

ANOTHER VICTORY FOR BIGHORN SHEEP!



Bighorn Sheep Resting

In yet another legal victory for bighorn sheep, *Advocates for the West* won a preliminary injunction closing the BLM's Partridge Creek allotment to domestic sheep grazing this fall.

Two years ago, our staff attorney Laurie Rule filed an initial federal court lawsuit against the Payette National Forest over its refusal to halt domestic sheep grazing in areas that its own scientists identified as posing a "high risk" of spreading deadly diseases to Rocky Mountain bighorn sheep in the Hells Canyon and Lower Salmon River region.

As a result of that litigation, the Payette Forest has agreed to close – on an interim basis, at least – many of the problem allotments.

Likewise, after we sued them, the Nez Perce National Forest took the same step of closing the Allison-Berg allotment on the north side of

“Bighorns could become infected and roam far up-river in the Salmon River drainage, infecting the other native bighorns along the way causing large-scale losses... the loss of the only remaining bighorns would be devastating.”

October 14th Injunction Order from U.S. District Judge Winmill.

the Salmon River, where the last remaining herd of genetically-pure native bighorn sheep reside. The Bureau of Land Management has adamantly refused to take similar steps to protect Salmon River bighorn sheep.

Despite repeated demands from conservationists and the Nez Perce Tribe, the BLM again allowed domestic sheep grazing to occur this fall on the Partridge Creek allotment, which is surrounded by closed Forest Service allotments and lies directly across the river from the closed Allison-Berg allotment.

On behalf of WWP, and working closely with The Wilderness Society and Hells Canyon Preservation Council, Laurie filed a new lawsuit over the Partridge Creek allotment this fall. The Nez Perce Tribe itself appeared as a friend of the court,

(Continued on Page 2)



(Continued from Page 1)

and offered extensive science supporting our case.

On October 14, 2009, U.S. District Judge Winmill issued an injunction order closing the Partridge Creek allotment to domestic sheep grazing this fall. The Court ruled that we showed a likelihood of prevailing on our NEPA claim that BLM has never studied or disclosed the threats posed by domestic sheep grazing to the Salmon River bighorn herd; and that the risk of disease transmission to bighorn sheep threatened irreparable harm.

Judge Winmill also found that recent Idaho legislation – which ordered Idaho Fish and Game to develop agreements with ranchers so that they could continue to graze sheep in bighorn areas – did not provide any scientific basis for ensuring that bighorn do not catch deadly diseases.

BLM subsequently agreed not to contest this injunction, promising to undertake a full environmental study before it may allow further sheep grazing on the Partridge Creek allotment. We will keep pushing the agencies to protect Bighorn Sheep on Federal Public Lands.



Bighorn Sheep

SLICKSPOT PEPPERGRASS LISTING CONFIRMS SCIENTIFIC FINDINGS



Slickspot Peppergrass (Lepidium Papilliferum) Cole

After four court rulings against it, the U.S. Fish and Wildlife Service at last determined in October 2009 to list Slickspot peppergrass (*Lepidium Papilliferum*) as a “threatened” species under the Endangered Species Act (ESA).

Slickspot peppergrass is a rare native desert flower, found only in small parts of southern Idaho. As its name suggests, this flower grows only where puddles or small pools form after rains or snow, and then dry up in the hot arid climate.

The species has been reduced to a fraction of its former range, due to impacts of livestock trampling and grazing, fire, agriculture, off-road vehicles, weed invasions and other human impacts. Scientists with the U.S. Fish and Wildlife Service have long recommended that Slickspot peppergrass deserves protection under the ESA, including in proposed listing rules in 2002 and 2006.

Yet agency decision-makers have repeatedly refused to heed those recommendations, bowing to pressure by Idaho ranchers and politicians.

Our Senior Staff Attorney Todd Tucci has thus had to drag the Service to federal court repeatedly in recent years, to force the agency to comply with its ESA duties. In four different rulings since 2003, U.S. Magistrate Judge Mikal Williams consistently agreed with us that the Service has acted unlawfully in refusing to list Slickspot peppergrass under the ESA.

This interference was led by state and federal politicians – and their allies in the ranching industry – who refused to change land use practices to provide for the needs of this species.”

“The science was never in question,” says Senior Staff Attorney Todd Tucci. “The bottleneck to protecting Slickspot peppergrass for the last 15 years has been political interference in the ESA listing decision.”

The long-overdue ESA listing is just one step in protecting Slickspot peppergrass. In conjunction with our client, Western Watersheds Project, we will now scrutinize federal land management decisions – particularly BLM grazing permits – that do not follow what scientists say this rare plant needs to survive into the future. •



NEW SUITS FILED TO PROTECT FISH AND WILDLIFE IN IDAHO'S UPPER SALMON BASIN



Salmon swimming upstream

From its headwaters near Stanley, Idaho, the upper stretch of the Salmon River flows north through Challis and Salmon, before it turns west and becomes the “River of No Return.”

With tributaries including the East Fork Salmon, Pahsimeroi, and Lemhi Rivers, the Upper Salmon basin offers some of the most productive fish habitat in Idaho. Salmon, steelhead, and bull trout all make their home here.

Yet all are imperiled by dams, stream dewatering, and habitat destruction by livestock grazing and other actions; and all are listed as “threatened” under the Endangered Species Act.

The Upper Salmon basin is also critical habitat for greater sage-grouse, which used to be abundant across Idaho, from the Nevada boundary to the Bitterroot Mountains and into Montana.

Now sage-grouse populations in the Upper Salmon basin are increasingly isolated and populations continue to dwindle due to habitat fragmentation.

Again, livestock grazing is a principal cause for the decline of sage-grouse in the Upper Salmon, as it is across the West.

Advocates for the West has long partnered with our client, Western Watersheds Project, in seeking to improve the management of public lands and water in the Upper Salmon basin in order to protect its vibrant fish and wildlife resources. That work is now accelerating, with the filing of several major new lawsuits – and more to come.

Our staff attorneys Laurie Rule and Kristin Ruether have worked with WWP staff and expert scientists over the past year to develop several new lawsuits in the Upper Salmon Basin.

These cases include new litigation against the Forest Service and BLM for failing to curtail grazing harm to endangered fisheries habitat in the Lemhi and Pahsimeroi River watersheds, in violation of the ESA and NEPA.

Even though the agencies promised more than a decade ago that they would improve stream habitat conditions for salmon, steelhead and bull trout, they have broken those promises. They have not even conducted the monitoring their scientists say is needed to understand grazing impacts and current conditions.

We are also suing the U.S. Fish and Wildlife Service and NOAA Fisheries for failing to complete ESA Section 7 consultation over the effects of irrigation diversions on Forest Service lands in the Lemhi watershed.

These public lands diversions block fish migration and dewater streams that are important for salmonid spawning and rearing, yet the Services have failed to require improvements to protect the fish.

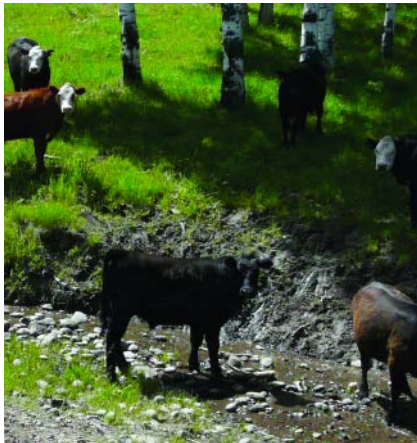
Other recent cases challenge a suite of BLM grazing decisions

(Continued on Page 4)



Female Sage Grouse

Advocates for the West



BLM will have to address this kind of grazing damage as a result of the Lane Settlement

in the Pahsimeroi valley, which threaten to degrade important remaining sage-grouse habitat and Wilderness Study Areas – values which BLM has ignored in allowing ranchers to determine how these public lands are managed. And we are preparing additional suits over public lands and water management in the East Fork Salmon River and Morgan Creek watersheds, among others.

It is little surprise, perhaps, that eight years of the Bush Administration has led these federal agencies to become so badly out of compliance with their legal duties under the ESA and other federal laws. Hopefully, the new White House Administration will acknowledge the violations we have identified and move to correct them.

Doing so will require federal land managers to recognize that the Upper Salmon basin is key to the future survival of the imperiled fish, sage-grouse and many other species there (such as pygmy rabbit) – and be willing to take steps to preserve this critical habitat from further degradation. •

BLM FORCED TO RESCIND “CATEGORICAL EXCLUSIONS” IN ISSUING GRAZING PERMITS

As reported in prior newsletters, *Advocates for the West* has been vigilant in fighting the Bush Administration’s many efforts to gut public involvement and ecological requirements for livestock grazing management on our federal public lands.

In 2006, we won preliminary injunctions from U.S. District Judge B. Lynn Winmill that blocked the Bureau of Land Management from revising its grazing regulations in ways sought by the livestock industry – including by excluding the public from involvement in grazing permits.

In June 2007, Judge Winmill entered a permanent injunction barring BLM from using the 2006 regulation changes.

Although BLM has not appealed that ruling – and continues to use the 1995 “rangeland reform” regulations adopted under President Clinton – two livestock industry trade associations (Public Lands Council and American Farm Bureau Federation) have appealed. Executive Director Laird Lucas just argued that case in the U.S. Court of Appeals for the Ninth Circuit in early November; and we expect to win a favorable decision soon upholding Judge Winmill’s rulings.

Meanwhile, in July 2009, we scored another victory in a separate lawsuit over related Bush Administration efforts to give the livestock industry free

reign over the public lands.

This case – styled *Western Watersheds Project v. Lane* – challenged an August 2007 “policy” by which BLM purported to authorize itself to “categorically exclude” most grazing permit renewals and vegetation manipulation projects from any environmental analysis or public involvement under the National Environmental Policy Act (NEPA).

Advocates for the West is one of the leading conservation groups enforcing NEPA’s requirements on the public lands, particularly over the damage that grazing causes to sensitive fish and wildlife habitats. Ranchers don’t want the public to know about this damage, and neither do industry allies in the agencies.

NEPA requires federal agencies to take a “hard look” at environmental impacts of their proposed actions, and to inform the public about those impacts and alternatives that may pose lesser impacts.

After we filed briefs in the *Lane* case establishing that BLM’s “categorical exclusion” policy itself violated NEPA, the federal government had to admit we were right. We thus entered into a settlement agreement in July 2009, approved by the federal court, which forced BLM to rescind the policy and adhere to NEPA in its grazing permit decisions. BLM publicly announced in August that it rescinded the policy. •



COURT AFFIRMS PROPRIETY OF LARGE SAGE-GROUSE LAWSUIT

We also won a notable court victory recently, when the U.S. District Court in Idaho rejected a motion by BLM, the State of Wyoming, and representatives of the energy and livestock industries that sought to dismiss our case challenging a suite of BLM land use plans across the range of greater sage-grouse.



Sage-grouse are an icon of the sagebrush ecosystem, but are declining due to habitat losses and degradation from farming and ranching, energy development, and other human impacts.

Working with WWP and other allies, *Advocates for the West* is pushing for sage-grouse to be protected under the Endangered Species Act; and we are contesting a large number of public land management decisions that allow further degradation to occur across the sage-grouse range.

One of our biggest cases – indeed, one of the biggest environmental cases ever brought – challenges eighteen land use plans (called “Resource Management Plans”) that BLM approved in the last two years of the Bush Administration, covering more than 25 million

acres of sage-grouse habitat across the American West.

These BLM plans will determine public land management for the next two decades across large parts of Wyoming, Utah, Nevada, California, Montana and Idaho. They allow widespread livestock grazing, energy development, off- road vehicles, and other harmful actions in critical sage-grouse habitat.

Yet BLM never analyzed sage-grouse needs in adopting these plans – and BLM did not take the steps to protect sage-grouse habitat that scientists have recommended.

Because BLM committed the same errors in adopting all these RMPs, we challenged them together in a case filed in Idaho, where our client Western Watersheds Project is based. That move has forced politicians and industries in other states to come to Idaho to litigate over these claims.

In a June ruling, Judge Winmill rejected the efforts by our opponents to dismiss the case, as being too large or not properly brought in Idaho.

The ruling – available on our website – holds that WWP is entitled to bring its claims together in one court, and that Idaho is an appropriate venue for those claims. This case, along with other related litigation over Great Basin sage-grouse, now will move forward through merits briefings, and possible injunction motions. Stay tuned! •

SETTLEMENT REQUIRES EPA TO IMPROVE IDAHO WATER QUALITY STANDARDS

Continuing our long-standing commitment to improving water quality in Idaho, *Advocates for the West* recently represented Idaho Conservation League in securing a settlement agreement with the U.S. EPA to strengthen standards for a variety of toxic contaminants.

ICL’s Program Director, Justin Hayes, has been deeply involved in working with EPA and the Idaho Department of Environmental Quality to identify and reduce sources of mercury, arsenic, and other toxic pollution in Idaho waterways. But the agencies often do not respond until faced with a threat of legal actions.

Last year we sent EPA a notice letter advising that ICL intended to sue for violations of the Clean Water Act. That Act requires EPA to regularly review Idaho water quality standards and determine if they are sufficient to protect human health, fish and wildlife. But EPA has not responded to a number of Idaho actions, which included industry-prodded efforts to weaken some standards.

To its credit, EPA acknowledged that it was not living up to its Clean Water Act duties, and we entered into several months of settlement talks. Those succeeded in April 2009, when we signed a binding settlement with EPA that sets deadlines for it and IDEQ to take actions necessary to improve numerous toxics standards – including to protect humans who consume large amounts of fish.

Advocates for the West is also continuing to work with Idaho Conservation League on numerous other Clean Water Act matters aimed at reducing industrial and other pollution in our streams, rivers, and lakes. •



BATS, BIRDS, AND BEES...OH MY! ALL SPECIES BALL ATTRACTS MANY CREATURES

A BIG THANK YOU goes out to our generous donors! Without these thoughtful supporters, the All Species Ball couldn't have been such a wonderful success. Please keep these merchants in mind when you shop!



Idaho River Sports

Boise Co-op

North Face

OARS

Dawson Taylor

Rickie Brady

The Chocolate Bar

Dunia Marketplace

Angler's

Boise Mobile DJs

Bogus Basin

Steve Stuebner

Klean Kanteen

Red Willow Massage

Mary Kaufman Photography

REI

Doubletree Riverside

Mountain Paints-Hailey

Shorty's Diner-Hailey

The Sports Connection-Ketchum

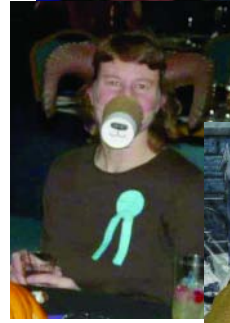
Ketchum on the Fly

The Open Room-Ketchum

Country Cousin-Ketchum

Country Cousin, Too-Ketchum

The Dollhouse-Ketchum



Check out all the photos from the All Species Ball at advocateswest.org



Staff Updates



Welcome To Ben Otto

The newest face at *Advocates for the West* is Ben Otto, who joins us on a one-year fellowship after graduating from Lewis and Clark Law School (in Portland, OR) this May. Prior to earning his J.D., Ben completed the Masters of Studies in Environmental Law at Vermont Law School.

Ben grew up in the San Francisco Bay Area and graduated from Prescott College, where he majored in outdoor recreation education. Ben's love of the outdoors and kids led him to run camps in Yosemite and other places for several years, before he went to law school. During law school, Ben focused on energy and natural resources issues.

Ben will be spending the next year assisting *Advocates for the West* and our clients on a wide range of energy and public land cases.

HELP US SAVE TREES!

We are trying to save costs by communicating electronically with you!

You can help us by providing an email address where you can receive the newsletter and other correspondences.

Go to AdvocatesWest.org today and sign up with your email address to help us go paperless, or call 208-342-7024 x 206

ADVOCATES_{for the}WEST

BOARD OF DIRECTORS

Grant Barbour
San Francisco, CA

Pamela Marcum
Boise, ID

Paul Hilding
Boise, ID

David Nevin
Boise, ID

Rick Johnson
Boise, ID

EXECUTIVE DIRECTOR

Laird Lucas

STAFF

Todd Tucci
Senior Staff Attorney

Lauren Rule
Staff Attorney

Kristin Ruether
Staff Attorney

Natalie Havlina
Staff Attorney

Gene Bray
Technology Guru

Tina Barnett
Office Manager

Laura Doty
Outreach Coordinator

Graham Carter
Website Consultant

Ben Otto
Fellow

The mission of Advocates for the West is to use law and advocacy to restore streams and watersheds, protect public lands and wildlife, and ensure sustainable communities in Idaho and other western states.

Case Notes is produced periodically
by *Advocates for the West*
in Boise, Idaho.



We are pleased to announce
a new \$60,000 Challenge Grant
from Earth Friends Wildlife Foundation
Please Support Our Work!

Help us reach the \$60,000 Challenge by donating today

www.AdvocatesWest.org

We are an IRS 501(c)(3) public charity, so your donation is fully tax deductible

Printed on 100% recycled paper



www.AdvocatesWest.org

NON PROFIT
ORGANIZATION
US POSTAGE
PAID
BOISE, IDAHO
PERMIT No. 849



PO Box 1612 • Boise, ID 83701