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All,

Attached in .doc and pdf formats is the July 14, 2017 issue of Public Lands News.

Enjoy,

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"No law can give me the right to do what is wrong." A. Lincoln

July 14, 2017: Attached is the current issue of the newsletter Public Lands News (Volume 42 Number 14), in .doc format and in PDF format. Below are the headlines. We thank you for reading Public Lands News.

In the attached issue. . .

* HOUSE PANEL WOULD REDUCE SPENDING. In Interior bill by \$824 million. Still, that's significantly less than the \$4.3B chop requested by Trump. Land management, fire fighting both lower. Big wolf amendment in.

Page 1

* GREENS SAY BLM ALSO MAY NOT DELAY METHANE REG. A week after a court said EPA may not delay implementation, enviros take BLM rule to court.

Page 4

* ZINKE WOULD ACCELERATE APD REVIEWS. And lock in quarterly sales. But critics could trip up attempts to speed because of mandatory NEPA and ESA reviews.

Page 6

* OUTDOOR INDUSTRY FIRES MONUMENTS WARNING SHOT. Pulls annual conference out of Utah because of monument criticism as comment period ends.

Page 8

* SENATE MAY MOVE QUICKLY ON ENERGY BILL. McConnell puts it on agenda. However, health bill, nominations expected to have priority.

Page 9

* ZINKE CONSIDERS NEW BLM PLANNING RULE. Asks public comment on possible rule to replace Obama 2.0 rule that Congress wiped out with CRA.

Page 11

* FIRES FLARE, PUTTING HEAT ON CONGRESS. NIFC counts 47 major fires, expects lots more. Could spur fire borrowing and put Hill on spot.

Page 12

* ANOTHER TRIAL OF BUNDY ALLIES UNDERWAY. Second-tier supporters of rancher in Nevada standoff now in court. Bundy trial expected in fall.

Page 14

* IBLA DECISIONS.

Page 15

* NOTES.

Page 15

* CONFERENCE CALENDAR.

Page 16

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Volume 42 Number 14, July 14, 2017

In this issue. . . .

House panel would reduce spending. *In Interior bill by \$824 million. Still, that's significantly less than the \$4.3B chop requested by Trump. Land management, fire fighting both lower. Big wolf amendment in.....* Page 1

Greens say BLM also may not delay methane reg. *A week after a court said EPA may not delay implementation, enviros take BLM rule to court.....* Page 4

Zinke would accelerate APD reviews. *And lock in quarterly sales. But critics could trip up attempts to speed because of mandatory NEPA and ESA reviews...* Page 6

Outdoor industry fires monuments warning shot. *Pulls annual conference out of Utah because of monument criticism as comment period ends.....* Page 8

Senate may move quickly on energy bill. *McConnell puts it on agenda. However, health bill, nominations expected to have priority.....* Page 9

Zinke considers new BLM planning rule. *Asks public comment on possible rule to replace Obama 2.0 rule that Congress wiped out with CRA.....* Page 11

Fires flare, putting heat on Congress. *NIFC counts 47 major fires, expects lots more. Could spur fire borrowing and put Hill on spot....* Page 12

Another trial of Bundy allies underway. *Second tier supporters of rancher in Nevada standoff now in court. Bundy trial expected in fall.....* Page 14

IBLA decisions..... Page 15

Notes..... Page 15

Conference Calendar..... Page 16

House subcommittee would cut funding for most programs

A House appropriations subcommittee July 12 approved a fiscal year 2018 Interior and related agencies spending bill with significantly less money than in fiscal 2017. Still, the bill contains far more money than recommended by the Trump administration.

The House subcommittee on Interior appropriations passed a bill with a ceiling of \$31.4 billion, or \$800 million less than a fiscal 2018 appropriation of \$32.2 billion. A mark-up in the full House Appropriations Committee has not been set.

The Trump administration had recommended \$4.3 billion less than the subcommittee number, or \$27.1 billion.

For BLM resource management and the National Forest System the subcommittee approved modest decreases. For BLM resource management the subcommittee approved a decrease of \$20 million, from \$1.095 billion in fiscal 2017 to \$1.075 billion in fiscal 2018. For the National Forest System the subcommittee approved a decrease of

\$20 million, from \$1.513 billion in fiscal 2017 to \$1.493 billion in fiscal 2018.

The allocations for some public lands programs were a little higher, despite the overall bill cap, because the subcommittee reduced allocations to federal acquisition under the Land and Water Conservation Fund (LWCF). Thus the National Forest System allocation actually increased by a small amount outside of land acquisition.

As has become customary, wildfire suppression ate up a significant portion of the subcommittee's \$31.4 billion allocation, \$3.4 billion, or about 11 percent of the total. And the subcommittee did not act on recommendations that it attempt to shift emergency wildfire costs out of the bill and into disaster funding.

The subcommittee set aside \$465 million for the payments-in-lieu of taxes (PILT) program, which Congress has occasionally paid for outside of appropriations bills. The \$465 million matches the fiscal 2017 appropriation. The Trump administration had recommended \$397 million for PILT.

As for the overall spending cap in the subcommittee bill, ranking panel Democrat Betty McCollum (D-Minn.) lashed out at the House Republican majority. "This level is too low and is a step in the wrong direction," she said. "These cuts mean that the needs of many important programs vital to protecting our nation's natural and cultural resources will not be met."

She also objected to the inclusion of numerous policy amendments (16 by her count), in the bill. "These provisions seek to turn back protections for endangered species and undermine clean water and clean air protections. They simply do not belong in this bill. They undermine important environmental laws and endanger public health and safety, while benefiting polluters."

But subcommittee chairman Ken Calvert (R-Calif.) stood up for the measure. "The agencies funded in the Interior and Environment Appropriations bill do important work protecting public lands, the air we breathe, and the water we drink. Our subcommittee prioritized proven programs that have a meaningful impact to achieve these goals while also ensuring our economy can continue to grow," he said.

The amendments/riders in the bill include such things as a ban on implementing a wetlands regulation; a bar on listing the greater sage-grouse as threatened or endangered under the Endangered Species Act; and a bar against delisting of the gray wolf in Wyoming.

The legislation would also ban the listing of any wolf species in the lower 48 states as threatened or endangered under the Endangered Species Act (Section 117).

That is a blanket ban that would forbid the use of funds to "treat" any wolf species as threatened or endangered under the act, including the Mexican gray wolf. The Fish and Wildlife Service June 30 proposed a new recovery plan for the endangered Mexican gray wolf that anticipates a future population in the Southwest of the United States of 320 wolves, plus 170 in Mexico. The population of the lobo, the most endangered of the wolf subspecies in the world, is currently 130 in Arizona and New Mexico.

Said Defenders of Wildlife President Jamie Rappaport Clark of the subcommittee amendment, "This wolf rider means certain death for America's wolves. It forces the Department of the Interior to abdicate its responsibilities for protecting gray wolves, which are currently listed as endangered in much of the contiguous United States. It also disrupts the abilities of other federal agencies to comply with their obligations under the law. It is particularly egregious that this rider would halt all efforts to protect and recover the Mexican gray wolf - the most endangered gray wolf in the world with just 113 in the U.S. and 35 in Mexico."

July 14, 2017**Page 3**

As for a spending cap for the bill, appropriators are apparently assigning seat-of-the-pants ceilings to individual appropriations measures because the House has yet to begin work on a guiding fiscal year 2018 budget.

If and when the House Budget Committee does go to work on a fiscal 2018 spending plan, it is expected to include in it a recommendation that Congress approve oil and gas development in the coastal plain of the Arctic National Wildlife Refuge (ANWR).

That recommendation would then be translated into specific authorization to lease in ANWR in a filibuster-proof budget reconciliation bill later this year.

A counterpart Senate subcommittee on Interior Appropriations has yet to begin work publicly on its bill. Like the House, the Senate has yet to go public with its budget plans.

Here are some of the numbers the House subcommittee released this week. The subcommittee did not go into detail on proposed appropriations for such line items as wild horse and burro management and BLM's National Conservation Lands:

NATIONAL FOREST SYSTEM: The subcommittee approved \$1.493 billion, or \$20 million less than a fiscal 2017 appropriation of \$1.513 billion. The committee would also shift \$392.5 million from a wildfire account for hazardous fuels management to the National Forest System line item, bringing the total to \$1.886 billion.

FOREST PRODUCTS: The subcommittee approved \$370 million for forest products (i.e. timber sales), or \$2 million more than a fiscal 2017 appropriation of \$368 million.

BLM RESOURCE MANAGEMENT: The subcommittee approved \$1.075 billion, or \$20 million less than the fiscal 2017 appropriation of \$1.095 billion. When a decrease of \$18.6 million for federal land acquisition is deducted, the subcommittee allocation would only drop by \$1.4 million.

WILDFIRE FOREST SERVICE: For a wildfire appropriation the subcommittee recommended \$2.898 billion, compared to a fiscal 2017 appropriation of \$2.833 billion. For an emergency account called FLAME the subcommittee recommended no money, compared to a fiscal 2017 FLAME appropriation of \$342 million.

WILDFIRE INTERIOR: For a wildfire appropriation the recommendation is \$956 million, compared to a fiscal 2017 appropriation of \$943 million. For an emergency account called FLAME the subcommittee proposed no money, compared to a fiscal 2017 FLAME appropriation of \$65 million.

In addition, the subcommittee did not address bipartisan legislative proposals (HR 2862, HR 2936) that would transfer emergency fire-fighting appropriations to a category of disaster funding. Such a shift would free up some \$400 million per year from the appropriations bill for other purposes and prevent the Forest Service from borrowing from other line programs to pay for fire fighting. *(See related article page 12.)*

PAYMENTS-IN-LIEU OF TAXES: The subcommittee approved \$465 million the same as a fiscal 2017 appropriation. The Trump administration had recommended \$397 million.

LWCF FEDERAL: The subcommittee approved \$110 million for federal land acquisition, or \$79 million less than a fiscal 2017 appropriation of \$189 million. The Trump administration had recommended an appropriation of \$51 million for land acquisition.

By agency BLM would receive \$12.8 million compared to \$31.4 million in fiscal 2017; the Fish and Wildlife Service would receive \$40.6 million compared to \$50 million; the Park Service would receive \$31.6 million compared to \$42 million; and the Forest Service would receive \$25 million compared to \$54.4 million.

Greens say that BLM also can't delay methane rule

One week after a federal court ruled July 3 that EPA could not legally delay implementation of a methane emissions rule, environmentalists went to court to prevent BLM from delaying implementation of its own methane rule.

The environmentalists are making the same argument in the BLM case that the Tenth Circuit Court of Appeals made in the EPA case - federal agencies may not delay implementation of rules that have already gone into effect. The court said that in order to alter a rule an agency must follow formal, time-consuming procedures.

However, the BLM lawsuit does not cite the Tenth Circuit decision for precedent.

On July 3 the Tenth Circuit held that under the Administrative Procedures Act (APA) EPA would have to start over with public notice, public comment and formal rewrites before changing a rule. That decision may have dealt a blow to the Trump administration's campaign to undo Obama administration energy regulations.

Indeed 17 national and local environmental groups filed a new lawsuit in U.S. District Court for Northern California July 10 arguing the APA also forbid BLM from delaying its methane emissions rule.

On its behalf BLM argued that the bureau's methane rule is already being considered by a third court and a stay of the rule would give the court time to act.

But the environmentalist plaintiffs, led by the Earthjustice law firm, countered that the purpose of the bureau's stay is not to let the court decision run its course but to allow BLM to revoke or change the rule.

"BLM purports to justify the stay based both on pending judicial review and its ongoing reconsideration of the Rule," argued the plaintiffs. "However, BLM's statements and actions demonstrate that it issued the stay to enable it to administratively rescind or revise the rule, not to allow for 'judicial review,' as required by (the APA)."

In the EPA case, the agency had delayed implementation of a methane emissions rule for 90 days. EPA had argued that it had broad discretion to revisit its own rules under the Clean Air Act.

But in a two-to-one decision the Tenth Circuit July 3 held that the APA forbids agencies from delaying a rule without a formal rulemaking procedure.

"Agencies obviously have broad discretion to reconsider a regulation at any time. To do so, however, they must comply with the (APA), including its requirements for notice and comment," said the court majority.

The court continued, "EPA's stay, in other words, is essentially an order delaying the rule's effective date, and this court has held that such orders are tantamount to amending or revoking a rule."

Signing off on the majority rule were Judges David S. Tatel (a President Clinton appointee) and Robert Leon Wilkins (an Obama appointee).

In a dissent Judge Janice Rogers Brown (a President George W. Bush appointee)

July 14, 2017

Page 5

said EPA had authority to delay implementation of the rule because a delay does not change a rule.

"EPA is not compelling compliance here," she argued. "If a regulated entity wants to comport its conduct to the requirements of the stayed rule, it is free to do so. By issuing the stay, all the EPA has indicated is that it will not, legally or practically, enforce the rule under reconsideration. The stay's consequences therefore do not impose legal or practical requirements on anyone - separating them from the kind of consequences encompassed by 'final agency action.'"

Because there is no final agency action, she concluded, there is no judiciable action for the court to consider and EPA's delay should continue.

Environmental group plaintiffs in the EPA suit, including the Sierra Club, declared victory. "Donald Trump and (EPA Administrator) Scott Pruitt's attempt to delay the implementation of these crucial protections had no basis in law, and we are glad to see their effort to do the bidding of the fossil fuel industry fail," said Sierra Club Chief Climate Counsel Joanne Spalding.

The Tenth Circuit decision is available at: [https://www.cadc.uscourts.gov/internet/opinions.nsf/A86B20D79BEB893E85258152005CA1B2/\\$file/17-1145-1682465.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/A86B20D79BEB893E85258152005CA1B2/$file/17-1145-1682465.pdf).

The question now is, does the Tenth Circuit EPA ruling set a precedent for separate BLM energy rules that may or may not be suspended/delayed by the Trump administration?

On June 24 BLM proposed a two-year delay in implementing its own methane rule. That is the subject of the July 10 environmentalist lawsuit.

Separately, on June 21 the Interior Department strongly suggested that BLM was about to take a similar step and rescind a hydraulic fracturing regulation. The department submitted to the White House Office of Information and Regulatory Affairs a document titled "Rescission of the 2015 BLM Hydraulic Fracturing Rule."

BLM and EPA announced separate rules in early June to postpone key elements of methane emissions rules for two years. As justification, BLM invoked a provision of the APA that authorizes agencies to postpone the implementation of new rules when petitioners give good cause.

In this instance BLM said June 15 the Western Energy Alliance had justified the delay of its Nov. 16, 2016, rule by objecting to the "regulatory uncertainty" of provisions dealing with leakage detection, storage tanks and pneumatic device provisions.

Other provisions that BLM is already implementing, such as development of a waste minimization plan, royalty free use of production, definitions of unavoidably lost and avoidably lost, limits on drilling and flaring, and downhole maintenance will continue in place, BLM said.

There is already litigation underway against the Obama administration's BLM methane rule, as the administration has cited for justification in its plan to delay the regulation. On January 16 Judge Scott W. Skavdahl in U.S. District Court in Wyoming refused for now to halt implementation of the BLM rule. He held that industry plaintiffs, including the Western Energy Alliance, had not yet proved they would be harmed by the regulation.

However, Skavdahl was skeptical of 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."

On June 13 EPA proposed a two-year delay of its methane emissions rule of June 3, 2016. EPA previously delayed that rule for 90 days beyond a June 3 compliance deadline.

In a surprise reversal for the Trump administration the Senate May 10 backed the Obama administration's BLM methane rule by a narrow 51-to-49 vote. It refused to use a Congressional Review Act that authorizes the House and Senate to repeal regulations issued in the last 60 legislative days of Congress.

Hydraulic fracturing: The Interior Department is apparently on track to attempt to suspend BLM's hydraulic fracturing rule of March 2015 while the bureau writes a new regulation, presumably one less burdensome to the oil and gas industry. The department submitted to the White House a proposal to rescind the rule.

A federal court in June 2016 (Judge Skavdahl) had already blocked implementation of the rule so a suspension would have virtually no immediate impact on the ground.

BLM has submitted to the White House Office of Information and Regulatory Affairs a document titled "Rescission of the 2015 BLM Hydraulic Fracturing Rule."

As part of the Trump administration's pro-development energy policy Secretary of Interior Ryan Zinke March 29 had already ordered BLM to begin the groundwork toward rescinding the hydraulic fracturing rule. The suspension - coupled with the court order - would presumably give BLM time to revise the rule.

Zinke faces high hurdles in his desire to speed APDs

Secretary of Interior Ryan Zinke July 6 directed his department to identify impediments to the swift processing of onshore public lands oil and gas applications for permit to drill (APD).

What steps Zinke can then take are unclear because BLM must comply with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA), among other laws, prior to approving permits. And that takes time.

But Zinke said in an executive order he is going to try to reduce the time for processing APDs.

"Oil and gas production on federal lands is an important source of revenue and job growth in rural America but it is hard to envision increased investment on federal lands when a federal permit can take the better part of a year or more in some cases," he said.

According to the department the Mineral Leasing Act requires BLM to complete a review of an APD within 30 days, but in fiscal year 2016 the average time was 257 days. The department said that as of January 31, BLM had 2,802 APDs in the pipeline.

Zinke also directed BLM to hold quarterly oil and gas lease sales. BLM state offices usually do try to hold quarterly sales but sometimes postpone the events because of complications due to NEPA and ESA protests.

Ranking House Natural Resources Committee Democrat Raúl M. Grijalva (D-Ariz.) said there is another side to the story - a large number of approved drilling

July 14, 2017

Page 7

permits that are not in production. He said that lessees now hold 7,950 APDs that are not being used.

Grijalva wrote Zinke July 6 and said that the Trump administration's concentration on "energy dominance" risks violating the multiple-use mandate of the Federal Land Policy and Management Act (FLPMA).

"One of the difficulties in managing our resources is that public lands have multiple potential uses and values, and the promotion of a particular use can result in the diminishment of a competing use," he wrote. "A strategy of 'energy dominance' will lead to an Interior Department conflicted between adhering to FLPMA and furthering the Administration's desires to expand fossil fuel production across all public lands."

And, of course, if BLM attempts to accelerate APD reviews by shrinking NEPA and ESA reviews, it risks legal actions from sportsmen as well as environmentalists. When the George W. Bush administration attempted to fast-track onshore oil and gas leases and APDs between 2000 and 2008, sportsmen joined environmentalists in filing petitions, appeals and lawsuits that often slowed leasing and APD approvals.

The Obama administration from 2008 to 2016 swung back the other way and instituted more detailed pre-lease and pre-APD approval reviews, ostensibly to avoid legal entanglements. But the oil and gas industry said the Obama reviews led to unnecessary regulatory delays.

The Obama administration did take one huge step that it said would speed APD and lease approvals - processing paperwork electronically. Late last year it began holding lease sales electronically instead of through in-person bidding.

BLM said it had little choice. In February 2012 it recommended to Congress that sales be shifted to online; Congress in turn allowed BLM to make the change in a rider to a National Defense Authorization Act (PL 113-291 of Dec. 19, 2014.)

Subsequently, the bureau also began taking nominations of interest online.

Then on February 7 the Trump administration published an Obama administration-generated rule that makes online filing of APDs the standard procedure, subject to some exceptions. Those two electronic moves may speed up both the processing of lease nominations and the processing of APDs.

In addition to the online oil and gas lease sale authority, Congress has acted to speed APDs. In December 2014 it approved a fee of \$9,500 to process each APD, with 25 percent of revenues used by local federal offices for processing permits.

That provision was also enacted as part of the Department of Defense Authorization law. Sens. John Barrasso (R-Wyo.) and Tom Udall (D-N.M.) were the lead sponsors of the provision.

Under a previous law - Section 365 of the Energy Policy Act of 2005 - BLM and its sister agencies received some \$18 million per year to pay for joint offices set up to move permits. The increased fee provides some \$50 million per year for BLM offices to use for APD processing.

Of the Zinke initiative Barrasso said, "I'm encouraged that today's secretarial order will get the ball rolling on making necessary reforms to help BLM field offices address the growing backlog. It's important that BLM has a system in place that allows them to effectively and efficiently process these permits."

Sen. John Hoeven (R-N.D.) has a separate new pilot proposal in the works to expedite APDs. Hoeven would authorize a pilot program in one state (presumably

North Dakota) to study ways to accelerate the processing of APDs to meet state standards where (1) less than 25 percent of the minerals in a spacing unit were owned by the federal government and (2) the surface estate was not owned by the federal government. The provision is attached to a high priority omnibus energy bill (S 1460). *(See related article page 9.)*

By definition the oil and gas industry was pleased with the Zinke initiative. Independent Petroleum Association of America (IPAA) Senior Vice President of Government Relations and Political Affairs Dan Naatz said, "IPAA welcomes today's secretarial order, which will restore certainty and efficiency to the federal permitting process. Long-term business planning and certainty is a critical component to the leasing process for oil and natural gas producers."

The order directs the Assistant Secretary of Interior for Land and Minerals and BLM to report back within 45 days with a strategy for insuring quarterly lease sales are held and a strategy for speeding APD processing. The order also asks the assistant secretary and BLM to identify impediments to quarterly lease sales, presumably lengthy NEPA and ESA reviews. The Zinke order is available at: <https://www.doi.gov/sites/doi.gov/files/uploads/doi-so-3354.pdf>.

Upset by monument study, rec industry pulls Utah confab

Just before the comment period ended on the Trump administration's review of recent national monument designations July 10, the outdoor industry formally pulled its annual conference out of Salt Lake City.

The Outdoor Industry Association said it moved the conference to Denver - worth \$45 million per year to the host city - in part because of Utah politicians' hostility to national monuments.

Said the Outdoor Alliance, on announcing the move to Denver July 6, "At the outset of the RFP process, we established criteria that not only addressed the required logistics to host a successful show, but also evaluated the alignment of our industry values. Denver and the state of Colorado are passionate about protecting and nurturing outdoor recreation, which is critical to the growth of our industry."

On February 16 the Outdoor Industry Association said it asked Utah Gov. Gary Herbert (R-Utah) to take four steps: end attempts to revoke the Antiquities Act, stop seeking reversal of a Bears Ears National Monument in Utah, support public lands in general and end attempts to sell or transfer public lands to the state. Herbert's response obviously didn't satisfy industry.

The announcement that the rec industry conference will move to Denver represents the arrowhead in an all-out campaign by sportsmen and conservationists against the review. Environmentalists say more than 2.5 million people have commented on the Interior Department review.

Whether that public response will have an impact on the Trump administration remains to be seen. Western Republican politicians have overwhelmingly criticized the number and size of national monuments in the West.

Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) for one important example endorsed the review. "I strongly support President Trump's order to review the largest national monuments designated over the past two decades," she said when the review was announced in April. "During the past administration, we saw the Antiquities Act result in sweeping designations that frequently ignored local opposition. This review is a good step forward in our efforts to reform

July 14, 2017**Page 9**

the monument designation process to ensure the concerns of those who stand to be impacted are heard and respected."

President Trump signed an executive order April 26 directing the Interior Department to review the designations of 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 outright.

The review is taking a look at the designation of 21 national monuments of more than 100,000 acres, plus an 87,500-acre Katahdin Woods and Waters National Monument in Maine and five huge marine monuments. That's 27 total.

The Trump-Zinke review could set the stage for Trump to at least reduce the size of the 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." That schedule suggests a recommendation from Zinke to President Trump by the end of August.

Zinke has already taken one major step. On June 12 he recommended that President Trump reduce the size of the Bears Ears National Monument in southern Utah, touching off a political firestorm. President Obama designated the 1.3 million-acre Bears Ears monument on Dec. 28, 2016.

Democrats may object, but Zinke's Bears Ears recommendation was greeted warmly by the all-Republican Utah Congressional delegation, which has been championing either a reduction in size of Bears Ears or a revocation of the designation of the monument by President Obama.

To beat the drums against any changes to the monuments a handful of Democratic senators held a press conference on July 11, the day after the public comment period ended.

A white paper put out by conservationists argues that a 1938 U.S. Attorney General opinion holds that the Antiquities Act of 1906 does not allow a President to undo a monument designation.

While the white paper notes that the 1938 attorney general opinion and a 1947 Interior Department Solicitor's opinion also hold that a President does have authority to reduce the size of a monument, such a step must be justified.

"The monuments at issue in the current review were created based on thorough review of the values that needed to be protected and the resulting boundaries were carefully crafted - undermining any purported justification for modification," says the paper.

At any rate numerous environmental groups have promised to file suit if President Trump alters any national monument or revokes a designation.

Political advocates have entered the battlefield. The League of Conservation Votes July 6 said it has launched a \$75,000 campaign against four senators who have supported the monuments review - Sens. Dean Heller (R-Nev.), Jim Risch (R-Idaho), Mike Crapo (R-Idaho) and Jeff Flake (R-Ariz.)

Floor time for Senate Energy bill depends on ACA repeal

Depending on how Senate maneuvering goes over national health legislation this summer, the Senate is poised to act quickly on an omnibus comprehensive energy bill (S 1460).

After Senate Energy Committee leaders introduced the energy measure June 28 Senate Majority Leader Mitch McConnell (R-Ky.) immediately put the 892-page bill on the Senate floor agenda, thus bypassing committee action. The Senate approved a predecessor bill in the last Congress only to have it fail in the final days of December.

McConnell reportedly hopes to move S 1460 in the Senate by a mid-August summer recess. Again, that depends on how much floor space he can find with health care legislation and nominations taking priority. Thus far, it appears the health care bill may be all consuming.

While the energy bill from committee chairman Lisa Murkowski (R-Alaska) and ranking committee Democrat Maria Cantwell (D-Wash.) addresses in the first instance energy, it contains few provisions dealing with onshore energy production.

It does, however, contain major conservation provisions such as making permanent the Land and Water Conservation Fund, establishing a Park Service maintenance fund, making permanent the National Historic Preservation Fund and approving 60 individual Forest Service, BLM and Park Service management bills.

In addition S 1460 contains a sportsmen's package that begins with a provision to ensure that public lands would be open to hunting and fishing unless specifically closed.

A predecessor energy bill in the last Congress was under serious consideration by the House and Senate late into December, but eventually failed. A matching House measure would also have added provisions to expedite timber sales and to accelerate hard rock mining permits.

House committee leaders are reportedly ready to assemble an energy bill of their own. House Republican leaders have far more leeway than their Senate counterparts in quickly moving legislation, as Senate action customarily lags.

The Senate bill contains one provision with some potential to expedite applications for permit to drill (APDs) for oil and gas on the public lands. The provision, advanced by Sen. John Hoeven (R-N.D.), would authorize a pilot program in one state (presumably North Dakota) to study ways to accelerate the processing of APDs to meet state standards where (1) less than 25 percent of the minerals in a spacing unit were owned by the federal government and (2) the surface estate was not owned by the federal government.

Outside the energy arena S 1460 also addresses the speed (or lack thereof) of processing hard rock mining permits. The provision would have BLM and the Forest Service "to the maximum extent practicable" establish deadlines for all kinds of permitting decisions for critical minerals.

Last year the Senate approved its version of the energy bill on April 12, 2016, by an 85-to-12 margin with broad bipartisan support. The House May 25, 2016, approved its version of the comprehensive energy bill by a 241-to-178 margin.

The House felt no compunction to avoid controversy. Here are a few provisions in last year's omnibus House energy bill affecting the public lands, including the 2017 versions of stand-alone bills:

HAZARDOUS FUELS: This bill would not only shift emergency fire fighting costs out of line appropriations and into disaster spending, but would also increase timber harvests. The measure has been reintroduced this year (HR 2936) by Rep. Bruce Westerman (R-Ark.) The House Natural Resources Committee approved the bill June 29.

July 14, 2017

Page 11

The bill would among other things categorically exclude from environmental review hazardous fuels projects in the national forests of up to 15,000 acres, require that at least 50 percent of burned areas be reforested, and require that 50 percent of a major category of projects paid for from the Secure Rural Schools program be spent on timber cuts.

CRITICAL MINERALS: This bill from Rep. Mark Amodei (R-Nev.) would direct federal agencies to expedite all permits for all hard rock mineral operations, not just for critical minerals. Amodei has introduced it (HR 520) as a stand-alone bill this year.

The bill would have BLM and the Forest Service first appoint a “project lead” to oversee processing of both exploration permits and mining permits. Then it would have the project lead “set and adhere to timelines and schedules for completion of the permitting process, set clear permitting goals and track progress against those goals.”

INDIAN ENERGY: In the last Congress this provision would have exempted Indian lands from new BLM rules regulating hydraulic fracturing. It would also have limited comment on environmental documentation of proposed projects to members of an affected Indian tribe and individuals living within an affected area.

The Senate bill includes a provision that would allow Native American tribes to more easily obtain authority to manage energy development on their lands, but does not include the controversial House provisions.

LAND AND WATER CONSERVATION FUND (LWCF): Although the House did not include permanent authority for LWCF in its version of an energy bill, the counterpart Senate-passed bill would. In addition the Senate bill would set aside \$150 million each year for Park Service maintenance.

Rep. Raúl M. Grijalva (D-Ariz.), ranking Democrat on the House Natural Resources Committee, offered a motion on the House floor May 25, 2016, that would have directed House conferees to accept the Senate LWCF provision, but it was defeated in a 205-to-212 vote.

Trump team preparing rule to replace BLM 2.0 rule

Now that Congress has wiped out a BLM planning rule prepared by the Obama administration called 2.0 the Trump administration is beginning work on its own replacement rule.

On July 3 BLM solicited the public's advice on making its planning and environmental rules "timelier and less costly." The bureau, which said it was already consulting with state and local officials and other stakeholders, will take recommendations up until July 24 at goo.gl/CYxqM5.

Until the Trump administration develops a new planning rule, BLM will use a 1983 Reagan administration rule that was revised in 2005 by the George W. Bush administration. The Reagan rule pointedly eliminated "burdensome, outdated, and unneeded provisions."

Indeed western Republican critics of the former Obama planning rule of Dec. 12, 2016, said it would limit commercial uses of the public lands and would limit state and local input to the management of the public lands. A Trump rule would, likely, remove limits on commercial uses.

The Obama rule revised the old Reagan/Bush rule by among other things placing a greater emphasis on broad area planning, requiring an assessment prior to the

writing of a management plan and involving the public earlier in the planning process.

As soon as President Trump was elected and Republicans took over the Senate (in addition to the House) they took aim at a slew of Obama administration public lands regulations, including the planning rule. They used as their main weapon the 20 year-old Congressional Review Act (CRA) that authorizes the House and Senate to repeal regulations issued in the last 60 legislative days of Congress.

The House went first on the December 2016 BLM planning rule, voting 234-to-186 on February 7 to revoke it. Rep. Liz Cheney (R-Wyo.) introduced the CRA resolution.

The Senate joined the House March 7 in a 51-to-48 vote with all Democrats opposed. Sen. Lisa Murkowski (R-Alaska) sponsored the Senate resolution.

On March 27 President Trump signed into law March 27 (PL 115-12) the resolution formally reversing the Obama rule and reviving the Reagan/Bush rule.

On the Senate floor Murkowski said of the Obama rule, "It is very obvious that BLM will deploy it as a mechanism to reduce or perhaps to eliminate many reasonable uses of federal land that provide jobs and support communities all across the West."

Similarly, Murkowski objected to provisions in the rule that would make state and local governments responsible for demonstrating a BLM land use plan was inconsistent with a state or local plan.

"Under this rule, BLM shifts the burden for making sure that resource management plans are consistent with state and local governments plans away from itself and onto the states and onto the local governments," she said. "That is not right."

But Sen. Maria Cantwell (D-Wash.) said the BLM rule was a necessary update of BLM's planning policy. "This is not a rule that regulates any specific use on public land. It does not restrict any particular activity. It updates the current law and says it is better to have input from local officials so they can update (plans) earlier," said Cantwell, ranking minority member on the Senate Energy Committee.

State and county officials, ranchers and miners all backed the resolutions revoking the Obama rule. Environmentalists stood behind it.

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

As wildfires take off, Congress faces bill-paying time

Despite a wet winter the National Interagency Fire Center said July 1 that not only is the 2017 fire season off to a hot start, the prospects for big wildfires in the next three months are high.

In the bulls-eye are California and Nevada for July, August and September. For once the Pacific Northwest looks relatively benign, said the fire center in its monthly report.

Although the wet winter continues to damp down the possibility of dangerous fires in the Pacific Northwest, California and Nevada have dried out, and the winter rains and snows have produced tons of fuel.

July 14, 2017**Page 13**

Said the center, "Timely precipitation along with above average soil moisture has led to the growth of an abundant crop of fine fuels across much of the west."

The center continued, "Periodic cooler than average temperatures across the northwestern portion of the country has slowed curing and drying rates in the grasses and has continued to slow the melting rates of the remaining snowpack. The southwestern states, however, have been drier and more continuously warmer than average for several months making fuels more receptive to fire activity."

The center's prognostication is coming true. At press time federal, state and other fire fighters were combatting 47 large fires over more than 660,000 acres. The leading states were Arizona (9 fires), California (7), Montana (6) and Nevada (8).

Thus far this year the fire season has been well above the ten-year average in acres burned. Already, more than 3.6 million acres have burned compared to an average of 2.7 million acres. Last year at this time just 2.4 million acres had burned.

Whether Congress has put up enough money in a fiscal year 2017 appropriations bill (PL 115-31 of May 5) to fight those fires this year remains to be seen. Congress appropriated just over \$4 billion for the Forest Service (\$3.175 billion) and the Interior Department (\$1.007 billion) for wildfire expenses. Those totals include \$407 million for emergency wildfires.

In the House two separate initiatives are in the works to help pay for wildfires. A lead proposal would reduce the severity of wildfires through hazardous fuels treatments and shift emergency fire-fighting costs to disaster spending.

The House Natural Resources Committee June 27 approved that initiative (HR 2936) by a 20-to-12 vote. The bill (1) authorizes a disaster cap for emergency wildfire costs and (2) speeds environmental reviews of timber sales.

As was the case last year the bill is certain to provide a negotiating position this year for Republicans (and a handful of Democrats) in jockeying for new wildfire legislation.

The bill from Rep. Bruce Westerman (R-Ark.) would in a half-dozen ways speed wildfire projects by reducing time limits for environmental review and for planning, and by limiting litigation. Westerman's bill was cosponsored by seven Republicans and two Democrats - Reps. Rick Nolan (D-Minn.) and Collin Peterson (D-Minn.)

In a separate initiative a bipartisan coalition of House members introduced legislation (HR 2862) June 8 that would place a disaster cap on wildfire funding, without altering timber-sale procedures.

The measure under lead sponsor Rep. Mike Simpson (R-Idaho) would transfer emergency wildfire expenses greater than the 10-year average out of discretionary appropriations and into disaster spending.

Westerman said his Resilient Federal Forests Act would reduce the cost of fighting wildfires. "This bill would utilize tools already available to the U.S. Forest Service and provide protection to America's forests by reducing the risks of wildfires through proper management techniques," he said.

He anticipates eventual passage in this Congress. "With the Resilient Federal Forests Act supported by my friends in western states and both parties, I believe it will not only pass the House again, but it will cross the finish line in the Senate and be signed into law by the president," he said in a recent editorial.

(D-Ariz.) said the bill would simply lead to more timber harvests and not to improved forest health. "It is a timber industry wish list dressed up as legislation that will not improve forest health," he said.

On behalf of his bill Simpson said, "When more than fifty percent of an agency's budget is unpredictable, you are creating a recipe for the unsustainable fire-borrowing we see today that devastates our forests and costs taxpayers," said Simpson.

Meanwhile, as we have reported Forest Service Chief Tom Tidwell told Senate appropriators June 7 that the Trump administration will work to guarantee money for emergency wildfires.

Trial begins for some Bundy allies in Nevada dispute

The old battle between federal land managers and their critics is getting cranked up again.

On July 10 the trial of four allies of Nevada rancher Cliven Bundy for preventing BLM from rounding up cattle on the public range began in federal court in Las Vegas.

They are among 19 defendants who allegedly participated in a 2014 armed standoff with BLM in a case involving illegally grazing on public land by permittee Cliven Bundy.

Just before the trial began ranking House Natural Resources Committee Democrat Raúl M. Grijalva (D-Ariz.) asked the Government Accountability Office (GAO) to report on threats and attacks on federal land managers.

Bundy and his allies are accused of bearing arms and threatening federal law enforcement officials for attempting to move them off a disputed grazing permit.

In a related case Bundy's sons Ammon and Ryan led a takeover of the Malheur National Wildlife Refuge in January 2016 to protest arson charges brought against a rancher in Oregon. The seven lead defendants in the Malheur case were declared not guilty by a federal jury in Oregon on Oct. 27, 2016.

In a letter to GAO Comptroller General Gene L. Dorado, Grijalva first referred to the Malheur incident, saying, "Many of the Malheur plotters are affiliated with a broader anti-government movement that, for decades, has targeted federal facilities and employees throughout the Western United States. This movement includes hundreds of militias and other groups violently opposed to federal ownership and management of lands in the West. Broadly speaking, this movement views the federal government as the enemy and does not respect the laws of this country."

Then Grijalva asked Dorado, "I request that GAO examine the efforts of federal land management agencies to address the threats posed by anti-government extremism."

In the Las Vegas trial the four defendants argued that they were simply defending their Constitutional rights to bear arms and to free speech, according to the *Associated Press*. But the federal prosecutor said they illegally bore arms. Two other defendants were convicted this winter. The six are considered tier two defendants.

The trials of the tier one defendants, including Cliven, Ammon and Ryan Bundy, are scheduled to start 30 days after the tier one trial is completed, or well into the fall.

July 14, 2017

Page 15

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: Timber sale.

BLM decision: BLM will approve a hazardous fuels project after preparing an environmental assessment (EA).

Appellant environmentalists: BLM erred because its EA did not comply with NEPA, among other things.

IBLA decision: Affirmed BLM.

Case identification: *Klamath-Siskiyou Wildlands Center, et al*, 190 IBLA 295. Decided July 3, 2017. Twenty-four pages. Appeal and petition to stay the effect of a decision of the Field Manager, Grants Pass Field Office of BLM, denying appellants' protest of BLM's decision to approve the Lower Grave Timber Sale. ORM07-TS-15-3.

IBLA argument: IBLA Administrative Judge Silvia M. Riechel affirmed a BLM decision approving a Lower Grave Timber Sale in western Oregon. The appellants argued that BLM in its EA failed to consider an appropriate range of alternatives, failed to take a hard look at impacts, used uncertain data and failed to prepare a full-blown EIS. Riechel rejected all those arguments because they did not demonstrate that the BLM decision contained errors. The appellants also argued that BLM failed to comply in its EA with a draft 2016 resource management plan, but Riechel said the bureau only needed to comply with a management plan in effect at the time the EA was written, i.e. a 1996 resource management plan, not a proposed plan.

Notes

BLM favors massive NPL gas project. BLM said in a draft EIS July 7 that it supports approval of a huge natural gas operation in Wyoming near the productive Jonah and Pinedale Anticline fields. BLM said the project, proposed by Jonah Energy LLC, would comply with both federal and State of Wyoming sage-grouse management plans. The project would open the way for production of 5.25 trillion cubic feet of natural gas and \$2.2 billion in royalties. The project would be located in Sublette County, 35 miles south of Pinedale. BLM said the project would cover 141,000 acres - 96 percent of it federal - and would authorize 3,500 directional wells over 10 years. More information is available at: <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=57654&dctmId=0b0003e8801765e7>.

New lobo recovery plan proposed. The Fish and Wildlife Service (FWS) June 30 proposed a new recovery plan for the endangered Mexican gray wolf that anticipates a future population in the Southwest of 320 wolves, plus 170 in New Mexico. The population of the lobo, the most endangered wolf subspecies in the world, is currently 130 in Arizona and New Mexico. The FWS strategy proposes two wolf populations within the animal's historical range. However, environmentalists say the protected area is not large enough to ensure a diverse gene pool. Said Bryan Bird, Southwest program director for Defenders of Wildlife, "Contrary to recommendations from leading wolf biologists, the U.S. Fish and Wildlife Service's draft plan restricts the Mexican gray wolves from moving into millions of acres of suitable habitat in northern Arizona, New Mexico, Utah and Colorado." The key dividing line apparently is Interstate 40. The proposal would protect the wolf south of the Interstate but not north of it. FWS prepared the proposal to carry out an agreement with the State of Arizona and Defenders of Wildlife. After taking comments until August 29 FWS intends to post a final plan in November. The proposed plan and a procedure for commenting are available at www.regulations.gov (place docket number FWS-R2-ES-2017-0036 in the search bar). (See page one story on appropriations rider that would bar spending on the Mexican wolf plan.)

Enviros protest proposed Utah O&G sale. Three environmental groups are protesting a proposal of the Utah State Office of BLM to lease for oil and gas development 15,000 acres in central Utah. Among other things the groups, including the Center for Biological Diversity, say oil and gas development could spell the

DOI-2020-06 00282

end of the Sheeprocks sage-grouse population. "The BLM is blowing off conservation science and federal law to allow short-term profits for oil companies," said Michael Saul, a senior attorney with the Center in a July 3 announcement of the protest. "Auctioning off this vital habitat for drilling and fracking may wipe out this population of Utah sage grouse and signal the beginning of the end for this imperiled bird." In their protest the environmentalists acknowledge that BLM has included stipulations in the lease proposal to protect the sage-grouse. "However," says the protest, "these stipulations are not absolute. Of the 10 GRSG stipulations in the EA, one can have exceptions and five can be modified. As a result, these stipulations might or might not actually be applied in the way they are described in the EA, and thus the mitigation that BLM suggests will occur might or might not actually take place." The sale is scheduled for September.

Y'stone grizzly delisting date set. The Fish and Wildlife Service (FWS) has set a formal date for delisting the Yellowstone grizzly bear under the Endangered Species Act (ESA) - July 31. That assumes a threatened lawsuit from environmentalists doesn't persuade a federal court to block the action. Following the lead of the Obama administration, the Trump administration said June 22 it would delist the Yellowstone population of the grizzly bear under the ESA. On June 30 FWS set a July 31 effective date. Under the action management of the Yellowstone bear would be turned over to the States of Wyoming, Montana and Idaho. The grizzlies that stay within the borders of Yellowstone National Park would be managed by the Park Service and would be subject to state rules only if they left the park. Under the lead of the Earthjustice law firm, environmentalists June 30 gave notice to Secretary of Interior Ryan Zinke of their intention to file suit if Zinke doesn't withdraw the delisting. The petition said FWS didn't adequately account for threats to the grizzly, such as a change in the grizzly's diet, climate change, and state-authorized hunting.

Conference Calendar

JULY

20-22. **63nd Annual Rocky Mountain Mineral Law Institute** in Santa Fe, N.M. Contact: Rocky Mountain Mineral Law Foundation, 9191 Sheridan Blvd., #203, Westminster, CO 80031. (303) 321-8100. <https://www.rmmlf.org>.

21-24. **National Association of Counties Annual Conference** in Franklin County, Ohio. Contact: National Association of Counties, 440 First St., N.W., 8th Floor, Washington, DC 20001. (202) 393-6226. FAX (202) 393-2630. <http://www.naco.org>.

26-29. **Outdoor Retailer Summer Market** in Salt Lake City, Utah. Contact www.outdoorretailer.com/summer-market.

AUGUST

2-4. **Western Energy Alliance Annual Meeting** in Vail, Colo. Contact: Western Energy Alliance, 410 17th St., Suite 700, Denver, CO 80202. <http://westernenergyalliance.org>

10-15. **American Bar Association Annual Meeting** in New York, N.Y. Contact: American Bar Association, 321 North Clark St., Chicago, IL 60610. (312) 988-5870. <http://www.abanet.org>.

SEPTEMBER

6-9. **Nevada Mining Association Annual Convention** at Lake Tahoe. Contact: Nevada Mining Association at (775) 829-2121 or <http://www.nevadamining.org>.

15-19. **The Wildlife Society Annual Conference** in Albuquerque, N.M. Contact: The Wildlife Society, 5410 Grosvenor Lane, Bethesda, MD 20814-2197. (301) 897-9770. <http://www.wildlife.org>.

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In this issue. . . .

House panel would reduce spending. *In Interior bill by \$824 million. Still, that's significantly less than the \$4.3B chop requested by Trump. Land management, fire fighting both lower. Big wolf amendment in.*

Page 1

Greens say BLM also may not delay methane reg. *A week after a court said EPA may not delay implementation, enviros take BLM rule to court.*

Page 4

Zinke would accelerate APD reviews. *And lock in quarterly sales. But critics could trip up attempts to speed because of mandatory NEPA and ESA reviews.*

Page 6

Outdoor industry fires monuments warning shot. *Pulls annual conference out of Utah because of monument criticism as comment period ends.*

Page 8

Senate may move quickly on energy bill. *McConnell puts it on agenda. However, health bill, nominations expected to have priority.*

Page 9

Zinke considers new BLM planning rule. *Asks public comment on possible rule to replace Obama 2.0 rule that Congress wiped out with CRA.*

Page 11

Fires flare, putting heat on Congress. *NIFC counts 47 major fires, expects lots more. Could spur fire borrowing and put Hill on spot.*

Page 12

Another trial of Bundy allies underway. *Second tier supporters of rancher in Nevada standoff now in court. Bundy trial expected in fall.*

Page 14

IBLA decisions.

Page 15

Notes.

Page 15

Conference Calendar.

Page 16

House subcommittee would cut funding for most programs

A House appropriations subcommittee July 12 approved a fiscal year 2018 Interior and related agencies spending bill with significantly less money

than in fiscal 2017. Still, the bill contains far more money than recommended by the Trump administration.

The House subcommittee on Interior appropriations passed a bill with a ceiling of \$31.4 billion, or \$800 million less than a fiscal 2018 appropriation of \$32.2 billion. A mark-up in the full House Appropriations Committee has not been set.

The Trump administration had recommended \$4.3 billion less than the subcommittee number, or \$27.1 billion.

For BLM resource management and the National Forest System the subcommittee approved modest decreases. For BLM resource management the subcommittee approved a decrease of \$20 million, from \$1.095 billion in fiscal 2017 to \$1.075 billion in fiscal 2018. For the National Forest System the subcommittee approved a decrease of \$20 million, from \$1.513 billion in fiscal 2017 to \$1.493 billion in fiscal 2018.

The allocations for some public lands programs were a little higher, despite the overall bill cap, because the subcommittee reduced allocations to federal acquisition under the Land and Water Conservation Fund (LWCF). Thus the National Forest System allocation actually increased by a small amount outside of land acquisition.

As has become customary, wildfire suppression ate up a significant portion of the subcommittee's \$31.4 billion allocation, \$3.4 billion, or about 11 percent of the total. And the subcommittee did not act on recommendations that it attempt to shift emergency wildfire costs out of the bill and into disaster funding.

The subcommittee set aside \$465 million for the payments-in-lieu of taxes (PILT) program, which Congress has occasionally paid for outside of appropriations bills. The \$465 million matches the fiscal 2017 appropriation. The Trump administration had recommended \$397 million for PILT.

As for the overall spending cap in the subcommittee bill, ranking panel Democrat Betty McCollum (D-Minn.) lashed out at the House Republican majority. "This level is too low and is a step in the wrong direction," she said. "These cuts mean that the needs of many important programs vital to protecting our nation's natural and cultural resources will not be met."

She also objected to the inclusion of numerous policy amendments (16 by her count), in the bill. "These provisions seek to turn back protections for endangered species and undermine clean water and clean air protections. They simply do not belong in this bill. They undermine important environmental laws and endanger public health and safety, while benefiting polluters."

But subcommittee chairman Ken Calvert (R-Calif.) stood up for the measure. "The agencies funded in the Interior and Environment Appropriations bill do important work protecting public lands, the air we breathe, and the water we drink. Our subcommittee prioritized proven programs that have a meaningful impact to achieve these goals while also ensuring our economy can continue to grow," he said.

The amendments/riders in the bill include such things as a ban on implementing a wetlands regulation; a bar on listing the greater sage-grouse

as threatened or endangered under the Endangered Species Act; and a bar against delisting of the gray wolf in Wyoming.

The legislation would also ban the listing of any wolf species in the lower 48 states as threatened or endangered under the Endangered Species Act (Section 117).

That is a blanket ban that would forbid the use of funds to "treat" any wolf species as threatened or endangered under the act, including the Mexican gray wolf. The Fish and Wildlife Service June 30 proposed a new recovery plan for the endangered Mexican gray wolf that anticipates a future population in the Southwest of the United States of 320 wolves, plus 170 in Mexico. The population of the lobo, the most endangered of the wolf subspecies in the world, is currently 130 in Arizona and New Mexico.

Said Defenders of Wildlife President Jamie Rappaport Clark of the subcommittee amendment, "This wolf rider means certain death for America's wolves. It forces the Department of the Interior to abdicate its responsibilities for protecting gray wolves, which are currently listed as endangered in much of the contiguous United States. It also disrupts the abilities of other federal agencies to comply with their obligations under the law. It is particularly egregious that this rider would halt all efforts to protect and recover the Mexican gray wolf - the most endangered gray wolf in the world with just 113 in the U.S. and 35 in Mexico."

As for a spending cap for the bill, appropriators are apparently assigning seat-of-the-pants ceilings to individual appropriations measures because the House has yet to begin work on a guiding fiscal year 2018 budget.

If and when the House Budget Committee does go to work on a fiscal 2018 spending plan, it is expected to include in it a recommendation that Congress approve oil and gas development in the coastal plain of the Arctic National Wildlife Refuge (ANWR).

That recommendation would then be translated into specific authorization to lease in ANWR in a filibuster-proof budget reconciliation bill later this year.

A counterpart Senate subcommittee on Interior Appropriations has yet to begin work publicly on its bill. Like the House, the Senate has yet to go public with its budget plans.

Here are some of the numbers the House subcommittee released this week. The subcommittee did not go into detail on proposed appropriations for such line items as wild horse and burro management and BLM's National Conservation Lands:

NATIONAL FOREST SYSTEM: The subcommittee approved \$1.493 billion, or \$20 million less than a fiscal 2017 appropriation of \$1.513 billion. The committee would also shift \$392.5 million from a wildfire account for hazardous fuels management to the National Forest System line item, bringing the total to \$1.886 billion.

FOREST PRODUCTS: The subcommittee approved \$370 million for forest products (i.e. timber sales), or \$2 million more than a fiscal 2017 appropriation of \$368 million.

BLM RESOURCE MANAGEMENT: The subcommittee approved \$1.075 billion, or \$20 million less than the fiscal 2017 appropriation of \$1.095 billion. When a decrease of \$18.6 million for federal land acquisition is deducted, the subcommittee allocation would only drop by \$1.4 million.

WILDFIRE FOREST SERVICE: For a wildfire appropriation the subcommittee recommended \$2.898 billion, compared to a fiscal 2017 appropriation of \$2.833 billion. For an emergency account called FLAME the subcommittee recommended no money, compared to a fiscal 2017 FLAME appropriation of \$342 million.

WILDFIRE INTERIOR: For a wildfire appropriation the recommendation is \$956 million, compared to a fiscal 2017 appropriation of \$943 million. For an emergency account called FLAME the subcommittee proposed no money, compared to a fiscal 2017 FLAME appropriation of \$65 million.

In addition, the subcommittee did not address bipartisan legislative proposals (HR 2862, HR 2936) that would transfer emergency fire-fighting appropriations to a category of disaster funding. Such a shift would free up some \$400 million per year from the appropriations bill for other purposes and prevent the Forest Service from borrowing from other line programs to pay for fire fighting. (See related article page 12.)

PAYMENTS-IN-LIEU OF TAXES: The subcommittee approved \$465 million the same as a fiscal 2017 appropriation. The Trump administration had recommended \$397 million.

LWCF FEDERAL: The subcommittee approved \$110 million for federal land acquisition, or \$79 million less than a fiscal 2017 appropriation of \$189 million. The Trump administration had recommended an appropriation of \$51 million for land acquisition.

By agency BLM would receive \$12.8 million compared to \$31.4 million in fiscal 2017; the Fish and Wildlife Service would receive \$40.6 million compared to \$50 million; the Park Service would receive \$31.6 million compared to \$42 million; and the Forest Service would receive \$25 million compared to \$54.4 million.

Greens say that BLM also can't delay methane rule

One week after a federal court ruled July 3 that EPA could not legally delay implementation of a methane emissions rule, environmentalists went to court to prevent BLM from delaying implementation of its own methane rule.

The environmentalists are making the same argument in the BLM case that the Tenth Circuit Court of Appeals made in the EPA case – federal agencies may not delay implementation of rules that have already gone into effect. The court said that in order to alter a rule an agency must follow formal, time-consuming procedures.

However, the BLM lawsuit does not cite the Tenth Circuit decision for precedent.

On July 3 the Tenth Circuit held that under the Administrative Procedures Act (APA) EPA would have to start over with public notice, public comment and formal rewrites before changing a rule. That decision may have

dealt a blow to the Trump administration's campaign to undo Obama administration energy regulations.

Indeed 17 national and local environmental groups filed a new lawsuit in U.S. District Court for Northern California July 10 arguing the APA also forbid BLM from delaying its methane emissions rule.

On its behalf BLM argued that the bureau's methane rule is already being considered by a third court and a stay of the rule would give the court time to act.

But the environmentalist plaintiffs, led by the Earthjustice law firm, countered that the purpose of the bureau's stay is not to let the court decision run its course but to allow BLM to revoke or change the rule.

"BLM purports to justify the stay based both on pending judicial review and its ongoing reconsideration of the Rule," argued the plaintiffs. "However, BLM's statements and actions demonstrate that it issued the stay to enable it to administratively rescind or revise the rule, not to allow for 'judicial review,' as required by (the APA)."

In the EPA case, the agency had delayed implementation of a methane emissions rule for 90 days. EPA had argued that it had broad discretion to revisit its own rules under the Clean Air Act.

But in a two-to-one decision the Tenth Circuit July 3 held that the APA forbids agencies from delaying a rule without a formal rulemaking procedure.

"Agencies obviously have broad discretion to reconsider a regulation at any time. To do so, however, they must comply with the (APA), including its requirements for notice and comment," said the court majority.

The court continued, "EPA's stay, in other words, is essentially an order delaying the rule's effective date, and this court has held that such orders are tantamount to amending or revoking a rule."

Signing off on the majority rule were Judges David S. Tatel (a President Clinton appointee) and Robert Leon Wilkins (an Obama appointee).

In a dissent Judge Janice Rogers Brown (a President George W. Bush appointee) said EPA had authority to delay implementation of the rule because a delay does not change a rule.

"EPA is not compelling compliance here," she argued. "If a regulated entity wants to comport its conduct to the requirements of the stayed rule, it is free to do so. By issuing the stay, all the EPA has indicated is that it will not, legally or practically, enforce the rule under reconsideration. The stay's consequences therefore do not impose legal or practical requirements on anyone - separating them from the kind of consequences encompassed by 'final agency action.'"

Because there is no final agency action, she concluded, there is no judicable action for the court to consider and EPA's delay should continue.

Environmental group plaintiffs in the EPA suit, including the Sierra Club, declared victory. "Donald Trump and (EPA Administrator) Scott Pruitt's attempt to delay the implementation of these crucial protections had no basis

in law, and we are glad to see their effort to do the bidding of the fossil fuel industry fail," said Sierra Club Chief Climate Counsel Joanne Spalding.

The Tenth Circuit decision is available at:
[https://www.cadc.uscourts.gov/internet/opinions.nsf/A86B20D79BEB893E85258152005CA1B2/\\$file/17-1145-1682465.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/A86B20D79BEB893E85258152005CA1B2/$file/17-1145-1682465.pdf).

The question now is, does the Tenth Circuit EPA ruling set a precedent for separate BLM energy rules that may or may not be suspended/delayed by the Trump administration?

On June 24 BLM proposed a two-year delay in implementing its own methane rule. That is the subject of the July 10 environmentalist lawsuit.

Separately, on June 21 the Interior Department strongly suggested that BLM was about to take a similar step and rescind a hydraulic fracturing regulation. The department submitted to the White House Office of Information and Regulatory Affairs a document titled "Rescission of the 2015 BLM Hydraulic Fracturing Rule."

BLM and EPA announced separate rules in early June to postpone key elements of methane emissions rules for two years. As justification, BLM invoked a provision of the APA that authorizes agencies to postpone the implementation of new rules when petitioners give good cause.

In this instance BLM said June 15 the Western Energy Alliance had justified the delay of its Nov. 16, 2016, rule by objecting to the "regulatory uncertainty" of provisions dealing with leakage detection, storage tanks and pneumatic device provisions.

Other provisions that BLM is already implementing, such as development of a waste minimization plan, royalty free use of production, definitions of unavoidably lost and avoidably lost, limits on drilling and flaring, and downhole maintenance will continue in place, BLM said.

There is already litigation underway against the Obama administration's BLM methane rule, as the administration has cited for justification in its plan to delay the regulation. On January 16 Judge Scott W. Skavdahl in U.S. District Court in Wyoming refused for now to halt implementation of the BLM rule. He held that industry plaintiffs, including the Western Energy Alliance, had not yet proved they would be harmed by the regulation.

However, Skavdahl was skeptical of 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."

On June 13 EPA proposed a two-year delay of its methane emissions rule of June 3, 2016. EPA previously delayed that rule for 90 days beyond a June 3 compliance deadline.

In a surprise reversal for the Trump administration the Senate May 10 backed the Obama administration's BLM methane rule by a narrow 51-to-49 vote. It refused to use a Congressional Review Act that authorizes the House and

Senate to repeal regulations issued in the last 60 legislative days of Congress.

Hydraulic fracturing: The Interior Department is apparently on track to attempt to suspend BLM's hydraulic fracturing rule of March 2015 while the bureau writes a new regulation, presumably one less burdensome to the oil and gas industry. The department submitted to the White House a proposal to rescind the rule.

A federal court in June 2016 (Judge Skavdahl) had already blocked implementation of the rule so a suspension would have virtually no immediate impact on the ground.

BLM has submitted to the White House Office of Information and Regulatory Affairs a document titled "Rescission of the 2015 BLM Hydraulic Fracturing Rule."

As part of the Trump administration's pro-development energy policy Secretary of Interior Ryan Zinke March 29 had already ordered BLM to begin the groundwork toward rescinding the hydraulic fracturing rule. The suspension - coupled with the court order - would presumably give BLM time to revise the rule.

Zinke faces high hurdles in his desire to speed APDs

Secretary of Interior Ryan Zinke July 6 directed his department to identify impediments to the swift processing of onshore public lands oil and gas applications for permit to drill (APD).

What steps Zinke can then take are unclear because BLM must comply with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA), among other laws, prior to approving permits. And that takes time.

But Zinke said in an executive order he is going to try to reduce the time for processing APDs.

"Oil and gas production on federal lands is an important source of revenue and job growth in rural America but it is hard to envision increased investment on federal lands when a federal permit can take the better part of a year or more in some cases," he said.

According to the department the Mineral Leasing Act requires BLM to complete a review of an APD within 30 days, but in fiscal year 2016 the average time was 257 days. The department said that as of January 31, BLM had 2,802 APDs in the pipeline.

Zinke also directed BLM to hold quarterly oil and gas lease sales. BLM state offices usually do try to hold quarterly sales but sometimes postpone the events because of complications due to NEPA and ESA protests.

Ranking House Natural Resources Committee Democrat Raúl M. Grijalva (D-Ariz.) said there is another side to the story - a large number of approved drilling permits that are not in production. He said that lessees now hold 7,950 APDs that are not being used.

Grijalva wrote Zinke July 6 and said that the Trump administration's concentration on "energy dominance" risks violating the multiple-use mandate of the Federal Land Policy and Management Act (FLPMA).

"One of the difficulties in managing our resources is that public lands have multiple potential uses and values, and the promotion of a particular use can result in the diminishment of a competing use," he wrote. "A strategy of 'energy dominance' will lead to an Interior Department conflicted between adhering to FLPMA and furthering the Administration's desires to expand fossil fuel production across all public lands."

And, of course, if BLM attempts to accelerate APD reviews by shrinking NEPA and ESA reviews, it risks legal actions from sportsmen as well as environmentalists. When the George W. Bush administration attempted to fast-track onshore oil and gas leases and APDs between 2000 and 2008, sportsmen joined environmentalists in filing petitions, appeals and lawsuits that often slowed leasing and APD approvals.

The Obama administration from 2008 to 2016 swung back the other way and instituted more detailed pre-lease and pre-APD approval reviews, ostensibly to avoid legal entanglements. But the oil and gas industry said the Obama reviews led to unnecessary regulatory delays.

The Obama administration did take one huge step that it said would speed APD and lease approvals - processing paperwork electronically. Late last year it began holding lease sales electronically instead of through in-person bidding.

BLM said it had little choice. In February 2012 it recommended to Congress that sales be shifted to online; Congress in turn allowed BLM to make the change in a rider to a National Defense Authorization Act (PL 113-291 of Dec. 19, 2014.)

Subsequently, the bureau also began taking nominations of interest online.

Then on February 7 the Trump administration published an Obama administration-generated rule that makes online filing of APDs the standard procedure, subject to some exceptions. Those two electronic moves may speed up both the processing of lease nominations and the processing of APDs.

In addition to the online oil and gas lease sale authority, Congress has acted to speed APDs. In December 2014 it approved a fee of \$9,500 to process each APD, with 25 percent of revenues used by local federal offices for processing permits.

That provision was also enacted as part of the Department of Defense Authorization law. Sens. John Barrasso (R-Wyo.) and Tom Udall (D-N.M.) were the lead sponsors of the provision.

Under a previous law - Section 365 of the Energy Policy Act of 2005 - BLM and its sister agencies received some \$18 million per year to pay for joint offices set up to move permits. The increased fee provides some \$50 million per year for BLM offices to use for APD processing.

Of the Zinke initiative Barrasso said, "I'm encouraged that today's secretarial order will get the ball rolling on making necessary reforms to

help BLM field offices address the growing backlog. It's important that BLM has a system in place that allows them to effectively and efficiently process these permits."

Sen. John Hoeven (R-N.D.) has a separate new pilot proposal in the works to expedite APDs. Hoeven would authorize a pilot program in one state (presumably North Dakota) to study ways to accelerate the processing of APDs to meet state standards where (1) less than 25 percent of the minerals in a spacing unit were owned by the federal government and (2) the surface estate was not owned by the federal government. The provision is attached to a high priority omnibus energy bill (S 1460). *(See related article page 9.)*

By definition the oil and gas industry was pleased with the Zinke initiative. Independent Petroleum Association of America (IPAA) Senior Vice President of Government Relations and Political Affairs Dan Naatz said, "IPAA welcomes today's secretarial order, which will restore certainty and efficiency to the federal permitting process. Long-term business planning and certainty is a critical component to the leasing process for oil and natural gas producers."

The order directs the Assistant Secretary of Interior for Land and Minerals and BLM to report back within 45 days with a strategy for insuring quarterly lease sales are held and a strategy for speeding APD processing. The order also asks the assistant secretary and BLM to identify impediments to quarterly lease sales, presumably lengthy NEPA and ESA reviews. The Zinke order is available at:

<https://www.doi.gov/sites/doi.gov/files/uploads/doi-so-3354.pdf>.

Upset by monument study, rec industry pulls Utah confab

Just before the comment period ended on the Trump administration's review of recent national monument designations July 10, the outdoor industry formally pulled its annual conference out of Salt Lake City.

The Outdoor Industry Association said it moved the conference to Denver - worth \$45 million per year to the host city - in part because of Utah politicians' hostility to national monuments.

Said the Outdoor Alliance, on announcing the move to Denver July 6, "At the outset of the RFP process, we established criteria that not only addressed the required logistics to host a successful show, but also evaluated the alignment of our industry values. Denver and the state of Colorado are passionate about protecting and nurturing outdoor recreation, which is critical to the growth of our industry."

On February 16 the Outdoor Industry Association said it asked Utah Gov. Gary Herbert (R-Utah) to take four steps: end attempts to revoke the Antiquities Act, stop seeking reversal of a Bears Ears National Monument in Utah, support public lands in general and end attempts to sell or transfer public lands to the state. Herbert's response obviously didn't satisfy industry.

The announcement that the rec industry conference will move to Denver represents the arrowhead in an all-out campaign by sportsmen and conservationists against the review. Environmentalists say more than 2.5 million people have commented on the Interior Department review.

Whether that public response will have an impact on the Trump administration remains to be seen. Western Republican politicians have overwhelmingly criticized the number and size of national monuments in the West.

Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) for one important example endorsed the review. "I strongly support President Trump's order to review the largest national monuments designated over the past two decades," she said when the review was announced in April. "During the past administration, we saw the Antiquities Act result in sweeping designations that frequently ignored local opposition. This review is a good step forward in our efforts to reform the monument designation process to ensure the concerns of those who stand to be impacted are heard and respected."

President Trump signed an executive order April 26 directing the Interior Department to review the designations of 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 outright.

The review is taking a look at the designation of 21 national monuments of more than 100,000 acres, plus an 87,500-acre Katahdin Woods and Waters National Monument in Maine and five huge marine monuments. That's 27 total.

The Trump-Zinke review could set the stage for Trump to at least reduce the size of the 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." That schedule suggests a recommendation from Zinke to President Trump by the end of August.

Zinke has already taken one major step. On June 12 he recommended that President Trump reduce the size of the Bears Ears National Monument in southern Utah, touching off a political firestorm. President Obama designated the 1.3 million-acre Bears Ears monument on Dec. 28, 2016.

Democrats may object, but Zinke's Bears Ears recommendation was greeted warmly by the all-Republican Utah Congressional delegation, which has been championing either a reduction in size of Bears Ears or a revocation of the designation of the monument by President Obama.

To beat the drums against any changes to the monuments a handful of Democratic senators held a press conference on July 11, the day after the public comment period ended.

A white paper put out by conservationists argues that a 1938 U.S. Attorney General opinion holds that the Antiquities Act of 1906 does not allow a President to undo a monument designation.

While the white paper notes that the 1938 attorney general opinion and a 1947 Interior Department Solicitor's opinion also hold that a President does have authority to reduce the size of a monument, such a step must be justified.

"The monuments at issue in the current review were created based on thorough review of the values that needed to be protected and the resulting

boundaries were carefully crafted - undermining any purported justification for modification," says the paper.

At any rate numerous environmental groups have promised to file suit if President Trump alters any national monument or revokes a designation.

Political advocates have entered the battlefield. The League of Conservation Votes July 6 said it has launched a \$75,000 campaign against four senators who have supported the monuments review - Sens. Dean Heller (R-Nev.), Jim Risch (R-Idaho), Mike Crapo (R-Idaho) and Jeff Flake (R-Ariz.)

Floor time for Senate Energy bill depends on ACA repeal

Depending on how Senate maneuvering goes over national health legislation this summer, the Senate is poised to act quickly on an omnibus comprehensive energy bill (S 1460).

After Senate Energy Committee leaders introduced the energy measure June 28 Senate Majority Leader Mitch McConnell (R-Ky.) immediately put the 892-page bill on the Senate floor agenda, thus bypassing committee action. The Senate approved a predecessor bill in the last Congress only to have it fail in the final days of December.

McConnell reportedly hopes to move S 1460 in the Senate by a mid-August summer recess. Again, that depends on how much floor space he can find with health care legislation and nominations taking priority. Thus far, it appears the health care bill may be all consuming.

While the energy bill from committee chairman Lisa Murkowski (R-Alaska) and ranking committee Democrat Maria Cantwell (D-Wash.) addresses in the first instance energy, it contains few provisions dealing with onshore energy production.

It does, however, contain major conservation provisions such as making permanent the Land and Water Conservation Fund, establishing a Park Service maintenance fund, making permanent the National Historic Preservation Fund and approving 60 individual Forest Service, BLM and Park Service management bills.

In addition S 1460 contains a sportsmen's package that begins with a provision to ensure that public lands would be open to hunting and fishing unless specifically closed.

A predecessor energy bill in the last Congress was under serious consideration by the House and Senate late into December, but eventually failed. A matching House measure would also have added provisions to expedite timber sales and to accelerate hard rock mining permits.

House committee leaders are reportedly ready to assemble an energy bill of their own. House Republican leaders have far more leeway than their Senate counterparts in quickly moving legislation, as Senate action customarily lags.

The Senate bill contains one provision with some potential to expedite applications for permit to drill (APDs) for oil and gas on the public lands. The provision, advanced by Sen. John Hoeven (R-N.D.), would authorize a pilot

program in one state (presumably North Dakota) to study ways to accelerate the processing of APDs to meet state standards where (1) less than 25 percent of the minerals in a spacing unit were owned by the federal government and (2) the surface estate was not owned by the federal government.

Outside the energy arena S 1460 also addresses the speed (or lack thereof) of processing hard rock mining permits. The provision would have BLM and the Forest Service "to the maximum extent practicable" establish deadlines for all kinds of permitting decisions for critical minerals.

Last year the Senate approved its version of the energy bill on April 12, 2016, by an 85-to-12 margin with broad bipartisan support. The House May 25, 2016, approved its version of the comprehensive energy bill by a 241-to-178 margin.

The House felt no compunction to avoid controversy. Here are a few provisions in last year's omnibus House energy bill affecting the public lands, including the 2017 versions of stand-alone bills:

HAZARDOUS FUELS: This bill would not only shift emergency fire fighting costs out of line appropriations and into disaster spending, but would also increase timber harvests. The measure has been reintroduced this year (HR 2936) by Rep. Bruce Westerman (R-Ark.) The House Natural Resources Committee approved the bill June 29.

The bill would among other things categorically exclude from environmental review hazardous fuels projects in the national forests of up to 15,000 acres, require that at least 50 percent of burned areas be reforested, and require that 50 percent of a major category of projects paid for from the Secure Rural Schools program be spent on timber cuts.

CRITICAL MINERALS: This bill from Rep. Mark Amodei (R-Nev.) would direct federal agencies to expedite all permits for all hard rock mineral operations, not just for critical minerals. Amodei has introduced it (HR 520) as a stand-alone bill this year.

The bill would have BLM and the Forest Service first appoint a "project lead" to oversee processing of both exploration permits and mining permits. Then it would have the project lead "set and adhere to timelines and schedules for completion of the permitting process, set clear permitting goals and track progress against those goals."

INDIAN ENERGY: In the last Congress this provision would have exempted Indian lands from new BLM rules regulating hydraulic fracturing. It would also have limited comment on environmental documentation of proposed projects to members of an affected Indian tribe and individuals living within an affected area.

The Senate bill includes a provision that would allow Native American tribes to more easily obtain authority to manage energy development on their lands, but does not include the controversial House provisions.

LAND AND WATER CONSERVATION FUND (LWCF): Although the House did not include permanent authority for LWCF in its version of an energy bill, the counterpart Senate-passed bill would. In addition the Senate bill would set aside \$150 million each year for Park Service maintenance.

Rep. Raúl M. Grijalva (D-Ariz.), ranking Democrat on the House Natural Resources Committee, offered a motion on the House floor May 25, 2016, that would have directed House conferees to accept the Senate LWCF provision, but it was defeated in a 205-to-212 vote.

Trump team preparing rule to replace BLM 2.0 rule

Now that Congress has wiped out a BLM planning rule prepared by the Obama administration called 2.0 the Trump administration is beginning work on its own replacement rule.

On July 3 BLM solicited the public's advice on making its planning and environmental rules "timelier and less costly." The bureau, which said it was already consulting with state and local officials and other stakeholders, will take recommendations up until July 24 at goo.gl/CYxqM5.

Until the Trump administration develops a new planning rule, BLM will use a 1983 Reagan administration rule that was revised in 2005 by the George W. Bush administration. The Reagan rule pointedly eliminated "burdensome, outdated, and unneeded provisions."

Indeed western Republican critics of the former Obama planning rule of Dec. 12, 2016, said it would limit commercial uses of the public lands and would limit state and local input to the management of the public lands. A Trump rule would, likely, remove limits on commercial uses.

The Obama rule revised the old Reagan/Bush rule by among other things placing a greater emphasis on broad area planning, requiring an assessment prior to the writing of a management plan and involving the public earlier in the planning process.

As soon as President Trump was elected and Republicans took over the Senate (in addition to the House) they took aim at a slew of Obama administration public lands regulations, including the planning rule. They used as their main weapon the 20 year-old Congressional Review Act (CRA) that authorizes the House and Senate to repeal regulations issued in the last 60 legislative days of Congress.

The House went first on the December 2016 BLM planning rule, voting 234-to-186 on February 7 to revoke it. Rep. Liz Cheney (R-Wyo.) introduced the CRA resolution.

The Senate joined the House March 7 in a 51-to-48 vote with all Democrats opposed. Sen. Lisa Murkowski (R-Alaska) sponsored the Senate resolution.

On March 27 President Trump signed into law March 27 (PL 115-12) the resolution formally reversing the Obama rule and reviving the Reagan/Bush rule.

On the Senate floor Murkowski said of the Obama rule, "It is very obvious that BLM will deploy it as a mechanism to reduce or perhaps to eliminate many reasonable uses of federal land that provide jobs and support communities all across the West."

Similarly, Murkowski objected to provisions in the rule that would make state and local governments responsible for demonstrating a BLM land use plan was inconsistent with a state or local plan.

"Under this rule, BLM shifts the burden for making sure that resource management plans are consistent with state and local governments plans away from itself and onto the states and onto the local governments," she said. "That is not right."

But Sen. Maria Cantwell (D-Wash.) said the BLM rule was a necessary update of BLM's planning policy. "This is not a rule that regulates any specific use on public land. It does not restrict any particular activity. It updates the current law and says it is better to have input from local officials so they can update (plans) earlier," said Cantwell, ranking minority member on the Senate Energy Committee.

State and county officials, ranchers and miners all backed the resolutions revoking the Obama rule. Environmentalists stood behind it.

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

As wildfires take off, Congress faces bill-paying time

Despite a wet winter the National Interagency Fire Center said July 1 that not only is the 2017 fire season off to a hot start, the prospects for big wildfires in the next three months are high.

In the bulls-eye are California and Nevada for July, August and September. For once the Pacific Northwest looks relatively benign, said the fire center in its monthly report.

Although the wet winter continues to damp down the possibility of dangerous fires in the Pacific Northwest, California and Nevada have dried out, and the winter rains and snows have produced tons of fuel.

Said the center, "Timely precipitation along with above average soil moisture has led to the growth of an abundant crop of fine fuels across much of the west."

The center continued, "Periodic cooler than average temperatures across the northwestern portion of the country has slowed curing and drying rates in the grasses and has continued to slow the melting rates of the remaining snowpack. The southwestern states, however, have been drier and more continuously warmer than average for several months making fuels more receptive to fire activity."

The center's prognostication is coming true. At press time federal, state and other fire fighters were combatting 47 large fires over more than 660,000 acres. The leading states were Arizona (9 fires), California (7), Montana (6) and Nevada (8).

Thus far this year the fire season has been well above the ten-year average in acres burned. Already, more than 3.6 million acres have burned

compared to an average of 2.7 million acres. Last year at this time just 2.4 million acres had burned.

Whether Congress has put up enough money in a fiscal year 2017 appropriations bill (PL 115-31 of May 5) to fight those fires this year remains to be seen. Congress appropriated just over \$4 billion for the Forest Service (\$3.175 billion) and the Interior Department (\$1.007 billion) for wildfire expenses. Those totals include \$407 million for emergency wildfires.

In the House two separate initiatives are in the works to help pay for wildfires. A lead proposal would reduce the severity of wildfires through hazardous fuels treatments and shift emergency fire-fighting costs to disaster spending.

The House Natural Resources Committee June 27 approved that initiative (HR 2936) by a 20-to-12 vote. The bill (1) authorizes a disaster cap for emergency wildfire costs and (2) speeds environmental reviews of timber sales.

As was the case last year the bill is certain to provide a negotiating position this year for Republicans (and a handful of Democrats) in jockeying for new wildfire legislation.

The bill from Rep. Bruce Westerman (R-Ark.) would in a half-dozen ways speed wildfire projects by reducing time limits for environmental review and for planning, and by limiting litigation. Westerman's bill was cosponsored by seven Republicans and two Democrats - Reps. Rick Nolan (D-Minn.) and Collin Peterson (D-Minn.)

In a separate initiative a bipartisan coalition of House members introduced legislation (HR 2862) June 8 that would place a disaster cap on wildfire funding, without altering timber-sale procedures.

The measure under lead sponsor Rep. Mike Simpson (R-Idaho) would transfer emergency wildfire expenses greater than the 10-year average out of discretionary appropriations and into disaster spending.

Westerman said his Resilient Federal Forests Act would reduce the cost of fighting wildfires. "This bill would utilize tools already available to the U.S. Forest Service and provide protection to America's forests by reducing the risks of wildfires through proper management techniques," he said.

He anticipates eventual passage in this Congress. "With the Resilient Federal Forests Act supported by my friends in western states and both parties, I believe it will not only pass the House again, but it will cross the finish line in the Senate and be signed into law by the president," he said in a recent editorial.

But ranking House Natural Resources Committee Democrat Raúl M. Grijalva (D-Ariz.) said the bill would simply lead to more timber harvests and not to improved forest health. "It is a timber industry wish list dressed up as legislation that will not improve forest health," he said.

On behalf of his bill Simpson said, "When more than fifty percent of an agency's budget is unpredictable, you are creating a recipe for the

unsustainable fire-borrowing we see today that devastates our forests and costs taxpayers," said Simpson.

Meanwhile, as we have reported Forest Service Chief Tom Tidwell told Senate appropriators June 7 that the Trump administration will work to guarantee money for emergency wildfires.

Trial begins for some Bundy allies in Nevada dispute

The old battle between federal land managers and their critics is getting cranked up again.

On July 10 the trial of four allies of Nevada rancher Cliven Bundy for preventing BLM from rounding up cattle on the public range began in federal court in Las Vegas.

They are among 19 defendants who allegedly participated in a 2014 armed standoff with BLM in a case involving illegally grazing on public land by permittee Cliven Bundy.

Just before the trial began ranking House Natural Resources Committee Democrat Raúl M. Grijalva (D-Ariz.) asked the Government Accountability Office (GAO) to report on threats and attacks on federal land managers.

Bundy and his allies are accused of bearing arms and threatening federal law enforcement officials for attempting to move them off a disputed grazing permit.

In a related case Bundy's sons Ammon and Ryan led a takeover of the Malheur National Wildlife Refuge in January 2016 to protest arson charges brought against a rancher in Oregon. The seven lead defendants in the Malheur case were declared not guilty by a federal jury in Oregon on Oct. 27, 2016.

In a letter to GAO Comptroller General Gene L. Dorado, Grijalva first referred to the Malheur incident, saying, "Many of the Malheur plotters are affiliated with a broader anti-government movement that, for decades, has targeted federal facilities and employees throughout the Western United States. This movement includes hundreds of militias and other groups violently opposed to federal ownership and management of lands in the West. Broadly speaking, this movement views the federal government as the enemy and does not respect the laws of this country."

Then Grijalva asked Dorado, "I request that GAO examine the efforts of federal land management agencies to address the threats posed by anti-government extremism."

In the Las Vegas trial the four defendants argued that they were simply defending their Constitutional rights to bear arms and to free speech, according to the *Associated Press*. But the federal prosecutor said they illegally bore arms. Two other defendants were convicted this winter. The six are considered tier two defendants.

The trials of the tier one defendants, including Cliven, Ammon and Ryan Bundy, are scheduled to start 30 days after the tier one trial is completed, or well into the fall.

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: Timber sale.

BLM decision: BLM will approve a hazardous fuels project after preparing an environmental assessment (EA).

Appellant environmentalists: BLM erred because its EA did not comply with NEPA, among other things.

IBLA decision: Affirmed BLM.

Case identification: *Klamath-Siskiyou Wildlands Center, et al*, 190 IBLA 295. Decided July 3, 2017. Twenty-four pages. Appeal and petition to stay the effect of a decision of the Field Manager, Grants Pass Field Office of BLM, denying appellants' protest of BLM's decision to approve the Lower Grave Timber Sale. ORM07-TS-15-3.

IBLA argument: IBLA Administrative Judge Silvia M. Riechel affirmed a BLM decision approving a Lower Grave Timber Sale in western Oregon. The appellants argued that BLM in its EA failed to consider an appropriate range of alternatives, failed to take a hard look at impacts, used uncertain data and failed to prepare a full-blown EIS. Riechel rejected all those arguments because they did not demonstrate that the BLM decision contained errors. The appellants also argued that BLM failed to comply in its EA with a draft 2016 resource management plan, but Riechel said the bureau only needed to comply with a management plan in effect at the time the EA was written, i.e. a 1996 resource management plan, not a proposed plan.

Notes

BLM favors massive NPL gas project. BLM said in a draft EIS July 7 that it supports approval of a huge natural gas operation in Wyoming near the productive Jonah and Pinedale Anticline fields. BLM said the project, proposed by Jonah Energy LLC, would comply with both federal and State of Wyoming sage-grouse management plans. The project would open the way for production of 5.25 trillion cubic feet of natural gas and \$2.2 billion in royalties. The project would be located in Sublette County, 35 miles south of Pinedale. BLM said the project would cover 141,000 acres - 96 percent of it federal - and would authorize 3,500 directional wells over 10 years. More information is available at: <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=57654&dctmId=0b0003e8801765e7>.

New lobo recovery plan proposed. The Fish and Wildlife Service (FWS) June 30 proposed a new recovery plan for the endangered Mexican gray wolf that anticipates a future population in the Southwest of 320 wolves, plus 170 in New Mexico. The population of the lobo, the most endangered wolf subspecies in the world, is currently 130 in Arizona and New Mexico. The FWS strategy proposes two wolf populations within the animal's historical range. However, environmentalists say the protected area is not large enough to ensure a diverse gene pool. Said Bryan Bird, Southwest program director for Defenders of Wildlife, "Contrary to recommendations from leading wolf biologists, the U.S. Fish and Wildlife Service's draft plan restricts the Mexican gray wolves from moving into millions of acres of suitable habitat in northern Arizona, New Mexico, Utah and Colorado." The key dividing line apparently is Interstate 40. The proposal would protect the wolf south of the Interstate but not north of it. FWS prepared the proposal to carry out an agreement with the State of Arizona and Defenders of Wildlife. After taking comments until August 29 FWS intends to post a final plan in November. The proposed plan and a procedure for commenting are available at

www.regulations.gov (place docket number FWS-R2-ES-2017-0036 in the search bar). (See page one story on appropriations rider that would bar spending on the Mexican wolf plan.)

Enviros protest proposed Utah O&G sale. Three environmental groups are protesting a proposal of the Utah State Office of BLM to lease for oil and gas development 15,000 acres in central Utah. Among other things the groups, including the Center for Biological Diversity, say oil and gas development could spell the end of the Sheeprocks sage-grouse population. "The BLM is blowing off conservation science and federal law to allow short-term profits for oil companies," said Michael Saul, a senior attorney with the Center in a July 3 announcement of the protest. "Auctioning off this vital habitat for drilling and fracking may wipe out this population of Utah sage grouse and signal the beginning of the end for this imperiled bird." In their protest the environmentalists acknowledge that BLM has included stipulations in the lease proposal to protect the sage-grouse. "However," says the protest, "these stipulations are not absolute. Of the 10 GRSG stipulations in the EA, one can have exceptions and five can be modified. As a result, these stipulations might or might not actually be applied in the way they are described in the EA, and thus the mitigation that BLM suggests will occur might or might not actually take place." The sale is scheduled for September.

Y'stone grizzly delisting date set. The Fish and Wildlife Service (FWS) has set a formal date for delisting the Yellowstone grizzly bear under the Endangered Species Act (ESA) - July 31. That assumes a threatened lawsuit from environmentalists doesn't persuade a federal court to block the action. Following the lead of the Obama administration, the Trump administration said June 22 it would delist the Yellowstone population of the grizzly bear under the ESA. On June 30 FWS set a July 31 effective date. Under the action management of the Yellowstone bear would be turned over to the States of Wyoming, Montana and Idaho. The grizzlies that stay within the borders of Yellowstone National Park would be managed by the Park Service and would be subject to state rules only if they left the park. Under the lead of the Earthjustice law firm, environmentalists June 30 gave notice to Secretary of Interior Ryan Zinke of their intention to file suit if Zinke doesn't withdraw the delisting. The petition said FWS didn't adequately account for threats to the grizzly, such as a change in the grizzly's diet, climate change, and state-authorized hunting.

Conference Calendar

JULY

20-22. **63rd Annual Rocky Mountain Mineral Law Institute** in Santa Fe, N.M. Contact: Rocky Mountain Mineral Law Foundation, 9191 Sheridan Blvd., #203, Westminster, CO 80031. (303) 321-8100. <http://www.rmmlf.org>.

21-24. **National Association of Counties Annual Conference** in Franklin County, Ohio. Contact: National Association of Counties, 440 First St., N.W., 8th Floor, Washington, DC 20001. (202) 393-6226. FAX (202) 393-2630. <http://www.naco.org>.

26-29. **Outdoor Retailer Summer Market** in Salt Lake City, Utah. Contact www.outdoorretailer.com/summer-market.

AUGUST

2-4. **Western Energy Alliance Annual Meeting** in Vail, Colo. Contact: Western Energy Alliance, 410 17th St., Suite 700, Denver, CO 80202. <http://westernenergyalliance.org>

10-15. **American Bar Association Annual Meeting** in New York, N.Y. Contact: American Bar Association, 321 North Clark St., Chicago, IL 60610. (312) 988-5870. <http://www.abanet.org>.

SEPTEMBER

6-9. **Nevada Mining Association Annual Convention** at Lake Tahoe. Contact: Nevada Mining Association at (775) 829-2121 or <http://www.nevadamining.org>.

15-19. **The Wildlife Society Annual Conference** in Albuquerque, N.M. Contact: The Wildlife Society, 5410 Grosvenor Lane, Bethesda, MD 20814-2197. (301) 897-9770. <http://www.wildlife.org>.

21-24. **Public Lands Council Annual Meeting** in Flagstaff, Ariz. Contact: Public Lands Council, 1301 Pennsylvania Ave. N.W. - Suite 300, Washington, DC 20004. (202) 347-0228. <http://www.publiclandscouncil.org>.

22-25. **The Geological Society of America Annual Meeting** in Seattle, Wash. Contact: The Geological Society of America, 3300 Penrose Place, Box 9140, Boulder, CO 80301. (1) (800) 472-1988. <http://www.geosociety.org>.