

Natural Resource Clinic Highlights, 2009–2010

Colorado Law students in the Natural Resource Clinic represent the National Wildlife Federation (NWF) and other organizations concerned with the protection of wildlife, wildlife habitat, and other natural resources across the western United States. Cases focus on management of public lands and include commenting on government agency proposals, administrative protests and appeals, and litigation in state and federal courts. The clinic is taught by visiting law professor Joe Feller.

In academic year 2009–10, clinic students worked on the following cases:

- **White Peak Land Exchange** (*New Mexico v. Lyons*): Clinic students, representing NWF and the New Mexico Wildlife Federation (NMWF), prepared and submitted two *amicus curiae* briefs for the New Mexico Supreme Court in a case brought by the New Mexico Attorney General against the state’s Commissioner of Public Lands. The Attorney General has asked the court to issue a writ of mandamus blocking a series of exchanges of state school trust lands for private lands. The Attorney General alleges that the exchanges were arranged through private negotiations that violated constitutional and statutory requirements for public auctions. NWF and NMWF are involved because of their concern that the exchanges move some of New Mexico’s best wildlife habitat from public into private hands and because the improper procedures deprived NMWF of the opportunity to bid on the lands in order to protect them from development and keep them open to hunting and fishing.
- **Mojave Desert Initiative** (*Western Watersheds Project v. Bureau of Land Management*): Clinic students represent Western Watersheds Project (WWP) and the Grand Canyon Wildlands Council (GCWC) in an administrative appeal of a decision by the Bureau of Land Management (BLM) to plant exotic (i.e., non-native) species of plants in the Mojave Desert in Arizona, Nevada, and Utah. Intentional and accidental introductions of plants and animals to areas outside their native habitats have led to some of the world’s greatest ecological disasters as these exotic species have sometimes spread unpredictably and uncontrollably. In the Mojave Desert, exotic grasses from Europe and Asia have invaded millions of acres, crowding out native vegetation and causing severe wildfires. The BLM has decided to try to combat these exotic grasses by, among other things, planting additional species of exotic plants. On behalf of WWP and GCWC, Clinic students have argued to the Interior Board of Land Appeals (IBLA) that the BLM violated the National Environmental Policy Act (NEPA) by failing to inform and consult interested members of the public about its plans, failing to analyze the potentially disastrous environmental consequence of the new plantings, and failing to consider alternatives to the use of exotic species. The Clinic students have also argued that the BLM violated a presidential Executive Order and the BLM’s own Manual provisions regarding the introduction of exotic species.
- **Estate of Hage v. United States**: Clinic students represent the Nevada Department of Wildlife, NWF, and the Nevada Wildlife Federation in opposing a lawsuit brought against the federal government by Nevada rancher Wayne Hage. Hage (1936–2006), a leader of the so-called “sagebrush rebellion,” alleged, among other things, that he owned a “surface estate” on more than 700,000 acres of the Toiyabe National Forest and other federal public lands in Nevada and that his property was taken when the Forest Service allowed the Nevada Department of Wildlife to introduce elk onto the National Forest. Although Hage died in 2006, his lawsuit lives on. In 2008, a federal judge rejected most of Hage’s claims but awarded Hage’s estate more than four million dollars for purported takings of his water rights. Clinic students are currently working on a brief for the U.S. Court of Appeals for the Federal Circuit.
- **Natural Gas Development on Public Lands: North Park**: The high-altitude valley of North Park, Colorado, provides high-quality habitat, hunting, and wildlife viewing for greater sage-grouse, mule deer, elk, and moose as well as an important recreational fishery on the North Platte River. Although the valley has seen low levels of historic oil and gas exploration, its public lands are largely intact as wildlife habitat. The BLM’s plan for the area is currently undergoing revision to address, among other issues, potential for oil and gas development as well as the decline of the greater sage-grouse. Clinic students researched parcels of federal land proposed for mineral leasing and prepared an administrative protest of the BLM’s proposal to lease parcels of important sage-grouse, deer, elk, pronghorn, and moose habitat. The BLM withdrew certain parcels prior to the lease sale; the protest remains pending as to others.

- **Natural Gas Development on Public Lands: Atlantic Rim:** Clinic students are investigating the Bureau of Land Management's administration of natural gas development on and around southern Wyoming's Atlantic Rim. The high desert and mountains of the Atlantic Rim contain some of Wyoming's best habitat for sage grouse, elk, and mule deer. The BLM has authorized the drilling of 2,000 gas wells that seriously threaten that habitat, but has made commitments to carefully monitor and control the impacts of the development. The Clinic students' investigation has revealed that the BLM is not meeting its commitments. Next year, Clinic students will develop and implement a legal strategy to force the BLM to either meet its commitments or halt the drilling of new wells.
- **Natural Gas Development on Public Lands: Pinedale Anticline:** Clinic students are also looking into the BLM's administration of natural gas development in western Wyoming's Pinedale Anticline, where the BLM has allowed some aspects of its operations to be controlled by a consortium of private interests and government employees, from which environmental groups and other interested members of the public are excluded. Clinic students are investigating whether this form of management violates the Federal Advisory Committee Act (FACA), NEPA, or other federal laws.
- **Bighorn Sheep v. Domestic Sheep in Idaho:** Clinic students prepared and submitted extensive and detailed comments on the U.S. Forest Service's proposed plans for domestic sheep grazing on Idaho's Payette National Forest. The wild bighorn sheep population on the Payette is in peril because of a fatal disease that domestic sheep transmit to the bighorns. The Clinic students' comments marshaled overwhelming scientific evidence and legal authority to show that the Forest Service must keep domestic sheep away from the bighorns.