



ADVOCATES for the **WEST**
Celebrating 15 Years of Winning for the West
2017 Spring/Summer Case Notes

The Fight for America's Crown Jewels

Todd Tucci
Senior Attorney
(Washington, DC office)



Advocates for the West has long fought to protect Wilderness Areas, National Monuments, Wild and Scenic Rivers, and other parts of the National Conservation Lands across the American West. As public land law specialists, we have won many battles defending these “crown jewels” from industries and special interests seeking to exploit them.

Now the fight for America's crown jewels is growing even more intense – and we are doubling down in our defense of them.

Advocates for the West is now working with the Conservation Lands Foundation (CLF), and its many local and regional partners, to protect and defend America's National Monuments, Wilderness, and other National Conservation Lands from the growing threats of President Trump and Republicans in Congress bent on removing protections for National Monuments – such as the recently-designated Bears Ears monument in southern Utah.

These lands will be protected – and the battles will be won – in the dynamic communities and towns sprinkled across the West. **Advocates for the West** is providing free legal services and is strategizing with CLF and other conservation partners to take action and impact local decisions when President Trump targets our National Monuments

and recreational lands. And, our approach is already reaping rewards.

On the heels of President Trump's inauguration, local city, county and industrial groups sought approval to punch a highway and energy rights-of-way through the heart of the Red Cliffs and Beaver Dam Wash National Conservation Areas (NCAs) in southern Utah. Not only would these new intrusions destroy the fragile beauty of these NCAs, but they would further fragment habitat for the imperiled Mojave desert tortoise and other sensitive species.

Our partner Conserve Southwest Utah has invested tens-of-thousands of dollars and dedicated thousands of hours to repairing habitat conditions, trails and paths in the NCAs. In April, the Interior Board of Land Appeals (IBLA) acknowledged our partners' interest in protecting these world-class areas, noting that any efforts to undermine the protections of these areas would harm our partners' use and enjoyment of these lands. Then in early May, the IBLA rejected and dismissed the case seeking the rights-of-way.

For now, these areas remain protected, but we fully expect opponents to make another run at seizing control over these landscapes. **Advocates for the West** will continue to provide the legal firepower needed for our partners

to protect and defend these special areas.

Advocates for the West is also gearing up to challenge any effort by President Trump and Interior Secretary Zinke to loosen or withdraw protections for National Monuments across the West, including Bears Ears and Gold Butte National Monuments, and others.

On April 26, President Trump signed an Executive Order calling for the review of National Monument designations made since 1996, which reaches back to the designations of Grand Staircase-Escalante National Monument. We view this as a ruse to remove or shrink National Monument designations, and allow the “Lords of Yesterday” (in the words of Western icon Charles Wilkinson) – coal, oil and gas corporations; big timber; and other resource-intensive industries – free reign over our backpacking destinations, hunting and fishing grounds, wildlife habitat and other treasured wildlands.

Advocates for the West is working to ensure that the integrity of the Antiquities Act outlasts Trump and Zinke, and we will fight – as early and as often as needed – any effort to open our national heritage to the highest bidder.

How this all plays out remains uncertain. But **Advocates for the West** will remain heavily engaged in this fight.



Red Cliffs National Conservation Area – BLM Photo/Alamy Stock Photo

Protecting and Restoring the East Fork Salmon River Watershed

Laird J. Lucas
Executive Director
(Boise, ID office)



The East Fork Salmon River is one of the West's most iconic watersheds – a majestic refuge known for its stunning beauty and magnificent wildlife. Its landscape is robust

and diverse – alpine forests, sagebrush flats and riparian zones are home to abundant wildlife species such as bighorn sheep, elk, pronghorn antelope, mule deer, moose, greater sage-grouse, coyotes, bears, wild horses and wolves.

The massive, 540 square mile East Fork drainage also provides some of the most important critical habitat and spawning areas for many of the West's imperiled native fish, including Chinook salmon, steelhead, bull and cutthroat trout.

But the East Fork is compromised by excessive and poorly managed livestock grazing, which degrades streams, fragments native habitats, and harms fish and wildlife; and by irrigation diversions that take more water than farmers and ranchers have water rights for, while obstructing fish migration and reproduction.

Advocates for the West has been working for over a decade to protect and restore the outstanding



East Fork of the Salmon River – Ed Cannady

natural values of the East Fork Salmon River, and we are now poised to make major advances in this long struggle through a series of strategic negotiations and legal actions.

Threats to the East Fork

Most of the East Fork drainage is public land, yet commercial livestock grazing remains the dominant land use – degrading the landscape and harming fish and wildlife habitats. The Forest Service and Bureau of Land Management (BLM)

authorize grazing ubiquitously across the watershed – even in the Sawtooth National Recreation Area (SNRA) and Boulder-White Clouds Wilderness.

Ineffective federal management practices have resulted in extensive degradation of streams, meadows, and sensitive uplands. Cattle

Dr. Hilding East Fork Memorial Fund
Advocates for the West's work to protect and restore Idaho's majestic East Fork Salmon River is generously funded in part by the Dr. David Hilding East Fork Memorial Fund. Dr. Hilding was a beloved doctor, and an ardent outdoorsman and conservationist. We are deeply honored that his family and friends chose to celebrate his life by funding our work.

routinely trample stream banks and aquatic habitats on the East Fork and its tributaries, disturbing highly erosive volcanic soil that chokes streams and impairs fish spawning and rearing.

Despite abundant evidence of damage to the East Fork caused by grazing, most ranchers refuse to make their operations less environmentally harmful. In the critically important bottomlands, irrigation diversions block important fish migration by taking excess water out of the streams so that ranchers can grow alfalfa and other cattle feed crops.

Additionally, occasional wolf depredations of livestock have led to extensive and unwarranted killings of numerous wolf packs by the federal agency Wildlife Services

– the rancher's taxpayer-funded hired gun.

Efforts To Protect And Restore the East Fork

Advocates for the West has provided free legal services to many partners on a wide array of initiatives to help protect and restore the East Fork Salmon watershed. Our efforts include:

- **Leasing State Lands for Conservation:** After going to the Idaho Supreme Court three times and bringing a federal civil rights action against former Idaho Gov. Jim Risch and others, we finally succeeded in forcing Idaho to allow conservationists to use the free market to bid on and obtain expiring grazing leases to conserve the land – including areas on the East Fork.
- **Reducing Grazing:** We brought a series of federal court cases and agency appeals to reduce livestock levels and protect sensitive streams and alpine habitats from over-grazing, resulting in the closure of high-elevation areas of large public lands allotments on the East Fork.
- **Improving Stream Diversions:** Based on investigations by our independent scientists, we issued notice letters and brought enforcement actions under the Endangered Species Act, forcing numerous East Fork bottomlands

ranchers to upgrade their stream diversions by installing modern fish screens to protect salmon, steelhead and bull trout.

- **Restoring Greenfire Preserve:** For over a decade, we have provided free legal advice to help restore private and public lands previously authorized for grazing at the Greenfire Preserve, located on the lower part of the East Fork Salmon River.
- **Retiring Spud Creek Grazing Allotment:** We provided free legal advice that helped secure the first permanent retirement of a grazing allotment on the East Fork – the Spud Creek allotment, which was held by the Greenfire Preserve and has not been grazed for a decade now.
- **Protecting Critical Habitat:** As described in the accompanying article by Senior Attorney Laurie Rule, we filed suit in 2016 over the Forest Service's failure to improve stream and fisheries habitat on the Upper and Lower East Fork allotments – resulting in the closure of these large allotments to grazing for this year and possibly longer to allow the resources to recover.

Outlook for the Future

The recent Boulder-White Clouds Wilderness Bill, enacted by Congress in 2015, provides the statutory

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authorization for permanent grazing retirements of any public lands allotment that is even partly located within the new Wilderness Areas. Under the new statute, about 800,000 acres of public lands grazing allotments could be permanently retired from livestock grazing.

The East Fork Salmon River watershed is now one of the few places in the West where the BLM and Forest Service must retire public lands grazing allotments if the permittee requests it – and we are working with our partners to promote more widespread grazing permit retirements throughout the East Fork drainage. This is a unique opportunity to protect and restore the ecological and recreational values of a beautiful and biologically diverse western landscape.



The Latest on Our East Fork Litigation

Laurie Rule
Senior Attorney
(Portland, OR office)



The Upper East Fork Salmon River begins deep in the heart of central Idaho where streams and forests provide habitat

for many species of fish, wildlife and rare plants. This area is also a popular recreation destination for hikers, backpackers, and mountain bikers due to its beautiful scenery and extensive trail system.

The headwaters of the East Fork arise within the new White Cloud Wilderness and the Sawtooth National Recreation Area (SNRA), but also flow through two large Forest Service grazing allotments, known as the Upper and Lower East Fork allotments.

These allotments cover more than 125,000 acres of public lands that have a remarkable array of diverse habitats, ranging from lower elevation streams and forests to high altitude mountain lakes. The allotments are also home to many wildlife and fish, including Chinook salmon, steelhead and bull trout,

which are threatened species under the Endangered Species Act.

Advocates for the West has worked for more than a decade to protect the outstanding ecological values of the Upper and Lower East Fork allotments. We filed a federal court suit in 2004 that ordered the Forest Service to follow its own scientists' recommendations to close many sensitive habitats to livestock grazing to protect species including the listed fish and rare alpine plants.

But the Forest Service has had trouble managing these rugged allotments over the years because cattle routinely trespass into areas they are not supposed to graze and overuse the areas they are allowed to graze – causing severe aquatic habitat damage. Flagrant violations of grazing standards and restrictions have allowed cattle to trample streams and degrade fish habitat as well as destroy the scenic values of popular wilderness recreation sites like Frog Lake and Little Redfish Lake.

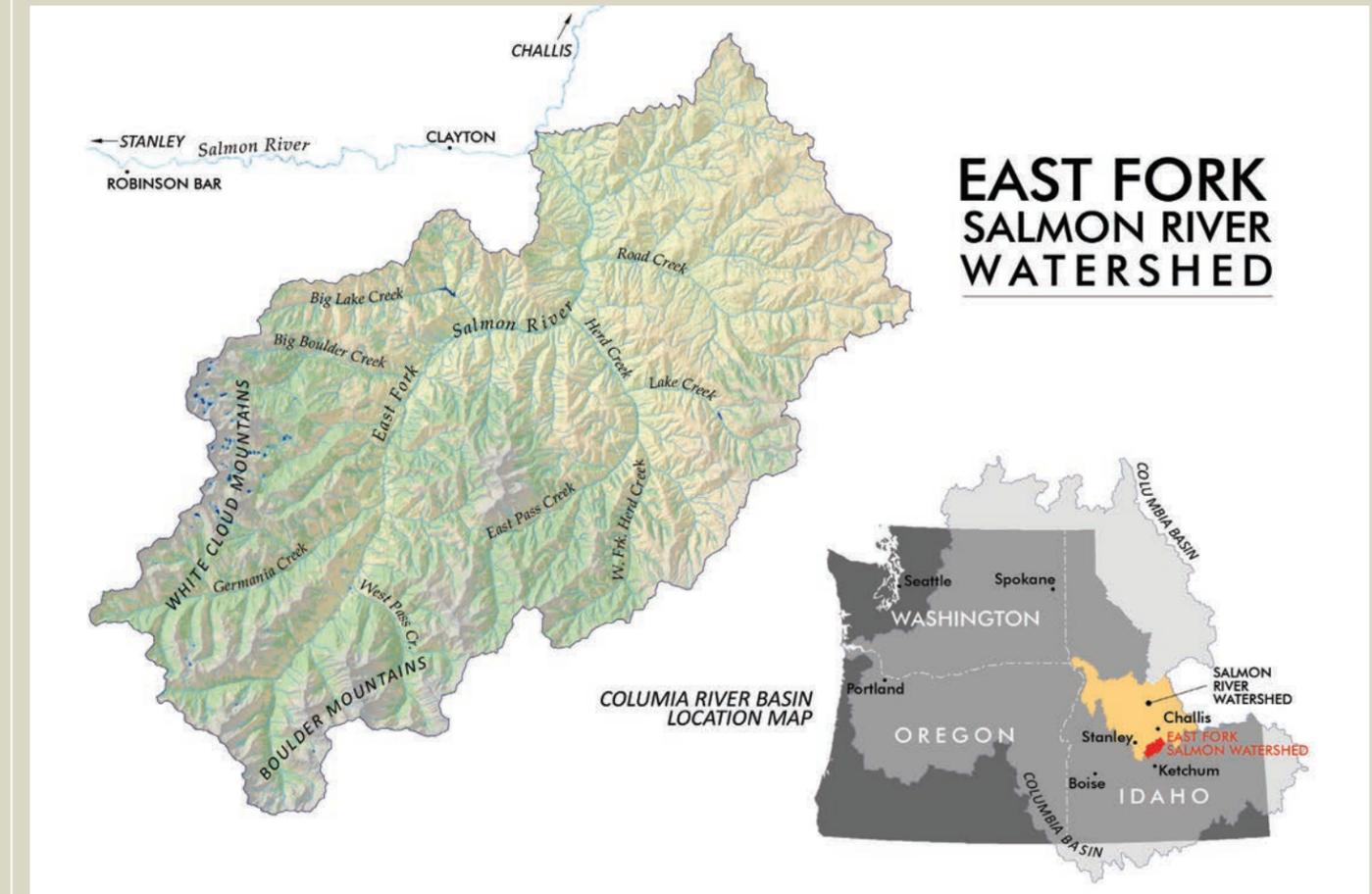
Particularly troubling is that the permittees were routinely disregarding requirements to keep cattle away from streams during

spawning and rearing seasons for salmon, steelhead, and bull trout.

In October 2016, as these problems persisted and the Forest Service failed to redress them, **Advocates for the West** again filed suit, alleging violations of the Endangered Species Act, the National Forest Management Act, and the SNRA Organic Act. Our case was based on the Forest Service's own documents acknowledging the persistent grazing violations and harms that have been occurring.

Because of this, the Forest Service recognized its vulnerable legal position and agreed that it must take action to protect the resources on these allotments. We negotiated a settlement agreement that would allow the two allotments to rest and recover from long-term grazing damage while the Forest Service conducts further analysis of grazing impacts. This agreement still needs final approval from the Federal Government, but at a minimum these resources will get a much-needed reprieve from cattle this summer!

Stopping the damage caused by improper cattle grazing is critical to protect the area's fish, wildlife, and rare plants, and will help restore the scenic values of the beautiful Upper East Fork of the Salmon River.



Salmon River Watershed Map – Paul Mitchell, Conservation Geography

Partner

Western Watersheds Project

EAST FORK SALMON RIVER WATERSHED

Securing Protections for Aquatic Species and Water Flows

Lizzy Potter (née Zultoski),
Staff Attorney
(Portland, OR office)



I have exciting updates about both of the Oregon cases Senior Attorney Laurie Rule discussed in our fall newsletter. As a reminder, these cases were launched to protect threatened Oregon spotted frog populations and their habitat in Central and Southern Oregon from water management and cattle grazing.

Flows In Deschutes River

We reached an excellent resolution of our litigation over water management in the Deschutes River near Bend, Oregon that provides interim protections for frogs from the devastating impacts of unnatural water flows.

In November 2016, U.S. District Court Judge Aiken approved a settlement agreement that required a substantial increase in minimum flows from September through March in the Deschutes. Like many managed western rivers, it suffers from unnaturally low flows in the winter and massive flows in the summer. These higher winter flows improve overwintering habitat for Oregon spotted frogs this past winter.

Oregon Spotted Frog – Oregon Zoo



Grazing Prohibited On Antelope Allotment

In another big win for Oregon spotted frogs, Judge Aiken recently approved Magistrate Clarke's injunction to protect frogs and sensitive wetland species from cattle grazing on the large (68,000-acre) Chemult Pasture

Our settlement also required more gradual "ramping rates" in the fall and spring as dam operators switch between irrigation and storage seasons, protecting the frogs and their eggs from sudden drying or flooding events. In addition, it requires the Bureau of Reclamation to complete an Endangered Species Act consultation by July 2017, which must ensure the agency's dams are not jeopardizing the frogs and their habitat.

In the meantime, we are working with our partners to secure protections in the final consultation documents for Oregon spotted frogs and the Deschutes River that are even more protective than these interim requirements.

Highlights

- Halting grazing on the Fremont-Winema National Forest to protect frogs and sensitive plants.
- Increasing winter flows in the Deschutes River and requiring timely Endangered Species Act consultation over the Bureau of Reclamation's dams.
- Developing new legal strategies to protect native fish and water flows in the Northwest.

on the Antelope Allotment in the Fremont-Winema National Forest of south-central Oregon.

The Antelope Allotment includes a unique, large complex of fens and wetlands surrounded by dry forests. These riparian areas are an oasis for many sensitive plants and animals such as rare mosses and sedges, mollusks, and the Oregon spotted frog. Many of these sensitive plant and mollusk species have been discovered on these allotment wetlands just since 2005. Yet the Forest Service has allowed livestock grazing to access and damage these sites, without adequately evaluating and preventing their harmful impacts. We have been fighting to protect the sensitive habitats and species here since 2010.

Last year, Magistrate Clarke found that the Forest Service's continued authorization of grazing on the allotment failed to account for repeated trespass, unauthorized use, and harm to habitat for the Oregon spotted frog and sensitive plant species, and that the Fish and Wildlife Service wrongly analyzed the impacts of grazing on frogs and their habitat.

Severe damage to aquatic habitat in Oregon, caused by livestock grazing. – Image courtesy of Paul Ruprecht, Western Watersheds Project



The agency is now barred from authorizing further grazing unless and until it can prove livestock will not harm the frogs or plants. And due to the Court's decision, the Forest Service recently announced it will not be authorizing grazing on the allotment's Chemult Pasture for at least a year!

If the agency seeks to authorize grazing on this or other pastures in the future, we will continue to

hold it accountable for any unlawful decisions that threaten sensitive aquatic frogs and plants in this area. This significant win highlights the benefits that can flow to the environment when we persistently advocate for a particular species or place!

Following up on these victories, this year Laurie and I will turn our sights to other imperiled waterways and aquatic species in Oregon,

including the Willamette and other rivers. We are investigating several major threats to threatened and endangered fish species that form the backbone of culture and economy in the Northwest. Climate change is compounding the perils these fish are facing, so we are working to ensure federal agencies finally take action to address these problems. 

Protecting the Boise River: Back in Court to Stop Atlanta Gold's Arsenic Pollution

Bryan Hurlbutt
Staff Attorney
(Boise, ID office)



In November 2016, we reopened our Clean Water Act citizen enforcement action against Atlanta Gold for continuing to pollute the headwaters of the Boise River.

Since the 1980s, Canadian mining company Atlanta Gold has been searching for gold in the mountains south of Atlanta, Idaho. Just outside of this tiny town is the “Level 900 Adit” – a historic mining tunnel used by Atlanta Gold as part of its mine exploration. Polluted water with high levels of the toxic metal arsenic flow out of the Adit and into Montezuma Creek, which flows through town and into the Middle Fork Boise River.

This is the third time **Advocates for the West** has taken legal action against Atlanta Gold for failing to comply with the Clean Water Act.

In 2005, we filed suit in federal court against Atlanta Gold for discharging polluted water without a Clean Water Act permit. We settled the case, and as a result Atlanta Gold got a permit and installed a water treatment facility.

But Atlanta Gold's facility was inadequate – every day the company violated the health-based arsenic discharge limit in its permit.

In 2011, we filed suit in federal court again, alleging Atlanta Gold committed more than two thousand

Clean Water Act violations. The Court agreed and ordered Atlanta Gold to pay a \$2 million penalty to the U.S. Treasury and to upgrade its treatment facility.

The company made some improvements to its water treatment facility in November 2012, but since then Atlanta Gold has continued to regularly discharge unacceptable levels of arsenic and iron to Montezuma Creek—still in violation of its permit and the court's order. On top of that, Atlanta Gold stopped making its court-ordered penalty payments. Meanwhile, instead of complying with the court's order, Atlanta Gold was busy conducting unauthorized mining at a different site.

In this reopened lawsuit, we document 574 new Clean Water Act violations Atlanta Gold committed from December 2012 through March 2017. We recently held a two-day trial before Magistrate Judge Ronald Bush.

We hope to secure a quick court decision ordering Atlanta Gold to further upgrade its water treatment facilities this summer and finally come into compliance with its

permit limits. We have also asked the court to impose further Clean Water Act penalties as well as sanctions for contempt of court to deter Atlanta Gold and other polluters from violating the Clean Water Act and failing to comply with court orders.

With this case **Advocates for the West** and our partners are



Atlanta Gold Filtration System at Adit
– Bryan Hurlbutt

continuing our successful work to protect the Boise River watershed from one of its biggest threats — mining pollution. 

Lucky Peak reservoir on the Boise River (which provides roughly 30% of the Treasure Valley's drinking water) is a popular recreation site. Atlanta Gold and other mining operations threaten to contaminate our water quality. – CSNafzger/Shutterstock



Highlights

- Polluted water from within an extensive underground network of mining tunnels flows out of Atlanta Gold's “adit” (a horizontal access tunnel) into Montezuma Creek in the headwaters of the Boise River.
- Over the last four years, Atlanta Gold discharged unlawfully high levels of arsenic and iron on more than 567 instances, despite an earlier court order to install an adequate treatment plant.
- Our lawsuit asks the court to order mining company Atlanta Gold to upgrade its inadequate water treatment facility, impose Clean Water Act penalties, and hold the company in contempt of court.

Wildlife Services: Cyanide Bombs and Broken Promises

Talasi B. Brooks
Associate Attorney
(Boise, ID office)



On March 16, 2017, a fourteen year-old boy in Pocatello, Idaho, accidentally activated a cyanide device – which Wildlife Services uses to kill coyotes – while walking his dog on Bureau of Land Management (BLM) lands, less than a quarter of a mile from his house.

The M-44, or “cyanide bomb,” killed the boy’s dog, and exposure to the poison required an emergency medical examination and left him with headaches. The cyanide bomb was likely manufactured and distributed from right there in Pocatello, at Wildlife Services’ “Pocatello Supply Depot.”

The tragedy came as even more of a shock because, in a new Environmental Assessment for Idaho issued last November, Wildlife Services promised it would no longer use cyanide bombs on public lands in Idaho—in response to public comments and pressure from people like you.

When asked whether the land on which the device was located belonged to the BLM, the BLM replied “no.” Yet, the County Sheriff’s office later confirmed that the device, and others in the vicinity, were in fact on BLM lands.

Following the incident, while **Advocates for the West** began

investigating innovative new legal strategies to take on the use of M-44s, a coalition of our client groups led by Western Watersheds Project petitioned Wildlife Services to cease the use of M-44s in Idaho. In response, Wildlife Services promised to remove all M-44s in Idaho, and to notify the clients before recommencing their use.

This victory is bittersweet, however, because Wildlife Services has shown that it cannot be trusted. Although it claims to have removed M-44s from all public lands in Idaho, the one triggered by the boy in Pocatello went off four months

after Wildlife Services had already promised the devices had been removed. And Wildlife Services still ships M-44s nationwide from the Pocatello Supply Depot, using them in many other states.

Also this year, two dogs in Wyoming and one rare wolf in Oregon died after accidentally triggering M-44s.

Advocates for the West recently filed a lawsuit over Wildlife Services’ new Idaho Environmental Assessment. We are challenging the agency’s aerial gunning of coyotes in the state, and taking it to task for plans to poison ravens based on a scientifically unfounded claim that

Highlights

- We just filed a new lawsuit challenging Wildlife Services’ aerial gunning of coyotes and killing of other predators in Idaho.
- Wildlife Services promised to stop using M-44s, or “cyanide bombs,” on public lands in Idaho when it issued a new Idaho Environmental Assessment in November 2016.
- In March 2017, a boy in Pocatello Idaho was injured—and his dog was killed—when he accidentally activated one of the devices while walking his dog on public lands managed by the Bureau of Land Management.
- The “cyanide bombs” are manufactured and/or shipped from Pocatello, Idaho.
- Thanks to our client groups’ efforts, Wildlife Services has now promised to remove all M-44s in Idaho, until further notice.

This is the M-44 that was accidentally detonated by a Pocatello, Idaho boy – which killed his dog and caused him injury. – Theresa Mansfield & Idaho State Journal



the action will help boost sage-grouse populations.

We also filed our final brief in a case challenging Wildlife Services’ Idaho wolf-killing in late April. Over the course of that litigation, Wildlife Services’ counsel has stated that Wildlife Services will not kill wolves in the Lolo Zone in 2017—a momentary reprieve for the wolves there, which Wildlife Services has targeted each year for the past 6 years. We hope for a court decision by the end of the year. 

Wolf pup and mother – Josef Pittner/Shutterstock



Kristy Pigeon banding ducks in Bruneau with Idaho Fish and Game.



“We support **Advocates for the West** because in addition to standing strong on important environmental issues, we value their success in leveraging our gifts by recovering litigation expenses. We truly get a lot of bang for our buck – which is why we are members of **Advocates for the West’s Legacy Society.**”

Kristy Pigeon and John Prudden of Hailey, ID



Legacy Society – Protecting our future, together.

If you believe caring for Earth and all its creatures is a sacred trust, by naming **Advocates for the West** as a beneficiary you are making a lasting commitment to defend and protect the American West’s natural treasures, precious waterways, and our wildlife.

If you have already included **Advocates for the West** in your estate plans, please let us know. Sharing your plan with us places you under no obligation, however it enables us to thank you and welcome you into the **Advocates for the West** Legacy Society. If you wish to be anonymous in your gift, we will gladly honor that wish.

Your pledge to **Advocates for the West** will help save wildlife and wild places by sponsoring some of the hardest hitting cases in defense of the American West.

We thank you, and Mother Nature thanks you!

For more information on planned giving, contact our Director of Strategic Partnerships:

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PROTECTING FISH & WILDLIFE



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Staff News

Welcome Stephanie Parent to our Board

Stephanie is an attorney with the Center for Biological Diversity’s Environmental Health program, working to reduce pesticides and other toxic chemicals in our environment. She has practiced environmental law for a quarter century and has litigated many wildlife and public lands cases.



Earlier in her career, Stephanie was the managing attorney and clinical professor with the environmental litigation clinic at Lewis & Clark Law School, an Assistant Attorney General with the Oregon Department of Justice, and a trial attorney with the U.S. Department

of Justice. She holds a law degree from Lewis & Clark and a bachelor of science from the University of Wisconsin-Madison.

Stephanie lives with her family in Portland, Oregon and loves to wander in the Cascades on foot, skis or by bike. She’s learning the art of printing, taking classes in woodblock and etching. Stephanie has served on the boards of Northwest Environmental Defense Center, the PTA, and the local West Point Parents Club.

Meet Our Summer Law Clerks

Tom Flynn is a third-year student at Vermont Law School, where he is pursuing a J.D. and a Masters degree. He enjoys the full range of environmental law courses offered at Vermont, including water law and natural resources law. He is a



member of the law review and the national moot court team. Before law school, Tom worked in Boise for Winter Wildlands Alliance and Outdoor Alliance.

Though he appreciates the north east, Tom is most at home in the West, particularly Idaho. He is excited to combine his passion for public lands advocacy with his growing legal skills as a summer law clerk at **Advocates for the West.**

Doug Rudeen is a current student at UCLA School of Law. He is involved with several student organizations including the student-run Journal of Environmental Law and Policy, the Environmental Law Society, and serves as the Vice President of Judicial Outreach on the Moot Court Honors Board. A Boise native, Doug received his Bachelor’s Degree in



Psychology from Seattle University in 2011.

After law school, Doug hopes to find a way to employ his interests in law, stats, and economics in the environmental advocacy space. In his spare time, he enjoys outdoors activities like hiking and bushcraft, running, and playing guitar.

Hal Shimkoski is a rising 2L at the University of Pennsylvania Law School and a graduate of Hamilton College ‘16, where he studied Philosophy and Public Policy and was president of the Hamilton College Debate Society. Hal sees the law as necessary to maintain a proper relationship between modern man and wilderness. In addition to his academic interests, Hal enjoys scuba diving, canoeing, fishing, and traveling.



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Sockeye Salmon Migration – Rokopix, Shutterstock

“There is a fire in water. There is an invisible flame, hidden in water, that creates not heat but life. And in this bewildering age, no matter how dark or glib some monetized, spiritually inert humans work to make it, wild salmon still climb rivers and mountain ranges in absolute earnest, solely to make contact with that flame.”

David James Duncan

Conservation activist, salmon expert, fly fisher, and bestselling author of *The River Why* and other books. We thank him for spending a memorable evening sharing his knowledge with us and our supporters in Boise.