



Showdown at Tejon Ranch

BY EDWARD HUMES

Lawyers for the Center for Biological Diversity are advancing a new legal theory to fight global warming. At stake is the future of a one-of-a-kind ecosystem.

Between the asphalt sprawl of the Los Angeles Basin and the fertile flatlands of the Central Valley lies a vast blank spot on the map about twelve times the size of Manhattan—a wild place unlike any other in California: Tejon Ranch. Here the valley, the Mojave, the Sierra Nevada, and the South Coast all meet, providing habitat for more than 80 rare and endangered species to roam, roost, and raise their young, including the nearly extinct California condor. Studded with ancient, windswept oak groves, twisted Joshua trees, native wildflower fields, and thick stands of piñon pines, Tejon is an unspoiled part of a much larger region that Conservation International has recognized as one of the most biodiverse in the world.

Tejon also happens to be private property—the largest single block in the state, in fact. And its owner, the Tejon Ranch Co., now wants to build on it what is said to be the single largest master-planned development in California history. The company is calling the project Centennial, which it envisions as a city of up to 70,000 people that would include industrial space, multiple shopping centers, schools, and medical facilities. A separate project on the land includes plans for a resort and luxury-home complex near the condors' foraging and historic nesting grounds.

From the developers' point of view, it's a plum just waiting to be plucked—more than a quarter million contiguous acres a mere 70 miles from downtown Los Angeles. A straight shot up the I-5, it would be the ultimate bedroom community, reportedly worth as much as half a trillion dollars when all is said and done. ("Playing SimCity for Real" is how the New York Times characterized this one-of-a-kind plan for a one-of-a-kind landscape.) And in the hope of appeasing conservationists, the company has also proposed setting aside 100,000 of the ranch's 270,000 acres as a permanent nature preserve. Copious additional acreage would be designated as open space.

But the plan has hardly satisfied conservation groups, and chief among them is the Center for Biological Diversity, a

battle-seasoned nonprofit organization staffed by a devoted 40-person coterie of lawyers, biologists, wildlife experts, and activists that no big developer can afford to take lightly. The center's track record speaks for itself: In its 18-year history it has won more than 90 percent of the hundred or so lawsuits it has filed under the Endangered Species Act, leading to the protection of 349 endangered species and 70 million acres of habitat. It has prevailed against adversaries as diverse as local city councils, California's largest developers, and the Bush administration.

With projects like Centennial, the center hopes to open a whole new battlefield against big developments, to address threats posed by global warming. It's an area of the law that is heating up, at both the state and federal levels. In fact, the center was a plaintiff in the case the U.S. Supreme Court decided in April, striking down by a 5—4 vote the Environmental Protection Agency's blanket refusal to regulate greenhouse-gas emissions from cars under the Clean Air Act. (Massachusetts v. EPA, 127 S. Ct. 1438 (2007).) And in California the center is attempting to compel the state to take actions against greenhouse gases that the EPA and President Bush have long resisted—including limiting development.

Already, the center has test cases in the works. Last December, center attorneys filed a suit in Riverside County Superior Court that argues the city of Banning should not have approved the 1,500-home SunCal housing development in grasslands without first considering the greenhouse-gas emissions that the project would pump into the atmosphere. The basis of the claim: a novel interpretation of the California Environmental Quality Act (CEQA), which does not explicitly address global warming but does require cities, counties, and other jurisdictions to disclose all of a project's important environmental impacts, and then make every reasonable effort to avoid, diminish, or mitigate those harmful effects. In April the center also sued San Bernardino County, claiming the county ignored global-warming concerns when formulating its long-term plan for growth. (Meanwhile,

Attorney General Jerry Brown has been urging planning agencies around the state to take these same concerns into account for development.)

Of course, lowering the greenhouse-gas emissions from a single housing development isn't going to save the polar ice caps. But a win in the Banning case, for example, could have enormous precedential value, making it much easier to modify, reduce the scope of, or even halt big development projects throughout the state, including Centennial. In that project, the center has called on the developer to provide both a global-warming analysis and mitigation proposals in its Environmental Impact Report (EIR), which the lawyers expect to be delivered later this year. And if the EIR falls short, the center will almost certainly file another complaint in state court on the global-warming issue.

"That's the battle that matters most," says Brendan Cummings, director of the center's oceans program. "Sure, we've preserved habitats and staved off extinctions. But all that will be beside the point if the ice sheets melt and those beautiful habitats are under ten feet of water."

Although the Center for Biological Diversity may not be a household name, its first big case had huge name recognition, both as a turning point for environmental activism and, to private-property-rights activists, as a symbol of regulatory excess. This was the fight to save the spotted owl.

The initial battle began in the 1980s when the center's founders, activist Kieran Suckling and wildlife researcher Peter Galvin, gathered reams of data on threatened plant and animal species throughout the Southwest, hoping to persuade the federal government to take action under the sweeping but then largely dormant Endangered Species Act (ESA) of 1973, one of the last pieces of comprehensive environmental legislation adopted by Congress. The pair started their crusade by petitioning the U.S. Fish and Wildlife Service to recognize the Mexican spotted owl as endangered. When it became clear that their data on the impending extinction of the once-plentiful raptor was irrefutable, the government granted the petition, triggering limits on development, logging, and grazing that would otherwise have doomed the owl to extinction.

In the wake of that victory, the two activists soon generated dozens more petitions under the ESA, then recruited volunteer lawyers to take the government and developers to court when they balked at the stringent measures and limitations triggered by the long-ignored law.

And so the center was born, starting out in 1989 as the Southwestern Center for Biological Diversity in rural southwestern New Mexico. Later it moved its headquarters

to Tucson, Arizona, where it dropped its regional focus in favor of a national and global effort. Today, eight of its eleven staff attorneys are based in California: four in San Francisco and four scattered throughout Southern California. (The other three are in Chicago, Washington, D.C., and Duluth, Minnesota.)

In recent victories, the center has:

- Compelled the Bush administration in 2006 to propose listing the polar bear as a threatened species because of the loss of its sea-ice habitat due to global warming—a development that down the road may require the federal government to regulate and mitigate greenhouse-gas emissions for all its future projects, permits, and other actions. The center also has a similar petition on file to protect 12 of the world's 19 penguin species.

- Forced the Bush administration to buy alternative-fuel vehicles for significant portions of the federal government's fleet purchases each year under the Energy Policy Act, a long-ignored 1992 law.

- Won a federal court ruling that the Bush administration violated both the ESA and the National Environmental Policy Act in attempting to open to off-road vehicles thousands of previously protected areas in the California desert, where the endangered desert tortoise and other imperiled species would be at risk.

- Stopped off-road vehicle access to 50,000 acres of Algodones Dunes in Imperial County, the largest dune ecosystem in the country and habitat for a broad range of endangered desert animals and plants.

- Joined forces with an evangelical environmental group, Christians Caring for Creation, to win protections for the endangered Arroyo toad and thousands of acres of its habitat, settling a suit that involved all four of California's national forests.

- Stopped the illegal bulldozing of wetlands in Big Bear Lake, one of the bald eagle's last remaining habitats in Southern California. The center's complaint led to a \$1.3 million fine and a permanent injunction against the project in 2006.

- Won a suit against the U.S. National Marine Fisheries Service that forced federal officials to apply ESA provisions to U.S.-flagged fishing vessels operating in international waters. The 2003 victory shut down California's long-line fishing fleet, which once used 30-mile filament lines bristling with hooks to catch swordfish and tuna—in the process also killing marine mammals, sea birds, and leatherback sea turtles, which had been driven to the edge of extinction.

If all the center ever did was save telegenic polar bears, penguins, and sea turtles, it would cause no offense. But

there's collateral damage to consider: fishing crews who lose their livelihoods; off-roaders and hunters who are barred from their favorite haunts; cattle ranchers who can't get grazing permits on federal lands; and local communities that see jobs vanish.

In Kern County many have complained bitterly about the center's efforts to block the building of Centennial—and thus deprive the region of both housing and tax revenue, not to mention the 30,000 jobs that the project's developers promised. A columnist for The Bakersfield Californian, Marylee Shrider, decried the center's "saber rattling" and "unwarranted sense of entitlement" in an article prominently republished on Centennial's website.

"They want, they want, they want," Shrider wrote of the activists at the center. "... Tejon Ranch Co. must develop, or not develop, the land according to their plan or it's off to court they'll go."

Sometimes the center itself is a target of litigation. An Arizona cattle rancher won a \$600,000 defamation verdict against the center in 2005 over photos posted on the organization's website. A Tucson jury determined the photos had painted a false image of alleged environmental damage at the man's ranch. The center argued that the photos were privileged, but a state appeals court found that argument to be untimely and so did not address its merits in upholding the verdict last December. The rancher, James Chilton, who is also a Los Angeles investment banker and husband of a controversial former Arizona Game and Fish commissioner, has blasted the center as a radical organization. Chilton's victory earned him an admiring profile in the Wall Street Journal for "turning the tables" on the center in one of its more visible and embarrassing setbacks.

"We hear the term 'extremist' at times," the Center for Biological Diversity's Brendan Cummings acknowledges. "But look at it this way: We're asking Ronald Reagan—appointed judges to enforce laws signed by Richard Nixon. There's nothing extreme about that."

"We know we can't stop development," says Kassie Siegel, another attorney at the center, who several years ago came up with the idea of trying to use CEQA to address global-warming concerns. "But, we often can make it better."

Cummings and Siegel—who are partners in life as well as in the law—work in the community of Joshua Tree, on the border of the national park by that name. Their law office and home is perched on a lonely dirt road with a stark view of desert scrub and foothills. The location and their lifestyle fit their environmental activism: Their home's solar power generates more electricity than they use; they drive a hybrid

Toyota Prius; their backyard is a veritable crossroads for wildlife—bobcats, quail, roadrunners, and owls; their midday exercise routine requires no stair-steppers or treadmills, just a hike through the desert.

Like many of the attorneys who have worked at the center, they are part of a small network of environmental litigators who came out of Boalt Hall School of Law at UC Berkeley. Both volunteered for the Center for Biological Diversity either during or immediately after law school, eventually earning spots as staff attorneys. Before starting his law degree, the ponytailed Cummings served aboard a conservation vessel called the Sea Shepherd; Siegel worked as a raft guide for an ecotourism company in Alaska.

Now specializing in climate-change litigation, Siegel is among the 1,000 volunteers trained by The Climate Project to present to community groups the slide show on global warming made famous by Al Gore in the film An Inconvenient Truth.

Her first case using a global-warming argument to protect an endangered species brought the sort of frustrating victory environmental litigators have come to know so well.

In 2001 Siegel filed a petition to protect the dwindling numbers of an Alaskan diving seabird. According to the center's wildlife experts, the Kittlitz's murrelet faces extinction because of climate changes that affect the bird's food sources and breeding abilities (on top of the Exxon Valdez oil spill, which in 1989 wiped out up to 15 percent of the species' Prince William Sound population). The Bush administration agreed with Siegel's claims and designated the murrelet a "candidate" species, suitable for endangered status and protection. A victory, right?

"Yes and no," Cummings and Siegel say, which so often is their response to any question about the results of a case that it has become something of a standing joke between them.

Although the U.S. Fish and Wildlife Service agreed with the center on the murrelet's impending doom, the agency has left the bird on the candidate list for six years, claiming it lacked the resources to take any further action. Two years ago the center determined that 283 additional "candidate" species have been trapped in the same bureaucratic limbo—for an average of 17 years each—and another 24 species actually became extinct before the government ever got around to formally listing them as endangered. The center has filed suit in Washington, D.C., seeking a court order forcing the administration to act. The case is still pending.

Siegel says the center waited years for a good test case on pushing the boundaries of CEQA as a tool to combat global warming. Finally, it got its opportunity in Banning. The development there, Black Bench, would consume energy

for 1,500 homes and generate emissions from 15,000 auto trips a day, plus emit greenhouse gases from construction. Siegel argues that those emissions could be cut in half, if not more, using methods and technologies that are cost free (passive solar placement), low cost (solar water heating), or cost effective (solar generation, alternative fuel, and hybrid vehicles).

“We have to start somewhere,” Siegel says. “A few more years of business as usual will commit us to climate disaster. In Banning we say they have to consider greenhouse gases. They say no we don’t. So we’ll see.”

Despite the long history of conflict, of late some developers are finding themselves more in agreement with the center than either side could have imagined a few years ago. In San Diego, land-use attorney Cary D. Lowe often consults with the center’s staff on behalf of his clients (mostly builders and developers) to find low-cost solutions to environmental concerns and avoid litigation.

Five years ago Lowe knew the center only by its reputation—which was not terribly favorable among lawyers who make a living helping people bulldoze and build. Then a mutual friend referred him to Siegel. Lowe represented an investor who was considering a proposal to refinance a large housing project in Riverside County called Oak Valley. The center had recently settled a suit there leading to the preservation of wetlands and a wildlife corridor, and Siegel provided Lowe with information he needed to evaluate the investment risk. “I was pleasantly surprised,” Lowe recalls. “She was helpful and forthcoming.”

A short time later, a homebuilder client of Lowe’s started a project very close to Oak Valley—with plans to block the very same wildlife corridor. Lowe called Siegel directly and suggested they meet to discuss solutions. The result of the negotiations was a fairly extensive redesign. Ultimately, the builder signed off on several accommodations, agreeing to install a large conduit through which wildlife could safely traverse a then-desolate road that would become much busier once the homes were built. It was an extra expense for the builder, Lowe acknowledges, but nothing compared to what litigation and project delays would have cost. Moreover, his client was pleasantly surprised by how “collegial” the whole process was.

In that same collaborative spirit, Lowe is now inviting Siegel to present her An Inconvenient Truth slide show to various planners, public officials, and environmental consultants he knows. “If we can bring the parties together in advance,” he says, “the center won’t have to feel it must file lawsuits constantly, and developers will feel they have a way out.”

But, of course, there will always be cases when compromise is not possible.

In Banning, no one is writing off the possibility of a settlement. But GERALYN SKAPIK, the attorney who represents the city, says that at this point her client won’t accept the center’s settlement demands.

“We don’t agree that there is enough scientific evidence to support their position at this time,” Skapik says. “And we disagree with how they’re utilizing the global-warming position and applying it to this project. We dispute the effects they claim this project would have, and we believe they are exaggerating the mitigation request.”

Banning and the developer, SunCal, recently filed a response in the case, denying the complaint’s allegations. In counter-arguments, the defendants are expected to focus on the obvious, contending that a single housing project will have no significant effect on global warming. They are also likely to point out that greenhouse gases such as carbon dioxide are not in themselves toxic. (This last argument failed to convince the U.S. Supreme Court, which found that, at least under the federal Clean Air Act, greenhouse gases can indeed be considered air pollutants.)

The plaintiffs will have to overcome a powerful appeal to common sense, admits John Buse, the other center attorney paired with Siegel to litigate the Banning case: “The impact of any project this size on global warming will be .000000000001 percent. What is there in the law that requires a developer to consider that?”

But Siegel and Buse insist that state law allows—and indeed requires—consideration of the cumulative effects of greenhouse gases, and that just because no one has yet thought of advancing that argument under existing law doesn’t diminish its logic. In fact, they say, both the Banning housing project and the far larger proposal for Tejon Ranch represent exactly the sort of old-style “leap-frog” development, far from existing urban areas, that has brought the planet to the brink of disaster.

As far as Skapik is concerned, such claims are outlandish: “The petition just isn’t rational,” she says.

Barry Zoeller, vice president and director of corporate communications for the Tejon Ranch Co., says he cannot comment directly on the Center for Biological Diversity because the company has been in litigation with the organization over yet another development on the ranch, the Tejon Industrial Complex. However, Zoeller expresses confidence that the conservation plan his company has

already put on the table for Centennial is more than adequate. “The fundamental core values of the ranch from the get-go are conservation and good stewardship,” he says.

Indeed, the company’s own website declares Tejon Ranch “an important part of California’s natural heritage,” providing “habitat for a variety of wildlife species.” But the developers don’t see the proposed site for Centennial that way. “There are very few species living in that area, and there is a mitigation plan for the bioresources there,” says Barbara Casey, a spokesperson for Centennial. “The land is pretty barren due to more than 100 years of grazing.”

As it stands now, developers hope to break ground as early as 2009 on the housing and resort projects for Centennial. But any lawsuit that heads to trial could slow things down.

The property owners stay in contact with environmental groups, Zoeller says, but no formal negotiations are under way. Nor has the ranch incorporated considerations to limit greenhouse-gas emissions into its plan, as the center suggests.

But even if the center’s global warming—based claims get thrown out of court, the project still could founder over more conventional environmental concerns. In fact, Siegel maintains that the issues of energy and water and the loss of biodiversity and natural habitat are in themselves strong arguments against Centennial ever being built.

“This wilderness area is iconic,” she says. “It’s California’s heritage. There’s no reason to put a new city there.”

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