



ADVOCATES for the WEST

2018 Fall/Winter Case Notes

ENVIRONMENTAL ENFORCEMENT IN THE ERA OF TRUMP

Laird J. Lucas, Executive Director



These are challenging times. Climate change deniers run the government, intent on turning public lands over to fossil fuel industries. Trump appointees are gutting their agencies, disregarding laws and science. What is to be done?

Fight back. Stand up and object. Insist on science, facts, and compliance with the law. Vote. Don't give up hope — and don't give up the fight!

We have faced challenging times before. The pendulum swings back. *Advocates for the West* has been enforcing our environmental laws and regulations for over 15 years now — **with an 85% rate of success through hundreds of cases.**

Advocates for the West fought Bush and Chaney in their efforts to gut environmental protections and public involvement in how

BLM manages 160 million acres of public lands for livestock grazing, and we used law and science in a decade-long strategy to protect 67 million acres of greater sage-grouse habitats from industrial development across 10 western states. Our legal pressures helped modernize irrigation diversions across the Upper Salmon River watershed to protect salmon and steelhead. Along with many other victories.

Advocates for the West is growing as we rise to the challenge of fighting back against the Trump Administration — we added three new lawyers in the last year alone:

- We are on the front lines of fighting Interior Secretary Zinke's efforts to gut National Monuments and the larger National Conservation Lands System — the "Crown Jewels" of BLM lands.

- We just won a major court ruling preventing Zinke and his henchmen from gutting environmental reviews and public involvement in BLM oil and gas leases in sage-grouse habitats.

- We are taking new steps to save Idaho's imperiled salmon and steelhead, which are being driven to extinction by high-cost dams on the lower Snake River that are flat-out money losers as the changing Northwest energy market offers plentiful new renewable wind and solar power.

I'm proud of the work and the many cases our staff are handling to resist Trump and protect our public lands, our fish and wildlife, and our clean air and water. And I'm deeply thankful for the support of so many allies and partners — like you. **Thank you for helping us win for the West!**

“FIGHT BACK. STAND UP AND OBJECT. INSIST ON SCIENCE, FACTS, AND COMPLIANCE WITH THE LAW. VOTE.”

VICTORY FOR PUBLIC INPUT IN OIL AND GAS LEASING DECISIONS

Sarah Stellberg, Staff Attorney (Boise, Idaho Office)



Advocates for the West recently scored a major court victory — a preliminary injunction putting an immediate stop to a Trump-era policy that drastically curtailed public participation and environmental reviews in BLM oil and gas leasing decisions.

Under the Trump Administration’s “energy dominance” mandate, the Zinke Interior Department adopted new policies to curtail or eliminate environmental reviews and public involvement in BLM oil and gas leasing decisions. Before the challenged policy went into effect, BLM offered a 30-day public comment period and an additional 30-day administrative protest period before auctioning off public lands for energy development. The new policy shortened the timeframe for public input dramatically — to just 10 or 15 days — and allowed BLM to forego public input and environmental analysis altogether in certain sales.

The changes were part of a wish list submitted by Western Energy Alliance — a trade organization that

lobbies for oil and gas industry members — and made without any input from the public. Zinke’s BLM concluded the allowing further public participation was an “unnecessary impediment” to achieving American energy dominance.

In September, a federal court found that the new policy “improperly emphasized economic maximization to the detriment if not outright exclusion of pre-decisional opportunities for the public to contribute to the decisionmaking process affecting the management of public lands.” That choice, the judge found, likely violated bedrock environmental laws and would irreparably harm groups seeking to provide input in oil and gas leasing decisions and, ultimately, the environment.

Upcoming lease sales, starting this December, will now be subject to a mandatory 30-day public comment period and 30-day protest period.

This win matters profoundly on the ground. The new procedures will ensure that environmental and community groups can voice their concerns as BLM attempts to lease some of our most spectacular public lands to the highest bidder. While the injunction is limited to lease sales that intersect with sage-grouse planning areas — some 67 million acres — its legal principles apply more broadly and vindicate the public’s right to participate in decisions affecting their public lands.

The injunction decision was just the latest ruling in the major lawsuit filed by *Advocates for the West* in April, which challenges the Trump Administration’s oil and gas leasing practices across greater sage-grouse habitat. As that suit works its way through Idaho federal court, we will seek to set aside specific oil and gas leasing decisions in key sage-grouse habitat, continuing our lengthy battle to protect the Sagebrush Sea.

“THIS WIN MATTERS PROFOUNDLY ON THE GROUND...ITS LEGAL PRINCIPLES APPLY MORE BROADLY AND VINDICATE THE PUBLIC’S RIGHT TO PARTICIPATE IN DECISIONS AFFECTING THEIR PUBLIC LANDS.”



“WITHIN DAYS OF FILING
OUR APPEAL, THE MINING
OPERATOR ABANDONED ITS
EXPLORATION PLAN.”



PROTECTING NATIONAL MONUMENTS AND DESERT CONSERVATION LANDS

Todd Tucci, Senior Attorney (Boise, ID Office)

Gold Mining on Conglomerate Mesa

This summer, *Advocates for the West* was alerted to a BLM decision to approve the Perdito Project, a gold exploration on Conglomerate Mesa, which is a beautiful stretch of California Desert Conservation Lands in the eastern Sierra Mountains located just outside Death Valley National Park. These conservation lands are home to one of the last remaining populations of Inyo rock daisy, and contains important Joshua tree woodland areas.

BLM approved the drilling of exploratory wells 1,000 feet deep, and the use of solvents, lubricants and other industrial compounds during the exploration process. The exploration site itself is within and adjacent to critical habitat areas for the Inyo rock daisy and

Joshua tree woodlands, in direct conflict with the requirements of BLM’s own land use plan.

BLM also failed to conduct even a rudimentary baseline analysis of the groundwater resources in and around Conglomerate Mesa, which is particularly concerning given that the best available data shows that shallow groundwater resources exist in areas surrounding Conglomerate Mesa.

Advocates for the West challenged the decision soon after it was approved, also filing expert declarations from well-known ground water experts, botanists, and ecologists. Within days of filing our appeal, the mining operator abandoned its exploration plan.

The mining claimants are actively seeking a new operator to take

on the exploration plan, but we are closely watching the situation and will be ready to take further action should the Perdito Project attempt to move forward again.

Defending Our National Monuments

Advocates for the West continues to work closely with Conservation Lands Foundation and its broad network of friends groups in defeating President Trump’s efforts to shrink Bears Ears and Grand Staircase Escalante National Monuments.

In September, the District Court in Washington, DC denied President Trump’s attempts to transfer to the District of Utah a series of challenges to the monuments reductions, opting to keep the cases in DC. The court will soon begin examining

the merits of these cases, with the first motion

focused on President Trump’s effort to get the cases dismissed. We are encouraged that the suits will remain in DC, and that the court appears motivated to resolve these issues quickly.

Advocates for the West is energized to continue our fight to protect our National Monuments and conservation lands, and we feel confident that our growing allegiance with other conservation groups will halt the Trump Administration’s attempts to rob the United States citizens of its treasured public lands for the shortsighted sake of “energy dominance.”

OPPOSING BPA'S COLUMBIA BASIN FISH ACCORD EXTENSION WITH IDAHO

Doug DeRoy, Wild Fish Advocate (Portland, OR office)



The Bonneville Power Administration (BPA) recently entered into a Columbia Basin Fish Accord extension agreement with Idaho. Since 2008, BPA and the other federal agencies responsible for operating the hydropower dams in the Columbia Basin have used similar Accords to buy the silence of state and tribal sovereigns throughout the Basin. With the exception of Oregon and the Nez Perce Tribe, most other sovereigns including Idaho have signed Accords with BPA.

Under the Accord extension with Idaho, in exchange for money for habitat and hatchery projects, Idaho is required to affirmatively support in all forums the Action Agencies' approach to complying with the Endangered Species Act (ESA), National Environmental Policy Act (NEPA), and the Northwest Power Act (NPA). This is despite the fact that the Agencies' approach is currently unknown and will remain so until the Columbia River System Operations Environmental Impact Statement is completed in 2021.

In August, *Advocates for the West* sent a letter on behalf of a coalition of Idaho conservation groups to the Administrator of BPA. We expressed concern over the lack of public notice and opportunity to comment on the Accord that BPA was renegotiating with Idaho. BPA had also failed to conduct any NEPA analysis for its decision to enter into new Accord extension agreements. In response, BPA released draft agreements for a 30-day public comment period, yet it offered no indication that it would conduct a NEPA analysis over this major federal action, nor did it offer any explanation as to why it believes the analysis is not warranted.

In September, we filed comments on behalf of the same Idaho coalition expressing our shared concerns with the draft Accord extension agreement with Idaho. It is unfair for BPA to dangle money for worthwhile projects in exchange for Idaho's fealty to a federal salmon and steelhead management plan that does not yet exist. BPA has not

conducted any subsequent NEPA analysis to support its renewed Accord with Idaho, and it is vitally important that BPA conduct a thorough analysis that does not rely on its stale NEPA document from 15 years ago.

A lot has changed since BPA entered into its 2008 Accord with Idaho, let alone since it conducted its last NEPA analysis in 2003. Returns of Idaho's imperiled salmon and steelhead have declined alarmingly in recent years. The Snake River Basin was historically the most productive region in the Columbia River Basin, producing 40% of the Columbia Basin's spring/summer chinook and 55% of its steelhead. However, in both 2015 and 2017, only 11 wild Snake River sockeye made it all the way to the Stanley Basin in Idaho's Sawtooth Mountains. Last year, only 4,100 wild spring/summer chinook were counted at Lower Granite Dam, and just a few hundred wild B-run steelhead were counted for the 2017-2018 run — about 1% of the wild B-run return recorded in 1962, before

the lower Snake River dams were constructed. In the protected Middle Fork of the Salmon River's 600 miles of superb spawning habitat, only 500 spring/summer chinook returned in 2017.

The decline of Idaho's salmon and steelhead is just one reason why BPA must conduct a new NEPA analysis for its Accord extension agreement with Idaho. We are prepared to represent our Idaho partners in litigation to see that they do so. Expect to hear more about his work in the coming months.



“When I was four years old I stood at Celilo Falls in its last month above slackwater, feeling the dip net inside me spring to life, scoop down. The faces of those tribal fishermen; the oceanic roar so far from the sea: they wreck me still. When I was five I had my first close encounter with a big male coho in a ruined urban stream: his totem red, white and black face assails me still. When I was eight I hooked my first winter steelhead in a little tributary of the Clackamas. She exploded the creek and my heart both at once. It hurts, it hurts, it hurts to remember how much wild wealth and beauty and joy has been lost, diminished, unloved, destroyed. But when it's the loving heart that hurts, I say, Let it. Mountains, broken and broken and broken again, become the pebbles of our beloved salmon's birth houses. May our hearts be like the mountains.”

— David James Duncan, bestselling author and lifelong salmon advocate

Read Duncan's essay, *Hearts Like the Mountains*, and find out how you can become a citizen activist for wild salmon and steelhead at: ColumbiaRediviva.org

Advocates for the West



PROTECTING THE CLEARWATER FROM ILLEGAL SUCTION DREDGE MINING

Bryan Hurlbutt, Staff Attorney (Boise, Idaho Office)



In August, *Advocates for the West* filed a Clean Water Act citizen enforcement suit against suction dredge miner Shannon Poe for unlawfully polluting the South Fork Clearwater River.

The South Fork is a popular recreation area and contains important habitat for Chinook salmon, steelhead, bull trout, cutthroat trout, and Pacific lamprey. But the river continually fails to meet water quality standards after decades of harmful mining and logging and is still a popular target for suction dredge miners.

Suction dredge miners use a wide hose to suck up riverbed material in search of gold. After sorting the material on a floating watercraft, miners discharge the sand, dirt, and gravel back into the river. These discharges impair

water quality and harm aquatic life, which is why the discharge is a regulated pollutant under the Clean Water Act.

Mr. Poe is the President of the American Mining Rights Association. For years, Poe has flagrantly and vocally chosen not to comply with the Clean Water Act and other state and federal laws regulating suction dredge mining in Idaho — and he encourages others to do the same.

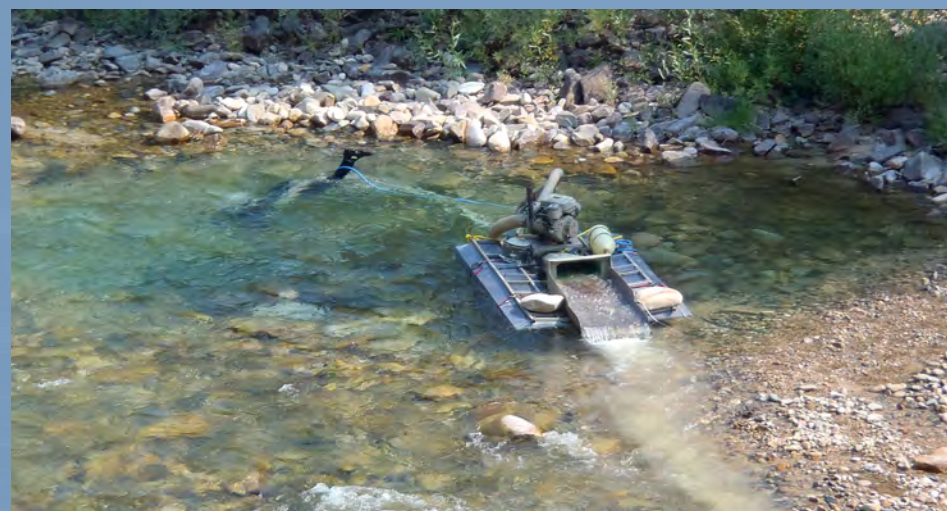
After Poe dredged on the South Fork Clearwater without a Clean Water Act permit in 2014 and 2015, *Advocates for the West* notified him that we would file suit if he did it again. Poe returned to the South Fork in 2018 and once again refused to get a permit, so we filed suit.

Not only did Poe violate the Clean Water Act again this year, he violated other state and federal laws. The Idaho Department of Water Resources

and the Forest Service issued him administrative notices of non-compliance as well.

In our case, we ask the Court to hold Poe accountable for violating the Clean Water Act by assessing civil penalties against him and prohibiting him from operating a suction dredge without a permit. But this case is about more than just Mr. Poe's lawless dredging on the South Fork Clearwater River.

Suction dredge mining is popular on many other Idaho rivers, including the Salmon, Boise, and Payette. While some miners comply with the rules, many do not. Without following state and federal rules governing where, when, and how dredging is allowed, these miners degrade water quality, fish habitat, and recreational experiences. We hope this case against Shannon Poe sends a strong message to other suction dredge miners to abide by the rules.



Clearwater River at sunset – Leon Werdinger/Alamy
Suction Dredge Mine – Justin Hayes

A WIN FOR WILDLIFE IN IDAHO

Talasi B. Brooks, Staff Attorney (Boise, Idaho Office)

Advocates for the West won a sweeping ruling this summer, taking USDA Wildlife Services to task for its November 2016 Idaho Environmental Assessment (EA). Through the EA, Wildlife Services claimed to analyze the environmental impacts of killing thousands of coyotes, foxes, black bears, cougars, bobcats, ravens, and other predators at the request of livestock producers each year in Idaho. It also expanded the activities to “benefit” game populations at the request of the Idaho Department of Fish and Game. The EA downplayed environmental impacts of Wildlife Services’ killing, which includes aerial gunning, poisoning, trapping, use of explosive cyanide devices called M-44s, and other indiscriminate methods that do not specifically target “offending” predators.

Wildlife Services claimed its killing activities have no significant impacts because they are limited in geographic extent, duration, and number of animals killed. Yet the agency’s own data for Idaho shows it slaughtered over 3,000 coyotes per year, in activities concentrated in the

southern half of the state, often in the same time period and location year after year. It also dismissed abundant evidence that killing coyotes indiscriminately would not achieve the intended purpose of protecting livestock, and that killing predators like ravens to boost game species such as sage-grouse was equally likely to fail.

In response to our suit, U.S. Chief District Judge Winmill held that Wildlife Services violated the law by failing to prepare a full Environmental Impact Statement (EIS) analyzing the environmental impacts of killing coyotes and other predators in Idaho.

The Court particularly faulted Wildlife Services for rejecting science-based criticisms from

agency reviewers, stating: “Wildlife Services has serious disagreements with leading experts, and has not given their studies the full attention they deserve...[t]he lack of dispersed impacts for coyote removal, in combination with the removals being conducted repeatedly for years, raises a concern that local populations could be depleted below sustainable levels, a concern expressed by both the Forest Service and BLM...”

The Court concluded: “The criticisms of the Forest Service, BLM, Fish and Wildlife Service, and the IDFG make this a unique case; it is rare for the Court to encounter such an unanimity of critical comments from other agencies.”



Their comments, the lack of reliable data, and the unconvincing responses from Wildlife Services, trigger three intensity factors that combine to require Wildlife Services to prepare an EIS.”

Advocates for the West is now asking the Court to prevent Wildlife Services from “proactively” killing coyotes in Idaho, expanding its killing to target predators of game species, conducting activities in wildernesses and other unique geographic areas, and using M-44 bombs and other hazardous traps that pose a danger to the public.

We hope to receive a decision soon that will force Wildlife Services to finally fall in line with modern science and stop killing our wildlife.



Coyotes in the Snow – Jim Cumming/Shutterstock

PROTECTING SENSITIVE HABITATS FROM BAD GRAZING PLANS

Laurie Rule, Senior Attorney (Portland, OR Office)



Halting Grazing at the Mogollon Rim

The Mogollon Rim is the uplifted southern edge of the Colorado Plateau in central Arizona. Below the scenic Rim is an extensive ponderosa pine forest, much of which occurs on the Tonto National Forest.

In 1979, after decades of overuse had caused heavy degradation of soils, vegetation and wildlife habitats, the Forest Service closed a portion of the forest to cattle grazing. Since the closure, the area has recovered beautifully and is a thriving habitat for wildlife such as elk, deer and turkeys, and is a popular hiking destination for locals and tourists.

Early this spring, local residents learned that the Forest Service planned to re-open the area to grazing in 2018 without conducting any environmental analysis. Cattle would once again be released onto the land, harming vegetation and displacing wildlife.

A local attorney, Rich Dillenburg, contacted *Advocates for the West*. He heard about our reputation for winning in court against bad grazing decisions and asked if we could help. It looked like a strong, clear case, so we decided to jump in.

Teaming up with Rich, we filed a lawsuit in April, two months

before the start of the grazing season. Within a month, the Forest Service backed down. The agency agreed to keep the closed area off-limits to cattle in 2018, and to comply with the existing permits by decreasing the number of cattle grazing the open pastures.

We recently resolved this case with a settlement agreement that keeps our terms in place until the Forest Service completes a new environmental analysis. This beautiful region, which has been free of cattle impacts for almost forty years, will remain so for now, allowing the plants and wildlife to continue to thrive.

Continuing the Fight for Oregon Spotted Frogs

Advocates for the West has been working to protect Oregon spotted frog habitat on the Antelope Allotment in central Oregon since 2010. The Chemult pasture within this allotment is home to the Jack Creek population of Oregon spotted frog, a species listed as threatened under the Endangered Species Act. The pasture also contains a high density of rare wetlands, called fens, that provide habitat for a diverse array of sensitive plants.

In 2016, *Advocates for the West* won our challenge to the Forest Service's grazing management plan. Cattle impacts were clearly

impairing the viability of the spotted frog and sensitive plant populations on the allotment. The court ruled that the Forest Service could not authorize grazing on the Chemult pasture in the future unless it proved that the grazing would not hurt those populations.

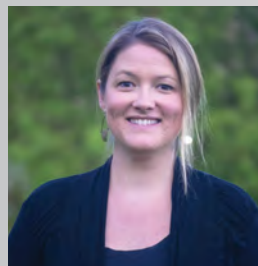
No grazing occurred on the pasture in 2017. But this May, just one month before the grazing season opened, the Forest Service issued a new management plan authorizing grazing for the 2018 season. *Advocates for the West* quickly filed legal action, and the court agreed that the Forest Service could not simply reauthorize grazing on its own. Instead, the agency must meet the

terms of the court's prior order to demonstrate that grazing would not harm these imperiled species.

The Court has yet to rule on this issue, but thanks to our challenge the 2018 grazing season ended with no cattle released onto the Chemult pasture, giving the Oregon spotted frog and sensitive plants another year of protection.

“ADVOCATES FOR THE WEST QUICKLY FILED LEGAL ACTION, AND THE COURT AGREED THAT THE FOREST SERVICE COULD NOT SIMPLY REAUTHORIZE GRAZING ON ITS OWN.”





INCREASING OUR IMPACT ACROSS THE NORTHWEST

Lizzy Potter, Staff Attorney (Portland, OR office)

The Oregon Office of *Advocates for the West* is wrapping up a big year! We brought on a third attorney — Wild Fish Advocate Doug DeRoy — and moved into a bigger office with plenty of room for years to come. Our legal, outreach, and advocacy work in Oregon and Washington strengthened along with our physical growth.

Taking on New Challenges

The Oregon Office is deeply engaged in a high-profile case against the Army Corps of Engineers to stop their dams from jeopardizing imperiled Upper Willamette River salmon. If successful, our suit will require the agency to improve aquatic habitat in hundreds of riverine miles in western Oregon.

We are also forcing the Oregon Department of Fish and Wildlife to address water pollution at about thirty fish hatcheries

throughout the state. And we are investigating conflicts between livestock grazing and sensitive species like bighorn sheep and fens on National Forests in Central Oregon and Washington.

By engaging in this new legal work, we are filling advocacy gaps and increasing the capacity of area conservation groups.

Increasing Our Outreach

This year we hosted two Public Lands Trivia events, through which we taught nearly two hundred people in Portland and Bend about environmental laws and advocacy. We highlighted how many of our victories — like forcing the Forest Service to regulate motorized over-snow vehicles — affect public lands and wildlife.

Additionally, we accepted invitations to present on emerging issues in environmental

law for conferences at Lewis and Clark Law School and the University of Oregon Law School, and for the Oregon State Bar. And *Advocates for the West's* partnership with the Conservation Lands Foundation allowed us to educate members of their Friends Grassroots Network on the fundamentals and applications of environmental law.

Through these efforts, we reached new partners and increased public engagement in conservation issues at a critical time for our democracy.

Continuing with Existing Casework

Our Oregon Office also continues to help our conservation partners defend existing victories and track new threats in central and southern Oregon.

As Senior Attorney Laurie



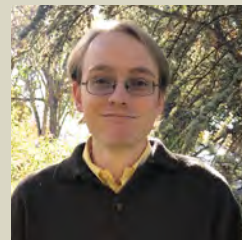
Rule discusses in this issue, we notched another win in our long-running litigation to protect sensitive species in the Fremont-Winema National Forest. We also advised our conservation partners on the settlement of our case against the Bureau of Reclamation over harm to imperiled species like the Oregon spotted frog caused by dams on the Deschutes River. Sustained efforts like these are crucial to ensuring our progress in the courtroom benefits species and natural resources in the Northwest.

Advocates for the West's growing presence in Oregon is bringing together new and old partners that will strengthen our westwide efforts to hold the Trump Administration accountable in the years to come.

STAFF & BOARD NEWS

Welcome Legal Fellow Garrison Todd

Garrison joined our Boise office in September as a Legal Fellow. He recently graduated cum laude with a JD and Master of Bioethics from the University of Pennsylvania, and brings with him a deep interest in ensuring federal agencies use the best available science.



During law school, Garrison worked at the EPA on determining riparian water rights, enforcing chemical reporting requirements, and analyzing compliance with superfund settlements. He also worked at the U.S. Senate Office of the Legislative Counsel drafting legislation on issues including health care, energy production, and the environment. At Penn, he was the Director of Regulatory Projects for the Environmental Law Project with whom he submitted comments to EPA, HUD, and DOE rulemakings and assisted environmental groups with preparing materials for litigation.

Before law school, Garrison attended Kenyon College, maintained trails for the Grand Traverse Conservation District, and

lived abroad. Garrison is an avid sailor, photographer, and hiker and is looking forward to exploring Idaho!

Welcome Gretchen Biggs to our Board

Gretchen has been a conservation advocate and activist involved in Idaho issues ever since arriving in Idaho in 1985 for a summer job as a river guide. After falling in love with the Salmon River country, and spending as much time as possible over the next few years in wild places, she worked as a freelance photographer and writer, and volunteered with Idaho Conservation League.



In 1988, she moved to Seattle to pursue a master's degree in Forest Policy Management. While providing scientific support for Sierra Club Legal Defense Fund during their game-changing spotted owl litigation, she recognized the value of the law as a means of achieving conservation objectives. So she obtained a law degree, clerking during law school for the Native American Rights Fund and Idaho Attorney General Larry Echo Hawk, followed by a fulltime clerkship at the Idaho Supreme Court.

In 1998, she founded the nonprofit

Animal Law Center, representing conservation, animal rights and indigenous organizations in federal court litigation. She also wrote a monthly column on climate change and other current environmental and animal rights issues. In 2003 she was the subject of a *People Magazine* profile about her legal work for animals.

Gretchen received a BA from Yale, an MS from the University of Washington, and a JD from the University of Colorado. She currently serves on the advisory board Predator Defense, and lives overlooking the Atlantic Ocean in Westerly, Rhode Island.

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15 for the West

Advocates for the West is celebrating **15 years** of successfully protecting the West's natural treasures and wildlife.

We are partnering with 35 conservation groups on **15 critical causes**.

We need your help to raise **\$15,000 for each** cause to keep winning for the West.

Join our fight today!

Paintings by Rachel Teannalach.

To learn more and to view all 15 causes, visit: www.AdvocatesWest.org/15-West

