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Public Lands Council



Capital Issues

~September 2010~

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LEGISLATION UPDATE

Waters Advocacy Coalition: “No” to *America’s Commitment to Clean Water Act*

Along with other members of the Waters Advocacy Coalition (WAC), PLC [sent a letter](#) to officials at the Environmental Protection Agency, Council on Environmental Quality, and the Army Corps of Engineers expressing opposition to H.R. 5088, *America’s Commitment to Clean Water Act*. The act would infringe on state and private property rights and lead to endless litigation and bureaucratic red tape which would actually hamper our nation’s ability to maintain clean waters. The legislation’s defining feature is the replacement of the term “navigable waters of the United States” with “*all* waters of the United States”, thereby giving the Federal government jurisdiction over the smallest mudhole.

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“No” to Burdensome New Tax Law

A cumbersome new tax law could be in the works, if tax legislation moves during the upcoming lame duck session. Beginning in 2012, farms, ranches and other businesses would be required to complete an IRS Form 1099 for all payments including goods and services aggregating \$600 or more in a calendar year to a single non-employee payee. Payments made to corporations, formerly excluded from the reporting requirement, would now be included. PLC sent [letters in support of repeal](#) of the requirements to two legislators whose amendments would have eased the requirements, had the Senate not rejected them. Congressman Dan Lungren (R- Calif.) is now collecting signatures on a discharge petition for his bill, H.R. 5141, the *Small Business Paperwork Mandate Elimination Act*. The bill would repeal the Form 1099 requirements. A discharge petition starts a process to force a bill out of committee and to the floor for a vote. A successful petition requires the signatures of 218 members. (See the list of signatures [here](#)).

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Death Tax: A Start to a Solution

PLC signed a [letter](#) voicing support for Senator Feinstein’s (D-Calif.) S. 3664, the “[Family Farm Estate Tax Deferral Act](#)”. Unless Congress acts, the “death tax” will hit full-force on January 1st 2011, when it will revert to a rate of 55% with an exemption of just \$1 million. See [Heritage Foundation videos](#) highlighting the “dreaded estate tax”, and go to our website to hear recent radio ads on the tax, funded by Heritage.

Although it’s far from perfect, Sen. Feinstein’s bill would alleviate some of the burden for farmers or ranchers. They would be exempt from paying federal estate taxes, provided the following conditions are met:

- The farm must be passed down to an individual or family member who has been materially engaged in its management and operation for at least five years;
- The farm generated more than 50 percent of the farm owner’s income, or comprised more than 50 percent of the farm owner’s estate at the time of death;
- The farm was owned by the decedent for at least five years;
- The descendent or family member inheriting the estate continues to use the land for farming purposes;
- Additionally, the bill would update existing estate tax incentives for voluntary, permanent protection of lands with conservation values.

While we generally support the bill, we will continue efforts to remove its proposed adjusted gross income limit— \$750,000 annually— so that all farmers and ranchers are protected from the estate tax.

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Wolf Delisting?

Idaho Sens. Mike Crapo and Jim Risch have introduced legislation, the [State Wolf Management Act of 2010](#) (S. 3825), to once again remove the gray wolf from the threatened or endangered species list (under the Endangered Species Act) in parts of the northern Rocky Mountain region. The wolves in this region had been delisted in every state but Wyoming, which had not created a state wolf plan that satisfied the federal government. U.S. District Judge Donald Molloy used this fact to overturn the partial delisting, ruling that because a delisting decision can only be made on an entire specie, not a subset of a specie, the wolf must be relisted in the entire northern Rocky Mountain region. The Idaho Senators have argued that Idaho and Montana, unlike Wyoming, have complied with federal demands for recovery efforts for their wolf populations, and those efforts should result in wolf management being turned over to state control. S. 3825 would also delist wolf populations in the adjoining states of Washington, Oregon and Utah.

Montana Sens. Max Baucus and Jon Tester, have introduced similar legislation (the [Restoring State Wildlife Management Act of 2010](#)) that would remove gray wolves located in Montana and Idaho from the ESA list and return Montana’s gray wolf back to state management.

In an entirely separate bill, [HR 6028](#), treatment of the gray wolf as an endangered or threatened species would be prohibited altogether. Introduced by Rep. Chet Edwards (D-Texas) in July, the legislation would allow western states to manage the now-recovered gray wolf populations themselves. This bill has not left committee.

Meanwhile, the U.S. Fish & Wildlife Service is considering delisting a distinct wolf population in Minnesota, Michigan, and Wisconsin. After a preliminary finding that a [delisting may be warranted](#), they will now conduct a review of “scientific and commercial data,” and issue a 12-month finding on the petitions to delist, which will address whether any of the petitioned actions are warranted.

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ADMINISTRATION UPDATE

Gunnison Sage-grouse: Warranted but Precluded

The U.S. Fish and Wildlife Service (Service) has announced its [12-month finding](#) on whether to list the Gunnison sage-grouse as threatened or endangered under the Endangered Species Act. They determined the species to be “warranted for listing” but “precluded by higher priority actions”. The Gunnison sage-grouse has thus joined the ranks on the candidate species list, along with the Greater sage-grouse and over 340 other species. “Warranted but precluded” means that the listing decision is effectively punted until the Service gets through its backlog of candidate species.

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PLC Submits Comments on Wild Horse & Burro Strategy Plan

PLC submitted comments on Secretary Salazar's "BLM Draft Goals, Objectives, & Possible Management Actions – Wild Horse and Burro Program". We indicated that the wild horse population is out of control, and without implementing solutions to reduce the reproduction rate, increase adoption or otherwise dispose of excess horses, the program will continue to be a burden on the BLM, ranchers, and natural resources on our federal lands. Over-population of horse and burro herds is continuing to cause serious problems, including overgrazing, environmental damage, and even starvation. [Read the comments.](#)

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BLM Announces Appointments to Three Key Leadership Positions

BLM Director Bob Abbey announced on September 7th the appointment of three career professionals to key leadership positions in the agency's Alaska, Idaho, and Montana state offices.

Bud Cribley, currently serving as the Deputy Assistant Director for Renewable Resources and Planning in the BLM's headquarters office, will serve as the new State Director in Alaska; Jamie Connell, now the Northwest Colorado District Manager, will be the new State Director in Montana; and former BLM employee Steve Ellis, currently Forest Supervisor of the Wallowa-Whitman National Forest in the Pacific Northwest, returns to BLM as the Idaho State Director. All three positions became vacant when the incumbents retired. Reporting dates have yet to be determined. [Read more...](#)

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JUDICIARY UPDATE

Court Decision Threatens Permittee Privacy

"There is a substantial interest in understanding the scope of the grazing and rangeland program, particularly in light of the environmental impacts associated with grazing and the amount of tax dollars spent on the grazing program itself." These are the words of Idaho District Court Judge Candy Dale, who this month ordered the BLM to release federal grazing permit holders' personal information—including names, addresses, phone numbers, and financial data. The ruling came in a Freedom of Information Act lawsuit filed by Western Watersheds Project and WildEarth Guardians. The result: individuals' privacy has been outweighed by the public's interest. If the BLM does not appeal the decision, it could be forced to turn over the names, addresses and other information about those who hold nearly 18,000 grazing permits and leases on nearly 160 million acres across the West. PLC is looking into options for involvement, so as to prevent the harassment and the intrusion of privacy of our members.

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Wayne Hage

As reported at [American Stewards of Liberty](#):

Last month, Judge Loren Smith issued what many hope will be the final decision in the landmark takings case, *Hage v. United States*. Wayne and Jean Hage (now both deceased) filed the landmark case September 26, 1991, after the U.S. Forest Service cancelled their grazing permits and confiscated a portion of their cattle. It is the first federal lands grazing case ever filed in the U.S. Court of Federal Claims and is viewed as one of the most important Fifth Amendment victories private property owners have achieved in the past two decades. Judge Smith increased the amount of interest to be awarded to the plaintiffs for the taking, and important precedents were set that favor the landowners, namely that Hage owned (1) the rights-of-way and 50 feet on each side of the ditches on the federal lands; (2) the range improvements on the federal lands; and (3) the water that flows from the federal lands onto the private fee land. Plaintiffs were previously awarded compensation for these property rights plus interest from the date of the taking, now totaling \$14,240,853.92 as a result of the courts new ruling. The court also awarded attorney's fees. See the court's [final judgement and order](#).

There are now eight published decisions in this case and in all the Plaintiffs have prevailed against the federal land management agencies.

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LITIGATION UPDATE

Payette National Forest Decision Appeal Filed

The Idaho Wool Growers Association, along with PLC, ASI and 21 other individuals and organizations have officially filed an appeal to a July 20 Record of Decision (ROD) that will reduce domestic sheep grazing by 70% on the Payette National Forest (PNF). The appeal states that the appellants are significantly and adversely affected by the ROD and the Forest Service's reduction of suitable rangeland for domestic sheep grazing on the PNF. The ROD has the potential to affect sheep producers nationwide as any loss of grazing acreage would cause the entire sheep industry to lose infrastructure. [View the appeal](#).

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PLC Joins Suit on Grazing Fee Challenge

PLC, the National Cattlemen's Beef Association (NCBA), and the American Sheep Industry Association (ASI) along with 24 state cattle, sheep and Farm Bureau organizations, whose members graze livestock on the federal lands, filed a petition to intervene in defending two federal agencies against a lawsuit over grazing fees on federal lands.

Represented by Mountain States Legal Foundation, organizations from 11 western states filed their motion with the federal district court for the District of Columbia where five anti-livestock groups filed suit in June. The case, filed against the Bureau of Land Management and the U.S. Forest Service, seeks a court order to require the agencies to reconsider how grazing fees are calculated and to perform environmental impact analysis under the National Environmental Policy Act (NEPA) prior to calculating the grazing fee each year.

Attempts have been made to use Congress to change the permit fee in the past, but those efforts have ultimately failed. By addressing the issue in court, the plaintiffs are seeking to affect the more than 20,000 ranchers that have federal grazing permits in one action.

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MORE NEWS

PLC Annual Meeting 2010

This year's annual meeting was held in Pendleton, Oregon, near the home of retiring president, Skye Krebs. The meeting kicked off with a welcome chuckwagon dinner on Sunday, September 13th, followed by two days of discussion, executive committee elections, and policy adoption. Speakers ranged from representatives from the Forest Service, Natural Resources Conservation Service and Bureau of Land Management; affiliate members such as the American Sheep Industry Association, National Cattlemen's Beef Association and Association of National Grasslands; the Heritage Foundation; and the U.S. House Republican Natural Resources Committee. Issues included National Monuments, border security, the listing of the wolf under the Endangered Species Act, and more. [Read our press release](#) regarding new leadership and policy.

New officers:

- President: John Falen, Nevada
- Vice President: Brice Lee, Colorado
- Secretary/Treasurer: Brenda Richards, Idaho

New policies:

- National Monument designations: Presidentially designated monuments have locked up millions of acres of land across the west. PLC supports congressional oversight, western states' exemption from designations, and reversal of unnecessary designations.
- "Restore Our Border" (ROB) plan: Developed by the Arizona Cattle Growers' Association, ROB would improve security along the U.S.-Mexican border.
- Grazing as mitigation: PLC will promote grazing as a mitigation tool for other public land uses, such as energy development.
- National Heritage Areas: PLC will oppose these designations, which jeopardize acceptable federal, state, and local land planning.

Many meeting-goers attended the Hamley Steakhouse dinner (Rex Sacco providing quality karaoke entertainment), the President's Banquet, the Pendleton underground tour, and the grand finale: the 100th Annual Pendleton Roundup rodeo. Many thanks to our sponsors (including Oregon PLC, who bought the drinks at the welcome dinner!), speakers, and retiring president, Skye Krebs.

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NCBA Legislative Conference 2010

During the week of September 13th members of the National Cattlemen's Beef Association (NCBA) gathered in Washington, D.C. to meet with members of Congress and regulatory officials to discuss issues critical to the cattle industry. The meetings were part of a three-day

legislative conference. Issues of concern included taxes (especially the estate tax); border security and immigration; the potential harm of cap-and-trade legislation; legislation expanding federal control of water; legislation prohibiting or limiting the use of antibiotics in the livestock industry; and USDA's proposed rule on livestock marketing. The Legislative Conference provided attendees the opportunity to meet with key congressional and agency influencers and articulate policy priorities of the cattle industry.

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PLC's Website

Visit us at PublicLandsCouncil.org!

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Contact PLC

If you have questions or information you would like highlighted in *Capital Issues*, please contact me, Theo Dowling, through email: tdowling@beef.org or phone: 202-879-9135.

The Public Lands Council (PLC) has represented livestock ranchers who use public lands since 1968, preserving the natural resources and unique heritage of the West. Public land ranchers own nearly 120 million acres of the most productive private land and manage vast areas of public land, accounting for critical wildlife habitat and the nation's natural resources. PLC works to maintain a stable business environment in which livestock producers can conserve the West and feed the nation and world.