

# Western Resources Legal Center

Training Legal Advocates to Represent Natural Resource Users

2016 Newsletter

## Year in Review: Message from the Executive Director



Caroline Lobdell

There were key developments in a number of environmental law areas this past year that will have significant effects on natural resource industries. WRLC continues to be involved in many litigation and regulatory matters which engage the students in hands on experience. The WRLC class remains fully enrolled, the externship placements are robust, and the students are directly assisting with,

and learning from, real world cases. Student projects included (1) drafting portions of a summary judgment brief in support of continued ranching on the Fremont-Winema National Forest in the face of challenges under the Endangered Species Act, Clean Water Act, and Wild and Scenic Rivers Act, (2) helping to prepare a Ninth Circuit brief to support an appeal of an adverse decision under the National Forest Management Act and National Environmental Policy Act that stopped the Snow Basin forest health project, and (3) preparing a review of the legal authority of the Obama Administration through an executive memorandum to direct land management agencies to change management emphasis to constrain natural resource production with a net benefit goal or, at a minimum, a no net loss goal.

Students continue to express their appreciation for the experience gained at WRLC through favorable faculty evaluations and letters to the Dean of the law school supporting WRLC. One recent graduate wrote to the Dean of his experience in the WRLC class and an externship with a WRLC supporter that “both experiences were highlights of my legal education, and importantly, allow me to acquire practical experience with issues that I wish to build my career around.”

To be sure, 2015 was one of WRLC's busiest years yet! Advocacy for resource users regarding the best use of our nation's natural resources remains essential.

Major regulatory changes in 2015 included EPA's “waters of the United States” rule, which expanded jurisdictional definitions of “tributary” and “adjacent” waters, as well as including other ephemeral drainages on a case-by-case basis; the U.S. Fish & Wildlife Service's decision not to list the greater sage grouse under the Endangered Species Act, though regional resource management plan amendments by the Bureau of Land Management will drastically alter the landscape for resource users in the coming years; and the Department of Agriculture's proposed groundwater directive, which was later withdrawn after strong concerns expressed by many regarding the Forest Service's interference with state and tribal water rights.

The issues of what to do with partially or fully recovered endangered species (e.g., wolves, salmon), as well as the appropriate treatment of unoccupied critical habitat areas (e.g., bull trout, woodland caribou), continue to be major sources of conflict between resource users and federal and state agencies. The need for practical species management has never been greater, especially as species continue to shift their ranges.

Wildfire and the cascading catastrophic effects of mis-or under-managed National Forest System and BLM lands also continue to plague timber companies, ranchers, miners, and even agriculture when valuable resources are wiped out, with predictable negative impacts on water quality in the rural western states.

On these and other issues, WRLC remains committed to educating our students on how best to promote the strong voice of rural communities and industry leaders, who are on the ground every day and at the forefront of innovative resource management techniques.

### ALSO IN THIS ISSUE

- **Welcome Senator Betsy Johnson**
- **Case/Issue Highlights – Wild Horse Victory & Sage Grouse Development**
- **Rising Stars: Student Successes**
- **WRLC Scholarship Award: John Richards**



## Welcome New Board Member: Betsy Johnson

WRLC is pleased to announce the addition of longtime WRLC supporter Betsy Johnson to our Board of Directors. Ms. Johnson is an Oregon State Senator who represents District 16 that includes Clatsop and Columbia counties, as well as portions of Tillamook, Washington, and Multnomah counties. Natural resource-dependent businesses—including agriculture, timber, and fishing—are a major and integral part of District 16's constituency. Over her three terms in the Oregon State Senate, Ms. Johnson has remained committed to championing natural resource industries. WRLC is looking forward to the benefit of Ms. Johnson's wisdom and considerable experience with Oregon's natural resource business community.

## WRLC Case/Issue Highlights

**D.C. Wild Horse Victory/Appeal:** Representing northern California ranchers, as well as national and local cattle and agriculture associations, WRLC gained a significant victory against the American Wild Horse Preservation Campaign and other groups in October 2015. The lawsuit sought to increase the acres of lands within the Modoc National Forest dedicated primarily to wild horses, including private lands, to the detriment of ranchers who have grazed domestic livestock on those lands for decades. In 2014, the wild horse population in the Modoc was estimated at 400-700% above capacity, which prevented ranchers from fully utilizing their grazing rights. The D.C. District Court's opinion upheld federal agency plans to return horse numbers to normal by removing horses from the range and better regulating the population. Despite a strongly written opinion, plaintiffs filed an appeal in the D.C. Court of Appeals. WRLC will continue to represent our clients during the appeal. *Am. Wild Horse Preservation Council v. Vilsack*, Case No. 1:14-cv-485 (D.D.C.).

**Sage Grouse Challenges in Nevada and Idaho:** After anxiously waiting for years for the U.S. Fish & Wildlife Service to decide whether to list the greater sage grouse, a species endemic to the western United States, last year the BLM and Forest Service authored significant plan amendments that will completely alter public land management across the West. Anticipating the

huge impacts of the new policy, a number of natural resource industry groups have joined together to challenge the regional sage grouse plans in Idaho, Wyoming, Utah and Nevada. WRLC continues to be involved in advising groups on a strategy to combat those changes, which include assessments of issues including the new so-called "net conservation gain" standard, creation of sage grouse focal areas with significant planned changes to land use and grazing standards, limits on oil and gas exploration, as well as drastic changes made between the draft and final environmental impact statements. *Otter v. Jewell* (Idaho), Case No. 1:15-cv-1566 (D.D.C.); *Western Exploration LLC v. Dept. of the Interior*, Case No. 3:15-cv-491 (D. Nev.); *Herbert v. Jewell*, Case No. 2:16-cv-00101 (D. Utah).

**Fremont-Winema Grazing Cases:** Environmental groups led by Oregon Wild have brought a pair of challenges to public lands livestock grazing on the Fremont-Winema National Forest in southern Oregon. WRLC intervened in both cases representing individual ranchers whose grazing rights are threatened by the lawsuits, which allege that grazing authorizations in occupied—as well as unoccupied—bull trout and sucker fish habitat violate the Endangered Species Act, Clean Water Act, and the Wild and Scenic Rivers Act. *Oregon Wild v. Cummins*, Case No. 1:15-cv-1360 (D. Or.); *Oregon Wild v. Forest Service*, Case No. 1:15-cv-895 (D. Or.).

**Recap – The 2012 Forest Planning Rule:** The first plans to be issued under the new planning rule framework are scheduled to be released in early 2016. After extended litigation regarding the 2012 rule, the D.C. District Court finally issued a decision in March 2015 denying resource groups' challenge to the rule. The rule was anticipated to shift how forest plans are written and implemented by, for example, establishing "ecological sustainability" as an overriding objective of forest management, placing so-called "ecosystem services" on par with existing multiple-use mandates such as timber and range development, and limiting salvage logging and recreational activities. WRLC will join other natural resource industries in submitting comments on the new forest plans over the coming months and years.

**Water Quality Standards Case Proceeds:** After briefing a motion to dismiss a lawsuit by environmental groups challenging EPA's approval of certain state water quality standards, including toxics, the Western Washington District Court issued an opinion dismissing several claims. Importantly, the Court held that plaintiffs were barred from raising claims based on federal actions taken more than six years ago, per the federal statute of limitations, and that EPA's inaction (i.e., lack of approval) for certain standards started the "running" of the limitations period. The case will proceed with review of the administrative record and briefing on summary judgment this coming year. *Nw. Env'tl. Advocates v. EPA*, Case No. 2:14-cv-196 (W.D. Wash.).

## Rising Stars: Student Successes



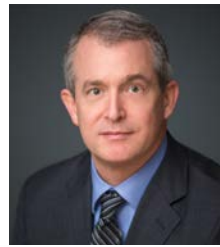
**Kevin Johnston ('15)**, was recently hired as legal director for the Oregon House Republican Caucus in Salem, OR.



**Tyler Alexander ('15)**, has joined the Oregon Farm Bureau Federation as a governmental affairs associate.



**Diane Lenkowsky ('14)**, was hired by Jordan Ramis PC in Lake Oswego, OR, where she focuses on civil litigation, including business disputes, alternative dispute resolution, water law, and environmental and natural resources law.



**Philip J. Wuest ('09)**, who is a real estate and natural resources attorney with Black Helterline in Portland, OR, has joined the Board of Directors for the Oregon Concrete and Aggregate Producers Association.

**Bryn Blomberg ('16)**, WRLC's law clerk and a former extern with the Oregon Cattlemen's Association, has been heavily involved in supporting WRLC in its litigation efforts over the past year, and was able to attend a national policy meeting to discuss wild horse management on public lands in Denver, CO.

**Jonathan Sikes ('16)**, was placed in an externship with the Lower Colorado River Authority in Austin, TX, a conservation and reclamation district that delivers electricity and manages the water supply for the Lower Colorado River basin area.

**Justin Reiter ('16)**, secured a grant to attend the Rocky Mountain Mineral Law Foundation conference in Colorado, and was placed in an externship with the International Association of Geophysical Contractors in Houston, TX, an industry association concerned with oil and gas development.

## WRLC Scholarship Award: John Richards

Congratulations to John Richards, who has been awarded a \$15,000 scholarship by WRLC to study environmental natural resources law at Lewis & Clark Law School. This is particularly exciting, as this is the first grant available exclusively to Lewis & Clark students specifically interested in pursuing careers in natural resources and environmental law. John is a first-year Lewis & Clark student and a fourth generation cattle rancher from southwestern Idaho, where his family grazes cattle on private and public lands.

John initially planned to attend law school elsewhere. However, after learning about the practical skills opportunities available through the WRLC course, facilitated externship programs and with the availability of the WRLC scholarship, it became possible for John to attend Lewis & Clark Law School. John was also awarded the 2015 Dean's Scholarship.

WRLC is proud to welcome John to Lewis & Clark and hopes that the scholarship will enable him to discover how to better protect and preserve the natural resource-focused values that WRLC supports throughout the course of his legal education.

The WRLC scholarship is made possible by the Public Lands Endowment Trust, which is administered by the Public Lands Council. WRLC would like to offer a huge thank you to PLC for their continued support, which helped WRLC establish the scholarship.

# WRLC Corporate Sponsors

**Board commitment to WRLC's mission is uncompromising and is demonstrated by 100% board contribution to WRLC.**

Aggregate Resources Industries	International Association Geophysical Contractors	Rizzo Mattingly Bosworth
Allen & Gibbons Logging	Ireland Trucking	Rolfe Law Offices
American Forest Resource Council	Iron Triangle	Rosboro
Arizona Cattlemen's Association	Jackson County Farm Bureau	Roseburg Forest Products
Ash Grove	Josephine County Farm Bureau	Samuel Johnson Foundation
Baker County Livestock	Justesen Brothers	Schroeder Law Offices
Boise Cascade	Key Knife	Schwabe Williamson & Wyatt
Buckley Law Firm	Klamath County Farm Bureau	SDS Lumber Company
California Cattlemen's Association	Krebs Sheep Company	Seneca Jones Timber
California Farm Bureau	Laird Ranch	Sierra Pacific Industries
Clackamas County Farm Bureau	Lake County Stockgrowers	Silver Butte Timber
Columbia Helicopters	Lively Ranch	Simplot
Coos Curry County Farm Bureau	Lone Rock Timber	Skinner Ranches
Coquille Indian Tribe	Malheur County Farm Bureau	Starfire Lumber
Cow Creek Band of Umpqua Tribe of Indians	Marion County Farm Bureau	Starker Forests
DR Johnson Lumber	Marion Ag Service	Stimson Lumber
Douglas County Farm Bureau	Marten Law Firm	Stoel Rives
Douglas County Forest Products	Montana Public Lands Council	Swanson Group
Douglas Timber Operators	Moore Smith Buxton & Turcke	Teevin Bros.
Dunn Carney	Mountain Western Log Scaling	Tillamook County Farm Bureau
Fort Klamath C.H. Landowners Foundation	National Cattlemen's Beef Association	Tyree Oil
Giustina Land & Timber	Nevada Cattlemen's Association	Umatilla – Morrow County Farm Bureau
Giustina Foundation	Nicholson Ranches	Union County Farm Bureau
Grant County Stockgrowers	NW Farm Credit Services	Wasco County Farm Bureau
Green Diamond Resources	Oregon Cattlemen	Washington Ag Legal Foundation
Haglund, Kelley, Jones & Wilder	Oregon Community Foundation	Washington County Farm Bureau
Harney County Farm Bureau	Oregon Concrete & Aggregate Producers Association	Washington Cattlemen's Association
Harney County Stockgrowers	Oregon Farm Bureau	West Coast Resources
Hawaii Cattlemen's Council	Oregonians for Food & Shelter	Wildish Sand & Gravel
Hellyer Limited Partnership	Outlaw Industrial	Windsor Rock Products
Idaho Cattle Association	Perkins Coie	Wyoming Stockgrowers
Indian Hill, LLC	Prairie Winds Consulting	Yamhill County Farm Bureau
Interfor	Public Lands Council	Yockim Carollo

## WRLC Board of Directors

### OFFICERS

**Tim Bernasek - Chairman**

Oregon Farm Bureau Federation

**Dustin Van Liew - Vice-Chairman/Treasurer**

International Association of Geophysical  
Contractors/ 3D Ranch

### BOARD MEMBERS

**Dave Baker**

Former Ash Grove Cement VP

**Mark Dunn**

Simplot

**Frank Erisman**

Schwabe, Williamson & Wyatt

**Jim Huffman**

Lewis & Clark Law School (Emeritus)

**Tom Insko**

Eastern Oregon University

**Betsy Johnson**

Oregon State Senator

**Valerie Johnson**

DR Johnson Lumber Company

**Nikki Martin**

International Association of Geophysical  
Contractors

**Roger Nicholson**

Nicholson Ranches

**Patrick Ryan**

Perkins Coie, LLC

**Bob Skinner**

Skinner Ranches

**Sean Smith**

Starfire Lumber Company

**Rick Sohn**

Umpqua Coquille LLC

**Doug Whitsett**

Oregon State Senator

**Steve Wildish**

Wildish Land Company

## Get Involved

Given the current economic environment of natural resource based industries WRLC needs your help now more than ever. You can help WRLC in its mission to help natural resource users while training the extraordinary legal minds of future lawyers, judges, educators and politicians.

### • Make a financial contribution to WRLC

Your tax deductible donation is essential to the continuation of this important work.

### • Tell a friend about WRLC's important work.

If you know someone who works in a natural resource field or whose livelihood (which is most of us) depends on natural resources, encourage them to become involved with WRLC.

### • Send our newsletter far and wide.

Tell people about our website [www.wrlegal.org](http://www.wrlegal.org) or send them a copy.

### • Invite WRLC to speak at your meeting.

Let us come and tell your group about our message. Contact us at 503.222.0628.

### • Welcome a WRLC student to intern with your organization's legal department.

### • Tell us about your potential case or legal issue.

## Do You Need WRLC's Help?

WRLC seeks cases and issues that allow students to build practical skills and learn environmental and/or natural resources law while advocating for natural resource entities. If you have a potential case or issue please go to our website [www.wrlegal.org](http://www.wrlegal.org) and download a "Request for Legal Services Form" and submit it to us today!