

Western Resources Legal Center

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

2019 Newsletter

Year in Review: Executive Director Update

by Caroline Lobdell



I am pleased to report on a busy and productive year. Record enrollment and a packed legal calendar meant we were able to involve staff and students in a wide variety of important issues facing resource users in 2018 and beyond.

As Executive Director for WRLC, I continue to seek to shape the conversation on issues common to all resource industries and to expand access to educational opportunities available for law students interested in natural resources and environmental law.

WRLC continues to offer exceptional and unique practical skills education and to expand opportunities for students through development of externships with industry groups, businesses, law firms, and other WRLC supporters. Our students have had some amazing opportunities over the last year, and we thank all our partners who have provided such valuable mentoring for WRLC students. I am also proud to announce a new partnership with the agriculture and food law focused National Agricultural Law Center in Arkansas, to begin this year.

On the legal front, WRLC's efforts in 2018 included advising on the new sage grouse resource management plan amendments; reviewing new ...

[cont. on Page 2]

ALSO IN THIS ISSUE:

- WRLC Welcomes Board Member Mary Anne Cooper
- Student Profile: Samantha Bayer
- Case Updates: Lostine Public Safety Project; Modoc Wild Horses; Streaked-Horned Lark 4(d) Rule; and FLPMA Administrative Withdrawal Authority
- WRLC Student/Alumni Highlights
- Partnership: National Agricultural Law Center

New Staff Attorney: Tate Justesen



In March, Tate Justesen will join WRLC as a staff attorney and associate development director.

Tate was born and raised in rural Oregon: he has deep roots in agriculture and an appreciation for the value of natural resources, having grown up on a wheat and cattle ranch. Tate received his undergraduate degree from Oregon State University, then, after a stint working on the family ranch, attended Lewis & Clark Law School, where he earned a certificate in Natural Resources/Environmental Law and was one of WRLC's first law clerks.

He has practiced civil litigation for ten years, while maintaining a connection with Lewis & Clark Law School through activities such as the student mentorship program, guest lectures, and judging for mock trials.

Tate is excited to be a part of the WRLC team. He looks forward to enhancing students' legal knowledge and practical understanding of natural resources use.

[cont. from Pg. 1, *Executive Director Update*]

forest plans issued under the Forest Service's new Planning Rule; advocating for grazing and other interests harmed by the wild horses' continuing population explosion; drafting a brief on behalf of a coalition of mining groups supporting a petition for writ of certiorari to the Supreme Court in a case interpreting the authority to "withdraw" lands from mining under the Federal Land Management and Policy Act; and intervening on behalf of agricultural interests to oppose a case seeking to invalidate a 4(d) rule for the streaked horned lark, which exempts standard farming practices from the Endangered Species Act's take provisions.

I would also like to take this opportunity to recognize departing Board members Tim Bernasek, Bob Skinner, Rick Sohn, and Doug Whitsett, who will serve on WRLC's Honorary Council and continue to guide our efforts. To all of you, thank you so much for your support.

Finally, I would also like to welcome new Board member Mary Anne Cooper, of the Oregon Farm Bureau, and Tate Justesen, WRLC's newest staff attorney.

I look forward to another incredible year.

WRLC Welcomes Board Member: Mary Anne Cooper



WRLC offers a warm welcome to Mary Anne Cooper as the newest member of our Board of Directors. Mary Anne is Public Policy Counsel and Director of Regulatory Affairs at Oregon Farm Bureau (OFB).

In addition to representing OFB on legal issues, Mary Anne works with state and federal agencies on water quality, water supply, removal-fill, Endangered Species Act, NEPA, Clean Water Act, floodplain regulation, land use, land acquisition, and other natural resources issues.

Mary Anne came to OFB from private practice in Portland, where she represented farmers and small businesses on a wide variety of environmental issues. Mary Anne is past chair of the executive committee of the Agricultural Law Section of the Oregon State Bar and served on the board of the E.R. Jackman Foundation for Oregon State University.

Mary Anne is a long-time supporter of WRLC, and has served on our attorney advisory committee, supervised externships, and sent cases to WRLC.

Student Profile: Samantha Bayer



After graduating from Lewis & Clark Law School in 2018, Samantha joined the Oregon Farm Bureau (OFB) in its legislative affairs office. As Associate Policy Counsel, she represents the interests of Oregon's agricultural community by lobbying in the State Capitol on natural resource issues and in litigation and regulatory matters. At OFB, she has had opportunities to help craft legislation, comment on regulations that impact Oregon agriculture, and draft legal briefs on behalf of the organization and its members.

Prior to accepting a full-time position, Samantha was placed with OFB for a summer externship through WRLC, where she had the unique opportunity to shadow the OFB government affairs team during the 2018 legislative session. Samantha says she found that experience invaluable: "It gave me exposure to the law from its impetus to its implementation, which in turn has given me a broader skill set to assist my clients."

The WRLC program provided a great way for Samantha to gain essential practical skills representing industry and business.

"WRLC is an amazing program because it gives students who are interested in natural resource law a unique opportunity to represent industry and businesses," said Bayer. "Moreover, it provides students the practical skills and knowledge they need to advocate for whomever their clients may be. Personally, WRLC helped me find my purpose in law school and ultimately enabled me to achieve my goals of representing Oregon's agricultural industry."

"I would recommend the WRLC program to any law student interested in environmental law as it provides a balanced perspective and valuable practical skills," Bayer said.

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.

With too many open cases to include here, this year's newsletter provides updates on a few cases addressing issues that are front-and-center in rural communities—forest health and wildfire, staggering overpopulation of wild horses on public lands, challenges to common-sense endangered species rules, and a case addressing the authority of the Executive branch to withdraw large tracts of federal lands from use for mining or other resources.

Lostine Corridor Public Safety Project Gets Go Ahead

Plaintiffs seeking to thwart the Forest Service's use of categorical exclusions (CEs) under the National Environmental Policy Act (NEPA) to fast-track certain forest health projects are continuing their challenge of the Lostine Public Safety Project to the U.S. Court of Appeals for the Ninth Circuit. *See Greater Hells Canyon Council, et al. v. Stein*, 18-35742 (9th Cir.).

The project was designed to reduce the risk of catastrophic wildfire along the Lostine Corridor, which is the only access to and from the Wallowa-Whitman National Forest and private inholdings in the area. The U.S. District Court of Oregon upheld the project in August 2018. A variety of thinning, hazard tree removal, fuels reduction, and other strategies were authorized by the Forest Service pursuant to the Healthy Forests Restoration Act (HFRA) to treat insect-diseased forests on an expedited basis.

WRLC intervened on behalf of Wallowa County to defend the project, and successfully argued that the Forest Service appropriately utilized a CE created by Congress as part of the 2014 Farm Bill Amendments to forego extensive NEPA analysis.

Plaintiffs have appealed the ruling and have sought an injunction against moving ahead with the project pending appeal to the Ninth Circuit. WRLC continues to advocate for Wallowa County throughout the appeal and injunction proceedings and is hopeful the much-needed safety project will

be able to proceed as designed, improving safety for County residents and long-term forest health.

Congress has reauthorized the authority to use CEs under HFRA to promote healthy forests and reduce the risk of catastrophic wildfire to rural communities. In doing so, Congress sought to strike a balance with the CE authorities—expediting priority forest health projects to ensure public safety. Yet environmental organizations continue to challenge the use of CEs, to the detriment of long-term forest health and the safety of rural communities like Wallowa County.

Like many other cases that WRLC accepts, this case shows why it is imperative for resource-dependent entities to intervene in litigation affecting rural communities. Federal land management decisions often have huge impacts on local communities, resource-dependent business, local citizens, and visitors. WRLC stands ready as a resource for local governments and others with resource interests facing similar legal challenges.

Federal Efforts to Manage Wild Horse Populations Face Challenges

WRLC continues its efforts to address wild horse population issues in the Devils Garden in northern California on the Modoc National Forest, which is one of the most overpopulated wild horse territories in the country.

We are currently working to respond to a pair of lawsuits filed in late 2018 designed to preclude the gather and sale of wild horses without limitations. *See Animal Legal Def. Fund, et al. v. Forest Service*, 3:18-cv-6410 (N.D. Cal.); *Front Range Equine Rescue, et al. v. Forest Service*, 3:18-cv-6531 (N.D. Cal.). WRLC is emphasizing that it is imperative for the agencies that manage wild horses to be permitted to use all of the tools available to address the exploding populations—and the long-term resource damage to our public lands and national forests associated with unmanaged wild horse numbers.

WRLC represents ranchers seeking to compel the Modoc National Forest to gather excess horses in compliance with the forest's wild horse plan. *Devils Garden Preservation Group, et al. v. Forest Service*, 2:17-cv-2185 (E.D. Cal.). That case remains stayed pending appeal of administrative review of the decisions to reduce livestock use by 50% to 100% on allotments where wild horses overconsumed range resources.

Legal Highlights (cont...)

Streaked Horned Lark ESA Case

Representing American Farm Bureau, Oregon Farm Bureau, and Oregon Seed Council, WRLC intervened in a case challenging the Fish & Wildlife Service's decision to list the lark as "threatened" rather than "endangered" and a so-called 4(d) Rule, which exempts certain standard agricultural practices from the Endangered Species Act's Section 9 "take" provisions. *See Ctr. for Biological Diversity v. Zinke*, 3:18-cv-359 (D. Or.).

The lark is endemic to the Willamette Valley in Oregon and a few select areas of the Northwest, and depends on access to open field conditions like airports with mowed grass and maintained agricultural fields.

In light of the current population trajectory of the larks—which is down from historic numbers but currently stabilizing—the Service declined to list the species and sought to encourage those agricultural practices contributing to population stabilization.

Briefing in this case will continue through Spring 2019.

Supreme Court Declined to Review Large-Tract "Withdrawals" of Lands from Mining

On behalf of a coalition of state mining associations, WRLC prepared a brief supporting the American Exploration & Mining Association's petition for writ of certiorari to the Supreme Court, to review whether the Executive branch can withdraw large tracts of lands from resource uses otherwise authorized under the Federal Land Policy and Management Act.

Section 204(c)(1) of the Act provides the Department of the Interior with authority to administratively "withdraw" lands from use for mining or other resource use—subject to a legislative veto provision that was deemed unconstitutional by the U.S. Court of Appeals for the Ninth Circuit.

Despite the effect of the Ninth Circuit's decision—which grants authority to the Secretary of the Interior to administratively withdraw vast tracts of federal lands from use (in this case over 1 million acres of lands from use for mining in Arizona) and arguably violates the Mining Law of 1872—the Supreme Court ultimately declined to grant the petition. *See Nat'l Mining Ass'n v. Zinke*, 17-1286 & 1290.



WRLC Partners with National Agricultural Law Center

Partnership with NALC Provides New Opportunities for Lewis & Clark Law Students Interested in Food Law and Agricultural Law

WRLC is excited to announce its new partnership with the National Agricultural Law Center (NALC), in Fayetteville, Arkansas. The NALC focuses on national agricultural law, with a burgeoning focus on food law, and is a unit of the University of Arkansas System Division of Agriculture.

WRLC initially helped an alumna of our program, Brigit Rollins, partner with NALC as a research fellow. Brigit worked with NALC to update its research on an array of subjects, including anti-trust, animal identification, and comparative state solutions to common agricultural issues. After Brigit's positive experience, NALC and WRLC formed a partnership to encourage additional opportunities for WRLC and Lewis & Clark students to engage with NALC on exciting new agriculture and food law research.

"Working with NALC has given me the opportunity to learn about areas of agricultural law that I had never come across before," said Rollins. Because of NALC's national scope, Brigit was able to do a comparative law project looking at how different states address typical issues pertinent to many agricultural businesses—creating and updating what NALC calls "Reading Rooms," or webpages dedicated to specific topics on agricultural issues. "Because NALC has a national scope," said Rollins, "I had the chance to explore how each state solves common agricultural problems ... affect[ing] the daily lives of people trying to make a living. I would recommend this fellowship to any student interested in learning more about agricultural law."

WRLC student Carley Poulard also recently accepted a paid clerkship with NALC and will be working with the Center over the coming year. Students or others interested in this program should contact WRLC or NALC for further information.

WRLC Program Rising Stars 2018-2019

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

Graduate Highlights



Lev Blumenstein (LLM '18) recently accepted a position with the U.S. Army Corps of Engineers, where he will focus on the ongoing renegotiation of the Columbia River Treaty with Canada.



Tyler Eastman ('18) joined the U.S. Department of Justice in their Environmental and Natural Resources Division, located in their Washington, D.C. office.

Derek Gauthier ('18) was hired as a judicial clerk in Nevada.



Tiffany Johnson ('14) was recently hired as assistant county counsel for Columbia County, Oregon. Tiffany previously was an environmental policy analyst for the Oregon Department of Environmental Quality.

Corin La Pointe-Aitchison ('17) joined Galanda Broadman, an Indian country law firm with offices across the West, including Seattle, Bend, Yakima, and Tucson.



Matt Query ('17) joined Yockim Carollo LLP in Roseburg, OR, where he works with Dominic Carollo, another WRLC alumnus.



John Richards ('18) joined AgriBeef as a legal fellow and attorney after returning to his native Boise, Idaho. John is a former WRLC scholarship recipient, who gained experience in energy policy and public lands issues affecting livestock as a policy analyst with the Idaho Governor's Office and as an extern with MSBT Law in Boise.

Student Highlights



Katie Gargan (3L) externed with Dorsay & Easton LLP, a Portland-based firm serving Indian tribes in the Pacific Northwest.

Katherine Jourdan (2L) externed with Schwabe, Williamson & Wyatt, where she focused on issues facing Washington farmers and ranchers, including the potential return of grizzly bears to the North Cascades and water pollution issues in eastern Washington.

Brandon Kaskawal (3L) was hired as the Ronald Regan Fellow at the Phoenix, Arizona-based Goldwater Institute in Spring 2019. Brandon has previously served as a law clerk with WRLC and with the Port of Portland.



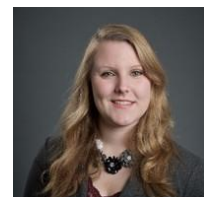
Cole Killion (2L) will be taking a Summer 2019 internship with international firm Baker Botts LLP in their Houston, Texas office, focusing on issues pertaining to oil and gas law.

Keenan Ordon-Bakalian (3L) is currently a law clerk with local Portland law firm Jordan Ramis, which focuses on agriculture and business law.



Brigit Rollins (3L) clerked with the natural-resources focused firm Somach Simmons & Dunn, in their Sacramento, California office. Brigit also received a paid clerkship through the National Agricultural Law Center.

Josh Sherman (3L) is currently working with the San Francisco, California office of Baker Botts LLP on wild horse litigation in collaboration with WRLC.



Caitlin Skulan (3L) worked with the Washington Department of Ecology and clerked with Schwabe, Williamson & Wyatt.

WRLC Corporate Sponsors

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

Aggregate Resource Industries	International Association of Geophysical Contractors	R & J McClelland Dairy
AgriBeef	Ireland Trucking	Rancho Tocaloma
Allen & Gibbons Logging	Iron Triangle	Rizzo Mattingly Bosworth
American Exploration & Mining Association	J Bar B Cattle Co.	Rockin Four Ranch
American Farm Bureau Federation	Josephine County Farm Bureau	Rogers Cattle
American Forest Resource Council	J-Spear Ranch	Rosboro
American Petroleum Institute	Justesen Brothers	Roseburg Forest Products
American Sheep Industry Association	Kaiser Foundation	Schadler Ranch Inc.
Ash Grove	Klamath-Lake County Farm Bureau	Schwabe, Williamson & Wyatt
Baker County Farm Bureau	Krebs Sheep Company	SDS Lumber Co.
Baker County Livestock Association	Laird Ranch LLC	Seneca Jones Timber Company
Baker Rock Resources	The Law Offices of Michael B. Dye	Silver Butte Timber Co.
Birkmaier Ranch Inc.	Likely Land and Livestock	Simplot
Boise Cascade	Livingston Ranch	Skinner Ranches
Browne Consulting LLC	Lone Rock Timber	Starfire Lumber Company
California Cattlemen's Association	Lunny Ranch	Starker Forests
Clackamas County Farm Bureau	Malheur County Farm Bureau	Swanson Group
Clark J. Guild Foundation	Marion County Farm Bureau	Teevin Bros. Land & Timber
Coos-Curry County Farm Bureau	McClaran Ranch	The Samuel S. Johnson Foundation
The Cow Creek Band of Umpqua Tribe of Indians	Modoc County Farm Bureau	The Stimson-Miller Foundation
Douglas County Farm Bureau	Mountain Western Log Scaling	Twin C Ranch
Douglas County Forest Products	MSBT Law	Umatilla County Cattlemen's Association
DR Johnson Lumber	Multnomah County Farm Bureau	Umatilla-Morrow County Farm Bureau
Dunn Carney LLP	National Cattlemen's Beef Association	Union County Farm Bureau
F Ranch	Northwest Farm Credit Services	Universal Cattle Guard
Freeman Rock	Offshore Operators Committee	US Cattle Ranch
Freres Foundation	O'Leary Ranch	Wallowa County Stockgrowers
George & Ruth Bradford Foundation	Oregon Cattlemen's Association	Wasco County Farm Bureau
Giustina Land & Timber Co.	Oregon Community Foundation	Washington Cattlemen's Association
Giustina Resources	Oregon Concrete & Aggregate Producers Association	Washington County Farm Bureau
Grant County Stockgrowers Association	Oregon Farm Bureau	Washington Farm Bureau
Haglund Kelley LLP	Oregonians for Food & Shelter	West Coast Contractors
Harney County Stockgrowers	Picnic Creek Ranch	Wildish Land Co.
Hawaii Cattlemen's Council	Point Reyes Seashore Ranchers Association	Windsor Rock Products
Hellyer Ranch	Porter W. Yett Company	Withers Ranch
Idaho Cattle Association	Prairie Winds Consulting	Wyoming State Grazing Board
Idaho Farm Bureau	Public Lands Council	Wyoming Stock Growers Association
Interfor		Yamhill County Farm Bureau
		Yockim Carollo LLP

BOARD OF DIRECTORS

OFFICERS

Dustin Van Liew
Chairman

International Association of Geophysical Contractors

Katie Jeremiah
Vice Chair

Aggregate Resource Industries

Brenda Richards
Secretary/Treasurer

US Cattle

BOARD MEMBERS

Mary Anne Cooper
Oregon Farm Bureau

Myles Culhane
Occidental Petroleum

Jim Huffman
Dean Emeritus,
Lewis & Clark Law School

Tom Insko
Eastern Oregon University

Betsy Johnson
Oregon Senator, Dist. 16

Valerie Johnson
D. R. Johnson Lumber Company

Nikki Martin
International Association of Geophysical Contractors

Sean Smith
Starfire Lumber

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) and download a "Request for Legal Services Form" and submit it to us today!