## Western Environmental Law Center

2020 ANNUAL REPORT WE DEFEND THE WEST

# WE DEFEND THE WEST

We use the power of the law to safeguard the public lands, wildlife, and communities of the American West in the face of a changing climate. As a nonprofit, pro bono law firm, we do not charge our clients for services, but rely instead on charitable gifts from individuals, families, and foundations to accomplish our mission. We are the lawyers fighting for the environment, for the wildlife, and for the West.

Dear Friends and Supporters,

In 2020, we face a perilous confluence of crises: an unraveling climate and related wildfires, a disastrous pandemic, economic hardship, chronic racial injustice, and a glaring failure of political leadership, especially in Washington, D.C. But we are grateful because you have helped us navigate this confluence with persistence, grace, and power.

Together, we have defeated the Trump administration's effort to eliminate restrictions on methane pollution and waste from oil and gas development. And we are front line advocates for iconic wildlife, including the grizzly, wolf, lynx, and wolverine, that still roam the American West, fierce and wild. And we are leaning forward, defending the people's environmental law, the National Environmental Policy Act, which is essential to the protection of rivers, public lands, and low-income communities.

We have also strategically used the power of the law to set precedent and create authority to spur positive change. And though we are prepared to confront whatever the years ahead may bring, we now look forward with purpose, intention, and courage to the prospect of new political leadership and the opportunity for visionary and ambitious action. With your support, and the engagement of our partner organizations, the Western Environmental Law Center will continue to work for a strong and resilient West.

To the future.



For the West,

Karin P. Sheldon **Board President** 

#### > LETTER TO OUR SUPPORTERS

Karin P. Steldon IShale

Erik Schlenker-Goodrich **Executive Director** 



## PROTECTING WILDLIFE

We are dedicated to protecting the West's native wildlife while preserving and restoring the healthy, functioning ecosystems they rely on for survival.



## DEFENDING OUR YELLOWSTONE GRIZZLY VICTORY

In 2018, we used science in federal court to show that the Trump administration's removal of Endangered Species Act protections from Greater Yellowstone grizzlies was political and would harm the bears' recovery. We won that case, stopping planned trophy hunts in Idaho and Wyoming where hunters were ready and eager to kill. Our victory was threatened when the Trump administration and the state of Wyoming doubled down on their anti-science agenda with an appeal of the ruling. In one of the first virtual court hearings of the COVID-19 era, our skilled attorneys argued the importance of grizzly bear migration from Greater Yellowstone to grizzly recovery around the country. We won our appeal, and Greater Yellowstone grizzly bears remain safe from trophy hunting.

## KEEPING THE LOBO ALIVE

After 20 years of reintroduction efforts spurred by WELC legal advocacy, the Mexican wolf still needs much more help to recover in the wild deserts of Arizona and New Mexico. Today, there are less than 200 of these wolves roaming the Southwest. Yet the current U.S. Fish and Wildlife Service plan omits any criteria to address genetic diversity, human threats, and connectivity, the primary obstacles to recovery. We are in court to force the federal agency to put in place a recovery plan for the *lobo* that addresses *all* threats to this imperiled animal. Protecting Mexican gray wolves is a core component of our wildlife program and we remain committed to the *lobo*'s recovery.

### SAVING FROGS, TOADS, AND STREAMS IN THE SIERRA

High-elevation meadows and streams in the Sierra Nevada Mountains of California provide important habitat for the Yosemite toad and Sierra Nevada mountain yellow-legged frog, both of which are threatened with extinction. We challenged the U.S. Forest Service in court for allowing repeated violations of water quality standards from cattle grazing on three allotments in the Stanislaus National Forest. These water quality problems have persisted for more than 10 years, and not only harm these threatened amphibians, but also human health as recreationists frequent the area and its waters. Even the smallest creatures play an important role in balancing ecosystems, and deserve protection, too.



### FIGHTING FOR LYNX PROTECTIONS

Since the U.S. Fish and Wildlife Service listed Canada lynx as threatened with extinction 20 years ago, the agency has gone out of its way to minimize its efforts toward recovery of this rare feline. We won a case in 2016 challenging the Service for its decision to exclude the iconic big cat's entire southern Rocky Mountain Range from designation as critical habitat. The science and the court—is simply unequivocal that this excellent habitat supports reproducing populations of lynx that should be protected for recovery—but isn't. Since 2016, the Service hasn't lifted a finger to right this wrong as ordered by a federal judge, so we brought the agency back to court. We want to ensure this rare cat gets the protection it needs to survive and thrive.

## **STANDING BETWEEN WOLVERINES AND EXTINCTION**

We are fiercely dedicated to helping wolverines keep their foothold in the American West. They're emblematic of the West's ruggedness, yet only 300 remain in the contiguous U.S.



### GIVING WOLVERINES A FIGHTING CHANCE AT RECOVERY

Six years ago, when the U.S. Fish and Wildlife Service denied wolverines endangered species protections even though they number only 300 in the lower 48 states, we knew the science didn't support the move. We went to court and won, forcing the Service back to the drawing board on the animal's protective status.

Now, the Trump administration is planning to again decline to provide wolverines much-needed endangered species protections despite their perilously small population and the direct threat of climate change to their wintry habitat. We will take the agency back to court to undo this politically motivated decision.

### NORTHERN SPOTTED OWL STILL NEEDS OUR HELP

Protecting northern spotted owls in the Pacific Northwest is a legacy issue for WELC. While these iconic forest dwellers have seen great improvement in protected habitat, the timber industry would like to reverse that progress to increase logging.

The industry made a deal with the Trump administration to reduce the acres of designated critical habitat—forests necessary for the recovery of the northern spotted owl. Meanwhile, science tells us this owl needs increased endangered species protections. We have petitioned the Fish and Wildlife Service to "uplist" the northern spotted owl to expand the safeguards this species would receive. We will use the power of the law to continue helping these owls recover.

### PROTECTING THE SONORAN DESERT TORTOISE

In 2011, biologists discovered that the "desert tortoise" was actually two distinct species. The newly identified Sonoran Desert tortoise only occurs in one U.S. state: Arizona, and the only scientific information we have about it is that its population is in decline.

In 2015, the U.S. Fish and Wildlife Service decided to deny protections to the tortoise. That decision was based on a *lack* of data, which is legally indefensible. We brokered a deal in which the government will study the Sonoran Desert tortoise and only then determine its endangered species status. In the interim, the tortoise will receive necessary "candidate species" federal protections.

### FIGHTING FOR BEAVERS—AND ECOSYSTEMS

Beavers are like a rising tide—they lift everything with them. They put the meander back in rivers and streams once straightened into veritable aquatic Autobahns, recharging groundwater sources. They create habitat allowing threatened fish such as salmon and steelhead to spawn. But even in Oregon, the "Beaver State," more than 400 beavers were killed in 2016 alone.

We are using our legal acumen to find ways to protect beavers from overzealous, lethal mismanagement by the federal wildlife-killing program Wildlife Services. We're looking into ways to ensure "problem" beavers are relocated instead of killed. We are also investigating ways for federal wildlife managers to close beaver relocation areas to trapping.

# **RESTORING THE PEOPLE'S** ENVIRONMENTAL LAW

he National Environmental Policy Act (NEPA), a truly bedrock law enacted in 1970, is the triumph of years of determined activism from people who wanted a greater say in decisions affecting their homes, health, and environment. In July 2020, the Trump administration finalized a rollback of longstanding NEPA rules, in an unprecedented attack on communities' clean air, clean water, health, and imperiled wildlife and wild lands.

The NEPA rollback we're faced with today is no runof-the-mill regulatory "streamlining" or "modernizing." It is a transparent assault on a pillar of community and environmental protection that has proven its worth in lives saved, water spared, and landscapes unmaimed over the course of its 50-year history.

**Eviscerating NEPA exempts dirty and destructive** projects from basic environmental reviews and cuts the public out of the decision-making process on

a chillingly radical scale. The new rules even allow developers to conduct their own environmental reviews for some projects, and allow federal agencies to require the public "pay to play" in the review process. This is inherently undemocratic.

The rollback's architects claim removing meaningful review and the public's voice from NEPA is needed to limit delays it attributes to frequent litigation-but less than 1% of all completed NEPA analyses end up in the courtroom. This is nothing more than a giveaway to those who exploit our country's natural heritage for profit.

WELC is representing a nationwide coalition of 20 environmental, recreation, and environmental justice groups in federal court to overturn this egregious, malicious assault on our communities, our voices, and the places we hold dear.

While NEPA was written and passed by a bipartisan and extraction industries exactly what they have repeatedly requested: a blank check to bulldoze wild Congress nearly unanimously in 1969, it is the Trump administration's politicized Council on Environmental places and the public's voice with little regard for the Quality that is now driving the NEPA bus off the consequences. But the consequences are real, and they often harm vulnerable communities the most. proverbial cliff. That means the executive branch is unilaterally undermining the will of Congress to Nature has a habit of showing us the costs of shatter this bedrock law that protects people and overstepping bounds. When Ohio's Cuyahoga River the environment from ruthless development that, became so inundated with industrial pollution in unchecked, will unquestionably harm the health and 1969 that it ignited into a hellish inferno, it became happiness of our families, friends, neighbors, and the the flashpoint that would motivate Republicans and places we call home.

Why did the Trump administration attack this particular law at this moment? It's likely because WELC and our partners have used NEPA to win case after case against the administration on the basis of protecting our shared climate and natural environment. This NEPA rollback guts the rules behind these victories, and gives the fossil fuel

#### We are in court, using the full power of the law to defend NEPA, our country's most significant environmental and public health protection, and a critical environmental justice law. This case is one of the most important fights of our generation. Together, we simply must succeed.

Democrats alike to write and enact NEPA. After almost a full term under the most environmentally hostile presidential administration in American history, in which many other rollbacks are actively harming our environment, on August 25, 2020, the Cuyahoga River burned again. When history repeats itself, it's a sign that our work to protect the environment is far from over.

## CLIMATE & ENERGY

We are working to end oil and gas leasing and drilling on our public lands to safeguard our climate and to protect the West's natural and cultural heritage.



## NATIONWIDE VICTORY FOR OUR CLIMATE

For over a decade, WELC has led a national coalition seeking to address an enormous yet silent climate killer: methane gas from oil and gas drilling. Natural gas is made mostly of methane, and while it is invisible to the naked eye, it is a greenhouse gas 87 times more potent than carbon dioxide. We advocated for the Obama administration's development of strong rules to address rampant methane pollution from oil and gas companies operating on public lands. Predictably, the Trump administration and industry allies attacked those rules every way they could. We defeated their clumsy attempts to green-light unnecessary pollution and waste four successive times—three times in federal court and once in Congress. This year, in the most serious and consequential challenge to these common-sense climate protections, we prevailed a fifth time over fossil fuel industry greed. Our victory will have longstanding protections for our climate and communities.

### PROTECTING MONTANA FARMLAND AND WATER FROM FRACKING

We achieved a victory for Montana farmers, clean water, and our climate when we won a case canceling 287 oil and gas leases spanning 145,063 acres across Montana.

We represented local landowners, chemical-free generational farmers on the Beartooth Front, and environmental allies in this case. The court ruled the Bureau of Land Management failed to take a hard look at the impacts of fracking.

Without our involvement in this important water and climate case, the billion-dollar oil and gas industry would have irreparably harmed these rural communities.

### DEFENDING PUBLIC INPUT AND HEALTH AT GREATER CHACO

When the Trump administration plowed ahead with a 40,802-acre oil and gas lease sale on public lands in New Mexico's Greater Chaco region without adequate public participation, we knew we had to act.

The lease sale process violated the law and fell far short of the "fair treatment and meaningful involvement" of Greater Chaco residents including the Diné communities of Torreon and Ojo Encino—that justice demands.

The Bureau of Land Management also failed to adequately analyze health, environmental justice, and climate impacts of the lease sale. We're suing to protect communities from this reckless, rushed fracking project.

### PRECEDENT-SETTING VICTORY ON EXPIRED OIL AND GAS LEASES

Oil and gas leases are designed to expire if unused after 10 years, but the leaseholder for 2,700 acres of roadless lands in Colorado's Thompson Divide received extension after extension by the Bureau of Land Management for an extra decade. When the bureau finally allowed the leases to expire after pressure from our clients, the oil and gas industry sued. Our attorneys intervened, successfully defending the proper expiration of the leases. Now, these public lands are unlocked for other, better uses. Our victory sets an important precedent that could have broad ripple effects on the almost 13 million acres of nonproducing oil and gas leases across the West.

### CHALLENGING OIL AND GAS LEASES ON 2 MILLION ACRES

In 2019, we won a precedent-setting case challenging oil and gas leases on more than 300,000 Western acres, forcing the federal government to consider the cumulative effects of fracking at a regional and national scale, rather than just the effects of each lease in isolation. Our case also required the government to analyze the climate effects of burning these fossil fuels. This forced the federal government to look beyond individual projects and study the total impacts of fossil fuel developments on public lands and their contribution to the climate crisis. Now, we're leveraging our landmark victory, challenging leases in Colorado, Montana, New Mexico, Utah, and Wyoming using the same legal theory and targeting more than 2 million acres.

## REPLACING COAL WITH RENEWABLE ENERGY

In 2020, New Mexico power regulators faced a choice: Replace coal power going offline in 2022 with a combination of fracked gas and renewables, or look to the future with an all-renewable plan. We represented some of our strongest allies in the region, the San Juan Citizens Alliance and the Navajo group Diné C.A.R.E., at state hearings, and served on the coalition that wrote the 100% renewable option. In a spectacular victory, the state chose our all-renewable portfolio, which will save ratepayers about \$70 each year, support 1,000 construction jobs, and invest \$1 billion in Four Corners communities. The decision also puts New Mexico in line to achieve the 40% renewable generation goal required by the state's ambitious Energy Transition Act a full two years ahead of the 2025 deadline.



### PROTECTING THE PUBLIC FROM THE HARMS OF COAL POLLUTION

The Bureau of Land Management has refused to abide by a court order regarding the environmental analysis for two management plans authorizing mining of a massive six billion tons of coal throughout the Powder River Basin. We are now taking the agency back to court. Our team won a case in 2018 ordering the agency to consider alternatives to the most intensive fossil fuel extraction plans and examine the harmful public health effects of coal combustion, which causes thousands of premature deaths and sickens many more in the U.S. every year. The law requires the bureau to disclose these impacts, but it has complied with neither the court order nor the law. We will hold them accountable.

### STOPPING THE JORDAN COVE LNG PROJECT IN OREGON

We have led the fight against the proposed Jordan Cove Liquefied Natural Gas (LNG) Terminal and Pacific Connector Pipeline in Oregon for over a decade. It would be the largest construction project in the state's history and the worst climate polluter in Oregon. This project would devastate the environment and take private property through eminent domain.

We defeated the project twice before, but under the fossil fuel-frenzied Trump administration, the project was revived. Federal regulators conditionally granted a permit, although the state denied other required permits. We are challenging the federal permit in court to deal this harmful behemoth the deathblow it deserves.

### KEEPING 71 MILLION TONS OF COAL IN THE GROUND

Montana's Rosebud Mine in Colstrip is one of the largest greenhouse gas polluters in the country. We are fighting a proposed 6,748-acre expansion of the mine because it would destroy water resources, harm wildlife, damage public lands, and exacerbate the climate crisis. The mine expansion also risks damage to habitat for the endangered pallid sturgeon in the Yellowstone River.

The expansion would potentially extend the lifetime of the mine by 19 years, mining and burning an additional 71 million tons of coal—an unacceptable hubris when renewable energy is possible and coal is facing an economic downward spiral.

### PROTECTING YOUR RIGHT TO PROTEST KEYSTONE XL PIPELINE

We are partnering with the American Civil Liberties Union (ACLU) to force the state of Montana to release public records of government plans to respond to protests of the Keystone XL fracked gas pipeline. We are concerned that such plans may include spying on protesters, suppressing constitutionally protected free speech rights, and using militarized police tactics. Montana agencies only released a fraction of the public documents required, and they were so heavily redacted as to be unintelligible. On top of that, the state unlawfully imposed "gag orders," prohibiting the ACLU of Montana from making its findings public. The right for people to protest is more important than ever, and we want to defend your rights and safety.

## WILDLANDS AND WATER

Public lands play a vital role as sources of clean drinking water, habitat for wildlife, and places for recreational and spiritual renewal.



## SAVING THE CLEAN WATER ACT

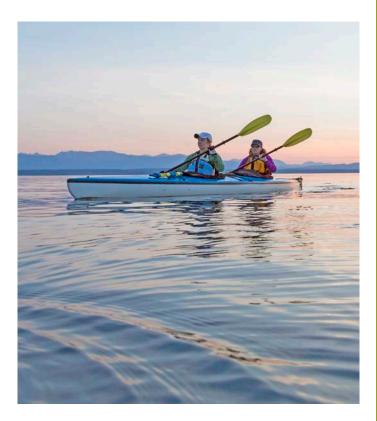
We are in court to protect the vitally important Clean Water Act from a new Trump administration power grab. The administration's move guts the Act's Section 401, which for nearly 50 years has granted states and Tribes veto power over the federal government in permitting decisions for projects within their borders. Projects that could be forced upon states and Tribes include pipelines, hydropower, industrial plants, municipal facilities, wetland development, and more. The change will also suppress state and Tribal public participation processes, silencing not only state and Tribal governments, but individuals as well. This rollback, in combination with changes to the Waters of the U.S. Rule, will make it virtually impossible for states, Tribes, and communities to stand in opposition to projects that would pollute and harm rivers, streams, lakes, and wetlands. Our team is developing a multi-pronged strategy to ensure the Clean Water Act remains intact, and continues to serve as an important protection for clean water across our country.

# PROTECTING WATER IN THE PUGET SOUND REGION

Discharges of nutrient and toxic pollution from municipalities are the main causes of plunging water quality in Washington state's Puget Sound. Yet, currently, none of the wastewater treatment facilities in the Puget Sound region are required to reduce the level of nutrient or toxics they discharge. WELC's legal team is using a combination of litigation and legal advocacy to compel the Environmental Protection Agency and the Washington State Department of Ecology to comply with the Clean Water Act. We aim to put Washington state's water regulatory program on a trajectory that will ensure a healthy Puget Sound that protects human health, salmon, orcas, and other wildlife.

### PROTECTING THE PECOS RIVER IN NEW MEXICO

WELC is working with Amigos Bravos and the New Mexico Acequia Association, San Miguel County, the Village of Pecos, the Upper Pecos Watershed Association, and organic farm Molino de la Isla Organics to protect water quality in Northern New Mexico's Upper Pecos Watershed. Our coalition is asking the state to nominate portions of the Upper Pecos River Watershed as Outstanding National Resource Waters under the Clean Water Act. This would safeguard traditional and ongoing uses of the watershed while also protecting water quality for future generations. This critical watershed supports agriculture, recreation, wildlife, habitat, climate change, and more.



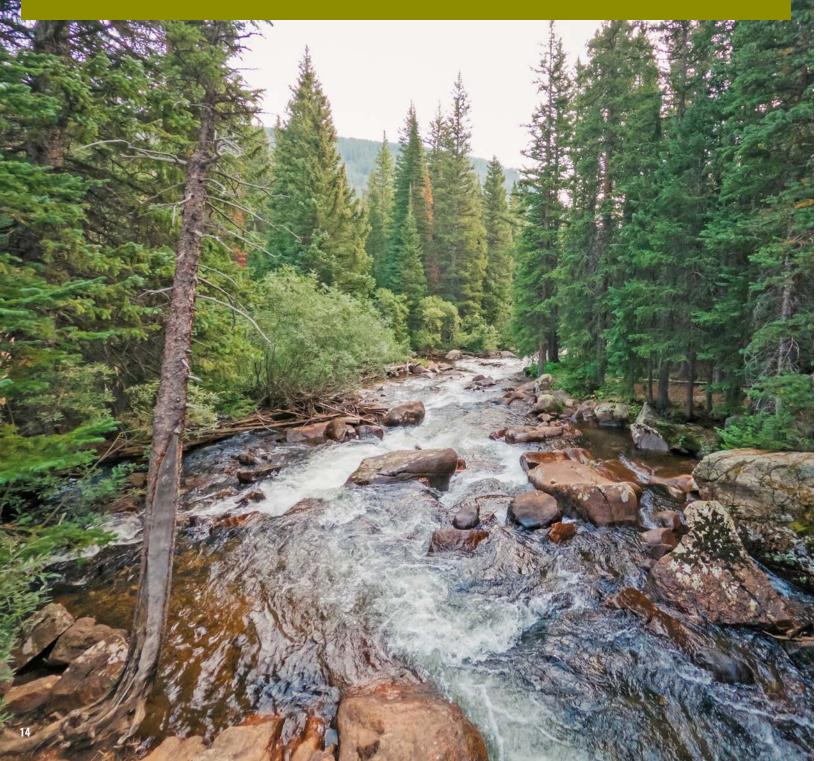
# CLEANING UP TOXIC WATER POLLUTION

Los Alamos County, New Mexico, suffers from toxic water pollution, with some pollutants more than 14,000 times maximum public safety levels. Thanks to a lawsuit we filed, the community and wildlife in this area are on their way to having safer water. We took the Environmental Protection Agency (EPA) to court to force the agency to address the extremely high urban storm water pollution downstream from Los Alamos National Laboratory, including mercury, cyanide, PCBs, and gross alpha radiation. Our lawsuit spurred the EPA to finally take action after years of ignoring the problem. This is a victory for public health, water, and wildlife.



## **PROTECTING PUBLIC LANDS AND NATIONAL FORESTS**

The outcome of our litigation will strongly influence how the U.S. Forest Service approaches forest planning nationwide for decades to come.



### PROTECTING NATIONAL FORESTS ACROSS THE WEST

We protect national forests and public lands across the West. From watch-dogging timber sales to active legal involvement in the development of once-in-a-generation land management plans, we use the power of the law to defend these important public lands and the values they provide.

One specific project we are challenging is the revised forest plan for Montana's Flathead National Forest, one of our country's most valuable, intact ecosystems. Ensuring this plan abides by core environmental laws is crucial because it will serve as a model for all future forest planning processes.

### KEEPING CONSERVATION IN FOREST MANAGEMENT

With more forest legislation requiring "collaborative development" the U.S. Forest Service is relying on independently organized groups for direction. Collaboratives are, by definition, filled with stakeholders from across the political spectrum. In eastern Oregon, where we see opportunities for a science-based agreement, we've jumped in with both feet.

We're dedicated to ensuring that so long as forest collaboratives exist, environmental advocates have a seat at the table and science is at the center of decision making. It isn't always easy to deliver the message of conservation in these settings, but our participation has already made an indelibly positive impact.

### KEEPING MONTANA ROADLESS AREAS ROADLESS

Thanks to WELC litigation, the U.S. Forest Service can no longer build new roads and use mechanized logging equipment in the Lazyman Roadless Area, public lands near the Continental Divide in Montana's Helena-Lewis and Clark National Forest. This victory protects what the court called "biological strongholds for elk and grizzly bears," which also provide secure habitat for wolverine and Canada lynx.

This roadless area would be protected as wilderness if not for a 1988 veto by President Reagan. The value of this rare, undisturbed forest as habitat, a wildlife travel corridor, and a biological reserve cannot be overstated.

### PROTECTING THE LAVA LANDS AT MT. ST. HELENS

The Pumice Plain—the blast zone of Mount St. Helens in Washington state—is unique on planet Earth and extremely valuable to the scientific community. Yet the U.S. Forest Service wants to build an access road to drill cores and perform seismic testing to analyze the stability of nearby Spirit Lake without taking a hard look at the environmental consequences of such a heavyhanded undertaking. We support the endeavor to understand public safety risks posed by Spirit Lake, however, we must not allow the Forest Service to hastily disturb this world-renowned area. We're prepared to pursue legal action to require the Forest Service to deeply analyze the many effects of building this road, and consider "light touch" alternatives.

# TOGETHER, WE DEFEND THE WEST

Your donations make a direct impact on the public lands, wildlife, and communities of the American West. As a public interest law firm, we do not charge clients and partners for services, but rely instead on charitable gifts from individuals, families, and foundations to achieve our mission. Our victories are not possible without your support.

## **THANK YOU!**

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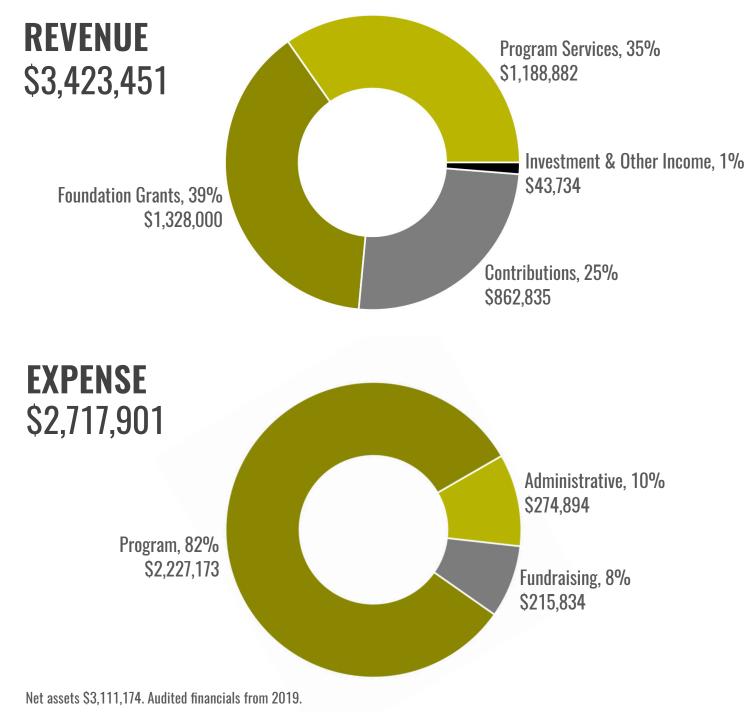
### Ranging from small grassroots to large national groups, we represented, partnered, and worked with more than 190 organizations and individuals in 2020.

Montana Elders for a Livable Tomorrow Montana Environmental Information Center Montana Wilderness Association National Parks Conservation Association National Wildlife Federation Native Ecosystems Council Native Fish Society Natural Resources Defense Council New Mexico Audubon Council New Mexico Backcountry Hunters and Anglers New Mexico Physicians for Social Responsibility New Mexico Wilderness Alliance North American Falconers Association North Cascades Conservation Council Northcoast Environmental Center Northern Blues Forest Collaborative Northern Plains Resource Council Northwest Energy Coalition Northwest Environmental Advocates Northwest Indian Fisheries Commission **Ochoco Forest Restoration Collaborative** Oregon Coast Alliance **Oregon Shores Conservation Coalition** Oregon Wild Pacific Coast Federation of Fishermen's Associations Pacific Rivers Pasado's Safe Haven Physicians for Social Responsibility Pineros y Campesinos Unidos del Noroeste Pipeline Awareness Southern Oregon

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