

High Country News

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CONVERSATION

The people v. the agency

Laird Lucas on environmental advocacy

Laird Lucas, founder and executive director of the nonprofit Advocates for the West, entered an Idaho courtroom last spring to examine a witness. As he prepared to take over from a junior colleague, the judge adjourned for the day. "You mean I had to put on a suit for nothing?" Lucas griped. In his Boise office, he favors shorts and sandals. But his legal opponents — big industries and government agencies — have learned not to confuse Lucas' unorthodox style with incompetence. Over the last eight years, with the help of a handful of staff, he and four other lawyers have taken on some of the West's most controversial environmental cases, many of them for the Idaho-based Western Watersheds Project. They win or reach favorable settlements roughly 85 percent of the time. In

late September, for instance, they convinced a federal judge to overturn resource management plans for more than 2.5 million acres of federal land in Idaho and Wyoming because the Bureau of Land Management didn't adequately consider the impacts of oil and gas development and grazing on the greater sage grouse. They're awaiting rulings on challenges to similar plans affecting some 25 million acres in the region. Lucas began his legal career with a high-powered San Francisco firm working civil and criminal cases, but passed up a partnership offer to practice environmental law. He started the Idaho chapter of the Land and Water Fund of the Rockies in 1993. When the organization de-emphasized litigation to cooperate with public utilities on green energy issues, Lucas started Advocates for the West. "I am a litigator at heart," he explains.

BY STEVE BUNK



Laird Lucas in front of the U.S. Supreme Court in 2009. COURTESY ADVOCATES FOR THE WEST

HIGH COUNTRY NEWS How would you describe your team's work and self-image?

LAIRD LUCAS We routinely go up against the biggest law firms in the country that throw lots and lots of lawyers at an issue. But you don't need lots and lots of lawyers. What you need are a couple of smart lawyers to identify and execute a strategy. We spend a lot of time with each other, with our clients, and with our experts talking about strategy. What's reasonable? What's feasible? Where are we pushing the envelope and when are we not? I would say we view ourselves as a kind of legal SWAT team.

HCN You've led more than 30 cases for this group, the vast majority of them wins. What legal outcome has been most satisfying to you, and which was the most disappointing?

LUCAS In 2005, the Bush administration said sage grouse do not warrant Endangered Species Act listing, and we successfully challenged that decision in federal court and had it reversed. We proved that political considerations had overwhelmed the scientific recommendations. That violates the Endangered Species Act. I think the agencies and industries thought the sage grouse issue was being closed. By winning a reversal, we reopened the whole debate, which I think is really important for the future of public lands in the sagebrush country of the Interior West, which is over 100 million acres.

But it's been harder than I expected to persuade the courts that livestock grazing is really bad for sage grouse. Livestock remove the grasses and wildflowers that are necessary for sage grouse, particularly the young, to survive. We've certainly succeeded in the courts at raising the problem, but we haven't succeeded in getting broad directives that the Bureau of Land Management needs to change how it's managing grazing across the sage grouse range. That's a fight we're still fighting. We hoped to have made more progress by now.

HCN What do you think of the trend within the environmental movement to cut controversial deals with developers?

LUCAS I'm pragmatic. Most lawsuits settle. You have to go from being the gladiator, with all your arms on, to somebody who can reach a hand out to your enemy and shake on an agreement. That's a really hard thing to do. But the fact is, lawsuits never protect land or change things. Lawsuits are a fulcrum for change. They point out that there's a problem.

So the other question becomes: What is the deal and how good is it? A year ago, we negotiated a deal with El Paso Pipeline to pay about \$22 million into innovative funds to retire livestock grazing and protect sage grouse habitat along the Ruby Pipeline. We evaluated our chances of stopping this pipeline or forcing it into a different route, like along the interstate. And the general counsel of El Paso Pipeline met with me and said, "We can't change the route. But we're willing to do something good for the environment. What would you like to see done?"

Putting money into funds to retire grazing, you have a new market mechanism to mitigate for habitat. Maybe old ranchers whose kids don't want to take over can keep their private property but get paid to retire their federal grazing permits. That can really do a lot, not just for the sage grouse, but for the biological health of the land. We got a lot of criticism for that from some of our allies, and others praised us. That's the example of where you don't just bring a lawsuit, but look for a way to come out with something innovative. It's not always possible. Sometimes you've got to get those court rulings that say, "Agency violated the law," in order to open up new paths.

HCN Do you think there's validity to the argument that we have too much environmental litigation, and it's not always helpful?

LUCAS What people think is a lot of litigation is really not much (litigation). We



The greater sage grouse, a species that Advocates for the West tries to protect.

turn down cases all the time from groups and individuals who need legal help because the federal land-management agencies are not following the laws. It's chronic. The agencies are doing what industry wants and not what's good for the land. So enforcing the law, I think, is an appropriate and necessary role. If the government did its job, they wouldn't need us.

HCN You must have learned important lessons about the federal agencies you oppose in court, such as the Bureau of Land Management and Forest Service.

LUCAS I've seen two basic traits. One is the agencies have a very close relationship with industries they are working with. They deal with each other every day, and the agencies are not used to dealing with the environmental groups at the same level. So you tend to see pro-industry decisions coming out, and that has been true irrespective of the political administration. The second lesson is it takes the public weighing in to force agencies to change, and lawsuits become the tip of the spear on that. We've seen timber harvests come down from truly unsustainable levels during the Reagan years, because of all the litigation over logging and roadless areas. We're coming to a place where we have managed forests that provide a supply of timber, and we have wild places that won't be put on the chopping block. That took two or three decades of concerted legal, scientific, political, and media actions by the conservation community.

HCN This must be a high-stress job, right? How do you temporarily escape the pressure?

LUCAS You've got judges who hold your fate in their hands. You do the best you can to persuade them, but sometimes you don't, and that's stressful. The flip side is, if you can work on the things you have a passion for, you're really lucky in life. I don't have too many temporary escapes. A walk or a bike ride are the major things I do, and being with my family and getting into the outdoors — traveling, seeing the American West. But unfortunately, I don't get to do it nearly as much as I'd like.

HCN If you could change any one thing about our legal system, what would it be?

LUCAS The politicization of the judiciary is of great concern. It's at the point where you can almost determine how a case is going to be decided by the judge who gets assigned to it, and that's not right. It's really hard to find judges who will just call it as they see it, and not bring a strong ideological perspective to their judging. □