



ADVOCATES for the WEST

2020 Spring/Summer Case Notes

Mairead Watches Ada-Paintings for Mairead - Oil and Wax on Linen – Rachel Teannalach

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Dear Friends,

First and foremost, I hope you are all safe and well. Though the *Advocates for the West* team has been working from home for weeks now, we remain fiercely committed to our mission to fight for the West's treasured public lands and wildlife.

Our team's ability to adjust quickly and effectively to significant life disruptions caused by Coronavirus has given me a new level of appreciation for our staff. Using remote technology, we are working closely together to ensure our critical legal work continues uninterrupted.

Our attorneys continue to serve dozens of conservation clients across the West. We are filing new cases, briefing many existing ones, managing volumes of discovery, and preparing for remote hearings.

Now more than ever, *Advocates for the West*, our partners, and

conservation-minded citizens like you must be vigilant. While the world's attention is necessarily focused on the pandemic, the Trump Administration is taking this as an opportunity to weaken environmental regulations and move ahead on projects that threaten to irreparably harm critical habitats, public lands and waterways. But as you will read in the following articles, we still have the law on our side and our attorneys are unrelenting in their pursuit of justice.

We are deeply grateful to you, the individuals and foundations whose funding commitments and longstanding partnerships make our work possible. With your generous continued support, *Advocates for the West* is prepared to weather the financial uncertainties of this unprecedented time.

We are alert to the likelihood that the monetary impacts of this global crisis may be felt for some time. We have always run a lean and mean operation, though now more than ever. With our board, we are making strategic decisions and taking actions to ensure we are strong, this year and into the

future. Your ongoing support helps ensure that our work continues.

Advocates for the West takes great comfort in having you by our side. And we are here for you. I hope you will stay in touch. Our team looks forward to the time when we can all gather again as a conservation community.

Until then, take heart in knowing that *Advocates for the West* is unwavering in our commitment to protecting and defending our treasured western landscapes and wildlife. We remain steadfast champions of the high deserts, lush riparian areas and forested mountains of the West. We are in this together, and we are still winning for the West.

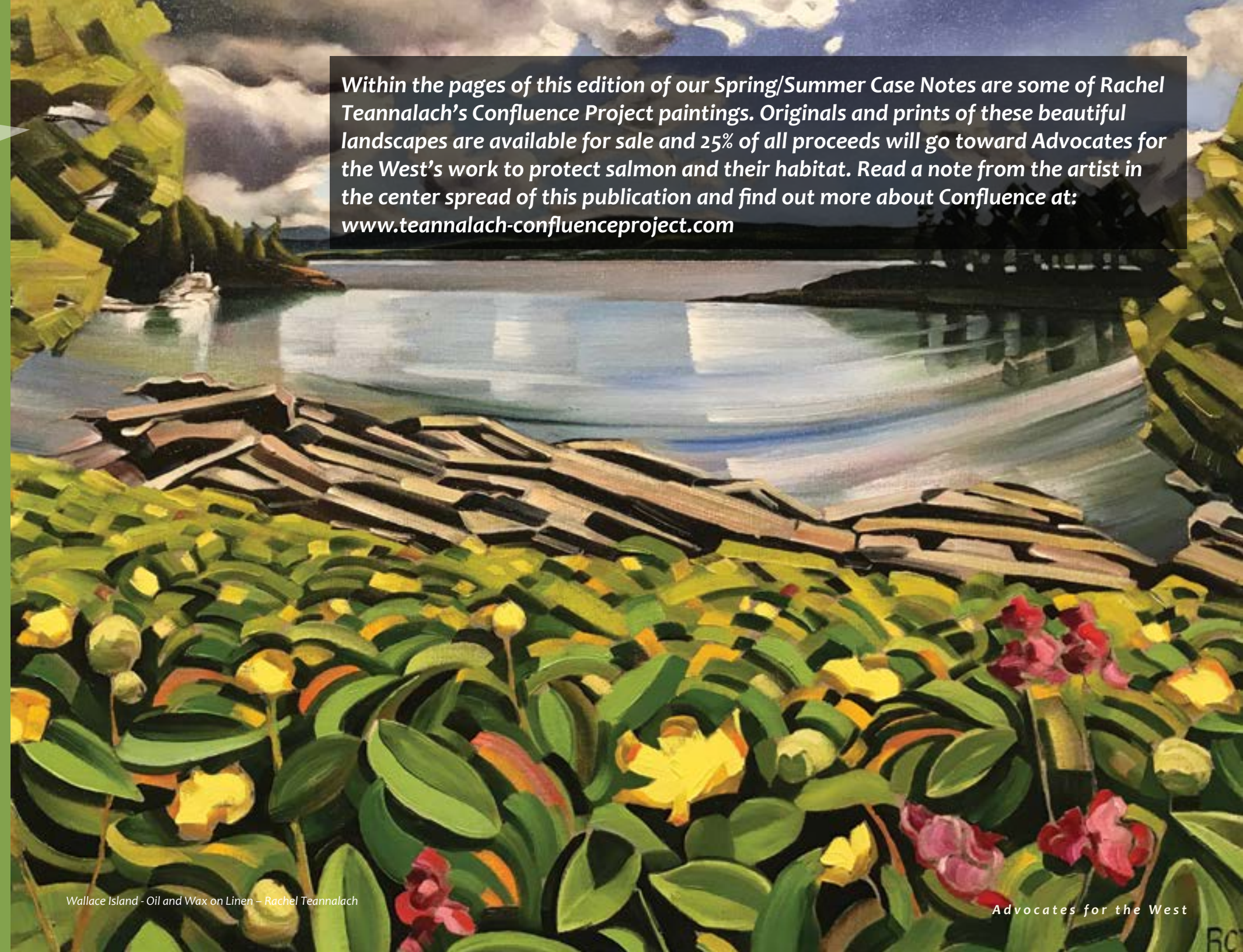
Sincerely,

Laird J. Lucas
Executive Director



**“WE ARE IN THIS
TOGETHER, AND
WE ARE STILL
WINNING FOR
THE WEST.”**

Within the pages of this edition of our Spring/Summer Case Notes are some of Rachel Teannalach's Confluence Project paintings. Originals and prints of these beautiful landscapes are available for sale and 25% of all proceeds will go toward Advocates for the West's work to protect salmon and their habitat. Read a note from the artist in the center spread of this publication and find out more about Confluence at: www.teannalach-confluenceproject.com



Wallace Island - Oil and Wax on Linen - Rachel Teannalach

“ADVOCATES FOR THE WEST LAWSUITS HAVE RESULTED IN THE SUSPENSION OR VOIDING OF LEASES ON ROUGHLY 1 MILLION ACRES OF PUBLIC LANDS —A QUARTER OF ALL ACRES LEASED BY THE TRUMP ADMINISTRATION IN THE INTERMOUNTAIN WEST. AND WE’RE JUST GETTING STARTED.”



FIGHTING TRUMP OIL AND GAS LEASING ACROSS THE WEST

Sarah Stellberg, Staff Attorney (Boise, ID Office)

The poster child of Trump’s vision for American public lands is an oil and gas rig. In the last three years alone, the Administration has sold off 4 million acres of public lands for fossil fuel development in the lower 48 states. Millions more were offered but attracted no bids. The Interior Department, with Zinke and Bernhardt at the helm, has also been forcing through dozens of environment rollbacks designed to aid the oil and gas industry. Even now, as the country hunkers down to weather this coronavirus crisis, BLM continues to hold quarterly auctions of oil and gas leases on public lands.

Fighting this energy-dominance agenda has been a priority for me since joining *Advocates for the West*. In the last two years alone, we have filed lawsuits to overturn oil and gas leases in Arizona, Montana, Nevada, Utah, and Wyoming landscapes that are too special, too fragile to be lost to fracking and drilling. And our impact has been profound. *Advocates for the West* lawsuits have resulted in the suspension or voiding of leases on roughly 1 million acres of public lands —a

quarter of all acres leased by the Trump Administration in the Intermountain West. And we’re just getting started.

Oil and Gas Leasing in Sage-Grouse Habitat

In late February, *Advocates for the West* secured a significant victory when a federal judge voided five lease sales encompassing 677 parcels in Nevada, Utah, and Wyoming sage-grouse habitat, finding that the BLM failed to allow public participation required by law. The judge also overturned a Trump Administration policy which curtailed public participation and environmental reviews in oil and gas leasing decisions. The ruling is part of a broader lawsuit challenging BLM’s expansive oil and gas leasing across greater sage-grouse habitat, filed on behalf of Western Watersheds Project and the Center for Biological Diversity. Trump’s Interior Department has sharply increased leasing in the bird’s priority habitat, despite its mandate to prioritize leasing elsewhere.

Oil and Gas Leasing in Arizona

In response to a lawsuit by *Advocates for the West*, BLM agreed to voluntarily suspend 4,200 acres of oil and gas leases on public land in Arizona’s Little Colorado River Valley. Fracking for oil, gas, and helium in the area would put at risk the region’s important Coconino aquifer and the Little Colorado River, which provide drinking water for millions of Arizonans. The government agreed to halt all activity on the leases while it conducts a fresh analysis under the National Environmental Policy Act, Endangered Species Act and National Historical Preservation Act. We represented the Center for Biological Diversity, Sierra Club, and WildEarth Guardians in this important case.

Oil and Gas Leasing in Utah

BLM agreed to pull back 130 leases in Southeast Utah in response to lawsuits filed by *Advocates for the West* and the Southern Utah Wilderness Alliance, acknowledging that its environmental analysis of these leases was inadequate. *Advocates for the West* challenged

these leases on behalf of Friends of Cedar Mesa, a group dedicated to protecting this remote and archaeologically significant corner of southeastern Utah, between Bears Ears and Canyons of the Ancients National Monuments. We will be back in court if BLM persists in its efforts to lease these parcels without proper protections for irreplaceable cultural and archaeological sites.

Outlook for the Future

BLM recently joined the oil and gas industry in appealing the district court victory we just won overturning the first set of lease sales in our sage-grouse case, which we will be defending in coming months, even as we seek reversal of additional leases illegally issued in sage-grouse habitats. And so long as BLM continues to issue new oil and gas leases in violation of federal law, I and other *Advocates for the West* attorneys will continue vigorously challenging the Trump “energy dominance” agenda for public lands.



CONTINUING OUR ENFORCEMENT OF BEDROCK ENVIRONMENTAL LAWS

Lizzy Potter, Staff Attorney (Portland, OR Office)

Center for Biological Diversity, Sierra Club, WildEarth Guardians, Western Watersheds Project

Partners

This spring, *Advocates for the West* resolved a lawsuit that stopped oil and gas activities from proceeding in Arizona's Little Colorado River Basin for the foreseeable future.

Our lawsuit challenged oil and gas leases that the Bureau of Land Management (BLM) issued in late 2018 without completing any environmental analysis under the National Environmental Policy Act nor any consultation under the Endangered Species Act or the National Historic Preservation Act. The agency's decision to flout these bedrock environmental laws was unusual, even for the Trump Administration. Left unchallenged, these decisions could have set a dangerous precedent for oil and gas leasing across the West.

In response to our litigation, the BLM quickly agreed that it needed to comply with these environmental laws, and suspended the leases. The suspensions will prevent the lessees from pursuing oil and gas activities unless and

until the agency completes new environmental analyses and consultations.

Fortunately for the rural communities and wildlife in the region that depend on the Little Colorado River valley and the Coconino Aquifer, news reports suggest that the agency may not prioritize completing new analyses and decisions, which would be needed for harmful extraction activities to move forward. But should the agency do so, we will stand ready to put the brakes on oil and gas activities in the region through a new lawsuit.

Fighting for increased transparency during the Trump administration

Advocates for the West just launched a new lawsuit challenging a Forest Service policy that frequently prevents the timely release of public records under the Freedom of Information Act (FOIA). Although it garners less attention, we depend on this statute to track and challenge federal agency activities that

threaten our public lands, wildlife, and communities across the West.

Under the Trump Administration, our work to use and enforce FOIA is more important than ever. As Justice Marshall eloquently explained, the purpose of FOIA "is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *N.L.R.B. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

FOIA requires federal agencies to respond to requestors within twenty days and produce public records "promptly." But the Forest Service routinely fails to comply with these requirements. Most recently, the agency has unreasonably delayed responding to requests for records about the impacts of livestock grazing on sensitive frogs and fens in the Fremont-Winema National Forest in Oregon and on bighorn sheep in the San Juan National Forest in

Colorado. Because these delays have impeded our efforts to protect these sensitive species, we filed suit to force the agency to finally produce the records.

Our lawsuit also aims to stop the agency from implementing a policy that requires National Forests to refer certain records to regional offices for extra "review." These referrals routinely delay the release of records for months or even years. Such delays threaten to prevent us from taking timely action to protect the public from harmful decisions.

If successful, our lawsuit should force the Forest Service to stop using this referral process as an excuse for withholding documents for long periods of time. Such relief would increase the public's ability to watchdog this agency that manages vast swaths of public land across the West.



PROTECTING SAN PEDRO NATIONAL CONSERVATION AREA

Todd Tucci, Senior Attorney (Boise, ID office)

Advocates for the West has been leading the charge to reform livestock grazing on public lands since 1997, when we sued BLM to improve conditions in southwestern Idaho's Owyhee Canyonlands. We have since brought winning litigation over grazing issues across Idaho and in Oregon, Washington, Nevada Arizona, Colorado, Utah, Wyoming and California — bringing sound science into the agency's decision-making process and allowing facts, not politics, to dictate what is appropriate on these federal public lands.

Now, under the Trump Administration, that work is even more critical as we battle its efforts to jettison science and disregard bedrock environmental laws in favor of opening public lands to resource extraction and industrial users.

A striking example of this is the in San Pedro Riparian National Conservation Area (RNCA) in southern Arizona, where *Advocates for the West* just filed a new

lawsuit to protect its wildlands and wildlife from Trump BLM plans to open sensitive riparian habitats to destructive livestock grazing.

In 1988, Congress created the San Pedro RNCA as the nation's first riparian National Conservation Area – including more than 46 miles of the San Pedro and Babocomari Rivers, and nearly 55,000 acres of riparian areas and uplands. The San Pedro RNCA contains four of the rarest habitat types in the American Southwest (cottonwood/willow forests, marshlands, grasslands, and mesquite bosques), and provides habitat for approximately 350 birds, 50 species of reptiles and amphibians, and more than 80 species of mammals, making this area one of the richest assemblages of land mammal species in the world.

In designating the San Pedro RNCA, Congress required BLM to manage its lands and waters to “conserve, protect, and enhance” the riparian, aquatic, wildlife, scientific, recreational

and other conservation values. Yet BLM is defying Congress by recently approving a new Resource Management Plan (RMP) authorizing high levels of grazing on the protected lands, putting the area's remarkable resources at risk. The agency also authorized shutting the public out of its decision-making by including a provision that allows the agency to increase the number of livestock allowed in the future without seeking public input.

The arid West's riparian habitats have always been vital refugia, and that is particularly so in the dry deserts of southern Arizona. And in the face of climate change, protecting riparian habitats is increasingly essential to ensuring that fish and wildlife can transition the changes we are all facing.

The blatant disregard for science and Congressional directives to protect the riparian habitats of the San Pedro NCA shows just how badly out of touch this Administration is with the ecological reality and needs facing the West.

Advocates for the West's San Pedro NCA case is just one of many fighting back against Trump. We hope to restore balance and sound science in BLM's decision-making within the San Pedro RNCA, and remove livestock from these treasured national conservation lands.



VICTORY FOR PACIFIC NORTHWEST SALMON AND STEELHEAD

Bryan Hurlbutt, Senior Attorney (Boise, ID office)

After three-and-a-half years of litigation, we have succeeded in forcing the Environmental Protection Agency (EPA) to finally uphold its legal obligation under the Clean Water Act (CWA) to protect Pacific Northwest salmon and steelhead from hot water temperatures in the Columbia and lower Snake Rivers. This is a major victory for these imperiled fish, which depend on clean, cool water to survive—and sets important CWA precedent.

In the early 1990s, EPA and the states of Washington, Oregon, and Idaho all recognized that river temperatures on the mainstem Columbia and lower Snake were getting so warm that they posed a danger to fish. These rivers are the migration route for all of Idaho’s migrating salmon and steelhead, and for many fish runs in Washington and Oregon.

In the late 1990s, the states asked EPA for help. After crunching the numbers, EPA found that

dams were to blame. Behind the dams, rivers slow and pool up in large reservoirs that bake in the sun, reaching temperatures that are lethal to migrating fish.

EPA drafted a plan, known as a Temperature TMDL (or “total maximum daily load”), which identified water temperature reductions needed at each dam on the Columbia and Snake to be safe for salmon and steelhead.

But EPA succumbed to pressure from the federal dam management agencies, and by 2003 had abandoned the Draft Temperature TMDL. Meanwhile, global warming worsened and summer river temperatures continued to increase with no plan in place.

In 2015, the Columbia and lower Snake got so hot that salmon and steelhead migrations suffered lethal losses. After leaving the ocean and starting their upriver journey, fish tried to wait out the heat wave in cooler pockets of

water. Shocked by the relentless heat, the fish became disoriented and diseased, never resuming their migration. Over 250,000 mighty Idaho salmon and steelhead—fish normally capable of traveling 800 miles upriver to spawn in high elevation headwater streams—perished without making it home.

In 2016, *Advocates for the West* sent EPA a notice of intent to sue for violating the CWA by failing to complete and issue the Temperature TMDL. In early 2017 we filed suit, briefing the case over the next year. In October 2018, the court ruled in our favor and ordered EPA to issue the Temperature TMDL within 30 days, which EPA appealed. We briefed the appeal in 2019 and I argued our case before the Ninth Circuit last August in Seattle.

In December 2019, the Ninth Circuit ruled in our favor, upholding the district court decision and ordering EPA to issue the TMDL. Unwilling to accept its losses, EPA filed a petition for reconsideration. But the Ninth

Circuit judges unanimously rejected EPA’s petition in March 2020. At last, EPA has committed to issuing the Temperature TMDL by May 18.

We expect the TMDL to establish the temperature reduction targets needed at each dam to keep the rivers cool enough to protect salmon and steelhead. But issuing the TMDL is only one step in the process — it must be implemented next. Hopefully EPA, Pacific Northwest states, and dam management agencies will take swift measures to implement the TMDL. If not, we will take further legal action to protect our wild salmon and steelhead.

Northwest Environmental Defense Center, Native Fish Society, WildEarth Guardians

Partners



“NATURE CONSERVATION IS ABOUT LIMITING THE NEGATIVE EFFECT HUMANS HAVE ON THE WORLD AROUND THEM, AND RETURNING OURSELVES TO A PERSPECTIVE OF BEING PART OF A WHOLE.”

2020 Spring/Summer Case Notes

Columbia Meets Pacific - Oil and Wax on Linen – Rachel Teannalach



CONFLUENCE PROJECT — A NOTE FROM THE ARTIST

Rachel Teannalach

Greetings from my art studio in Boise.

Advocates for the West invited me to write an update on the Confluence Project – our collaborative, traveling art exhibit in support of the Pacific Salmon. As my thoughts unfolded about what to write, I realized how interconnected my emotional reaction to the quarantine and my feelings about conservation are at the moment. I am allowing myself to write more from my emotional side than usual as I, like many of us, are feeling the urge to connect through our vulnerability right now.

First, let me say I have been heartened by the spirit of optimism that *Advocates for the West* has exuded during this time, finding ways to engage and reach out so that conservation work can continue. As an artist, I am accustomed to working alone and it has been a blessing

to have a capable, positive team for this project and in this time.

Prior to the lockdown, we had a full calendar of events planned between Ketchum, ID and San Juan Island, WA. These events were intended to share art, a passion for conservation, and each other's company. After the lockdown, like so many others, we have scrambled to create online experiences until the live events can be enjoyed as planned. The Confluence Project can now be enjoyed at www.teannalach-confluenceproject.com.

Through this re-routing process, I have been contemplating UN-doing. Many of our accustomed ways of moving through our lives have been undone. The unraveling of our project's schedule was initially a source of anxiety and disbelief for me. However, I have lately been seeing the potential of re-evaluating what we deem “productive”

and “essential”. Certainly for those who are ill, or financially devastated by this pandemic, the essentials of life are painfully clear and lacking. I have personally been struggling with the sudden shift in my life from full-heartedly engaging in wildlife conservation efforts, to being overwhelmed by the bleak reality which so many humans are currently facing.

However, so many of our human enterprises are not only non-essential clutter, but harmful actions to the earth and its other inhabitants. We have already seen so many examples in the last weeks of what Nature can DO when we UN-do. Nature Conservation is about limiting the negative effect humans have on the world around them, and returning ourselves to a perspective of being part of a whole. It feels right that in this moment, we as a species, consider

taking actions that not only do no harm, but help to UN-do the harm we have already caused.

A pesky, conditioned voice in my head keeps telling me that this isn't the time to “Save the Whales.” But my heart tells me – this is the time to heal the perceived gulf between what we deem the human world and the natural world. There is nothing like a pandemic to remind us that our biology is vulnerably connected to other organisms.

The Confluence Project is about plucking heartstrings and engaging minds about one species who really needs us to UN-do. This species is the Pacific Salmon, but in engaging with the salmon we address an entire ecosystem in which it dwells. UN-doing some dams would be a good start.

Find out more about Rachel Teannalach and our Confluence Project collaboration at: www.teannalach-confluenceproject.com

Advocates for the West



PUTTING THE BRAKES ON RECKLESS AGENCIES

Andrew Missel, Staff Attorney (Portland, OR office)

Hitting Pause on Willamette Basin Reallocation

The U.S. Army Corps of Engineers is, to put it kindly, not known for being swift to take action. But in one case currently being litigated by *Advocates for the West*, the Corps is recklessly trying to rush through a plan to reallocate half a trillion gallons of water stored in the Willamette Project, a set of dams and reservoirs in Oregon’s Willamette River Basin. This reallocation would specify how much water could be used for irrigation, municipal, and industrial purposes, as well as how much would be available for fish.

The Corps is attempting to push its plan forward despite being in the middle of a separate five-year process working with the National Marine Fisheries Service (NMFS) to determine how much of the water stored in the Willamette Project is needed for fish and wildlife, including the protection of threatened species of Chinook salmon and steelhead. The reallocation plan, if allowed to

proceed, would short-circuit that process, making it impossible for the Corps to adequately protect fish and wildlife and further jeopardizing salmon and steelhead.

Our main legal argument in this case was made possible by *Advocates for the West*’s past success: the only reason the Corps and NMFS are currently studying how best to protect the threatened salmon and steelhead species in the Upper Willamette is because of our ongoing lawsuit challenging the Corps’ refusal to implement measures required to promote salmon and steelhead survival threatened by its operation of the Willamette Project. Had we not brought that case, it would be difficult, if not impossible, to challenge the reallocation plan.

Advocates for the West filed suit in mid-March and filed a motion for a preliminary injunction shortly thereafter to stop the reallocation plan. Not surprisingly, two groups comprised of agricultural and municipal water users—the beneficiaries of the Corps’ deeply

flawed plan—are attempting to intervene in the case to protect their interests. The Court has set a hearing on the preliminary injunction motion for May 26th, and we hope to hear good news shortly thereafter.

Protecting the Beautiful Mogollon Rim

The Mogollon Rim in Arizona’s Tonto National Forest is a 200-mile long escarpment characterized by tall cliffs and dramatic canyons. Because of rapid changes in elevation, the Mogollon Rim area contains a large diversity of flora and fauna, including elk, deer, turkey, black bear, fox, goshawk, golden eagle, and Mexican spotted owl.

In the late 1970s, the Forest Service conducted extensive studies showing that cattle grazing was having devastating effects on the vegetation, water and habitat of the Bar X grazing allotment just south of the Rim. In response, the Forest Service closed large

portions of the allotment to grazing and severely limited it in others.

In 2015, with no warning to nearby residents and no environmental review, the Forest Service re-opened the long-closed portions of the Bar X allotment to grazing. Working with Rich Dillenburg, an attorney who lives in the area, we filed suit to stop the damaging plan. In response, the Forest Service agreed to re-close the areas, but only pending completion of an environmental study concerning the effects of increased grazing on the area.

In December 2019, the Forest Service released its environmental study. It concluded that reopening these portions of Bar X to grazing and allowing more than twice the amount of livestock will benefit soil and water resources, vegetation, and habitat for several ESA-listed species. The study is a model of reckless agency decision-making: it relies on nonexistent or flawed data, ignores the detailed studies conducted in the 1970s, contains basic arithmetic errors,

and draws conclusions that are directly refuted by the evidence. It is the perfect artifact of the Trump administrative state.

We filed suit in February 2020 to stop the Forest Service from implementing its new grazing strategy. We hope to protect the Bar X area for the people and animals that live there and give the ecosystem—which is still recovering from overgrazing in the 1970s—the opportunity to heal.

WaterWatch of Oregon, Northwest Environmental Defense Center, WildEarth Guardians, Native Fish Society, and Neighbors of the Mogollon Rim

Partners



Discovery in the Time of COVID-19

Garrison Todd, Legal Fellow

Advocates for the West and the Nez Perce Tribe recently entered into the discovery phase of the Tribe's Clean Water Act litigation against Midas Gold. Discovery—the pre-trial phase of litigation in which parties to a dispute seek relevant information and records from one another—is a complex and time-consuming process at the best of times, let alone during a pandemic. Although handling discovery in the midst of the COVID-19 pandemic has presented us with unique challenges, it has also, inspiringly, given us the opportunity to include new members of the team in our legal process and advance our technology savvy.

Luckily, document review is no longer an analog task. Junior attorneys used to park themselves in basements full of Bankers boxes, where they sifted through mountains of

paperwork. Today, because the vast majority of files are stored digitally, the review process is mostly completed digitally. Our team is now processing electronic documents without a single papercut and, most importantly in these uncertain times, without leaving the safety of their homes.

Thanks to secure online discovery software and the ability to meet via video chat, I was able to instruct the staff at *Advocates for the West* and the Tribe on the document review process. They are now putting in long hours from home to ensure this critical phase of our case continues moving forward efficiently and effectively.

This is just one example of how *Advocates for the West* is adapting to the pandemic. The rest of our team is taking similar steps to continue defending the American West. We stand ready, even at a distance, to protect our wild spaces, wildlife and water. Please stay home, stay safe and stay tuned. We're in this together.



VICTORIES IN CASE AGAINST MIDAS GOLD

Amanda Rogerson, Staff Attorney (Boise, ID Office)

Advocates for the West and the Nez Perce Tribe (Tribe) recently won two victories in our lawsuit against Canadian mining company Midas Gold Corp. and its three American subsidiary corporations (Midas Gold) for the discharge of pollutants at its proposed open pit mine site in the historical Stibnite Mining District. The site is located in the headwaters of the East Fork South Fork Salmon River (EFSFSR) near Yellow Pine, Idaho and is within the Tribe's exclusive aboriginal territory. Under its 1855 treaty with the United States, the Tribe retains rights to fish, hunt, gather, and pasture in the area.

Since Midas Gold started acquiring mining claims in the historical Stibnite Mining District in 2009, its companies have done nothing to address the unpermitted pollutant discharges at the mine site, which are degrading water quality in the EFSFSR and its tributaries. These waters support

salmon, steelhead, and bull trout among other important aquatic and terrestrial species. Midas Gold's proposed mine also threatens a significant amount of wildlife habitat within the area.

In August of 2019, *Advocates for the West* and the Tribe filed suit under the Clean Water Act (CWA) against Midas Gold. It quickly responded with a motion to stay the litigation, insisting that proceeding with the litigation was a waste of everyone's time and resources. Then, Midas Gold filed another motion asking the court to dismiss the Tribe's lawsuit altogether.

Midas Gold claimed that once it received the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) designation it is seeking from the Environmental Protection Agency (EPA) for its mine site, the court would be required to dismiss our case. We pushed back hard,

pointing out that Midas Gold's argument for a stay was without legal foundation and that a CERCLA designation—should Midas Gold receive one for its site—would not necessarily shield it from our lawsuit. Midas Gold's intent is to use a CERCLA designation to dismiss the Tribe's lawsuit and delay meaningful cleanup at the site, including the pollution discharges alleged in the Tribe's lawsuit, until after it has finished conducting new gold mining operations. It projects these operations will last two decades or longer.

In December 2019, we argued this case before US Chief District Judge Winmill, who rejected Midas Gold's motion to dismiss the lawsuit in a ruling from the bench. Then in January 2020, Judge Winmill issued an order denying Midas Gold's motion to stay the litigation. The court order noted that the companies had failed to offer any evidence

that they would receive a CERCLA designation for the Stibnite site from EPA in a reasonable time and that, “[i]n comparison, the Tribe has presented evidence that there will be real, tangible harm if the discharge of pollutants continues.”

As a result of Judge Winmill's rulings, we have moved into the discovery phase of the litigation. We'll keep you updated as the litigation proceeds!





A WIN FOR IDAHO'S WOLVES

Laurie Rule, Senior Attorney (Portland, OR Office)

Advocates for the West has been fighting for years against the secretive federal agency Wildlife Services, which kills thousands of animals in Idaho every year, and millions nationwide, under the guise of “animal damage management.” Of particular concern is Wildlife Services’ targeting of wolves, which it kills largely at the behest of livestock ranchers through aerial gunning, ground shooting, traps, or neck snares.

In 2016, we sued Wildlife Services for its aerial gunning of wolves in the Lolo and Selway Zones of northern Idaho and the elimination of numerous wolf packs in the Sawtooth Valley, Wood River Valley, and Sawtooth National Recreation Area (SNRA). Idaho District Judge Lodge dismissed our case in 2018, and we appealed. In 2019, the Ninth Circuit Court of Appeals overturned the Idaho federal court’s dismissal — setting the stage for negotiations.

This spring, in a key victory for Idaho wildlife, *Advocates for the West* negotiated a strong settlement agreement that sets strict limits preventing Wildlife Services from killing wolves in Idaho wilderness areas and other special places for several years while it completes a new Environmental Impact Statement (EIS) that fully considers the impacts of its wolf-killing activities.

Wildlife Services is barred from killing wolves in the Frank Church-River of No Return, Gospel-Hump, Selway-Bitterroot, Boulder-White Clouds, Sawtooth, Hells Canyon, Craters of the Moon, and the Owyhee Canyonlands Wilderness Areas. The SNRA and specified public lands in the Sawtooth Valley and Wood River Valley are also off-limits to Wildlife Service’s wolf killing.

Our agreement also prohibits Wildlife Services from using M-44 “cyanide bombs” and neck snares in Idaho; requires that traps are set properly to avoid harming smaller animals and must be checked within 72 hours; and prohibits

killing wolves for the supposed benefit of protecting ungulates.

With these restrictions in place until the new EIS is finished, wolves in Idaho will fare better for now and special places like Wilderness Areas and the SNRA will be the wolf havens they are supposed to be.

Protecting Winter Wildlife from Snowmobiles in Central Idaho

In a position that is unusual for us, *Advocates for the West* is helping defend a winter travel plan issued by the Forest Service that regulates snowmobile use in Central Idaho.

The Fairfield Ranger District on the Sawtooth National Forest completed a winter travel plan that allowed for significantly increased public snowmobile use in the north half of the district, but also closed a portion of the area in order to protect important habitat for mountain goats, wolverines and lynx.

The entire north half of the district had previously been inaccessible for public snowmobile use due to

a legal restriction. After numerous requests by snowmobilers to lift that restriction, the Forest Service agreed and developed a new winter travel plan that opened up more than 138,000 acres to snowmobilers, but that was not good enough for them.

The Idaho State Snowmobile Association sued the Forest Service because the winter travel plan did not allow them to use the area that was set aside to protect winter habitats. *Advocates for the West* intervened in the case on the side of the Forest Service to defend this wildlife closure.

The area at issue is home to a large population of mountain goats that winter there annually, and also is used by wolverines. In fact, a recent study assessing the impacts of winter recreation on wolverines included the Fairfield Ranger District and documented wolverines using much of the district. The study determined that snowmobile use is detrimental to female wolverines during their denning period, which is winter and early spring.

Western Watersheds Project, Center for Biological Diversity, Friends of the Clearwater, WildEarth Guardians, Predator Defense, Winter Wildlands Alliance

Partners

Although our clients would have preferred the Forest Service close a larger area to protect wildlife, it is critical to at least maintain the current closure to protect these rare and vulnerable species in winter. The briefing for this case is completed and hopefully the court sides with the agency in this instance!

SUMMER LAW CLERKS & INTERNS



Lindsey Hutchison,
Summer Law Clerk, Boise

Lindsey is entering her third year at the University of Oregon School of Law where she is the Co-Director of Land Air Water, the nation's oldest environmental law society. During her first two years, Lindsey worked with the Environmental Law Foundation and Western Environmental Law Center. Before law school, Lindsey worked restoring anadromous fish habitats as a Watershed Stewards Program member, as a volunteer coordinator at the UC Santa Cruz Arboretum & Botanic Garden, and as an environmental educator with the Coastal Watershed Council. Lindsey attended Smith College and majored in Government and minored in Environmental Science and Jewish Studies. In her free time, Lindsey enjoys exploring state and national parks, painting, and walking dogs at the animal shelter.



Victoria Rose,
Summer Law Clerk, Boise

Victoria is entering her third year at Duke University School of Law where she is completing a dual JD and Masters of Environmental Management. In the coming school year, she will serve as Editor in Chief for the Duke Environmental Law and Policy Forum and Articles Editor for the Duke Journal of Comparative and International Law as well as continue her work with Lawyer-on-the-Line, a project that connects low income North Carolina residents with legal advice. Prior to law school, Victoria worked with a lab that researched grasshopper mice and bark scorpions and completed her B.A. at Baylor University with a focus in biology and environmental science. Victoria enjoys running, birding, and being outside.



Emma Sperry,
Summer Law Clerk, Boise

Emma is entering her fourth year in a dual degree J.D. and Master of Public Policy program at the University of Chicago. While in law school, Emma worked as a legal intern for the Abrams Environmental Law Clinic, the Natural Resources Defense Council, the Shriver Center, and the Institute for Justice Clinic on Entrepreneurship. Originally from Terre Haute, Indiana, Emma graduated from Indiana University in 2017 with a degree in economics, math, and sociology. In her free time, Emma enjoys cycling, playing the piano, and watching comedy.



Andrew Hursh,
Summer Law Clerk, Portland

Andrew will be a third-year student at Vermont Law School next year. In law school, Andrew has focused his course work on water, climate, and international law. He has long been dedicated to safeguarding natural resources and public lands; at the University of Montana, he studied at the college of forestry and conservation as an undergraduate and earned a master's degree in systems ecology with research focused on global soil responses to climate change. Andrew is eager to work on public interest environmental issues as an attorney, and he has previously worked with Friends of the San Juans in Washington and Wilderness Watch in Montana and has performed research for several other conservation groups. Prior to law school, Andrew guided backcountry hiking and river trips, worked as an editor for scientific manuscripts, and acquired a variety of other valuable experiences from winemaking to music instruction at home and abroad. Andrew is always thinking about his next backcountry trip, and these days is focusing most of his musical practice on his banjo chops, in genres often different than you may think!



Jack Barbour,
Summer Law Intern, Boise

Jack grew up in the San Francisco Bay Area and is entering his fourth year as an undergraduate at the University of Chicago, where he is majoring in mathematics and religious studies. For the past three years he has been a member of UChicago's Moot Court team, competing against other schools in mock Supreme Court arguments. Prior to his third year, Jack interned at the Cook County Public Defender's Office, where he gained his first exposure to public interest law. He is an avid runner, competing on UChicago's cross country and track teams, and outside of school enjoys exploring the outdoors through kayaking and hiking.



Andrew Follett,
Summer Law Intern, Boise

Andrew is an entering student at Yale Law School. As an undergraduate, he worked as a lead research assistant at BYU Law School, where he researched federal environmental law and the history of the environmental movement. His co-authored work has appeared in Environmental Law Reporter, Hastings Law Journal, and his scholarship is forthcoming in Indiana Law Journal and Cambridge University Press. Born and raised in Idaho Falls, he is now based in Boise. In his spare time, Andrew enjoys chess, running, and classical music.

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REFUGE, REFUGIA, AND REFUGEES IN THE TIME OF COVID-19 AND CLIMATE CHANGE

Laird J. Lucas, Executive Director

I have been thinking a lot recently about “refuge” – a place of safety. In this time of pandemic, our homes are the place of refuge to which we are all retreating, which we are so fortunate to have.

“Refugia” is a term I think of often too, mostly for the work that *Advocates for the West* has been doing for over 17 years, seeking to use law and science to protect our public lands and waters. In my mind, refugia are places of healthy, intact habitats that fish and wildlife need to survive, particularly as we move forward into a world where climate change is already unraveling ecosystems.

When I think about the American West—the particular area that we at *Advocates for the West* have chosen to fight for and defend—I see a landscape fragmented and degraded by so many human impacts: roads, powerlines, cities, oil and gas wells, farms, mines, logged forests, grazed landscapes, it goes on and on. And

I see invasive weeds taking over areas disturbed and degraded by humans, and they fuel larger fires that in turn are made larger and more frequent by climate change.

But I also see a landscape that is unique in the world, because so much of it is protected as federal public land—and big portions remain largely undisturbed as wilderness, wild and scenic rivers, roadless areas, and lands designated for heightened protection under the National Conservation Lands system.

We at *Advocates for the West* are experts in using the laws to keep defending and protecting these areas. So much of our work—just a small portion of which is reflected in this newsletter—is aimed at ensuring that keystone fish and wildlife species are able to keep surviving on these lands. Protecting sage-grouse helps us defend remaining intact high desert landscapes from new threats, such as grazing and oil and gas

development. Fighting for salmon and steelhead calls attention to dams and diversions that obstruct their migration. And we defend wolves, bighorn sheep, and sensitive species like spotted frogs, because we know that all parts of the ecosystem need protection.

As climate change impacts intensify, the threats to our western lands grow worse. The fish and wildlife that live here, or that migrate through, are becoming refugees — they urgently need our help to protect the remaining intact habitats, to ensure they have refugia to survive and transition into a new era.

Climate change is also making more and more humans into refugees. I feel a strong moral imperative to aid not only fish and wildlife refugees, but also those in our global community who are becoming refugees, as we move into the uncertainty of climate change and its impacts.

I unequivocally believe that in protecting our western landscape, in seeking to ensure that refugia exist for fish and wildlife, *Advocates for the West* is also serving the cause of helping to adopt a new world to human refugees. We must learn to live in a sustainable way on this Earth, transitioning to abundant solar power, and freeing ourselves from needing harmful dams or fossil fuels that our western public lands and rivers have been devoted to in the past.

I deeply hope that the Covid-19 pandemic spreads some good—underscoring to people the importance of refuge for all of us, and of protecting refugia into the future. I am grateful for the work we do at *Advocates for the West*, enforcing our bedrock environmental laws to help protect public lands and serve the needs of all refugees in these challenging times.



ADVOCATES for the **WEST**

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As *Advocates for the West* continues to shelter in place, **our attorneys remain hard at work defending the West's treasured public lands and wildlife.**

While the world's attention is necessarily focused on Covid-19, the Trump Administration is shamelessly seizing this as an opportunity to weaken and ignore our bedrock environmental statutes. **Our work is critical now more than ever.**

We hope you will join help us keep winning for the West with a generous gift today!

