



ADVOCATES for the WEST

2018 Spring/Summer Case Notes



Sage-grouse display on lek in Idaho Owyhees high desert – Glenn Oakley

SAGE-GROUSE DEFENSE

Challenging the Trump Administration’s Environmental Rollbacks on Public Lands

Laird J. Lucas, Executive Director (Boise, Idaho Office)



“I think the only thing this administration understands is lawsuits. We’re losing this planet. We have an evil government.... And I’m not going to stand back and just let evil win.”

– Patagonia founder Yvon Chouinard quoted in GQ, April 5, 2018

After eight years of progress protecting and restoring our magnificent public lands and their wildlife and fish under the Obama Administration, we are now forced to fight pitched legal battles against the Trump Administration in its efforts to roll back environmental protections and turn our public lands over to industry.

In close alliance with the Conservation Lands Foundation and its network of 60+ “Friends”

groups, **Advocates for the West** is developing new legal strategies to protect National Monuments and National Conservation Lands across the West.

And we continue to work with a coalition of conservation clients to oppose the Zinke Interior Department’s efforts to rescind or weaken protections for greater sage-grouse across nearly 70 million acres of public lands in order to promote oil and gas development in key sage-grouse habitats.

Challenging Oil and Gas in Sage-Grouse Habitats

In late April, we launched a major new case challenging the Trump Administration’s efforts to open public lands to oil and gas leasing and development, and to exclude or limit public involvement in its leasing decisions.

This case targets hundreds of oil and gas leases that have already been approved by Zinke or are slated for approval in the near future, affecting sage-grouse habitats across the West.

We are also challenging “policy” changes made recently by Zinke to stifle public involvement in oil and gas leasing decisions, including by avoiding doing environmental reviews under NEPA and requiring that comments and protests be submitted within unreasonably short (10 or 15 day) timeframes.

We are planning to seek judicial relief ordering the Zinke BLM to

allow full public participation in oil and gas leasing through court motions early this summer.

Opposing Efforts To Weaken Sage-Grouse Protections

Advocates for the West is also working with a broad coalition of groups to preserve gains made during the Obama Administration to protect nearly 70 million acres of public lands that are home to remaining greater sage-grouse populations.

Years of our careful advocacy culminated in the September 2015 adoption of land use plan amendments that identified priority sage-grouse habitats for heightened protections across the West. But now, under directives from Trump, Zinke is moving to gut or weaken these conservation plans.

Zinke started this rollback process last fall, and just issued draft Environmental Impact Statements that propose to rescind the highest habitat protections for sage-

grouse, allow extensive new energy development within high priority habitats, and defer more broadly to inconsistent and inadequate state management. The Administration intends to finalize these plan amendments by the end of 2018 or early 2019.

We are monitoring these rollback efforts with our partners to develop opposition strategies, including filing extensive comments and scientific literature underscoring the need to protect sage-grouse. As an “umbrella” species that shares native habitats with 350 other species, protecting sage-grouse has widespread

benefits across the sagebrush biome.

We intend to challenge the plan amendments as soon as they are complete through litigation in the U.S. District for Idaho, where we have won major sage-grouse cases in the past. We intend to stop the Zinke Interior Department from allowing these weakened plans to take effect, aiming ultimately to reverse them.

Gunnison Sage-Grouse

In another recent development on the sage-grouse front, we recently reached an agreement with the Department of Justice over the ESA listing of Gunnison sage-grouse. Our stipulation preserves the “threatened” listing for Gunnison sage-grouse and requires U.S. Fish and Wildlife Service to prepare a recovery plan aimed at ensuring the Gunnison sage-grouse is able to overcome the many threats it faces.



DEFENDING NATIONAL MONUMENTS AND NATIONAL CONSERVATION LANDS



Todd Tucci, Senior Attorney (Washington, DC Office)

On December 5, 2017, President Trump announced his unprecedented efforts to shrink Bears Ears and Grand Staircase-Escalante National Monuments, and eliminate almost two million acres from these treasured landscapes. Since then, Secretary Zinke has doubled down – systematically seeking to undermine protections for wildlife and wildlands across the American West. **Advocates for the West** is aggressively fighting back.

First, we are partnering with the Conservation Lands Foundation and other plaintiffs, together with leading law firms, to sue President Trump over his unlawful shrinking of Bears Ears and Grand Staircase-Escalante. In total, there are currently five lawsuits challenging President Trump’s decisions to shrink these National Monuments, all filed in Washington, DC. These cases are awaiting a court decision on President Trump’s motion to transfer all cases to Utah. Once this issue is resolved, the cases are set to proceed on a fast track, hopefully with motions and briefs filed – and a district court decision – sometime in the late summer. But we don’t expect these cases to end

there, and are prepared to fight as long and hard as needed to expose President Trump’s unprecedented attack on our national treasures.

Second, we are helping build the legal and advocacy capacity of scores of conservation organizations across the West. New this year, Lizzy, Sarah and I are giving legal and advocacy trainings to Conservation Lands Foundation and the 60+ organizations within its Friends Grassroots Network. Our objective is to prepare these groups to defend and protect the wildlands and wildlife in their communities.

The idea behind these trainings is our belief that conservation gains (and defense) will occur in the scores of communities sprinkled across the West; and building the knowledge, capability, and power of these local groups is essential to successful conservation in the coming years. This effort represents an evolution in **Advocates for the West’s** work beyond representing clients in court.

Even as we are building the legal and advocacy capacity of these groups, we are working with them to apply our legal and litigation skills to

protect treasured landscapes on our public lands. For example, as Sarah notes in her article, we are deeply involved with Friends of Cedar Mesa in preparing administrative appeals and potential litigation over Secretary Zinke’s effort to lease and develop oil and gas immediately adjacent to Bears Ears National Monument. We are also working with Conserve Southwest Utah to oppose the building of a new highway through critical desert tortoise habitat and the Red Cliffs National Conservation Area in southern Utah. And, we are working with Conservation Lands Foundation and others to prevent Secretary Zinke and the BLM from undermining protections on almost 3 million acres of public lands in the California Desert Conservation Area in southern California.

It has been a busy time for me. The most exciting part is that, while I continue to represent **Advocates for the West’s** conservation partners in court to protect all that we cherish, our team is also forging relationships with new partners to help build these groups into aggressive defenders of the American West. 🌱

Jacob Hamblin Arch in Coyote Gulch, Grand Staircase Escalante National Monument – Kojihirano, Shutterstock

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OPPOSING OIL AND GAS LEASING NEAR UTAH NATIONAL MONUMENTS

Sarah Stellberg, Staff Attorney (Boise, ID Office)

The Bureau of Land Management (BLM) recently auctioned off leases for more than 51,000 acres of archeologically and ecologically rich public lands in Southern Utah for oil and gas development. This landscape is the ancestral home of many Southwestern Native American Tribes and is blanketed with nationally significant historic and cultural resources.

Some of Utah's largest archaeological sites were included in the oil and gas lease sale, including Recapture Canyon, Alkalai Ridge, and Montezuma Canyon, along with countless lesser-known great houses, cliff dwellings, rock art, and artifacts of Ancestral Puebloan cultures. The sale also included parcels near the boundaries of three national monuments—the former Bears Ears National Monument, scaled back by the Trump Administration in December, as well as the

Hovenweep and Canyons of the Ancients National Monuments.

BLM considered similar lease sales in both 2010 and 2015 but eventually deferred its plans, acknowledging the region's cultural significance and need for additional archeological inventories and a mitigation strategy. This further analysis has not yet been completed. Undeterred, the Trump Administration is now pressing ahead with the Utah auction.

Advocates for the West is working closely with Friends of Cedar Mesa and the National Trust for Historic Preservation to challenge the Bears Ears lease sale and hold the Trump BLM accountable under federal laws. This winter, we assisted both groups in filing a formal lease sale protest contesting the sufficiency of BLM's cultural resources analysis under

the National Historic Preservation Act and National Environmental Policy Act. We called into question BLM's assumption that drilling could be sited to avoid any adverse effects to archaeological sites, given the density of such sites and susceptibility to setting and feeling of these landscapes. BLM has yet to resolve the protest but sold all 43 parcels at a March 20, 2018 auction.

The Utah auction is part of the Trump Administration's broader efforts to expand federal leasing and roll back environmental safeguards—an agenda **Advocates for the West** is fighting on multiple fronts.

We are prepared to defend our partners in litigation challenging the sale and subsequent oil and gas development if necessary. Expect to hear more about this work in coming months. 🌱



Ute Rock Art in Montezuma Canyon – Josh Ewing, Friends of Cedar Mesa

VICTORY FOR BIGHORN SHEEP

Laurie Rule, Senior Attorney (Portland, Oregon Office)



Advocates for the West has been working to protect bighorn sheep populations from fatal diseases spread by domestic sheep grazing on public lands for more than 10 years. In our latest victory, Lizzy Potter and I won significant protections for the South Beaverhead Mountains bighorn sheep population in eastern Idaho.

Domestic sheep often carry pathogens that can be transferred to bighorn sheep, which almost always causes fatal pneumonia. Respiratory disease outbreaks have decimated entire bighorn populations across the West.

Our prior cases have protected numerous Idaho bighorn populations, including by closing federal lands to domestic sheep grazing in the Hells Canyon and Salmon River watersheds. And our legal precedents have established that federal land managers need to carefully assess risks of disease

transmission to bighorn herds before they authorize domestic sheep grazing in bighorn ranges.

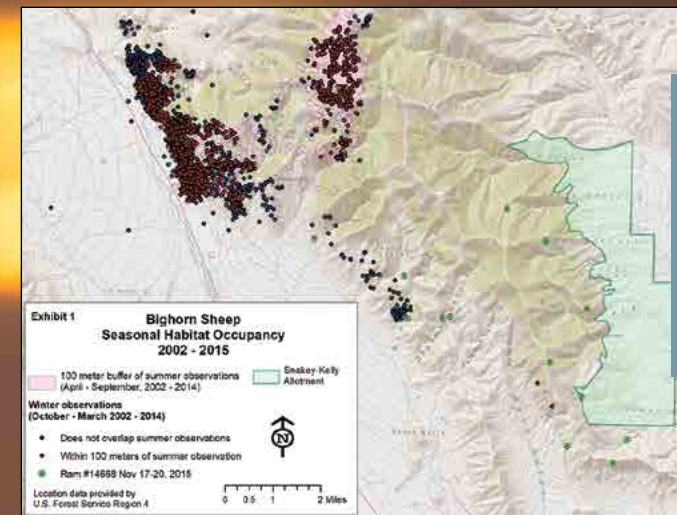
The Forest Service disregarded this law and science last fall when it authorized winter domestic sheep grazing on the Snakey Canyon and Kelly Canyon allotments on the Caribou-Targhee National Forest – despite clear evidence that the South Beaverhead bighorn population was using habitat on or very near the allotments.

Upon learning about these authorizations, we went back to Idaho federal court and sought an emergency injunction to stop the grazing and prevent the possibility of disease transmission. In a sweeping ruling in our favor, U.S. Magistrate Judge Candy Dale recognized the risk to bighorns and ordered the Forest Service to prohibit any domestic sheep grazing on the allotments last winter.

Since that ruling, the Forest Service has stated that it will not allow any domestic sheep to graze the allotments until it does a full environmental analysis to assess the future of the allotments, which may take years (if it happens at all).

Following our victory, we next notified the BLM that two of its nearby domestic sheep allotments also posed a significant risk to this same bighorn population. To avoid litigation, BLM agreed to conduct an environmental analysis for its allotments too, and put them in non-use for 2018 while it works on the analysis.

The South Beaverhead bighorn population, which has been at low numbers with poor lamb recruitment for years, now has a fighting chance to recover to a viable size if domestic sheep remain off these allotments. 



This map, prepared by Board member Amy Haak of Conservation Geography, illustrates how important the Snakey Canyon and Kelly Canyon allotments are to the nearby South Beaverhead bighorn population.



Bighorn Sheep – Agnieszka Bacal, Shutterstock

VICTORY FOR QUIET WINTER RECREATION

Laurie Rule, Senior Attorney (Portland, Oregon Office)

Last fall, **Advocates for the West** filed a new case against the U.S. Forest Service for rubber stamping old winter travel maps rather than completing new winter travel plans that would better regulate snowmobile use.

The old maps allowed snowmobile use across vast areas of the Payette, Boise, and Bridger-Teton National Forests in Idaho and Wyoming. These maps did not take into account recent information concerning conflicts between increasing snowmobile use and

wildlife, as well as conflicts with quiet recreation users such as backcountry skiers.

After we filed suit, the Forest Service recognized our likely success. It withdrew the maps and stated that it would complete full winter travel plans for each of the three forests. These plans will allow for public input in deciding where snowmobiles are permitted, and must minimize harassment of wildlife and conflicts with quiet winter recreationists. 

Case Highlight

Senior Attorney Laurie Rule is teaming up with Arizona attorney Richard Dillenburg to bring a lawsuit against the Forest Service for arbitrarily reauthorizing grazing on allotments at the base of the scenic Mogollon Rim. The Forest Service closed the area in 1979 after cattle had devastated the natural resources and wildlife populations, and no grazing could be authorized in the future unless the agency determined the area had fully recovered and was capable of supporting livestock.

In the absence of cattle, native wildlife and vegetation thrived and watershed conditions were restored. But in 2015, the Forest Service arbitrarily and unlawfully re-opened the area to grazing without doing the required evaluation or environmental analysis. And despite clear evidence of damage, the agency again authorized grazing there in 2018.

PROTECTING WILD FISH FROM FEDERAL DAMS IN OREGON

Lizzy Potter, Staff Attorney (Portland, Oregon Office)



This spring, **Advocates for the West's** Oregon office sued the Army Corps of Engineers for failing to protect Upper Willamette River Chinook salmon and winter steelhead. These highly imperiled salmonids were driven to the brink of extinction by the Corps' construction and operation of thirteen federal dams and five hatcheries in the Willamette Basin. The dams block salmonids from accessing much of their historic spawning habitat, including about 90% of such habitat for some Chinook salmon.

Historically, more than 275,000 Spring Chinook and 220,000 steelhead returned to this basin, but last year, only about 5,000 Chinook and less than 1,000 steelhead—a historic low—returned to the Willamette Basin. Recently, the State of Oregon announced that Upper Willamette steelhead have a 90% chance of going extinct in the coming years unless drastic changes are taken to protect the wild fish.

These populations are slipping closer to extinction faster than many others in the Columbia River Basin, yet have received less public attention and advocacy resources than other runs. We gathered a coalition of partners to address this dire situation with hard-hitting action.

Last year, we spent several hundred hours investigating the issues and uncovered that the Corps has violated key Endangered Species Act requirements for years. The Corps has blown off deadlines to provide passage for salmonids through multiple dams that are several hundred feet tall, and has refused to take all measures required to address water quality and flow problems in the Upper Willamette River and its tributaries. The agency has dragged its feet with reforming hatchery practices that are known to harm wild fish, even though the agency continues to fund hatcheries that produce

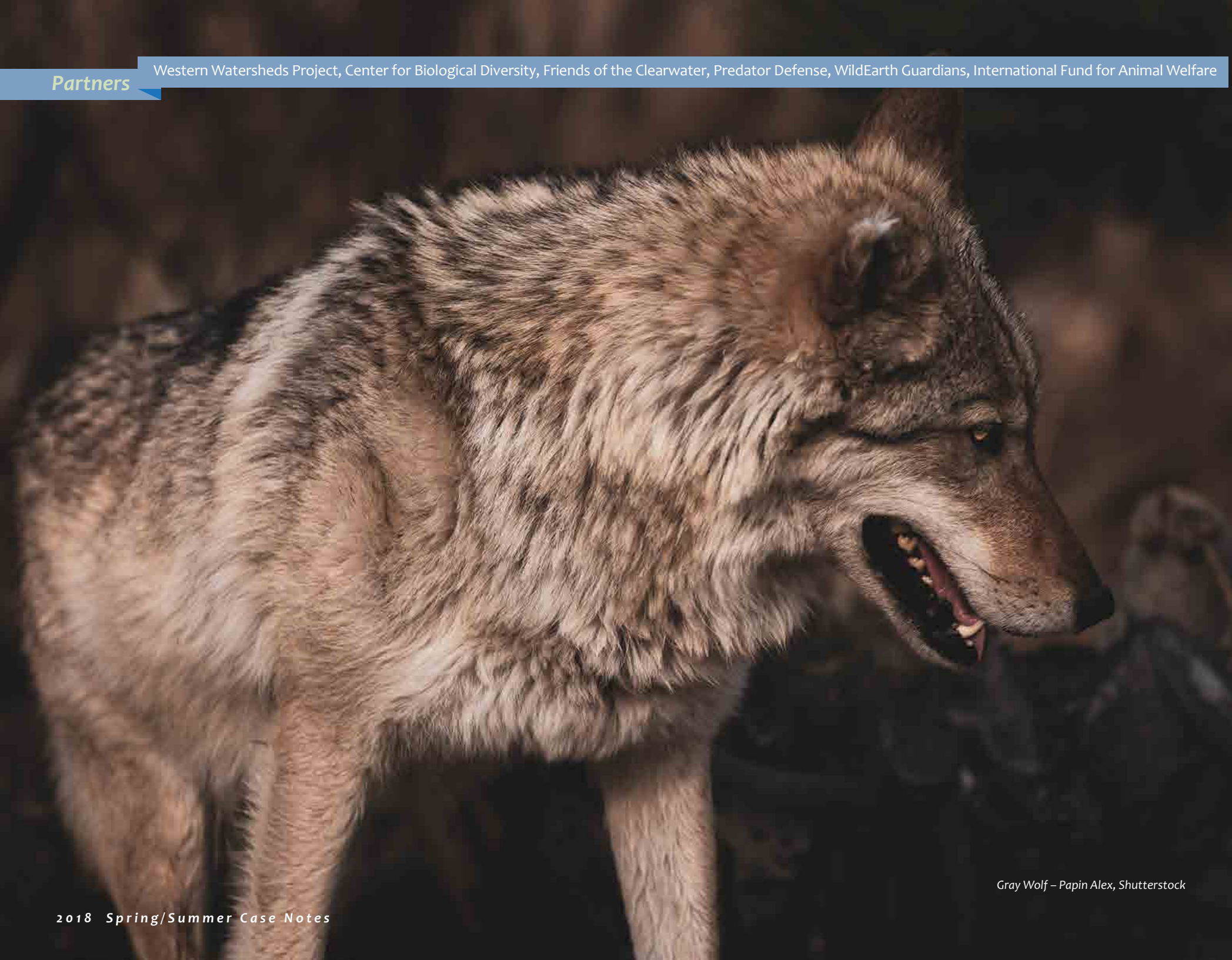
non-native steelhead and serve no conservation purpose.

For years, State and federal expert fish agencies have implored the Corps to stop this egregious behavior and fulfill its duties to protect these fish, but the Corps continued to drag its feet until we took action. Soon after filing our lawsuit, the Corps agreed to our overarching demand—re-initiating consultation with the National Marine Fisheries Service. This consultation will result in a new plan that forces the Corps to stop operating its dams and hatcheries in a manner that jeopardizes the survival of Upper Willamette River Chinook salmon and steelhead.

In the interim, we will fight to ensure the Corps implements measures that will improve conditions for wild fish and to prevent these species from going extinct on our watch. 



Chinook Salmon – Evan Linnell, Shutterstock



Gray Wolf – Papin Alex, Shutterstock

FIGHTING FOR WOLVES, COYOTES, AND RAVENS

Litigation Against Idaho Wildlife Services Continues

Talasi Brooks, Staff Attorney (Boise, Idaho Office)

As the federal agency Wildlife Services begins another season of killing Idaho wildlife at the behest of the cattle and sheep industry—and now, also, the Idaho Department of Fish & Game (IDFG)—we will be watching closely. We have two lawsuits pending against the agency: Our wolf litigation, challenging Wildlife Services’ 2011 Idaho Wolf Environmental Assessment (EA), and our lawsuit challenging Wildlife Services’ broader Idaho Predator EA, which covers its activities targeting coyotes, ravens, and other wildlife.

In early 2018, Senior Judge Lodge of the U.S. District Court in Idaho held that we could not challenge the Wolf EA because he presumed the State of Idaho would find a way to kill any unwanted wolves even if Wildlife Services could not. That ruling is clearly wrong as a matter of law, since we challenged Wildlife Services’ violations of the National Environmental Policy Act (NEPA) in not fully disclosing its wolf killing actions and their environmental consequences; yet Judge Lodge ignored those claims. We appealed that decision to the U.S. Court of Appeals for the Ninth Circuit and will file our opening brief soon.

Then in mid-March, we learned from

an IDFG press release that Wildlife Services killed 10 wolves in the Lolo Zone again this year, despite knowing we continue to challenge its activities as unlawful. Before the killings occurred, our partners and we attended two Idaho Wolf Control Board meetings and asked the agencies whether they planned to kill wolves in the Lolo Zone. Their representatives evasively (and possibly untruthfully) answered that they did not know yet. As usual, the public did not find out about yet another wolf slaughter until after the fact.

Our second lawsuit against Wildlife Services for its activities targeting most other predators in Idaho—primarily coyotes and ravens—is ongoing. The lawsuit is now fully briefed before Judge Winmill in Idaho federal court. We argued, as did many federal agencies that reviewed Wildlife Services’ draft EA, that the science it relies upon is outdated, its logic is flawed, and a statewide analysis does not adequately consider localized impacts from its activities.

We argued this case in mid-May and expect a decision later this summer. If we win, Wildlife Services will be forced to prepare a full Environmental Impact Statement on its Idaho

predator control programs, and we will ask the Court to limit Wildlife Services’ actions until it has fully complied with law.

To help educate the public on the secretive actions of Wildlife Services, I joined our partners this spring to present at a panel discussion following a screening of Predator Defense’s award-winning documentary, *Exposed: USDA’s Secret War on Wildlife*. The film, which blows the whistle on Wildlife Services’ barbaric practices, was shown to commemorate the one-year anniversary fourteen year-old Canyon Mansfield accidentally detonating a Wildlife Services M-44 sodium-cyanide device, which had been illegally placed on public land near his home in Pocatello, Idaho. Canyon suffered lasting injuries and his dog, Kasey, was killed.

Wildlife Services is currently weighing whether to start using these devices in Idaho again. You can help by calling your Senators and Congressmen and asking them to support Canyon’s Law—or for a countrywide ban.

Wildlife Services’ activities and methods have no place in the 21st century. We will continue doing all we can to help our partners fight for wildlife in Idaho. 





January – Big and Little Jacks Creek Wilderness Areas



February – Hells Canyon Wilderness



March – Selway-Bitterroot Wilderness



April – Pole Creek Wilderness



May – Craters of the Moon National Monument

Monthly Marathons in the Wilderness State

Bryan Hurlbutt, Staff Attorney (Boise, Idaho Office)

Last December, I decided to combine my passion for running with my love for Idaho’s outdoors. Instead of running trail races in 2018, I would do something more adventurous.

I glanced at a map of Idaho for inspiration and was drawn to the “wilderness areas”—places championed by Idahoans to be given the highest level of protection of all public lands. With so many special places protected as wilderness, Idaho has become known as “The Wilderness State”.

Studying the map, I marveled at the peaks and lakes dotting Idaho’s high alpine wilderness areas, such as Idaho’s three newest designations (White Clouds, Boulder, and Jerry Peak). I scanned the boundaries of Idaho’s remote desert wilderness areas, including Craters of the Moon, and traced the stunning stretches of free-flowing rivers as they cut through the Hells Canyon, Selway-Bitterroot, and Frank Church-River of No Return wildernesses.

An idea struck me—I would run a marathon in every Idaho wilderness area in 2018.

There are 15 designated wilderness areas in Idaho. Six are concentrated in the Owyhee Canyonlands, so I grouped each into 3 pairs, creating 12 wilderness destinations—one for each month.

As 2018 drew near, I still hadn’t decided whether to do it. Could I really run a wilderness marathon each month? But by mid-January, curiosity took hold and I planned my first trip.

I was nervous. I didn’t tell many people, wanting to see how the first marathon went, and quietly planned the route with a couple running buddies who wanted to join me. We picked Big and Little Jacks Creek in the Owyhees, south of Bruneau. These lower-elevation wilderness areas were most likely to be runnable in January.

We lucked out. It was a crystal clear, warm January day. The ground was dry. Perfect running conditions. And Big and Little Jacks’ deep gorges didn’t disappoint. I was hooked—I couldn’t wait for next month’s wilderness marathon.

I have now completed four wilderness marathons with at least one running partner joining me on each run. In February, we ran through sleet with numb feet along the icy-black Snake River at the bottom of the Hells Canyon wilderness. In March, we ran along the banks of the Selway River in the Selway-Bitterroot wilderness, where the trail alternated between glorious sandy beaches, stunning cliffsides, and knee-deep snow under towering trees. In April, I returned to the Owyhees to visit the North Fork Owyhee and Pole Creek wildernesses, where we climbed through juniper forests to rocky outcrops with views far into Idaho, Nevada, and Oregon.

The solitude has been surreal. In over 100 miles of wilderness running, so far we have only bumped into three people. Granted, this was during winter and early spring. Trails will be more crowded this summer.

But as the human population continues to grow, and as our nation’s environmental policies regress (hopefully just temporarily), visiting these wild places has been refreshing—reassuring me that our work at **Advocates for the West** will succeed in providing lasting protections for the West’s many natural treasures.

Staff News

Welcome New Board Members

Walt Minnick is a former Congressman from Idaho and Co-Founder and Partner of the Partnership for Responsible Growth – a Washington, DC-based environmental nonprofit advocating imposing a fee on greenhouse gas emissions. He currently serves on the Boards of SummerWinds Garden Centers and Melni Connectors, Inc. He previously was Co-Founder and Partner of The Majority Group, a DC government relations firm.



Prior to serving in Congress, he was Co-Founder, Chairman of the Board, and CEO of SummerWinds Garden Centers, Inc. and President and Chief Executive Officer of Trus Joist Corporation, now a \$3 billion division of Weyerhaeuser. He was a Co-Founder, Director and Member of the Idaho Business Council, a member of the American Business Conference, and was selected in 1991 as Idaho’s Businessman of the Year.

Walt also served 3 ½ years as a Staff Assistant to the President and as a Deputy Assistant Director in the Office of Management and Budget. He has previously served on the Boards of TJ International, Eljer Industries, MacMillan Bloedel, The Wilderness Society, Trout Unlimited and Idaho Conservation League. He is a graduate of Whitman College,

Harvard Business School and Harvard Law School.

Michael Lopez has served for ten years as a staff attorney for the Nez Perce Tribe Office of Legal Counsel.

He provides advice to the Tribe on matters including treaty rights, cultural resources law, natural resources and environmental law, water law, self-determination contracting, land use, human resources law, and transportation law.



Michael has extensive experience working with tribes, federal agencies, states, local governments and non-governmental organizations. He assists with coordinating and providing legal support for numerous government-to-government consultations between the Tribe and U.S. on a broad range of matters implicating the Tribe’s interests on millions of acres of land spanning four states.

He also worked as the Senior Program Manager for the Native American and Alaska Native program with the Morris K. Udall and Stewart L. Udall Foundation’s U.S. Institute for Environmental Conflict Resolution in Tucson, AZ.

Michael has a Juris Doctor and Certificate in Environmental and Natural Resources Law from Lewis and Clark Law School; a Master of Biological Sciences from the University of Minnesota; and a Bachelor of Science from the

University of California, San Diego. He is also a returned Peace Corps Volunteer from the Central African Republic (‘95-’96) and Burkina Faso (‘96-’97).

Welcome Our New Attorney

Doug DeRoy joined our Portland office in June as our Wild Fish Advocate. Doug brings an immense knowledge of and deep passion for wild salmonids in the Pacific Northwest.



Doug is a graduate of the University of California, Berkeley and Lewis & Clark Law School. He earned a certificate in Environmental and Natural Resources Law, focusing on salmon and steelhead issues. Doug worked as a legal fellow at Lewis & Clark’s Earthrise Law Center, where he litigated federal and state cases to protect wild salmon in the Pacific Northwest, clean up Oregon’s rivers, and save natural resources on federal public lands.

Before law school, Doug founded and ran a nonprofit garden program for underserved California public schools; interned with a California Public Utilities Commissioner and the litigation team at Natural Resources Defense Council; and co-founded and ran a stainless steel cup company.

Doug is a volunteer River Steward and Board Member for Native Fish

Society, and received the 2015 River Steward of the Year Award.

Meet Our Summer Law Clerks

Jesse Caldwell grew up in Fort Lauderdale, Florida. She spent much of her childhood on the water watching manatees and other aquatic life, sparking her interest in environmental issues. Jesse focused her independent research at Princeton on environmental sociology, and became an avid backpacker through working for the university’s outdoor orientation program. Jesse is a rising 2L at Lewis & Clark Law School.



Kelsey Dayton developed her love for the outdoors growing up in Northern California, learning about the Russian River Watershed and hiking near vineyards and dairy farms. After graduating from Stanford, she worked as a paralegal in Los Angeles, helping her firm represent the Navajo Nation after the Gold King Mine Spill. Traveling to the Nation is what sparked her interest in environmental law in the West. Kelsey is a rising 2L at The University of Chicago Law School.





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