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From: Sutherland, Ryan
Sent: 2017-02-03T18:07:35-05:00
Importance: Normal
Subject: Fwd: Public Lands News: Zinke through committee; GOP begins reg reversals; big energy jump; lean budget in works
Received: 2017-02-03T18:07:49-05:00
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Dear Public Lands News Subscriber:

February 3, 2017: Attached is the current issue of the newsletter Public Lands News (Volume 42 Number 3), in .doc format and in PDF format. Below are the headlines. We thank you for reading Public Lands News.

The Editors

BEAKING NEWS: CHAFFETZ PULLS LAND SALE BILL

In the attached issue of *PLN* we report on legislation (HR 621) introduced by Rep. Jason Chaffetz (R-Utah) that would expedite the sale of 3.3 million acres of public lands declared excess by BLM. Yesterday, Chaffetz pulled that legislation and said:

"I am withdrawing HR 621. I'm a proud gun owner, hunter and love our public lands. The bill would have disposed of small parcels of lands Pres. Clinton identified as serving no public purpose but groups I support and care about fear it sends the wrong message. The bill was originally introduced several years ago. I look forward to working with you. I hear you and HR 621 dies tomorrow. "

Sportsmen were taking credit for pressuring Chaffetz. Said Land Tawney, president of the Backcountry Hunters & Anglers, "Representative Chaffetz should never have introduced this ill-conceived bill, but the instant and overwhelming response by sportsmen and women forced him to listen and ultimately abandon H.R. 621, which would have seized millions of acres of public lands. His fellow lawmakers should take note of the ire and rapid response by hunters and anglers. We aren't going away."

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Public Lands News is published by Resources Publishing Co., P.O. BOX 41320, Arlington, VA 22204. EIN 52-1363538. Phone (703) 553-0552. FAX (703) 553-0558. E-mail james.b.coffin@verizon.net. Website: <http://www.plnfpr.com>.

Public Lands News®

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Senate committee approves Zinke nomination with ease

The Senate Energy Committee approved the nomination of Rep. Ryan Zinke (R-Mont.) as Secretary of Interior January 31 by a solid 16-to-6 margin.

Although some Democratic senators expressed reservations about Zinke's positions in support of commodity development of the public lands, most committee members backed President Trump's nominee.

The nomination could reach the Senate floor as early as today (February 3), if not next week.

Said committee chair Lisa Murkowski (R-Alaska), "The vision that you laid out as you have appeared before the committee I think it has been received favorably. I think that has been reflected in the vote totals. You will have my strong support as we move to the floor. I hope to have a speedy confirmation. We know we need to get to work early and quickly."

Ranking minority committee member Maria Cantwell (D-Wash.) led the Democrats who expressed reservations about the nominee's emphasis on commodity development. Cantwell opposed the nomination. "I am concerned that the Trump administration has made it clear that it wants to pursue an aggressive energy development agenda—undoing reasonable protections—on environmentally sensitive lands and waters. And they want to renew efforts at reversing protections both onshore and offshore. So, I hope that this conversation about how we provide good stewardship will continue," she said.

One fly in the ointment for Zinke is a charge of travel fraud while serving in the U.S. Navy as an officer in SEAL Team Six. The issue did not come up at the confirmation vote, but may be revived on the Senate floor.

In those charges Zinke allegedly billed the military for official travel when he was actually going home to renovate his house. The Navy didn't bring charges because the Navy SEALs have a tradition of avoiding scandal, according to the reports. The infractions allegedly occurred in 1998, 1999 and the early 2000s.

Although some environmental groups such as WildEarth Guardians oppose Zinke, most such organizations are concentrating their fire on other Trump nominees, such as Oklahoma Attorney General Scott Pruitt as administrator at the Environmental Protection Agency

Sportsmen are sticking with Zinke. Backcountry Hunters and Anglers President Land Tawney said that Zinke would likely protect federal lands and backcountry hunting and fishing opportunities.

Commercial users of the public lands backed Zinke. Said Tracy Brunner, president of the National Cattlemen's Beef Association at the time of his confirmation hearing, "During his tenure in the U.S. House of Representatives, Rep. Zinke has consistently advocated for our western communities, economies, and ranchers. He has demanded transparency and the inclusion of stakeholders when it comes to land management decisions, and has a strong understanding of the challenges that come with stewarding the West."

The Western Energy Alliance concurred. "Western oil and natural gas producers with reasonable access to federal public lands can help create hundreds of thousands of high-paying, blue-collar jobs," said Kathleen Sgamma, president at the alliance. "Congressman Zinke is the right person to enact this vision while protecting the landscapes that all Westerners love and cherish."

Support on the right for Zinke is not universal. Property rights advocates such as the American Land Rights Association last month mounted a campaign against his nomination, asking its members to contact the Trump transition team. The association objects to Zinke's past support for the Land and Water Conservation Fund.

As we reported in the last issue of *PLN* Zinke performed a high-wire act at his confirmation hearing before the Senate Energy Committee January 17 - alternately promising to open public lands to increased development while being a good steward of the lands.

He sort of laid out the development case. "I fully recognize and appreciate that there are lands that deserve special recognition and are better managed under the John Muir model of wilderness, where man is more of an observer than an active participant," he began.

Then he added, "I also recognize that the preponderance of our federal holdings are better suited to be managed under the Pinchot model of multiple use using best practices, sustainable policies, and objective science." DOI-2020-03 00512

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Zinke made the conservation case explicitly, repeating his support for retention of public lands in the federal domain and for making the Land and Water Conservation Fund (LWCF) permanent. When Sen. Maria Cantwell (D-Wash.) asked if he supported a permanent LWCF, Zinke said, "I do. I think land and water conservation has been important to Montana, certainly in many states. I think we should look at it . . . Lastly, I do think the states and local communities should have a say where those funds go."

As for retention of federal lands when Sen. Bernie Sanders (I-Vt.) asked his opinion on privatization of the National Park System, Zinke said, "I want to be clear on this point. I am absolutely against the transfer or sale of the public lands."

It is understood that Zinke will attempt to flatten the federal bureaucracy, i.e. transfer employees out of headquarters and regional offices into the field, according to people who have talked with the Trump transition team.

Zinke hinted at that in his testimony saying one of his three top priorities is "to ensure the professionals on the front line, our rangers and field managers, have the right tools, right resources, and flexibility to make the right decisions that give a voice to the people they serve."

His two other top priorities are to restore trust in federal land management agencies and to reduce a Park Service maintenance backlog.

Meanwhile, the Senate Energy Committee January 31 chose Sen. Mike Lee (R-Utah) as chairman of the Senate subcommittee on Public Lands, Sen. Steve Daines (R-Mont.) as chairman of the Senate subcommittee on National Parks and Sen. Cory Gardner (R-Colo.) as chairman of the Senate subcommittee on Energy.

House nears vote to revoke methane rule, first of many?

The House and Senate this week got serious about reversing a half-dozen Obama administration public lands regulations.

As a first order of business the House was scheduled to vote as early as today (February 3) on a resolution (HJ Res 36) that would reverse an Obama administration oil and gas methane emissions rule published by BLM on Nov. 15, 2016. Sen. John Barrasso (R-Wyo.) introduced a counterpart Senate resolution (SJ Res 11) January 30.

The House is scheduled to take up the methane resolution under the Congressional Review Act (CRA), as it would all the resolutions. If also accepted by the Senate and President Trump, the resolution would revoke the rule. The act authorizes Congress to undo recent regulations.

Western Republicans introduced a handful of other CRA resolutions in the last week or so to reverse Obama initiatives, including regulations that updated BLM planning guidance, set standards for oil and gas development in national wildlife refuges, set standards for oil and gas development in the National Park System, set standards for onshore oil and gas site security, and limited hunting and fishing in national wildlife refuges in Alaska.

The author of the methane resolution, House Natural Resources Committee Chairman Rob Bishop (R-Utah), said at a January 27 press conference, "Congress has an obligation to insure that executive actions are consistent with Congressional intent and that agencies operate in accordance with their statutory mandates. When they don't - and in this case they haven't - it is our responsibility to act."

At the press conference Carla Sonntag, president of the New Mexico Business

Coalition, made the case that the rule would put operators out of business in New Mexico.

"In the northwest quadrant of our state 70 percent of the 30,000 natural gas wells are considered marginal by the feds because of low production," she said. "They are barely considered economic to operate. The cost of retrofitting one of these wells to comply with these rules can be as much as \$50,000. That doesn't make economic sense so the operators are shutting down these wells. New Mexico can't afford that."

But Raúl M. Grijalva (D-Ariz.), ranking Democrat on the House Natural Resources Committee, told his Democratic colleagues, "This rule would cut down on the amount of natural gas that companies are allowed to vent, flare, or leak from federal leases - a waste of federal and tribal natural gas resources currently estimated to be \$330 million per year. Natural gas on federal lands belongs to the American people, and they receive a share of the proceeds from the sale of that gas. When that gas is wasted, not only does a valuable commodity get frittered away, but the revenue owed to the American people evaporates as well."

On February 1 the House approved another resolution (HJ Res 38) that would revoke a stream protection rule issued by the Office of Surface Mining in July 2015 that bars mountaintop removal to open up coal seams.

The House is taking up the regulatory reversal resolutions one-by-one under the Congressional Review Act even though the House on January 4 approved legislation (HR 21) that would allow Congress to bunch regulations under the act, rather than move them singly.

The Senate hasn't taken up HR 21 yet. While most of the action on regulatory reversals has taken place in the House thus far, the Senate may prove a greater hurdle. That's because the GOP holds only a two-vote majority (52-to-48) and a switch of only two or three votes could defeat a resolution.

Methane rule: Although the methane rule technically went into effect January 17, it would not begin phasing in required reductions in methane until 2018. By that time the Trump administration will be firmly in charge. The rule requires producers to use available technology to cut flaring in half and to inspect their operations regularly for leaks.

EPA is also attempting to reduce methane emissions. It completed a rule May 12, 2016, that governs methane emissions from *future* operations and said it was also in the process of gathering information about a possible new rule governing *existing* operations. In the May 12, 2016, rule EPA not only set emission limits from methane but also required operators to find and repair leaks.

A federal judge in Wyoming refused January 16 to halt implementation of the new BLM methane emissions rule. For the time being at least U.S. District Court Judge Scott W. Skavdahl rejected the argument of oil and gas producing states and industry that BLM has no authority to regulate air quality; only EPA does. He accepted BLM's argument that the rule is designed to prevent waste, i.e. methane venting, not assume EPA's clean air responsibility

BLM planning: On January 30 Sen. Lisa Murkowski (R-Alaska) and 16 of her Senate colleagues and Rep. Liz Cheney (R-Wyo.) and 10 of her Republican colleagues introduced a resolution (SJ res 15 and HJ Res 41) to overturn a BLM planning rule of Dec. 12, 2016.

The BLM rule, known as 2.0, would revise the substance of an existing planning rule. Among the proposed changes are a greater emphasis on broad area planning,

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preparation of an assessment prior to writing a management plan and earlier public involvement in the planning process.

"The Obama administration's Planning 2.0 rule makes sweeping changes to how BLM develops resource management plans, shifts decision-making authority away from the impacted states to Washington, D.C., and disregards BLM's multiple-use mission. If left intact, it will harm grazing, timber, energy and mineral development, and recreation on our public lands," Murkowski said.

BLM's existing planning rules - posted in 1979, 1983 and 2005 - guide the management of public lands, as required by the Federal Land Policy and Management Act of 1976. BLM's website on the plan is at www.blm.gov/plan2.

FWS oil and gas: On January 30 Rep. Kevin Cramer (R-N.D.) and five of his colleagues introduced a resolution (HJ Res 45) to revoke a Fish and Wildlife Service (FWS) oil and gas management rule of Nov. 14, 2016. That final rule would have FWS tighten its oversight of oil and gas operations within wildlife refuges. The rule was scheduled to go into effect Dec. 14, 2016.

The rule would require a minerals owner to obtain an operations permit and to obtain financial assurance, i.e. a bond to cover any possible damages and reclamation costs. FWS says that more than 100 refuges host oil and gas operations. That includes almost 1,700 producing wells, and thousands more inactive or plugged wells.

NPS oil and gas: On January 30 Rep. Paul Gosar (R-Ariz.) and five of his Republican colleagues introduced a resolution (HJ Res 46) to revoke a Park Service oil and gas management rule of Nov. 3, 2016. The NPS rule would subject all oil and gas operations in the national parks to the regulations. The rule was scheduled to go into effect Dec. 5, 2016.

Currently, 12 of the 408 National Park System units host oil and gas operations and 60 percent of those are exempt from NPS regulations. The rule would also require operators to pay the full cost of reclamation.

Oil and gas site security: On February 1 Rep. Steve Pearce (R-N.M.) and nine of his colleagues introduced a resolution (HJ Res 56) that would reverse a BLM rule of Oct. 12, 2016, that set standards for onshore oil and gas facility site security.

Alaska hunting: On January 27 Rep. Don Young (R-Alaska) introduced a resolution (HJ Res 35) that would revoke a rule limiting hunting and fishing in national wildlife refuges in Alaska. Sen. Dan Sullivan (R-Alaska) introduced a counterpart resolution (SJ Res 18) February 1.

The rule limits predator hunting of wolves and grizzly bears under state laws. The state filed a lawsuit against the rule on January 13.

Trump foresees big energy jump, starts posting orders

President Trump is moving quickly to keep his promise to expand energy development on the public lands and to expedite projects to produce energy.

First, he posted an overarching energy plan on inauguration day January 20 that puts public lands front-and-center. "The Trump Administration will embrace the shale oil and gas revolution to bring jobs and prosperity to millions of Americans," the post at the White House website says. "We must take advantage of the estimated \$50 trillion in untapped shale, oil, and natural gas reserves, especially those on federal lands that the American people own."

Second, Trump issued an executive order on January 24 directing agencies

to work with the White House to identify high priority projects and to expedite environmental reviews for them. That applies to all federal agencies and to all kinds of projects, not just energy-related ones.

Third, Trump on January 24 issued several other energy-related executive orders and memoranda including a memorandum inviting the Trans Canada Keystone Pipeline, L.P. to resubmit its application for a Keystone XL pipeline that President Obama blocked.

It is one thing for the President to project an increase in energy from the public lands, but it's another thing to create market conditions that lead to increased demand for leases and permits.

Environmentalists are counting on the market, among other things, to slow Trump down. Nada Culver, director of The Wilderness Society BLM Action Center, told *PLN*, "What we have seen over the years is that no matter how 'aggressive' a program may be to promote leasing and drilling, actual development is dependent on where resources are located, the prices for oil and gas, and the cost of exploration and development. Even with the improvements in technology, which reduces the costs for exploration and production, we saw more development happening where shale resources were more easily accessible and less happening where prices were lower."

Besides, Culver said, tens of millions of acres of public lands are already under lease. "Looking at federal lands right now, we have (through fiscal year 2015 - the most recent data available) 32.2 million acres under lease and 12.8 million acres in production - so a lot of surplus acreage (is) already not being developed," she said. "Similarly at last count there were approximately 7,500 approved permits to drill not being used."

And, of course, environmentalists will take any legal actions available to block leasing/permitting decisions they disagree with. "Going forward, we will be continuing to engage in leasing and permitting decisions, and expect to be defending places on our public lands and the rights of the public to have input and ensure any decisions are based on full evaluation of environmental consequences," said Culver.

The Western Energy Alliance is all in with Trump's plans. Said alliance President Kathleen Sgamma, "We're very excited to have a new Administration that's talking about tapping into America's full energy potential. It's quite a switch from the previous one which was outright hostile to our industry and used regulation as a weapon."

Sgamma said that while the nation enjoys a surfeit of energy right now, demand could go up if the federal government removed roadblocks to the export of oil and gas. "Congress finally removed the barriers to exporting oil late in 2015, and we have an Administration that will not be a roadblock to free market exports of natural gas, as was the last one," said Sgamma.

While Trump is doing his part to accelerate energy development with executive orders and memoranda, Congress has begun to do its part with revocations of what Republican leaders consider overly-restrictive regulations.

This week western senators and House members introduced resolutions to reverse a handful of Obama administration energy regulations. (*See previous article.*)

Zinke nomination moves: Meanwhile, the nomination of the man who will oversee any expansion in energy development of the public lands as secretary of Interior, Rep. Ryan Zinke (R-Mont.), has taken one step forward with the approval of his nomination January 31 by the Senate Energy Committee. (*See article page one.*)

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authorize the chairman of the Council on Environmental Quality to identify "high priority" infrastructure projects. Once a project was so designated, the chairman would work with an agency to establish expedited approval procedures "in a manner consistent with law."

Trump on energy projects: In addition to opening the way for the reconsideration of the Keystone XL Pipeline Trump directed the Corps of Engineers to expedite reviews of a Dakota Access Pipeline that would bring crude oil from North Dakota to market. The \$3.8 billion, 1,100-mile pipeline is 90 percent complete.

Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) endorsed the Trump moves, saying, "I support consultation with the people affected by infrastructure projects, and we must ensure that they are built and operated responsibly. However, for too long federal agencies have been sources of unnecessary delay and uncertainty. Reform is long overdue, and the president's actions today are a good start."

The Sierra Club promised to keep fighting the Keystone pipeline. Said club executive director Michael Brune, "Donald Trump has been in office for four days and he's already proving to be the dangerous threat to our climate we feared he would be. But, these pipelines are far from being in the clear. The millions of Americans and hundreds of Tribes that stood up to block them in the first place will not be silenced, and will continue fighting these dirty and dangerous projects."

Template for Trump budget would slash DoI, end LWCF

In preparing budget/appropriations recommendations the Trump administration is reportedly working off a Heritage Foundation paper that calls for dramatic changes in public lands policy.

The foundation in a seminal *Blueprint for Reform* recommends an overall spending cap enforced by sequestration, privatization of federal lands, authorization of state energy management, transfer of the Forest Service to the Interior Department, elimination of the Land and Water Conservation Fund, and the opening of "all" federal lands to energy development, short of conservation lands.

In dollars the Heritage Foundation would reduce Interior Department spending in fiscal 2017 by 20 percent, a reduction of \$2.8 billion from a Congressional Budget Office estimate of \$14.1 billion to \$11.4 billion.

How much of that recommendation the Trump administration will bite off remains to be seen. For instance, Trump himself and his nominee for secretary of Interior, Rep. Ryan Zinke (R-Mont.), say they oppose the transfer of federal lands to states.

While the Heritage Foundation reportedly has the ears of the Trump administration, advocates of the national parks are nonetheless laying out their own competing recommendations.

To wit, an association of National Park Service retirees last month posted a long list of needed park improvements, most of which require money. At the top of the coalition's list is the Park Service's \$11.9 billion maintenance backlog.

In letters to leading senators the Coalition to Protect America's National Parks said, "The fact that National Park System receives over 307 million visits each year underscores the need to prioritize funding for these repairs. It is sadly ironic that while we have not funded the maintenance backlog, spending from visitors to our national parks annually generates more than three times that amount for the U.S. economy (more than \$32 billion in 2015), and supports hundreds of thousands of private-sector jobs."

Coalition Chair Maureen Finnerty signed the letter.

The administration intends to submit a budget, presumably a fiscal year 2017 appropriations request, to Congress in early March, according to press reports. How much of the request would address spending and how much of it would address policy is unclear, but policy and spending of course intertwine.

The Trump administration's fiscal 2017 spending request at first blush appears to be hemmed in by a current overall spending agreement between the Obama White House and Congress (PL 114-74 of Nov. 2, 2015). It set an overall fiscal 2017 spending cap \$1.070 trillion. But conservative Republicans are eager to lower that cap.

An interim fiscal 2017 spending resolution (PL 114-254 of Dec. 10, 2016) is keeping the government in money through April 28. The measure would roughly maintain fiscal 2016 spending under roughly the same terms and conditions.

For the record the House approved its version of a fiscal 2017 Interior and Related Agencies spending bill (HR 5538) July 14 and the Senate Appropriations Committee approved its bill (S 3068). The two bills also include both wildfire and payments-in-lieu of taxes spending, which eat up much of annual appropriations.

If by some miracle Congress actually prepares an Interior appropriations bill next year based on HR 5538 and S 3068, here are some of the recommended House and Senate committee appropriations:

The House approved its fiscal 2017 Interior bill (HR 5538) July 14 and the Senate Appropriations Committee approved its bill (S 3068) June 16. Both the House and the Senate committee packed their bills with amendments/riders that attack dozens of Obama administration public lands initiatives.

Among other things both the House and the Senate committee would block the listing of the greater sage-grouse under the Endangered Species Act; would order the Interior Department to delist the gray wolf in Wyoming from the Endangered Species Act; would forbid EPA from implementing a rule that would reduce carbon emissions from existing power plants; and would forbid EPA from implementing a May 27, 2015, rule that would expand the definition of a wetland subject to a Section 404 permit under the Clean Water Act.

The House alone approved provisions that would forbid the designation of any national monument in specific counties in eight states - Arizona, California, Colorado, Nevada, New Mexico, Oregon, Utah and Maine; forbid BLM from spending any money to change royalty rates "under Federal coal, oil, and gas leasing programs;" forbid BLM from implementing hydraulic fracturing rules (a federal court has already blocked them); prevent implementation of a plan to designate the 19 million-acre Arctic National Wildlife Refuge as wilderness; forbid EPA from spending any money to implement a May 12 methane rule; forbid the spending of any money on the gray wolf under the Endangered Species Act; forbid the Fish and Wildlife Service from completing a regulation of nonfederal oil and gas in wildlife refuges; and forbid any agency from attempting to transfer water rights to the federal government on renewal of a permit.

The fiscal 2017 House bill would actually increase land and resource management spending for BLM by \$9 million, allocating \$1.082 billion instead of the fiscal 2016 appropriation of \$1.073 billion. The Senate committee would increase the line item by \$16 million, to \$1.088 billion.

For the National Forest System the House approved a \$22 million increase, from \$1.509 billion in fiscal 2016 to \$1.531 billion in fiscal 2017. The Senate committee

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would increase National Forest System spending by \$11 million, to \$1.529 billion.

The Heritage Foundation, a bedrock conservation organization, makes the following recommendations in its report, <http://www.heritage.org/research/reports/2016/07/blueprint-for-reform>:

Privatization of federal lands: The foundation says, "States, local governments, and individuals are the best arbiters of how to manage land, and the federal government should explore opportunities to privatize land and shift more land to state control. New leadership should shift the regulatory authority to the states for land use and environmental protection." This may be a nonstarter if Trump and Zinke continue to object to the idea.

State energy management: The foundation says, "The next President's budget should also empower states to regulate energy and environmental activities without federal interference."

Transfer of the Forest Service: The foundation says, "Its work should be moved to the U.S. Department of Interior, which currently manages national parks and public lands. This should help consolidate the work of Interior and improve communication." This is probably a nonstarter because various administrations and Congressional leaders from time immemorial have wasted political capital on such a merger.

No Land and Water Conservation Fund: The foundation says, "The federal estate is already too massive for the government to manage, and many recreation areas are underutilized." The foundation would have the program expire when its current authorization ends on Sept. 30, 2018. However, Zinke has endorsed permanence for the program and full funding of \$900 million per year.

Energy development public lands: The foundation says, "(T)he President's budget should make clear that the federal government will open all federal waters and all non-wilderness, non-federal monuments to exploration and production of all of America's natural resources." This may fly. The Trump administration says it is determined to open the nation's federal lands to fossil fuel development (see *previous article*.)

Hill money posts relatively unchanged: The senators and House members who will write appropriations bills in this Congress look a lot like the people who did the job in the last Congress.

That is, Sen. Lisa Murkowski (R-Alaska) will chair the Senate subcommittee on Interior and Related Appropriations and Sen. Tom Udall (D-N.M.) will serve as ranking member.

In the House Rep. Ken Calvert (R-Calif.) will chair the counterpart subcommittee and Rep. Betty McCollum (D-Minn.) will serve as ranking member.

Utah county lawsuit against BLM coal moratorium alive

It may soon be rendered moot by the Trump administration but a lawsuit to block an Obama administration coal leasing moratorium grinds on in a federal court.

In the lawsuit two Utah counties contend the Jan. 15, 2016, moratorium violated several laws, including the Mineral Leasing Act and the National Environmental Policy Act.

The moratorium may be relatively easy to stop because it was instituted by Secretary of Interior Sally Jewell in a Secretarial Order No. 3338, not a hard

regulation. The next Trump administration secretary of the Interior, presumably Rep. Ryan Zinke (R-Mont.), may simply put out his own executive order.

Similarly, work on a programmatic EIS on overall coal policy attendant to the leasing pause may be retrievable because no formal proposal has been made. On March 24, 2016, BLM did launch a scoping period and subsequently hosted listening sessions around the country.

However, environmentalists say the reversals are not a legal given. "I think an imminent rollback of the moratorium is not without risk for the Interior Department," warned Ted Zukoski of the Earthjustice law firm. Zukoski would not speculate on what legal arguments environmentalists might advance against an undoing of the moratorium and the EIS work.

Just last month on January 11 BLM completed a report based on the environmental scoping effort but made no specific recommendations, leaving it up to the Trump administration to consider such things as an increased royalty or the impact of coal leasing on climate change.

Meanwhile, the lawsuit filed by Kane and Garfield Counties continues in the U.S. District Court for Utah, Central Division.

In the most recent filing in the case environmentalists who entered the case on the side of the Obama administration argued, "The Counties' requested relief would reverse reforms that Conservation Groups support and undercut an ongoing review of the federal coal leasing program that could limit that damage and meaningfully modernize that program to better address environmental, climate, and fiscal concerns."

The environmentalists, led by Earthjustice, said January 17 their voices must be heard because "the incoming administration's stated hostility to the coal leasing pause that the Counties' challenge demonstrate that the Department of the Interior may not adequately represent Conservation Groups' interests."

Both the plaintiffs and the environmentalist intervenors devote most of their legal arguments to the substantive merits of a moratorium and the need for an EIS.

But the plaintiff Utah counties do make a couple of legal arguments, i.e., the Mineral Leasing Act demands that BLM make money for the counties and the National Environmental Policy Act mandates that BLM prepare an EIS *before* the leasing pause and not after.

Of the Mineral Leasing Act the plaintiffs said, "The Mineral Leasing Act requires the BLM to maximize economic recovery for coal on federal land. In preventing the immediate and sizable return on readily available coal on federal tracts of land adjacent to existing operations, the BLM is disregarding its statutory fiduciary duty in a manner contrary to law in violation of the APA."

Of the EIS the plaintiffs said, "The Moratorium is a major Federal action affecting the quality of the human environment because it is a program-wide action that limits access to minerals on Federal land and limits the ability of coal operators and state and local governments to revitalize existing mine locations to ensure the land is environmentally suitable."

President-elect Trump has said a top priority for him is to terminate Jewell's moratorium. More than 40 percent of the coal produced in this country comes from the public lands.

The Obama administration's January 11 analysis, in the form of an EIS scoping report, made these suggestions:

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Royalty: The report does not identify a specific change to the existing 12.5 percent royalty paid by federal coal lessees. It just recommends that the Trump administration consider a higher royalty.

Says the report, "The BLM would identify the most appropriate metric and corresponding royalty rate for Federal coal, reflecting on analysis already conducted by other groups such as the Council of Economic Advisers."

Climate: The EIS scoping report suggests that BLM require compensation for damage to the climate caused by coal mining, with those revenues used to limit carbon damage. "The BLM would require lessees to carry out or fund activities that proportionally offset climate-related impacts, including through investment in a fund managed by an entity that takes on the liability to proportionally offset those greenhouse gas emissions and climate-related impacts," says the EIS scoping report.

The money would then be used "for activities including, but not limited to, carbon offsets, carbon sequestration, climate adaptation, and community resilience," the report says.

Leasing: The EIS scoping report suggests a complete shake-up in the leasing-by-application system now used that usually leads to one bidder per application. The EIS would have BLM plan for and then hold inter-tract bidding.

"The BLM would determine a maximum tonnage of coal or maximum number of Btus to be leased consistent with projected demands," says the EIS scoping report. "Under a modified inter-tract leasing process, all interested companies would bid among themselves for the right to produce a specified quantity of coal in the location of their choice, assuming it is suitable for mining and consistent with the approved land use plan and strategic leasing plan."

The EIS scoping analysis is available at: <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=93180>.

Big land transfer yet to appear, but GOP works on edges

Although the House took a key step last month toward easing the way for federal land transfers to states, no major land transfer legislation itself has been introduced.

However, western Republicans have reintroduced several long-standing bills that would open the way for the sale of some public lands. One such measure (HR 621) from Rep. Jason Chaffetz (R-Utah) would expedite the sale of 3.3 million acres of land BLM has identified as suitable for sale in 10 western states.

Another bill (HR 232) from Rep. Don Young (R-Alaska) would authorize states to buy up to 2 million acres of national forest land, per state.

In a related matter Chaffetz introduced a bill (HR 622) that would remove law enforcement functions from BLM and the Forest Service and transfer those responsibilities to local governments. Chaffetz introduced his legislation January 24.

To ease the way for federal land transfers the House on January 3 approved a package of rules for itself that exempt federal land transfers from Congressional pay-as-you-go limits.

Under old House rules sponsors of legislation to transfer federal lands to states would have had to come up with budgetary offsets to balance against the value

of lost federal oil, gas, coal, minerals, timber, rangelands, etc. Those offsets could include either new revenues (taxes) or spending reductions.

But the package of rules (H Res 5) the House approved 233-to-190 says "a conveyance of Federal land to a State, local government, or tribal entity shall not be considered as providing new budget authority, decreasing revenues, increasing mandatory spending or increasing outlays."

Still, the odds are stacked against Congress authorizing the transfer or sale any substantial quantity of public lands soon, if only because President Trump's administration opposes the idea.

In addition Senate rules still require offsets and any land transfer bill would face immense opposition, not only from the administration but also from sportsmen, environmentalists and others.

Environmentalists are already criticizing Chaffetz's bill to authorize the disposal of surplus BLM lands, first introduced in 2013. Said Alan Rowsome, senior government relations director for The Wilderness Society, "What's worthless to allies of the fossil fuel industry for all except oil and gas extraction has irreplaceable value to the American people for hiking, hunting, camping, fishing and countless other pastimes that Teddy Roosevelt first acknowledged were central to the strength and well-being of this nation."

But Chaffetz said, "The long overdue disposal of excess federal lands will free up resources for the federal government while providing much-needed opportunities for economic development in struggling rural communities."

Young's bill has also been around for several sessions of Congress. The measure would allow a state to select and buy up to 2 million acres of national forest at fair market value. The bill would also require states to sell enough timber "to meet the needs of all wood processing operations existing in that State as of the date of the enactment of this Act."

However, that is the bill that prompted President Trump's nominee for secretary of Interior, Rep. Ryan Zinke (R-Mont.), to say at a Congressional mark-up June 15, 2015, "I'm starting to wonder how many times I have to tell these guys in leadership I'm not going to allow Montana's public lands to be sold or given away." Zinke, the Trump administration nominee for secretary of Interior, voted against the bill.

Utah solons repeat: We will try to reverse Bears Ears

The Utah Congressional delegation said once again January 24 that as a top priority this year it would seek a reversal of the Dec. 28, 2016, designation of a 1.35 million-acre Bears Ears monument in southern Utah by President Obama.

The state's two senators and four House members jointly said they would ask Congress and President Trump to undo the designation.

"We will work with the Trump administration to re-examine Bears Ears National Monument, as well as other ill-advised unilateral executive designations across the country," the legislators said in a statement. "What is done through executive action can be undone through executive action."

As to federal land management in Utah in general the delegation said, "We will utilize all the Article One powers we possess, including the power of the purse, congressional oversight and legislation. We will support all efforts of the state, including the judicial route, to ensure Utahns control their own destiny."

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The delegation, all Republicans, consists of Sens. Orrin Hatch and Mike Lee and Reps. Rob Bishop, Jason Chaffetz, Chris Stewart and Mia Love.

Bishop recommended to the Trump transition team Dec. 5, 2016, that the President-elect roll back objectionable national monument designations.

After meeting with the Trump transition team Bishop said, "Any monument designation that lacks local support, is excessive, or violates the terms of the Antiquities Act will be scrutinized and is easier to abolish. Today's discussions with the transition team examined options for the incoming administration. The talks were positive and encouraging."

But some scholars believe a President would have limited authority under the Antiquities Act to reverse designations. Indeed, the Congressional Research Service in a report it prepared last month on the act questioned whether reversals would be legal.

The Trump administration will feel pressure from the other side too. The Southern Utah Wilderness Alliance said that the Trump administration nominee for secretary of Interior, Rep. Ryan Zinke (R-Mont.), should meet with the coalition of Indian tribes that were out in front in requesting the Bears Ears Monument and with conservationists.

Zinke said at his confirmation hearing January 17 in the Senate Energy Committee that his first trip as secretary would be to Utah.

Said SUWA in a press release, "First, Zinke must meet with the tribes who so passionately worked for (Bears Ears) protection and assist them in their goals - certainly they are affected. Second, as the local conservation group that has worked on Utah wilderness for more than 30 years, and knows these lands inside and out, Rep. Zinke needs to meet with our staff in Moab."

President Obama set a record by designating 34 national monuments on his watch, often to the dismay of western Republicans and plaudits from conservationists. He capped it off January 12 by designating land in five areas of the country as national monuments, including a 48,000-acre expansion of the Cascade-Siskiyou National Monument in southern Oregon. The formerly 66,000-acre Cascade-Siskiyou monument, managed by BLM, is now 114,000 acres.

Obama also added 6,200 acres to a California Coastal National Monument (BLM manages the monument) and designated three civil rights sites in the South. The three civil rights sites, to be managed by the Park Service, include a Birmingham Civil Rights National Monument in Birmingham, Ala.; a Freedom Riders National Monument in Anniston, Ala.; and a Reconstruction Era National Monument in Beaufort County, S.C.

Not all monuments advocates are pleased. The Obama administration didn't act on the recommendation of Rep. Raúl Grijalva (D-Ariz.) that the President designate a 1.7 million-acre national monument adjacent to Grand Canyon National Park.

To that end Grijalva, ranking Democrat on the House Natural Resources Committee that Bishop chairs, earlier this month reintroduced legislation (HR 360) that would establish a Greater Grand Canyon Heritage National Monument in Arizona. The monument would be located north and south of Grand Canyon National Park and would protect the park's watershed as well as lands held sacred by Native American tribes.

Meanwhile, western Republicans are stepping up their campaign to prevent the unilateral designation of national monuments by future presidents. Twenty-five senators last month joined Senate Energy Committee Chairman Lisa Murkowski

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(R-Alaska) in introducing legislation (S 33) that would require Congressional and state approval of any monument.

BLM completes Gateway West route over local objections

BLM gave final approval January 20 to the last two segments totaling 321 miles of a 1,000-mile Gateway West Transmission Project in Idaho and Wyoming, despite state and local objections.

However, the approval on the last day of the Obama administration has not yet made its way into the *Federal Register*, casting some doubt on the finality of the decision.

Said a BLM spokeswoman, "We do need to publish a *Federal Register* notice. The *Federal Register* process has slowed down with the change of administrations. I can understand the new administration wants to get a chance to catch up."

BLM had approved the initial seven segments of the right-of-way (ROW) on Dec. 12 2013, that extend some 700 miles.

Idaho Gov. C.L. "Butch" Otter (R), local communities, private landowners and environmentalists have opposed the project for a variety of reasons. Otter said the project would interfere with an Idaho sage-grouse plan. The counties said the project was not consistent with their management plans. And environmentalists said the project would cause too much damage.

However, the Interior Board of Land Appeals (IBLA) rejected the county and environmentalist objections in three decisions last fall. IBLA said BLM complied with the state and local consultation requirements of the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act.

In a protest of the latest decision on segments eight and nine Otter said BLM would harm the greater sage-grouse by giving predators roosting opportunities in transmission lines and lattice towers.

But BLM said, "The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives. The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action."

Whether the Trump administration attempts to undo the decision remains to be seen. To do so it may have to undertake a lengthy environmental review process of its own.

The ROW would transmit conventional and renewable energy (primarily wind) from Glenrock, Wyo., to Melba, Idaho, across state lands (73.4 miles), private lands (434.9 miles), and federal lands (472 miles).

Former BLM Director Neil Kornze signed the January 20 decision and said, "Gateway West has been an Administration priority project to transform our electric power grid and spur development of renewable energy. Today's decision authorizes the routes with the least impact on private property, farmland, historic trails and cultural resources, visual resources, wetlands, sage grouse habitat, and the Birds of Prey National Conservation Area."

Before BLM reached a decision on the first seven segments, Otter had protested to the BLM director an EIS that BLM prepared in support of the ROW decision. BLM rejected the protest and BLM Assistant Director for Minerals Michael D. Nedd told

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Otter, "Your letter to the BLM State Director and your appeal do not meet the regulatory requirements by specifically identifying inconsistencies between the Greater Sage-Grouse Plan and the proposed land use plan amendments in the Gateway West Transmission Project FIEIS."

According to BLM's timetable Idaho Power submitted an initial application on May 7, 2007. In May 2009 BLM published a draft EIS. In March 2010 it published a second draft EIS. In April 2013 the EIS on the first seven segments was completed.

Gateway West was one of seven high priority energy development projects identified by the Obama administration.

Here are summaries of the three IBLA decisions:

Local governments: The Wyoming Coalition of Local Governments said the 2013 decision was not consistent with state and local land use plans, as required by FLPMA. But IBLA Administrative Judge James K. Jackson held that the BLM decision was not a planning action so the consistency provision did not apply. Further, Jackson said BLM complied with the FLPMA requirement that it coordinate public land management with states and local governments. That decision is cited as *Wyoming Coalition of Local Governments*, 188 IBLA 356 of Sept. 27, 2016.

Environmentalists: The Western Watersheds Project and allied environmental groups said the 2013 EIS failed for a number of reasons, including an absence of an analysis of cumulative impacts. But Jackson said among other things the appellant didn't identify other activities the project would team with to cause cumulative impacts. That decision is cited as *Western Watersheds Project, et al.*, 188 IBLA 234 of Sept. 16, 2016.

Citizens' objections: Several citizens said the 2013 EIS failed because BLM changed the route after an original EIS was prepared and the agency should have prepared a supplemental EIS on the new route. But Jackson said the new route is not significantly different enough to warrant a supplemental EIS. That decision is cited as *Erick W. Esterholdt, et al.*, 188 IBLA 290 of Sept. 16, 2016.

The decision approving the final two segments and related documents are available at: <https://www.blm.gov/programs/nepa-and-planning/plans-in-development/idaho/gateway-west-transmission-line>.

IBLA decisions

(We post current Interior Board of Land Appeals decisions at our website, <http://www.blm.gov/programs/nepa-and-planning/plans-in-development/idaho/gateway-west-transmission-line>. IBLA may be contacted at: Interior Board of Land Appeals, 801 North Quincy St., MS 300 QC, Arlington, VA 22203. Phone (703) 235 3750.)

Subject: Oil and gas lease suspension.

BLM decision: BLM will suspend oil and gas leases while it conducts additional environmental reviews.

Appellant environmental groups: IBLA should not allow BLM to keep the leases in effect.

IBLA decision: Dismissed appeal as premature.

Case identification: *Wilderness Workshop, et al.*, 189 IBLA 22. Decided January 24, 2017.

Appeal from decisions of the Deputy State Director, Colorado State Office of BLM dated April 29, 2016, dismissing requests for State Director Review of March 30, 2016, decisions of the Colorado River Valley Field Office, BLM, approving the suspension of operations and production on Federal oil and gas leases. 3165 (CO-922).

IBLA argument: IBLA Administrative Judge James F. Roberts held that the appellant environmental groups had no standing to appeal a suspension of oil and gas leases because no decision had been taken. The appellants argued that the leases in the White River National Forest are likely to cause harm if and when a suspension is lifted. The appellants cited for proof a draft record of decision on oil and gas development in the forest prepared by the forest. But judge Roberts said BLM has taken no decision on whether the leases should be developed or not. For the time being BLM is preparing environmental documentation on the

DOI-2020-03 00525

advisability of development of the leases. Roberts said that after BLM makes a decision on the future of the leases, then the appellants would have a decision that could be brought to the board. "Any drilling and related ground-disturbing activities associated with the future development of the Leases remain contingent and hypothetical," held Roberts.

Subject: Mining claim transfer.

BLM decision: BLM will reject the transfer of mining claim deeds if grantors don't prove they have authority to make the transfer.

Appellant claimants: BLM erred because proposed grantors have authority to transfer deeds.

IBLA decision: Remanded based on new evidence.

Case identification: *August F. Plachta & Marita P. Lih, 189 IBLA 235*. Decided January 26, 2017. Four pages. Appeal from a decision of the Montana State Office of BLM, dated June 9, 2016, in which BLM rejected four deeds submitted to transfer interests in the Empty Pockets (MMC 146205) and Yellow Jacket (MMC 146208) mining claims.

IBLA argument: IBLA Chief Administrative Judge Eileen Jones sent this case involving the transfer of mining claims back to BLM based on new evidence. In an original decision BLM rejected a request to transfer four deeds to interests in mining claims because the proposed grantors hadn't proved they owned the claims. Subsequently, said judge Jones, the proposed grantors said they have new documentation as to their ownership of the claims. So she remanded for BLM to consider the new information.

Notes: Public Lands News

BLM, FS grazing fee goes down. BLM and the Forest Service said January 31 that the grazing fee for calendar 2017 will decrease to \$1.87 per animal unit month (AUM). The fee last year was \$2.11 per animal unit month. The environmental group Western Watersheds Project said that fee is well below market and that Congress should redo the formula. Said Erik Molvar, executive director of Western Watersheds Project, "Our public lands are a national treasure that should be protected for future generations with responsible stewardship. It makes no sense to rent them to ranchers for below-market prices to prop up a dying industry that degrades soil productivity, water, wildlife habitat, and the health of the land." The Obama administration asked Congress in its last several budget requests to increase the fee to \$2.50 per AUM, but Congress did not act. The fee formula was established by the 1978 Public Rangelands Improvement Act and has been extended by a 1986 Presidential Executive Order. The fee is based on a number of factors including the cost of doing business for ranchers. The new fee of \$2.11 per AUM will apply to 18,000 BLM grazing permits and 8,000 Forest Service permits beginning March 1.

ESA poll favors protection. Despite criticism of the Endangered Species Act (ESA) from Congressional Republicans, environmentalists continue to promote the law. Most recently, the Center for American Progress released a new poll January 18 that indicates public support for the protection of the greater sage-grouse and the gray wolf. The center said 70 percent of voters opposed removal of protections for the species under the ESA. Separately, in December a coalition of conservationists recommended that the Trump administration give priority to the protection of 10 species, including the greater sage-grouse and the gray wolf. However, Congressional Republicans who are in power are going the other way. Eleven House Republicans reintroduced legislation (HR 527) January 13 that would effectively overturn the Obama administration's greater sage-grouse policy. The bill would reverse the three pillars of the policy: First, it would forbid implementation of BLM and Forest Service plans to protect the sage-grouse if states had management plans in place. Almost all of them do. Second, it would forbid listing of the greater sage-grouse under the Endangered Species Act. The Obama administration did defer listing in favor of the BLM and Forest Service plans. Finally, the bill would forbid the withdrawal of 10 million acres from hard rock mining, as begun by the administration. House Natural Resources Committee Chairman Rob Bishop (R-Utah) is the chief sponsor. In another development, Rep. Liz Cheney (R-Wyo.) and 14 of her colleagues introduced legislation (HR 424) January 10 to delist the northern gray wolf in Wyoming under the Endangered Species Act. The wolf in Wyoming was

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originally delisted by the Fish and Wildlife Service (FWS) in August 2012, but a federal judge in September 2014 ordered it relisted.

Energy industry establishes new site. The Western Energy Alliance has launched a pro-development news site on energy and environmental issues in the West. The alliance was already a forceful advocate for the oil and gas industry on public lands. The new site, [Western Wire](http://westernwire.net), will provide "news, commentary and analysis on pro-growth, prod-development policies across the West," says the alliance. The alliance said community support for energy development doesn't receive coverage from the media, "So we decided to do something about it." The website is here: <http://westernwire.net>.

Notes: Federal Parks & Rec

NPCA objects to NPS hiring freeze. The National Parks Conservation Association (NPCA) said January 23 that President Trump's freeze on hiring new workers compounds an already serious understaffing of the National Park Service. The freeze, posted January 23, forbids the hiring of new employees by nonmilitary agencies, with limited exceptions. Said NPCA President Theresa Pierno, "Parks already have 10 percent fewer rangers and other staff compared to a few years ago. They cannot continue to be hampered by low staffing, and that's exactly what will happen with this hiring freeze." However, it is understood that the Trump administration nominee for secretary of Interior, Rep. Ryan Zinke (R-Mont.), intends to move department employees out of national and regional headquarters and into the field.

Trump exempts seasonals from freeze. The Trump administration January 31 amended its hiring freeze of January 23 to establish important exemptions, including National Park Service seasonal workers. The Office of Management and Budget and the U.S. Office of Personnel Management said in a memorandum, "Appointment of seasonal employees and short-term temporary employees necessary to meet traditionally recurring seasonal workloads, provided that the agency informs its OMB Resource Management Office in writing in advance of its hiring plans." The Park Service of course relies on thousands of seasonal employees in the busy summer months.

Report: FS ski areas lack money. The outdoor recreation industry is circulating a recent news article that holds that the White River National Forest in Colorado raises large amounts of money for the government but the forest get none of it back. And the article says Congress continues to reduce appropriations for the forests. In the [report](http://www.funoutdoors.com/node/view/3599) the *Aspen Times* said in December that the forest in fiscal 2016 collected \$20 million in fees from 11 ski resorts there, and turned all the money over to the U.S. Treasury. Meanwhile, the forest's budget has been reduced and the number of workers managing ski resorts has decreased. The ski areas in the forest include well-known Aspen and Snowmass. The American Recreation Coalition says that the situation argues for a rewrite by Congress of the Federal Lands Recreation Enhancement Act. Such a rewrite could include a provision that would return ski resort fees to the collecting forest. The *Aspen Times* article is at: <http://www.funoutdoors.com/node/view/3599>.

Alaska hunting rule targeted in House. Rep. Don Young (R-Alaska) introduced legislation (HJ Res 35) January 27 that would use a new Congressional procedure to revoke an Obama administration rule limiting hunting and fishing in national wildlife refuges in Alaska. The Young resolution would enable the House and Senate to use a Congressional Review Act to revoke the rule announced by the Fish and Wildlife Service on Aug. 3, 2016. The rule limits predator hunting of wolves and grizzly bears under state laws. The state filed a lawsuit against the rule on January 13. The House approved legislation (HR 21) January 4 that would allow Congress to bunch regulations under the Congressional Review Act, rather than move them singly.

Boxscore of Legislation**Fiscal year 2017 appropriations (until April 28)**

HR 2028 (Simpson). President Obama signed into law December 10 as PL 114-254. Extends funding at fiscal 2016 levels through April 28.

Fiscal year 2017 appropriations (full year)

HR 5538 (Calvert), S 3068 (Murkowski). House approved July 14, 2016. Senate committee approved June 16, 2016. Both would increase wildfire, PILT appropriations. Critics say numerous riders cripple bills.

Rule reversals

HR 21 (Issa). House approved January 4. Would allow Congress to revoke groups of regulations at one time with majority vote (no Senate filibuster.)

HR 5 (Goodlatte). House approved January 11. Would subject BLM and FS plans to major economic impact analysis.

(Specific rules) HJ Res 36 (Bishop), HJ Res 41 (Cheney), HJ Res 45 (Cramer), HJ Res 46 (Gosar), HJ Res 35 (Young), HJ Res 56 (Pearce), SJ Res 11 (Barrasso), SJ Res 15 (Murkowski), SJ Res 18 (Sullivan). The House may vote on the methane rule reversal on February 3. SJ Res 11 also would revoke the methane rule. HJ Res 41 and SJ Res 15 would revoke a BLM planning rule. HJ Res 45 would reverse an FWS oil and gas rule, HJ Res 46 would reverse an NPS oil and gas rule, HJ Res 35 and SJ Res 18 would reverse a FWS hunting rule in Alaska, and HJ Res 56 would revoke a BLM rule on oil and gas site security.

Federal land transfers

H Res 5 (McCarthy). House approved January 3. Would not require economic offsets if Congress tried to transfer federal lands to states, local governments or tribes.

HR 232 (Young), HR 621 (Chaffetz). Young introduced January 3. Chaffetz introduced January 24. Young allow states to acquire up to 2 million acres of national forest. Chaffetz would expedite the sale of 3.3 million acres of excess BLM land.

National monument restrictions

S 33 (Murkowski), S 132 (Crapo). Murkowski introduced January 5. Crapo introduced January 12. Murkowski would require Congressional and state approval of new monuments. Crapo would require Congressional approval.

New national monuments

HR 360 (Grijalva). Grijalva introduced January 6. Would establish a Greater Grand Canyon Heritage National Monument.

Greater sage-grouse

HR 527 (Bishop). Bishop introduced January 13. Would largely revoke federal sage-grouse management policy and give the job to the states.

Wolf in Wyoming

HR 424 (Peterson, Cheney), S 164 (Johnson). Peterson introduced January 10, Johnson January 17. Would maintain the delisting of the gray wolf in Wyoming.

Critical minerals

HR 520 (Amodei). Amodei introduced January 13. Would have federal land managers establish time lines for acting on all mineral permits.

Arctic National Wildlife Refuge (development)

S 49 (Murkowski). Murkowski introduced January 5. Would open coastal plain to O&G development.

Land and Water Conservation Fund

HR 502 (Grijalva). Grijalva introduced January 12. Would make the program permanent.

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Federal Parks & Rec

addendum to Public Lands News

January 6, 2017

- * *Trump allies would eliminate LWCF*
- * *Alexander revives talk of another PCAO*
- * *Memorial Bridge repairs promoted, but*
- * *Zinke survives Senate vote (see Public Lands News article)*
- * *Early Hill action on land shifts (see Public Lands News article)*

Trump allies in budget plan would do away with LWCF

President Trump's nominee for secretary of Interior plus a bipartisan group of House and Senate members may favor the Land and Water Conservation Fund, but there are powerful interests that oppose it.

Exhibit One is the Heritage Foundation. Its budget blueprint being used by the Trump administration to prepare fiscal year 2017 spending recommendations would do away with LWCF, period.

In a report titled Blueprint for Reform the foundation says, "Eliminate the Land and Water Conservation Fund. Using earnings from offshore oil and gas leasing, the fund has been used to underwrite recreation areas and facilities. It is set to expire on September 30, 2018."

The foundation adds, "The federal estate is already too massive for the government to manage, and many recreation areas are underutilized." The foundation would have the program expire when its current authorization ends on Sept. 30, 2018.

But that is not where Trump's nominee for secretary of Interior, Rep. Ryan Zinke (R-Mont.), says he wants to go. When Sen. Maria Cantwell (D-Wash.) asked Zinke at his confirmation hearing January 17 if he supported a permanent LWCF, Zinke said, "I do. I think land and water conservation has been important to Montana, certainly in many states. I think we should look at it . . . Lastly, I do think the states and local communities should have a say where those funds go." The Senate Energy Committee held that hearing.

The administration intends to submit a budget, presumably a fiscal year 2017 appropriations request, to Congress in early March, according to press reports. How much of the request will address spending and how much of it will address policy is unclear, but policy and spending of course intertwine.

LWCF is receiving tentative bipartisan support in Congress. On January 12 Rep. Raúl Grijalva (D-Ariz.) and Rep. Patrick Meehan (R-Pa.) took a first step toward making LWCF permanent by introducing legislation (HR 502) to do so.

Legislation to make LWCF permanent almost made it over the finish line in December 2016 in an omnibus energy bill. But differences of opinion between the House and Senate on a host of provisions did the bill in.

The lead sponsor of the energy bill, Senate Energy Committee Chairman Lisa Murkowski (R-Alaska), has said she wants to renew her campaign to move the measure early in this Congress.

However, her counterpart as chairman of the House Natural Resources Committee, Rep. Rob Bishop (R-Utah), has been hesitant to accept a permanent LWCF

Last summer he did introduce a "discussion draft" bill that would have extended LWCF for seven years and substantially realigned program priorities.

Bishop's draft would have slashed funding for the federal side of LWCF but given greater support to the state side. States traditionally receive a small fraction of the total LWCF pie; the draft Bishop bill would have guaranteed them 45 percent. In addition Bishop would have allocated five percent of LWCF to an urban recreation fund, sort of a follow-on to an Urban Parks and Recreation Recovery program. He would have allocated just 3.5 percent to federal land acquisition.

The Grijalva bill is simpler. It simply makes LWCF permanent and allocates at least 1.5 percent of the annual LWCF appropriation for sportsmen's access to public lands.

In an ideal world LWCF advocates would prefer legislation that Sen. Maria Cantwell (D-Wash.) introduced in the last Congress that would not only have made LWCF permanent, but also have guaranteed \$900 million per year for the program without further appropriations. Cantwell is the ranking Democrat on the Senate Energy Committee.

Alexander revives talk of rec commission, is criticism

The chairman of the last national blue ribbon commission on outdoor recreation, Sen. Lamar Alexander (R-Tenn.), is calling for a new national commission.

At the January 17 confirmation hearing of the Senate Energy Committee for Rep. Ryan Zinke (R-Mont.) as secretary of Interior Alexander told the nominee, "I think you're in a wonderful position to do a follow-up to the Commission on Americans Outdoors. This is the 30th anniversary of that report; a generation has passed and it's time for the next look."

Alexander chaired that 1986 President's Commission on America's Outdoors (PCAO) when he was governor of Tennessee. And, he has off and on called for a renewal of the commission.

For instance shortly after the 20th anniversary of PCAO in March 29, 2007, Alexander said on the Senate floor, "It would be an opportunity to look ahead for another generation and tell our country what we need to do to create places for us to enjoy the outdoors in appropriate ways, an opportunity to create a new conservation agenda."

When he renewed that pitch last month Zinke said, "'We have to look at new ways of incentivizing younger Millennials to experience the parks, to experience the outdoors, to teach them the value of our public lands . . . In many cases, I would argue it's better than being in front of a TV, watching video games."

When Alexander chaired PCAO in the mid 1980s the commission recommended dozens of major strategies to revive park and rec programs. Perhaps most noteworthy the commission recommended in 1987 a \$1 billion trust fund to guarantee money for the Land and Water Conservation Fund.

However, in the last go-round the commission didn't file a final report because a private property rights groups - the American Land Rights Association (ALRA) - brought a lawsuit against the commission for violating the Federal Advisory Committee Act.

ALRA President Chuck Cushman said this week, "If they come out with a new commission, we'll be on it like stink on a pig, and you can quote me on it."

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Cushman complained that the first PCAO placed too much emphasis on acquiring land in the West and not enough on recreation where people lived in cities and suburbs. And he would anticipate a similar emphasis in a new commission.

"Go back and look at the President's Commission on Americans Outdoors," he said. "They were bound and determined to buy land far from where people live. People want to recreate near home."

The Obama administration put together its own recreation initiative called America's Great Outdoors, with a seminal report published on Feb. 16, 2011. It recommended an all-of-the-above approach to outdoor policy, beginning with full funding for the Land and Water Conservation Fund and the protection of conservation lands in general.

Although no PCAO report was codified, the commission's recommendations did lead to substantial appropriations for the Land and Water Conservation Fund, revisions to federal recreation fee laws, a Recreational Trails Program and a Scenic Byways program.

Memorial Bridge repairs promoted, but NPS irks Trump

Prominent among the projects bruited about as candidates for a mammoth Trump administration infrastructure program is a \$250 million rehabilitation of the Memorial Bridge in Washington, D.C., by the Park Service. But there may be complications.

On the plus side the Trump transition team last month included the Memorial Bridge in a sample list of 50 projects around the country that might be financed by a trillion-dollar infrastructure plan. The team supplied the sample list to the National Governors Association and asked for recommendations from the governors.

Also on the plus side Virginia Sens. Tim Kaine and Mark Warner, both Democrats, asked the Trump administration last month to make repairs to Arlington Memorial Bridge a top priority.

Finally, the House Transportation Committee February 1 heard five national leaders describe a pressing need for big-time infrastructure spending around the country.

The National Park Service and other federal land management agencies with their multi-billion dollar maintenance backlogs would be prime candidates for assistance, with the Memorial Bridge a prime example.

Complicating matters is President Trump's anger at the Park Service for posting photographs of the crowd at his swearing-in ceremony side-by-side with far larger crowds for President Obama's first inauguration.

Trump reportedly called acting NPS Director Michael T. Reynolds January 21 the day after the inauguration and asked him to release photographs showing larger crowds for his inauguration.

Whether Trump will take out his anger about the inauguration photographs on the Park Service and its budget remains to be seen. On the other hand his administration says it is committed to the big infrastructure program.

Already on the books is a five-year surface transportation law (fiscal 2016 through fiscal 2020) that includes more than \$800 million per year for a block of programs related to the outdoors, including a Recreational Trails Program.

In addition the law (PL 14-94 of Dec. 4, 2015), called the Fixing America's Surface Transportation (FAST) Act, sets aside \$335 million in fiscal 2016 for federal land roads, with \$268 million of that going to the National Park Service. By fiscal 2020 the federal lands allocation would increase to \$375 million and the NPS share \$300 million. In addition the bill establishes a Federal Lands Access Program for major road projects beginning at \$250 million in fiscal 2016 and growing to \$270 million in fiscal 2020.

But other than the federal land roads money the FAST Act doesn't come close to paying for the Park Service's \$12.5 billion maintenance backlog, and similar backlogs for other federal land management agencies.

At his confirmation hearing by the Senate Energy Committee January 17 the Trump administration's nominee for secretary of Interior, Rep. Ryan Zinke (R-Mont.), called the Park Service maintenance backlog one of his top three priorities. The committee approved Zinke's nomination January 31.

He told the senators, "The President-elect is committed to a jobs and infrastructure bill, and I am going to need your help in making sure that bill includes shoring up our Nations treasures."

National Governors Association: As a first step in an infrastructure program the Trump transition team in December submitted a sample list of possible major infrastructure projects. The Washington Post is making the list available at: <http://apps.washingtonpost.com/g/documents/politics/read-the-list-of-projects-that-could-be-funded-by-a-trump-infrastructure-plan/2304/>.

At the same time the transition team asked the governors for their recommendations of five projects per state and most governors have reportedly responded.

Virginia senators: Sens. Warner and Kaine on January 17 asked Zinke and Elaine Chao, nominee for secretary of Transportation, to come up with money to repair the Arlington Memorial Bridge, which leads from the Lincoln Memorial to Arlington National Cemetery.

Warner and Kaine were instrumental in securing an extra \$90 million supplied by the FAST Act in July of 2016, but that is still \$160 million short of the \$250 million needed to avoid a closure of the bridge, which is also used as a popular commuter route.

"Without additional funding, however, Memorial Bridge will be forced to spend millions of dollars in the coming years for emergency repairs and will still face permanent closure if full rehabilitation is not achieved. For these reasons, we strongly urge that you, if confirmed, make fully rehabilitating Memorial Bridge a top priority," the senators wrote. "This iconic structure remains in danger of falling into disrepair without significant additional investment."

House hearing: The House Transportation Committee has for decades produced surface transportation legislation that benefits a half-dozen park and recreation programs, including Park Service roads. The FAST Act is a good example.

At the February 1 hearing the committee took testimony from Frederick W. Smith, chairman of the FedEx Corporation; David W. MacLennan, chairman of Cargill, Inc.; Ludwig Willisch, president and Chief Executive Officer of BMW of North America; Mary V. Andringa, Chair of the Vermeer Corp.; and Richard L. Trumka, president of the AFL-CIO.

Public Lands News
Volume 42 Number 3
February 3, 2017

Public Lands News is published by Resources Publishing Co., P.O. BOX 41320, Arlington, VA 22204. EIN 52-1363538. Phone (703) 553-0552. FAX (703) 553-0558. E-mail james.b.coffin@verizon.net. Website: <http://www.publiclandsnews.com>.

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Senate committee approves Zinke nomination with ease

The Senate Energy Committee approved the nomination of Rep. Ryan Zinke (R-Mont.) as Secretary of Interior January 31 by a solid 16-to-6 margin.

Although some Democratic senators expressed reservations about Zinke's positions in support of commodity development of the public lands, most committee members backed President Trump's nominee.

The nomination could reach the Senate floor as early as today (February 3), if not next week.

Said committee chair Lisa Murkowski (R-Alaska), "The vision that you laid out as you have appeared before the committee I think it has been received favorably. I think that has been reflected in the vote totals. You will have my strong support as we move to the floor. I hope to have a speedy confirmation. We know we need to get to work early and quickly."

Ranking minority committee member Maria Cantwell (D-Wash.) led the Democrats who expressed reservations about the nominee's emphasis on commodity development. Cantwell opposed the nomination. "I am concerned that the Trump administration has made it clear that it wants to pursue an aggressive energy development agenda—undoing reasonable protections—on environmentally sensitive lands and waters. And they want to renew efforts at reversing protections both onshore and offshore. So, I hope that this conversation about how we provide good stewardship will continue," she said.

One fly in the ointment for Zinke is a charge of travel fraud while serving in the U.S. Navy as an officer in SEAL Team Six. The issue did not come up at the confirmation vote, but may be revived on the Senate floor.

In those charges Zinke allegedly billed the military for official travel when he was actually going home to renovate his house. The Navy didn't bring charges because the Navy SEALs have a tradition of avoiding scandal, according to the reports. The infractions allegedly occurred in 1998, 1999 and the early 2000s.

Although some environmental groups such as WildEarth Guardians oppose Zinke, most such organizations are concentrating their fire on other Trump nominees, such as Oklahoma Attorney General Scott Pruitt as administrator at the Environmental Protection Agency

Sportsmen are sticking with Zinke. Backcountry Hunters and Anglers President Land Tawney said that Zinke would likely protect federal lands and backcountry hunting and fishing opportunities.

Commercial users of the public lands backed Zinke. Said Tracy Brunner, president of the National Cattlemen's Beef Association at the time of his confirmation hearing, "During his tenure in the U.S. House of Representatives, Rep. Zinke has consistently advocated for our western communities, economies, and ranchers. He has demanded transparency and the inclusion of stakeholders when it comes to land management decisions, and has a strong understanding of the challenges that come with stewarding the West."

The Western Energy Alliance concurred. "Western oil and natural gas producers with reasonable access to federal public lands can help create hundreds of thousands of high-paying, blue-collar jobs," said Kathleen Sgamma, president at the alliance. "Congressman Zinke is the right person to enact this vision while protecting the landscapes that all Westerners love and cherish."

Support on the right for Zinke is not universal. Property rights advocates such as the American Land Rights Association last month mounted a campaign against his nomination, asking its members to contact the Trump transition team. The association objects to Zinke's past support for the Land and Water Conservation Fund.

As we reported in the last issue of *PLN* Zinke performed a high-wire act at his confirmation hearing before the Senate Energy Committee January 17 alternately promising to open public lands to increased development while being a good steward of the lands.

He sort of laid out the development case. "I fully recognize and appreciate that there are lands that deserve special recognition and are better managed under the John Muir model of wilderness, where man is more of an observer than an active participant," he began.

Then he added, "I also recognize that the preponderance of our federal holdings are better suited to be managed under the Pinchot model of multiple use using best practices, sustainable policies, and objective science."

Zinke made the conservation case explicitly, repeating his support for retention of public lands in the federal domain and for making the Land and Water Conservation Fund (LWCF) permanent. When Sen. Maria Cantwell (D-Wash.) asked if he supported a permanent LWCF, Zinke said, "I do. I think land and water conservation has been important to Montana, certainly in many states. I think we should look at it . . . Lastly, I do think the states and local communities should have a say where those funds go."

As for retention of federal lands when Sen. Bernie Sanders (I-Vt.) asked his opinion on privatization of the National Park System, Zinke said, "I want to be clear on this point. I am absolutely against the transfer or sale of the public lands."

It is understood that Zinke will attempt to flatten the federal bureaucracy, i.e. transfer employees out of headquarters and regional offices into the field, according to people who have talked with the Trump transition team.

Zinke hinted at that in his testimony saying one of his three top priorities is "to ensure the professionals on the front line, our rangers and field managers, have the right tools, right resources, and flexibility to make the right decisions that give a voice to the people they serve."

His two other top priorities are to restore trust in federal land management agencies and to reduce a Park Service maintenance backlog.

Meanwhile, the Senate Energy Committee January 31 chose Sen. Mike Lee (R-Utah) as chairman of the Senate subcommittee on Public Lands, Sen. Steve Daines (R-Mont.) as chairman of the Senate subcommittee on National Parks and Sen. Cory Gardner (R-Colo.) as chairman of the Senate subcommittee on Energy.

House nears vote to revoke methane rule, first of many?

The House and Senate this week got serious about reversing a half-dozen Obama administration public lands regulations.

As a first order of business the House was scheduled to vote as early as today (February 3) on a resolution (HJ Res 36) that would reverse an Obama administration oil and gas methane emissions rule published by BLM on Nov. 15, 2016. Sen. John Barrasso (R-Wyo.) introduced a counterpart Senate resolution (SJ Res 11) January 30.

The House is scheduled to take up the methane resolution under the Congressional Review Act (CRA), as it would all the resolutions. If also accepted by the Senate and President Trump, the resolution would revoke the rule. The act authorizes Congress to undo recent regulations.

Western Republicans introduced a handful of other CRA resolutions in the last week or so to reverse Obama initiatives, including regulations that updated BLM planning guidance, set standards for oil and gas development in national wildlife refuges, set standards for oil and gas development in the National Park System, set standards for onshore oil and gas site security, and limited hunting and fishing in national wildlife refuges in Alaska.

The author of the methane resolution, House Natural Resources Committee Chairman Rob Bishop (R-Utah), said at a January 27 press conference, "Congress has an obligation to insure that executive actions are consistent with Congressional intent and that agencies operate in accordance with their statutory mandates. When they don't and in this case they haven't it is our responsibility to act."

At the press conference Carla Sonntag, president of the New Mexico Business Coalition, made the case that the rule would put operators out of business in New Mexico.

"In the northwest quadrant of our state 70 percent of the 30,000 natural gas wells are considered marginal by the feds because of low production," she said. "They are barely considered economic to operate. The cost of retrofitting one of these wells to comply with these rules can be as much as \$50,000. That doesn't make economic sense so the operators are shutting down these wells. New Mexico can't afford that."

But Raúl M. Grijalva (D-Ariz.), ranking Democrat on the House Natural Resources Committee, told his Democratic colleagues, "This rule would cut down on the amount of natural gas that companies are allowed to vent, flare, or leak from federal leases - a waste of federal and tribal natural gas resources currently estimated to be \$330 million per year. Natural gas on federal lands belongs to the American people, and they receive a share of the proceeds from the sale of that gas. When that gas is wasted, not only does a valuable commodity get frittered away, but the revenue owed to the American people evaporates as well."

On February 1 the House approved another resolution (HJ Res 38) that would revoke a stream protection rule issued by the Office of Surface Mining in July 2015 that bars mountaintop removal to open up coal seams.

The House is taking up the regulatory reversal resolutions one-by-one under the Congressional Review Act even though the House on January 4 approved legislation (HR 21) that would allow Congress to bunch regulations under the act, rather than move them singly.

The Senate hasn't taken up HR 21 yet. While most of the action on regulatory reversals has taken place in the House thus far, the Senate may prove a greater hurdle. That's because the GOP holds only a two-vote majority (52-to-48) and a switch of only two or three votes could defeat a resolution.

Methane rule: Although the methane rule technically went into effect January 17, it would not begin phasing in required reductions in methane until 2018. By that time the Trump administration will be firmly in charge. The rule requires producers to use available technology to cut flaring in half and to inspect their operations regularly for leaks.

EPA is also attempting to reduce methane emissions. It completed a rule May 12, 2016, that governs methane emissions from *future* operations and said it was also in the process of gathering information about a possible new rule governing *existing* operations. In the May 12, 2016, rule EPA not only set emission limits from methane but also required operators to find and repair leaks.

A federal judge in Wyoming refused January 16 to halt implementation of the new BLM methane emissions rule. For the time being at least U.S. District Court Judge Scott W. Skavdahl rejected the argument of oil and gas producing states and industry that BLM has no authority to regulate air quality; only EPA does. He accepted BLM's argument that the rule is designed to prevent waste, i.e. methane venting, not assume EPA's clean air responsibility

BLM planning: On January 30 Sen. Lisa Murkowski (R-Alaska) and 16 of her Senate colleagues and Rep. Liz Cheney (R-Wyo.) and 10 of her Republican colleagues introduced a resolution (SJ res 15 and HJ Res 41) to overturn a BLM planning rule of Dec. 12, 2016.

The BLM rule, known as 2.0, would revise the substance of an existing planning rule. Among the proposed changes are a greater emphasis on broad area planning, preparation of an assessment prior to writing a management plan and earlier public involvement in the planning process.

"The Obama administration's Planning 2.0 rule makes sweeping changes to how BLM develops resource management plans, shifts decision-making authority away from the impacted states to Washington, D.C., and disregards BLM's multiple-use mission. If left intact, it will harm grazing, timber, energy and mineral development, and recreation on our public lands," Murkowski said.

BLM's existing planning rules posted in 1979, 1983 and 2005 - guide the management of public lands, as required by the Federal Land Policy and Management Act of 1976. BLM's website on the plan is at www.blm.gov/plan2.

FWS oil and gas: On January 30 Rep. Kevin Cramer (R-N.D.) and five of his colleagues introduced a resolution (HJ Res 45) to revoke a Fish and Wildlife Service (FWS) oil and gas management rule of Nov. 14, 2016. That final rule would have FWS tighten its oversight of oil and gas operations

within wildlife refuges. The rule was scheduled to go into effect Dec. 14, 2016.

The rule would require a minerals owner to obtain an operations permit and to obtain financial assurance, i.e. a bond to cover any possible damages and reclamation costs. FWS says that more than 100 refuges host oil and gas operations. That includes almost 1,700 producing wells, and thousands more inactive or plugged wells.

NPS oil and gas: On January 30 Rep. Paul Gosar (R-Ariz.) and five of his Republican colleagues introduced a resolution (HJ Res 46) to revoke a Park Service oil and gas management rule of Nov. 3, 2016. The NPS rule would subject all oil and gas operations in the national parks to the regulations. The rule was scheduled to go into effect Dec. 5, 2016.

Currently, 12 of the 408 National Park System units host oil and gas operations and 60 percent of those are exempt from NPS regulations. The rule would also require operators to pay the full cost of reclamation.

Oil and gas site security: On February 1 Rep. Steve Pearce (R-N.M.) and nine of his colleagues introduced a resolution (HJ Res 56) that would reverse a BLM rule of Oct. 12, 2016, that set standards for onshore oil and gas facility site security.

Alaska hunting: On January 27 Rep. Don Young (R-Alaska) introduced a resolution (HJ Res 35) that would revoke a rule limiting hunting and fishing in national wildlife refuges in Alaska. Sen. Dan Sullivan (R-Alaska) introduced a counterpart resolution (SJ Res 18) February 1.

The rule limits predator hunting of wolves and grizzly bears under state laws. The state filed a lawsuit against the rule on January 13.

Trump foresees big energy jump, starts posting orders

President Trump is moving quickly to keep his promise to expand energy development on the public lands and to expedite projects to produce energy.

First, he posted an overarching energy plan on inauguration day January 20 that puts public lands front-and-center. "The Trump Administration will embrace the shale oil and gas revolution to bring jobs and prosperity to millions of Americans," the post at the White House website says. "We must take advantage of the estimated \$50 trillion in untapped shale, oil, and natural gas reserves, especially those on federal lands that the American people own."

Second, Trump issued an executive order on January 24 directing agencies to work with the White House to identify high priority projects and to expedite environmental reviews for them. That applies to all federal agencies and to all kinds of projects, not just energy-related ones.

Third, Trump on January 24 issued several other energy-related executive orders and memoranda including a memorandum inviting the Trans Canada Keystone Pipeline, L.P. to resubmit its application for a Keystone XL pipeline that President Obama blocked.

It is one thing for the President to project an increase in energy from the public lands, but it's another thing to create market conditions that lead to increased demand for leases and permits.

Environmentalists are counting on the market, among other things, to slow Trump down. Nada Culver, director of The Wilderness Society BLM Action Center, told *PLN*, "What we have seen over the years is that no matter how 'aggressive' a program may be to promote leasing and drilling, actual development is dependent on where resources are located, the prices for oil and gas, and the cost of exploration and development. Even with the improvements in technology, which reduces the costs for exploration and production, we saw more development happening where shale resources were more easily accessible and less happening where prices were lower."

Besides, Culver said, tens of millions of acres of public lands are already under lease. "Looking at federal lands right now, we have (through fiscal year 2015 the most recent data available) 32.2 million acres under lease and 12.8 million acres in production so a lot of surplus acreage (is) already not being developed," she said. "Similarly at last count there were approximately 7,500 approved permits to drill not being used."

And, of course, environmentalists will take any legal actions available to block leasing/permitting decisions they disagree with. "Going forward, we will be continuing to engage in leasing and permitting decisions, and expect to be defending places on our public lands and the rights of the public to have input and ensure any decisions are based on full evaluation of environmental consequences," said Culver.

The Western Energy Alliance is all in with Trump's plans. Said alliance President Kathleen Sgamma, "We're very excited to have a new Administration that's talking about tapping into America's full energy potential. It's quite a switch from the previous one which was outright hostile to our industry and used regulation as a weapon."

Sgamma said that while the nation enjoys a surfeit of energy right now, demand could go up if the federal government removed roadblocks to the export of oil and gas. "Congress finally removed the barriers to exporting oil late in 2015, and we have an Administration that will not be a roadblock to free market exports of natural gas, as was the last one," said Sgamma.

While Trump is doing his part to accelerate energy development with executive orders and memoranda, Congress has begun to do its part with revocations of what Republican leaders consider overly-restrictive regulations.

This week western senators and House members introduced resolutions to reverse a handful of Obama administration energy regulations. (*See previous article.*)

Zinke nomination moves: Meanwhile, the nomination of the man who will oversee any expansion in energy development of the public lands as secretary of Interior, Rep. Ryan Zinke (R-Mont.), has taken one step forward with the approval of his nomination January 31 by the Senate Energy Committee. (*See article page one.*)

Trump on environmental regulations: The White House executive order would authorize the chairman of the Council on Environmental Quality to

identify "high priority" infrastructure projects. Once a project was so designated, the chairman would work with an agency to establish expedited approval procedures "in a manner consistent with law."

Trump on energy projects: In addition to opening the way for the reconsideration of the Keystone XL Pipeline Trump directed the Corps of Engineers to expedite reviews of a Dakota Access Pipeline that would bring crude oil from North Dakota to market. The \$3.8 billion, 1,100-mile pipeline is 90 percent complete.

Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) endorsed the Trump moves, saying, "I support consultation with the people affected by infrastructure projects, and we must ensure that they are built and operated responsibly. However, for too long federal agencies have been sources of unnecessary delay and uncertainty. Reform is long overdue, and the president's actions today are a good start."

The Sierra Club promised to keep fighting the Keystone pipeline. Said club executive director Michael Brune, "Donald Trump has been in office for four days and he's already proving to be the dangerous threat to our climate we feared he would be. But, these pipelines are far from being in the clear. The millions of Americans and hundreds of Tribes that stood up to block them in the first place will not be silenced, and will continue fighting these dirty and dangerous projects."

Template for Trump budget would slash DoI, end LWCF

In preparing budget/appropriations recommendations the Trump administration is reportedly working off a Heritage Foundation paper that calls for dramatic changes in public lands policy.

The foundation in a seminal *Blueprint for Reform* recommends an overall spending cap enforced by sequestration, privatization of federal lands, authorization of state energy management, transfer of the Forest Service to the Interior Department, elimination of the Land and Water Conservation Fund, and the opening of "all" federal lands to energy development, short of conservation lands.

In dollars the Heritage Foundation would reduce Interior Department spending in fiscal 2017 by 20 percent, a reduction of \$2.8 billion from a Congressional Budget Office estimate of \$14.1 billion to \$11.4 billion.

How much of that recommendation the Trump administration will bite off remains to be seen. For instance, Trump himself and his nominee for secretary of Interior, Rep. Ryan Zinke (R-Mont.), say they oppose the transfer of federal lands to states.

While the Heritage Foundation reportedly has the ears of the Trump administration, advocates of the national parks are nonetheless laying out their own competing recommendations.

To wit, an association of National Park Service retirees last month posted a long list of needed park improvements, most of which require money. At the top of the coalition's list is the Park Service's \$11.9 billion maintenance backlog.

In letters to leading senators the Coalition to Protect America's National Parks said, "The fact that National Park System receives over 307 million visits each year underscores the need to prioritize funding for these repairs. It is sadly ironic that while we have not funded the maintenance backlog, spending from visitors to our national parks annually generates more than three times that amount for the U.S. economy (more than \$32 billion in 2015), and supports hundreds of thousands of private-sector jobs."

Coalition Chair Maureen Finnerty signed the letter.

The administration intends to submit a budget, presumably a fiscal year 2017 appropriations request, to Congress in early March, according to press reports. How much of the request would address spending and how much of it would address policy is unclear, but policy and spending of course intertwine.

The Trump administration's fiscal 2017 spending request at first blush appears to be hemmed in by a current overall spending agreement between the Obama White House and Congress (PL 114-74 of Nov. 2, 2015). It set an overall fiscal 2017 spending cap \$1.070 trillion. But conservative Republicans are eager to lower that cap.

An interim fiscal 2017 spending resolution (PL 114-254 of Dec. 10, 2016) is keeping the government in money through April 28. The measure would roughly maintain fiscal 2016 spending under roughly the same terms and conditions.

For the record the House approved its version of a fiscal 2017 Interior and Related Agencies spending bill (HR 5538) July 14 and the Senate Appropriations Committee approved its bill (S 3068). The two bills also include both wildfire and payments-in-lieu of taxes spending, which eat up much of annual appropriations.

If by some miracle Congress actually prepares an Interior appropriations bill next year based on HR 5538 and S 3068, here are some of the recommended House and Senate committee appropriations:

The House approved its fiscal 2017 Interior bill (HR 5538) July 14 and the Senate Appropriations Committee approved its bill (S 3068) June 16. Both the House and the Senate committee packed their bills with amendments/riders that attack dozens of Obama administration public lands initiatives.

Among other things both the House and the Senate committee would block the listing of the greater sage-grouse under the Endangered Species Act; would order the Interior Department to delist the gray wolf in Wyoming from the Endangered Species Act; would forbid EPA from implementing a rule that would reduce carbon emissions from existing power plants; and would forbid EPA from implementing a May 27, 2015, rule that would expand the definition of a wetland subject to a Section 404 permit under the Clean Water Act.

The House alone approved provisions that would forbid the designation of any national monument in specific counties in eight states Arizona, California, Colorado, Nevada, New Mexico, Oregon, Utah and Maine; forbid BLM from spending any money to change royalty rates "under Federal coal, oil, and gas leasing programs;" forbid BLM from implementing hydraulic fracturing rules (a federal court has already blocked them); prevent implementation of a plan to designate the 19 million-acre Arctic National Wildlife Refuge as

wilderness; forbid EPA from spending any money to implement a May 12 methane rule; forbid the spending of any money on the gray wolf under the Endangered Species Act; forbid the Fish and Wildlife Service from completing a regulation of nonfederal oil and gas in wildlife refuges; and forbid any agency from attempting to transfer water rights to the federal government on renewal of a permit.

The fiscal 2017 House bill would actually increase land and resource management spending for BLM by \$9 million, allocating \$1.082 billion instead of the fiscal 2016 appropriation of \$1.073 billion. The Senate committee would increase the line item by \$16 million, to \$1.088 billion.

For the National Forest System the House approved a \$22 million increase, from \$1.509 billion in fiscal 2016 to \$1.531 billion in fiscal 2017. The Senate committee would increase National Forest System spending by \$11 million, to \$1.529 billion.

The Heritage Foundation, a bedrock conservation organization, makes the following recommendations in its report,
<http://www.heritage.org/research/reports/2016/07/blueprint-for-reform>:

Privatization of federal lands: The foundation says, "States, local governments, and individuals are the best arbiters of how to manage land, and the federal government should explore opportunities to privatize land and shift more land to state control. New leadership should shift the regulatory authority to the states for land use and environmental protection." This may be a nonstarter if Trump and Zinke continue to object to the idea.

State energy management: The foundation says, "The next President's budget should also empower states to regulate energy and environmental activities without federal interference."

Transfer of the Forest Service: The foundation says, "Its work should be moved to the U.S. Department of Interior, which currently manages national parks and public lands. This should help consolidate the work of Interior and improve communication." This is probably a nonstarter because various administrations and Congressional leaders from time immemorial have wasted political capital on such a merger.

No Land and Water Conservation Fund: The foundation says, "The federal estate is already too massive for the government to manage, and many recreation areas are underutilized." The foundation would have the program expire when its current authorization ends on Sept. 30, 2018. However, Zinke has endorsed permanence for the program and full funding of \$900 million per year.

Energy development public lands: The foundation says, "(T)he President's budget should make clear that the federal government will open all federal waters and all non-wilderness, non-federal monuments to exploration and production of all of America's natural resources." This may fly. The Trump administration says it is determined to open the nation's federal lands to fossil fuel development (*see previous article*.)

Hill money posts relatively unchanged: The senators and House members who will write appropriations bills in this Congress look a lot like the people who did the job in the last Congress.

That is, Sen. Lisa Murkowski (R-Alaska) will chair the Senate subcommittee on Interior and Related Appropriations and Sen. Tom Udall (D-N.M.) will serve as ranking member.

In the House Rep. Ken Calvert (R-Calif.) will chair the counterpart subcommittee and Rep. Betty McCollum (D-Minn.) will serve as ranking member.

Utah county lawsuit against BLM coal moratorium alive

It may soon be rendered moot by the Trump administration but a lawsuit to block an Obama administration coal leasing moratorium grinds on in a federal court.

In the lawsuit two Utah counties contend the Jan. 15, 2016, moratorium violated several laws, including the Mineral Leasing Act and the National Environmental Policy Act.

The moratorium may be relatively easy to stop because it was instituted by Secretary of Interior Sally Jewell in a Secretarial Order No. 3338, not a hard regulation. The next Trump administration secretary of the Interior, presumably Rep. Ryan Zinke (R-Mont.), may simply put out his own executive order.

Similarly, work on a programmatic EIS on overall coal policy attendant to the leasing pause may be retrievable because no formal proposal has been made. On March 24, 2016, BLM did launch a scoping period and subsequently hosted listening sessions around the country.

However, environmentalists say the reversals are not a legal given. "I think an imminent rollback of the moratorium is not without risk for the Interior Department," warned Ted Zukoski of the Earthjustice law firm. Zukoski would not speculate on what legal arguments environmentalists might advance against an undoing of the moratorium and the EIS work.

Just last month on January 11 BLM completed a report based on the environmental scoping effort but made no specific recommendations, leaving it up to the Trump administration to consider such things as an increased royalty or the impact of coal leasing on climate change.

Meanwhile, the lawsuit filed by Kane and Garfield Counties continues in the U.S. District Court for Utah, Central Division.

In the most recent filing in the case environmentalists who entered the case on the side of the Obama administration argued, "The Counties' requested relief would reverse reforms that Conservation Groups support and undercut an ongoing review of the federal coal leasing program that could limit that damage and meaningfully modernize that program to better address environmental, climate, and fiscal concerns."

The environmentalists, led by Earthjustice, said January 17 their voices must be heard because "the incoming administration's stated hostility to the coal leasing pause that the Counties' challenge demonstrate that the Department of the Interior may not adequately represent Conservation Groups' interests."

Both the plaintiffs and the environmentalist intervenors devote most of their legal arguments to the substantive merits of a moratorium and the need for an EIS.

But the plaintiff Utah counties do make a couple of legal arguments, i.e., the Mineral Leasing Act demands that BLM make money for the counties and the National Environmental Policy Act mandates that BLM prepare an EIS before the leasing pause and not after.

Of the Mineral Leasing Act the plaintiffs said, "The Mineral Leasing Act requires the BLM to maximize economic recovery for coal on federal land. In preventing the immediate and sizable return on readily available coal on federal tracts of land adjacent to existing operations, the BLM is disregarding its statutory fiduciary duty in a manner contrary to law in violation of the APA."

Of the EIS the plaintiffs said, "The Moratorium is a major Federal action affecting the quality of the human environment because it is a program-wide action that limits access to minerals on Federal land and limits the ability of coal operators and state and local governments to revitalize existing mine locations to ensure the land is environmentally suitable."

President-elect Trump has said a top priority for him is to terminate Jewell's moratorium. More than 40 percent of the coal produced in this country comes from the public lands.

The Obama administration's January 11 analysis, in the form of an EIS scoping report, made these suggestions:

Royalty: The report does not identify a specific change to the existing 12.5 percent royalty paid by federal coal lessees. It just recommends that the Trump administration consider a higher royalty.

Says the report, "The BLM would identify the most appropriate metric and corresponding royalty rate for Federal coal, reflecting on analysis already conducted by other groups such as the Council of Economic Advisers."

Climate: The EIS scoping report suggests that BLM require compensation for damage to the climate caused by coal mining, with those revenues used to limit carbon damage. "The BLM would require lessees to carry out or fund activities that proportionally offset climate-related impacts, including through investment in a fund managed by an entity that takes on the liability to proportionally offset those greenhouse gas emissions and climate-related impacts," says the EIS scoping report.

The money would then be used "for activities including, but not limited to, carbon offsets, carbon sequestration, climate adaptation, and community resilience," the report says.

Leasing: The EIS scoping report suggests a complete shake-up in the leasing-by-application system now used that usually leads to one bidder per application. The EIS would have BLM plan for and then hold inter-tract bidding.

"The BLM would determine a maximum tonnage of coal or maximum number of Btus to be leased consistent with projected demands," says the EIS scoping report. "Under a modified inter-tract leasing process, all interested

companies would bid among themselves for the right to produce a specified quantity of coal in the location of their choice, assuming it is suitable for mining and consistent with the approved land use plan and strategic leasing plan."

The EIS scoping analysis is available at:
<https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=93180>.

Big land transfer yet to appear, but GOP works on edges

Although the House took a key step last month toward easing the way for federal land transfers to states, no major land transfer legislation itself has been introduced.

However, western Republicans have reintroduced several long-standing bills that would open the way for the sale of some public lands. One such measure (HR 621) from Rep. Jason Chaffetz (R-Utah) would expedite the sale of 3.3 million acres of land BLM has identified as suitable for sale in 10 western states.

Another bill (HR 232) from Rep. Don Young (R-Alaska) would authorize states to buy up to 2 million acres of national forest land, per state.

In a related matter Chaffetz introduced a bill (HR 622) that would remove law enforcement functions from BLM and the Forest Service and transfer those responsibilities to local governments. Chaffetz introduced his legislation January 24.

To ease the way for federal land transfers the House on January 3 approved a package of rules for itself that exempt federal land transfers from Congressional pay-as-you-go limits.

Under old House rules sponsors of legislation to transfer federal lands to states would have had to come up with budgetary offsets to balance against the value of lost federal oil, gas, coal, minerals, timber, rangelands, etc. Those offsets could include either new revenues (taxes) or spending reductions.

But the package of rules (H Res 5) the House approved 233-to-190 says "a conveyance of Federal land to a State, local government, or tribal entity shall not be considered as providing new budget authority, decreasing revenues, increasing mandatory spending or increasing outlays."

Still, the odds are stacked against Congress authorizing the transfer or sale any substantial quantity of public lands soon, if only because President Trump's administration opposes the idea.

In addition Senate rules still require offsets and any land transfer bill would face immense opposition, not only from the administration but also from sportsmen, environmentalists and others.

Environmentalists are already criticizing Chaffetz's bill to authorize the disposal of surplus BLM lands, first introduced in 2013. Said Alan Rowsome, senior government relations director for The Wilderness Society,

"What's worthless to allies of the fossil fuel industry for all except oil and gas extraction has irreplaceable value to the American people for hiking, hunting, camping, fishing and countless other pastimes that Teddy Roosevelt first acknowledged were central to the strength and well-being of this nation."

But Chaffetz said, "The long overdue disposal of excess federal lands will free up resources for the federal government while providing much-needed opportunities for economic development in struggling rural communities."

Young's bill has also been around for several sessions of Congress. The measure would allow a state to select and buy up to 2 million acres of national forest at fair market value. The bill would also require states to sell enough timber "to meet the needs of all wood processing operations existing in that State as of the date of the enactment of this Act."

However, that is the bill that prompted President Trump's nominee for secretary of Interior, Rep. Ryan Zinke (R-Mont.), to say at a Congressional mark-up June 15, 2015, "I'm starting to wonder how many times I have to tell these guys in leadership I'm not going to allow Montana's public lands to be sold or given away." Zinke, the Trump administration nominee for secretary of Interior, voted against the bill.

Utah solons repeat: We will try to reverse Bears Ears

The Utah Congressional delegation said once again January 24 that as a top priority this year it would seek a reversal of the Dec. 28, 2016, designation of a 1.35 million-acre Bears Ears monument in southern Utah by President Obama.

The state's two senators and four House members jointly said they would ask Congress and President Trump to undo the designation.

"We will work with the Trump administration to re-examine Bears Ears National Monument, as well as other ill-advised unilateral executive designations across the country," the legislators said in a statement. "What is done through executive action can be undone through executive action."

As to federal land management in Utah in general the delegation said, "We will utilize all the Article One powers we possess, including the power of the purse, congressional oversight and legislation. We will support all efforts of the state, including the judicial route, to ensure Utahns control their own destiny."

The delegation, all Republicans, consists of Sens. Orrin Hatch and Mike Lee and Reps. Rob Bishop, Jason Chaffetz, Chris Stewart and Mia Love.

Bishop recommended to the Trump transition team Dec. 5, 2016, that the President-elect roll back objectionable national monument designations.

After meeting with the Trump transition team Bishop said, "Any monument designation that lacks local support, is excessive, or violates the terms of the Antiquities Act will be scrutinized and is easier to abolish. Today's discussions with the transition team examined options for the incoming administration. The talks were positive and encouraging."

But some scholars believe a President would have limited authority under the Antiquities Act to reverse designations. Indeed, the Congressional Research Service in a report it prepared last month on the act questioned whether reversals would be legal.

The Trump administration will feel pressure from the other side too. The Southern Utah Wilderness Alliance said that the Trump administration nominee for secretary of Interior, Rep. Ryan Zinke (R-Mont.), should meet with the coalition of Indian tribes that were out in front in requesting the Bears Ears Monument and with conservationists.

Zinke said at his confirmation hearing January 17 in the Senate Energy Committee that his first trip as secretary would be to Utah.

Said SUWA in a press release, "First, Zinke must meet with the tribes who so passionately worked for (Bears Ears) protection and assist them in their goals - certainly they are affected. Second, as the local conservation group that has worked on Utah wilderness for more than 30 years, and knows these lands inside and out, Rep. Zinke needs to meet with our staff in Moab."

President Obama set a record by designating 34 national monuments on his watch, often to the dismay of western Republicans and plaudits from conservationists. He capped it off January 12 by designating land in five areas of the country as national monuments, including a 48,000-acre expansion of the Cascade-Siskiyou National Monument in southern Oregon. The formerly 66,000-acre Cascade-Siskiyou monument, managed by BLM, is now 114,000 acres.

Obama also added 6,200 acres to a California Coastal National Monument (BLM manages the monument) and designated three civil rights sites in the South. The three civil rights sites, to be managed by the Park Service, include a Birmingham Civil Rights National Monument in Birmingham, Ala.; a Freedom Riders National Monument in Anniston, Ala.; and a Reconstruction Era National Monument in Beaufort County, S.C.

Not all monuments advocates are pleased. The Obama administration didn't act on the recommendation of Rep. Raúl Grijalva (D-Ariz.) that the President designate a 1.7 million-acre national monument adjacent to Grand Canyon National Park.

To that end Grijalva, ranking Democrat on the House Natural Resources Committee that Bishop chairs, earlier this month reintroduced legislation (HR 360) that would establish a Greater Grand Canyon Heritage National Monument in Arizona. The monument would be located north and south of Grand Canyon National Park and would protect the park's watershed as well as lands held sacred by Native American tribes.

Meanwhile, western Republicans are stepping up their campaign to prevent the unilateral designation of national monuments by future presidents. Twenty-five senators last month joined Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) in introducing legislation (S 33) that would require Congressional and state approval of any monument.

BLM completes Gateway West route over local objections

BLM gave final approval January 20 to the last two segments totaling 321 miles of a 1,000-mile Gateway West Transmission Project in Idaho and Wyoming, despite state and local objections.

However, the approval on the last day of the Obama administration has not yet made its way into the *Federal Register*, casting some doubt on the finality of the decision.

Said a BLM spokeswoman, "We do need to publish a *Federal Register* notice. The *Federal Register* process has slowed down with the change of administrations. I can understand the new administration wants to get a chance to catch up."

BLM had approved the initial seven segments of the right-of-way (ROW) on Dec. 12 2013, that extend some 700 miles.

Idaho Gov. C.L. "Butch" Otter (R), local communities, private landowners and environmentalists have opposed the project for a variety of reasons. Otter said the project would interfere with an Idaho sage-grouse plan. The counties said the project was not consistent with their management plans. And environmentalists said the project would cause too much damage.

However, the Interior Board of Land Appeals (IBLA) rejected the county and environmentalist objections in three decisions last fall. IBLA said BLM complied with the state and local consultation requirements of the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act.

In a protest of the latest decision on segments eight and nine Otter said BLM would harm the greater sage-grouse by giving predators roosting opportunities in transmission lines and lattice towers.

But BLM said, "The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives. The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action."

Whether the Trump administration attempts to undo the decision remains to be seen. To do so it may have to undertake a lengthy environmental review process of its own.

The ROW would transmit conventional and renewable energy (primarily wind) from Glenrock, Wyo., to Melba, Idaho, across state lands (73.4 miles), private lands (434.9 miles), and federal lands (472 miles).

Former BLM Director Neil Kornze signed the January 20 decision and said, "Gateway West has been an Administration priority project to transform our electric power grid and spur development of renewable energy. Today's decision authorizes the routes with the least impact on private property, farmland, historic trails and cultural resources, visual resources, wetlands, sage grouse habitat, and the Birds of Prey National Conservation Area."

Before BLM reached a decision on the first seven segments, Otter had protested to the BLM director an EIS that BLM prepared in support of the ROW decision. BLM rejected the protest and BLM Assistant Director for Minerals

Michael D. Nedd told Otter, "Your letter to the BLM State Director and your appeal do not meet the regulatory requirements by specifically identifying inconsistencies between the Greater Sage-Grouse Plan and the proposed land use plan amendments in the Gateway West Transmission Project FIEIS."

According to BLM's timetable Idaho Power submitted an initial application on May 7, 2007. In May 2009 BLM published a draft EIS. In March 2010 it published a second draft EIS. In April 2013 the EIS on the first seven segments was completed.

Gateway West was one of seven high priority energy development projects identified by the Obama administration.

Here are summaries of the three IBLA decisions:

Local governments: The Wyoming Coalition of Local Governments said the 2013 decision was not consistent with state and local land use plans, as required by FLPMA. But IBLA Administrative Judge James K. Jackson held that the BLM decision was not a planning action so the consistency provision did not apply. Further, Jackson said BLM complied with the FLPMA requirement that it coordinate public land management with states and local governments. That decision is cited as *Wyoming Coalition of Local Governments*, 188 IBLA 356 of Sept. 27, 2016.

Environmentalists: The Western Watersheds Project and allied environmental groups said the 2013 EIS failed for a number of reasons, including an absence of an analysis of cumulative impacts. But Jackson said among other things the appellant didn't identify other activities the project would team with to cause cumulative impacts. That decision is cited as *Western Watersheds Project, et al.*, 188 IBLA 234 of Sept. 16, 2016.

Citizens' objections: Several citizens said the 2013 EIS failed because BLM changed the route after an original EIS was prepared and the agency should have prepared a supplemental EIS on the new route. But Jackson said the new route is not significantly different enough to warrant a supplemental EIS. That decision is cited as *Erick W. Esterholdt, et al.*, 188 IBLA 290 of Sept. 16, 2016.

The decision approving the final two segments and related documents are available at: <https://www.blm.gov/programs/nepa-and-planning/plans-in-development/idaho/gateway-west-transmission-line>.

IBLA decisions

(We post current Interior Board of Land Appeals decisions at our website, <http://www.blm.gov/programs/nepa-and-planning/plans-in-development/idaho/gateway-west-transmission-line>. IBLA may be contacted at: Interior Board of Land Appeals, 801 North Quincy St., MS 300 QC, Arlington, VA 22203. Phone (703) 235 3750.)

Subject: Oil and gas lease suspension.

BLM decision: BLM will suspend oil and gas leases while it conducts additional environmental reviews.

Appellant environmental groups: IBLA should not allow BLM to keep the leases in effect.

IBLA decision: Dismissed appeal as premature.

Case identification: *Wilderness Workshop, et al.*, 189 IBLA 22. Decided January 24, 2017. Appeal from decisions of the Deputy State Director, Colorado State Office of BLM dated April 29, 2016, dismissing requests for State Director Review of March 30, 2016, decisions of the Colorado River Valley Field Office, BLM, approving the suspension of operations and production on Federal oil and gas leases. 3165 (CO-922).

IBLA argument: IBLA Administrative Judge James F. Roberts held that the appellant environmental groups had no standing to appeal a suspension of oil and gas leases because no decision had been taken. The appellants argued that the leases in the White River National Forest are likely to cause harm if and when a suspension is lifted. The appellants cited for proof a draft record of decision on oil and gas development in the forest prepared by the forest. But judge Roberts said BLM has taken no decision on whether the leases should be developed or not. For the time being BLM is preparing environmental documentation on the advisability of development of the leases. Roberts said that after BLM makes a decision on the future of the leases, then the appellants would have a decision that could be brought to the board. "Any drilling and related ground-disturbing activities associated with the future development of the Leases remain contingent and hypothetical," held Roberts.

Subject: Mining claim transfer.

BLM decision: BLM will reject the transfer of mining claim deeds if grantors don't prove they have authority to make the transfer.

Appellant claimants: BLM erred because proposed grantors have authority to transfer deeds.

IBLA decision: Remanded based on new evidence.

Case identification: *August F. Plachta & Marita P. Lih, 189 IBLA 235*. Decided January 26, 2017. Four pages. Appeal from a decision of the Montana State Office of BLM, dated June 9, 2016, in which BLM rejected four deeds submitted to transfer interests in the Empty Pockets (MMC 146205) and Yellow Jacket (MMC 146208) mining claims.

IBLA argument: IBLA Chief Administrative Judge Eileen Jones sent this case involving the transfer of mining claims back to BLM based on new evidence. In an original decision BLM rejected a request to transfer four deeds to interests in mining claims because the proposed grantors hadn't proved they owned the claims. Subsequently, said judge Jones, the proposed grantors said they have new documentation as to their ownership of the claims. So she remanded for BLM to consider the new information.

Notes: Public Lands News

BLM, FS grazing fee goes down. BLM and the Forest Service said January 31 that the grazing fee for calendar 2017 will decrease to \$1.87 per animal unit month (AUM). The fee last year was \$2.11 per animal unit month. The environmental group Western Watersheds Project said that fee is well below market and that Congress should redo the formula. Said Erik Molvar, executive director of Western Watersheds Project, "Our public lands are a national treasure that should be protected for future generations with responsible stewardship. It makes no sense to rent them to ranchers for below-market prices to prop up a dying industry that degrades soil productivity, water, wildlife habitat, and the health of the land." The Obama administration asked Congress in its last several budget requests to increase the fee to \$2.50 per AUM, but Congress did not act. The fee formula was established by the 1978 Public Rangelands Improvement Act and has been extended by a 1986 Presidential Executive Order. The fee is based on a number of factors including the cost of doing business for ranchers. The new fee of \$2.11 per AUM will apply to 18,000 BLM grazing permits and 8,000 Forest Service permits beginning March 1.

ESA poll favors protection. Despite criticism of the Endangered Species Act (ESA) from Congressional Republicans, environmentalists continue to promote the law. Most recently, the Center for American Progress released a new poll January 18 that indicates public support for the protection of the greater sage-grouse and the gray wolf. The center said 70 percent of voters opposed removal of protections for the species under the ESA. Separately, in December a coalition of conservationists recommended that the Trump administration give priority to the protection of 10 species, including the

greater sage-grouse and the gray wolf. However, Congressional Republicans who are in power are going the other way. Eleven House Republicans reintroduced legislation (HR 527) January 13 that would effectively overturn the Obama administration's greater sage-grouse policy. The bill would reverse the three pillars of the policy: First, it would forbid implementation of BLM and Forest Service plans to protect the sage-grouse if states had management plans in place. Almost all of them do. Second, it would forbid listing of the greater sage-grouse under the Endangered Species Act. The Obama administration did defer listing in favor of the BLM and Forest Service plans. Finally, the bill would forbid the withdrawal of 10 million acres from hard rock mining, as begun by the administration. House Natural Resources Committee Chairman Rob Bishop (R-Utah) is the chief sponsor. In another development, Rep. Liz Cheney (R-Wyo.) and 14 of her colleagues introduced legislation (HR 424) January 10 to delist the northern gray wolf in Wyoming under the Endangered Species Act. The wolf in Wyoming was originally delisted by the Fish and Wildlife Service (FWS) in August 2012, but a federal judge in September 2014 ordered it relisted.

Energy industry establishes new site. The Western Energy Alliance has launched a pro-development news site on energy and environmental issues in the West. The alliance was already a forceful advocate for the oil and gas industry on public lands. The new site, *Western Wire*, will provide "news, commentary and analysis on pro-growth, prod-development policies across the West," says the alliance. The alliance said community support for energy development doesn't receive coverage from the media, "So we decided to do something about it." The website is here: <http://westernwire.net>.

Notes: Federal Parks & Rec

NPCA objects to NPS hiring freeze. The National Parks Conservation Association (NPCA) said January 23 that President Trump's freeze on hiring new workers compounds an already serious understaffing of the National Park Service. The freeze, posted January 23, forbids the hiring of new employees by nonmilitary agencies, with limited exceptions. Said NPCA President Theresa Pierno, "Parks already have 10 percent fewer rangers and other staff compared to a few years ago. They cannot continue to be hampered by low staffing, and that's exactly what will happen with this hiring freeze." However, it is understood that the Trump administration nominee for secretary of Interior, Rep. Ryan Zinke (R-Mont.), intends to move department employees out of national and regional headquarters and into the field.

Trump exempts seasonals from freeze. The Trump administration January 31 amended its hiring freeze of January 23 to establish important exemptions, including National Park Service seasonal workers. The Office of Management and Budget and the U.S. Office of Personnel Management said in a memorandum, "Appointment of seasonal employees and short-term temporary employees necessary to meet traditionally recurring seasonal workloads, provided that the agency informs its OMB Resource Management Office in writing in advance of its hiring plans." The Park Service of course relies on thousands of seasonal employees in the busy summer months.

Report: FS ski areas lack money. The outdoor recreation industry is circulating a recent news article that holds that the White River National Forest in Colorado raises large amounts of money for the government but the forest get none of it back. And the article says Congress continues to reduce appropriations for the forests. In the report the *Aspen Times* said in

December that the forest in fiscal 2016 collected \$20 million in fees from 11 ski resorts there, and turned all the money over to the U.S. Treasury. Meanwhile, the forest's budget has been reduced and the number of workers managing ski resorts has decreased. The ski areas in the forest include well-known Aspen and Snowmass. The American Recreation Coalition says that the situation argues for a rewrite by Congress of the Federal Lands Recreation Enhancement Act. Such a rewrite could include a provision that would return ski resort fees to the collecting forest. The *Aspen Times* article is at:

<http://www.funoutdoors.com/node/view/3599>.

Alaska hunting rule targeted in House. Rep. Don Young (R-Alaska) introduced legislation (HJ Res 35) January 27 that would use a new Congressional procedure to revoke an Obama administration rule limiting hunting and fishing in national wildlife refuges in Alaska. The Young resolution would enable the House and Senate to use a Congressional Review Act to revoke the rule announced by the Fish and Wildlife Service on Aug. 3, 2016. The rule limits predator hunting of wolves and grizzly bears under state laws. The state filed a lawsuit against the rule on January 13. The House approved legislation (HR 21) January 4 that would allow Congress to bunch regulations under the Congressional Review Act, rather than move them singly.

Boxscore of Legislation

Fiscal year 2017 appropriations (until April 28)

HR 2028 (Simpson). President Obama signed into law December 10 as PL 114-254. Extends funding at fiscal 2016 levels through April 28.

Fiscal year 2017 appropriations (full year)

HR 5538 (Calvert), S 3068 (Murkowski). House approved July 14, 2016. Senate committee approved June 16, 2016. Both would increase wildfire, PILT appropriations. Critics say numerous riders cripple bills.

Rule reversals

HR 21 (Issa). House approved January 4. Would allow Congress to revoke groups of regulations at one time with majority vote (no Senate filibuster.) HR 5 (Goodlatte). House approved January 11. Would subject BLM and FS plans to major economic impact analysis.

(Specific rules) HJ Res 36 (Bishop), HJ Res 41 (Cheney), HJ Res 45 (Cramer), HJ Res 46 (Gosar), HJ Res 35 (Young), HJ Res 56 (Pearce), SJ Res 11 (Barrasso), SJ Res 15 (Murkowski), SJ Res 18 (Sullivan). The House may vote on the methane rule reversal on February 3. SJ Res 11 also would revoke the methane rule. HJ Res 41 and SJ Res 15 would revoke a BLM planning rule. HJ Res 45 would reverse an FWS oil and gas rule, HJ Res 46 would reverse an NPS oil and gas rule, HJ Res 35 and SJ Res 18 would reverse a FWS hunting rule in Alaska, and HJ Res 56 would revoke a BLM rule on oil and gas site security.

Federal land transfers

H Res 5 (McCarthy). House approved January 3. Would not require economic offsets if Congress tried to transfer federal lands to states, local governments or tribes.

HR 232 (Young), HR 621 (Chaffetz). Young introduced January 3. Chaffetz introduced January 24. Young allow states to acquire up to 2 million acres

of national forest. Chaffetz would expedite the sale of 3.3 million acres of excess BLM land.

National monument restrictions

S 33 (Murkowski), S 132 (Crapo). Murkowski introduced January 5. Crapo introduced January 12. Murkowski would require Congressional and state approval of new monuments. Crapo would require Congressional approval.

New national monuments

HR 360 (Grijalva). Grijalva introduced January 6. Would establish a Greater Grand Canyon Heritage National Monument.

Greater sage-grouse

HR 527 (Bishop). Bishop introduced January 13. Would largely revoke federal sage-grouse management policy and give the job to the states.

Wolf in Wyoming

HR 424 (Peterson, Cheney), S 164 (Johnson). Peterson introduced January 10, Johnson January 17. Would maintain the delisting of the gray wolf in Wyoming.

Critical minerals

HR 520 (Amodei). Amodei introduced January 13. Would have federal land managers establish time lines for acting on all mineral permits.

Arctic National Wildlife Refuge (development)

S 49 (Murkowski). Murkowski introduced January 5. Would open coastal plain to O&G development.

Land and Water Conservation Fund

HR 502 (Grijalva). Grijalva introduced January 12. Would make the program permanent.

Federal Parks & Rec

addendum to Public Lands News

January 6, 2017

- * Trump allies would eliminate LWCF*
- * Alexander revives talk of another PCAO*
- * Memorial Bridge repairs promoted, but*
- * Zinke survives Senate vote (see Public Lands News article)*
- * Early Hill action on land shifts (see Public Lands News article)*

Trump allies in budget plan would do away with LWCF

President Trump's nominee for secretary of Interior plus a bipartisan group of House and Senate members may favor the Land and Water Conservation Fund, but there are powerful interests that oppose it.

Exhibit One is the Heritage Foundation. Its budget blueprint being used by the Trump administration to prepare fiscal year 2017 spending recommendations would do away with LWCF, period.

In a report titled Blueprint for Reform the foundation says, "Eliminate the Land and Water Conservation Fund. Using earnings from offshore oil and gas leasing, the fund has been used to underwrite recreation areas and facilities. It is set to expire on September 30, 2018."

The foundation adds, "The federal estate is already too massive for the government to manage, and many recreation areas are underutilized." The foundation would have the program expire when its current authorization ends on Sept. 30, 2018.

But that is not where Trump's nominee for secretary of Interior, Rep. Ryan Zinke (R-Mont.), says he wants to go. When Sen. Maria Cantwell (D-Wash.) asked Zinke at his confirmation hearing January 17 if he supported a permanent LWCF, Zinke said, "I do. I think land and water conservation has been important to Montana, certainly in many states. I think we should look at it . . . Lastly, I do think the states and local communities should have a say where those funds go." The Senate Energy Committee held that hearing.

The administration intends to submit a budget, presumably a fiscal year 2017 appropriations request, to Congress in early March, according to press reports. How much of the request will address spending and how much of it will address policy is unclear, but policy and spending of course intertwine.

LWCF is receiving tentative bipartisan support in Congress. On January 12 Rep. Raúl Grijalva (D-Ariz.) and Rep. Patrick Meehan (R-Pa.) took a first step toward making LWCF permanent by introducing legislation (HR 502) to do so.

Legislation to make LWCF permanent almost made it over the finish line in December 2016 in an omnibus energy bill. But differences of opinion between the House and Senate on a host of provisions did the bill in.

The lead sponsor of the energy bill, Senate Energy Committee Chairman Lisa Murkowski (R-Alaska), has said she wants to renew her campaign to move the measure early in this Congress.

However, her counterpart as chairman of the House Natural Resources Committee, Rep. Rob Bishop (R-Utah), has been hesitant to accept a permanent LWCF.

Last summer he did introduce a "discussion draft" bill that would have extended LWCF for seven years and substantially realigned program priorities.

Bishop's draft would have slashed funding for the federal side of LWCF but given greater support to the state side. States traditionally receive a small fraction of the total LWCF pie; the draft Bishop bill would have guaranteed them 45 percent. In addition Bishop would have allocated five percent of LWCF to an urban recreation fund, sort of a follow-on to an Urban Parks and Recreation Recovery program. He would have allocated just 3.5 percent to federal land acquisition.

The Grijalva bill is simpler. It simply makes LWCF permanent and allocates at least 1.5 percent of the annual LWCF appropriation for sportsmen's access to public lands.

In an ideal world LWCF advocates would prefer legislation that Sen. Maria Cantwell (D-Wash.) introduced in the last Congress that would not only have made LWCF permanent, but also have guaranteed \$900 million per year for the program without further appropriations. Cantwell is the ranking Democrat on the Senate Energy Committee.

Alexander revives talk of rec commission, is criticism

The chairman of the last national blue ribbon commission on outdoor recreation, Sen. Lamar Alexander (R-Tenn.), is calling for a new national commission.

At the January 17 confirmation hearing of the Senate Energy Committee for Rep. Ryan Zinke (R-Mont.) as secretary of Interior Alexander told the nominee, "I think you're in a wonderful position to do a follow-up to the Commission on Americans Outdoors. This is the 30th anniversary of that report; a generation has passed and it's time for the next look."

Alexander chaired that 1986 President's Commission on America's Outdoors (PCAO) when he was governor of Tennessee. And, he has off and on called for a renewal of the commission.

For instance shortly after the 20th anniversary of PCAO in March 29, 2007, Alexander said on the Senate floor, "It would be an opportunity to look ahead for another generation and tell our country what we need to do to create places for us to enjoy the outdoors in appropriate ways, an opportunity to create a new conservation agenda."

When he renewed that pitch last month Zinke said, ""We have to look at new ways of incentivizing younger Millennials to experience the parks, to experience the outdoors, to teach them the value of our public lands . . . In many cases, I would argue it's better than being in front of a TV, watching video games."

When Alexander chaired PCAO in the mid 1980s the commission recommended dozens of major strategies to revive park and rec programs. Perhaps most noteworthy the commission recommended in 1987 a \$1 billion trust fund to guarantee money for the Land and Water Conservation Fund.

However, in the last go-round the commission didn't file a final report because a private property rights groups the American Land Rights Association (ALRA) - brought a lawsuit against the commission for violating the Federal Advisory Committee Act.

ALRA President Chuck Cushman said this week, "If they come out with a new commission, we'll be on it like stink on a pig, and you can quote me on it."

Cushman complained that the first PCAO placed too much emphasis on acquiring land in the West and not enough on recreation where people lived in cities and suburbs. And he would anticipate a similar emphasis in a new commission.

"Go back and look at the President's Commission on Americans Outdoors," he said. "They were bound and determined to buy land far from where people live. People want to recreate near home."

The Obama administration put together its own recreation initiative called America's Great Outdoors, with a seminal report published on Feb. 16, 2011. It recommended an all-of-the-above approach to outdoor policy, beginning with full funding for the Land and Water Conservation Fund and the protection of conservation lands in general.

Although no PCAO report was codified, the commission's recommendations did lead to substantial appropriations for the Land and Water Conservation Fund, revisions to federal recreation fee laws, a Recreational Trails Program and a Scenic Byways program.

Memorial Bridge repairs promoted, but NPS irks Trump

Prominent among the projects bruited about as candidates for a mammoth Trump administration infrastructure program is a \$250 million rehabilitation of the Memorial Bridge in Washington, D.C., by the Park Service. But there may be complications.

On the plus side the Trump transition team last month included the Memorial Bridge in a sample list of 50 projects around the country that might be financed by a trillion-dollar infrastructure plan. The team supplied the sample list to the National Governors Association and asked for recommendations from the governors.

Also on the plus side Virginia Sens. Tim Kaine and Mark Warner, both Democrats, asked the Trump administration last month to make repairs to Arlington Memorial Bridge a top priority.

Finally, the House Transportation Committee February 1 heard five national leaders describe a pressing need for big-time infrastructure spending around the country.

The National Park Service and other federal land management agencies with their multi-billion dollar maintenance backlogs would be prime candidates for assistance, with the Memorial Bridge a prime example.

Complicating matters is President Trump's anger at the Park Service for posting photographs of the crowd at his swearing-in ceremony side-by-side with far larger crowds for President Obama's first inauguration.

Trump reportedly called acting NPS Director Michael T. Reynolds January 21 the day after the inauguration and asked him to release photographs showing larger crowds for his inauguration.

Whether Trump will take out his anger about the inauguration photographs on the Park Service and its budget remains to be seen. On the other hand his administration says it is committed to the big infrastructure program.

Already on the books is a five-year surface transportation law (fiscal 2016 through fiscal 2020) that includes more than \$800 million per year for a

block of programs related to the outdoors, including a Recreational Trails Program.

In addition the law (PL 14-94 of Dec. 4, 2015), called the Fixing America's Surface Transportation (FAST) Act, sets aside \$335 million in fiscal 2016 for federal land roads, with \$268 million of that going to the National Park Service. By fiscal 2020 the federal lands allocation would increase to \$375 million and the NPS share \$300 million. In addition the bill establishes a Federal Lands Access Program for major road projects beginning at \$250 million in fiscal 2016 and growing to \$270 million in fiscal 2020.

But other than the federal land roads money the FAST Act doesn't come close to paying for the Park Service's \$12.5 billion maintenance backlog, and similar backlogs for other federal land management agencies.

At his confirmation hearing by the Senate Energy Committee January 17 the Trump administration's nominee for secretary of Interior, Rep. Ryan Zinke (R-Mont.), called the Park Service maintenance backlog one of his top three priorities. The committee approved Zinke's nomination January 31.

He told the senators, "The President-elect is committed to a jobs and infrastructure bill, and I am going to need your help in making sure that bill includes shoring up our Nations treasures."

National Governors Association: As a first step in an infrastructure program the Trump transition team in December submitted a sample list of possible major infrastructure projects. The Washington Post is making the list available at: <http://apps.washingtonpost.com/g/documents/politics/read-the-list-of-projects-that-could-be-funded-by-a-trump-infrastructure-plan/2304/>.

At the same time the transition team asked the governors for their recommendations of five projects per state and most governors have reportedly responded.

Virginia senators: Sens. Warner and Kaine on January 17 asked Zinke and Elaine Chao, nominee for secretary of Transportation, to come up with money to repair the Arlington Memorial Bridge, which leads from the Lincoln Memorial to Arlington National Cemetery.

Warner and Kaine were instrumental in securing an extra \$90 million supplied by the FAST Act in July of 2016, but that is still \$160 million short of the \$250 million needed to avoid a closure of the bridge, which is also used as a popular commuter route.

"Without additional funding, however, Memorial Bridge will be forced to spend millions of dollars in the coming years for emergency repairs and will still face permanent closure if full rehabilitation is not achieved. For these reasons, we strongly urge that you, if confirmed, make fully rehabilitating Memorial Bridge a top priority," the senators wrote. "This iconic structure remains in danger of falling into disrepair without significant additional investment."

House hearing: The House Transportation Committee has for decades produced surface transportation legislation that benefits a half-dozen park

and recreation programs, including Park Service roads. The FAST Act is a good example.

At the February 1 hearing the committee took testimony from Frederick W. Smith, chairman of the FedEx Corporation; David W. MacLennan, chairman of Cargill, Inc.; Ludwig Willisch, president and Chief Executive Officer of BMW of North America; Mary V. Andringa, Chair of the Vermeer Corp.; and Richard L. Trumka, president of the AFL-CIO.