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Owl forests in the coast range, like these bordering the Klamath River, would be unprotected from logging if Secretary Lujan's "extinction plan" is approved by Congress. Photo by Tim Palmer

Spotted owl battle rages on

By Tim McKay

Congress and the Bush administration both attempted in May to break the stalemate on the spotted owl-ancient forest issue, but by month's end the matter was still tied up in the courts and still more confusing. Nothing much had changed.

First, two Congressional subcommittees fleshing out the latest ancient forest bill adopted vastly different measures to manage the dwindling numbers of the rare bird which has become a symbol of the fight for forest survival. One would reduce public timber sales to about one-half of the average annual cut in the 1980s. The other would reduce logging in federal forests to about one-fourth the annual average of the previous decade.

The environmental community, thinking that the historic loss of up to 90 percent of our ancient forests is already compromise enough, is backing the "American Heritage" option that would reduce sale levels to about one-eighth of the average. Some activists want to see no more cutting at all in national forests.

Next, the White House weighed in. Garnering the most media attention was the decision by the so-called "God Squad" to exempt 13 of 44 proposed Bureau of Land Management (BLM) timber sales—all in timber communities of southwestern Oregon—from the provisions of the Endangered Species Act (ESA) despite the consequences to the owl.

The God Squad exemption, only the second granted in the 19-year history of the ESA, covers a tiny fraction of the forest acreage at

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Property rights vs. environmental regs: Is the Supreme Court taking a new look?

By Scott McCarthy

Suppose that you had purchased property and, subsequent to your purchase, you were prevented by law from building on the property. Do you have recourse? What if the property were wetlands? Habitat for endangered species? These are all questions of "takings," the body of law that derives from the Fifth Amendment assurance that "...private property [shall not] be taken for public use without just compensation."

The issue of constitutional takings is not very glamorous. Outside of courtrooms and law schools, discussions of takings are uncommon and poorly understood. But we all are affected by how the United States Supreme Court interprets property rights cases, and the Court's recent forays into defining what constitutes a takings has caused stoic Court watchers to take note and powerful interests to take sides.

The Supreme Court this year agreed to listen to three cases involving takings, and the potential repercussions

are enormous. Conservationists are concerned that the Court decisions could weaken existing environmental legislation and make new regulation prohibitively expensive. "Wise use" advocates hope the Court rulings will favor less government control.

The Supreme Court has divided takings into two kinds: physical and regulatory. The physical taking of land is generally understood to be relatively unambiguous. When the government requires land for the greater public good, it can use its power of eminent domain. The property owner is compensated at fair market value. But what if the value of the property is decreased as a result of government regulation? Does this constitute a takings, and is government required to compensate the owner for the lower value of the property?

Historically, the Court has been lenient toward government regulations restricting private property use. If a regulation clearly abated a "nuisance," for instance by

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COALITION PAGE

MONTHLY REPORT

BY JIM EATON

Five years ago the California Wilderness Coalition's Board of Directors first managed to meet in the wilderness. That summer we hiked into the Jenny Lakes Wilderness in the southern Sierra.

Since then we've tried to get out in the wilds, but it's never easy to coordinate the busy schedules of a dozen activists. Our latest attempt was this past Memorial Day weekend.

Last February, the board was enthusiastic about the trip. But as the weekend approached, member after member found other obligations paramount. Those of us remaining found the call of the wild compelling, so we headed off to the Mill Creek Roadless Area in Lassen National Forest.

Mill Creek arises in Lassen National Park, flows through a deep canyon cloaked in an ancient forest, rushes through the Ishi Wilderness, and finally merges with the Sacramento River. We were headed for the old-growth trees above the Ishi Wilderness.

The expedition consisted of CWC President Mary Scoonover, Nobby Riedy, Sally Miller, Lynn Ryan, Inyo the wonder dog, and me. Joining us were North Coast activists Cecelia and Kurt.

Kurt was an inspiration for us all. Despite suffering from multiple sclerosis, he bravely negotiated the rocky canyon trail, slippery stream crossings, and many other assorted obstacles. Kurt's sense of humor equaled his courage; he was a wonderful hiking companion.

Due to the long drive and an extended car shuttle, we didn't hit the trail until nearly two p.m. Since there are limited camping opportunities along the route, we found our favored site occupied, albeit by a group of Davisites headed by Eric Knapp and Brad Norton. Nobby and I independently found another campsite and after agreeing to share discover's rights, led the group to our chosen spot.

Since this was not a terribly long hike, we brought enough food for a week. We ate well:

shish kabobs, pilaf, green salads, fruit salads, tortillas and chili, muffins, and chocolate, chocolate, chocolate. We drank well, too: lots of fresh coffee, ice-cold (filtered) mountain water, scotch, and bourbon.

Inyo didn't fare too badly either. In addition to his kibble and dog biscuits, he got assorted leftovers and Sally's wet, moldy tortillas.

We awoke at the crack of noon the second day, so we again hiked in the heat of the day. Once more we were surprised to find other groups camping in our planned site, but our top priority was jumping into the ice-cold stream to wash off our sweat and dust. Mary and Sally then found an ideal campsite.

That evening we discussed the future of the Coalition. We finally agreed on a plan to develop a vision for a biologically diverse California while continuing to work on saving our wild lands. We intend to work with local groups that are formulating strategies to connect our wilderness areas to each other and to other wild lands. We still will focus on the wild areas, but we want to branch out on behalf of the corridors that are imperative to the survival of the flora and fauna of protected core areas.

To accomplish our goal, we intend to return to our roots—the grassroots activists. I will spend less time analyzing timber sales and more time in the field finding wilderness supporters and helping them to be more effective. We will organize regional wilderness workshops as needed.

On our final day, we reviewed our decisions and resolved to implement them as soon as we can. Of course, we will need to fund this plan, so you soon will be receiving a request for a donation to make our dream possible.

I am excited by this new program for the Coalition. I know it will revitalize our efforts to save wild California. And we're going to begin with Mill Creek.

Take CWC along on all your summer wilderness trips

1. Pack lots of CWC t-shirts (seen on better hikers everywhere).

2. Join the clique of *Wilderness Record* photographers. All you need is a camera, black-and-white film, and the California wilderness (designated or *de facto*) of your choice.



A blight on the landscape

"If Americans must be forced to set aside lands for innumerable animals, then the land should be one geographic location, a sanctuary for all of these animals to congregate, rather than provide tens of thousands of places dotting the landscape and disrupting the economy." —Rep. Dannemeyer on the Endangered Species Act

Convert 'em in the cradle

Melody demonstrates refined taste and a surprisingly sophisticated vocabulary. Photo by Stephanie Mandel, a.k.a. "Mom"



Uncle Jim's Wilderness Trivia Quiz Question:

In what wilderness will you find (compass permitting) Coche Creek, Jack Rabbit Flat, Foresters Leap Canyon, and Hurricane Deck?

Answer on page 7.

BLM wilderness study areas

Wild and ancient landscape on Mono Lake's eastern shore

By Phyllis Mottola

Beyond the eastern shores of Mono Lake lies a land of sagebrush, pinyon pine, and juniper, a land dramatic with granitic and volcanic rock formations. Granite Mountain Wilderness Study Area (WSA) and the adjacent Walford Springs WSA are an integral part of the Mono Basin wilderness experience. Standing on the south shore of Mono Lake, the crown jewel of the basin, you are surrounded by magnificent views—the Mono Craters to the south, the Sierra crest to the west, Black Point and Conway Summit across the lake to the north, and, to the east, miles of sagebrush gradually sloping upward to the Cowtrack Mountain plateau. You are standing in the midst of a vast wild and ancient landscape. It feels like the first day of creation, eons before the age of technology, overpopulation, and wholesale destruction of the earth.

It has long been the dream of visionary environmentalists to preserve these lands to the east as a part of a regional wilderness system which would stretch from Yosemite National Park west of Mono Lake, across the Mono Basin (with the Mono Basin Scenic Area), and on to the Toiyabe National Forest in Nevada.

A new wilderness area, proposed by a coalition of environmental groups and citizen activists, would go a long way toward making this dream a reality. The proposed Granite Mountain-Walford Springs Wilderness would encompass 85,000 acres of lands to the east and northeast of Mono Lake. Although the Bureau of Land

Management (BLM) found both Granite Mountain and Walford Springs WSAs to be largely unspoiled, with "outstanding opportunities" for solitude, the agency's final recommendations did not include any acreage from either area for wilderness designation. The environmentalist proposal includes both WSAs (with a combined size of about 71,000 acres) plus three additional parcels—Granite Basin, Indian Spring, and Cowtrack Spring (see map).

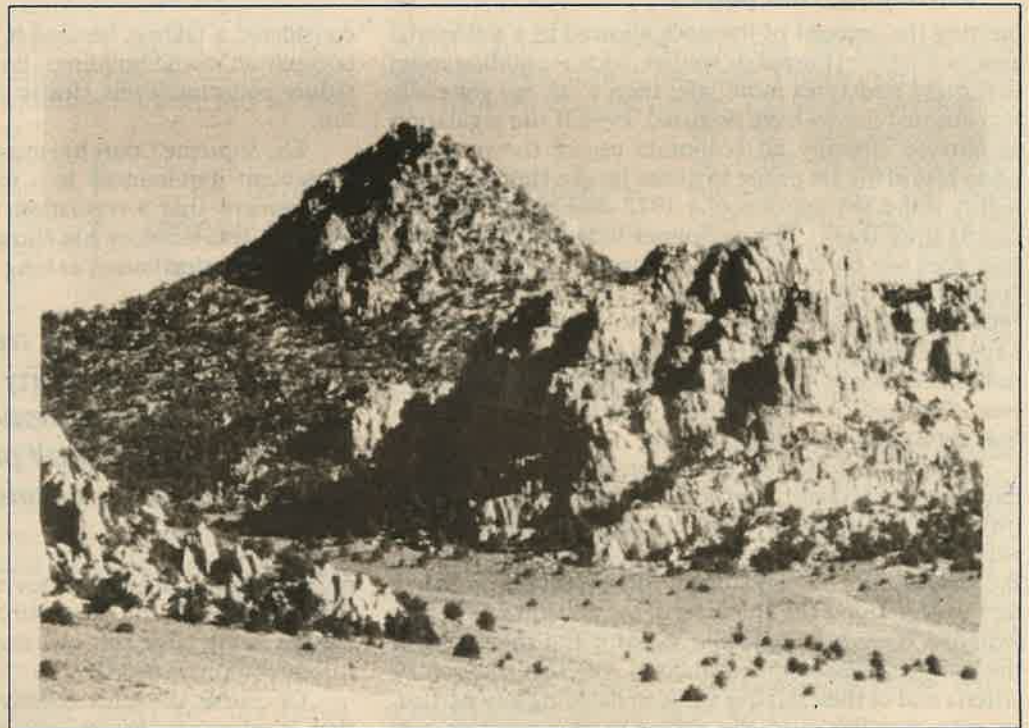
A broad and varied landscape makes up the proposed wilderness area. The gently sloping lands bordering Mono Lake's eastern

shore are fill deposits from Lake Russell, the ancient and enormous precursor of Mono Lake. The land rises from an elevation of about 6,500 feet near Mono Lake, to Cowtrack Mountain with elevations over 8,000 feet, to a high point of nearly 8,900 feet at Horse Peak. The Cowtrack plateau has a stark beauty of its own, punctuated by colorful volcanic rock formations; breathtaking sunsets and panoramic views—of the White Mountains to the east and Mono Lake and the Sierra Nevada to the west—belie the plateau's pedestrian name.

Farther east, the Granite Basin and Granite Mountain have varied complexes of granite formations at elevations from 7,300 to nearly 9,000 feet at Granite Mountain Peak. There also are rolling basalt hills and basins in the eastern parts of Granite Mountain WSA and a sand dune system in the Walford Springs WSA.

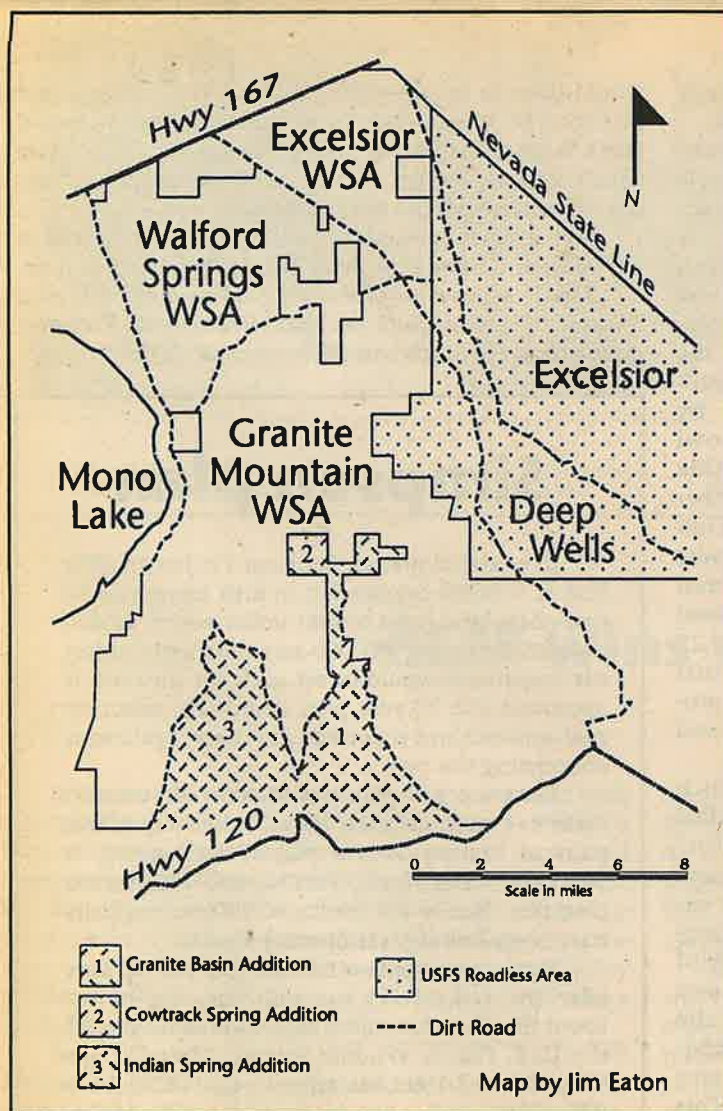
Vegetation varies from Great Basin shrubs and wildflowers to pinyon and juniper at higher elevations. Mono buckwheat (*Eriogonum amplexicaule*), a candidate for the threatened and endangered species plant list, grows in the easternmost corner of Granite Mountain WSA. The area provides critical range for mule deer, pronghorn, and wild horses. Other wildlife includes mountain lions, sage grouse, and numerous raptors.

The three additional parcels environmentalists want to include are important components of a Granite Mountain Wilderness. The BLM's 4,480-acre Granite Basin parcel, which adjoins the WSA just west of Granite Mountain, has outstanding scenic qualities; the 6,500-acre Indian Spring BLM parcel is a lush natural spring important to wildlife; and the Cowtrack Spring parcel at the heart of the Cowtrack plateau is a 2,000-acre privately-owned inholding which the BLM has proposed for acquisition.



Granite Mountain, Granite Mountain WSA

Photo by Pete Yamagata



Because of its size, diverse topography, and screening afforded by vegetation and geologic features, the proposed wilderness area offers fine opportunities for seclusion and solitude. Current recreational uses include hiking, especially on Granite Mountain; camping, primarily on Cowtrack Mountain; and some hunting, which has decreased to almost nothing during the drought. According to the BLM, there are about 40 miles of primitive vehicle "routes" in the area, many of them extremely sandy or revegetating. Off-road vehicle use is light to moderate now but is expected to increase if the area is not designated as wilderness.

There is little apparent interest in mineral development, with only five claims in Granite Mountain WSA. One claim has been abandoned, and the other four are inactive. The western portion of the proposed wilderness area is in the Mono Long Valley Known Geothermal Resource Area, and the BLM estimates moderate to high geothermal potential with low to moderate development potential. There are no currently active leases, however. If such development did occur, it could have severe environmental impacts including visual degradation and lowering the water table.

There is some grazing in the southeast corner of Granite Mountain WSA and on the west side, primarily by sheep. Access for permittees to service their allotments could be allowed on several primitive routes under BLM wilderness regulations.

If you are interested in exploring the proposed Granite Mountain Wilderness Area, it can be reached by way of Highway 120, which connects with Highway 395 a few miles south of Lee Vining. The Inyo National Forest visitors' map has details.

You can ask the BLM to include you on their mailing list for any proposed actions in the WSAs. Write to the Area Manager, BLM-Bishop Resource Area, 787 North Main Street, Suite P, Bishop, CA 93514.

Phyllis Mottola is "a free-lance environmental activist and writer."

Environmental policy

Supreme Court takes on "takings"

continued from page 1

limiting the amount of livestock allowed in a residential area, or furthered the public welfare, such as building codes that make structures more safe, then a takings generally was deemed not to have occurred, even if the regulation eliminated virtually all economic use of the property. Legal historians are prone to quote Justice Holmes whose highly respected opinion of a 1922 case has guided the Courts since then. Justice Holmes stated that "if regulation goes too far it will be recognized as a taking," but, "property may be regulated to a certain extent" because "government could hardly go on" otherwise. The courts have interpreted this to mean that government could not reasonably be expected to compensate those who were damaged by a government regulation as long as that regulation did not "go too far".

The Supreme Court has never defined in precise language what constitutes "going too far," however, and instead has developed a set of criteria to determine whether a takings has occurred: the economic impact of the regulation; the regulation's interference with investors' expectations; the character of the government action (whether there is a physical invasion); and the nature of the State's interest in the regulation. The vagueness of the criteria and of their relative value in deciding any particular case contributes to the difficulty in predicting outcomes of takings litigation. Requiring property owners to allow television cable to be installed in their buildings was

considered a takings because it is a permanent physical occupation of the buildings, but requiring a business to reduce pollution levels, clearly in the public interest, was not.

The Supreme Court has moved away from a nuisance abatement requirement to a more broadly interpreted requirement that a regulation must benefit the public welfare. This leniency has allowed government to enact wide-ranging legislation as long as it could show that the

If governments were forced to compensate property owners who were hurt by regulation, most zoning and environmental protection laws would become unenforceable.

public welfare had been improved. Legislation such as the Clean Water Act, the Clean Air Act, and the Endangered Species Act in large part owe their success to the Court's interpretation of takings.

Of course, the most effective environmental legislation is inherently the most inconvenient legislation to developers and resource extractors. If governments were forced to compensate property owners who were hurt by

regulation, most zoning and environmental protection laws would become unenforceable. While most state and local governments are alarmed at the potential consequences of such a ruling, the Bush administration supports an interpretation of takings that encompasses regulatory takings.

The three cases the Supreme Court agreed to hear differ in their content but are linked by the issue of regulatory takings. Earlier this year the Supreme Court mysteriously dismissed a case after hearing the oral arguments. In that case, *PFZ Properties vs. Rodriguez*, the government of Puerto Rico had refused to allow a large resort complex to be built in the middle of a mangrove jungle. Although it is not unknown for the Supreme Court to change its mind about hearing a case, the dismissal of the *PFZ Properties* case surprised many observers.

The decision in the second case, *Yee vs. Escondido*, was handed down by the Court in April of this year. The Yees owned two mobile home parks in Escondido, California and were contesting the legitimacy of a rent control ordinance passed by that city. The Court's unanimous opinion was that no takings had occurred because the regulation did not require any physical invasion of the property.

In the third and as-yet-undecided case, *Lucas vs. The South Carolina Coastal Commission*, Lucas had purchased

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Owl decisions generate lots of noise, little else

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issue, just 1,742 acres. Because five of the seven committee votes were required for the exemption, the White House had to compromise to obtain the exemption. John Knauss of the National Oceanic and Atmospheric Administration proved to be the deciding vote after holding out for reduced timber sales and for making sales contingent on the BLM's adoption of a ten-year, owl-friendly plan for future sales. EPA administrator William Reilly voted against

the exemption, as did Oregon's representative—the only committee member not appointed by President Bush.

The BLM sales are still under court injunction, however. Yet another suit against the BLM, for improperly filing for an exemption in the first place, is being considered.

On the same day, Interior Secretary Manuel Lujan, who later raised eyebrows by declaring he did not believe

in Darwinian evolution, threw down the gauntlet on the still-unrenewed ESA by releasing two owl "recovery" plans. One would allow for timber sales of about 2.28 billion board feet a year on public lands within the owl's range, instead of the estimated 4.22 billion board feet that would be cut if no protection were tendered to the tiny raptor.

The other—which Secretary Lujan called the "preservation plan" but which environmentalists termed the "extinction plan" because it would allow the bird to die out in the coast ranges—would set the logging level at 3.18 billion board feet to save more timber jobs. This second plan is illegal under the ESA and

would have to be approved by Congress. Government biologists said that under the second plan, the owl would face a "high probability of ultimate extinction." The Sierra Club's Michael Fischer said the administration was "telling the ancient forests to drop dead."

Still another spotted owl suit was heard in Seattle in late May, and more may come before the courts in June.

Tim McKay is a member of the California Ancient Forest Alliance. Reprinted from the June 1992 issue of *Econews*, newsletter of the Northcoast Environmental Center.



Inland owl forests, like these in the South Fork Salmon Canyon, would be protected under Secretary Lujan's owl recovery plan.

Simpson plan

In a related matter, Simpson Timber and the Fish & Wildlife Service last month announced a first-of-its-kind joint project under which 13,000 acres of Simpson's 383,000-acre northern California forestlands would be set aside for the owl. If approved, the 30-year plan could take effect by mid-summer and supersede any state regulations concerning the owl.

The proposed plan would allow Simpson to "take"—that is, displace, harm, or kill—up to five pairs of mature owls a year while logging in Humboldt, Del Norte, Trinity, and Mendocino counties. Nearly 400 birds and 100 nesting pairs have been found on Simpson property.

Public comments will be accepted for 30 days after the Federal Register publishes the notice about the plan. For copies or to comment, contact the U. S. Fish & Wildlife Service, 2800 Cottage Way, Room E-1803, Sacramento, CA 95825; (916) 978-4866.

—Tim McKay

Desert management

Appropriation needed for E. Mojave "biological gardens"

By Vicky Hoover

The Trust for Public Lands (TPL) has just obtained a binding option to buy four parcels of land in our future Mojave National Park—now the East Mojave National Scenic Area (NSA). Comprising a total of 1,727 acres, the four inholdings include Caruthers Canyon, long favored by desert hikers for its rock formations, rare plant life, mining relics, and climbing opportunities; full sections of land at Rock Springs and Woods Wash, in the central portion of the East Mojave NSA; and a partial section of land at Marl Springs, west of Kelso Dunes. To exercise the option, the TPL is seeking funds to cover the purchase price of \$975,000.

"Regardless of the outcome of the debate over the California Desert Protection Act," says the TPL's Bob Flewelling, "those with a special place in their hearts for the East Mojave have an extraordinary opportunity to protect some of its finest resources right now. These four

parcels will become public land if Congress appropriates \$975,000 this year. If Congress fails to act this year, however, the owner will withdraw his offer and we may lose the opportunity forever."

Elden Hughes, longtime southern California desert activist and a director of the California Desert Protection League, is excited about the prospect of this multiple acquisition. "In arid lands,"

Hughes writes, "waterholes—springs, seeps, riparian areas—are the magnets for biodiversity. The variety of plant life here attracts animal life, including man. The proposed TPL acquisitions are extremely important for they focus on these waterholes."

"The major Native American trail from New Mexico and Arizona to the California coast stopped at two of these sites: Rock Springs and Marl Mountain. Here, for more

In arid lands, waterholes—springs, seeps, riparian areas—are the magnets for biodiversity.

than a thousand years were carried the trade goods of Arizona (precious stones and pottery) for the dried shrimp and coastal products of California.

"Father Garces passed this way in 1776 seeking converts and an overland route from the Colorado River to the Pacific. He, too, stopped at Rock Springs and Marl Springs—as did Jedediah Smith in 1827; the first Yankee to come overland to California. When the Mojave Road was laid out in the 1850s, it followed the route that connected the springs."

Caruthers Canyon

In this biological garden at least 273 species of flowering plants have been documented. Among the unusual flora are ferns,

coastal manzanita, coastal scrub oak, live oak with great basin sage, and, high in the range, a small forest of white fir, a remnant from the ice age. Caruthers Canyon hosts

the great basin ground squirrel, while rare bighorn sheep, mountain lions, and mule deer roam the valleys and the high granite spires and outcrops. On the east side of Caruthers, exposed white limestone harbors rare en-

demic plants. Through much of the winter and spring a running stream delights hikers and campers.

Rock Springs

At this major stop on the Old Mojave Trail, a granite outcrop brings underground water to the surface for about 100 yards of riparian area. The water then disappears into the sands of Watson Wash. Native American petroglyphs are found alongside some stylish graffiti from the Army's occupation period in the 1860s. During this time, wells were sunk three miles to the west at Government Holes to provide the water needed by the Army. Although never in great quantity (beyond the occasional flash flood), water at Rock Springs was always dependable.

Also on the property are a house built entirely of native rock and the Army's rock corrals.

Woods Wash

The scenic Woods Mountains and Woods Wash contain some of the best petroglyph sites in this area. The layered volcanic mountains provided excellent rock shelters for habitation and for hunting sites. Woods Wash hosts a fine mix of cactus and very large Mojave yucca. A small herd of bighorn sheep inhabits the area, and in the adjacent Woods Mountains are three golden eagle aeries and one prairie falcon aerie.

Marl Springs

This next waterhole west of Rock Springs on the Old Mojave Trail hosts cultural remains: corrals and water troughs from the cowboy period and a long abandoned arrastra, a primitive ore-grinding mill, from the mining period. Marl Mountain is granite and grows some extraordinary barrel cactus. Here, ancient creosote bushes have reproduced by throwing out genetically-identical seeds that form clone rings, with many 1,000- and 2,000-year-old plants around the parent plant. Centuries-old pencil cholla over seven feet tall and a climax forest of Joshua trees, creosote, and cactus round out the list of botanical curiosities.

Vicky Hoover is Chair of the Sierra Club's California Desert Committee.



Mammalaria cactus in Woods Wash, East Mojave

Photo by Jim Eaton

BLM wins one for Dedeckera Canyon

Miner pleads "no contest"

After months of legal maneuvering, the miner who attempted in October 1991 to bulldoze a road through a remote desert canyon has pleaded "no contest" to criminal charges that he destroyed natural resources. As a result, the Bureau of Land Management (BLM) will require the miner, John Nichols, to rehabilitate the damaged site, the "narrows" of Dedeckera Canyon in the Saline Valley Wilderness Study Area. Nichols' sentence also includes a \$1,000 fine and two years of probation.

According to Lee Delaney, the BLM's Ridgecrest Resource Area Manager, the decision to charge Nichols for destruction of natural resources rather than for an infraction of mining regulations made the victory possible

because the mining regulations have no teeth. This is the third time the district has prosecuted successfully over destruction of natural resources. Delaney hopes that the prosecution and subsequent sentence will demonstrate that the BLM is serious about protecting the natural resources in its charge.

How successful the rehabilitation of Dedeckera Canyon will be remains in question. Nichols probably will be required to remove the tons of gravel with which he had planned to construct a road through the narrow canyon en route to his Saline Valley pumice claim (see March 1992 WR). None of the canyon's rare plant species was harmed by Nichols' road building because the BLM intervened

before he reached the parts of the canyon where the plants grow.

BLM staff will oversee the rehabilitation to ensure that no more damage is done. Under the sentence, the cost of the BLM's supervision will be borne by Nichols. The BLM also may require Nichols to reduce the visual impact of his illegal road building. Scars on rock faces, for instance, can be chemically aged to match the natural patina of undamaged rock. Rainstorms already have obliterated some traces of Nichols' bulldozing. BLM rangers are still assessing how best to rehabilitate the canyon, but Delaney says he expects the rehabilitation to be completed within six months.

Wilderness news

Easy course ahead for Los Padres wilderness bill

The last impediment to passage of the Los Padres Condor Range and Rivers Protection Act—legislation which would create five new wilderness areas, add acreage to two others, and designate three new Wild & Scenic Rivers (W&SRs) in the Los Padres National Forest—was cleared in May when the Senate Energy and Natural Resources Committee unanimously approved a bill identical to the House bill passed in November 1991. The legislation goes next to the full Senate, where it is expected to pass, and then to the President, who is considered unlikely to veto a bill supported by both of California's senators.

The Cranston-Seymour bill would designate a new 220,000-acre Sespe Wilderness as well as four smaller wilderness areas: Chumash, Garcia, Silver Peak, and Matilija. In addition, 43,000 acres would be added to the existing San Rafael Wilderness and 30,000 acres to Ventana Wilderness. In all, almost 400,000 acres of wild lands would gain permanent protection, a figure which looks less impressive when compared with the more than 700,000 acres of roadless lands to be released for non-wilderness use (see August 1991 WR).

It was the question of river protection, and not wilderness protection however, that created the logjam that previously blocked the progress of the Senate bill. Specifically, it was the 55-mile long Sespe Creek which agricultural interests have sought to dam. Movement of the Senate bill was delayed last year while Senator



The lower gorge of Sespe Creek, Los Padres National Forest Photo by Timothy Teague, courtesy of Keep the Sespe Wild

Seymour, newly appointed by Governor Wilson, considered how much of the creek he was willing to protect. The bill which passed the Senate Energy and Natural Resources Committee, on which Senator Seymour serves, designates only the upper 31.5 miles of the Sespe as a W&SR, disappointing many conservationists. Along with the Sespe, the Senate bill would afford W&SR protection to the Sisquoc and Big Sur rivers. Four other rivers, the Little Sur River and Lopez, Matilija, and Piru creeks, would be studied for possible future W&SR designation.

Regulatory takings

continued from page 4

two pieces of beachfront property for nearly one million dollars, hoping to build homes on both lots. Subsequently, the South Carolina legislature passed the Beachfront Management Act (BMA), which severely limits construction in fragile coastal and dune areas. Lucas does not disagree with the intent of the law, but since the enforcement of the law reduces the value of his property, he feels that this constitutes a takings and that he is owed compensation from the state government for the difference in his property's value due to the regulation. On the other hand, South Carolina argues that it is not required to compensate Lucas because the BMA furthers the public welfare. The Supreme Court's ruling on the case is expected early this summer.

When the Supreme Court agreed to hear not one but three cases involving takings in the same year, many observers felt that the Court was ready to alter dramatically the future of takings interpretations. One case would be a sign of interest, but three seemed to signal a willingness by a newly conservative Court to redefine when a takings has occurred. Both the Yee and

PFZ Properties decisions have deflated the hopes of private property rights advocates and elicited guarded optimism from environmentalists. And while both sides await the Lucas outcome, it seems clear that the Supreme Court is not ready to overturn the vast body of jurisprudence that defines takings today.

Scott McCarthy is an intern for the California Wilderness Coalition.

A bill to withdraw 6,000 acres of public lands surrounding Bodie State Historic Park from new mining claims and to tighten regulations on current mining activity has been introduced by Representative Richard Lehman (D-Fresno). Portions of two Bureau of Land Management wilderness study areas—Bodie and Mt. Biedeman—would be protected by Lehman's bill, the Bodie Protection Act.

The bill, H. R. 4370, would allow mining on existing claims, but only if no adverse impact to historic or natural resources resulted from the activity. The Bodie area is currently

Partial victory in S. Sierra grazing appeal

By Canyon Fred

Back in April 1991, the California Wilderness Coalition (CWC) and four other conservation groups appealed the South Sierra Wilderness Management Plan, asking that several statements that appeared to approve indefinitely the existing level of cattle grazing in the South Sierra Wilderness be removed from the plan. The appeal also requested that a "no grazing" alternative be evaluated.

Some Forest Service employees believe they cannot curtail grazing within designated wilderness because grazing is allowed by the Wilderness Act of 1964. Conservationists have long argued, however, that Congress did not intend wilderness grazing to continue where it conflicts with other wilderness resources and uses such as fisheries, wildlife, riparian habitat, and recreation.

A decision on the appeal was delayed while negotiations took place between Jim Eaton, Executive Director of the CWC, and staff from the Inyo and Sequoia national forests. The local Forest Service officials refused to budge on any of the issues, and agreement could not be reached.

Deputy Regional Forester Joyce Muraoka recently handed down her decision on the appeal. She determined that the disagreement over subjective language contained in the plan is moot because recent policy from the national office of the Forest Service calls for wilderness management prescriptions to be incorporated into forest plans. This means that traditional wilderness management plans will no longer be prepared and that the Inyo and Sequoia national forests will have to amend their forest plans to include specific standards and guidelines for wilderness management. (The new forest plan amendments will be subject to appeal.)

Although Muraoka upheld the construction of new cattle fences opposed by the appellants, she instructed the Forest Supervisors to "consider the appropriateness of a no grazing alternative" in future allotment management plans. This latter portion of her decision is seen as a victory for wilderness advocates since it affirms that the Forest Service has the authority to curtail wilderness grazing where significant conflicts with specific resources are identified.

Bodie mining bill assayed

threatened by a Galactic Resources Ltd. proposal to mine on Bodie Bluff immediately behind the ghost town of Bodie.

Lehman's bill would require the Secretary of the Interior to consult with the Governor of California before approving any plan for mining within the Bodie Bowl.

For more information on the Bodie Protection Act, contact the Save Bodie Committee of the California State Park Rangers Association, P. O. Box 292010, Sacramento, CA 95829-2010.

Book review

The pragmatic environmentalist

Free Market Environmentalism

By Terry L. Anderson & Donald R. Leal, *Pacific Research Institute for Public Policy, San Francisco, 1991, 192 pp., \$14.95.*

Authors Terry Anderson and Donald Leal have described their book as a "Berlitz course in free market environmentalism." For me, it was also a timely course in keeping an open mind. That wasn't easy when, for instance, the authors compare bison to pollutants, but it's always good practice, and the analogy, for all that it rankles, still lingers.

Free market environmentalism represents a significant departure from traditional thinking about environmental problems and how to address them. Don't legislate and regulate environmental benefits, the authors argue, buy them. That's not so radical (or expensive) an idea as it appears on its face. Organizations like the Nature Conservancy already are successfully pursuing this approach. The authors maintain that private ownership of now-public resources would lead to better management because owners have more incentive to preserve and enhance the environment (the source of their wealth) than do public employees subject to the winds of political pressure. Moreover, the authors argue compellingly that

the existing machinery of environmental protection—lobbying, litigation, legislation, and regulation—has high costs and deficiencies of its own.

It is in delineating the costs and deficiencies of the status quo that the book excels. The authors succinctly and clearly explain the problems inherent in our institutional (and subsidized) management of a wide range of resources: from forests and grasslands to wetlands and streams.

Later chapters apply the free-market paradigm to a host of environmental ills. Rather than mandate industry-wide standards for pollution abatement, the authors suggest a market in pollution permits, a system they believe would encourage entrepreneurial solutions and reward producers who generate less pollution. Environmentalists who want to lower pollution levels further could buy and retire permits.

In embracing pragmatism (and the bottom line, whether economic or environmental), the authors completely disregard ethical considerations. Many readers will be offended by a discussion of whether we should manage wildlife as public or private property, a discussion that never gives even lip service to the notion that animals are not ours to own. In describing historic logging practices, the authors state that "when the majority of good forestlands were publically owned and few forestlands were open to private ownership, the [timber] industry had no choice but to take [i.e. steal] public resources." That may be good economics, but ethical it's not.

There's a lot to argue with here, but also a lot to ponder. And if the authors' solution—free market environmentalism—is less convincing than their indictment of the status quo, the book is worth reading nonetheless.

—Lucy Rosenau

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DATES TO REMEMBER

June 17-25 SCOPING MEETINGS on revisions to the Desolation Wilderness Management Plan. An environmental impact statement (EIS) will address the use of the Limits of Acceptable Change framework in future management. Submit ideas and comments for consideration in the EIS before July 10 to: Karen Leyse, Interdisciplinary Team Leader/Project Coordinator, Pacific Ranger Station, Pollock Pines, CA 95726. Meetings are scheduled for 7:00 p.m. in Placerville on June 17 (Shakespeare Club, 2940 Bedford Ave.); South Lake Tahoe on June 18 (Tahoe Sands Inn, 3600 Highway 50); Sacramento on June 23 (KVIE Community Room, 2595 Capitol Oaks Drive); and Oakland on June 25 (Scottish Rite Center, 1547 Lakeside Drive).

July 11 ACTIVISTS MEETING of the California Ancient Forest Alliance in Davis. Call Jim Eaton at (916) 758-0380 for details.

Wilderness Trivia Quiz Answer:

San Rafael Wilderness, Los Padres National Forest.

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**California
Wilderness
Coalition**

Purposes of the California Wilderness Coalition

...to promote throughout the State of California the preservation of wild lands as legally designated wilderness areas by carrying on an educational program concerning the value of wilderness and how it may best be used and preserved in the public interest, by making and encouraging scientific studies concerning wilderness, and by enlisting public interest and cooperation in protecting existing or potential wilderness areas.

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The *Record* welcomes letters-to-the-editor, articles, black & white photos, drawings, book reviews, poetry, etc. on California wilderness and related subjects. We reserve the right to edit all work. Please address all correspondence to:

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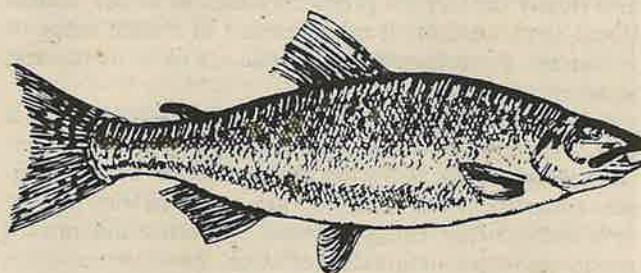
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