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Public Lands Council



Capital Issues ~March/April 2015~

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EXECUTIVE BRIEFING

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

I'd like to start off by thanking all who traveled to Washington, DC in March to attend the PLC legislative conference. I know it is both a time and resource commitment for each of you; however, it is likely the most effective way for our industry to impact activities in DC. Each year, as with this year, we continue to see agency heads and congressional leaders attend and address our meetings; hold small-group meetings to hash over important details; and follow up with us in light of your in-person communication. This is all evidence of the true impact you all have when you come to DC to be the voice of our industry.

As a follow-up to our legislative conference, PLC staff remain focused working with the appropriations committees to support our multiple priorities. It's a busy time for us, as both congressional chambers are currently drafting the Interior appropriations bills. Additionally, this spring we have remained focused on modernizing the Endangered Species Act, including supporting provisions to block the listing of the sage grouse. Recently House Natural Resources Chairman Rob Bishop was successful in including language in the FY 16 National Defense Authorization Act (NDAA) to block the listing for the next 10 years, while also blocking and reversing any management decisions by the BLM and USFS which go beyond state sage grouse management plans. We will pull out all stops to ensure this language makes it into the final version that reaches the President's desk.

As you will read in this edition of Capital Issues, this Spring has been particularly busy with the new Congress now well underway, introducing many bills from the last session of Congress while beginning to hold oversight hearings on multiple resources related topics. PLC staff continues to work with other organizations and coalitions in Washington to develop and drive ideas--such as specific changes to the ESA.

In April, PLC affiliates received information for submitting proposals to the Endowment Trust for consideration at our annual meeting in September – just a reminder that those proposals are due to our office by May 31st. It is exciting to note that the Board will likely approve projects in September that will bring the total grants over the past three years to more than \$1million in investments in our industry.

Finally, as many of you know and will read below, the DC district court dismissed our facial challenge of the US Forest Service 2012 Planning Rule. The judge's decision was based, in her opinion, on lack of standing. While we've understood all along that this would be our biggest hurdle in challenging the rule facially, we are disappointing that we didn't get the chance to argue the merits – an area in which we believe we have a strong case. PLC staff and leadership are consulting with our attorneys and I plan to have counsel join our May Board call to brief you all on our options going forward. Our coalition has made Congress aware of the weaknesses of the rule, and congressional action may be on the horizon.

The forest planning rule challenge has been a great opportunity to strengthen our coalition of multiple-use industries. In the long view, maintaining and building this coalition will contribute to the productivity and health of the public lands.

Dustin Van Liew
Executive Director

-Your voice in Washington, D.C.

HIGHLIGHT

PLC Spring Conference

PLC Spring Conference was a great success. Ranchers from across the west came to represent their industry with lawmakers and Washington agency officials. Priority issues included: Equal Access to Justice Act reform; Endangered Species Act improvements; securing the H-2A Agricultural Workers program; oversight of national monument designations; sage grouse; and improving the wild horse and burro program.

The agenda was packed with discussions with influential people in Washington. We were visited by Senator John Barrasso (R-Wyo.); Representatives Greg Walden (R-Ore.), Mark Amodei (R-Nev.), Jason Chaffetz (R-Utah), Doug LaMalfa (R-Calif.), and Paul Gosar (R-Ariz.). We also had U.S. Forest Service Chief Tidwell, BLM deputy director Ellis, and U.S. Fish and Wildlife Service Director Ashe speak to the group. Representatives presented from the Waters Advocacy Coalition; the National Endangered Species Act Reform Coalition; Rubin Meyer Communications; National Horse & Burro Rangeland Management Coalition; and Western Agriculture and Conservation Coalition.

We also heard from our two PLC scholars, Brianne “Bree” Lind, a graduate student at University of Wyoming, and Frank “Patxi” Larrocea-Phillips, a young rancher and student at University of Idaho.

Attendees had a chance to visit with their congressional delegations and to have in-depth discussions with agency officials. This face-to-face contact is essential to the success of our industry. We thank all who made the trip to Washington DC. It’s a great commitment of time and effort, and it’s invaluable to the entire industry.

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LEGISLATIVE UPDATE

House Scrutinizes Interior Budget Request

On March 5th, the House Natural Resources Committee, chaired by Rep. Rob Bishop (R-Utah), held an [oversight hearing](#) of the President’s proposed budget for the Department of Interior. Interior Secretary Sally Jewell and Deputy Secretary Michael Connor testified. Some of PLC’s priority issues were addressed: shortcomings of the Endangered Species Act and the need for improvements; Interior’s insistence that Congress’ appropriations language regarding sage grouse does not preclude a listing decision in September (rather, that it only precludes the writing and publishing of regulations); other endangered species issues including the gray wolf and long-eared bat; the need for public input in national monument designations; drought relief in the west; Land and Water Conservation Fund (land acquisition); and Payment in Lieu of Taxes. PLC will continue to work alongside the House Committee on Natural Resources to ensure our priorities are met in any final budget and the following appropriations actions.

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House Subcommittees Address ESA Spending Priorities

On March 19, the House Natural Resources Subcommittees on Federal Lands and Water, Power and Oceans took the U.S. Fish and Wildlife Service to task for its budget request. A major focus was the implementation of the Endangered Species Act. The joint [hearing](#) was chaired by Chairmen Tom McClintock and John Fleming and included testimony from FWS Director Dan Ashe and National Oceanic Atmospheric Administration administrator, Kathryn Sullivan. Issues that were raised included lack of data transparency; too little focus on species recovery and delisting; and recurrent failure of FWS to coordinate with the states and local governments.

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Congress Renews Efforts to Repeal Death Tax

The U.S. House voted on April 16 to repeal the death tax. [H.R. 1105](#), the bipartisan *Death Tax Repeal Act of 2015*, was introduced by Representatives Kevin Brady (R-TX) and Sanford Bishop (D-GA). PLC joined a [support letter](#) for H.R. 1105.

Also in April, U.S. Sen. John Thune (R-S.D.), member of the tax-writing Senate Finance Committee, reintroduced similar legislation to permanently repeal the federal estate tax ([S. 860](#)). Eliminating the tax would help ranchers, farmers and other small business owners keep their businesses in the family. PLC fully supports this legislation.

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Congress Makes Progress on Budget

PLC is pleased with the budgets passed by both chambers of Congress last month. At the end of March, the Senate passed a concurrent resolution setting forth the FY 2016 Congressional budget and future budgetary levels for FY2017-FY2025. While the budget provisions are non-binding, they provide insight and suggestion on how issues may be dealt with during the appropriations process.

The House and Senate will now work to reconcile differences in their budgets. In the Senate-passed budget, several amendments that PLC supports were agreed to:

- **S.Amdt.443**, offered by Senator Cory Gardner (CO) would establish a deficit-neutral reserve fund relating to protecting privately held water rights and permits.
- **S.Amdt.607**, offered by Senator John Thune (SD) would establish a deficit-neutral reserve fund to allow for the permanent elimination of the Federal estate tax.
- **S. Amdt.838**, offered by Senator Murkowski (AK) would establish a spending-neutral reserve fund relating to the disposal of certain Federal lands.
- **S. Amdt.347**, offered by Senator John Barrasso (WY) would establish a spending-neutral reserve fund to keep the Federal Water Pollution Control Act focused on protection of water quality, to establish bright lines for Federal jurisdiction, and to create clear and unambiguous exemptions for features that the Administrator of the Environmental Protection Agency or the Secretary of the Army, acting through the Chief of Engineers, claim they are not seeking to regulate.
- **S.Amdt.434**, offered by Senator Ron Wyden (OR) would provide for an adjustment to committee allocations for wildfire suppression funding while blocking agency fire borrowing.
- **S. Amdt.947**, offered by Senator Michael Bennet (CO) would ensure that small businesses are provided relief as part of tax reform by permanently increasing the maximum amount of the section 179 small business expensing allowance to \$1,000,000 and the investment limitation to \$2,500,000 and indexing them both for inflation.
- The amendment offered by Senator Steve Daines of Montana dealing with public input and the designation of national monuments (S.Amdt.388) was unfortunately withdrawn.

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USFS & BLM Budget Requests examined by Subcommittee

The House Natural Resources Subcommittee on Federal Lands held a [hearing](#) on March 24th to discuss the spending priorities of the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM). USFS Chief Tom Tidwell and BLM Director Neil Kornze testified in front of the subcommittee, chaired by Rep. Tom McClintock (R-Calif.)

Chairman McClintock noted several topics of concern in his opening remarks, including the lack of proper forest management on public lands. The chairman proposed three new management goals. The first “goal” notes that the public has a right to access the public lands with the fewest restrictions compatible with sustainable management. The second goal is that the public has the right to expect that the public lands are being properly managed to ensure the prosperity and enjoyment of these lands for the current and future generations. Finally, he notes that the government needs to become a good neighbor once again to the local communities affected by federal ownership. This includes reducing the federal footprint and deferring to local elected officials and law enforcement.

During the hearing, issues important to PLC were raised by industry supporters such as Natural Resources Committee Chairman Rob Bishop; Committee Vice Chairman Cynthia Lummis; Federal Lands Subcommittee Chairman Tom McClintock; and Federal Lands Committee Vice Chairman Doug LaMalfa. They included:

- The agency is proposing a \$2.50 fee on top of the current grazing fee.
- Preference rights
- Bighorn Sheep
- Border security
- Sage grouse regulations
- Implementation of Grazing Improvement Act
- Groundwater directive – “currently on hold” while continuing discussions about how to limit groundwater contamination. Bishop urged a permanent withdrawal.
- Land acquisition - \$127 million for land acquisition through LWCF

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Congress Addresses WOTUS Rulemaking

Congress has wasted no time in the early days of the 114th session digging into the “waters of the United States” (WOTUS) rulemaking of the Environmental Protection Agency and Army Corp of Engineers. On April 6, EPA sent the draft rule to the White House Office of Management and Budget for review. This is the final step before the rule can be unveiled and made final in the coming months.

The House Agriculture Conservation and Forestry Subcommittee held a [hearing](#) on March 17th, where state and local government representatives and private industry representatives testified. The Senate Committee on Agriculture, Nutrition and Forestry held a similar [hearing](#) March 24th.

On April 30, Senators John Barrasso (R-Wyo.) and Joe Donnelly (D-Ind.) introduced bipartisan legislation ([S. 1140](#)) to repeal the WOTUS proposal. PLC fully supports this legislation. As noted in Sen. Barrasso’s [press release](#):

“EPA and the Corps of Engineers have proposed to expand the scope of federal authority over land and water to encompass all water in a flood plain, manmade water management systems, and water that infiltrates into the ground or moves overland, and any other water that they decide has a “significant nexus” to downstream water based on use by animals, insects and birds and water storage considerations, shifting the focus of the Clean Water Act from water quality protection and navigable waters to habitat and water supply.”

PLC supports ongoing efforts on the House side, as well. In mid-April, the *Regulatory Integrity Protection Act* ([H.R. 1732](#)), a companion to S. 1140, was introduced by Rep. Bill Shuster (R-Penn.). On May 1, the U.S. House passed [H.R. 2028](#), the FY 2016 Energy and Water Appropriations bill, which included a rider that prohibits the Army Corps of Engineers from implementation or enforcement of the WOTUS rule. The rider was attached to the appropriations bill at the [urging of a letter](#) led by Western Caucus Vice Chairman Paul Gosar (AZ-04), which was signed by 103 Members of Congress.

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Congress Confronts Administration on Bighorn Sheep

On April 23, Congress sent a [letter](#) to the Administration regarding sheep grazing and bighorn sheep management. 36 senators and representatives addressed Secretary of Agriculture Tom Vilsack and Department of Interior Secretary Sally Jewell, requesting “steps focused on finding solutions that prevent further loss of the domestic sheep industry and setbacks in the conservation of wild sheep.” Currently, the land-management agencies are implementing a bighorn/domestic sheep management framework--developed in cooperation with Western Watersheds Project, an overtly anti-livestock grazing group. The result has been unsuccessful at saving bighorn, but successful at shutting down domestic sheep operations.

This congressional letter is a follow-up to a June 2014 letter on the serious issue signed by 37 U.S. representatives and senators from both sides of the aisle. It requests that the officials supply answers to questions asked by Congress last year that still require a response. It also points out the continued lack of cooperation between the U.S. Forest Service and the Agriculture Research Service in considering the science-based reasoning and expertise ARS has to offer in examining disease transmission potential between domestic and bighorn sheep.

In addition to this letter, industry is requesting that language reflecting the bighorn concerns be included in the Appropriations legislation for the Department of Interior for fiscal year 2016.

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House Bills Would Improve EPA Science

On March 18, the U.S. House of Representatives passed [H.R. 1030, the Secret Science Reform Act of 2015](#) with a bipartisan vote of 241-175. The EPA has been proposing, finalizing, and implementing far-reaching and economically harmful regulations without releasing the science on which these regulations are based. Without transparency, independent scientists cannot review and verify the science nor can the affected public be certain that that the extra red tape and bureaucracy is actually necessary. H.R. 1030 prohibits the EPA from proposing or implementing regulations without first publishing the science on which they are based for independent review. The bill was sponsored by Science, Space and Technology Committee Chairman Lamar Smith (TX-21).

Earlier that week, the House also passed H.R. 1029, [a bill](#) to increase public participation in the EPA's Science Advisory Board, make advisor selection more transparent, and ensure the board remains focused on science and not politics. It was sponsored by Rep. Frank Lucas (R-Tex.). Currently 60 percent of the members of EPA's standing scientific advisory panels directly received National Center for Environmental Research grants from the agency since 2000.

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Sage Grouse Protection and Conservation Act Reintroduced

On April 21st, Senator Cory Gardner (R-Colo), reintroduced the [Sage Grouse Protection and Conservation Act](#) (S. 1036). This bill would allow each state to create and implement conservation and management plans for the recovery of both the greater and Gunnison sage-grouse. It would encourage state management of the species but would allow an individual state to defer to federal agencies for protection of the species if they so choose. Once a state submits a plan, the Secretary of the Interior would be required to share scientific data with the states and assist the states in implementing the plans. The Secretary would be required to recognize the state plans for a minimum of six years before making a listing decision. The bill would also require the Secretary of the Interior to implement Secretarial Order 3336 to prevent rangeland fire and restore sagebrush landscapes on federal lands.

Representative Chris Stewart (R-Utah) introduced the companion [bill](#) in the House on April 23rd. PLC thanks Senator Gardner and Rep. Stewart for their leadership and for their positive and proactive bill. [Click here](#) to read our letter of support.

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Sage Grouse Provisions in House Defense Bill

Efforts continue on the House side to prevent a listing of the grouse, as well. A draft [defense spending bill](#) in the U.S. House of Representatives would ban the U.S. Fish & Wildlife Service from listing the greater sage grouse for 10 years. It would also roll back the federal land management agencies' sage grouse plans. These plans are currently in draft form, but appear to be very damaging for multiple uses. The sage grouse language was offered by Rep. Rob Bishop (R-Utah) and included in the [text](#) of the National Defense Authorization Act. The package passed the defense appropriations committee late in April, and is expected to be considered by the full House in May.

Specifically, the language says that, in any states that have crafted their own grouse conservation plans, FWS may not make a listing decision until 2015. The language would also halt or roll back any of the land-use plan amendments by BLM or the Forest Service if they don't conform to the state plans or go beyond what the states have in place.

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Congressional Letter Urges Full Delisting of Gray Wolf

On April 29th, Rep. Dan Newhouse (R-WA) led 36 Members in a [letter](#) to Interior Secretary Sally Jewell and U.S. Fish and Wildlife (FWS) Director Dan Ashe, urging the Administration to implement its June 13, 2013 proposed rule to delist the gray wolf nationally from the endangered species list under the Endangered Species Act of 1973 (ESA).

In the letter Members write “The failure by USFWS to fully delist the gray wolf has also led to decreased ‘social tolerance’ and has hurt the ability of many states to maintain this critically-important facet of successful wolf recovery. This complex issue includes various considerations – from social to economic and political – and a state’s ability to manage their gray wolf population relies on the input and buy-in of a variety of stakeholders, who can be disenfranchised by the failure to remove problem wolves (lethally or through other means)”.

Rep. Newhouse, Greg Walden (R-OR) and Rep. Chris Stewart (R-UT), have also introduced [legislation](#), the *Pacific Northwest Gray Wolf Management Act of 2015*, that would specifically delist the gray wolf in Washington, Oregon and Utah and return management authority to those states. This bill is not the first of its kind, as Rep. Reid Ribble (R-WI) introduced [H.R. 884](#) that would lead to the delisting of wolves in the Western Great Lakes and Wyoming, and Rep. John Kline (R-MN) introduced [H.R. 843](#), which would prohibit gray wolves to be treated as endangered in Minnesota, Wisconsin, and Michigan.

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Senate Committee holds LWCF Reauthorization and Reform Hearing

On Wednesday, April 22nd, the Senate Energy and Natural Resources Committee held a [hearing](#) regarding the reauthorization and potential reforms to the Land and Water Conservation Fund (LWCF). Senator Lisa Murkowski (R-AK) presided over the hearing.

LWCF was created in 1964 to “provide money to federal, state and local governments to purchase land, water and wetlands for the benefit of all Americans.” LWCF is often used for land acquisition by the federal government. PLC believes the federal government should shift its focus from acquisition of more land, to maintaining the land it already owns. The federal government already owns more than 660 million acres of land, which is approximately one-third of the United States. Over 90% of this land is found in the West.

In our [letter](#) to the Committee, PLC urged committee members to carefully examine the program and work with the ranching community to ensure transparency and uphold the original intent of the program.

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Groups Ask Congress to Delay National Ocean Policy

PLC has joined a [letter](#) to Congress urging appropriations language to put on hold the most overreaching components of the Obama Administration's [National Ocean Policy](#). The letter was signed by nearly 70 commercial and recreational groups and submitted to the Chairs and Ranking Members of the U.S. House and Senate Appropriations Committees. We asked that fiscal year 2016 appropriations bills include a one-year pause in implementation of the "Coastal and Marine Spatial Planning" (CMSP) proposal and the "Ecosystem-Based Management" proposal.

CMSP is described as a process "to better determine how the oceans, coasts, and Great Lakes are sustainably used and protected," and the Interior Department has likened CMSP to a "national zoning plan" that "will serve as an overlay" in federal decisions. The geographic coverage of CMSP includes inland bays and estuaries, as well as "upland areas." This could well include regulation of waters depended upon by livestock producers.

The second concern is the National Ocean Policy's requirement to implement "Ecosystem-Based Management" (EBM). EBM is described as a "fundamental shift" in how the U.S. manages ocean, coastal, and Great Lakes resources. Among other things, federal entities are required to "[i]ncorporate EBM into Federal agency environmental planning and review processes" by 2016. These processes would undoubtedly create regulatory burden and uncertainty.

Language identical to that requested in the letter has already been included in the FY 2016 Energy & Water bill that would fund entities including the Department of Energy and Army Corps of Engineers. That [bill](#) passed the House in late April.

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Ag Subcommittee Holds Hearing on National Forest Management

On April 29, the House Agriculture Committee's Conservation and Forestry Subcommittee held a [hearing](#) to review the National Forest System and active forest management. Members of the Conservation and Forestry Subcommittee called upon Forest Service Chief Thomas Tidwell, who testified at the hearing, to use the tools Congress made available in the 2014 farm bill in order to strengthen rural economies and improve the health of the national forest system.

"Harvesting timber in National Forests...is essential to sustain vibrant rural communities," said Subcommittee Chairman Glenn "GT" Thompson (R-Penn.). "Since the 1980s there has been a steep decline in the amount of board feet of timber produced by our national forests. The harvesting of valuable timber is a tool the Forest Service must utilize to effectively and actively manage these federal lands," Thompson added.

House Committee on Agriculture Chairman K. Michael Conaway (R-TX) said, "The Forest Service was given tools in the farm bill that, if used correctly, will improve its ability to actively manage the national forests in all parts of the country. These tools will reduce the risk of wildfires and help ensure national forests drive the economies of surrounding communities."

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Reps. Stewart and Bishop Launch New Federal Land Action Group

On April 28, Representatives Chris Stewart (R-Utah) and Rob Bishop (R-Utah) launched the *Federal Land Action Group*, a congressional team that will develop a legislative framework for

transferring public lands to local ownership and control.

This Group, chaired by Rep. Stewart, will build on the work started by Utah and other states in recent years. Rep. Rob Bishop (R-UT), Chairman of the House Natural Resources Committee, said the group will “explore legal and historical background in order to determine the best congressional action needed to return these lands back to the rightful owners.” The Federal Land Action Group will hold a series of forums with experts on public lands policy, with the goal of introducing transfer legislation. Other members of the Group include Representatives Mark Amodei (R-Nev.), Diane Black (R-Tenn.), Jeff Duncan (R-S.C.), Crescent Hardy (R-Nev.), and Cynthia Lummis (R-WY).

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PLC Legislation Tracker

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

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

Regulatory Integrity Protection Act, [S. 1140](#), [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 201, 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](#)

Secret Science Reform Act of 2015, [H.R. 1030](#)

EPA Science Advisory Board Reform Act of 2015, [H.R. 1029](#)

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ADMINISTRATIVE UPDATE

Wyoming Launches Sage Grouse Conservation Bank

Wyoming has launched the nation’s first conservation bank for greater sage grouse. The bank will manage a vast expanse of central Wyoming for sage grouse, mule deer and other wildlife, allowing energy development and other economic activities to proceed on lands elsewhere in the state. A conservation bank is a site or suite of sites established under an agreement with U.S. Fish and Wildlife Service (USFWS) “to protect, and where feasible, improve habitat for species.” Entities can purchase “credits” resulting from perpetual conservation easements and projects on the land to offset impacts occurring elsewhere.

The project has been hailed by Interior Secretary Sally Jewell and the directors of BLM and USFWS. The conservation bank will launch with 55,000 deeded acres. It may expand to 700,000 acres on other private lands, should “demand” for mitigation credits grow. The Wyoming Stock Growers Agricultural Land Trust has been selected to hold and administer the conservation easements in perpetuity.

A review team has guided the conservation bank’s creation and will continue overseeing its long-term management. Team members include representatives from Wyoming Department of Environmental Quality, Wyoming Game and Fish, Wyoming Office of State Lands and Investments, Bureau of Land Management, Natural Resources Conservation Service, private landowners, and USFWS.

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Sage Grouse Agreements Signed in Oregon

Oregon ranchers in 8 eastern and central Oregon counties have reached a deal with U.S. Fish and Wildlife Service (USFWS) in case the sage grouse is listed. Landowners may enroll their property into a voluntary “candidate conservation agreement with assurances” (CCAA), which requires them to abide by certain restrictions, but protects them from further regulation if the listing occurs. The deal, along with other conservation agreements across Oregon, could cover over 4 million acres of habitat, which ranchers hope will discourage USFWS from listing the bird. Similar CCAA agreements were reached last year with nine ranchers in Wyoming.

Ranchers who enroll in the Oregon CCAA would be required to allow federal biologists to come to their land to assess “threats” to the bird. They may be required to change grazing practices; remove juniper trees; control non-native grasses; mark fences; or put bird ramps in water troughs. Ranchers may decide to unenroll in the CCAA at any time.

In related news, recently in Nevada, Barrick Gold Corp., the world’s largest gold mining company, agreed to establish a conservation bank in conjunction with The Nature Conservancy. This “mitigation” is intended to give Barrick greater flexibility in operations. PLC has yet to review the Barrick plan.

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Western Governors’ Sage Grouse Report: Listing Is Unnecessary

The Western Governors’ Association have released the [2014 Sage-Grouse Inventory](#), highlighting the effective conservation work undertaken by public, private and non-governmental groups during the past year across the 11-state range of the greater sage-grouse. Western Governors’ assert that the magnitude of voluntary conservation efforts across the region, if allowed to run their course, will provide the bird with the necessary habitat to thrive. Colorado Gov. John Hickenlooper, co-chair of the Sage Grouse Task Force (SGTF), said, "Governors believe that a listing of the greater sage-grouse by the Fish and Wildlife Service would diminish the amount of conservation work undertaken and have a significant, negative economic impact across the West."

The fourth annual inventory produced by the Governors, through the Western Governors' Association (WGA), has expanded its focus from previous years (read all [WGA reports on sage-grouse](#)). In addition to state and local government conservation initiatives, it includes reports from federal agencies, conservation districts, industry and nonprofits. Some Inventory highlights:

- **Colorado, Idaho and Montana** have collectively protected nearly 350,000 acres of greater sage-grouse habitat through purchase or conservation easements.
- **Nevada Mining Association members** have developed Habitat Conservation Plans on 1.2 million acres.
- **The Natural Resources Conservation Service's Sage Grouse Initiative**, working with landowners, has reclaimed over 400,000 acres of sage-grouse habitat through conifer removal.

The governors also published the [2014 Sage-Grouse Appendix](#), which identifies all sage-grouse conservation initiatives reported by states and counties since 2011.

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Ranchers Applaud Bi-State Sage Grouse Decision

The U.S. Fish and Wildlife Service (FWS) has [decided](#) not to list the “bi-state sage grouse” in the Mono Basin along the Nevada/California border. The bi-state sage grouse is considered to be a “distinct population segment” of the greater sage grouse. Thus, it was being considered separately from the greater sage grouse for listing. FWS was also considering designating 1.8 million acres as “critical habitat” for the bi-state, a proposal that has also been withdrawn.

The decision was a change of course for FWS, which in 2013 proposed the bird for listing as “threatened.” According to a study led by U.S. Geological Survey, the bird’s population has been stable since 2003. Additional reasons for not listing the bird were listed in an FWS press release. The first “key factor” FWS listed was the existence of the “Bi-State Action Plan,” which was developed over the past 15 years by the “Bi-State Local Area Working Group.” FWS also pointed to the fact that \$45 million has been secured over the next 10 years (from the state and federal governments) for ongoing sage grouse conservation projects. Also, 7,300 acres of ranchland that have been put in permanent working easements, with an additional 4,500 acres in process.

As the agency approaches a decision on the greater sage grouse, PLC hopes FWS continues to recognize the need for pinpointed, locally-specific and locally-developed plans to treat threats and opportunities for sage grouse conservation.

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FWS Finalizes Incidental Take Regulations

The Administration has finalized potentially damaging [new regulations](#) regarding “incidental take” under the Endangered Species Act. The ESA requires all federal agencies to consult with U.S. Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NMFS) to ensure their actions (including those they fund or authorize) are not likely cause the death, injury or “harassment” of any listed species. Thus, federal agencies are required to “consult” with FWS/NMFS before moving forward with a project—such as a grazing permit renewal or timber harvest. FWS/NMFS may issue an “Incidental Take Statements” as part of the consultation process. This provides the consulting federal agency (such as BLM or Forest Service) with an exemption from the ESA’s prohibitions on “take.”

With the new changes, FWS and NMFS are now able to:

- Use “surrogates” to express the anticipated amount or extent of incidental take. The definition of “surrogate” is very vague, including “ecological conditions.” In other words, if FWS or NMFS determine that a project isn’t necessarily going to harm an endangered frog, but it may harm “ecological conditions” in that frog’s habitat, a project could be halted.
- Issue a *programmatic* “incidental take statement.” This is intended for “programmatic” federal actions that do not immediately result in take of listed species, but “may” in the future. This adds a layer of red tape, since agencies will still have to consult with FWS/NMFS on individual projects.

PLC submitted [comments](#) along with a coalition when the rule was in draft form, but our concerns appear to have been disregarded.

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FWS Lists Northern Long-Eared Bat as Threatened

On April 2nd, the U.S. Fish and Wildlife Service (FWS) listed the Northern Long Eared Bat as a threatened species under the Endangered Species Act (ESA), allegedly due to white-nose syndrome, a fungal disease that FWS claims has decimated many bat populations. The April 2 decision was required under the mega-settlement between FWS and Center for Biological Diversity and WildEarth Guardians. The listing becomes effective May 4, 2015. As shown in a [map](#) released by FWS, the bat’s range covers the midwest and eastern United States, North Dakota and South Dakota, and the eastern edges of Montana and Wyoming.

The listing was opposed vehemently by a coalition in both chambers of Congress. The House Natural Resources Committee wrote a suite of letters with information requests and clarifications, which FWS largely ignored:

- On March 4, 2015, the Committee sent FWS a [letter](#) requesting that the Service provide to the Committee by March 13, 2015, specific data and population models used to support any final listing determination, urging the Service to protect the bat from population loss associated with white-nose syndrome, without unduly burdening economic activities that have no impact on the species. **FWS has not provided this information.**
- On March 30, 2015, the Committee sent a follow-up [letter](#) to the March 4 letter to FWS, reiterating the request for any information used in the development of the proposed rule that was not included in the proposed rule. **FWS has not provided this information.**
- On March 16, 2015, House and Senate Committee leaders sent FWS a [letter](#), requesting that the Service extend the comment period and delay the listing determination for the bat.
- On March 13, 2015, 16 Members of Congress sent FWS a [letter](#), urging the Service to provide more flexibility in the final bat listing proposal.
- On March 1, 2015, 21 Members of Congress sent FWS a [letter](#), urging the Service to hold more public meetings and extend the comment period.

Public comments will be accepted through July 1st on a proposed interim special rule that supposedly “eliminates unnecessary regulatory requirements for landowners, land managers, government agencies and others in the range of the northern long-eared bat”. Three teleconferences will be held to provide details and answer questions about the listing and the interim 4(d) rule before a final 4(d) rule is published later this year. More information about the listing and the teleconferences can be found [here](#).

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Secretary Vilsack Announces Secure Rural Schools Payments

On April 27th, USDA Secretary Tom Vilsack announced that \$285 million will go to 41 states and the Commonwealth of Puerto Rico as part of a two year Congressional reauthorization of the Secure Rural Schools and Community Self-Determination Act. Each county's share of its state's payment amounts is available on the Forest Service [Payments and Receipts Web site](#).

According to the [press release](#), “payments from the Forest Service may be used to support public schools and public roads, for projects to help maintain and improve the health of forests; and for county projects including ‘Firewise Communities’ programs, reimbursements for emergency services on national forests, and development of community wildfire protection plans”.

The Secure Rural Schools and Community Self-Determination Program provides payments to state jurisdictions to compensate for the cost of providing services in tax-exempt federal lands within those jurisdictions. We applaud Congress for their support of this program, which is vital to rural western economies.

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JUDICIARY UPDATE

Western Coalition Files Data Quality Suit on Sage Grouse

PLC has joined a coalition challenging the federal government’s science regarding the greater sage grouse. The administrative challenge was filed under the Data Quality Act. In fact, the coalition of western counties, livestock associations, energy groups, and mining groups filed three challenges involving three agencies: Bureau of Land Management, U.S. Fish & Wildlife Service, and U.S. Geological Survey. The documents being challenged (or, rather, the data behind those documents)

include the BLM's "National Technical Team (NTT)" report, the USFWS' "Conservation Objectives Team (COT)" report, and the USGS' monograph report.

One of the pivotal pieces of research being used by the agencies was a study by Garton et al, which the agencies used for sage grouse population modeling. That study included mathematical errors and was based upon a data set and computer code that has never been made public. Other problems found with the agencies' information include:

- Government scientists "peer reviewing" their own work;
- Researchers' having clear conflicts of interest;
- Government-funded researchers withholding data;
- Government employee emails indicating the need for "science" to back up decisions they'd already made;
- Using conjecture instead of data to justify "research results";
- Biased modeling;
- Glaring mathematical errors;
- And disregarding a great number of studies and peer reviewers that disagree with the reports' findings.

The agencies are required to respond to the challenge in the next 5 to 6 months. The coalition asked them to either retract or amend the documents. It also asked that the agencies include the entire body of science that the coalition provided--including 5 pages of studies that should have been considered in the reports. If the Administration fails to respond favorably, the coalition will have appeal rights. Additionally, this challenge, now that it's submitted to the administrative record, can be used by local governments, states, and industry groups to judicially challenge decisions as they come down from the agencies.

The full Data Quality Act challenges and an Executive Summary are available [here](#).

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Utah Wild Horse Case Progresses

The livestock industry's challenge of BLM's lack of wild horse management will proceed, after a decision recently issued by federal judge Dee Benson. The decision was issued following oral arguments on March 26. Judge Benson subsequently denied a "motion to dismiss" by the defendant-intervenors, which include Amerian Wild Horse Preservation Campaign and the Cloud Foundation. These groups had claimed the livestock industry didn't meet the necessary pleading requirements.

In April 2014, a group of 13 ranchers in central and southwestern Utah filed a lawsuit against Department of Interior and BLM for mismanagement of wild horse populations that is directly harming their operations. The complaint states that BLM has failed to comply with its duties pursuant to the Wild Free-Roaming Horses and Burros Act of 1971 (WHBA). According to the lawsuit, BLM's failure uphold the WHBA management requirements "has resulted in an excessive wild horse population, which has severely damaged the public and private rangeland resources and has caused damage and injury to Plaintiffs, who are private landowners and federal and state grazing permittees."

Earlier in 2014, the ranchers all received letters from BLM stating that the agency would not have the budget to remove excess wild horses, and asking permittees to "voluntarily" reduce their livestock numbers within herd management areas or herd areas by up to 50 percent.

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Forest Planning Rule Case Dismissed

The multiple-use industries' [challenge](#) of the U.S. [Forest Service's 2012 Planning Rule](#) has been

dismissed by a federal judge. In our challenge, PLC and co-plaintiffs had alleged that the Forest Service's planning rule breaches the agency's statutory multiple-use mandate in a multitude of ways that will hurt the ranching industry. Judge Ketanji Brown Jackson of the Federal District Court for the District of Columbia found that PLC and other industry groups failed to show how we are concretely harmed or imminently threatened by harm as a result of the agency's adoption of the Planning Rule. This "standing" issue was the biggest hurdle we knew we faced in this "facial" challenge. Judge Ketanji recently released this [Memorandum](#) and this [Order](#). Also, read this [opinion summary](#) for an explanation of the judge's ruling.

Litigation of the USFS was our last resort, after PLC participated as much as possible in the rulemaking process, asked Forest Service Chief Tidwell to halt the rule, and asked Congress for the same. We are disappointed the Judge failed to recognize the potential harm of implementing this rule. In the future, we will be looking for opportunities to prove the statutory violations with "as-applied" cases. Also, we have not ruled out asking Congress, again, to shut down this flawed rule.

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Wyoming Wild Horse Case Dismissed in U.S. District Court

The lawsuit brought by the state of Wyoming against the Department of Interior and Bureau of Land Management was [dismissed](#) by a federal judge on April 21st. This was a devastating decision for many. The State of Wyoming sued the federal government for failure to manage wild horses in Wyoming in compliance with the Wild Free-Roaming Horses and Burros Act. Specifically, the state alleges that the BLM has a non-discretionary duty to remove excess wild horses and maintain the areas to prevent overpopulation. The BLM and intervenors, which include the American Wild Horse Preservation Campaign and the Cloud Foundation, sought dismissal of the State's petition, calling it "legally infirm" and arguing that there is no discrete action required by BLM to gather excess wild horses. The State of Wyoming and intervenors, including the Wyoming Stock Growers Association, responded that their petition focuses on Congress' specific requirement that BLM remove excess horses from overpopulated herd management areas and that the appropriate relief would be for the Court to require removal.

Setting dangerous precedent, the Court has agreed with BLM and has dismissed the case. At this time PLC has not heard if the State of Wyoming will appeal the decision.

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MORE NEWS

NCBA and ASI Hold Legislative Conferences

PLC affiliates National Cattlemen's Beef Association and American Sheep Industry Association also held their legislative conferences in conjunction with PLC. Below are the top priorities addressed:

NCBA:

- USDA Proposals to import Brazilian and Argentinian Beef
- USDA Dietary Guidelines
- Waters of the United States Proposed Rule
- Trade
- Endangered Species Act

ASI:

[Wildlife Services](#)

[U.S. Sheep Experiment Station](#)

[Bighorn Sheep in Domestic Sheep Grazing Allotments](#)

[Livestock Mandatory Price Reporting](#)

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Savory Grazing Conference

“Only livestock can save us,” said range scientist Allan Savory at a recent grazing conference in Chico, CA. Savory is helping to change the public’s perception of livestock grazing through his worldwide effort to increase grazing across the planet. The world’s grasslands evolved with millions of large wild grazers, now only replaceable by livestock. Rest from grazing, Savory says, is turning grasslands across the globe into deserts. Well-managed grazing—which Savory generally defines as high-density grazing followed by substantial periods of rest--brings life to the soil. It does so, he explained, by breaking the soil crust; compacting the soil to improve germination; returning standing plant material to the soil through trampling; providing fertilizer; and cropping plants to keep them at optimum photosynthesis, which in turn improves soil health and stores carbon in the soil. In short, Savory said, livestock grazing is the only solution to reversing greenhouse gas emissions; the global desertification trend; poor soil health and productivity; the instability of livestock producers’ operations and communities; the lack of nutrient density in our food; and the deteriorating health of our human population. To learn more, visit www.savoryinstitute.com.

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Rustici Grazing Conference

An attitude shift about grazing is occurring, says PLC president, Brenda Richards. Richards presented at the recent “Rustici Rangeland Science Symposium” at University of California, Davis. “More and more, we’re seeing the light bulb turning on for people: that this earth and its inhabitants need grazing to survive,” she said. The purpose of the annual Rustici Symposium is to “serve as a forum for scientists, managers, policy-makers, and other stakeholders interested in rangeland issues to co-learn, network, and build collaboration.” This year, the Symposium tackled two hot-button issues: public land grazing, and the State of California’s proposal to regulate grazing’s effects on water quality.

With regard to the water quality issue in California, research presented at the Symposium should allay regulators’ concerns, said UC Davis researchers. According to their in-depth study:

- Nutrient concentrations were negligible in grazed areas;
- Fecal indicator bacteria were broadly met in grazed areas;
- And the U.S. Environmental Protection Agency’s recommended *E. coli* benchmarks were never exceeded.

“Our results do not support previous concerns of widespread microbial water quality pollution across these grazed landscapes, as concluded in other surveys,” the UC Davis researchers stated.

With regard to public land grazing, Richards and other presenters talked about the environmental, social and economic importance of the industry. But, Richards added, a panoply of laws and regulations are allowing predatory litigious groups to dominate public land policy. Rather, she said, decisions should be driven by those individuals on the ground—including ranchers--who have a personal stake in soundly managing the resources. She noted that a growing number of organizations and institutions are beginning to “see the light” about grazing, including the Rustici Symposium; the Savory Institute; the Aldo Leopold Institute; the Noble Foundation; The Nature Conservancy; the Owyhee Initiative, and others “who are proving that they want to work together to do what’s best for people and the land.”

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Upcoming Events

- **NCBA Summer Conference:** July 15-18, 2015, Denver, CO ([click here](#))
- **PLC Annual Conference:** September 9- 12, Cody, WY (details to come)
- **NCBA Convention:** January 27-29, 2016, San Diego, CA ([click here](#))

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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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