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## Public Lands Council

# Capital Issues

~June 2011~

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## LEGISLATION UPDATE

### **Wildlife Services Defunding Amendment Defeated in House Ag Appropriations**

PLC, NCBA and ASI scored a victory with the defeat of an amendment to the agriculture appropriations bill to cut \$11 million for the USDA – APHIS Wildlife Services program, which includes livestock predation protection. According to ASI, the amendment was led by the Humane Society of the United States and Natural Resources Defense Council. It was introduced by Reps. John Campbell (Calif.) and Peter DeFazio (Ore.). DeFazio tries to cut livestock protection every year—this year, despite Republican support of the language, it was soundly rejected on the House floor, with 287 members voting nay on the amendment and only 132 yeas.

PLC and 130 national and state organizations [sent a letter](#) to members of the House conveying the importance of Wildlife Services, including livestock protection. The groups represented livestock, agriculture, sportsmen (including the National Rifle Association), and government, such as the National Association of Counties and National Association of State Departments of Agriculture.

Reps. Frank Lucas (Okla.) and Collin Peterson (Minn.), chairman and ranking member, respectively, of the House Agriculture Committee, and Rep. Cynthia Lummis (Wyo.), vice chair of the House Agriculture Appropriations Subcommittee, all took the floor and spoke out against the amendment. Lucas also penned a [letter to Congress](#) articulating strong arguments against the anti-livestock protection amendment. Reps. Jim Matheson (Utah) and Mike Simpson (Idaho) sent a compelling “[Dear Colleague](#)” letter to all members of Congress also encouraging them to vote against the Campbell-DeFazio amendment. We appreciate their support.

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### **Land and Water Conservation Authorization and Funding Act of 2011**

Leading Senate Democrats, Sen. Max Baucus (D-Mont.) and Sen. Jeff Bingaman (D-N.M.), have reintroduced a bill to guarantee permanent full funding for the Land and Water Conservation Fund, which is used to “acquire new federal lands, conserve private lands and assist states in promoting recreation.” In addition to providing \$900 million annually, the [bill](#) would also stipulate that 1.5 percent of the money must be used to enhance access to existing federal lands for hunting, fishing and other recreational uses. PLC strongly opposes this legislation and any proposal to expand the federal estate.

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### **Two Measures to Provide U.S. Border Patrol Access to Department of Interior Lands**

*Excerpts from a congressional press release:*

A bipartisan majority in the House of Representatives voted in favor of an amendment introduced by Congresswoman Cynthia Lummis (R-WY) that would strike language in the Department of Homeland Security Appropriations Act for 2012 ([section 547](#)) that authorizes environmental mitigation payments by the Border Patrol to the Department of Interior (DOI). Many believe these funds are used as leverage by public land managers in exchange for simply granting U.S. Border Patrol agents access to federal lands. Additionally, the amendment would strike language in the bill that allows these funds to be used by the DOI to purchase more land.

Congressman Rob Bishop (R-UT) has also introduced legislation, [H.R. 1505](#), that would restrict federal environmental policies and public land managers from limiting the Border Patrol’s access to the entire southern U.S./ Mexico border. For a number of years, DOI has blocked access to Border Patrol agents, or required the Border Patrol to transfer funds to the DOI for “mitigation” efforts on public lands along the U.S./Mexican border. In theory, these mitigation funds are to be used to offset apparent environmental damage by the Border Patrol in the course of patrolling the millions of acres (more than

40 percent of the land) along the border. There is evidence, however, that the U.S. Border Patrol is being coerced by the Department of Interior (DOI) into paying these funds in exchange for access to federal lands necessary for them to both deter and apprehend criminal smugglers and traffickers.

The Department of Homeland Security Appropriations Act for 2012 was passed by the House and has been referred to the Senate Committee on Appropriations.

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### **Members of Congress Request ‘Do Over’ of Proposed Forest Planning Rule**

In response to the administration’s lack of consideration of the multiple attempts by Congress and stakeholders to give input and request further consideration of the U.S. Forest Service’s proposed forest planning rule, 59 members of Congress sent a [letter](#) to Secretary of Agriculture Tom Vilsack expressing their concern. Reps. Greg Walden (R-Ore.) and Mike Ross (D-Ark.) and their colleagues, collectively representing over 77% of the nation’s National Forest System (NFS) lands, commented on the proposed rule’s cumbersome and overly restrictive requirements, which would hinder multiple use on NFS lands and harm rural economies. They recognized in particular that the ‘viability’ provision of the proposed rule is unworkable. (See our [press release](#).)

The Walden/Ross letter was preceded by another congressional letter that had the backing of radical environmental groups and asked for the rule to be even more restrictive and prescriptive. The acres of NFS lands in those members’ districts amounted to just 10 million, compared to the 150 million acres of NFS lands in the districts of members on the Walden/Ross letter. The latter group arguably has more standing to take issue with the proposed rule, as their constituents will be directly impacted by the rule.

Next steps will likely include hearings, either on Capitol Hill or in the field, to hear testimony from stakeholders and demonstrate the impracticability of the proposed rule. Forest Service Chief Tom Tidwell has indicated that he has no intention of scrapping the proposed rule.

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### **Proposed Senate Amendments Demonstrate ESA Shortcomings**

Two Senators this month highlighted the weaknesses of the Endangered Species Act (ESA) by filing amendments to exempt ESA listing of species to pending legislation. Senate Environment and Public Works Committee Ranking Member James Inhofe, R-OK, filed an amendment that would exempt the Lesser Prairie Chicken from ESA listing. The amendment was offered to S. 782, the “Economic Development Revitalization Act of 2011”; Inhofe cited the economic impact the listing would have (and the fact that the bird is still hunted in neighboring Kansas). Senator John Cornyn, R-TX, also filed an amendment to the bill, this one to exempt the Sand Dune Lizard from ESA listing. Prior to the legislative mandate to delist the wolf under the ESA, such legislative measures have not been entertained. While cloture on the bill has not been invoked, the introduction of these amendments indicates Congress’ recognition of the need for reform of ESA, an act that has continually caused immeasurable economic damage by mandating unwarranted or excessive protections for over 1,300 species, with a recovery success rate of 1.5 percent.

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### **Unwanted Horse Problem Stands to Be Exacerbated by Horse Slaughter Bill**

As is her annual tradition, Senator Mary Landrieu (D-Louis.) has introduced her “American Horse Slaughter Prevention Act of 2011” ([S. 1176](#)). The bill would prohibit the “shipping, transporting, moving, delivering, receiving, possessing, purchasing, selling, or donation of horses and other equines for slaughter for human consumption.” While the denial of funding to USDA inspectors for horse slaughter plants has already shut down horse slaughter in the U.S., there still exists an international market for horsemeat and byproducts. Meanwhile, despite this demand, the number of unwanted horses in the U.S. continues to contribute to the

suffering of thousands of horses across the country. By cutting off the only remaining avenue for the practical disposal of unwanted horses, this bill would only perpetuate horse neglect.

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## **ADMINISTRATION UPDATE**

### **GAO Issues Report on Unintended Consequences of Cessation of Horse Slaughter**

The Government Accountability Office (GAO) has released its [report](#) on horse welfare and slaughter. An article in the [Billings Gazette](#) gave a good summary:

The closure of the last U.S. horse slaughter plants in the fall of 2007 has failed to reduce the number of horses shipped to slaughter. Instead, the federal funding ban had the unintended consequence of forcing horses to be shipped great distances to be slaughtered in Canada or Mexico where they are killed, and not necessarily humanely...

The (GAO) report confirms what many horse owners have been saying for years: Because of a glut in the horse market, prices for all but the most expensive horses are seriously depressed.

Local veterinarians are also feeling the effects of a depressed horse market.

With low prices come fewer sales, further restricting options for horse owners. Horses are being abandoned, turned out to fend for themselves, especially onto tribal lands, or neglected, the GAO concluded.

The GAO issued two alternative recommendations: either reconsider restrictions on the use of federal funds to inspect horses for slaughter or, instead, consider a permanent ban on horse slaughter. PLC questions how the latter recommendation will alleviate the horse neglect problem, but is optimistic that this report may have a positive influence on policy.

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### **PLC: BLM is Wrong to Re-evaluate Wild Horse Gather Decision**

On June 13, the BLM released an environmental assessment and decision record to implement a wild horse gather and fertility control program on the White Mountain and Little Colorado Herd Management Areas (HMAs) in Wyoming to bring the horse populations back to a level consistent with land capacity. However, it has since backtracked and announced it is re-evaluating the decision, apparently caving to pressure from extremist groups. According to BLM, the maximum appropriate management level (AML) on the White Mountain and Little Colorado HMAs is 400 horses. However, BLM estimates the current population is nearly 1,000 horses. Unfortunately, this overpopulation is consistent across the west.

In September 2010, PLC submitted comments on BLM's draft horse management plan and specifically raised concerns with proposed reductions in gathers allowed in 2011 and the inevitable expansion of HMAs. The BLM's refusal to follow statute to manage wild horse populations at appropriate levels has damaging effects on the land, the wild horses, other wildlife and livestock grazing on the lands.

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### **BLM Announces Wild Horse and Burro Gather Schedule for Summer 2011**

The Bureau of Land Management announced its tentative summer schedule for gathering wild horses and burros from overpopulated herds on Western public rangelands.

The goal will be to treat more than 1,200 mares per year (over the current level of about 900 in FY 2011) through implementation of “catch, treat, and release” gathers. These gathers will be principally aimed at applying the fertility-control vaccine porcine zona pellucida (PZP) to mares. In some herds, the BLM will adjust sex ratios in favor of males to reduce the number of on-the-range pregnancies or potentially manage non-reproducing herds (such as geldings) in some Herd Management Areas.

The approximate dates of the summer gathers are available [here](#).

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### **PLC to Submit Comments on EPA/Corps Water Guidance**

On May 2<sup>nd</sup>, 2011, the EPA and the U.S. Army Corps of Engineers released a draft guidance document that will be sent to field staff instructing them as to how to determine whether a water body falls under the Clean Water Act’s (CWA) jurisdiction. 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 greatly expand the number of waters that would be found “jurisdictional” under CWA, costing livestock producers millions of dollars in permitting costs and regulatory restraints. PLC actions:

- 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 have [requested an extension](#) of the comment period. A 30-day extension was granted; the new deadline is July 31<sup>st</sup>.
- We have urged all affiliates to submit comments on the draft guidance by the deadline, now extended to July 31<sup>st</sup>.
- PLC will submit a comprehensive set of comments along with WAC.

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### **Senators Lift Hold on FWS Director Appointment**

*From E&E News:*

Republican Sens. John Barrasso of Wyoming and Mike Lee of Utah have lifted their holds on Dan Ashe, the Obama administration’s nominee to lead the Fish and Wildlife Service, leaving an apparently clear path for his confirmation before the full Senate.

Barrasso announced today that he stopped blocking the nomination after **Ashe** and Interior Secretary Ken Salazar agreed to travel to Wyoming in the next month to “aggressively” seek a solution to remove gray wolves from the Endangered Species List...

The Interior officials – Ashe is currently deputy director for policy at FWS – will meet with Wyoming Gov. Matt Mead (R) and other state officials next week to discuss a state management plan that would allow Endangered Species Act protections to be lifted. Wolves, which now number more than 300 in Wyoming, have been protected since they were reintroduced to Yellowstone National Park during the Clinton administration...

A Lee spokeswoman said the senator lifted his hold last week and is still reviewing documents he had requested on Interior’s development of a now-scrapped “wild lands” order to protect wilderness [PLC note: until the order is withdrawn, we do not consider it “scrapped”. Additionally, the order was not to protect actual “wilderness”]...

A spokeswoman from the office of Senate Majority Leader Harry Reid (D-Nev.) did not confirm whether there are any remaining holds on Ashe or whether a vote was planned for his confirmation.

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### **Environmental Activist Group CEO Nominated as Assistant Secretary for Fish, Wildlife and Parks**

President Obama has nominated the leader of an environmental activist group to be the Interior Department's next Assistant Secretary for Fish, Wildlife and Parks, a position that oversees national parks and the Fish and Wildlife Service. According to E&E News, nominee Rebecca Wodder was picked to replace Tom Strickland, who left Interior for the private sector in early January. Wodder's selection is seen as a nod to environmental groups and has already drawn criticism from some in the Senate, including Senator James Inhofe (R-Okla.), who expressed concern regarding Wodder's support of the proposal to expand the definition of waters subject to federal regulations under the Clean Water Act. Wodder worked for the Wilderness Society for over 10 years before becoming CEO of American Rivers, an organization whose positions on climate change, dam removal, energy exploration and other issues render it in opposition to PLC's policies.

The following statement from Interior Secretary Ken Salazar demonstrates his and the administration's commitment to conservation above all other multiple uses:

"Rebecca's extensive experience and notable accomplishments in natural resource management make her an outstanding choice for this key position on our departmental leadership team," said in a statement. "Her lifelong work to conserve and restore America's lands and waters will be invaluable in carrying out Interior's strategic vision for our wildlife and park conservation programs and initiatives."

Wodder's confirmation is not a certainty in this session of Congress. Both the Environment and Public Works and the Energy and Natural Resources committees will review Wodder's nomination, at which point a hold may be placed on her nomination.

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### **EPA Water Chief Nominee Supports Expanding Federal Authority over All U.S. Waters**

President Obama's nominee to become U.S. Environmental Protection Agency (EPA) Water Chief, Ken Kopocis, may be added to the ranks of Obama appointees who support expanding the definition of "waters of the United States" under the Clean Water Act (CWA) to give the federal government unprecedented regulatory authority over all U.S. waters. According to E&E News, Kopocis, who worked 25 years on Capitol Hill as a congressional committee attorney, was tapped Friday to lead the Office of Water. If accepted, he will replace Peter Silva, who stepped down after having vetoed an already-approved mountaintop removal coal mining project in West Virginia, an unprecedented violation of water rights that drew the ire of many industry groups, including PLC.

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### **Agriculture Secretary Vilsack Renews Interim Directive Covering Roadless Areas in National Forests**

*From a USDA press release, May 31:*

Agriculture Secretary Tom Vilsack announced that he is renewing an interim directive regarding inventoried roadless areas within our National Forests and Grasslands for an additional year. This is the third one-year, interim directive issued by Secretary Vilsack that governs projects in roadless areas in our National Forests...

The directive provides decision-making authority to the Secretary over proposed forest management or road construction projects in inventoried roadless areas. This directive also ensures a consistent national review of all proposed projects. In 2009, the 9th U.S. Circuit Court of Appeals upheld the 2001 Roadless Rule. The Rule is currently under appeal in the 10th Circuit. A ruling on that case is expected soon.

The revised interim directive does not require Secretarial approval for activities such as emergency fire-fighting activities and small diameter timber cutting to improve endangered species habitat and to reduce risk of

catastrophic wildfire. These activities were also exempted under the previous interim directives and are consistent with the 2001 Roadless Rule.

This interim directive does not affect roadless areas on National Forest System lands in Idaho. Idaho developed its own roadless rule through the Administrative Procedures Act. The Idaho rule provides strong protections for roadless areas...

See the [press release](#).

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### **NRCS Provides Funds for Sage Grouse Protection**

The USDA's Natural Resources Conservation Service (NRCS) and Farm Service Agency will provide approximately \$18.2 million in additional financial assistance to help eligible ranchers in Idaho, Utah, Wyoming conserve critical sage-grouse habitats through the Grassland Reserve Program (GRP). USDA provided \$53 million earlier this fiscal year to eligible ranchers through conservation programs in 11 states.

The additional \$18.2 million will be allocated as follows:

Idaho - \$5.5 million

Utah - \$2.3 million

Wyoming - \$10.4 million

GRP is a voluntary program that, according to the USDA [press release](#), "allows ranchers and farmers to limit future development of the land while retaining the right for landowners to conduct common grazing practices and operations using rental contracts and conservation easements. USDA directs financial resources and technical expertise to help landowners protect and restore these lands."

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## **JUDICIARY UPDATE**

### **Colorado Cattlemen Beat WWP**

The Colorado Cattlemen's Association (CCA), the U.S. Forest Service, the Chaffee County Board of Commissioners, and thirteen livestock producing families this month prevailed against a lawsuit filed by Western Watersheds Project (WWP). In 2009, CCA and Chaffee County joined ranchers in protecting their right to multiple-use grazing of public lands by intervening in a lawsuit filed by the anti-livestock grazing WWP, which sought to deny renewal of grazing in the Pike and San Isabel National Forests.

According to a CCA press release, the appeal by WWP objected to the renewal of the grazing permits, claiming that the decision violated the Forest Plan in various ways including wildlife protection, protecting soil productivity, protecting water quality, and protecting archaeological resources. The decision to renew had in fact been approved after a thorough environmental review. The Forest Service grazing decision also incorporated adaptive management principles to improve environmental conditions in the forests. The ranchers and the Forest Service worked together to develop management steps that would address resource issues and still be cost-effective. Upon reviewing the briefs and the administrative record, the [court affirmed](#) the decision of the Forest Service and allows continued livestock grazing under the adaptive management that everyone committed to do.

This ruling is very helpful in the greater fight against extremist groups as they continually file lawsuits with similar claims to those of WWP. The victory is also a testament to the great job CCA has done along with their members in collecting monitoring data to defend grazing decisions in the face of court challenge.

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### **Justices to Hear EPA Wetland Case**

The Supreme Court has agreed to take up a case challenging the Environmental Protection Agency's (EPA) jurisdictional claim over alleged wetlands on a young couple's homebuilding site near Priest Lake, Idaho. Mike and Chantell Sackett called upon Pacific Legal Foundation (PLF), Sacramento, Calif.-based group that focuses on property rights, to help prove their land does not contain wetlands subject to Section 400 of the Clean Water Act, as the EPA has claimed. The EPA claimed their land contained jurisdictional wetlands, halted construction on the site and required the Sacketts to restore the "wetlands", even though no standing water exists on the property and the lot sits in a residential neighborhood with homes on both sides. Facing permit fees of up to \$200,000, and after being denied at the Ninth Circuit Court, the couple will now get their day at the nation's highest court with *Sackett v. U.S. Environmental Protection Agency*. The timing of this case is particularly interesting in light of the EPA's recent attempt to regulate all waters by way of issuing "guidance". The justices will hear arguments in the Sackett case in the 2011 court term, which begins in October. The court's announcement can be found at <http://www.supremecourt.gov/orders/courtorders/062811zr.pdf>.

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## **MORE NEWS**

### **Arizona wildfires continue to burn out of control**

Over the past month, over 6 million acres have reportedly been scorched by wildfire throughout the southwest. In the wake of what Arizona Cattle Growers Association (ACGA) has called the worst wildfire season in Arizona history, ACGA has established the "[Great Arizona Bale-Out Fund](#)" to raise money to help members affected by the blaze. New Mexico Cattle Growers Association is also helping people affected by the Wallow fire, located on the AZ/NM border. On June 21<sup>st</sup>, 90 families and more than 800,000 acres (much of it grazing lands) had been tragically impacted. While most livestock has been saved, critical grazing land is no longer available to feed their cattle.

ACGA also sent a [letter to the regional forester](#), Corbin Newman, asking that the Forest Service consider their proposal to "immediately add cattle presence to fire-threatened landscapes on Forest Service ground as an emergency, and perhaps permanent, means of reducing high fire fuel loads now occurring thereon and thus reducing their potential for immediate and future catastrophic destruction by wildfires."

In light of the infrastructure lost (due both to back-burns and to wildfire) and the agency's limited budget, ACGA also requested that its delegation ask the Forest Service some questions, such as how the agency will work to get grazing back onto burned areas, how litigation by extremist groups against timber harvests has affected fire hazard levels, and how much federally protected species habitat has been affected by the burns.

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### **Bighorn Sheep Meeting Held in Denver**

On June 13-14, PLC Vice President, Brice Lee and Executive Director, Dustin Van Liew attended a Denver, Colo. meeting to discuss and collaborate on strategies to allow bighorn sheep and domestic sheep to coexist on public lands with the least effect on one another. The meeting drew more than 80 representatives from 16 states and two countries from the domestic sheep industry, wild sheep advocacy groups and representatives of state

and federal government agencies. Presentations on the potential diseases that cause bighorn die offs, the possible transmission of those diseases and the latest research on the topic including successful vaccines were offered. In addition, state and federal government agency representatives were on hand to discuss regulations they operate under, their role in bighorn and habitat management, the mapping of bighorn populations and the policies around allotment use.

Support of continued research into vaccine treatments of wild sheep and domestic sheep; the consolidation of Best Management Practices (BMP) for ease of use and recommendations; in-field research to evaluate the existing BMP; and implementation of collaborative working groups that include all affected parties to create accountability for finding solutions. The complete list of recommendations is available on the American Sheep Industry Association website at [www.sheepusa.org](http://www.sheepusa.org) by clicking the Policy & Programs tab and then the Industry Programs tab.

A complete report of the meeting will be published in the July issue of the Sheep Industry News. Presentations from the meeting are available at [www.sheepusa.org](http://www.sheepusa.org) by clicking on the Resources tab and then on the Presentations tab.

### **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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