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Public Lands Council

Capital Issues ~June/July 2015~

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EXECUTIVE BRIEFING

From the Other Side of the Fence (Washington, D.C.)

As usual in Washington, June and July turned out to be extremely busy but saw few accomplishments by Congress. For the first time in six years, the House was on track to pass the Interior and Related Agencies Appropriations bill, which addresses many priority issues for the western livestock industry. Then, with just a few votes to go, a disagreement over the use and display of the confederate battle flag on federal properties caused the entire appropriations process to grind to a halt. As Congress takes the month of August to spend time in their districts and states, I encourage you to visit with your representatives and senators about the importance of using the federal government funding process to stop and push back against the Obama administration. It is one of the few ways to stem the overreach we continue to see from federal agencies across the government. Now, it looks likely that Congress will pass a short-term continuing resolution (CR) while continuing to negotiate a larger budget/spending package that would be taken up toward the end of the calendar year. So, our efforts will continue on the industry priorities contained in the current draft funding bill (see specifics below).

The Antiquities Act and monument designations will continue to be a priority for PLC. As President Obama nears the end of his second term, I suspect we will see further abuse of the Act through excessive designations like the million acres of new monuments in Nevada and California. While it will be difficult to get legislation signed to stop monument designations, the House took a major step in approving language to block monuments in many counties across the west – proving that Congress is finally recognizing monuments' crippling effect on multiple uses, and the resulting damage to western communities. It remains important for us to visit with our governors and local officials about the detrimental effects of monuments and continue to call for an open and public process until we have a president willing to agree that the Antiquities Act needs to be returned to what was (and is) intended by the law.

The PLC staff will spend much of August recess planning and preparing for our Annual Meeting, this year taking place in Cody, Wyoming. Please see below and visit our [website](#) for details on reserving hotel rooms and registering for the meeting.

I will close on a sad note. Cayle Krebs, my good friend and the son of Skye and Penny Krebs, was killed in a terrible car accident in late June. Skye Krebs was PLC president when I became executive director of PLC. Over the years, he and his family have become close friends and like a second family to me. I won't ever forget the many Pendleton Roundups spent with the Krebs family, nor the Fourth of July and New Year's fireworks shows on the Krebs ranch--orchestrated and executed by Cayle. Cayle's loss is, of course, immeasurable for the Krebs family. Our entire industry, too, has lost a great man and future leader. It was an honor to know him. He will forever remain in our hearts, and our memories will continue to remind us all how fortunate we are to have known him. Until we meet again my friend, so long.

Dustin Van Liew
Executive Director

-Your voice in Washington, D.C.

HIGHLIGHT

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LEGISLATIVE UPDATE

Congress Stalls on Interior/Environment Spending Bills

PLC has put a good deal of focus on the fiscal year 2016 Interior and Environment appropriations bill in both the House and Senate. This bill sets the spending levels for the Bureau of Land Management (BLM) and the U.S. Fish and Wildlife Service (FWS) within the Department of the Interior, the Environmental Protection Agency (EPA) and similar agencies. Two versions are being considered in the House and Senate that contain very similar provisions of interest to PLC. Both the House and Senate versions have been marked up and passed by their respective appropriations committees.

However, it's unclear whether either the full House or full Senate will vote on the bill. Senate Democrats are reportedly blocking appropriations bills from coming to the floor in order to force a compromise on the budget. In the House, controversy broke out in early July when an amendment regarding the Confederate flag was introduced.

The stall in both chambers is unfortunate. Below are the primary PLC-supported provisions included in both the House and Senate versions:

- Level funding of the range management programs, which is vital to the efficiency and effectiveness of land management agencies.
- Rejection of President Obama's attempt to impose an additional arbitrary tax on grazing fees. The President's request would have increased fees by 148%.
- A delay of the greater sage grouse listing. This was included in last year's spending law, effective through Sept. 30, 2015. The measure included in the FY 2016 bill measure would delay a listing through September 30, 2016. The Fish and Wildlife Service (FWS) is under court order to make a listing determination by September 30, 2015--meaning that they will still have to decide if the sage grouse warrants listing under the ESA. However, under this rider, they cannot legally implement or enforce a listing. A delay of a listing will allow states' plans time to take effect.
- A ban on EPA's from implementation of its burdensome Waters of the United States final rule. The Energy and Water Appropriations bill also included a rider that accomplishes the same goal as applied to the Army Corps of Engineers.
- A measure to prohibit funding for the creation of de facto wilderness areas under Secretarial Order 3310, the "wild lands" order.
- A measure requiring land management agencies to offer alternative allotments to permittees who are impacted by drought or wildfire.
- Gray wolf provisions directing FWS to re-issue delisting rules for Wyoming and Great Lakes. Senate report language directs FWS to use \$1,000,000 to reinstate the wolf-livestock loss demonstration program.
- Continued block of the National Ocean Policy.
- Rejected proposal to increase Land and Water Conservation Fund (LWCF) from \$292 to the \$400 million Obama requested. A smaller increase (\$13.87 million) was approved.

- Wildfire provisions that will increase Forest Service spending on hazardous fuels reduction, road maintenance and construction, and forest products production. Also, \$3.61 billion to fight wildland fire. This represents fire suppression funded at 100 percent of the 10-year average. The bill also includes \$1.054 billion in emergency spending, which may only be used if all discretionary appropriations are exhausted. Also included in bill language is a fire cap adjustment that would make fire suppression expenditures above 100 percent of the 10-year average eligible for disaster assistance.

PLC will continue to push for passage of the Interior and Environment appropriations bills, should the opportunity present itself.

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Senate Defense Bill Drops Sage Grouse Language

Important sage grouse language was dropped in the Senate this month when that chamber debated and passed its version of the National Defense Authorization Act (NDAA). The NDAA is just one legislative avenue by which pending sage grouse regulations could be forestalled. An amendment to the NDAA, introduced by Senators Mike Lee (R-Utah) and Jim Inhofe (R-Okla.), would have delayed a listing of the Greater Sage-Grouse for ten years (and would have delisted the Lesser Prairie Chicken and the American Burying Beetle). Unfortunately, Senator McCain (R-Ariz.), chairman of the Senate Armed Services Committee, withdrew that amendment after President Obama threatened to veto the bill, due in-part to the ESA related provisions.

As reported last month, the House-passed version of NDAA does include this ESA-related language. Specifically, it would keep the greater sage grouse off the endangered species list through the year 2025. It would also allow the states to put to work their own respective sage-grouse plans and make sure that the federal lands in those states are managed in a manner that's consistent with the states' plans. That would mean putting a halt to the Bureau of Land Management's (BLM) and U.S. Forest Service's proposed amendments to land and resource management plans across the West.

PLC will work with House Natural Resources Chairman Rob Bishop (R-Utah) in an attempt to see that the conference committee on the NDAA retains the language he successfully included in the House-passed NDAA. A conference report could be voted on in September.

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Mexican Wolf Delist Bill Introduced

Representatives Paul Gosar (R-Ariz) and Steve Pearce (R-N.M.) have introduced [H.R. 2910](#), the Mexican Wolf Transparency and Accountability Act, a bill to delist the Mexican wolf and to terminate the “nonessential experimental population” rule that went into effect early this year.

The Mexican wolf was first listed as an endangered species in 1976. Even though U.S. Fish and Wildlife Service (FWS) has acknowledged that its recovery plan has never contained recovery criteria for delisting (as required by law), the agency continues to use the same “recovery” plan—with no mechanism for the down-listing or delisting of this subspecies of wolf.

In January of this year, FWS re-designated the Mexican gray wolf as an endangered subspecies and also issued the new “nonessential experimental population” rule (or 10(j) rule) that dramatically expanded the area Mexican gray wolves can roam.

Meanwhile, the Mexican wolf's presence in one county has caused a direct economic loss of \$5 million and resulted in “1,172 calves lost annually to wolf depredation,” according to a study. Mexican wolves have caused so many problems in recent years that [12 wolves have had to be lethally removed](#) and [more than 150 others](#) have been forced to be relocated.

H.R. 2910 has been endorsed by PLC, NCBA, Arizona Cattle Growers' Association, and many other organizations from Arizona and New Mexico.

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House Passes New Forest Management Legislation

On July 9, the House of Representatives passed the *Resilient Federal Forests Act of 2015* ([H.R. 2647](#)) in a 262- 167 vote. The bill was first presented at a House Federal Lands Subcommittee [hearing](#) in early June. The legislation is designed to restore fundamental land management capabilities to the U.S. Forest Service, such as routine thinning practices to improve forest health and reduce wildfire threats. These practices have been encumbered by litigation for decades—a matter that the bill also endeavors to address.

[Click here](#) for summary of the bill. Specifically, it seeks to:

- Build upon the successes of categorical exclusions (CEs) under NEPA. CEs are used for routine activities with known outcomes, and they save the Forest Service time and money while still protecting the environment and natural resources.
- Expedite the Forest Service's ability to quickly remove dead trees after wildfires.
- Incentivize collaboration among groups, and speed the implementation of collaborative projects.
- Protect collaborative projects from unnecessary delay by requiring bonding for legal challenges. This discourages arbitrary and frivolous litigation against the Forest Service.
- Reduce project planning times and costs of implementing forest management projects.
- Update and modernize the Secure Rural Schools law and reauthorizes the Resource Advisory Committees (RACs). This bill allows local areas to tailor RACs to fit their unique needs.
- Provide new methods of funding projects, such as “revolving funds” for projects on national forests funded by states.
- Require that any court hearing a case regarding Forest Service action must weigh the benefits of taking short-term action versus the potential long-term harm of inaction (fire, etc.).
- Amend the Stewardship Contracting Authority so the Forest Service is no longer required to set aside money in the event a stewardship contract is cancelled.
- Allow the Federal Emergency Management Agency (FEMA) to transfer funds to the effort of fighting forest fires after Forest Service or BLM suppression funding has been exhausted. In the past, the agencies would have to borrow from non-fire related accounts to continue funding firefighting efforts.

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ESA a Focal Point at Senate ENR Drought Hearing

Historic drought in the west is being exacerbated by government regulation, according to witnesses at a June 2 [hearing](#) of the Senate Environment and Natural Resources Committee. Much of the West has been in varying degrees of drought for the past 15 years now. California, in the midst of its fourth year of severe drought, has for the first time imposed mandatory 25 percent reductions on water use by residents and businesses. On June 12, the state issued a notice to senior water rights

holders within the Delta, San Joaquin and Sacramento Watersheds that they could no longer divert water.

According to witness Cannon Michael, speaking on behalf of Family Farm Alliance, much of the waters in California's reservoirs "has been allowed to flow out the Golden Gate by federal fisheries agencies, with no apparent benefit for the fish species it is intended to protect." Similarly, he said, misguided flow-management decisions on the Klamath-Trinity River system in Northern California / Southern Oregon have not helped fish, but they have had devastating effects on California and Oregon water and power customers.

Michael added that across the west, "litigation stemming from citizen suit provisions of environmental laws including the Endangered Species Act (ESA) and Clean Water Act (CWA) is producing federal court decisions (or court approved 'settlements') that direct federal agency 'management' of state water resources."

Given that more surface and groundwater storage is a critical piece of the solution to water shortfalls—both in California and across the west—Michael called on Congress to ease the "ever-present potential of serious federal restrictions being placed on the West's irrigation water storage and delivery activities."

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Can Congress Overturn the WOTUS Rule?

Congress may move to put a halt to the now-finalized "Waters of the United States" (WOTUS) rule of the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers. There are four main avenues by which Congress is most likely to put a stop to the rule:

- **Pass a joint resolution of disapproval under the Congressional Review Act.** This would nullify the rule and prevent the agency from reissuing either that rule or any substantially similar one. On July 7, Rep. Adrian Smith (R-Nebr.) introduced such a resolution ([House Joint Resolution 59](#)). It has been sent to a congressional committee for consideration before going before the House or Senate.

- **Appropriations bill limitations.** This could limit or prevent agency funds from being used for the rule. Both the Senate and the House Appropriations Committees included language in the FY 2016 Interior Appropriations bill that would block the EPA from implementing the WOTUS final rule. Neither the full House nor full Senate have voted to finalize the Interior appropriations bill.

Similar language to block the rule was included in the Energy and Water Appropriations bill. That bill was passed by the House in May. The Senate version, which has yet to pass the full Senate, does not include an amendment to stop the rule.

- **Standalone targeted legislation.** Multiple stand-alone bills to block/repeal the rule have been introduced in both chambers: S. 791; S. 1140; H.R. 2599; H.R. 594; H.R. 1487; and [H.R. 1732](#), the *Regulatory Integrity Protection Act*, which passed the House on May 12, 2015. In the Senate, [S. 1140](#), the *Federal Water Quality Protection Act*, was approved by the Senate Environment and Public Works Committee on June 10.

- **Broad amendments to the Clean Water Act.** PLC supports this approach in the long run, although it may be the toughest lift. Several bills this session ([S. 980](#) and [H.R. 2705](#)) have been introduced to amend the CWA. Legislation to affirm or clarify Congress's intention regarding CWA jurisdiction would have broad implications for the CWA, since questions of jurisdiction are fundamental to all of the act's regulatory requirements.

Each option faces a steep path to enactment, because President Obama likely would oppose legislation to halt or weaken a major regulatory initiative of the Administration. In order to override his veto, the House and Senate must have a two-thirds vote.

Read more about PLC's involvement in the WOTUS rule, below. One story describes PLC's request for postponement of the rule's implementation, and the other summarizes our legal challenge of the rule.

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House Passes CA Water Storage and Western Water Rights Bill

On July 16, the U.S. House passed the [Western Water and American Food Security Act of 2015](#) (H.R. 2898), a bill that could help increase water storage, streamline water permitting and protect water rights in the West. The bipartisan vote of 245-176 sends the legislation to the U.S. Senate for consideration.

The bill was introduced by U.S. Representative David G. Valadao (R-CA) in part to address issues related to the drought in California. Congressional Western Caucus Chairman Cynthia Lummis (R-Wyo.) noted that California's drought "demands congressional action to tackle the man-made barriers that are needlessly choking off water supplies crucial not just for California jobs but for the food on American tables."

"The current natural drought in CA is being exacerbated by man-made actions, including Endangered Species Act regulations on the delta smelt and salmon," the Western Caucus release stated. "H.R. 2898 requires more transparent science and the deployment of more effective management tools before the federal government resorts to the failed species recovery strategy of choking off water supplies to people."

Additionally, H.R. 2898 would spur the completion of federal studies for new water storage in California to augment the state's water supplies.

In addition to streamlining surface water storage projects and addressing other drought issues, the bill would prevent BLM and Forest Service from demanding water rights in exchange for use permits on public lands. This is an issue PLC has fought steadily since its inception: Forest Service, in particular, demanding that permittees (also ski resorts) relinquish part or all of their water rights in order to be issued the federal permit the operator needs to operate legally. The language included in this bill is based on a bill (introduced by Rep. Scott Tipton (R-Colo.) and Sen. John Barrasso (R-Wyo.)) that passed the House last Congress. Tipton and Barrasso have reintroduced in the current Congress ([H.R. 1830/S. 982](#)).

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ESA Consultation Hearing

On July 29th, the House Natural Resources Committee held an [oversight hearing](#) on "Federal Agencies' Selective Enforcement of ESA Consultation." The hearing focused on two proposed rules to reduce carbon dioxide emissions from power plants as part of President Obama's Climate Action Plan. Ironically, EPA's proposals may actually harm the manatee, an endangered species that counts on the warmed water that is released into their habitat after it is used to cool power plants. Yet, EPA has determined that Section 7 consultation under the ESA is not necessary. Lawmakers at the hearing criticized the federal agencies for only enforcing ESA regulations when it suits their agenda.

Committee Chairman Rob Bishop (R-UT) added that, instead of an open, transparent, and science-based regulatory scheme that would make partners of states, "we have been left with an opaque, litigation-driven system that resolves controversial policy questions through closed-door settlement agreements." He said that recent proposals by the Administration highlight that the status quo is

unacceptable and that improvements in transparency, science, and state-federal collaboration are overdue.

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PLC Legislation Tracker

Resilient Federal Forests Act of 2015, [H.R. 2647](#)

Sage Grouse Protection and Conservation Act, [S. 1036](#), [H.R. 1997](#)

Death Tax Repeal Act of 2015, [H.R. 1105](#)

Regulatory Integrity Protection Act, [H.R. 1732](#)

Federal Water Quality Protection Act, [S. 1140](#)

Open Book on Equal Access to Justice Act, [H.R. 384](#)

Secure Our Borders First Act of 2015, [H.R. 399](#), [S. 208](#)

Regulatory Accountability Act, [H.R. 185](#)

National Monument Designation Transparency and Accountability Act, [S. 228](#)

Stewardship End Result Contracting Improvement Act, [S. 326](#)

FLAME Act Amendments of 2015, S. 508

Wildfire Disaster Funding Act, [H.R. 167](#), [S. 235](#)

Common Sense in Species Protection Act, [S. 112](#)

America's Small Business Tax Relief Act of 2015, [H.R. 636](#)

National Monument Designation Transparency and Accountability Act of 2015, [H.R. 900](#), [S. 228](#)

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ADMINISTRATIVE UPDATE

Forest Service Drops Groundwater Directive

On June 19th, the [U.S. Forest Service announced](#) full withdrawal of the [Proposed Directive on Groundwater Management](#). The directive, which was proposed in May of 2014, was an attempt to control nearly all waters found in a watershed--both surface and subsurface—if that water were thought to somehow affect water on USFS land. Neither statute nor case law supported this effort. Specific problems with the directive, as noted in PLC's [comments](#), included:

- Vague language that would have made practically all activities on USFS land vulnerable to regulation, litigation, and curtailment. For example: “Prior to implementation or approval of proposed projects, approvals, and authorizations, assess their potential to affect the groundwater resources of [National Forest System (NFS)] lands. If there is a high probability for substantial impact to NFS groundwater resources, including its quality, quantity, and timing, evaluate those potential impacts... Require that monitoring and mitigation is conducted, evaluated, and reported...”
- Other language in the directive instructed USFS employees to overlook state law. For example, it directs personnel to “assume a hydrological connection between groundwater and surface water, *regardless* of whether State law addresses these water resources separately” (emphasis added).
- The proposed directive gave unprecedented power to USFS personnel, putting at jeopardy water rights owners’ ability to use their water. The USFS directive reads:
 - “After a proposal involving water wells or water pipelines has passed first and second-level screening and an application for that project has been accepted, the authorized officer shall deny the application if NFS groundwater resources would be compromised, despite mitigation, if the proposed use were authorized...”

- In other words, an “authorized officer” could simply deny any application if he thought groundwater resources would be “compromised.”
- The proposal likely would have led to massive takings of private property. Take, for example, this directive: “When issuing or reissuing an authorization or approving modification of an authorized use, require implementation of water conservation strategies to limit total water withdrawals from NFS lands deemed appropriate by the authorized officer.”

PLC opposed this directive full-throatedly in the press, to Administration officials, and in the halls of Congress. Multiple bills were introduced to stop the directive, all of which have PLC’s full support. We are pleased to see USFS pull back this ill-conceived proposal, yet will remain vigilant for future attempts by USFS to wrest control of western waters.

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PLC Protests Sage Grouse Plans West-wide

On June 29, PLC and affiliates filed protests on the BLM/Forest Service Final Environmental Impact Statements (FEISs) on sage grouse management across the west. The 14 documents vary in some ways, but share common themes of inflexible and arbitrary buffer zone and stubble height requirements—none of which is based in sound science. Many of the FEISs make calls for grazing permit retirement, which PLC argues is contrary to law.

Despite industry’s protests from early on, BLM and Forest Service continue to rely on a “Habitat Assessment Framework,” which calls for certain habitat objectives, such as 7-inch-tall grass and forbs (at minimum) in arid areas during nesting season—roughly March 1 through June 30.

Additionally, each of the documents includes zones where “human disturbance” is to be avoided—sometimes within a 4-mile radius of leks (breeding grounds). Some of the documents, like Oregon’s, Nevada’s and California’s, call for changing age-old trailing and turn-out practices, disallowing “livestock congregation” on or near leks. Other restrictions include limits on noise; changes or removal of range improvements; and reductions in road use that could hamper livestock management.

In our protests, we pointed out that the Administration’s plans disregard all the hard work, money and resources that states and counties have already put into creating sage grouse conservation plans. Furthermore, we point out that grazing regulations in the FEISs will only serve to harm sage grouse, as habitat fragmentation and catastrophic wildfire will increase dramatically as ranchers go out of business.

Being as the Administration appears not to have heeded our past recommendations and concerns, we expect that our continued work with Congress may be the only avenue for relief—short of litigation.

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Obama Designates 1M acres of new monuments

With the stroke of his pen, President Obama on July 10 designated three new national monuments that together comprise over one million acres. The new “Basin and Range” monument in south-central Nevada covers roughly 704,000 acres. The new “Berryessa Snow Mountain” monument stretches across more than 330,000 acres in northwestern California. A third monument in Texas covers a 100-acre excavation site containing mammoth remains. In total, Obama has now designated more than 260 million acres’ worth of monuments, far more than any president before him. That includes 19 new or expanded national monuments.

The new designations in Nevada and California met with strong protest from local governments and industry groups such as PLC. Similarly to wilderness areas, national monuments impose regulations

on multiple uses such as livestock grazing. Both the Nevada and California monuments are historic ranching areas. While both the monument proclamations claim that current grazing laws and regulations “shall continue to apply,” this same language has failed to protect grazing on other monuments from litigation and eventual curtailment.

Presidents are able to single-handedly designate federal lands as monuments because of the Antiquities Act of 1906. PLC is actively supporting efforts to reform the Act to prevent its further abuse by the executive branch. U.S. Representative Raul Labrador (R-Idaho) and U.S. Senator Mike Crapo (R-Idaho) this February introduced the “[National Monument Designation Transparency and Accountability Act of 2015](#).” The bill would require that the President get congressional approval; be in compliance with the National Environmental Policy Act (NEPA); and get the affected State to pass legislation approving the designation.

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PLC Requests Postponement of WOTUS Rule

PLC has joined National Cattlemen’s Beef Association (NCBA), and a coalition of agriculture groups in [requesting](#) that U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers postpone the effective date of the “Waters of the U.S.” (“WOTUS”) rule. When the agencies published the rule on June 29th, they stated the rule would be effective August 28th. As we stated in our extension request letter, this provides “a mere 60 days for the Agencies to determine how the rule will be interpreted and ensure the regulators are trained and equipped to implement the new definition. Likewise, it affords minimal time for the regulated community to comply.”

Indeed, there are already signs that the agencies themselves need time to interpret the new rule. For example, a regional EPA employee recently told an NCBA member that farm and stock ponds would become jurisdictional “waters of the U.S.” if they overflowed into a jurisdictional tributary. This interpretation is clearly wrong given that farm and stock ponds are exempt from jurisdiction. EPA headquarters has since confirmed that the regional interpretation is wrong.

Furthermore, a recent news report suggests that the Corps disagreed with changes made in the final version of the rule--including criticism that portions of the rule are too broad. If the two agencies are not in accord, implementation of the rule will be inconsistent and unpredictable for the “regulated community.”

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NRCS Sage Grouse Roundtable

In mid-July, ranchers from several western states participated in a roundtable discussion with the Natural Resources Conservation Service (NRCS), Partners for Conservation (PFC) and Utah Grazing Improvement Program to discuss their efforts at improving and maintaining habitat for the greater sage grouse. These efforts are outlined in a new publication by the NRCS’ [Sage-Grouse Initiative](#) (SGI) called [Success on the Range](#). Over 1,100 livestock producers across five states have voluntarily put in place special sage grouse practices on over 4.4 million acres of land. NRCS has committed an additional \$200 million for SGI over the next four years, with a goal of adding another 3.5-4 million private acres to the voluntary SGI system.

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Montana Enters Sage Grouse Agreement with SGI

Following the abovementioned roundtable of the Natural Resources Conservation Service (NRCS) Sage Grouse Initiative (SGI), Montana Governor Steve Bullock and the state’s Soil and Water Conservation Districts entered an agreement with NRCS to “enhance joint efforts to conserve privately owned working rangelands that provide habitat for sage grouse.” Almost two-thirds of Montana’s sage grouse are on private lands. According to the Governor’s press release, the

memorandum of understanding with NRCS “encourages the [Soil and Water Conservation Districts], NRCS, and the State of Montana to work together in the preservation of sage grouse habitat on working rangelands in Montana. The MOU invites the organizations to implement mutually agreed upon priorities, to share expertise, and to streamline the protection and enhancement of sage grouse habitat. Governor Bullock is confident that bringing together these interested parties will align local, state, and federal resources and coordinate efforts to help Montana ranchers voluntarily protect sage grouse while maintaining profitable and resilient grazing lands.”

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JUDICIARY UPDATE

Judge Denies Sheep Grazing Injunction in MT

Federal district court judge Brian Morris has spared a Montana ranching family from removing 8,000 head of sheep from their federal range this summer. The Gallatin Wildlife Association is suing to halt grazing on the Helle family’s seven federal sheep grazing allotments in southwestern Montana, claiming that domestic sheep grazing is incompatible with grizzly bear and the bighorn sheep population that was introduced on the Beaverhead-Deerlodge National Forest 12 years ago. This spring, the Gallatin group had also asked Judge Morris to immediately ban grazing on two of the 7 allotments while the lawsuit plays out. But this month, Judge Morris [denied](#) the injunction request, pointing out that sheep grazing has taken place in the area for 150 years. In a [memo](#) released this month, the judge wrote that one more year of grazing while the court deliberates is not going to have a significant effect on grizzlies, bighorn, or Gallatin’s members.

The judge’s denial on the grazing injunction is good news for the family, but it’s just one chapter of a bigger story. Next summer, Judge Morris will likely make a decision that affects all 7 of the family’s allotments. He will decide whether the U.S. Forest Service violated the National Environmental Policy Act (NEPA), the National Forest Management Act, and the Endangered Species Act (ESA) by allowing Helles’ sheep grazing operation to continue on the Beaverhead-Deerlodge National Forest.

The Helle family points readers to their new Facebook page related to the case, “Fight for Agriculture’s Future.” PLC will continue to monitor the case and is weighing legal options to support the effort against this attack.

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Hammond Resentencing: More Prison Time?

Dwight and Steven Hammond, two ranchers in eastern Oregon, may go back to federal prison to serve more time for having started two range fires that escaped onto BLM land. The federal government charged them under the “Antiterrorism and Effective Death Penalty Act of 1996” for the fires, which burned a total of 140 acres of BLM land. Details on the fires:

- The 2001 “Hardie-Hammond” fire was a prescribed burn that Hammonds started on their private property. The family had a long-standing plan between Hammonds and their BLM range conservationist to burn off invasive species on that section. BLM had told them there was no burn ban in effect that day. The fire ended up spreading to approximately 139 acres of one of Hammonds’ BLM grazing allotments.
- The 2006 fire was a backburn Hammonds started on their private property in 2006. It was intended to protect the ranch’s winter pasture from a lightning fire on adjacent BLM land. Hammonds’ backfire ended up burning about one acre of BLM land.

The two Hammond men, father and son, have combined spent one year, three months and one day in prison after admitting to a jury they had started the fires. Judge Michael Hogan, a federal judge for the District of Oregon, had made the sentencing. Now, the federal government is asking for more prison time for the men, since there's a 5-year "mandatory minimum" for offenses under the Antiterrorism and Effective Death Penalty Act. The resentencing is set for October 2015.

Meanwhile, in a civil case being considered wholly separate, the ranch is also paying \$400,000 as part of a settlement agreement with BLM for the alleged costs of fighting fires for which BLM claims Hammonds are responsible. If Hammonds have to sell part of their ranch to make the payment, BLM managed (as part of the settlement agreement) to get first option to buy.

BLM has also denied Hammonds the renewal of their grazing permits, and they have been without the ability to graze on those public lands and their intertwined private lands for two years running. The family is in the process of appealing to get their permits reinstated. PLC and Oregon Cattlemen's Association are following the situation closely.

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Federal Government denies liability on Pautre Fire

In April 2013, a prescribed burn lit by the U.S. Forest Service got away from them and ended up burning nearly 11,000 acres of public and private land near Lemmon, South Dakota. Local ranchers said they warned USFS against starting the prescribed burn on the day the agency chose to start the fire. The local grazing district filed a Federal Tort Claims Act (FTCA) claim for nearly \$2.5 million in damages. Documented losses include an inch of topsoil in some cases; burned fences; sick or dead livestock; and burned trees and structures.

But on June 27, 2015, more than two years after the fire, the ranchers and grazing district affected by the fire learned that the government, its words, does not have "the authority to take responsibility" for the fire, and will not pay for the associated damages.

Equally as troubling are the claims made by USDA Secretary Vilsack in a letter to Senator John Thune (R-S.D.) that the USFS provided grazing opportunities; made excess hay available; explored options including financial assistance through NRCS; and talked to oil companies interested in making donations. Local ranchers say that the only pasture made available was state land, that the ranchers did not qualify for the financial assistance, and that no oil companies made any donations.

A lawsuit may be the only recourse that the ranchers have at this point. However, Senator Thune has introduced [S. 1100](#), the Prescribed Burn Approval Act of 2015. If enacted, the bill would require a federal agency to pay (in a timely manner) for losses that result from an out-of-control fire that it starts. PLC supports the continued use of prescribed fire where appropriate, but agrees that the federal agencies should accept responsibility when accidents happen—just as the government expects citizens to. We will continue to work with Congress to support efforts to make whole again those ranchers that were impacted by the fire.

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Industry Litigates WOTUS

On July 2nd, PLC and NCBA, along with multiple co-plaintiffs, filed a [challenge](#) of the Environmental Protection Agency (EPA) and the Army Corps of Engineers' "Waters of the United States" (WOTUS) final rule. The challenge was filed with the U.S. District Court for the Southern District of Texas. It charges that the rule:

- Violates the Due Process Clause of the Fifth Amendment. The rule "fails to give fair notice of what conduct is forbidden under the criminal provisions of the Clean Water Act and grants

impermissible ad hoc discretion to the Defendants, guaranteeing arbitrary enforcement,” read the official complaint.

- Fails to establish the precision and guidance necessary so that those enforcing the law do not act in an arbitrary or discriminatory way.” The rule’s imprecision would require landowners to survey unprecedented amounts of land in extreme detail: land users would be required to know and assess a land area of between 62 and 390 square miles (up to one-third the size of Rhode Island) to determine if their waters are jurisdictional.
- Was accompanied by “an unprecedented advocacy campaign” by EPA, including lobbying through news releases, webcasts, blog posts, and aggressive social media tactics. This illegal practice likely distorted, biased, and subverted the legally-required comment period.

Co-plaintiffs in the challenge include the American Farm Bureau Federation, Texas Farm Bureau, American Petroleum Institute, American Road and Transportation Builders, Leading Builders of America, National Alliance of Forest Owners, National Association of Home Builders, National Association of Manufacturers, National Corn Growers Association, National Mining Association, and the National Pork Producers Council.

Similar suits challenging the overreaching nature of the rule were filed by 27 different states. On the other side, a coalition of groups including the Center for Biological Diversity and the Waterkeeper Alliance issued a challenge against the rule in mid-July, claiming it doesn’t go far enough.

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MORE NEWS

Federal Lands Committee Meets at 2015 NCBA Summer Conference

The National Cattlemen’s Beef Association (NCBA) Federal Lands Committee met at the 2105 NCBA Summer Conference in Denver, Colorado on July 17th. The committee first held a joint session with the Property Rights & Environmental Management Committee and heard from John Swartout, senior policy advisor to Colorado Governor John Hickenlooper, regarding sage grouse and the Endangered Species Act (ESA). Scott Yager, NCBA Environmental Council, gave an update on the EPA’s Waters of the U.S. rule and the lawsuit that PLC and NCBA have joined in filing against the EPA and Army Corps of Engineers. Dustin Van Liew, Executive Director of PLC and NCBA Federal Lands gave an update on the ESA and the current efforts to modernize the ESA on Capitol Hill.

Led by committee chair Robbie LeValley (Colorado) and vice-chair Rex Sacco (Utah), the Federal Lands Committee held their business session in the afternoon, where the Committee heard updates from the BLM and U.S. Forest Service. Dick Mayberry returned to give the BLM update, and committee members had a chance to meet the new Forest Service range lead Allen Rowley for the first time. Dustin Van Liew gave a policy update on the expanse of legislative and regulatory issues being addressed in Washington, DC.

The next meeting of the NCBA Federal Lands Committee will be at the [2016 Cattle Industry Convention and NCBA Trade Show](#) in San Diego, California on January 29, 2016.

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Battle Mountain Update

After two years of denying access to cattle, BLM has temporarily allowed Dan and Eddyann Filippini's cattle back on the Battle Mountain Complex in northern Nevada.

On June 5, BLM and Filippinis reached a settlement agreement after Filippinis took action to finally turn out their cows—without BLM approval—on June 2. Feed was abundant, making BLM's grazing moratorium seem illogical for multiple reasons: the ranchers needed the feed, and the risk of wildfire was high. Furthermore, the allotments are mixed with acres and AUMs owned by Filippinis, bringing into question property rights issues. Prior to turning out, the family made a public call for support. Their call was answered: a crowd of mounted supporters joined them for the turnout June 2. BLM came forward with a settlement agreement 3 days later.

The settlement is clear that the return to grazing is temporary and under strict stipulations (remove cattle after reaching a four-inch stubble height on key riparian areas OR upon reaching 30 percent utilization of key herbaceous species on uplands.) Should the limitations not be met, next year's turnout will be Oct. 1; the normal turnout date is in March. A second year of not meeting the limitations would result in no grazing the following year. These limitations are in place "until the date the BLM determines that the drought in the [Battle Mountain complex] has ended," or when the permit comes up for renewal.

Following the settlement agreement PLC and Nevada Land Action Association withdrew their appeal, however, we will remain vigilant to the possible continued use of the drought EA in Nevada and act in the future if necessary.

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PLC & NCBA Spring Internship

PLC and sister affiliate National Cattlemen's Beef Association are accepting applications for the government affairs spring internship. The deadline to submit is Oct. 1, 2015. It's a great opportunity for students with an interest in the beef industry; federal lands grazing; and public policy. College students get the opportunity to work alongside PLC and NCBA staff in Washington, DC on a range of issues that livestock producers. The internship is designed to work closely with the lobbying team on Capitol Hill; to assist with PLC and NCBA's regulatory efforts; and to work closely with the communications team.

The full-time internship will begin January 11, 2016 and end May 13, 2016. To apply, interested college juniors, seniors or graduate students should submit the application, college transcripts, two letters of recommendation and a resume to internships@beef.org. More information about the internship is available on www.BeefUSA.org.

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PLC Annual Meeting Preliminary Details

It's time to start making plans for the 2015 Public Lands Council Annual Meeting. Registration is now open. The cost to attend this year's meeting is \$150.00 and includes all meetings, the welcome barbecue, lunch on Thursday and Friday, the banquet on Friday evening and the range tour on Saturday. This year, PLC has added a Guest/Spouse rate of \$75.00 for those who are making the trip to Cody but will not be attending the meetings. The guest rate includes all meals (including the welcome barbecue and the banquet), and the range tour. If you want to attend the Welcome Barbecue only, the cost is \$25.00. [Click here to register.](#)

Board of Directors registration (PLC officers and one director from each affiliate state) is \$100.00. [Click here to register](#) as a member of the Board of Directors.

This year's meeting will be held September 9-12, 2015 in Cody, Wyoming at the Cody Holiday Inn, Comfort Inn and Buffalo Bill Village. All three hotels are on the same property and more information can be found here: <http://www.blairhotels.com/>.

PLC has reserved a block of rooms at the hotels. Rooms can be reserved by using the following phone numbers and reference codes below:

- Holiday Inn: 307 587 5555 (Holiday Inn Ref. Code: "ZWD, Public Lands Council")
- Comfort Inn: 307 587 5556 (Comfort Inn Ref. Code: "Public Lands Council")
- Buffalo Bill Village: 307 587 5544 (Buffalo Bill Village Ref. Code: "Public Lands Council")

Below is the tentative agenda:

Wednesday, September 9th

- PLC Trust Board of Directors Meeting (noon to 5:00pm)
- BBQ (evening)

Thursday, September 10th

- General meetings (all day)

Friday, September 11th

- Board of Directors Meeting (morning)
- Business Meeting (full body, following the Board meeting)
- Banquet/Dinner

Saturday, September 12th

Range Tour (morning to early afternoon)

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Upcoming Events

- **PLC Annual Conference:** September 9- 12, Cody, WY ([click here](#))
- **NCBA Convention:** January 27-29, 2016, San Diego, CA ([click here](#))
- **ASI Annual Convention:** January 27-30, 2016, Scottsdale, AZ (details to come)

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Nick Theos PLC Scholarship

As reported in [April 2013](#), Nick Theos, a founding member of PLC and great supporter of the livestock industry, passed away on April 11th, 2013 at the age of 92. The Theos family has requested that memorial donations be made to PLC; all such donations will go to the newly-created Nick Theos PLC Scholarship Program. The Scholarship will enable young people to attend our annual Legislative Conference in Washington, DC. PLC kicked off the scholarship with an initial \$500, and since then the donations have been steadily coming in. The running total to date exceeds \$3,500. We are very grateful for the generosity of:

Brice Lee
Charlie Wynn and Toula Theos
Colorado Wool Growers Association
Colorado PLC
Daryl Bonyor Resources
Dean and Sharon Rhoads

Elena and Zoie Theos
Etchart Livestock, Inc.
Jean Brown Living Trust
Jim Magagna
Joe and Margaret S. Hinson
John Cheney
John and Sheryl Etchart
Julie Hansmire
Harper Livestock
Megiel and Rome Inda
Mike Harper Livestock
Nick and Toni Sampinos
Pole Mountain Cattlemen's Association
Reuben and Stephanie Oldland
Sharon Klinglesmith
Skye and Penny Krebs
Vermillion Ranch LTD

Everyone who knew Nick knew his passion for involving younger generations in PLC's activities in order to ensure the industry's future vitality. We are sure he would be proud to know he is still contributing in this way to PLC's and industry's success. Donations to the Nick Theos PLC Scholarship may be sent to:

Public Lands Council
1301 Pennsylvania Ave NW, Suite 300
Washington, DC 20004

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Keep in Touch with Us

To receive directly from us PLC's new releases, calls to action, and this newsletter, or to receive only this newsletter, email Marci Schlup at mschlup@beef.org. We've also started an official blogspot for PLC. Click "follow" at the [blog website](#). Also, find us on [Facebook](#), check out our [Op-Ed archives](#) page, and visit www.publiclandscouncil.org for news releases, video and audio clips, issue pages, PLC events, and more.

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PLC's Sage Grouse Database

For peer reviewed research, legal information and state/regional plans on grazing and Sage Grouse, visit our database at: www.grazingforgrouse.com.

American Sheep Industry Association News

Go to www.sheepindustrynews.org.

Link to IBLA Decisions

To find the decisions of the Interior Board of Land Appeals over the last three months, [click here](#).

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