

# Western Resources Legal Center

PROVIDING HANDS-ON LEGAL TRAINING FOR THE NEXT GENERATION OF LEGAL PROFESSIONALS  
AND ADVOCATES FOR NATURAL RESOURCE INDUSTRY USERS

2020 Newsletter

## Year in Review: Executive Director Update

by *Caroline Lobdell*



WRLC enjoyed success upon success this past year in so many aspects of our program. With a fully staffed center of three attorneys and a program manager, WRLC is hitting it out of the park for our students and clients.

The WRLC practicum had record enrollment with a waitlist in 2019. Our expanded field placements program has our students interning and externing in high profile positions from Washington DC to San Francisco, and from Texas to Alaska. Following graduation, our students are landing great jobs where they will serve as our nation's attorneys, judges, policymakers, and advocates in the years to come. WRLC students are working in private law firms and clerking in courts around the country—using their training and knowledge to understand and advocate for a wide variety of natural resource users and rural communities.

In addition to our ongoing educational programs and research, WRLC obtained major victories in the courtroom this past year. At the Ninth Circuit Court of Appeals, WRLC secured a decision rejecting the argument that the State of Washington or federal government adequately represents the interests of farmers and ranchers in the nonpoint source pollution regulatory arena, precluding their intervention in a Clean Water Act case. Also at the Ninth Circuit, WRLC's successful advocacy allowed the Lostine

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- Case Updates: Lostine Corridor Safety Timber Project; Sage Grouse Plan Amendments; Sheep Grazing in Mountain States; Wild Horse Population; Spalding's Catchfly, Washington State Intervention
- Planning for WRLC's Future
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Public Safety Project to move forward. Finally, a California federal district court rejected a Clean Water Act challenge to livestock grazing in the Stanislaus National Forest. These cases are complex and often take years, making these wins especially rewarding.

We continue to build our WRLC-facilitated externship and placement opportunities, in addition to offering students direct opportunities to work on targeted litigation and research toward smarter natural resources-focused policy. WRLC remains the educational model for law schools to offer a balanced and reasoned view of policy and legal issues facing natural resource-dependent businesses and rural communities.

WRLC would not be where it is today without an incredibly supportive and committed Board of Directors. I would like to welcome new Board members Rob Freres, Jane O'Keeffe, and Evan Zimmerman.

Finally, on behalf of WRLC and our Board, I want to thank the many stakeholders who joined us in September for our strategy session to explore what is up next for our program.

I look forward to another wonderful year.

## WRLC Welcomes New Board Members



**Rob Freres** is president of Freres Lumber Co., president of Freres Timber, Inc., partner in Evergreen Biopower LLC, and board member of the Freres Foundation. He worked his way up through the family

business and is a lifelong advocate of the wood products industry and rural America.



**Jane O'Keeffe** is a partner in O'Keeffe Ranch in Adel, Oregon and a partner in Campbell Crossing Ranch in Kimberly, Oregon. She is a graduate of Oregon State

University's agricultural and research economics program and holds a master's degree in fine arts in creative writing from Antioch University. From 1995-2002, O'Keeffe was a Lake County commissioner. In recognition of her service, she was named an Oregon Woman of Achievement in 2012.



**Evan Zimmerman** serves as the executive director of the Offshore Operators Committee, representing more than 40 operating companies and more than 50 critical service companies with ongoing

activities on the U.S. Outer Continental Shelf, now including offshore renewable energy. Zimmerman has been granted four patents for offshore technology. He also has had a small ranch with longhorn cattle.

## Harpole Attorney Award

Pictured are 2019 winners Nancy Murray '90 (attorney) and WRLC student, Cole Killion '20 (scholarship).



In celebration of the life of Joyce Ann Harpole, the Harpole Attorney Award recognizes lawyers who work quietly in pursuit of justice while maintaining a sense of balance between their legal career and their personal life that distinguishes them within the legal community.

## Legal Highlights: Case Updates

WRLC takes on cases pertaining to a wide variety of issues affecting natural resource industries, from endangered species to water quality, and advises on natural resources policy and legislation.

As our case load has grown and we have too many open cases to include here, this newsletter provides updates on cases that highlight the range and scope of WRLC's advocacy on behalf of natural resources users.

### Groups Continue to Oppose Sheep Grazing in Mountain States, Including Colorado, Idaho

WRLC has intervened in two noteworthy cases involving challenges to sheep grazing on federal lands.

The first case involves a challenge by Western Watersheds Project (WWP) to the domestic sheep grazing research program at the U.S. Sheep Experiment Station, located near Dubois, Idaho. WWP has brought several lawsuits since 2012 challenging various aspects of the Station's operation, including claims of potential adverse impacts of domestic sheep interactions with wildlife including bighorn sheep, grizzly bears, and greater sage-grouse. *WWP v. U.S. Sheep Experiment Station*, 1:19-cv-65 (D. Idaho).

The Station is operated by the Agricultural Research Service and has operated as a research facility for over 100 years, focusing on improving production efficiency and sustainability of rangeland ecosystems for domestic sheep grazing. In addition to its main 28,000-acre facility, the Station also holds about 16,000 acres in the Centennial Mountains and utilizes various other federally managed rangelands in the Caribou-Targhee National Forest and elsewhere.

WRLC is representing the American Sheep Industry Association and we are optimistic that essential research and grazing will continue at the Station.

The second case involves a challenge to a privately held domestic sheep grazing permit in the Rio Grande National Forest in Colorado. *WildEarth Guardians v. U.S. Forest Service*, 1:19-cv-208 (D. Colo.). The lawsuit cites similar concerns over risk of transmission of a respiratory pathogen from domestic to bighorn sheep.

WRLC represents the permittees in the case and believes the Forest Service undertook an adequate environmental analysis of potential

## Legal Highlights (cont...)

interactions.

Both cases will continue to develop in 2020.

### **Ninth Circuit Upholds Lostine Corridor Public Safety Timber Project**

In December, WRLC traveled to Seattle, WA to represent Wallowa County at oral argument in the Ninth Circuit Court of Appeals on the overall legal validity of the Lostine Corridor Safety Project. WRLC implored the Ninth Circuit to recognize the need for public safety by reducing hazardous fuels and disease in the Corridor, which is located directly adjacent to the community of Lostine and lies within the wildland-urban interface between domestic livestock and wildlife.

The purpose of the Project is to reduce hazard and danger trees and fuel loads along the Corridor and increase safety for the residents of Lostine and the thousands of yearly visitors to the Wallowa-Whitman National Forest and Eagle Cap Wilderness.

In January, the Ninth Circuit unanimously upheld the District Court's decision allowing the Lostine Project to proceed under a categorical exclusion for areas at extreme risk for insect and disease infestations. WRLC's advocacy on behalf of Wallowa County helped convince the Ninth Circuit of the importance and sound reasoning supporting the Project. *Greater Hells Canyon Council v. Stein*, 18-35742 (9th Cir.).

Plaintiffs left no stone unturned in their attempt to shut the project down or reduce it into obscurity, including filing a last minute emergency preliminary injunction, which was rejected by the Ninth Circuit.

In light of this ruling, we are hopeful the Project will proceed quickly and help preserve the health, safety, environment, and economy for Wallowa County.

### **Wild Horse Overpopulation Persists in Devils Garden Wild Horse Territory**

The latest estimates indicate at least 4,000 wild horses occupy the Devils Garden Wild Horse Territory in northern California, despite an upper limit of 402 set for the Territory.

Considering the overwhelming overpopulation of wild horses, the agencies responsible for managing the Territory have moved at a glacial pace. As a result, range conditions have declined precipitously, and wild

horses and other wildlife regularly suffer from a lack of available resources.

Livestock grazing permittees have also been precluded from turning out or reduced to less than 50% of their allocated use for several seasons now, and the Forest Service needs to take action.

Since 2014, WRLC has intervened in two lawsuits filed by wild horse preservation groups and filed its own case on behalf of local ranchers imploring the Forest Service to address the Modoc wild horse population issues as required by law. *Devils Garden Preservation Group, et al. v. U.S. Forest Service*, 2:17-cv-2185-MCE-KJN (E.D. Cal.).

### **Oregon District Court Dismisses Lawsuit Challenging Livestock Grazing in Hells Canyon**

In July 2019, District Court Judge Michael Simon issued a final decision upholding the Forest Service's authorization of grazing on four allotments along the Imnaha and Snake River corridor in the Hells Canyon National Recreation Area (HCNRA). *Greater Hells Canyon Council v. U.S. Forest Service*, 2:18-cv-00054-SU (D. Or.). WRLC represented Wallowa County and McClaran Ranch, which has wintered livestock in the area since the 1920s.

Greater Hells Canyon Council filed suit in January 2018 seeking to enjoin grazing in the HCNRA, citing concerns over potential damage to the Spalding's catchfly, despite the Forest Service's determination that impacts would be minimal and the adoption of mitigation measures, including plant surveys and exclosure fencing. Spalding's catchfly is a rhizomatous perennial flowering plant that is listed as "threatened" under the Endangered Species Act. The plant, which may lie dormant for one or more consecutive years and can be difficult to locate, is prevalent on private and federally owned lands in Wallowa County and in adjacent areas in Washington, Oregon, Idaho, and Montana.

After briefing and a hearing on the merits, Magistrate Judge Patricia Sullivan found that the Forest Service adequately evaluated the long-term viability and recovery prospects for the Spalding's catchfly in the area.

McClaran Ranch was recognized in Magistrate Judge Sullivan's opinion as land and cultural stewards with an exemplary record of grazing management. Plaintiffs did not appeal the ruling.

## Legal Highlights (cont...)

### **Ninth Circuit Rejects Argument that State of Washington Represents Interests of Farmers and Ranchers Regarding Nonpoint Source Pollution**

In a big win for the Washington Farm Bureau Federation (WFB) and the Washington Cattlemen's Association (WCA), the Ninth Circuit Court of Appeals found that WFB and WCA had the right to intervene in a lawsuit brought by environmental group Northwest Environmental Advocates (NEA) involving nonpoint source pollution in Washington state. *Nw. Envtl. Advocates v. U.S. Dept. of Commerce, et al.*, 2:16-cv-01866 (W.D. Wash.).

The lawsuit challenged federal regulators' approval and funding of nonpoint source pollution plans under the Clean Water Act (CWA) and Coastal Zone Management Act (CZMA). A primary contention by NEA was that federal grants for nonpoint source infrastructure projects under the CWA and CZMA must be halted, and previously spent money should be returned. Washington farmers and ranchers have directly benefited from these grants in a variety of ways. In NEA's view, no funding should have been approved because the nonpoint source management plan for the coast was only conditionally approved, while the statewide plan was not stringent enough.

Remarkably, the District Court denied WFB and WCA's motion to intervene – despite plaintiff's claim that farmers and ranchers are the biggest source of nonpoint source pollution in the

state and that the management practices governing farm and ranch practices in Washington's plans were not adequate to control nonpoint pollution.

The Ninth Circuit reversed the District Court decision, finding that WFB and WCA had a significant interest in the case due to the potential loss of funding and imposition of more burdensome requirements on farm and ranch operations: "Because the constituents of WFB and WCA are the intended beneficiaries of the grant program and bear the burdens of any additional management requirements imposed on their operations, they have an immediate existing interest in the subject of the controversy."

The Ninth Circuit also held that the District Court erred in concluding that the State of Washington (through the Department of Ecology) represents the same interests as WFB and WCA because of the state's focus on achieving the "highest possible standards" for water purity" regardless of economic feasibility. Thus, WFB and WCA had a "specialized expertise" in on-the-ground pollution control measures not shared by the State of Washington.

This decision on intervention shows how difficult and important it can be to ensure the interests of industry stakeholders are represented in litigation. Remarkably, the Justice Department had opposed WFB and WCA's intervention in the case. This decision allows WRLC to represent the interests of WFB and WCA in potential settlement discussions that will impact farmers and ranchers moving forward.



## **Planning for WRLC's Future**

On September 12, 2019, nearly 80 stakeholders from all over the country joined WRLC for a half-day strategic planning session. The session began with a look back at how WRLC started and then reviewed the successes of our educational mission. There was a spirited discussion about what the future of WRLC could (and should) hold, what our next goals should be, and how they can be attained. Armed with many ideas, the WRLC Honorary Council is preparing a strategic plan and action items to present to the Board of Directors in 2020. WRLC remains grateful to our stakeholders, volunteers, students and alumni for your incredible commitment and passion for this program.

## WRLC Program Rising Stars

2019-2020

*Below is a sampling of what recent WRLC students, alumni, and supporters of WRLC's programs have been up to this past year.*

### Graduate Highlights



**Zac Goldberg-Johns** ('18) is clerking for Judge Robert E. Jones of the U.S. District Court, District of Oregon.

**Keenan Ordon-Bakalian** ('19) joined Portland-based Jordan Ramis PC as an associate attorney following his clerkship last year. Jordan Ramis PC focuses on agriculture and business law.



**John Richards** ('18) joined the Idaho Governor's Office of Species Conservation as Associate Legal Counsel. He previously worked with Agri Beef and is a former WRLC scholarship recipient.

**Brigit Rollins** ('19) clerked with Somach Simmons & Dunn. Following graduation, Brigit joined the National Agricultural Law Center as a full-time staff attorney following a research fellowship with the center.



**Nicholas Sanchez** ('18) will be clerking for Chief Judge James C. Egan with the Oregon Court of Appeals in Summer 2020. He is a deputy district attorney in Jackson County.

**Caitlin Skulan** ('19) clerked with Schwabe, Williamson & Wyatt and then worked at the Washington State Department of Ecology. She now serves as an associate attorney with Schroeder Law Offices in Reno, Nevada.



### Student Highlights



**Amanda Biediger** (2L) has an externship with the National Agricultural Law Center focusing on food law and policy.

**Conor Butkus** (3L) had a Ninth Circuit Court of Appeals field placement last summer and will spend next year clerking for Judge Rich Melnick on the Washington Court of Appeals.

**Cole Killion** (3L) clerked with Baker Botts LLP, focusing on issues pertaining to oil and gas. He recently conducted academic research on the most recent Ninth Circuit Court of Appeals mining decision, *Bohmker v. Oregon*, 903 F.3d 1029 (9th Cir. 2018) and helped draft a Petition for Certiorari on a related Oregon placer mining case.



**Jesse Miles** (2L) has a summer externship with Occidental Petroleum in Houston, Texas. He also has a post-graduate placement with the Washington State Court of Appeals.

**Nolan Smith** (2L) has a field placement with Vial Fotheringham in Lake Oswego, and will be clerking this summer with Yockim Carollo in Roseburg, Oregon.



**Reed West** (3L) spent last summer as a legal intern at U.S. Congressman Greg Walden's Washington D.C. office.

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## Get Involved

Given the current economic climate for natural resource industries, WRLC needs your help now more than ever. You can aid WRLC's mission to help natural resource users while training extraordinary legal minds of future lawyers, judges, educators, and politicians.

**Make a financial contribution.**

**Tell us about your potential case or legal issue.**

**Welcome a WRLC student to intern in your organization's legal department.**

**Invite WRLC student to speak at your meeting.**

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## 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 resources 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!