



ADVOCATES for the WEST

2024 Fall/Winter Case Notes

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FOCUSED ON THE BIG PICTURE IN FIGHTS TO DEFEND THE WEST

Laird J. Lucas, Executive Director

I'm always amazed at the intense beauty of the West's vast and iconic landscapes. These breathtaking deserts, old growth forests, and wild rivers are worthy of our protection for their scenic values alone. But perhaps more importantly, large and resilient landscapes help prevent the worst effects of climate change and species loss by capturing carbon and sustaining biological processes.

Advocates for the West has long fought for the protection of large and resilient landscapes threatened by extractive industries, fragmentation under the guise of "progress," and administrations eager to privatize wealth from our publicly-owned natural resources. That fight continues on critical fronts, as you will read in the following pages, and its importance in curbing climate chaos is increasingly apparent.

Indeed, we're living in uncertain times. Not long after this

publication is in your hands, we will know the outcome of our 2024 presidential election, and have much more clarity about the role our organization will play in coming years to defend large, biodiverse landscapes and the people and wildlife that depend on them. Fortunately, *Advocates for the West's* greatest strengths over our 22-year history are our nimbleness and versatility. We've grown at a steady and sustainable rate, allowing us to respond quickly to pressing environmental threats and win environmental victories through both litigation and advocacy.

We've won major victories defending actions taken by environmentally-conscious administrations, and have promoted better protections for under-represented species and ecosystems such as sage-grouse and the Sagebrush Sea. We joined our conservation allies last year

in advocating for a strong Public Lands Rule to promote the health and restoration of our public lands—which we are now fighting to defend from state and industry challenges, as outlined on page 8. Should Vice President Harris prevail on November 5, we're ready to stand up for other forward-looking conservation priorities that will shape the West for the better in decades to come.

Yet we've also succeeded in blocking and reversing environmentally-damaging policies, including the worst Trump-era policies and decisions that threatened to degrade vast swaths of intact ecosystems. And if Trump wins another term, we're ready to dig in our heels.

Administrations come and go, but our work stands the test of time, thanks to your support. Whether through protecting large landscapes for their myriad

social and ecological benefits or leveraging our skill sets for the greatest impact, our approach to defending the West ensures we're focused on the big picture.

With immense gratitude,




Sarah Marino Photography



SUPPORTER SPOTLIGHT

“My wife, Anja, and I became familiar with *Advocates for the West* through my work with Idaho Rivers United. *Advocates for the West* has represented IRU on a plethora of cases and while the breadth of work was impressive, it was the knowledge of the case material and the dedication that they devoted to each issue that was most indelible. I found myself reaching out to Laird Lucas and Bryan Hurlbutt constantly for advice and not just on issues they represented us in.

Their commitment to excellence in defending the rivers, landscapes, and wildlife across the West is unparalleled, and I am honored to help support *Advocates for the West* in these efforts. Without the great work that they have provided, I know the West would truly be a diminished place.”

 **Nic Nelson**
Boise, Idaho
Sage Society Member

JOIN OUR SAGE SOCIETY AND RECEIVE AN ADVOCATES FOR THE WEST BANDANA!

As free lawyers for the environment, *Advocates for the West* relies on the generosity of supporters like you to provide free, top-notch legal services to our partners. Sage Society members provide critical support that we can count on—showing up month after month to chip in for our work to defend the West. Your monthly gifts will ensure we have the resources we need to fight—and win—for the West!

Monthly giving is secure, easy to sign up for, and you can adjust or cancel any time. Will you join us? Sign up for monthly giving by the end of this year, and you’ll receive our custom bandana designed by artist Miguel Almeida.



Find out more and sign up today by scanning the QR code or by visiting: AdvocatesWest.org/Sage-Society



2024 Fall/Winter Case Notes



Sarah Marino Photography

Advocates for the West

“WHILE THIS CASE CHALLENGED A SEEMINGLY OBSCURE FEDERAL AGENCY PROGRAM, OUR IN-COURT AND OUT-OF-COURT VICTORIES HAVE IMPORTANT IMPLICATIONS FOR THESE PRECIOUS ECOSYSTEMS SPANNING THE ENTIRE WEST.”



A WIN FOR POLLINATORS IS A WIN FOR ENTIRE ECOSYSTEMS

Hannah Goldblatt, Staff Attorney

Western desert, sagebrush, and grassland ecosystems make up a vast portion of our public lands and are home to a diverse array of species. Key pollinators such as western bumblebees, monarch butterflies, moths, and other insects are the foundation of these ecosystems, encouraging fertilization necessary to produce fruits, seeds, and young plants. Unfortunately, pesticide use is a leading threat to these pollinator species and, in turn, the ecosystem services they provide.

In spring 2022, *Advocates for the West* filed a lawsuit on behalf of the Xerces Society for Invertebrate Conservation and the Center for Biological Diversity to protect these vast and diverse areas from aerial pesticide spraying. The Animal and Plant Health Inspection Service (APHIS), a federal agency, authorizes and funds the application of pesticides in 17 western states through its rangeland pesticides program. The purpose of this program is to protect rangelands used for commercial ranching by killing off

natural grasshopper and Mormon cricket population booms to keep them from competing with cattle for forage. But the broad-spectrum pesticides used by APHIS have adverse impacts far beyond these target grasshoppers and Mormon crickets, including by harming and killing native pollinators and reducing food sources for sage-grouse, migratory birds, and other wildlife.

For over 20 years, APHIS has operated this program by relying on an unlawfully narrow interpretation of its authority that it can only reactively apply pesticides. Making this worse, APHIS also carries out its program with little transparency about where it applies pesticides and without adequately analyzing impacts to sensitive areas like National Wildlife Refuges, endangered species habitats, or nearby wilderness areas.

This summer, we won a sweeping victory in the District of Oregon when the Court agreed with all of our claims. The Court held that APHIS can no longer shirk its duties

under the law, and must consider more holistic, integrated pest management techniques in carrying out its program. Integrated pest management combines biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks. In addition, the Court found APHIS must do a better job to analyze the program-wide and local environmental effects to sensitive areas and species, including by considering the baseline conditions of butterflies, moths, and native bees in spray areas as well as the cumulative effects of its program when combined with other pesticide use in these areas. The ruling means APHIS will have to reconsider its overreliance on toxic pesticides and take a harder look at the program’s environmental impacts.

Although our lawsuit drew particular attention to Oregon, Idaho, Wyoming, and Montana where aerial sprays have been particularly concerning, APHIS carries out its program across millions of acres in 17 western

states. As a result, the Court’s ruling will improve the program across vast expanses of the West.

The pressure from our lawsuit also forced APHIS to finally complete its Endangered Species Act consultation that had been pending since 2015. Although we are pleased to see that the agency will now provide consistent protective measures for endangered species, we are still concerned that its analysis lacks supporting scientific evidence about impacted species.

While this case challenged a seemingly obscure federal agency program, our in-court and out-of-court victories have important implications for these precious ecosystems spanning the entire West. Insect populations in particular are declining worldwide at alarming rates—largely due to the use of toxic pesticides. Forcing APHIS to go back to the drawing board and consider non-pesticides alternatives is an important step toward ensuring a less toxic environment for these important species.





PUBLIC LANDS RULE BRINGS BALANCE BACK TO BLM LANDS

Todd C. Tucci, Senior Attorney

In 1975, Congress passed the Federal Land Policy and Management Act (FLPMA), which guides management of 245 million acres of federal public lands managed by the Bureau of Land Management (BLM). FLPMA requires that “the public lands be managed in a manner that will protect the quality of the scientific, scenic, historical, ecological, environmental, air and atmospheric, water resources, and archaeological values,” and further requires BLM to “preserve and protect certain public lands in their natural condition.” Of course, FLPMA also adopts a “multiple use-sustained yield” management regime, which requires BLM to manage our public lands and their resources in the “combination that will best meet the present and future needs of the American people.”

Despite this clear Congressional direction to bring balance and consideration to the management of western public lands, BLM’s track record is spotty at best. In fact, BLM has repeatedly and consistently elevated extractive uses (oil and gas development, mining, grazing, coal,

etc.) over FLPMA’s conservation mandate—and BLM’s own data shows that public lands across the West are failing to meet even the minimum requirements for healthy watersheds and habitats, and otherwise failing to maintain and achieve ecological resilience, which is especially important in the face of global climate change. This pervasive degradation of public lands has resulted in weed invasions, extreme wildfires, and increased habitat fragmentation, which BLM recognizes threatens its ability to manage public lands as directed by FLPMA.

In May 2024—nearly 50 years after Congress ordered BLM to “protect” public lands and resources—BLM adopted the Conservation and Landscape Health rule (commonly called the Public Lands Rule), which acknowledges that conservation use is on par with other uses of public lands. The rule seeks to achieve FLPMA’s multiple use mandate “by prioritizing the health and resilience of ecosystems across public lands.” BLM will accomplish this goal in three ways:

- First, the agency will prepare an inventory of large, unfragmented ecosystems (i.e., intact landscapes) on public lands, and begin managing to protect these remaining intact landscapes. This first step is a no brainer—if we are going to protect the air and water and other conservation resources, we have to first focus on protecting the best of what is left. And, BLM has finally identified and adopted procedures for considering and designating Areas of Critical Environmental Concern (ACECs), which will allow for the protection of public lands containing unique ecological, historic, scenic, or cultural values.
- Second, BLM will work to restore habitat degraded by past use, including by issuing so-called restoration leases and mitigation leases designed to restore public lands or mitigate reasonably foreseeable impacts for an otherwise permitted activity. Restoration and mitigation leases represent a creative new approach to protecting public lands—while being mindful of existing uses and authorizations

on these same lands.

- Third, the Rule adopts a series of new steps designed to ensure that science, data, and Indigenous knowledge inform its decision-making on western public lands. The Rule applies existing land health standards for livestock grazing to all other uses of western public lands, and adopts these standards as best management practices guiding future use.

While one could fault BLM for not fully implementing FLMPA before now, *Advocates for the West* applauds BLM’s effort to bring public lands management into the 21st century. The Public Lands Rule represents an exciting opportunity to use existing authority to manage large, intact landscapes to meet the challenges of providing clean water, clean air, and ensure western public lands have a fighting chance to absorb the coming ecological changes from climate change.

Our work is not done, however, especially because several western states have teamed up with the

“Lords of Yesterday”—a phrase coined by western scholar Charles Wilkinson in reference to mining, oil and gas, livestock, timber, and coal industries—and filed several lawsuits to stop BLM’s adoption and implementation of the Public Lands Rule. These cases are based on rhetoric and assumptions, and the Lords of Yesterday are mainly seeking to maintain their stranglehold over our public lands.

Advocates for the West is representing the Conservation Lands Foundation and a number of other conservation partners in defending the Public Lands Rule in these lawsuits as fully consistent with FLPMA’s commands that conservation is—and should be—a guiding principle for public lands management.

“THE PUBLIC LANDS RULE REPRESENTS AN EXCITING OPPORTUNITY TO USE EXISTING AUTHORITY TO MANAGE LARGE, INTACT LANDSCAPES TO MEET THE CHALLENGES OF PROVIDING CLEAN WATER, CLEAN AIR, AND ENSURE WESTERN PUBLIC LANDS HAVE A FIGHTING CHANCE TO ABSORB THE COMING ECOLOGICAL CHANGES FROM CLIMATE CHANGE.”

Sarah Marino Photography





SCAN TO DONATE

SHOW YOUR LOVE FOR THE WEST

Advocates for the West provides winning legal services to our clients at no charge. This allows our partners in conservation to focus on what they do best rather than diverting their energies to addressing legal costs. Our fundraising allows us to focus on what we do best: provide clients with free, top-notch legal representation for the environment.

This is where you come in. Individual contributions and grants from private foundations are critical to our success. We hope you are inspired by our long track record of success and will make a tax-deductible gift to *Advocates for the West* today.

Thanks to support from people like you, we continue to fight—and win—for the West’s treasured public lands, water, fish, and wildlife. Learn more and give today by scanning the QR code or visiting: AdvocatesWest.org/donate

Sarah Marino Photography

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Conservation Lands Foundation staff and partners

Advocates for the West

PARTNER SPOTLIGHT

“Founded in 2007, the Conservation Lands Foundation (CLF) is rooted in the belief that America’s public lands are best protected by the enduring commitment of local communities. Our mission is focused on public lands managed by the Bureau of Land Management (BLM), the largest public lands manager in the U.S.

The BLM oversees nearly 250 million acres, but 85% of these public lands lack adequate protections and are vulnerable to harmful activities like drilling and overuse. Protecting more of these lands as National Conservation Lands will be essential to addressing the climate crisis and safeguarding clean air and water, wildlife, cultural sites, and local communities.

Advocates for the West remains a steadfast and valued partner in our work to protect, defend, and expand National Conservation Lands. Their invaluable legal expertise and representation enable us to successfully defend public lands in the courts, including our efforts to uphold protections for Bears Ears and Grand Staircase-Escalante National Monuments in Utah, prevent the construction of a four-lane highway through Red Cliffs National Conservation Area in Utah, and defend the Public Lands Rule which balances conservation with development.

At the heart of our success is our Friends Grassroots Network, a powerful coalition of 80+ community-based groups across the country. *Advocates for the West* provides these organizations with legal counsel, representation, and training, empowering them to respond effectively to threats that put public lands at risk.

With the ongoing support of partners like *Advocates for the West*, and people like you who care deeply about the lands we all love and need, we are making significant progress in safeguarding nature and wildlife in the U.S. Join us at conservationlands.org”



Jocelyn Torres
Chief Conservation Officer
Conservation Lands Foundation



ENFORCING REFUGE PURPOSES FOR LARGE LANDSCAPE CONNECTIVITY

Andrew Hursh, Staff Attorney

I recently met some of *Advocates for the West's* clients, partners, and supporters in the stunning Centennial Valley in southwestern Montana. This valley occupies a small corner of the “Greater Yellowstone Ecosystem,” which is indeed an immense place. The humbling scale stretches in all directions from the National Park and extends into other distinct but connected regions as well. Off to the west, millions of acres of deep canyon country and undulating forests that characterize central Idaho and the Bitterroots. North, the Rocky Mountain Front, the Bob Marshall Wilderness Complex, and Glacier National Park. Such cherished intact ecosystems and truly large landscapes are what make the West.

What brought me to the Centennial Valley is only a small patch in the embroidery of human borders upon the earth’s canvas: the Red Rock Lakes National Wildlife Refuge. The Refuge is a junior cousin to the large parks and forests in the Greater Yellowstone region, covering about 50,000 acres of shallow lakes, fens, wetlands, sage, grasslands, and

the aspen and fir on the toes of the steep Centennial Mountains—part of the “High Divide” connecting Yellowstone to those wilderness and roadless areas to the west and farther north. Because the vastness of the West is nothing without continuity from horizon to horizon, special places like Red Rock Lakes are not isolated features. Every unit of protected land is a vital component of the whole landscape.

The Refuge’s importance derives from its relationship to its surroundings. Here, we find the largest wetlands complex in the Greater Yellowstone Ecosystem, which played a key role in the conservation of trumpeter swans facing near-extinction in the early 20th century; it was this context that led President Franklin Roosevelt to designate the area for protection in 1935. Here, streams approach the farthest headwaters of the Missouri River, starting the fourth longest route from source to sea in the world. Here resides the southernmost native population of arctic grayling, clinging to diminished lacustrine and riverine habitat. Here are species reliant on dwindling expanses of sagebrush,

like the sage-grouse, Brewer’s sparrow, and pronghorn. Here treads the grizzly bear, tentatively stretching out to recapture the many territories it ranged prior to brutal extirpation. If these and other iconic species are to share with us the several vast landscapes I described above, then geographic links like the Centennial Valley and protected pockets like Red Rock Lakes are crucial.

This summer, *Advocates for the West* filed a lawsuit on behalf of our partners at WildEarth Guardians and Western Watersheds Project to challenge commercial livestock grazing in the Red Rock Lakes National Wildlife Refuge. As we’ve learned through more than 20 years of related advocacy, the dominant presence of cattle is difficult to reconcile with the purposes of a National Wildlife Refuge—areas designated to protect iconic species and their habitats. Livestock wreck riparian and other habitats, transport weeds, require fencing, and create conflicts with wildlife, including native carnivores.

For decades, the U.S. Fish and Wildlife Service has allowed privately owned cattle to occupy

the federal public lands in the National Wildlife Refuge. The agency’s environmental analyses and Refuge planning efforts are decades old and badly outdated, and even the decades-old materials acknowledged negative impacts from grazing years ago. But the Fish and Wildlife Service never followed through with the robust oversight it said was necessary to permit the practice. And it has continued to issue commercial livestock permits.

Our lawsuit seeks to enforce the clear mandate in federal law that National Wildlife Refuges only allow activities compatible with wildlife habitat conservation. We aim to ensure that the Refuge serves as connective habitat—as relief from our landscape-dividing forces—for migratory birds, grizzly bears, and other creatures. National Wildlife Refuges are not additional properties for lease to commercial interests but are critical to maintaining large landscape connectivity and healthy habitats for myriad species. Our litigation at Red Rock Lakes is poised to help our clients and partners as they strive to maintain the value of wildlife refuges free from harmful incursions all around the West.



“BECAUSE THE VASTNESS OF THE WEST IS NOTHING WITHOUT CONTINUITY FROM HORIZON TO HORIZON, SPECIAL PLACES LIKE RED ROCK LAKES ARE NOT ISOLATED FEATURES. EVERY UNIT OF PROTECTED LAND IS A VITAL COMPONENT OF THE WHOLE LANDSCAPE.”

Sarah Marino Photography

CASE UPDATES

Victory to Protect Idaho's South Fork of the Clearwater River

In July, *Advocates for the West* won a major victory for rivers and streams throughout the United States. The U.S. Supreme Court upheld our legal efforts for Idaho Conservation League requiring that suction dredge miners must obtain a Clean Water Act (CWA) permit before engaging in the destructive activity. The Supreme Court rejected a petition to review our prior wins holding that gold miner Shannon Poe, of California, violated the CWA when he dumped suction dredge mining waste into Idaho's South Fork of the Clearwater River without a required pollution permit. The South Fork of the Clearwater is a State Protected River and provides critical habitat for salmon, steelhead, bull trout, and other sensitive species.

Victory to Defend Idaho's Snake River from Illegal Feedlot Pollution

We won an initial victory in our CWA lawsuit challenging decades of unlawful pollution discharges into the Snake River at Simplot Corporation's Grand View, Idaho feedlot. A federal court judge denied Simplot's motion to dismiss, allowing our lawsuit to proceed.

The Snake River in southern Idaho is threatened by ongoing agricultural pollution, including from the Grand View feedlot. One of the largest feedlots in the country, with a capacity of up to 150,000 cattle and generating nearly 50,000 tons of manure each year, Simplot's Grand View feedlot discharges livestock waste to the Snake River, yet Simplot lacks any CWA permit regulating its discharges. We sued in May 2023 to require a permit.

Victory to Safeguard Clean Air, Public Health in Idaho

Advocates for the West won an interim victory in our ongoing fight to stop Perpetua Resources' proposed Stibnite Gold Mine on the edge of Idaho's Frank Church–River of No Return Wilderness and within the aboriginal homelands of the Nez Perce Tribe. The Idaho Board of Environmental Quality issued a decision invalidating Perpetua's air pollution permit for the proposed mine, which would have allowed Perpetua to emit massive amounts of arsenic-laden dust in quantities that exceed state law limits designed to protect the public from exposure to carcinogens. The Board found that the Idaho Department of Environmental Quality (DEQ) failed to follow Idaho air pollution

rules designed to protect people from exposure to toxic and carcinogenic pollutants when it issued the permit. The permit is now remanded back to DEQ for further proceedings.

Victory for Clean Air, Clean Water, Wildlife in Wyoming

We just won a significant victory halting the 5,000-well Converse County Oil and Gas Project in eastern Wyoming. A federal court judge ruled that the Bureau of Land Management's (BLM) approval of the project was unlawful, finding that agency's groundwater modeling contained major errors and grossly underestimated the depletion of groundwater by the massive project. The Court blocked the approval of new drilling permits in reliance on the BLM's flawed environmental review of the project. In addition to impacts to groundwater, rare and dwindling populations of sage-grouse and birds of prey, and nearby local communities, the project would result by year ten in 69.5 million metric tons of carbon dioxide equivalent annually—the same level of carbon pollution as 15 million cars each operating for a year.

Defending Colorado's Pawnee National Grassland from Fossil Fuel Development

Advocates for the West sued the BLM for failing to protect shortgrass prairie in northern Colorado's Pawnee National Grassland from continued oil and gas extraction. In issuing drilling permits, BLM erroneously claims to lack authority to consider harms to wildlife, air and water, dark skies, or the aesthetic of the grassland because the federal minerals would be extracted by horizontal fracking from wells built on private or state lands. Oil and gas extraction in and around the area also contributes to ozone pollution in Colorado's Front Range, which since 2004 has consistently exceeded ambient air quality standards set by the Environmental Protection Agency.

Protecting the Columbia River Estuary from a Proposed Diesel Refinery

We filed a lawsuit challenging the Army Corps of Engineers for unlawfully determining that no permit is required under the Rivers and Harbors Act for NEXT Renewable Fuels' proposal to construct a diesel fuel refinery and rail yard and store a million barrels

of diesel and jet fuel adjacent to the Columbia River near Clatskanie, OR. This so-called "renewable diesel" refinery in the heart of the Columbia River Estuary would pose a significant environmental threat to the surrounding area and the river, polluting the air and water, negatively impacting local family farms, creating conditions for a catastrophic spill, and harming Endangered Species Act-protected salmon and steelhead due to an increase in barge traffic.




To learn more about our victories and active cases, visit: AdvocatesWest.org/cases



SUPPORTER SPOTLIGHT

"The work *Advocates for the West* does is effective, over and above the ways we conservationists used to 'fight.' I got burned out long ago and felt like we weren't making any progress. Supporting *Advocates for the West* feels hopeful."

 **Jan Kelly**
Camano Island, Washington

Sarah Marino Photography



ADVOCATES for the WEST

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FEATURED ARTIST: SARAH MARINO

Sarah Marino is a nature photographer, nature enthusiast, and writer based in southwestern Colorado. In addition to photographing grand landscapes, Sarah is best known for her photographs of smaller subjects including intimate landscapes, abstract renditions of natural subjects, and creative portraits of plants and trees. Sarah is a highly regarded photography teacher, focusing on personal expression, seeing opportunities in any landscape, photographing nature's small scenes, and a slow style of photography focused on exploration and connecting with nature. Sarah, a co-founder of the Nature First Alliance for Responsible Nature Photography, also seeks to promote the responsible stewardship of natural and wild places through her photography and teaching. You can see more of her work at www.smallscenes.com

When you're finished reading this publication, we encourage you to share it with your friends and family, leave it on the coffee table at a bank or doctor's office, or pass it on to a public newsstand. Help us share our work to protect and defend the West!