

From: Merrill, Adam
Sent: 2017-12-15T09:06:02-05:00
Importance: Normal
Subject: Fwd: Public Lands News: BLM move West boosted; Grand Canyon withdrawal upheld; BLM defers methane rule
Received: 2017-12-15T09:06:52-05:00
[PLN2417Dec15.pdf](#)
[P2417Dec15.doc](#)

----- Forwarded message -----

From: **Public Lands News** <james@publiclandnewsletter.com>
Date: Fri, Dec 15, 2017 at 6:55 AM
Subject: Public Lands News: BLM move West boosted; Grand Canyon withdrawal upheld; BLM defers methane rule
To: james@publiclandnewsletter.com

Dear Public Lands News Subscriber:

December 15, 2017: Attached is the current issue of the newsletter Public Lands News (Volume 42 Number 24), in .doc format and in PDF format. Below are the headlines. We thank you for reading Public Lands News.

The Editors

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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>.

Resource Public Lands News
Volume 42 Number 24
December 15, 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-
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HOLIDAY PUBLISHING SCHEDULE FOR PUBLIC LANDS NEWS

Public Lands News will not be published over the holidays so that we may take a brief vacation. The next issue of Public Lands News, Volume 43 Number 1, will be published January 5, 2018. If news breaks over the holidays, we will E-mail you a bulletin.

Westerners back Zinke notion of moving BLM HQ to West

The drumbeats in Congress for the move of BLM headquarters to the West are beating louder and louder.

At a House Natural Resources Committee hearing December 7 on a possible reorganization of the Interior Department chairman Rob Bishop (R-Utah) endorsed the idea of such a move.

"We need to restore the trust between people, the Administration and the DoI by giving more authority and flexibility to the field level," he said.

More to the point Bishop released a letter he and five of his subcommittee chairmen sent to President Trump recommending the transfer of Interior Department personnel to the field.

"Any thoughtful DOI reorganization should give serious consideration to relocating select agencies away from Washington, D.C. and closer to the American people they were created to serve," the House Republicans wrote. "Simply put, federal employees should know and live around the people, lands, and economies they regulate. Relocation, coupled with devolving decision-making authority to local federal officials, will go a long way towards restoring balance to the partnership between the states and federal government."

Secretary of Interior Ryan Zinke has made no secret about his intention to attempt to move agency headquarters to the field, particularly BLM.

In a July meeting with U.S. Geological Survey (USGS) executives Zinke said the transfer would be part of his plan to shift personnel from Washington and regional headquarters to the front lines.

In addition Zinke told the USGS bosses he intends to combine management of federal lands via inter-agency joint management areas (JMAAs), with JMA leadership shifting among agencies.

In an interview with the *Salt Lake Tribune* last month Zinke repeated his interest in moving BLM's headquarters.

The transfer of BLM to the West is part of a quantum personnel shift within the Interior Department envisioned by Zinke. His fiscal year 2018 Interior Department budget would reduce department employee levels by six percent, from 64,000 to 60,000 full-time equivalents. For BLM alone the budget would trim 1,062 positions, reducing the total from 9,411 to 8,349.

At the December 7 hearing the Western Energy Alliance endorsed a transfer of BLM's headquarters, but worried about combined management JMAAs.

"The Western Energy Alliance strongly supports efforts to move certain bureaus of the department out West, especially (BLM)," said alliance president Kathleen Sgamma. "However, we do have some concerns with some DoI reorganization issues that are being floated, namely regions based on ecosystems or watersheds, and a rotating or multi-bureau, integrated command structure."

There is plenty of more pointed push back. At the House hearing Denis Galvin, on behalf of the Coalition to Protect America's National Parks, first complained that the Zinke plan is being prepared in secret. He did acknowledge his coalition had pieced together some aspects of the plan.

Noting the plan is based on personnel reductions and field transfers Galvin, a former deputy Park Service director, said, "With this current effort, we wonder what the purpose of the reorganization is and what its goals are. We also want to know what analysis went into developing this reorganizational plan. We understand the Park Service was not consulted to determine the effects the reorganization would have on the national parks. This leads us to ask who developed the plan and their experience with national parks and the issues affecting the agency."

In addition an alliance of BLM retirees, the Public Lands Foundation, said the BLM headquarters should remain in Washington, D.C. The Public Lands Foundation said BLM staff needs to be in Washington to meet with Congress and other players.

Said foundation president Jesse J. Juen in a June 14 letter to Zinke, "This includes attending impromptu yet critical meetings requiring face-to-face discussions and learning the process of how to be agile, flexible and handle difficult, complex and political discussions and situations related to the day-to-day demands of any administration, Congress, agency, community and partner."

The House Republican letter to President Trump is here:
https://naturalresources.house.gov/uploadedfiles/2017-11-16_cnr_to_president_trump_re_doi_reorg.pdf.

Policy makers still lacking: Meanwhile, the Interior Department continues to operate without many of its top policy makers, beyond Zinke and his deputy Dave Bernhardt. The department did gain a crucial new official December 7 when the Senate confirmed Joseph Balash as assistant secretary of Interior for Land and Minerals Management. The vote was 61-to-38.

Despite the substantial vote for Balash his nomination was not without rancor. Ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.) faulted Balash's record as director of the Alaska Department of Natural Resources.

She objected particularly to a state claim filed on his watch for 20,000 acres of the Alaska National Wildlife Refuge so the lands could be leased for oil and gas development. Under his new position, said Cantwell, Balash could be in the position of ruling on that claim. "For that reason, I am not supporting Mr. Balash's nomination to this position today," she said.

But Sen. Dan Sullivan (R-Alaska), for whom Balash served as chief of staff, was all in. "Joe understands how to build consensus, how to navigate State and Federal lands issues and interests, and, importantly, how to work to responsibly develop our resources and grow our economy, while always understanding that our lands sustain us and that stringent environmental safeguards are absolutely necessary for all Americans," he said.

Still pending on the Senate floor are the nominations of Ryan Nelson as Interior Department Solicitor and Susan Combs as assistant secretary of Interior for Policy.

On the agency front:

BLM: Last month Zinke chose an advocate of the disposal of public lands, Brian Steed, as interim BLM director. Steed last served as deputy director of BLM for programs and before that as chief of staff for Rep. Chris Stewart (R-Utah). Steed takes over for former BLM Eastern States Director Michael Nedd, who moves to a position as acting deputy director for operations.

One rumor anticipates the nomination of Wyoming attorney Karen Budd-Falen as BLM director. She is a veteran public lands attorney who has worked in the Interior Department and for the law firm Mountain States Legal Foundation, as well as her own law firm.

Budd-Falen confirmed to us this week she is in the running. "I can confirm that I am under consideration, but it hasn't gone any farther than that," she said. "I have no idea when the Administration will be announcing the nominee, so can't help you with that question."

NPS: Even before former director Jonathan B. Jarvis left office in January the Park Service had made it clear that his assistant Mike Reynolds would serve as acting director in the early days of the Trump administration. A few names of possible nominees as director have been bandied about including David Mihalic, former superintendent of Yosemite National Park, and Rob Wallace, former Hill staffer. Wallace once served as assistant director of NPS and most recently has worked for i2Capital, an advisory company.

FWS: Greg Sheehan has been serving as acting director, succeeding former director Dan Ashe. Sheehan has served for 25 years in the Utah Division of Wildlife Resources - the last five as the state agency's director.

FOREST SERVICE: The Forest Service is doing better because former chief Tom Tidwell, who had been in office since 2009, continued in that position until September 1, when service veteran Tony Tooke took over. The chief does not require Senate confirmation.

For Under Secretary of Agriculture, former Forest Service Associate Chief Dan Jiron, has been serving as acting since June 21.

Court upholds Grand Canyon withdrawal, but okays VER

In one of two unanimous decisions December 12 a federal appeals court upheld an Obama administration withdrawal from uranium mining of 1 million acres of public lands near Grand Canyon National Park.

In a second decision the same Ninth U.S. Circuit Court of Appeals panel held that the uranium mining company Energy Fuels Resources, Inc. holds a valid existing right (VER) to mine within the withdrawn area. That doesn't mean the company can immediately begin mining; it would still have to obtain permits and licenses before mining could begin.

Of note the Department of Agriculture recommended in October that President Trump cancel the 1 million-acre withdrawal of Jan. 21, 2012, that includes Kaibab National Forest land.

The appeals court decision upholding the withdrawal drew praise from Rep. Raúl Grijalva (D-Ariz.) He has introduced legislation (HR 360) that would effectively make the withdrawal permanent and establish a Greater Grand Canyon Heritage National Monument in Arizona.

"Special interests who refuse to leave the Grand Canyon alone need to sit down and read this ruling carefully," Grijalva said.

Environmentalists also applauded the broad withdrawal decision but were dismayed by the second decision backing VER for Energy Fuels. Said Sandy Bahr, Sierra Club's Grand Canyon chapter director, "We are disappointed that the court did not uphold the challenge to Canyon Mine, however, and we will continue to do all we can to ensure permanent protection of these lands."

On the carpet in both decisions was then Secretary of Interior Ken Salazar's withdrawal of 1 million-plus acres from uranium mining on public lands near Grand Canyon National Park. The withdrawal applied to 350,000 acres of national forest and 650,000 acres of BLM land, but Salazar said VER would be honored.

In its lawsuit against the withdrawal the National Mining Association argued that Salazar's decision was inadequate for a number of reasons, including arbitrary boundaries, a flawed assessment of economic impacts, and omission of important information from an EIS.

But, referring to itself as the "panel" the three judges said, "The panel held that consonant with the multiuse principle, the Secretary engaged in a careful and reasoned balancing of the potential economic benefits of additional mining against the possible risks of environmental and cultural resources. Finally, the panel held that the final environmental impact statement took existing legal regimes into account but reasonably concluded that they were inadequate to meet the purposes of the withdrawal."

In the other lawsuit the Havasupai Tribe and environmental groups argued that a Forest Service decision in a "Mineral Report" holding that Energy Fuels Resources held a valid existing right to minerals was fatally flawed. Among other things they said the report didn't include an update of environmental impacts since an EIS was prepared in 1988.

The court disagreed, again referring to itself as the panel. "The panel further held that the original approval of the mining plan of operations was a major federal action, that action was complete when the plan was approved, and resumed operation of Canyon Mine did not require any additional government action," held the court. "The panel concluded that the environmental impact statement prepared in 1988 satisfied NEPA."

The court also said that the Forest Service decision did not constitute approval of mining activities. "The panel agreed with the district court that the Mineral Report did not permit, license, or approve resumed operations at Canyon Mine, it simply acknowledged the continued vitality of the original approval of the plan of operations," said the court.

At a December 12 hearing of the House subcommittee on Energy and Mineral Resources on the scarcity of domestic sources of critical minerals the National Mining Association said the Grand Canyon withdrawal was excessive.

Said Katie Sweeney, senior vice president of legal affairs for the National Mining Association, "The 2012 withdrawal was purportedly intended to protect the Grand Canyon National Park, obviously a national treasure that merits protection. However, the 1.2 million acres of federal land included in the GCNP were already protected from the impacts of mining as those lands were withdrawn from the operation of the Mining Law when the park was created. The park as created additionally included a built-in buffer zone to protect park resources from activities taking place outside the park boundaries."

In a separate withdrawal dispute on October 11 the Interior Department canceled a 10 million-acre Obama administration withdrawal to protect sage-grouse habitat in the West. That effectively allowed an interim withdrawal to expire on Sept. 24, 2017.

The Ninth Circuit decision upholding Salazar's withdrawal is here:
<http://cdn.ca9.uscourts.gov/datastore/opinions/2017/12/12/14-17350.pdf>.

The Ninth Circuit decision upholding the Forest Service valid existing rights determination is here:
<http://cdn.ca9.uscourts.gov/datastore/opinions/2017/12/12/15-15754.pdf>.

Administration postpones much of Obama BLM methane rule

BLM finally succeeded December 8 in delaying portions of an Obama administration methane emissions rule, until January 17, 2019. An earlier attempt by BLM was rejected by a court for failure to seek public input first.

The BLM action does allow four areas of the Obama rule to continue in force - development of a waste minimization plan, royalty free use of production, definitions of unavoidably lost and avoidably lost, limits on drilling and flaring, and downhole maintenance.

But the BLM delay order, effective Jan. 8, 2018, does give the bureau time to revise (or eliminate) other provisions of the Nov. 16, 2016, Obama rule governing such things as gas capture, reporting volumes of gas vented, well drilling, equipment requirements and operator responsibility.

Said Brian Steed, BLM deputy director for Policy and Programs, "By holding off on certain requirements, the BLM now has sufficient time to review the 2016 final rule while avoiding any compliance costs on industry that may not be needed after the review."

The Western Energy Alliance and the Independent Petroleum Association of America (IPAA), which have filed a lawsuit against the Obama regulation, are all for the postponement.

"We're pleased (BLM) suspended an eleventh-hour Obama-era regulation aimed at shutting in marginal-producing wells, putting independent oil and gas producers, their livelihoods, and the considerable federal royalties generated from their businesses at jeopardy," said Barry Russell, president of IPAA.

As it did in its lawsuit against the Obama rule, the Western Energy Alliance questioned BLM's authority to write the rule in the first place, contending that Congress reserved the powers to EPA and the states.

Said Kathleen Sgamma, president of Western Energy Alliance, "In suspending the rule, BLM has recognizes that it does not have the statutory authority claimed by the Obama Administration. The notice even quotes the federal judge's clear statement earlier this year that BLM attempted to usurp the Clean Air Act authority of the states and the Environmental Protection Agency."

The Western Organization of Resource Councils, which represents ranchers and environmentalists, is not pleased. "With this suspension, American citizens will lose revenue from wasted, publicly-owned gas that could be easily captured and will be exposed to greater emissions, including BTEX (benzene, toluene, ethylbenzene and xylene) carcinogens. Industry is the big financial winner," said Rodger Steen, a council member.

The Obama administration rule and the Republican efforts to revoke it have trod a tortured path, legally and politically.

On May 10 in a stunning reversal for the Trump administration the Senate rejected by a narrow 51-to-49 vote a resolution (HJ Res 36) that would have repealed the rule. The House had approved the resolution on February 23 by a 221-to-191 vote and, if it had come to President Trump, he was sure to sign it.

On the legal front on June 27 in response to the industry lawsuit arguing that BLM didn't have authority to issue the original Obama rule U.S. District Court Judge Scott W. Skavdahl in Wyoming refused to issue an injunction because many of the provisions weren't imminent. But he did cast doubt on BLM's jurisdiction over methane emissions.

In a separate lawsuit brought by the States of California and New Mexico against an initial BLM attempt of June 15 to summarily delay the Obama rule, a federal judge said BLM had not followed Administrative Procedures Act requirements to take public input before issuing a rule.

U.S. District Court for Northern California Judge Elizabeth Laporte on October 5 held that BLM's initial delay rule was illegal, touching off this most recent BLM attempt to postpone the Obama rule.

This time BLM on October 5 *proposed* a suspension of the Obama methane emissions rule until January 17, 2019, took public comments on the proposal and on December 8 issued the final rule.

Lots of lawsuits against Utah monument revisions

Just as soon as President Trump signed proclamations December 4 substantially reducing the size of the Bears Ears and Grand Staircase-Escalante National Monuments in Utah the lawsuits flew.

This time the litigation came not only from environmentalists but also from Native Americans and the outdoor industry. They all argued that President Trump does not have authority to modify or revoke national monuments - only Congress does.

The other shoe fell the next day on December 5 when Secretary of the Interior Ryan Zinke formally released his widely-pirated report to President Trump on a review of more than two-dozen existing monuments.

As has been previously reported, Zinke in his review recommended the shrinkage of the Cascade-Siskiyou National Monument in Oregon and Gold Butte National Monument in Nevada, as well as Bears Ears and Grand Staircase. In addition the secretary recommended an increase in consumptive uses in 10 monuments. President Trump has yet to act on those other recommendations.

The Interior Department addressed the charge that the Trump administration's monuments review is a proxy for the eventual transfer of large tracts of public lands to states for commercial uses.

Said the department in formally releasing Zinke's report that was leaked to the public in September, "The Secretary adamantly opposes the wholesale sale or transfer of public lands. The Antiquities Act only allows federal land to be reserved as a national monument. Therefore, if any monument is reduced, the land would remain federally owned and would be managed by the appropriate federal land management agency, such as the BLM, U.S. Forest Service, U.S. Fish and Wildlife Service, or the National Park Service."

On signing the Bears Ears and Grand Staircase proclamations at an event in Salt Lake City Trump made the same arguments that Utah officials have long made about past monument designations - they far exceed in scope the authority vested in Presidents by the Antiquities Act of 1906.

"As many of you know, past administrations have severely abused the purpose, spirit, and intent of a century-old law known as the Antiquities Act," he said. "This law requires that only the smallest necessary area be set aside for special protection as national monuments. Unfortunately, previous administrations have ignored the standard and used the law to lock up hundreds of millions of acres of land and water under strict government control."

Trump also said the designations have not reflected the wishes of local people. "These abuses of the Antiquities Act give enormous power to faraway bureaucrats at the expense of the people who actually live here, work here, and make this place their home," he said. "This is where they raise their children. This is the place they love."

The President concluded, "I don't think it is controversial, actually. I think it's so sensible."

Concurrent with the proclamations the White House said, "Monument designations have greatly restricted multiple-uses like grazing, timber harvest, fishing, resource development, infrastructure upgrades, and motorized recreation."

Although the administration believes its Bears Ears and Grand Staircase modifications have the force of law, Utah House members introduced legislation December 4 (HR 4532) and December 6 (HR 4558) to codify the new boundaries of the two areas. The committee has scheduled a hearing on the Grand Staircase bill for December 14.

Said House Natural Resources Committee Chairman Rob Bishop (R-Utah) of the two bills, "Now is the time for Congress to take the next step forward. This legislation will set in motion what we need to do to bring finality to the situation."

At the same time the President issued the two Utah monument proclamations the administration attempted to mollify critics who charge Trump plans to transfer large tracts of public lands to consumptive users. "The Trump Administration is not going to sell public lands wholesale," the White House said.

Bishop, perhaps the lead Congressional objector to what he calls monument abuses, backed Trump. "I applaud President Trump for recognizing the limitations of the law," he said. "Americans of all political stripes should commend him for reversing prior administrations' abuses of the Antiquities Act and instead exercising his powers within the scope of authority granted by Congress."

He added, "These new proclamations are a first step towards protecting identified antiquities without disenfranchising the local people who work and manage these areas. The next steps will be to move beyond symbolic gestures of protection and create substantive protections and enforcement and codify in law a meaningful management role for local governments, tribes and other stakeholders."

To that end Bishop's committee on October 11 approved his bill (HR 3990) to set new conditions on protected area designations. The vote was 23-to-17. HR 3990 is different from HR 4532 and HR 4558, which address just Bears Ears and Grand Staircase, because it addresses all monument designations.

The broader Bishop bill would forbid the designation of any national monument larger than 85,000 acres by a President, except in an emergency, and that emergency designation could last for only one year.

In addition HR 3990 would give Congressional endorsement to any attempts by an administration to reduce existing national monuments larger than 85,000 acres. The latter provision would authorize President Trump to reduce the size of large national monuments in the West, including Bears Ears and Grand Staircase.

The livestock industry said Trump's actions were long overdue. "We are grateful that today's action will allow ranchers to resume their role as responsible stewards of the land and drivers of rural economies," said Craig Uden, president of the National Cattlemen's Beef Association. "Going forward, it is critical that we reform the Antiquities Act to ensure that those whose livelihoods and communities depend on the land have a voice in federal land management decisions."

The Outdoor Industry Association countered that the proclamations would harm western economies. "Outdoor Industry Association and the outdoor industry view the announcement by President Trump as detrimental to the \$887 billion outdoor recreation economy and the 7.6 million American jobs it supports," the association said in a statement. "This decision is part of a long pattern of attacks against public lands and will harm hundreds of local Utah communities and businesses, will stifle millions of dollars in annual economic activity and threatens thousands of jobs in the region."

Trump issued two proclamations on December 4 shrinking the two Utah national monuments, effective February 4. He reduced the size of Bears Ears from 1.35 million acres to 228,000 acres and split the remaining land into two monuments - Shash Jáa, and Indian Creek. And he reduced the size of Grand Staircase from 1.9 million acres to 1,006,341 acres.

Zinke in his memorandum of December 5 *proposed* that both the President in proclamations and land managers in management plans "protect objects and prioritize public access; infrastructure upgrades, repair, and maintenance; traditional use; tribal cultural use; and hunting and fishing rights." The key phrase there is traditional use.

Trump launched his monuments initiative April 26 when he signed an executive order directing the Interior Department to review the designations of national monuments of more than 100,000 acres made since 1996, plus a Katahdin Woods and Waters National Monument in Maine. The Zinke review looked at 27 monuments.

Legal arguments: Even before the ink was dry on Trump's two proclamations the Navajo Nation filed suit in U.S. District Court for the District of Columbia against the Bears Ears proclamation; the Earthjustice environmental law firm filed suit in the same court against the Grand Staircase proclamation; and the Patagonia outdoor goods company said it would file a suit.

On December 7 a broad coalition of environmentalists filed lawsuits against the Bears Ears proclamation. The environmentalist and Navajo suits were filed in U.S. District Court in the District of Columbia.

All argued - or will argue - that President Trump does not have authority under the Antiquities Act to modify national monuments. They contend the act only allows a President to *designate* national monuments.

The White House rejoined that Presidents have often reduced monument boundaries. "Presidents have modified the boundaries to remove lands from monuments 18 times in the past," said the White House. "The most significant reduction occurred in 1915 when President Woodrow Wilson halved Mount Olympus National Monument, which is now a National Park."

That interpretation of the law was disputed by an alliance of 121 law professors in a July 6 letter to Zinke. They argued that the legal situation has changed since 1915 because the Federal Land Policy and Management Act of 1976 (FLPMA) codified Congressional intent to revise monument reversal authority.

"Congress confirmed this understanding of the Antiquities Act when it enacted (FLPMA), which included provisions governing modification of withdrawals of federal lands," said the professors. "Those provisions indicate that the Executive Branch may not 'modify or revoke any withdrawal creating national monuments.' And the legislative history of FLPMA demonstrates that Congress understood itself to have 'specifically reserve[d] to Congress the authority to modify and revoke withdrawals for national monuments created under the Antiquities Act.'"

That last quote was extracted from a House report on FLPMA (HR Report 94-1163 of May 15, 1976).

The Indian lawsuit was filed by the Native American Rights Fund on behalf of five tribes – Hopi Tribe, Navajo Nation, Pueblo of Zuni, Ute Indian Tribe, and Ute Mountain Ute Tribe. “Bears Ears is one of the most important places for Indian Country, and that is why Indian Country came together to advocate for this important place. Trump’s attack on Bears Ears is an attack on all of us, and we will fight to protect it,” said the fund’s attorney Matthew Campbell.

The environmentalist lawsuits were filed by Earthjustice on behalf of national and local environmental groups, led by The Wilderness Society and the Natural Resources Defense Council.

White House materials are contained in several separate postings at: <https://www.whitehouse.gov/blog>.

Secretary of Zinke’s report and backup are available at: <https://www.doi.gov/news>.

The Navajo Bears Ears lawsuit is available at: [https://www.scribd.com/document/366342903/Doc-1-Complaint-00184691x9D7F5#from embed](https://www.scribd.com/document/366342903/Doc-1-Complaint-00184691x9D7F5#from_embed).

The environmentalist Grand Staircase lawsuit is available at: <https://earthjustice.org/sites/default/files/files/TWS-v.-Trump.pdf>.

The environmentalist Bears Ears lawsuit is available at: <https://earthjustice.org/sites/default/files/files/Bears%20Ears%20complaint.pdf>.

Complications face ANWR leasing in House-Senate confab

A House-Senate conference committee is widely expected to accept shortly a Senate-passed version of legislation to open the coastal plain of the Arctic National Wildlife Refuge (ANWR) to oil and gas leasing. That would insure the provision would be included in a final, jumbo tax bill (HR 1). But it is not a given.

HR 1 is now in the conference to resolve differences between House- and Senate-passed versions of the tax legislation. Republican leaders hope to complete HR 1 by December 22 before the Christmas holiday begins.

The conferees on December 13 met in open session amid word that they had reached agreement on top-end numbers, such as income tax rates. But they apparently hadn’t reached agreement on other details, such as ANWR.

At the December 13 meeting provision sponsor Sen. Lisa Murkowski (R-Alaska) made a pitch for it. “Alaskans have fought for a long time to authorize a program for responsible energy development in the non-wilderness 1002 Area,” she said. “It will provide economic growth and prosperity for our state and the nation.”

The **first complication** dealing with environmental reviews sprung up in the Senate. An original version of the ANWR language, as approved by the Senate Energy Committee, said BLM would conduct environmental reviews “in accordance with” rules governing the National Petroleum Reserve Alaska.

But that would have violated Senate procedural requirements because the Senate Environment and Public Works Committee has jurisdiction over environmental reviews. So Murkowski revised the language to say that the environmental review will be "similar" to NPRA rules.

Because that change could require a brand new EIS and delay bonus bids and royalties from leasing, the Congressional Budget Office (CBO) estimated that the provision would bring in \$910 million, rather than the \$1.092 billion CBO originally estimated. So the Senate added the sale of some oil from a strategic reserve to make up the difference.

In addition, that apparently minor change, said Sen. Tom Carper (D-Del.), could have enormous consequences that he liked by insuring that BLM follows "NEPA, the Endangered Species Act, the Marine Mammal Protection Act, the Alaska National Interest Lands Conservation Act, or any other environmental or land management statute."

The Senate went on to vote to include the ANWR provision in HR 1 by a 52-to-48 vote and to approve HR 1 itself by a 51-to-49 vote.

The **second complication** sprung up December 6 when BLM offered 10 million acres for oil and gas lease sale in the National Petroleum Reserve Alaska (NPRA) adjacent to ANWR and received minuscule bids. House and Senate Democrats pounced on the results to argue that the CBO's (and the Senate's) estimates of revenues from the ANWR provision are wildly exaggerated.

So House Natural Resources Committee ranking Democrat Raúl M. Grijalva (D-Ariz.) wrote CBO December 7 and asked for a recount. "As the [Arctic Refuge] provisions are currently under consideration as part of the conference for H.R. 1 we respectfully request that CBO immediately reassess the revenue projections for oil and gas leasing in ANWR based on information gained from yesterday's lease sale," Grijalva and two other Democrats wrote CBO Director Keith Hall.

In the NPRA sale BLM received bids on only 80,000 acres for a total of \$1.16 million. (*See related article page 16.*)

The third complication sprung up when 11 House Republicans November 30 said they oppose inclusion of the ANWR provision in HR 1.

The Republican rebels, led by Reps. Brian Fitzpatrick (R-Pa.) and Dave Reichert (R-Wash.), wrote the House leadership and said, "Further, the resources beneath the Refuge's Coastal Plain simply are not necessary for our nation's energy independence. If proven, the estimated reserves in this region would represent a small percentage of the amount of oil produced worldwide. Moreover, the likelihood that lawsuits would accompany any development is high."

But Murkowski, who also chairs the Senate Energy Committee, took a victory lap after a decade of fighting for leasing in the 1.6 million-acre coastal plain. "Opening the 1002 Area and tax reform both stand on their own, but combining them into the same bill, and then successfully passing that bill, makes this a great day to be an Alaskan," she said on initial Senate passage of HR 1.

Under a Republican budget game plan, the energy committee bill has been attached to the overall Republican tax reform plan, HR 1. As such the ANWR provision was not subject to a filibuster, so Murkowski only needed the 50 votes on the Senate floor. The only Republican defector was Sen. Susan Collins (R-Me.) and the only Democratic defector was Sen. Joe Manchin (D-W.Va.)

The ANWR provision anticipates raising just over \$900 million from two lease sales - one within four years of at least 400,000 acres from the 1.5 million-acre coastal plain and the other within 10 years.

In an original report the Congressional Budget Office said the bill would meet the Senate budget instruction. "CBO estimates that gross proceeds from bonus bids paid for the right to develop leases in ANWR would total \$2.2 billion over the 2018-2027 period," said the report. "That estimate is based on historical information about oil and gas leasing in the United States and on information from DOI, EIA, and individuals working in the oil and gas industry about factors that affect the amounts that companies are willing to pay to acquire oil and gas leases." Half the \$2.2 billion would go to the federal treasury and half to Alaska.

But CBO altered that opinion after Murkowski revised the bill to assert environmental reviews would be "similar to" National Petroleum Reserve Alaska rules and not "in accordance with" those rules. As revised ANWR leasing would bring in \$1.8 billion, with half going to the feds. HR 1 brings the total revenues up to \$1.1 billion by authorizing the sale of oil from the nation's Strategic Petroleum Reserve.

The Trump administration is an enthusiastic supporter of ANWR leasing. As *PLN* has reported the Interior Department plans to write a regulation that would lead to oil and gas *exploration* within the coastal plain of ANWR.

In the Interior Department campaign for ANWR development a *memo* from Acting Fish and Wildlife Service (FWS) Director James W. Kurth tells the Alaska regional director to prepare a rule that, when completed, "will allow for applicants to [submit] requests for approval of new exploration plans."

FWS in the 1980s first authorized exploration in ANWR over an 18-month period to help estimate oil and gas reserves in the 1.5 million-acre coastal plain. Environmentalists and their supporters, including the Obama administration, have argued that the 1980 Alaska National Interest Lands Conservation Act (ANILCA) only authorized one exploration program.

Only Congress is allowed to authorize oil and gas *development* under ANILCA.

Democratic critics fired their best shot against the ANWR provision, including a letter from numerous scientists, such as former officials from Alaska's Department of Fish & Game, FWS, and the U.S. Geological Survey.

They dismissed Murkowski's argument that the footprint of development would be limited to 2,000 acres. "Since the effects of industrial activities, starting with seismic surveys, are not limited to the footprint of a structure or to its immediate vicinity, it is highly likely that such activities would result in significant impacts on a variety of wildlife in the refuge's narrow coastal plain," the officials told Murkowski and ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.).

But Murkowski said the environment would be protected. "We authorize an oil and gas development program in the 1002 area in accordance with the environmentally protective framework used to manage the nearby NPRA," she said. "We have not pre-empted the environmental review process in this legislation. We have not pre-empted the environmental review. Nor have we limited the consultation process with Alaska Natives in any way. All relevant laws, all regulations and executive orders will apply under this language."

In face of court order EPA says mining bond is unneeded

EPA said earlier this month it will not issue regulations that would require hard rock miners to obtain bonds when carrying out projects under the Superfund law.

The Obama administration had proposed bonding regulations to comply with a court order that EPA address the advisability of bonds under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

But EPA Administrator Scott Pruitt said bonds are unnecessary. "After careful analysis of public comments, the statutory authority, and the record for this rulemaking, EPA is confident that modern industry practices, along with existing state and federal requirements address risks from operating hardrock mining facilities," he said. "Additional financial assurance requirements are unnecessary and would impose an undue burden on this important sector of the American economy and rural America, where most of these mining jobs are based."

Environmentalists immediately threatened to go back to court on the grounds that the original holding of the U.S. District Court for the District of Columbia mandated that EPA write a bonding regulation.

"Scott Pruitt is thumbing his nose at both the law and the judges of the D.C. Circuit," said Jan Hasselman, attorney with Earthjustice, which has been litigating EPA bonding for a decade. "We know that these rules are critically needed to protect communities and taxpayers, but after meeting with mine company CEOs and lobbyists, Pruitt threw the proposed standards in the trash and declared that the problem doesn't exist. We will see Pruitt and his 'alternative facts' in Court."

The hard rock mining industry as represented by the American Exploration & Mining Association (AEMA) backed Pruitt. Industry said BLM and the Forest Service already have sufficient rules in place. AEMA said between them federal agencies and the states hold more than \$5 billion in "financial assurances."

Said AEMA Executive Director Laura Skaer, "No mine approved by (BLM) or the (Forest Service) since 1990 has been placed on the Superfund list. This undeniable fact, along with robust financial assurance requirements, stringent regulatory requirements and the industry's commitment to the highest environmental standards is what made today's decision the right one."

In its decision the U.S. Circuit Court of Appeals for the District of Columbia on Jan. 29, 2016, ordered EPA to write a draft regulation by Dec. 1,

2016, to require financial assurance under CERCLA, also known as the Superfund law. The court said EPA must complete the regulations by Dec. 1, 2017.

Those deadlines were extended by the court but on January 11 of this year the Obama administration did propose bonding regulations.

To the court the need for a regulation appeared to be cut-and-dried under CERCLA: "Section 108(b) (of CERCLA) provides that EPA 'shall promulgate' regulations requiring 'that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. . . . Thirty years later, EPA has yet to issue any regulations.'"

But the court gave EPA leeway to decide what to put in a regulation.

The Western Governors' Association backed Pruitt. Said Jim Ogsbury, executive director of the bipartisan Western Governors' Association, "These programs require operators to comply with state regulations, implement reclamation and post-closure plans, and post financial assurance to minimize risks to public health and the environment. Western Governors appreciate EPA's decision regarding its proposed financial assurance requirements under CERCLA 108(b), which would have duplicated or supplanted existing and proven state financial assurance regulations."

Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) was also on board. "Significant requirements are already in place at both the state and federal levels to ensure resources are available for mine cleanup and environmental protection," she said.

Six environmental groups led by the Earthjustice law firm brought the lawsuit asking the courts to direct EPA to write financial assurance regulations under CERCLA.

EPA estimated at the time some 142 hazardous waste sites are eligible for cleanup at a cost of \$20 billion. Environmentalists say site owners frequently defer to the federal government for reclamation, rather than doing it themselves.

Approps extended temporarily; lots of problems

Congress has just one week left before a temporary fiscal year 2018 appropriations law (PL 115-90) expires December 22. But Congress is expected to approve next week another temporary spending measure to extend funding until January 19.

The extensions are designed to give the House and Senate time to complete fiscal 2018 spending bills. President Trump signed the temporary bill, PL 115-90, into law December 8.

On December 13 House Appropriations Committee Chairman Rodney Frelinghuysen (R-N.J.) introduced a new temporary spending extension (HJ Res 124) to keep the government in money until January 19.

"This CR is not the preferred way to do the nation's fiscal business," said Frelinghuysen. "It is vital that all 12 Appropriations bills be negotiated with the Senate and signed into law. However, this resolution will allow time for the leadership of the House and Senate and the White House to come to agreement on a topline spending level for this fiscal year."

Completing an Interior and Related Agencies appropriations bill won't be easy because the House and Senate are so far apart. On the money front alone a draft Senate bill would put up \$1.2 billion more than a counterpart, House-approved bill (HR 3354).

On the rider front the House and Senate each have adopted major public lands policy amendments (riders, if you will) that the other body has not.

Mutually, the Senate draft and the House-passed bill include similar riders that would exempt the gray wolf from an Endangered Species Act (ESA) listing in Wyoming, forbid the listing of the greater sage-grouse under the ESA, and authorize agencies to terminate a wetlands protection rule.

The Senate draft includes major, major riders not included in the House bill, including measures to end wildfire borrowing, to exempt Alaska national forests from a roadless area rule, and to delay a transition to young-growth timber sales in the Tongass National Forest.

The House-passed HR 3354 includes an amendment not included in the Senate draft that forbids spending any money "to treat" any wolf as a threatened or endangered species under the ESA.

Here are the **numbers** in the Senate mark, compared to the House-passed bill and fiscal 2017 allocations:

NATIONAL FOREST SYSTEM: The Senate mark includes \$1.881 billion, compared to a House number of \$1.886 billion and a fiscal 2017 appropriation of \$1.513 billion. The big increase over fiscal 2017 in the House bill and the Senate committee mark stems from a shift of \$392.5 million from a wildfire account for hazardous fuels management to the National Forest System line item.

FOREST PRODUCTS: The Senate mark includes \$365.5 billion, compared to the House approval of \$370 million for forest products (i.e. timber sales) and a fiscal 2017 appropriation of \$368 million.

BLM RESOURCE MANAGEMENT: The Senate mark includes \$1.246 billion, compared to the House approval of \$1.075 billion and a fiscal 2017 appropriation of \$1.095 billion.

WILD HORSES AND BURROS: The Senate mark includes \$85 million, compared to the House number of \$80.6 million and a fiscal 2017 appropriation of \$80.6 million.

ENERGY AND MINERALS: The Senate mark includes \$188 million, compared to the House approval of \$168.4 million and a fiscal 2017 appropriation of \$177.4 million.

NATIONAL LANDSCAPE CONSERVATION SYSTEM: The Senate mark includes \$32 million, compared to the House approval of \$35.8 million and a fiscal 2017 appropriation of \$36.8 million.

WILDFIRE FOREST SERVICE and INTERIOR: In sum the Senate mark and the House include similar regular appropriations for the Forest Service of \$2.9 billion. For the Interior Department the Senate mark recommends \$949 million in fire-fighting money and the House \$956 million.

PAYMENTS-IN-LIEU OF TAXES: The Senate mark and the House would provide \$465 million, the same as a fiscal 2017 appropriation. The Trump administration had recommended \$397 million.

LWCF FEDERAL: The Senate mark includes \$180 million for federal land management agency acquisitions. The House approved \$110 million, or \$79 million less than a fiscal 2017 appropriation of \$189 million. The Trump administration had recommended an appropriation of \$51 million for land acquisition.

FWS REFUGE SYSTEM: The Senate mark includes \$483.9 million, the same as the House approval and the same as the fiscal 2017 appropriation.

Here are some **riders/amendments** in the Senate mark and the House-passed bill:

Wolf delisting - Wyoming: Both the Senate mark and the House. The provision directs FWS to once again issue a rule removing the gray wolf from the Endangered Species Act in Wyoming. That is already the law but the amendment/rider would also exempt the rule from judicial review.

Wolf spending: House only. HR 3354 forbids spending any money "to treat" any wolf as a threatened or endangered species under the Endangered Species Act (ESA). That would include the Mexican gray wolf that FWS designated as an endangered subspecies in January 2015. (The Mexican wolf was previously protected under a blanket gray wolf listing.)

On June 30 FWS proposed a new recovery plan for Mexican wolves that anticipates a future population in the Southwest of the United States of 320 animals, plus 170 in Mexico. The population of the lobo, the most endangered of the wolf subspecies in the world, is currently 130 in Arizona and New Mexico.

Sage-grouse plans: Both the Senate mark and the House. The provision would forbid FWS from proposing the listing of the greater sage-grouse as threatened or endangered under the ESA. Currently the greater sage-grouse is governed by 98 BLM and Forest Service land use plans, plus state plans, but is not proposed for listing under the ESA. That was the sum and substance of September 2015 actions by the Obama administration.

Now the Trump administration, under Secretary of Interior Ryan Zinke's June 7 Secretarial Order 3353 and a Forest Service November 21 proposal, has directed a review of the federal and state plans to determine compatibility. The appropriations language would make sure that Zinke doesn't rebel and propose a listing, however unlikely.

Wetlands regulation: Both the Senate mark and the House. The provision would authorize EPA and the Corps of Engineers to rescind an Obama administration rule governing permits to disturb wetlands under the Clean Water Act and to reinstall a Bush administration rule. EPA and the Corps

proposed June 27 to do just that, but that effort might require an expensive and time-consuming exercise that could be exposed to a lawsuit.

Forest Service roadless rule: Senate mark only, presumably at the request of Sen. Lisa Murkowski (R-Alaska), chairman of the Senate subcommittee on Interior appropriations. The mark would exempt all forests in Alaska from a 2001 Clinton administration roadless area rule.

Murkowski and Alaskans have fought in Congress and the courts for years to gain exemption from the rule that limits commercial activities in roadless areas. The legal battle has not quite ended even though the Supreme Court has twice declined to hear cases objecting to the rule.

In another setback for the rule U.S. District Court Judge Richard J. Leon in the District of Columbia September 20 rejected a half-dozen arguments from the State of Alaska and co-plaintiffs that the rule was hastily drawn and administratively incomplete.

In reaction to the September court decision Murkowski raised the possibility that Congress and/or the Trump administration would attempt to exempt the Tongass National Forest from the rule. "I recognize the damage this rule is causing, particularly in Southeast, and will pursue every possible legislative and administrative option to exempt us from it," she said September 25.

Tongass timber sales: Senate mark only, presumably at the request of Murkowski. On Dec. 9, 2016, the Forest Service completed a plan to move Tongass National Forest timber sales away from old growth to mixed growth sales.

In the appropriations mark Murkowski would delay a transition to young growth management immediately and would give the forest \$700,000 to write a new plan. Says a report accompanying the mark, "The Forest Service is directed to initiate either a plan revision or new plan amendment and is provided \$700,000 to begin this effort. The Committee strongly believes the plan revision or plan amendment should include a timber management program sufficient to preserve a viable timber industry in the region."

Returns meager from NPRA sale; state has better luck

BLM sold less than one percent of the land in the National Petroleum Reserve Alaska (NPRA) it put up for oil and gas lease sale December 6 - 80,000 acres - with bids totaling only \$1.16 million. BLM had offered 10.3 million acres for sale.

To be fair BLM has already leased 189 tracts in NPRA covering 1,372,688 acres.

In a separate sale in the North Slope the same day the Alaska Department of Natural Resources (DNR) had better returns, selling almost 180,000 acres worth \$21.2 million.

The Alaska DNR said even though most of its lands on the North Slope, North Slope Foothills and the Beaufort Sea were already leased, the demand was healthy for additional acreage.

Said Chantal Walsh, director of the Alaska Division of Oil and Gas, "Today's results were stronger than we expected. On state lands, companies have already leased many of the available tracts. And yet for what acreage was available, we received extremely competitive bids. This indicates that companies are interested in exploring in Alaska,"

This was the third highest amount of bids the state has received since sales began in 1998, with 143 bids on 119 tracts, mostly on the North Slope.

BLM said that it offered just five tracts with high potential covering 22,412 acres. No bids were offered for those tracts. BLM also offered 895 tracts with low potential covering 10,2343,617 acres and received seven bids on them for a total of \$1,159.357.

Environmentalists used the results of BLM's NPRA sale to argue that Congress should not authorize oil and gas development in the adjoining coastal plain of the Arctic National Wildlife Refuge (ANWR). A House-Senate conference committee is presently considering whether to include ANWR leasing in a giant tax bill (HR 1). *(See related article page 10.)*

Said Kristen Miller, conservation director with the Alaska Wilderness League, "Today's lease sale shows once again the fuzzy Arctic Refuge math by the Trump administration and congressional Republicans. Nine hundred tracts and more than 10 million acres were offered in the Reserve, but a measly seven tracts at \$14.99/acre were leased."

Miller added, "At that price, leasing the entirety of the Arctic Refuge Coastal Plain's 1.5 million acres would raise slightly more than \$11 million in revenue for the federal government, a far cry from the billion dollar lie that Trump and Republicans are feeding the American public."

The rejoinder to that argument is that BLM has never held a lease sale in the coastal plain of ANWR, so returns are difficult to project there. In addition, much of the most promising land on the eastern side of NPRA near ANWR is already leased, and ConocoPhillips Alaska has identified significant oil deposits there. ConocoPhillips and Anadarko jointly submitted the winning bids for the seven tracts BLM sold December 6.

ConocoPhillips said it is making progress on two major oil and gas projects in NPRA - Greater Mooses Tooth 1 and 2. Greater Mooses Tooth-1 is reportedly ready to begin production in December 2018 and BLM is working on an EIS for Greater Mooses Tooth-2.

Gov. Bill Walker (I-Alaska), the Alaska Congressional delegation and the Trump administration are chomping at the bit to accelerate oil and gas development in NPRA and to begin leasing in ANWR. Their immediate and long-term goal is to produce enough oil to replenish the Trans-Alaska Pipeline System and rescue a struggling Alaskan economy.

As we have reported, Secretary of Interior Ryan Zinke joined up with the Alaska establishment on May 31 to launch an all-out campaign to open the North Slope of the state to energy development. Zinke posted a two-headed Secretarial Order No. 3352 that (1) orders a replacement of a plan governing NPRA and (2) orders the development of a plan to assess oil and natural gas potential of both NPRA and the coastal plain of ANWR.

As always, the energy market will determine whether oil and gas companies make the risky investment to develop resources in NPRA and ANWR, assuming Congress at some point makes ANWR available for leasing.

Under a 2013 Integrated Activity Plan for NPRA the Obama administration authorized leasing of up to 10.3 million acres of the 22.8 million-acre reserve. The Trump administration will almost certainly attempt to open up more of the reserve for leasing.

Latest Mexican wolf recovery plan hit from two sides

The Fish and Wildlife Service (FWS) December 4 announced completion of a new Mexican Wolf recovery plan, touching off protests from a western Republican and environmentalists, albeit for different reasons.

At bottom the recovery plan, following the January 2015 listing of the Mexican wolf under the Endangered Species Act (ESA), envisions an increase in population from 130 now to 320 by 2038.

But Rep. Stevan Pearce (R-N.M.) said the plan puts too much of the recovery onus on New Mexico and Arizona and not enough on Mexico the country.

"It once again places the burden of recovery on the backs of New Mexicans and disregards the serious concerns of ranchers and farmers whose livelihoods are affected by the program," he said on release of the recovery plan by the Trump administration. "Additionally, the updated recovery plan ignores the fact that the vast majority of traditional habitat lies in Mexico."

Environmentalists said the recovery plan, like the listing decision, falls far short of protecting the lobo. "It's a 'recovery plan' in name only. Without additional habitat and greater genetic diversity, the wolves will continue to teeter on the brink of extinction. The plan provides none of these essential needs," said Heidi McIntosh, an attorney with the Earthjustice environmental law firm.

Earthjustice has long-running litigation going against the Obama administration's lobo policies. Now environmentalists are also turning their fire on the Trump administration.

In January 2015 the Obama administration designated the Mexican grey wolf as an endangered subspecies. The lobo had previously been protected under a blanket gray wolf listing, but FWS had delisted the wolf in much of the West.

In 1982 FWS completed an initial Mexican wolf recovery plan. On June 30 FWS under the Trump administration proposed a new recovery plan for the wolf. On December 4 FWS completed that plan.

Sums up the plan, "Our recovery strategy for the Mexican wolf is to establish and maintain a minimum of two resilient, genetically diverse Mexican wolf populations distributed across ecologically and geographically diverse areas in the subspecies' range in the United States and Mexico."

Adds the plan, "The recovery strategy's primary components include expanding the geographic distribution of the Mexican wolf, increasing

population abundance, improving gene diversity, monitoring wild populations and implementing adaptive management, and collaborating with partners to address social and economic concerns related to Mexican wolf recovery."

FWS said it will consider the Mexican wolf as recovered under ESA when the "United States population average over a 4-year period is greater than or equal to 320 Mexican wolves," and when gene diversity is reached. FWS said the implementation of the plan would cost \$178,439,000.

If it has its way, the House of Representatives would not allow any spending on the Mexican wolf under the ESA. On September 14 it approved a fiscal year 2018 appropriations bill (HR 3354) that would do just that.

More information on the FWS plan is available at:
<https://www.fws.gov/southwest/es/mexicanwolf/>.

IBLA decisions

(We post current Interior Board of Land Appeals decisions at our website, <http://www.blm.gov/ibla.htm>. 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 leasing.

BLM decision: BLM will offer nine parcels for oil and gas lease sale after preparing an environmental assessment (EA).

Appellant environmental groups: IBLA should stay lease approvals because the EA was inadequate and development will harm the environment.

IBLA decision: Rejected stay request because the appellants did not demonstrate immediate and irreparable harm.

Case identification: *Western Watersheds Project, et al*, 192 IBLA 72. Decided December 6, 2017. Seventeen pages. Appeal and petition to stay the effect of a decision of the Deputy State Director, Lands and Minerals, of the Utah State Office of BLM to offer for sale oil and gas lease parcels. DOI-BLM-UT-WO20-2017-0001.

IBLA argument: IBLA Administrative Judge Sylvia Riechel rejected a request from environmentalists for a stay of the offering by BLM of nine tracts for oil and gas lease sale in Juab County, Utah. Riechel rejected the stay because she said the appellants didn't demonstrate immediate and irreparable harm from the BLM decision to offer the tracts. The judge said the impacts of the leasing won't be known until BLM approves applications for permit to drill. Held Riechel, "Even if lease issuance could be construed as irreparable harm, (the appellant) has not shown that harm is immediate. As (the appellant) itself recognizes, BLM must grant applications for permits to drill before any surface-disturbing activities may occur, and 'additional consultation, coordination and environmental analysis will be required during the review and approval of site-specific proposals for oil and gas exploration and development on the lease parcels.'"

Notes

Second critical minerals hearing in House. The House subcommittee on Energy and Mineral Resources held a second hearing December 12 on the scarcity of domestic sources of critical minerals. The hearing, intended to address the nation's dependence on foreign minerals, also addressed the amount of public lands withdrawn from hard rock mining. Said Katie Sweeney, senior vice president of legal affairs for the National Mining Association, "Currently, new mining operations are already either restricted or banned on more than half of all federally owned public lands. Given the vast amount of federal lands already closed to mining operations, caution should be exercised when determining whether additional lands should be placed off limits." On March 21 the subcommittee held an initial hearing on legislation (HR 520) from Rep. Mark Amodei (R-Nev.) that would encourage domestic

production of critical minerals. Among other things the Amodei bill would have federal land managers establish time lines for decisions on all mineral permits, not just for critical minerals. Ranking House Natural Resources Committee minority member Raúl M. Grijalva (D-Ariz.) used the December 12 hearing to promote an existing withdrawal from uranium mining of 1 million acres of public lands near Grand Canyon National Park. He has introduced legislation (HR 360) to make the existing, 20-year Grand Canyon withdrawal permanent. In October the Department of Agriculture recommended termination of that withdrawal. Said Grijalva, "We're supposed to believe our national demand for uranium, of all things, is too important to let the Grand Canyon, tribal needs, public health or any other considerations get in the way." (See related article on the Grand Canyon withdrawal on page 4.)

Wolf v. grizzly in court? The Fish and Wildlife Service (FWS) December 7 asked for the public's advice on the applicability of a court decision on the delisting of the Great lakes wolf under the Endangered Species Act (ESA) on the delisting of the Greater Yellowstone grizzly bear. In August the Court of Appeals for the District of Columbia ruled that before FWS carves out a distinct population of the Great Lakes wolf it needed to assess the impacts of partial delisting and the possible loss of historical range. FWS had deployed a similar strategy for the grizzly - first identifying a distinct population of the grizzly, i.e. the Greater Yellowstone segment, and then delisting the population under ESA. So FWS is now asking the public to comment on the possible link between FWS's Great Lakes wolf strategy and its grizzly bear strategy. The appeals court decision *Humane Society of the United States, et al. v. Zinke et al.*, 865 F.3d 585 (D.C. Cir. 2017), was handed down August 1. On June 30 FWS had delisted the Yellowstone grizzly. Comment by January 8 at: <http://www.regulations.gov>, Docket No. FWS-R6-ES-2017-0089.

Daines would release Montana WSAs. Sen. Steve Daines (R-Mont.) introduced legislation (S 2206) December 7 that would release 449,500 acres of national forest wilderness study areas (WSAs) to multiple use. The Forest Service had recommended in forest plans the release of the 449,500 acres, contained in four distinct WSAs. Daines painted the release as a boon to outdoor recreation. "Implementing the Forest Service recommendation for these WSAs will increase the value of public lands for Montana outdoor recreationists of all ages and across the board - hunters, anglers, snowmobilers, mountain bikers, off-road vehicles users and more, bolstering Montana's \$6 billion outdoor economy and balancing our iconic wildlife populations," he said. The Montana Mining Association and the Montana Stockgrowers Association also endorsed S 2206. Congress designated the WSAs in the 1970s for their potential as wilderness. The Montana Wilderness Association blasted the legislation. Said John Todd, the association's conservation director, "We believe that it's time to decide on how these areas should be managed for the long-haul. But we believe that any management decisions regarding any wilderness study area must involve a diverse group of stakeholders working together at the local level towards agreement and mutual benefit. But if Senator Daines has his way, these five areas totaling nearly a half-million acres would be forever altered - without a single public meeting."

Conference Calendar

JANUARY

4-7. **Archaeological Institute of America Annual Meeting** in Boston. Contact: Archaeological Institute of America, 656 Beacon St., Boston, MA 02215-2006. (617) 353-9361. <http://www.archaeological.org>.

5-10. **American Farm Bureau Federation Annual Convention** in Nashville, Tenn. Contact: American Farm Bureau Federation, 600 Maryland Ave., SW Washington, D.C. 202-406-3600. <http://www.fb.org>.

27-Feb. 3. **National Association of Conservation Districts Annual Meeting** in Nashville, Tenn. Contact: National Association of Conservation Districts, 509 Capitol Court, N.E., Washington, D.C. 20002. (202) 547-6233. <http://www.nacdnet>.

28-Feb. 2. **Society for Range Management Annual Meeting and Trade Show** in Sparks, Nev. Contact: Society for Range Management, 30 W 27th Ave., Wheat Ridge, CO 80215-6601. (303) 986-3309. <http://www.rangelands.org>.

31-Feb. 2. **Cattle Industry Convention & NCBA Trade Show** in Phoenix. Contact: National Cattlemen's Beef Association Convention & Meetings Department, 9110 East Nichols Avenue, Suite 300, Centennial, CO 80112. <http://www.beefusa.org>.

FEBRUARY

6-7. **Air Quality Issues Affecting Oil, Gas and Mining special institute** in Denver. Contact: Rocky Mountain Mineral Law Foundation, 9191 Sheridan Blvd., #203, Westminster, CO 80031. (303) 321-8100. <https://www.rmmlf.org>.

7-10. **Association of Partners for Public Lands** convention in San Diego. Contact: Association of Partners for Public Lands, 2401 Blueridge Ave, Suite 303, Wheaton, MD 20902. (301) 946-9475. <http://www.appl.org>.

25-28. **Society for Mining, Metallurgy and Exploration Annual Meeting** in Minneapolis. <http://www.smenet.org>.

25-March 1. **Public Lands Alliance Convention and Trade Show** in Palm Spring, Calif. Contact: Public Lands Alliance, 2401 Blueridge Avenue, Suite 303, Silver Spring, MD 20902. (301) 946-9475. <http://www.publiclandsalliance.org>.

MARCH

4-7. **Prospectors and Developers Association of Canada Convention** in Toronto, Canada. Contact: Prospectors and Developers Association of Canada, 34 King Streets East, Suite 900, Toronto, Ontario CA M5C 2X8. (416) 362-1969. <http://www.pdac.ca>.

26-30. **North American Wildlife and Natural Resources Conference** in Norfolk, Va. Contact: Wildlife Management Institute, 1146 19th Street, NW, Suite 700, Washington, DC 20036. (202) 371-1808. <http://www.wildlifemanagementinstitute.org>.

Public Lands News®

Editor: James B. Coffin

Subscription Services: Gerrie Castaldo

Volume 42 Number 24, December 15, 2017

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Westerners back Zinke notion of moving BLM HQ to West

The drumbeats in Congress for the move of BLM headquarters to the West are beating louder and louder.

At a House Natural Resources Committee hearing December 7 on a possible reorganization of the Interior Department chairman Rob Bishop (R-Utah) endorsed the idea of such a move.

"We need to restore the trust between people, the Administration and the DoI by giving more authority and flexibility to the field level," he said.

More to the point Bishop released a letter he and five of his subcommittee chairmen sent to President Trump recommending the transfer of Interior Department personnel to the field.

"Any thoughtful DOI reorganization should give serious consideration to relocating select agencies away from Washington, D.C. and closer to the American people they were created to serve," the House Republicans wrote. "Simply put, federal employees should know and live around the people, lands, and economies they regulate. Relocation, coupled with devolving decision-making authority to local federal officials, will go a long way towards restoring balance to the partnership between the states and federal government."

Secretary of Interior Ryan Zinke has made no secret about his intention to attempt to move agency headquarters to the field, particularly BLM.

In a July meeting with U.S. Geological Survey (USGS) executives Zinke said the transfer would be part of his plan to shift personnel from Washington and regional headquarters to the front lines.

In addition Zinke told the USGS bosses he intends to combine management of federal lands via inter-agency joint management areas (JMAs), with JMA leadership shifting among agencies.

In an interview with the *Salt Lake Tribune* last month Zinke repeated his interest in moving BLM's headquarters.

The transfer of BLM to the West is part of a quantum personnel shift within the Interior Department envisioned by Zinke. His fiscal year 2018 Interior Department budget would reduce department employee levels by six percent, from 64,000 to 60,000 full-time equivalents. For BLM alone the budget would trim 1,062 positions, reducing the total from 9,411 to 8,349.

At the December 7 hearing the Western Energy Alliance endorsed a transfer of BLM's headquarters, but worried about combined management JMAs.

"The Western Energy Alliance strongly supports efforts to move certain bureaus of the department out West, especially (BLM)," said alliance president Kathleen Sgamma. "However, we do have some concerns with some DoI reorganization issues that are being floated, namely regions based on ecosystems or watersheds, and a rotating or multi-bureau, integrated command structure."

There is plenty of more pointed push back. At the House hearing Denis Galvin, on behalf of the Coalition to Protect America's National Parks, first complained that the Zinke plan is being prepared in secret. He did acknowledge his coalition had pieced together some aspects of the plan.

Noting the plan is based on personnel reductions and field transfers Galvin, a former deputy Park Service director, said, "With this current effort, we wonder what the purpose of the reorganization is and what its goals are. We also want to know what analysis went into developing this reorganizational plan. We understand the Park Service was not consulted to determine the effects the reorganization would have on the national parks. This leads us to ask who developed the plan and their experience with national parks and the issues affecting the agency."

In addition an alliance of BLM retirees, the Public Lands Foundation, said the BLM headquarters should remain in Washington, D.C. The Public Lands Foundation said BLM staff needs to be in Washington to meet with Congress and other players.

Said foundation president Jesse J. Juen in a June 14 letter to Zinke, "This includes attending impromptu yet critical meetings requiring face-to-face discussions and learning the process of how to be agile, flexible and handle difficult, complex and political discussions and situations related to the day-to-day demands of any administration, Congress, agency, community and partner."

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The House Republican letter to President Trump is here:
https://naturalresources.house.gov/uploadedfiles/2017-11-16_cnr_to_president_trump_re_doi_reorg.pdf.

Policy makers still lacking: Meanwhile, the Interior Department continues to operate without many of its top policy makers, beyond Zinke and his deputy Dave Bernhardt. The department did gain a crucial new official December 7 when the Senate confirmed Joseph Balash as assistant secretary of Interior for Land and Minerals Management. The vote was 61-to-38.

Despite the substantial vote for Balash his nomination was not without rancor. Ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.) faulted Balash's record as director of the Alaska Department of Natural Resources.

She objected particularly to a state claim filed on his watch for 20,000 acres of the Alaska National Wildlife Refuge so the lands could be leased for oil and gas development. Under his new position, said Cantwell, Balash could be in the position of ruling on that claim. "For that reason, I am not supporting Mr. Balash's nomination to this position today," she said.

But Sen. Dan Sullivan (R-Alaska), for whom Balash served as chief of staff, was all in. "Joe understands how to build consensus, how to navigate State and Federal lands issues and interests, and, importantly, how to work to responsibly develop our resources and grow our economy, while always understanding that our lands sustain us and that stringent environmental safeguards are absolutely necessary for all Americans," he said.

Still pending on the Senate floor are the nominations of Ryan Nelson as Interior Department Solicitor and Susan Combs as assistant secretary of Interior for Policy.

On the agency front:

BLM: Last month Zinke chose an advocate of the disposal of public lands, Brian Steed, as interim BLM director. Steed last served as deputy director of BLM for programs and before that as chief of staff for Rep. Chris Stewart (R-Utah). Steed takes over for former BLM Eastern States Director Michael Nedd, who moves to a position as acting deputy director for operations.

One rumor anticipates the nomination of Wyoming attorney Karen Budd-Falen as BLM director. She is a veteran public lands attorney who has worked in the Interior Department and for the law firm Mountain States Legal Foundation, as well as her own law firm.

Budd-Falen confirmed to us this week she is in the running. "I can confirm that I am under consideration, but it hasn't gone any farther than that," she said. "I have no idea when the Administration will be announcing the nominee, so can't help you with that question."

NPS: Even before former director Jonathan B. Jarvis left office in January the Park Service had made it clear that his assistant Mike Reynolds would serve as acting director in the early days of the Trump administration. A few names of possible nominees as director have been bandied about including David Mihalic,

HOLIDAY PUBLISHING SCHEDULE FOR PUBLIC LANDS NEWS

Public Lands News will not be published over the holidays so that we may take a brief vacation. The next issue of *Public Lands News*, Volume 43 Number 1, will be published January 5, 2018. If news breaks over the holidays, we will E-mail you a bulletin.

DOI-2020-01 02382

former superintendent of Yosemite National Park, and Rob Wallace, former Hill staffer. Wallace once served as assistant director of NPS and most recently has worked for i2Capital, an advisory company.

FWS: Greg Sheehan has been serving as acting director, succeeding former director Dan Ashe. Sheehan has served for 25 years in the Utah Division of Wildlife Resources – the last five as the state agency's director.

FOREST SERVICE: The Forest Service is doing better because former chief Tom Tidwell, who had been in office since 2009, continued in that position until September 1, when service veteran Tony Tooke took over. The chief does not require Senate confirmation.

For Under Secretary of Agriculture, former Forest Service Associate Chief Dan Jiron, has been serving as acting since June 21.

Court upholds Grand Canyon withdrawal, but okays VER

In one of two unanimous decisions December 12 a federal appeals court upheld an Obama administration withdrawal from uranium mining of 1 million acres of public lands near Grand Canyon National Park.

In a second decision the same Ninth U.S. Circuit Court of Appeals panel held that the uranium mining company Energy Fuels Resources, Inc. holds a valid existing right (VER) to mine within the withdrawn area. That doesn't mean the company can immediately begin mining; it would still have to obtain permits and licenses before mining could begin.

Of note the Department of Agriculture recommended in October that President Trump cancel the 1 million-acre withdrawal of Jan. 21, 2012, that includes Kaibab National Forest land.

The appeals court decision upholding the withdrawal drew praise from Rep. Raúl Grijalva (D-Ariz.) He has introduced legislation (HR 360) that would effectively make the withdrawal permanent and establish a Greater Grand Canyon Heritage National Monument in Arizona.

"Special interests who refuse to leave the Grand Canyon alone need to sit down and read this ruling carefully," Grijalva said.

Environmentalists also applauded the broad withdrawal decision but were dismayed by the second decision backing VER for Energy Fuels. Said Sandy Bahr, Sierra Club's Grand Canyon chapter director, "We are disappointed that the court did not uphold the challenge to Canyon Mine, however, and we will continue to do all we can to ensure permanent protection of these lands."

On the carpet in both decisions was then Secretary of Interior Ken Salazar's withdrawal of 1 million-plus acres from uranium mining on public lands near Grand Canyon National Park. The withdrawal applied to 350,000 acres of national forest and 650,000 acres of BLM land, but Salazar said VER would be honored.

In its lawsuit against the withdrawal the National Mining Association argued that Salazar's decision was inadequate for a number of reasons, including arbitrary boundaries, a flawed assessment of economic impacts, and omission of important information from an EIS.

But, referring to itself as the "panel" the three judges said, "The panel held that consonant with the multiuse principle, the Secretary engaged in a careful and reasoned balancing of the potential economic benefits of additional mining against

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the possible risks of environmental and cultural resources. Finally, the panel held that the final environmental impact statement took existing legal regimes into account but reasonably concluded that they were inadequate to meet the purposes of the withdrawal."

In the other lawsuit the Havasupai Tribe and environmental groups argued that a Forest Service decision in a "Mineral Report" holding that Energy Fuels Resources held a valid existing right to minerals was fatally flawed. Among other things they said the report didn't include an update of environmental impacts since an EIS was prepared in 1988.

The court disagreed, again referring to itself as the panel. "The panel further held that the original approval of the mining plan of operations was a major federal action, that action was complete when the plan was approved, and resumed operation of Canyon Mine did not require any additional government action," held the court. "The panel concluded that the environmental impact statement prepared in 1988 satisfied NEPA."

The court also said that the Forest Service decision did not constitute approval of mining activities. "The panel agreed with the district court that the Mineral Report did not permit, license, or approve resumed operations at Canyon Mine, it simply acknowledged the continued vitality of the original approval of the plan of operations," said the court.

At a December 12 hearing of the House subcommittee on Energy and Mineral Resources on the scarcity of domestic sources of critical minerals the National Mining Association said the Grand Canyon withdrawal was excessive.

Said Katie Sweeney, senior vice president of legal affairs for the National Mining Association, "The 2012 withdrawal was purportedly intended to protect the Grand Canyon National Park, obviously a national treasure that merits protection. However, the 1.2 million acres of federal land included in the GCNP were already protected from the impacts of mining as those lands were withdrawn from the operation of the Mining Law when the park was created. The park as created additionally included a built-in buffer zone to protect park resources from activities taking place outside the park boundaries."

In a separate withdrawal dispute on October 11 the Interior Department canceled a 10 million-acre Obama administration withdrawal to protect sage-grouse habitat in the West. That effectively allowed an interim withdrawal to expire on Sept. 24, 2017.

The Ninth Circuit decision upholding Salazar's withdrawal is here: <http://cdn.ca9.uscourts.gov/datastore/opinions/2017/12/12/14-17350.pdf>.

The Ninth Circuit decision upholding the Forest Service valid existing rights determination is here: <http://cdn.ca9.uscourts.gov/datastore/opinions/2017/12/12/15-15754.pdf>.

Administration postpones much of Obama BLM methane rule

BLM finally succeeded December 8 in delaying portions of an Obama administration methane emissions rule, until January 17, 2019. An earlier attempt by BLM was rejected by a court for failure to seek public input first.

The BLM action does allow four areas of the Obama rule to continue in force - development of a waste minimization plan, royalty free use of production, definitions of unavoidably lost and avoidably lost, limits on drilling and flaring, and downhole maintenance.

But the BLM delay order, effective Jan. 8, 2018, does give the bureau time to revise (or eliminate) other provisions of the Nov. 16, 2016, Obama rule governing such things as gas capture, reporting volumes of gas vented, well drilling, equipment requirements and operator responsibility.

Said Brian Steed, BLM deputy director for Policy and Programs, "By holding off on certain requirements, the BLM now has sufficient time to review the 2016 final rule while avoiding any compliance costs on industry that may not be needed after the review."

The Western Energy Alliance and the Independent Petroleum Association of America (IPAA), which have filed a lawsuit against the Obama regulation, are all for the postponement.

"We're pleased (BLM) suspended an eleventh-hour Obama-era regulation aimed at shutting in marginal-producing wells, putting independent oil and gas producers, their livelihoods, and the considerable federal royalties generated from their businesses at jeopardy," said Barry Russell, president of IPAA.

As it did in its lawsuit against the Obama rule, the Western Energy Alliance questioned BLM's authority to write the rule in the first place, contending that Congress reserved the powers to EPA and the states.

Said Kathleen Sgamma, president of Western Energy Alliance, "In suspending the rule, BLM has recognizes that it does not have the statutory authority claimed by the Obama Administration. The notice even quotes the federal judge's clear statement earlier this year that BLM attempted to usurp the Clean Air Act authority of the states and the Environmental Protection Agency."

The Western Organization of Resource Councils, which represents ranchers and environmentalists, is not pleased. "With this suspension, American citizens will lose revenue from wasted, publicly-owned gas that could be easily captured and will be exposed to greater emissions, including BTEX (benzene, toluene, ethylbenzene and xylene) carcinogens. Industry is the big financial winner," said Rodger Steen, a council member.

The Obama administration rule and the Republican efforts to revoke it have trod a tortured path, legally and politically.

On May 10 in a stunning reversal for the Trump administration the Senate rejected by a narrow 51-to-49 vote a resolution (HJ Res 36) that would have repealed the rule. The House had approved the resolution on February 23 by a 221-to-191 vote and, if it had come to President Trump, he was sure to sign it.

On the legal front on June 27 in response to the industry lawsuit arguing that BLM didn't have authority to issue the original Obama rule U.S. District Court Judge Scott W. Skavdahl in Wyoming refused to issue an injunction because many of the provisions weren't imminent. But he did cast doubt on BLM's jurisdiction over methane emissions.

In a separate lawsuit brought by the States of California and New Mexico against an initial BLM attempt of June 15 to summarily delay the Obama rule, a federal judge said BLM had not followed Administrative Procedures Act requirements to take public input before issuing a rule.

U.S. District Court for Northern California Judge Elizabeth Laporte on October 5 held that BLM's initial delay rule was illegal, touching off this most recent BLM attempt to postpone the Obama rule.

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This time BLM on October 5 *proposed* a suspension of the Obama methane emissions rule until January 17, 2019, took public comments on the proposal and on December 8 issued the final rule.

Lots of lawsuits against Utah monument revisions

Just as soon as President Trump signed proclamations December 4 substantially reducing the size of the Bears Ears and Grand Staircase-Escalante National Monuments in Utah the lawsuits flew.

This time the litigation came not only from environmentalists but also from Native Americans and the outdoor industry. They all argued that President Trump does not have authority to modify or revoke national monuments - only Congress does.

The other shoe fell the next day on December 5 when Secretary of the Interior Ryan Zinke formally released his widely-pirated report to President Trump on a review of more than two-dozen existing monuments.

As has been previously reported, Zinke in his review recommended the shrinkage of the Cascade-Siskiyou National Monument in Oregon and Gold Butte National Monument in Nevada, as well as Bears Ears and Grand Staircase. In addition the secretary recommended an increase in consumptive uses in 10 monuments. President Trump has yet to act on those other recommendations.

The Interior Department addressed the charge that the Trump administration's monuments review is a proxy for the eventual transfer of large tracts of public lands to states for commercial uses.

Said the department in formally releasing Zinke's report that was leaked to the public in September, "The Secretary adamantly opposes the wholesale sale or transfer of public lands. The Antiquities Act only allows federal land to be reserved as a national monument. Therefore, if any monument is reduced, the land would remain federally owned and would be managed by the appropriate federal land management agency, such as the BLM, U.S. Forest Service, U.S. Fish and Wildlife Service, or the National Park Service."

On signing the Bears Ears and Grand Staircase proclamations at an event in Salt Lake City Trump made the same arguments that Utah officials have long made about past monument designations - they far exceed in scope the authority vested in Presidents by the Antiquities Act of 1906.

"As many of you know, past administrations have severely abused the purpose, spirit, and intent of a century-old law known as the Antiquities Act," he said. "This law requires that only the smallest necessary area be set aside for special protection as national monuments. Unfortunately, previous administrations have ignored the standard and used the law to lock up hundreds of millions of acres of land and water under strict government control."

Trump also said the designations have not reflected the wishes of local people. "These abuses of the Antiquities Act give enormous power to faraway bureaucrats at the expense of the people who actually live here, work here, and make this place their home," he said. "This is where they raise their children. This is the place they love."

The President concluded, "I don't think it is controversial, actually. I think it's so sensible."

Concurrent with the proclamations the White House said, "Monument designations have greatly restricted multiple-uses like grazing, timber harvest, fishing, resource

development, infrastructure upgrades, and motorized recreation.”

Although the administration believes its Bears Ears and Grand Staircase modifications have the force of law, Utah House members introduced legislation December 4 (HR 4532) and December 6 (HR 4558) to codify the new boundaries of the two areas. The committee has scheduled a hearing on the Grand Staircase bill for December 14.

Said House Natural Resources Committee Chairman Rob Bishop (R-Utah) of the two bills, “Now is the time for Congress to take the next step forward. This legislation will set in motion what we need to do to bring finality to the situation.”

At the same time the President issued the two Utah monument proclamations the administration attempted to mollify critics who charge Trump plans to transfer large tracts of public lands to consumptive users. “The Trump Administration is not going to sell public lands wholesale,” the White House said.

Bishop, perhaps the lead Congressional objector to what he calls monument abuses, backed Trump. “I applaud President Trump for recognizing the limitations of the law,” he said. “Americans of all political stripes should commend him for reversing prior administrations’ abuses of the Antiquities Act and instead exercising his powers within the scope of authority granted by Congress.”

He added, “These new proclamations are a first step towards protecting identified antiquities without disenfranchising the local people who work and manage these areas. The next steps will be to move beyond symbolic gestures of protection and create substantive protections and enforcement and codify in law a meaningful management role for local governments, tribes and other stakeholders.”

To that end Bishop’s committee on October 11 approved his bill (HR 3990) to set new conditions on protected area designations. The vote was 23-to-17. HR 3990 is different from HR 4532 and HR 4558, which address just Bears Ears and Grand Staircase, because it addresses all monument designations.

The broader Bishop bill would forbid the designation of any national monument larger than 85,000 acres by a President, except in an emergency, and that emergency designation could last for only one year.

In addition HR 3990 would give Congressional endorsement to any attempts by an administration to reduce existing national monuments larger than 85,000 acres. The latter provision would authorize President Trump to reduce the size of large national monuments in the West, including Bears Ears and Grand Staircase.

The livestock industry said Trump’s actions were long overdue. “We are grateful that today’s action will allow ranchers to resume their role as responsible stewards of the land and drivers of rural economies,” said Craig Uden, president of the National Cattlemen’s Beef Association. “Going forward, it is critical that we reform the Antiquities Act to ensure that those whose livelihoods and communities depend on the land have a voice in federal land management decisions.”

The Outdoor Industry Association countered that the proclamations would harm western economies. “Outdoor Industry Association and the outdoor industry view the announcement by President Trump as detrimental to the \$887 billion outdoor recreation economy and the 7.6 million American jobs it supports,” the association said in a statement. “This decision is part of a long pattern of attacks against public lands and will harm hundreds of local Utah communities and businesses, will stifle millions of dollars in annual economic activity and threatens thousands of jobs in the region.”

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Trump issued two proclamations on December 4 shrinking the two Utah national monuments, effective February 4. He reduced the size of Bears Ears from 1.35 million acres to 228,000 acres and split the remaining land into two monuments - Shash Jáa, and Indian Creek. And he reduced the size of Grand Staircase from 1.9 million acres to 1,006,341 acres.

Zinke in his memorandum of December 5 *proposed* that both the President in proclamations and land managers in management plans "protect objects and prioritize public access; infrastructure upgrades, repair, and maintenance; traditional use; tribal cultural use; and hunting and fishing rights." The key phrase there is traditional use.

Trump launched his monuments initiative April 26 when he signed an executive order directing the Interior Department to review the designations of national monuments of more than 100,000 acres made since 1996, plus a Katahdin Woods and Waters National Monument in Maine. The Zinke review looked at 27 monuments.

Legal arguments: Even before the ink was dry on Trump's two proclamations the Navajo Nation filed suit in U.S. District Court for the District of Columbia against the Bears Ears proclamation; the Earthjustice environmental law firm filed suit in the same court against the Grand Staircase proclamation; and the Patagonia outdoor goods company said it would file a suit.

On December 7 a broad coalition of environmentalists filed lawsuits against the Bears Ears proclamation. The environmentalist and Navajo suits were filed in U.S. District Court in the District of Columbia.

All argued - or will argue - that President Trump does not have authority under the Antiquities Act to modify national monuments. They contend the act only allows a President to *designate* national monuments.

The White House rejoined that Presidents have often reduced monument boundaries. "Presidents have modified the boundaries to remove lands from monuments 18 times in the past," said the White House. "The most significant reduction occurred in 1915 when President Woodrow Wilson halved Mount Olympus National Monument, which is now a National Park."

That interpretation of the law was disputed by an alliance of 121 law professors in a July 6 letter to Zinke. They argued that the legal situation has changed since 1915 because the Federal Land Policy and Management Act of 1976 (FLPMA) codified Congressional intent to revise monument reversal authority.

"Congress confirmed this understanding of the Antiquities Act when it enacted (FLPMA), which included provisions governing modification of withdrawals of federal lands," said the professors. "Those provisions indicate that the Executive Branch may not 'modify or revoke any withdrawal creating national monuments.' And the legislative history of FLPMA demonstrates that Congress understood itself to have 'specifically reserve[d] to Congress the authority to modify and revoke withdrawals for national monuments created under the Antiquities Act.'"

That last quote was extracted from a House report on FLPMA (HR Report 94-1163 of May 15, 1976).

The Indian lawsuit was filed by the Native American Rights Fund on behalf of five tribes - Hopi Tribe, Navajo Nation, Pueblo of Zuni, Ute Indian Tribe, and Ute Mountain Ute Tribe. "Bears Ears is one of the most important places for Indian Country, and that is why Indian Country came together to advocate for this important place. Trump's attack on Bears Ears is an attack on all of us, and we will fight to protect it," said the fund's attorney Matthew Campbell.

DOI-2020-01 02388

The environmentalist lawsuits were filed by Earthjustice on behalf of national and local environmental groups, led by The Wilderness Society and the Natural Resources Defense Council.

White House materials are contained in several separate postings at: <https://www.whitehouse.gov/blog>.

Secretary of Zinke's report and back-up are available at: <https://www.doi.gov/news>.

The Navajo Bears Ears lawsuit is available at: [https://www.scribd.com/document/366342903/Doc-1-Complaint-00184691x9D7F5#from embed](https://www.scribd.com/document/366342903/Doc-1-Complaint-00184691x9D7F5#from_embed).

The environmentalist Grand Staircase lawsuit is available at: <https://earthjustice.org/sites/default/files/files/TWS-v.-Trump.pdf>.

The environmentalist Bears Ears lawsuit is available at: <https://earthjustice.org/sites/default/files/files/Bears%20Ears%20complaint.pdf>.

Complications face ANWR leasing in House-Senate confab

A House-Senate conference committee is widely expected to accept shortly a Senate-passed version of legislation to open the coastal plain of the Arctic National Wildlife Refuge (ANWR) to oil and gas leasing. That would insure the provision would be included in a final, jumbo tax bill (HR 1). But it is not a given.

HR 1 is now in the conference to resolve differences between House- and Senate-passed versions of the tax legislation. Republican leaders hope to complete HR 1 by December 22 before the Christmas holiday begins.

The conferees on December 13 met in open session amid word that they had reached agreement on top-end numbers, such as income tax rates. But they apparently hadn't reached agreement on other details, such as ANWR.

At the December 13 meeting provision sponsor Sen. Lisa Murkowski (R-Alaska) made a pitch for it. "Alaskans have fought for a long time to authorize a program for responsible energy development in the non-wilderness 1002 Area," she said. "It will provide economic growth and prosperity for our state and the nation."

The **first complication** dealing with environmental reviews sprung up in the Senate. An original version of the ANWR language, as approved by the Senate Energy Committee, said BLM would conduct environmental reviews "in accordance with" rules governing the National Petroleum Reserve Alaska.

But that would have violated Senate procedural requirements because the Senate Environment and Public Works Committee has jurisdiction over environmental reviews. So Murkowski revised the language to say that the environmental review will be "similar" to NPRA rules.

Because that change could require a brand new EIS and delay bonus bids and royalties from leasing, the Congressional Budget Office (CBO) estimated that the provision would bring in \$910 million, rather than the \$1.092 billion CBO originally estimated. So the Senate added the sale of some oil from a strategic reserve to make up the difference.

In addition, that apparently minor change, said Sen. Tom Carper (D-Del.), could have enormous consequences that he liked by insuring that BLM follows "NEPA, the Endangered Species Act, the Marine Mammal Protection Act, the Alaska National

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Interest Lands Conservation Act, or any other environmental or land management statute."

The Senate went on to vote to include the ANWR provision in HR 1 by a 52-to-48 vote and to approve HR 1 itself by a 51-to-49 vote.

The **second complication** sprung up December 6 when BLM offered 10 million acres for oil and gas lease sale in the National Petroleum Reserve Alaska (NPRa) adjacent to ANWR and received minuscule bids. House and Senate Democrats pounced on the results to argue that the CBO's (and the Senate's) estimates of revenues from the ANWR provision are wildly exaggerated.

So House Natural Resources Committee ranking Democrat Raúl M. Grijalva (D-Ariz.) wrote CBO December 7 and asked for a recount. "As the [Arctic Refuge] provisions are currently under consideration as part of the conference for H.R. 1 we respectfully request that CBO immediately reassess the revenue projections for oil and gas leasing in ANWR based on information gained from yesterday's lease sale," Grijalva and two other Democrats wrote CBO Director Keith Hall.

In the NPRa sale BLM received bids on only 80,000 acres for a total of \$1.16 million. (*See related article page 16.*)

The third complication sprung up when 11 House Republicans November 30 said they oppose inclusion of the ANWR provision in HR 1.

The Republican rebels, led by Reps. Brian Fitzpatrick (R-Pa.) and Dave Reichert (R-Wash.), wrote the House leadership and said, "Further, the resources beneath the Refuge's Coastal Plain simply are not necessary for our nation's energy independence. If proven, the estimated reserves in this region would represent a small percentage of the amount of oil produced worldwide. Moreover, the likelihood that lawsuits would accompany any development is high."

But Murkowski, who also chairs the Senate Energy Committee, took a victory lap after a decade of fighting for leasing in the 1.6 million-acre coastal plain. "Opening the 1002 Area and tax reform both stand on their own, but combining them into the same bill, and then successfully passing that bill, makes this a great day to be an Alaskan," she said on initial Senate passage of HR 1.

Under a Republican budget game plan, the energy committee bill has been attached to the overall Republican tax reform plan, HR 1. As such the ANWR provision was not subject to a filibuster, so Murkowski only needed the 50 votes on the Senate floor. The only Republican defector was Sen. Susan Collins (R-Me.) and the only Democratic defector was Sen. Joe Manchin (D-W.Va.)

The ANWR provision anticipates raising just over \$900 million from two lease sales - one within four years of at least 400,000 acres from the 1.5 million-acre coastal plain and the other within 10 years.

In an original report the Congressional Budget Office said the bill would meet the Senate budget instruction. "CBO estimates that gross proceeds from bonus bids paid for the right to develop leases in ANWR would total \$2.2 billion over the 2018-2027 period," said the report. "That estimate is based on historical information about oil and gas leasing in the United States and on information from DOI, EIA, and individuals working in the oil and gas industry about factors that affect the amounts that companies are willing to pay to acquire oil and gas leases." Half the \$2.2 billion would go to the federal treasury and half to Alaska.

But CBO altered that opinion after Murkowski revised the bill to assert environmental reviews would be "similar to" National Petroleum Reserve Alaska rules and not "in accordance with" those rules. As revised ANWR leasing would bring

DOI-2020-01 02390

\$1.8 billion, with half going to the feds. HR 1 brings the total revenues up to \$1.1 billion by authorizing the sale of oil from the nation's Strategic Petroleum Reserve.

The Trump administration is an enthusiastic supporter of ANWR leasing. As *PLN* has reported the Interior Department plans to write a regulation that would lead to oil and gas exploration within the coastal plain of ANWR.

In the Interior Department campaign for ANWR development a memo from Acting Fish and Wildlife Service (FWS) Director James W. Kurth tells the Alaska regional director to prepare a rule that, when completed, "will allow for applicants to [submit] requests for approval of new exploration plans."

FWS in the 1980s first authorized exploration in ANWR over an 18-month period to help estimate oil and gas reserves in the 1.5 million-acre coastal plain. Environmentalists and their supporters, including the Obama administration, have argued that the 1980 Alaska National Interest Lands Conservation Act (ANILCA) only authorized one exploration program.

Only Congress is allowed to authorize oil and gas development under ANILCA.

Democratic critics fired their best shot against the ANWR provision, including a letter from numerous scientists, such as former officials from Alaska's Department of Fish & Game, FWS, and the U.S. Geological Survey.

They dismissed Murkowski's argument that the footprint of development would be limited to 2,000 acres. "Since the effects of industrial activities, starting with seismic surveys, are not limited to the footprint of a structure or to its immediate vicinity, it is highly likely that such activities would result in significant impacts on a variety of wildlife in the refuge's narrow coastal plain," the officials told Murkowski and ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.).

But Murkowski said the environment would be protected. "We authorize an oil and gas development program in the 1002 area in accordance with the environmentally protective framework used to manage the nearby NPRA," she said. "We have not pre-empted the environmental review process in this legislation. We have not pre-empted the environmental review. Nor have we limited the consultation process with Alaska Natives in any way. All relevant laws, all regulations and executive orders will apply under this language."

In face of court order EPA says mining bond is unneeded

EPA said earlier this month it will not issue regulations that would require hard rock miners to obtain bonds when carrying out projects under the Superfund law.

The Obama administration had proposed bonding regulations to comply with a court order that EPA address the advisability of bonds under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

But EPA Administrator Scott Pruitt said bonds are unnecessary. "After careful analysis of public comments, the statutory authority, and the record for this rulemaking, EPA is confident that modern industry practices, along with existing state and federal requirements address risks from operating hardrock mining facilities," he said. "Additional financial assurance requirements are unnecessary and would impose an undue burden on this important sector of the American economy and rural America, where most of these mining jobs are based."

Environmentalists immediately threatened to go back to court on the grounds
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that the original holding of the U.S. District Court for the District of Columbia mandated that EPA write a bonding regulation.

"Scott Pruitt is thumbing his nose at both the law and the judges of the D.C. Circuit," said Jan Hasselman, attorney with Earthjustice, which has been litigating EPA bonding for a decade. "We know that these rules are critically needed to protect communities and taxpayers, but after meeting with mine company CEOs and lobbyists, Pruitt threw the proposed standards in the trash and declared that the problem doesn't exist. We will see Pruitt and his 'alternative facts' in Court."

The hard rock mining industry as represented by the American Exploration & Mining Association (AEMA) backed Pruitt. Industry said BLM and the Forest Service already have sufficient rules in place. AEMA said between them federal agencies and the states hold more than \$5 billion in "financial assurances."

Said AEMA Executive Director Laura Skaer, "No mine approved by (BLM) or the (Forest Service) since 1990 has been placed on the Superfund list. This undeniable fact, along with robust financial assurance requirements, stringent regulatory requirements and the industry's commitment to the highest environmental standards is what made today's decision the right one."

In its decision the U.S. Circuit Court of Appeals for the District of Columbia on Jan. 29, 2016, ordered EPA to write a draft regulation by Dec. 1, 2016, to require financial assurance under CERCLA, also known as the Superfund law. The court said EPA must complete the regulations by Dec. 1, 2017.

Those deadlines were extended by the court but on January 11 of this year the Obama administration did propose bonding regulations.

To the court the need for a regulation appeared to be cut-and-dried under CERCLA: "Section 108(b) (of CERCLA) provides that EPA 'shall promulgate' regulations requiring 'that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. . . Thirty years later, EPA has yet to issue any regulations.'"

But the court gave EPA leeway to decide what to put in a regulation.

The Western Governors' Association backed Pruitt. Said Jim Ogsbury, executive director of the bipartisan Western Governors' Association, "These programs require operators to comply with state regulations, implement reclamation and post-closure plans, and post financial assurance to minimize risks to public health and the environment. Western Governors appreciate EPA's decision regarding its proposed financial assurance requirements under CERCLA 108(b), which would have duplicated or supplanted existing and proven state financial assurance regulations."

Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) was also on board. "Significant requirements are already in place at both the state and federal levels to ensure resources are available for mine cleanup and environmental protection," she said.

Six environmental groups led by the Earthjustice law firm brought the lawsuit asking the courts to direct EPA to write financial assurance regulations under CERCLA.

EPA estimated at the time some 142 hazardous waste sites are eligible for cleanup at a cost of \$20 billion. Environmentalists say site owners frequently defer to the federal government for reclamation, rather than doing it themselves.

Approps extended temporarily; lots of problems

Congress has just one week left before a temporary fiscal year 2018 appropriations law (PL 115-90) expires December 22. But Congress is expected to approve next week another temporary spending measure to extend funding until January 19.

The extensions are designed to give the House and Senate time to complete fiscal 2018 spending bills. President Trump signed the temporary bill, PL 115-90, into law December 8.

On December 13 House Appropriations Committee Chairman Rodney Frelinghuysen (R-N.J.) introduced a new temporary spending extension (HJ Res 124) to keep the government in money until January 19.

"This CR is not the preferred way to do the nation's fiscal business," said Frelinghuysen. "It is vital that all 12 Appropriations bills be negotiated with the Senate and signed into law. However, this resolution will allow time for the leadership of the House and Senate and the White House to come to agreement on a topline spending level for this fiscal year."

Completing an Interior and Related Agencies appropriations bill won't be easy because the House and Senate are so far apart. On the money front alone a draft Senate bill would put up \$1.2 billion more than a counterpart, House-approved bill (HR 3354).

On the rider front the House and Senate each have adopted major public lands policy amendments (riders, if you will) that the other body has not.

Mutually, the Senate draft and the House-passed bill include similar riders that would exempt the gray wolf from an Endangered Species Act (ESA) listing in Wyoming, forbid the listing of the greater sage-grouse under the ESA, and authorize agencies to terminate a wetlands protection rule.

The Senate draft includes major, major riders not included in the House bill, including measures to end wildfire borrowing, to exempt Alaska national forests from a roadless area rule, and to delay a transition to young-growth timber sales in the Tongass National Forest.

The House-passed HR 3354 includes an amendment not included in the Senate draft that forbids spending any money "to treat" any wolf as a threatened or endangered species under the ESA.

Here are the **numbers** in the Senate mark, compared to the House-passed bill and fiscal 2017 allocations:

NATIONAL FOREST SYSTEM: The Senate mark includes \$1.881 billion, compared to a House number of \$1.886 billion and a fiscal 2017 appropriation of \$1.513 billion. The big increase over fiscal 2017 in the House bill and the Senate committee mark stems from a shift of \$392.5 million from a wildfire account for hazardous fuels management to the National Forest System line item.

FOREST PRODUCTS: The Senate mark includes \$365.5 billion, compared to the House approval of \$370 million for forest products (i.e. timber sales) and a fiscal 2017 appropriation of \$368 million.

BLM RESOURCE MANAGEMENT: The Senate mark includes \$1.246 billion, compared to the House approval of \$1.075 billion and a fiscal 2017 appropriation of \$1.095 billion.

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WILD HORSES AND BURROS: The Senate mark includes \$85 million, compared to the House number of \$80.6 million and a fiscal 2017 appropriation of \$80.6 million.

ENERGY AND MINERALS: The Senate mark includes \$188 million, compared to the House approval of \$168.4 million and a fiscal 2017 appropriation of \$177.4 million.

NATIONAL LANDSCAPE CONSERVATION SYSTEM: The Senate mark includes \$32 million, compared to the House approval of \$35.8 million and a fiscal 2017 appropriation of \$36.8 million.

WILDFIRE FOREST SERVICE and INTERIOR: In sum the Senate mark and the House include similar regular appropriations for the Forest Service of \$2.9 billion. For the Interior Department the Senate mark recommends \$949 million in fire-fighting money and the House \$956 million.

PAYMENTS-IN-LIEU OF TAXES: The Senate mark and the House would provide \$465 million, the same as a fiscal 2017 appropriation. The Trump administration had recommended \$397 million.

LWCF FEDERAL: The Senate mark includes \$180 million for federal land management agency acquisitions. The House approved \$110 million, or \$79 million less than a fiscal 2017 appropriation of \$189 million. The Trump administration had recommended an appropriation of \$51 million for land acquisition.

FWS REFUGE SYSTEM: The Senate mark includes \$483.9 million, the same as the House approval and the same as the fiscal 2017 appropriation.

Here are some **riders/amendments** in the Senate mark and the House-passed bill:

Wolf delisting - Wyoming: Both the Senate mark and the House. The provision directs FWS to once again issue a rule removing the gray wolf from the Endangered Species Act in Wyoming. That is already the law but the amendment/rider would also exempt the rule from judicial review.

Wolf spending: House only. HR 3354 forbids spending any money "to treat" any wolf as a threatened or endangered species under the Endangered Species Act (ESA). That would include the Mexican gray wolf that FWS designated as an endangered subspecies in January 2015. (The Mexican wolf was previously protected under a blanket gray wolf listing.)

On June 30 FWS proposed a new recovery plan for Mexican wolves that anticipates a future population in the Southwest of the United States of 320 animals, plus 170 in Mexico. The population of the lobo, the most endangered of the wolf subspecies in the world, is currently 130 in Arizona and New Mexico.

Sage-grouse plans: Both the Senate mark and the House. The provision would forbid FWS from proposing the listing of the greater sage-grouse as threatened or endangered under the ESA. Currently the greater sage-grouse is governed by 98 BLM and Forest Service land use plans, plus state plans, but is not proposed for listing under the ESA. That was the sum and substance of September 2015 actions by the Obama administration.

Now the Trump administration, under Secretary of Interior Ryan Zinke's June 7 Secretarial Order 3353 and a Forest Service November 21 proposal, has directed a review of the federal and state plans to determine compatibility. The appropriations language would make sure that Zinke doesn't rebel and propose a listing, however unlikely.

Wetlands regulation: Both the Senate mark and the House. The provision would

DOI-2020-01 02394

authorize EPA and the Corps of Engineers to rescind an Obama administration rule governing permits to disturb wetlands under the Clean Water Act and to reinstall a Bush administration rule. EPA and the Corps proposed June 27 to do just that, but that effort might require an expensive and time-consuming exercise that could be exposed to a lawsuit.

Forest Service roadless rule: Senate mark only, presumably at the request of Sen. Lisa Murkowski (R-Alaska), chairman of the Senate subcommittee on Interior appropriations. The mark would exempt all forests in Alaska from a 2001 Clinton administration roadless area rule.

Murkowski and Alaskans have fought in Congress and the courts for years to gain exemption from the rule that limits commercial activities in roadless areas. The legal battle has not quite ended even though the Supreme Court has twice declined to hear cases objecting to the rule.

In another setback for the rule U.S. District Court Judge Richard J. Leon in the District of Columbia September 20 rejected a half-dozen arguments from the State of Alaska and co-plaintiffs that the rule was hastily drawn and administratively incomplete.

In reaction to the September court decision Murkowski raised the possibility that Congress and/or the Trump administration would attempt to exempt the Tongass National Forest from the rule. "I recognize the damage this rule is causing, particularly in Southeast, and will pursue every possible legislative and administrative option to exempt us from it," she said September 25.

Tongass timber sales: Senate mark only, presumably at the request of Murkowski. On Dec. 9, 2016, the Forest Service completed a plan to move Tongass National Forest timber sales away from old growth to mixed growth sales.

In the appropriations mark Murkowski would delay a transition to young growth management immediately and would give the forest \$700,000 to write a new plan. Says a report accompanying the mark, "The Forest Service is directed to initiate either a plan revision or new plan amendment and is provided \$700,000 to begin this effort. The Committee strongly believes the plan revision or plan amendment should include a timber management program sufficient to preserve a viable timber industry in the region."

Returns meager from NPRA sale; state has better luck

BLM sold less than one percent of the land in the National Petroleum Reserve Alaska (NPRA) it put up for oil and gas lease sale December 6 - 80,000 acres - with bids totaling only \$1.16 million. BLM had offered 10.3 million acres for sale.

To be fair BLM has already leased 189 tracts in NPRA covering 1,372,688 acres.

In a separate sale in the North Slope the same day the Alaska Department of Natural Resources (DNR) had better returns, selling almost 180,000 acres worth \$21.2 million.

The Alaska DNR said even though most of its lands on the North Slope, North Slope Foothills and the Beaufort Sea were already leased, the demand was healthy for additional acreage.

Said Chantal Walsh, director of the Alaska Division of Oil and Gas, "Today's results were stronger than we expected. On state lands, companies have already leased many of the available tracts. And yet for what acreage was available, we received extremely competitive bids. This indicates that companies are interested

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in exploring in Alaska,"

This was the third highest amount of bids the state has received since sales began in 1998, with 143 bids on 119 tracts, mostly on the North Slope.

BLM said that it offered just five tracts with high potential covering 22,412 acres. No bids were offered for those tracts. BLM also offered 895 tracts with low potential covering 10,2343,617 acres and received seven bids on them for a total of \$1,159.357.

Environmentalists used the results of BLM's NPRA sale to argue that Congress should not authorize oil and gas development in the adjoining coastal plain of the Arctic National Wildlife Refuge (ANWR). A House-Senate conference committee is presently considering whether to include ANWR leasing in a giant tax bill (HR 1). *(See related article page 10.)*

Said Kristen Miller, conservation director with the Alaska Wilderness League, "Today's lease sale shows once again the fuzzy Arctic Refuge math by the Trump administration and congressional Republicans. Nine hundred tracts and more than 10 million acres were offered in the Reserve, but a measly seven tracts at \$14.99/acre were leased."

Miller added, "At that price, leasing the entirety of the Arctic Refuge Coastal Plain's 1.5 million acres would raise slightly more than \$11 million in revenue for the federal government, a far cry from the billion dollar lie that Trump and Republicans are feeding the American public."

The rejoinder to that argument is that BLM has never held a lease sale in the coastal plain of ANWR, so returns are difficult to project there. In addition, much of the most promising land on the eastern side of NPRA near ANWR is already leased, and ConocoPhillips Alaska has identified significant oil deposits there. ConocoPhillips and Anadarko jointly submitted the winning bids for the seven tracts BLM sold December 6.

ConocoPhillips said it is making progress on two major oil and gas projects in NPRA - Greater Mooses Tooth 1 and 2. Greater Mooses Tooth-1 is reportedly ready to begin production in December 2018 and BLM is working on an EIS for Greater Mooses Tooth-2.

Gov. Bill Walker (I-Alaska), the Alaska Congressional delegation and the Trump administration are chomping at the bit to accelerate oil and gas development in NPRA and to begin leasing in ANWR. Their immediate and long-term goal is to produce enough oil to replenish the Trans-Alaska Pipeline System and rescue a struggling Alaskan economy.

As we have reported, Secretary of Interior Ryan Zinke joined up with the Alaska establishment on May 31 to launch an all-out campaign to open the North Slope of the state to energy development. Zinke posted a two-headed Secretarial Order No. 3352 that (1) orders a replacement of a plan governing NPRA and (2) orders the development of a plan to assess oil and natural gas potential of both NPRA and the coastal plain of ANWR.

As always, the energy market will determine whether oil and gas companies make the risky investment to develop resources in NPRA and ANWR, assuming Congress at some point makes ANWR available for leasing.

Under a 2013 Integrated Activity Plan for NPRA the Obama administration authorized leasing of up to 10.3 million acres of the 22.8 million-acre reserve. The Trump administration will almost certainly attempt to open up more of the reserve for leasing.

DOI-2020-01 02396

Latest Mexican wolf recovery plan hit from two sides

The Fish and Wildlife Service (FWS) December 4 announced completion of a new Mexican Wolf recovery plan, touching off protests from a western Republican and environmentalists, albeit for different reasons.

At bottom the recovery plan, following the January 2015 listing of the Mexican wolf under the Endangered Species Act (ESA), envisions an increase in population from 130 now to 320 by 2038.

But Rep. Stevan Pearce (R-N.M.) said the plan puts too much of the recovery onus on New Mexico and Arizona and not enough on Mexico the country.

"It once again places the burden of recovery on the backs of New Mexicans and disregards the serious concerns of ranchers and farmers whose livelihoods are affected by the program," he said on release of the recovery plan by the Trump administration. "Additionally, the updated recovery plan ignores the fact that the vast majority of traditional habitat lies in Mexico."

Environmentalists said the recovery plan, like the listing decision, falls far short of protecting the lobo. "It's a 'recovery plan' in name only. Without additional habitat and greater genetic diversity, the wolves will continue to teeter on the brink of extinction. The plan provides none of these essential needs," said Heidi McIntosh, an attorney with the Earthjustice environmental law firm.

Earthjustice has long-running litigation going against the Obama administration's lobo policies. Now environmentalists are also turning their fire on the Trump administration.

In January 2015 the Obama administration designated the Mexican grey wolf as an endangered subspecies. The lobo had previously been protected under a blanket gray wolf listing, but FWS had delisted the wolf in much of the West.

In 1982 FWS completed an initial Mexican wolf recovery plan. On June 30 FWS under the Trump administration proposed a new recovery plan for the wolf. On December 4 FWS completed that plan.

Sums up the plan, "Our recovery strategy for the Mexican wolf is to establish and maintain a minimum of two resilient, genetically diverse Mexican wolf populations distributed across ecologically and geographically diverse areas in the subspecies' range in the United States and Mexico."

Adds the plan, "The recovery strategy's primary components include expanding the geographic distribution of the Mexican wolf, increasing population abundance, improving gene diversity, monitoring wild populations and implementing adaptive management, and collaborating with partners to address social and economic concerns related to Mexican wolf recovery."

FWS said it will consider the Mexican wolf as recovered under ESA when the "United States population average over a 4-year period is greater than or equal to 320 Mexican wolves," and when gene diversity is reached. FWS said the implementation of the plan would cost \$178,439,000.

If it has its way, the House of Representatives would not allow any spending on the Mexican wolf under the ESA. On September 14 it approved a fiscal year 2018 appropriations bill (HR 3354) that would do just that.

More information on the FWS plan is available at: <https://www.fws.gov/southwest/es/mexicanwolf/>.

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IBLA decisions

(We post current Interior Board of Land Appeals decisions at our website, <http://www.blm.gov/ibla.htm>. 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 leasing.

BLM decision: BLM will offer nine parcels for oil and gas lease sale after preparing an environmental assessment (EA).

Appellant environmental groups: IBLA should stay lease approvals because the EA was inadequate and development will harm the environment.

IBLA decision: Rejected stay request because the appellants did not demonstrate immediate and irreparable harm.

Case identification: *Western Watersheds Project, et al*, 192 IBLA 72. Decided December 6, 2017. Seventeen pages. Appeal and petition to stay the effect of a decision of the Deputy State Director, Lands and Minerals, of the Utah State Office of BLM to offer for sale oil and gas lease parcels. DOI-BLM-UT-WO20-2017-0001.

IBLA argument: IBLA Administrative Judge Sylvia Riechel rejected a request from environmentalists for a stay of the offering by BLM of nine tracts for oil and gas lease sale in Juab County, Utah. Riechel rejected the stay because she said the appellants didn't demonstrate immediate and irreparable harm from the BLM decision to offer the tracts. The judge said the impacts of the leasing won't be known until BLM approves applications for permit to drill. Held Riechel, "Even if lease issuance could be construed as irreparable harm, (the appellant) has not shown that harm is immediate. As (the appellant) itself recognizes, BLM must grant applications for permits to drill before any surface-disturbing activities may occur, and 'additional consultation, coordination and environmental analysis will be required during the review and approval of site-specific proposals for oil and gas exploration and development on the lease parcels.'"

Notes

Second critical minerals hearing in House. The House subcommittee on Energy and Mineral Resources held a second hearing December 12 on the scarcity of domestic sources of critical minerals. The hearing, intended to address the nation's dependence on foreign minerals, also addressed the amount of public lands withdrawn from hard rock mining. Said Katie Sweeney, senior vice president of legal affairs for the National Mining Association, "Currently, new mining operations are already either restricted or banned on more than half of all federally owned public lands. Given the vast amount of federal lands already closed to mining operations, caution should be exercised when determining whether additional lands should be placed off limits." On March 21 the subcommittee held an initial hearing on legislation (HR 520) from Rep. Mark Amodei (R-Nev.) that would encourage domestic production of critical minerals. Among other things the Amodei bill would have federal land managers establish time lines for decisions on all mineral permits, not just for critical minerals. Ranking House Natural Resources Committee minority member Raúl M. Grijalva (D-Ariz.) used the December 12 hearing to promote an existing withdrawal from uranium mining of 1 million acres of public lands near Grand Canyon National Park. He has introduced legislation (HR 360) to make the existing, 20-year Grand Canyon withdrawal permanent. In October the Department of Agriculture recommended termination of that withdrawal. Said Grijalva, "We're supposed to believe our national demand for uranium, of all things, is too important to let the Grand Canyon, tribal needs, public health or any other considerations get in the way." (See related article on the Grand Canyon withdrawal on page 4.)

Wolf v. grizzly in court? The Fish and Wildlife Service (FWS) December 7 asked for the public's advice on the applicability of a court decision on the delisting of the Great lakes wolf under the Endangered Species Act (ESA) on the delisting of the Greater Yellowstone grizzly bear. In August the Court of Appeals for the District of Columbia ruled that before FWS carves out a distinct population of the Great Lakes wolf it needed to assess the impacts of partial delisting and the possible loss of historical range. FWS had deployed a similar strategy for the

grizzly - first identifying a distinct population of the grizzly, i.e. the Greater Yellowstone segment, and then delisting the population under ESA. So FWS is now asking the public to comment on the possible link between FWS's Great Lakes wolf strategy and its grizzly bear strategy. The appeals court decision *Humane Society of the United States, et al. v. Zinke et al.*, 865 F.3d 585 (D.C. Cir. 2017), was handed down August 1. On June 30 FWS had delisted the Yellowstone grizzly. Comment by January 8 at: <http://www.regulations.gov>, Docket No. FWS-R6-ES-2017-0089.

Daines would release Montana WSAs. Sen. Steve Daines (R-Mont.) introduced legislation (S 2206) December 7 that would release 449,500 acres of national forest wilderness study areas (WSAs) to multiple use. The Forest Service had recommended in forest plans the release of the 449,500 acres, contained in four distinct WSAs. Daines painted the release as a boon to outdoor recreation. "Implementing the Forest Service recommendation for these WSAs will increase the value of public lands for Montana outdoor recreationists of all ages and across the board - hunters, anglers, snowmobilers, mountain bikers, off-road vehicles users and more, bolstering Montana's \$6 billion outdoor economy and balancing our iconic wildlife populations," he said. The Montana Mining Association and the Montana Stockgrowers Association also endorsed S 2206. Congress designated the WSAs in the 1970s for their potential as wilderness. The Montana Wilderness Association blasted the legislation. Said John Todd, the association's conservation director, "We believe that it's time to decide on how these areas should be managed for the long-haul. But we believe that any management decisions regarding any wilderness study area must involve a diverse group of stakeholders working together at the local level towards agreement and mutual benefit. But if Senator Daines has his way, these five areas totaling nearly a half-million acres would be forever altered - without a single public meeting."

Conference Calendar

JANUARY

4-7. **Archaeological Institute of America Annual Meeting** in Boston. Contact: Archaeological Institute of America, 656 Beacon St., Boston, MA 02215-2006. (617) 353-9361. <http://www.archaeological.org>.

5-10. **American Farm Bureau Federation Annual Convention** in Nashville, Tenn. Contact: American Farm Bureau Federation, 600 Maryland Ave., SW Washington, D.C. 202-406-3600. <http://www.fb.org>.

27-Feb. 3. **National Association of Conservation Districts Annual Meeting** in Nashville, Tenn. Contact: National Association of Conservation Districts, 509 Capitol Court, N.E., Washington, D.C. 20002. (202) 547-6233. <http://www.nacdnet>.

28-Feb. 2. **Society for Range Management Annual Meeting and Trade Show** in Sparks, Nev. Contact: Society for Range Management, 30 W 27th Ave., Wheat Ridge, CO 80215-6601. (303) 986-3309. <http://www.rangelands.org>.

31-Feb. 2. **Cattle Industry Convention & NCBA Trade Show** in Phoenix. Contact: National Cattlemen's Beef Association Convention & Meetings Department, 9110 East Nichols Avenue, Suite 300, Centennial, CO 80112. <http://www.beefusa.org>.

FEBRUARY

6-7. **Air Quality Issues Affecting Oil, Gas and Mining special institute** in Denver. Contact: Rocky Mountain Mineral Law Foundation, 9191 Sheridan Blvd., #203, Westminster, CO 80031. (303) 321-8100. <https://www.rmmlf.org>.

7-10. **Association of Partners for Public Lands** convention in San Diego. Contact: Association of Partners for Public Lands, 2401 Blueridge Ave, Suite 303, Wheaton, MD 20902. (301) 946-9475. <http://www.appl.org>.