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Public Lands Council



Capital Issues

~June 2014~

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EXECUTIVE BRIEFING

Summer is in full force in our Nation's Capital, meaning temperatures north of 90 most every day and humidity percentages are near those figures as well. I can see why Congress – and DC for that matter—used to shut down for the summer months! In modern times (read air-conditioning) Congress only leaves for one month (August) and the bureaucracy never shuts down – while we would all welcome such a reprieve.

Congress has less than fifty days of legislative work scheduled for the remainder of the calendar year and with elections coming up in November there are not great expectations that much will get done on Capitol Hill. We continue to watch developments on the appropriations front; however, it is becoming more and more likely that Congress will pass a stop-gap measure to fund the government at existing levels through the elections. The outcome of the election, especially in the Senate, will dictate whether we see new funding bills passed for fiscal year 2015, or just a continuation of the status quo. PLC continues to work to see that the priority provisions of the Grazing Improvement Act are included in the appropriations discussion – given the general challenge of moving legislation through the Senate.

Speaking of the election year, I had the privilege to spend the first weekend of June in Roanoke, Virginia – a town in the southwestern corner of the state. I say privilege because I was a voting delegate to the Virginia Republican Convention and had the honor of casting my vote for the now Senate-nominee, Ed Gillespie. Virginia leaves it to the political parties to decide whether to have primaries or conventions for the candidate nominating process. Growing up in the west, where most states are 100 to 150 years old, it was humbling to take part in the political process of one of the original states, as old as our republic, and to be reminded that many of our founding fathers came from Virginia and that four of our first five presidents came from the state. I discuss this not because y'all want to hear a history of some eastern state, but because elections have consequences and engaging in the political process, regardless of your party affiliation, is the only way to ultimately change the current status of Washington DC – gridlock. While gridlock was built into the system by our founders to ensure tyranny did not rule the day, they never could have envisioned such an extensive bureaucracy with near unlimited power reaching into every aspect of our lives, something I imagine the founders would not recognize as the republic they created if they were standing here today. The current makeup of Congress, the House and Senate being controlled by opposing parties, has led to an unchecked executive branch more than willing to preside over a never ending expansion of the federal bureaucracy. The only answer is to elect Senators who will act to rebalance the power-sharing built into our republican system.

In addition to the efforts our industry expends on the day-to-day challenges--in Washington, DC and across the western states-- I encourage each of you to work between now and Election Day to ensure the best candidates are elected to the US Senate and House which will work to reduce burdens on ranchers and stop the ever expanding federal bureaucracy.

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

Dustin Van Liew

Executive Director

-Your voice in Washington, D.C.

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LEGISLATIVE UPDATE

Dust Bill Reintroduced

PLC supported the introduction this month of a bill that would prevent naturally occurring, uncontrollable events from counting towards violations of EPA's air quality standards. The bill, the *Commonsense Legislative Exceptional Events Reform (CLEER) Act* (S. 2526), was introduced by Sen. Jeff Flake (R-Ariz.), who had [previously introduced](#) the bill as member of the U.S. House of Representatives. The bill would streamline EPA regulations intended to ensure that states and localities are not considered in violation of federal air-quality standards due to "exceptional events" – such as the dust storms and wildfires that occur in Arizona. In 2005, Congress amended the Clean Air Act so states and localities could get off the regulatory hook when "exceptional events" impact air quality. However, the resulting Exceptional Event Rule, promulgated by the EPA in 2007, has proven to be broad and vague. EPA has announced a formal rulemaking to revise the Rule; however, the proposed rule revision has been delayed until at least 2015. The CLEER Act would require EPA to modify its rule to be in keeping with the Act within 180 days.

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PLC Legislation Tracker

The following is a list of PLC-supported legislation introduced this Congress. Click the links to see the bills' progress:

Top Priority:

- Grazing Improvement Act ([S. 258](#) and [H.R. 657](#))

Water Regulation:

- Water Rights Protection Act ([H.R. 3189](#) and [S. 1630](#))
- Silviculture Regulatory Consistency Act of 2013 ([H.R. 2026](#) and [S. 971](#))

EAJA/Judgment Fund Oversight:

- Judgment Fund Transparency Act ([H.R. 317](#) and [S. 1420](#))
- Open Book on Equal Access to Justice Act ([H.R. 2919](#))

Federal Land Disposal:

- Federal Land Transaction Facilitation Act Reauthorization ([S. 368](#) and [H.R. 2068](#))
- Land Disposal and Efficiency Act ([H.R. 2095](#))

Wildfire and Forestry:

- Catastrophic Wildfire Prevention Act ([H.R. 1345](#) and [S. 1479](#))
- Good Neighbor Forestry Act ([S.327](#))
- Healthy Forest Management and Wildfire Prevention Act ([H.R. 1526](#))
- Wildfire Disaster Funding Act ([S. 1875](#) and [H.R. 3992](#))

Monument Designation Oversight:

- Ensuring Public Involvement in the Creation of National Monuments Act ([H.R. 1459](#))
- National Monument Designation Transparency and Accountability Act ([H.R. 2192](#))
- Preserve Land Freedom For Americans Act ([H.R. 382](#))

ESA Improvement:

- Endangered Species Act Settlement Reform Act ([S. 19](#) and [H.R. 1314](#))
- 21st Century Endangered Species Transparency Act ([H.R. 4315](#))
- Endangered Species Improvement Act of 2014 ([H.R. 4256](#))
- Endangered Species Recovery Transparency Act ([H.R. 4316](#))
- State, Tribal and Local Species Transparency and Recovery Act ([H.R. 4317](#))
- Endangered Species Litigation Reasonableness Act ([H.R. 4318](#))
- Community Protection Act ([S. 2084](#))
- Common Sense in Species Protection Act of 2014 ([H.R. 4319](#))

Other:

- Regulations from the Executive In Need of Scrutiny Act (REINS) Act ([S. 15](#) and [H.R. 367](#))
- Livestock Disaster Protection Act ([H.R. 1607](#))
- Sunshine for Regulatory Decrees and Settlements Act ([S. 714](#) and [H.R. 1493](#))
- National Security and Federal Lands Protection Act ([H.R. 2398](#))
- Federal Lands Invasive Species Control, Prevention and Management Act ([H.R. 3994](#))
- Commonsense Legislative Exceptional Events Reform (CLEER) Act ([S. 2526](#))

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ADMINISTRATIVE UPDATE

ESA Update

Critical Habitat regulations: This month, 43 members of Congress sent a [letter](#) to U.S. Fish and Wildlife (FWS) expressing their disapproval of and requesting a comment extension for three proposed Endangered Species Act (ESA) “critical habitat” (CH) regulations. As reported [last month](#), the proposed rules would broaden the “destroy or adversely modify” CH definition; allow territory that may someday be inhabited to be defined as CH; and make it harder to exclude lands or waters from CH designations due to economic factors.

“Significant Portion of its Range” Rule: Also this month, FWS [finalized](#) another CH regulation (PLC [commented](#) on the proposed policy in 2012). The new definition has both positive and negative potential implications. It is expected to raise the bar for when a species is considered to be threatened or endangered in a “significant portion of its range.” On the downside, once a species is determined to be threatened or endangered in a “significant portion of its range,” the new policy extends “protections” to not just that portion of the range, but to the entire population. Previous policy allowed a species to be

listed or delisted in only a portion of their range, a policy we support.

CBD Lawsuits: The Center for Biologic Diversity (CBD) this month announced six ESA lawsuits and one legal petition against the U.S. Fish and Wildlife Service (FWS). Five suits centered on “the agency’s failure to grant Endangered Species Act protection” to species ranging from a flying squirrel in California to a snail in Florida. The sixth lawsuit regarded “inadequate protections” for the lesser prairie chicken, which FWS listed as “threatened” instead of “endangered”. The legal petition urged the USFWS to expand its recovery range for the Californian grizzly bear. According to the 2011 mega-settlement agreement between CBD and FWS, CBD is able to file 10 ESA lawsuits per year against the agency. According to *Western Livestock Journal*, FWS’ Assistant Director for Endangered Species Gary Frazer said, “Time after time the CBD and other similar groups have undermined the goal of the Endangered Species Act (ESA) by litigating, obstructing and frustrating the FWS, while racking up hundreds of thousands of dollars in taxpayer-funded attorney’s fees that continue to feed their litigious strategies in detriment of species and people.”

Wolf Listed in California: Also in ESA news, the gray wolf has been listed under California’s state ESA, despite the livestock industry’s efforts to prevent the listing by collaborating on a wolf management plan. CBD and other environmental groups requested the state listing in 2012, shortly after the arrival of one wolf, which soon returned to Oregon.

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EPA “Waters of the U.S.” Rulemaking Update

Comment Deadline Extension on Rule: The Environmental Protection Agency (EPA) and the Army Corps of Engineers have officially extended the comment period on the controversial Waters of the United States (WOTUS) Proposal. The comment period was originally set to close later this month (July 21) but has been extended to October 20, 2014. This is good news for the livestock industry, as it gives us more time to comment on a proposal that would have a disastrous effect on the industry. The expansion of EPA’s authority over virtually all waters of the U.S. will create an unfathomable regulatory burden and violate states’ rights. We urge our members to [submit comments](#) using the National Cattlemen’s Beef Association’s pre-drafted comment letter.

“Interpretive Rule”: Industry [commented](#) this month on the “Interpretive Rule” (IR), which was designed to interpret the WOTUS Proposal with regard to exempted farming and ranching activities under CWA Section 404. Currently, “normal farming, silviculture and ranching activities” are exempt from CWA regulation. The IR would significantly narrow the scope of those activities, requiring ranchers to meet the strict national conservation standards in order to receive the exemption. Our comments also point out that the IR would turn the NRCS into CWA compliance agency; would discourage landowner participation in conservation programs; and would provide no regulatory assurance to landowners.

Legislation to Block Rule: Efforts on Capitol Hill continue to block the WOTUS rule. This month, as part of the Waters Advocacy Coalition, both PLC and NCBA signed onto [a letter](#) sent to the Senate Appropriations Committee and the Appropriations

Subcommittee on Energy and Water Development, urging support of an amendment to block the rulemaking. The amendment was introduced by Sens. John Hoeven (R-N.D.) and Mike Johanns (R-Nebr.). Another bill recently introduced, [S. 2496](#), has PLC's support. It is a standalone bill introduced by Sen. John Barrasso (R-Wyo.) and 29 other senators, which would also block the rulemaking.

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Efforts to Stop USFS Groundwater Regs Continue

As reported last month, U.S. Forest Service has proposed a draft "[directive](#)" that would greatly expand the agency's authority over water. The proposal would be a direct violation of western water law, which gives States primacy over waters in their borders. PLC is developing comments by August 4th, along with other multiple-use industries. The draft directive asserts federal reserved rights of water on USFS land while at the same time directing agency employees to enforce new permitting requirements on water rights holders. The language in the draft directive is so broad, it could be applied not only to activities directly related to water (such as wells and pipeline construction and maintenance) but to other activities on USFS land, as well. It even ventures into land adjacent to USFS land. Read PLC's recent [Western Livestock Journal column](#) on the topic, and watch a [hearing](#) recently held by the House Natural Resources Water and Power Subcommittee. 43 U.S. senators and representatives also sent a [letter](#) to the Administration protesting the draft directive.

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Forest Service Ski Area Directive

The U.S. Forest Service (USFS) recently released a formal proposal which they claim will protect the availability of water for ski resorts that operate on National Forest System lands. The 35-page clause will be open to a 60 day comment period, closing on August 22, 2014.

According to USFS, the new clause is meant to ensure that water rights remain at ski areas for snowmaking and related services. USFS claims that if the drought in the west continues, population continues to grow, and water becomes scarcer, the water rights that the ski areas hold would become more valuable than the actual business. USFS believes that if water rights are sold, ski areas would no longer be viable.

USFS claims that this proposal would allow water rights to be in the name of the special use term permit holder, and that there would be no need for the water rights to be transferred to the government (an improvement from their former policy of demanding ownership of water rights in exchange for use permits—a policy that also spilled over into the ranching sector). At this time, USFS permits 122 ski areas to operate on 180,000 acres of national forest system lands.

While we applaud the effort by USFS to protect water rights for ski areas, PLC believes that management of water should remain with states and individuals. We will continue to be vigilant of attempts by USFS to obtain privately held water rights in exchange for use permits. The recently-released draft of the House Interior and Environment

appropriations bill includes language that would prevent such extortion tactics by either USFS or BLM.

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Bi-state Agreement May Prevent Bird's Listing

Newly committed funding from USDA may help prevent the listing of the bi-state sage grouse population, a “subpopulation” of the bird found along the Nevada-California border. U.S. Fish and Wildlife Service has proposed to list the subspecies, with final decision expected by April 2015. USDA, via Natural Resources Conservation Service and Forest Service, will provide up to \$25.5 million of “conservation investments” over the next five to ten years as part of its contribution to delivering the federal, state and local 2012 Bi-State Action Plan. The strategy has been “sanctioned” by FWS, which could mean its implementation could prevent a listing. The BLM has also announced a \$6.5 million commitment over the next ten years. They will make bi-state amendments to resource management plans in coordination with Forest Service. The amendments will include standards and guidelines designed to “conserve and enhance sage grouse habitat.”

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Wildlife Services Administrator Defends Program

In light of persistent bad press by self-proclaimed “wildlife” and “environmental” groups, the administrator of USDA’s Wildlife Services (WS) program this month issued a [public letter](#) in defense of the program. According to the USDA Animal and Plant Health Inspection Service (APHIS) WS [webpage](#), the program is designed “to provide Federal leadership and expertise to resolve wildlife conflicts to allow people and wildlife to coexist. WS conducts program delivery, research, and other activities...” WS helps control predators and identify when livestock has been depredated.

“I’m proud of Wildlife Services, its employees, and the vital work it does for American agriculture,” wrote APHIS Administrator Kevin Shea in his letter. “I very much want to address the false information about Wildlife Services I’ve read, and continue to read, about the program. I can’t do it all in one letter, though, so I intend to send additional letters periodically over the coming months, and post them all to the APHIS [Web site](#).”

“For the last 16 years, we have published management reports (available at www.aphis.usda.gov/wildlife_damage/) detailing all of Wildlife Services’ work, including numbers of wildlife dispersed and lethally removed,” Shea wrote.

PLC fully supports WS. As reported in March, PLC joined a [letter](#) to appropriators in Congress supporting WS funding.

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USDA Announces Programs for New Farmers

This month, USDA announced the implementation of new Farm Bill measures and other policy changes to “improve the financial security of new and beginning farmers and

ranchers.” The new Farm Bill policies include:

- Waiving service fees for new and beginning farmers or ranchers to enroll in the Non-Insured Crop Disaster Assistance Program (NAP) for the 2014 crop year.
- Eliminating payment reductions under the [Conservation Reserve Program \(CRP\)](#) for new and beginning farmers which will allow routine, prescribed, and emergency grazing outside the primary nesting season on enrolled land consistent with approved conservation plans.
- Increasing payment rates to beginning farmers and ranchers under Emergency Assistance for [Livestock, Honeybees and Farm-Raised Fish Program \(ELAP\)](#).
- In the near future, USDA will also announce additional crop insurance program changes for beginning farmers and ranchers – including discounted premiums, waiver of administrative fees, and other benefits.

A fact sheet outlining significant USDA efforts to support beginning farmers and ranchers, and other Department-wide accomplishments, are available on www.usda.gov/results. A new website, www.usda.gov/newfarmers, has been unveiled as well, intended to “provide a centralized, one-stop resource where beginning farmers and ranchers can explore the variety of USDA initiatives designed to help them succeed.” Information at the website includes: “how to increase access to land and capital; build new market opportunities; participate in conservation opportunities; select and use the right risk management tools; and access USDA education, and technical support programs.”

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JUDICIARY

Landowners File Trespass Lawsuit Against WWP

Fifteen landowners in Wyoming have filed a civil trespass lawsuit in Wyoming District Court, Fremont County, against Western Watersheds Project, Inc. (WWP) and Jonathan Ratner, WWP Director for Wyoming, Utah and Colorado. They are suing WWP for “intentionally and without owner permission trespassing and entering private property.”

The trespass occurred while collecting and submitting water quality samples to the Wyoming Department of Environmental Quality (DEQ), and also occurred while collecting range monitoring data. When coordinates for the individual water quality site locations were provided by WWP, those locations were proven to be on private property. WWP had to use GPS equipment to accurately pinpoint the location of the monitoring sites, therefore they knew that they were on private property without the permission of the landowner and were willfully breaking the law. Additionally, WWP was caught trespassing on state lands and was notified by the Wyoming Office of State lands and Investments that collection of data on state trust lands was prohibited and that collection of data must cease.

The Plaintiffs in the case are seeking a permanent injunction to stop further unauthorized trespass against their private property, as well as recovery of actual, nominal and punitive damages.

PLC fully supports these landowners in their fight to protect their private property rights against illegal acts by WWP. This radical organization has one primary purpose, outlined in a policy memo on their website: “Get all cows off public lands ASAP.” They are clearly willing to do just about anything to accomplish this goal, including breaking the law and disrespecting private property owners in the process. We hope that this lawsuit will show WWP that they are not above the law.

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Appeals Court Ruling Could Make Herder Salaries Unaffordable

A federal appeals court [ruling](#) may result in changes to U.S. Department of Labor’s (DOL) “special procedures” for livestock herders under the H-2A guest worker program. In 2011, DOL put in place the special rules for livestock herders due to the “unique characteristics” of working in the open range, such as the lack of a regular workday. Several domestic herders sued DOL, effectively claiming that the special rules allowed livestock owners to hire foreign herders at salaries that are lower than domestic herders are willing to work for.

PLC supports DOL’s special rule and the D.C. Circuit Court’s decision last year that the plaintiffs did not have standing to litigate. Now that the U.S. Court of Appeals for the D.C. Circuit has overturned that ruling and remanded the case back to the circuit court, the requirements under the program remain uncertain.

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MORE NEWS

PLC Participates in “Usable Range Science” Workshop

The Sustainable Rangelands Roundtable (SRR) recently convened a meeting in Ardmore, OK to tackle the question of how to get “usable science” into the hands of land managers. SRR is a forum for rangeland management experts from all strains to “identify criteria and indicators of rangeland sustainability.” PLC participated in the workshop, along with representatives from the federal land management agencies, funding organizations, private land managers, livestock producers, non-government organizations, and academics (read our blog post, [“Is Science Enough?”](#) and our [Western Livestock Journal column](#) on the event.) The 50-some participants broke into small groups with themes of soil, water, animal, vegetation, and socio-economic health. Each subgroup identified research topics that would be useful to on-the-ground managers.

In the “animal” subgroup, a drought planning tool was one idea everyone agreed would help producers better manage their land. That subgroup identified another problem—possibly one even bigger than drought. Lots of science has already been produced showing the benefits of grazing to rangeland health, and much of it goes unseen by land managers, policymakers and the public. PLC emphasized that these audiences need that science in a format that’s understandable to laymen. One expected product of the SRR

meeting: more articles directed toward the non-scientific community.

Even if range science starts to reach new audiences, however, the fact remains that science can't make judgment calls, such as what "desired conditions" or "desired products" should be. Furthermore, no amount of science can force the agencies to uphold their statutory mandate to allow for multiple uses to the benefit of the American people.

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UK Publication Highlights American Ag's Depredation Struggles

PLC executive director Dustin Van Liew this month was quoted in a [story](#) published by an English publication, the FarmersGuardian.com. The story focused on American farmers and ranchers' ongoing struggle with livestock depredation. "Loss to predators is the second most significant net loss of sheep in the USA and about 250,000 sheep out of a national flock of some 5.5 million are lost every year to predation," the article read. "The United States Department of Agriculture's figures for cattle losses are substantial. In 2010, 220,000 head, amounting to £66m, or 5.5 per cent of all losses, were due to predation. This was despite £125m being spent on non-lethal prevention activities."

Van Liew stated: "Predation has a serious impact on our members' bottom line. Regarding wolves, the beef industry is not opposed to them but would like to see them managed, so those causing problems are taken care of."

The article highlighted the wolf depredation problem, as well as wolves' contribution toward "cow weight loss, reduced conception rates, increased management expense and general health issues, giving potential losses of £140 per cow."

The article also focused on the Endangered Species Act, which it stated was enacted "not to recreate some rural historical past but to prevent extinction of species."

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Sign Up for PLC Blog Posts!

We've started an official blogspot for PLC, updated weekly by Theo Dowling. If you'd like to sign up to get her posts in your email inbox, click "follow" at the [blog website](#). Also, find us on [Facebook](#) and check out our [Op-Ed archives](#) page on the PLC website. Also, check the homepage (www.publiclandscouncil.org) for news releases, video and audio clips, issue pages, PLC events, and more.

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Upcoming Events

- NCBA Summer Conference: July 30 – August 2, 2014 ([click here](#) for info)
- PLC Annual: Mark your calendars for our next Annual Meeting in Ignacio (near Durango), Colorado, Sept. 3rd-6th, 2014.
- ASI Convention: January 28-31, 2015 ([click here](#) for info)

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Nick Theos PLC Scholarship

As reported in [April](#), 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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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.

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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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