

The *Litigator*

Vigilant, Valiant & Victorious for 30 Years

MSLF CELEBRATES HISTORIC ACHIEVEMENT

In 1977, MSLF began in a tawdry and tiny walk up in a rundown high-rise on the edge of Denver's business district; one member of the small staff, on her arrival at work, often found it necessary to step over a homeless person who had sought refuge in the dark hallway. No one had ever heard of MSLF.

In 2007, MSLF owns its national headquarters near the foothills of Colorado's Rocky Mountains. An American Flag and professional offices greet legal and administrative staff on their arrival. As for MSLF, it is known nationally as a strong, steady, and steadfast defender of constitutional liberties and the rule of law for which it has drawn the praise of individuals as diverse as Ronald Reagan and Ruth Bader Ginsburg.

MSLF was created by western business leaders, including the late Joseph Coors who was its first chairman and sustained it with magnanimous contributions, and supported by westerners concerned about their ability to own and use property and to use the vast federal land holdings that abound in the West for economic and recreational activities. One of MSLF's first cases challenged the presence of wild horses on private grasslands in Wyoming's Sweetwater County. Soon MSLF was taking on key nationally significant litigation of interest to most Americans: a tax on what Congress called "windfall profits," racial preferences and quotas, and the ability of environmental groups to prevent almost all economic growth.

Although MSLF remains preeminent regarding environment and natural resources issues, particularly on federal lands throughout the country, as well as its efforts to ensure citizens' ability to



own and use property, MSLF's greatest victories have come in its remarkable fight for the Constitution's equal protection guarantee.

MSLF's defense of tiny Adarand Constructors of Colorado Springs, Colorado, not only made national news and reached the U.S. Supreme Court on three separate occasions, it also changed the legal landscape. *Time* called the Supreme Court's 1995 *Adarand* ruling a "legal lightning bolt," and labeled it one of the five most important rulings during Chief Justice Rehnquist's time on the Court. Legal scholars predicted that MSLF's *Adarand* victory would put an end to race-based decision making by all units of government: federal, state, and local. MSLF is working hard across the country to achieve that result.

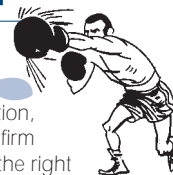
MSLF's experience representing property owners and tiny units of government in the West allowed it to take cases from beleaguered citizens and local governments across the country, including farmers in Missouri, landowners in Michigan and Minnesota, and a tiny town in Pennsylvania.

MSLF's successes on the national stage have not turned its head. It continues to fight in the West for property rights and the free enterprise system in cases that have increased MSLF's fame for being "in the courts for good." MSLF

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represented John Shuler of Montana who killed a grizzly bear in self-defense then was sued by the U.S. Fish and Wildlife Service. MSLF fought for Bobby Unser who nearly died in a Colorado ground blizzard then was charged criminally for entering a wilderness area on a snowmobile during the midst of that blinding storm. MSLF won for Larry Squires of New Mexico who was barred from using his arid lands because the federal government claimed they were "waters of the United States."

Through its litigation, MSLF seeks to protect the rights guaranteed by the Constitution and preserve the rule of law, in the course of which MSLF seeks to win victories for its clients, establish binding legal precedents to serve its constituents and the public in general, and educate the American people on the daily threat to their liberties. Thanks to MSLF's thousands of generous donors, in every state in the country, MSLF has been able to do just that, as of April 25, 2007, for 30 years!

FEDS GET DISMISSAL IN BOMBING CASE

A Utah family, which for decades urged the United States to fulfill its contractual and moral obligations to the family by cleaning up family property the United States used as a bombing and weapons testing site, lost their fight in Utah federal district court to prevent efforts by the federal government to have the case dismissed. The lawsuit, filed by F. Douglas Cannon, Margaret Louise Cannon, and Allan Cannon, contends that the failure of the United States to reclaim some 1,417 acres of land that the Cannon family owns just south of the Army Dugway Proving Grounds in Tooele County in west central Utah violates federal Solid Waste Disposal and the Administrative Procedure Acts. The contract between the Army and the Cannons' grandfather said the land would be restored to its original state. Federal attorneys assert that the United States has taken action to "remove" or "remediate" the ordinance; therefore, the case should be dismissed.

Over the last 61 years, the United



States has done nothing about the deadly high explosive, incendiary, and chemical weapons on the Cannons' property; yet, now maintains that the paperwork shuffle in which it has engaged since the Cannons' lawsuit was filed in late 2005 is "cleanup."

MSLF, arguing for the Cannons, urged the district court to reject the claim as "absurd."

Despite demands by Jesse Fox Cannon after World War II as well as by his son, the Cannons' father, in subsequent years, that the United States take action to restore the property, the United States did no reclamation work other than to complete a draft 1996 engineering study, which verified the extent of the contamination. A 1998 lawsuit by the family for monetary damages ended when the U.S. Court of Appeals for the Tenth Circuit ruled the case was filed too late.

The family argues the materials left by the United States present "an imminent and substantial endangerment to health or the environment."

PENDLEY'S VIEW

On March 19, the U.S. Supreme Court heard *Wilkie v. Robbins* to answer this question by the United States: **"Whether the right to exclude others from property is sufficiently established that federal employees should know, when they retaliate against an owner for excluding them, that they are violating his constitutional rights?"**

Harvey Frank Robbins owns the High Island Ranch, a cattle and guest ranch in Hot Springs County, Wyoming. In 1994, Mr. Robbins' predecessor granted the Bureau of Land Management (BLM) an easement to use a road that crossed the ranch to access other federal land in exchange for a limited right-of-way to use that same road to cross BLM land. He recorded his right-of-way; however, the BLM failed to record its easement. Unaware of the unrecorded easement, Mr. Robbins purchased the ranch and, thus under Wyoming law, extinguished the BLM's easement.

When it learned its easement had been extinguished, the BLM demanded Mr. Robbins grant an easement without compensation. When he refused, BLM employees began a campaign of threats, harassment, and intimidation to coerce him into relinquishing his rights to exclude them from his property. After years of abuse, Mr. Robbins sued the BLM employees in Wyoming federal district court, which ruled against him on pleading grounds; however, the U.S. Court of Appeals for the Tenth Circuit reversed. On remand, the BLM employees argued they had immunity. The district court rejected that claim, held the evidence substantiated Mr. Robbins' allegations, and ordered the case to trial. The BLM employees appealed. The Tenth Circuit ruled again for Mr. Robbins.

Here is another question: ***Given the millions of "Keep Out - Private Property" signs children have affixed to bedroom doors, tree houses, and secret hideaways, where did these BLM employees grow up?***

A handwritten signature in black ink, appearing to read "Harvey Robbins".

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 employees' 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 resource 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: "Relying on a 2003 U.S. Supreme Court ruling, local school boards are assigning students on the basis of race to achieve 'diversity.' Does this violate the Equal Protection Clause?" Seventy-six percent (76%) said, "Yes. Discrimination on the basis of race between and among Americans is 'odious to a free society.' The Supreme Court must reverse its 2003 ruling." Twenty-four percent (24%) said, "No. The national good served by teaching students to live in a diverse society exceeds the damage of teaching them that a student's race matters."

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

Remember, the best way to keep abreast of MSLF's precedent-setting, nationally-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."

NINTH CIRCUIT HAS SACRED LAND CASE

The U.S. Court of Appeals for the Ninth Circuit heard oral arguments on whether a decision by the U.S. Forest Service to close a famous climbing area on federal land because some American Indian religious practitioners say it is sacred is unconstitutional. The Access Fund, which filed the appeal, argued that the Forest Service's closure of Cave Rock near Lake Tahoe in Nevada violates the Constitution's Establishment Clause, which mandates government neutrality regarding religion. MSLF joined in support of the group with a friend of the court brief, which drew a bitter response from the federal lawyer during argument. A Nevada federal district court had upheld the closure earlier citing the "unique" nature of American Indian religion.



MSLF noted that the Forest Service says the religious "power" of Cave Rock is a "renewable" resource whose use must not "compromise [its] long-term productivity." MSLF also directed the Ninth Circuit to a similar case where a Latin cross on federal lands was unconstitutional; the law applied there applies here as well, argued MSLF.

MSLF has been involved for over a decade in whether federal land may be closed because American Indian religious practitioners assert that the land is sacred and must be closed. MSLF's litigation includes Devils Tower and the Bighorn National Forest in Wyoming, the Lewis and Clark National Forest in Montana, Rainbow Bridge National Monument in Utah, and the Plumas National Forest in California.

MINERS WIN BIG!

A Montana federal district court ruled in favor of a Montana mining family whose mining claims were declared forfeited by the U.S. Bureau of Land Management (BLM) reversing the actions of the U.S. Department of the Interior Board of Land Appeals (IBLA). Ms. Julie Dimitrov and three members of her family, some descendants of Kester Counts, the original locator of most of the claims, had challenged an August 31, 1999, decision by the BLM that they had not complied with annual filing requirements for their claims. On January 14, 2005, after more than five years, the IBLA, in a 2-1 ruling, upheld the BLM's decision. The district court granted summary judgment to the family and ordered the IBLA to reinstate the 29 claims.

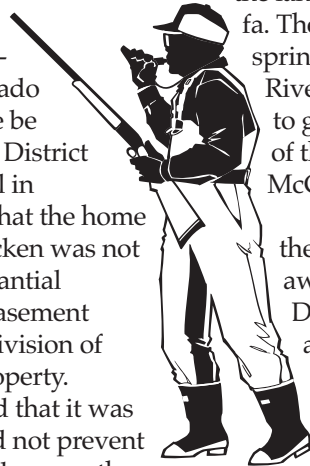
The family members who filed the lawsuit include: Ms. Dimitrov, Laretta Ferranti, Laura Jean Cole, and Opal Blair.

COLORADOANS SAVE HOME FROM STATE WRECKING BALL!

A Colorado family saved its newly constructed home from the wrecking ball when a Colorado state court rejected the demand by a Colorado state agency that the home be razed. The Logan County District Court, after a two-day trial in Sterling, Colorado, ruled that the home of Joel and Justina McCracken was not an "unreasonable or substantial encroachment" upon an easement owned by the Colorado Division of Wildlife (DOW) on the property.

The family had argued that it was clear that the easement did not prevent the construction of homes because the DOW did not object when two other homes were built on that easement. Moreover, the McCrackens had presented evidence, including testimony from owners of other homes built on the easement, that the demand by the DOW has no basis in law or in fact. The court held that the deed itself is ambiguous.

Joel and Justina McCracken purchased 115 acres of land along County Road 370 in Sterling, Colorado, in December 2004. More than half of the acreage falls under a sprinkler, and the



McCrackens intend to use that part of the land for growing wheat and alfalfa. The part of the land not under a sprinkler abuts the South Platte River; there the McCrackens intend to graze cattle. It is on about 1 acre of this latter portion that the McCrackens built their home.

At the time they purchased the land, the McCrackens were aware of the easement held by the DOW that provides for public access for fishing and hunting, which was acquired in 1967 from Lewis and Berneice Knudson. Subsequently, the Knudsons' property was subdivided and sold to others, including the McCrackens. Two other homes were built on the easement, one in 1974 and one in 1998.

After receiving assurances from the DOW that a new home would not interfere with the easement, the McCrackens obtained a building permit and began construction in October 2005. Then, the DOW sued to have the McCrackens' home removed.

During the trial, the DOW offered several excuses for its failure to enforce

its view that private residences interfere with its easement by preventing the construction of two other homes. For example, the DOW claimed that its employee did not notice the homes despite that one of them was built next to his mailbox.

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.**

PLANS TO GIVE!

All you ever wanted to know about planned giving but were afraid to ask is at www.mountainstateslegal.org!

ENDOWMENT ENSURES "ETERNAL VIGILANCE" IN U.S. COURTS

The fight for constitutional liberties and the rule of law never ends. America's Founding Fathers knew this well; those who love liberty have learned it, often the hard way, that is, by being forced to defend their rights in court.

To ensure that MSLF will be "eternal[ly] vigilan[t]" and to coincide with MSLF's Thirtieth Anniversary, MSLF has announced a plan to increase its endowment from its current \$1 million to \$10 million within the next five years. MSLF's endowment was established by Lou and Lydia Sheffels of Wilbur, Washington, to ensure that, when historic battles come, such as MSLF's famed *Adarand Constructors* victories, MSLF will be ready. In short, MSLF's Endowment seeks to ensure what MSLF has always said about itself, which is that it is, "In the Courts for Good!"

In the words of President Reagan, who once wrote glowingly of MSLF's battle for

freedom: "[F]reedom is not the property of one generation; it's the obligation of this and every generation. It's our duty to protect it and expand it and pass it undiminished to those still unborn."

Already, scores of Americans who share MSLF's commitment to constitutional liberties and the rule of law have sought to ensure a Legacy of Eternal Vigilance. You can join with them. The decision is yours. Your gift will not only ensure MSLF's ability to be there for other Americans besieged by out-of-control bureaucrats and their teams of powerful lawyers and liberal groups; your gift will also inspire others to join with you. By doing so, you will preserve freedom for future generations to achieve what the Founding Fathers intended when they wrote in the Constitution's Preamble: "***We the People of the United States, in Order to...secure the Blessing of Liberty to ourselves and our Posterity....***"

You can be a part of the revolution that began with the Declaration of Independence and, after decades of lying fallow, was reborn in the Reagan Revolution, a revolution that remains at the core of the conservative movement in America, most surprisingly, among millions of America's young people who were born after President Reagan left office. By doing so, you will be in control, not government bureaucrats and their lawyers; moreover, you can save 55 percent or more in estate taxes. Your contribution to the Legacy of Eternal Vigilance will be an investment in America's future, a future in which MSLF will be in the courts defending constitutional liberties and the rule of law.

A FEW WELL-CHOSEN WORDS

You can ensure a Legacy of Eternal Vigilance with these words in your will:

"I give, devise, and bequeath to Mountain States Legal Foundation, tax identification number 84-0736725, 2596 South Lewis Way, Lakewood, Colorado 80227 (insert percentage, amount or

nature of gift, or remainder of estate) to be used for public interest litigation to ensure constitutional liberties and the rule of law."

If you wish, MSLF will assist you in locating an attorney nearby to draft or update your will. If you wish, MSLF will have someone meet with you personally to discuss your desire to ensure a legacy of eternal vigilance.

MSLF'S WEB PAGE
Click "Planned Giving"



YOU CAN ENSURE A LEGACY OF ETERNAL VIGILANCE!

Name _____
 Address _____
 City _____ State _____ Zip _____
 Home Phone _____ Work Phone _____ E-Mail _____

- Please send me information on making a legacy gift.
- I have included MSLF in my estate plans. Please include me in MSLF's Legacy Legion and engrave my name on MSLF's Endowment Plaque.
- I want to include MSLF in my estate plans. Please include me in MSLF's Legacy Legion.
- Call me at (____) _____ - _____ Monday to Friday from _____.m. to _____.m. Saturday and/or Sunday from _____.m. to _____.m. to discuss the various options available to me to join MSLF's Legacy Legion.
- I am interested in receiving FREE information about (check all that apply to you):
 - Will/Living Trust
 - Life Insurance
 - Charitable Gift Annuity
 - Charitable Remainder Trust
 - IRA or other Retirement Plan
 - Other: _____

\$100,000 IN TAX FREE GIFTS? YOU MUST ACT NOW!

Donors who are 70.5 years of age or older, who act before December 31, 2007, may contribute up to \$100,000 directly from an IRA or Roth IRA to MSLF without incurring income tax on the distribution! Under the Pension Protection Act of 2006, the gifts must go directly to MSLF. Please contact MSLF or visit MSLF's web page and click on "Planned Giving."

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

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 2006 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 ➤ Contribution of stock can be made electronically to the Foundation brokerage account. When transferring stock, indicate account # C9C006602, NFP Securities, DTC 226. **Please notify the Foundation when contributing stock as there is no way to identify the donor without prior notification.**

MSLF CANNOT REST; ITS ROLE ESSENTIAL TO REMAINING FREE

In 2007, MSLF will have been going to court for 30 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 30 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 \$50; please send William Perry Pendley's *Warriors for the West: Fighting Bureaucrats, Radical Groups, and Liberal Judges on America's Frontier*.
- 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 _____

HAZLETON DEFENDS RIGHT TO END ILLEGAL IMMIGRANT WOES

On March 12, amid a sea of cameras and a press of reporters from across the nation, including major television networks—some called it a “media circus”—the tiny mountain town of Hazleton, Pennsylvania, began its defense of its brave efforts to address the difficulties posed by illegal immigration. Led by Mayor Lou Barletta, Hazleton has become a national symbol of the frustration of small towns across the country that address what Congress refuses to address. Hazleton’s thoughtful ordinances to deal, not with national problems, but with purely local ramifications, including crime, have drawn the overwhelming support of the American people. Scores of communities are considering adopting Hazleton’s ordinances.

Not surprisingly, Hazleton’s efforts have drawn furious opposition. One opponent cried, “for every immigrant... who leaves, we [will] find [another];” another called Hazleton, “the first Nazi city in the country;” President Clinton’s Transportation Secretary Federico Peña called such efforts “mean spirited.” Name calling was the least of it; “open borders” groups, including the ACLU, the Puerto Rican Legal Defense &

Educational Fund, the Community Justice Project, and numerous others filed a federal lawsuit.

Responding to Mayor Barletta’s call for help, MSLF joined a small legal team to fight assertions by the vast array of left-of-center legal groups that Hazleton’s ordinances violate the Constitution’s Supremacy Clause because, under the Preemption Doctrine, Congress “has occupied the field” regarding immigration. Over the past several months Hazleton’s legal team, which includes the Immigration Reform Law Institute in Washington, D.C. led by its general counsel Michael M. Hethmon, has conducted discovery, filed and responded to motions filed by the scores of attorneys representing the plaintiffs, and prepared for trial.

Located 80 miles northwest of Philadelphia near the intersection of Interstates 80 and 81, Hazleton, which was incorporated in 1857, was the home, during the 2000 Census, to fewer than 25,000 citizens; however, since that time the population has ballooned to more

than 31,000, most of that number comprised of individuals believed to have entered the country illegally.

Frustrated by the failure of the federal government to address the issue of illegal immigration and the problems it poses for the tiny, cash-strapped city—including violent crime, crowded schools, hospital costs, and the demand for services—the City Council adopted the legislation at the request of Mayor Barletta.

On the Supremacy Clause issue, MSLF remains confident. In 1976, the Court ruled that the “regulation of immigration” involves “determining what aliens shall be admitted to the United States, the period they may remain, the regulation of their conduct before naturalization, and the terms and conditions of their naturalization.” Plus, Congress has chosen to regulate only authorized entry, length of stay, residence status, and the deportation of immigrants; clearly, it has not “occupied the field” as to the matters addressed by Hazleton, for example.



TRIBAL COURT LACKS TORT JURISDICTION

A Montana tribal court has no jurisdiction over a non-member for trying a tort case, MSLF recently advised a Montana federal district court. MSLF’s friend of the court brief was in support of Sherman Motor Inn, Inc., which had been sued by a member of the local tribe in tribal court for the recovery of damages allegedly sustained as a result of a slip and fall. MSLF argues that the U.S. Supreme Court has narrowed sharply circumstances under which a tribal court may exercise jurisdiction over a non-member.

Tribal courts have jurisdiction over non-members of the tribe only if Congress grants that power, if the non-member consents to that jurisdiction, or if jurisdiction is key to tribal self-government, argued MSLF. None of these circumstances exist in

the case; thus, the tribal court has no jurisdiction over the Sherman Motor Inn and the federal district court should so rule.

The Sherman Motor Inn, Inc., which is a non-Indian corporation organized under the laws of the State of Montana whose directors and shareholders are all non-Indians, operates a hotel/restaurant/lounge business on non-Indian fee land in Wolf Point, Montana, within the exterior boundaries of the Fort Peck Indian Reservation. Douglas Garfield is a citizen of the State of Montana and an enrolled member of the Assiniboine and Sioux Tribes and resides within the exterior boundaries of the Fort Peck Indian Reservation. Tribal courts held that he had the right to sue Sherman Motor Inn in tribal court. The Inn challenged that ruling in Montana federal district court.

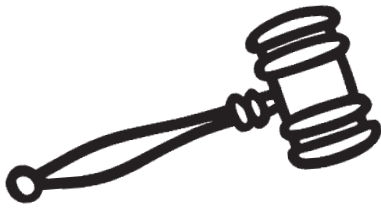


NM DENIAL APPEAL

A group of oil and gas operators appealed the ruling by a New Mexico federal district court that it may not intervene in a lawsuit by environmental groups challenging a Bureau of Land Management (BLM) oil and gas leasing plan in southern New Mexico.

After the BLM adopted the plan for parts of Otero and Sierra Counties, Governor Richardson filed a lawsuit challenging the plan. Within days, environmental groups filed their own lawsuit. The Independent Petroleum Association of New Mexico (IPANM), whose members develop oil and gas resources, moved to intervene in both cases to ensure that the BLM would aggressively defend its plan.





LEGAL ACTION

- In an almost unprecedented action, an Oklahoma appeals court heard oral arguments in a challenge by a Texas oil and gas group to an Oklahoma tax withholding scheme.
- MSLF filed a key friend of the court brief with the U.S. Supreme Court in support of a Wyoming rancher whose constitutional rights to exclude government agents from his land were violated.
- After nearly three weeks, the trial ended in the challenge by the ACLU against rural Fremont County, Wyoming, demanding that a racially gerrymandered district be created to ensure election of an American Indian county commissioner.
- MSLF filed a friend of the court brief with the U.S. Supreme Court arguing that the Endangered Species Act (ESA) is not a “super statute” that supersedes all other environmental statutes. The U.S. Court of Appeals for the Ninth Circuit ruled that the ESA is such a law!
- The Bureau of Land Management failed to comply with the Federal National Environmental Policy Act (NEPA) when it closed hundreds of miles of roads in Utah without writing an Environmental Impact Study (EIS), MSLF argued in a friend of the court brief filed with the U.S. Supreme Court.
- A Montana landowner denied the right to hunt on private land because it lies within an Indian Reservation appealed the dismissal of his equal protection lawsuit to the Ninth Circuit.
- A lawsuit by the EEOC against a roofing company in Syracuse, New York, will continue after efforts by MSLF to dismiss the case at the pleadings stage were denied. The EEOC argues that language is a proxy for race, a view rejected by various federal courts.
- The United States filed a motion to remove a lawsuit filed by a Montana grassroots group from a Washington, D.C. federal district; Communities for a Great Northwest argues that federal grizzly bear rules are illegal.
- The U.S. Court of Appeals for the District of Columbia rejected a challenge by a group of Montana miners that sought to set aside an illegal Clinton era withdrawal in Montana. The court held that it was required to defer to the Bush Administration’s view of federal law.
- MSLF appeared before the Ninth Circuit to argue that its clients should have been allowed to intervene in a lawsuit by the ACLU challenging Arizona Proposition 200, which sought to protect the ballot box. MSLF’s clients were the original proponents of the law.
- On the eve of trial, a Wyoming federal district court upheld the constitutionality of Section 2 of the Voting Rights Act despite that some Supreme Court justices stated that the section has not been upheld.
- A Montana landowner appealed the dismissal of his lawsuit to the Ninth Circuit after a Montana federal district court ruled that requiring him to walk three miles to his home was “reasonable” access.
- Property owners near Big Timber, Montana, were in Montana federal district court to argue against the attempts by environmental groups to halt timber harvesting that would prevent the loss of life.

NOTABLE



QUOTES

“Thank God there are organizations like MSLF to fight these many battles.”

Robert Osmundson
Fort Collins, Colorado

“Keep the good work up!”

Mary H. McLemore
Pike Road, Alabama

“[U]se my donation for Hazleton, PA.”

Joan D. Tatarsky
Milwaukee, Wisconsin

“You are awesome at defending and protecting the property rights of all Americans.”

Kathy Stocklen
Honor, Michigan

“Wish we had more organizations like yours.”

Neil W. White
Kill Devil Hills, North Carolina

“Keep up the good work.”

Richard L. Partridge
Paducah, Kentucky

“You’re doing fantastic work.”

Ethel L. Brost
Sidney, Montana

“Enjoy reading... *The Litigator*.”

Everett M. Witzel
San Rafael, California

“[K]eep working with local governments to mitigate the effects of illegal immigration.”

Francis E. Lyon
Perrysburg, Ohio

“I appreciate all the support which you plan to give to the town of Hazleton, PA.”

Joseph H. Wilkens
Nesquehoning, Pennsylvania

DISABLED VETERAN WINS RIGHT TO MINE CALIFORNIA CLAIM!

A California miner has the right to engage in placer mining on his claim in the mountains of northern California, the Interior Board of Land Appeals (IBLA) ruled in a long-awaited decision, yielding a great victory for MSLF. The IBLA rejected an appeal by the U.S. Forest Service in upholding a December 2003 26-page ruling by an administrative law judge (ALJ) that the claim has an economic value that is more substantial than other uses claimed by the Forest Service.

The IBLA ruling in favor of Donald Eno, a disabled veteran on a fixed income who had hoped to mine his claim's gold and travertine to supplement his disability benefits, reversed minor aspects of the ALJ's ruling but did not affect its final conclusions. The ALJ had rejected the federal government's argument that the area must be protected due to: its scenic value (it has been mined for 100 years); its uniqueness (travertine deposits are common in California); its sacredness to American Indian religious practitioners (despite urgings by the Forest Service, local Indians said otherwise).

The ruling is a vindication of the vision of and years of hard work by Mr. Eno who committed himself to developing his claim. It is also a tremendous victory for MSLF. Before MSLF entered the case, legal experts were pessimistic regarding



the chances for victory. "It is almost impossible to win these cases," one opined. Indeed it was a tough battle stretching over years, filling scores of boxes of documents, and yielding a tall stack of legal briefs. (It may not be over; the federal government could still appeal.) Nonetheless, given the decisions by the ALJ and the IBLA, MSLF is confident.

MSLF believes it prevailed because it had what it took to win: a committed client who was willing to put his trust in MSLF and fight on for total victory; a skilled litigator who was capable of mastering the facts of the case and marshalling the best legal arguments; a capable legal staff able to provide the necessary support; and, the tax-deductible contributions of MSLF's supporters.

Mr. Eno owns the Hound Dog placer mining claim, which is located in the Plumas National Forest Service near Quincy, California, some 110 miles northeast of Sacramento. Since 1998, he has paid taxes and maintenance fees on the claim. Because the land upon which his claim is located was withdrawn in 1927 for use as a "power site," Mr. Eno was required to obtain from the U.S. Department of the Interior, which regulates mining on federal land, a ruling that extraction of the gold and travertine from his claim will not "substantially interfere with other uses of the land."

A five-day hearing was conducted in June 2002, after which the United States and Mr. Eno filed various briefs.



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