



# Western Watersheds Project **MESSENGER**

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Spring 2015

**Sage-Grouse Protection in  
Craters of the Moon**

**WWP Storms PIELC**

**Wyoming Ranchers Fight  
for Water Pollution**

**A Second Chance for Eagle  
Lake Rainbow Trout**

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through education, public policy initiatives and legal advocacy.**

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**Table of Contents**

**Sage-Grouse Protection in Craters of the Moon** *Paul Ruprecht and Kristin Ruether* 4  
 Accounting for grouse on the Big Desert allotment.

**Bad Bills Never Die** *Josh Osher* 5  
 They just get attached to must-pass legislation.

**Fighting for Bison** *Michael Connor* 7  
 An Endangered Species Act listing petition is filed for this iconic species.

**A Good Effort on the Agua Fria** 10  
*Laura Welp*  
 Steps are taken to protect the fragile desert in Arizona.

**WWP Storms PIELC** *Kristin Ruether* 11  
 The annual environmental law conference where WWP shines.

**Catching the BLM Red-Handed** 12  
*Greta Anderson*  
 The BLM bungles their way through managing a national monument.

**Wyoming Ranchers Fight for Water Pollution** *Travis Bruner* 13  
 An attempt to shut down WWP's water quality monitoring through a trespass lawsuit and state legislation.

**A Second Chance for Eagle Lake Rainbow Trout** 14  
*Michael Connor and Paul Ruprecht*  
 Idaho braces itself for the slaughter.

**2014 Annual Financial Report** 15

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# Sage-Grouse Protection in Craters of the Moon



By Paul Ruprecht and Kristin Ruether

A few years ago, following decades of legal advocacy by WWP and allies, the Bureau of Land Management (BLM) promised to adopt a “new paradigm” for managing sage-grouse. Specifically, the agency issued a report and guidelines intended to hold the line on protecting sage-grouse until completion of the much-anticipated amendments to its land use plans across the range of sage-grouse, expected later this year. The interim guidelines provide direction to protect the unfragmented sagebrush habitats necessary for sage-grouse.

In its guidelines, the BLM committed to evaluate the need for new fences, troughs, and other livestock structures



*Craters of the Moon National Monument*

known to harm sage-grouse. This is important because sage-grouse fly low, and collisions with fencing leads to many deaths. Sage-grouse also innately avoid vertical structures like fence posts because they provide perches for predators like raptors. Water developments attract ravens and other predators as well, and ground-disturbing construction provides areas for invasive plants like cheatgrass to establish and spread.

The BLM guidelines also promised to manage grazing in a way that improves

sage-grouse habitat and meets seasonal habitat requirements. This is critical because research has shown that grazing at certain times is more harmful than others. Spring grazing is particularly harmful due to disturbance of nesting females and chicks, as is twice-a-year grazing (spring and fall), which both disturbs chicks early in the year and removes necessary residual grass cover in the fall.

Unfortunately, even good policies and guidance do nothing to help sage-

## Please join us at Western Watersheds Project’s 2015 Board Meeting!

You are cordially invited to the Annual WWP Board and Members Meeting

**Friday, June 12, 2015 from 9:00 AM to 2:00 PM**

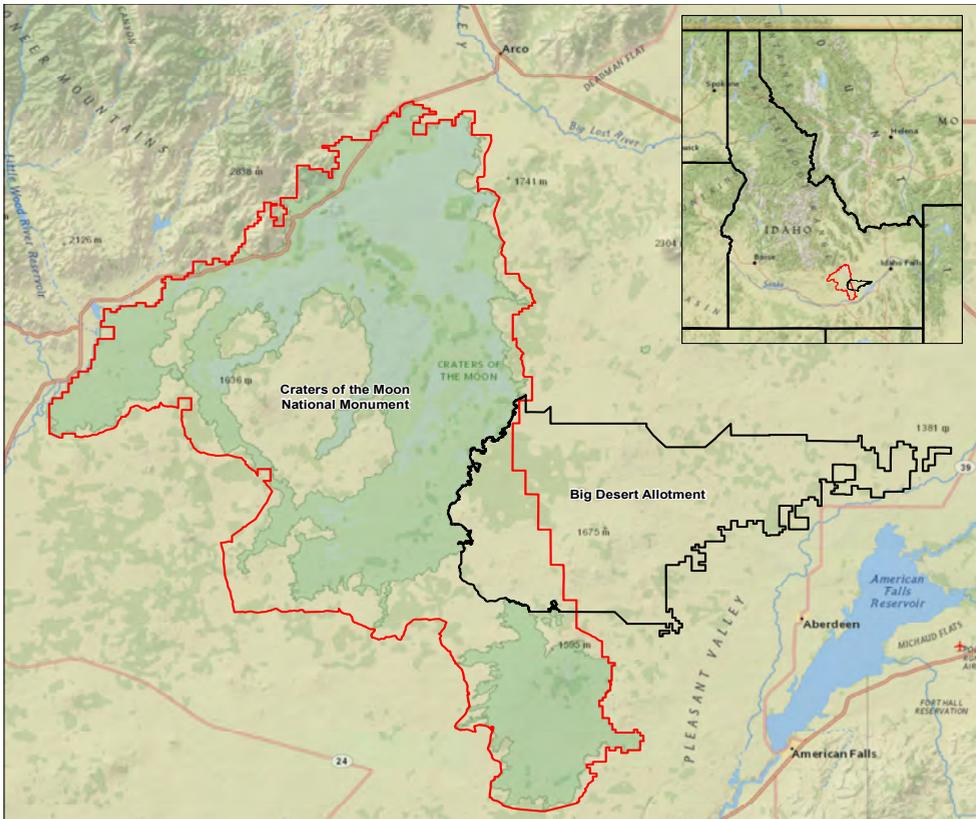
at the Murie Center in Grand Teton National Park. Lunch will be provided by WWP.

Please join us to learn the latest news about WWP and our plans for the next year!

The Murie Center is located 13 miles north of Jackson, Wyoming. It is a dynamic center where people gather for study, debate and inspiration on behalf of wild nature.

For directions, information about an informal gathering, and details about a presentation by George Wuerthner please visit: [www.westernwatersheds.org/boardmeeting](http://www.westernwatersheds.org/boardmeeting)

Please RSVP by calling **208-788-2290** or emailing [wwp@westernwatersheds.org](mailto:wwp@westernwatersheds.org)



*Big Desert Allotment and Craters of the Moon National Monument*

grouse if not implemented on the ground, and application of these protective measures has been spotty. BLM’s grazing decisions for the Big Desert Sheep allotment are a prime example of agency managers choosing not to implement these protections.

The Big Desert Sheep allotment is partly within the Craters of the Moon National Monument and Preserve located northwest of American Falls, Idaho. This low-elevation area of the Snake River Plain has proven susceptible to wildfires, causing conversion of some sagebrush habitat to annual grasses such as cheatgrass. BLM authorizes up to 40,000 sheep to graze the allotment every year in both spring and fall. Sage-grouse populations have been in decline since the 1950s, and dozens of leks in the area have disappeared. Clearly, this is not an area that will continue to support sage-grouse under status quo management practices.

What was the BLM’s solution? More grazing and more fences. The BLM issued decisions expanding the season

of grazing use on the Big Desert Sheep allotment by 40 days. Now sheep can graze there earlier in the spring, and later into the summer—overlapping nearly the entire sage-grouse breeding season. So much for managing grazing to meet seasonal sage-grouse habitat requirements! The decisions also authorize construction of 17 miles of new fencing

in priority sage-grouse habitat—within close proximity to active sage-grouse leks—and approve construction of a corral, a well, pipelines, and troughs. So much for the “new paradigm.”

Unwavering in its defense of Greater sage-grouse, Western Watersheds Project filed suit in the District of Idaho federal court this February to challenge the BLM’s grazing decisions for the Big Desert Sheep allotment. WWP explained that the decisions are inconsistent with BLM guidelines and obligations to protect sage-grouse and its habitat, and that the BLM failed to consider the implications of the expanded grazing and range developments on sage-grouse.

BLM actions in this beautiful corner of Craters of the Moon National Monument show that the current guidelines and policies are not adequate. If the BLM is serious about saving sage-grouse, the forthcoming land management plan amendments need to contain firm parameters protecting sage-grouse including, limits on new infrastructure, and provisions for immediate enforceability.

*Kristin Ruether is WWP’s Senior Attorney.*

*She lives in Boise, ID.*

*Paul Ruprecht is WWP’s Staff Attorney.*

*He lives in Portland, OR.*



*Craters of the Moon National Monument*

# Bad Bills Never Die

By Josh Osher



For over a decade, the United States Forest Service (USFS) and the Bureau of Land Management (BLM) have been attaching Congressional riders to appropriations bills to shirk responsibilities under federal law. This loophole allows agencies to forgo environmental analyses when renewing federal public lands grazing permits.

The riders were purportedly enacted to address the agencies' backlog in completing environmental reviews prior to grazing permit expiration and allow for a temporary delay in permit processing. However, it has become the practice of the agencies to use the rider on a regular basis, particularly for allotments where conditions are the worst and reductions in grazing would be required to comply with federal law. This insidious practice

has led to the rubber stamp renewal of thousands of grazing permits without any public involvement and often times without even investigating the conditions on the ground.

Over the years, WWP has documented the significant impact livestock grazing has on wildlife and sensitive ecosystems throughout the American West including these permits that get a free pass from public scrutiny and environmental analysis. We have successfully challenged many of these permit renewals based on violations of the Endangered Species Act and other landmark environmental laws. However, the systematic use of these permit renewal riders has made our task much more difficult and allowed the agencies to ignore many of the problems caused by livestock.

Furthermore, the livestock lobby has been pressuring senators and representatives in western states to make these riders permanent and to provide additional cover from public scrutiny. The so-called Grazing "Improvement"

Act (GIA) sponsored by Wyoming Senator John Barrasso and Idaho Representative Raul Labrador reads like a wishlist for the livestock lobby. While the bill managed to make it through the Senate Energy and Natural Resources Committee, it had little chance of passing as stand-alone legislation. However, as is often the case, rather than shelve an unpopular bill or allow it to be amended, portions of the GIA were included in 11th hour, must-pass legislation. In this case, the rider was included as part of the public lands package attached to the National Defense Authorization Act which became law in December of 2014.

This new language not only makes the rider a permanent fixture allowing the agencies to continue sidestepping the public, but also allows them to avoid their responsibility to manage for the health of public lands by completely waiving the requirement to prepare environmental reviews for the majority of grazing permit renewals. These categorical exclusions even apply to permits in



*US Capitol Building*

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habitat for imperiled species such as sage-grouse and endangered fish, wildlife and plants.

It is not clear how all this will affect WWP's site-specific work in the long run. The categorical exclusions have yet to be clearly defined and the agencies are still relying on the existing riders to renew permits. Our success in challenging agency decisions to renew grazing permits likely has a lot to do with these new laws. Rather than address the damage to our public lands caused by subsidized livestock grazing that violates federal environmental laws, the livestock lobby has provided federal agencies with mechanisms to avoid public scrutiny and to continue to allow livestock to degrade public lands. WWP will challenge these new laws and seek to find ways to hold the federal agencies accountable in order to end the subsidized destruction of our western public lands.

*Josh Osber is WWP's Montana Coordinator and Public Policy Consultant. He lives in Hamilton, MT.*

## Fighting for Bison



**By Michael Connor**

In November of 2014, Western Watersheds Project and Buffalo Field Campaign petitioned the U.S. Fish and Wildlife Service to list the Yellowstone bison as threatened or endangered under the Endangered Species Act. Yellowstone bison are found primarily in Yellowstone National Park but periodically move outside the park boundaries into Montana, Idaho, and Wyoming where they are subject to harassment, capture, forcible removal, or slaughter.

Once numbering tens of millions, there were fewer than 50 wild bison remaining



*Bison Taking a Dust Bath*

in the remote interior of Pelican Valley in Yellowstone National Park at the turn of the 20th Century. Yellowstone bison are the only extant population of bison in the United States that retains their genetic integrity and that have persisted in their native range.

The best available science presented in the petition shows that the Yellowstone bison populations are unique, significant, and genetically and behaviorally distinct. Nearly all other plains bison in the United States are kept as domestic livestock and/or are descendants of bison that were deliberately interbred with cattle by ranchers. For this reason, the Yellowstone bison population

is critical to the overall survival and recovery of the species.

The petition catalogues the many threats that Yellowstone bison face. Specific threats include: extirpation from their range to facilitate livestock grazing, livestock diseases and disease management practices by the government, overutilization, trapping for slaughter, hunting, ecological and genomic extinction due to inadequate management, and climate change.

Copies of the petition are available on the Western Watersheds Project website.

*Michael Connor is WWP's California Director. He lives in Reseda, CA.*



*Bison Calling in Yellowstone National Park*



*Even*

*Everything has beauty, but not everyone sees it.*

*~ Confucius*



Watercolor by WWP Member David Hayes

# A Good Effort on the

## Agua Fria

By Laura Welp



Agua Fria National Monument is part of the BLM's National Landscape Conservation System, a network of special BLM lands that are set aside to protect unique natural and cultural resources. Agua Fria was specially-designated because its mesa tops contain hundreds of archaeological resources representing one of the most significant systems of late prehistoric sites in the Southwest. In addition, the upland semi-desert tobosa grasslands are interwoven with biologically rich riparian zones, which provide habitat for a wide range of sensitive fish and wildlife species.

Many people don't realize that national monuments under BLM management

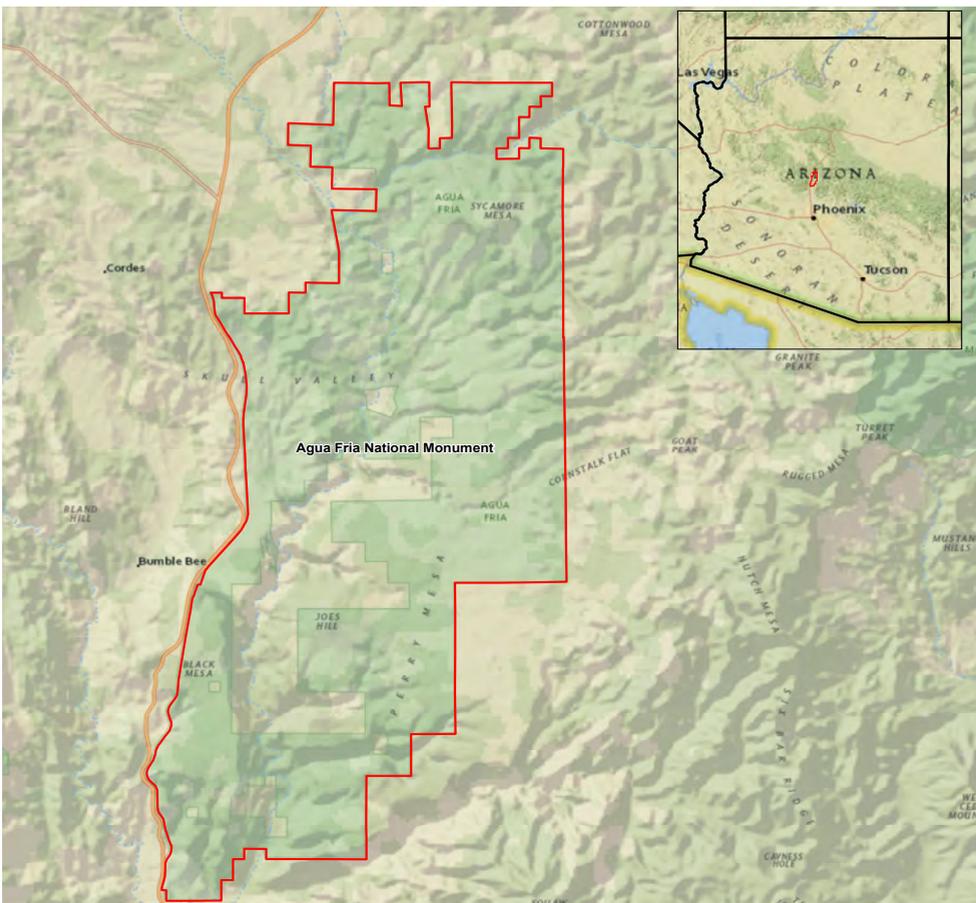


*Petroglyphs at the Agua Fria National Monument*

allow grazing. In most BLM monuments, livestock management isn't any different from other BLM lands. However, Agua Fria National Monument's manager and staff may be on track to break out of

that mold. A Coordinated Resources Management Plan (CRMP) is currently underway to guide grazing management on Agua Fria's Horseshoe allotment over the next ten years. A BLM staffer and permittee put most allotment management plans, if they exist at all, together over the phone. This CRMP process is unusual in the amount of public participation it invites. Before complete, the Monument will have held at least seven stakeholder meetings and field trips in addition to the usual public input process required by the National Environmental Protection Act.

I went to one of the meetings and expected a typical BLM event with bored staff going through the motions and fending off questions with one-word answers. I knew I was in for something different when the biologist told the room that they were following range scientist Jerry Holocek's recommendations for forage utilization levels in desert grasslands. (WWP routinely cites Holocek in their comments on grazing documents.) The preferred alternative also describes detailed plans for monitoring and research. They include grazing



*Agua Fria National Monument, Arizona*

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enclosures to serve as controls for various exotics treatments and for research into grazing management and ecological conditions. Many BLM plans pay lip service to monitoring that doesn't happen. This plan is different, however, with clear and measurable objectives and management triggers that can be verified, such as maintaining a 6-8 inch stubble height in riparian areas.

It's not a perfect plan and there are causes for concern in several areas. For example, the preferred alternative proposes new water developments to be fed by a new well. This would replace the current system in which water is pumped out of the creeks, so ultimately more water would be left in the riparian area for ecosystem processes. However, how would the new well alter upland water regimes? I ask this question often in meetings with the BLM. Usually I'm met with eye rolls. In this case, however, the staff acknowledged the issue and talked about measuring depth to groundwater, wet/dry mapping, and installing piezometers to monitor changes to ground water levels. I still don't think new water developments should be installed to support grazing, but I was impressed by the thoughtful, considered answer.

The Agua Fria scoping letter says, "An additional purpose of this effort is to improve ecological conditions within the project area using tools such as adaptive grazing management." WWP disagrees with the notion that grazing has a role in improving ecological conditions, having never seen a successful example. However, this group appears to have a sincere commitment to considering recommendations from the CRMP stakeholders in making grazing management decisions. WWP will be at the table making those recommendations every step of the way.

*Laura Welp is WWP's Ecosystems Specialist. She lives in Phoenix, AZ.*

## WWP Storms PIELC

By Kristin Ruether



WWP staffers and board members hit the podiums for a record number of panels at this year's Public Interest Environmental Law Conference (PIELC) held in Eugene, Oregon. Sage-grouse protection and livestock-related predator killing were both hot topics at this year's environmental reunion.

I gave an overview of the agency that everyone loves to hate, Wildlife Services, explaining how they kill wildlife in the name of livestock across the West. The audience was cheered to hear about WWP's exciting recent legal challenge to the agency's killing practices in Idaho.

Executive Director Travis Bruner presented on livestock grazing impacts to sage-grouse on a panel discussing emerging threats to sage-grouse and the expected next steps from the BLM, as it works on West-wide revisions to its land management plans. The audience was horrified to learn that sage-grouse populations have reportedly plunged

over 50% since the last range-wide count in 2007.

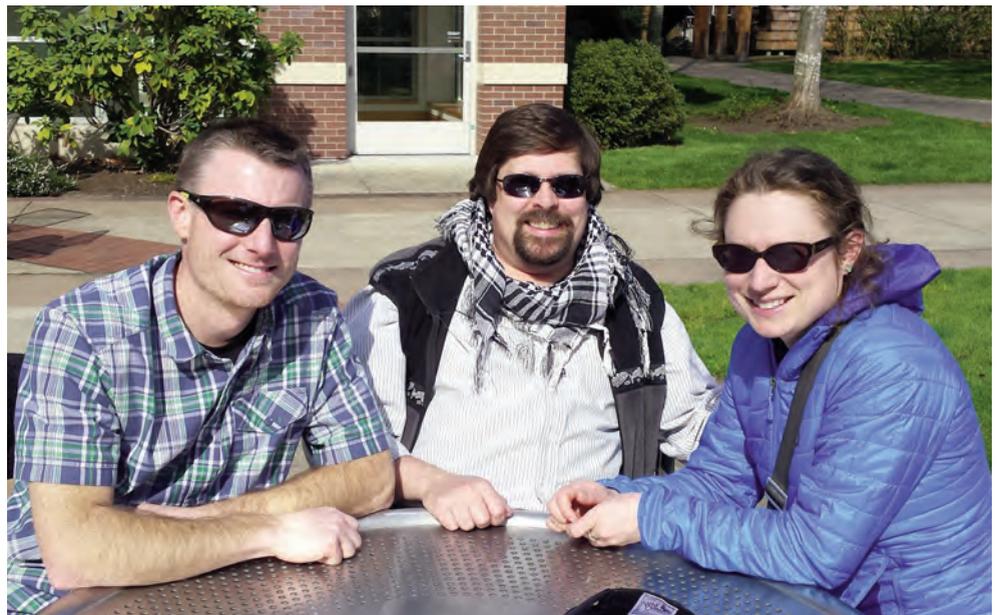
Deputy Director Greta Anderson gave a hard-hitting explanation of how the BLM's upcoming land management plan revisions fail to tackle the problems of grazing and other threats, and how the agencies are failing to consider the need to recover the large historic range of sage-grouse.

Idaho Director Ken Cole participated on two panels, with presentations on WWP's ongoing efforts to close the disease-spreading U.S. Sheep Experiment Station in eastern Idaho, and efforts to obtain protection for bison under the Endangered Species Act.

Board member George Wuerthner was on so many panels, it was hard to keep track! He was involved in panels about bad collaborative processes, "Protecting Biodiversity in the Anthropocene," and the rider to the National Defense Appropriations Act that further reduces BLM and Forest Service responsibility to analyze grazing impacts.

Great work, Team!

*Kristin Ruether is WWP's Senior Attorney. She lives in Boise, ID.*



*Renowned high desert legal eagles Mac Lacy of Oregon Natural Desert Association and solo practitioner Dave Becker plotting with WWP's Kristin Ruether at PIELC.*

# Catching the BLM Red-Handed

By Greta Anderson



It was a pleasant surprise from a conservative judge in a conservative state when WWP won its case against the Bureau of

Land Management's (BLM) flawed grazing program on the Sonoran Desert National Monument (SDNM) in central Arizona. Years of litigation pressed the BLM to analyze grazing at all, and recently exposed faults in the BLM's analysis. District Court Judge Paul G. Rosenblatt agreed that the BLM failed to adequately explain itself in its determination that ongoing livestock grazing was compatible with the paramount purposes of the monument designation.

The SDNM's 2001 proclamation was unique in that it excluded livestock grazing upon permit expiration from part of the Monument and allowed grazing to continue in other parts of the Monument as long as it was found to be compatible with protection of monument objects, including plant communities, wildlife and iconic species such as saguaro cactus. The BLM began study-



*Sonoran Desert National Monument in Arizona*

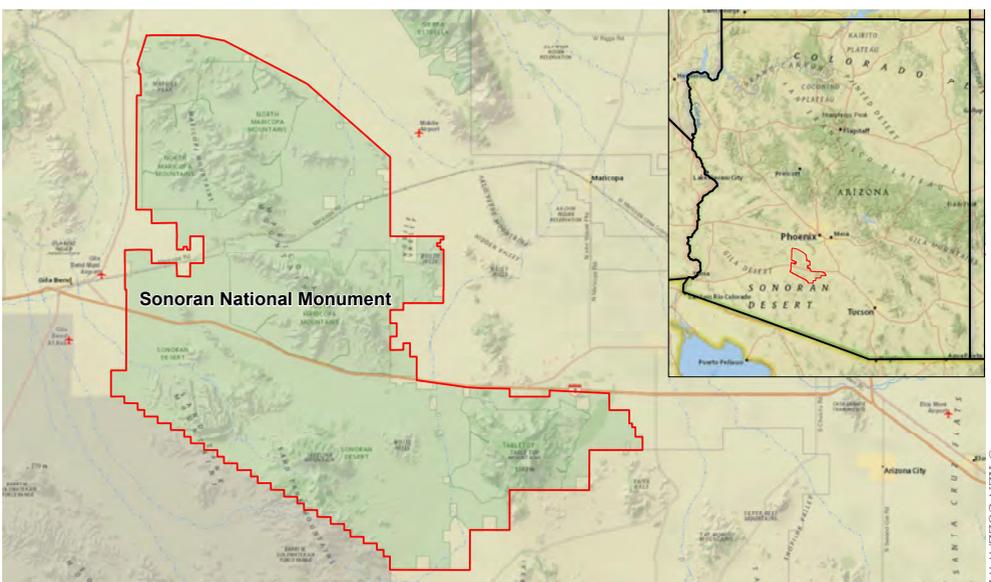
ing the monument and comparing the results to similar areas of livestock-free landscapes to determine this compatibility. However, when the grazed lands weren't meeting the bar for land health, the BLM lowered the bar. In seven iterations of the Land Health Evaluation, standards were consistently lowered and more of the monitoring sites were deemed passing as a result.

Because this case relied so heavily on science, and because the courts are known for being very deferential to the 'experts' at BLM, WWP and Senior Attorney Laurie Rule at Advocates for

the West worked very hard to craft the litigation with a simplified narrative. This tactic eased the judge's understanding of the arcane concepts of vegetation composition, recruitment success, and ecological site objectives. Hard work paid off with a February 26 order finding that the Land Health Evaluation was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." The judge agreed that BLM "cherry-picked" which data to use, analyzing only a subset of the data it had and choosing inconsistent data sets across the monument.

The saga continues, however, because the judge refused to vacate the decision and instead gave BLM another chance to explain. The issue is not that the BLM didn't explain itself well enough in the court filings or find the right parts of the record to demonstrate the validity of its decision. It's that BLM repeatedly, unilaterally, and knowingly rejected any data that found livestock to blame for poor conditions on the monument. If the Arizona District Court doesn't get that, perhaps the Appellate Court will.

*Greta Anderson is WWP's Deputy Director. She lives in Tucson, AZ.*



*Sonoran Desert National Monument, 6 Arizona*

# Wyoming Ranchers Fight for Water Pollution

By Travis Bruner



Western Watersheds Project has spent over a decade monitoring the impacts of livestock grazing on water quality in Wyoming. Jonathan Ratner, our Wyoming Director, spends countless field days every year assessing and documenting unhealthy levels of animal waste in streams, creeks, and rivers on public lands. He then submits his results to the Wyoming Department of Environmental Quality to demonstrate that a particular body of water should be included on the state's list of impaired waters. The identification and validation of these impacts helps WWP advocate for better livestock management on public lands grazing allotments and affirms the need for improved management of wildlife habitats.

While clean water should be in everyone's interest, the livestock industry and the Wyoming lawmakers under their control aren't so appreciative of WWP's efforts. In June of 2014, longtime anti-WWP attorney Karen Budd Falen brought a lawsuit on behalf of the ranchers against WWP alleging that WWP must have trespassed to collect water quality data. WWP is fortunate to have legal assistance from two skilled law professors at the University of Denver, Justin Pidot and Justin Marceau, and an experienced Wyoming trial attorney, Bob Southard, in defending us from these frivolous claims.

The lawsuit claims that the ranchers were harmed by trespass, but fails to present any solid evidence of the alleged trespass. WWP filed a Motion to Dismiss the ranchers' lawsuit, and the Reply to that Motion by Ms. Falen and her clients

contained the startling argument that dangerous contamination of rural Wyoming waters is not of concern because few people reside in those areas.

It's clear that what the ranchers and Ms. Falen are really after is a look inside the internal workings of WWP rather than compensation for any real harm they have suffered. Rather than focus on the factual issues related to the alleged trespass during the depositions, Ms. Falen asked Jonathan numerous questions about his water quality data collection, such as what type of cooler he uses. Furthermore, when WWP deposed ranch managers a few days later, it became clear that WWP's efforts to protect public lands motivated this lawsuit, and not any harm related to an alleged trespass.

We're hoping that the court will grant WWP's motion to dismiss following the hearing on May 18 in Lander, allowing us to put this absurd litigation behind us.

Unfortunately, the ranchers had another trick up their sleeves to try to stop WWP's water quality work. In late March 2015, the Wyoming legislature

passed and Governor Mead signed a law criminalizing trespass to "unlawfully" collect data and prohibiting any data collected "unlawfully" from being used in a civil, criminal, or administrative proceeding, i.e. in WWP's legal advocacy efforts. Effectively, crossing open and unmarked roads through private property to sample water on public lands is now a high crime in Wyoming, and using the results of that monitoring data to inform a discussion about grazing permits is also illegal. Heaven forbid we reveal the truth about unhealthy E. coli levels!

Plainly, this new law is unconstitutional and wouldn't stand up in any court outside of perhaps Wyoming. What it will take to get the new law overturned remains to be seen. In the meantime, the Cowboy State's cows will continue to pollute public waters and the real illegal activities – violations of the Clean Water Act, the Endangered Species Act, the Federal Lands Policy and Management Act, and others – will continue.

*Travis Bruner is WWP's Executive Director. He lives in Hailey, ID.*



*A fence line demonstrates riparian damage in Wyoming.*

© JONATHAN RATNER/WWP

# A Second Chance for Eagle Lake Rainbow Trout

By Michael Connor and Paul Ruprecht



As the result of a legal action by Western Watersheds Project, the U.S. Fish and Wildlife Service (USFWS) has agreed to conduct a full review to determine if California's Eagle Lake rainbow trout warrant threatened or endangered species status under the Endangered Species Act (ESA).

The Eagle Lake rainbow trout were petitioned for ESA protection in 2003. In September 2014, Western Watersheds Project filed suit after the USFWS had failed in its mandatory duty to issue a timely "12-month finding" on the status of the fish. In mid-March, a federal court judge for the Eastern District of California approved a settlement agreement between WWP and the USFWS. Under the terms of the settlement, the Service will now conduct a full status review to determine if Eagle Lake



*Eagle Lake, California*

rainbow trout warrant listing and will publish its finding by June 2016.

The Eagle Lake rainbow trout are endemic to Eagle Lake, the second largest natural lake in California. Located on the east side of the Sierra Nevada range in Lassen County, Eagle Lake has no natural outlet and its waters are highly

alkaline. Eagle Lake rainbow trout are uniquely adapted to this harsh environment. Living up to eleven years allows the trout to weather periodic dry spells when access to Pine Creek, their main spawning stream, is temporarily interrupted due to low flows.

A century ago, the Eagle Lake rain-



*Eagle Lake, California*



Eagle Lake, California

bow trout population was robust enough that it supported a commercial fishery. However, overfishing quickly led to major declines. Thanks to livestock grazing and logging, the lower reaches of Pine Creek shifted from a permanent to an intermittent stream. As a result of that restricted access to the natural spawning areas, state agencies developed a hatchery program in order to maintain a recreational fishery in the lake. Unfortunately, the hatchery was built at the mouth of Pine Creek and a hatchery weir now blocks natural access to the creek from Eagle Lake. Hatchery practices may have also weakened the genetic fitness of the species. In the upper reaches of Pine Creek, the species faces competition from non-native, introduced brook trout.

The threats to the Eagle Lake rainbow trout are manmade and reversible. The impacts of livestock grazing, water withdrawals, impoundments, and roads along the Pine Creek watershed should be minimized to restore flows in Pine Creek. The Forest Service and BLM must reduce or eliminate livestock grazing in watersheds where the trout spawn. The fish hatchery has to be reconfigured so it no longer blocks access to the trout's natural spawning grounds. Protection of the Eagle Lake rainbow trout under the Endangered Species Act will provide the impetus needed to limit grazing and other threats, and will ensure the conservation and speedy recovery of this iconic fish.

*Michael Connor is WWP's California Director. He lives in Reseda, CA.*

*Paul Ruprecht is WWP's Oregon Staff Attorney. He lives in Portland, OR.*

## Western Watersheds Project 2014 Annual Financial Report

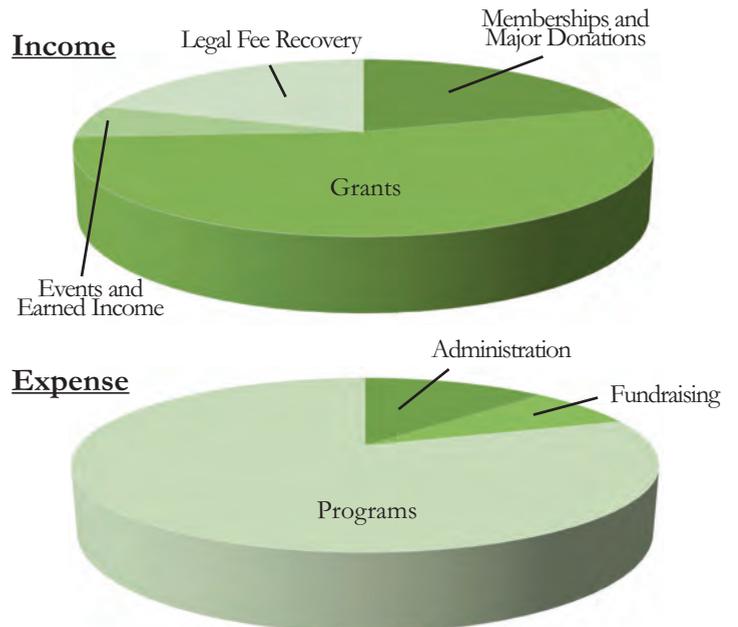
### Income

Memberships and Major Donations	\$141,700.00
Grants	\$371,500.00
Events and Earned Income	\$40,700.00
Legal Fee Recovery	\$139,300.00
<b>Total Income</b>	<b>\$693,200.00</b>

### Expenses

Accounting	\$3,400.00
Portfolio Management	\$200.00
Donation Processing	\$2,200.00
Conferences and Meetings	\$5,000.00
Contract Services	\$37,200.00
Equipment Rental and Maintenance	\$3,500.00
Insurance	\$23,000.00
Legal	\$96,600.00
Occupancy	\$21,800.00
Payroll	\$490,700.00
Payroll Expenses	\$42,500.00
Postage and Shipping	\$14,400.00
Printing and Publications	\$119,100.00
Grazing Leases	\$400.00
Supplies	\$11,000.00
Telephone	\$9,600.00
Travel	\$51,900.00
Website	\$900.00
<b>Total Expenses</b>	<b>\$933,400.00</b>

Net Income	-\$240,200.00
Transfers from Capital Assets	\$260,000.00
Year End Balance	\$19,800.00





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### Thank You for Your Continued Support!

Every day the public lands, streams and wildlife throughout the West benefit because of the work done by Western Watersheds Project. The agency management plans we challenge, the allotments we monitor, and the lawsuits we file all help to protect and restore our western public lands.

- **Any size donation is greatly appreciated and makes a difference!** Everything WWP does to influence the restoration of western public lands is based on a vision that western North America may be one of the only places on earth where enough of the native landscape and wildlife still exists to make possible the restoration of a wild natural world.
- **Make a gift of appreciated stock.** Talk to your accountant or financial planner about the potential tax benefits of making this type of donation.
- **A gift through careful estate planning can make a lasting difference for WWP.** A bequest, an arrangement made in a donor's will, is a simple and uncomplicated approach to planned giving. Other methods to facilitate a planned giving donation include: charitable remainder trust, charitable lead trust and gift annuity. It may be wise to talk to your accountant or financial planner to fully understand the potential tax benefits of different giving options.
- **Help others learn about WWP!** Recently, WWP supporters hosted events in Pocatello, Idaho and Berkeley, California to help us spread the word about our important work. You can host an event too and WWP will help. We'll supply informational materials, send out email/printed invitations combining your guest list with local WWP supporters, and even have a WWP representative attend a "meet & greet" which can be customized to your area of interest or concern.



The Western Watersheds Project Messenger is printed using vegetable-based inks on carbon neutral, 100% post-consumer waste.

