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Dear Public Lands News Subscriber:

May 5, 2017: Attached is the current issue of the newsletter Public Lands News (Volume 42 Number 9), in .doc format and in PDF format. Below are the headlines. We thank you for reading Public Lands News.
The Editors

BREAKING NEWS: Senate gives final approval to FY 2017 approps bill
The Senate yesterday afternoon (May 4) passed a fiscal year 2017 appropriations bill (HR 244), sending the measure to President Trump. Although Trump has hinted at a possible veto, he is expected to sign the measure into law. *(Much more in the attached newsletter.*

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FY 2017 approps bill drops riders, maintains spending

Congress was nearing final action today (May 5) on a fiscal year 2017 appropriations bill (HR 244) that would roughly maintain fiscal 2016 spending levels for public lands agencies. The House approved the bill May 3.

However, President Trump May 2 hinted at a veto of the bill in order to trigger a national debate over federal government spending.

For BLM land and resource management HR 244, as agreed to by a House-Senate appropriations conference committee May 1, would appropriate \$1.095 billion, compared to a fiscal 2016 appropriation of \$1.073 billion.

For the National Forest System the appropriators approved \$1.513 billion, compared to \$1.509 billion in fiscal 2016.

Appropriators approved \$2.8 billion for Forest Service wildfire management, \$342

million for a wildfire suppression reserve fund called FLAME, and \$390 million for hazardous fuels management.

For the Interior Department wildfire programs appropriators approved \$943 million in various wildland fire management accounts, \$65 million for FLAME, and \$180 million for hazardous fuels management.

In completing the bill May 1 the House-Senate conference committee dropped dozens of public lands amendments/riders that the House and the Senate Appropriations Committee approved last year.

Topping the list of killed amendments was a House proposal to forbid the designation of any national monument in specific counties in eight states - Arizona, California, Colorado, Nevada, New Mexico, Oregon, Utah and Maine. Democrats said the proposed ban would apply to 160 million acres.

But HR 244 does contain two important amendments:

BLM foundation: The measure would establish for the first time a Bureau of Land Management Foundation. Foundation donors would be able to specify what programs should receive their money. On the list are wild horses and burros, national conservation areas, recreation resources and so on. By the same token donors could direct the distribution of their contributions to the reclamation of abandoned hard rock mining and energy sites.

Other land management agencies already have similar foundations, including the National Park Foundation, the National Fish and Wildlife Foundation, and the National Forest Foundation. Like those foundations, a BLM entity would have the authority to operate like a nonprofit group and collect and distribute money.

Eastern Alaska plan: The measure would have BLM revisit a new plan released by BLM January 6 that covers 6.5 million acres of eastern interior Alaska. Among other things the plan designates 1 million acres of the region as areas of critical environmental concern that will limit mining and other uses.

Says the report accompanying HR 422, "The Bureau is instructed to review recently executed land management plans to determine whether decisions to retain certain mineral closures are consistent with Federal law, including the Alaska National Interest Lands Conservation Act and the Federal Land Policy Management Act, including a determination whether sufficient notice was provided prior to the creation of Areas of Critical Environmental Concern."

Also lopped off the bill were riders that would have:

- * forbid the implementation of an Office of Natural Resources Revenue rule on coal, oil and gas royalties. That was kind of mooted when the Trump administration suspended the rule and began work on a new rule.

- * forbid the implementation of an EPA rule regulating oil and gas methane emissions. EPA has begun work on revoking the rule.

- * forbid the implementation of an Obama administration policy governing the greater sage-grouse under the Endangered Species Act. HR 244 does contain a provision barring the listing of the sage-grouse under the act.

- * forbid the Interior Department from delisting the gray wolf in Wyoming from the Endangered Species Act. That was mooted May 1 when the Fish and Wildlife Service followed a circuit court order and delisted the Wyoming wolf.

The money: Here are a few appropriations numbers compared to fiscal 2016:

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BLM RESOURCE MANAGEMENT: The fiscal 2017 bill contains an appropriation of \$1.095 billion, compared to a fiscal 2016 appropriation of \$1.073 billion.

PAYMENTS-IN-LIEU OF TAXES: The fiscal 2017 law contains an appropriation of \$465 million, compared to a fiscal 2016 appropriation of \$452 million.

WILD HORSES AND BURROS: The fiscal 2017 law contains an appropriation of \$80.6 million, the same as a fiscal 2016 appropriation of \$80.6 million.

ENERGY AND MINERALS: The fiscal 2017 law contains an appropriation of \$172.8 million, compared to a fiscal 2016 appropriation of \$166 million.

NATIONAL LANDSCAPE CONSERVATION SYSTEM: The fiscal 2017 law contains an appropriation of \$36.8 million, the same as a fiscal 2016 appropriation of \$36.8 million.

NATIONAL FOREST SYSTEM: The fiscal 2017 bill contains an appropriation of \$1.513 billion, compared to a fiscal 2016 appropriation of \$1.509 billion.

FOREST PRODUCTS: The fiscal 2017 bill contains \$367.8 million for this line item, which includes timber sales, compared to a fiscal 2016 appropriation of \$359.8 million.

FWS REFUGE MANAGEMENT: The fiscal 2017 bill contains an appropriation of \$483.9 million compared to a fiscal 2016 appropriation of \$481.4 million.

LWCF FEDERAL: The fiscal 2017 bill contains an appropriation of \$188.8 million compared to a fiscal 2016 appropriation of \$226.9 million.

Here is the agency-by-agency LWCF distribution: BLM would receive \$31.4 million compared to \$38.6 million in fiscal 2016; the Fish and Wildlife Service (FWS) would receive \$50 million compared to \$58.5 million; the Park Service would receive \$42 million compared to \$53.7 million; and the Forest Service would receive \$54.4 million compared to \$64.4 million.

Trump monument review may key on size, not revocations

President Trump signed an executive order April 26 directing the Interior Department to review the designations of 25 national monuments of more than 100,000 acres made since 1996. Trump did not take the ultimate step and say he had the authority to revoke those designations.

Trump's order only tells Secretary of Interior Ryan Zinke to review the scope of the designations, presumably keying on a provision of the Antiquities Act of 1906 that limits the size of monument designations.

That law authorizes monument designations of federal lands that "may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected."

Zinke sounded most interested in reducing the size of monuments, not so much the outright revocation of them. "Historically, the Act calls for the President to designate the 'smallest area compatible with proper care and management of the objects to be protected,'" he said. "Despite this clear directive 'smallest area' has become the exception and not the rule."

Critics of President Obama's designation of a Bears Ears National Monument in Utah and President Clinton's designation of a Grand Staircase-Escalante National

Monument assert far more land was protected than necessary.

At a hearing of the House subcommittee on Federal Lands on national monument designations May 2 chairman Tom McClintock (R-Calif.) said the Obama administration abused the law by designating excessive acreage and that Congress could step in.

"Possible reforms to prevent these abuses include acreage limitations on this authority and a requirement that state and local governments be included in the decision," he said.

Ranking subcommittee Democrat Colleen Hanabusa (D-Hawaii) warned the administration not to revoke designations. "Let me say this," she said. "Any executive actions to abolish the existing monuments will be met with significant opposition of the American people."

At the hearing Maine Gov. Paul LePage (R-Me.) blasted President Obama for designating an 87,500-acre North Woods national monument in Maine. The National Park Service manages the area. He recommended local approval of any national monument.

"I believe the law should be amended to require local approval before the President can unilaterally designate a National Monument," LePage said. "This support should include approvals from the state's governor and legislature."

LePage said February 22 that he wrote Trump on February 14 and asked him to either revoke the designation or, alternatively, allow the State of Maine to manage the area. The North Woods monument is not included in the Trump-Zinke review.

The Trump-Zinke review could set the stage for Trump to at least reduce the size of national monuments, if not outright revoke their designations. It directs Secretary of Interior Ryan Zinke to report back to the White House within 120 days with recommendations for "Presidential actions, legislative proposals, or other actions consistent with law."

For the Bears Ears National Monument in southern Utah the executive order asks for a response from Zinke within 45 days.

Said Trump in a ceremony at the Interior Department, "The previous administration used a 100-year-old law known as the Antiquities Act to unilaterally put millions of acres of land and water under strict federal control - have you heard about that? - eliminating the ability of the people who actually live in those states to decide how best to use that land."

Trump made clear his displeasure with the Bears Ears designation. "In December of last year alone, the federal government asserted this power over 1.35 million acres of land in Utah, known as Bears Ears - I've heard a lot about Bears Ears, and I hear it's beautiful - over the profound objections of the citizens of Utah," he said. "The Antiquities Act does not give the federal government unlimited power to lock up millions of acres of land and water, and it's time we ended this abusive practice."

Bishop backed Trump's review. "Today's action sends the powerful message that communities will no longer take a back seat to out-of-state special interest groups. I'm pleased to see President Trump recognize long-standing abuses of the Antiquities Act. It was created with noble intent and for limited purposes, but has been hijacked to set aside increasingly large and restricted areas of land without public input," said the chairman.

Bishop met with Trump shortly after the November elections and reportedly told the President he had authority to revoke the Bears Ears monument.

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Bishop's Senate counterpart as chairman of the Senate Energy Committee, Sen. Lisa Murkowski (R-Alaska), was also on board. "I strongly support President Trump's order to review the largest national monuments designated over the past two decades," she said. "During the past administration, we saw the Antiquities Act result in sweeping designations that frequently ignored local opposition."

If Zinke's review recommends legislative action, Bishop and Murkowski will not have it easy. Democrats, environmentalists and, crucially, sportsmen will rebel.

Said ranking House Natural Resources Committee Democrat Rep. Raúl M. Grijalva (D-Ariz.), "Attempting to wipe national monuments off the map with the stroke of a pen would be illegal and unpopular, and this review will show as much. If done in good faith, this review will lead President Trump and Secretary Zinke to see these wonderful places as the American people see them: as sources of national pride and engines for local economic development."

Ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.) pointed out on the Senate floor the economic benefits of outdoor recreation linked to national monuments, as calculated by a new report from the Outdoor Industry Association.

"Today, the recreation industry generates \$887 billion in consumer spending every year," she said. "That is up more than \$200 billion – from \$646 billion – since the last time the study was done a few years ago. What does this tell us? Not only do more Americans enjoy recreation on our public lands, but an economy has been built around it, and it continues to grow and thrive, with new products, new services, and more comfortable and innovative ways to enjoy the outdoors."

Sportsmen warned they might object to monument revocations. "The process outlined in this executive order starts us down a path that could jeopardize protected public lands important for hunters and anglers, such as Berryessa Snow Mountain and Rio Grande del Norte National Monument," said Corey Fisher, a senior policy director for Trout Unlimited. "These are places that sportsmen and women have worked tirelessly to protect. Hunters and anglers will watch this review carefully and strongly oppose any efforts to roll back national monuments."

In a particularly tough statement, National Parks Conservation Association President Theresa Pierno said, "To call into question whether our national heritage is worth protecting will have lasting repercussions on the preservation of our public lands for generations to come."

"America's national monuments have become the latest victims in this heated political atmosphere. Any attempt to undo or alter them isn't just undermining a century-old law, it's a betrayal of the people who fought so hard for them, and the land and history we've all spent generations safeguarding."

A significant school of thought questions Trump's authority to outright undo national monument designations, if not his authority to trim the size of them.

And the Earthjustice law firm, which betimes coordinates lawsuits in such situations on behalf of environmental groups, suggested that litigation might be in the offing if Trump tinkered with monument designations.

A national debate has erupted about whether or not the President has authority to unilaterally revoke or revise a national monument designation. In late March the influential American Enterprise Institute (AEI) published a [report](#) that argues Trump has unlimited authority to do so.

However, that report disagrees with a 1938 U.S. Attorney General opinion and a Congressional Research Service [report](#) of last fall that doubt Trump enjoys such authority.

But AEI researchers John Yoo and Todd Gaziano argue that the 1938 decision of former Attorney General Homer Cummings, failed. "We think this opinion is poorly reasoned; misconstrued a prior opinion, which came to the opposite result; and is inconsistent with constitutional, statutory, and case law governing the president's exercise of analogous grants of power," they wrote. "Based on a more careful legal analysis, we believe that a general discretionary revocation power exists."

Meanwhile, the Center for American Progress says in a new report that Bears Ears not only qualifies as a national monument, but also as a unit of the National Park System.

In a new analysis the center says Bears Ears ranks high among all areas in the West in terms of ecological intactness and connectivity, minimal light pollution, biodiversity, etc.

For their part western Republicans are stepping up their campaign to prevent the unilateral designation of national monuments by presidents in the future. Twenty-five senators joined Murkowski in introducing legislation (S 33) that would require Congressional and state approval of any monument.

Bears Ears: President Obama on December 28 designated a 1.35 million-acre Bears Ears monument in southern Utah, although that is significantly less than the 1.9 million acres advocates had recommended. BLM manages the monument.

The Utah Congressional delegation said January 24 that as a top priority it would seek a reversal of the Bears Ears monument. The state's two senators and four House members jointly said they would ask Congress and President Trump to undo the designation.

Obama set a record by designating 34 national monuments on his watch, often to the dismay of western Republicans and plaudits from Conservationists.

Grand Staircase Escalante: President Clinton designated the 1.9 million-acre monument in southern Utah on Sept. 18, 1996. It is the first national monument for BLM.

The designation caused a furor in Utah, particularly in the Congressional delegation, because the Clinton administration reportedly did not consult with the Utah delegation before making the designation.

President Trump's executive order is available at:
<https://www.whitehouse.gov/the-press-office/2017/04/26/presidential-executive-order-review-designations-under-antiquities-act>.

Hill reversal of BLM methane rule going down to wire

The Senate at press time had not yet acted on a House-passed resolution to overturn a BLM oil and gas methane emissions rule of Nov. 15, 2016. That leaves only today and two days next week for the Senate to act and reverse the rule.

An underlying law says the Congressional Review Act (CRA) only allows Congress to reverse Obama administration rules by May 9.

President Trump and Secretary of Interior Ryan Zinke have begun an initiative to reverse the rule administratively, but that might take years. A reversal under the CRA would be immediate.

This is a big one for the energy industry. The president of the Western Energy Alliance, Kathleen Sgamma, said at a press conference May 1, "Our number

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one priority is getting the BLM methane rule overturned in the Senate. That's our number one priority. Time is running out on that."

If the Senate doesn't act, she said, "We continue our lawsuit in the District (Court) of Wyoming and we engage in rule-making and show the new administration why the old administration completely overstepped its legal bounds."

Sgamma was optimistic about the lawsuit and the Trump administration but granted it would take hard work to undo the rule. "I think we would ultimately prevail there. It would just take more time and effort and lawyers," she said.

The House approved a CRA resolution (HJ Res 36) to reverse the methane rule February 23 by a vote of 221-to-191. The Senate has not acted yet on its resolution (SJ Res 11) and, although Senate rules authorize passage by a simple majority, a vote is expected to be close.

The BLM rule would limit the rate of flaring, require frequent inspections by operators and require the replacement of outdated equipment.

Meanwhile, EPA has taken first steps toward modifying or replacing a methane rule the agency published on June 3, 2016. On April 20 EPA stayed a deadline for compliance with its rule for 90 days beyond a June 3, 2017, deadline.

The EPA rule, which governs methane emissions from *future* operations, would not only set emission limits from methane but also require operators to find and repair leaks.

Sgamma said stopping the EPA methane rule is also a top priority of the energy industry. The EPA rule is not eligible for reversal under the CRA because it was issued too long ago.

Congress has already approved two CRA resolutions that President Trump signed, thus revoking a BLM planning rule and a Fish and Wildlife Service (FWS) rule governing hunting in Alaska. Environmentalists are challenging the constitutionality of the hunting rule in court (*see following article.*)

Time is running short for Congress because the CRA gives the House and Senate just 60 working days to act on regulations, or, according to the Congressional schedule, until May 9. The law allows Congress to address only those Obama administration regulations issued after June 13, 2016.

Methane rule: A signature Republican regulation reversal would undo a BLM oil and gas methane emissions rule of Nov. 15, 2016.

President Trump and Secretary of Interior Ryan Zinke have begun an initiative to reverse the rule administratively, but that might take years. A Congressional reversal under the CRA would terminate the rule immediately. A Zinke Secretarial order 3349 directs BLM to report back to him immediately on what needs to be done to reverse the rule, such as what kind of environmental documentation is required.

Judge Scott W. Skavdahl in U.S. District Court in Wyoming on January 16 refused for now to halt implementation of the rule. He held that industry plaintiffs have not yet proved they would be harmed by the regulation.

However, Skavdahl was skeptical about BLM's argument that the rule is designed to prevent waste, i.e. methane venting, and not to assume EPA's clean air responsibility. The oil and gas industry argue in their suit that BLM has no authority over Clean Air Act regulation; only EPA does.

Said the judge, "The Court questions whether the 'social cost of methane' is an

appropriate factor for BLM to consider in promulgating a resource conservation rule pursuant to its [Mineral Leasing Act] authority."

BLM planning: Trump did not comment March 27 on signing into law (PL 115-12) the revocation of BLM's planning rule of Dec. 12, 2016, the so-called 2.0 rule.

Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) did, praising the President. "The repeal of this onerous land management planning rule returns power and decision-making authority back to local and state entities in Alaska and western states," she said. "If left intact, it would have harmed grazing, timber, energy development, mineral production, and even recreation on federal lands. Now, those who actually live near BLM lands will once again make planning decisions – not those who work thousands of miles away at BLM headquarters in Washington, D.C."

The Senate had joined the House March 7 in approving the resolution (HJ Res 44) to overturn the BLM planning rule

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

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

The Zinke Secretarial Order 3349 directs FWS to review the rule and report to him on how to revoke it administratively.

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

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

The Zinke Secretarial Order 3349 directs NPS to review the rule and report to him on how to revoke it administratively.

Oil, gas and coal royalties: On February 13 Rep. Scott Tipton (R-Colo.) introduced a resolution (HJ Res 71) to overturn a July 1, 2016, Interior Department rule that would establish new procedures for calculating the value of oil, gas and coal for royalty purposes

The rule, from the Office of Natural Resources Revenue (ONRR), replaced a former rule that applied a series of benchmarks to set the royalty price. Instead ONRR now begins with a first affiliated sales price, followed by index prices.

The oil and gas industry objects because, among other things, the Obama rule establishes a default provision that allows ONRR to establish valuation when an operator does not play by the rules.

The Obama rule is already in abeyance because ONRR postponed its implementation on February 22. Then on April 4 the department proposed outright repeal of the Obama rule. But again, Congressional repeal would eliminate the rule immediately.

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Oil and gas site security: On February 1 Rep. Steve Pearce (R-N.M.) and nine of his colleagues introduced a resolution (HJ Res 56) that would reverse a BLM rule of Oct. 12, 2016, that set standards for onshore oil and gas facility site security. No votes yet.

Natural gas measurement order: On February 7 Rep. Cramer introduced a resolution (HJ Res 68) that would reverse a BLM rule of Oct. 17, 2016, that revised standards for measuring and reporting on gas produced on public lands. No votes yet.

On February 16 Rep. Bruce Westerman (R-Ark.) introduced a resolution (HJ Res 82) that would reverse a BLM rule of Oct. 17, 2016, that revised standards for measuring and reporting on oil produced on public lands. No votes yet.

Alaska hunting: The Senate joined the House March 21 in approving a resolution (HJ Res 69) that would revoke a rule limiting hunting and fishing in national wildlife refuges in Alaska moves the debate to the Senate. President Trump signed HJ Res 69 into law April 3 PL 115-20.

Enviros challenge constitutionality of reg reversals

The Center for Biological Diversity last month brought an initial lawsuit challenging the Constitutionality of the Congressional Review Act. This Congress has used the law to revoke 13 Obama administration regulations, including two important public lands rules.

The lawsuit says the Congressional Review Act (CRA) violates the Constitutional separation of powers precept by preventing a federal agency from carrying out its legal duty. That is, once a rule is revoked the CRA forbids an agency from producing a new rule "substantially" like the old one.

The immediate target of the Center's lawsuit is a CRA resolution that President Obama signed into law April 3 (PL 115-20) that revokes a rule limiting hunting and fishing in national wildlife refuges in Alaska.

The lawsuit argues, "By nullifying the Refuges Rule, and prohibiting any future substantially similar rules, 5 U.S.C. § 801(b)(2), without amending any of Interior's existing rulemaking authorities, Congress expanded its own power at the expense of the executive branch. Such Congressional overreaching undermines the separation of powers that must be maintained between the legislative and executive branches, in violation of the U.S. Constitution."

That is, Congress has delegated to the Fish and Wildlife Service (FWS) - i.e. the executive branch - broad powers to manage the nation's wildlife refuges. By constraining those powers, the lawsuit maintains, Congress is interfering with the authority of FWS (the executive branch) to manage the refuges.

Said Collette Adkins, a Center attorney and biologist, "The Congressional Review Act throws the balance of power out of whack and opens the door for politicians in Congress to meddle in decisions that ought to be made by experts at federal agencies."

At issue in Congress's revocation resolution is an Aug. 8, 2016, FWS rule that pre-empted a State of Alaska policy authorizing "intensive predator management" in wildlife refuges in Alaska. The FWS rule curbed a state policy governing the hunting of bears and wolves.

In addition to the Alaska hunting rule Congress also revoked a BLM planning 2.0 rule (PL 115-12) on March 27. BLM published the rule on Dec. 12, 2016.

Waiting in the wings is another controversial BLM public lands rule that governs methane emissions from oil and gas projects. BLM completed the rule on Nov. 15, 2016. Although the House approved the resolution (HJ Res 36) February 23 by a vote of 221-to-191 the Senate has not acted yet on its resolution (SJ Res 11). (See *previous article*.)

But time is running short on the methane resolution and on a half-dozen other resolutions targeting public lands regulations. That's because the CRA gives the House and Senate just 60 working days to act on regulations, or, according to the Congressional schedule, May 9. The law allows Congress to address only those Obama administration regulations issued after June 13, 2016.

The CRA requires only a simple majority in both the House and Senate, circumventing a Senate filibuster. Of importance once a rule is revoked the CRA forbids an agency from producing a new rule "substantially" like the old one.

Although environmentalists objected strenuously to the Alaska hunting resolution, their cause was hampered by the support for the resolution by their hunting and fishing colleagues in the conservation community.

Indeed 27 hunting and fishing groups endorsed the House resolution just before the House approved it February 16 by a vote of 225-to-193. Such conservation groups as Ducks Unlimited, the International Association of Fish and Wildlife Agencies, and the Wildlife Management Institute signed a letter of support for the resolution to House members.

The State of Alaska filed a lawsuit against the FWS rule on January 13 and the Safari Club International filed a separate lawsuit on January 19.

The dispute over hunting bears and wolves in national refuges and national parks has erupted into a national controversy.

The FWS regulation held that the State of Alaska may not regulate predators in 77 million acres of federal wildlife refuges unless state regulations are based on sound science. The rule did not affect subsistence hunting by Alaska Natives.

SRS shut out in approps, PILT okay; will senators help?

Both Republican and Democratic senators May 2 promised to strive to insure full funding for twin county public lands assistance programs - Secure Rural Schools (SRS) and payments-in-lieu of taxes (PILT).

PILT is temporarily in decent shape, in line for \$465 million in a fiscal year 2017 appropriations bill (HR 244) that Congress is expected to approve today (May 5). However, the bill contains no money for SRS.

SRS was last authorized in fiscal year 2015, with \$300 million in payments allocated in March of 2016, and hasn't been extended since. In December western legislators failed to persuade their colleagues to extend SRS into this year, perhaps costing public lands counties more than \$300 million.

At a Senate Energy Committee hearing on the two programs May 2 panel chairman Lisa Murkowski (R-Alaska) promised to help both SRS and PILT, perhaps by establishing a trust fund.

"(I)f we are going to retain federal lands in federal ownership, we need to be creative in thinking about and funding payments for tax-exempt lands," she said. "And that includes taking a hard look at ideas like a permanent natural resources trust and other options for revenue sharing because the annual scramble that goes

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on around here to find funding does not provide the certainty or stability that our rural communities need to provide services to their people."

Sen. Ron Wyden (D-Ore.) said he was frustrated that the fiscal 2017 appropriations bill left SRS out. "I was also disappointed the bill does not include help for Oregon's rural counties through the Secure Rural Schools program. I am working on bipartisan solutions to give our struggling rural counties a lifeline and to get ahead of the catastrophic wildfires that threaten our forests and communities."

To follow through Murkowski, Wyden, Sen. Orrin Hatch (R-Utah) introduced legislation (S 1027) May 3 to extend the SRS program for two years (fiscal 2016 with payments in calendar 2017 and fiscal 2017 with payments in calendar 2018. Rep. Cathy McMorris Rodgers (R-Wash.) introduced a House version of the bill (HR 2340.) Said Murkowski, "In the short-term, we must work together to continue the SRS and PILT programs. However, we must find better solutions in the long-term that will help provide the jobs and economic activity our rural and forested communities so desperately need."

The SRS payments are designed to compensate western counties for significant revenues they once received from a share of federal timber sales, back when those sales amounted to 12 billion board feet a year. The last timber sale year for which the service has data, fiscal 2015, counted 2.9 billion board feet of sales.

This SRS spending battle is actually being fought out over two fiscal years at once - in the fiscal 2017 appropriations bill for the Interior Department and Related Agencies that a House-Senate appropriations committee reached final agreement on May 1 and for the next year.

Eighty members of Congress from both parties on February 17 asked the Office of Management and Budget Director Mick Mulvaney to give SRS priority in shaping a fiscal 2018 Trump budget request. "Forest counties and schools received their last authorized SRS payment in March 2016. Without SRS, existing revenue sharing payments are not sufficient to support the services these counties must provide, and counties are forced to choose between critical services for their citizens," they wrote.

Hatch and Wyden were the lead Senate authors and Rodgers and Suzanne Bonamici (D-Ore.) were the lead House authors.

The Trump administration sketched the outlines of a fiscal 2018 budget March 16 that recommends an unspecified decrease in allocations for the payments-in-lieu of taxes program. A more detailed Trump budget is expected shortly.

The outline of a budget says the administration "(s)upports counties through discretionary funding for the (PILT) program at a reduced level, but in line with average funding for PILT over the last decade." The outline doesn't mention SRS.

Complained Sen. Maria Cantwell, "The White House does not seem to understand the need for the SRS program or the PILT program, nor the impact they have on local governments and local economies across the West. These two programs are what pay for schools, roads, and emergency services in our rural communities."

Congress posts \$4.2B for wildfires; no emergency shift

Congressional appropriators said May 1 they have inserted enough money for wildfire fighting in a final fiscal year 2017 appropriations bill (HR 244) to pay for an expensive wildfire season.

The appropriators said that the final spending bill - approved by the House May 3 and due for a Senate vote shortly - contains \$3.8 billion for regular wildfire spending costs and \$407 million for emergency wildfire costs.

Summarized the House Appropriations Committee, "In total, the bill funds wildland firefighting and prevention programs at \$4.2 billion, including \$407 million in emergency funding. It fully funds the 10-year average for wildland fire suppression costs for both the Department of the Interior and the Forest Service. The legislation also includes \$570 million for hazardous fuels management, which is \$25 million above the fiscal year 2016 level."

Broken down, appropriators approved \$2.8 billion for Forest Service wildfire management, \$342 million for a wildfire suppression reserve fund called FLAME, and \$390 million for hazardous fuels management.

For the Interior Department appropriators approved \$943 million in various wildland fire management accounts, \$65 million for FLAME, and \$180 million for hazardous fuels management.

The appropriators were under the gun on wildfire spending because those costs have increased so dramatically in the last decade that they are eating up an unsustainable share of an Interior and Forest Service spending bill.

In the last two Congresses the Obama administration and House and Senate westerners from both parties have proposed transferring emergency wildfire costs above the 10-year average out of spending bills and into a disaster account. The fiscal 2017 appropriations bill does not do that.

In addition the Trump administration's fiscal 2018 initial, short-form budget request does not include the emergency transfer. A more detailed Trump request is expected in the next fortnight.

The ranking Democrat on the Senate Energy Committee, Sen. Maria Cantwell (D-Wash.), is not pleased. In effect, Cantwell said last month, the Trump budget does not anticipate the \$600 million in emergency wildfire costs of calendar 2016.

In a letter to Trump she said, "You should reverse this decision immediately. Underfunding the Federal wildland fire program will almost certainly force your agencies to restart the practice of transferring funding from non-fire accounts to pay for the cost of managing fires."

She added, "The appropriate Congressional committees stand ready to work with you to implement a permanent fire-budgeting fix this year. I am requesting that in your more-detailed Fiscal Year 2018 budget request that you are scheduled to release (shortly), you include a comprehensive, thought-through fix to the 'fire-borrowing' problem."

Last year 5.5 million acres of forest around the country burned. The National Interagency Fire Center (NIFC) put the cost of fighting the fires at \$2 billion, the second most on record after \$2.1 billion in 2015.

There is no guarantee that the upcoming calendar year 2017 wildfire season will be as bad as 2016 because of the huge storms that blew across the West this last winter.

But NIFC said the heavy rain and snow could become a problem in the summer because they will spur the growth of flammable plants. "Exceptional winter and early spring precipitation is leading to the development of a substantial crop of fine fuels in the lower and middle elevations," the center said May 1 in a monthly

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outlook report. "The heavy loading of fine fuels could become problematic when they cure out in July."

The center did say the deep snowpack is expected to melt more slowly than normal, keeping things cool and damp and delaying the fire season.

Despite the heavy rain and snow of this winter westerners such as Cantwell and Sen. Ron Wyden (D-Ore.) say legislation is still needed to guarantee emergency spending on wildfires is transferred to a disaster account.

"One year of heavy rainfall won't solve the problems caused by years of drought and a backlog of fire prevention projects in our forests," a spokeswoman for Wyden told us earlier this year. "Without a long-term fix, the agencies will keep being forced to clean out their coffers to fight wildfires."

Bill sponsors may give up a previous recommendation that emergency wildfire costs be transferred to disaster spending when those costs reach 70 percent of the 10-year average. The House and some Senate Republicans would prefer to wait until costs reached 100 percent of the average before the transfer.

Appropriators drop ESA riders; GOP still seeks change

Congress was on the verge of approving a fiscal year 2017 appropriations bill (HR 244) at press time that includes virtually no substantive endangered species amendments. Last year the House and the Senate Appropriations Committee had approved several such riders.

Gone is a major amendment to undo the Obama administration sage-grouse policy, although HR 244 would forbid listing under the Endangered Species Act (ESA). The Obama administration had concurred on not listing; its policy did not include a listing.

Also gone is an amendment that would have ordered the Interior Department to delist the gray wolf in Wyoming as an imperiled species from the Endangered Species Act (ESA). That amendment was largely rendered moot when an appeals court March 3 ordered the delisting of the gray wolf.

But that does not mean Republican critics of the ESA are not demanding major changes in the law in this Congress. Sen. John Barrasso (R-Wyo.), chairman of the Senate Environment and Public Works (EPW) Committee, is taking the Senate lead in revising the ESA. And House Natural Resources Committee, chairman Rob Bishop (R-Utah), is expected to address reform of the law in this Congress.

Some of the less influential Republican players are already chomping at the bit. Those players, led by Sen. Rand Paul (R-Ky.) and Rep. Blaine Luetkemeyer (R-Mo.), introduced legislation (HR 2134, S 935) April 25 that would forbid the Fish and Wildlife Service (FWS) from designating a species as endangered or threatened under the ESA unless the governor of a state consented.

. The bill would also require Congressional approval for any new species to be listed and would delist already listed species within five years, if Congress did not approve a resolution approving a listing.

"We can better protect endangered species by empowering state leaders to implement a strategy more tailored to their specific circumstances," said Sen. Paul. "Instead of continuing Washington's 'one-size-fits-all' approach to regulation, this bill puts local needs first and guards against bureaucratic overreach."

Mexican wolf: Meanwhile, in a major development affecting the Mexican gray wolf

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the Tenth U.S. Circuit Court of Appeals ruled April 25 that FWS may release the wolves into the wild in New Mexico. A lower court had ruled that such a release would harm ungulate herds and issued an injunction against it.

The Tenth Circuit lifted the injunction and said the State of New Mexico had not proved the release would harm cattle, pigs, elk, deer and other ungulates. It said the state didn't prove its case.

Said a three-judge panel, "For example, assuming *arguendo* that the Department is correct in asserting, for the first time on appeal, that a Mexican wolf may kill over twenty elk and deer per year, the Department offered no evidence that the release of one, ten, fifty, or even one hundred additional wolves would affect the overall populations of the State's ungulate herds or necessitate action from the Department in order to manage and maintain those populations."

Sage-grouse: The Obama administration sage-grouse policy, issued on Sept. 22, 2015, did not list the greater sage-grouse as an endangered or threatened species as western states had feared. Instead, it directed BLM and the Forest Service to implement 98 records of decisions to protect the bird. The plans affected 67 million acres across 10 western states.

The Interior Department also withdrew 10 million acres of public lands from hard rock mining claims. (*See following article.*)

In their fiscal 2017 appropriations bills both the House and Senate went after the Obama policy, although appropriators largely dropped those initiatives May 1 in announcing a final fiscal 2017 spending bill.

On July 15, 2016, the House had approved its 2017 Interior spending bill (HR 5538) that would not only forbid FWS from listing the greater sage-grouse, but would also have forbid implementation of BLM and Forest Service plans governing the greater sage-grouse if states had management plans in place. HR 5538 would also have forbid the Interior Department from extending the 10 million-acre withdrawal for 20 years.

The Senate Appropriations Committee June 16, 2006, approved a counterpart appropriations bill (S 3086) with the listing restriction, but the Senate would neither limit the implementation of plans nor forbid the 10 million-acre withdrawal. That is roughly the provision appropriators accepted May 1.

Wyoming wolf court: The Obama administration agreed with the Bush administration that the State of Wyoming should be allowed to manage the gray wolf within state boundaries.

FWS delisted the wolf most recently in August 2012, but a federal judge in September 2014 ordered it relisted. U.S. District Court Judge Amy Berman Jackson in U.S. District Court in Washington, D.C., said a State of Wyoming rule that led to the delisting failed.

She said in a Sept. 23, 2014, decision that a state plan didn't guarantee a baseline of 10 breeding pairs and 100 wolves in the state. She said FWS should have demanded stronger proof from the state.

But on March 3 the U.S. Circuit Court for the District of Columbia overruled Jackson. The appeals court said that the state had proved that its rule would not wipe out the wolf in Wyoming.

FWS gave final concurrence to the court's ruling May 1 by issuing a final rule in the *Federal Register* delisting the gray wolf in Wyoming.

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Miners mount all-out campaign against grouse policy

The hard rock mining industry is working on three fronts to reverse the Obama administration's sage-grouse management policy enacted through BLM and Forest Service plans, plus a 10 million-acre withdrawal.

In court, industry, plus its Nevada local government allies, won a recent district court decision that requires the agencies to prepare a supplemental EIS on the designation of sage-grouse focal areas where mining is forbidden. However, the court did not halt implementation of the plans.

In the Trump administration, the mining industry in the person of the American Exploration and Mining Association is asking for the termination of a temporary 10 million-acre withdrawal and the rejection of any attempt to extend the withdrawal for 20 years. The Obama administration included the withdrawal in its overarching sage-grouse policy.

Finally, as we have reported, House and Senate members reintroduced legislation (S 273, HR 527) earlier this year to halt Obama policy in virtually all respects. Sen. Jim Risch (R-Idaho) and House Natural Resources Committee Chairman Rob Bishop (R-Utah) are the lead sponsors.

That is, the legislation would not only forbid FWS from listing the greater sage-grouse, it would also forbid implementation of BLM and Forest Service plans governing the greater sage-grouse if states had management plans in place, and almost all do. And the bills would also forbid the Interior Department from carrying out the 10 million-acre withdrawal.

The Obama administration sage-grouse policy, issued on Sept. 22, 2015, did not list the greater sage-grouse as an endangered or threatened species as western states had feared. Instead, it directed BLM and the Forest Service to implement 98 records of decisions to protect the bird. The plans apply to 67 million acres across 10 western states.

The Interior Department also withdrew 10 million-acres of public lands from hard rock mining claims.

Now the hard rock mining industry, the oil and gas industry, some western states and some western local governments are pushing all buttons to do away with the Obama policy and let state plans govern the imperiled bird. By one count 38 lawsuits have been filed against the Obama policy.

Nevada court decision: On March 28 U.S. District Court Judge Miranda Du in Nevada directed BLM and the Forest Service to prepare a supplemental EIS on the designation in land use plans of sage-grouse focal areas (SFAs) where mining would be forbidden. Judge Du, an Obama appointee, said the agencies didn't fully identify SFAs in proposed EISs that were included in final EISs.

"The Agencies used the new information from FWS (Fish and Wildlife Service) to include low priority habitat and non-habitat as SFA and failed to explain why it designated already developed areas as priority habitat in the final FEIS," Du held. "The public should have had an opportunity to review FWS's determinations and comment on the decision to change or add new designations."

But the judge said the agencies should continue to implement their plans while preparing a supplemental EIS. "In balancing such potential harm to the greater sage-grouse species with the Agencies' violation of NEPA – which the Agencies may cure with an SEIS – the Court finds that protection of the greater-sage grouse weights against vacatur of the RODs," she held.

American Exploration & Mining Association Executive Director Laura Skaer said Judge Du's SFA directive should be applied across the West. "We're hoping that the Department of Interior will agree that rather than just the State of Nevada, the EIS should cover all states at once," she said.

20-year withdrawal review: Before heading out the door the Obama administration in January asked for public comment on the advisability of extending a temporary two-year withdrawal of 10 million acres in the West to 20 years. On Sept. 24, 2015, BLM withdrew the 10 million acres within SFAs for two years and proposed a 20-year withdrawal.

To the January request for comments on the longer withdrawal the American Exploration & Mining Association (AEMA) responded the Trump administration should not only terminate the two-year withdrawal but should also reject a longer withdrawal.

The mining association said that while the withdrawal technically would honor valid existing rights, in reality it would force mining claimants to undergo mandatory expensive and long-lasting mineral examinations.

Said the association in a letter to BLM, "Therefore, the two-year segregation and the proposed withdrawal not only adversely affect AEMA's members who engage in mining operations that are both economical and structured to leave the smallest environmental footprint, but also those businesses and citizens that depend on locatable minerals. Accordingly, AEMA and its members respectfully submit these comments requesting that the Secretary of the Interior select the No Action Alternative and reject the application for the proposed withdrawal, which would terminate the two-year segregation."

The association's executive director Skaer said the amount of land disturbed by miners under the withdrawal would be minimal. "When you compare the difference in reasonably foreseeable disturbance between the no action alternative in the EIS and the withdrawal it's only 6,934 acres," she said. That's 9,554 acres in the no action alternative compared to 2,620 acres in the withdrawal.

Skaer said she has heard of no signals about how Secretary of Interior Ryan Zinke is leaning on the issue, but she is worried about the lack of staff at the top of the Interior Department. The Trump administration has nominated few assistant secretaries, deputies and other top officials to help Zinke.

Legislation: The Risch and Bishop bills, introduced February 1 and January 13 respectively, would not only forbid FWS from listing the greater sage-grouse under the Endangered Species Act, they would also forbid implementation of BLM and Forest Service plans governing the greater sage-grouse if states had management plans in place, and almost all do. And the bills would also forbid the Interior Department from carrying out the 10 million-acre withdrawal.

The Risch-Bishop stand-alone bills aren't the only legislative initiatives that take on the Obama policy. Fiscal year 2017 appropriations bills from both sides of the Hill are in the game; however, House and Senate appropriators largely rejected the amendments May 1.

Still, on July 15, 2016, the House approved its 2017 Interior spending bill (HR 5538) that, like the Risch-Bishop measure, would not only forbid FWS from listing the greater sage-grouse, but would also forbid implementation of BLM and Forest Service plans governing the greater sage-grouse if states had management plans in place. The spending measure would also forbid the Interior Department from extending the 10 million-acre withdrawal for 20 years.

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The Senate Appropriations Committee June 16, 2006, approved a counterpart appropriations bill (S 3086) with the listing restriction, but the Senate would neither limit the implementation of plans nor forbid the 10 million-acre withdrawal. That is the provision appropriators adopted May 1.

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: O&G development vs. potash development.

BLM decision: BLM will approve a potash-mining project in an area loaded with oil and gas leases.

Oil and gas lessees: BLM erred because, first, it didn't first prove a potash deposit existed and, second, it prepared an inadequate EIS.

IBLA decision: Affirmed BLM decision.

Case identification: *COG Operating, LLC, et al. 190 IBLA 049*. Decided April 24, 2017. Forty-eight pages. Appeals from a Record of Decision of the Field Manager, Carlsbad (New Mexico) Field Office of BLM, who approved construction, operation, maintenance, and decommissioning of the Ochoa Mine Project, and a related decision approving the issuance of potash preference right leases. BLM/NM/PL-14-02-3500.

IBLA argument: IBLA Deputy Chief Administrative Judge James F. Roberts upheld the approval of 15 potash preference right leases in an area containing 93 oil and gas leases. The Mineral Leasing Act authorizes potash development in the same area where oil and gas development is ongoing as long as the competing industries work out an agreement. In this case the oil and gas lessees - Concho Resources Inc. and Devon Energy Production Co. - contend BLM failed to establish that the area contains a valid potash deposit and failed to adequately analyze environmental impacts of potash development in an EIS. But, held Roberts, "In particular, we conclude that BLM fully analyzed the consequences of requiring (the) oil and gas lessees to negotiate workable agreements for the co-development of their respective resources, including measures designed to mitigate any significant adverse effects."

Subject: Livestock grazing.

BLM decision: BLM will approve decisions reducing grazing in groups of allotments in Idaho.

Administrative law judge decision: Dismissed appeals because appellants didn't have standing.

Appellant grazing groups: Judge erred because individual ranchers within groups would be harmed by BLM decision.

IBLA decision: Reversed in part by holding that one of five appellants does have standing.

Case identification: *Idaho Cattle Association, et al. 190 IBLA 099*. Decided April 26, 2017. Fifteen pages. Appeal from a September 12, 2014, Order of an Administrative Law Judge declining to reconsider an earlier order dismissing grazing associations' appeals of grazing decisions issued by BLM's Owyhee Field Office for lack of standing.

IBLA argument: IBLA Administrative Judge Amy B. Sosin sided procedurally with one of five groups of appellants who object to one of a series of BLM decisions reducing grazing rights in lands overseen by the Owyhee Field Office of BLM in Idaho. In this decision she affirmed a decision of Administrative Law Judge Robert G. Holt that four of the appellants in the appeal don't have standing, including the Idaho Farm Bureau Federation and the Public Lands Council. Both Sosin and Holt said the appellants had not demonstrated that individual members of their groups would be affected by the BLM decision. But Sosin reversed Holt and said the Idaho Cattle Association (ICA) had demonstrated that its members were affected by the decision, thus the appeal can proceed. Held Sosin, "By demonstrating a nexus between the harm to its members and the interests ICA seeks to protect, ICA has met our requirement for establishing standing."

Notes

FWS follows court order on wolf. The Fish and Wildlife Service (FWS) May 1 accepted an order of the U.S. Circuit Court for the District of Columbia and turned the gray wolf over to the state for management. FWS in the Obama administration had already maintained that the wolf should be delisted in Wyoming. The plan from the Wyoming Game and Fish Department says the state will maintain a population of at least 100 wolves, including 10 breeding pairs, outside of Yellowstone National Park and the Wind River Indian Reservation. Environmentalists led by Defenders

of Wildlife maintained in the lawsuit at issue that the Wyoming plan would not guarantee the survival of a healthy, genetically-diverse population of wolves. In their lawsuit the plaintiffs focused on a portion of the plan that establishes a "predator area" over 19 percent of the wolf's habitat, which would essentially be unregulated. But the circuit court on March 3 said deregulating the wolf would not harm the species. "Thus, according to the Service, the predator zone cannot be deemed a 'significant portion' of the wolves' range because the species would not become endangered even if every single wolf there were killed," said the court. Congress has been involved. The House and the Senate Appropriations Committee last year both approved an amendment to a fiscal year 2017 appropriations bill (HR 5538, S 3068) that would override the lower court decision. A House-Senate appropriations conference committee May 1 dropped the amendment.

Bernhardt picked for DoI number two. President Trump April 28 chose former Interior Department solicitor and current lobbyist David L. Bernhardt as deputy secretary of Interior, the number two spot. Bernhardt has been a leading member of the Trump transition team for the Department of Interior. His nomination will be subject to confirmation by the Senate. Bernhardt was a member of the law firm Brownstein Hyatt Farber Schreck LLP, where he represented energy and mining companies and the Westlands Water District in California. Said former Bush administration Secretary of the Interior Dirk Kempthorne, with whom Bernhardt worked, "Dave Bernhardt is an excellent choice to be Deputy Secretary. After I became Secretary of the Interior, Dave was unanimously confirmed by the Senate to be the Solicitor, Interior's highest-ranking legal officer. Dave provided wide counsel based on thoroughly understanding issues being decided." But ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.) immediately fired a warning shot across Bernhardt's bow. "I am gravely concerned about Mr. Bernhardt's record of working on behalf of corporations at the expense of the environment, and his history at the Department of the Interior during years plagued by ethical scandals," she said.

Perdue takes over at USDA. Former George Gov. Sonny Perdue (R-Ga.) assumed the office of Secretary of Agriculture last week after being confirmed for the office by the Senate April 24. Perdue has worked as a farmer, as a veterinarian and as a politician, including two terms as governor of Georgia. The department both oversees the Forest Service and its 194 million acres of land as well as conservation programs on private lands that make lands available for hunting, fishing and other outdoor pursuits. Traditionally, the Under Secretary of Agriculture sets day-to-day policy for the Forest Service, but the Trump administration has not yet nominated a candidate for under secretary.

Huge Rockies wilderness bill is back. Rep. Carolyn Maloney (D-N.Y.) and Sen. Sheldon Whitehouse (D-R.I.) reintroduced legislation (HR 2135, S 936) April 25 that would designate more than 20 million acres of wilderness across the northern Rocky Mountains. Maloney and other House and Senate members have introduced the Northern Rockies Environmental Protection Act several times since 1992. The bill would designate wilderness in Idaho, Montana, Wyoming, Oregon and Washington state national forests and BLM-managed land. Maloney said without the legislation the ecosystem would be in danger. "The Northern Rockies are a rich ecosystem and a national treasure," she said. "They are worthy of our country's highest protective status for wildlands." Eleven House members cosponsored the bill and six senators cosponsored the Senate bill, mostly Democrats from the East.

Senate Red Rock wilderness bill in. Sen. Richard Durbin (D-Ill.) and 18 Democratic cosponsors reintroduced legislation (S 948) April 26 that would protect 9.2 million acres of Utah wild lands. Thirty House Democrats reintroduced the same Red Rock Wilderness legislation (HR 2044) April 6. No Utah legislators cosponsored either bill. The introduction comes as the Trump administration and the Utah Congressional delegation are moving in the opposite direction and attempting to undo the December designation by President Obama of a 1.35 million-

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acre Bears Ears monument in southern Utah. President Trump signed an executive order April 26 ordering the Interior Department to review that designation. The Democrats' Utah wilderness bill has been introduced in every Congress since 1989, when former Rep. Wayne Owens (D-Utah) first introduced it. Durbin said that when he was originally approached about introducing the legislation, he didn't "feel right" about introducing a bill affecting an area of the country he had never seen. But after visiting the area he said, "I took a closer look, which everyone should, and found a unique part of America - a wilderness area which can't be found anywhere else and a wilderness area which boasts archeological and historic and environmental significance way beyond what many people in the rest of the lower 48 might appreciate."

Time to move BLM HQ? Rep. Scott Tipton (R-Colo.) and Sen. Cory Gardner (R-Colo.) introduced legislation (HR 2287, S 1007) May 2 that would authorize the transfer of BLM's headquarters from Washington, D.C., to one of 12 western states. The bills would allow the secretary of Interior to choose a new location. Gardner in the past has suggested a transfer of the headquarters to Grand Junction, Colo. "Moving BLM's headquarters West is a commonsense solution that Coloradans from across the political spectrum support."

O&G royalty panel nominees sought. The Office of Natural Resources Revenue (ONRR) May 3 extended its deadline for nominations to a new Royalty Policy Committee for 30 days until June 2. The policy committee, with up to 28 members, is expected to play a key role in the Trump administration's setting of royalty valuation rules for coal, oil and gas, and other minerals produced from the public lands. The Interior Department on April 4 formally proposed outright repeal of an Obama administration oil, gas and coal royalty rule. The department had already delayed implementation of the rule in February. The energy industry had complained that the July 1, 2016, Obama administration rule of ONRR had unreasonably complicated the valuation of their product and the reporting of that valuation. In a major change the Obama regulations sought to replace an old standard that applied (and may apply again) a series of benchmarks to set the royalty price. In the Obama rule ONRR would begin with a first affiliated sales price, followed by index prices. A Bush administration rule is already back in place because on February 22 ONRR *postponed* the implementation of the July 1, 2016, rule that went into effect January 1. That immediately reinstalled the Bush rule, although ONRR is now proposing to review it through the regulatory process. The royalty committee will be made up of up to six state members, four Indian members, six industry members, and four from academia and public interest groups.

Boxscore of Legislation

Fiscal year 2017 appropriations (full year)

HR 244 (Cook). House approved May 3. Senate near approval on May 5. Would appropriate roughly same amounts of money as fiscal 2016. Was stripped of riders.

Rule restrictions

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

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

(*Specific rules*) HJ Res 36 (Bishop), HJ Res 44 (Cheney), HJ Res 45 (Cramer), HJ Res 46 (Gosar), HJ Res 56 (Pearce), HJ Res 68 (Cramer), HJ Res 82 (Westerman), HJ Res 35 (Young), HJ Res 71 (Tipton), SJ Res 11 (Barrasso), SJ Res 15 (Murkowski), SJ Res 18 (Sullivan). President Trump signed into law March 27 (PL 115-12) a resolution reversing a BLM planning rule (HJ Res 44). President Trump signed into law April 3 a resolution (PL 115-20) reversing a FWS hunting rule in Alaska (HJ Res 35). The

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House approved HJ Res 36, a methane rule reversal, February 2. HJ Res 45 would reverse FWS oil and gas rule and HJ Res 46 would reverse an NPS oil and gas rule. HJ Res 56, HJ Res 68 and HJ Res 82 would reverse BLM oil and gas orders. HJ Res 71 would revoke an ONRR oil, gas and coal royalty rule.

Federal land transfers

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

HR 232 (Young). Young introduced January 3. Would allow states to acquire up to 2 million acres of national forest.

National monument restrictions

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

New national monuments

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

Greater sage-grouse

HR 527 (Bishop), S 273 (Risch). Bishop introduced January 13. Risch introduced February 1. Would largely revoke federal sage-grouse management policy and give the job to the states.

Wolf in Wyoming

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

Critical minerals

HR 520 (Amodei), S 145 (Heller). House hearing March 21. Senate hearing March 28. Would have federal land managers establish time lines for acting on all mineral permits.

Energy policy limitations

S 737 (Markey), S 800 (Cantwell), HR 1819 (Cartwright) S 750 (Merkley), S 987 (Merkley). Markey introduced March 27. Cantwell and Cartwright introduced March 30. Merkley introduced March 28. Merkley introduced April 27. Markey would increase coal royalty, Cantwell and Cartwright would forbid coal self-bond, and Merkley would forbid new fossil fuels leasing from the public lands.

Arctic National Wildlife Refuge (development)

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

Arctic National Wildlife Refuge (wilderness)

HR 1889 (Huffman), S 820 (Markey). Huffman and Markey introduced April 4. Would designate coastal plain as wilderness.

BLM foundation

HR 1668 (Hice.) Hice introduced March 22. Would establish a BLM foundation, like those supporting NPS, FWS and FS.

Land and Water Conservation Fund

HR 502 (Grijalva), S 569 (Cantwell). Grijalva introduced January 12. Cantwell introduced March 8. Would make the program permanent.

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Federal Parks & Rec

addendum to Public Lands News

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- * *Appropriators maintain level funding*
- * *Rec economy grows significantly*
- * *Notes*
- * *Monuments (See Public Lands News article)*

FY 2017 DoI spending bill roughly keeps FY 2016 levels

It's only seven months late but Congress was near final approval today (May 5) of a fiscal year 2017 Interior and Related Agencies appropriations (HR 244). The measure closely approximates a fiscal 2016 bill. The House approved the measure May 3.

However, President Trump May 2 hinted that he may veto the bill in order to trigger a larger war over federal spending.

In one instance of continuity for Park Service operations the measure contains \$2.425 billion, or \$29 million more than the fiscal 2016 appropriation of \$2.396 billion.

Similarly, for the state side of Land and Water Conservation Fund (LWCF) appropriators approved \$110 million, or the same as the \$110 million in a fiscal 2016 spending bill.

However, for the federal side of LWCF appropriators would slash \$38 million from the fiscal 2016 appropriation, approving \$188.8 million compared to \$226.9 million.

The appropriators approved \$2.8 billion for Forest Service wildfire management, \$342 million for a wildfire suppression reserve fund called FLAME, and \$390 million for hazardous fuels management.

For the Interior Department appropriators approved \$943 million in various wildland fire management accounts, \$65 million for FLAME, and \$180 million for hazardous fuels management.

In completing the bill May 1 a House and Senate conference committee dropped dozens of amendments/riders that the House and the Senate Appropriations Committee approved last year.

Topping the list of killed amendments was a House proposal to forbid the designation of any national monument in specific counties in eight states - Arizona, California, Colorado, Nevada, New Mexico, Oregon, Utah and Maine. Grijalva said the ban would apply to 160 million acres.

Also dropped from the bill were riders to block limits on motorboat use in Havasu Wildlife Refuge; to block an Obama administration ocean policy; to prevent designation of a national heritage area in southeastern Colorado; to bar the designation of any new ocean national monuments; and to forbid the completion of a regulation governing hunting and fishing in national wildlife refuges in Alaska. That last rider was rendered moot when Congress approved a resolution killing the regulation (PL 115-20 of April 3).

The conferees did approve \$1.6 million to keep the Dwight D. Eisenhower Memorial Commission in business and to authorize construction to continue on building a contentious monument to the former President on the Washington, D.C., Mall. The conferees said \$45 million is available for construction. Republican leaders on the House Natural Resources Committee and some Eisenhower family members had objected to the design of the proposed memorial.

The numbers: Here's a summary of the fiscal 2017 bill compared to a fiscal 2016 law:

LWCF FEDERAL: The fiscal 2017 bill contains an appropriation of \$188.8 million compared to a fiscal 2016 appropriation of \$226.9 million.

Here is the agency-by-agency LWCF distribution: the Bureau of Land Management (BLM) would receive \$31.4 million compared to \$38.6 million in fiscal 2016; the Fish and Wildlife Service (FWS) would receive \$50 million compared to \$58.5 million; the Park Service would receive \$42 million compared to \$53.7 million; and the Forest Service would receive \$54.4 million compared to \$64.4 million.

LWCF STATE: The fiscal 2017 bill contains an appropriation of \$110 million, or the same as the \$110 million in fiscal 2016.

PARK SERVICE OPERATIONS: The fiscal 2017 bill contains an appropriation of \$2.425 billion, or \$29 million more than the fiscal 2016 appropriation of \$2.396 billion.

CENTENNIAL CHALLENGE GRANTS: The fiscal 2017 bill contains an appropriation of \$20 million, or \$5 million more than the \$15 million in fiscal 2016.

PARK SERVICE RECREATION AND PRESERVATION: The fiscal 2017 bill contains an appropriation of \$62.6 million, the same as a fiscal 2016 appropriation of \$62.6 million.

NATIONAL HERITAGE AREAS: The fiscal 2017 bill contains an appropriation of \$19.8 million, the same as a fiscal 2016 appropriation of \$19.8 million.

PARK SERVICE CONSTRUCTION: The fiscal 2017 bill contains an appropriation of \$209.4 million, compared to a fiscal 2016 appropriation of \$193 million.

PARK SERVICE HISTORIC PRESERVATION: The fiscal 2017 bill contains an appropriation of \$80.9 million, compared to a fiscal 2016 appropriation of \$65.4 million.

SAVE AMERICA'S TREASURES: The fiscal 2017 bill contains an appropriation of \$5 million, compared to no money in fiscal 2016.

STATE WILDLIFE CONSERVATION GRANTS: The fiscal 2017 bill contains an appropriation of \$82.6 million, compared to a fiscal 2016 appropriation of \$60.6 million.

NATIONAL FOREST SYSTEM: The fiscal 2017 bill contains an appropriation of \$1.513 billion, compared to a fiscal 2016 appropriation of \$1.509 billion.

FOREST SERVICE RECREATION: The fiscal 2017 bill contains an appropriation of \$264.6 million, just over the fiscal 2016 appropriation of \$261.7 million.

FOREST SERVICE TRAILS: The fiscal 2017 bill contains an appropriation of \$77.5 million, the same as a fiscal 2016 appropriation of \$77.5 million.

FOREST LEGACY: The fiscal 2017 bill contains an appropriation of \$62.3 million.

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the same as a \$62.3 million appropriation in fiscal 2016.

BLM RESOURCE MANAGEMENT: The fiscal 2017 bill contains an appropriation of \$1.095 billion, compared to a fiscal 2016 appropriation of \$1.073 billion.

BLM RECREATION MANAGEMENT: The fiscal 2017 bill contains an appropriation of \$71.7 million, compared to a fiscal 2016 appropriation of the same, \$69.5 million.

NATIONAL LANDSCAPE CONSERVATION SYSTEM: The fiscal 2017 law contains an appropriation of \$36.8 million, the same as a fiscal 2016 appropriation of \$36.8 million.

FWS REFUGE MANAGEMENT: The fiscal 2017 bill contains an appropriation of \$483.9 million compared to a fiscal 2016 appropriation of \$481.4 million.

Rec economy outpaces energy on jobs and benefits

Outdoor recreation received a triple boost last week, first and foremost from a new [report](#) that holds the industry contributes \$887 billion to the nation's economy each year. That's a \$243 billion increase from a 2013 report prepared for the Outdoor Industry Association.

In a second boost House and Senate Democrats and Republicans forged a powerful new caucus to advocate for recreation. The Senate Recreation Caucus and the House Recreation Caucus are led by Sens. Jim Risch (R-Idaho) and Martin Heinrich (D-N.M.) and Reps. Mike Simpson (R-Idaho) and Jared Polis (D-Colo.)

In the third boost a House subcommittee held a hearing April 27 on the importance of outdoor recreation to the economy. Said House subcommittee on Digital Commerce Chairman Robert Latta (R-Ohio), "For many states and communities outdoor recreation is a keystone of economic activity. It creates jobs and generates revenue and spurs vital investments. Our goal is to continue that progress and insure the outdoor recreation industry remains a strong pillar in the U.S. economy."

But ranking subcommittee Democrat Rep. Janice Schakowsky (D-Ill.) warned that Trump administration climate policies could seriously damage outdoor recreation opportunities. "If we don't act now (on climate change) winter will become a thing of the past," she said. "That means fewer people will enjoy winter sports and fewer sales for the outdoor recreation industry. And summer will be worse too when they get so hot they discourage Americans from leaving air conditioned buildings to enjoy the great outdoors."

When the Outdoor Industry Association published its inaugural report in 2013 on the impact of outdoor recreation on the economy, it was a game-changer. Republican and Democratic Congressmen and state officials all cited the report on almost a daily basis to boost the industry in their jurisdictions. And to support policies that abet outdoor recreation.

Now the association has upped the ante with its new report showing outdoor recreation contributes more to the economy than all other industries except health care and financial services. Viewed another way outdoor recreation contributes almost three times as much to the economy as does the energy industry - \$887 billion compared to \$304 billion.

The association intends to use that power to advocate for protection of the nation's lands and waters. Amy Roberts, executive director of the group, expressed alarm about President Trump's April 26 executive order directing a review of 25 national monument designations. (*See related article page three*).

"We are deeply concerned about the order and our hope is that no one seeks to roll back or dilute over 100 years of history and protection for our nation's public lands through the Antiquities Act," she said. "Monuments, many of which have become national parks, have created economic prosperity and jobs in local communities for decades."

The association's report itself emphasizes the point, saying, "From our national parks to local green spaces, from alpine lakes to transcontinental rivers, America's outdoor recreation assets are its citizens' common trust. Our public lands and waterways belong to every American, and they are the backbone of our outdoor recreation economy. They hold the promise of prosperity and well-being. It is as much our responsibility to invest in them as it is our right to enjoy them."

Of the new Senate Outdoor Recreation Caucus, cofounder Sen. Risch said, "Outdoor recreation is a way of life in Idaho, but now we also know what a powerful economic force it is across the nation."

Said House Outdoor Recreation Caucus cofounder Mike Simpson (R-Idaho), "We are seeing now more than ever the importance of wild places, rivers, ski resorts, trails and green spaces in recruiting and retaining businesses and a skilled workforce."

The House subcommittee took testimony from Roberts as well as representatives of five other organizations representing recreation industries, as well as Outward Bound School.

The subcommittee gave special attention to a law Congress passed last year (PL 114-249 of Dec. 8, 2016) that directs the Department of Commerce to prepare an analysis of the contributions of outdoor recreation to the nation's economy.

Latta said at his hearing that the report will quantify all outdoor recreation economic activities to produce an "annual national assessment of the U.S. economy. As a result policy makers and stakeholders alike will have necessary information to make critical decisions that will allow this industry to thrive for generations to come."

The Outdoor Industry Association report is available at:
<https://outdoorindustry.org/wp-content/uploads/2017/04/OIA RecEconomy FINAL Single.pdf>.

Notes

Ski areas keep consolidating. Two national ski resort companies - Aspen and Vail - are rapidly consolidating major resorts on national forests. Last month Aspen Skiing Company announced the acquisition of the most popular ski resort in the country - Mammoth Mountain in California. As part of the deal Aspen also acquired June Mountain, Snow Summit, Bear Mountain and other properties in California. Altogether the partnership will operate 12 resorts that host 7 million skiers a year. Mammoth alone draws 2 million. The price of the acquisition was not announced but it is expected to run in the hundreds of millions of dollars. Vail has been doing its own acquisitions, building a portfolio of up to 10 resorts and three urban ski sites in Colorado, Utah, California, Nevada, Minnesota, Michigan and Wisconsin, and Australia. Said Aspen of its deal with Mammoth, expected to close by fall, "Mammoth Lakes is a vibrant community on a year round basis, offering alpine and freestyle on-snow camps well into June. Their extensive mountain biking trail system attracts visitors all summer and their close proximity to Yosemite National Park is also a big draw. Just as importantly, these resorts have distinct personalities stemming from their early days as fledgling resorts, creating a strong sense of place that is alive and well." The April 12 Aspen press release is available at:

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<https://www.aspensnowmass.com/inside-aspen-snowmass/stories/better-together>.

Energy ROW proposed near Joshua Tree. The Bureau of Land Management (BLM) said last month it is nearing approval of a 12-mile electrical transmission right-of-way (ROW) 1.5 miles from Joshua Tree National Monument. After protests on the proposed plan and environmental assessment (EA) are resolved BLM will post a record of decision. There will almost certainly be protests from environmentalists. The National Parks Conservation Association (NPCA) would prefer that the California Desert area be transferred to the Park Service. "In fact, the BLM's action today contradicts the proposal to expand Joshua Tree National Park by returning the Eagle Mountain area to its boundary," said David Lamfrom, California Desert and Wildlife Director for NPCA. "The National Park Service has repeatedly requested a comprehensive analysis of the transmission line impacts within the larger context of the Eagle Crest Project due to its potential harm to Joshua Tree National Park." In announcing completion of the proposed plan and EA April 21 Doug Herrema, BLM Palm Springs Field Manager, said, "If approved, the Eagle Crest right-of-way is anticipated to transmit hydroelectric energy to power 900,000 homes in California each year."

Rec leaders meet with Trump officials. Leaders of the outdoor recreation industry met with top Trump administration officials last week to discuss increased public/private partnerships in the management of facilities on the public lands. The officials also asked for improved access to the public lands. Meeting with the recreation officials on behalf of the administration were Secretary of Interior Ryan Zinke, Interior Department Senior White House Liaison Doug Domenech, Special Assistant to the Secretary for Fish and Wildlife and Parks Virginia Johnson, Acting National Park Service Director Mike Reynolds and Forest Service Deputy Chief Leslie Weldon. The confab, arranged by the Outdoor Recreation Industry Roundtable, was held at Shenandoah National Park. "No team wins by itself, and when you get right down to it, public-private partnerships are where success is going to happen," said Jim Houser, Delaware North President for Sportservice, Parks & Resorts and Patina Restaurant Group.

Huge Rockies wilderness bill is back. Rep. Carolyn Maloney (D-N.Y.) and Sen. Sheldon Whitehouse (D-R.I.) reintroduced legislation (HR 2135, S 936) April 25 that would designate more than 20 million acres of wilderness across the northern Rocky Mountains. Maloney and other House and Senate members have introduced the Northern Rockies Environmental Protection Act several times since 1992. The bill would designate wilderness in Idaho, Montana, Wyoming, Oregon and Washington state national forests and BLM-managed land. Maloney said without the legislation the ecosystem would be in danger. "The Northern Rockies are a rich ecosystem and a national treasure," she said. "They are worthy of our country's highest protective status for wildlands." Eleven House members cosponsored the bill and six senators cosponsored the Senate bill, mostly Democrats from the East.

Y'stone grizzly tagging begins. Yellowstone National Park advised the public this past week that it is going to begin a three-month grizzly bear tagging operation Sunday, May 7. The tagging, to be conducted by the Interagency Grizzly Bear Study Team (IGBST), is part of an ongoing research program. The IGBST is made up of representatives from the U.S. Geological Survey, the National Park Service, the U.S. Fish and Wildlife Service, the U.S. Forest Service, the Eastern Shoshone and Northern Arapaho Tribal Fish and Game Department, and the states of Idaho, Montana and Wyoming. The Fish and Wildlife Service (FWS) March 3, 2016, proposed the delisting of the Yellowstone grizzly bear population across its 20 million-acre habitat under the Endangered Species Act. FWS said the bear population, headquartered in Yellowstone and Grand Teton National Parks, had grown from just 136 animals 40 years ago to more than 700 now. The Wyoming Congressional delegation welcomed the proposal. The National Parks Conservation Association responded more cautiously, even with some trepidation.

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FY 2017 approps bill drops riders, maintains spending

Congress was nearing final action yesterday (May 4) on a fiscal year 2017 appropriations bill (HR 244) that would roughly maintain fiscal 2016 spending levels for public lands agencies. The House approved the bill May 3.

However, President Trump May 2 hinted at a veto of the bill in order to trigger a national debate over federal government spending.

For BLM land and resource management HR 244, as agreed to by a House-Senate appropriations conference committee May 1, would appropriate \$1.095 billion, compared to a fiscal 2016 appropriation of \$1.073 million.

For the National Forest System the appropriators approved \$1.513 billion, compared to \$1.509 billion in fiscal 2016.

Appropriators approved \$2.8 billion for Forest Service wildfire management, \$342 million for a wildfire suppression reserve fund called FLAME, and \$390 million for hazardous fuels management.

For the Interior Department wildfire programs appropriators approved \$943 million in various wildland fire management accounts, \$65 million for FLAME, and \$180 million for hazardous fuels management.

In completing the bill May 1 the House-Senate conference committee dropped dozens of public lands amendments/riders that the House and the Senate Appropriations Committee approved last year.

Topping the list of killed amendments was a House proposal to forbid the designation of any national monument in specific counties in eight states - Arizona, California, Colorado, Nevada, New Mexico, Oregon, Utah and Maine. Democrats said the proposed ban would apply to 160 million acres.

But HR 244 does contain two important amendments:

BLM foundation: The measure would establish for the first time a Bureau of Land Management Foundation. Foundation donors would be able to specify what programs should receive their money. On the list are wild horses and burros, national conservation areas, recreation resources and so on. By the same token donors could direct the distribution of their contributions to the reclamation of abandoned hard rock mining and energy sites.

Other land management agencies already have similar foundations, including the National Park Foundation, the National Fish and Wildlife Foundation, and the National Forest Foundation. Like those foundations, a BLM entity would have the authority to operate like a nonprofit group and collect and distribute money.

Eastern Alaska plan: The measure would have BLM revisit a new plan released by BLM January 6 that covers 6.5 million acres of eastern interior Alaska. Among other things the plan designates 1 million acres of the region as areas of critical environmental concern that will limit mining and other uses.

Says the report accompanying HR 422, "The Bureau is instructed to review recently executed land management plans to determine whether decisions to retain certain mineral closures are consistent with Federal law, including the Alaska National Interest Lands Conservation Act and the Federal Land Policy Management Act, including a determination whether sufficient notice was provided prior to the creation of Areas of Critical Environmental Concern."

Also lopped off the bill were riders that would have:

* forbid the implementation of an Office of Natural Resources Revenue rule on coal, oil and gas royalties. That was kind of mooted when the Trump administration suspended the rule and began work on a new rule.

* forbid the implementation of an EPA rule regulating oil and gas methane emissions. EPA has begun work on revoking the rule.

* forbid the implementation of an Obama administration policy governing the greater sage-grouse under the Endangered Species Act. HR 244 does contain a provision barring the listing of the sage-grouse under the act.

* forbid the Interior Department from delisting the gray wolf in Wyoming from the Endangered Species Act. That was mooted May 1 when the Fish and Wildlife Service followed a circuit court order and delisted the Wyoming wolf.

The money: Here are a few appropriations numbers compared to fiscal 2016:

BLM RESOURCE MANAGEMENT: The fiscal 2017 bill contains an appropriation of \$1.095 billion, compared to a fiscal 2016 appropriation of \$1.073 billion.

PAYMENTS-IN-LIEU OF TAXES: The fiscal 2017 law contains an appropriation of \$465 million, compared to a fiscal 2016 appropriation of \$452 million.

WILD HORSES AND BURROS: The fiscal 2017 law contains an appropriation of \$80.6 million, the same as a fiscal 2016 appropriation of \$80.6 million.

ENERGY AND MINERALS: The fiscal 2017 law contains an appropriation of \$172.8 million, compared to a fiscal 2016 appropriation of \$166 million.

NATIONAL LANDSCAPE CONSERVATION SYSTEM: The fiscal 2017 law contains an appropriation of \$36.8 million, the same as a fiscal 2016 appropriation of \$36.8 million.

NATIONAL FOREST SYSTEM: The fiscal 2017 bill contains an appropriation of \$1.513 billion, compared to a fiscal 2016 appropriation of \$1.509 billion.

FOREST PRODUCTS: The fiscal 2017 bill contains \$367.8 million for this line item, which includes timber sales, compared to a fiscal 2016 appropriation of \$359.8 million.

FWS REFUGE MANAGEMENT: The fiscal 2017 bill contains an appropriation of \$483.9 million compared to a fiscal 2016 appropriation of \$481.4 million.

LWCF FEDERAL: The fiscal 2017 bill contains an appropriation of \$188.8 million compared to a fiscal 2016 appropriation of \$226.9 million.

Here is the agency-by-agency LWCF distribution: BLM would receive \$31.4 million compared to \$38.6 million in fiscal 2016; the Fish and Wildlife Service (FWS) would receive \$50 million compared to \$58.5 million; the Park Service would receive \$42 million compared to \$53.7 million; and the Forest Service would receive \$54.4 million compared to \$64.4 million.

Trump monument review may key on size, not revocations

President Trump signed an executive order April 26 directing the Interior Department to review the designations of 25 national monuments of more than 100,000 acres made since 1996. Trump did not take the ultimate step and say he had the authority to revoke those designations.

Trump's order only tells Secretary of Interior Ryan Zinke to review the scope of the designations, presumably keying on a provision of the Antiquities Act of 1906 that limits the size of monument designations.

That law authorizes monument designations of federal lands that "may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected."

Zinke sounded most interested in reducing the size of monuments, not so much the outright revocation of them. "Historically, the Act calls for the President to designate the 'smallest area compatible with proper care and management of the objects to be protected,'" he said. "Despite this clear directive 'smallest area' has become the exception and not the rule."

Critics of President Obama's designation of a Bears Ears National Monument in Utah and President Clinton's designation of a Grand Staircase-Escalante National Monument assert far more land was protected than necessary.

At a hearing of the House subcommittee on Federal Lands on national monument designations May 2 chairman Tom McClintock (R-Calif.) said the Obama administration abused the law by designating excessive acreage and that Congress could step in.

"Possible reforms to prevent these abuses include acreage limitations on this authority and a requirement that state and local governments be included in the decision," he said.

Ranking subcommittee Democrat Colleen Hanabusa (D-Hawaii) warned the administration not to revoke designations. "Let me say this," she said. "Any executive actions to abolish the existing monuments will be met with significant opposition of the American people."

At the hearing Maine Gov. Paul LePage (R-Me.) blasted President Obama for designating an 87,500-acre North Woods national monument in Maine. The National Park Service manages the area. He recommended local approval of any national monument.

"I believe the law should be amended to require local approval before the President can unilaterally designate a National Monument," LePage said. "This support should include approvals from the state's governor and legislature."

LePage said February 22 that he wrote Trump on February 14 and asked him to either revoke the designation or, alternatively, allow the State of Maine to manage the area. The North Woods monument is not included in the Trump-Zinke review.

The Trump-Zinke review could set the stage for Trump to at least reduce the size of national monuments, if not outright revoke their designations. It directs Secretary of Interior Ryan Zinke to report back to the White House

within 120 days with recommendations for "Presidential actions, legislative proposals, or other actions consistent with law."

For the Bears Ears National Monument in southern Utah the executive order asks for a response from Zinke within 45 days.

Said Trump in a ceremony at the Interior Department, "The previous administration used a 100-year-old law known as the Antiquities Act to unilaterally put millions of acres of land and water under strict federal control - have you heard about that? - eliminating the ability of the people who actually live in those states to decide how best to use that land."

Trump made clear his displeasure with the Bears Ears designation. "In December of last year alone, the federal government asserted this power over 1.35 million acres of land in Utah, known as Bears Ears - I've heard a lot about Bears Ears, and I hear it's beautiful - over the profound objections of the citizens of Utah," he said. "The Antiquities Act does not give the federal government unlimited power to lock up millions of acres of land and water, and it's time we ended this abusive practice."

Bishop backed Trump's review. "Today's action sends the powerful message that communities will no longer take a back seat to out-of-state special interest groups. I'm pleased to see President Trump recognize long-standing abuses of the Antiquities Act. It was created with noble intent and for limited purposes, but has been hijacked to set aside increasingly large and restricted areas of land without public input," said the chairman.

Bishop met with Trump shortly after the November elections and reportedly told the President he had authority to revoke the Bears Ears monument.

Bishop's Senate counterpart as chairman of the Senate Energy Committee, Sen. Lisa Murkowski (R-Alaska), was also on board. "I strongly support President Trump's order to review the largest national monuments designated over the past two decades," she said. "During the past administration, we saw the Antiquities Act result in sweeping designations that frequently ignored local opposition."

If Zinke's review recommends legislative action, Bishop and Murkowski will not have it easy. Democrats, environmentalists and, crucially, sportsmen will rebel.

Said ranking House Natural Resources Committee Democrat Rep. Raúl M. Grijalva (D-Ariz.), "Attempting to wipe national monuments off the map with the stroke of a pen would be illegal and unpopular, and this review will show as much. If done in good faith, this review will lead President Trump and Secretary Zinke to see these wonderful places as the American people see them: as sources of national pride and engines for local economic development."

Ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.) pointed out on the Senate floor the economic benefits of outdoor recreation linked to national monuments, as calculated by a new report from the Outdoor Industry Association.

"Today, the recreation industry generates \$887 billion in consumer spending every year," she said. "That is up more than \$200 billion from \$646 billion - since the last time the study was done a few years ago. What

does this tell us? Not only do more Americans enjoy recreation on our public lands, but an economy has been built around it, and it continues to grow and thrive, with new products, new services, and more comfortable and innovative ways to enjoy the outdoors."

Sportsmen warned they might object to monument revocations. "The process outlined in this executive order starts us down a path that could jeopardize protected public lands important for hunters and anglers, such as Berryessa Snow Mountain and Rio Grande del Norte National Monument," said Corey Fisher, a senior policy director for Trout Unlimited. "These are places that sportsmen and women have worked tirelessly to protect. Hunters and anglers will watch this review carefully and strongly oppose any efforts to roll back national monuments."

In a particularly tough statement, National Parks Conservation Association President Theresa Pierno said, "To call into question whether our national heritage is worth protecting will have lasting repercussions on the preservation of our public lands for generations to come."

"America's national monuments have become the latest victims in this heated political atmosphere. Any attempt to undo or alter them isn't just undermining a century-old law, it's a betrayal of the people who fought so hard for them, and the land and history we've all spent generations safeguarding."

A significant school of thought questions Trump's authority to outright undo national monument designations, if not his authority to trim the size of them.

And the Earthjustice law firm, which betimes coordinates lawsuits in such situations on behalf of environmental groups, suggested that litigation might be in the offing if Trump tinkered with monument designations.

A national debate has erupted about whether or not the President has authority to unilaterally revoke or revise a national monument designation. In late March the influential American Enterprise Institute (AEI) published a report that argues Trump has unlimited authority to do so.

However, that report disagrees with a 1938 U.S. Attorney General opinion and a Congressional Research Service report of last fall that doubt Trump enjoys such authority.

But AEI researchers John Yoo and Todd Gaziano argue that the 1938 decision of former Attorney General Homer Cummings, failed. "We think this opinion is poorly reasoned; misconstrued a prior opinion, which came to the opposite result; and is inconsistent with constitutional, statutory, and case law governing the president's exercise of analogous grants of power," they wrote. "Based on a more careful legal analysis, we believe that a general discretionary revocation power exists."

Meanwhile, the Center for American Progress says in a new report that Bears Ears not only qualifies as a national monument, but also as a unit of the National Park System.

In a new analysis the center says Bears Ears ranks high among all areas in the West in terms of ecological intactness and connectivity, minimal light pollution, biodiversity, etc.

For their part western Republicans are stepping up their campaign to prevent the unilateral designation of national monuments by presidents in the future. Twenty-five senators joined Murkowski in introducing legislation (S 33) that would require Congressional *and* state approval of any monument.

Bears Ears: President Obama on December 28 designated a 1.35 million-acre Bears Ears monument in southern Utah, although that is significantly less than the 1.9 million acres advocates had recommended. BLM manages the monument.

The Utah Congressional delegation said January 24 that as a top priority it would seek a reversal of the Bears Ears monument. The state's two senators and four House members jointly said they would ask Congress and President Trump to undo the designation.

Obama set a record by designating 34 national monuments on his watch, often to the dismay of western Republicans and plaudits from Conservationists.

Grand Staircase Escalante: President Clinton designated the 1.9 million-acre monument in southern Utah on Sept. 18, 1996. It is the first national monument for BLM.

The designation caused a furor in Utah, particularly in the Congressional delegation, because the Clinton administration reportedly did not consult with the Utah delegation before making the designation.

President Trump's executive order is available at:
<https://www.whitehouse.gov/the-press-office/2017/04/26/presidential-executive-order-review-designations-under-antiquities-act>.

Hill reversal of BLM methane rule going down to wire

The Senate at press time had not yet acted on a House-passed resolution to overturn a BLM oil and gas methane emissions rule of Nov. 15, 2016. That leaves only today and two days next week for the Senate to act and reverse the rule.

An underlying law says the Congressional Review Act (CRA) only allows Congress to reverse Obama administration rules by May 9.

President Trump and Secretary of Interior Ryan Zinke have begun an initiative to reverse the rule administratively, but that might take years. A reversal under the CRA would be immediate.

This is a big one for the energy industry. The president of the Western Energy Alliance, Kathleen Sgamma, said at a press conference May 1, "Our number one priority is getting the BLM methane rule overturned in the Senate. That's our number one priority. Time is running out on that."

If the Senate doesn't act, she said, "We continue our lawsuit in the District (Court) of Wyoming and we engage in rule-making and show the new administration why the old administration completely overstepped its legal bounds."

Sgamma was optimistic about the lawsuit and the Trump administration but granted it would take hard work to undo the rule. "I think we would ultimately prevail there. It would just take more time and effort and lawyers," she said.

The House approved a CRA resolution (HJ Res 36) to reverse the methane rule February 23 by a vote of 221-to-191. The Senate has not acted yet on its resolution (SJ Res 11) and, although Senate rules authorize passage by a simple majority, a vote is expected to be close.

The BLM rule would limit the rate of flaring, require frequent inspections by operators and require the replacement of outdated equipment.

Meanwhile, EPA has taken first steps toward modifying or replacing a methane rule the agency published on June 3, 2016. On April 20 EPA stayed a deadline for compliance with its rule for 90 days beyond a June 3, 2017, deadline.

The EPA rule, which governs methane emissions from *future* operations, would not only set emission limits from methane but also require operators to find and repair leaks.

Sgamma said stopping the EPA methane rule is also a top priority of the energy industry. The EPA rule is not eligible for reversal under the CRA because it was issued too long ago.

Congress has already approved two CRA resolutions that President Trump signed, thus revoking a BLM planning rule and a Fish and Wildlife Service (FWS) rule governing hunting in Alaska. Environmentalists are challenging the constitutionality of the hunting rule in court (*see following article.*)

Time is running short for Congress because the CRA gives the House and Senate just 60 working days to act on regulations, or, according to the Congressional schedule, until May 9. The law allows Congress to address only those Obama administration regulations issued after June 13, 2016.

Methane rule: A signature Republican regulation reversal would undo a BLM oil and gas methane emissions rule of Nov. 15, 2016.

President Trump and Secretary of Interior Ryan Zinke have begun an initiative to reverse the rule administratively, but that might take years. A Congressional reversal under the CRA would terminate the rule immediately. A Zinke Secretarial order 3349 directs BLM to report back to him immediately on what needs to be done to reverse the rule, such as what kind of environmental documentation is required.

Judge Scott W. Skavdahl in U.S. District Court in Wyoming on January 16 refused for now to halt implementation of the rule. He held that industry plaintiffs have not yet proved they would be harmed by the regulation.

However, Skavdahl was skeptical about BLM's argument that the rule is designed to prevent waste, i.e. methane venting, and not to assume EPA's clean air responsibility. The oil and gas industry argue in their suit that BLM has no authority over Clean Air Act regulation; only EPA does.

Said the judge, "The Court questions whether the 'social cost of methane' is an appropriate factor for BLM to consider in promulgating a resource conservation rule pursuant to its [Mineral Leasing Act] authority."

BLM planning: Trump did not comment March 27 on signing into law (PL 115-12) the revocation of BLM's planning rule of Dec. 12, 2016, the so-called 2.0 rule.

Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) did, praising the President. "The repeal of this onerous land management planning rule returns power and decision-making authority back to local and state entities in Alaska and western states," she said. "If left intact, it would have harmed grazing, timber, energy development, mineral production, and even recreation on federal lands. Now, those who actually live near BLM lands will once again make planning decisions not those who work thousands of miles away at BLM headquarters in Washington, D.C."

The Senate had joined the House March 7 in approving the resolution (HJ Res 44) to overturn the BLM planning rule

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

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

The Zinke Secretarial Order 3349 directs FWS to review the rule and report to him on how to revoke it administratively.

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

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

The Zinke Secretarial Order 3349 directs NPS to review the rule and report to him on how to revoke it administratively.

Oil, gas and coal royalties: On February 13 Rep. Scott Tipton (R-Colo.) introduced a resolution (HJ Res 71) to overturn a July 1, 2016, Interior Department rule that would establish new procedures for calculating the value of oil, gas and coal for royalty purposes

The rule, from the Office of Natural Resources Revenue (ONRR), replaced a former rule that applied a series of benchmarks to set the royalty price. Instead ONRR now begins with a first affiliated sales price, followed by index prices.

The oil and gas industry objects because, among other things, the Obama rule establishes a default provision that allows ONRR to establish valuation when an operator does not play by the rules.

The Obama rule is already in abeyance because ONRR postponed its implementation on February 22. Then on April 4 the department proposed outright repeal of the Obama rule. But again, Congressional repeal would eliminate the rule immediately.

Oil and gas site security: On February 1 Rep. Steve Pearce (R-N.M.) and nine of his colleagues introduced a resolution (HJ Res 56) that would reverse a BLM rule of Oct. 12, 2016, that set standards for onshore oil and gas facility site security. No votes yet.

Natural gas measurement order: On February 7 Rep. Cramer introduced a resolution (HJ Res 68) that would reverse a BLM rule of Oct. 17, 2016, that revised standards for measuring and reporting on gas produced on public lands. No votes yet.

On February 16 Rep. Bruce Westerman (R-Ark.) introduced a resolution (HJ Res 82) that would reverse a BLM rule of Oct. 17, 2016, that revised standards for measuring and reporting on oil produced on public lands. No votes yet.

Alaska hunting: The Senate joined the House March 21 in approving a resolution (HJ Res 69) that would revoke a rule limiting hunting and fishing in national wildlife refuges in Alaska moves the debate to the Senate. President Trump signed HJ Res 69 into law April 3 PL 115-20.

Enviros challenge constitutionality of reg reversals

The Center for Biological Diversity last month brought an initial lawsuit challenging the Constitutionality of the Congressional Review Act. This Congress has used the law to revoke 13 Obama administration regulations, including two important public lands rules.

The lawsuit says the Congressional Review Act (CRA) violates the Constitutional separation of powers precept by preventing a federal agency from carrying out its legal duty. That is, once a rule is revoked the CRA forbids an agency from producing a new rule "substantially" like the old one.

The immediate target of the Center's lawsuit is a CRA resolution that President Obama signed into law April 3 (PL 115-20) that revokes a rule limiting hunting and fishing in national wildlife refuges in Alaska.

The lawsuit argues, "By nullifying the Refuges Rule, and prohibiting any future substantially similar rules, 5 U.S.C. § 801(b)(2), without amending any of Interior's existing rulemaking authorities, Congress expanded its own power at the expense of the executive branch. Such Congressional overreaching undermines the separation of powers that must be maintained between the legislative and executive branches, in violation of the U.S. Constitution."

That is, Congress has delegated to the Fish and Wildlife Service (FWS) - i.e. the executive branch - broad powers to manage the nation's wildlife

refuges. By constraining those powers, the lawsuit maintains, Congress is interfering with the authority of FWS (the executive branch) to manage the refuges.

Said Collette Adkins, a Center attorney and biologist, "The Congressional Review Act throws the balance of power out of whack and opens the door for politicians in Congress to meddle in decisions that ought to be made by experts at federal agencies."

At issue in Congress's revocation resolution is an Aug. 8, 2016, FWS rule that pre-empted a State of Alaska policy authorizing "intensive predator management" in wildlife refuges in Alaska. The FWS rule curbed a state policy governing the hunting of bears and wolves.

In addition to the Alaska hunting rule Congress also revoked a BLM planning 2.0 rule (PL 115-12) on March 27. BLM published the rule on Dec. 12, 2016.

Waiting in the wings is another controversial BLM public lands rule that governs methane emissions from oil and gas projects. BLM completed the rule on Nov. 15, 2016. Although the House approved the resolution (HJ Res 36) February 23 by a vote of 221-to-191 the Senate has not acted yet on its resolution (SJ Res 11). (*See previous article.*)

But time is running short on the methane resolution and on a half-dozen other resolutions targeting public lands regulations. That's because the CRA gives the House and Senate just 60 working days to act on regulations, or, according to the Congressional schedule, May 9. The law allows Congress to address only those Obama administration regulations issued after June 13, 2016.

The CRA requires only a simple majority in both the House and Senate, circumventing a Senate filibuster. Of importance once a rule is revoked the CRA forbids an agency from producing a new rule "substantially" like the old one.

Although environmentalists objected strenuously to the Alaska hunting resolution, their cause was hampered by the support for the resolution by their hunting and fishing colleagues in the conservation community.

Indeed 27 hunting and fishing groups endorsed the House resolution just before the House approved it February 16 by a vote of 225-to-193. Such conservation groups as Ducks Unlimited, the International Association of Fish and Wildlife Agencies, and the Wildlife Management Institute signed a letter of support for the resolution to House members.

The State of Alaska filed a lawsuit against the FWS rule on January 13 and the Safari Club International filed a separate lawsuit on January 19.

The dispute over hunting bears and wolves in national refuges and national parks has erupted into a national controversy.

The FWS regulation held that the State of Alaska may not regulate predators in 77 million acres of federal wildlife refuges unless state regulations are based on sound science. The rule did not affect subsistence hunting by Alaska Natives.

SRS shut out in approps, PILT okay; will senators help?

Both Republican and Democratic senators May 2 promised to strive to insure full funding for twin county public lands assistance programs - Secure Rural Schools (SRS) and payments-in-lieu of taxes (PILT).

PILT is temporarily in decent shape, in line for \$465 million in a fiscal year 2017 appropriations bill (HR 244) that Congress is expected to approve today (May 5). However, the bill contains no money for SRS.

SRS was last authorized in fiscal year 2015, with \$300 million in payments allocated in March of 2016, and hasn't been extended since. In December western legislators failed to persuade their colleagues to extend SRS into this year, perhaps costing public lands counties more than \$300 million.

At a Senate Energy Committee hearing on the two programs May 2 panel chairman Lisa Murkowski (R-Alaska) promised to help both SRS and PILT, perhaps by establishing a trust fund.

"(I)f we are going to retain federal lands in federal ownership, we need to be creative in thinking about and funding payments for tax-exempt lands," she said. "And that includes taking a hard look at ideas like a permanent natural resources trust and other options for revenue sharing because the annual scramble that goes on around here to find funding does not provide the certainty or stability that our rural communities need to provide services to their people."

Sen. Ron Wyden (D-Ore.) said he was frustrated that the fiscal 2017 appropriations bill left SRS out. "I was also disappointed the bill does not include help for Oregon's rural counties through the Secure Rural Schools program. I am working on bipartisan solutions to give our struggling rural counties a lifeline and to get ahead of the catastrophic wildfires that threaten our forests and communities."

To follow through Murkowski, Wyden, Sen. Orrin Hatch (R-Utah) introduced legislation (S 1027) May 3 to extend the SRS program for two years (fiscal 2016 with payments in calendar 2017 and fiscal 2017 with payments in calendar 2018. Rep. Cathy McMorris Rodgers (R-Wash.) introduced a House version of the bill (HR 2340.) Said Murkowski, "In the short-term, we must work together to continue the SRS and PILT programs. However, we must find better solutions in the long-term that will help provide the jobs and economic activity our rural and forested communities so desperately need."

The SRS payments are designed to compensate western counties for significant revenues they once received from a share of federal timber sales, back when those sales amounted to 12 billion board feet a year. The last timber sale year for which the service has data, fiscal 2015, counted 2.9 billion board feet of sales.

This SRS spending battle is actually being fought out over two fiscal years at once - in the fiscal 2017 appropriations bill for the Interior Department and Related Agencies that a House-Senate appropriations committee reached final agreement on May 1 and for the next year.

Eighty members of Congress from both parties on February 17 asked the Office of Management and Budget Director Mick Mulvaney to give SRS priority

in shaping a fiscal 2018 Trump budget request. "Forest counties and schools received their last authorized SRS payment in March 2016. Without SRS, existing revenue sharing payments are not sufficient to support the services these counties must provide, and counties are forced to choose between critical services for their citizens," they wrote.

Hatch and Wyden were the lead Senate authors and Rodgers and Suzanne Bonamici (D-Ore.) were the lead House authors.

The Trump administration sketched the outlines of a fiscal 2018 budget March 16 that recommends an unspecified decrease in allocations for the payments-in-lieu of taxes program. A more detailed Trump budget is expected shortly.

The outline of a budget says the administration "(s)upports counties through discretionary funding for the (PILT) program at a reduced level, but in line with average funding for PILT over the last decade." The outline doesn't mention SRS.

Complained Sen. Maria Cantwell, "The White House does not seem to understand the need for the SRS program or the PILT program, nor the impact they have on local governments and local economies across the West. These two programs are what pay for schools, roads, and emergency services in our rural communities."

Congress posts \$4.2B for wildfires; no emergency shift

Congressional appropriators said May 1 they have inserted enough money for wildfire fighting in a final fiscal year 2017 appropriations bill (HR 244) to pay for an expensive wildfire season.

The appropriators said that the final spending bill - approved by the House May 3 and due for a Senate vote shortly - contains \$3.8 billion for regular wildfire spending costs and \$407 million for emergency wildfire costs.

Summarized the House Appropriations Committee, "In total, the bill funds wildland firefighting and prevention programs at \$4.2 billion, including \$407 million in emergency funding. It fully funds the 10-year average for wildland fire suppression costs for both the Department of the Interior and the Forest Service. The legislation also includes \$570 million for hazardous fuels management, which is \$25 million above the fiscal year 2016 level."

Broken down, appropriators approved \$2.8 billion for Forest Service wildfire management, \$342 million for a wildfire suppression reserve fund called FLAME, and \$390 million for hazardous fuels management.

For the Interior Department appropriators approved \$943 million in various wildland fire management accounts, \$65 million for FLAME, and \$180 million for hazardous fuels management.

The appropriators were under the gun on wildfire spending because those costs have increased so dramatically in the last decade that they are eating up an unsustainable share of an Interior and Forest Service spending bill.

In the last two Congresses the Obama administration and House and Senate westerners from both parties have proposed transferring emergency wildfire costs above the 10-year average out of spending bills and into a disaster account. The fiscal 2017 appropriations bill does not do that.

In addition the Trump administration's fiscal 2018 initial, short-form budget request does not include the emergency transfer. A more detailed Trump request is expected in the next fortnight.

The ranking Democrat on the Senate Energy Committee, Sen. Maria Cantwell (D-Wash.), is not pleased. In effect, Cantwell said last month, the Trump budget does not anticipate the \$600 million in emergency wildfire costs of calendar 2016.

In a letter to Trump she said, "You should reverse this decision immediately. Underfunding the Federal wildland fire program will almost certainly force your agencies to restart the practice of transferring funding from non-fire accounts to pay for the cost of managing fires."

She added, "The appropriate Congressional committees stand ready to work with you to implement a permanent fire-budgeting fix this year. I am requesting that in your more-detailed Fiscal Year 2018 budget request that you are scheduled to release (shortly), you include a comprehensive, thought-through fix to the 'fire-borrowing' problem."

Last year 5.5 million acres of forest around the country burned. The National Interagency Fire Center (NIFC) put the cost of fighting the fires at \$2 billion, the second most on record after \$2.1 billion in 2015.

There is no guarantee that the upcoming calendar year 2017 wildfire season will be as bad as 2016 because of the huge storms that blew across the West this last winter.

But NIFC said the heavy rain and snow could become a problem in the summer because they will spur the growth of flammable plants. "Exceptional winter and early spring precipitation is leading to the development of a substantial crop of fine fuels in the lower and middle elevations," the center said May 1 in a monthly outlook report. "The heavy loading of fine fuels could become problematic when they cure out in July."

The center did say the deep snowpack is expected to melt more slowly than normal, keeping things cool and damp and delaying the fire season.

Despite the heavy rain and snow of this winter westerners such as Cantwell and Sen. Ron Wyden (D-Ore.) say legislation is still needed to guarantee emergency spending on wildfires is transferred to a disaster account.

"One year of heavy rainfall won't solve the problems caused by years of drought and a backlog of fire prevention projects in our forests," a spokeswoman for Wyden told us earlier this year. "Without a long-term fix, the agencies will keep being forced to clean out their coffers to fight wildfires."

Bill sponsors may give up a previous recommendation that emergency wildfire costs be transferred to disaster spending when those costs reach 70 percent of the 10-year average. The House and some Senate Republicans would

prefer to wait until costs reached 100 percent of the average before the transfer.

Appropriators drop ESA riders; GOP still seeks change

Congress was on the verge of approving a fiscal year 2017 appropriations bill (HR 244) at press time that includes virtually no substantive endangered species amendments. Last year the House and the Senate Appropriations Committee had approved several such riders.

Gone is a major amendment to undo the Obama administration sage-grouse policy, although HR 244 would forbid listing under the Endangered Species Act (ESA). The Obama administration had concurred on not listing; its policy did not include a listing.

Also gone is an amendment that would have ordered the Interior Department to delist the gray wolf in Wyoming as an imperiled species from the Endangered Species Act (ESA). That amendment was largely rendered moot when an appeals court March 3 ordered the delisting of the gray wolf.

But that does not mean Republican critics of the ESA are not demanding major changes in the law in this Congress. Sen. John Barrasso (R-Wyo.), chairman of the Senate Environment and Public Works (EPW) Committee, is taking the Senate lead in revising the ESA. And House Natural Resources Committee, chairman Rob Bishop (R-Utah), is expected to address reform of the law in this Congress.

Some of the less influential Republican players are already chomping at the bit. Those players, led by Sen. Rand Paul (R-Ky.) and Rep. Blaine Luetkemeyer (R-Mo.), introduced legislation (HR 2134, S 935) April 25 that would forbid the Fish and Wildlife Service (FWS) from designating a species as endangered or threatened under the ESA unless the governor of a state consented.

The bill would also require Congressional approval for any new species to be listed and would delist already listed species within five years, if Congress did not approve a resolution approving a listing.

"We can better protect endangered species by empowering state leaders to implement a strategy more tailored to their specific circumstances," said Sen. Paul. "Instead of continuing Washington's 'one-size-fits-all' approach to regulation, this bill puts local needs first and guards against bureaucratic overreach."

Mexican wolf: Meanwhile, in a major development affecting the Mexican gray wolf the Tenth U.S. Circuit Court of Appeals ruled April 25 that FWS may release the wolves into the wild in New Mexico. A lower court had ruled that such a release would harm ungulate herds and issued an injunction against it.

The Tenth Circuit lifted the injunction and said the State of New Mexico had not proved the release would harm cattle, pigs, elk, deer and other ungulates. It said the state didn't prove its case.

Said a three-judge panel, "For example, assuming arguendo that the Department is correct in asserting, for the first time on appeal, that a Mexican wolf may kill over twenty elk and deer per year, the Department

offered no evidence that the release of one, ten, fifty, or even one hundred additional wolves would affect the overall populations of the State's ungulate herds or necessitate action from the Department in order to manage and maintain those populations."

Sage-grouse: The Obama administration sage-grouse policy, issued on Sept. 22, 2015, did not list the greater sage-grouse as an endangered or threatened species as western states had feared. Instead, it directed BLM and the Forest Service to implement 98 records of decisions to protect the bird. The plans affected 67 million acres across 10 western states.

The Interior Department also withdrew 10 million acres of public lands from hard rock mining claims. (*See following article.*)

In their fiscal 2017 appropriations bills both the House and Senate went after the Obama policy, although appropriators largely dropped those initiatives May 1 in announcing a final fiscal 2017 spending bill.

On July 15, 2016, the House had approved its 2017 Interior spending bill (HR 5538) that would not only forbid FWS from listing the greater sage-grouse, but would also have forbid implementation of BLM and Forest Service plans governing the greater sage-grouse if states had management plans in place. HR 5538 would also have forbid the Interior Department from extending the 10 million-acre withdrawal for 20 years.

The Senate Appropriations Committee June 16, 2006, approved a counterpart appropriations bill (S 3086) with the listing restriction, but the Senate would neither limit the implementation of plans nor forbid the 10 million-acre withdrawal. That is roughly the provision appropriators accepted May 1.

Wyoming wolf court: The Obama administration agreed with the Bush administration that the State of Wyoming should be allowed to manage the gray wolf within state boundaries.

FWS delisted the wolf most recently in August 2012, but a federal judge in September 2014 ordered it relisted. U.S. District Court Judge Amy Berman Jackson in U.S. District Court in Washington, D.C., said a State of Wyoming rule that led to the delisting failed.

She said in a Sept. 23, 2014, decision that a state plan didn't guarantee a baseline of 10 breeding pairs and 100 wolves in the state. She said FWS should have demanded stronger proof from the state.

But on March 3 the U.S. Circuit Court for the District of Columbia overruled Jackson. The appeals court said that the state had proved that its rule would not wipe out the wolf in Wyoming.

FWS gave final concurrence to the court's ruling May 1 by issuing a final rule in the *Federal Register* delisting the gray wolf in Wyoming.

Miners mount all-out campaign against grouse policy

The hard rock mining industry is working on three fronts to reverse the Obama administration's sage-grouse management policy enacted through BLM and Forest Service plans, plus a 10 million-acre withdrawal.

In court, industry, plus its Nevada local government allies, won a recent district court decision that requires the agencies to prepare a supplemental EIS on the designation of sage-grouse focal areas where mining is forbidden. However, the court did not halt implementation of the plans.

In the Trump administration, the mining industry in the person of the American Exploration and Mining Association is asking for the termination of a temporary 10 million-acre withdrawal and the rejection of any attempt to extend the withdrawal for 20 years. The Obama administration included the withdrawal in its overarching sage-grouse policy.

Finally, as we have reported, House and Senate members reintroduced legislation (S 273, HR 527) earlier this year to halt Obama policy in virtually all respects. Sen. Jim Risch (R-Idaho) and House Natural Resources Committee Chairman Rob Bishop (R-Utah) are the lead sponsors.

That is, the legislation would not only forbid FWS from listing the greater sage-grouse, it would also forbid implementation of BLM and Forest Service plans governing the greater sage-grouse if states had management plans in place, and almost all do. And the bills would also forbid the Interior Department from carrying out the 10 million-acre withdrawal.

The Obama administration sage-grouse policy, issued on Sept. 22, 2015, did not list the greater sage-grouse as an endangered or threatened species as western states had feared. Instead, it directed BLM and the Forest Service to implement 98 records of decisions to protect the bird. The plans apply to 67 million acres across 10 western states.

The Interior Department also withdrew 10 million-acres of public lands from hard rock mining claims.

Now the hard rock mining industry, the oil and gas industry, some western states and some western local governments are pushing all buttons to do away with the Obama policy and let state plans govern the imperiled bird. By one count 38 lawsuits have been filed against the Obama policy.

Nevada court decision: On March 28 U.S. District Court Judge Miranda Du in Nevada directed BLM and the Forest Service to prepare a supplemental EIS on the designation in land use plans of sage-grouse focal areas (SFAs) where mining would be forbidden. Judge Du, an Obama appointee, said the agencies didn't fully identify SFAs in proposed EISs that were included in final EISs.

"The Agencies used the new information from FWS (Fish and Wildlife Service) to include low priority habitat and non-habitat as SFA and failed to explain why it designated already developed areas as priority habitat in the final FEIS," Du held. "The public should have had an opportunity to review FWS's determinations and comment on the decision to change or add new designations."

But the judge said the agencies should continue to implement their plans while preparing a supplemental EIS. "In balancing such potential harm to the greater sage-grouse species with the Agencies' violation of NEPA which the Agencies may cure with an SEIS the Court finds that protection of the greater-sage grouse weights against vacatur of the RODs," she held.

American Exploration & Mining Association Executive Director Laura Skaer said Judge Du's SFA directive should be applied across the West. "We're

hoping that the Department of Interior will agree that rather than just the State of Nevada, the EIS should cover all states at once," she said.

20-year withdrawal review: Before heading out the door the Obama administration in January asked for public comment on the advisability of extending a temporary two-year withdrawal of 10 million acres in the West to 20 years. On Sept. 24, 2015, BLM withdrew the 10 million acres within SFAs for two years and proposed a 20-year withdrawal.

To the January request for comments on the longer withdrawal the American Exploration & Mining Association (AEMA) responded the Trump administration should not only terminate the two-year withdrawal but should also reject a longer withdrawal.

The mining association said that while the withdrawal technically would honor valid existing rights, in reality it would force mining claimants to undergo mandatory expensive and long-lasting mineral examinations.

Said the association in a letter to BLM, "Therefore, the two-year segregation and the proposed withdrawal not only adversely affect AEMA's members who engage in mining operations that are both economical and structured to leave the smallest environmental footprint, but also those businesses and citizens that depend on locatable minerals. Accordingly, AEMA and its members respectfully submit these comments requesting that the Secretary of the Interior select the No Action Alternative and reject the application for the proposed withdrawal, which would terminate the two-year segregation."

The association's executive director Skaer said the amount of land disturbed by miners under the withdrawal would be minimal. "When you compare the difference in reasonably foreseeable disturbance between the no action alternative in the EIS and the withdrawal it's only 6,934 acres," she said. That's 9,554 acres in the no action alternative compared to 2,620 acres in the withdrawal.

Skaer said she has heard of no signals about how Secretary of Interior Ryan Zinke is leaning on the issue, but she is worried about the lack of staff at the top of the Interior Department. The Trump administration has nominated few assistant secretaries, deputies and other top officials to help Zinke.

Legislation: The Risch and Bishop bills, introduced February 1 and January 13 respectively, would not only forbid FWS from listing the greater sage-grouse under the Endangered Species Act, they would also forbid implementation of BLM and Forest Service plans governing the greater sage-grouse if states had management plans in place, and almost all do. And the bills would also forbid the Interior Department from carrying out the 10 million-acre withdrawal.

The Risch-Bishop stand-alone bills aren't the only legislative initiatives that take on the Obama policy. Fiscal year 2017 appropriations bills from both sides of the Hill are in the game; however, House and Senate appropriators largely rejected the amendments May 1.

Still, on July 15, 2016, the House approved its 2017 Interior spending bill (HR 5538) that, like the Risch-Bishop measure, would not only forbid FWS from listing the greater sage-grouse, but would also forbid implementation of

BLM and Forest Service plans governing the greater sage-grouse if states had management plans in place. The spending measure would also forbid the Interior Department from extending the 10 million-acre withdrawal for 20 years.

The Senate Appropriations Committee June 16, 2006, approved a counterpart appropriations bill (S 3086) with the listing restriction, but the Senate would neither limit the implementation of plans nor forbid the 10 million-acre withdrawal. That is the provision appropriators adopted May 1.

IBLA decisions

(We post current Interior Board of Land Appeals decisions at our website, <http://www.blmfor.com/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: O&G development vs. potash development.

BLM decision: BLM will approve a potash-mining project in an area loaded with oil and gas leases.

Oil and gas lessees: BLM erred because, first, it didn't first prove a potash deposit existed and, second, it prepared an inadequate EIS.

IBLA decision: Affirmed BLM decision.

Case identification: *COG Operating, LLC, et al.* 190 IBLA 049. Decided April 24, 2017. Forty-eight pages. Appeals from a Record of Decision of the Field Manager, Carlsbad (New Mexico) Field Office of BLM, who approved construction, operation, maintenance, and decommissioning of the Ochoa Mine Project, and a related decision approving the issuance of potash preference right leases. BLM/NM/PL-14-02-3500.

IBLA argument: IBLA Deputy Chief Administrative Judge James F. Roberts upheld the approval of 15 potash preference right leases in an area containing 93 oil and gas leases. The Mineral Leasing Act authorizes potash development in the same area where oil and gas development is ongoing as long as the competing industries work out an agreement. In this case the oil and gas lessees - Concho Resources Inc. and Devon Energy Production Co. - contend BLM failed to establish that the area contains a valid potash deposit and failed to adequately analyze environmental impacts of potash development in an EIS. But, held Roberts, "In particular, we conclude that BLM fully analyzed the consequences of requiring (the) oil and gas lessees to negotiate workable agreements for the co-development of their respective resources, including measures designed to mitigate any significant adverse effects."

Subject: Livestock grazing.

BLM decision: BLM will approve decisions reducing grazing in groups of allotments in Idaho.

Administrative law judge decision: Dismissed appeals because appellants didn't have standing.

Appellant grazing groups: Judge erred because individual ranchers within groups would be harmed by BLM decision.

IBLA decision: Reversed in part by holding that one of five appellants does have standing.

Case identification: *Idaho Cattle Association, et al.* 190 IBLA 099. Decided April 26, 2017. Fifteen pages. Appeal from a September 12, 2014, Order of an Administrative Law Judge declining to reconsider an earlier order dismissing grazing associations' appeals of grazing decisions issued by BLM's Owyhee Field Office for lack of standing.

IBLA argument: IBLA Administrative Judge Amy B. Sosin sided procedurally with one of five groups of appellants who object to one of a series of BLM decisions reducing grazing rights in lands overseen by the Owyhee Field Office of BLM in Idaho. In this decision she affirmed a decision of Administrative Law Judge Robert G. Holt that four of the appellants in the appeal don't have standing, including the Idaho Farm Bureau Federation and the Public Lands Council. Both Sosin and Holt said the appellants had not demonstrated that individual members of their groups would be affected by the BLM decision. But Sosin reversed Holt and said the Idaho Cattle Association (ICA) had demonstrated that its members were affected by the decision, thus the appeal can

proceed. Held Sosin, "By demonstrating a nexus between the harm to its members and the interests ICA seeks to protect, ICA has met our requirement for establishing standing."

Notes

FWS follows court order on wolf. The Fish and Wildlife Service (FWS) May 1 accepted an order of the U.S. Circuit Court for the District of Columbia and turned the gray wolf over to the state for management. FWS in the Obama administration had already maintained that the wolf should be delisted in Wyoming. The plan from the Wyoming Game and Fish Department says the state will maintain a population of at least 100 wolves, including 10 breeding pairs, outside of Yellowstone National Park and the Wind River Indian Reservation. Environmentalists led by Defenders of Wildlife maintained in the lawsuit at issue that the Wyoming plan would not guarantee the survival of a healthy, genetically-diverse population of wolves. In their lawsuit the plaintiffs focused on a portion of the plan that establishes a "predator area" over 19 percent of the wolf's habitat, which would essentially be unregulated. But the circuit court on March 3 said deregulating the wolf would not harm the species. "Thus, according to the Service, the predator zone cannot be deemed a 'significant portion' of the wolves' range because the species would not become endangered even if every single wolf there were killed," said the court. Congress has been involved. The House and the Senate Appropriations Committee last year both approved an amendment to a fiscal year 2017 appropriations bill (HR 5538, S 3068) that would override the lower court decision. A House-Senate appropriations conference committee May 1 dropped the amendment.

Bernhardt picked for DoI number two. President Trump April 28 chose former Interior Department solicitor and current lobbyist David L. Bernhardt as deputy secretary of Interior, the number two spot. Bernhardt has been a leading member of the Trump transition team for the Department of Interior. His nomination will be subject to confirmation by the Senate. Bernhardt was a member of the law firm Brownstein Hyatt Farber Schreck LLP, where he represented energy and mining companies and the Westlands Water District in California. Said former Bush administration Secretary of the Interior Dirk Kempthorne, with whom Bernhardt worked, "Dave Bernhardt is an excellent choice to be Deputy Secretary. After I became Secretary of the Interior, Dave was unanimously confirmed by the Senate to be the Solicitor, Interior's highest-ranking legal officer. Dave provided wide counsel based on thoroughly understanding issues being decided." But ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.) immediately fired a warning shot across Bernhardt's bow. "I am gravely concerned about Mr. Bernhardt's record of working on behalf of corporations at the expense of the environment, and his history at the Department of the Interior during years plagued by ethical scandals," she said.

Perdue takes over at USDA. Former Georgia Gov. Sonny Perdue (R-Ga.) assumed the office of Secretary of Agriculture last week after being confirmed for the office by the Senate April 24. Perdue has worked as a farmer, as a veterinarian and as a politician, including two terms as governor of Georgia. The department both oversees the Forest Service and its 194 million acres of land as well as conservation programs on private lands that make lands available for hunting, fishing and other outdoor pursuits. Traditionally, the Under Secretary of Agriculture sets day-to-day policy for the Forest Service, but the Trump administration has not yet nominated a candidate for under secretary.

Huge Rockies wilderness bill is back. Rep. Carolyn Maloney (D-N.Y.) and Sen. Sheldon Whitehouse (D-R.I.) reintroduced legislation (HR 2135, S 936) April 25 that would designate more than 20 million acres of wilderness across the northern Rocky Mountains. Maloney and other House and Senate members have introduced the Northern Rockies Environmental Protection Act several times since 1992. The bill would designate wilderness in Idaho, Montana, Wyoming, Oregon and Washington state national forests and BLM-managed land. Maloney said without the legislation the ecosystem would be in danger. "The Northern Rockies are a rich ecosystem and a national treasure," she said. "They are worthy of our country's highest protective status for wildlands." Eleven House members cosponsored the bill and six senators cosponsored the Senate bill, mostly Democrats from the East.

Senate Red Rock wilderness bill in. Sen. Richard Durbin (D-Ill.) and 18 Democratic cosponsors reintroduced legislation (S 948) April 26 that would protect 9.2 million acres of Utah wild lands. Thirty House Democrats reintroduced the same Red Rock Wilderness legislation (HR 2044) April 6. No Utah legislators cosponsored either bill. The introduction comes as the Trump administration and the Utah Congressional delegation are moving in the opposite direction and attempting to undo the December designation by President Obama of a 1.35 million-acre Bears Ears monument in southern Utah. President Trump signed an executive order April 26 ordering the Interior Department to review that designation. The Democrats' Utah wilderness bill has been introduced in every Congress since 1989, when former Rep. Wayne Owens (D-Utah) first introduced it. Durbin said that when he was originally approached about introducing the legislation, he didn't "feel right" about introducing a bill affecting an area of the country he had never seen. But after visiting the area he said, "I took a closer look, which everyone should, and found a unique part of America - a wilderness area which can't be found anywhere else and a wilderness area which boasts archeological and historic and environmental significance way beyond what many people in the rest of the lower 48 might appreciate."

Time to move BLM HQ? Rep. Scott Tipton (R-Colo.) and Sen. Cory Gardner (R-Colo.) introduced legislation (HR 2287, S 1007) May 2 that would authorize the transfer of BLM's headquarters from Washington, D.C., to one of 12 western states. The bills would allow the secretary of Interior to choose a new location. Gardner in the past has suggested a transfer of the headquarters to Grand Junction, Colo. "Moving BLM's headquarters West is a commonsense solution that Coloradans from across the political spectrum support."

O&G royalty panel nominees sought. The Office of Natural Resources Revenue (ONRR) May 3 extended its deadline for nominations to a new Royalty Policy Committee for 30 days until June 2. The policy committee, with up to 28 members, is expected to play a key role in the Trump administration's setting of royalty valuation rules for coal, oil and gas, and other minerals produced from the public lands. The Interior Department on April 4 formally proposed outright repeal of an Obama administration oil, gas and coal royalty rule. The department had already delayed implementation of the rule in February. The energy industry had complained that the July 1, 2016, Obama administration rule of ONRR had unreasonably complicated the valuation of their product and the reporting of that valuation. In a major change the Obama regulations sought to replace an old standard that applied (and may apply again) a series of benchmarks to set the royalty price. In the Obama rule ONRR would begin with a first affiliated sales price, followed by index

prices. A Bush administration rule is already back in place because on February 22 ONRR *postponed* the implementation of the July 1, 2016, rule that went into effect January 1. That immediately reinstalled the Bush rule, although ONRR is now proposing to review it through the regulatory process. The royalty committee will be made up of up to six state members, four Indian members, six industry members, and four from academia and public interest groups.

Boxscore of Legislation

Fiscal year 2017 appropriations (full year)

HR 244 (Cook). House approved May 3. Senate near approval on May 5. Would appropriate roughly same amounts of money as fiscal 2016. Was stripped of riders.

Rule restrictions

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

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

(*Specific rules*) HJ Res 36 (Bishop), HJ Res 44 (Cheney), HJ Res 45 (Cramer), HJ Res 46 (Gosar), HJ Res 56 (Pearce), HJ Res 68 (Cramer), HJ Res 82 (Westerman), HJ Res 35 (Young), HJ Res 71 (Tipton), SJ Res 11 (Barrasso), SJ Res 15 (Murkowski), SJ Res 18 (Sullivan). President Trump signed into law March 27 (PL 115-12) a resolution reversing a BLM planning rule (HJ Res 44). President Trump signed into law April 3 a resolution (PL 115-20) reversing a FWS hunting rule in Alaska (HJ Res 35). The House approved HJ Res 36, a methane rule reversal, February 2. HJ Res 45 would reverse FWS oil and gas rule and HJ Res 46 would reverse an NPS oil and gas rule. HJ Res 56, HJ Res 68 and HJ Res 82 would reverse BLM oil and gas orders. HJ Res 71 would revoke an ONRR oil, gas and coal royalty rule.

Federal land transfers

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

HR 232 (Young). Young introduced January 3. Would allow states to acquire up to 2 million acres of national forest.

National monument restrictions

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

New national monuments

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

Greater sage-grouse

HR 527 (Bishop), S 273 (Risch). Bishop introduced January 13. Risch introduced February 1. Would largely revoke federal sage-grouse management policy and give the job to the states.

Wolf in Wyoming

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

Critical minerals

HR 520 (Amodei), S 145 (Heller). House hearing March 21. Senate hearing March 28. Would have federal land managers establish time lines for acting on all mineral permits.

Energy policy limitations

S 737 (Markey), S 800 (Cantwell), HR 1819 (Cartwright) S 750 (Merkley), S 987 (Merkley). Markey introduced March 27. Cantwell and Cartwright introduced March 30. Merkley introduced March 28. Merkley introduced April 27. Markey would increase coal royalty, Cantwell and Cartwright would forbid coal self-bond, and Merkley would forbid new fossil fuels leasing from the public lands.

Arctic National Wildlife Refuge (development)

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

Arctic National Wildlife Refuge (wilderness)

HR 1889 (Huffman), S 820 (Markey). Huffman and Markey introduced April 4. Would designate coastal plain as wilderness.

BLM foundation

HR 1668 (Hice.) Hice introduced March 22. Would establish a BLM foundation, like those supporting NPS, FWS and FS.

Land and Water Conservation Fund

HR 502 (Grijalva), S 569 (Cantwell). Grijalva introduced January 12. Cantwell introduced March 8. Would make the program permanent.

Park Service Centennial

S 751 (Warner). Warner introduced March 28. Would guarantee as much as \$500 million per year for NPS maintenance.

Red Rock wilderness (Utah)

HR 2044 (Lowenthal), S 948 (Durbin). Lowenthal introduced April 6. Durbin introduced April 26. Would protect 9.2 million acres of Utah land.

Northern Rockies wilderness

HR 2135 (Maloney), S 936 (Whitehouse). Maloney and Whitehouse introduced April 25. Would protect more than 20 million acres across the northern Rocky Mountains.

Federal Parks & Rec

Addendum to Public Lands News

May 5, 2017

- * *Appropriators maintain level funding*
- * *Rec economy grows significantly*
- * *Notes*
- * *Monuments (See Public Lands News article)*

FY 2017 DoI spending bill roughly keeps FY 2016 levels

It's only seven months late but Congress was near final approval today (May 5) of a fiscal year 2017 Interior and Related Agencies appropriations (HR 244). The measure closely approximates a fiscal 2016 bill. The House approved the measure May 3.

However, President Trump May 2 hinted that he may veto the bill in order to trigger a larger war over federal spending.

In one instance of continuity for Park Service operations the measure contains \$2.425 billion, or \$29 million more than the fiscal 2016 appropriation of \$2.396 billion.

Similarly, for the state side of Land and Water Conservation Fund (LWCF) appropriators approved \$110 million, or the same as the \$110 million in a fiscal 2016 spending bill.

However, for the federal side of LWCF appropriators would slash \$38 million from the fiscal 2016 appropriation, approving \$188.8 million compared to \$226.9 million.

The appropriators approved \$2.8 billion for Forest Service wildfire management, \$342 million for a wildfire suppression reserve fund called FLAME, and \$390 million for hazardous fuels management.

For the Interior Department appropriators approved \$943 million in various wildland fire management accounts, \$65 million for FLAME, and \$180 million for hazardous fuels management.

In completing the bill May 1 a House and Senate conference committee dropped dozens of amendments/riders that the House and the Senate Appropriations Committee approved last year.

Topping the list of killed amendments was a House proposal to forbid the designation of any national monument in specific counties in eight states - Arizona, California, Colorado, Nevada, New Mexico, Oregon, Utah and Maine. Grijalva said the ban would apply to 160 million acres.

Also dropped from the bill were riders to block limits on motorboat use in Havasu Wildlife Refuge; to block an Obama administration ocean policy; to prevent designation of a national heritage area in southeastern Colorado; to bar the designation of any new ocean national monuments; and to forbid the completion of a regulation governing hunting and fishing in national wildlife refuges in Alaska. That last rider was rendered moot when Congress approved a resolution killing the regulation (PL 115-20 of April 3).

The conferees did approve \$1.6 million to keep the Dwight D. Eisenhower Memorial Commission in business and to authorize construction to continue on building a contentious monument to the former President on the Washington, D.C., Mall. The conferees said \$45 million is available for construction. Republican leaders on the House Natural Resources Committee and some Eisenhower family members had objected to the design of the proposed memorial.

The numbers: Here's a summary of the fiscal 2017 bill compared to a fiscal 2016 law:

LWCF FEDERAL: The fiscal 2017 bill contains an appropriation of \$188.8 million compared to a fiscal 2016 appropriation of \$226.9 million.

Here is the agency-by-agency LWCF distribution: the Bureau of Land Management (BLM) would receive \$31.4 million compared to \$38.6 million in fiscal 2016; the Fish and Wildlife Service (FWS) would receive \$50 million compared to \$58.5 million; the Park Service would receive \$42 million compared to \$53.7 million; and the Forest Service would receive \$54.4 million compared to \$64.4 million.

LWCF STATE: The fiscal 2017 bill contains an appropriation of \$110 million, or the same as the \$110 million in fiscal 2016.

PARK SERVICE OPERATIONS: The fiscal 2017 bill contains an appropriation of \$2.425 billion, or \$29 million more than the fiscal 2016 appropriation of \$2.396 billion.

CENTENNIAL CHALLENGE GRANTS: The fiscal 2017 bill contains an appropriation of \$20 million, or \$5 million more than the \$15 million in fiscal 2016.

PARK SERVICE RECREATION AND PRESERVATION: The fiscal 2017 bill contains an appropriation of \$62.6 million, the same as a fiscal 2016 appropriation of \$62.6 million.

NATIONAL HERITAGE AREAS: The fiscal 2017 bill contains an appropriation of \$19.8 million, the same as a fiscal 2016 appropriation of \$19.8 million.

PARK SERVICE CONSTRUCTION: The fiscal 2017 bill contains an appropriation of \$209.4 million, compared to a fiscal 2016 appropriation of \$193 million.

PARK SERVICE HISTORIC PRESERVATION: The fiscal 2017 bill contains an appropriation of \$80.9 million, compared to a fiscal 2016 appropriation of \$65.4 million.

SAVE AMERICA'S TREASURES: The fiscal 2017 bill contains an appropriation of \$5 million, compared to no money in fiscal 2016.

STATE WILDLIFE CONSERVATION GRANTS: The fiscal 2017 bill contains an appropriation of \$82.6 million, compared to a fiscal 2016 appropriation of \$60.6 million.

NATIONAL FOREST SYSTEM: The fiscal 2017 bill contains an appropriation of \$1.513 billion, compared to a fiscal 2016 appropriation of \$1.509 billion.

FOREST SERVICE RECREATION: The fiscal 2017 bill contains an appropriation of \$264.6 million, just over the fiscal 2016 appropriation of \$261.7 million.

FOREST SERVICE TRAILS: The fiscal 2017 bill contains an appropriation of \$77.5 million, the same as a fiscal 2016 appropriation of \$77.5 million.

FOREST LEGACY: The fiscal 2017 bill contains an appropriation of \$62.3 million, the same as a \$62.3 million appropriation in fiscal 2016.

BLM RESOURCE MANAGEMENT: The fiscal 2017 bill contains an appropriation of \$1.095 billion, compared to a fiscal 2016 appropriation of \$1.073 billion.

BLM RECREATION MANAGEMENT: The fiscal 2017 bill contains an appropriation of \$71.7 million, compared to a fiscal 2016 appropriation of the same, \$69.5 million.

NATIONAL LANDSCAPE CONSERVATION SYSTEM: The fiscal 2017 law contains an appropriation of \$36.8 million, the same as a fiscal 2016 appropriation of \$36.8 million.

FWS REFUGE MANAGEMENT: The fiscal 2017 bill contains an appropriation of \$483.9 million compared to a fiscal 2016 appropriation of \$481.4 million.

Rec economy outpaces energy on jobs and benefits

Outdoor recreation received a triple boost last week, first and foremost from a new report that holds the industry contributes \$887 billion to the nation's economy each year. That's a \$243 billion increase from a 2013 report prepared for the Outdoor Industry Association.

In a second boost House and Senate Democrats and Republicans forged a powerful new caucus to advocate for recreation. The Senate Recreation Caucus and the House Recreation Caucus are led by Sens. Jim Risch (R-Idaho) and Martin Heinrich (D-N.M.) and Reps. Mike Simpson (R-Idaho) and Jared Polis (D-Colo.)

In the third boost a House subcommittee held a hearing April 27 on the importance of outdoor recreation to the economy. Said House subcommittee on Digital Commerce Chairman Robert Latta (R-Ohio), "For many states and communities outdoor recreation is a keystone of economic activity. It creates jobs and generates revenue and spurs vital investments. Our goal is to continue that progress and insure the outdoor recreation industry remains a strong pillar in the U.S. economy."

But ranking subcommittee Democrat Rep. Janice Schakowsky (D-Ill.) warned that Trump administration climate policies could seriously damage outdoor recreation opportunities. "If we don't act now (on climate change) winter will become a thing of the past," she said. "That means fewer people will enjoy winter sports and fewer sales for the outdoor recreation industry. And summer will be worse too when they get so hot they discourage Americans from leaving air conditioned buildings to enjoy the great outdoors."

When the Outdoor Industry Association published its inaugural report in 2013 on the impact of outdoor recreation on the economy, it was a game-changer. Republican and Democratic Congressmen and state officials all cited the report on almost a daily basis to boost the industry in their jurisdictions. And to support policies that abet outdoor recreation.

Now the association has upped the ante with its new report showing outdoor recreation contributes more to the economy than all other industries except health care and financial services. Viewed another way outdoor

recreation contributes almost three times as much to the economy as does the energy industry - \$887 billion compared to \$304 billion.

The association intends to use that power to advocate for protection of the nation's lands and waters. Amy Roberts, executive director of the group, expressed alarm about President Trump's April 26 executive order directing a review of 25 national monument designations. *(See related article page three).*

"We are deeply concerned about the order and our hope is that no one seeks to roll back or dilute over 100 years of history and protection for our nation's public lands through the Antiquities Act," she said. "Monuments, many of which have become national parks, have created economic prosperity and jobs in local communities for decades."

The association's report itself emphasizes the point, saying, "From our national parks to local green spaces, from alpine lakes to transcontinental rivers, America's outdoor recreation assets are its citizens' common trust. Our public lands and waterways belong to every American, and they are the backbone of our outdoor recreation economy. They hold the promise of prosperity and well-being. It is as much our responsibility to invest in them as it is our right to enjoy them."

Of the new Senate Outdoor Recreation Caucus, cofounder Sen. Risch said, "Outdoor recreation is a way of life in Idaho, but now we also know what a powerful economic force it is across the nation."

Said House Outdoor Recreation Caucus cofounder Mike Simpson (R-Idaho), "We are seeing now more than ever the importance of wild places, rivers, ski resorts, trails and green spaces in recruiting and retaining businesses and a skilled workforce."

The House subcommittee took testimony from Roberts as well as representatives of five other organizations representing recreation industries, as well as Outward Bound School.

The subcommittee gave special attention to a law Congress passed last year (PL 114-249 of Dec. 8, 2016) that directs the Department of Commerce to prepare an analysis of the contributions of outdoor recreation to the nation's economy.

Latta said at his hearing that the report will quantify all outdoor recreation economic activities to produce an "annual national assessment of the U.S. economy. As a result policy makers and stakeholders alike will have necessary information to make critical decisions that will allow this industry to thrive for generations to come."

The Outdoor Industry Association report is available at:
https://outdoorindustry.org/wp-content/uploads/2017/04/OIA_RecEconomy_FINAL_Single.pdf.

Notes

Ski areas keep consolidating. Two national ski resort companies - Aspen and Vail - are rapidly consolidating major resorts on national forests. Last month Aspen Skiing Company announced the acquisition of the most popular

ski resort in the country - Mammoth Mountain in California. As part of the deal Aspen also acquired June Mountain, Snow Summit, Bear Mountain and other properties in California. Altogether the partnership will operate 12 resorts that host 7 million skiers a year. Mammoth alone draws 2 million. The price of the acquisition was not announced but it is expected to run in the hundreds of millions of dollars. Vail has been doing its own acquisitions, building a portfolio of up to 10 resorts and three urban ski sites in Colorado, Utah, California, Nevada, Minnesota, Michigan and Wisconsin, and Australia. Said Aspen of its deal with Mammoth, expected to close by fall, "Mammoth Lakes is a vibrant community on a year round basis, offering alpine and freestyle on-snow camps well into June. Their extensive mountain biking trail system attracts visitors all summer and their close proximity to Yosemite National Park is also a big draw. Just as importantly, these resorts have distinct personalities stemming from their early days as fledgling resorts, creating a strong sense of place that is alive and well." The April 12 Aspen press release is available at: <https://www.aspensnowmass.com/inside-aspen-snowmass/stories/better-together>.

Energy ROW proposed near Joshua Tree. The Bureau of Land Management (BLM) said last month it is nearing approval of a 12-mile electrical transmission right-of-way (ROW) 1.5 miles from Joshua Tree National Monument. After protests on the proposed plan and environmental assessment (EA) are resolved BLM will post a record of decision. There will almost certainly be protests from environmentalists. The National Parks Conservation Association (NPCA) would prefer that the California Desert area be transferred to the Park Service. "In fact, the BLM's action today contradicts the proposal to expand Joshua Tree National Park by returning the Eagle Mountain area to its boundary," said David Lamfrom, California Desert and Wildlife Director for NPCA. "The National Park Service has repeatedly requested a comprehensive analysis of the transmission line impacts within the larger context of the Eagle Crest Project due to its potential harm to Joshua Tree National Park." In announcing completion of the proposed plan and EA April 21 Doug Herrema, BLM Palm Springs Field Manager, said, "If approved, the Eagle Crest right-of-way is anticipated to transmit hydroelectric energy to power 900,000 homes in California each year."

Rec leaders meet with Trump officials. Leaders of the outdoor recreation industry met with top Trump administration officials last week to discuss increased public/private partnerships in the management of facilities on the public lands. The officials also asked for improved access to the public lands. Meeting with the recreation officials on behalf of the administration were Secretary of Interior Ryan Zinke, Interior Department Senior White House Liaison Doug Domenech, Special Assistant to the Secretary for Fish and Wildlife and Parks Virginia Johnson, Acting National Park Service Director Mike Reynolds and Forest Service Deputy Chief Leslie Weldon. The confab, arranged by the Outdoor Recreation Industry Roundtable, was held at Shenandoah National Park. "No team wins by itself, and when you get right down to it, public-private partnerships are where success is going to happen," said Jim Houser, Delaware North President for Sportservice, Parks & Resorts and Patina Restaurant Group.

Huge Rockies wilderness bill is back. Rep. Carolyn Maloney (D-N.Y.) and Sen. Sheldon Whitehouse (D-R.I.) reintroduced legislation (HR 2135, S 936) April 25 that would designate more than 20 million acres of wilderness across the northern Rocky Mountains. Maloney and other House and Senate members have introduced the Northern Rockies Environmental Protection Act several times since 1992. The bill would designate wilderness in Idaho, Montana,

Wyoming, Oregon and Washington state national forests and BLM-managed land. Maloney said without the legislation the ecosystem would be in danger. "The Northern Rockies are a rich ecosystem and a national treasure," she said. "They are worthy of our country's highest protective status for wildlands." Eleven House members cosponsored the bill and six senators cosponsored the Senate bill, mostly Democrats from the East.

Y'stone grizzly tagging begins. Yellowstone National Park advised the public this past week that it is going to begin a three-month grizzly bear tagging operation Sunday, May 7. The tagging, to be conducted by the Interagency Grizzly Bear Study Team (IGBST), is part of an ongoing research program. The IGBST is made up of representatives from the U.S. Geological Survey, the National Park Service, the U.S. Fish and Wildlife Service, the U.S. Forest Service, the Eastern Shoshone and Northern Arapaho Tribal Fish and Game Department, and the states of Idaho, Montana and Wyoming. The Fish and Wildlife Service (FWS) March 3, 2016, proposed the delisting of the Yellowstone grizzly bear population across its 20 million-acre habitat under the Endangered Species Act. FWS said the bear population, headquartered in Yellowstone and Grand Teton National Parks, had grown from just 136 animals 40 years ago to more than 700 now. The Wyoming Congressional delegation welcomed the proposal. The National Parks Conservation Association responded more cautiously, even with some trepidation.