



MOUNTAIN  
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LEGAL  
FOUNDATION

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**December 1, 2009**

Dear Friend of Mountain States Legal Foundation (MSLF):

The case I describe in my *Action Update*, in which the National Park Service (NPS) sued a young New Jersey family, the Hulls, shocks the conscience!

I wish I could say I am surprised; however, after twenty years of fighting the federal government in court, I am not. Over the decades, MSLF has defended scores of clients in similar situations. For example, to name but a few, MSLF defended:

- **John Shuler of Montana**, who killed a grizzly bear in self defense, but was persecuted by the Fish & Wildlife Service (FWS) for eight years;
- **Bobby Unser of New Mexico**, who nearly died on a snowmobile ride, but was prosecuted by the Forest Service, which said it need not prove criminal intent;
- **Kathy Stupak-Thrall of Michigan**, who owns a small lake-side cabin, but was prosecuted by federal lawyers who argued that she had no property rights.

MSLF believes it is essential that the Hulls fight back: not only to secure their right to own and use their property, but also to prevent the government from concluding that it can do this to American citizens. Federal agencies, their covetous bureaucrats, and their scores of lawyers must learn that the Constitution and the rule of law apply to them!

Fortunately, because MSLF now represents the Hulls free of charge, they are able to fight back. Make no mistake, however; this battle will not be easy! As we have seen, Obama and his officials do not like to be challenged; they “come out swinging” against anyone who has the temerity to fight back. Plus, the Administration’s allies in powerful environmental groups will try to enter the case to aid the NPS and to overwhelm MSLF.

In fighting for the Hulls, MSLF is obeying the command of Ronald Reagan that we fight for, protect, and hand freedom over to our children, so we need not spend our sunset years telling them, “what it was once like in the United States where men were free.” Please join in supporting MSLF in this critical battle for liberty. Thank you!

Sincerely yours,

William Perry Pendley, Esq.  
President and Chief Operating Officer



ROOM

FOR

DEBATE

## A Running Commentary on the News

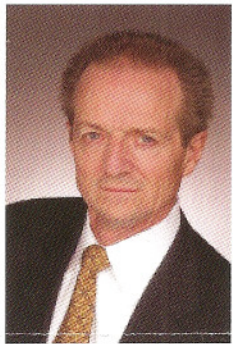
On Sunday, the first episode of Ken Burns's 12-hour history, "The National Parks: America's Best Idea," aired on public television. Last week, the independent National Parks Second Century Commission, led by former senators Howard H. Baker, Jr. and J. Bennett Johnston, Jr., released an extensive report on the state of the parks and a vision for the next century.

The national parks have been well loved since their beginnings in the 1870s; sometimes nearly loved to death. Since their creation, there has been tension between two goals: wilderness preservation and making these sublime landscapes open to more people.

What's the best way to protect the national parks, and what's the best use of resources for that purpose?

### Maintain What We Have

*William Perry Pendley, Esq.*



Mr. Pendley, president and chief operating officer of Mountain States Legal Foundation, a nonprofit, public interest law firm, was born and raised in Wyoming, received degrees from the George Washington University and the University of Wyoming, and practices law in Washington, D.C., Virginia, and Colorado. Known for his advocacy on natural resources, environmental, and constitutional

issues, he argued and won the landmark U.S. Supreme Court case, *Adarand Constructors, Inc. v. Peña*.

America's national parks are the pride of the Nation, possessing remarkable scenery and breathtaking vistas virtually unchanged since they were first set aside. Parks, however, are intended to be used; they are not the playground of park employees, the testing ground of scientists, or the "critical habitat" of wildlife and thus off limits to the American people. Although parks are well protected by the laws creating them, parks have been permitted to deteriorate because the National Park Service (NPS) has focused its expenditures and its energies, not on upkeep and maintenance, but on acquiring more land. The best way to ensure that today's and future generations



*Yosemite National Park, California*

enjoy parks as Theodore Roosevelt intended is to maintain them properly. The NPS must be not only a "good steward" but also a good neighbor, by recognizing the constitutional and property rights of private citizens within and beyond park boundaries.

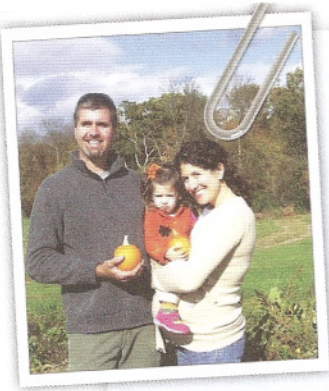
Natural resources are meant to be used; in fact, every generation has left future generations with more resources than existed when that generation arrived on the planet. Today we have more coal, oil and gas, and minerals, for example, than were predicted to exist short years ago. Months ago, many predicted "peak" oil and a future of declining supplies. Today we celebrate the discovery of a vast deposit of oil in the Gulf



*Theodore Roosevelt Library of Congress  
Theodore Roosevelt and John Muir in  
Yosemite, 1903.*

of Mexico, and a massive natural gas find in Pennsylvania and New York. Given what we have accomplished in the natural resources field in past decades, who knows what the future holds. In the meantime, we must use what has been provided for us. As the late Warren Brookes once remarked, "The learning curve is green." Thus, it is not government but the free market that yields better and wiser use of the resources available to us.





## Matthew and Michelle Hull Layton, New Jersey Thanksgiving Day

Hi Perry,

Our two year old wants to go outside and our newborn is about to wake up, but I thought it was really important to take a moment to thank MSLF for taking our case. We are so relieved and thankful.

Matt and Aaron truly realized a dream come true when we purchased Cy Harker's farm in 2007. It was a stretch for us to buy the land, but Matt and Aaron knew Cy for a long time and had helped him maintain the farm he loved so much. We had talked to Cy about buying it one day. We feel he would be proud that we sacrificed a lot to buy the land to farm it and to restore the old stone house (built in 1774). Imagine how elated we felt when his estate accepted our offer especially when other buyers with more purchasing power were interested—the Nature Conservancy and the National Park Service (NPS).

It was a short lived feeling. Soon after we bought the land, the NPS blindsided us with a negative press release because we erected gates to protect our property; the NPS's lawsuit followed shortly afterwards.

We had all dealt with the NPS in the past. We thought we had a good relationship with the agency and could resolve disagreements as neighbors always do in rural New Jersey. We were stunned by the lawsuit and the dawn arrival of the Marshals. (Thankfully, they did not serve me where I work; I would have been so humiliated.) We hired a lawyer to protect our rights to our private property; but, soon we were more deeply in debt than I imagined we could be. What a terrible choice we faced: be in debt forever or give our property to the Park Service!

When we got the call from MSLF we had been praying for I was on the way to our farm. I was just opening the gate when I was told that MSLF would represent us—for free. I was so overwhelmed with feelings of relief, hope, and gratitude that I began to cry.

Perry, we are also grateful to you for visiting our property, for understanding why we believe we must fight for our rights, and for ensuring our ability to do so.

Sincerely,

Michelle Hull





## **OBAMA'S NATIONAL PARK SERVICE (NPS) WAGES WAR ON FAMILY; U.S. MARSHALS SWEEP IN AT DAWN; NPS PLAN: "BLEED THEM DRY!" MSLF FIGHTS BACK BUT FEARS MORE "1984 BIG BROTHER" TACTICS!**

In September 2009, *The New York Times* ballyhooed public television's broadcast of Ken Burns' 12-hour, "The National Parks: America's Best Idea." It also revealed that the National Parks Second Century Commission, which was chaired by two former U.S. Senators, had released a report on "the state of the parks and a vision for the next century." These two events caused *The New York Times* to ponder the future of the national parks. One writer took the occasion to demand that the NPS, "be not only a good steward but also a good neighbor, by recognizing its boundaries and the constitutional and property rights of private citizens within and beyond park boundaries." The case of the Hulls of northern New Jersey reveals one reason for that demand.

In the 1950s, the United States proposed creation of the Tocks Island Dam Project along the Delaware River in Sussex County, New Jersey, which would have created a 37-mile-long lake between Pennsylvania and New Jersey and would have been the biggest dam project east of the Mississippi. Beginning in the 1960s, the U.S. Army Corps of Engineers, via purchase and condemnation, acquired 72,000 acres of private land, causing many locals to complain about insufficient compensation and heavy-handed tactics. In time, the project failed due to local opposition and lack of federal funds; however, the land was not returned. Instead, in 1978, it was transferred to the NPS.

One of the most persistent opponents of the project was Enos "Cy" Harker, a World War II veteran who refused to sell the land on which he lived for almost 50 years until he died—while tilling a hillside—in October 2006 at age 93. By then, he was the only landowner along Old Mine Road who had not sold his property to the federal government. In fact, he included a deed restriction barring his property from ever being sold to the United States.

In September 2007, brothers Matthew and Aaron Hull and Matthew's wife, Michelle, who were born and raised in the area and knew Harker well and had worked with him maintaining and farming his land, bought the property, which is surrounded on three sides by the NPS managed Delaware Water Gap National Recreation Area (NRA) and on one side by the Delaware River. Old Mine Road, which was abandoned by the Sandyston Township in 1988 and reverted to Harker and then the Hulls, crosses the NRA and bisects the Hulls' property for 300 yards; it passes within 20 feet of their house. To protect their children, their property, and trespassers who might otherwise be injured on their property, the Hulls erected gates on their road.



The NPS never claimed ownership of the road and refused to maintain it; nonetheless, on March 23, 2009, the NPS filed a federal lawsuit against the Hulls alleging that the road was property of the United States! That was a surprise, but what was a shock was how the NPS commenced its lawsuit.

At sunrise, six federal marshals from Newark, New Jersey, "in full gear," swept into the sleepy little town where the Hulls live, surrounded their home, and stormed onto their front porch. It was Matthew holding their tiny, one-year-old daughter who clung tightly to him, who opened the door. When Matthew asked for an explanation of their behavior, one Marshal said that they had been told by the NPS to expect the Hulls "in the trees with guns!"

Forthwith, the NPS began "trying the lawsuit" in the media, fomenting negative coverage regarding the Hulls. Worse yet, the legal strategy of the NPS is to "bleed [the Hulls] dry." The reason, many believe, is simple—the NPS lacks the funds to pay for the property as the Constitution requires!

Fortunately, MSLF is defending the Hulls. MSLF will do as it has for others assaulted by vast federal agencies, scores of covetous bureaucrats, and teams of federal lawyers who seek, not justice, but to win at all costs. MSLF will fight for their constitutional rights and the rule of law to win!

MSLF's battle for the Hulls in federal court in New Jersey is not just about the Hulls, their property rights, and the heavy-handedness of the NPS, its police, and the lawyers who do its bidding. Instead, it is about the right of citizens to be free from fear that their government will destroy their lives.

A bumper sticker from years ago is making an unfortunate come back: "I LOVE MY COUNTRY BUT I FEAR MY GOVERNMENT." Little wonder citizens express this fear. A new book by an expert criminal lawyer shows that, with all the federal laws and regulations now on the books, every citizen commits "three felonies a day!" According to him, the reason why some are targeted by federal lawyers is "prosecutorial discretion!" In his expert view, if federal lawyers decide to target an innocent person, they can find reasons to do so.

What will happen when even more federal laws and regulations are written, such as "health care," "cap and trade" (Al Gore's global warming "cure"), and "environmental" laws, with pages of new enforcement authority for agencies like the IRS and provisions for civil fines and criminal penalties?

That is why the battle for the Hulls is so vital. Not only must MSLF win for them; MSLF must restore "justice" to Eric Holder's Department of Justice.

G.K. Chesterton once said, "Thieves respect property. They merely wish the property to become their property that they may more perfectly respect it." Thus it is with the NPS; the NPS saw what the Hulls own, wanted it, and filed an outrageous lawsuit to get it. They thought the Hulls would be easy pickings; the NPS did not count on MSLF coming to the Hulls' defense.