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Public Lands Council

Capital Issues

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HIGHLIGHT:

PLC, Affiliates Submit Comments on the Proposed Forest Planning Rule

On May 16th, PLC, Association of National Grasslands (ANG), American Sheep Industry Association (ASI), and National Cattlemen's Beef Association (NCBA), along with 31 additional sheep and cattle affiliates from across the country, [submitted comments](#) on the Proposed Forest Planning Rule ("[Proposed Rule](#)"). Issued by the Forest Service (FS) under the National Forest Management Act (NFMA), the Proposed Rule contains requirements that would be difficult, if not impossible, for the agency to achieve without precluding grazing and other multiple uses on National Forest System (NFS) lands.

Despite calls from [multiple use industries](#) and [Congress](#) to extend the comment period, the administration would not extend the May 16th deadline (see FS Chief Tidwell's [response](#) to industry's request). In response to the FS' insistence that a final rule will be released by the end of the year, stakeholders and legislators question the wisdom of pushing through, without ample time for discussion, this very momentous rulemaking.

In our comments, the livestock associations voiced concern that the Proposed Rule elevates the objectives of preservation and wildlife management over other multiple use objectives, such as grazing. Some highlights from the comments:

The Proposed Rule:

- Ignores provisions in NFMA and the Multiple Use-Sustained Yield Act (MUSYA) calling for "multiple use and sustained yield" of products and services including "outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness". The Proposed Rule instead dedicates an entire section to wildlife; focuses on climate change and carbon sequestration; and even highlights the role NFS lands play in "spiritual sustenance". It lists only "ecosystem services" as a multiple use that "contributes to local, regional, and national economies in a sustainable manner."
- Makes "guidelines" legally enforceable standards. This change throws away management flexibility and the FS' hard fought victories establishing that guidelines are discretionary—not mandatory;
- Wrongly calls for "maintaining" "viable populations" of all plants, wildlife, and even moss and fungus. This requirement is unattainable, procedurally impossible, and currently one of the most frequent claims in forest plan litigation. The language is not found in the FS' authorizing statute; thus this provision is beyond the agency's authority to enforce. Furthermore, there is no scientific consensus on what level of population is "viable" or how it is to be "maintained". Thus, using these words will perpetuate and likely increase the amount of lawsuits filed against the FS. Species management is the responsibility of the states, not the FS;
- Puts inordinate focus on "public engagement" while simultaneously weakening the requirement for agency coordination with local governments;
- Calls for the use of "best available science." Documenting the consideration of "the best available science" will slow the planning process and create a new legal burden on the FS. The Planning Rule should simply require that the FS take into account available, relevant scientific information, along with other factors, in the amendment or revision of forest plans;
- Heightens monitoring requirements beyond necessity and achievability;
- Creates new, vague species designations and protections that will invite litigation; and

- Appropriately calls for objections to a draft plan to be made before the final plan is released. This requirement would allow the agency to take issues into account and make appropriate changes so as to avoid litigation.

With the urging of PLC and other multiple use industries, a letter signed by roughly 60 congressmen will be submitted to Secretary Vilsack, urging the agency to “redraft the proposed rule to make it simpler and less encumbered with process, and to eliminate provisions like the ‘species viability’ clause that surpass Congress’ statutory direction.” This letter is 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. A stark contrast is noticeable between the Congressmen of the first letter and those of ours: while only 10 million total acres of NFS lands exist in the districts of the Congressmen promoting more restrictions, nearly 150 million acres of NFS lands fall within the districts of members that signed our letter.

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LEGISLATION UPDATE

Grazing Improvement Act of 2011

On May 26, 2011, Senator John Barrasso (R-Wyo.), Chairman of the Senate Western Caucus, along with Orrin Hatch (R-Utah); John Thune (R-S.D.); Michael Enzi (R-Wyo.); Dean Heller (R-Nev.); and Michael Crapo (R-Idaho), introduced the Grazing Improvement Act of 2011 (S. 1129) to improve livestock grazing permitting on Bureau of Land Management (BLM) and U.S. Forest Service (USFS) lands. PLC and affiliates sent a [letter](#) and issued a [press release](#) strongly supporting and endorsing the legislation. This much-needed legislation would help alleviate the permit renewal problems that arise due to the backlog of National Environmental Protection Act (NEPA) documentation, and give permittees added protection in the courts when permits are appealed.

For over a decade, PLC has been obligated to secure language in the annual appropriations bill to allow for the renewal of permits in spite of the NEPA backlog. S. 1129 would codify that “rider language”. It would also extend the life of a permit from 10 to 20 years, and allow for the categorical exclusion of grazing permits that are to continue under current grazing management. These provisions will cut down drastically the agencies’ NEPA workload.

Additionally, S. 1129 would provide permittees with added protections in cases of appealed grazing permits. It would apply the Administrative Procedure Act’s (APA) formal adjudication procedures of for a “hearing on the record” to the Forest Service, and apply the APA’s formal adjudication procedures to BLM grazing permittee appeals. When required to go through this process, litigious special interest groups will have a harder time making it to the courts with their challenges. The bill would also provide for a stay of decision by the agency on a grazing permit (in the event that the decision is appealed), which would prevent the permittee from having to vacate the allotment while the appeals process is underway.

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Wyoming Lawmakers Introduce EAJA Reform Bill

PLC supports the “[Government Litigation Savings Act](#)” (GSLA), legislation introduced by U.S. Representative Cynthia Lummis (R-Wyo.) in the House ([H.R. 1996](#)) and Senator John Barrasso (R-Wyo.) in the Senate ([S. 1061](#)), to bring much-needed transparency and accountability to the Equal Access to Justice Act (EAJA) (see the [press release](#)). EAJA allows plaintiffs to recover attorney fees and other expenses from the federal government when they prevail in a case against the government. Often, the government settles cases and pays plaintiffs through EAJA without even a trial, choosing to avoid devoting the time, staff and resources a trial would entail.

According to letters sent to [Rep. Lummis](#) and [Sen. Barrasso](#) by PLC and 36 affiliates, “EAJA has become a means for wealthy radical environmental groups to obtain federal funding to target ranchers by challenging federal land management agencies (primarily on minor process decisions) in court to curtail...livestock grazing. As a result, our members are forced to pay multiple times over to defend themselves: on the one hand, they pay attorney fees as interveners in defense of the federal government; on the other hand, as hard working citizens, their tax dollars go toward agency operations budgets, and toward filling the pockets of these vastly wealthy environmental groups with EAJA funds.”

GSLA would prohibit organizations with a net worth exceeding \$7 million from filing for EAJA; require that EAJA filers show a “direct and personal monetary interest” in the action to be eligible for payments; and cap the attorney fees environmental activists claim to be owed. It would also require government oversight and publicly available reporting of EAJA payments.

The bill was co-sponsored by the following members of both the Senate and House Western Caucuses: Senators Mike Crapo (R-ID), Mike Enzi (R-WY), Orrin Hatch (R-UT), Dean Heller (R-NV), Mike Lee (R-UT), John Thune (R-SD), James Risch (R-ID) and Representatives Rob Bishop (R-UT), Jason Chaffetz (R-UT), Mike Coffman (R-CO), Mike Conaway (R-TX), Jeff Denham (R-CA), John Duncan (R-TN), Trent Franks (R-AZ), Wally Herger (R-CA), Doug Lamborn (R-CO), Kristi Noem (R-SD), Devin Nunes (R-CA), Steve Pearce (R-NM), Denny Rehberg (R-MT), Mike Simpson (R-ID), Glenn Thompson (R-PA), Scott Tipton (R-CO), Don Young (R-AK).

GLSA was also endorsed by [85 agriculture, sportsmen, recreation, and energy groups](#). According to PLC and affiliates’ letter, the Government Litigation Savings Act “will help protect our members from the injustice of funding their own demise.”

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Wilderness & Roadless Release Act Introduced in Senate

Senator John Barrasso (R-Wyo.), Chairman of the Senate Western Caucus, has introduced the [Wilderness and Roadless Area Release Act \(S. 1087\)](#). The legislation, a companion bill to Rep. Kevin McCarthy’s (R-Ca.) bill in the House of Representatives, 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. See the [talking points](#) and [summary](#) provided by Sen. Barrasso’s office. See the PLC and affiliate [letter of support](#).

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Heller Joins Energy and Natural Resources Committee

Newly sworn in Sen. Dean Heller (R-Nev.) has been assigned to the Senate Energy and Natural Resources Committee. He succeeds the departing Republican Sen. John Ensign. The House vacancy Heller left behind will lead to a Sept. 13 special election in Nevada’s 2nd District, which covers all of the state outside of metropolitan Las Vegas.

Heller leaves behind his post as a senior member on the House Ways and Means Committee. While this committee does not typically address issues in the federal lands ranching realm, he has been a strong supporter of the federal lands grazing industry, voting to repeal the death tax and the 1099 tax reporting requirement; vocally opposing the Interior Secretary’s Wild Lands order, the listing of the sage grouse under the Endangered Species Act, and national monuments; and promoting border security. He served as Vice Chair of the House Western Caucus, which has since appointed Rep. Cynthia Lummis (R-Wyo.) to replace him. Heller has now joined the Senate Western Caucus.

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PLC Submits Appropriations Priorities

This month, PLC submitted [appropriations priorities](#) to Congress, many of which contrasted sharply with the funding proposals in President Obama's FY 2012 budget request. Along with the annual request for language (grazing permit rider) to allow for the renewal of permits despite the processing backlog, we requested:

- The continued funding of grazing programs to enable the agencies to carry out range monitoring, land health assessments, development and implementation of allotment management plans, and adaptive management. Due to the backlog of National Environmental Policy Act (NEPA) documentation and the resulting environmental litigation, we opposed the president's request to decrease funding to both the BLM and Forest Service range programs. Rather, we asked that Congress appropriate more money to these programs relative to the FY 10 enacted / FY 11 continuing resolution (CR) budget;
- The continued denial of funds to Secretary Salazar's Wild Lands Order;
- The denial of funds to implement the "species viability" aspect of the Forest Planning Rule with respect to bighorn sheep;
- The elimination or reduction of funds for the federal government to acquire more land;
- The denial of the funding increase requested by the president for the Wild Horse and Burro Program, a program which, should the administration implement the latest proposed plan, will constitute an even greater management failure that would not be improved with more funding.

The Subcommittee on Interior, Environment, and Related Agencies is scheduled to hold a hearing to markup an the budget bill July 6th.

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"Clean Water Cooperative Federalism Act" Would Limit EPA's Power

House Transportation and Infrastructure Chairman John Mica (R-Fla.) and ranking member Nick Rahall (D-W.Va) have introduced legislation to restrict the Environmental Protection Agency's (EPA) powers under the Clean Water Act, especially when intervening with state oversight programs. [H.R. 2018](#), the "Clean Water Cooperative Federalism Act", would "amend the Federal Water Pollution Control Act to preserve the authority of each State to make determinations relating to the State's water quality standards". In Rep. Mica's home state of Florida, the EPA has imposed numeric nutrient criteria water standards, despite the state's efforts to develop its own standards, and protests that the EPA's standards will be detrimental to producers. Rep. Rahall, a West Virginian, has seen the EPA outstep its bounds by revoking water permits, effectively putting a halt to the coal mining business in that state. H.R. 2018 would restrict the EPA's ability to issue such impractical and damaging water quality standards without the state's permission.

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ADMINISTRATION UPDATE

Salazar Releases Wild Lands Memo Recognizing Congressional Hold

On June 1st, Department of the Interior (DOI) Secretary Ken Salazar released a [memo](#) to Bureau of Land Management (BLM) Director Bob Abbey regarding the future of his Wild Lands Order (Order 3310). While the Secretary did recognize that the agency would not be permitted to designate any lands as “Wild Lands” this fiscal year due to a funding prohibition passed by Congress, he also emphasized that the agency would be developing recommendations regarding the management of BLM lands with “wilderness characteristics,” as well as “soliciting input” for nominations of BLM lands as congressionally designated wilderness. PLC issued a [press release](#) voicing industry’s approval of the Secretary’s recognition of the congressional mandate, but also concerns that, in calling for an inventory of lands that may merely have *some* “wilderness characteristics,” the agency will subject itself to litigation if those newly inventoried areas are not managed as though they are actual wilderness. Also of concern is that the administration appears ready for an onslaught of proposed wilderness designations, and that it intends to continue searching for ways to administratively give special protection to lands with wilderness characteristics. PLC will continue to push for defunding of the Order in FY12 appropriations, and watch for remaining potential threats brought by the Order.

See the DOI press release by clicking [here](#).

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Administration Unveils Plans to “Improve Regulation and Regulatory Review”

As reported in the April edition of [Capital Issues](#), on January 18, 2011, President Obama issued [Executive Order 13563](#), “*Improving Regulation and Regulatory Review*.” According to the Western Business Roundtable, the Executive Order directed agencies to develop and submit a preliminary plan within 120 days that will explain how they will review existing significant regulations and identify regulations that can be made more effective or less burdensome in achieving regulatory objectives. Those preliminary plans have now been released by the White House for public review. Agencies will finalize the plans this fall.

Rep. Cliff Stearns (R-Fla.), chairman of the Oversight and Investigations Subcommittee, has summoned Cass Sunstein, who leads the review of federal rules at the Office of Management and Budget, to testify to his panel on June 3 to review the administration’s proposed changes. According to Rep. Stearn, Sunstein and his staff ignored [formal requests](#) from the Oversight and Investigations Subcommittee for the preliminary plans by May 24, releasing publicly the plans on the 26th, without allowing review by the Subcommittee.

Some of the preliminary plans released could affect public lands grazing. For example:

U.S. Department of Agriculture:

- **U.S. Forest Service** will address the costliness of the National Environmental Policy Act (NEPA), possibly streamlining NEPA reviews (this could be beneficial for obvious reasons, but the proposed inclusion of decommissioning of roads as categorically excluded from NEPA review could be damaging.)
- **Natural Resources Conservation Service:** NRCS plans to “improve the delivery of technical and financial assistance” by “simplify[ing] the customers’ participation in NRCS’ technical and financial assistance programs, streamlin[ing] the delivery and timeliness of conservation assistance to clients, and enhance[ing] the technical quality of NRCS’ conservation planning and services.”

Department of Interior:

- **Land Classification Regulations (BLM)** – “BLM proposes to amend its regulations to remove obsolete land classification regulations and consolidate these regulations into the existing planning

system regulations.” According to the BLM, “This would benefit the public by consolidating all land use decisions into one systematic process.”

- **Endangered Species Act Rules (Fish and Wildlife Service)** – “The Fish and Wildlife Service (FWS), working in conjunction with the National Marine Fisheries Service, will revise and update the ESA implementing regulations and policies to improve conservation effectiveness, reduce administrative burden, enhance clarity and consistency for impacted stakeholders and agency staff, and encourage partnerships, innovation, and cooperation.” (These changes could present benefits, such as expediting safe harbor agreements. However, the ESA’s problems may well need a congressional, rather than administrative, remedy.)
- **Fostering “Smart from the Start” Renewable Energy Development on Public Lands (BLM)** – “BLM is pursuing a landscape-level planning approach for renewable energy projects on public lands that is built around the identification of solar energy zones in which large scale solar projects should be preferentially cited.” (This is something our industry will watch closely for potential impacts on grazing.)
- **Improving Transparency in Land Appeals Proceedings (Interior Board of Land Appeals)** – “The Interior Board of Land Appeals published new rules to codify procedures established through Board decisions and practice but not formally published elsewhere. These regulatory changes were requested by practitioners to ensure a clear set of rules for all those appearing before the Board, and will benefit the parties who appear before the Board as well as facilitate expeditious administrative review.”

Several agencies reference “climate change” in their reviews, which would likely prove problematic as the administration continues to lack statutory authority to regulate based on climate change. See links to the relevant plans, below.

Department of Agriculture – Click [here](#).

Department of Energy – Click [here](#).

Department of the Interior – Click [here](#).

Council on Environmental Quality – Click [here](#).

Environmental Protection Agency – Click [here](#).

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Pending ESA Settlement Could Prompt New Listings, Climate Change Regs

A pending [Settlement Agreement](#) between the U.S. Fish and Wildlife Service (FWS) and environmental activist groups could result in a large number of species added to the endangers species list, as well as greater pollution control requirements adopted by the Environmental Protection Agency (EPA).

The pending settlement was originally filed in the U.S. District Court for the District of Columbia to resolve pending [litigation](#) brought by the activist group, WildEarth Guardians. It is designed to reduce listing petitions and prohibit more lawsuits from the group due to missed deadlines for listing determinations; in return, the settlement establishes a work plan requiring the FWS to “make initial petition findings for over 600 species and issue proposed listing rules or not warranted findings for at least 251 species” within a four year time frame. It would also require the agency to make critical habitat determinations by specific deadlines for the Mexican wolf, the New Mexico meadow jumping mouse, the greater sage-grouse and others. Making findings on such a vast number of species and habitats would take considerable resources, and the FWS would be subject to court order as it works through the plan. We believe the proposed settlement would be disastrous for the nation’s producers, taxpayers and the agency itself.

However, the settlement could be in the process of getting even more stringent. Another activist group, the Center for Biological Diversity (CBD), filed papers with the Court opposing the settlement, complaining that it was unfairly left out of settlement negotiations. Had CBD not been included in the settlement, it would have been free to sue the agency in light of the inevitable pile-up of missed deadlines. Thus, its inclusion in the settlement agreement would seem prudent on behalf of the agency and the courts. But now that CBD has joined in negotiations, it aims to increase significantly the number of species considered in the settlement and strengthen the agreement's enforcement provisions. Reports are that the deal, once completed, could include significant and unprecedented regulations addressing the effect of "climate change" on species. Radical special interest groups not party to the final settlement, should one be finalized, would not be bound by the agreement and could still bring suit against the FWS regarding any decision made on species included in the settlement. For now, proceedings on the settlement have been stayed by U.S. District Judge Emmet G. Sullivan and the new court date is set for June 20th.

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DOI Withdraws ESA Memo Allowing Partial Delisting

The Department of Interior (DOI) has withdrawn the [memorandum](#) issued by the Bush Administration in 2007 which allowed for the delisting of a species in a portion of its range. The Endangered Species Act (ESA) contains the phrase "any species that is in danger of extinction throughout all *or a significant portion of its range*" (emphasis added), which the agency had used to partially delist distinct population segments of endangered species, where those populations were successfully recovered. One example of such an attempt was the delisting of the northern Rocky Mountain gray wolf in the entire region except in the state of Wyoming, an action that was rejected by federal judge Donald Molloy in 2010. A similar case involving the Gunnison prairie dog was rejected by a judge in Montana. Now, with the agency's withdrawal of the memorandum, the partial delisting of another species, the Preble's meadow jumping mouse will likely be nullified. The mouse was first listed in Colorado and Wyoming in 1998; the 2007 memo allowed for its delisting in Wyoming. Now, it may be relisted in the state, despite its successful recovery in the state. In light of the memo's withdrawal, future cases of successful recovery will presumably be treated likewise.

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Wolves Delisted, Activist Groups Sue

On May 5, by direction of Congress in the recently enacted FY11 year-long appropriations act, the Fish & Wildlife Service (FWS) published in the Federal Register the [official delisting](#) of the Northern Rocky Mountain distinct population segment (DPS) of the gray wolf in Idaho, Montana, Washington, Oregon, and Utah. Wolves will remain listed in Wyoming until FWS can agree on a plan with state officials. Wolves that are being delisted will be monitored for a period of five years to track the progress of the population. Upon the publishing of the new rule, two environmental activist groups, [WildEarth Guardians](#) and [Center for Biological Diversity](#) (CBD), promptly filed two lawsuits. Both were filed with the U.S. District Court for the District of Montana in Missoula, where Judge Donald Molloy presides.

In addition, the FWS issued a separate [Federal Register Notice](#) proposing to identify the Minnesota wolf population as a Western Great Lakes (WGL) DPS of the gray wolf and to remove this DPS from ESA protection. If made final, the rule would remove the currently designated critical habitat for the gray wolf in Minnesota and Michigan and the current special regulations for gray wolves in Minnesota. In the Notice, FWS also proposed to revise the range of the gray wolf by removing all or part of the 29 eastern states that they now recognize were not part of the historical range of the gray wolf. FWS is also initiating status reviews of gray wolves in the Pacific Northwest and Southwest, as well as seeking information on a newly-recognized species, the eastern wolf, throughout its range in the United States and Canada. Public comment on this rule is due on or before July 5, 2011.

To expedite and expand the wolf delisting process nationwide, Rep. Candice Miller (R-Mich.) has introduced a bill, [H.R. 1819](#) (the State Wildlife Management Act of 2011), to turn over management of gray wolves to state wildlife agencies in all states where wolves are known to exist, outside of Alaska. Miller said congressional action is needed because environmentalists' lawsuits repeatedly have blocked regulators from keeping wolf numbers under control.

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New Wild Horse Fertility Control Study Launched

The Bureau of Land Management (BLM) and the United States Geological Survey at the bureau's wild horse short-term holding facility in Nebraska have launched a five-year trial to test a new PZP formulation, SpayVac® a long-term horse contraceptive.

According to an article at the ["Horsetalk"](#) website, the pasture breeding study will test the effectiveness of two formulations of the investigational contraceptive vaccine, to determine if the treatment can reduce foaling rates in wild horse mares. If SpayVac® is proven to provide a longer-term effect than other PZP vaccines currently used by the BLM, it will be considered for use with free-roaming horses to help control population growth rates on the range. The supplier of the new PZP vaccine has no connections to the activist animal rights group, Humane Society of the United States (HSUS), the group which currently holds the exclusive contract to provide BLM with PZP.

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PLC Requests Comment Extension on CWA Guidance

As reported in last month's [Capital Issues](#), the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) have issued a [draft guidance document](#) which expands the definition of "waters of the United States" and thus which waters fall under the federal Clean Water Act's (CWA) regulatory jurisdiction. PLC has [asked for an extension](#) of the comment period on the guidance, as the EPA's action is both procedurally and substantively problematic. (Only Congress can change definitions contained in a statute; the EPA did not follow the normal notice/comment rule-making process; and the guidance, if implemented, would threaten water rights and undermine the federal-state CWA partnership that has long existed.)

Prior to the issuance of the draft guidance, 170 members of Congress sent a [letter of opposition](#) to the EPA. 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. PLC will join industry comments which will be prepared through the WAC coalition.

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JUDICIARY UPDATE

PLC Files Writ of Certiorari with Supreme Court on Grazing Regulations

On April 19th, PLC filed a [writ of certiorari](#) with the U.S. Supreme Court, appealing the wrongly decided Ninth Circuit decision on four points dealing with the 2006 BLM grazing regulations. Prior to May 23rd, the deadline for amicus to be filed, many other groups filed, in total, four supporting amicus briefs with the Court, seeking reversal of the Ninth Circuit decision.

In 2006 Western Watersheds Project (WWP) filed suit in district court prior to the grazing regulations going into effect, and PLC intervened to defend the regulations. The district court overturned the regulations on grounds that they violated the National Environmental Protection Act (NEPA), the Endangered Species Act (ESA) and the Federal Land and Policy Management Act (FLPMA). PLC appealed the district court decision to

the Ninth Circuit (along with the American Farm Bureau Federation (AFBF), which had also intervened). The BLM also appealed, but later withdrew its appeal with the change in administrations. The plaintiffs (supported by the United States, as an amicus) argued that PLC could not appeal, because the federal agency had not appealed. In its decision, the Ninth Circuit rejected their argument and held that PLC and AFBF had demonstrated Article III standing and therefore could maintain their appeal.

On appeal, PLC raised all issues decided by the district court, and AFBF raised only the FLPMA issue. The Ninth Circuit decided that the district court had wrongly analyzed the FLPMA issue, and remanded the issue to the district court.

In addition to the NEPA and ESA issues, PLC also raised two additional arguments on appeal: (1) that the plaintiffs did not have Article III standing to appeal, in light of the Supreme Court's recent decision in *Summers v. Earth Island Institute*, 129 S.Ct. 1142 (2009), and (2) that the plaintiffs' action was not ripe for review.

The Ninth Circuit made four erroneous decisions of national significance that should be of interest to the Supreme Court. The four matters raised in the writ are Article III standing, ripeness, NEPA's "hard look" requirement, and the consultation requirements of ESA. PLC filed a petition for rehearing en banc that, although denied, served as the outline for PLC's certiorari petition. Generally, a greater number of supporting amicus filed corresponds with increased likelihood that the Supreme Court will accept the case. Thus, this case may indeed be accepted.

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MORE NEWS

Washington Hears from American Sheep Industry

More than 70 American Sheep Industry Association (ASI) producer leaders from 21 states converged in Washington, DC this month for the annual ASI fly-in. These leaders visited the offices of their members of Congress, Department of Interior (DOI) and U.S. Department of Agriculture (USDA) officials to talk about the industry's top national issues.

Pursuing the continuation of the livestock protection program of the USDA's Animal and Plant Health Inspection Service's (APHIS) Wildlife Services Agency (WS) was a priority of the fly-in. "Sheep need to be protected," said Gregory Parham, DVM, administrator of USDA's APHIS during a meeting with ASI. "The work done by WS is important; however, the curtain is going to fall on projects that are funded by earmark dollars, not because WS chooses to discontinue these programs but because Congress has made that choice for us."

In light of Congress' moratorium on earmarks, Bill Clay, deputy administrator for WS, indicated that a non-federal source of funding would have to be found.

Another topic of discussion included a resolution to the perceived conflict between domestic and bighorn sheep. The FS has issued a planning rule that is out for comment.

The message brought forward by Jay Jensen, deputy undersecretary of Natural Resources and Environment, and Jim Pena, associate deputy chief for the National Forest System (NFS), was that the over-arching philosophy of the Forest Service (FS) is the restoration and resilience of its lands. The activities that are carried out on FS lands, like sheep grazing, are not always understood and, therefore, it is the responsibility of the FS and the sheep industry to educate the public about the value of these activities.

“The public should understand that sheep grazing on public lands is one of the main reasons these lands are in such great shape and are so desirable for mixed uses,” stated Bob Benson, chair of ASI Legislative Action Council. “Sheep grazing reduces the risk of fire and promotes foliage growth.”

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American Sheep Industry Association News

Go to www.sheepindustrynews.org

Environmental Steaks

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

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