

Western Resources Legal Center

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

2021 Newsletter

Year in Review: Executive Director Update

by Caroline Lobdell



Between a global pandemic and natural disasters, this past year has been challenging for so many of you. Yet I am incredibly proud of the natural resources community for stepping up and sticking together through tough times. And I am grateful that WRLC has been able to continue

to serve our students and clients through these unprecedented challenges.

A major focus for WRLC this past year has been bringing divergent natural resource industries together to build coalitions and speak with a unified voice on policy issues of national importance. Representing oil and gas, farming, ranching, mining, and timber, these coalitions have come together to provide input on major regulatory changes – such as the revised definition of “habitat” under the Endangered Species Act, as well as major overhauls to the National Environmental Policy Act, wilderness designation process, recovery standards, and many pressing regulatory issues. Our students have contributed to and benefitted from working on these collaborations by gaining real-world experience and perspectives that will be critical when they graduate.

Our students have achieved a number of positive outcomes in the courtroom that will benefit natural resources users for years to come, including several victories in the district courts and at the Ninth Circuit. One noteworthy appellate decision rejected the notion that the

ALSO IN THIS ISSUE:

- Case Updates: NOAA Must Produce Hidden FOIA Records; Grazing Decisions on Malheur National Forest Upheld; Lostine Public Safety Project to Go Forward
- Alumni Spotlight – Kevin Johnson, Marla Quick
- Alumni Q&A – Jesse Miles
- New Student Group—Natural Resources Law Association
- WRLC Student/Alumni Highlights

Forest Service must demonstrate affirmative compliance with INFISH/PACFISH standards in site-specific grazing authorizations, affirming the agency’s use of adaptive management tools. *Or. Natural Desert Ass’n v. U.S. Forest Service*, 18-35514 (9th Cir.) (*en banc* denied). Additionally, the federal district court in Oregon ruled in favor of WRLC in a long-running public records battle against the National Oceanic and Atmospheric Administration (NOAA) in a case with nationwide implications. *WRLC v. NOAA*, 3:19-cv-1119-AC (D. Or.). You can find out more about these and other successes in the legal highlights section.

WRLC’s relentless work on these issues and involvement in active cases serves as our most effective tool to not just teach, but also actively engage, students with practical, hands-on (and eye-opening) legal education. Our course remains fully enrolled with a waitlist and WRLC continues to build our externship program, which places students with a range of private natural resources businesses, law firms, and professional associations.

I remain deeply indebted to the incredible leadership of WRLC’s Board of Directors and look forward to another successful year.

Legal Highlights: Case Updates

Beyond its focus on education, WRLC makes an impact through targeted litigation and feedback on natural resources policy. In 2020, WRLC continued to build natural resource coalitions to provide coordinated input on various changes to many of the nation's core environmental and natural resources regulations.

In particular, WRLC led efforts to offer analysis of proposed revisions to the National Environmental Policy Act regulations proposed by the Council on Environmental Quality and other federal agencies; the U.S. Fish and Wildlife Service's proposal to delist gray wolves under the Endangered Species Act (ESA); as well as two proposed rules amending the process for designating critical habitat for ESA-listed species and redefining "habitat." These technical rules made some significant strides toward decreasing the burden on regulated entities and

simplifying implementation of complicated statutes that industry has been seeking for years.

We also have obtained legal victories in a number of cases that should reap significant benefits for natural resources users, including but not limited to:

NOAA Must Produce Hidden FOIA Records on Marine Mammal Acoustic Guidance, WRLC v. NOAA, 3:19-cv-1119-AC (D. Or.)

In a long-running public records battle against the National Oceanic and Atmospheric Administration (NOAA), WRLC has sought public release of records relating to NOAA's marine mammal acoustic guidance. In a detailed ruling, the District of Oregon ultimately found that NOAA had failed to conduct a reasonable search to meet the statutory deadlines imposed by the Freedom of Information Act (FOIA) for making a final determination and "promptly" providing responsive records.

ALUMNI SPOTLIGHT – Marla Quick



Raised in the woods of North Florida, Marla Quick's family received sustenance from their farm and their keen hunting/gathering skills. Drawn to natural resources from childhood, Ms. Quick appreciates the issues facing natural resource users, the role of attorneys in advocating for these users, and the hard work necessary to advocate successfully. Ms. Quick was in the inaugural WRLC class at Lewis & Clark Law School, where she gained important practical skills through WRLC placements with the Lower Colorado River Authority in Austin, Texas, and the Port of Portland. Following graduation, she worked on discrete projects for the Port of Portland and the law firm Rizzo Mattingly Bosworth, PC (RMB) related to the Portland Harbor Superfund Site. As an associate at RMB, her practice involved primarily environmental insurance defense. She also assisted the non-Indian water users in the Upper Klamath area in an effort to reach a water-sharing and habitat restoration agreement with the State of Oregon and the Klamath Tribes. Currently she serves as corporate counsel for NANA Regional Corporation, Inc., an Alaska Native Regional Corporation organized under the Alaska Native Claims Settlement Act (ANCSA), where she focuses on the areas of resource development, land management, corporate governance, compliance, and contract negotiations. Ms. Quick credits her success in part to WRLC. "I left law school with a greater ability to analyze and argue complex legal issues and a greater appreciation of the rigor necessary to advocate successfully on behalf of my clients," said Ms. Quick. "Through my ongoing experience with WRLC, I continue to learn about natural resources law and to work with some stellar law students in field placements."

ALUMNI SPOTLIGHT – Kevin Johnson



Five years ago, Kevin Johnson graduated from Lewis & Clark Law School and, in 2020, landed his dream job as Associate Counsel for the California Farm Bureau (CFB). Today, he focuses primarily on energy-related issues that impact CFB's members. After graduating from law school, Mr. Johnson worked as the legal director for the Oregon House Republican Office, followed by contract work at the Oregon Farm Bureau, before spending two years at a small law firm in Salem to gain litigation experience. He learned about WRLC from another law student who encouraged him to meet with Executive Director, Caroline Lobdell, and he was hooked. He has been part of the WRLC family since and credits WRLC with helping him achieve his goals. "Working on natural resource related issues felt like the greatest opportunity to have an impact," says Johnson. "WRLC gave me the chance to connect with others who felt similarly and, after working on issues related to timber, water, farming, and ranching while in law school, I knew I had made the right choice."

Legal Highlights (cont...)

In addition, the Court ordered NOAA to expand its search and offer justification for any documents it withheld. The Court's order focused specifically on NOAA's failure to identify all relevant records keepers or "custodians" and its failure to adequately inform WRLC of the records it withheld from production.

The order includes several procedural rulings that should benefit members of the public seeking transparency from government agencies, such as NOAA. First, NOAA may not string out FOIA productions over months or years; the agency must make a timely determination informing a requester of the full scope of the documents it intends to produce. Second, "predictable agency workloads" do not constitute exceptional circumstances that warrant extensions of deadlines under FOIA. Third, the agency must adequately describe documents it seeks to withhold. Finally, FOIA requesters may proceed directly to court and need not go through a lengthy administrative appeal process when the agency fails to make an adequate or timely final determination.

Grazing Decisions on Malheur National Forest Upheld; USFS Need Not Demonstrate Affirmative Compliance with Aspirational PACFISH/INFISH Standards **ONDA v. USFS, 18-35514 (9th Cir.)**

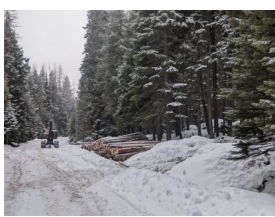
The Ninth Circuit Court of Appeals upheld 117 livestock grazing decisions on seven allotments along the Malheur and North Fork Malheur Rivers in eastern Oregon. The lawsuit by Oregon Natural Desert Association (ONDA) challenged grazing decisions issued over more than a decade—alleging that grazing was inconsistent with riparian management objectives (RMOs) for threatened inland native fish (INFISH), including bull trout. ONDA sought to halt livestock grazing in bull trout critical habitat entirely until the agency could prove compliance with INFISH RMOs.

A major issue in the case concerned whether, and how, the Forest Service must comply with aspirational Forest Plan objectives geared towards long-term recovery of riparian habitat. ONDA argued the agency must demonstrate compliance with Forest Plan standards in every site-specific grazing authorization, including informal annual operating instructions (AOIs), and that minor exceedances of stubble height and bank alteration standards violated the Forest Plan under the National Forest Management Act (NFMA)'s "consistency" requirement.

The Ninth Circuit held in favor of the permittees on both issues. Importantly, the Court deferred to the Forest Service's use of ongoing monitoring and grazing adjustments to address any exceedances of permit conditions. The opinion also solidifies the important precedent that INFISH (and PACFISH) RMOs are not inflexible standards but, rather, aspirational objectives. This is a victory that will benefit ranchers all across the West—given the applicability of INFISH/PACFISH across eastern Oregon and Washington, Idaho, western Montana, and parts of northern California.

Of significance, the opinion recognized that bull trout populations and habitat are affected by a number of complex factors such as irrigation and introduction of brook trout — rejecting ONDA's long-standing premise that grazing is the primary cause of the decline of bull trout.

Lostine Public Safety Project to Go Forward, GHCC v. Stein, 18-35742 (9th Cir.)



WRLC successfully represented Wallowa County in the District of Oregon and on appeal to the Ninth Circuit to support much-needed thinning work along the Lostine Corridor in eastern Oregon. WRLC

implored the Court to recognize the obvious public safety need for reducing fuels and disease in the Corridor, which is located directly adjacent to the community of Lostine and lies within the wildland-urban interface. The stewardship timber project will provide immense benefit to the community of Lostine by increasing safety for residents and the thousands of yearly visitors to the nearby Wallowa-Whitman National Forest and Eagle Cap Wilderness.

In its order, 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, which led to an abundance of hazardous fuels. WRLC's zealous advocacy on behalf of Wallowa County helped convince the Ninth Circuit of the importance and sound reasoning supporting the Project.

It has been an honor for WRLC to wage this battle to preserve the health, safety, environment, and economy of Wallowa County, especially during the aftermath of a brutal fire season in the West. WRLC is proud of its role in giving a voice, once again, to intervenors such as Wallowa County — a rural community that has so much at stake in these type of safety projects.



Q: Why natural resources law?

A: I grew up in a family of coal miners in the Appalachian foothills of Virginia. Being raised in such a beautiful region of the country that also was utilized for its natural resources, sparked a curiosity in how people interact with their environments. Following a short career in biology, I pivoted to the study of natural resources law to best transform this curiosity into a career.

Q: What was your placement in WRLC, and what were your thoughts on it?

A: I interned for a semester at Occidental Petroleum (OXY). The placement was one of the most incredible professional/academic opportunities of my career. It offered a myriad of practical experiences, as well as insight into the workings of a large company. My mentor, Myles Culhane, also offered excellent guidance. Overall, the training was invaluable to my development as a young attorney.

Q: What is your current position and did WRLC help you prepare for it?

A: I currently clerk for the Chief Judge of the Washington State Court of Appeals, Div. 1. I assist the judge in research and opinion drafting. I will have drafted nearly 60 opinions by the time I finish this position. I genuinely feel WRLC prepared me for the position due to the program's practical approach to teaching the stages of litigation, as well as the exposure offered through the placement.

Q: Have you relied on your legal education and experience at WRLC outside of your position?

A: I lecture undergraduate students at a handful of universities on topics such as Clean Water Act jurisdiction and agency accountability. I like to educate individuals on the multiple perspectives of environmental challenges through a legal lens. I have career talks with the students who are interested in pursuing a legal education. WRLC further framed these lectures outside of the traditional two-party dichotomy. This framework assists in structuring lectures so that the students have a broader understanding of environmental challenges.

Q: How has your experience with WRLC impacted you?

A: Beyond the academic and vocational exposure, WRLC brought to life the environmental challenges faced by resource users and illustrated the complexity of natural resource issues. The program exposed me to an alternate vision of resource users — not just as individuals who seek to utilize natural resources, but also as stewards of the land, proponents of healthy ecosystems, and pioneers in climate change solutions.

Q: What is your advice to new law students?

A: Do not close yourselves off to ideas and opportunities. The legal field is a large, complex place that tackles complicated issues. Be open to think in terms of other perspectives, even if those are the perspectives you plan to challenge. Often it helps to challenge your own perspectives first. Work hard. The best advocate is not only the one who is intelligent, but the one that applies that intelligence vigorously for their client.

NATURAL RESOURCES LAW ASSOCIATION

This past year a small group of students created a new student group called the Natural Resources Law Association (NRLA). Their goals are to have an impact on law students' professional development and future career placement, become a vocal advocate for natural resource users in developing legal issues on- and off-campus, and develop a well-respected student organization recognized by established natural resource attorneys for placement in their firms. NRLA hosted their first event this fall – a lunchtime lecture with Sara Ghafouri of the American Forest Resource Council on the evolution of forest management practices in response to the increasing frequency and intensity of wildfires. In the spring semester, they are planning more lectures and a networking event. Led by a passionate executive committee, NRLA hopes to provide students with practical experience and connections with potential employers for an under-represented area of law at Lewis & Clark Law School.

WRLC Program Rising Stars

2020-2021

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

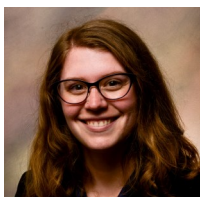
Conor Butkus ('20) is clerking for the Washington State Court of Appeals.



Derek Gauthier ('18) joined Meyer, Fluegge & Tenney, P.S. in Yakima, Washington, in 2020. Previously, Mr. Gauthier clerked for Chief Judge Steve Dobrescu and Judge Gary Fairman of the Nevada Seventh Judicial District.

Rick Griesel ('14) joined the Office of the General Counsel for the U.S. Department of Agriculture in Portland, Oregon, as an Attorney-Advisor. Previously, he served as Deputy Attorney General at the Idaho Attorney General's office.

Cole Killion ('20) passed the Texas bar in October 2020 and is an incoming Associate at Baker Botts in Houston, Texas.

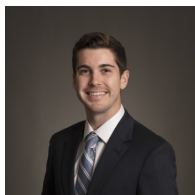


Brigit Rollins ('19) serves as a staff attorney at the National Agricultural Law Center, making presentations for them on topics of national importance.

Reed West ('20) joined the District Attorney's office in Union County, Oregon, as Deputy District Attorney. Previously, he served as a Legal Intern for U.S. Representative Greg Walden in Washington, D.C.

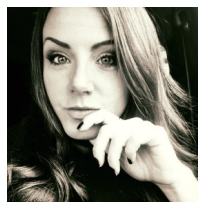
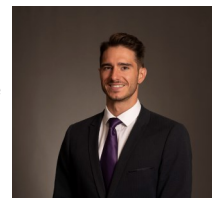


Student Highlights



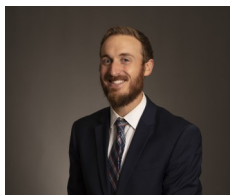
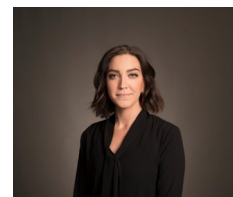
Logan Cook (2L) spent Fall 2020 working at the Oregon Farm Bureau on issues relating to the interests of farming and ranching families in the public and policymaking arenas.

Drew Hancherick (2L) spent Fall 2020 working at Schroeder Law Office focusing on water rights and land use.



Brittany Masterson ('20) spent Fall 2020 working at Yockim Carollo focusing on timber, agriculture, water, mining, and other natural resources issues.

Heidi Logan (3L) spent Fall 2020 working with the American Forest Resource Council on issues related to forest management.



Dan Polkow (2L) spent Fall 2020 working with the NANA Regional Corporation on issues relating to native corporation mining.

Ryan Roberts ('20) clerked with Rizzo Mattingly Bosworth PC in Portland, Oregon, working on environmental matters ranging from regulatory compliance through litigation.



Nolan Smith (3L) spent Fall 2020 term clerking for the Honorable Michael Simon of U.S. District Court for the District of Oregon.

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Harney County Stockgrowers	Oregonians for Food & Shelter	Wyoming Stock Growers Association
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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 a WRLC student to speak at your meeting.

Send our newsletter far and wide.

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!