



1301 Pennsylvania Ave. NW, Suite 300 • Washington, D.C. 20004

Public Lands Council



Capital Issues

~October 2014~

[Executive Briefing](#)

HIGHLIGHT

[PLC Comments on WOTUS, Encourages Members to Comment](#)

Legislative Update

[PLC Legislation Tracker](#)

Administrative Update

[PLC Comments on Critical Habitat Policy Proposals](#)

[Secretary Jewell Makes Sage Grouse Tour](#)

[Obama 'Not Finished' Naming Monuments](#)

[Tool helps make farm bill decisions](#)

More News

[Van Liew named to WRLC Board of Directors](#)

[Grass March to DC Accomplished; Leader Passes](#)

[American Lands Council meeting](#)

[Upcoming Events](#)

[Donations to the Nick Theos PLC Scholarship](#)

[Sign Up for PLC Emails!](#)

[Join PLC on Facebook](#)

EXECUTIVE BRIEFING

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

Tomorrow is Election Day, marking the end of the 2014 midterm elections. The results will weigh heavily on how the next two years look in Washington DC. I encourage everyone to take time to exercise the privilege we have in America to vote; a surprisingly small percentage of people around the globe are provided such a privilege. While it may not seem to matter much which party controls Congress, our industry relies on our allies on Capitol Hill to hold the line and work to advance our policy positions. Although federal agencies manage the land our industry relies on, the legislative branch is equally—if not more—important to our industry. Federal agencies are comprised of unelected individuals, while members of Congress can and should be held accountable by the American people in the face of flawed or failed federal policies.

Whatever the election outcomes may be tomorrow, the PLC office will be focused on the upcoming lame-duck congressional session, which is scheduled to run from November 12th through December 11th (though this schedule can change). The current federal funding “continuing resolution” will expire in December, which means Congress will have to act (or face a “shutdown”) before adjourning the 113th session. The two potential courses of action: another continuing resolution, or an omnibus funding package.

One of our top priorities in the appropriations process is securing the “grazing rider,” which allows for permits to be renewed while environmental analysis is processed by the agencies. Currently, that rider is in place through FY 15. However, we recently saw a federal judge in Idaho file an order which misinterprets congressional intent with respect to the rider. In fact, the order is directly counter to the very purpose for which Congress has supported the grazing rider for more than a decade: to allow the grazing industry to carry on while the agencies work through a regulatory backlog that is no fault of ranchers’. As intervenors in the case, PLC (along with NCBA & Idaho Cattle Association) are planning to file a notice of appeal in order to retain our options on the legal front. However, we have also been actively engaging Congress to ensure the rider is written so that further misinterpretation will not take place going forward.

In addition to working on the appropriations process, we are working with allies on Capitol Hill to find any opportunity to pass the Grazing Improvement Act. While it remains to be seen how many legislative actions may be taken during the lame duck session, we may be able to secure parts of this legislation, which will make the federal grazing programs more stable and efficient. We’d like to thank Senator Barrasso (R-Wyo.) and Representative Labrador (R-Idaho) , who have remained steadfast champions of our industry and this proactive grazing legislation.

I’ll be in touch in the coming weeks as things develop on Capitol Hill. Next time you read the newsletter, we’ll have a clearer idea of how the next two years in Washington will shape up.

Dustin Van Liew
Executive Director

-Your voice in Washington, D.C.

HIGHLIGHT

PLC Comments on WOTUS Rule, Encourages Members to Comment

PLC and NCBA filed [comments](#) on Oct. 28 calling for the immediate withdrawal of the Environmental Protection Agency and the Army Corps of Engineers' proposed "waters of the United States" (WOTUS) rule. As reported last month, the comment period for the WOTUS proposed rule has been extended from Oct. 20 to **Nov. 14, 2014**, we elected to file our comments prior to the Nov. 4 elections. **We urge you to comment now.** It's easy--this [online](#) tool, developed by NCBA, only requires a few clicks and some of your identification information. Or, send paper copies of your own comments (the original and three copies) to: Water Docket, Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, Attention: Docket ID No. EPA-HQ-OW-2011-0880.

Our comments articulate many procedural and substantive concerns with the proposed rule, which led us to ultimately ask the agencies to withdraw the proposed rule and start over, this time with stakeholders at the table. Here are a few major points made in the comments:

1. We oppose the expansion of the Clean Water Act to intermittent and ephemeral non-navigable streams, which are defined as tributaries and per se jurisdictional under the proposed rule.
2. We oppose the agencies' inclusion of ditches in the definition of tributary.
3. We oppose making isolated wetlands, ponds and other open waters per se jurisdictional if they are located within a riparian area or floodplain.
4. The comments articulate at length the numerous undefined and ambiguous terms and phrases used throughout the proposed rule that would allow an unprecedented expansion of the Clean Water Act.
5. The exclusions and exemptions provided under the proposed rule are similarly unclear, making their utility to our industry minimal at best.
6. PLC and NCBA were deprived of a meaningful comment period because of procedural errors by the agencies, including the numerous legal terms/phrases left undefined or inadequately defined, the lack of a final scientific report, withheld information by the agencies, and new regulatory documents developed during the comment period.
7. PLC and NCBA request the agency to immediately withdraw the Interpretive Rule that limits the Sec. 404 "normal farming, silviculture and ranching" exemption to 56 NRCS practices.
8. The proposed rule usurps states' rights to manage waters and land-use activity. The Clean Water Act recognized the rights of states to make land-use decisions, but this proposed rule obliterates that federal/state boundary and makes all waters federal, violating the Commerce Clause of the Constitution and the plain language of the Clean Water Act.

[Back to Top](#)

LEGISLATIVE UPDATE

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:

- Restoring Healthy Forests for Healthy Communities Act ([H.R. 1526](#))
- 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 ([H.R. 3992](#) and [S. 1875](#))
- Federal Land Assistance, Management and Enhancement Act (FLAME Act) ([S. 2593](#))

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](#))

[Back to Top](#)

ADMINISTRATIVE UPDATE

PLC Comments on Critical Habitat Policy Proposals

On October 9, 2014, PLC and national and state affiliates submitted comments on the U.S. Fish and Wildlife Service and the National Marine Fisheries Service “[Proposed Rule on Definition of Destruction or Adverse Modification of Critical Habitat](#),” “[Proposed Rule Implementing Changes to the Regulations for Designating Critical Habitat](#),” and policy “[Regarding Implementation of Section 4\(b\)\(2\) of the Endangered Species Act](#).”

The Services are attempting to broaden their authority when it comes to determining what qualifies as critical habitat. One of the proposed rule changes would lower the bar for what qualifies as “adverse modification” of critical habitat. The Services say that this is because the courts have invalidated the current regulatory definition. In our comments, we give specific suggestions as to how terms such as “adverse modification” and “depreciably diminished,” should be defined.

Another proposed rule change would allow critical habitat to be designated in areas where a species might someday inhabit, whether or not they actually inhabit that area at the time of designation. In our comments, we offer more concise definitions of terms so as to reduce the odds that they will be used to give the Services—and litigators—more power to control resource use. We also urge the Services to retain the core elements of the existing critical habitat program, which require that certain elements *currently* exist in an area in order for it to qualify as habitat.

The third proposed change is a policy change, and has to do with areas that will be excluded from critical habitat due to either damaging economic impacts or because “voluntary” agreements have been made with a landowner. Our comments state that we support excluding areas based on economic concerns. We also gave specific suggestions as to how to strengthen the policy, such as ensuring that the Services complete timely and thorough economic analysis; that they automatically exclude from critical habitat areas that are already covered under a “safe harbor” or other such agreement; and clarify the term “conservation value” when considering which areas to exclude from critical habitat.

It is clear that the agencies are once again overstepping the bounds of their authority and seeking to give themselves the ability to control more land.

[Back to Top](#)

Secretary Jewell Makes Sage Grouse Tour

Department of Interior Secretary Sally Jewell made a trip across the West this month as she looked at sage grouse habitat in Idaho, Oregon and Wyoming. Jewell oversees both the U.S. Fish and Wildlife Service and the Bureau of Land Management. BLM’s involvement in preventing a listing of the sage grouse is thought to be crucial because roughly 64 percent of the sage-grouse’s occupied range is on federally managed lands. Secretary Jewell toured sagebrush habitat restoration efforts in Idaho, where she was joined by BLM Deputy Director Steve Ellis and U.S. Senators Mike Crapo (R-Idaho) and James Risch (R-Idaho). Federal, state and local partners are working to restore sagebrush habitat in the area by reseeded, fighting invasive species, and making necessary changes to fire protocols and prevention. Jewell acknowledged that wildfire is one of the biggest threats to sage grouse and is one of the factors responsible for the more than 50 percent decrease in sagebrush habitat.

Jewell previously visited Oregon in late September, where she met with PLC Sage Grouse Committee Chairman, John O’Keeffe. O’Keeffe said Jewell praised the collaboration taking place in the BLM Lakeview District between the federal government and local stakeholders on the 35,000 acre Lake County project. This project entails the cutting and thinning of juniper trees along with improvements to help sustain sage grouse populations in the area. According to O’Keeffe, Jewell also recognized the importance of keeping ranches in operation.

Jewell made her way to Wyoming in mid-October to witness the signing of nine long-term protection plans for sagebrush habitat. The plans fall under a Candidate Conservation Agreement with Assurances that is designed to protect participating landowners from further regulation if the bird is listed.

[Back to Top](#)

Obama 'not finished' naming monuments

President Obama recently designated another national monument, this one constituting 350,000 acres southern California. “And I’m not finished,” Obama said at the announcement of the San Gabriel Mountains monument designation in California this month. PLC opposes monument designations as *de facto* Wilderness designations—with many of the same restrictions on multiple uses, but without the consent of Congress or local governments and citizens. Under the authority of the Antiquities Act of 1906, U.S. presidents may designate a monument with the stroke of a pen. Since taking office, Obama has created or expanded 13 national monuments, primarily located in the West and totaling over 3 million acres. Researchers at Utah State University and Southern Utah University have found that counties in the vicinity of special land designations have overall lower per capita income, lower total payroll, and lower total tax receipts when compared to analogous counties not encumbered by special designations.

Legislation to limit national monuments has passed House of Representatives this session: Rep. Rob Bishop’s “Ensuring Public Involvement in the Creation of National Monuments Act” (EPIC Act) ([H.R. 1459](#)). As reported in [April 2013](#), PLC Vice President Dave Eliason [testified](#) in support of that legislation. However, the bill has stalled due to inaction by the Senate.

[Back to Top](#)

Tool helps make farm bill decisions

When farmers choose one of the 2014 farm bill’s safety-net programs this winter, they are locked in for the next four years. A new online tool by the Food and Agricultural Policy Research Institute at the University of Missouri, in partnership with the Agricultural and Food Policy Center at Texas A&M University, can help them evaluate which program is best for them. Farmers can choose either Agricultural Risk Coverage (ARC) or Price Loss Coverage (PLC). Whichever one is selected will be in place for the life of the farm bill. Under Price Loss Coverage, producers receive payments if a covered commodity’s national average price for the marketing year drops below a reference price, while ARC is based on both yield and prices. The tool can be accessed at www.fapri.missouri.edu or www.usda.afpc.tamu.edu.

[Back to Top](#)

MORE NEWS

Van Liew named to WRLC Board of Directors

Message from Brenda Richards, PLC President

PLC Executive Director Dustin Van Liew was recently appointed to serve on the [Western Resources Legal Center \(WRLC\)](#) Board of Directors. In the nearly seven years that Dustin has been with PLC, he has distinguished himself as a formidable force in Washington, DC. Dustin has established trusted professional relationships with members of Congress, agency leaders and staff and other decision makers. PLC's relationship with WRLC has also flourished and WRLC has become our go-to for legal advice and counsel. Through PLC, WRLC Executive Director Caroline Lobdell and her team provide ranchers who operate on public lands a strong voice in the courtroom.

WRLC is the nation's first clinical internship program and only hands-on training program specializing in legal advocacy for natural resource users. By representing natural resource users and involving students in that process, WRLC teaches aspiring attorneys to appreciate and understand the legal complexities of natural resource uses. WRLC's Board of Directors represent a diversity of natural resource industries, including operators, advocates, and attorneys.

PLC congratulates Dustin on this important appointment. I am confident that he will serve WRLC as effectively as he serves PLC, and we look forward to a continued partnership between the two organizations.

[Back to Top](#)

Grass March to DC Accomplished; Leader Passes

This month, a group of horseback riders and grassroots activists rode from Bodega Bay, CA to Washington, D.C. --nearly 2,800 miles-- to raise awareness about Bureau of Land Management actions that are threatening ranchers' grazing rights. The group, which calls itself the [Grass March Cowboy Express](#), delivered petitions and personal testimony about abuses by the federal government in states such as Nevada, Utah and Kansas.

The Grass March movement was initiated in Nevada, where the BLM's drought policy is putting several ranches out of business. Tragically, the movement's leader, Grant Gerber, suffered a fatal head injury after his horse fell during the ride. Although he was able to finish the journey to DC, Gerber died on his way home to Nevada. He was a rancher, attorney, Elko County commissioner, husband and father. According to a letter from the Elko County Commissioners, Gerber led not just the Cowboy Express, but also the Jarbidge South Canyon Shovel Brigade and "other efforts to support wise multiple use and access of public lands." He was a founding member of the American Lands Council, which supports the transferring of the federal lands to the western states. He was an energetic and inspired man who will be greatly missed by all who knew him.

[Back to Top](#)

ALC Meeting Addresses Federal Land Transfer to States

A meeting of the [American Lands Council](#) this month brought together state and county representatives to discuss strategies in various western states to bring about the transfer of multiple-use federal lands to state ownership. The federal government owns about 50 percent of the West. The result, according to non-profit groups like American Lands Council and the [Sutherland Coalition for Self-Government in the West](#), is that those states are losing out on millions of dollars of revenue each year, and local citizens are not fully benefiting from the natural resources in their states. American Lands Council passed a [policy resolution](#), the first clause of which urges "the

timely and orderly transfer of federal public lands to willing states for local control that will provide better public access, better environmental health, and better economic productivity.”

The Utah State Legislature has already passed legislation calling for the transfer of federal land to the state. Nevada, Montana, Wyoming and Idaho have created taskforces to study the concept, while other states such as Arizona, Alaska and New Mexico are reportedly working on legislation or resolutions. Organizations such as the National Association of Counties, the American Farm Bureau Federation, and the Republican National Committee have ratified policies supporting the transfer. PLC does not currently have policy on the issue. Protecting water rights and grazing rights is our main concern, and there are questions as to how that will be ensured should lands be transferred. During PLC’s recent annual meeting a committee was appointed to work on this issue over the coming year.

[Back to Top](#)

Upcoming Events

- **ASI Convention:** January 28-31, 2015 ([click here](#) for info)
- **NCBA Convention:** February 4-7, 2015, San Antonio, TX ([click here](#))
- **PLC/NCBA Legislative Conference:** March 23-26, 2015, Washington, DC

[Back to Top](#)

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 Toulia 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

[Back to Top](#)

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.

[Back to Top](#)

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](#).

[Back to Top](#)