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From: **Public Lands News** <james@publiclandnewsletter.com>
Date: Fri, Jun 30, 2017 at 6:58 AM
Subject: Public Lands News: ANWR may get in reconciliation; House wildfire bill moves; fracking rule suspension?
To: james@publiclandnewsletter.com

Dear Public Lands News Subscriber:

June 30, 2017: Attached is the current issue of the newsletter Public Lands News (Volume 42 Number 13), in .doc format and in PDF format. Below are the headlines. We thank you for reading Public Lands News.

The Editors

BREAKING NEWS: SENATE ENERGY BILL REINTORDUCED

Senate Energy Committee leaders late this week reprised their strategy of the last Congress and introduced a comprehensive energy bill (S 1460).

While the 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.

LAST FEDERAL PARKS & REC ATTACHMENT

For the last six months we have attached to Public Lands News reporting from our sister publication, Federal Parks & Recreation. With this issue we cease publication of Federal Parks & Recreation, so this will be the final attachment to Public Lands News. Henceforth, Public Lands News will once again be a stand-alone publication.

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ANWR may be candidate for express reconciliation bill

If and when the House and Senate assemble a Congressional budget, they are 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.

Environmentalists are already attempting to rouse opposition, particularly among Republicans. On June 27 six House Republicans who oppose leasing wrote budget committee leaders and asked them to leave ANWR out of the budget resolution. A counterpart GOP Senate letter is reportedly in the works.

"We share your deep commitment to producing a fiscally-sound budget," the six wrote. "The effort to open the Arctic Refuge to development is a long-debated and highly controversial issue that we do not believe belongs in a responsible budgeting process. The six were led by Reps. Brian Fitzpatrick (R-Pa.) and Dave Reichert (R-Wash.)

To publicize their opposition to leasing, the Alaska Wilderness League and The Wilderness Society last week held a press conference.

"Not only is (the 1.4 million-acre coastal plain) the biological heart of the Arctic National Wildlife Refuge, the refuge is also the crown jewel of the National Wildlife Refuge System," said Lydia Weiss, government relations director for The Wilderness Society.

Besides, said Weiss, a controversial ANWR provision would weigh down a reconciliation bill that is ticketed to carry out Republican tax reform.

Already, the greater budget process is engulfed with controversy as Republicans attempt to establish military and domestic spending caps. The House and Senate had hoped to begin work on a budget this month before the July 4 holiday but neither the House Budget Committee nor the Senate Budget Committee budged.

The budget reconciliation process is almost essential if Republican leaders hope to move their tax reform legislation this year, because it would require just 50 votes in the Senate, avoiding a filibuster. But under Congressional rules to use the reconciliation process the House and Senate first must agree on a fiscal year 2018 budget.

As we reported last month, Secretary of Interior Ryan Zinke joined up with the Alaska establishment on May 31 to launch an all-out campaign to open the North Slope of the state to energy development.

Zinke posted a two-headed Secretarial Order No. 3352 that (1) orders a replacement of a plan governing the National Petroleum Reserve in Alaska (NPRA) and (2) orders the development of a plan to assess oil and natural gas potential of both NPRA and the coastal plain of ANWR.

BLM has already leased 189 tracts in NPRA covering 1,372,688 acres but Congress has yet to authorize oil and gas leasing in the coastal plain of ANWR.

Gov. Bill Walker (I-Alaska) and the Alaska Congressional delegation are chomping at the bit to accelerate oil and gas development in NPRA and begin

leasing in ANWR. Their immediate and long-term goal is to produce enough oil to replenish the Trans-Alaska Pipeline System and rescue a struggling Alaskan economy.

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

But ConocoPhillips Alaska is reportedly making progress on two major projects in NPRA - Greater Mooses Tooth 1 and 2. Greater Mooses Tooth-1 will reportedly be ready to begin production in December 2018 and BLM is working on an EIS supporting drilling in Greater Mooses Tooth-2.

ConocoPhillips announced January 13 that it has made a significant oil and gas find in Greater Mooses Tooth-1 from two drilled wells called the Willow Discovery. The two wells are about four miles apart. BLM and the Corps of Engineers took years to complete permitting for the landmark lease.

The first part of Zinke's order directs his assistants to produce a schedule for revising a 2013 Obama administration Integrated Activity Plan for NPRA. The order calls for "a schedule to effectuate the lawful review and development of a revised Integrated Activity Plan for the NPR-A that strikes an appropriate statutory balance of promoting development while protecting surface resources."

The second part directs Zinke's assistants to put together a plan for assessing oil and gas reserves in both NPRA and ANWR. It tells them to submit to his office within 21 days "a joint plan for updating current assessments of undiscovered, technically recoverable oil and natural gas resources of Alaska's North Slope, focusing on Federal lands including the NPR-A and the Section 1002 Area. The joint plan shall include consideration of new geological and geophysical data that has become available since the last assessments, as well as potential for reprocessing existing geological and geophysical data."

The starting-point of the ANWR debate in the Senate is a bill (S 49) from Sen. Lisa Murkowski (R-Alaska) that would authorize leasing in the 1.4 million-acre coastal plain. The bill, say supporters, would limit maximum surface acreage covered in connection with the leasing program by production and support facilities, including airstrips and any areas covered by gravel berms or piers for support of pipelines, does not exceed 2,000 acres on the Coastal Plain."

But the Alaska Wilderness League and The Wilderness Society strenuously disagree. The league has posted at its website a position paper saying the 2,000-acre impact cap is misleading.

"The 2,000-acre limitation does not include all necessary oil infrastructure or operations," says the paper. "It omits gravel mines, roads, seismic or other exploration operations, air and noise pollution, or even pipelines (except their posts). Development would require these pieces of infrastructure to spread across the entire Coastal Plain, since the U.S. Geological Survey estimates that oil located in the Refuge's Coastal Plain is scattered in small pockets throughout its 1.5 million acres."

The league's paper is available at:

<http://www.alaskawild.org/wp-content/uploads/2017/06/2000-Acre-Hoax-13117.pdf>.

House committee reapproves wildfire/timber sale measure

The House Natural Resources Committee once again June 27 approved legislation by a 20-to-12 vote that (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 (HR 2936) from Rep. Bruce Westerman (R-Ark.) would in a half-dozen ways speed wildfire projects by reducing time 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.)

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 would not improve forest health. "It is a timber industry wish list dressed up as legislation that will not improve forest health," he said.

Grijalva said he objected to the bill because it "undermines core provisions of the National Environmental Protection Act (NEPA) intended to ensure forest conservation; expands the use of categorical exclusions under NEPA to allow clear cutting in certain forests without any sort of environmental assessment or review; and limits or prohibits judicial review of certain activities."

A senior policy analyst with The Wilderness Society, Mike Anderson, agreed with Grijalva. "It ignores science necessary to guide restoration of healthy forests and excludes the public from participating in decisions about forests close to where they live and play," he said. "This draft legislation is a clear-cut disaster for America's forests, wildlife, fishing streams and drinking water."

Separately, 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.

"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.

The House approved a predecessor to the Westerman bill twice in the last Congress and the Senate Agriculture Committee approved it once.

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

Although the fiscal year 2018 administration budget request does not propose a "disaster cap" to take spending on huge wildfires out of regular appropriations, Tidwell said the administration is ready to talk turkey. That repeats the promise of his boss Secretary of Agriculture Sonny Perdue to the House last week.

For wildfire management the Trump fiscal 2018 budget request approximates a fiscal 2017 final appropriations law (PL 115-31 of May 5). It requests \$2.849 billion for Forest Service wildfire management compared to a fiscal 2017 appropriation of \$2.8 billion.

For the Interior Department the administration requested \$874 million for wildfire management compared to a fiscal 2017 appropriation of \$943 million.

The Westerman bill would accelerate timber harvests of burned trees, simplify environmental processing by expanding the use of categorical exclusions, and speed planning.

GAO says fossil royalty hike may be double-edged sword

As the Department of Interior weighs a new overall policy for setting royalties for fossil fuel energy, the Government Accountability Office (GAO) weighed in June 20 with an assessment of the impact of higher royalties.

GAO came to a mixed conclusion based on several independent studies - higher royalties could lead to more income for the federal government but they could also lead to lower production, and less income to the government.

In the big picture the GAO report seemed to guesstimate that a higher oil and gas royalty would have minimal impacts on production while producing more income for the government. However, a higher royalty on coal would have the opposite impact of discouraging development.

For the moment the Interior Department is concentrating on a rewrite of royalty valuation rules for coal, oil and gas, and other minerals produced from the public lands. The department's immediate target is an Obama administration rule of July 1, 2006, that sought to replace an old standard that applied (and may apply again) a series of benchmarks to set the royalty price. In the Obama rule ONRR would begin with a first affiliated sales price, followed by index prices.

On April 4 the Interior Department formally proposed outright repeal of the Obama administration oil, gas and coal royalty rule. The department had already delayed implementation of the rule in February.

The States of California and New Mexico have filed a lawsuit against the delay in implementation of the Obama rule. They argue, as have Congressional Democrats, that ONRR has no authority to delay implementation of a regulation once it has been instituted.

At a June 20 hearing of the Senate Energy Committee on the Interior Department's fiscal year 2018 budget request ranking panel Democrat Maria Cantwell (D-Wash.) complained of favoritism of industry. "I find the budget is so focused on the oil and natural gas aspect of revenue that I think that you are neglecting the fact that the outdoor economy generates \$887 billion a year," she said.

Buried in the fiscal 2018 budget request is a bit of a surprise - the possible establishment of a royalty on **hard rock** minerals, a surprise because President Trump is considered a friend of industry.

Says the Interior department budget request, "(A) long-standing challenge is to provide a fair return to taxpayers for the use of their natural resources, without discouraging development. To meet this challenge and prepare for the President's 2019 budget, Interior will conduct a study to evaluate the production and development of hardrock minerals from Federal lands. In carrying out this study, Interior will include an analysis of revenue recovered by other entities, including other countries, which permit mining on their land."

Indeed, almost all countries and states impose royalties on hard rock minerals, including 12 western states, GAO said.

Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) gently urged Secretary of Interior Ryan Zinke to go easy on a hard rock royalty for fear it would discourage development.

"I also appreciate the administration taking a deliberative and constructive approach on a potential royalty for hardrock minerals," she said. "I'll be interested to see the results of the study that the Department of the Interior is now conducting. But with our mineral security in a perilous state, and our nation importing at least 50 percent of 50 different minerals, our first goal must be to do no harm. And that's what exactly what I see here."

Any imposition of a royalty on hard rock minerals would take Congressional action and with Republican majorities in both Houses sympathetic to industry that is not likely to happen, viz. Murkowski's remarks.

The possibility of changes in oil, gas and coal royalties paints a more complex picture because the Office of Natural Resources Revenue may develop a new royalty valuation system (if it doesn't just keep Bush administration rules in place.)

ONRR has commissioned a new Royalty Policy Committee for advice but has yet to name members that are to be divided up among six state officials, four

Indian representatives, six industry representatives, and four representatives from academia and public interest groups.

In its report, *OIL, GAS, AND COAL ROYALTIES: Raising Federal Rates Could Decrease Production on Federal Lands but Increase Federal Revenue*, GAO said analyses it examined forecast an increase in revenues from higher royalties.

"The studies we reviewed for oil and gas estimate that raising the federal royalty rate could increase net federal revenue between \$5 million and \$38 million per year (equivalent to around 0.7 percent to around 5.2 percent of net oil and gas royalties in fiscal year 2016)," GAO held.

GAO said a royalty increase from 12.5 percent to 18.75 percent might have a minimal impact on production. "We identified two studies one by the (Congressional Budget Office) and one by Enegis, LLC that modeled the effects of different policy scenarios on oil and gas production on federal lands," said GAO. "Both studies suggested that a higher royalty rate could decrease production on federal lands by either a small amount or not at all."

As for coal GAO again said an increase in royalties "could lead to an increase in federal revenues" ranging up to \$730 million per year.

But, GAO said, it examined two studies that forecast a significant reduction in production from a higher royalty. GAO concluded, "BLM officials stated that an operator can justify a capital investment to produce coal on federal lands if the potential for revenue outweighs the cost of production. According to officials, increasing the royalty rate would add to the cost of production, which could cause an operator to bypass federal coal, thus causing the government to miss out on revenue."

The GAO report is available at:
<http://www.gao.gov/products/GAO-17-540>.

Trump orders delisting of Yellowstone grizzly under ESA

Following the lead of the Obama administration, the Trump administration said June 22 it will delist the Yellowstone population of the grizzly bear under the Endangered Species Act (ESA).

Absent a court order - and one will surely be requested - management of the Yellowstone bear will be turned over to the States of Wyoming, Montana and Idaho. The grizzlies that stay within the borders of Yellowstone National Park will be managed by the Park Service and will be subject to state rules only if they leave the park.

Secretary of Interior Ryan Zinke described the recovery of the Yellowstone grizzly as a major triumph. "This achievement stands as one of America's great conservation successes; the culmination of decades of hard work and dedication on the part of the state, tribal, federal and private partners. As a Montanan, I'm proud of what we've achieved together," he said.

Wyoming Gov. Matt Mead (R-Wyo.), who said he asked the Interior Department in 2013 to delist the Yellowstone grizzly, was equally enthusiastic. "The Interagency Grizzly Bear Study Team, which includes the

FWS and Wyoming Game and Fish, must be commended for its years of great work," he said. "Thanks to the team effort, grizzlies will be managed appropriately by our experts at Game and Fish."

Some but not all conservation groups were upset with the administration decision, which goes into effect in 60 days. Defenders of Wildlife said in the end it doesn't trust Idaho, Montana and Wyoming and foreshadowed a lawsuit. Defenders has had a separate running battle with those states over management of the delisted northern gray wolf.

Said Jamie Rappaport Clark, president of Defenders, "Defenders of Wildlife is going through the (grizzly) delisting rule with a fine-toothed comb, and we will hold federal and state wildlife and land management agencies accountable for strong stewardship and management of grizzly bears and their habitat post delisting."

But some conservation groups such as the National Wildlife Federation are on board with the delisting. "The purpose of the Endangered Species Act is to create self-sustaining populations of species in the wild. This has happened we are now seeing grizzlies in places where they haven't been recorded for a century," said Tom France, regional executive director of the Federation's Northern Rockies Regional Center. "We should all celebrate this success."

House Natural Resources Committee Chairman Rob Bishop (R-Utah) said the great length of time (24 years) the grizzly was listed under the ESA argues for turning over more responsibility for the management of species to state governments. "Recovery and delisting and responsible state management that will prevent listings in the first place must be the goals of ESA, not lifetime sentences on the endangered list fraught with frivolous litigation," he said.

His committee counterpart, ranking Democrat Raúl M. Grijalva (D-Ariz.), joined several Indian tribal leaders in criticizing the FWS decision. "The Interior Department has snatched defeat from the jaws of victory by delisting Yellowstone grizzlies prematurely and without adequate tribal consultation or safeguards to ensure the bears' long-term survival," Grijalva said.

He added, "Delisting the grizzly ignores the objections of scientists and tribal leaders who have raised concerns over the irreparable harm to Tribal sovereignty and self-determination throughout the delisting process."

FWS published a grizzly bear recovery plan in 1993. FWS first delisted the Yellowstone population in 2007 but a federal judge vacated that action. In March 2016 the Obama administration repropose delisting.

The population of Yellowstone grizzlies has increased from 136 in 1975 to an estimated 700 today. That may even open the way for the states to hold hunting seasons.

Grizzly bears once roamed from Alaska to Minnesota to Mexico. A population of 1,000 grizzlies in northern Idaho and Montana will remain listed under the ESA.

BLM's fracking rule may be on way to suspension

The Interior Department is apparently on track to suspend a hydraulic fracturing rule of March 2015 while it prepares a new regulation, presumably one less onerous to the oil and gas industry.

A federal court in June 2016 had already blocked implementation of the rule so the 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."

The White House has not completed a review of the proposal so the substance of any rule has not been published. Still, the title is a dead giveaway.

The Sierra Club protested the June 20 posting. "With today's decision, Trump is making it clear that he thinks we need more fracking operations contaminating our drinking water, causing earthquakes, and polluting our environment, not fewer," said Kelly Martin, deputy director of the Sierra Club Beyond Dirty Fuels campaign. "The Sierra Club will continue to defend this rule, ensuring that our publicly-owned lands remain protected from fracking and Donald Trump."

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.

Unlike several other department energy regulations, the hydraulic fracturing rule was too old to come under the Congressional repeal authority established by the Congressional Review Act.

But there are no guarantees. In a stunning reversal for the administration the Senate May 10 backed an Obama administration regulation governing oil and gas methane emissions from the public lands. (See *following article*.)

The Senate by a narrow 51-to-49 vote refused to consider a resolution (HJ Res 36) that would have paved the way for the repeal of the BLM rule of Nov. 15, 2016. The House had approved the resolution on February 23 by a 221-to-191 vote and, if it had come to President Trump, he was sure to sign it.

Again, a federal court has already issued an injunction against the hydraulic fracturing rule. On June 21, 2016, U.S. District Court Judge Scott W. Skavdahl in Wyoming blocked implementation of the regulation, saying BLM had no authority to issue the regulation, period. He said Congress had forbidden both BLM and EPA from regulating non-diesel hydraulic fracturing.

That case is now before the 10th U.S. Circuit Court of Appeals and on March 16 the Department of Justice told the appellate court it would not defend the rule and that the Interior Department intends to write a new rule.

On March 26, 2015, BLM issued the rule that would have companies (1) validate well integrity and cement barriers, (2) disclose chemicals used in

fracking shortly after completing operations, (3) follow stiffer standards on storage of waste fluids and (4) submit more detailed information on the geology and location of existing wells.

A March 28 executive order from President Trump and the March 29 secretarial order from Zinke direct the Interior Department and BLM to get rid of the rule. The Trump order tells the Interior Department to review the rule to identify "burdensome" regulations and, if deemed necessary, to "as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding those rules."

Zinke sort of commits to implementing old methane rule

Although BLM has postponed implementation of parts of a methane emissions rule for two years, Secretary of Interior Ryan Zinke June 20 said he would keep the rest of the rule in place until a new regulation could be written.

On June 14 BLM had delayed the implementation of ten or so provisions of the Nov. 26, 2016, Obama administration rule.

On June 20 ranking Senate Energy Committee Democrat Maria Cantwell told Zinke at a hearing on the Interior Department's fiscal year 2018 budget, "You say you are suspending that rule, but if you want to suspend that rule you have to go through the Administrative Procedures Act. And the Administrative Procedures Act is about proposing a change and then hearing public comment on it before it is finalized. So are you telling me that during this process you are going to make sure the current law is implemented?"

To which Zinke replied, "We are looking at how to implement. It's a little problematic exactly on the law, which was part of the issue of the methane law itself - why it was changed. My intention, so you know it, is we are going to rewrite the rule and go through the complete public process on it."

Cantwell tried again, "You are not going to spend time for the next six months dragging your feet on implementation, are you?" Zinke replied, "I don't drag my feet, I don't operate that way. As far as the law goes I support the law as we all should."

Nevertheless, BLM has suspended portions of the rule dealing with leakage detection, storage tanks and pneumatic devices. On June 19 Cantwell wrote Zinke questioning BLM's authority under the Administration Procedures Act to do so. Cantwell said that the law only allows suspension of rules that have not yet reached an effective date.

She wrote, "Section 705 of the APA authorizes agencies to postpone the effective date of regulations pending judicial review. We are unaware of instances in which an agency has attempted to suspend parts of a regulation under section 705 of the APA after the effective date of the regulation as a whole."

She continued, "Apart from our disagreements with some of your policies, we are troubled that your agency continues to seek out new ways to circumvent administrative law. The suspension of parts of the Methane Waste

and Prevention Rule seems particularly brazen given that on May 10 the Senate rejected a Congressional Review Act resolution to repeal the Rule."

In a June 15 *Federal Register* notice BLM explained why it was suspending the provisions. "While the BLM believes the Waste Prevention Rule was properly promulgated, the petitioners have raised serious questions concerning the validity of certain provisions of the Rule," the bureau said. "Given this legal uncertainty, operators should not be required to expend substantial time and resources to comply with regulatory requirements that may prove short-lived as a result of pending litigation or the administrative review that is already under way."

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 Administrative Procedures Act that authorizes agencies to postpone the implementation of new rules when petitioners show good cause.

In this instance BLM said June 15 the Western Energy Alliance had justified the delay of the bureau's 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.

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.

There is already litigation underway. 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 April 20 EPA stayed a deadline for compliance with its rule for 90 days beyond a June 3, 2017, deadline. Six national environmental groups immediately asked a federal court June 5 in a new lawsuit to force EPA to implement the rule ASAP.

The environmental groups, including the Sierra Club, argued to the U.S. Court of Appeals for the District of Columbia that the Administrative Procedures Act does not allow EPA to postpone implementation of its rule.

In a surprise reversal for the Trump administration the Senate May 10 backed the Obama methane rule by a narrow 51-to-49 vote. As a result it

first appeared that opponents of the BLM rule faced a laborious administrative rewrite/removal of the regulation, or a fight in the federal courts. But the June 15 delay may give BLM time to rewrite or revoke the November 2016 BLM rule.

Dems fault monument review; Zinke drops hints

They hold few cards, but Senate Democrats nonetheless are objecting strongly to the Trump administration's review of major national monuments. The review may lead to a reduction in size or outright revocation of the monuments.

The critics are particularly exercised about a recommendation by Secretary of Interior Ryan Zinke to President Trump that he reduce the size of the Bears Ears National Monument in southern Utah by an unspecified amount.

Ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.) complained at a hearing of the Senate Energy Committee June 20 on the Interior Department budget, "It took the administration 100 days to declare war on 100 years of bipartisan conservation. The most glaring example is an ongoing attack on the Antiquities Act in general and Bears Ears National Monument in particular. Trying to rollback Bears Ears is a taxpayer waste, especially at a time when the Interior Department is proposing significant staff cutbacks."

But she didn't offer a legislative or legal strategy to stop or reverse any final administration action.

Zinke offered a soft clue at the hearing about his review of an 87,500-acre Katahdin Woods and Waters National Monument in Maine. He told Sen. Angus King (I-Me.) that he would take an action that King would be "enthusiastic" about. King notably supports the designation of the monument, managed by the National Park Service.

Even if Democratic critics in Congress don't have the votes to stop any moves by Trump, their environmentalist allies promise legal action. As Heidi McIntosh, Earthjustice's managing attorney for the Rocky Mountains, said, "If President Trump follows Secretary Zinke's recommendation to shrink the boundaries of these cherished lands, we will see him in court."

On June 12 Zinke recommended that President Trump reduce the size of the Bears Ears National Monument in southern Utah, touching off a political firestorm.

As part of an administration-wide review of the designation of 27 large national monuments, Zinke told the President, "I've submitted my 45-day interim report to President Trump expressing my belief that the monument needs to be right-sized and that it is absolutely critical that an appropriate part be co-managed by the Tribal nations. I also recommend that Congress take action to protect some areas."

At the Senate committee hearing Zinke offered a mixed reading of the administration's plans for Bears Ears. "There is no doubt there are some antiquities there that are well deserving of federal protection," he said.

"But what I didn't see, I didn't see any sign(age), I didn't seen any bathrooms, I didn't see any trailheads, I didn't see any parking lots."

Because of that, he said, "If we are going to assume the responsibility of preserving something, we also have to assume the responsibility to make sure we preserve it."

The following day, June 21, when Zinke appeared before the Senate subcommittee on Interior appropriations on his budget, Sen. Tom Udall (D-N.M.) faulted Zinke's trip to southern Utah in early May. He said the secretary spent most of his time with monument opponents.

"I'm very disappointed with your decision to spend only one hour with tribal members while other stakeholders received substantially more of your time," Udall said. "I'm also disappointed that your report ignored most of the 1 million public comments."

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 Dec. 28, 2016, designation of the monument by President Obama.

Said House Natural Resources Committee Chairman Rob Bishop (R-Utah, "This is positive news for the State of Utah and local communities affected by the Bears Ears monument designation. Anyone with honest intentions recognizes that local input should matter when the federal executive makes a decision of this magnitude. I commend Secretary Zinke for actually listening to local voices on the issue and conducting a thoughtful and deliberative review to help inform the President's ultimate decision."

President Trump started the monument review ball rolling April 26 when he signed an executive order directing the Interior Department to review the designation of 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.

The 100,000-acre limit applies to 21 national monuments in the West, plus an 87,500-acre Katahdin Woods and Waters National Monument in Maine and five huge marine monuments. That's 27 total.

Zinke went to Maine June 14 to meet with critics and supporters of the Katahdin national monument, which is managed by the Park Service.

The public comment period on Bears Ears ended May 26. Trump's executive order asked for a recommendation from Zinke by June 10. The recommendation was submitted June 12. The comment period for the other 26 monuments runs through July 9.

Zinke suggests line offices won't be hurt by cutbacks

Amid rumors of seismic shifts in natural resources management by the Trump administration, Secretary of Interior Ryan Zinke said June 20 that he anticipates few reductions in spending for *individual* national parks.

Asked by Sen. Angus (I-Me.) about the possibility of reductions in park operations because of a proposed department-wide reduction of 4,000 full-time

employees, Zinke said at a hearing on his budget held by the Senate Energy Committee, "Individually, very doubtful. What I've done in headquarters is impose a hiring freeze and in Denver so we can push bodies to where they belong out front to make sure we shore up and expand the frontline."

He reaffirmed, "Our goal is to make sure the parks not only were whole but to give them more assets in the frontline and reduce the middle and upper management."

As part of the Trump administration's ambitious government-wide program to reduce federal spending, the Interior Department budget would reduce employee levels by six percent, from 64,000 to 60,000 full-time equivalents. For the Park Service alone the budget would take away 1,242 jobs, reducing the number of full-time equivalent employees from 19,510 to 18,268.

In an early move Zinke has *in camera* reportedly begun reassigning as many as 50 people, many of them from the Senior Executive Service (SES). At a hearing of the Senate subcommittee on Interior appropriations June 21 with Zinke, Sen. Tom Udall (D-N.M.) objected to mass shifts of SESers. (SES employees are senior executives who can be moved around both within agencies and among agencies.)

"It is my understanding that the scale of these changes is virtually without precedent," Udall said. "Staff members appear to have been transferred without a clear plan regarding how or whether their current positions will be filled." He said the transfers may be carried out as soon as the end of June, today.

Udall zeroed in on the possible shift of New Mexico BLM State Director Amy Leuders to the Fish and Wildlife Service. "I mentioned the BLM State Director Amy Leuders as an example of these staff members whose work affects my state on a day-to-day basis," he said. "Amy has served as our BLM state director for the past two years. She has been incredibly engaged and responsive and I quite frankly don't want New Mexico to lose her."

In addition *E&E News* reported June 28 that Leuders is one of three BLM state directors the department is removing as part of the overall reorganization. The other two are Bud Cribley in Alaska and Ruth Welch in Colorado.

Despite the personnel moves to the field contemplated by Zinke, the Trump administration still hasn't nominated agency directors. However, one new rumor anticipates the nomination of Wyoming attorney Karen Budd-Falen as BLM director.

Budd-Falen is a veteran public lands attorney who has worked in the Interior Department and for the law firm Mountain States Legal Foundation, as well as her own law firm. Utah House Rules Chairman Michael E. Noel (R) had been high on the list of possible nominees for BLM director, but that possibility has reportedly faded.

Also among the missing at Interior is a deputy secretary. The Senate Energy Committee June 6 approved the nomination of David Bernhardt to the job by a 14-to-9 vote. That fairly close vote promises a fierce floor fight on the nomination.

On May 26 Zinke named 18 acting staff members, including James E. Cason, who has been serving as associate deputy secretary since January, to continue in that post.

Zinke summed up his position on the reorganization at the June 20 Senate Energy Committee hearing on his budget. "It is clear that the frontline is too thin," he said. "My assessment of the (department) is we have too many in middle management and above and too few in the parks. So we are looking at going through a process in coordination with you on how to push more assets to the frontline. Every previous cost-cutting measure has always regionalized assets up and we found ourselves too short where (personnel) are needed in the parks."

Here are the acting heads of natural resource agencies and a few names being circulated as possible directors/chiefs:

BLM: Former BLM Eastern States Director Michael Nedd is serving as acting director. Utah's Noel had been high on the list of possible nominees for director, but that possibility has faded. Budd-Falen is a new favorite.

Forest Service: Tom Tidwell, long-time chief during the Obama administration, is expected to stay on for the immediate future until the Department of Agriculture gets a deputy secretary for natural resources.

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

FWS: Jim Kurth has been serving as acting director, succeeding former director Dan Ashe. Kurth had served as the service's deputy director for operations for the last two years.

At the Department of Agriculture the Trump administration has yet to nominate an under secretary for Natural Resources but on June 16 Secretary of Agriculture Sonny Perdue named Dan Jiron as deputy under secretary for Natural Resources. Jiron is well known in the public lands field as a recent associate chief of the Forest Service and for numerous recent high-level field positions.

In a side issue Rep. Scott Tipton (R-Colo.) and Sen. Cory Gardner (R-Colo.) introduced legislation (HR 2287, S 1007) in May that would authorize the transfer of BLM's headquarters from Washington, D.C., to one of 12 western states. The bills would allow the secretary of Interior to choose a new location.

Gardner in the past has suggested a transfer of the headquarters to Grand Junction, Colo. "Moving BLM's headquarters West is a commonsense solution that Coloradans from across the political spectrum support," he said.

But an alliance of BLM retirees says the BLM headquarters should remain in Washington, D.C. The Public Lands Foundation says BLM employees need to be in Washington to meet with Congress and other players.

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

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: Coal lease modification.

BLM decision: BLM will (1) deny a request for a determination that a coal-mining unit was mined out and (2) approve advanced royalties in the mining unit.

Appellant lessee: BLM erred because (1) the unit was mined out and (2) the advanced royalties were excessive.

Initial IBLA decision: Affirmed BLM on both counts.

Appellant lessee: New information proves the unit was mined out and the advanced royalties were excessive.

IBLA decision: Affirmed BLM.

Case identification: *AMCA Coal Leasing, Inc., et al (on reconsideration)*, 190 IBLA 271. Decided June 20, 2017. Ten pages. Motion for reconsideration of *AMCA Coal Leasing, Inc.*, 187 IBLA 57 (2016), which affirmed decisions by the Utah State Office of BLM, rejecting a proposed modification to a Resource Recovery and Protection Plan for the Aberdeen Mine and identifying recoverable coal reserves for calculating advance royalties to be paid in lieu of continued operation of the Aberdeen Logical Mining Unit. UTU 73865.

IBLA argument: IBLA Administrative Judge James K. Jackson affirmed on all counts a BLM decision and a previous IBLA decision involving a coal lease logical mining unit (LMU). In this case the appellant coal mining companies asked the board to reconsider a January 2016 IBLA decision that had held that (1) the LMU was not mined out and (2) the unit participants owed advance royalties in lieu of operations. Jackson said the new information on the mined out LMU consisted of an internal, draft BLM memo to that effect. But he said that memo was simply a draft offering the state director possible options, not a hard recommendation. Jackson said the appellants had "repeatedly" said there were reserves in the LMU and the internal BLM draft had nothing to do with the amount of reserves. On the second count of advanced royalties the appellants argued that BLM should update the amount of advanced royalties the companies are paying "in lieu of continued operations." But Jackson said the royalties must be paid based on the existing recovery plan and until that plan is revised the appellants are stuck.

Notes

EPA proposes wetlands rule revocation. EPA and the Corps of Engineers proposed June 27 to rescind an Obama administration rule governing permits to disturb wetlands under the Clean Water Act. The agencies are taking two steps: First, they *proposed* revocation of the Obama rule, which would leave a pre-existing Bush administration rule in place. The competing rules govern what navigable waters should come under a wetlands permitting scheme. Second, the agencies said they are beginning "deliberations" on a proposed rule that might redefine waters of the United States that should come under the navigable waters rubric. For the immediate future the twin proposals would have little impact because the Sixth U.S. Court of Appeals has already stayed the 2015 rule. The hard rock mining industry welcomed the proposals.

"Our members are greatly encouraged to see the Trump administration undo this unnecessary rule and return states' authority over water regulation and regulatory certainty that is crucial to a prosperous American mining industry," said Laura Skaer, executive director of the American Exploration & Mining Association. "Mining is ready to get back to work and grow communities. Ending this deeply flawed rule allows us to do just that." The Obama rule, if implemented, would greatly expand the definition of navigable waters. A starting point about EPA's plans is available at: <https://www.epa.gov/newsreleases/epa-us-army-move-rescind-2015-waters-us>.

The FY 2018 budget situation. The House and Senate Budget Committees at press time had yet to produce fiscal year 2018 budget recommendations, as Republicans and Democrats continue a stalemate over topline spending. The budget this year is supposed to do two main things: (1) set spending caps for appropriators, as usual, and (2) open the way for a reconciliation bill later this year for substantive programs that is filibuster-proof in the Senate. A reconciliation bill might include such things as authorization of oil and gas development in the coastal plain of the Arctic National Wildlife Refuge (see *related article page one*). If the House and Senate can't produce a new budget, theoretically a Budget Control Act of 2011 would govern topline spending, effectively maintaining existing levels. But President Trump wants to shift things around with a \$54 billion boost for the military combined with a comparable decrease in domestic spending. And Senate Democrats June 26 called on their Senate Republican counterparts to actually increase spending across-the-board in a new budget. Despite the lack of a budget the House Appropriations Committee has begun to move quickly on several appropriations bills. On June 28 the subcommittee on Energy and Water approved its bill with \$3.65 billion more than the Trump administration requested, or a total of \$37.56 billion. That's just \$209 million below the fiscal 2017 level. On June 29 the committee approved a Legislative Affairs bill with \$5 million more than fiscal 2017. Again, appropriators acted on the legislation without guidance from a budget.

DoI touts O&G sale results. The most recent round of BLM oil and gas lease sales were of course prepared by the Obama administration under former Secretary of Interior Sally Jewell. Nevertheless, the Trump administration June 26 took credit for producing more than \$8 million in bonus bids in sales in a half-dozen states. BLM said the sales were, "In keeping with the Administration's goals of promoting America's energy independence." However, comparable sales from the states of Colorado, Montana, New Mexico, Utah and Wyoming a year ago produced almost \$11 million in bonus bids. But of course the Trump administration's Interior Department has not had time to put its imprint on oil and gas lease sales. In addition interest in sales is generated to a great extent by the market.

King Cove road possible? The Interior Department and House Republicans are working in tandem to build a road in Alaska linking the communities of Cold Bay and King Cove, a proposal that divided the Alaska Congressional delegation and the Obama administration for eight years. The road would provide transportation for ill people in Cold Bay to medical facilities in King Cove. The House Natural Resources Committee June 27 approved long-standing legislation (HR 218) that would authorize a land exchange that would open the way for a road across a wilderness area in the Izembek National Wildlife Refuge. Rep. Don Young (R-Alaska) is the bill sponsor. The Obama administration refused to support such a road. Separately, Secretary of Interior Ryan Zinke said June 26 that the Fish and Wildlife Service has

approved a permit for the Alaska Department of Transportation to attempt to identify a best route for a road.

Zinke personally touts PILT, however. Secretary of Interior Ryan Zinke offered effusive praise June 26 to the payments-in-lieu of taxes (PILT) program in announcing fiscal year 2017 distributions of \$465 million. Zinke didn't mention that the Trump administration has proposed a \$68 million decrease for the program in fiscal 2018. "As a kid who grew up in northwest Montana and whose sons graduated from the same high school as I did, I know how important PILT payments are to local communities that have Federal lands," said Zinke at a meeting with county officials. "These investments are one of the ways the federal government is fulfilling its role of being a good land manager and good neighbor to local communities."

SRS-PILT problems continue. Although western Congressmen from both parties continue to campaign for assistance to counties dependent on a share of revenues from public lands operations, little has been done. The payments-in-lieu of taxes (PILT) program is in better shape than a Secure Rural Schools (SRS) program, having received \$465 million in fiscal year 2017 appropriations and being in for \$397 million in fiscal 2018 in the Trump administration budget request. Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) sees the Trump request as a positive, even though it is 12 percent below the 2017 level. "The administration's proposal to extend PILT, the Payment in Lieu of Taxes program, is another good sign," she told Secretary of Interior Ryan Zinke at a June 20 hearing on the Interior Department budget request. But Murkowski, who also chairs the Senate subcommittee on Interior Appropriations, said the money should be guaranteed outside her appropriations bill because PILT was eating up more than \$400 million per year. "I would note, however, that PILT should be mandatory. And it should not be subject to an across-the-board cut not unless the federal government is willing to divest some of its lands, and allow local governments to find alternative means to recoup their lost property tax base," she said. The other program, Secure Rural Schools (SRS), is not in as good shape. SRS was last authorized in fiscal year 2015, with \$300 million in payments allocated in March of 2016, and hasn't been extended since. Sen. Orrin Hatch (R-Utah) and Rep. Cathy McMorris Rodgers (R-Wash.) have introduced legislation (S 1027, HR 2340) to extend the program for two years.

Arizona cooper mine reversal bill back. Rep. Raúl M. Grijalva (D-N.J.) and Sen. Bernie Sanders (I-Vt.) June 15 introduced long-shot legislation (HR 2915, S 1375) to repeal a December 2014 law authorizing the third largest undeveloped copper resource in the world. Grijalva and Sanders say the law, which would authorize a land exchange with the miner, Resolution Copper Mining, LLC, would damage Tonto National Forest land that is sacred to Native Americans. Said Sanders, "It is wrong that a backroom deal in Washington could lead to the destruction of a sacred area that is so important to so many. We must defend the hundreds of thousands of Americans who are standing in opposition to this giveaway of our natural resources to foreign corporations." Congress approved the land exchange in Section 3033 of the public lands portion of a giant omnibus public lands bill. President Obama signed it into law Dec. 19, 2014, as PL 113-291. The exchange would send 2,422 acres of federal land in the Tonto National Forest to Resolution Copper in return for 5,344 acres held by the company in five counties in Arizona. The mine is a long way from becoming a fait accompli. The forest is still working on the EIS to authorize the exchange and Rio Tinto managing director Nigel Steward told Congress March 21 the project is "years away from a final permit." Rio Tinto is a partial owner of the project and Steward said the

company has spent \$1.3 billion on the project to date. Of note three Republicans cosponsored the House bill objecting to the project - Tom Cole (R-Okla.), Markwayne Mullin (R-Okla.) and Walter B. Jones (R-N.C.)

Boxscore of Legislation

Fiscal year 2018 appropriations

No Interior bill yet. President Trump submitted his budget request May 23. Would reduce spending for virtually all public lands programs.

Fiscal year 2017 appropriations (full year)

HR 244 (Cook). President Trump signed into law May 5 as PL 115-31. Appropriates roughly same amounts of money as fiscal 2016. Was stripped of riders.

Rule restrictions

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

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

(Specific rules) HJ Res 36 (Bishop), HJ Res 44 (Cheney), HJ Res 35 (Young). President Trump signed into law March 27 (PL 115-12) a resolution reversing a BLM planning rule (HJ Res 44). Trump signed into law April 3 a resolution (PL 115-20) reversing a FWS hunting rule in Alaska (HJ Res 35). The Senate defeated 51-to-49 a resolution that would have reversed a BLM methane emissions rule (HJ Res 36). The time has expired for Congress to act on other resolutions to reverse Obama energy regulations.

Federal land transfers

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

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

National monument restrictions

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

New national monuments

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

Wildfire

HR 2862 (Simpson), HR 2936 (Westerman). Simpson introduced June 8. House committee approved HR 2936 June 27. Both would transfer emergency fire spending to disaster category; Westerman would also accelerate timber sales.

Greater sage-grouse

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

Wolf in Wyoming

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

Critical minerals

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

Energy policy limitations

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

County assistance

S 1027 (Hatch) HR 2340 (Rodgers). Hatch, Rodgers introduced May 3. Would reauthorize Secure Rural Schools program for two years.

Arctic National Wildlife Refuge (development)

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

Arctic National Wildlife Refuge (wilderness)

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

BLM foundation

HR 1668 (Hice) HR 244 (Cook). President Trump signed the fiscal 2017 appropriations bill into law May 5 as PL 115-31 that establishes a BLM foundation, like those supporting NPS, FWS and FS.

Land and Water Conservation Fund

HR 502 (Grijalva), S 569 (Cantwell), S 896 (Burr), HR 2836 (Simpson), HR 2943 (Barragán). Grijalva introduced January 12. Cantwell introduced March 8. Burr introduced April 7. Simpson introduced June 8. Barragán introduced June 21. HR 502, S 569, and S 896 would make the program permanent. HR 2836 would authorize for seven years and split money with land management agency maintenance. Barragán would set aside O&G royalties for city rec programs.

Park Service Centennial

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

Red Rock wilderness (Utah)

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

Northern Rockies wilderness

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

Federal Parks & Rec

Addendum to Public Lands News

June 30, 2017

- * *Zinke, Alexander promote LWCF; budget not so rosy*
- * *Congress has done little yet on infrastructure*
- * *Notes*
- * *Monuments, personnel (See Public Lands News articles)*

Zinke, Alexander promote LWCF, but budget noncommittal

Secretary of Interior Ryan Zinke told Congress last week that he supports a "permanent fix" for the Land and Water Conservation Fund (LWCF), presumably in reauthorization legislation floating around Congress.

However, his prepared testimony on the fiscal year 2018 Interior Department budget for appearances before two Senate committees doesn't make that commitment. It simply says the administration will look at "options" for reauthorization.

Still, Zinke appeared to commit to a reauthorization of the program June 21 in a hearing on the fiscal 2018 department budget held by the Senate subcommittee on Interior Appropriations. Sen. Lamar Alexander (R-Tenn.), a major supporter of the program, faulted the administration's \$61 million request for the program and asked Zinke for his position.

Said the secretary, "I did support and I remain supportive of the Land and Water Conservation Fund. . . I would like a permanent fix in the Land and Water Conservation Fund."

Zinke did complain about the Obama administration's offshore oil and gas royalty program, which theoretically pays for LWCF. He noted offshore royalties dropped from \$18 billion in 2008 to \$2.6 billion in 2016. But he did acknowledge a backlog of unspent money in the fund of \$20 billion.

LWCF is not in danger of expiring any day soon. Congress extended the fund for three years in a fiscal 2016 appropriations law (PL 113-114 of Dec. 18, 2015) through fiscal 2018.

But program supporters want to lock the program in now. Three bills have been introduced to make the program permanent (HR 502, S 569 and S 896).

Separately, Rep. Mike Simpson (R-Idaho) introduced a bill (HR 2863) June 8 that would guarantee money for LWCF for seven years and allocate the half the money for federal land management agency maintenance. In that LWCF is presently authorized at \$900 million per year Simpson would set aside \$450 million for LWCF and \$450 million for federal land management agency maintenance.

At the Interior Department budget hearings Senate Republicans and Democrats scored the Trump administration for requesting just \$61 million for LWCF in fiscal 2018.

Alexander said, "In the mid-1980s I was chairman of President Reagan's President's Commission on Americans Outdoors. We recommended permanent

authority of (LWCF). Last year Congress appropriated \$400 million for it and it should have been \$900 million. Your budget recommends \$61 million."

At a hearing of the Senate Energy Committee the previous day, ranking committee Democrat Maria Cantwell was even more critical. "This is our nation's most successful land conservation program, which 85 Senators voted to make permanent just last year," she added. "Suffice it to say, this budget would pump the brakes on the booming outdoor recreation economy all in favor of industries that have had trouble competing in today's marketplace."

In his prepared remarks to the energy committee Zinke said of LWCF, "The LWCF receipts authorization expires at the end of fiscal year 2018 and the Administration will review options for reauthorization, including consideration of a range of conservation-related investments that could be funded through the LWCF."

In a House Appropriations Committee hearing on his budget June 8 Zinke said, "When it comes to infrastructure we plan on taking care of what we have. A reduction in LWCF simply (means) no more acquisitions," he said. "But we're going to take care of what we have. I'm concerned as you are about infrastructure."

After Rep. Simpson introduced his bill to reauthorize LWCF and split the money with federal agency maintenance he acknowledged that has not yet identified a source of money for the bill - always the hang-up in such campaigns. But he said President Trump's trillion-dollar infrastructure program might do the trick

The Trump administration in its fiscal year 2018 budget proposed virtually no new major federal land acquisitions. For instance the Forest Service budget request of May 23 calls for, "Reducing funding for lower priority activities in the National Forest System, such as new Federal land acquisitions; instead, the 2018 President's Budget focuses on maintaining existing forests and grasslands."

And the Interior Department budget request says, "The 2018 budget places a priority on Interior taking care of its current assets. Accordingly, the budget for land acquisition programs is \$54.0 million, \$129.1 million below 2017. A small amount of funding is maintained in each bureau for emergencies or acquisition of inholdings needed to improve management of established areas or to increase access."

In raw numbers the fiscal 2018 Trump budget request would slash the federal side of LWCF by \$138 million, from \$189 million in fiscal 2017 to \$51 million in fiscal 2018. The state side of LWCF would receive \$3 million, compared to \$110 million in fiscal 2017, but the budget would have Congress allocate an additional \$90 million from Gulf of Mexico offshore oil and gas royalties to the program, for a conditional total of \$93 million. That of course assumes Congress changes the law.

The Forest Service Forest Legacy program, which is financed by LWCF revenues, would receive no money, compared to \$62.3 million in fiscal 2017.

Here are the LWCF budget request numbers compared to fiscal 2017 appropriations:

LWCF FEDERAL ACQUISITION: The fiscal 2018 proposal recommends an appropriation of \$51 million compared to a fiscal 2017 appropriation of \$188.8 million.

By agency: the Bureau of Land Management (BLM) would receive \$3.6 million compared to \$31.4 million in fiscal 2017; the Fish and Wildlife Service (FWS) would receive \$17.1 million compared to \$50 million; the Park Service would receive \$23.3 million compared to \$42 million; and the Forest Service would receive \$7 million compared to \$54.4 million.

LWCF STATE: The fiscal 2018 proposal recommends an appropriation of \$3 million, compared to \$110 million in fiscal 2017. But the budget also proposes to boost state side revenues with \$90 million from Gulf of Mexico oil and gas royalties, for a total of \$93 million in fiscal 2018. Congress would have to approve legislation to provide the offshore oil and gas money, no sure thing.

The three bills to make LWCF permanent were introduced as follows: HR 502, Rep. Raul Grijalva (D-Ariz.) on January 12; S 569, Cantwell on March 8; and S 896, Sen. Richard Burr (R-N.C.) on April 7. Simpson's bill would authorize the program for seven years.

New state LWCF bill: Rep. Nanette Diaz Barragán (D-Calif.) and 24 cosponsors introduced legislation (HR 2943) June 21 to guarantee money for a subprogram of the state side of LWCF - the Outdoor Recreation Legacy Partnership (ORLP). That program offers competitive matching grants to states, local governments or Indian tribes to invest in parks and open spaces in urban areas. In fiscal 2017 Congress set aside \$12 million out of the state-side appropriation for ORLP grants.

The bill would tap 20 percent of Gulf of Mexico oil and gas royalties each year. "It is my hope that this designated federal funding will help set aside local green spaces, build neighborhood baseball fields and allow for park projects along our waterfronts," Barragán said.

Congress leaves town with little done on infrastructure

Congress headed out on a July 4 holiday today without taking any public steps toward approving a \$1 trillion infrastructure program. Nor has the Trump administration, which launched the initiative, begun filling in the details of its baseline recommendation.

With health care legislation, jumbo tax reform legislation and appropriations bills all piling up the House and Senate will be hard pressed to even introduce talking-point infrastructure legislation this year.

"Any kind of prognostication about how much Congress will get done this year is premature," said one outdoor veteran close to the Republican leadership.

All that is on the table is a bare-boned outline from President Trump to use \$200 billion of federal money produced by tax reform over the next 10 years. The rest would come from partnerships with private enterprise coordinated with state and local governments.

There are suggestions that much of the federal contribution will come simply from reducing line appropriations. For instance the fiscal year 2018 Forest Service budget request proposes a huge \$264 million decrease for infrastructure, decreasing from \$364 million to \$100 million. But Forest Service Chief Tom Tidwell has told Congress that lost \$264 million may be picked up by the \$1 trillion Trump program.

Separately, Rep. Mike Simpson (R-Idaho) introduced legislation (HR 2863) June 8 that would use \$450 million per year of Land and Water Conservation Fund money for federal land management agency maintenance. Simpson said the source of the money could be Trump's infrastructure program.

Until the Trump administration and its Republican allies figure out how to pay for the infrastructure program, there is likely to be little movement on Capitol Hill. Both the House Transportation Committee and the Senate Environment and Public Works Committees have held preliminary hearings, but that is all, at least publicly.

As most players know the problem with infrastructure programs is money. For decades various administrations and Congressional leaders from both parties have sought money for surface transportation, with limited success. On Dec. 4, 2015, President Obama did sign into law (PL 114-94) a surface transportation bill that provides outdoor programs with more than \$850 million per year for five years.

The House and Senate generated that legislation only after identifying "gimmicky" funding sources beyond the Highway Trust Fund, which is barely contributing half of the needed \$300 billion.

So now comes the Trump administration with its far broader and far more ambitious infrastructure program. Once again the Highway Trust Fund is expected to help out, but most observers believe Congress will rely mostly on tax reform revenues, such as repatriation from domestic companies operating overseas. And partnerships with private industry.

If and when an infrastructure bill is put together, it holds the potential for significant park and recreation assistance.

Forest Service maintenance: At a Senate Appropriations Committee hearing on the Forest Service budget June 7 chairman Lisa Murkowski (R-Alaska) and ranking Democrat Tom Udall (D-N.M.) chided chief Tom Tidwell for the proposed maintenance reduction.

Tidwell suggested that money for those projects may be in the offing in President Trump's infrastructure plan.

He said the \$100 million appropriation would be used "to maintain a workforce that will implement critical infrastructure maintenance projects on National Forest System lands and remain ready to implement additional improvements that could be funded through the Administration's infrastructure initiatives."

Simpson LWCF bill: Simpson introduced legislation (HR 2863) June 8 that would allocate \$450 million per year of Land and Water Conservation Fund (LWCF) money for federal land management agency maintenance. "The lands bill which is going to reauthorize the (LWCF) for seven year under mandatory funding, with half of it going to (LWCF) split between the state and federal

sides and half to be used for backlog maintenance for our parks and other land management agencies, \$450 million per year," said Simpson. "Hopefully, that would address maintenance backlog in these various agencies."

Before introducing HR 2863 Simpson said at a June 8 hearing of the House subcommittee on Interior appropriations, "We still have to find the offset for it, but we're hoping that maybe we can work that into the infrastructure package because it is infrastructure, the backlog is." The subcommittee was holding a hearing on the Interior Department's fiscal year 2018 budget request with Secretary Ryan Zinke.

Here are a couple of other contenders for infrastructure money.

NPS Legacy Act: Four senators led by Sen. John Portman (R-Ohio) introduced legislation (S 751) March 28 that would establish an ambitious fund that would guarantee as much as \$500 million per year for Park Service maintenance.

The money would be drawn from revenues from mineral development and would not be subject to appropriations. However, House and Senate Appropriations Committees would have to sign off on annual priority project lists submitted by NPS.

For fiscal years 2018, 2019 and 2020 the bill would allocate \$50 million per year for the NPS maintenance backlog.

For the next three fiscal years it would set aside \$150 million per year. For the next three fiscal years after that it would set aside \$250 million per year. And from fiscal 2027 through fiscal 2047 it would put up \$500 million per year.

Eighty percent of the money would be used for non-transportation projects and 20 percent for transportation. More than half of the total NPS maintenance backlog is made up of transportation projects, but a surface transportation law already allocates more than \$270 million per year to Park Service highway maintenance.

Recreation industry proposal: The recreation industry in February asked Congress to include a recreation title in any infrastructure legislation it develops this year, with an emphasis on private investment.

In a letter to the House Transportation Committee a new alliance of powered and human-powered recreation interests said, "The infrastructure needs of the nation's federally-managed lands are a national responsibility and deserve a key role in the Trump Administration/115th Congress Infrastructure Initiative."

The industry representatives, organized as the Outdoor Recreation Industry Roundtable (ORIR), is calling on Congress to:

- (1) embrace private investments such as those that have in the past paid for the construction of Park Service lodges and national forest ski resorts;
- (2) allocate infrastructure bank investments to recreation projects for lodging, marinas, campgrounds, etc.;
- (3) invest revenues from federal recreation fees in projects; and

(4) approve more public-private initiatives such as the Park Service Centennial Challenge program, which matches private contributions to the national parks with federal appropriations

ORIR members include the National Ski Areas Association, the National Marine Manufacturers Association, the International Snowmobile Manufacturers Association, the American Sportfishing Association and the Outdoor Industry Association, to name a few.

Notes

Grand Canyon bison bill in. Rep. Paul Gosar (R-Ariz.) introduced legislation (HR 3005) June 22 to authorize the hunting of a mixed breed of bison and cattle in Grand Canyon National Park. Gosar and environmentalists say a population of 600 of the "cattalos" is harming the park and, furthermore, is nonnative. Gosar said hunting would reduce the herd and protect the park at no cost. "This bill addresses immediate population concerns and provides a long-term management plan to reduce bison numbers in the Park to a healthy level," said Gosar. "By authorizing the immediate use of lethal and non-lethal methods, this bill will allow for the reduction of the bison herd, ensure its long-term sustainability and provide Grand Canyon National Park's resources a respite from degradation and a chance to rejuvenate and heal." In the last issue of the newsletter we reported that the environmental group Public Employees for Environmental Responsibility (PEER), which opposes any cattalo in the ark, is praising the Trump administration for attempting to remove the animals. In May the Park Service proposed a three-year plan to reduce the population from 600 to 200. But PEER says NPS should look beyond three years and eliminate the cattalo altogether.

FS water rights bill back. Rep. Scott Tipton (R-Colo.) and nine of his fellow House Republicans reintroduced legislation (HR 2929) June 20 that would forbid the Forest Service from attempting to transfer water rights to the federal government on renewal of a permit. In 2014 the Forest Service proposed such a directive for renewal of ski area permits, but after objections across the West the service withdrew it on Dec. 30, 2015. The service instead published a directive addressing sufficiency of water for ski areas. However, Tipton said the Forest Service may attempt to revisit the water rights directive some time in the future. "The Water Rights Protection Act is a sensible approach that would preserve the water rights of all water users and provide certainty that the federal government cannot take their rights in the future," he said.

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ANWR may be candidate for express reconciliation bill

If and when the House and Senate assemble a Congressional budget, they are 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.

Environmentalists are already attempting to rouse opposition, particularly among Republicans. On June 27 six House Republicans who oppose leasing wrote budget committee leaders and asked them to leave ANWR out of the budget resolution. A counterpart GOP Senate letter is reportedly in the works.

"We share your deep commitment to producing a fiscally-sound budget," the six wrote. "The effort to open the Arctic Refuge to development is a long-debated and highly controversial issue that we do not believe belongs in a responsible budgeting

process. The six were led by Reps. Brian Fitzpatrick (R-Pa.) and Dave Reichert (R-Wash.)

To publicize their opposition to leasing, the Alaska Wilderness League and The Wilderness Society last week held a press conference.

"Not only is (the 1.4 million-acre coastal plain) the biological heart of the Arctic National Wildlife Refuge, the refuge is also the crown jewel of the National Wildlife Refuge System," said Lydia Weiss, government relations director for The Wilderness Society.

Besides, said Weiss, a controversial ANWR provision would weigh down a reconciliation bill that is ticketed to carry out Republican tax reform.

Already, the greater budget process is engulfed with controversy as Republicans attempt to establish military and domestic spending caps. The House and Senate had hoped to begin work on a budget this month before the July 4 holiday but neither the House Budget Committee nor the Senate Budget Committee budged.

The budget reconciliation process is almost essential if Republican leaders hope to move their tax reform legislation this year, because it would require just 50 votes in the Senate, avoiding a filibuster. But under Congressional rules to use the reconciliation process the House and Senate first must agree on a fiscal year 2018 budget.

As we reported last month, Secretary of Interior Ryan Zinke joined up with the Alaska establishment on May 31 to launch an all-out campaign to open the North Slope of the state to energy development.

Zinke posted a two-headed Secretarial Order No. 3352 that (1) orders a replacement of a plan governing the National Petroleum Reserve in Alaska (NPRA) and (2) orders the development of a plan to assess oil and natural gas potential of both NPRA and the coastal plain of ANWR.

BLM has already leased 189 tracts in NPRA covering 1,372,688 acres but Congress has yet to authorize oil and gas leasing in the coastal plain of ANWR.

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

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

But ConocoPhillips Alaska is reportedly making progress on two major projects in NPRA - Greater Mooses Tooth 1 and 2. Greater Mooses Tooth-1 will reportedly be ready to begin production in December 2018 and BLM is working on an EIS supporting drilling in Greater Mooses Tooth-2.

ConocoPhillips announced January 13 that it has made a significant oil and gas find in Greater Mooses Tooth-1 from two drilled wells called the Willow Discovery. The two wells are about four miles apart. BLM and the Corps of Engineers took years to complete permitting for the landmark lease.

The first part of Zinke's order directs his assistants to produce a schedule for revising a 2013 Obama administration Integrated Activity Plan for NPRA. The order calls for "a schedule to effectuate the lawful review and development of a revised Integrated Activity Plan for the NPR-A that strikes an appropriate statutory

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balance of promoting development while protecting surface resources."

The second part directs Zinke's assistants to put together a plan for assessing oil and gas reserves in both NPRA and ANWR. It tells them to submit to his office within 21 days "a joint plan for updating current assessments of undiscovered, technically recoverable oil and natural gas resources of Alaska's North Slope, focusing on Federal lands including the NPR-A and the Section 1002 Area. The joint plan shall include consideration of new geological and geophysical data that has become available since the last assessments, as well as potential for reprocessing existing geological and geophysical data."

The starting-point of the ANWR debate in the Senate is a bill (S 49) from Sen. Lisa Murkowski (R-Alaska) that would authorize leasing in the 1.4 million-acre coastal plain. The bill, say supporters, would limit maximum surface acreage covered in connection with the leasing program by production and support facilities, including airstrips and any areas covered by gravel berms or piers for support of pipelines, does not exceed 2,000 acres on the Coastal Plain."

But the Alaska Wilderness League and The Wilderness Society strenuously disagree. The league has posted at its website a position paper saying the 2,000-acre impact cap is misleading.

"The 2,000-acre limitation does not include all necessary oil infrastructure or operations," says the paper. "It omits gravel mines, roads, seismic or other exploration operations, air and noise pollution, or even pipelines (except their posts). Development would require these pieces of infrastructure to spread across the entire Coastal Plain, since the U.S. Geological Survey estimates that oil located in the Refuge's Coastal Plain is scattered in small pockets throughout its 1.5 million acres."

The league's paper is available at:
<http://www.alaskawild.org/wp-content/uploads/2017/06/2000-Acre-Hoax-13117.pdf>.

House committee reapproves wildfire/timber sale measure

The House Natural Resources Committee once again June 27 approved legislation by a 20-to-12 vote that (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 (HR 2936) from Rep. Bruce Westerman (R-Ark.) would in a half-dozen ways speed wildfire projects by reducing time 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.)

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 would not improve forest health. "It is a timber industry wish list dressed up as legislation that will not improve forest health," he said.

Grijalva said he objected to the bill because it "undermines core provisions of the National Environmental Protection Act (NEPA) intended to ensure forest conservation; expands the use of categorical exclusions under NEPA to allow clear cutting in certain forests without any sort of environmental assessment or review; and limits or prohibits judicial review of certain activities."

A senior policy analyst with The Wilderness Society, Mike Anderson, agreed with Grijalva. "It ignores science necessary to guide restoration of healthy forests and excludes the public from participating in decisions about forests close to where they live and play," he said. "This draft legislation is a clear-cut disaster for America's forests, wildlife, fishing streams and drinking water."

Separately, 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.

"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.

The House approved a predecessor to the Westerman bill twice in the last Congress and the Senate Agriculture Committee approved it once.

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

Although the fiscal year 2018 administration budget request does not propose a "disaster cap" to take spending on huge wildfires out of regular appropriations, Tidwell said the administration is ready to talk turkey. That repeats the promise of his boss Secretary of Agriculture Sonny Perdue to the House last week.

For wildfire management the Trump fiscal 2018 budget request approximates a fiscal 2017 final appropriations law (PL 115-31 of May 5). It requests \$2.849 billion for Forest Service wildfire management compared to a fiscal 2017 appropriation of \$2.8 billion.

For the Interior Department the administration requested \$874 million for wildfire management compared to a fiscal 2017 appropriation of \$943 million.

The Westerman bill would accelerate timber harvests of burned trees, simplify environmental processing by expanding the use of categorical exclusions, and speed planning.

GAO says fossil royalty hike may be double-edged sword

As the Department of Interior weighs a new overall policy for setting royalties for fossil fuel energy, the Government Accountability Office (GAO) weighed in June 20 with an assessment of the impact of higher royalties.

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GAO came to a mixed conclusion based on several independent studies - higher royalties could lead to more income for the federal government but they could also lead to lower production, and less income to the government.

In the big picture the GAO report seemed to guesstimate that a higher oil and gas royalty would have minimal impacts on production while producing more income for the government. However, a higher royalty on coal would have the opposite impact of discouraging development.

For the moment the Interior Department is concentrating on a rewrite of royalty valuation rules for coal, oil and gas, and other minerals produced from the public lands. The department's immediate target is an Obama administration rule of July 1, 2006, that sought to replace an old standard that applied (and may apply again) a series of benchmarks to set the royalty price. In the Obama rule ONRR would begin with a first affiliated sales price, followed by index prices.

On April 4 the Interior Department formally proposed outright repeal of the Obama administration oil, gas and coal royalty rule. The department had already delayed implementation of the rule in February.

The States of California and New Mexico have filed a lawsuit against the delay in implementation of the Obama rule. They argue, as have Congressional Democrats, that ONRR has no authority to delay implementation of a regulation once it has been instituted.

At a June 20 hearing of the Senate Energy Committee on the Interior Department's fiscal year 2018 budget request ranking panel Democrat Maria Cantwell (D-Wash.) complained of favoritism of industry. "I find the budget is so focused on the oil and natural gas aspect of revenue that I think that you are neglecting the fact that the outdoor economy generates \$887 billion a year," she said.

Buried in the fiscal 2018 budget request is a bit of a surprise - the possible establishment of a royalty on **hard rock** minerals, a surprise because President Trump is considered a friend of industry.

Says the Interior department budget request, "(A) long-standing challenge is to provide a fair return to taxpayers for the use of their natural resources, without discouraging development. To meet this challenge and prepare for the President's 2019 budget, Interior will conduct a study to evaluate the production and development of hardrock minerals from Federal lands. In carrying out this study, Interior will include an analysis of revenue recovered by other entities, including other countries, which permit mining on their land."

Indeed, almost all countries and states impose royalties on hard rock minerals, including 12 western states, GAO said.

Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) gently urged Secretary of Interior Ryan Zinke to go easy on a hard rock royalty for fear it would discourage development.

"I also appreciate the administration taking a deliberative and constructive approach on a potential royalty for hardrock minerals," she said. "I'll be interested to see the results of the study that the Department of the Interior is now conducting. But with our mineral security in a perilous state, and our nation importing at least 50 percent of 50 different minerals, our first goal must be to do no harm. And that's what exactly what I see here."

Any imposition of a royalty on hard rock minerals would take Congressional action and with Republican majorities in both Houses sympathetic to industry that is not likely to happen, viz. Murkowski's remarks.

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The possibility of changes in oil, gas and coal royalties paints a more complex picture because the Office of Natural Resources Revenue may develop a new royalty valuation system (if it doesn't just keep Bush administration rules in place.)

ONRR has commissioned a new Royalty Policy Committee for advice but has yet to name members that are to be divided up among six state officials, four Indian representatives, six industry representatives, and four representatives from academia and public interest groups.

In its report, *OIL, GAS, AND COAL ROYALTIES: Raising Federal Rates Could Decrease Production on Federal Lands but Increase Federal Revenue*, GAO said analyses it examined forecast an increase in revenues from higher royalties.

"The studies we reviewed for oil and gas estimate that raising the federal royalty rate could increase net federal revenue between \$5 million and \$38 million per year (equivalent to around 0.7 percent to around 5.2 percent of net oil and gas royalties in fiscal year 2016)," GAO held.

GAO said a royalty increase from 12.5 percent to 18.75 percent might have a minimal impact on production. "We identified two studies – one by the (Congressional Budget Office) and one by Enegis, LLC – that modeled the effects of different policy scenarios on oil and gas production on federal lands," said GAO. "Both studies suggested that a higher royalty rate could decrease production on federal lands by either a small amount or not at all."

As for coal GAO again said an increase in royalties "could lead to an increase in federal revenues" ranging up to \$730 million per year.

But, GAO said, it examined two studies that forecast a significant reduction in production from a higher royalty. GAO concluded, "BLM officials stated that an operator can justify a capital investment to produce coal on federal lands if the potential for revenue outweighs the cost of production. According to officials, increasing the royalty rate would add to the cost of production, which could cause an operator to bypass federal coal, thus causing the government to miss out on revenue."

The GAO report is available at:
<http://www.gao.gov/products/GAO-17-540>.

Trump orders delisting of Yellowstone grizzly under ESA

Following the lead of the Obama administration, the Trump administration said June 22 it will delist the Yellowstone population of the grizzly bear under the Endangered Species Act (ESA).

Absent a court order – and one will surely be requested – management of the Yellowstone bear will be turned over to the States of Wyoming, Montana and Idaho. The grizzlies that stay within the borders of Yellowstone National Park will be managed by the Park Service and will be subject to state rules only if they leave the park.

Secretary of Interior Ryan Zinke described the recovery of the Yellowstone grizzly as a major triumph. "This achievement stands as one of America's great conservation successes; the culmination of decades of hard work and dedication on the part of the state, tribal, federal and private partners. As a Montanan, I'm proud of what we've achieved together," he said.

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2013 to delist the Yellowstone grizzly, was equally enthusiastic. "The Interagency Grizzly Bear Study Team, which includes the FWS and Wyoming Game and Fish, must be commended for its years of great work," he said. "Thanks to the team effort, grizzlies will be managed appropriately by our experts at Game and Fish."

Some but not all conservation groups were upset with the administration decision, which goes into effect in 60 days. Defenders of Wildlife said in the end it doesn't trust Idaho, Montana and Wyoming and foreshadowed a lawsuit. Defenders has had a separate running battle with those states over management of the delisted northern gray wolf.

Said Jamie Rappaport Clark, president of Defenders, "Defenders of Wildlife is going through the (grizzly) delisting rule with a fine-toothed comb, and we will hold federal and state wildlife and land management agencies accountable for strong stewardship and management of grizzly bears and their habitat post delisting."

But some conservation groups such as the National Wildlife Federation are on board with the delisting. "The purpose of the Endangered Species Act is to create self-sustaining populations of species in the wild. This has happened – we are now seeing grizzlies in places where they haven't been recorded for a century," said Tom France, regional executive director of the Federation's Northern Rockies Regional Center. "We should all celebrate this success."

House Natural Resources Committee Chairman Rob Bishop (R-Utah) said the great length of time (24 years) the grizzly was listed under the ESA argues for turning over more responsibility for the management of species to state governments. "Recovery and delisting – and responsible state management that will prevent listings in the first place – must be the goals of ESA, not lifetime sentences on the endangered list fraught with frivolous litigation," he said.

His committee counterpart, ranking Democrat Raúl M. Grijalva (D-Ariz.), joined several Indian tribal leaders in criticizing the FWS decision. "The Interior Department has snatched defeat from the jaws of victory by delisting Yellowstone grizzlies prematurely and without adequate tribal consultation or safeguards to ensure the bears' long-term survival," Grijalva said.

He added, "Delisting the grizzly ignores the objections of scientists and tribal leaders who have raised concerns over the irreparable harm to Tribal sovereignty and self-determination throughout the delisting process."

FWS published a grizzly bear recovery plan in 1993. FWS first delisted the Yellowstone population in 2007 but a federal judge vacated that action. In March 2016 the Obama administration repropose delisting.

The population of Yellowstone grizzlies has increased from 136 in 1975 to an estimated 700 today. That may even open the way for the states to hold hunting seasons.

Grizzly bears once roamed from Alaska to Minnesota to Mexico. A population of 1,000 grizzlies in northern Idaho and Montana will remain listed under the ESA.

BLM's fracking rule may be on way to suspension

The Interior Department is apparently on track to suspend a hydraulic fracturing rule of March 2015 while it prepares a new regulation, presumably one less onerous to the oil and gas industry.

A federal court in June 2016 had already blocked implementation of the rule so the 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."

The White House has not completed a review of the proposal so the substance of any rule has not been published. Still, the title is a dead giveaway.

The Sierra Club protested the June 20 posting. "With today's decision, Trump is making it clear that he thinks we need more fracking operations contaminating our drinking water, causing earthquakes, and polluting our environment, not fewer," said Kelly Martin, deputy director of the Sierra Club Beyond Dirty Fuels campaign. "The Sierra Club will continue to defend this rule, ensuring that our publicly-owned lands remain protected from fracking and Donald Trump."

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.

Unlike several other department energy regulations, the hydraulic fracturing rule was too old to come under the Congressional repeal authority established by the Congressional Review Act.

But there are no guarantees. In a stunning reversal for the administration the Senate May 10 backed an Obama administration regulation governing oil and gas methane emissions from the public lands. (*See following article.*)

The Senate by a narrow 51-to-49 vote refused to consider a resolution (HJ Res 36) that would have paved the way for the repeal of the BLM rule of Nov. 15, 2016. The House had approved the resolution on February 23 by a 221-to-191 vote and, if it had come to President Trump, he was sure to sign it.

Again, a federal court has already issued an injunction against the hydraulic fracturing rule. On June 21, 2016, U.S. District Court Judge Scott W. Skavdahl in Wyoming blocked implementation of the regulation, saying BLM had no authority to issue the regulation, period. He said Congress had forbidden both BLM and EPA from regulating non-diesel hydraulic fracturing.

That case is now before the 10th U.S. Circuit Court of Appeals and on March 16 the Department of Justice told the appellate court it would not defend the rule and that the Interior Department intends to write a new rule.

On March 26, 2015, BLM issued the rule that would have companies (1) validate well integrity and cement barriers, (2) disclose chemicals used in fracking shortly after completing operations, (3) follow stiffer standards on storage of waste fluids and (4) submit more detailed information on the geology and location of existing wells.

A March 28 executive order from President Trump and the March 29 secretarial order from Zinke direct the Interior Department and BLM to get rid of the rule. The Trump order tells the Interior Department to review the rule to identify "burdensome" regulations and, if deemed necessary, to "as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding those rules."

Zinke sort of commits to implementing old methane rule

Although BLM has postponed implementation of parts of a methane emissions rule for two years, Secretary of Interior Ryan Zinke June 20 said he would keep the rest of the rule in place until a new regulation could be written.

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On June 14 BLM had delayed the implementation of ten or so provisions of the Nov. 26, 2016, Obama administration rule.

On June 20 ranking Senate Energy Committee Democrat Maria Cantwell told Zinke at a hearing on the Interior Department's fiscal year 2018 budget, "You say you are suspending that rule, but if you want to suspend that rule you have to go through the Administrative Procedures Act. And the Administrative Procedures Act is about proposing a change and then hearing public comment on it before it is finalized. So are you telling me that during this process you are going to make sure the current law is implemented?"

To which Zinke replied, "We are looking at how to implement. It's a little problematic exactly on the law, which was part of the issue of the methane law itself - why it was changed. My intention, so you know it, is we are going to rewrite the rule and go through the complete public process on it."

Cantwell tried again, "You are not going to spend time for the next six months dragging your feet on implementation, are you?" Zinke replied, "I don't drag my feet, I don't operate that way. As far as the law goes I support the law as we all should."

Nevertheless, BLM has suspended portions of the rule dealing with leakage detection, storage tanks and pneumatic devices. On June 19 Cantwell wrote Zinke questioning BLM's authority under the Administration Procedures Act to do so. Cantwell said that the law only allows suspension of rules that have not yet reached an effective date.

She wrote, "Section 705 of the APA authorizes agencies to postpone the effective date of regulations pending judicial review. We are unaware of instances in which an agency has attempted to suspend parts of a regulation under section 705 of the APA after the effective date of the regulation as a whole."

She continued, "Apart from our disagreements with some of your policies, we are troubled that your agency continues to seek out new ways to circumvent administrative law. The suspension of parts of the Methane Waste and Prevention Rule seems particularly brazen given that on May 10 the Senate rejected a Congressional Review Act resolution to repeal the Rule."

In a June 15 *Federal Register* notice BLM explained why it was suspending the provisions. "While the BLM believes the Waste Prevention Rule was properly promulgated, the petitioners have raised serious questions concerning the validity of certain provisions of the Rule," the bureau said. "Given this legal uncertainty, operators should not be required to expend substantial time and resources to comply with regulatory requirements that may prove short-lived as a result of pending litigation or the administrative review that is already under way."

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 Administrative Procedures Act that authorizes agencies to postpone the implementation of new rules when petitioners show good cause.

In this instance BLM said June 15 the Western Energy Alliance had justified the delay of the bureau's 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.

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.

There is already litigation underway. 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 April 20 EPA stayed a deadline for compliance with its rule for 90 days beyond a June 3, 2017, deadline. Six national environmental groups immediately asked a federal court June 5 in a new lawsuit to force EPA to implement the rule ASAP.

The environmental groups, including the Sierra Club, argued to the U.S. Court of Appeals for the District of Columbia that the Administrative Procedures Act does not allow EPA to postpone implementation of its rule.

In a surprise reversal for the Trump administration the Senate May 10 backed the Obama methane rule by a narrow 51-to-49 vote. As a result it first appeared that opponents of the BLM rule faced a laborious administrative rewrite/removal of the regulation, or a fight in the federal courts. But the June 15 delay may give BLM time to rewrite or revoke the November 2016 BLM rule.

Dems fault monument review; Zinke drops hints

They hold few cards, but Senate Democrats nonetheless are objecting strongly to the Trump administration's review of major national monuments. The review may lead to a reduction in size or outright revocation of the monuments.

The critics are particularly exercised about a recommendation by Secretary of Interior Ryan Zinke to President Trump that he reduce the size of the Bears Ears National Monument in southern Utah by an unspecified amount.

Ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.) complained at a hearing of the Senate Energy Committee June 20 on the Interior Department budget, "It took the administration 100 days to declare war on 100 years of bipartisan conservation. The most glaring example is an ongoing attack on the Antiquities Act in general and Bears Ears National Monument in particular. Trying to rollback Bears Ears is a taxpayer waste, especially at a time when the Interior Department is proposing significant staff cutbacks."

But she didn't offer a legislative or legal strategy to stop or reverse any final administration action.

Zinke offered a soft clue at the hearing about his review of an 87,500-acre Katahdin Woods and Waters National Monument in Maine. He told Sen. Angus King (I-Me.) that he would take an action that King would be "enthusiastic" about. King notably supports the designation of the monument, managed by the National Park Service.

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Even if Democratic critics in Congress don't have the votes to stop any moves by Trump, their environmentalist allies promise legal action. As Heidi McIntosh, Earthjustice's managing attorney for the Rocky Mountains, said, "If President Trump follows Secretary Zinke's recommendation to shrink the boundaries of these cherished lands, we will see him in court."

On June 12 Zinke recommended that President Trump reduce the size of the Bears Ears National Monument in southern Utah, touching off a political firestorm.

As part of an administration-wide review of the designation of 27 large national monuments, Zinke told the President, "I've submitted my 45-day interim report to President Trump expressing my belief that the monument needs to be right-sized and that it is absolutely critical that an appropriate part be co-managed by the Tribal nations. I also recommend that Congress take action to protect some areas."

At the Senate committee hearing Zinke offered a mixed reading of the administration's plans for Bears Ears. "There is no doubt there are some antiquities there that are well deserving of federal protection," he said. "But what I didn't see, I didn't see any sign(age), I didn't see any bathrooms, I didn't see any trailheads, I didn't see any parking lots."

Because of that, he said, "If we are going to assume the responsibility of preserving something, we also have to assume the responsibility to make sure we preserve it."

The following day, June 21, when Zinke appeared before the Senate subcommittee on Interior appropriations on his budget, Sen. Tom Udall (D-N.M.) faulted Zinke's trip to southern Utah in early May. He said the secretary spent most of his time with monument opponents.

"I'm very disappointed with your decision to spend only one hour with tribal members while other stakeholders received substantially more of your time," Udall said. "I'm also disappointed that your report ignored most of the 1 million public comments."

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 Dec. 28, 2016, designation of the monument by President Obama.

Said House Natural Resources Committee Chairman Rob Bishop (R-Utah, "This is positive news for the State of Utah and local communities affected by the Bears Ears monument designation. Anyone with honest intentions recognizes that local input should matter when the federal executive makes a decision of this magnitude. I commend Secretary Zinke for actually listening to local voices on the issue and conducting a thoughtful and deliberative review to help inform the President's ultimate decision."

President Trump started the monument review ball rolling April 26 when he signed an executive order directing the Interior Department to review the designation of 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.

The 100,000-acre limit applies to 21 national monuments in the West, plus an 87,500-acre Katahdin Woods and Waters National Monument in Maine and five huge marine monuments. That's 27 total.

Zinke went to Maine June 14 to meet with critics and supporters of the Katahdin national monument, which is managed by the Park Service.

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The public comment period on Bears Ears ended May 26. Trump's executive order asked for a recommendation from Zinke by June 10. The recommendation was submitted June 12. The comment period for the other 26 monuments runs through July 9.

Zinke suggests line offices won't be hurt by cutbacks

Amid rumors of seismic shifts in natural resources management by the Trump administration, Secretary of Interior Ryan Zinke said June 20 that he anticipates few reductions in spending for *individual* national parks.

Asked by Sen. Angus (I-Me.) about the possibility of reductions in park operations because of a proposed department-wide reduction of 4,000 full-time employees, Zinke said at a hearing on his budget held by the Senate Energy Committee, "Individually, very doubtful. What I've done in headquarters is impose a hiring freeze and in Denver so we can push bodies to where they belong out front to make sure we shore up and expand the frontline."

He reaffirmed, "Our goal is to make sure the parks not only were whole but to give them more assets in the frontline and reduce the middle and upper management."

As part of the Trump administration's ambitious government-wide program to reduce federal spending, the Interior Department budget would reduce employee levels by six percent, from 64,000 to 60,000 full-time equivalents. For the Park Service alone the budget would take away 1,242 jobs, reducing the number of full-time equivalent employees from 19,510 to 18,268.

In an early move Zinke has *in camera* reportedly begun reassigning as many as 50 people, many of them from the Senior Executive Service (SES). At a hearing of the Senate subcommittee on Interior appropriations June 21 with Zinke, Sen. Tom Udall (D-N.M.) objected to mass shifts of SESers. (SES employees are senior executives who can be moved around both within agencies and among agencies.)

"It is my understanding that the scale of these changes is virtually without precedent," Udall said. "Staff members appear to have been transferred without a clear plan regarding how or whether their current positions will be filled." He said the transfers may be carried out as soon as the end of June, today.

Udall zeroed in on the possible shift of New Mexico BLM State Director Amy Leuders to the Fish and Wildlife Service. "I mentioned the BLM State Director Amy Leuders as an example of these staff members whose work affects my state on a day-to-day basis," he said. "Amy has served as our BLM state director for the past two years. She has been incredibly engaged and responsive and I quite frankly don't want New Mexico to lose her."

In addition *E&E News* reported June 28 that Leuders is one of three BLM state directors the department is removing as part of the overall reorganization. The other two are Bud Cribley in Alaska and Ruth Welch in Colorado.

Despite the personnel moves to the field contemplated by Zinke, the Trump administration still hasn't nominated agency directors. However, one new rumor anticipates the nomination of Wyoming attorney Karen Budd-Falen as BLM director.

Budd-Falen is a veteran public lands attorney who has worked in the Interior Department and for the law firm Mountain States Legal Foundation, as well as her own law firm. Utah House Rules Chairman Michael E. Noel (R) had been high on the list of possible nominees for BLM director, but that possibility has reportedly faded.

Also among the missing at Interior is a deputy secretary. The Senate Energy Committee June 6 approved the nomination of David Bernhardt to the job by a 14-to-9

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vote. That fairly close vote promises a fierce floor fight on the nomination.

On May 26 Zinke named 18 acting staff members, including James E. Cason, who has been serving as associate deputy secretary since January, to continue in that post.

Zinke summed up his position on the reorganization at the June 20 Senate Energy Committee hearing on his budget. "It is clear that the frontline is too thin," he said. "My assessment of the (department) is we have too many in middle management and above and too few in the parks. So we are looking at going through a process in coordination with you on how to push more assets to the frontline. Every previous cost-cutting measure has always regionalized assets up and we found ourselves too short where (personnel) are needed in the parks."

Here are the acting heads of natural resource agencies and a few names being circulated as possible directors/chiefs:

BLM: Former BLM Eastern States Director Michael Nedd is serving as acting director. Utah's Noel had been high on the list of possible nominees for director, but that possibility has faded. Budd-Falen is a new favorite.

Forest Service: Tom Tidwell, long-time chief during the Obama administration, is expected to stay on for the immediate future until the Department of Agriculture gets a deputy secretary for natural resources.

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

FWS: Jim Kurth has been serving as acting director, succeeding former director Dan Ashe. Kurth had served as the service's deputy director for operations for the last two years.

At the Department of Agriculture the Trump administration has yet to nominate an under secretary for Natural Resources but on June 16 Secretary of Agriculture Sonny Perdue named Dan Jiron as deputy under secretary for Natural Resources. Jiron is well known in the public lands field as a recent associate chief of the Forest Service and for numerous recent high-level field positions.

In a side issue Rep. Scott Tipton (R-Colo.) and Sen. Cory Gardner (R-Colo.) introduced legislation (HR 2287, S 1007) in May that would authorize the transfer of BLM's headquarters from Washington, D.C., to one of 12 western states. The bills would allow the secretary of Interior to choose a new location.

Gardner in the past has suggested a transfer of the headquarters to Grand Junction, Colo. "Moving BLM's headquarters West is a commonsense solution that Coloradans from across the political spectrum support," he said.

But an alliance of BLM retirees says the BLM headquarters should remain in Washington, D.C. The Public Lands Foundation says BLM employees need to be in Washington to meet with Congress and other players.

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

demands of any administration, Congress, agency, community and partner."

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: Coal lease modification.

BLM decision: BLM will (1) deny a request for a determination that a coal-mining unit was mined out and (2) approve advanced royalties in the mining unit.

Appellant lessee: BLM erred because (1) the unit was mined out and (2) the advanced royalties were excessive.

Initial IBLA decision: Affirmed BLM on both counts.

Appellant lessee: New information proves the unit was mined out and the advanced royalties were excessive.

IBLA decision: Affirmed BLM.

Case identification: *AMCA Coal Leasing, Inc., et al (on reconsideration)*, 190 IBLA 271.

Decided June 20, 2017. Ten pages. Motion for reconsideration of *AMCA Coal Leasing, Inc.*, 187 IBLA 57 (2016), which affirmed decisions by the Utah State Office of BLM, rejecting a proposed modification to a Resource Recovery and Protection Plan for the Aberdeen Mine and identifying recoverable coal reserves for calculating advance royalties to be paid in lieu of continued operation of the Aberdeen Logical Mining Unit. UTU 73865.

IBLA argument: IBLA Administrative Judge James K. Jackson affirmed on all counts a BLM decision and a previous IBLA decision involving a coal lease logical mining unit (LMU). In this case the appellant coal mining companies asked the board to reconsider a January 2016 IBLA decision that had held that (1) the LMU was not mined out and (2) the unit participants owed advance royalties in lieu of operations. Jackson said the new information on the mined out LMU consisted of an internal, draft BLM memo to that effect. But he said that memo was simply a draft offering the state director possible options, not a hard recommendation. Jackson said the appellants had "repeatedly" said there were reserves in the LMU and the internal BLM draft had nothing to do with the amount of reserves. On the second count of advanced royalties the appellants argued that BLM should update the amount of advanced royalties the companies are paying "in lieu of continued operations." But Jackson said the royalties must be paid based on the existing recovery plan and until that plan is revised the appellants are stuck.

Notes

EPA proposes wetlands rule revocation. EPA and the Corps of Engineers proposed June 27 to rescind an Obama administration rule governing permits to disturb wetlands under the Clean Water Act. The agencies are taking two steps: First, they proposed revocation of the Obama rule, which would leave a pre-existing Bush administration rule in place. The competing rules govern what navigable waters should come under a wetlands permitting scheme. Second, the agencies said they are beginning "deliberations" on a proposed rule that might redefine waters of the United States that should come under the navigable waters rubric. For the immediate future the twin proposals would have little impact because the Sixth U.S. Court of Appeals has already stayed the 2015 rule. The hard rock mining industry welcomed the proposals. "Our members are greatly encouraged to see the Trump administration undo this unnecessary rule and return states' authority over water regulation and regulatory certainty that is crucial to a prosperous American mining industry," said Laura Skaer, executive director of the American Exploration & Mining Association. "Mining is ready to get back to work and grow communities. Ending this deeply flawed rule allows us to do just that." The Obama rule, if implemented, would greatly expand the definition of navigable waters. A starting point about EPA's plans is available at: <https://www.epa.gov/newsreleases/epa-us-army-move-rescind-2015-waters-us>.

The FY 2018 budget situation. The House and Senate Budget Committees at press time had yet to produce fiscal year 2018 budget recommendations, as Republicans and Democrats continue a stalemate over topline spending. The budget this year is supposed to do two main things: (1) set spending caps for appropriators, as usual,

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and (2) open the way for a reconciliation bill later this year for substantive programs that is filibuster-proof in the Senate. A reconciliation bill might include such things as authorization of oil and gas development in the coastal plain of the Arctic National Wildlife Refuge (*see related article page one*). If the House and Senate can't produce a new budget, theoretically a Budget Control Act of 2011 would govern topline spending, effectively maintaining existing levels. But President Trump wants to shift things around with a \$54 billion boost for the military combined with a comparable decrease in domestic spending. And Senate Democrats June 26 called on their Senate Republican counterparts to actually increase spending across-the-board in a new budget. Despite the lack of a budget the House Appropriations Committee has begun to move quickly on several appropriations bills. On June 28 the subcommittee on Energy and Water approved its bill with \$3.65 billion more than the Trump administration requested, or a total of \$37.56 billion. That's just \$209 million below the fiscal 2017 level. On June 29 the committee approved a Legislative Affairs bill with \$5 million more than fiscal 2017. Again, appropriators acted on the legislation without guidance from a budget.

DoI touts O&G sale results. The most recent round of BLM oil and gas lease sales were of course prepared by the Obama administration under former Secretary of Interior Sally Jewell. Nevertheless, the Trump administration June 26 took credit for producing more than \$8 million in bonus bids in sales in a half-dozen states. BLM said the sales were, "In keeping with the Administration's goals of promoting America's energy independence." However, comparable sales from the states of Colorado, Montana, New Mexico, Utah and Wyoming a year ago produced almost \$11 million in bonus bids. But of course the Trump administration's Interior Department has not had time to put its imprint on oil and gas lease sales. In addition interest in sales is generated to a great extent by the market.

King Cove road possible? The Interior Department and House Republicans are working in tandem to build a road in Alaska linking the communities of Cold Bay and King Cove, a proposal that divided the Alaska Congressional delegation and the Obama administration for eight years. The road would provide transportation for ill people in Cold Bay to medical facilities in King Cove. The House Natural Resources Committee June 27 approved long-standing legislation (HR 218) that would authorize a land exchange that would open the way for a road across a wilderness area in the Izembek National Wildlife Refuge. Rep. Don Young (R-Alaska) is the bill sponsor. The Obama administration refused to support such a road. Separately, Secretary of Interior Ryan Zinke said June 26 that the Fish and Wildlife Service has approved a permit for the Alaska Department of Transportation to attempt to identify a best route for a road.

Zinke personally touts PILT, however. Secretary of Interior Ryan Zinke offered effusive praise June 26 to the payments-in-lieu of taxes (PILT) program in announcing fiscal year 2017 distributions of \$465 million. Zinke didn't mention that the Trump administration has proposed a \$68 million decrease for the program in fiscal 2018. "As a kid who grew up in northwest Montana and whose sons graduated from the same high school as I did, I know how important PILT payments are to local communities that have Federal lands," said Zinke at a meeting with county officials. "These investments are one of the ways the federal government is fulfilling its role of being a good land manager and good neighbor to local communities."

SRS-PILT problems continue. Although western Congressmen from both parties continue to campaign for assistance to counties dependent on a share of revenues from public lands operations, little has been done. The payments-in-lieu of taxes (PILT) program is in better shape than a Secure Rural Schools (SRS) program, having received \$465 million in fiscal year 2017 appropriations and being in for \$397 million in fiscal 2018 in the Trump administration budget request. Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) sees the Trump request as a positive, even though it is 12 percent below the 2017 level. "The administration's proposal to extend PILT, the Payment in Lieu of Taxes program, is another good sign."

she told Secretary of Interior Ryan Zinke at a June 20 hearing on the Interior Department budget request. But Murkowski, who also chairs the Senate subcommittee on Interior Appropriations, said the money should be guaranteed outside her appropriations bill because PILT was eating up more than \$400 million per year. "I would note, however, that PILT should be mandatory. And it should not be subject to an across-the-board cut—not unless the federal government is willing to divest some of its lands, and allow local governments to find alternative means to recoup their lost property tax base," she said. The other program, Secure Rural Schools (SRS), is not in as good shape. SRS was last authorized in fiscal year 2015, with \$300 million in payments allocated in March of 2016, and hasn't been extended since. Sen. Orrin Hatch (R-Utah) and Rep. Cathy McMorris Rodgers (R-Wash.) have introduced legislation (S 1027, HR 2340) to extend the program for two years.

Arizona cooper mine reversal bill back. Rep. Raúl M. Grijalva (D-N.J.) and Sen. Bernie Sanders (I-Vt.) June 15 introduced long-shot legislation (HR 2915, S 1375) to repeal a December 2014 law authorizing the third largest undeveloped copper resource in the world. Grijalva and Sanders say the law, which would authorize a land exchange with the miner, Resolution Copper Mining, LLC, would damage Tonto National Forest land that is sacred to Native Americans. Said Sanders, "It is wrong that a backroom deal in Washington could lead to the destruction of a sacred area that is so important to so many. We must defend the hundreds of thousands of Americans who are standing in opposition to this giveaway of our natural resources to foreign corporations." Congress approved the land exchange in Section 3033 of the public lands portion of a giant omnibus public lands bill. President Obama signed it into law Dec. 19, 2014, as PL 113-291. The exchange would send 2,422 acres of federal land in the Tonto National Forest to Resolution Copper in return for 5,344 acres held by the company in five counties in Arizona. The mine is a long way from becoming a fait accompli. The forest is still working on the EIS to authorize the exchange and Rio Tinto managing director Nigel Steward told Congress March 21 the project is "years away from a final permit." Rio Tinto is a partial owner of the project and Steward said the company has spent \$1.3 billion on the project to date. Of note three Republicans cosponsored the House bill objecting to the project - Tom Cole (R-Okla.), Markwayne Mullin (R-Okla.) and Walter B. Jones (R-N.C.)

Boxscore of Legislation

Fiscal year 2018 appropriations

No Interior bill yet. President Trump submitted his budget request May 23. Would reduce spending for virtually all public lands programs.

Fiscal year 2017 appropriations (full year)

HR 244 (Cook). President Trump signed into law May 5 as PL 115-31. Appropriates roughly same amounts of money as fiscal 2016. Was stripped of riders.

Rule restrictions

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

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

(*Specific rules*) HJ Res 36 (Bishop), HJ Res 44 (Cheney), HJ Res 35 (Young). President Trump signed into law March 27 (PL 115-12) a resolution reversing a BLM planning rule (HJ Res 44). Trump signed into law April 3 a resolution (PL 115-20) reversing a FWS hunting rule in Alaska (HJ Res 35). The Senate defeated 51-to-49 a resolution that would have reversed a BLM methane emissions rule (HJ Res 36). The time has expired for Congress to act on other resolutions to reverse Obama energy regulations.

June 30, 2017**Page 17****Federal land transfers**

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

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

National monument restrictions

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

New national monuments

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

Wildfire

HR 2862 (Simpson), HR 2936 (Westerman). Simpson introduced June 8. House committee approved HR 2936 June 27. Both would transfer emergency fire spending to disaster category; Westerman would also accelerate timber sales.

Greater sage-grouse

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

Wolf in Wyoming

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

Critical minerals

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

Energy policy limitations

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

County assistance

S 1027 (Hatch) HR 2340 (Rodgers). Hatch, Rodgers introduced May 3. Would reauthorize Secure Rural Schools program for two years.

Arctic National Wildlife Refuge (development)

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

Arctic National Wildlife Refuge (wilderness)

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

BLM foundation

HR 1668 (Hice) HR 244 (Cook). President Trump signed the fiscal 2017 appropriations bill into law May 5 as PL 115-31 that establishes a BLM foundation, like those supporting NPS, FWS and FS.

Federal Parks & Rec

addendum to Public Lands News

June 30, 2017

- * Zinke, Alexander promote LWCF; budget not so rosy
- * Congress has done little yet on infrastructure
- * Notes
- * Monuments, personnel (See Public Lands News articles)

Zinke, Alexander promote LWCF, but budget noncommittal

Secretary of Interior Ryan Zinke told Congress last week that he supports a "permanent fix" for the Land and Water Conservation Fund (LWCF), presumably in reauthorization legislation floating around Congress.

However, his prepared testimony on the fiscal year 2018 Interior Department budget for appearances before two Senate committees doesn't make that commitment. It simply says the administration will look at "options" for reauthorization.

Still, Zinke appeared to commit to a reauthorization of the program June 21 in a hearing on the fiscal 2018 department budget held by the Senate subcommittee on Interior Appropriations. Sen. Lamar Alexander (R-Tenn.), a major supporter of the program, faulted the administration's \$61 million request for the program and asked Zinke for his position.

Said the secretary, "I did support and I remain supportive of the Land and Water Conservation Fund. . . I would like a permanent fix in the Land and Water Conservation Fund."

Zinke did complain about the Obama administration's offshore oil and gas royalty program, which theoretically pays for LWCF. He noted offshore royalties dropped from \$18 billion in 2008 to \$2.6 billion in 2016. But he did acknowledge a backlog of unspent money in the fund of \$20 billion.

LWCF is not in danger of expiring any day soon. Congress extended the fund for three years in a fiscal 2016 appropriations law (PL 113-114 of Dec. 18, 2015) through fiscal 2018.

But program supporters want to lock the program in now. Three bills have been introduced to make the program permanent (HR 502, S 569 and S 896).

Separately, Rep. Mike Simpson (R-Idaho) introduced a bill (HR 2863) June 8 that would guarantee money for LWCF for seven years and allocate the half the money for federal land management agency maintenance. In that LWCF is presently authorized at \$900 million per year Simpson would set aside \$450 million for LWCF and \$450 million for federal land management agency maintenance.

At the Interior Department budget hearings Senate Republicans and Democrats scored the Trump administration for requesting just \$61 million for LWCF in fiscal 2018.

Alexander said, "In the mid-1980s I was chairman of President Reagan's President's Commission on Americans Outdoors. We recommended permanent authority of (LWCF). Last year Congress appropriated \$400 million for it and it should have been \$900 million. Your budget recommends \$61 million."

At a hearing of the Senate Energy Committee the previous day, ranking

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committee Democrat Maria Cantwell was even more critical. "This is our nation's most successful land conservation program, which 85 Senators voted to make permanent just last year," she added. "Suffice it to say, this budget would pump the brakes on the booming outdoor recreation economy – all in favor of industries that have had trouble competing in today's marketplace."

In his prepared remarks to the energy committee Zinke said of LWCF, "The LWCF receipts authorization expires at the end of fiscal year 2018 and the Administration will review options for reauthorization, including consideration of a range of conservation-related investments that could be funded through the LWCF."

In a House Appropriations Committee hearing on his budget June 8 Zinke said, "When it comes to infrastructure we plan on taking care of what we have. A reduction in LWCF simply (means) no more acquisitions," he said. "But we're going to take care of what we have. I'm concerned as you are about infrastructure."

After Rep. Simpson introduced his bill to reauthorize LWCF and split the money with federal agency maintenance he acknowledged that has not yet identified a source of money for the bill – always the hang-up in such campaigns. But he said President Trump's trillion-dollar infrastructure program might do the trick

The Trump administration in its fiscal year 2018 budget proposed virtually no new major federal land acquisitions. For instance the Forest Service budget request of May 23 calls for, "Reducing funding for lower priority activities in the National Forest System, such as new Federal land acquisitions; instead, the 2018 President's Budget focuses on maintaining existing forests and grasslands."

And the Interior Department budget request says, "The 2018 budget places a priority on Interior taking care of its current assets. Accordingly, the budget for land acquisition programs is \$54.0 million, \$129.1 million below 2017. A small amount of funding is maintained in each bureau for emergencies or acquisition of inholdings needed to improve management of established areas or to increase access."

In raw numbers the fiscal 2018 Trump budget request would slash the federal side of LWCF by \$138 million, from \$189 million in fiscal 2017 to \$51 million in fiscal 2018. The state side of LWCF would receive \$3 million, compared to \$110 million in fiscal 2017, but the budget would have Congress allocate an additional \$90 million from Gulf of Mexico offshore oil and gas royalties to the program, for a conditional total of \$93 million. That of course assumes Congress changes the law.

The Forest Service Forest Legacy program, which is financed by LWCF revenues, would receive no money, compared to \$62.3 million in fiscal 2017.

Here are the LWCF budget request numbers compared to fiscal 2017 appropriations:

LWCF FEDERAL ACQUISITION: The fiscal 2018 proposal recommends an appropriation of \$51 million compared to a fiscal 2017 appropriation of \$188.8 million.

By agency: the Bureau of Land Management (BLM) would receive \$3.6 million compared to \$31.4 million in fiscal 2017; the Fish and Wildlife Service (FWS) would receive \$17.1 million compared to \$50 million; the Park Service would receive \$23.3 million compared to \$42 million; and the Forest Service would receive \$7 million compared to \$54.4 million.

LWCF STATE: The fiscal 2018 proposal recommends an appropriation of \$3 million, compared to \$110 million in fiscal 2017. But the budget also proposes to boost state side revenues with \$90 million from Gulf of Mexico oil and gas royalties, for a total of \$93 million in fiscal 2018. Congress would have to approve legislation to provide the offshore oil and gas money, no sure thing.

The three bills to make LWCF permanent were introduced as follows: HR 502, Rep. Raul Grijalva (D-Ariz.) on January 12; S 569, Cantwell on March 8; and S 896, Sen. Richard Burr (R-N.C.) on April 7. Simpson's bill would authorize the program for seven years.

New state LWCF bill: Rep. Nanette Diaz Barragán (D-Calif.) and 24 cosponsors introduced legislation (HR 2943) June 21 to guarantee money for a subprogram of the state side of LWCF - the Outdoor Recreation Legacy Partnership (ORLP). That program offers competitive matching grants to states, local governments or Indian tribes to invest in parks and open spaces in urban areas. In fiscal 2017 Congress set aside \$12 million out of the state-side appropriation for ORLP grants.

The bill would tap 20 percent of Gulf of Mexico oil and gas royalties each year. "It is my hope that this designated federal funding will help set aside local green spaces, build neighborhood baseball fields and allow for park projects along our waterfronts," Barragán said.

Congress leaves town with little done on infrastructure

Congress headed out on a July 4 holiday today without taking any public steps toward approving a \$1 trillion infrastructure program. Nor has the Trump administration, which launched the initiative, begun filling in the details of its baseline recommendation.

With health care legislation, jumbo tax reform legislation and appropriations bills all piling up the House and Senate will be hard pressed to even introduce talking-point infrastructure legislation this year.

"Any kind of prognostication about how much Congress will get done this year is premature," said one outdoor veteran close to the Republican leadership.

All that is on the table is a bare-boned outline from President Trump to use \$200 billion of federal money produced by tax reform over the next 10 years. The rest would come from partnerships with private enterprise coordinated with state and local governments.

There are suggestions that much of the federal contribution will come simply from reducing line appropriations. For instance the fiscal year 2018 Forest Service budget request proposes a huge \$264 million decrease for infrastructure, decreasing from \$364 million to \$100 million. But Forest Service Chief Tom Tidwell has told Congress that lost \$264 million may be picked up by the \$1 trillion Trump program.

Separately, Rep. Mike Simpson (R-Idaho) introduced legislation (HR 2863) June 8 that would use \$450 million per year of Land and Water Conservation Fund money for federal land management agency maintenance. Simpson said the source of the money could be Trump's infrastructure program.

Until the Trump administration and its Republican allies figure out how to pay for the infrastructure program, there is likely to be little movement on Capitol Hill. Both the House Transportation Committee and the Senate Environment and Public Works Committees have held preliminary hearings, but that is all, at least publicly.

As most players know the problem with infrastructure programs is money. For decades various administrations and Congressional leaders from both parties have sought money for surface transportation, with limited success. On Dec. 4, 2015, President Obama did sign into law (PL 114-94) a surface transportation bill that provides outdoor programs with more than \$850 million per year for five years.

The House and Senate generated that legislation only after identifying

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"gimmicky" funding sources beyond the Highway Trust Fund, which is barely contributing half of the needed \$300 billion.

So now comes the Trump administration with its far broader and far more ambitious infrastructure program. Once again the Highway Trust Fund is expected to help out, but most observers believe Congress will rely mostly on tax reform revenues, such as repatriation from domestic companies operating overseas. And partnerships with private industry.

If and when an infrastructure bill is put together, it holds the potential for significant park and recreation assistance.

Forest Service maintenance: At a Senate Appropriations Committee hearing on the Forest Service budget June 7 chairman Lisa Murkowski (R-Alaska) and ranking Democrat Tom Udall (D-N.M.) chided chief Tom Tidwell for the proposed maintenance reduction.

Tidwell suggested that money for those projects may be in the offing in President Trump's infrastructure plan.

He said the \$100 million appropriation would be used "to maintain a workforce that will implement critical infrastructure maintenance projects on National Forest System lands and remain ready to implement additional improvements that could be funded through the Administration's infrastructure initiatives."

Simpson LWCF bill: Simpson introduced legislation (HR 2863) June 8 that would allocate \$450 million per year of Land and Water Conservation Fund (LWCF) money for federal land management agency maintenance. "The lands bill which is going to reauthorize the (LWCF) for seven year under mandatory funding, with half of it going to (LWCF) split between the state and federal sides and half to be used for backlog maintenance for our parks and other land management agencies, \$450 million per year," said Simpson. "Hopefully, that would address maintenance backlog in these various agencies."

Before introducing HR 2863 Simpson said at a June 8 hearing of the House subcommittee on Interior appropriations, "We still have to find the offset for it, but we're hoping that maybe we can work that into the infrastructure package because it is infrastructure, the backlog is." The subcommittee was holding a hearing on the Interior Department's fiscal year 2018 budget request with Secretary Ryan Zinke.

Here are a couple of other contenders for infrastructure money.

NPS Legacy Act: Four senators led by Sen. John Portman (R-Ohio) introduced legislation (S 751) March 28 that would establish an ambitious fund that would guarantee as much as \$500 million per year for Park Service maintenance.

The money would be drawn from revenues from mineral development and would not be subject to appropriations. However, House and Senate Appropriations Committees would have to sign off on annual priority project lists submitted by NPS.

For fiscal years 2018, 2019 and 2020 the bill would allocate \$50 million per year for the NPS maintenance backlog.

For the next three fiscal years it would set aside \$150 million per year. For the next three fiscal years after that it would set aside \$250 million per year. And from fiscal 2027 through fiscal 2047 it would put up \$500 million per year.

Eighty percent of the money would be used for non-transportation projects and 20 percent for transportation. More than half of the total NPS maintenance backlog

is made up of transportation projects, but a surface transportation law already allocates more than \$270 million per year to Park Service highway maintenance.

Recreation industry proposal: The recreation industry in February asked Congress to include a recreation title in any infrastructure legislation it develops this year, with an emphasis on private investment.

In a letter to the House Transportation Committee a new alliance of powered and human-powered recreation interests said, "The infrastructure needs of the nation's federally-managed lands are a national responsibility and deserve a key role in the Trump Administration/115th Congress Infrastructure Initiative."

The industry representatives, organized as the Outdoor Recreation Industry Roundtable (ORIR), is calling on Congress to:

- (1) embrace private investments such as those that have in the past paid for the construction of Park Service lodges and national forest ski resorts;
- (2) allocate infrastructure bank investments to recreation projects for lodging, marinas, campgrounds, etc.;
- (3) invest revenues from federal recreation fees in projects; and
- (4) approve more public-private initiatives such as the Park Service Centennial Challenge program, which matches private contributions to the national parks with federal appropriations

ORIR members include the National Ski Areas Association, the National Marine Manufacturers Association, the International Snowmobile Manufacturers Association, the American Sportfishing Association and the Outdoor Industry Association, to name a few.

Notes

Grand Canyon bison bill in. Rep. Paul Gosar (R-Ariz.) introduced legislation (HR 3005) June 22 to authorize the hunting of a mixed breed of bison and cattle in Grand Canyon National Park. Gosar and environmentalists say a population of 600 of the "cattalos" is harming the park and, furthermore, is nonnative. Gosar said hunting would reduce the herd and protect the park at no cost. "This bill addresses immediate population concerns and provides a long-term management plan to reduce bison numbers in the Park to a healthy level," said Gosar. "By authorizing the immediate use of lethal and non-lethal methods, this bill will allow for the reduction of the bison herd, ensure its long-term sustainability and provide Grand Canyon National Park's resources a respite from degradation and a chance to rejuvenate and heal." In the last issue of the newsletter we reported that the environmental group Public Employees for Environmental Responsibility (PEER), which opposes any cattalo in the park, is praising the Trump administration for attempting to remove the animals. In May the Park Service proposed a three-year plan to reduce the population from 600 to 200. But PEER says NPS should look beyond three years and eliminate the cattalo altogether.

FS water rights bill back. Rep. Scott Tipton (R-Colo.) and nine of his fellow House Republicans reintroduced legislation (HR 2929) June 20 that would forbid the Forest Service from attempting to transfer water rights to the federal government on renewal of a permit. In 2014 the Forest Service proposed such a directive for renewal of ski area permits, but after objections across the West the service withdrew it on Dec. 30, 2015. The service instead published a directive addressing sufficiency of water for ski areas. However, Tipton said the Forest Service may attempt to revisit the water rights directive some time in the future. "The Water Rights Protection Act is a sensible approach that would preserve the water rights of all water users and provide certainty that the federal government cannot take their rights in the future," he said.