you mail your gift, please include a matching gift form from your employer. MSLF will do the rest!

WEB PAGE POLL

Visitors to MSLF's web site at www.mountainstateslegal.org responded to the following question: "A New Jersey family that owns a home inside an area managed by the National Park Service was sued after the agency claimed its driveway. Is that right?" One hundred percent (100%) said, "No. The Park Service never claimed nor maintained the road; it is trying to get the family's land without paying for it!" Zero percent (0%) said, "Yes. Given the size of the federal deficit, the Park Service can not pay for 'just compensation.' It must seize the land."

Vote on the new question at MSLF's web site today!

Remember, the best way to keep abreast of MSLF's precedent-setting, national-significant litigation is to check MSLF's highly acclaimed web site. MSLF's web site is updated at least every week and often daily. In particular, check for updates on MSLF's "Legal Cases" and "Press Releases."

PENDLEY'S VIEW

In 2009, the Supreme Court heard arguments in *Free Enterprise Fund v. Public Company Accounting Oversight Board* (PCAOB), which asks whether the PCAOB, established in the Sarbanes-Oxley Act, complies with the U.S. Constitution. One judge from the U.S. Court of Appeals for the District of Columbia Circuit called it "the most important separation-of-powers case regarding the president's appointment and removal powers to reach the courts in the last 20 years."

In 2006, the Free Enterprise Fund, a nonprofit group that champions limited government, sued arguing that the PCAOB violates the Constitution's "Separation of Powers Doctrine" and the "Appointments Clause." In 2007, the District of Columbia federal district court upheld the Act's constitutionality. In 2008, the District of Columbia Circuit, by a 2-1 margin, agreed and then rejected petitions for rehearing and rehearing *en banc* by 2-1 and 5-4, respectively. In 2009, however, the Supreme Court agreed to hear the matter.

Despite the Constitution's specificity, over the decades Congress blurred clear lines by creating executive entities that report, not to the President, but to the multi-headed monster that is Congress, hence to no one. In a series of cases beginning in 1886, extending through 1935, and culminating in 1988 (in a ruling Justice Scalia called "an open invitation for Congress to experiment"), the Court authorized the administrative state. A 1926 ruling, in which the Court got it right, via careful analyses of the Constitution's text and the Founders' theory, was brushed aside.

In *Free Enterprise Fund*, the Court should rule that independent agencies—bodies of persons wielding executive power, over which the President exercises little, if any control or supervision—are anathema to the Constitution. With so much mischief in Washington, D.C., there has never been a more important time to do so!

GUN RIGHTS AT U.S. SUPREME COURT

Two Colorado gun-owner groups have filed a friend of the court brief with the Supreme Court of the United States urging the Court to hold that the Second Amendment right to “keep and bear arms” applies against the States via the Fourteenth Amendment. Rocky Mountain Gun Owners (RMGO) and the National Association for Gun Rights (NAGR), both incorporated in Colorado, argue that earlier holdings by the Supreme Court that the Second Amendment applies only against the federal government were overturned by the Supreme Court’s 2008 ruling against Washington, D.C. RMGO, Colorado’s largest state-based gun lobby, is dedicated solely to protecting the natural right to keep and bear arms by way of grassroots and professional lobbying; NAGR assists state-based gun-rights organizations by providing information and lobbying support nationally and in Washington, D.C. In their *amicus curiae* brief, the groups argue that westerners believe the Second Amendment has always applied to the States.

The Second Amendment to the U.S. Constitution provides, “A well regulated Militia, being necessary to the security of a

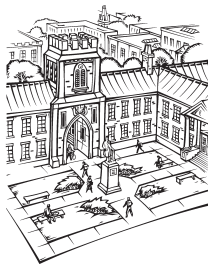
free State, the right of the people to keep and bear Arms, shall not be infringed.” In 2008, in *District of Columbia v. Heller*, the Supreme Court held that the Second Amendment protects the individual’s right to keep and bear arms for self-defense by striking down a Washington, D.C., law because the law banned handgun possession and required other firearms to be kept locked and unloaded. (MSLF filed a friend of the Court brief in that case on behalf of the would-be gun owners.) Although the Supreme Court ruled that the Second Amendment protects the individual’s right to keep and bear arms for self-defense, it also has ruled that the Second Amendment applies only to the federal government and is not incorporated against the States by way of the Fourteenth Amendment; however, *Heller* casts grave doubt on the continuing validity of the Court’s 19th-century rulings.

Recently, the U.S. Courts of Appeals for the Second and Seventh Circuits refused to use *Heller* to apply the Second Amendment to States. In April 2009, would-be gun owners in Chicago sought Supreme Court review of the Seventh Circuit’s refusal, which was granted in September 2009.



COLLEGES MAY NOT USE RACE TO ADMIT

In support of the appeal by two Texas coeds denied admission to the University of Texas – Austin because of their race, MSLF filed a friend of the court brief with the U.S. Court of Appeals for the Fifth Circuit. MSLF, which prevailed in the landmark *Adarand Constructors, Inc. v. Peña* ruling by the U.S. Supreme Court (*TIME* called it a “legal earthquake”), argues that the Texas federal district court, in upholding the use of race by the University of Texas, relied improperly upon student surveys and the University’s unsupported judgment as to the “critical mass” of minority students necessary; as a result, the district court went beyond what was permitted by the



Supreme Court in its 2003 decision regarding the University of Michigan School of Law. MSLF also contends that the Supreme Court’s 2003 ruling is an aberration that deviates significantly from decades of equal protection jurisprudence and should be abandoned.

Abigail Noel Fisher of Sugar Land, who graduated in the top 12 percent of her class, and Rachel Multer Michalewicz of Buda, who graduated in the top 11 percent of her class, applied for but were denied admission. In April 2008, they sued the University and its officials in the U.S. District Court for the Western District of Texas in Austin, alleging that they were denied the right to compete for admission.

KEEP WOLVES OFF

Wolves imported into Idaho and Montana by the federal government no longer merit listing on the federal Endangered Species Act (ESA) argue two western farm bureaus before a federal district court in Montana in urging the court to uphold a decision by the U.S. Fish and Wildlife Service (FWS). The Montana Farm Bureau Federation and the Idaho Farm Bureau Federation, represented by MSLF, all three of which intervened in a lawsuit filed by environmental groups aver that the gray wolf in the northern Rocky Mountains is a distinct population segment (DPS) of the gray wolf and may be removed from ESA protection given state plans by Idaho and Montana regarding the predator. The DPS designation was made by the FWS as to gray wolf populations in Idaho and Montana in April 2009. Environmental groups filed their lawsuit in June 2009. MSLF had challenged the 1994 decision to place Canadian wolves in the region.

The gray wolf (*Canis lupus*) once roamed the northern Rocky Mountain region; however, due to their predation on livestock, the federal government permitted their killing. By 1930, wolves had been almost eliminated in the region. In 1973, the FWS listed the Northern Rocky Mountain Wolf (*Canis lupus irremotus*) as “endangered” and, in 1978, listed the gray wolf as “endangered” in the lower 48 States, except in Minnesota, where it was “threatened.” In 1994, the FWS captured wolves in Canada, imported them into the United States, and released them in Montana, Idaho, and Wyoming.

KEEP READING!

The Litigator, MSLF’s quarterly newsletter, is the indispensable tool for staying informed regarding the latest in MSLF’s precedent-setting, nationally-significant, public-interest litigation. *The Litigator* is mailed on the first of February, May, August, and November. Ensure that you keep receiving *The Litigator* by contributing \$25 annually.

GIFT OF SECURITY IS BETTER THAN CASH?

MSLF values all gifts provided by its generous supporters; they permit MSLF to aggressively defend the rule of law and constitutional liberties in the courts of the land. Each supporter, however, may find the value of some gifts, in terms of taxes lawfully avoided, more valuable than others. One example is that involving the choice between a gift of cash or one of long-term appreciated securities; in this case a supporter in the 28% marginal tax bracket wishing to contribute \$10,000:

<u>CASH</u>		<u>SECURITY</u>
\$10,000 (cash)	contribution	\$10,000 (securities bought at \$2,000)
<u>-2,800</u>	income taxes saved	-2,800
	capital gains tax avoided	<u>-1,200</u>
\$ 7,200	post tax contribution cost	\$6,000

For those supporters concerned that the securities, which were bought years ago, are a good investment and likely to continue to increase in value, experts have a suggestion: contribute the stock and use cash to buy the same stock again. In the end they will still hold that good investment but will have eliminated the taxable capital gain to date!

Income tax regulation and estate tax laws are complex and vary state to state. PLEASE consult a tax advisor before making any decision. If you decide to contribute stock, please follow the instructions on the facing page and NOTIFY MSLF that they are "on the way."

ACT NOW: REMEMBER MSLF IN YOUR WILL

Suggest this bequest language to your attorney:

"I [name], of [city, state, ZIP] give, devise and bequeath to Mountain States Legal Foundation (MSLF), (tax identification number 84-0736725) 2596 South Lewis Way, Lakewood, Colorado 80227, [written dollar amount or percentage of the estate or description of the property] to continue its mission to protect and preserve individual liberty, the right to own and use property, limited and ethical government and the free enterprise system."

When you add MSLF to your will, be sure to tell us! We want to thank you by adding your name to MSLF's Legacy Society wall plaque.

NEED TO DRAFT OR REVISE YOUR WILL?

More than 60 percent of adults living in households with children do not have wills. You need one if:

- You are married;
- You have minor children or ailing parents;
- Your entire estate is valued at more than \$50,000;
- You own real estate;
- You own a business;
- You support MSLF!

You need to revise your will if there have been changes in any of the following:

- Marital status;
- Desired executor/guardian;
- Finances;
- Beneficiaries;
- Place of residence;
- Tax laws;
- Children's financial needs;
- Degree of support for MSLF.

IF HELPING IS HARD

During these tough economic times, some life-long supporters find it hard to make the financial contributions they have in the past.

They may continue to support MSLF and ensure its fight for liberty far into the future by naming MSLF in their wills or making MSLF a beneficiary of a life insurance policy their loved ones no longer need.

A gift for MSLF's future has great value for MSLF's fight for freedom.

HELP MSLF FIGHT FOR FREEDOM: JOIN THE LEGACY SOCIETY

Name _____

Address _____

City _____ State _____ Zip _____

Home Phone _____ Cell Phone _____ E-Mail _____

- Send me FREE information on Planned Giving.
- Call me! I have planned giving questions.
- I have added MSLF to my estate plans. Put my name on the plaque.
- Send me the MSLF E-Newsletter.

Mail to: MSLF, 2596 SOUTH LEWIS WAY, LAKEWOOD, CO 80227

Mountain States Legal Foundation (MSLF) Is A Nonprofit, Public-Interest Law Firm, Certified As A 501(c)(3) Organization Since Its 1977 Founding.

Therefore, Your Generous Contributions to MSLF Are Tax Deductible!

- Fact** MSLF receives no government funds (except when it wins in court and the judge orders the federal government to pay attorneys' fees and expenses).
- Fact** MSLF's sole source of support is the tax-deductible contributions of those who support its aggressive litigation program.
- Fact** MSLF is a nonprofit, public interest I.R.C. 501(c)(3) corporation, which makes the contributions it receives tax deductible.
- Fact** MSLF is committed to the vision of the Founding Fathers: individual liberty, the right to own and use property, limited and ethical government, and the free enterprise system.
- Fact** MSLF's commitment to the Constitution ensures that America remains a nation of laws and not of men and that the rich liberty legacy of this nation continues.
- Fact** MSLF does only one thing: it goes to court in defense of the Constitution, strict adherence to the laws of the land, and those who cannot afford to hire legal counsel to protect their rights.
- Fact** Only YOU can ensure that MSLF may continue its vital work.

Problem ➤ Federal, state, and local taxes take an ever-increasing share of one's income.

Solution ➤ Gift giving decreases taxes while advancing charitable goals.

Reason ➤ At a time when many mechanisms for legally lowering taxes have been eliminated, the opportunities for reducing taxes by planned charitable giving have been increased!

The Means ➤ **Income Tax** – Each year a person may deduct as much as 50 percent of his or her adjusted gross income (AGI) for gifts of cash to a qualified charity; that limit is only 30 percent for gifts of appreciated property.

Estate Tax – A person who died in 2009 is entitled to an exclusion of up to \$1,000,000; however, estates in excess of that amount may deduct charitable gifts, by will or trust. Because federal estate taxes over \$1,000,000 range from 37 percent to 50 percent, for every charitable gift of \$1,000, the estate saves up to \$500 in taxes. Please consult your tax adviser.

Stock Transfer Information ➤ Contributions of stock can be made electronically to MSLF's brokerage account DTC 0164. When transferring stock, indicate acct. #7080-3528, Charles Schwab & Co., 518 17th St., Suite 100; Denver, CO 80202. (Richard Wulforst 303-260-5908; 303-260-5917). **Please notify MSLF BEFORE making the transfer; there is no way to identify a stock donor without prior notification.**

MSLF CANNOT REST; ITS ROLE ESSENTIAL TO REMAINING FREE

In 2010, MSLF will have been going to court for 33 years, fighting to compel compliance with the commands of the Constitution and federal law to ensure that America remains a nation of laws. At no time during these three decades has the need for MSLF to go to court on behalf of those who could not afford legal representation been lessened. In fact, as the federal bureaucracy has grown and as federal laws have become more far-reaching and intrusive, MSLF's caseload has increased dramatically. That is obvious from a review of the scores of MSLF cases.

Your Support Is Vital

If there is one lesson MSLF has learned over the past 33 years, it is that, regardless of which party occupies the White House or controls Congress, the threat to liberty remains and MSLF must be ready, willing, and able to go to court to defend freedom. As Thomas Jefferson once said, "Eternal vigilance is the price of liberty." One of the prices that must be paid for MSLF to remain vigilant is the price that tens of thousands of Americans pay annually by making their tax-deductible contributions to MSLF and its litigation.

The support of MSLF by tens of thousands of Americans committed to freedom could not be more important. Your support will ensure that MSLF remains IN THE COURTS FOR GOOD!

Yes! I want to help MSLF in its brave fight to ensure the guarantees of the U.S. Constitution and to preserve the rule of law throughout the land!

- Enclosed is a tax-deductible contribution of \$25. Please keep sending me *The Litigator!*
- Enclosed is a tax-deductible contribution of \$ _____ to help MSLF in its courtroom battles.
- Enclosed is a tax-deductible contribution of \$ _____ for MSLF's Endowment Fund.
- PLEASE send me information on planned giving.

Name _____

Street _____

City _____ State _____ Zip _____

Day Phone (_____) _____ E-mail Address _____

ARIZONA MINERS APPEAL A 2-1 RULING

The Arizona Mining Association, in a friend of the court brief filed by MSLF, challenged a 2-1 ruling by the U.S. Court of Appeals for the Ninth Circuit and urged that an *en banc* panel of the court rehear the case. At issue is a proposed land exchange between the Bureau of Land Management (BLM) and Asarco LLC, which was analyzed at length by the BLM and upheld, against a challenge by environmental groups, by the Interior Board of Land Appeals (IBLA) and an Arizona federal district court. The Ninth Circuit panel, however, held the studies performed by the BLM under the National Environmental Policy Act (NEPA) to be inadequate. The Association argues that the panel's ruling rejects the will of Congress, renders land exchanges off-limits to the mining industry, and robs Arizonans of jobs. Created in 1965, the Association represents the State's mining industry, which, in 2008, contributed \$10.4 billion to the State's economy and paid \$167 million in State and local taxes and fees.

In Gila and Pinal Counties, Arizona, Asarco LLC owns and operates the Ray

Mine Complex, which includes a 265,000-ton-per-day open-pit copper mine, a smelter and other plants, as well as mills, concentrators, leaching systems, and related support facilities. The Ray Mine is the second most productive copper mine in Arizona and the third most productive in the U.S.

In 1994, Asarco proposed a land exchange with the BLM to consolidate its holdings and to support and expand its mining operations: Asarco would convey to the United States 18 parcels of private land totaling 7,300 acres; in return, Asarco would receive 31 parcels totaling 10,976. Between 1995 and 1997, the BLM consulted with various federal, state, and local agencies, representatives, nongovernmental organizations, tribal entities, and private individuals. In October 1998, the BLM released a Draft Environmental Impact Statement for public comment. After reviewing and considering public comments, the BLM issued its Final Environmental Impact Statement in June 1999. In April 2000, the BLM issued a Record of Decision and approved the land exchange.



MINERS APPEAL "EXPERT" EDICT

Two small mining companies, which discovered and developed a valuable gold deposit in an area mined since the late 1800s, filed a brief in their appeal of a ruling by a Washington, D.C., federal district court that they had not made valid discoveries under the General Mining Law. Ernest K. Lehmann & Associates of Montana, Inc., and Mount Royal Joint Venture, which seek reinstatement of their six mining claims, had challenged the ruling by the U.S. Department of the Interior's (DOI's) Interior Board of Land Appeals (IBLA) upholding an Administrative Law Judge (ALJ) decision that six of their fourteen claims are invalid. In April 2009, however, the district court deferred to the agency and upheld the IBLA ruling. The miners argue that the DOI made assumptions no reasonably prudent miner would make and that the agency's "expert" assumed the deposit would be high-graded and that tons of very valuable ore would be discarded. The miners also argue that, contrary to a U.S. Supreme Court ruling, the burden of persuasion was imposed on them and not the agency.

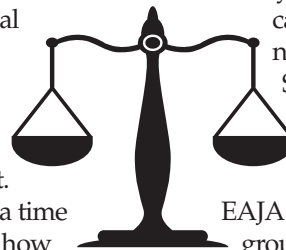
The claims are in the Sweet Grass Hills Area in Liberty and Toole Counties in north-central Montana. The area consists of intermingled private, state, and federal surface and mineral interests.

VICTORIOUS MINER FIGHTS FOR ATTORNEYS' FEES AND COSTS

A California miner who won the right to engage in placer mining on his claim in the mountains of northern California after a February 2007 ruling by the Interior Board of Land Appeals (IBLA) filed his formal "Statement of Reasons" in an appeal to the IBLA regarding his right to be reimbursed by the United States for legal expenses incurred in his victory. In 2007, the IBLA rejected claims by the U.S. Forest Service and upheld a December 2003 ruling by an administrative law judge (ALJ) that the claim of Donald Eno, a disabled veteran on fixed income, has an economic value that is more substantial than other uses argued by the Forest Service and is not located on land that is sacred, geologically

unique, or scenic. Subsequently, however, when Mr. Eno sought reimbursement for the legal fees and expenses incurred in his victory pursuant to the Equal Access to Justice Act (EAJA), another ALJ held that the government's legal action in the case was "substantially justified" and thus denied payment.

Mr. Eno's appeal comes at a time of increased media scrutiny on how the federal government awards attorneys' fee and expenses under the EAJA. According to a recent study, in cases involving the U.S. Forest Service from 2003 to 2005, 35 of the 44 EAJA awards made were to environmental groups. Moreover, in Idaho federal district court



over the past decade, one environmental group received nearly one million dollars in attorneys' fees and expenses. In some cases, environmental groups did not win; instead, the United States settled the lawsuits. The view of many that the federal government and federal courts are too willing to make EAJA awards to environmental groups received additional support when, early in 2009, Attorney General Eric Holder settled a lawsuit and paid \$19,222 to three environmental groups that did little more than file a complaint!

Mr. Eno owns the Hound Dog placer mining claim in the Plumas National Forest Service near Quincy, California.

LEGAL



ACTION

■ A national organization and three Colorado students or former students filed their brief in their appeal of the denial, by a state district court, of their claim that the University of Colorado's ban on concealed carry on campus violates state law and the Colorado Constitution.

- MSLF filed its brief at the U.S. Court of Appeals for the Tenth Circuit urging the appellate court to uphold a ruling by Wyoming federal district court that President Clinton's U.S. Forest Service "roadless" proclamation was illegal.
- A Montana family that prevailed at Montana federal district court in its fight to allow the U.S. Forest Service to engage in forest health reclamation to prevent catastrophic fires urged the U.S. Court of Appeals for the Ninth Circuit to uphold the lower court's ruling.
- A New Mexico woman fighting for her right to use her private property

filed responsive briefs in her lawsuit against the U.S. Forest Service.

- A Wyoming man seeking to keep his private property, which the U.S. Forest Service wants for a public trail, filed pleadings before the U.S. Court of Federal Claims and the Tenth Circuit.
- MSLF demanded that the U.S. Fish and Wildlife Service withdraw its plan for designation of tens of thousands of acres of "critical habitat" for the Prebles' Meadow Jumping Mouse because the agency's decision is not based on good science; in 2003, MSLF sued over the mouse's 1998 listing.

NOTABLE



QUOTES

"Thanks for being there. We sure need you more than ever."
Doug Nelson
Dixon, NM

"I appreciate your work."
Frances C. Young
Ketchikan, AK

"You are one of the few I am sending a contribution to."
Kenneth M. Pike
Rosemead, CA

"My hope is that more people will take the lead as MSLF has done to 'never give up'."
Ronald F. Whited
Sidney, MT

"I do want to thank you for what you are doing and please keep up the good work."
Maxine Mizell
San Antonio, TX

"You people are the real 'A' team."
Mortimer J. Lewis
Henderson, NV

"Thank you for ALL you've done and continue to do in protecting our freedoms."
Saralyn Johnson
Wallowa, OR

"Keep up the good work. It's an honor to be associated with your firm."
David A. Voldseth
Martinsdale, MT

"I am glad you are in the Pennsylvania court's battle over the natural gas deposit."
Susan Brunoff
New Holland, PA

"My grandfather and his brothers worked in the oil fields of northern Pennsylvania . . . in the late 1880s 'til 1925 or so . . . God bless your efforts for the Minard Oil Company."
Carol A. Morris
East Jordan, MI

"I have great regard for the work that the Foundation is engaged in."
Patricia J. Bean
Bellbrook, OH

"Thanks for all your efforts."
Stephen S. Konz
Republic, WA

"I agree with your work."
Floyd C. Slagowski
Carlin, NV

"You have fought this battle [to keep the Republic] for so long."
Arlene M. Frelk
Merrillan, WI

"Thank you for your help to so many who are losing their freedom."
Mary F. Rushing
Pinckneyville, IL

"Keep up the good work. Thanks for all you do."
Gene L. Schreiber
Worland, WY

"[W]e are proud to help with your program."
Timothy Barnard
Bozeman, MT

"We appreciate your contributions to our free society and . . . are very proud of the work you all do and the results you achieve . . ."
Norman E. Murray
Buffalo, NY

"Keep up the good fight and the great work."
Mike Caskey
Denver, CO

"I worry about the way this country is going . . . keep up the good fight."
Jim Barnsdale
Homeland, CA

NATIONAL PARK SERVICE ATTACKS YOUNG FAMILY OVER ROAD

Last fall, a rural New Jersey family was thrilled to learn that MSLF will represent it in New Jersey federal district court to defend its right to own and use its property. Matthew and Aaron Hull and Matthew's wife, Michelle, of Layton, New Jersey, were sued by the National Park Service (NPS) after they erected gates across Old Mine Road, which bisects the Hulls' property for 300 yards and passes within 20 feet of their house, to keep trespassers off their land. In a lawsuit filed in March 2009, seeking damages and injunctive relief, the NPS alleged that the road, which lies within the Delaware Water Gap National Recreation Area (NRA), is property of the United States. The Hulls contend that the United States has never owned or maintained the road and that it reverted to them after it was abandoned by the local township. In a filing by MSLF late last year, the Hulls counterclaim that they, not the NPS, own the road and the court should vest permanent title in them.

In the 1950s, the United States proposed creation of the Tocks Island Dam Project on the Delaware River in Sandyston Township, Sussex County, New Jersey, which



would have created a 37-mile-long lake between New Jersey and Pennsylvania and would have been the biggest dam project east of the Mississippi. In the 1960s, the U.S. Army Corps of Engineers acquired 72,000 acres of private land; many landowners complained about insufficient compensation and heavy-handed tactics. In the end, the project failed due to local opposition and lack of funds, yet the land was never returned. In 1978, it was transferred to the NPS and managed as the NRA.

One of the most persistent opponents of the project was Enos "Cy" Harker, a World War II veteran who refused to sell the land on which he lived for almost 50 years until he died—while tilling a hillside—in October 2006 at age 93. By then, he was the only landowner along Old Mine Road who had not sold his property to the federal government. In fact, he included a deed restriction barring his property from ever being sold to the United States.

In September 2007, the Hulls bought the property, which is abutted on three sides by the NRA and on one side by the Delaware River. Old Mine Road was abandoned by the Sandyston Township in 1988.



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