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**Public Lands Council**

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~July 2011~

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## HIGHLIGHT

### Interior-Environment Appropriations Bill

Debate on the FY 2012 Department of Interior, Environment, and Related Agencies Appropriations Act, [H.R. 2584](#), stalls in the House of Representatives as debt ceiling talks continue. H.R. 2584 contains funding provisions for FY 2012 to prevent the Department of Interior (DOI) and the Environmental Protection Agency (EPA) from moving forward with regulations that could be harmful to the U.S. livestock industry. Rep. Mike Simpson (R-ID), Chairman of the Appropriations Subcommittee on Interior, Environment, and Related Agencies, was integral in drafting a bill which returns balance to BLM and Forest Service grazing programs and protections to grazing through many provisions in the underlying language of the bill. See Chairman Simpson's editorial from the NCBA newsletter, by [clicking here](#) (go to "Restoring Balance to Well-Intended, Yet Often Misused Environmental Laws").

A host of amendments were offered in full committee markup and on the House floor (with more to come), both favorable and unfavorable to the industry. Chairman Simpson and many other western members of Congress were effective in ensuring the right outcome on votes on those amendments (listed after the underlying language provisions, below.) PLC kept a constant eye on amendments as they were raised, sending vote recommendations to the Hill and providing representatives and their staff with a [comprehensive list](#) of recommended votes.

#### FUNDING LEVELS IMPORTANT TO PLC:

##### BLM

*Bureau-wide Funding*—The Committee recommends funding the BLM at \$1,055,122,000 which is \$58,764,000 below fiscal year 2011 enacted levels and \$59,672,000 below the President's budget request.

*Range Management Program*—The Committee recommends \$87,532,000 for the range management program, \$10,617,000 above fiscal year 2011 enacted levels and \$15,929,000 above the budget request. The program has been significantly underfunded in the past while its costs, mostly due to litigation, continue to rise. PLC worked diligently to see that the range line-item was adequately funded to provide the resources necessary to limit any negative impacts on permittees due to broader government funding issues.

*Wild Horse & Burro*—The Committee recommends \$63,986,000 for wild horse and burro management, \$11,767,000 below fiscal year 2011 enacted levels and \$11,022,000 below the budget request. The recommendation is equal to fiscal year 2010 enacted levels. The Committee is deeply troubled by the Bureau's announcement that it will reduce gathers needed to remove 2,400 excess wild horses and burros from rangelands that are overpopulated.

*National Landscape Conservation System (NLCS)*—The Committee recommends \$20,000,000 for the NLCS, this \$11,870,000 below fiscal year 2011 enacted levels and \$19,345,000 below the President's budget request. PLC supports the cut to this line item as we continue to believe the NLCS was and is an additional layer of bureaucracy, created by the 2009 Omnibus Public Lands bill, which is unnecessary.

*Land Acquisition*—The Committee recommends \$4,880,000 for the BLM land acquisition account, this is \$17,076,000 below fiscal year 2011 enacted levels and \$45,120,000 below the President's budget request. The funds made available by this bill would only be available for inholding, emergency, hardship and acquisition management – not general acquisition. PLC supports this recommendation by the Committee as past land acquisition funding has been used to enlarge the federal estate and our policy calls for 'no net-loss' of private lands to the federal government.

*Range Improvements* – The Committee recommends \$10,000,000 for range improvements; this is level to the fiscal year 2011 enacted level and the President's budget request.

##### U.S. Fish & Wildlife Service

*Threatened and Endangered Species.*—The Committee recommends \$21,668,000 for threatened and endangered species as requested, \$491,000 below the fiscal year 2011 enacted level. The bill places a moratorium on any new listings, including moving threatened or candidate species to the endangered species list. (Language was stripped—see below for an update on this language based on an amendment passed on the House floor.)

### Wildland Fire Management

The Committee recommends \$574,072,000 in new discretionary funding for wildland fire management which, when combined with the directed use of \$189,000,000 in carryover emergency fire suppression funds, provides \$763,072,000 for wildland fire management at the Department of the Interior.

### NFS

*System-wide Funding*—The Committee recommends \$1,546,463,000 for the National Forest System (NFS), \$4,215,000 above the fiscal year 2011 enacted level and \$158,063,000 below the budget request. The Committee is deeply concerned about the aftermath of wildfires in the Southwest.

*Grazing Management.*—The Committee recommends \$55,445,000 for grazing management, \$5,707,000 above the fiscal year 2011 enacted level and \$10,000,000 above the budget request. As mentioned below under monitoring and inventory, the Committee is concerned about the lack of both annual and trend monitoring for allotments.

*Range Betterment Fund.*—The Committee recommends \$3,262,000 as requested, for the range betterment fund.

*Vegetation and Watershed Management*—The Committee recommends \$184,341,000, which is level to the fiscal year 2011 enacted amount and \$184,341,000 above the President's request. The administration was attempting to roll this account into a larger line-item, 'Integrated Resource restoration', which the Committee chose not to fund. While unsure what the full impact of such a change would have had on grazing, PLC was concerned with the administration's proposal due to the fact that 10-15% of the Vegetation line-item is typically put toward grazing.

*Planning.*—The Committee recommends \$30,033,000 for planning, \$15,000,000 below fiscal year 2011 levels... The Committee recognizes the Forest Service is in the process of reviewing comments and revising the draft planning rule. Nonetheless, the Committee has significant concerns about the implementation and cost of the planning rule as currently drafted. The draft rule places too many conflicting requirements on forest plans and will likely lead to increased litigation. The new inventory requirements for invertebrates will very likely cost millions upon millions of dollars and are virtually impossible to complete. The Committee believes the Forest Service must simplify the rule, ensure it is implementable, understandable to the public, and cost effective. The Committee retains language in Title IV General Provisions allowing forest management plans to expire if the Service has made a good faith effort to update plans commensurate with appropriated funds. The Committee modifies this language by allowing forest plans to be completed under the 1982 and 2000 planning rules and allows these plans to be used in place of revised plans that would be completed under the new planning rule (expected to be released in December of 2011).

*Inventory and monitoring* – The Committee is concerned about the lack of monitoring related to livestock grazing allotments and strongly encourages the Forest Service to increase both annual and trend monitoring on allotments. The Committee directs the Forest Service to allocate a greater portion of monitoring funds for these efforts.

*Land Acquisition*—The Committee recommends \$12,500,000, which is \$20,434,000 below fiscal year 2011 enacted levels and \$77,500,000 below the President's request. As with the BLM, none of these funds can be used for general acquisition but rather are limited to critical inholdings/wilderness protection and acquisition management. PLC supports these cuts.

*Wildlife and Fish Habitat Management.*—The Committee recommends \$140,260,000 for wildlife and fish habitat management, which is equal to the fiscal year 2011 enacted level. As mentioned under inventory & monitoring and grazing management, the Committee directs the Service to increase monitoring of threatened and endangered

fish and their habitat, especially in grazing allotments. The Committee expects a portion of funding from this program to be allocated for this purpose.

## LWCF

The Committee recommends \$61,833,000 for Land and Water Conservation Fund (LWCF) programs, \$238,701,000 below fiscal year 2011 enacted levels and \$838,167,000 below the 2012 budget request.

## EAJA

The Committee directs the Department of the Interior (DOI), the EPA, and the Forest Service to provide detailed reports, within 60 days of enactment of the FY 2012 spending bill, regarding payments via the Equal Access to Justice Act (EAJA); specifically, the amounts of payments, recipients, and other details to the House and Senate Committees on Appropriations and make them publicly available.

## GENERAL PROVISIONS

1. Sec. 118 Administrative Review: Civil action challenging the Bureau of Land Management concerning public lands grazing will only come before a Federal Court after all hearing and appeal procedures have been exhausted. An amendment was offered to strike this language but was defeated on the House floor.
2. Sec. 119. Gray Wolves: Prevents legal challenges of any future agreement to delist the gray wolf in Wyoming and the Great Lakes region from the Endangered Species List. An amendment was introduced to strip this language, but it failed (see below). \*[Read the message](#) sent to Congress by PLC, its national affiliates and National Rifle Association.
3. Sec. 120. Trailing Livestock over Public Land: Exempts the trailing of livestock over BLM managed land from the National Environmental Policy Act (NEPA) requirements. An amendment was offered to strike this language but was defeated on the House floor.
4. Sec. 415. Grazing Permits: Extends the “rider” language five years to allow the renewal of federal grazing permits despite the backlogs in NEPA and makes the transfer of permits, with no significant changes, an administrative action.
5. Sec. 442 Bighorn Sheep: Bars funds for management of bighorn sheep to the detriment of public lands grazing. \*[Click here](#) to see the American Sheep Industry Association/PLC joint letter to Congress opposing the expected amendment to strip this language.
6. Sec. 435: Waters of the United States: Prevents EPA from issuing new guidance regarding the definition of “waters of the United States” under the Clean Water Act. Chairman Simpson’s language would stop EPA’s attempt to remove “navigable” from the Clean Water Act through a “guidance” document it proposed in May of this year.

## AMENDMENTS PLC SUPPORTED

Dust Regulation: Rep. Jeff Flake’s (R-Ariz.)—defunds EPA’s current efforts to regulate dust at unprecedented and unachievable levels. This amendment would stop EPA’s current revision of the coarse particulate matter standard (dust standard), which PLC expects to be proposed sometime this summer at levels that are double the stringency of the current standard. This amendment was accepted by the full committee.

Wild Lands: Rep. Cynthia Lummis’ (R-Wyo.)—continues the funding block on Department of Interior’s Secretarial Order 3310 regarding wild lands designations. This amendment was accepted by the full committee. \*[Read the letter](#) signed by PLC, its national affiliates and National Rifle Association supporting Rep. Lummis’ amendment.

## AMENDMENTS PLC OPPOSED

**Grazing Fee:** Rep. Betty McCollum (D-Minn.)—to raise the grazing fee. Amendment was voted down in full committee (before reaching House floor). \*[See our letter](#) to Congress opposing the amendment.

**ESA Moratorium:** Rep. Norm Dicks (D-Wash.)—to strike the language providing for a moratorium on ESA listings. This amendment was defeated in full committee, but, when reintroduced on the House floor, passed 224-202.

**Gray Wolf:** Rep. Norm Dicks (D-Wash.)—to strike the language preventing legal challenges of any future agreement to delist the gray wolf in Wyoming or the Great Lakes Region. Failed on the House floor, 174-250. \*[Read the message](#) sent to Congress by PLC, its national affiliates and National Rifle Association.

The Obama administration is threatening to veto this bill, but it will likely not reach his desk in current form. The House, after passing its version of the bill, will probably end up in conference with the Senate. The likely outcome is that an omnibus continuing resolution (CR) will have to be enacted. PLC will continue to work with both chambers to ensure that as many of our preferred provisions as possible are included in the final agreement.

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## LEGISLATION UPDATE

### **Wilderness Study, Roadless Area Release Act Gets Hearing**

On July 26<sup>th</sup>, House Majority Whip Kevin McCarthy's (R-Calif.) [Wilderness and Roadless Area Release Act](#) saw a hearing by the Natural Resources Subcommittee on National Parks, Forests and Public Lands. The legislation calls for the release of Wilderness Study Areas (WSAs) and Inventoried Roadless Areas (IRAs) deemed by BLM and the Forest Service as not-suitable for a Wilderness Area designation ([see our press release on the bill](#)). 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. PLC submitted a [letter of support](#) for the bill, which was placed in the record. PLC also suggested to several members of the subcommittee questions regarding the bill's impact on grazing. One of these questions was brought up repeatedly: once released as study areas, will the land management automatically change, and will they completely lose current protections? The anticipated response was that no, they would retain specified management parameters, and any changes made to that management could only be made as part of a very intricate and carefully crafted land use planning processes.

Witnesses included representatives Steve Pearce (R-N.M.), Chairman of the House Western Caucus, and Kevin McCarthy (R-Calif.), Majority Whip (both House cosponsors); Senator John Barrasso (R-Wyo.), Chairman of the Senate Western Caucus and sponsor of an identical bill in the Senate; BLM Director Bob Abbey; Forest Service Under Secretary Harris Sherman; former Department of Interior Secretary Bruce Babbitt; Wyoming County Commissioner Kent Connelly, who spoke to the importance of livestock grazing on those lands; and others. ([See a complete list of witnesses and their testimonies](#)).

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### **House Approves Legislation to Prevent Regulatory Expansion over Water**

On July 15<sup>th</sup>, the House approved [H.R. 2354](#), the Fiscal Year 2012 Energy, Water and Related Agencies Appropriations bill that provides the annual funding for various agencies and programs, including the Army Corps of Engineers. Provisions within this bill prevent the Corps of Engineers from issuing new guidance regarding the definition of "waters of the United States" under the Clean Water Act. This language is identical to the language in the Interior-Environment appropriations bill, and would prevent the Corps from finalizing the

Clean Water Act Guidance that it jointly proposed with EPA in May of this year. ([See PLC's comments and other actions regarding the draft Guidance, below.](#))

H.R. 2354 will now be sent to the Senate. PLC will continue to work to maintain the preventative language in any appropriations bills taken up by the Senate.

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### **Clean Water Cooperative Federalism Act Passes House**

On July 13, 2011, the U.S. House of Representatives passed the Clean Water Cooperative Federalism Act ([H.R. 2018](#)). This legislation, which PLC fully supports, would prevent the Environmental Protection Agency (EPA) from usurping the states' rights under the Clean Water Act (CWA). It prevents EPA from using coercive tactics against the states to further its (EPA's) own political agenda. H.R. 2018 was sponsored by Rep. John Mica (R-Fla.) and Nick Rahall (D-W.Va.) as a way to restore cooperation between the federal government and the states, which is the foundation of the CWA.

Currently, the EPA is not required to consider the impact on jobs or the economy when promulgating regulations, despite the fact that many of its current actions could result in a loss of jobs and economic hardships. During debate of H.R. 2018 on the House floor, Rep. Shelley Moore Capito (R-W. Va.) offered an amendment that would require EPA to consider these impacts. Rep. Capito's amendment passed by a vote of 268-152.

The legislation now heads to the Senate, where it faces an uphill battle. Additionally, President Obama has indicated that he will veto the bill if it gets to his desk. PLC will continue to educate lawmakers on the importance of this bill and will work on its passage in the Senate.

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### **Arizona Rancher Urges Congress to Pass Legislation to Strengthen Border Security**

On July 8<sup>th</sup>, Dr. Gary Thrasher, rancher and veterinarian from southern Arizona, [testified](#) on behalf of the Arizona Cattle Growers' Association, PLC and NCBA during a legislative hearing of the House Committee on Natural Resources on [H.R. 1505](#), the National Security and Federal Lands Protection Act ([see our press release](#)). Thrasher said H.R. 1505, introduced by Representative Rob Bishop (R-Utah), is an important piece of legislation needed to protect the "sovereignty and security of the border region, its federal lands and refuges, as well as the nation's security."

A dangerous situation faces ranchers on remote stretches of the border between the United States and Mexico, where human and drug trafficking run rampant. The increasing deployment of border patrol personnel to the more easily accessed areas has driven border incursions toward less accessible trails in rural areas – areas that cross through ranches, national forests, national monuments, wilderness areas, reservations and wildlife refuges. In these areas, border patrol agents are hindered from securing the border by federal policies and regulations developed under the National Environmental Protection Act; the Federal Land Policy Management Act; the Endangered Species Act; and others. In turn, ranchers are confronted with threats; damage and destruction of property; theft; break-ins; and serious disruption of necessary ranch work almost daily. Extreme resource damage also results from the thousands of traffickers crossing the border each week.

H.R. 1505 would ensure that the environmental policies and regulations enforced by the Department of Interior or Department of Agriculture do not restrict or impede U.S. Border Patrol from having operational control of the border. The legislation would allow U.S. Border Patrol immediate access to federal lands and the ability to construct and maintain roads and place surveillance equipment in strategic areas to assist in detecting and apprehending criminals.

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## ADMINISTRATION UPDATE

### **BLM Announces New Sage Grouse Strategy**

According to its July 30<sup>th</sup> press release, the BLM met on July 16 with state wildlife management officials to brief them on the agency's "National Greater Sage-Grouse Planning Strategy." While PLC has not yet seen the strategy, the BLM states it "emphasizes a cooperative approach and provides a framework to advance efforts to implement timely conservation measures for sage-grouse and its habitat."

From the BLM release:

As part of the strategy, the BLM will incorporate science-based conservation measures into Resource Management Plans across regions where the greater sage-grouse is found. It will address principal threats to the sage-grouse identified by the U.S. Fish and Wildlife Service within different portions of the range and work closely with Western state fish and wildlife agencies...

In April 2010, the U.S. Fish and Wildlife Service found that the greater sage-grouse warrants the protection of the Endangered Species Act, but it did not list the species due to a need to address other, higher-priority species first. The BLM's goal is to provide for long-term sage-grouse conservation, habitat protection and species improvement that would make federal Endangered Species Act protection unnecessary in the coming years.

PLC has requested a copy of the new strategy. We will keep members posted as to the implications this new strategy could have on grazing.

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### **DOI Economic Impact Report Undercuts Grazing Contributions**

According to a [report](#) released by the Department of Interior (DOI), public lands grazing contributes just .2% of all the jobs generated by DOI policy and only \$0.64 billion in economic impact. To quote Western Livestock Journal writer, Andy Rieber:

Perhaps the most peculiar is the disparity between the number of BLM permittees and the number of jobs directly created by DOI grazing policy. According to BLM, there are nearly 18,000 BLM grazing permits and leases and 21,000 allotments on BLM land. However, the DOI report indicates that there are only 2,507 "direct" jobs generated by BLM grazing policy. Evidently, ranchers themselves were not recognized by the modeling method used by DOI to estimate jobs that are dependent on BLM grazing...

Indications are that DOI was working with limited information about the industry. To remedy this lack of information, PLC is considering options to commission a study on the true economic value of public lands grazing in order to refute the spurious figures contained in DOI's analysis.

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### **PLC Submits Comments on EPA/Corps Water Guidance**

Along with the Waters Advocacy Coalition (WAC), PLC has submitted [comments](#) on the Environmental Protection Agency (EPA)/Army Corps of Engineers (Corps) draft Clean Water Act (CWA) Guidance and has encouraged state affiliates to do the same by August 1<sup>st</sup>. As reported last month, on May 2<sup>nd</sup>, 2011, the EPA and the Corps released a draft guidance document that will be sent to field staff instructing them as to the newly expanded definition of waters that fall under federal jurisdiction. The new definition would effectively make all waters, not just "navigable" waters, subject to federal regulation. PLC strongly opposes the draft guidance because it would harm private property rights, does not follow the language of the CWA or Supreme Court

precedent, and would cost livestock producers millions of dollars in permitting fees and regulatory restraints. PLC actions to date:

- As part of the Waters Advocacy Coalition (WAC), PLC sent a [letter](#) expressing concern with the draft guidance and calling for a formal rule-making process.
- We [requested an extension](#) of the comment period. A 30-day extension was granted; the new deadline is July 31<sup>st</sup> (effectively August 1<sup>st</sup>, due to the weekend).
- We have urged all affiliates to submit comments on the draft guidance by the new deadline.
- PLC has submitted a comprehensive set of [comments](#) along with WAC.

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### **BLM Seeks Bids for New Pasture Facilities to Care for and Maintain Wild Horses**

The BLM is soliciting bids for new long-term pasture facilities for excess wild horses and burros. The solicitation is for one or more pasture facilities accommodating 800 to 5,000 wild horses for a one-year period, with a renewal option under BLM contract for four one-year extensions. The solicitation is open until August 19, 2011, and is 100 percent set aside for small businesses under the North American Industry Classification System. The BLM has specifically prohibited federal lands from inclusion in any agreement. [Click here](#) for more information.

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### **Nevada Horse Gather to Take Place despite Lawsuit**

Until the last week of July, litigation was holding up yet another horse gather in eastern Nevada. A federal appeals court has lifted a temporary injunction blocking the gather of more than 1,700 wild horses, put in place at the request of extreme animal rights activist group, the Cloud Foundation. The Colorado-based group had sued to stop the roundup, but, according to an article from the Associated Press, “a three-judge panel of the 9th Circuit U.S. Court of Appeals in San Francisco said the group had failed to show it could prove the roundup is illegal and that removal of horses from federally protected public rangeland would cause irreparable harm.” The federal appeals court still intends to hear the case, setting an August 12 deadline for the Cloud Foundation to file its formal case.

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### **Top Officials Agree “In Principle” to Wyoming Wolf Agreement**

Wyoming and the federal government have reached “an agreement in principle” on a deal to remove the state’s wolves from the endangered species list and put them under state control. In April, Congress voted to delist wolves in five other western states, though not Wyoming.

Following a meeting at the Wyoming State Capitol earlier this month, Gov. Matt Mead, Interior Secretary Ken Salazar and U.S. Fish and Wildlife Service Director Dan Ashe said they hoped to reach a deal by the end of the month and ratify it by the end of September. The three said they agreed on a deal under which Wyoming would be required to maintain 100 wolves, including 10 breeding pairs, outside Yellowstone National Park. They also agreed in principle on creating a wolf “flex area” in Sublette and Lincoln counties, in which wolves would be protected only during the winter months.

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## **USDA to Inspect Horses in Transit**

Next year, the U.S. Department of Agriculture (USDA) will resume the inspection of horses that are trucked commercially, including those headed for slaughter facilities in Canada and Mexico.

In 2007, Congress banned USDA checks on horses in transit to U.S. facilities that processed horses for meat, effectively shuttering such plants because the meat could no longer be certified as coming from healthy horses. The ban also led to a surplus of older horses, causing prices for them to drop nationwide.

Moreover, it brought a halt to USDA's inspection program for horses being shipped. Driving the restart is USDA's duty to enforce laws on treatment of animals, but there is no chance that the move will lead to the re-opening of slaughter plants in the United States. USDA will hire more inspectors to check on horses in transit.

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## **BLM Appears Supportive of HSUS Wild Horse Gather Report**

On July 15<sup>th</sup>, BLM [issued a statement](#) welcoming “the involvement and concern” of the Humane Society of the United States (HSUS) regarding the BLM's management of wild horses and burros. In its recently released report, HSUS called for cameras to be placed on helicopters and corrals during gathers. They also called for a “panel of experts” to view/review gathers, which the BLM supported in its press release. The release stated the BLM's intent to “[work] together with HSUS and other partners” to “put into place what BLM Director Bob Abbey has called a ‘new normal’ for doing business.” PLC is wary of any “partnership” involving the radical group, HSUS, and questions its proposed panel's compliance with FACA. To view the HSUS report, [click here](#).

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## **Salazar Continues to Push Wilderness Agenda**

While Secretary of the Interior Ken Salazar has pledged not to designate any lands as “Wild Lands” under Secretarial Order 3310 due to a congressional funding ban, his July 19<sup>th</sup> [Instruction Memorandum](#) (IM) to BLM state directors furthers his agenda of designating actual wilderness under the Wilderness Act. The IM directs BLM state directors to provide a summary of lands in their respective states which they believe should be designated as wilderness. This effort is an extension of Secretary Salazar's June 10, 2011, [letter to Members of Congress](#) requesting their ideas on “crown jewel” areas of public lands. In response to Salazar's letter, both House and Senate members of each chamber's Western Caucus sent a counterproposal, asking the Secretary to “help identify legislative proposals we have put forward that the Department of Interior could support to create jobs in the West.” While there appears to be little appetite, especially in the House, to pass any major wilderness bills, PLC will continue to speak to Natural Resources Committee staff to ensure no wilderness lacking local stakeholder support is designated.

As a further precaution, PLC will be in communication with agency officials, to see that these BLM state director reports do not result in new study areas – which we would consider a clear violation of law.

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## **JUDICIARY UPDATE**

### **Judge Sides with Grazing in Jarbidge Sage Grouse Case**

On Friday, July 22<sup>nd</sup>, Chief Judge B. Lynn Winmill of the Federal District Court for Idaho held that Simplot Ranches, Brackett Ranches, and Camas Creek Cattle Association could continue to graze, thereby allowing

these public land-dependent ranches to operate while protecting sage grouse habitat on 17 grazing allotments located within the BLM Jarbidge Resource Area (JRA), south of Twin Falls, Idaho.

Judge Winmill, after considering all the efforts by the BLM and the permittees over the last five years, decided “[the] BLM is committed to protecting the habitat of the listed species” and that “a total ban on grazing would interfere with the BLM’s ability to use the best science to manage grazing.”

The permittees have been operating under Interim Grazing Management Plans (IGMPs) since 2005 when Western Watersheds Project challenged the 17 allotments based on NEPA compliance and settled to allow grazing to continue under the IGMPs. The IGMPs expired earlier this year and WWP refused to agree that grazing should continue.

The decision by Judge Winmill is a significant ruling from a court not particularly friendly to public lands grazing – we are encouraged that the judge recognizes that grazing is compatible with the protection of sage grouse and its habitat.

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### **Activists Challenge Wolf Delist Rider**

Environmental activist groups have gone to federal court seeking to restore endangered species status for gray wolves in the Northern Rocky Mountain (NRM) region. A policy rider in the April 2011 continuing resolution passed by Congress delisted most NRM wolves and blocked judicial review of the wolves’ delisting. Now, the activists are saying Congress exceeded its authority by intervening in an ongoing court case to remove the wolves from the endangered species list without amending the underlying law and by presuming to exclude its action from judicial review. The wolf advocates want the rider declared unconstitutional and the gray wolf returned to federal protection. Government lawyers, however, said the delisting effectively amended the Endangered Species Act by making a special exemption for wolf populations in the Rockies.

The hearing will come before U.S. District Judge Donald Molloy in Montana. Molloy has twice blocked attempts to delist the predators. Now he is being asked to consider whether Congress violated the separation of powers under the U.S. Constitution with legislation crafted to circumvent his earlier rulings.

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### **FWS Agrees to ESA Settlement**

The U.S. Fish and Wildlife Service (FWS) has announced that it has agreed to a proposed settlement with the Center for Biological Diversity and WildEarth Guardians that would require FWS to make initial or final decisions on hundreds of plants and animals under the Endangered Species Act by 2018. As reported in the May Capital Issues, we believe the proposed settlement could have disastrous results for the nation’s producers, taxpayers and the FWS. The settlement is now being considered by U.S. District Judge Emmet G. Sullivan.

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### **Study: Forest Service Paid \$6.1M in EAJA Fees over 6 Years**

A new [report](#) published in the latest issue of the Society of American Foresters’ *Journal of Forestry* shows that the Forest Service paid \$6.1 million in Equal Access to Justice Act (EAJA) funds to environmental activist groups that sued it over a six-year period. The report, citing research by attorney Karen Budd-Falen, among others, includes data from the Forest Service and Justice Department obtained through Freedom of Information Act requests. The payments cover the period 1999 to 2005, and frequent litigators included multi-million dollar groups such as Sierra Club Legal Defense Fund, the Center for Biological Diversity and Earthjustice. These radical activist groups have reaped the benefits of a program meant to reimburse individuals who prevail in

court against the powerful federal government. They have taken advantage of the lack of oversight of EAJA payments, filing numerous lawsuits they know they can win on procedural grounds.

As reported in previous editions of Capital Issues, legislation introduced by Sen. John Barrasso (R-Wyo.) and Rep. Cynthia Lummis (R-Wyo.), the “[Government Litigation Savings Act](#),” would amend EAJA to prevent such abuses. The bill would prohibit organizations with a net worth exceeding \$7 million from filing for EAJA funds; cap total EAJA reimbursements to \$200,000 for any single action, and allow no more than three awards in a calendar year; require that EAJA filers show a “direct and personal monetary interest” in the action to be owed.

Separately, there is language in the House appropriations bill for the Interior and U.S. EPA that would require tracking and reporting of EAJA payments.

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## **MORE NEWS**

### **PLC Staff Attend Affiliate Events**

This month, PLC executive director Dustin Van Liew attended various affiliate events across the west, providing PLC updates and gaining knowledge of regional issues.

Van Liew attended the Idaho Governor’s Trail Ride, riding alongside Governor Butch Otter and discussing the latest issues facing the public lands grazing industry. He also provided an update on the FY 2012 Interior Appropriations bill and discussed the potential advances our industry might see if the bill is enacted into law.

He also spoke at the Western State Land Commissioners’ Meeting in Rapid City, South Dakota, where he gave background and issue updates for PLC, per the commissioners’ request. The goal was to foster a working relationship between our industry and the commissioners responsible for managing state lands. Van Liew also attended the Arizona Cattle Growers’ Association annual meeting in Prescott, where border security and wildfire prevention and recovery were prevailing topics. He also had the opportunity to meet with Arizona Governor Jan Brewer.

Van Liew and PLC manager of legislative affairs, Theo Dowling both attended the annual California Cattlemen’s Association Range Ride. They were accompanied by many permit-holding ranchers and agency officials. Most discussion revolved around the evident damage done to the range by an overgrown wild horse population, as well as the improvements made on sage grouse (and cattle) habitat with the removal of juniper trees via public/private partnerships.

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

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

### **Environmental Steaks**

See NCBA’s monthly newsletter, [Environmental Steaks!](#)

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