

**From:** Byard Kershaw  
**Sent:** 2017-12-02T11:33:47-05:00  
**Importance:** Normal  
**Subject:** Fwd: Public Lands News: ANWR leasing too close to call; Senate approps goes own way; senators address fire borrowing  
**Received:** 2017-12-02T11:34:34-05:00  
[P2317Dec1.pdf](#)  
[P2317Dec1.doc](#)

All,

Attached is the December 1, 2017, issue of the Public Lands News.

I hope you all had a Happy Thanksgiving, and Merry Christmas!!

Enjoy!

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

December 1, 2017: Attached is the current issue of the newsletter Public Lands News (Volume 42 Number 23), in .doc format and in PDF format. Below are the headlines. We thank you for reading Public Lands News.

The Editors

### **BREAKING NEWS: Last-minute snags slow ANWR leasing, tax bill**

The Senate late last night was unable to act on landmark legislation to open the coastal plain of the Arctic National Wildlife Refuge (ANWR) to oil and gas leasing. Procedural issues afflicted both the ANWR provision and the greater tax bill. The Senate was expected to try again today (December 1).

The ANWR provision was bedeviled by a dispute over environmental review language in the provision. That language, as approved by the Senate Energy Committee, said BLM would

conduct environmental reviews under rules governing the National Petroleum Reserve Alaska. But Senate rules may require a new EIS, delaying revenues from the provision. And those revenues must be produced within ten years to meet Senate requirements.

In the attached issue. . .

\* TAX PACKAGE WITH ANWR LEASING TOO CLOSE TO CALL. Senate floor vote due with some GOP members undecided. CBO backs Murkowski estimate of \$1.1B in revenues, but no guarantee. First sale of 400,000-plus acres.

Page 1

\* APPROPRIATIONS POSITIONS STAKED OUT. But extension of interim levels probable. Senate committee posts 'mark' with more money, controversial riders.

Page 4

\* SENATORS BACK END TO FIRE BORROWING. Senate Appropriations Committee includes provision to shift to disaster spending in FY 2018 'mark.'

Page 7

\* ALASKA EXEMPTION FROM FS ROADLESS RULE SOUGHT. Amendment in Senate money bill revives old battle over Tongass forest. Would overrule courts.

Page 9

\* DEMS' ENERGY BILL OFFERS RESTRAINTS. All-encompassing measure would hike fossil fuel royalties, keep in place methane and fracking regs.

Page 11

\* TRUMP PUBLIC LANDS PERSONNEL MOVES QUESTIONED. Advocate of public lands disposal is acting BLM head. Senate policymaker votes on hold.

Page 12

\* BILL ATTACKS COAL-LEASE MORATORIUMS. House committee approves measure to require Congressional approval. Zinke has already revoked last one.

Page 14

\* ZINKE TRAVELS OF INTEREST TO IG. Inspector General says she has received too little data thus far. Bernhardt blames it on Obama people.

Page 15

\* IBLA DECISIONS.

Page 17

\* NOTES.

Page 17

\* BOXSCORE OF LEGISLATION.

Page 19

**Resource Public Lands News**  
**Volume 42 Number 23**  
**December 1, 2017**

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

**Tax package with ANWR leasing too close to call.** *Senate floor vote due with some GOP members undecided. CBO backs Murkowski estimate of \$1.1B in revenues, but no guarantee. First sale of 400,000 plus acres.*

*Page 1*

**Approps positions staked out.** *But extension of interim levels probable. Senate committee posts 'mark' with more money, controversial riders.*

*Page 4*

**Senators back end to fire borrowing.** *Senate Appropriations Committee includes provision to shift to disaster spending in FY 2018 'mark.'*

*Page 7*

**Alaska exemption from FS roadless rule sought.** *Amendment in Senate money bill revives old battle over Tongass forest. Would overrule courts.*

*Page 9*

**Dems' energy bill offers restraints.** *All encompassing measure would hike fossil fuel royalties, keep in place methane and fracking regs.*

*Page 11*

**Trump public lands personnel moves questioned.** *Advocate of public lands disposal is acting BLM head. Senate policymaker votes on hold.*

*Page 12*

**Bill attacks coal-lease moratoriums.** *House committee approves measure to require Congressional approval. Zinke has already revoked last one.*

*Page 14*

**Zinke travels of interest to IG.** *Inspector General says she has received too little data thus far. Bernhardt blames it on Obama people.*

*Page 15*

**IBLA decisions.**

*Page 17*

**Notes.**

*Page 17*

**Boxscore of legislation.**

*Page 19*

## ANWR leasing nears Senate vote as part of big tax bill

The Senate at press time was on the verge of voting on landmark legislation to open the coastal plain of the Arctic National Wildlife Refuge (ANWR) to oil and gas leasing.

The Senate Budget Committee November 28 added the provision to a monster, must-pass tax reform bill (HR 1). But it is not clear if Republican leaders have the votes (1) to approve ANWR leasing and/or (2) to approve the tax bill.

The Senate Energy Committee November 15 approved the ANWR provision by a 13-to-10 vote. The Senate Budget Committee approved the whole tax package with ANWR added November 28 by a vote of 12-to-11.

No committee Republican voted against the legislation in either the energy or budget committees. Sen. Joe Manchin (D-W.Va.) was the lone Democrat supporting ANWR leasing in the energy panel.

The Senate floor may be more problematic. ANWR provision sponsor and energy committee chairman Lisa Murkowski (R-Alaska) still must round up 50 votes in favor of the ANWR provision. In the past Sens. Susan Collins (R-Me.) and John McCain (R-Ariz.) have opposed ANWR leasing; neither sits on the energy committee.

Under a Republican budget game plan, the energy committee bill has been attached to the overall Republican tax reform plan, HR 1. As such the ANWR provision would not be subject to a filibuster, so Murkowski would only need the 50 votes on the Senate floor.

The ANWR provision anticipates raising just over \$1 billion from two lease sales one within four years of at least 400,000 acres from the 1.5 million-acre coastal plain and the other within 10 years.

Murkowski stressed the financial benefits of leasing at her committee's mark-up. "CBO (the Congressional Budget Office) estimated that our legislation will raise \$1.092 billion in federal revenues over the next 10 years," she said. "We recognize that is a significant sum and enough to meet our (budget) instruction even though the vast majority of revenues likely tens of billions of new revenues - will be generated after production begins just outside the budget 10-year window."

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

But CBO warned that the vagaries of oil and gas development could affect its projection. "Estimates of bonus bids for leases in ANWR are uncertain. Potential bidders might make assumptions that are different from

CBO's, including assumptions about long-term oil prices, production costs, the amount of oil and gas resources in ANWR, and alternative investment opportunities," said the report. But CBO concluded that \$1.1 billion "reflects our best estimate of the midpoint of that range."

Ranking energy committee Democrat Maria Cantwell (D-Ore.), often a Murkowski ally, this time led the opposition to the legislation. She objected to using a wildlife refuge for oil and gas development, period, with the exception of refuges that already allow development as a valid existing right.

"At its core the chairman's mark would change current law of the Arctic Wildlife Refuge to turn it into an oil field," she said. "This mark would direct the oil and gas program to be managed under the same laws and regulations as the (National Petroleum Reserve Alaska - NPRA). That is despite the fact that (NPRA) was established for very, very different purposes. They are subject to different laws and they are not even managed by the same agencies." The refuge is managed by the Fish and Wildlife Service and NPRA by BLM.

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

Environmentalists, who have declared all-out war against the legislation, questioned the financial returns from leasing. The Center for American Progress in a recent report doubted that leasing would produce bonus bids of even \$75 million, let alone \$1 billion. The group said bids in the adjoining NPRA since 1999 averaged \$50 per acre.

The center summed up, "If all 1.5 million acres of the Arctic Refuge's coastal plain were sold for oil drilling over the next 10 years at an average bonus bid of \$50 per acre, the federal government would receive \$75 million in revenue. After providing the State of Alaska a required 50 percent share of federal energy royalties, the U.S. Treasury would receive just \$37.5 million."

But all of Alaska's political leaders are backing Murkowski, including Gov. Bill Walker (I-Alaska), Sen. Dan Sullivan (R-Alaska) and Rep. Don Young (R-Alaska).

Said Walker, "When Alaska became a state, we had a promise from the federal government in our statehood compact: we need to live off the resources in our land. Much like mid-western states harvest the resources that grow on the ground, like wheat and corn, Alaska must harvest the resources in our ground."

Murkowski also touted the support of leading Alaska Native groups. She circulated testimony from Native groups at a November 2 committee hearing prior to the committee mark-up.

In that testimony Richard Glenn, executive vice president for lands and natural resources at the Arctic Slope Regional Corporation, said, "The only indigenous people that should be listened to the loudest are the folks from Kaktovik (within the coastal plain). And today's hearing, to me, shows that there is a lack of attention paid to them. Listen to what they're saying. They need an economy. They need development in their area. They want to have the freedom to do what the rest of the country seemingly takes for granted. We're talking about reliable power, and water, and schools, and the ability to use sanitation that keeps their kids healthy."

The committee-passed bill differs from Murkowski's long-standing coastal plain development bill (S 49) in one important respect: environmental reviews. S 49 describes fairly elaborate environmental requirements; the committee bill defers to the National Petroleum Reserve Production Act of 1976, which governs energy development in NPRA.

The NPRA act in and of itself does not specify environmental review requirements; it simply tells the Interior Department to write rules it "deems necessary and appropriate" to protect resources in the petroleum reserve.

Both S 49 and the committee bill restrict development in the coastal plain to 2,000 acres with the footprint limited to areas "to be covered by production and support facilities (including airstrips and any area covered by gravel berms or piers for support of pipelines)."

Cantwell took exception at the November 2 hearing to Murkowski's assertion that only 2,000 acres of the refuge would be impacted by oil and gas development. "There is no new science that says development will take up a smaller footprint," she said. "This map shows development will take up a significant portion of the refuge 1,800 miles of the Trans Alaska Pipeline, 219 miles of power transmission lines - and so on and so forth."

Both S 49 and the committee bill would assess a 16.75 percent production royalty and distribute the revenues evenly between the State of Alaska and the federal government.

The stage was set for the Senate to act on ANWR October 26 when the Senate gave final Congressional approval to a fiscal 2018 Congressional budget (H Con Res 71). The resolution takes the first step toward authorizing oil and gas leasing in the coastal plain. The Congressional budget is not submitted to the President for signature.

The budget directs the Senate Energy Committee to pass follow-up legislation that comes up with \$1 billion to help balance the budget. Senate Republican leaders say they hope to enact the tax law with ANWR by Christmas.

The CBO report is available at: <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/anwrreconciliation.pdf>.

### Senators post their approps position; delay is expected

Senate Appropriations Committee leaders published a draft fiscal year 2018 Interior appropriations bill November 20 that would put up \$1.2 billion more than a counterpart, House-approved bill (HR 3354).

As noteworthy, the Senate draft includes a flock of policy amendments, such as an end to wildfire borrowing (*see following article*), exemption of all Alaska national forests from a roadless area rule, an order to delist the gray wolf from an Endangered Species Act (ESA) listing, an order not to list the greater sage-grouse under the ESA, authority for agencies to terminate a wetlands protection rule, and an order to delay a transition to young-growth timber sales in the Tongass National Forest.

The rider to exempt the Tongass and Chugach National Forests from the Clinton-era roadless rule drew an immediate objection from The Wilderness Society. Said the society in a memo to reporters:

"This is an outrageous and unprecedented political assault on a landmark conservation policy achievement. While there have been numerous legal attacks from powerful logging and energy industries and by the Bush administration, this is the first far-reaching attempt in Congress to undermine the Roadless Rule." (*See related article page 9.*)

Because the Senate Appropriations Committee has for a number of reasons been unable to mark up a fiscal 2018 Interior appropriations bill this year a low spending cap, an ailing chairman, etc. it has prepared the draft bill to use as a negotiating tool with the House. The House did approve its version of a bill (HR 3354) on September 14.

On December 8 a temporary fiscal 2018 spending measure (PL 115-56 of September 8) is due to expire. The senators prepared the draft bill, also known as a mark, to use in negotiations with the House and the Trump administration on a final fiscal 2018 appropriations law. That assumes the parties are not so far apart that they shut down the government.

House and Senate leaders suggested this week that they will miss the December 8 deadline to complete a fiscal 2018 appropriations bill. The leaders anticipate extending fiscal 2017 appropriations on an interim basis, either to just before Christmas or into next year.

Of the Senate mark Senate Appropriations Committee Chairman Thad Cochran (R-Miss.) said, "The effective management of the nation's natural resources is important, as is the government's commitment to native peoples. The chairmen's mark establishes a Senate position for working with the House and the administration to reach an agreement to meet these priorities."

In final negotiations on HR 3354 the Senate committee is at odds with the House and the administration on overall spending. The Senate committee assumes a bill ceiling of \$32.6 billion, or \$1.2 billion more than a House cap of \$31.4 billion and \$5.5 billion above a Trump administration recommendation of \$27.1 billion.

The Senate Appropriations Committee draft Interior mark is available at: <https://www.appropriations.senate.gov/download/fy2018-interior-chairmens-mark>. The draft report for the bill is available at: <https://www.appropriations.senate.gov/download/fy2018-interior-explanatory-statement>.

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

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

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

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

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

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

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

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

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

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

By agency under the Senate mark BLM would receive \$25 million (House, \$12.8 million); the Fish and Wildlife Service (FWS) would receive \$55.4 million (House, \$40.6 million); the Park Service would receive \$46.2 million (House, \$31.6 million); and the Forest Service would receive \$69.5 million (House, \$25 million).

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

#### **Riders/amendments in Senate mark and House bill:**

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

On Sept. 10, 2012, FWS initially issued a rule removing the gray wolf from the ESA in Wyoming. Environmentalists took that rule to court and won at the district court level but lost at the appeals court level. So on April 26 FWS for a second time removed the wolf from the ESA in Wyoming. Now appropriators are asking FWS to do so for a third time, only now the rule would be exempt from court review.

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

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

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

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

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

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

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

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

In reaction to the September court decision Murkowski raised the possibility that Congress and/or the Trump administration would attempt to

exempt the Tongass National Forest from the rule. "I recognize the damage this rule is causing, particularly in Southeast, and will pursue every possible legislative and administrative option to exempt us from it," she said September 25.

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

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

### Senate appropriations mark would end wildfire borrowing

The Senate Appropriations Committee November 20 took a major step toward ending fire borrowing by including a provision to stop the practice in a draft fiscal year 2018 Interior and Related Agencies appropriations bill. With caveats.

The draft bill would transfer emergency wildfire expenses above 100 percent of the 10-year average to disaster spending and out of annual appropriations bills. That would (1) end the practice of borrowing from line programs to fight fire, including from fire prevention, and (2) free up some \$500 million per year in an Interior and Related Agencies appropriations bill.

One caveat is that the bill provision would limit alternatives in an environmental analysis or EIS for a hazardous fuels reduction project to two no action and the proposed action. Democrats have traditionally opposed such a limitation.

Another caveat is posed by the huge increase in overall disaster spending caused by hurricanes, wildfires, floods, droughts, etc. this year. Those increased costs have prompted the Trump administration to demand spending offsets in the future to reduce disaster-spending hits. Congress has traditionally not required reduction in other spending to compensate for disaster appropriations.

Because the Senate Appropriations Committee has for a number of reasons been unable to mark up a fiscal 2018 Interior appropriations bill this year a low spending cap, an ailing chairman, etc. it has prepared the draft bill to use as a negotiating tool with the House. The House did approve its version of a bill (HR 3354) on September 14.

Congress is facing a December 8 deadline to complete a fiscal 2018 appropriations bill, but Congressional leaders anticipate extending fiscal 2017 appropriations on an interim basis to either just before Christmas or into next year.

The House bill includes none of the fire-borrowing language that is in the Senate draft. The House did approve \$2.9 billion in fire money for the Forest Service and \$956 million for the Interior Department. The Senate committee mark includes almost identical straight fire-fighting appropriations as the House - \$2.9 billion for the Forest Service and \$949 million for the Interior Department.

Despite the Senate Appropriations Committee recommendation on emergency wildfire spending, disagreements remain.

For instance, 28 Senate Democrats in early November asked the Trump administration to propose an end to wildfire borrowing in the most recent emergency spending request. But the Trump administration November 17 included no such recommendation in its request.

The Democrats had asked Office of Management and Budget Director Mick Mulvaney to propose the language. That is, the Democrats want support for legislation that would transfer wildfire suppression costs above the 10-year average out of agency appropriations bills and into disaster spending, as the appropriations mark calls for.

But in submitting a request for \$44 billion to pay for hurricanes and wildfires Mulvaney did not mention fire borrowing. He did recommend a handful of tax reductions for burned-out families.

Sen. Ron Wyden (D-Ore.), a champion of the campaign to end fire borrowing, objected to Mulvaney's recommendation. "Our communities are battling growing infernos and a broken wildfire budgeting system that shortchanges prevention funding in a destructive cycle that literally adds fuel to fires," he said. "If the White House refuses to offer aid to wildfire-stricken communities, it's up to Congress to get off the backbench and put an end to fire borrowing, and this senseless cycle, for good."

In the last few years Republicans and Democrats alike have mounted campaigns to persuade Congress to transfer wildfire suppression costs above the 10-year average out of agency appropriations bills and into disaster spending. To no avail.

The Senate Democrats mistakenly believed that the emergency spending proposal from Mulvaney offered the most promising opportunity yet to gain that Congressional approval. The Senate appropriations mark may instead provide that opportunity.

In their letter to Mulvaney the 28 Democrats, led by Senate Minority Leader Charles E. Schumer (D-N.Y. and Sen. Patrick Leahy (D-Vt.), included wildfire assistance in their 16-page recommendation for the emergency bill.

"We ask that you support a legislative proposal that amends the Budget Control Act to increase the annual amount available for all disasters within the Disaster Cap Adjustment and authorizes wildfire suppression as an eligible activity," they wrote Mulvaney. "We believe that access to the Disaster Cap and stopping this erosion of the agencies' budgets, coupled with their existing authorities, will produce increased active forestry management and therefore oppose linking any forestry reforms to this solution to ending wildfire borrowing."

However, the Democrats' request runs headlong into House Republicans' recommendation that any extra wildfire assistance be coupled with limits on environmental reviews of hazardous fuels reduction projects.

In that vein on November 1 the House approved a wildfire bill (HR 2936) that would authorize the President to establish a special fund to supplement regular appropriations to fight wildfires, as well as to speed environmental reviews prior to hazardous fuels reduction projects, i.e. timber sales. In the main Democrats opposed the limits on environmental reviews. The vote on passage was 232-to-188.

Without the disaster-cap provision in law federal agencies must borrow from line programs when fire suppression costs exceed appropriations. Thus in fiscal 2017 the Forest Service and Interior Department had to take \$576.5 million from other programs, including fire prevention.

The \$576.5 million has been paid back. The Senate October 24 gave final approval to a disaster-spending bill (HR 2266) that includes the fiscal 2017 remuneration. President Trump signed the legislation into law October 26 as PL 115-72.

But that law does not resolve the ongoing problem of future wildfire suppression costs that will far exceed appropriations. Into the breach jumped the Senate appropriations mark to shift emergency wildfire expenses to a budget disaster cap. The provision would amend a comprehensive budget law by including wildfire suppression as an activity that Congress would treat as an emergency appropriation.

Just about everyone in Congress agrees that underfunding of emergency wildfires is a problem. They just don't agree on what to do about it.

One bipartisan proposal (HR 2862, S 1571) would transfer wildfire suppression costs above the 10-year average out of agency appropriations bills and into disaster spending, and not include new limits on environmental reviews of timber projects. Rep Mike Simpson (R-Idaho) and Sen. Mike Crapo (R-Idaho) are the lead sponsors of those bills. Those measures have not moved in this Congress.

The Trump administration in the person of Secretary of Agriculture Sonny Perdue thus far has sided with the Simpson-Crapo initiative. At a September 26 public briefing on the wildfire situation Perdue endorsed their legislation.

The House approach that would combine a partial spending solution with forestry reforms has some support among influential western Republican senators.

Thus, on October 25 the Senate Environment and Public Works (EPW) Committee held a hearing on draft legislation from four Republican senators that would limit environmental reviews of hazardous fuels projects.

The bill from Sens. John Barrasso (R-Wyo.), Orrin Hatch (R-Utah), John Thune (R-S.D.) and Steve Daines (R-Mont.) would establish several new categories of categorical exclusions from environmental reviews, including an exclusion of "immediate action in critical response situations due to disease and insect infestations, threats to watersheds, and other high-risk areas."

The Senate Appropriations Committee draft Interior bill (or mark) is available at: <https://www.appropriations.senate.gov/download/fy2018-interior-chairmens-mark>. The draft report for the bill is available at: <https://www.appropriations.senate.gov/download/fy2018-interior-explanatory-statement>.

## Senate rider would exempt Alaska from FS roadless rule

In posting a draft fiscal year 2018 public lands appropriations bill just before Thanksgiving the Senate Appropriations Committee revived an old battle over applying a national forest roadless rule to Alaska forests.

The committee included in its mark for an Interior and Related Agencies appropriations bill an amendment that would exempt the Tongass and Chugach National Forests from the Clinton-era rule.

That rule limits damaging land uses on the 58.5 million acres of roadless national forest, although forests in Colorado and Idaho are exempt from the rule, but state-specific rules restrain commercial users.

Alaska too once had an exemption but the courts terminated it. The exemption had been approved in a 2003 rule under President George W. Bush that said the roadless rule did not apply to the 9.5 million roadless acres of the 17 million-acre Tongass National Forest. In 2005 the U.S. Supreme Court left in place an appeals court decision that denied the exemption for the Tongass.

Into this fray last week entered the Senate version of an Interior appropriations mark that would once again exempt from the Clinton rule the 9.5 million roadless acres of the Tongass and the 5.4 million roadless acres of the Chugach. Sen. Sen. Lisa Murkowski (R-Alaska), chairman of the Senate subcommittee on Interior appropriations, is almost certainly the author.

The amendment is one sentence long: "The Roadless Area Conservation Rule established under part 294 of title 36, Code of Federal Regulations (or successor regulations), shall not apply with respect to any National Forest System land in the State of Alaska."

The amendment drew an immediate objection from The Wilderness Society. Said the society in a memo to reporters:

"This is an outrageous and unprecedented political assault on a landmark conservation policy achievement. While there have been numerous legal attacks from powerful logging and energy industries and by the Bush administration, this is the first far-reaching attempt in Congress to undermine the Roadless Rule."

The society said the amendment would set a precedent for national forests in other states. "Ultimately this attack on one state's roadless areas is an attack on all of America's national forest roadless areas," said the society. "If a senator succeeded in eliminating the Roadless Rule's protections in Alaska, it would set a terrible precedent for forest-by-forest or state-by-state exemptions from this national policy."

The House approved its version of an Interior spending bill (HR 3354) on September 14 and did not mention the Clinton roadless rule. The Senate

mark is expected to serve as a negotiating position for the Senate against HR 3354 next week as Congress attempts to complete fiscal 2018 appropriations bills. On December 8 a temporary fiscal 2018 spending measure (PL 115-56 of September 8) is due to expire.

Although Congress is facing the December 8 deadline to complete a fiscal 2018 appropriations bill, Congressional leaders anticipate extending fiscal 2017 appropriations on an interim basis to either just before Christmas or into next year.

The courts have been involved repeatedly in the roadless rule over the last 15 years. The Supreme Court has twice declined to hear cases objecting to the rule, but critics of the rule keep on plugging.

In the most recent twist a federal court September 20 upheld the rule, as several other courts have. U.S. District Court Judge Richard J. Leon in the District of Columbia rejected a half-dozen arguments from the State of Alaska and co-plaintiffs that the rule was hastily drawn and administratively incomplete.

Leon's ruling effectively ordered the Forest Service to protect roadless forests from road construction and timber harvest.

Senate Energy Committee Chairman Murkowski, in reaction to Leon's decision, raised the possibility that Congress or the Trump administration would attempt to exempt the Tongass National Forest from the rule.

"I recognize the damage this rule is causing, particularly in Southeast, and will pursue every possible legislative and administrative option to exempt us from it," she said September 25.

In the last Congress Murkowski introduced legislation (S 631) on March 3, 2015, to ensure that national forests in Alaska would be exempted from the 2001 Clinton era roadless rule. The bill did not move.

On Jan. 12, 2001, the Clinton administration posted the famous roadless rule that limits road building in 58.5 million acres of national forests.

Under President George W. Bush the Forest Service in 2003 posted a separate rule exempting the 17 million-acre Tongass National Forest (not all of it roadless) from the Clinton rule.

Along the way on Oct. 16, 2008, the Forest Service exempted the State of Idaho with a unique rule that governs 9.3 million acres of roadless national forest in the state.

On July 3, 2012, the Forest Service completed an exemption for the State of Colorado that provides unique management direction for 4.2 million acres of roadless national forest.

### Dems' energy bill would restrain industry everywhere

If Democrats ever return to power in the House they will have a piece of legislation ready-made to overhaul public lands energy policy, with an emphasis on conservation.

That bill (HR 4426), introduced a fortnight ago by 18 House Democrats, would among other things increase oil, gas and coal royalties by 50 percent and forbid oil and gas development in the coastal plain of the Arctic National Wildlife Refuge. That's just the tip of the iceberg.

The lead sponsor of the bill, ranking House Natural Resources Committee Minority Member Raúl M. Grijalva (D-Ariz.), said HR 4426 would serve as a counter to recently-passed committee legislation (HR 4239). The Republican committee bill would allow states to regulate oil and gas drilling permits on onshore public lands.

"Republicans need to understand that their demands are not popular and will not become law if they keep putting polluter industries ahead of taxpayer interests," Grijalva said. "The Democratic way forward through SEDRA is cleaner energy, more returns to taxpayers, an end to industry giveaways and less pollution in the air we breathe and the water we drink."

SEDRA is the title of the Democrats' bill, the Sustainable Energy Development Reform Act.

The Democrats faulted their Republican counterparts for not working with Senate Energy Committee leaders last year to complete an ambitious energy bill.

The Senate had on April 20, 2016, approved by a large majority the bill. It is once again on the Senate floor agenda as S 1460. That measure, from Senate Energy Committee chairman Lisa Murkowski (R-Alaska) and ranking committee Democrat Maria Cantwell (D-Wash.), addresses in the first instance energy. But it contains few provisions dealing with onshore energy production.

The Senate bill 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.

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

But that falls far short of the House committee Republican bill (HR 4239) that would allow states to approve oil and gas drilling permits on onshore public lands. And to manage subsequent oil and gas operations. The committee vote was 19-to-14, with only Republicans in favor.

To obtain such powers under the bill a state would first have to gain approval from the federal government of a management program.

In addition, irrespective of any such delegation, if a state had hydraulic fracturing regulations in place and most do the federal government would not be allowed to regulate the practice.

The draft would also address royalty policy by ensuring that states would receive 50 percent of federal royalty payments, if they adopted a permit management program; two percent of the state share is presently deducted to help defray federal administrative costs. Finally, the draft would allow states to manage royalty payments and collections.

The Democrats' bill, among many other things, would:

- increase oil, gas and coal royalties from the existing standard of 12.5 percent to 18.75 percent,
- decrease the basic oil and gas lease term from ten years to five years,
- revive oil and gas lease master plans that the Obama administration had begun to complete as preludes to leasing (the Trump administration has said it would discontinue work on the plans),
- impose a moratorium on oil shale leasing,
- demand that BLM implement a methane emission rule issued on Nov. 16, 2016 (the Trump administration October 4 proposed a suspension of the rule until January 17, 2019),
- demand that BLM implement a hydraulic fracturing rule of March 26, 2015 (the Trump administration July 25 proposed to rescind the rule),
- eliminate self-bonding by coal lessees (several major coal companies declared bankruptcy last year raising the possibility they would default on reclamation bonds guaranteed by the companies themselves),
- forbid oil and gas development in the coastal plain of the Arctic National Wildlife Refuge (the Senate this week was on the verge of a major vote on the advisability of leasing for oil and gas in the coastal plain (see *page one article*), and
- permanently reauthorize the Land and Water Conservation Fund, a lead public lands conservation program.

### Interior personnel matters touch off political fights

Even when the Trump administration tries to fill acting public lands positions, let alone formal nominations, controversy follows.

Most recently, Secretary of Interior Ryan Zinke stirred the pot when he chose an advocate of the disposal of public lands, Brian Steed, as interim BLM director. Steed last served as deputy director of BLM for programs and before that as chief of staff for Rep. Chris Stewart (R-Utah).

Although Steed has not been nominated as full-time director the administration hasn't selected a nominee yet - environmentalists are protesting that Steed has long advocated transfer of the federal lands to states and private interests.

Said Center for Western Priorities Executive Director Jennifer Rokala, "Secretary Zinke has just promoted a champion of disposing America's public lands into state and private hands. Brian Steed is a proud opponent of America's parks, wilderness, and public lands."

Zinke has repeatedly assured Congress and the public that he has no intention of transferring large tracts of public lands to states and/or private interests. As department spokeswoman Heather Swift told the *Washington Post*, "The Secretary's position is unchanged." Swift did not respond to our request for comment.

Meanwhile, the nominations of three important Interior Department officials continue to linger on the Senate floor because of a dispute over the cancellation/reduction in the size of national monuments.

On September 19 the Senate Energy Committee sent to the Senate floor the nominations of Ryan Nelson as Interior Department Solicitor and Joseph Balash as assistant secretary of Interior for Land and Minerals Management. On August 3 the committee approved the nomination of Susan Combs as assistant secretary of Interior for Policy.

On October 23 Senate Assistant Minority Leader Richard Durbin (D-Ill.) and 15 other Democrats wrote Zinke to complain about his review of possible changes in national monument designations. Durbin has acknowledged that he has placed holds on the nominees, preventing floor consideration until a filibuster is overcome, because of the monument review.

"It is clear that any changes to these monuments threaten their important natural, archeological, and cultural resources," the senators wrote. "We encourage you to maintain the current boundaries and management plans for all our monuments to ensure they will be protected for future generations." Zinke's recommendations are pending before President Trump, who is expected to announce December 4 in Utah his intentions to reduce the size of Bears Ears and Grand Staircase-Escalante National Monuments in the state.

Zinke and Republican senators are fighting back against Durbin and his allies. On November 11 Zinke wrote Durbin and said the held-up nominees "have nothing to do with this monument review, yet they have been forced to sit on the sidelines." Zinke asked Durbin for a meeting.

Sixteen Republican senators joined the scrum November 17 by asking Senate Majority Leader Mitch McConnell (R-Ky.) and Senate Minority Leader Charles Schumer (D-N.Y.) to schedule a vote soon on the Interior Department nominees.

"As you proceed in scheduling the next nominations to bring to the floor, we urge you to make these well-qualified nominees a top priority," the Republicans wrote. "A fully staffed DOI is essential to implementing the Senate's bipartisan objectives for responsible energy and natural resource development, stewardship of our public lands, and creating good paying jobs that will benefit not only western states, but the U.S. economy as a whole."

The senators, led by Sen. Steve Daines (R-Mont.), noted that the nominations of Balash, Nelson and Combs had been pending on the Senate floor longer than any of comparable nominees in the Obama, Bush two and Clinton administrations. Balash has been waiting for 128 days, Nelson 120 days and Combs 142 days since their nominations reached Senate leadership.

At the agency level the Trump administration has still not sent up nominees for BLM director, Fish and Wildlife Service director and Park Service director.

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

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

*BLM:* As acting BLM director Steed replaces former BLM Eastern States Director Michael Nedd, who transfers to a position as acting deputy director for operations.

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

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

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

Steed's former House boss Stewart has been a leader in Congress in the campaign to transfer public lands to nonfederal interests. On April 28, 2015, Stewart and House Natural Resources Committee Chairman Rob Bishop (R-Utah) established a Congressional team to "develop a legislative framework for transferring public lands to local ownership and control." Stewart chairs the Federal Land Action Group effort.

"The federal government has been a lousy landlord for western states and we simply think the states can do it better," Stewart said at the time. "If we want healthier forests, better access to public lands, more consistent funding for public education and more reliable energy development, it makes sense to have local control."

At his confirmation hearing before the Senate Energy Committee Zinke had a different take. When Sen. Bernie Sanders (I-Vt.) asked his opinion on privatization of the National Park System, Zinke said, "I want to be clear on this point. I am absolutely against the transfer or sale of the public lands."

### House committee would put end to coal lease moratoriums

The House Natural Resources Committee November 30 approved legislation (HR 1778) that would forbid the Interior Department from declaring a moratorium on coal leasing without Congressional approval.

That suits the Trump administration just fine because its Secretary of Interior Ryan Zinke on March 29 terminated a leasing moratorium declared by his predecessor Sally Jewell.

As the sponsor of HR 1778, Rep. Liz Cheney (R-Wyo.), has said, "While Congress allows the Department of the Interior to oversee the day-to-day management of our federal public lands, Congress should not allow the department to unilaterally make major policy changes like instituting a ban on new coal leases. Ultimately, this is a Constitutional authority issue."

On Jan. 15, 2016, Jewell ordered a halt to the federal coal-leasing program that she projected would last three years. The moratorium was not absolute: BLM exempted 18 leases from the moratorium, while 32 were held up. Now they all may proceed.

There is of course litigation. As soon as Zinke terminated the Jewell moratorium on March 29 environmentalists led by the Earthjustice law firm filed suit, arguing that BLM should have prepared an EIS first. The lawsuit was filed on behalf of the Center for Biological Diversity.

Besides, future leasing may have to leap over new legal hurdles. On September 15 the Tenth U.S. Circuit Court of Appeals ruled that BLM must consider the global climate change impacts of coal leasing before approving leases.

The court did not say that in every instance BLM must assess the impacts of climate change. But the court did say that when BLM posits the same amount of coal would be produced in the country whether a lease is approved or not, thus having no impact on the climate, it should still consider global warming impacts in an EIS.

In its decision the Tenth U.S. Circuit Court of Appeals did not vacate the four huge leases at issue that contribute to mines that produce twenty percent of the nation's coal.

The plaintiffs in the case WildEarth Guardians and the Sierra Club - hailed the decision as a game-changer in its campaign to eliminate fossil fuels development on the public lands.

Said Michael Brune, executive director of the Sierra Club, "This decision marks a major step in our efforts to hold coal, oil, and gas companies accountable for their reckless contributions to climate change and to force the dotting Trump Administration to take our environmental laws seriously."

How much the termination of the coal moratorium would help industry is unclear because (1) the moratorium already allowed some lease applications to proceed, (2) some 20 years worth of coal is already under lease and (3) the coal industry is having difficulty competing with natural gas and renewable energy in the marketplace.

The Tenth Circuit decision on climate change is available at: <https://www.ca10.uscourts.gov/opinions/15/15-8109.pdf>.

### Zinke's travels of interest to DoI Inspector General

The Interior Department Inspector General complained a fortnight ago that she is unable to account for Secretary of Interior Ryan Zinke's travel costs because of inadequate documentation from the department.

Numerous news reports have said that Zinke has taken expensive trips in the West and to the Virgin Islands on private planes and charter flights, rather than commercial flights. Deputy Inspector General Mary L. Kendall is investigating those flights.

Kendall advised Zinke's deputy David Bernhardt in a memorandum, "Our investigation has been delayed by absent, or incomplete documentation for several pertinent trips and a review process that failed to include proper documentation and accountability."

Kendall also complained that the department had not provided adequate documentation on the travels of Zinke's wife, Lolita. "(B)ased on the documents we have received to date, we have not been able to determine the full extent to which Lolita Zinke, the Secretary's wife, accompanied the Secretary on official travel," Kendall wrote.

In her memo Kendall asked Bernhardt, "While we have received some requested documentation, we seek your assistance in obtaining additional information necessary for us to complete a thorough and timely investigation of Secretary Zinke's travel."

The day after Kendall's missive Bernhardt said the Obama administration messed up department procedures. "When I arrived at the Department in August 2017, it was clear to me that the Secretary and I inherited an organizational and operational mess from the previous Administration," he told the Inspector General. "From my perspective, regarding IOS travel procedures, it appears that the exact same procedures and processes utilized by the previous Administration remain in place and continue to be dysfunctional."

Bernhardt then itemized trips taken by Zinke's predecessor, Sally Jewell, and said Jewell had not fully documented vouchers for them.

Finally, Bernhardt said he would "work to provide" documentation not only on trips taken by Zinke and his wife but also on trips taken by Jewell.

Politicians have as often been tripped up over the years for taking unauthorized free trips from stakeholders as from controversial policies. Most recently former Secretary of Health and Human Services Tom Price Tom Price resigned September 29 after taking more than \$400,000 in taxpayer funded trips on private planes.

Among other things Zinke is on the hot seat for chartering a flight from Las Vegas to Kalispell Mont., in June for himself and his staff that cost taxpayers \$12,375, according to the *Washington Post*. Commercial tickets for the route cost as little as \$300. In addition the plane is owned by executives of the Nielson & Associates oil and gas exploration company.

Ranking House Natural Resources Committee Democrat Raúl M. Grijalva (D-Ariz.) said, "Secretary Zinke has the nerve to blow your tax dollars on easy living and then tell oil executives that a third of his own workforce isn't loyal to the Trump administration," he said. "Loyalty to this White House means treating taxpayer money like a piggy bank. He's the one with the ethics problems, not the employees he threw under the bus."

House Natural Resources Committee Chairman Rob Bishop (R-Utah), nominally a close ally of Zinke, wrote the secretary October 3 asking for detailed information about noncommercial flights Zinke may have taken.

"Ethical guidelines are on the books to promote transparency and responsible use of taxpayer dollars," said Bishop. "Federal officials should be held to the highest ethical standard in adhering to these rules. When violations occur, the public deserves to know. When willful violations occur, there should be consequences."

The IG memo to Bernhardt is available at:  
[https://www.doi.gov/sites/doi.gov/files/MA\\_ZinkeTravel\\_111517.pdf](https://www.doi.gov/sites/doi.gov/files/MA_ZinkeTravel_111517.pdf).

## IBLA decisions

(We post current Interior Board of Land Appeals decisions at our website, <http://www.blm.gov/ibla.htm>. IBLA may be contacted at: Interior Board of Land Appeals, 801 North Quincy St., MS 300 QC, Arlington, VA 22203. Phone (703) 235 3750.)

**Subject:** Oil and gas drainage/standing.

**BLM decision:** BLM will require that a federal lessee enter a communitization agreement with a private lessee when a private lease is draining federal minerals.

**Appellant private lease operator:** BLM erred because the federal government does not own the oil.

**IBLA decision:** Rejected stay request because private operator did not have standing to appeal; only the private lessee itself could.

**Case identification:** *Statoil Oil & Gas, 192 IBA 32*. Decided November 21, 2017.

Twenty-three pages. Appeal from and petition for a stay of the effect of a decision of the Acting State Director of BLM's Montana State Office, affirming a decision holding the lessees of Federal oil and gas lease NDM-94105 liable for compensatory royalty. SDR No. 922-17-04.

**IBLA argument:** IBLA Administrative Judge Amy B. Sosin rejected a request for a stay of a BLM decision demanding compensatory royalties from the owners of an oil and gas well on private land that was draining oil and gas from federal land. The operator of the private well challenged the BLM decision, but Sosin said only the well's lessee - and not the operator - has standing to appeal a compensatory drainage decision to the board. "But because the lessees, not the well operator, are liable for compensatory royalty, Statoil (the appellant) cannot demonstrate that it is adversely affected by the decision it seeks to appeal," Sosin held. "Consequently, Statoil does not meet its burden under the Board's regulations to establish standing to pursue its appeal." Three other IBLA judges concurred in Sosin's decision.

**IBLA dissent:** IBLA Administrative Judge James K. Jackson in a dissent said that the well operator should at least be given an opportunity to prove that BLM's demand for compensatory royalty would do injury to the company. "I do not know whether Statoil would be able to make that showing (whether he has standing to appeal), but based on facts that may be shown by Statoil, I can readily discern multiple claims it could advance to show it has a legally cognizable interest that is likely to be adversely affected (by the BLM decision)," held Jackson.

**IBLA majority response to the dissent:** Judge Sosin said speculation as to such future damages does not prove standing. "Standing requires a causal relationship between the injury alleged and the decision on appeal; the possibility of being adversely affected in the event of some future contingency does not confer standing," she said. "We will not speculate, nor should we, on whether Statoil may, in the future, be responsible for any payment to the lessees. No will we speculate about what other arguments Statoil may make to try to justify its standing to appeal."

## Notes

**Trump monuments action awaited.** President Trump is expected to announce Monday, December 4, his plans for reducing the size of the Bears Ears and Grand Staircase-Escalante National Monuments in Utah. Trump is expected to say he intends to reduce the Bears Ears National Monument by more than 1 million acres, from 1.35 million acres to, perhaps, just over 100,000 acres. He also is expected to reduce the Grand Staircase-Escalante National

Monument from 1.9 million acres to between 700,000 and 1.2 million acres, according to testimony from an aide to Sen. Orrin Hatch (R-Utah) to the (Utah) Commission for the Stewardship of Public Lands. It is not clear if Trump will announce his intentions on several other national monuments. On August 24 Secretary of Interior Ryan Zinke recommended to the President that he take unspecified steps to reduce the size of four national monuments in the West and increase consumptive uses in 10 monuments. In addition to Bears Ears and Grand Staircase, Zinke recommended reductions in the size of Cascade-Siskiyou National Monument in Oregon and Gold Butte National Monument in Nevada. In all his recommendations Zinke did not specify how many acres should be removed from each monument, but Trump has hinted broadly his intentions to Hatch and Utah Gov. Gary Herbert (R-Utah).

**FS also takes on sage-grouse plans.** The Forest Service said November 21 that it too intends to revise 98 sage-grouse management plans prepared under the Obama administration. On October 11 BLM announced that it intended to revise the plans of Sept. 24, 2015, that have drawn criticism from commodity groups and some, but not all, western states. BLM and the Forest Service prepared the plans to protect the greater sage-grouse in lieu of a more drastic listing as threatened or endangered under the Endangered Species Act. The Forest Service *Federal Register* notice announces the beginning of a scoping process asking the public to recommend changes to the plans. BLM and the Forest Service are given legal cover by a March 28 decision by U.S. District Court Judge Miranda Du in Nevada. She directed BLM and the service to prepare a supplemental EIS on the designation in land use plans of sage-grouse focal areas (SFAs), where mining would be forbidden. Judge Du, an Obama appointee, said the agencies didn't fully identify SFAs in proposed EISs that were included in final EISs. The livestock industry backs the Forest Service action. "Emerging science has shown that - as written - the flawed amendments will inappropriately target proper grazing due to poorly structured habitat objectives requirements found throughout the plans," said Ethan Lane, executive director of the Public Lands Council.

**House approves Minnesota mining bill.** The House approved November 30 legislation (HR 3905) that would require Congressional approval of any mineral withdrawal from national forest land in Minnesota and Congressional approval of any national monument in the state. In addition the bill would make sure that mineral leases now in effect stay in effect. The bottom-line purpose of the legislation from Rep. Tom Emmer (R-Minn.) is to head off attempts to block a proposed underground hard rock, sulfide-ore mining operation in the Superior National Forest near the Boundary Waters Canoe Area Wilderness, the Twin Metals Minnesota Project. Said Emmer on the House floor, "The MINER Act will reverse the misguided last minute actions of the Obama administration to stop any exploration of one of the most valuable precious metal deposits in the world. The MINER Act will ensure that the people of Minnesota will have the opportunity for jobs and economic prosperity that would come if the deposit can ever be mined in an environmentally safe and responsible manner." But other Minnesota legislators, such as Rep. Betty McCollum (D-Minn.), oppose the legislation both because of the bar on withdrawals and monuments and the possible dangers to the Boundary Waters area. "This bill undermines bedrock environmental and public land management laws in order to create a perpetual lease for a foreign-owned toxic mine. This mine will be on the doorstep of one of our country's last truly wild places, the Boundary Waters Canoe Area Wilderness," said McCollum

**EPA visibility rule goes to court.** Environmentalists filed a lawsuit a fortnight ago against a 2012 Obama administration visibility rule, charging that it exempted coal power plants in the West that produce haze over public lands. The Obama rule replaced a rule limiting emissions from specific plants with a region-wide trading system. The Clean Air Act directed EPA to write a Regional Haze Rule that insures Class I areas — all national parks and wilderness areas larger than 5,000 acres — are free of haze. Under the rule EPA sets guidelines that states are supposed to follow in setting up visibility programs. Although the Obama administration published the rule, environmentalists say the Trump administration should modify it. “The EPA is defending loopholes that give polluters a free pass at the expense of the hundreds of millions of people who go to our national parks and wilderness areas each year,” said Stephanie Kodish, director of the National Parks Conservation Association’s Clean Air Program. “The EPA has a responsibility to protect the health of America’s people and public lands. It should direct its efforts toward that mission and not protecting polluters.”

**Northwest energy line ROW approved.** BLM gave final approval November 17 to a 300-mile electrical right-of-way to carry energy between eastern Oregon and southwestern Idaho, particularly renewable energy. “The Boardman to Hemingway Project is a Trump Administration priority focusing on infrastructure needs that support America’s energy independence,” said Secretary of the Interior Ryan Zinke. “Today’s decision is the result of extensive public involvement and will support the environmentally responsible development of resources to meet the needs of communities in Idaho, Oregon, and the surrounding region.” The route will cross 100 miles of federal land, 190 miles of private land and three miles of state land. The decision and supporting documentation are here: <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=68150>.

**NPS fee hike yields explosion.** A Park Service proposal to double entrance fees for 17 of the crown jewel national parks has produced a bipartisan outburst against such increases. Perhaps most important the chairman of the House subcommittee on Federal Lands, Rep. Tom McClintock (R-Calif.), said he has objected personally to Secretary of Interior Ryan Zinke. “At a time when we are trying to encourage more Americans to visit and value our national parks, more than doubling entrance fees is certain to have a significant impact on park visits and the commerce they bring to our gateway communities,” he said recently. In an October 24 proposal the Park Service recommended a doubling of the peak season, seven-day entrance fee to \$70 for 17 national parks including Yellowstone, Yosemite and Grand Canyon. The Western Slope No-Fee Coalition, which represents backcountry public lands users, said, “The bottom line? America’s best places at the most desirable times of the year would only be available to the wealthiest few.” The coalition added, “The justification cited for this massive increase is to address backlogged maintenance. But the NPS only anticipates that it will raise an additional \$68 million — which would barely touch their claimed backlog of \$12 BILLION. They haven’t revealed how they calculated that \$68 million, but given that most people can be expected to buy an America the Beautiful Pass, their estimate is probably wildly optimistic.” The Park Service said November 21 that it has extended a comment period until December 22 at: <http://parkplanning.nps.gov/commercialtourrequirements>.

**Anti-public lands caucus named.** The Congressional Western Caucus, long an advocate of commercial uses of the public lands, has a new competitor from the left — the Congressional anti-parks caucus. That is the name given by

the liberal Center for American Progress to 19 Republican House and Senate members that the center believes harm the public lands. The center published its list November 20 in anticipation that President Trump will soon reduce the size of several national monuments, particularly Bears Ears and Grand Staircase-Escalante National Monuments in Utah (see above). Leading the center's anti-parks list is House Natural Resources Committee Chairman Rob Bishop (R-Utah). Said the center of Bishop, "His committee has taken up a number of bills that threaten bedrock conservation laws such as the Antiquities Act and the Endangered Species Act; that aim to transfer public lands out of public ownership; and that sell out public lands to the oil and gas industry." The center's brief is available at: <https://www.americanprogress.org/issues/green/reports/2017/11/20/443087/congressional-anti-parks-caucus-power/>.

## Boxscore of Legislation

### **Fiscal year 2018 appropriations**

HR 3354 (Calvert), Senate mark. House approved September 14. Senate mark introduced November 20. House would reduce spending for most public lands programs, but not as much as the Trump administration has requested. Senate more generous.

### **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).

### **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), HR 3990 (Bishop). House committee approved HR 3990 October 11. Murkowski introduced January 5. Crapo introduced January 12. Bishop would limit President's monument designation authority in several ways. 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), S 1571 (Crapo). Simpson introduced June 8. House approved HR 2936 November 1. All bills would revise emergency fire spending; 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. (In House committee's fiscal 2018 approps bill.)

**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.

**Mine law reform**

S 1833 (Udall). Udall introduced September 19. Would establish a hard rock royalty and tougher environmental standards.

**Energy bill (omnibus)**

S 1460 (Murkowski). Murkowski introduced June 28. On Senate agenda. Would revise dozens of energy policies.

**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). Senate Energy Committee approved November 15. On Senate floor at press time. 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

# Public Lands News®

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Volume 42 Number 23, December 1, 2017

*In this issue. . . .*

**Tax package with ANWR leasing too close to call.** *Senate floor vote due with some GOP members undecided. CBO backs Murkowski estimate of \$1.1B in revenues, but no guarantee. First sale of 400,000 plus acres.....* Page 1

**Approps positions staked out.** *But extension of interim levels probable. Senate committee posts 'mark' with more money, controversial riders..* Page 4

**Senators back end to fire borrowing.** *Senate Appropriations Committee includes provision to shift to disaster spending in FY 2018 'mark'...* Page 7

**Alaska exemption from FS roadless rule sought.** *Amendment in Senate money bill revives old battle over Tongass forest. Would overrule courts..* Page 9

**Dems' energy bill offers restraints.** *All encompassing measure would hike fossil fuel royalties, keep in place methane and fracking regs.....* Page 11

**Trump public lands personnel moves questioned.** *Advocate of public lands disposal is acting BLM head. Senate policymaker votes on hold.....* Page 12

**Bill attacks coal-lease moratoriums.** *House committee approves measure to require Congressional approval. Zinke has already revoked last one..* Page 14

**Zinke travels of interest to IG.** *Inspector General says she has received too little data thus far. Bernhardt blames it on Obama people.....* Page 15

**IBLA decisions.....** Page 17

**Notes.....** Page 17

**Boxscore of legislation.....** Page 19

## ANWR leasing nears Senate vote as part of big tax bill

The Senate at press time was on the verge of voting on landmark legislation to open the coastal plain of the Arctic National Wildlife Refuge (ANWR) to oil and gas leasing.

The Senate Budget Committee November 28 added the provision to a monster, must-pass tax reform bill (HR 1). But it is not clear if Republican leaders have the votes (1) to approve ANWR leasing and/or (2) to approve the tax bill.

The Senate Energy Committee November 15 approved the ANWR provision by a 13-to-10 vote. The Senate Budget Committee approved the whole tax package with ANWR added November 28 by a vote of 12-to-11.

No committee Republican voted against the legislation in either the energy or budget committees. Sen. Joe Manchin (D-W.Va.) was the lone Democrat supporting ANWR leasing in the energy panel.

The Senate floor may be more problematic. ANWR provision sponsor and energy committee chairman Lisa Murkowski (R-Alaska) still must round up 50 votes in favor of the ANWR provision. In the past Sens. Susan Collins (R-Me.) and John McCain (R-Ariz.) have opposed ANWR leasing; neither sits on the energy committee.

Under a Republican budget game plan, the energy committee bill has been attached to the overall Republican tax reform plan, HR 1. As such the ANWR provision would not be subject to a filibuster, so Murkowski would only need the 50 votes on the Senate floor.

The ANWR provision anticipates raising just over \$1 billion from two lease sales - one within four years of at least 400,000 acres from the 1.5 million-acre coastal plain and the other within 10 years.

Murkowski stressed the financial benefits of leasing at her committee's mark-up. "CBO (the Congressional Budget Office) estimated that our legislation will raise \$1.092 billion in federal revenues over the next 10 years," she said. "We recognize that is a significant sum and enough to meet our (budget) instruction even though the vast majority of revenues - likely tens of billions of new revenues - will be generated after production begins just outside the budget 10-year window."

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

But CBO warned that the vagaries of oil and gas development could affect its projection. "Estimates of bonus bids for leases in ANWR are uncertain. Potential bidders might make assumptions that are different from CBO's, including assumptions about long-term oil prices, production costs, the amount of oil and gas resources in ANWR, and alternative investment opportunities," said the report. But CBO concluded that \$1.1 billion "reflects our best estimate of the midpoint of that range."

Ranking energy committee Democrat Maria Cantwell (D-Ore.), often a Murkowski ally, this time led the opposition to the legislation. She objected to using a wildlife refuge for oil and gas development, period, with the exception of refuges that already allow development as a valid existing right.

"At its core the chairman's mark would change current law of the Arctic Wildlife Refuge to turn it into an oil field," she said. "This mark would direct the oil and gas program to be managed under the same laws and regulations as the (National Petroleum Reserve Alaska - NPRA). That is despite the fact that (NPRA) was established for very, very different purposes. They are subject to different laws and they are not even managed by the same agencies." The refuge is managed by the Fish and Wildlife Service and NPRA by BLM.

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

Environmentalists, who have declared all-out war against the legislation, questioned the financial returns from leasing. The Center for American Progress

December 1, 2017

Page 3

recent report doubted that leasing would produce bonus bids of even \$75 million, let alone \$1 billion. The group said bids in the adjoining NPRA since 1999 averaged \$50 per acre.

The center summed up, "If all 1.5 million acres of the Arctic Refuge's coastal plain were sold for oil drilling over the next 10 years at an average bonus bid of \$50 per acre, the federal government would receive \$75 million in revenue. After providing the State of Alaska a required 50 percent share of federal energy royalties, the U.S. Treasury would receive just \$37.5 million."

But all of Alaska's political leaders are backing Murkowski, including Gov. Bill Walker (I-Alaska), Sen. Dan Sullivan (R-Alaska) and Rep. Don Young (R-Alaska).

Said Walker, "When Alaska became a state, we had a promise from the federal government in our statehood compact: we need to live off the resources in our land. Much like mid-western states harvest the resources that grow on the ground, like wheat and corn, Alaska must harvest the resources in our ground."

Murkowski also touted the support of leading Alaska Native groups. She circulated testimony from Native groups at a November 2 committee hearing prior to the committee mark-up.

In that testimony Richard Glenn, executive vice president for lands and natural resources at the Arctic Slope Regional Corporation, said, "The only indigenous people that should be listened to the loudest are the folks from Kaktovik (within the coastal plain). And today's hearing, to me, shows that there is a lack of attention paid to them. Listen to what they're saying. They need an economy. They need development in their area. They want to have the freedom to do what the rest of the country seemingly takes for granted. We're talking about reliable power, and water, and schools, and the ability to use sanitation that keeps their kids healthy."

The committee-passed bill differs from Murkowski's long-standing coastal plain development bill (S 49) in one important respect: environmental reviews. S 49 describes fairly elaborate environmental requirements; the committee bill defers to the National Petroleum Reserve Production Act of 1976, which governs energy development in NPRA.

The NPRA act in and of itself does not specify environmental review requirements; it simply tells the Interior Department to write rules it "deems necessary and appropriate" to protect resources in the petroleum reserve.

Both S 49 and the committee bill restrict development in the coastal plain to 2,000 acres with the footprint limited to areas "to be covered by production and support facilities (including airstrips and any area covered by gravel berms or piers for support of pipelines)."

Cantwell took exception at the November 2 hearing to Murkowski's assertion that only 2,000 acres of the refuge would be impacted by oil and gas development. "There is no new science that says development will take up a smaller footprint," she said. "This map shows development will take up a significant portion of the refuge - 1,800 miles of the Trans Alaska Pipeline, 219 miles of power transmission lines - and so on and so forth."

Both S 49 and the committee bill would assess a 16.75 percent production royalty and distribute the revenues evenly between the State of Alaska and the federal government.

The stage was set for the Senate to act on ANWR October 26 when the Senate gave final Congressional approval to a fiscal 2018 Congressional budget. DOI-2020-01-03210

71). The resolution takes the first step toward authorizing oil and gas leasing in the coastal plain. The Congressional budget is not submitted to the President for signature.

The budget directs the Senate Energy Committee to pass follow-up legislation that comes up with \$1 billion to help balance the budget. Senate Republican leaders say they hope to enact the tax law with ANWR by Christmas.

The CBO report is available at: <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/anwrreconciliation.pdf>.

### Senators post their approps position; delay is expected

Senate Appropriations Committee leaders published a draft fiscal year 2018 Interior appropriations bill November 20 that would put up \$1.2 billion more than a counterpart, House-approved bill (HR 3354).

As noteworthy, the Senate draft includes a flock of policy amendments, such as an end to wildfire borrowing (*see following article*), exemption of all Alaska national forests from a roadless area rule, an order to delist the gray wolf from an Endangered Species Act (ESA) listing, an order not to list the greater sage-grouse under the ESA, authority for agencies to terminate a wetlands protection rule, and an order to delay a transition to young-growth timber sales in the Tongass National Forest.

The rider to exempt the Tongass and Chugach National Forests from the Clinton-era roadless rule drew an immediate objection from The Wilderness Society. Said the society in a memo to reporters:

"This is an outrageous and unprecedented political assault on a landmark conservation policy achievement. While there have been numerous legal attacks from powerful logging and energy industries and by the Bush administration, this is the first far-reaching attempt in Congress to undermine the Roadless Rule." (*See related article page 9.*)

Because the Senate Appropriations Committee has for a number of reasons been unable to mark up a fiscal 2018 Interior appropriations bill this year - a low spending cap, an ailing chairman, etc. - it has prepared the draft bill to use as a negotiating tool with the House. The House did approve its version of a bill (HR 3354) on September 14.

On December 8 a temporary fiscal 2018 spending measure (PL 115-56 of September 8) is due to expire. The senators prepared the draft bill, also known as a mark, to use in negotiations with the House and the Trump administration on a final fiscal 2018 appropriations law. That assumes the parties are not so far apart that they shut down the government.

House and Senate leaders suggested this week that they will miss the December 8 deadline to complete a fiscal 2018 appropriations bill. The leaders anticipate extending fiscal 2017 appropriations on an interim basis, either to just before Christmas or into next year.

Of the Senate mark Senate Appropriations Committee Chairman Thad Cochran (R-Miss.) said, "The effective management of the nation's natural resources is important, as is the government's commitment to native peoples. The chairmen's mark establishes a Senate position for working with the House and the administration to reach an agreement to meet these priorities."

In final negotiations on HR 3354 the Senate committee is at odds with the House

December 1, 2017

Page 5

and the administration on overall spending. The Senate committee assumes a bill ceiling of \$32.6 billion, or \$1.2 billion more than a House cap of \$31.4 billion and \$5.5 billion above a Trump administration recommendation of \$27.1 billion.

The Senate Appropriations Committee draft Interior mark is available at: <https://www.appropriations.senate.gov/download/fy2018-interior-chairmens-mark>. The draft report for the bill is available at: <https://www.appropriations.senate.gov/download/fy2018-interior-explanatory-statement>.

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

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

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

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

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

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

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

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

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

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

By agency under the Senate mark BLM would receive \$25 million (House, \$12.8 million); the Fish and Wildlife Service (FWS) would receive \$55.4 million (House, \$40.6 million); the Park Service would receive \$46.2 million (House, \$31.6 million); and the Forest Service would receive \$69.5 million (House, \$25 million).

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

**Riders/amendments in Senate mark and House bill:**

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

On Sept. 10, 2012, FWS initially issued a rule removing the gray wolf from the ESA in Wyoming. Environmentalists took that rule to court and won at the district court level but lost at the appeals court level. So on April 26 FWS for a second time removed the wolf from the ESA in Wyoming. Now appropriators are asking FWS to do so for a third time, only now the rule would be exempt from court review.

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

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

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

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

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

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

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

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

**December 1, 2017****Page 7**

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

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

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

### Senate appropriations mark would end wildfire borrowing

The Senate Appropriations Committee November 20 took a major step toward ending fire borrowing by including a provision to stop the practice in a draft fiscal year 2018 Interior and Related Agencies appropriations bill. With caveats.

The draft bill would transfer emergency wildfire expenses above 100 percent of the 10-year average to disaster spending and out of annual appropriations bills. That would (1) end the practice of borrowing from line programs to fight fire, including from fire prevention, and (2) free up some \$500 million per year in an Interior and Related Agencies appropriations bill.

One caveat is that the bill provision would limit alternatives in an environmental analysis or EIS for a hazardous fuels reduction project to two - no action and the proposed action. Democrats have traditionally opposed such a limitation.

Another caveat is posed by the huge increase in overall disaster spending caused by hurricanes, wildfires, floods, droughts, etc. this year. Those increased costs have prompted the Trump administration to demand spending offsets in the future to reduce disaster-spending hits. Congress has traditionally not required reduction in other spending to compensate for disaster appropriations.

Because the Senate Appropriations Committee has for a number of reasons been unable to mark up a fiscal 2018 Interior appropriations bill this year - a low spending cap, an ailing chairman, etc. - it has prepared the draft bill to use as a negotiating tool with the House. The House did approve its version of a bill (HR 3354) on September 14.

Congress is facing a December 8 deadline to complete a fiscal 2018 appropriations bill, but Congressional leaders anticipate extending fiscal 2017 appropriations on an interim basis to either just before Christmas or into next year.

The House bill includes none of the fire-borrowing language that is in the Senate draft. The House did approve \$2.9 billion in fire money for the Forest Service and \$956 million for the Interior Department. The Senate committee mark includes almost identical straight fire-fighting appropriations as the House - \$2.9 billion for the Forest Service and \$949 million for the Interior Department.

Despite the Senate Appropriations Committee recommendation on emergency wildfire spending, disagreements remain.

For instance, 28 Senate Democrats in early November asked the Trump administration to propose an end to wildfire borrowing in the most recent emergency spending request. But the Trump administration November 17 included no such recommendation in its request.

The Democrats had asked Office of Management and Budget Director Mick Mulvaney to propose the language. That is, the Democrats want support for legislation that would transfer wildfire suppression costs above the 10-year average out of agency appropriations bills and into disaster spending, as the appropriations mark calls for.

But in submitting a request for \$44 billion to pay for hurricanes and wildfires Mulvaney did not mention fire borrowing. He did recommend a handful of tax reductions for burned-out families.

Sen. Ron Wyden (D-Ore.), a champion of the campaign to end fire borrowing, objected to Mulvaney's recommendation. "Our communities are battling growing infernos and a broken wildfire budgeting system that shortchanges prevention funding in a destructive cycle that literally adds fuel to fires," he said. "If the White House refuses to offer aid to wildfire-stricken communities, it's up to Congress to get off the backbench and put an end to fire borrowing, and this senseless cycle, for good."

In the last few years Republicans and Democrats alike have mounted campaigns to persuade Congress to transfer wildfire suppression costs above the 10-year average out of agency appropriations bills and into disaster spending. To no avail.

The Senate Democrats mistakenly believed that the emergency spending proposal from Mulvaney offered the most promising opportunity yet to gain that Congressional approval. The Senate appropriations mark may instead provide that opportunity.

In their letter to Mulvaney the 28 Democrats, led by Senate Minority Leader Charles E. Schumer (D-N.Y. and Sen. Patrick Leahy (D-Vt.), included wildfire assistance in their 16-page recommendation for the emergency bill.

"We ask that you support a legislative proposal that amends the Budget Control Act to increase the annual amount available for all disasters within the Disaster Cap Adjustment and authorizes wildfire suppression as an eligible activity," they wrote Mulvaney. "We believe that access to the Disaster Cap and stopping this erosion of the agencies' budgets, coupled with their existing authorities, will produce increased active forestry management and therefore oppose linking any forestry reforms to this solution to ending wildfire borrowing."

However, the Democrats' request runs headlong into House Republicans' recommendation that any extra wildfire assistance be coupled with limits on environmental reviews of hazardous fuels reduction projects.

In that vein on November 1 the House approved a wildfire bill (HR 2936) that would authorize the President to establish a special fund to supplement regular appropriations to fight wildfires, as well as to speed environmental reviews prior to hazardous fuels reduction projects, i.e. timber sales. In the main Democrats opposed the limits on environmental reviews. The vote on passage was 232-to-188.

Without the disaster-cap provision in law federal agencies must borrow from line programs when fire suppression costs exceed appropriations. Thus in fiscal 2017 the Forest Service and Interior Department had to take \$576.5 million from other programs, including fire prevention.

The \$576.5 million has been paid back. The Senate October 24 gave final

**December 1, 2017****Page 9**

approval to a disaster-spending bill (HR 2266) that includes the fiscal 2017 remuneration. President Trump signed the legislation into law October 26 as PL 115-72.

But that law does not resolve the ongoing problem of future wildfire suppression costs that will far exceed appropriations. Into the breach jumped the Senate appropriations mark to shift emergency wildfire expenses to a budget disaster cap. The provision would amend a comprehensive budget law by including wildfire suppression as an activity that Congress would treat as an emergency appropriation.

Just about everyone in Congress agrees that underfunding of emergency wildfires is a problem. They just don't agree on what to do about it.

One bipartisan proposal (HR 2862, S 1571) would transfer wildfire suppression costs above the 10-year average out of agency appropriations bills and into disaster spending, and not include new limits on environmental reviews of timber projects. Rep Mike Simpson (R-Idaho) and Sen. Mike Crapo (R-Idaho) are the lead sponsors of those bills. Those measures have not moved in this Congress.

The Trump administration in the person of Secretary of Agriculture Sonny Perdue thus far has sided with the Simpson-Crapo initiative. At a September 26 public briefing on the wildfire situation Perdue endorsed their legislation.

The House approach that would combine a partial spending solution with forestry reforms has some support among influential western Republican senators.

Thus, on October 25 the Senate Environment and Public Works (EPW) Committee held a hearing on draft legislation from four Republican senators that would limit environmental reviews of hazardous fuels projects.

The bill from Sens. John Barrasso (R-Wyo.), Orrin Hatch (R-Utah), John Thune (R-S.D.) and Steve Daines (R-Mont.) would establish several new categories of categorical exclusions from environmental reviews, including an exclusion of "immediate action in critical response situations due to disease and insect infestations, threats to watersheds, and other high-risk areas."

The Senate Appropriations Committee draft Interior bill (or mark) is available at: <https://www.appropriations.senate.gov/download/fy2018-interior-chairmens-mark>. The draft report for the bill is available at: <https://www.appropriations.senate.gov/download/fy2018-interior-explanatory-statement>.

### Senate rider would exempt Alaska from FS roadless rule

In posting a draft fiscal year 2018 public lands appropriations bill just before Thanksgiving the Senate Appropriations Committee revived an old battle over applying a national forest roadless rule to Alaska forests.

The committee included in its mark for an Interior and Related Agencies appropriations bill an amendment that would exempt the Tongass and Chugach National Forests from the Clinton-era rule.

That rule limits damaging land uses on the 58.5 million acres of roadless national forest, although forests in Colorado and Idaho are exempt from the rule, but state-specific rules restrain commercial users.

Alaska too once had an exemption but the courts terminated it. The exemption had been approved in a 2003 rule under President George W. Bush that said the roadless rule did not apply to the 9.5 million roadless acres of the 17 million-acre

Tongass National Forest. In 2005 the U.S. Supreme Court left in place an appeals court decision that denied the exemption for the Tongass.

Into this fray last week entered the Senate version of an Interior appropriations mark that would once again exempt from the Clinton rule the 9.5 million roadless acres of the Tongass and the 5.4 million roadless acres of the Chugach. Sen. Sen. Lisa Murkowski (R-Alaska), chairman of the Senate subcommittee on Interior appropriations, is almost certainly the author.

The amendment is one sentence long: "The Roadless Area Conservation Rule established under part 294 of title 36, Code of Federal Regulations (or successor regulations), shall not apply with respect to any National Forest System land in the State of Alaska."

The amendment drew an immediate objection from The Wilderness Society. Said the society in a memo to reporters:

"This is an outrageous and unprecedented political assault on a landmark conservation policy achievement. While there have been numerous legal attacks from powerful logging and energy industries and by the Bush administration, this is the first far-reaching attempt in Congress to undermine the Roadless Rule."

The society said the amendment would set a precedent for national forests in other states. "Ultimately this attack on one state's roadless areas is an attack on all of America's national forest roadless areas," said the society. "If a senator succeeded in eliminating the Roadless Rule's protections in Alaska, it would set a terrible precedent for forest-by-forest or state-by-state exemptions from this national policy."

The House approved its version of an Interior spending bill (HR 3354) on September 14 and did not mention the Clinton roadless rule. The Senate mark is expected to serve as a negotiating position for the Senate against HR 3354 next week as Congress attempts to complete fiscal 2018 appropriations bills. On December 8 a temporary fiscal 2018 spending measure (PL 115-56 of September 8) is due to expire.

Although Congress is facing the December 8 deadline to complete a fiscal 2018 appropriations bill, Congressional leaders anticipate extending fiscal 2017 appropriations on an interim basis to either just before Christmas or into next year.

The courts have been involved repeatedly in the roadless rule over the last 15 years. The Supreme Court has twice declined to hear cases objecting to the rule, but critics of the rule keep on plugging.

In the most recent twist a federal court September 20 upheld the rule, as several other courts have. U.S. District Court Judge Richard J. Leon in the District of Columbia rejected a half-dozen arguments from the State of Alaska and co-plaintiffs that the rule was hastily drawn and administratively incomplete.

Leon's ruling effectively ordered the Forest Service to protect roadless forests from road construction and timber harvest.

Senate Energy Committee Chairman Murkowski, in reaction to Leon's decision, raised the possibility that Congress or the Trump administration would attempt to exempt the Tongass National Forest from the rule.

"I recognize the damage this rule is causing, particularly in Southeast, and will pursue every possible legislative and administrative option to exempt us from it," she said September 25.

**December 1, 2017****Page 11**

In the last Congress Murkowski introduced legislation (S 631) on March 3, 2015, to ensure that national forests in Alaska would be exempted from the 2001 Clinton era roadless rule. The bill did not move.

On Jan. 12, 2001, the Clinton administration posted the famous roadless rule that limits road building in 58.5 million acres of national forests.

Under President George W. Bush the Forest Service in 2003 posted a separate rule exempting the 17 million-acre Tongass National Forest (not all of it roadless) from the Clinton rule.

Along the way on Oct. 16, 2008, the Forest Service exempted the State of Idaho with a unique rule that governs 9.3 million acres of roadless national forest in the state.

On July 3, 2012, the Forest Service completed an exemption for the State of Colorado that provides unique management direction for 4.2 million acres of roadless national forest.

### Dems' energy bill would restrain industry everywhere

If Democrats ever return to power in the House they will have a piece of legislation ready-made to overhaul public lands energy policy, with an emphasis on conservation.

That bill (HR 4426), introduced a fortnight ago by 18 House Democrats, would among other things increase oil, gas and coal royalties by 50 percent and forbid oil and gas development in the coastal plain of the Arctic National Wildlife Refuge. That's just the tip of the iceberg.

The lead sponsor of the bill, ranking House Natural Resources Committee Minority Member Raúl M. Grijalva (D-Ariz.), said HR 4426 would serve as a counter to recently-passed committee legislation (HR 4239). The Republican committee bill would allow states to regulate oil and gas drilling permits on onshore public lands.

"Republicans need to understand that their demands are not popular and will not become law if they keep putting polluter industries ahead of taxpayer interests," Grijalva said. "The Democratic way forward through SEDRA is cleaner energy, more returns to taxpayers, an end to industry giveaways and less pollution in the air we breathe and the water we drink."

SEDRA is the title of the Democrats' bill, the Sustainable Energy Development Reform Act.

The Democrats faulted their Republican counterparts for not working with Senate Energy Committee leaders last year to complete an ambitious energy bill.

The Senate had on April 20, 2016, approved by a large majority the bill. It is once again on the Senate floor agenda as S 1460. That measure, from Senate Energy Committee chairman Lisa Murkowski (R-Alaska) and ranking committee Democrat Maria Cantwell (D-Wash.), addresses in the first instance energy. But it contains few provisions dealing with onshore energy production.

The Senate bill 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.

The Senate bill contains one provision with some potential to expedite

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

But that falls far short of the House committee Republican bill (HR 4239) that would allow states to approve oil and gas drilling permits on onshore public lands. And to manage subsequent oil and gas operations. The committee vote was 19-to-14, with only Republicans in favor.

To obtain such powers under the bill a state would first have to gain approval from the federal government of a management program.

In addition, irrespective of any such delegation, if a state had hydraulic fracturing regulations in place – and most do – the federal government would not be allowed to regulate the practice.

The draft would also address royalty policy by ensuring that states would receive 50 percent of federal royalty payments, if they adopted a permit management program; two percent of the state share is presently deducted to help defray federal administrative costs. Finally, the draft would allow states to manage royalty payments and collections.

The Democrats' bill, among many other things, would:

- increase oil, gas and coal royalties from the existing standard of 12.5 percent to 18.75 percent,
- decrease the basic oil and gas lease term from ten years to five years,
- revive oil and gas lease master plans that the Obama administration had begun to complete as preludes to leasing (the Trump administration has said it would discontinue work on the plans),
- impose a moratorium on oil shale leasing,
- demand that BLM implement a methane emission rule issued on Nov. 16, 2016 (the Trump administration October 4 proposed a suspension of the rule until January 17, 2019),
- demand that BLM implement a hydraulic fracturing rule of March 26, 2015 (the Trump administration July 25 proposed to rescind the rule),
- eliminate self-bonding by coal lessees (several major coal companies declared bankruptcy last year raising the possibility they would default on reclamation bonds guaranteed by the companies themselves),
- forbid oil and gas development in the coastal plain of the Arctic National Wildlife Refuge (the Senate this week was on the verge of a major vote on the advisability of leasing for oil and gas in the coastal plain *(see page one article)*, and
- permanently reauthorize the Land and Water Conservation Fund, a lead public lands conservation program.

## Interior personnel matters touch off political fights

Even when the Trump administration tries to fill acting public lands positions, let alone formal nominations, controversy follows.

Most recently, Secretary of Interior Ryan Zinke stirred the pot when he chose an advocate of the disposal of public lands, Brian Steed, as interim BLM director. Steed last served as deputy director of BLM for programs and before that as chief of staff for Rep. Chris Stewart (R-Utah).

December 1, 2017

Page 13

Although Steed has not been nominated as full-time director - the administration hasn't selected a nominee yet - environmentalists are protesting that Steed has long advocated transfer of the federal lands to states and private interests.

Said Center for Western Priorities Executive Director Jennifer Rokala, "Secretary Zinke has just promoted a champion of disposing America's public lands into state and private hands. Brian Steed is a proud opponent of America's parks, wilderness, and public lands."

Zinke has repeatedly assured Congress and the public that he has no intention of transferring large tracts of public lands to states and/or private interests. As department spokeswoman Heather Swift told the *Washington Post*, "The Secretary's position is unchanged." Swift did not respond to our request for comment.

Meanwhile, the nominations of three important Interior Department officials continue to linger on the Senate floor because of a dispute over the cancellation/reduction in the size of national monuments.

On September 19 the Senate Energy Committee sent to the Senate floor the nominations of Ryan Nelson as Interior Department Solicitor and Joseph Balash as assistant secretary of Interior for Land and Minerals Management. On August 3 the committee approved the nomination of Susan Combs as assistant secretary of Interior for Policy.

On October 23 Senate Assistant Minority Leader Richard Durbin (D-Ill.) and 15 other Democrats wrote Zinke to complain about his review of possible changes in national monument designations. Durbin has acknowledged that he has placed holds on the nominees, preventing floor consideration until a filibuster is overcome, because of the monument review.

"It is clear that any changes to these monuments threaten their important natural, archeological, and cultural resources," the senators wrote. "We encourage you to maintain the current boundaries and management plans for all our monuments to ensure they will be protected for future generations." Zinke's recommendations are pending before President Trump, who is expected to announce December 4 in Utah his intentions to reduce the size of Bears Ears and Grand Staircase-Escalante National Monuments in the state.

Zinke and Republican senators are fighting back against Durbin and his allies. On November 11 Zinke wrote Durbin and said the held-up nominees "have nothing to do with this monument review, yet they have been forced to sit on the sidelines." Zinke asked Durbin for a meeting.

Sixteen Republican senators joined the scrum November 17 by asking Senate Majority Leader Mitch McConnell (R-Ky.) and Senate Minority Leader Charles Schumer (D-N.Y.) to schedule a vote soon on the Interior Department nominees.

"As you proceed in scheduling the next nominations to bring to the floor, we urge you to make these well-qualified nominees a top priority," the Republicans wrote. "A fully staffed DOI is essential to implementing the Senate's bipartisan objectives for responsible energy and natural resource development, stewardship of our public lands, and creating good paying jobs that will benefit not only western states, but the U.S. economy as a whole."

The senators, led by Sen. Steve Daines (R-Mont.), noted that the nominations of Balash, Nelson and Combs had been pending on the Senate floor longer than any of comparable nominees in the Obama, Bush two and Clinton administrations. Balash has been waiting for 128 days, Nelson 120 days and Combs 142 days since their nominations reached Senate leadership.

DOI-2020-01 03220

At the agency level the Trump administration has still not sent up nominees for BLM director, Fish and Wildlife Service director and Park Service director.

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

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

*BLM:* As acting BLM director Steed replaces former BLM Eastern States Director Michael Nedd, who transfers to a position as acting deputy director for operations.

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

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

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

Steed's former House boss Stewart has been a leader in Congress in the campaign to transfer public lands to nonfederal interests. On April 28, 2015, Stewart and House Natural Resources Committee Chairman Rob Bishop (R-Utah) established a Congressional team to "develop a legislative framework for transferring public lands to local ownership and control." Stewart chairs the Federal Land Action Group effort.

"The federal government has been a lousy landlord for western states and we simply think the states can do it better," Stewart said at the time. "If we want healthier forests, better access to public lands, more consistent funding for public education and more reliable energy development, it makes sense to have local control."

At his confirmation hearing before the Senate Energy Committee Zinke had a different take. When Sen. Bernie Sanders (I-Vt.) asked his opinion on privatization of the National Park System, Zinke said, "I want to be clear on this point. I am absolutely against the transfer or sale of the public lands."

### House committee would put end to coal lease moratoriums

The House Natural Resources Committee November 30 approved legislation (HR 1778) that would forbid the Interior Department from declaring a moratorium on coal leasing without Congressional approval.

That suits the Trump administration just fine because its Secretary of Interior Ryan Zinke on March 29 terminated a leasing moratorium declared by his predecessor Sally Jewell.

**December 1, 2017****Page 15**

As the sponsor of HR 1778, Rep. Liz Cheney (R-Wyo.), has said, "While Congress allows the Department of the Interior to oversee the day-to-day management of our federal public lands, Congress should not allow the department to unilaterally make major policy changes like instituting a ban on new coal leases. Ultimately, this is a Constitutional authority issue."

On Jan. 15, 2016, Jewell ordered a halt to the federal coal-leasing program that she projected would last three years. The moratorium was not absolute: BLM exempted 18 leases from the moratorium, while 32 were held up. Now they all may proceed.

There is of course litigation. As soon as Zinke terminated the Jewell moratorium on March 29 environmentalists led by the Earthjustice law firm filed suit, arguing that BLM should have prepared an EIS first. The lawsuit was filed on behalf of the Center for Biological Diversity.

Besides, future leasing may have to leap over new legal hurdles. On September 15 the Tenth U.S. Circuit Court of Appeals ruled that BLM must consider the global climate change impacts of coal leasing before approving leases.

The court did not say that in every instance BLM must assess the impacts of climate change. But the court did say that when BLM posits the same amount of coal would be produced in the country whether a lease is approved or not, thus having no impact on the climate, it should still consider global warming impacts in an EIS.

In its decision the Tenth U.S. Circuit Court of Appeals did not vacate the four huge leases at issue that contribute to mines that produce twenty percent of the nation's coal.

The plaintiffs in the case - WildEarth Guardians and the Sierra Club - hailed the decision as a game-changer in its campaign to eliminate fossil fuels development on the public lands.

Said Michael Brune, executive director of the Sierra Club, "This decision marks a major step in our efforts to hold coal, oil, and gas companies accountable for their reckless contributions to climate change and to force the dotting Trump Administration to take our environmental laws seriously."

How much the termination of the coal moratorium would help industry is unclear because (1) the moratorium already allowed some lease applications to proceed, (2) some 20 years worth of coal is already under lease and (3) the coal industry is having difficulty competing with natural gas and renewable energy in the marketplace.

The Tenth Circuit decision on climate change is available at: <https://www.ca10.uscourts.gov/opinions/15/15-8109.pdf>.

### Zinke's travels of interest to DoI Inspector General

The Interior Department Inspector General complained a fortnight ago that she is unable to account for Secretary of Interior Ryan Zinke's travel costs because of inadequate documentation from the department.

Numerous news reports have said that Zinke has taken expensive trips in the West and to the Virgin Islands on private planes and charter flights, rather than commercial flights. Deputy Inspector General Mary L. Kendall is investigating those flights.

Kendall advised Zinke's deputy David Bernhardt in a memorandum, "Our investigation has been delayed by absent, or incomplete documentation of expenses."

pertinent trips and a review process that failed to include proper documentation and accountability."

Kendall also complained that the department had not provided adequate documentation on the travels of Zinke's wife, Lolita. "(B)ased on the documents we have received to date, we have not been able to determine the full extent to which Lolita Zinke, the Secretary's wife, accompanied the Secretary on official travel," Kendall wrote.

In her memo Kendall asked Bernhardt, "While we have received some requested documentation, we seek your assistance in obtaining additional information necessary for us to complete a thorough and timely investigation of Secretary Zinke's travel."

The day after Kendall's missive Bernhardt said the Obama administration messed up department procedures. "When I arrived at the Department in August 2017, it was clear to me that the Secretary and I inherited an organizational and operational mess from the previous Administration," he told the Inspector General. "From my perspective, regarding IOS travel procedures, it appears that the exact same procedures and processes utilized by the previous Administration remain in place and continue to be dysfunctional."

Bernhardt then itemized trips taken by Zinke's predecessor, Sally Jewell, and said Jewell had not fully documented vouchers for them.

Finally, Bernhardt said he would "work to provide" documentation not only on trips taken by Zinke and his wife but also on trips taken by Jewell.

Politicians have as often been tripped up over the years for taking unauthorized free trips from stakeholders as from controversial policies. Most recently former Secretary of Health and Human Services Tom Price resigned September 29 after taking more than \$400,000 in taxpayer funded trips on private planes.

Among other things Zinke is on the hot seat for chartering a flight from Las Vegas to Kalispell Mont., in June for himself and his staff that cost taxpayers \$12,375, according to the *Washington Post*. Commercial tickets for the route cost as little as \$300. In addition the plane is owned by executives of the Nielson & Associates oil and gas exploration company.

Ranking House Natural Resources Committee Democrat Raúl M. Grijalva (D-Ariz.) said, "Secretary Zinke has the nerve to blow your tax dollars on easy living and then tell oil executives that a third of his own workforce isn't loyal to the Trump administration," he said. "Loyalty to this White House means treating taxpayer money like a piggy bank. He's the one with the ethics problems, not the employees he threw under the bus."

House Natural Resources Committee Chairman Rob Bishop (R-Utah), nominally a close ally of Zinke, wrote the secretary October 3 asking for detailed information about noncommercial flights Zinke may have taken.

"Ethical guidelines are on the books to promote transparency and responsible use of taxpayer dollars," said Bishop. "Federal officials should be held to the highest ethical standard in adhering to these rules. When violations occur, the public deserves to know. When willful violations occur, there should be consequences."

The IG memo to Bernhardt is available at:  
[https://www.doioig.gov/sites/doioig.gov/files/MA\\_ZinkeTravel\\_111517.pdf](https://www.doioig.gov/sites/doioig.gov/files/MA_ZinkeTravel_111517.pdf).

December 1, 2017

Page 17

IBLA decisions

(We post current Interior Board of Land Appeals decisions at our website, <http://www.blm.gov/ibla.htm>. IBLA may be contacted at: Interior Board of Land Appeals, 801 North Quincy St., MS 300 QC, Arlington, VA 22203. Phone (703) 235 3750.)

**Subject:** Oil and gas drainage/standing.

**BLM decision:** BLM will require that a federal lessee enter a communitization agreement with a private lessee when a private lease is draining federal minerals.

**Appellant private lease operator:** BLM erred because the federal government does not own the oil.

**IBLA decision:** Rejected stay request because private operator did not have standing to appeal; only the private lessee itself could.

**Case identification:** *Statoil Oil & Gas, 192 IBA 32*. Decided November 21, 2017. Twenty-three pages. Appeal from and petition for a stay of the effect of a decision of the Acting State Director of BLM's Montana State Office, affirming a decision holding the lessees of Federal oil and gas lease NDM-94105 liable for compensatory royalty. SDR No. 922-17-04.

**IBLA argument:** IBLA Administrative Judge Amy B. Sosin rejected a request for a stay of a BLM decision demanding compensatory royalties from the owners of an oil and gas well on private land that was draining oil and gas from federal land. The operator of the private well challenged the BLM decision, but Sosin said only the well's lessee - and not the operator - has standing to appeal a compensatory drainage decision to the board. "But because the lessees, not the well operator, are liable for compensatory royalty, Statoil (the appellant) cannot demonstrate that it is adversely affected by the decision it seeks to appeal," Sosin held. "Consequently, Statoil does not meet its burden under the Board's regulations to establish standing to pursue its appeal." Three other IBLA judges concurred in Sosin's decision.

**IBLA dissent:** IBLA Administrative Judge James K. Jackson in a dissent said that the well operator should at least be given an opportunity to prove that BLM's demand for compensatory royalty would do injury to the company. "I do not know whether Statoil would be able to make that showing (whether he has standing to appeal), but based on facts that may be shown by Statoil, I can readily discern multiple claims it could advance to show it has a legally cognizable interest that is likely to be adversely affected (by the BLM decision)," held Jackson.

**IBLA majority response to the dissent:** Judge Sosin said speculation as to such future damages does not prove standing. "Standing requires a causal relationship between the injury alleged and the decision on appeal; the possibility of being adversely affected in the event of some future contingency does not confer standing," she said. "We will not speculate, nor should we, on whether Statoil may, in the future, be responsible for any payment to the lessees. No will we speculate about what other arguments Statoil may make to try to justify its standing to appeal."

Notes

**Trump monuments action awaited.** President Trump is expected to announce Monday, December 4, his plans for reducing the size of the Bears Ears and Grand Staircase-Escalante National Monuments in Utah. Trump is expected to say he intends to reduce the Bears Ears National Monument by more than 1 million acres, from 1.35 million acres to, perhaps, just over 100,000 acres. He also is expected to reduce the Grand Staircase-Escalante National Monument from 1.9 million acres to between 700,000 and 1.2 million acres, according to testimony from an aide to Sen. Orrin Hatch (R-Utah) to the (Utah) Commission for the Stewardship of Public Lands. It is not clear if Trump will announce his intentions on several other national monuments. On August 24 Secretary of Interior Ryan Zinke recommended to the President that he take unspecified steps to reduce the size of four national monuments in the West and increase consumptive uses in 10 monuments. In addition to Bears Ears and Grand Staircase, Zinke recommended reductions in the size of Cascade-Siskiyou National Monument in Oregon and Gold Butte National Monument in Nevada. In all his recommendations Zinke did not specify how many acres should be removed from each monument, but Trump has hinted broadly his intentions to Hatch and Utah Gov. Gary Herbert (R-Utah).

**FS also takes on sage-grouse plans.** The Forest Service said November 21 that it too intends to revise 98 sage-grouse management plans prepared for the

DOI-2016-01-03224

Obama administration. On October 11 BLM announced that it intended to revise the plans of Sept. 24, 2015, that have drawn criticism from commodity groups and some, but not all, western states. BLM and the Forest Service prepared the plans to protect the greater sage-grouse in lieu of a more drastic listing as threatened or endangered under the Endangered Species Act. The Forest Service *Federal Register* notice announces the beginning of a scoping process asking the public to recommend changes to the plans. BLM and the Forest Service are given legal cover by a March 28 decision by U.S. District Court Judge Miranda Du in Nevada. She directed BLM and the service to prepare a supplemental EIS on the designation in land use plans of sage-grouse focal areas (SFAs), where mining would be forbidden. Judge Du, an Obama appointee, said the agencies didn't fully identify SFAs in proposed EISs that were included in final EISs. The livestock industry backs the Forest Service action. "Emerging science has shown that - as written - the flawed amendments will inappropriately target proper grazing due to poorly structured habitat objectives requirements found throughout the plans," said Ethan Lane, executive director of the Public Lands Council.

**House approves Minnesota mining bill.** The House approved November 30 legislation (HR 3905) that would require Congressional approval of any mineral withdrawal from national forest land in Minnesota and Congressional approval of any national monument in the state. In addition the bill would make sure that mineral leases now in effect stay in effect. The bottom-line purpose of the legislation from Rep. Tom Emmer (R-Minn.) is to head off attempts to block a proposed underground hard rock, sulfide-ore mining operation in the Superior National Forest near the Boundary Waters Canoe Area Wilderness, the Twin Metals Minnesota Project. Said Emmer on the House floor, "The MINER Act will reverse the misguided last minute actions of the Obama administration to stop any exploration of one of the most valuable precious metal deposits in the world. The MINER Act will ensure that the people of Minnesota will have the opportunity for jobs and economic prosperity that would come if the deposit can ever be mined in an environmentally safe and responsible manner." But other Minnesota legislators, such as Rep. Betty McCollum (D-Minn.), oppose the legislation both because of the bar on withdrawals and monuments and the possible dangers to the Boundary Waters area. "This bill undermines bedrock environmental and public land management laws in order to create a perpetual lease for a foreign-owned toxic mine. This mine will be on the doorstep of one of our country's last truly wild places, the Boundary Waters Canoe Area Wilderness," said McCollum.

**EPA visibility rule goes to court.** Environmentalists filed a lawsuit a fortnight ago against a 2012 Obama administration visibility rule, charging that it exempted coal power plants in the West that produce haze over public lands. The Obama rule replaced a rule limiting emissions from specific plants with a region-wide trading system. The Clean Air Act directed EPA to write a Regional Haze Rule that insures Class I areas - all national parks and wilderness areas larger than 5,000 acres - are free of haze. Under the rule EPA sets guidelines that states are supposed to follow in setting up visibility programs. Although the Obama administration published the rule, environmentalists say the Trump administration should modify it. "The EPA is defending loopholes that give polluters a free pass at the expense of the hundreds of millions of people who go to our national parks and wilderness areas each year," said Stephanie Kodish, director of the National Parks Conservation Association's Clean Air Program. "The EPA has a responsibility to protect the health of America's people and public lands. It should direct its efforts toward that mission and not protecting polluters."

**Northwest energy line ROW approved.** BLM gave final approval November 17 to a 300-mile electrical right-of-way to carry energy between eastern Oregon and southwestern Idaho, particularly renewable energy. "The Boardman to Hemingway Project is a Trump Administration priority focusing on infrastructure needs that support America's energy independence," said Secretary of the Interior Ryan Zinke. "Today's decision is the result of extensive public involvement and

December 1, 2017

Page 19

the environmentally responsible development of resources to meet the needs of communities in Idaho, Oregon, and the surrounding region." The route will cross 100 miles of federal land, 190 miles of private land and three miles of state land. The decision and supporting documentation are here: <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=68150>.

**NPS fee hike yields explosion.** A Park Service proposal to double entrance fees for 17 of the crown jewel national parks has produced a bipartisan outburst against such increases. Perhaps most important the chairman of the House subcommittee on Federal Lands, Rep. Tom McClintock (R-Calif.), said he has objected personally to Secretary of Interior Ryan Zinke. "At a time when we are trying to encourage more Americans to visit and value our national parks, more than doubling entrance fees is certain to have a significant impact on park visits and the commerce they bring to our gateway communities," he said recently. In an October 24 proposal the Park Service recommended a doubling of the peak season, seven-day entrance fee to \$70 for 17 national parks including Yellowstone, Yosemite and Grand Canyon. The Western Slope No-Fee Coalition, which represents backcountry public lands users, said, "The bottom line? America's best places at the most desirable times of the year would only be available to the wealthiest few." The coalition added, "The justification cited for this massive increase is to address backlogged maintenance. But the NPS only anticipates that it will raise an additional \$68 million - which would barely touch their claimed backlog of \$12 BILLION. They haven't revealed how they calculated that \$68 million, but given that most people can be expected to buy an America the Beautiful Pass, their estimate is probably wildly optimistic." The Park Service said November 21 that it has extended a comment period until December 22 at: <http://parkplanning.nps.gov/commercialtourrequirements>.

**Anti-public lands caucus named.** The Congressional Western Caucus, long an advocate of commercial uses of the public lands, has a new competitor from the left - the Congressional anti-parks caucus. That is the name given by the liberal Center for American Progress to 19 Republican House and Senate members that the center believes harm the public lands. The center published its list November 20 in anticipation that President Trump will soon reduce the size of several national monuments, particularly Bears Ears and Grand Staircase-Escalante National Monuments in Utah (see above). Leading the center's anti-parks list is House Natural Resources Committee Chairman Rob Bishop (R-Utah). Said the center of Bishop, "His committee has taken up a number of bills that threaten bedrock conservation laws such as the Antiquities Act and the Endangered Species Act; that aim to transfer public lands out of public ownership; and that sell out public lands to the oil and gas industry." The center's brief is available at: <https://www.americanprogress.org/issues/green/reports/2017/11/20/443087/congressional-anti-parks-caucus-power/>.

## Boxscore of Legislation

### **Fiscal year 2018 appropriations**

HR 3354 (Calvert), Senate mark. House approved September 14. Senate mark introduced November 20. House would reduce spending for most public lands programs, but not as much as the Trump administration has requested. Senate more generous.

### **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

DOI-2020-01 03226

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).

#### **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), HR 3990 (Bishop). House committee approved HR 3990 October 11. Murkowski introduced January 5. Crapo introduced January 12. Bishop would limit President's monument designation authority in several ways. 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), S 1571 (Crapo). Simpson introduced June 8. House approved HR 2936 November 1. All bills would revise emergency fire spending; 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. (In House committee's fiscal 2018 approps bill.)

#### **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.

#### **Mine law reform**

S 1833 (Udall). Udall introduced September 19. Would establish a hard rock royalty and tougher environmental standards.

#### **Energy bill (omnibus)**

S 1460 (Murkowski). Murkowski introduced June 28. On Senate agenda. Would revise dozens of energy policies.

#### **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.