



1301 Pennsylvania Ave. NW, Suite 300 • Washington, D.C. 20004



## Public Lands Council

# Capital Issues

~April 2011~

### OVERVIEW

[HIGHLIGHT: Fiscal Year 2011 Final Budget Passed](#)

#### Legislation Update

[PLC Member Testifies at Border Security Hearing](#)

[Bill to Release Wilderness and Roadless Study Areas](#)

[“3-D” Bill Addresses EPA’s, Radical Environmental Groups’ Abuses](#)

[Congress Repeals Onerous 1099 Tax Requirement](#)

[Congress Puts Rocky Mountain Wolf Population on Path to Delisting](#)

[Farm Dust Regulation Prevention Act](#)

#### Administration Update

[EPA Issues Clean Water Guidance Document](#)

[NESARC Comments on DOI Regulatory Review](#)

[Proposed Rule to De-List Gray Wolves in Western Great Lakes States](#)

[Forest Service Chief Refuses to Review Payette Decision](#)

[Livestock Industries Make Wildlife Services Nominations](#)

#### Judiciary Update

[Judge Issues Troubling Wild Horse Ruling](#)

[Judge Winmill Denies EAJA Fees to WWP](#)

[State of Utah Files Suit against Federal Government to Set Aside “Wild Lands” Order](#)

#### More News

[Vaccine Research Could Solve Bighorn Separation Problem](#)

## **HIGHLIGHT: Fiscal Year 2011 Final Budget Passed**

On April 8<sup>th</sup>, Congress narrowly avoided a government shutdown by passing [H.R. 1473](#), the final of many continuing resolutions (CR) which will fund the federal government through FY 2011. In addition to the \$12 billion in reductions from the previous two 2011 CRs, this final long term CR cuts \$28 billion from FY 2010 levels. While it comes in below Republicans' promised \$100 billion reduction from the president's original FY 2011 budget request (in sum, the CR cut only \$38 billion from the president's budget request), the "real battle" is thought to be ahead, with the development of the FY 2012 budget. In the meantime, the final CR for 2011 does offer a few gains (or "near-misses") for producers—and multiple use industries, in particular:

- **Wild Lands:** "For the fiscal year ending September 30, 2011, none of the funds made available by this division or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010." Rep. Mike Simpson (R-ID), Chairman of the Interior appropriations subcommittee, was integral in keeping this language as part of the final budget agreement. The fact that the Wild Lands rider remained in the CR—while almost all other riders from the earlier, failed CR (H.R. 1) were removed—speaks to the effectiveness of the ranching and other multiple-use industries in conveying the issue's importance to Congress. Now, PLC and this multiple-use coalition must ensure that next year's budget includes similar provisions to block funds to the Order, until the Secretary repeals it or Congress passes other legislation to nullify it.
- **Wolves:** Language included by Senator John Tester (D-MT) and Rep. Mike Simpson (R-ID) will reissue the Department of Interior's 2009 decision to delist the wolf in the Northern Rocky Mountain Region. That reissuance will not be subject to judicial review. The wolf is therefore delisted in Montana, Idaho, Washington, Oregon and Utah, and as soon as Wyoming's state management plan is approved, wolves throughout the entire Northern Rocky Mountain region will return to state management. (See the article below for more: [Congress Puts Rocky Mountain Wolf Population on Path to Delisting](#)).

**The CR includes \$29.6 billion in discretionary funding for Interior and Environment**, which is 8.1%, or \$2.62 billion, below the FY 2010 enacted level and 8.5%, or \$2.8 billion, below the President's request.

- **Land and Water Conservation Fund (LWCF)** budget was reduced by \$149 million from last year, which will reduce the federal government's ability to acquire more land. This reduction is a sign that the FY 2012 budget will not likely include the full amount requested by the president: \$900 million—the maximum authorized amount for LWCF.
- **Climate change** funding bill-wide was cut by \$49 million (a 13% reduction from last year).
- **The Environmental Protection Agency (EPA)** budget was cut by \$1.6 billion, a 16% decrease from last year's level.
- **National Forest System:** the budget was cut by \$602 million (an 11.4% reduction from last year.) However, most of these cuts are in unused wildfire funds, and will not affect other Forest Service operations, such as completing required NEPA documentation for permit renewals.
- **U.S. Fish & Wildlife Service:** the budget was reduced by \$140.6 million from last year, which is an increase of \$238.9 million above H.R. 1. The proposal includes \$37.5 million for the North American Wetlands Conservation Fund and \$62 million for state and tribal wildlife grants.
- **National Park Service:** the budget was reduced by \$127.2 million from last year. NPS will operate on \$2.6 billion for the remaining fiscal year, including \$2.3 billion for operations and \$210 million for construction activities to address a maintenance backlog that has grown to more than \$10 billion. NPS' allocation in the final CR came \$112.7 million above levels proposed in the failed H.R. 1.
- **The Natural Resources Conservation Service (NRCS):** The Conservation Operations budget was cut by more than \$15 million, from nearly \$888 million to just over \$872 million.
  - \$119 million cut from the Wetlands Reserve Program (WRP)

- \$80 million cut from the Environmental Quality Incentives Program (EQIP)
- \$39 million cut from the Conservation Stewardship Program (CSP).

[Back to Top](#)

## LEGISLATION UPDATE

### **PLC Member Testifies at Border Security Hearing**

The safety and security of cattlemen and women along the border between the United States and Mexico was front and center of a recent congressional oversight hearing. Jim Chilton, an Arizona rancher and member of PLC and NCBA, testified at the hearing, held jointly by the Government and Oversight Committee's Subcommittee on National Security, Homeland Defense and Foreign Operations and the Natural Resources Committee's Subcommittee on National Parks, Forests and Public Lands. Chilton told members of Congress that environmental laws have "unduly hampered" the ability of U.S. Border Patrol to control the border at the border. He said ranchers live in constant danger and urged Congress to step up efforts to strengthen border security. Chilton was aired on Fox News' "On the Record" with Greta Van Susteren on April 18<sup>th</sup>. [Click here](#) to see the interview.

Some members of Congress are already working to strengthen security along the southern border of the United States. Congressman Rob Bishop (R-Utah) recently introduced [H.R. 5016](#), the National Security and Federal Lands Protection Act, to help improve border security on public lands. NCBA and PLC support this legislation which would prevent the secretaries of the Department of Interior (DOI) and the United States Department of Agriculture (USDA) from impeding, prohibiting, or restricting the Department of Homeland Security's (DHS) efforts to obtain operational control of the border.

[Back to Top](#)

### **Bill to Release Wilderness and Roadless Study Areas**

House Majority Whip Kevin McCarthy (R-Calif.) has introduced the [Wilderness and Roadless Area Release Act](#). The legislation calls for the release of Wilderness Study Areas (WSAs) and inventoried roadless areas (IRAs) recommended by BLM and the Forest Service as not-suitable for a Wilderness Area designation. Under this legislation, these areas, currently managed as wilderness, would be managed for multiple use. The legislation would also exclude these lands from consideration under the Wild Lands Order. [Click here](#) to see the talking points provided by Rep. McCarthy's office. See the PLC and affiliate [letter of support](#) and our [news release](#).

[Back to Top](#)

### **"3-D" Bill Addresses EPA's, Radical Environmental Groups' Abuses**

Senator David Vitter (R-LA) and Representative Rob Bishop (R-UT) have introduced the "3-D Act": [The Domestic Jobs, Domestic Energy, and Deficit Reduction Act of 2011](#). PLC supports the legislation, which, according to Rep. Bishop, is designed to "allow for the development of domestic resources". In particular, PLC supports the provisions that affect our members directly:

- Amend the National Environmental Policy Act (NEPA) of 1969 to expedite the environmental review process and require federal agencies to use the most expeditious environmental review process available until unemployment falls below 5 percent.
- Amend the Clean Air Act (CAA) to declare that carbon dioxide and methane from livestock are not pollutants.
- Amend the CAA to require the EPA to do full economic analysis of new rules under the Act.
- Amend the Endangered Species Act (ESA) to prohibit consideration of the impact of greenhouse gases on any species of fish or wildlife or plant for any purpose in the implementation of the ESA.

- Amend the Equal Access to Justice Act (EAJA) to prevent payment from the Judgment Fund to reimburse environmental activist groups for filing lawsuits against domestic businesses.

[Back to Top](#)

### **Congress Repeals Onerous 1099 Tax Requirement**

On April 5<sup>th</sup>, the Senate finally voted to repeal onerous 1099 tax reporting requirements, after months of debate and votes. The provision, found in the health care legislation, would have required businesses to file a tax reporting document for all vendors from whom they bought \$600 worth of goods or services within a year—a requirement that would have been a huge burden on most farmers and ranchers. PLC promoted the repeal, and we appreciate PLC members' encouraging their senators to vote for it.

The bipartisan vote, 87-12, was taken on the same bill that the House had passed repealing the 1099 rule, H.R. 4. It was offered by Sen. Mike Johanns (R-NB) as part of a small business bill. The bill then proceeded to the White House, where President Obama signed it on April 14<sup>th</sup>.

According to an article in [Politico](#), Republican Leader Sen. Mitch McConnell (R-KY) “immediately heralded the bill’s passage as ‘the first repeal effort of Obamacare.’”

[Back to Top](#)

### **Congress Puts Rocky Mountain Wolf Population on Path to Delisting**

This month, U.S. District Judge Donald Molloy blocked the [settlement](#) that would have delisted wolves in Idaho and Montana—and put the entire Northern Rocky Mountain (NRM) population on the path to delisting, as well. But in spite of Judge Molloy’s ruling, which would have kept wolves on the endangered species list indefinitely, wolves in Idaho and Montana have nonetheless been delisted—via congressional mandate. Senator John Tester (D-MT) and Rep. Mike Simpson (R-ID) included language ([Sec. 1713](#)) in the final continuing resolution for FY 2011 that had very nearly the same effect that the blocked settlement would have had—but with fewer strings attached (see [“Fiscal Year 2011 Final Budget Passed”](#) article, above). The settlement would have required additional steps, including a review of recovery goals after three years that could have raised those goals, resulting in the need to maintain higher wolf populations in the states. The congressional approach, however, was simple: the Department of Interior’s 2009 delisting decision has been reissued, and that reissuance will not be subject to judicial review. Now, if the U.S. Fish and Wildlife Service (FWS) stands by its promise to finally come to an agreement with the state of Wyoming on a management plan, the entire NRM wolf population can be under state management, bringing relief to ranchers and private landowners across the region, and an end to years of litigation.

[Back to Top](#)

### **Farm Dust Regulation Prevention Act**

PLC and NCBA recently sent a [letter of support](#) to Representative Kristi Noem (R-SD) for her attempt to stop the Environmental Protection Agency (EPA) from increasing regulations on “Coarse Particulate Matter”—dust—in rural areas. The EPA has proposed to double the stringency of the “Coarse Particulate Matter National Ambient Air Quality Standard” under the Clean Air Act, citing health risks as its justification. However, scientific studies have never shown that rural agricultural dust causes health problems at ambient levels. At the same time, this new standard would put large portions of agricultural land in the Midwest, West and Southwest into nonattainment or to the brink of nonattainment, substantially stymieing economic development. Rep. Noem’s legislation, the [Farm Dust Regulation Prevention Act \(H.R. 1633\)](#), would halt the current revision of the dust standard for one year, and exempt agricultural dust if state and local authorities have already implemented dust control measures. In areas where there are no state or local dust control measures, EPA would be required to prove substantial negative health effects and show that the benefits of regulation outweigh the economic costs. This bill, which enjoys bipartisan support, would not only provide immediate relief, but would also give states and localities the first opportunity to protect their citizens.

[Back to Top](#)

## ADMINISTRATION UPDATE

### **EPA Issues Clean Water Guidance Document**

The Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) have issued a [draft guidance document](#) that will be sent to agency field staff, instructing them as to how to determine whether a body of water falls under the federal Clean Water Act's (CWA) regulatory jurisdiction. The draft guidance expands the definition of "waters of the United States," thereby reversing decisions by the United States Supreme Court that set limits on the federal government's authority to regulate waters. Such action is legally suspect, as only Congress can change "definitions" contained in a statute. It is also a gross process violation; not only are the EPA/Corps moving forward unilaterally on an issue that only Congress can legitimately "fix," they are doing so without even going through a normal notice-comment rule-making process. Furthermore, this guidance will cause real problems on the ground. The guidance – at least in its draft form – would undermine the federal-state CWA partnership that has long existed.

Prior to the issuance of the draft guidance, 170 members of Congress (some of whom were encouraged by PLC members to sign on) sent a [letter of opposition](#) to EPA Administrator Lisa Jackson and Assistant Secretary of the Army for Civil Works Jo-Ellen Darcy. The Waters Advocacy Coalition (WAC), a coalition of which PLC has been a part for several years, also sent a [letter](#) expressing concern with the proposed guidance and calling for a formal rule-making process.

Through WAC, PLC will be submitting comments within the 60-day comment period, which will begin as soon as the draft guidance is published in the Federal Register.

[Back to Top](#)

### **ESA: Another Reason to Prevent Federal Greenhouse Gas Regulation**

According to [InsideEPA](#):

As federal regulators threaten to take over permitting for greenhouse gas (GHG) emissions in states with unsatisfactory state implementation plans (SIPs), permit applicants have more to worry about than just meeting tougher emission standards. If the EPA takes charge in states like Idaho, Oregon, Wyoming and Arizona, where SIPs have been declared insufficient or too slowly implemented, provisions under the ESA may require the EPA to evaluate the impacts a facility's GHGs may have on endangered species. The result will undoubtedly be lengthier permit processes and boundless vulnerability to civil suits, as environmental activists will be able to claim that the EPA did not adequately consider impacts to endangered species in any given case. EPA's takeover of some states' air permitting to implement federal greenhouse gas (GHG) limits could trigger a mandate for the agency to evaluate the impacts a facility's GHGs may have on endangered species, a potentially lengthy process that could open the door to citizen suits challenging the evaluations, sources say.

[Back to Top](#)

### **NESARC Comments on DOI Regulatory Review**

(Excerpt from the National Endangered Species Act Reform Coalition (NESARC), April 15<sup>th</sup>):  
NESARC submitted comments to the Department of the Interior (DOI) late last month in response to the President's Executive Order 13563 "Improving Regulation and Regulatory Review." The coalition's comments focused on the need for improvements to Section 7 consultation under the Endangered Species Act (ESA), reiterating NESARC's comments from August 2009 and its support of the FIFRA-related petitions for ESA rulemakings.

The Executive Order can be found at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>

NESARC comments can be found on the regulations.gov website at:

<http://www.regulations.gov/#!searchResults;rpp=10;po=0;s=DOI-2011-0001>

[Back to Top](#)

### **Proposed Rule to De-List Gray Wolves in Western Great Lakes States**

(From the National Endangered Species Act Reform Coalition (NESARC), April 15<sup>th</sup>):

On April 15th, the Fish and Wildlife Service proposed a rule to remove gray wolves in the Western Great Lakes Distinct Population Segment (DPS) from the Federal List of Endangered and Threatened Wildlife. This DPS is located in a core recovery area of Minnesota, Michigan, and Wisconsin with a range dispersing into parts of adjacent states. FWS is also initiating a review of the eastern wolf throughout its range, previously thought to be a subspecies of the gray wolf, but now recognized as a distinct species. Comments on this rule will be due 60 days from publication in the Federal Register. Publication is expected to occur within the next two weeks.

[Back to Top](#)

### **Forest Service Chief Refuses to Review Payette Decision**

In July of 2010, a U.S. Forest Service forest supervisor, Suzanne Rainville, issued a [record of decision](#) to reduce by 70% domestic sheep grazing on the Payette National Forest due to concerns regarding disease transfer to bighorn sheep. While the science surrounding the concern remains inconclusive, the decision is one that could dictate the future of the U.S. sheep industry. When the Regional Forester denied an appeal by the Idaho Wool Growers Association (IWGA) and the American Sheep Industry Association (ASI), their last resort was to [appeal to Chief Tom Tidwell](#). Now, the most recent development comes with a letter from Washington. On April 6<sup>th</sup>, Associate Deputy Chief, Tony Tooke [sent a response](#) to IWGA and ASI's counsel at Holland & Hart, LLP stating that Chief Tom Tidwell has elected not to exercise discretionary review of the Regional Forester's decision. His decision constitutes the final administrative determination of the Forest Service that is subject to judicial review in federal district court. Industry will now decide whether or not to litigate the determination.

[Back to Top](#)

### **Livestock Industries Make Wildlife Services Nominations**

This month, the American Sheep Industry Association (ASI) and Arizona Cattle Growers Association (ACGA) made numerous nominations to the National Wildlife Service's Advisory Committee (NWSAC). ASI nominated Bryce Reese, the executive vice president of the Wyoming Wool Growers Association, as an incumbent member; Burdell Johnson, a past ASI president and cattle and sheep producer of North Dakota; Joel Dennis, a Texas cattle and sheep producer and past president of the Texas Wildlife Damage Management Association and the Texas Sheep and Goat Raisers' Association (TSGRA); and Lee Bloodworth, another longtime Texas sheep rancher and TSGRA member. ACGA nominated sheep and cattle producer Carey Dobson, of Arizona.

20 members will be selected to NWSAC by Secretary of Agriculture Tom Vilsack. The committee advises the Secretary on policies, program issues and research needed to conduct the Wildlife Services (WS) program. It also serves as a public forum enabling those affected by the WS program to have a voice in the program's policies. Members selected for the committee will serve two-year terms.

[Back to Top](#)

## JUDICIARY UPDATE

### Judge Issues Troubling Wild Horse Ruling

According to the Associated Press:

U.S. District Judge Morrison England Jr. ruled in Sacramento that In Defense of Animals and others can move forward with their lawsuit accusing the U.S. Bureau of Land Management of violating laws protecting the wild horses on the range when they gathered more than 1,700 of the animals near the California-Nevada line last year.

“Assuming each of the plaintiffs allegations are true, this court could conceivably provide relief in the form of an order returning all animals in short-term and long-term holding facilities to either Twin Peaks or the West until all requirements of NEPA are met,” Judge Morrison said.

“Further, this court could issue an order compelling (BLM) to fully comply with NEPA requirements for all future gathers,” he wrote.

Morrison earlier denied the horse advocates’ bid for a temporarily restraining order to block the roundup before it began last fall in the extreme northeast corner of California. The critics said in their lawsuit the gather was illegal partly because there has been no discussion or consideration of removing some of the 10,000-plus cattle and sheep currently grazing on the Twin Peaks HMA. An appeal of that ruling still is pending before the 9th Circuit Court of Appeals in San Francisco. [Read the full article.](#)

[Back to Top](#)

### Judge Winmill Denies EAJA Fees to WWP

Federal Court Judge Lynn Winmill has denied Equal Access to Justice Act (EAJA) attorney fee payments in a lawsuit brought against the Bureau of Land Management (BLM) by the radical environmental group, Western Watersheds Project (WWP). In a case where WWP challenged the BLM’s renewal of grazing permits in the Jarbidge Resource Area (JRA), Winmill determined that, although WWP prevailed, the BLM was “substantially justified” in its decisions. This relieves the federal government from the obligation to pay fees and costs to the plaintiffs.

According to the [Memorandum Decision and Order](#), the case began in 2004, when WWP challenged the BLM’s renewal of ten-year grazing permits for 28 allotments in the JRA. In 2005, the Court issued a decision enjoining grazing on those allotments after finding that the renewals violated federal statute, and the JRA resource management plan (RMP). Later in 2005, parties negotiated a Stipulated Settlement Agreement (SSA) that established interim grazing restrictions as the BLM drafted a new RMP. The case was closed.

It was reopened, however, following the massive Murphy Complex Fire in July of 2007, when WWP filed a motion to challenge the BLM’s decisions to allow grazing on areas unaffected by the fire. The Court refused to enjoin grazing, but it did enjoin the BLM from “interpreting the 1987 RMP in any manner other than imposing requirements (1) to maintain or enhance existing and potential populations of the sensitive species within the planning area, and (2) to ensure that wildlife goals and watershed needs will be satisfied prior to allowing increases in livestock use.” According to Winmill’s memo, “The Court granted in part the BLM’s motion for summary judgment to the extent that it sought summary judgment on WWP’s request for a total ban on grazing.”

WWP then argued that it was a prevailing party deserving payment under EAJA. However, according to Judge Winmill’s memo, the BLM’s decisions were not “a blatant disregard of the Court’s prior decision” and that a “reasonable argument could be made to support the BLM’s management, even if that argument ultimately proved unsuccessful.” The Court found that the position of the BLM was thus “substantially justified”, and hence denied the motion for fees and costs.

[Back to Top](#)

## **State of Utah Files Suit against Federal Government to Set Aside “Wild Lands” Order**

According to a press release from Utah Governor Gary R. Herbert’s office, on April 29<sup>th</sup> the Governor announced that the State of Utah had filed suit in federal court, asking the court to invalidate Secretarial Order 3310, or the “Wild Lands Order,” issued by Secretary of the Interior, Ken Salazar on December 22, 2010. The Governor stated that in issuing the Order, the Secretary departed from Congressionally-authorized procedure and created a new “Wild Lands” designation for public lands, elevating this category above all other uses of public lands without any timeline for completion of studies to determine a proper and final designation.

“The Department of Interior sought no input from me - nor any other Governor - before they issued this order,” said Governor Herbert. “The order undid years of collaborative and costly work. State and county officials, environmental organizations, natural resources industries, citizens, and local Bureau of Land Management (BLM) offices have labored to create Resource Management Plans - the legal and proper way to determine the designation and use of our public lands. This order circumvents that system, and Congressional authority, to designate lands by bureaucratic fiat.”

“The Department of Interior, by their own admission, had no statutory authority for this order,” he continued. “We’re seeking judicial relief so we can pick up our work where we left off rather than letting the federal government arbitrarily change the rules at the end of the game.”

The lawsuit will ask the federal court to declare Order 3310 null and void, set BLM manuals created pursuant to the order set aside, and prevent the Department of Interior from managing public lands in a manner contrary to existing BLM Resource Management Plans. The suit was filed by the office of Utah Attorney General Mark Shurtleff in the U.S. District Court for the District of Utah in Salt Lake City (Case 2:11-cv-00391-DB). [Go to the Governor’s website](#) to see the entire press release, a copy of the filing and the language of the complaint.

## **MORE NEWS**

### **Vaccine Research Could Solve Bighorn Separation Problem**

According to the Lewiston Tribune, a Washington State University wildlife disease researcher produced an experimental vaccine that appears to have protected four bighorn sheep against deadly pneumonia. While the existence of disease transfer from domestic sheep to bighorns on the range is still in question, this vaccine, developed by Professor Subramaniam Srikumaran, could eliminate the perceived need to prevent domestic/bighorn contact through separation. Should federal land management agencies proceed down the path of separation by removing domestic sheep from their traditional ranges (as was the case on the Payette National Forest), the entire sheep industry could well collapse. Thus, although further research is needed on the vaccine and problems may arise in administering and controlling dosage, research such as Srikumaran’s is crucial to the industry. He is also reportedly working on a method that would treat domestic sheep, rather than the bighorns.

Read more at <http://tinyurl.com/68mxb8r>.

[Back to Top](#)

### **American Sheep Industry Association News**

Go to [www.sheepindustrynews.org](http://www.sheepindustrynews.org)

### **Environmental Steaks**

See two editions of NCBA’s monthly newsletter, *Environmental Steaks!*, [for April](#) and [for May](#).

[Back to Top](#)