





GOT'CHA!

A Fed-up Arizona family sues radical enviros for their lies—AND WINS!

By Cindy Coping

"Our opponents don't use science, they subvert science," says Arizona rancher Jim Chilton. "Endangered species are just their tools to raise money and to impose their antiproduction philosophy."

Chilton wants to expose the way the Center for Biological Diversity (CBD) does business and is incensed over the lost livelihoods of tens of thousands of rural westerners: timber workers, ranchers and miners who lost productive, well-paid employment. "Too many other victims just couldn't defend themselves against relentless attacks by CBD or Forest Guardians."

Brothers Jim and Tom Chilton and their father Ken, partners in Chilton Ranch and Cattle Company, recently won a defamation suit against CBD.

"Environmental activist organizations wear people down until they can no longer function," a witness in court asserted.

"That's exactly the problem," emphasizes Jim, who persevered through seven years of predatory political action, litigious attacks, slander and libel to protect the family's multi-generational heritage. "Ranching is not a job; it's a culture. It is a unique western American way of life and a national cultural treasure worthy of preservation. This [defamation] case is more about the truth, values and science than about money."

Jim, a fifth-generation Arizona rancher, and his ancestors have a long history of environmental stewardship. Since 1905 when the U.S. Forest Service (USFS) replaced "open range" with regulated private allotments, the Chiltons have stocked their ranches conserva-

tively and improved forage, infrastructure and herd quality. "You'll hit poor years," Ken says, "and you'll still have good grass cover."

In 1978 the Chilton Ranch and Cattle Company left northern Arizona where the family had raised cattle since 1888, and purchased the Diamond Bell Ranch southwest of Tucson. On their own initiative, they invited the Natural Resources Conservation Service to help create a range conservation plan for the Diamond Bell.

"We [still] needed a bigger place to support two generations," says Jim, "so when a good ranch came on the market in 1987 just 30 miles south of the Diamond Bell, we decided to buy it." They established their new home in Arivaca, a small historic ranching community first put on the map in 1695 by Father Eusebio Kino, Arizona's original rancher. Jim worked cattle while his wife Sue, a hobby naturalist, continued collecting plant specimens and learning to identify the local subtropical migratory birds.

"Sue's natural history avocation led to her appointment to the Arizona Game and Fish Commission in 2000, adding to a generations-long tradition of volunteer civic leadership by individual Chiltons," Ken explains. "We take pride in our name."

Jim adds, "Three things are the most important in a person's life: his love for family, his word, and his integrity and reputation."

In 1991, Jim enlarged the ranch with purchase of the Montana Allotment in the Coronado National Forest between the Mexican border and Arivaca. He immediately implemented a rest-rotation grazing system in cooperation with the Forest Service. The system gives lowland pastures 20 months' rest out of 24 to increase perennial grass cover and rapidly recruit riparian vegetation. Today the allotment provides habitat for wildlife includ-

Heritage and integrity with deep roots spurred the Chiltons to fight back. FROM LEFT: Jim, father Ken, and brother Tom.



PHOTOS COURTESY CHILTON FAMILY

than 75 percent of its habitat has been lost to livestock grazing, dams, and water diversions.” Ironically, the final FWS listing rule indicates that the frog was eradicated from major Arizona waterways primarily by exotic bullfrog predation, and more than one-third of survivors are found in earthen cattle tanks, to which the rule gives special legal protection. Recently, Arizona ranchers hauled water to save the frog from drought. The Chiltons also actively participate in recovery efforts.

“We and our neighbors in the Altar Valley Conservation Alliance,” Jim says, “have been working on a plan to reintroduce this frog as soon as we get a management plan from the Forest Service and consultation with Fish and Wildlife so our conservation efforts don’t lead to an activist lawsuit.”

Jim Chilton’s 10-year grazing permit was up for renewal in 2003. In 1997, CBD and Forest Guardians sued to force the Forest Service to consult FWS regarding endangered species on 158 grazing allotments, including the Montana Allotment. USFS and CBD settled their lawsuit with an agreement to fence livestock out of waters including the occasional water at the border in California Gulch.

In March 1997, Forest Service biologist Jerry Stefferud, a CBD member, wrote the Biological Assessment for the Montana Allotment as required by the Endangered Species Act (ESA). He declared that grazing was “likely to adversely affect” the Sonora chub, asserting cattle might “ingest” chub larvae, trample fish and increase stream sedimentation in California Gulch. Mima Falk, a Forest Service botanist, concluded that grazing would “likely adversely affect” the lesser long-nosed bat although the species has never been located on the grazing allotment.

The Forest Service forwarded the Biological Assessment to FWS where Sally Stefferud, coincidentally Jerry Stefferud’s wife, wrote the Biological Opinion. Jim expressed dismay at “the obvious collusion and inappropriate lack of scientific detachment.”

The Biological Opinion mandated a three-times-per-pasture-per-year monitoring requirement that would have cost Jim about \$25,000 annually. He suspects that “it was really just a setup for another lawsuit.” Meanwhile, activists were having a field day with the official USFS file for the Montana Allot-

Forest Service biologist Jerry Stefferud complained cattle might stomp and chomp on fish in a wash that appears occasionally. The Biological Opinion from U.S. Fish & Wildlife Service, negative toward cattle, was written by Stefferud’s wife. “This is a typical ranch riparian area,” Chilton says, “and I can prove it.”

ing javelina, deer, coatimundi, songbirds and Mearns quail. “There is absolutely no inherent ‘incompatibility’ between raising livestock and providing habitat for wildlife,” Sue is happy to point out. “A good ranch is good for both.”

Despite impressive stewardship, however, the Chiltons found themselves perpetually at odds with CBD, supposedly over three federally listed species: the Sonora chub, the lesser long-nosed bat and the Chiricahua leopard frog.

In wet years, the “threatened” Sonora chub minnows swim under the Mexican border fence and up an intermittent wash known as California Gulch. They venture only a few hundred yards into the United States because the border marks the end of perennial water and the extreme northern edge of their range. The Forest Service fenced and removed this tiny segment of California Gulch from the Montana Allotment in 1997 in response to a CBD lawsuit. Any fish that cross the border when the wash runs, die when the temporary water dries up in late spring. Although the leading researcher on the chub found the species secure and abundant in Mexico, it was listed because it was rare in the United States. In fact, most fish are rare in dry washes.

The lesser long-nosed bat is another south-of-the-border species. Adult males

never travel north into the United States. Pregnant females migrate each spring to a few locations in southern Arizona where they remain for the summer. This species’ 1988 “endangered” listing relied on a questionable report finding only 135 specimens in the United States. More capable researchers published a paper exposing the very poor science

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the U.S. Fish & Wildlife Service (FWS) accepted to justify the bat’s listing. Evidence is mounting that the listing proponents looked in the wrong places at the wrong time when they sounded the alarm of the species’ imminent demise. Experts counted more than 14,000 in Arizona within a year of the listing. By 1993, they documented more than 200,000 roosting along the border.

On June 13, 2002, FWS added the Chiricahua leopard frog to its “threatened” species list. Its status in Mexico is unknown. In its petition to list the frog, CBD claimed: “More

ment, which featured 30-year-old data and unchecked claims of poor soil and riparian conditions.

"We had no idea what the activists were stuffing in the agency record," Jim sighs. "It was like having someone put false reports in your credit file, and just as hard to fix."

When Jim used the Freedom of Information Act to obtain the file, he was aghast. "A cowboy's creed is honesty, integrity and straightforwardness. The only way to correct the data file and counteract baseless claims would be to bring in top scientists."

In April 1998, Jim retained Dr. Jerry Holechek and Dr. Dee Galt to extensively monitor the allotment semiannually and provide quantitative data to the file. Dr. Holechek, a tenured professor at New Mexico State University, literally "wrote the book" on range management. More than 50 accredited university range management programs teach from Holechek's textbook.

Holechek felt apprehensive when Jim and Sue Chilton first contacted him. He had previously donated his expertise to help environmentalists force an allegedly irresponsible

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rancher out of business. After the team's first visit to the Montana Allotment, however, Dr. Holechek exclaimed, "I was ecstatic" upon seeing the Chiltons had stocked conservatively. "The Montana Allotment has the richest, most diverse flora of any area I have ever worked in."

Following rigorous measurements, Holechek and Galt's first report indicated stable soils, excellent vegetation vigor and healthy watersheds. They recommended additional steps, which the Chiltons eagerly followed, to more evenly distribute grazing intensity.

In 1998, the Forest Service limited "utilization" (removal of primary range forage grasses) to 55 percent. Holechek recommends 35 percent averaged over a 10-year period. Holechek and Galt's monitoring during 15 site visits since 1998 documented that in most years the Chiltons have averaged 20-25 percent utilization across the Montana Allotment, including forage consumed by wildlife.



California Gulch riparian utilization survey area, between Tenaja and Ralph Griffin's road, grazed summer 1998, rested summer 1999. Photo taken July 1999.

Holechek and Galt compared their production and utilization measurements against detailed monitoring reports from permanent study sites, called transects, that the USFS established on the allotment in the 1960s. The team confirmed the ground cover had doubled and desirable native perennial midgrasses had significantly replaced short-

grass species. Hundreds of trees had become established in riparian reaches where they were absent 13 years earlier. Recently retired USFS conservation expert Duane Thwaites, who over 23 years made some 200 daylong monitoring visits to the Montana Allotment, confirmed that he likewise observed "very dramatic improvements" in key indicators. He said Jim was "always out on the ground" and communicated frequently.

Holechek, Galt and hydrologist Dr. William Fleming, who evaluated eight riparian areas on the allotment, published two



Dr. Jerry Holechek, Marijuana Flat, 2002. The range scientist was retained with Dr. Dee Galt to extensively monitor Jim Chilton's allotment. Holechek had previously helped environmentalists force an allegedly irresponsible rancher out of business but when he checked Chilton's range he was "ecstatic. The Montana Allotment has the richest most diverse flora of any area I have ever worked in."



This is Ruby Japanese Tank. CBD photographed a tiny corner, trying to prove that bullfrogs were taking over, thanks to cattle. Bullfrogs were introduced by Arizona Game & Fish and they eat the endangered Chiricahua leopard frog, which is being devastated by a fungus. "Cattle are not the problem with the Chiricahua," USFWS told Jim Chilton. Wildlife and cattle have never seen this beautiful pond dry. It is fed by a spring. It was used by a Japanese farmer who grew and sold vegetables to miners in the 1890s.

peer-reviewed papers, "10 Steps to Evaluate Range Riparian Health" and "The Montana Allotment: A Grazing Success Story," both in the December 2001 issue of the prestigious *Rangelands* scientific journal.

Dr. Fleming returned in 2002 and rigorously proved the annual soil erosion on the allotment falls below the average natural background rate, disproving the myth that

grazing on the allotment accelerates erosion and sedimentation. The Chiltons also hired fish biologist Mary Darling to study the Sonora chub. Her studies conducted on 20 visits between 1998 and 2002 documented the presence of exotic predators and historic mining toxins in California Gulch. She concluded that the ultimate death sentence to the border-crossing minnows occurs when the



The Chilton family showed true grit. It took seven years to get back their sanity and their reputation after being abused by operatives for the Center for Biological Diversity. Even after the onslaught the family remains strong. FROM LEFT: Ken, Sue, Jim and Tom.

wash dries up. She says it is dry, "the majority of the time."

In December 2000 a federal judge struck down the Biological Opinion for the Montana Allotment. While CBD and FWS appealed, FWS published a new Draft Biological Opinion that characterized California Gulch as a "stream" with "perennial or near perennial water," and would have eliminated grazing on 1,200 acres parallel to it to "protect the chub." Jim questions wryly: "Guess which Forest Service and FWS cou-

...their favorite control tool had just been "zapped" by the most unlikely Court of Appeals."

ple was behind this renewed attack?"

At the same time CBD's "Grazing Reform Program Coordinator" Dr. Martin Taylor, an entomologist, wrote to USFS claiming proof of "clear violations," and requesting suspension or cancellation of Jim's grazing permit. Two USFS experts independently investigated the Montana Allotment on-site and found the claims baseless. Outraged, Jim had an attorney demand a retraction. Taylor never responded.

In a landmark decision on December 17, 2001, the Ninth Circuit Court of Appeals proclaimed the FWS Biological Opinion for Montana Allotment "arbitrary, capricious and unlawful," and prohibited incidental take statements for unoccupied "potential or suitable habitat." The Court further ruled, if an endangered species is present, FWS has the burden to prove grazing would kill or injure the species before it can issue an incidental take statement and demand regulatory jurisdiction.

The Chiltons' older son Ken recalled the reaction as he read the just-released decision to some "activist" government agents who came to see California Gulch. He "watched their faces fall as they realized their favorite control tool had just been zapped" by unanimous decision of the most unlikely Court of Appeals. "They tried to conceal their dismay,"

Ken says, "but they weren't very good actors."

When USFS published the renewed grazing authorization for the Montana Allotment, CBD's Taylor, indicating intent to appeal, requested and received the allotment's entire record. Taylor said he chose not to read the reports authored by Jim Chilton's consultants.

"Holechek's literature wasn't convincing to me as a scientist," Taylor recently recalled, contradicting the fact that he cited Holechek's recommended utilization limits as the "best available science" in CBD's last failed appeal.

CBD's appeal requested an Environmental Impact Statement and suspension of grazing during the two-to-four years interim, marking their fourth formal attempt to stop Jim Chilton's permit. On Feb. 13, 2003, USFS renewed Jim Chilton's grazing permit.

On July 2, 2002, CBD issued a news advisory with online links to the appeal and to 21 photographs with inaccurate captions. Activist Mike Hudak nominated the Montana Allotment in an Internet contest for the most "overgrazed" allotment of 26,000 nationwide. The photos led contest voters to "award" the Montana Allotment fourth place.

CBD issued a press release with the Internet address of poll results. Dr. Holechek commented: "[Environmental activists] have an agenda where the end justifies any means. I strongly believe this is a primary example of this type of behavior."

In November 2002, Maggie Malinovitch, editor of the free *Arivaca Connection* newspaper, who has been a CBD member and financial supporter, printed the press release for everyone in the Chiltons' hometown of 1,500 citizens to read. Sue Chilton learned of it amidst rarely used "cowboy words" exploding from her husband. Jim's lifelong sense of humor had finally met its match. He developed insomnia and a stomach condition. "It felt to me just like how Martin Luther King described he felt upon being hit with a brick."

To top it off, Mary Darling, confused and concerned for her own reputation, called Jim. "I wondered if [the Chiltons] had manipulated what I saw so that I would write favorable reports," she recalls. "[Jim] said those photos are not representative, and he was very angry. I heard the agitation in his voice." Jim's brother Tom remarks: "The worst part about this

whole deal is for my parents. Dad is 88, Mom is 87, and they have to go through this. We have always tried to be good people." CBD kept the inflammatory news advisory and photos online for more than a year, until the Chiltons sued.

"If I had not responded to their false accusations," Jim explains, "I would always have been trying to explain to everyone that I really was a good rancher. My reputation, my dad's and my brother's reputations are very, very important to us."

During the trial, Martin Taylor had referred to CBD as a "watchdog" enforcing government compliance with the ESA. The Chiltons' attorney Kraig Marton asked Taylor: "Who performs the watchdog duty over the Center for Biological Diversity?"

"I don't know," Taylor replied. Marton pointed beside him to 10 poker-faced men and women.

"This jury does, don't they sir?" ■

Arizona rancher Cindy Coping is 2nd vice president of S. Ariz. Cattlemen's Protective Assn. and a member of People for the West.

In the jury's opinion: "an evil mind"

"Photographs can lie, and liars take photographs," says Jim Chilton, who successfully sued the Center for Biological Diversity (CBD) for defamation in a jury trial that lasted two weeks. The suit also individually named Dr. Martin Taylor, Shane Jimerfield

and A.J. Schneller. Jurors awarded \$100,000 in actual damages and \$500,000 in punitive damages.

CBD's July 2, 2002, news advisory alleged "much" of Chilton's Forest Service allotment is "grazed to bare dirt," and repeated an earlier allegation by Sierra Club and CBD that Jim and his wife Sue, chairman of the Arizona Game and Fish Commission, "have an agenda hostile to wildlife and endangered species." CBD provided links to 21 photographs of "grazing damage" on Chilton's Montana Allotment. Captions included the phrases, "completely trampled," "100 percent utilized" and "zero recovery."

Photos zoomed in on tiny patches of bare

ground including a roadside campsite. Attorney Kraig Marton showed the jury wide-angle photos taken in the same locations, revealing surrounding lush green landscapes.

The Chiltons tracked coordinates on four CBD photos, supposedly representative of the allotment, to private lands they do not own. These included a mining area, a former cabin site and a muddy stock pond CBD alleged was a trampled spring. Another photo featured "Marijuana Flat," where hundreds of campers engage in annual May Day revelry. CBD's "Range Reform Researcher" A.J. Schneller attended in 2002, returned two weeks later, took the photo and captioned it: "California Gulch completely denuded..." implying cattle were responsible.

Ranch broker James Webb testified the press release reduced the Montana Allotment's potential market value by \$200,000.

All 10 jurors agreed that CBD's news advisory did not "accurately describe the condition of the Montana Allotment." Nine voted that CBD's press release contained "false statements" and "misleading photographs," and that CBD had published it "with an evil mind." ■



Marijuana Flat in September 2002. Activists from the Center for Biological Diversity listed this area on their Web site as "the most abused ranch country in the United States." The fact is none of these cows eat fish and real range scientists found it among the healthiest in the Southwest.