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A Cautionary Tale

Rogue ranchers threaten Western trout water

By Ted Williams

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Public-lands ranching on our 252 million acres of Western rangeland entrusted to the US Forest Service and Bureau of Land Management (BLM) is at best a precarious undertaking. There are places in the West--former bison habitat, for example--where carefully regulated grazing may make economic sense. In the third week of July, 1994 I was not in one of them.

FR&R had sent me to Gila National Forest in southwest New Mexico to inspect grazing damage to habitat of the Gila trout, our only endangered inland salmonid. In parts of the Midwest an acre of grassland can sustain 10 cows. In Gila country--specifically the 145,000-acre Diamond Bar Allotment--it takes 487 acres to sustain one cow. Or so averred the Forest Service--but only after being chastened by environmentalists.

Whatever the real figure may be, one has to ask: Why bother? All the public range in the West produces less than five percent of this nation's beef. With sufficient subsidies and manipulations of water resources, running cattle in semi-deserts such as the Gila National Forest is possible but insane--like raising pineapples in Alaska. It's a lose-lose-lose situation--for ranchers, for fish and wildlife, and for taxpayers who are called upon to underwrite: 1) the eradication of native predators; 2) the removal of native plant communities to make way for alien grasses favored by cattle but useless to wildlife; and 3) the purchase and installation of cattle guards, water troughs, water pipes and fences. On top of these services the Forest Service and BLM lease grazing rights on the public's land for about one-seventh fair-market value--what private landowners get for leasing the same acreage. According to the General Accounting Office, the federal government lost \$123 million administering public-lands grazing in fiscal 2004.

Grazing rights on the Diamond Bar Allotment, in the Gila Wilderness (the nation's first designated wilderness) and the Aldo Leopold Wilderness, had been leased to the Laney and Diamond Bar Cattle companies, owned by ranchers Kit Laney and his then wife, Sherry. Unlike other extractive industries, livestock ranching is permitted in federal wilderness, national wildlife refuges, and even national-park units, provided it has been deemed a "traditional use." The Laney's cattle hadn't been responsible for all the damage I saw, but they had done their share.

When bovine teeth and hooves devegetate and dest-abilize floodplains, runoff doesn't seep, creep and renew; it slashes, setting off headcuts that race along stream channels and form waterfalls at the confluence of each tributary. The waterfalls, in turn, set off headcuts on the tributaries until the whole system unravels into a wide, dry latticework of cemented silt. The flow ceases; the water table plummets. Thus do cows pound trout streams into the bowels of the earth.

The giant cottonwoods that had shaded and cooled former Gila trout water had expired with the streams. Their sand-blasted corpses stood beside or lay across dry washes. Riparian grasses had been replaced by rabbitbrush, Western yarrow, thistle, pinon, juniper and other plants worthless to riparian fish and wildlife, and even livestock. I kept seeing the Laney's ragged, bony cows standing in and around extinct trout streams. If a Yankee dairyman kept stock in this condition, he would be busted by the Society for the Prevention of Cruelty to Animals.

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In Black Canyon Creek, the last perennial stream in the Aldo Leopold Wilderness, I finally encountered fish--desert suckers, speckled dace and Gila-rainbow hybrids. The Endangered Species Act required the federal government to get the cows out of the stream and restore pure Gilas; but, as usual, the bureaucracy was moving in slow motion. In the wide, eroded section through the Laney's inholdings and allotment cows were standing in the stream, urinating, defecating and knocking down the banks. Where the sun hit the water, cow pies had blossomed into enormous gobs of green algae. When I stopped by the Mimbres ranger station to inquire why federal law was being flouted, I had to navigate around cow pies on the cement walkway.

Kit and Sherry Laney's ranch and a good part of their allotment was in Catron County, epicenter of the general rancher malaise vaguely defined as the "county supremacy movement," but otherwise indistinguishable from property-rights zealotry. The Laney's were angry in 1994, but not as angry as they would become over the course of the next 10 years. "Hungry and Out of Work?" inquired the bumper sticker on their truck. "Eat an Environmentalist." Journalists, Kit informed me, are "big, shittin' jackasses," a harsh assessment considering all the fawning press he was getting and would get from livestock and property-rights publications and even mainstream newspapers.

According to the preferred alternative of the Forest Service's Environmental Impact Statement, cattle on the Diamond Bar needed to be reduced from 1,188 head to no more than 800 head. The document also alleged that, in order for even this many cattle to survive without further savaging the fish, wildlife and native plant communities of this desiccated land, the agency would have to build the Laney's up to 20 "stock tanks" (artificial ponds bulldozed out of wilderness seeps, springs and wet meadows that feed past and present Gila trout water). The proposed grazing reduction outraged the Laney's. "Buddy," Kit told me, "our business is over." But it wasn't.

The following year, 1995, the Forest Service announced its final decision: It would build the Laney's 15 stock tanks. This elicited an administrative appeal from environmentalists and the subsequent overturn of the decision by the agency's chief, Jack Ward Thomas, who observed that congressional grazing guidelines for wilderness don't include this kind of intensive manipulation.

The Laney's refused to sign the Forest Service permit with the new limits on their cattle use. Instead they continued grazing--without a permit--while they filed a lawsuit claiming that, because they controlled water rights, they, not the American public, owned grazing rights on the 145,000-acre Diamond Bar Allotment. It was a bizarre notion eliciting incredulity from anyone with even rudimentary knowledge of the law; but it made perfect sense to the Laney's and their support group of livestock and property-rights activists and organizations, including the Paragon Foundation, an outfit out of Alamogordo, New Mexico, which provided free legal counsel.

During the course of this litigation, which the Laney's lost, they continued to trespass their cattle on the public's land without a grazing permit, ignoring citations and declining to pay fines. These purposeful violations drew a countersuit from the US Department of Justice in which the court enjoined the Laney's from all grazing in the Gila National Forest and ordered them to remove their cattle and pay fines and damages. The Laney's appealed to the Tenth Circuit, which affirmed the lower court's decision in favor of the United States, ruling that the Laney's never held a vested property right to graze cattle on public lands. By this time it was 1999, and the Laney's cows had been pounding fish and wildlife habitat for 11 years. Now the Laney's tried an entirely new tactic--obeying the law. They rounded up their cattle, settled their debts with the Forest Service, and vacated their ranch.

With the cows off the Diamond Bar Allotment, the US Fish and Wildlife Service and the state

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Department of Game and Fish began to make major progress with Gila trout recovery. The land began to heal. Stream banks stabilized. Subtle promises of riparian forests broke through parched earth. Water started flowing again, and even in the dry washes grass components reappeared.

Meanwhile the livestock industry and the property-rights community were hissing into the Laney's ears, convincing them that public-lands ranchers everywhere were counting on them to establish case law, and that they could prevail in court. In March and April of 2003 the Laney's (now divorced but still ranching together and warming to the role of martyrs) filed declarations of ownership in Catron, Grant, and Sierra counties whereby the grazing permits for the Laney and the Diamond Bar Cattle companies were transferred to them personally--an arrangement they contended absolved them of former legal obligations but which was later defined by a federal judge as a "duplicious attempt to evade the operation and effect of this Court's Orders and the judgment of the Tenth Circuit."

With that, the Laney's turned their stock back into the wilderness. They ignored repeated Forest Service orders to remove their trespassing cattle, reasserting their already discredited claim that their alleged but unproven water rights allowed them to graze their cattle on the Diamond Bar Allotment whenever and however they pleased.

So the Forest Service sought and secured an order to hold the Laney's in contempt of court. The judge gave them 30 days to remove their trespassing cattle, after which time the Forest Service could round them up and sell them at auction. In response the Laney's seized upon the New Mexico Livestock Code, which they professed made it unlawful for the Forest Service to transport impounded cattle through the state. In this effort they acquired the enthusiastic support of Catron County Sheriff Cliff Snyder, who vowed that he would "not allow anyone, in violation of state law, to ship Diamond Bar cattle out of my county." Informed by the district attorney that he could face arrest by federal marshals, Sheriff Snyder eventually backed off.

Now the Laney's began contacting livestock auction houses, persuading them that if they dealt with the Forest Service, they'd be boycotted by other ranchers. In one such warning they declared that "any cattle carrying [our brands] that may be brought to you will have been unlawfully and illegally stolen from us . . . and the individuals (including Forest Service personnel) involved in the theft will be subject to arrest and prosecution." It worked, leaving the Forest Service with nowhere to unload the trespassing cattle. Finally, the agency lined up an auction house in Oklahoma and kept the deal quiet.

The actual roundup, a monumental undertaking requiring hired contractors, armed agents, trucks, horses and helicopters, didn't get underway until March 2004. Despite pious pledges to fellow ranchers and the media not to obstruct justice or otherwise interfere with the court-ordered operation, Kit Laney appeared on horseback in one of the corrals on March 14. According to court documents, he charged at federal law enforcement officers, threat-ening them, yelling profanities, lashing them with his reins, knocking down and injuring one of them, and attempting to tear down the fence. It took four officers and a blast of pepper spray to wrestle him, kicking with boots and spurs, to the ground. Eleven days later he was indicted by a federal grand jury on two counts of obstruction of justice, five counts of assaulting and interfering with federal officers and employees and one count of interfering with a court order. He faced up to 63 years in prison, but a plea agreement reduced his sentence to six months. Proceeds from the sale of the stock went to the government as partial reimbursement, leaving taxpayers about \$150,000 short, according to the Forest Service.

But the Laney's and their ever-growing support group weren't finished. Sherry, who now called herself Sherry Farr, filed criminal complaints, signed by Sheriff Snyder, against a cowboy and a cattle hauler the Forest Service had hired to round up the trespassing cattle, alleging that they had transported

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animals in violation of the state Livestock Code. The cowboy, 20-year-old Isaiah Baker of Durango, Colorado, was stunned when he opened a "Criminal Summons" directing him to appear on June 14, 2004 at the Catron County Magistrate Court in Reserve, New Mexico, (about an eight-hour drive from his home) and warning that if he didn't show up "a warrant will be issued for [his] arrest." A conviction could have gotten him a year in jail.

Baker had never met Farr, and his contact with Kit Laney had been limited to getting whipped with his reins. Moreover, on the day he was alleged to have been transporting livestock he had actually been doing mechanical repairs at a Forest Service camp. According to a written and sworn declaration filed with the court by the Forest Service, Farr had evidently acquired Baker's contact information from the Catron County Sheriff's office, whose uniformed deputies had stopped both Baker and the cattle hauler "for no apparent reason other than to ascertain their identities."

Rather than place himself at the mercy of the Catron County Magistrate Court, Baker transferred the bogus criminal complaint to federal court where, not surprisingly, Farr dismissed the charge. Still, the court granted Baker's October 28, 2005 motion for sanctions against Farr, assessing her \$6,409.34 to cover Baker's attorney's fees and other expenses and finding "that Ms. Farr's conduct [in this and past litigation] showed a disregard for the orderly process of justice," that she had "stubbornly and repeatedly ignored this Court's findings and conclusions on the underlying civil matters; attempted to block and circumvent the execution of this Court's Contempt Order authorizing impoundment by publishing public threats and mailing intimidating letters; and abused the judicial system by bringing contrived Magistrate Court criminal prosecutions complaints against Forest Service contractors," and that she had filed "frivolous and oppressive litigation brought in bad faith."

Tom Lustig, the National Wildlife Federation attorney who represented Baker and the environmental community in its interventions on behalf of fish, wildlife and wilderness, told me this: "Kit and Sherry were puppets. As the federal judge said during Kit Laney's criminal case: 'You've gotten some terrible advice. And you made a terrible mistake by acting on it.' The papers Farr and Laney submitted to the federal court in their attempt to defend their ongoing trespass were barely readable. They're like babes in the woods; and I kind of feel sorry for them for having to suffer the consequences of others' schemes."

While the Laney's are indeed hopelessly lost and hideously ill-advised in matters of the law, it's a mistake to dismiss them or their saga as aberrations. The story is less the behavior of Kit and Sherry than the behavior of their puppeteers, a group that abounds with livestock growers far less aberrant, in fact quite typical. The single honest and accurate statement I have heard from the Paragon Foundation is its declaration that "every livestock organization in the state of New Mexico" supports its outlandish contention that the Livestock Board shouldn't have acknowledged the Forest Service's legal right and public obligation to transport the Laney's trespassing cattle.

Rep. Steve Pearce (R-NM) requested an investigation by the US Department of Agriculture into the Forest Service's handling of the Laney case. "It should not have come to this point," he declared. Sen. Pete Domenici (R-NM) saw an opportunity for the feds to mend their ways, stating "the end of the Laney case gives the Forest Service a window of opportunity to begin improving its relationship with permittees. The acrimonious atmosphere generated by the Laney situation is not helpful to the Forest Service or livestock producers." Domenici had written language for a 2003 insert into a budget bill that allows both the Forest Service and the Bureau of Land Management to automatically renew grazing permits under the same conditions and without environmental review until 2008.

"Are developments in southwestern New Mexico tumbling out of control and setting up a situation like

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the one at Ruby Ridge, Idaho, where three innocent citizens were gunned down by federal law enforcement officials?" demanded The Lewis News internet service.

"The tragedy is that if the big guys succeed in taking the property and life work of several generations of Laneys, they can also take the property and life work of every other Western rancher whose livestock graze on so-called public land," proclaimed Henry Lamb, executive vice president of a front group called the Environmental Conservation Organization.

Range Magazine, which describes itself as an "award-winning quarterly devoted to the issues that threaten the West, its people, lifestyles, lands, and wildlife," ran a sob story entitled "Nightmare on the Diamond Bar" lamenting the Laneys' courageous and torturous negotiation of "twenty years of tough ranching terrain, every day with the hardship of a continuous losing battle with the Forest Service and nearly every anti-grazing, clean-water-loving, forest-guarding organization and concern in the country." The author reported (accurately enough save for the word "successfully") that "Kit, Sherry and friends found hope in the case of Wayne Hage, who has successfully waged a 20-year battle for vested rights on his ranch in Nevada [and who also had his trespassing cattle rounded up and sold at auction by the Forest Service]" and that "Kit Laney and Wray Schildnecht, an exhaustive researcher, familiarized themselves with the Hage case, poring over law dictionaries and books on private property rights. It gave them hope that the Diamond Bar too might win in court someday." Instructed a sidebar: "Put aside for a moment the overdrawn comparisons to Nazi Germany or Stalin's Soviet Union. Laney is an American political prisoner even if his iron shackles have been removed." The piece concluded with an editor's note urging readers to help the Laneys through the Paragon Foundation.

But after Kit Laney was carted off to federal prison, the Paragon Foundation expunged from its Web site all information about the allegedly tragic case of the Laneys. Their usefulness as puppets had run its course.

"Gila trout recovery is progressing in fits and starts," reports David Propst, project leader for the New Mexico Department of Game and Fish. Propst is less eager than the feds to downlist the fish, submitting that the recovery goal hasn't been met. That goal calls for the replication of each stream population in another stream far enough away that a natural catastrophe such as a forest fire can't extinguish both. "We've done that for every population except Whiskey Creek's," Propst says. Now there are 12 or 13 populations, (depending on how you count tribes), and 80 miles of occupied habitat. Soon there will be 100 miles. To me that's impressive, considering what I saw in 1994 and what Propst and his state and federal colleagues have had to contend with since then.

But what's also impressive--and frightening--is that two rogue ranchers and their convoy of tacticians, attorneys, cheerleaders and financial backers could push the United States government around for two decades, intimidating federal resource managers into contravening the Endangered Species Act, separating US taxpayers from at least \$150,000, and destroying fish, wildlife and plant communities on this fragile and beautiful public land.

With lots of time and money you can knock down puppets in the courts, as the Forest Service has just demonstrated. But the trouble with puppets is that there's an endless supply, and they keep popping up, manipulated by the same hands.