

Groundbreaking Victory for the West's Public Lands and Wildlife!



Craters of the Moon Photo by NPS

Advocates for the West's efforts to protect and restore populations and habitat for the Greater sage-grouse – an imperiled bird endemic to the sagebrush-steppe of the interior west – received a significant boost in late September when a federal court vacated and reversed two Resource Management Plans (RMPs) because the Bureau of Land Management (BLM) failed to adequately consider the needs of sage-grouse.

As noted in earlier Case Notes, in *Western Watersheds Project v. Salazar*, *Advocates for the West* is seeking to protect Greater sage-grouse populations and habitat on over 25 million acres of public land

in the interior West. In this case, we are challenging 16 Resource Management Plans that the Bureau of Land Management adopted in the waning days of the Bush administration. Resource Management Plans set long-term management goals and establish which areas of the public lands may be grazed, drilled, mined, or given special protection, and these Bush-era RMPs allow destructively high levels of livestock grazing, provide for oil and gas drilling in inappropriate areas, and permit other activities harmful to sage-grouse.



Natalie Havlina

Advocates for the West teed-up two RMPs for review during the initial round of litigation: the



Laird Lucas

Craters of the Moon National Monument in south-central Idaho and the Pinedale Field Office in western Wyoming. We chose these areas because of their extraordinary resource values – including the “kipukas” in the Craters area, which are islands of sagebrush plant communities surrounded by lava that provide a window on vegetative communities of the past that have been erased

(Continued on Page 2)

The New York Times

Excerpts from the NY Times article, *Judge's Sage Grouse Ruling Could Stall BLM Plans in Wyo., Idaho*, published September 30, 2011.

“A federal judge in Idaho this week ruled the Interior Department failed to analyze the cumulative impacts of oil and gas development on sage grouse in southwest Wyoming and failed to include enough data or alternatives for grazing in an Idaho national monument.

‘What this court said is in light of the collapse of sage grouse population and habitat, the agency needs to slow down and take a comprehensive look at the impacts of its decisions,’ said Todd Tucci, an attorney for *Advocates for the West* who is arguing the case.

The sage grouse was granted “candidate” status for federal protection in March 2010, and BLM has since announced that it will amend six management plans in Wyoming. But U.S. District Judge Lynn Winmill in a 37-page brief said those amendments could take years to complete and warned that sage grouse faced immediate impacts from natural gas development in the Pinedale area.

In addition, the agency's environmental impact statement failed to discuss why almost a third of the acres covered by grazing allotments were not meeting rangeland health standards. A 2004 study by the Western Association of Fish and Wildlife Agencies found that livestock grazing has depleted native forbs and grasses needed by sage grouse, and facilitated an invasion of cheatgrass.”



Pinedale

Photo by Natalie Havlina

from most of the Snake River plain. The Pinedale area was once home to one of the most productive populations of sage-grouse in the United States, but BLM has permitted an explosion of oil and gas drilling that has changed the landscape.

But, *Advocates for the West* chose the two test cases also because they demonstrated errors in science, law, and logic that pervade each of the other 14 RMPs challenged, such that winning on the test cases will inform our strategy moving forward on the others.

Our litigation strategy has begun to pay off, and on September 28 a federal district court in Idaho reversed and vacated both the Craters of the Moon National Monument and the Pinedale Field Office RMPs. The court agreed with *Advocates for the West* that both RMPs violated the National Environmental Policy Act (NEPA) and the Federal Land Policy and Management Act (FLPMA). Specifically, Bureau of Land Management violated NEPA by refusing to consider reducing livestock grazing in Craters of the Moon, even though BLM had documented that grazing was harming the sage-grouse

habitat in this area. BLM also violated NEPA in the Pinedale RMP, the court held, by failing to consider how energy

development has and will continue to depress a sage-grouse population already under pressure from livestock grazing.

The court further held that BLM violated FLPMA by disregarding its own National Sage-Grouse Habitat Conservation Strategy and Sensitive Species Policy in issuing the new RMPs. According to the court, both policies require BLM to protect sage-grouse habitat in its RMPs, but BLM “completely disregarded” these policies in adopting the new RMPs.

Advocates for the West will now begin to address interim remedial relief, as well as mapping out our second targets for litigation.

The Fight Continues to Preserve Wild and Scenic River Corridor



Lochsa River

Photo by John McCarthy

U.S. Highway 12 is a lot more than just a highway. It’s an Idaho state scenic byway, a national scenic byway, and an All American Road. For many small towns in north central Idaho, Highway 12 is the equivalent of “Main Street,” and for residents who live along it, Highway 12 is “My Street.” It’s the artery that supplies the lifeblood to north central Idaho’s tourism industry, the only way to get to the hospital,

and an integral part of the Middle Fork Clearwater and Lochsa Wild and Scenic River system.

These are just a few of the reasons that *Advocates for the West* has been fighting to protect this area, and prohibit Big Oil from converting Highway 12 into an industrial, high and wide corridor – a passageway devoted to the transport of loads so huge they block both lanes of the highway, delay other



travelers for long periods of time, degrade the corridor's scenic values, and impede access to nearby public lands, hospitals, and other resources.

As described in earlier Case Notes, *Advocates for the West* has challenged the Idaho Transportation Department (ITD) permits authorizing mega-loads to use Highway 12, and our partners in Montana have been granted an injunction barring the use of this corridor as an industrial high-and-wide corridor. Together, we have stopped Exxon Mobil in its tracks, and they have abandoned their efforts to industrialize Highway 12.

For now.

Exxon Mobil is back in court seeking to lift the Montana injunction, and the Idaho Transportation Department continues to issue permits for mega-loads to travel on Highway 12.

Advocates for the West isn't done yet, either. In September, we filed a third administrative action challenging ITD's decision to allow another corporate giant – the Weyerhaeuser Corporation – to transport eight mega-loads of industrial equipment up Highway 12 to southern Alberta, Canada. And, *Advocates for*

the West continues to seek federal court intervention affirming that the U.S. Forest Service and the Federal Highway Administration have violated their legal obligations to protect and preserve the unique nature of Highway 12 and the Middle Fork Clearwater and Lochsa Wild and Scenic River corridors.



Natalie Havlina

Our partners in this fight include Idaho Rivers United, Friends of the Clearwater, and dozens of local folks interested in keeping Idaho wild.

Advocates for the West Helping to Protect Wildlife in Central Oregon

In a case that has brought senior staff attorney Laurie Rule full circle from her days conducting wildlife surveys in central Oregon, Magistrate Judge Mark Clarke issued a strong ruling in July finding that the U. S. Forest Service was violating the law by not protecting rare plants and animals from cattle grazing. The Chemult Ranger District in central Oregon, where Laurie worked as a wildlife technician before law school, contains a unique expanse of wetlands that provide habitat for a remarkable number of rare plants, mollusks, and the Oregon spotted frog. Many of these species, which are designated as U. S. Forest Service (USFS) sensitive species because of their rare status and declining numbers, were just discovered in these wetlands in the last few years.

But instead of immediately protecting these sensitive plants and animals from cattle that trample them and destroy their habitat, the USFS made

no changes to its livestock grazing management. Judge Clarke ruled that the agency violated the National Forest Management Act and the National Environmental Policy Act by ignoring the harm that was occurring to these newly discovered rare species and simply authorizing the same grazing to continue. The Judge also ruled that the U. S. Forest Service violated the National Environmental Policy Act by reauthorizing grazing in Round Meadow, an area the USFS had closed to grazing for years to restore the natural wetlands in the meadow. The Judge ruled that the USFS had to prepare an environmental analysis before it could authorize grazing in Round Meadow.

Because of our work, together with our clients Oregon Natural Desert Association and Klamath Siskiyou Wildlands Center, the U. S. Forest Service cannot continue to ignore these species. In response, the agency reduced grazing by 1/3 for the

2011 grazing season and again closed Round Meadow, and is in the process of completing a long-term management plan for the entire area, which Judge Clarke is expecting them to complete in a "timely" manner.



Laurie Rule

Thanks are due to all involved in this litigation, especially to our client Jayne Goodwin for her tireless efforts to protect this unique area and Dave Becker for his assistance as co-counsel.



Big Leaf Lupine

Photo by USFS



Advocates for West Saves Wyoming's Green Mountain Common Allotment From Fencing, Again

Advocates for the West has again stopped the construction of nearly 50 miles of new fences and other range developments on the Green Mountain Common allotment in southwestern Wyoming. This area – which is home to important habitat for sage-grouse, pygmy rabbit, and antelope, deer and other big game – is one of the largest unfenced areas of public land in the lower 48 states. And, thanks to *Advocates for the West* Staff Attorney Natalie Havlina, it will stay this way for the foreseeable future.



Green Mtn. Common Natalie Havlina

Since 2002, Bureau of Land Management (BLM) has been aware that excessive livestock grazing has degraded the conditions of these public lands,

including by eroding soils, drying up its riparian sloughs, and suppressing sage-grouse population to about half of what the 522,000 acres areas should support.

But BLM refused to do anything about it for nearly a decade. In 2010, BLM decided to cure these woeful conditions on the Green Mountain Common allotment by permitting status quo grazing and building more fences. After *Advocates for the West* succeeded in challenging this decision on the grounds that BLM failed to consider the impacts of its decision on Greater sage-grouse populations and habitat – BLM came back with a nearly identical proposal in 2011.

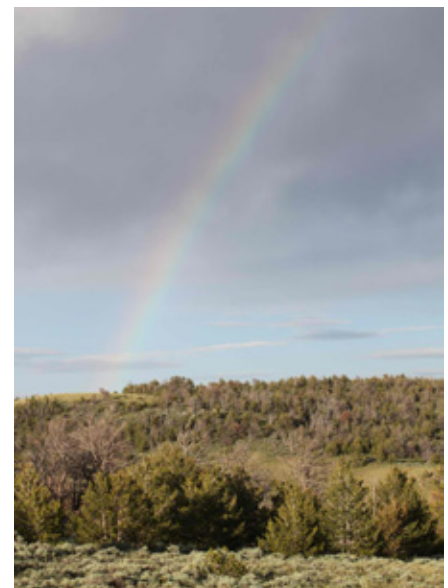
Advocates for the West again appealed this decision on behalf of Western Watersheds Project and others, and submitted declaration from well-recognized experts in the field, including Dr. Clait Braun, Don Clarke, Bruce Van Haveren and Jill Morrow. In August, an administrative judge again prohibited BLM from building the fences, finding that BLM had

likely violated the Federal Land Policy and Management Act (FLPMA) and its own grazing regulations in issuing the decision.



Natalie Havlina

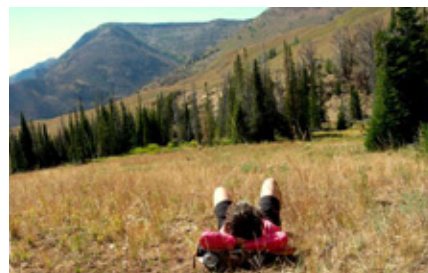
Advocates for the West is now pursuing alternative remedies through mediation, but we are ready to re-engage this litigation if the mediation efforts falter. Stay tuned.



Green Mtn. Common Jonathan Ratner

Federal Court Tightens Restrictions on Grazing in Sage Grouse Habitat

In late July, a federal district in Idaho further tightened the screws on livestock grazing in sage-grouse habitat in the Jarbidge Field Office in south-central Idaho. Under the new order, Bureau of Land Management (BLM) must consider “outright bans” or further restrictions on grazing within key sage-grouse habitat, including restrictions that would exclude grazing from key



Jarbidge Photo by Pam Marcum

sage-grouse habitat for a large portion of each year.

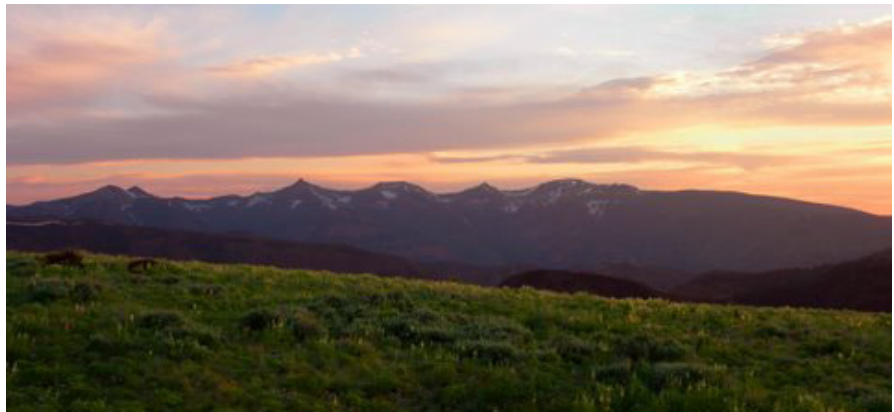
Since 2005, livestock grazing in large portions of the Jarbidge have been permitted under a joint agreement between Western Watersheds Project and BLM, which was a result of earlier litigation brought by *Advocates for the West*.

This agreement expired in March 2011, and the court refused to extend the agreement over the objections



of *Advocates for the West* and Western Watersheds Project. As a result, in March, the Court stopped all livestock grazing across nearly 450,000 of sage-grouse habitat in the Jarbidge.

After holding a brief hearing, the court expressed concern over BLM’s continued authorization of livestock grazing in important sage-grouse habitat during sensitive times for the sage-grouse. The court lifted its injunction barring all grazing, however, and instead, adopted a more surgical approach directing BLM to give “extra scrutiny” to all livestock grazing in key sage-grouse habitat. The court expressly cited the scientific evidence and testimony provided by Dr. Clait Braun, one of the world’s leading experts on Greater sage-grouse,



Jarbidge

Photo by Pam Marcum

who testified for Western Watersheds Project in this case.

According to Dr. Braun’s testimony, livestock grazing in key sage-grouse habitat must be restricted to June 20-August 1, and November 15-March 1. Thus, for the indefinite future, all livestock grazing within key sage-grouse habitat will

have to comply with Dr. Braun’s management guidelines, unless BLM proposes an outright ban on all grazing in key sage-grouse habitat.



Todd Tucci

Pygmy Rabbit Needs Endangered Species Act Protection

The pygmy rabbit (*Brachylagus idahoensis*) is the smallest rabbit in North America, and one of the smallest members of the family Leporidae (which includes hares and rabbits) in the world. Weighing less than one pound, it varies in length from approximately nine inches up to 11.5 inches.

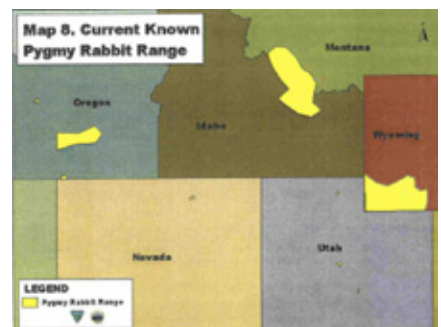
Pygmy rabbits are strict sagebrush obligates – meaning that it inhabits sage-steppe dominated habitats in the



Pygmy Rabbit Photo by R. Dixon (IDFG) and H. Ulmschneider (BLM)

Intermountain Region and Great Basin – and pygmy rabbits were a “once common” feature of the Great Basin and Intermountain Region, coincident with the distribution of sagebrush. Pygmy rabbit range historically spanned over 100 million acres of the American West including much of the semi-arid, sage-steppe region of the Great Basin and adjacent intermountain zones, including portions of California, Oregon, Idaho, Nevada, Utah, Montana, Washington, and Wyoming.

Unfortunately, pygmy rabbit populations have been eliminated from approximately 90% of their known historic range, and likely reside in perhaps as little as 5 percent (estimated at or less than 7 or 8 million acres). As the following maps illustrate, rabbit habitat is dwindling fast.



Pygmy rabbit population numbers have similarly contracted, with recent surveys showing a small fraction of historic population levels. The best available science shows that several factors have contributed to the pygmy

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 rabbit's slide toward extinction, including: (1) degradation of sage-steppe habitats from cattle grazing and associated rangeland developments (e.g., fences, pipelines, troughs, etc.); (2) agency prescribed and wild land fire; (3) sagebrush eradication efforts; and (4) extensive agricultural activities.

Despite this scientific evidence showing a steady

march toward extinction, the U.S. Fish and Wildlife Service has again refused to protect the pygmy rabbit under the Endangered Species Act. In early October 2011, *Advocates for the West* filed a new lawsuit against the U.S. Fish and Wildlife Service challenging the Service's refusal to protect the pygmy rabbit under the Endangered Species Act. This case now represents the fourth

federal court lawsuit against the Service over its refusal to grant the pygmy rabbit the protection it deserves.

As in the past four successful cases, Senior Attorney Todd C. Tucci is representing our client Western Watersheds Project in this matter.



Todd Tucci

Grazing Regulations Victory Confirmed

On October 3, 2011, the U.S. Supreme Court denied review of defendants' Public Land Council challenge to *Advocates for the West's* victory overturning and

remanding the Bush-era grazing regulations. Thus, once and for all, these grazing regulations – which would have significantly weakened the BLM's ability to guard against harmful livestock

grazing – are consigned to the dustbin of history, and the Babbitt-era Rangeland Reform Regulations are, once again, the law of the land.

Fighting to Keep the Boise River Clean

Advocates for the West is again fighting to reign in arsenic and iron pollution in the Boise River in a new case filed against Atlanta Gold Corporation, which has long desired to open a gold mine in the Middle Fork Boise River watershed.



Atlanta Gold

Photo by ICL

Our latest case challenges Atlanta Gold's failure to comply with its Clean Water Act permit – a permit Atlanta Gold obtained only after *Advocates for the West* and Idaho Conservation League sued them in 2005 for discharging pollutants without a required permit.

Atlanta Gold owns and

controls various parcels of land around Atlanta, Idaho, a small town in the mountains near the Middle Fork Boise River. One site it controls is the mouth of an adit (mining tunnel) known as the 900 Adit. The water flowing from this adit is highly contaminated with arsenic and iron.

Atlanta Gold has an onsite treatment facility, but according to its own monitoring reports, the discharges from this facility have *continuously* violated the permit limitations for arsenic and iron since Atlanta Gold received the permit in 2009, and often quite dramatically.

This is troubling because the discharges flow into Montezuma Creek (which is often bright orange from the iron pollution), a tributary of the Middle Fork Boise River. Many species rely on the river and watershed, including bull trout, protected as threatened under the Endangered Species Act.

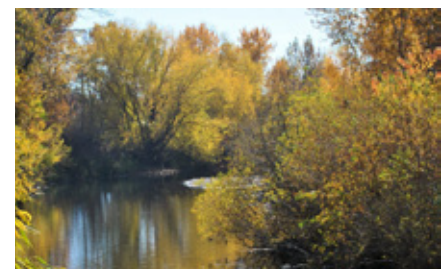
Advocates for the West filed this case to force Atlanta Gold to clean up its act and comply with

its own Clean Water Act permit. Staff Attorney Kristen Ruether is scheduled to argue this case on November 1, 2011 at 10:30 in Judge Williams' Courtroom at the U.S. Courthouse, 550 West Fort Street, Boise. Please attend the hearing if you are interested, and watch Kristen in action.



Kristen Ruether

Advocates for the West brought this case on behalf of our clients Idaho Conservation League and Northwest Environmental Defense Center (NEDC), and we would like to extend our thanks to NEDC attorney Andrew Hawley for co-counseling this case with us.



Boise River



STAFF AND BOARD UPDATES

Welcome New Staff Attorney Bryan Hurlbutt, Idaho Water Fellow

While growing up in Twin Falls and Ketchum, Bryan spent much of his youth playing in the Snake River canyon and central Idaho's mountains. Bryan studied physics at Colorado College, where he explored the far reaches of the West as often as he could. After taking an environmental law course in his final semester at Colorado



Bryan Hurlbutt and family

College, Bryan had found his calling.

After college, Bryan worked for two years at the Colorado College State of Rockies Project, conducting data-driven research on environmental and socioeconomic issues in the West. Before starting at Columbia Law School, he moved to Ketchum for a year, where he reconnected with Idaho, family, and friends and began dating Gretchen, who is now his wife.

At Columbia, Bryan focused on environmental law. He was a devoted student in the Columbia Environmental Law Clinic for four semesters, served as a staff member of the Columbia Journal of Environmental Law for two years, and worked as a legal intern at Hudson Riverkeeper in summer 2008 and at Waterkeeper Alliance in summer 2009.

After graduating from law school in May 2010, Bryan moved with his wife Gretchen, daughter Hendrix, and dog Maddie to Boise, where they spend time in the Boise Foothills nearly every day. During the past year, Bryan worked as a law clerk to Chief Justice Roger Burdick of the Idaho Supreme Court. Bryan is thrilled to begin working at *Advocates for the West* and he hopes to run into you on the trails!

Goodbye and thank you, Leigh Lustre

After two great years on the *Advocates for the West* team Leigh Lustre has moved on. We deeply appreciate her passion for the West's special places, and the animals making those places home. Leigh wore many hats during her time with us. She served as Development Assistant, and helped keep the much needed financial resources coming in. She kept you engaged by sending our highly regarded e-blasts. And she regularly helped the attorneys with various paralegal duties. Thank you for all of your help Leigh! You are missed.



Leigh Lustre

Thank you to our Summer Interns, Miles Johnson and David Bechtold

All of us at *Advocates for the West* thank Miles and David for their great service this past summer. Miles, a student at Lewis and Clark Law School, and David, a student at Stanford Law School, spent this past summer assisting our team of attorneys with various issues including over-snow-vehicle (OSV) use, mountain whitefish protection, grazing in the Jarbidge, and the CUMO Mine. We look forward to their graduation, and the impact they will make protecting the West. Thank you Miles and David!



Miles Johnson



David Bechtold



THANK YOU FOR SUPPORTING ADVOCATES FOR THE WEST!

With the generous support of the following individuals and organizations, who gave gifts between October 1, 2010 and October 1, 2011, we continue to protect the West's public lands, water and wildlife.

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Photo by Aimee Moran

Yoga for the West!

Thank you to all who joined us at this summer's Yoga for the West retreats. The gorgeous Greenfire Preserve in central Idaho served as home base for yoga, hiking, relaxation and friendship. Thank you to our teacher Rachel Teannalach, and volunteers Gretchen Arguedas and Karris Kimball. Thanks also to our sponsors LuLu Lemon Athletica, Boise Co-op, Flying M Coffeehouse, and Graeber & Company for making the events possible. All proceeds from the retreats benefit *Advocates for the West*. Stay tuned for Yoga for the West 2012!

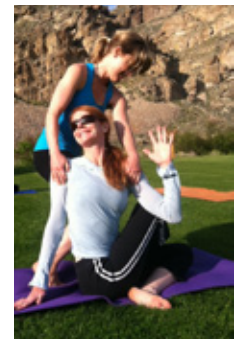


Photo by
Marcy Westover



*Conservation receives only 2% of all charitable giving. Most people believe it deserves more. Source: Giving USA



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SUPPORT OUR CHALLENGE TO BENEFIT



Conservation and the environment receives just 2% of charitable giving in America. Put simply, conservation is not as well supported as it must be to ensure our future quality of life.

Preventative action to maintain the health of our air, waters, lands and forests costs a fraction of what we will sacrifice if we neglect our responsibilities. Conservation has one of the highest returns on investment of charitable work. It preserves our ability to sustain our population while protecting the majesty of our world.

By supporting recipients of the Earth Friends Challenge, you are smartly leveraging your investment. The Earth Friends Challenge recognizes groups known for their efficiency and success in accomplishing their mission.

Advocates for the West's work is essential to our lives and to future generations.

THERE IS NO TIME TO LOSE. PLEASE INVEST IN ADVOCATES FOR THE WEST TODAY!

Thank you to all of the great volunteers who helped out in 2011!

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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



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Annual Boise Porch Party!

Come share a drink, have a snack, visit with like-minded friends and get the latest on our work. All in honor of you, our awesome supporters!

Wednesday November 2, 2011. 5:00pm.
Advocates for the West office,
1320 W. Franklin, Boise, 83702.

Questions? Contact Aimee Moran
amoran@advocateswest.org or
208-342-7024x210

