

# Western Resources Legal Center

2007 – 2018

CELEBRATING 10 YEARS OF PROVIDING HANDS-ON LEGAL TRAINING  
FOR THE NEXT GENERATION OF LEGAL PROFESSIONALS AND ADVOCATES  
FOR NATURAL RESOURCE INDUSTRY USERS

2018 Newsletter

## Year in Review: Message from the Executive Director

by *Caroline Lobdell*



The close of 2017 marks the completion of our 10th year of partnership with Lewis & Clark Law School, as well as our first year on campus. First, allow me to offer my deepest appreciation to all our supporters over the last decade! Due to your leadership and support, the Western Resources Legal Center has provided a home for over 100 students

to develop the skills necessary to represent natural resource businesses. We have also helped countless more find internships, externships, and jobs in resource industries, government, and elsewhere.

Thank you also to our students, who continue to seek access to our program and, once they finish, represent us and you out in the real world. Being on campus has been incredible, and it has increased WRLC's ability to interact with students in-person on a daily basis.

Finally, to our departing Chairman Tim Bernasek, and departing Board members Steve Wildish, Roger Nicholson, and Frank Erisman: thank you all for your extremely generous support and sage guidance in building our program over the years. A special thank you to my friend Steve, who stepped down from the Board in order to chair WRLC's new Honorary Council. The Council will provide an opportunity for resource users and attorneys in the community to strategize on common issues and engage in improving educational opportunities for law students in the natural resource fields. We hope that anyone interested in participating will contact us. Joining Steve on the Council will be Jeff Mendes (Ash Grove Cement) and Cameron Krauss (Seneca Sawmill Co.).

In the next year, there is lots to look forward to. While the voices of resource users are starting to be heard—and numerous favorable resource management decisions are announced—we as a community must remain diligent and work together on common issues. If there are better ways to engage in conservation and sustainable practices, now is our opportunity to help shape the conversation. We must also ensure our voices continue to be heard as regulatory decisions that benefit resource users are challenged in the courts.

Over the next decade, WRLC aspires to maintain its high post-graduation employment rates, high class enrollment, and full caseload—while continuing to build relationships with natural resource users large and small. In the last year, we have proudly developed new contacts with several industries, including sheep (American Sheep Industry Association), oil and gas (Occidental Petroleum), and mining (American Exploration & Mining Association). It is our enduring mission to continue to build those relationships and protect the rights of resource users by advocating for reasonable regulation of resource use—on issues ranging from property rights to endangered species, water quality, and use of our public lands and forests—while also teaching law students about these complicated issues.

## WRLC Welcomes New Legal Director



WRLC is proud to welcome **Shay S. Scott** as its first Legal Director. Shay received his J.D. from the University of Oregon in 1993 and spent 24 years in private practice with Haglund Kelley LLP in Portland, Oregon. Shay brings extensive litigation and transactional experience to WRLC's team, and he will help WRLC continue to grow its legal portfolio both in the courtroom and classroom.

# Board of Directors Update

*WRLC welcomes two new members to our Board:*



**Katie Jeremiah** is an Of Counsel attorney at the law firm of Jordan Ramis PC in Lake Oswego, Oregon, where she works on matters involving construction and mining law. Katie is returning to our Board after some time away and will be serving as Vice Chair. Katie continues to be involved in her family's resource development and construction business, Aggregate Resource Industries, Inc., an Oregon-based company with operations throughout the West. Raised in a logging and construction family, Katie has focused her education and career in the area of construction, holding a B.S. from Oregon State University in construction engineering management and a J.D. from Lewis & Clark Law School, with dual certificates in environmental law and business law. Prior to law school, Katie worked as a project engineer/project manager for DPR Construction, Inc.



**Myles Culhane** is Assistant General Counsel for Occidental Petroleum Corporation, in Houston, Texas. Myles has supervised a paid externship for one of WRLC's students and has previously served on our attorney advisory committee. Myles has more than 27 years of experience in the environmental, safety, health and land use fields, including 15 years of experience working as a chemical engineer for companies in the refining, energy and industrial markets. Myles began his legal career as an attorney with Paul Hastings' Energy Practice in San Francisco, where he worked on air quality, toxic waste, and remediation matters. In 2011 he joined Occidental, focusing on legal and policy issues relevant to upstream oil and gas operations. These range from securing water access for development of land in the arid southwest to dealing with endangered species, air quality, and water quality issues.

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## WRLC Case/Issue Highlights

### **Wildfire and Public Safety Under HFRA: *Hells Canyon Preservation Council v. U.S. Forest Service* (D. Or.), #2:17-cv-843.**

Hells Canyon Preservation Council and Oregon Wild sued the Forest Service to halt a public safety project on federal forestland in northeastern Oregon, which was designed to reduce the risk of catastrophic fire to the community of Lostine. WRLC represents Wallowa County as an intervenor in the case to make the court aware of what is at stake if plaintiffs halt the wildfire risk reduction efforts. The Lostine Corridor, a narrow 11-mile road, presents a particularly high risk because high-density fuels and insect-infested trees could funnel fire directly toward Lostine and easily trap residents and others along the road. Projects like these are essential not just for rural communities like Lostine in the wildland-urban interface—but also to semi-urban and urban ones as well, as wildfire incidence has increased substantially over the past decade. One in three U.S. homes—44 million residences—are located in the wildland-urban interface area where they abut fire-prone forests and open space. WRLC is defending the provisions of the Healthy Forests Restoration Act that provide for more prompt action to combat insect infestation and reduce high-risk fuels by using a categorical exclusion instead of an Environmental Impact Statement.

### **Intervention Standard Under Fed. R. Civ. P. 24(a): *Town of Chester v. Laroe Estates* (U.S. Supreme Court), #16-605.**

Last year, the U.S. Supreme Court granted *certiorari* in this case to address whether a party moving to intervene “as of right” under Fed. R. Civ. P. 24(a) in ongoing litigation must demonstrate Article III standing. This issue has vast implications for lawsuits involving environmental, public lands, NEPA, and other issues affecting resource users. Intervenors in these cases are most commonly industry or small businesses that rely on accessing the disputed natural resources for their livelihoods. WRLC's brief, filed on behalf of various industry groups—including timber, farming, public lands, and oil and gas—argued that even if a party moving to intervene as a plaintiff must demonstrate standing, it is inappropriate for a party intervening as a defendant *to support an agency regulation or project decision* to be held to that same standard. Otherwise, resource users with economic interests, which courts have held do not alone provide standing under environmental laws, would be prevented from representing their interests and, importantly, from appealing an adverse decision where the government declines to do so. The Court released its opinion in June 2017, holding that intervenors must demonstrate standing where they seek relief different from that requested by plaintiffs.

*Continued on Page 3.*

***“Intervention Standard,” Continued from Page 2.***

As intervention is a critical tool for industry to participate in lawsuits filed by environmental groups, WRLC has sought to build a coalition of resource users to share its perspective on intervention. A related issue of concern to WRLC is whether resource-user intervenors have the right to appeal administrative remand orders where an agency, who has lost in court, chooses not to. Because remand orders can have the same practical finality as a permanent injunction—e.g., forcing an agency to halt a project and prepare an Environmental Impact Statement—if resource users are barred from appeal, they are cut out of the judicial review process. See *Petition for Writ of Cert., Scott Timber Co. v. Oregon Wild*, #17-881.

***Wild Horse Management: Devils Garden Preservation Group v. U.S. Forest Service (E.D. Cal.), #2:17-cv-2185.***

Reallocation of forage from domestic livestock grazing to exploding wild horse populations on federal lands has resulted from decades of inaction by the Forest Service to gather wild horses and from litigation by environmental groups. In the Modoc National Forest, wild horses now number nearly 700% of the appropriate management level, leaving over 2,800 wild horses in an area fit for 402. Yet the Forest Service has refused to manage horses there according to its plan because of litigation delays and its fear to conduct horse gathers. This lawsuit, brought by WRLC on behalf of ranchers and landowners in northern California’s Modoc County, asks the Forest Service to start managing the wild horse population according to its plan, as required by law.

***Clean Air Act Exceptional Events Rule: Natural Resources Def. Council v. EPA (D.C. Cir.), #16-1413.***

The Natural Resources Defense Council (“NRDC”) and Sierra Club challenged the EPA’s 2016 revisions to the so-called “Exceptional Events Rule,” under which natural events causing exceedances of air quality rules are disregarded by EPA. In the lawsuit before the D.C. Circuit Court of Appeals, NRDC and Sierra Club attacked prescribed burning, which is used by many resource industries and by governments for reasons including reducing the risk of catastrophic wildfires and managing landscapes to achieve desired conditions for agricultural or wildlife purposes. WRLC submitted an amicus brief on behalf of agricultural and ranching interests arguing that appellants’ opposition to the revisions is short-sighted and ignores the environmental benefits and low cost of prescribed burning. The challenge also ignores that prescribed burns are governed by a different portion of the rule, not the “natural events” clause. We await a final decision from the court in 2018.

***Stanislaus Grazing: Cent. Sierra Envtl. Res. Ctr. v. Stanislaus Nat’l Forest (E.D. Cal.), #1-17-cv-441.***

Plaintiffs challenge grazing authorizations on allotments in the Stanislaus National Forest in northern California, just outside Yosemite National Park. Plaintiffs argue grazing violates numerous statutes, including the 1995 Rescissions Act (which set a schedule for assessing environmental impacts of grazing under NEPA), California’s Porter-Cologne Act, the Clean Water Act, the forest plan, and the Endangered Species Act (“ESA”) due to the presence of the Yosemite toad and the Sierra Nevada yellow-legged frog, two species listed as “threatened” under the ESA. WRLC and the Forest Service moved to dismiss most of the claims. WRLC argued that the ESA claim should be dismissed and that the Forest Service and permittees do not need to obtain a state permit on federal land to comply with the Clean Water Act. In response to the motions, plaintiffs voluntarily withdrew their ESA claim and the Court is considering the motions to dismiss the other claims.

***U.S. Sheep Experiment Station: W. Watersheds Project v. U.S. Forest Service (D. Idaho), #1:17-cv-434.***

Plaintiffs in this case sought an emergency injunction to prevent sheep grazing at the U.S. Sheep Experiment Station near Dubois, Idaho, over concerns of disease transmission between domestic and wild sheep. The one-of-a-kind research station is funded in part by matched dollars from industry group American Sheep Industry Association—on whose behalf WRLC intervened in the case. The Station conducts instrumental research on issues of range management, breeding, reproduction, and wild/domestic sheep interaction. Despite no proven links regarding transmission of disease from domestic to wild sheep at the Station, the Court granted the injunction for the coming grazing season, disrupting ongoing research and years of work and investments. This case may have impacts for all livestock grazing on public lands, as disease transmission between domestic and wild animals has become a focal point for environmental groups who wish to undercut grazing on federal lands. The case will proceed to the merits this coming year.

***Injunction Standard: Cascadia Wildlands v. Scott Timber (9th Cir.), 2017 WL 5493908.***

WRLC assisted Scott Timber and WRLC alumnus Dominic Carollo in an appeal of an injunction of timber harvest because of the marbled murrelet. Scott Timber argued the district court incorrectly applied the injunction standard by failing to require plaintiffs to demonstrate they would be irreparably harmed. WRLC students helped prepare for, and attended, oral argument. The Ninth Circuit ruled in favor of Scott Timber and reversed the district court. Congratulations to Scott Timber and Dominic Carollo.

## WRLC Corporate Sponsors

Board commitment to WRLC's mission is demonstrated by 100% Board contribution.

Aggregate Resource Industries	Idaho Farm Bureau Federation	Rizzo Mattingly Bosworth PC
Allen & Gibbons Logging	Interfor	Rockin Four Ranch
American Farm Bureau	International Association of	Rogers Cattle
American Forest Resource Council	Geophysical Contractors	Rosboro
Antelope Springs Ranch	Ireland Trucking	Roseburg Forest Products
Arizona Cattle Growers' Association	Iron Triangle	The Samuel S. Johnson Foundation
Ash Grove	J Bar B Cattle Company	Schwabe Williamson & Wyatt
Asotin County CattleWomen	Jackson County Farm Bureau	SDS Lumber
Baker County Livestock	Jer-Osa Organic Dairy	Seneca Jones Timber Company
Boise Cascade	Josephine County Farm Bureau	Sierra Pacific Industries
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California Cattlemen's Association	Justesen Brothers	Simplot
California Farm Bureau	Klamath-Lake County Farm Bureau	Skinner Ranches
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Douglas County Forest Products	McDonald Lucchesi Cattle	Tyree Oil
Douglas Timber Operators	Mountain Western Log Scaling	Umatilla-Morrow County Farm Bureau
Dunn Carney LLP	MSBT Law	Union County Farm Bureau
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F Ranch	National Cattlemen's Beef Association	Wasco County Farm Bureau
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Freres Foundation	O'Leary Ranch	Washington County Farm Bureau
Gila County Cattle Growers	Oregon Cattlemen's Association	Washington Farm Bureau
Giustina Land & Timber	Oregon Community Foundation	West Coast Resources
Giustina Resources	Oregon Farm Bureau	Wildish Land Company
Haglund Kelley LLP	Oregonians For Food & Shelter	Windsor Rock Products
Halliburton	Outlaw Industrial	Withers Ranch
Harney County Farm Bureau	Prairie Wind Consulting	Wyoming Stock Growers Association
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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.**
- **Invite WRLC student to speak at your meeting.**
- **Tell us about your potential case or legal issue.**
- **Send our newsletter far and wide.**
- **Welcome a WRLC student to intern in your organization's legal department.**
- **Tell a friend about WRLC.**

## 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!

# WRLC Program Rising Stars 2017-2018

## Graduate Highlights



**Bryn Blomberg ('16)** is now a staff attorney with WRLC after serving as our legal fellow for the last year, as well as participating in nearly every program WRLC offers during his time at Lewis & Clark.

**Chris Griffith ('15)** joined Haglund Kelley LLP, where he focuses on natural resources and business litigation. Chris formerly worked for Yockim Carollo LLP in Roseburg, OR.

**Rick Grisel ('14)** joined the Idaho Attorney General's Office, where he is a Deputy Attorney General in the Natural Resources Division. Rick formerly worked as an environmental law specialist for the Oregon Department of Environmental Quality.



**Andrew T. King ('14)** joined Foster Pepper as an associate in their Seattle, WA office. Andy focuses his practice on natural resources, environmental, and land use issues.

**Lauren Maccarone ('15)** joined Coughlin Duffy LLP in Morristown, NJ. Lauren previously held her own estate planning and family law practice in Baton Rouge, LA.



**Olivia Schneider Grabacki ('17)** joined Miller Nash Graham & Dunn's general business practice team in Portland, OR. Olivia focuses her practice on tax, natural resources, and energy law.

**Matt Query ('17)** joined Yockim Carollo LLP in Roseburg, OR. Matt's practice focuses on natural resources law.

**Jonathan Quinsey ('16)** is now working for the Arizona Department of Environmental Quality in Phoenix, AZ.

## Student Highlights

**Samantha Bayer (3L)** will be working as a legislative intern for the Oregon Farm Bureau this spring in Salem, OR.

**Tyler Eastman (3L)** recently accepted an honors attorney position with the U.S. Department of Justice in their Washington, D.C. office, which will begin upon graduation. Tyler recently completed an externship with the Oregon Farm Bureau.

**Katie Gargan (2L)** will be working this summer as a law clerk for Dorsay & Easton LLP, which specializes in Indian law.

**Zachary Goldberg-Johns (2L)** is a law clerk for Multnomah County Circuit Court Judge Jerome LaBarre in Portland.

**Rachel Perry (2L)** will be working as an extern this spring for The Honorable Judge Michael H. Simon, of the U.S. District Court for the District of Oregon.

**John Richards (3L)** will be working as WRLC's law clerk this spring. John has previously worked as an energy policy analyst for the Idaho Governor's Office of Energy and Mineral Resources, participated in a WRLC-facilitated externship with MSBT Law in his native Boise, ID and focused his studies on public lands issues affecting livestock.

**Brigit Rollins (2L)** will be working over the summer as an extern with the California Farm Bureau. Brigit has also accepted a position as a research assistant at the National Agricultural Law Center at the University of Arkansas in Fayetteville, AR.

**Caitlin Skulan (2L)** completed an externship with the Washington Farm Bureau last summer, and was able to secure a spring externship with the Department of Energy. Caitlin also recently accepted a summer clerk position with Schwabe, Williamson & Wyatt in their Washington natural resources practice group.

**William Stinman (3L)** is an extern for Smith Freed Eberhard in their Portland office.