

To: BLM_WO_302[blm_wo_302@blm.gov]; BLM_WO_310[blm_wo_310@blm.gov];
BLM_WO_320[blm_wo_320@blm.gov]; BLM_WO_350[blm_wo_350@blm.gov]
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From: **Public Lands News** <james@publiclandnewsletter.com>
Date: Fri, Nov 17, 2017 at 7:02 AM
Subject: Public Lands News: ANWR leasing passes big test; new fire spending opportunity; withdrawals on firing line
To: james@publiclandnewsletter.com

Dear Public Lands News Subscriber:

November 17, 2017: Attached is the current issue of the newsletter Public Lands News (Volume 42 Number 22), in .doc format and in PDF format. Below are the headlines. We thank you for reading Public Lands News.

The Editors

BREAKING NEWS: Senators will release approps 'mark' next week

With time running short on a temporary fiscal year 2018 Interior and Related Agencies appropriations bill in the Senate, Senate Appropriations Committee Chairman Chad Cochran (R-Miss.) said yesterday he will publish a "mark" of a bill next week.

That mark would then serve as a negotiating position for the Senate against a House-passed version of an Interior bill (HR 3354). The interim fiscal 2018 spending law expires December 8, giving Congress only two weeks after the Thanksgiving holiday to negotiate out a dozen appropriations bills. However, Speaker of the House Paul Ryan (R-Wis.) said this week an extension of the interim law is likely, although he intends to complete appropriations by Christmas.

Cochran's committee had scheduled a mark-up of an Interior bill for October 19 but the chairman was too ill to conduct the meeting.

In the attached issue. . .

* SENATE COMMITTEE APPROVES ANWR LEASING. Endorses O&G development in a close vote. Senate floor may be more difficult. CBO backs Murkowski estimate of \$1.1B in revenues. First sale of 400,000-plus acres.

Page 1

* ANOTHER ATTEMPT NEARS TO END FIRE BORROWING. Twenty-eight Senate Dems see upcoming disaster bill as logical vehicle to resolve problem.

Page 4

* AGENCIES, HILL WORKING TO END WITHDRAWALS. GOP recommends revocation of Grand Canyon withdrawal, along with sage-grouse, river withdrawals.

Page 5

* DEMS GET THE JUMP ON METHANE COMMENTS. House and Senate members say DoI should keep BLM rule. But industry says DoI or courts will revoke.

Page 7

* HOUSE COMMITTEE APPROVES STATE O&G POWERS. Would allow states to both decide on permits and manage operations. Paired with OCS openings.

Page 9

* WAY OPENED FOR ACTION ON SAGE-GROUSE PLANS. With 15 field hearings over BLM can turn its attention to making changes that Zinke suggested.

Page 11

* ENVIROS PUSH FOR PUBLIC LANDS RETENTION. Even though FLPMA says that is the law greens want DoI to write a rule to make doubly certain.

Page 12

* ESA BILLS DELAYED IN HOUSE. As big tax bill eats up all the oxygen. Measures may be the forerunner of major changes in the law.

Page 14

* IBLA DECISIONS.

Page 16

* NOTES.

Page 16

* CONFERENCE CALENDAR.

Page 17

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Page 1

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Page 4

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Page 5

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Page 7

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Page 9

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Page 11

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Page 12

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Page 14

IBLA decisions.

Page 16

Notes.

Page 16

Conference calendar.

Page 17

Senate Energy Committee narrowly approves ANWR leasing

The Senate Energy Committee November 15 approved legislation to open the coastal plain of the Arctic National Wildlife Refuge (ANWR) to oil and gas leasing by a close 13-to-10 vote.

No committee Republicans voted against the legislation and Sen. Joe Manchin (D-W.Va.) was the lone Democrat supporting it. The Senate floor may

be more problematic. Bill sponsor and panel chairman Lisa Murkowski (R-Alaska) still must round up 50 votes. In the past Sens. Susan Collins (R-Me.) and John McCain (R-Ariz.) have opposed ANWR leasing; neither sits on the committee.

Under a Republican budget game plan, the energy committee bill will now be attached to an overall Republican tax reform plan. 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 bill 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 the 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 does say 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.

CBO did warn 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," says 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.

But Murkowski said the environment would be protected. "We authorize an oil and gas development program in the 1002 area in accordance with the

environmentally protective framework used to manage the nearby NPRA," she said. "We have not pre-empted the environmental review process in this legislation. We have not pre-empted the environmental review. Nor have we limited the consultation process with Alaska Natives in any way. All relevant laws, all regulations and executive orders will apply under this language."

Environmentalists, who have declared all-out war against the legislation, question 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 just before 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 Energy Committee to act on ANWR October 26 when the House 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>.

Still another good chance to end fire borrowing looms

In the last few years Republicans and Democrats alike have mounted numerous 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.

But an upcoming emergency spending bill offers perhaps the most promising opportunity yet to gain that Congressional approval.

Leading the latest campaign, 28 Senate Democrats said last week that they have asked Office of Management and Budget Director Mick Mulvaney to request a transfer of wildfire spending to a disaster cap in the next emergency bill. Mulvaney has said the Trump administration would send a third such emergency assistance bill to the Hill this month to help pay for this fall's hurricanes.

In a letter to Mulvaney the 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 to divest forestry reforms from the disaster cap 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 borrow \$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 payback. 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, forcing agencies to borrow money from line programs, including fire prevention.

Sen. Ron Wyden (D-Ore.), a signatory to the Democratic senators' letter to Mulvaney, described the situation this way: "Natural disasters have pummeled communities in every corner of our country this year. Year after year, the broken wildfire budgeting system shortchanges prevention funding, literally adding fuel to fires. Putting an end to fire borrowing would at long last allow America to get ahead of the West's natural disasters - wildfires."

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."

There is not much appropriations help in the pipeline for hazardous fuel reductions. The House approved a fiscal year 2018 appropriations bill (HR 3354) September 14 that would put up only \$5 million more than the fiscal 2017 appropriation for hazardous fuels. The House approved \$575 million for prevention efforts in fiscal 2018, compared to the \$570 million fiscal 2017 level.

GOP working in agencies and on Hill to undo withdrawals

The Trump administration is striving on three fronts to revoke major land withdrawals that bar hard rock mining, and Democrats are resisting.

Leading the way is a Department of Agriculture recommendation that a one million-acre withdrawal near Grand Canyon National Park be canceled.

Separately, on October 11 the Interior Department did cancel a 10 million-acre Obama administration withdrawal to protect sage-grouse habitat in the West.

Finally, on October 25 the Interior Department in a new report identified obstacles to expanding energy development on the public lands, and included in the list withdrawals to protect wild and scenic rivers.

Ranking House Natural Resources Committee Member Raúl M. Grijalva (D-Ariz.) is particularly exercised about the suggested withdrawal near the Grand Canyon. He wrote two letters November 3 on the subject, one to House Natural Resources Committee Chairman Rob Bishop (R-Utah) asking for a hearing on the Grand Canyon area, and one to Secretary of Agriculture Sonny Perdue asking for an explanation of the withdrawal revocation request.

Grijalva has introduced legislation (HR 360) to make the existing, 20-year Grand Canyon withdrawal permanent. He told Bishop, "Rescinding the existing withdrawal, after only five years and without scientific or public review, would be irresponsible and threaten a watershed that provides drinking water to more than 20 million Americans."

Grijalva made a similar pitch to Perdue. "Rescinding the withdrawal now, after only five years, without demonstrating an updated understanding of the available data has the potential to do lasting ecological damage, not to mention irreparable harm to the region's numerous cultural resources," he wrote.

For his part Bishop on September 28 asked the Trump administration to end millions of acres of Obama administration hard rock mining withdrawals across the West.

Bishop didn't list all the withdrawals he objects to but the low-hanging fruit includes the 2012 million-acre withdrawal of BLM and Forest

Service land to protect Grand Canyon National Park. Bishop submitted his request in a letter to Secretary of Interior Ryan Zinke and Perdue.

The Federal Land Policy and Management Act of 1976 (FLPMA) authorizes the secretary of Interior to effectively withdraw land immediately (called a segregation) for up to two years and to make larger withdrawals for up to 20 years. In practice secretaries make withdrawals to protect public lands from development, usually hard rock mining but also other uses.

The Obama administration executed two major withdrawals - the one million-acre withdrawal near Grand Canyon and the 10 million-acre sage-grouse segregation.

Sage-grouse: Secretary of Interior Sally Jewell segregated 10 million acres from the mining law on Sept. 24, 2015, for two years to protect the sage-grouse. When the Trump administration didn't follow through with a 20-year withdrawal, the segregation terminated.

Subsequently, BLM on October 11 made it official and said it would not attempt to execute a 20-year withdrawal. "The proposal to withdraw 10 million acres to prevent 10,000 from potential mineral development was a complete overreach," said Acting BLM Director Mike Nedd.

Grand Canyon: On Jan. 21, 2012, then Secretary of Interior Ken Salazar withdrew a million acres from uranium mining claims on public lands near Grand Canyon National Park. The withdrawal applied to 350,000 acres of national forest and 650,000 acres of BLM land.

Responding to President Trump's order to promote energy production in the country, the Department of Agriculture prepared a report in October recommending 15 policy changes affecting the Forest Service. Prominent among them was the cancellation of the Grand Canyon withdrawal.

Said the department report, "Adoption of this recommendation could re-open lands to mineral entry pursuant to the United States mining laws facilitating exploration for, and possibly development of, uranium resources."

Wild and Scenic rivers: Over the years BLM in its Instruction Memorandums to the field laid out a strategy for processing withdrawals to protect wild and scenic rivers under the Wild and Scenic Rivers Act. In an October 25 regulatory review report, the Interior Department said it would revisit the manual strategy.

"Manual 6400 will be reviewed following the proposed revisions to BLM Mitigation Manual Section and Handbook to ensure that it conforms to BLM revised mitigation guidance," says the report. "Although the requirements for minerals and mineral withdrawals are legally mandated under the mining and mineral leasing laws in sections 9(a) and 15(2) of the WSRRA, Manual 6400 will be reviewed for opportunities to clarify discretionary decision-space."

The Department of Agriculture report is available at:
https://www.eenews.net/assets/2017/11/01/document_pm_05.pdf.

The Department of Interior report is available at;
https://www.doi.gov/sites/doi.gov/files/uploads/interior_energy_actions_report_final.pdf.

The Grijalva letters are available at: <http://bit.ly/2zgRyFX> and <http://bit.ly/2j0tMIh>.

Dems team up against revocation of Obama methane rule

Eighty-one Democrats got a jump on the competition a fortnight ago by recommending that BLM cancel a proposed rule to delay implementation of most of a BLM methane emissions rule.

Submitting comments three days before the November 6 deadline for comments on the proposal to block an Obama administration rule, the Democrats said the argument that the rule would harm the oil and gas industry was baseless.

"The Department's stated rationale for moving to repeal or revise the rule is not supported by the facts," said the Democrats, led by ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.) and ranking House Natural Resources Committee Democrat Raúl M. Grijalva (D-Ariz.)

"There is no credible evidence that the rule will cause marginal wells to shut-in, will drive industry away from federal and Tribal lands, or will result in job loss," they said. "The state of Colorado enacted similar methane control rules in 2014, and has not experienced any of these negative consequences."

But the Western Energy Alliance and the Independent Petroleum Association of America, which are involved in tangled litigation over the Obama regulation, are all for postponement of it.

"Given the clear overreach by BLM in the current rule, the decision to re-evaluate the rule is entirely appropriate. What BLM should have done in its original rulemaking, and appears willing to do based on this proposed rule, is focus on a tailored update to Notice to Lessees 4-A, and address the delays with pipeline infrastructure right-of-way permit approvals," the associations told BLM in a November 6 comment.

On the legal front the oil and gas associations last month petitioned U.S. District Court Judge Scott W. Skavdahl in Wyoming to issue an injunction against provisions of the rule due to go into effect this coming January. Skavdahl on June 27 had previously refused to issue an injunction because the deadlines were many months away.

But now, said the Western Energy Alliance and the Independent Petroleum Association of America, time is running short and Skavdahl should delay the provisions due to go into effect in January.

They argued in an October 27 submittal to the court that BLM's schedule for deferring the rule won't be met. "BLM did not publish the proposed Suspension Rule until nearly six weeks after its target Date . . .," they told the judge. "Even if BLM meets its December 8, 2017 target date, this timing gives Industry Petitioners little certainty ahead of the looming January 17, 2018 compliance deadlines and still requires compliance until then."

Either through the BLM suspension of the Obama rule or litigation industry thinks it will win in the end. Kathleen Sgamma, president of the Western Energy Alliance, told *PLN*, "The suspension rulemaking is pretty cut and dried; it doesn't make sense for industry to comply with a rule that is being substantially rewritten. We have two paths, the suspension rulemaking process or a court ruling either on the merits of the case or an injunction, to make sure that the rule as it currently exists doesn't go into effect. I remain very confident that companies will not have to comply with the overreaching Obama rule."

But in a separate lawsuit involving the delay of the Obama rule brought by the states of California and New Mexico, U.S. District Court for Northern California Judge Elizabeth Laporte on October 5 held that an initial BLM attempt to delay the Obama rule in June was illegal.

She said that June delay attempt was illegal because the bureau failed to follow normal rule-making procedures, as required by the Administrative Procedures Act.

California attorney general Xavier Becerra (D), a plaintiff in the lawsuit before Laporte, on November 6 told the Interior Department that BLM's new proposal is just as illegal as the June proposal.

"BLM's current proposal to delay and suspend the Waste Prevention Rule is devoid of legal justification and violates the fundamental requirements of the Administrative Procedure Act," he said. "Indeed, BLM has failed to articulate a valid basis for suspending a rule that it recently found was needed to fulfill its statutory mandates and ensure the environmentally responsible development of oil and gas resources on federal and Indian lands, nor has it explored alternatives to address any alleged deficiencies in the Rule. "

So that's where we sit. The Obama administration's methane rule of Nov. 16, 2016, is still in effect. It would tighten up provisions dealing with leakage detection, use of storage tanks and use of pneumatic devices.

And the Trump administration with a proposed rule of October 5 for the second time is attempting to delay implementation, this time until Jan. 17, 2019, while complying with the Administrative Procedures Act strictures requiring public input.

BLM initial delay proposal: On June 15 BLM attempted to postpone several provisions of a Nov. 16, 2016, BLM methane emissions rule dealing with leakage detection, storage tanks and pneumatic device provisions.

The bureau said it was postponing those provisions because a lawsuit from the Western Energy Alliance had created "regulatory uncertainty."

Said BLM, "In light of the existence and potential consequences of the pending litigation, the BLM has concluded that justice requires it to postpone the compliance dates for certain sections of the Rule pursuant to the Administrative Procedure Act, pending judicial review." Judge Laporte then blocked that effort.

BLM said that other provisions of the methane rule that it was already implementing, such as development of a waste minimization plan, royalty free

use of production, definitions of unavoidably lost and avoidably lost, limits on drilling and flaring, and downhole maintenance would continue in place.

BLM latest delay proposal: Following formal rule-making procedures BLM October 5 *proposed* a suspension of the Obama methane emissions rule until January 17, 2019.

The suspension would give BLM time to write a Trump administration rule to either revoke the Obama rule or revise it. Said BLM Director Mike Nedd, "Our proposal would give the BLM sufficient time to review the 2016 final rule and consider revising or rescinding its requirements."

In its October 5 proposal BLM asked for public comments on revisions to the methane rule within 30 days.

The bureau said it intended to write a rule consistent with Trump administration policies that promote fossil fuel energy development. BLM said it found provisions in the Obama rule that are "unnecessarily burdensome on industry."

Panel approves bill to put states in charge of O&G APDs

After a contentious two days of debate the House Natural Resources Committee November 8 approved legislation (HR 4239) to allow states to approve oil and gas drilling permits on onshore public lands. And to manage subsequent oil and gas operations. The vote was 19-to-14, with no Democrats 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.

Although Rep. Stephen Scalise (R-La.) is the title sponsor of the bill the prime mover behind it is bill cosponsor and committee chairman Rob Bishop (R-Utah.) He said, "Through cooperative federalism and commonsense regulatory practices we can fundamentally improve the way our federal lands and waters are managed for oil, gas and wind development."

The measure is contentious because critics argue that the bill is a first step toward transferring responsibility for federal land management to states and, ultimately, to commodity users, i.e. the energy industry.

Ranking House subcommittee on Energy Democrat Alan Lowenthal (D-Calif.) said the bill provides a Hobson's choice for states. They can either maintain such national environmental laws as the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA) and the National Historic Preservation Act (NHPA) or they can fail to protect the land. And if they do

maintain NEPA, ESA and NHPA, the states will need to take as long to process permits as the federal government, he said.

"So you have a choice - waive NEPA, the ESA, the National Historic Preservation Act and the concept of multiple use so states can approve surface uses plans or, if you want all the laws adhered to, states would take just as long as BLM to approve permits," Lowenthal said.

The committee operated on a tight schedule. Scalise introduced the measure November 2, the Energy subcommittee held a hearing on it November 7, and the committee passed the bill November 8.

Giving the bill added heft, the committee coupled the onshore provisions with provisions that would open up substantial portions of the Outer Continental Shelf for oil and gas development.

Western states largely endorsed the measure. Lynn Helms, director of the North Dakota Department of Mineral Resources, said delays in drilling result in the loss of \$250 million in royalties and taxes, presumably per year.

He added, "This legislation will reduce delays in operator's abilities to conduct oil and gas production in North Dakota. In my observation, operators applying for drilling permits generally wait approximately nine months for approval of an application for permit to drill from the BLM. Operators wait less than 20 days for State approval of an application to drill in North Dakota. By imposing additional permitting requirements, BLM duplicates, frustrates, and interferes with North Dakota's regulatory role and authority."

The oil and gas industry was also on board. At a previous October 13 hearing of a draft of the onshore provisions of HR 4239 Dan T. Naatz, senior vice president for government relations & political affairs for the Independent Petroleum Association of America, singled out for praise the hydraulic fracturing provision.

"The states and tribes have a proven track record of safely and effectively regulating hydraulic fracturing operations. States and tribes understand the geology and hydrology of their regions far better than federal officials in Washington, D.C.," he said. "Rather than establishing a duplicative, 'one-size-fits-all' regulatory regime governing hydraulic fracturing, we commend the committee for deferring to state and tribal regulations, permitting and guidance for all activities related to hydraulic fracturing."

The Public Lands Foundation, which represents BLM retirees and often reflects the thinking of BLM professionals, criticized the bill at a second, November 7 hearing. "The PLF believes that public lands should continue to be managed as a unified estate by (BLM)," said Ray Brady, a member of the foundation. "While perhaps well-intentioned, the draft ONSHORE Act discussion draft creates far more problems than it solves and we would not support the proposed bill."

In a letter to chairman Bishop foundation employees said the delegation to states risked inadequate protection of the public lands. "We are deeply concerned that these provisions are not in the public interest or provide for

the appropriate environmental protections in the multiple-use management of our public lands," Jesse Juen, foundation president, wrote.

At the November 7 hearing subcommittee on Energy Chairman Paul Gosar (R-Ariz.) lauded the bill and said it would lead to increased energy development on onshore public lands, and an increase in royalties for both federal and state governments.

"This legislation provides states with a path to maintain stewardship and their revenues. The multi-faceted Secure American Energy Act provides a multi-faceted approach to improving management of our natural, valuable energy resources," he said.

HR 4239 resembles but is different in key aspects from separate Republican legislation (HR 3565, S 335) introduced earlier this year that would also authorize states to assume control of permitting. However, the earlier bills would also delegate leasing authority to states; the committee bill would not.

In addition HR 3565, introduced by Rep. Diane Black (R-Tenn.), and S 335, introduced by Sen. Jim Inhofe (R-Okla.), don't mention hydraulic fracturing.

In the details of HR 4239 the bill would give the Interior Department 180 days to approve or disapprove a state application for a program, with provisions for appeal of a denial. To qualify for the program a state would have to describe its content to the Interior Department, complete with a certification of the state attorney general that state laws are adequate.

Then the secretary would have to determine if a state program was "at least as effective" as the federal program, that a state had the competence and finances to carry out a program, that a state would hold a public comment period, and that a state program would not reduce federal royalties.

On the royalty front the bill would ensure that states received 50 percent of all onshore federal royalties, which Gosar said would have allocated to states \$26 million in fiscal year 2016. The split is now 51 percent federal and 49 percent states. And the bill would allow states to collect royalties.

Finally, the hydraulic fracturing provisions would not allow BLM to regulate the practice if a state had such a program in place, as most do.

Meanwhile, still pending on the Senate floor agenda is an omnibus energy bill (S 1460) that touches on onshore energy development, but does not include a provision to delegate wholesale management to the states. The measure, sponsored by Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) and ranking Democrat Maria Cantwell (D-Wash.), has been on the Senate agenda since June 28, without moving.

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

With hearings completed DoI can begin new grouse policy

The Trump administration concluded yesterday (November 15) 15 hearings on its intention to revise 98 Obama administration sage-grouse plans. That helps set the stage for the Trump administration to revise those plans over the next year or so.

At the hearings held in eight states environmentalists recommended that the administration give the Obama plans an opportunity to work.

"These modest sage grouse conservation plans already include concessions to industry. The Trump administration should be strengthening them, not trying to unwind them," said Patrick Donnelly, Nevada state director at the Center for Biological Diversity.

Three western states have said roughly the same thing - Colorado, Montana and Wyoming. At an October 25 hearing of the House Natural Resources Committee, John Tubbs, director of the Montana Department of Natural Resources, questioned the need for Secretary of Interior Ryan Zinke to rewrite the 98 plans.

"It is imperative that we avoid prolonged and unnecessary work that would unravel the foundation of the 2015 'not warranted' finding to the point that we all risk a result we worked so hard to avoid," he said. "Adaptive implementation of the plans can reduce uncertainty for our partners, industry, and working ranch families who take care of the land and the wildlife on our behalf and can help address inconsistencies efficiently."

Wyoming Gov. Matt Mead (R-Wyo.) and Colorado Gov. John Hickenlooper (D-Colo.) have said the same thing.

But other western states, such as Utah and Idaho, have not only criticized the Obama plans of Sept. 24, 2015, but have also taken them to court. However, in January U.S. District Court Judge Emmet G. Sullivan in the District of Columbia threw out the Idaho lawsuit on the grounds that the state had not demonstrated a harm from the plans and thus did not have standing to bring suit.

Utah and Idaho are backed by the oil and gas industry, which has filed its own lawsuit against the plans.

On the table is an October 11 BLM announcement that the bureau intends to revise its 2015 plans. As part of the preparation of environmental documentation BLM has conducted the 15 hearings in California, Colorado, Idaho, Montana, Nevada, Oregon, Utah and Wyoming. The public comment period on the BLM scoping announcement runs to December 1.

Zinke signaled the kinds of changes that he anticipates BLM will make in an August memo to the department. Those changes are based upon recommendations Zinke received from an interagency sage-grouse review team. High on Zinke's list is direction to "Modify or issue new policy on fluid mineral leasing and development" and "Work with the States to improve techniques and methods to allow the States to set appropriate population objectives."

On the state delegation front the House Natural Resources Committee held a hearing October 25 on the advisability of transferring to the states responsibility for managing the sage-grouse.

In addition, the Interior Department on October 25 singled out the upcoming sage-grouse regulations as a necessary prequel to opening the public lands to energy development.

In a report titled, *Review of the Department of the Interior Actions that Potentially Burden Domestic Energy*, the department said its upcoming sage-grouse revisions are "giving appropriate weight to the value of energy and other development on public lands within BLM's overall multiple-use mission."

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

If as promised the Trump Interior Department revises the 98 sage-grouse plans, that action may affect a slew of lawsuits against the Obama plans. As a first order of business the new plans may render moot the lawsuits brought by Idaho and Utah and by the oil and gas industry. Those lawsuits said the Obama plans were too limiting; the Trump plans would be less limiting.

But the changes to the plans may well revive an environmentalist lawsuit that charges the Obama plans weren't limiting enough. Even less limiting plans from the Trump administration would not only lead to an amended lawsuit but it might also bring on new litigation.

BLM's website on proposed revisions to the sage-grouse plans is at: <https://eplanning.blm.gov/epl-frontoffice/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=90121&dctmId=0b0003e880fb63b3>.

Enviros ask Zinke to insure public lands stay public

Environmentalists are pressuring the Trump administration to retain the size of national monuments with a novel Administrative Procedures Act (APA) demand.

That demand, in the form of a legal petition, calls on the Interior Department to write a rule that prohibits the disposal of large tracts of public lands.

"In the wake of a wildly unpopular national monument 'review,' it's easy to forget that public servants - like Department of the Interior Secretary Ryan Zinke - work for us, the American people," said Brad Brooks, director of public lands with The Wilderness Society. "It's time for Secretary Zinke to show us how serious he is about keeping public lands public."

However, we pointed out to Brooks that the Federal Land Policy and Management Act (FLPMA) already says that it is Congress's will that public

lands be retained in the federal domain, except for land exchanges, etc. that are covered by land use plans.

He agreed, but said the society wanted to make sure. "FLPMA does give BLM the authority to dispose of public lands in certain circumstances under acreage restrictions," he acknowledged.

Then Brooks added, "However, we do think it is feasible that BLM or DOI could try to undergo a process to dispose or give management authority on public land to states or other non-federal entities. It is not out of the realm of possibility that political appointees could challenge long held policy around disposal of public land."

The petition itself says Congress has given "limited authority" to dispose of public lands. And, it says, "With threats to our public lands looming, now is the time for DOI to enact a rule prohibiting the widespread sale or disposal of America's public land beyond the authority granted by Congress. Only by doing so can DOI ensure the American people that our public lands will remain available for the benefit and enjoyment of present and future generations."

The petition was submitted to Zinke not only by environmental groups but also by sportsmen, including the BlueRibbon Coalition, which represents powered vehicle users and frequently bangs heads with environmentalists.

"Even though we may not always agree about *how* we use public lands, we all love these places and agree they ought to remain public," said Martin Hackworth, executive director of the coalition.

While there is little chance the Trump administration would up-front transfer to states or private interests large tracts of public lands, there is a chance that the President would reduce the size of large, existing national monuments.

In phone conversations in October with Utah Gov. Gary Herbert (R-Utah) and Sen. Orrin Hatch (R-Utah) President Trump reportedly suggested that he would reduce the size of the Bears Ears National Monument from 1.35 million acres to 120,000 acres.

Herbert said Trump told him he will accede to a Herbert recommendation, and Herbert has recommended reduction of the monument to 120,000 acres.

Trump also told Hatch that he would authorize coal development in the 1.9 million-acre Grand Staircase Escalante National Monument. In addition Trump might reduce the size of the monument. Trump is expected to act in December.

On August 24 Secretary of Interior Ryan Zinke submitted a recommendation to President Trump that he take unspecified steps to reduce the size of four national monuments in the West and increase consumptive uses in 10 monuments.

On the chopping block for reductions are Bears Ears, Grand Staircase-Escalante, Cascade-Siskiyou National Monument in Oregon, and Gold Butte National Monument in Nevada. In his recommendation Zinke did not specify how many acres should be removed from each monument.

The Zinke memo argues that past Presidents have violated the Antiquities Act of 1906 by setting aside excessively large amounts of land for monuments.

"No President should use the authority under the Act to restrict public access, prevent hunting and fishing, burden private land, or eliminate traditional land uses, unless such action is needed to protect the object," Zinke said in a document titled *Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act*.

For the six major national monuments in the West up for major changes Zinke recommended that the Presidential Proclamation for each and the management plan for each be reshaped to authorize "traditional uses."

If President Trump does issue proclamations directing revisions to management plans, those revisions will take years to write. Historically, BLM has taken around five years to write a monument management plan, which then is subject to appeal or lawsuit.

Congress entered the overall battle over national monument powers October 11 when the House Natural Resources Committee approved a bill (HR 3990) to set new conditions on protected area designations. The vote was 23-to-17.

Above all, the bill from panel chairman Rob Bishop (R-Utah) would forbid the designation of any national monument larger than 85,000 acres, except in an emergency and that emergency designation could last for only one year.

In addition HR 3990 would give Congressional endorsement to any attempts by an administration to reduce existing national monuments larger than 85,000 acres.

The latter provision would give President Trump authority to reduce the size of the four national monuments in the West, as recommended by Zinke.

Contrasting reports have been posted in the last year on the legality of a President's authority to unilaterally revoke or revise a national monument designation.

A 1938 U.S. Attorney General opinion and a Congressional Research Service (CRS) [report](#) of last fall doubt Trump enjoys such authority. But an American Enterprise Institute [report](#) published this spring argues that he does.

A copy of Zinke's recommendation memorandum is here:
<https://www.documentcloud.org/documents/4052225-Interior-Secretary-Ryan-Zinke-s-Report-to-the.html>.

A copy of the environmentalists' petition is here:
<http://wilderness.org/sites/default/files/APA%20Petition%20Public%20Lands%20Rule%2011.16.17.pdf>.

Five House ESA bills delayed by press of other business

The House was tied up with mega-tax issues this week, preventing it from taking up five separate bills on its agenda to ease the bite of the Endangered Species Act (ESA). But when the House returns after Thanksgiving the bills, cleared by the House Natural Resources Committee, may be given priority on the floor.

The bills in combination would revise substantially the ESA, although individually they might have limited impacts. The measures would do such things as curb awards to environmentalists in litigation and make listing data available to states early in the game.

Most of those bills enjoyed some Democratic support, so they might succeed in the Senate. But more sweeping reforms - as championed by western Republicans - would have a harder time of it in the Senate.

House Natural Resources Committee Chairman Rob Bishop (R-Utah), who has made no secret of his ambition to enfeeble the ESA, reportedly said recently he would "love to invalidate" the act.

House Democrats said the House was wasting its time on major ESA reforms because the Senate would never accept them, what with several moderate Republicans regularly voting in support of environmentalists.

Indeed in exhibit one the Senate October 19 rejected a legislative amendment to remove from federal control management of species wholly within one state under the ESA. In effect the amendment from Sen. Mike Lee (R-Utah) would have opened the way for states to regulate endangered species that don't cross state borders.

The vote was a close 49-to-51 with three Republicans in opposition. The three Republicans who voted against - Sens. Lamar Alexander (R-Tenn.), Susan Collins (R-Me.) and Bob Corker (R-Tenn.) - may set a precedent for more ambitious ESA reform legislation, as well as other natural resources legislation.

The House approved these ESA bills: HR 1274, which would make listing data available to states prior to a listing (approved 22-to-14); HR 424, which would forbid litigation against the delisting of the Wyoming population of the gray wolf (approved 26-to-14); HR 717, which would include economic factors in listing decisions (approved 22-to-13); HR 2603, which would bar nonnative species from being considered as imperiled under the ESA (approved 22-to-16); and HR 3131, which would limit awards to environmental plaintiffs in ESA litigation (approved 22-to-16).

In the Senate, Sen. Lee argued on the floor that the U.S. Constitution limits the federal government's powers primarily to interstate transactions; it leaves to the states oversight of intrastate activities.

"(The constitution) does not give the Congress the power to regulate any and every activity occurring intrastate," he said. "Yet, for the last few decades, under the Endangered Species Act, this very power has been abused to regulate species that exists only in one place, only within one State, never crossing State lines, never forming any part of any channel or instrumentality of interstate commerce."

But Sen. Tom Carper (D-Del.), ranking minority member on the Senate Environment and Public Works Committee, disagreed, arguing that the majority of species are intrastate and many are deserving of federal protection.

"Seventy-seven percent of all listed species, including the polar bear, the Florida panther, and many more are found only in one State, and for an island State like Hawaii, all of its species would lose protection," he said.

In the Senate Sen. John Barrasso (R-Wyo.), chairman of the Senate Environment and Public Works (EPW) Committee, is taking the lead in revising the ESA.

Barrasso led off the Republican campaign with an initial Senate EPW committee oversight hearing February 15. Barrasso laid out this bottom line at the hearing: "Here's the problem. The Endangered Species Act is not working today and we should be concerned when the (ESA) fails to work. States, wildlife managers, home builders, construction companies, farmers, ranchers and other stakeholders are all making it clear that the (ESA) is not working today."

A central complaint of critics of the law is the legal deadline for FWS to act on petitions to list species for protection. FWS must first determine within 90 days if a petition merits study and, if so, make a listing determination within a year.

That the Republican Congress, in concert with the Trump administration, intends to make significant changes in the law is a given. But the path in the legislative process won't be smooth because the ESA traditionally has enjoyed some Republican support and strong public support, viz. the Lee amendment.

The Republican are particularly perturbed by two overarching agreements the Obama administration struck in 2011 with environmental groups to settle lawsuits. The environmentalists said FWS and the National Marine Fisheries Service were too slow in acting on 1,000 listing petitions.

In the first agreement on May 17, 2011, FWS struck a deal with WildEarth Guardians to process petitions for 251 candidate species. In return WildEarth, which had been plastering FWS with listing petitions, agreed to limit the number of future petitions. Among the 251 species is the Greater sage-grouse. On July 12, 2011, FWS reached a second agreement with the Center for Biological Diversity to protect 757 species by 2018.

IBLA decisions

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

(IBLA posted only one minor decision in the last fortnight dealing with recreation.)

Notes

Appropriations bills still stuck in neutral. The Senate Appropriations Committee did not address fiscal year 2018 appropriations legislation in the last fortnight, insuring a major spending crisis when Congress returns after

a Thanksgiving holiday. Once Congress comes back the week of November 27 it will have just two weeks before an interim fiscal 2018 appropriations bill expires on December 8, so another extension is probable, but Speaker of the House Paul Ryan said November 15 he anticipates completing legislation before Christmas. A lot is working against appropriations legislation in the Senate. First, it is tied up with tax reform legislation. Second, senators disagree about how much money to put up and how many riders to include. Finally, Senate Appropriations Committee Chairman Thad Cochran (R-Miss.) is not well physically. The continued incapacitation of Cochran, 79, forced the cancellation of a scheduled committee mark-up in October of the fiscal 2018 Interior and Related Agencies appropriations bill (HR 3354). The Senate subcommittee on Interior had been scheduled to mark up October 17 and the full appropriations panel October 19. The House approved its version of a bill (HR 3354) on September 14. The House wrapped eight domestic appropriations bill into the lead Interior measure. If and when the Senate committee addresses a fiscal 2018 spending bill, it will have major obstacles to overcome. First and foremost, the committee will use a significantly higher spending cap than in the House-passed bill. The Senate committee would have \$600 million more to work with. However, the Senate cap for the Interior and Related Agencies bill is still \$224 million less than a final fiscal 2017 appropriation of \$32.224 billion. On the all-important wildfire front the Senate panel must come up with some \$4 billion for wildfire suppression and fire prevention programs. The Senate Republican money committee members will almost certainly demand several public lands riders. In the past the committee has supported riders that would ban the listing of the sage-grouse as threatened or endangered under the Endangered Species Act and forbid the Interior Department from delisting the gray wolf in Wyoming from the Endangered Species Act.

Sportsmen give Zinke mixed rating. A year after President Trump was elected President hunters and fishermen who often tip the political scales on public lands issues are giving pluses and minuses to Secretary of Interior Ryan Zinke. At a new [website](#) the sportsmen praise Zinke for attempting to increase hunting and fishing opportunities on the public lands. And they say he is attempting to protect some public lands they value. At the same time, Back Country Hunters and Anglers President Land Tawney criticized Zinke for recommending increased commercial uses in national monuments. "We believe that while some of these actions are commendable - and are in keeping with the values of Theodore Roosevelt - others deserve our swift and honest criticism," said Tawney. A website on the report card is at: <http://whatwouldtrdo.org/>.

PERC gets a new manager. The external affairs director for the Gulf Power Company, Brian Yablonski, will be the next executive director of the conservative think tank Property and Environment Research Center (PERC). Yablonski will replace the current executive director Reed Watson in January. Yablonski has also served as the chairman of the Florida Fish and Wildlife Conservation Commission. PEER operates out of Bozeman, Mont., and has long advocated for a greater role for private industry in managing the public lands.

Conference Calendar

DECEMBER

1-9. **Western Governors' Association Winter Meeting** in Phoenix. Contact: Western Governors' Association, 1515 Cleveland Place, Suite 200, Denver, CO 80202. (303) 623-9378. <http://www.westgov.org>.

4-8. **American Exploration & Mining Association Annual Meeting** in Reno, Nev. Check the association website at <http://www.miningamerica.org>.

14-17. **Council of State Governments 2017 National Conference** in Las Vegas, Nev. Contact: Council of State Governments, P.O. Box 11910, Lexington, KY 40578. (859) 244-8103. <http://www.csg.org/>.

JANUARY

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

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

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

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

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

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Editor: James B. Coffin

Subscription Services: Gerrie Castaldo

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In this issue. . . .

Senate committee approves ANWR leasing. *Endorses O&G development in a close vote. Senate floor may be more difficult. CBO backs Murkowski estimate of \$1.1B in revenues. First sale of 400,000 plus acres.....* Page 1

Another attempt nears to end fire borrowing. *Twenty eight Senate Dems see upcoming disaster bill as logical vehicle to resolve problem.....* Page 4

Agencies, Hill working to end withdrawals. *GOP recommends revocation of Grand Canyon withdrawal, along with sage grouse, river withdrawals... Page 5*

Dems get the jump on methane comments. *House and Senate members say DoI should keep BLM rule. But industry says DoI or courts will revoke... Page 7*

House committee approves state O&G powers. *Would allow states to both decide on permits and manage operations. Paired with OCS openings... Page 9*

Way opened for action on sage-grouse plans. *With 15 field hearings over BLM can turn its attention to making changes that Zinke suggested.... Page 11*

Enviros push for public lands retention. *Even though FLPMA says that is the law greens want DoI to write a rule to make doubly certain..... Page 12*

ESA bills delayed in House. *As big tax bill eats up all the oxygen. Measures may be the forerunner of major changes in the law..... Page 14*

IBLA decisions..... Page 16

Notes..... Page 16

Conference calendar..... Page 17

Senate Energy Committee narrowly approves ANWR leasing

The Senate Energy Committee November 15 approved legislation to open the coastal plain of the Arctic National Wildlife Refuge (ANWR) to oil and gas leasing by a close 13-to-10 vote.

No committee Republicans voted against the legislation and Sen. Joe Manchin (D-W.Va.) was the lone Democrat supporting it. The Senate floor may be more problematic. Bill sponsor and panel chairman Lisa Murkowski (R-Alaska) still must round up 50 votes. In the past Sens. Susan Collins (R-Me.) and John McCain (R-Ariz.) have opposed ANWR leasing; neither sits on the committee.

Under a Republican budget game plan, the energy committee bill will now be attached to an overall Republican tax reform plan. 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 bill 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 the 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 does say 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.

CBO did warn 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," says 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.

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

Environmentalists, who have declared all-out war against the legislation, question 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."

November 17, 2017**Page 3**

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 just before 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 Energy Committee to act on ANWR October 26 when the House 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>.

DOI-2020-09 00344

Still another good chance to end fire borrowing looms

In the last few years Republicans and Democrats alike have mounted numerous 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.

But an upcoming emergency spending bill offers perhaps the most promising opportunity yet to gain that Congressional approval.

Leading the latest campaign, 28 Senate Democrats said last week that they have asked Office of Management and Budget Director Mick Mulvaney to request a transfer of wildfire spending to a disaster cap in the next emergency bill. Mulvaney has said the Trump administration would send a third such emergency assistance bill to the Hill this month to help pay for this fall's hurricanes.

In a letter to Mulvaney the 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 to divest forestry reforms from the disaster cap 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 borrow \$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 payback. 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, forcing agencies to borrow money from line programs, including fire prevention.

Sen. Ron Wyden (D-Ore.), a signatory to the Democratic senators' letter to Mulvaney, described the situation this way: "Natural disasters have pummeled communities in every corner of our country this year. Year after year, the broken wildfire budgeting system shortchanges prevention funding, literally adding fuel to fires. Putting an end to fire borrowing would at long last allow America to get ahead of the West's natural disasters - wildfires."

November 17, 2017**Page 5**

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."

There is not much appropriations help in the pipeline for hazardous fuel reductions. The House approved a fiscal year 2018 appropriations bill (HR 3354) September 14 that would put up only \$5 million more than the fiscal 2017 appropriation for hazardous fuels. The House approved \$575 million for prevention efforts in fiscal 2018, compared to the \$570 million fiscal 2017 level.

GOP working in agencies and on Hill to undo withdrawals

The Trump administration is striving on three fronts to revoke major land withdrawals that bar hard rock mining, and Democrats are resisting.

Leading the way is a Department of Agriculture recommendation that a one million-acre withdrawal near Grand Canyon National Park be canceled.

Separately, on October 11 the Interior Department did cancel a 10 million-acre Obama administration withdrawal to protect sage-grouse habitat in the West.

Finally, on October 25 the Interior Department in a new report identified obstacles to expanding energy development on the public lands, and included in the list withdrawals to protect wild and scenic rivers.

Ranking House Natural Resources Committee Member Raúl M. Grijalva (D-Ariz.) is particularly exercised about the suggested withdrawal near the Grand Canyon. He wrote two letters November 3 on the subject, one to House Natural Resources Committee Chairman Rob Bishop (R-Utah) asking for a hearing on the Grand Canyon area, and one to Secretary of Agriculture Sonny Perdue asking for an explanation of the withdrawal revocation request.

Grijalva has introduced legislation (HR 360) to make the existing, 20-year Grand Canyon withdrawal permanent. He told Bishop, "Rescinding the existing withdrawal, after only five years and without scientific or public review, would be irresponsible and threaten a watershed that provides drinking water to more than 20 million Americans."

Grijalva made a similar pitch to Perdue. "Rescinding the withdrawal now, after only five years, without demonstrating an updated understanding of the available data has the potential to do lasting ecological damage, not to mention irreparable harm to the region's numerous cultural resources," he wrote.

For his part Bishop on September 28 asked the Trump administration to end millions of acres of Obama administration hard rock mining withdrawals across the West.

Bishop didn't list all the withdrawals he objects to but the low-hanging fruit includes the 2012 million-acre withdrawal of BLM and Forest Service land to protect Grand Canyon National Park. Bishop submitted his request in a letter to Secretary of Interior Ryan Zinke and Perdue.

The Federal Land Policy and Management Act of 1976 (FLPMA) authorizes the secretary of Interior to effectively withdraw land immediately (called a segregation) for up to two years and to make larger withdrawals for up to 20 years. In practice secretaries make withdrawals to protect public lands from development, usually hard rock mining but also other uses.

The Obama administration executed two major withdrawals - the one million-acre withdrawal near Grand Canyon and the 10 million-acre sage-grouse segregation.

Sage-grouse: Secretary of Interior Sally Jewell segregated 10 million acres from the mining law on Sept. 24, 2015, for two years to protect the sage-grouse. When the Trump administration didn't follow through with a 20-year withdrawal, the segregation terminated.

Subsequently, BLM on October 11 made it official and said it would not attempt to execute a 20-year withdrawal. "The proposal to withdraw 10 million acres to prevent 10,000 from potential mineral development was a complete overreach," said Acting BLM Director Mike Nedd.

Grand Canyon: On Jan. 21, 2012, then Secretary of Interior Ken Salazar withdrew a million acres from uranium mining claims on public lands near Grand Canyon National Park. The withdrawal applied to 350,000 acres of national forest and 650,000 acres of BLM land.

Responding to President Trump's order to promote energy production in the country, the Department of Agriculture prepared a report in October recommending 15 policy changes affecting the Forest Service. Prominent among them was the cancellation of the Grand Canyon withdrawal.

Said the department report, "Adoption of this recommendation could re-open lands to mineral entry pursuant to the United States mining laws facilitating exploration for, and possibly development of, uranium resources."

Wild and Scenic rivers: Over the years BLM in its Instruction Memorandums to the field laid out a strategy for processing withdrawals to protect wild and scenic rivers under the Wild and Scenic Rivers Act. In an October 25 regulatory review report, the Interior Department said it would revisit the manual strategy.

"Manual 6400 will be reviewed following the proposed revisions to BLM Mitigation Manual Section and Handbook to ensure that it conforms to BLM revised mitigation guidance," says the report. "Although the requirements for minerals and mineral withdrawals are legally mandated under the mining and mineral leasing laws in sections 9(a) and 15(2) of the WSLRA, Manual 6400 will be reviewed for opportunities to clarify discretionary decision-space."

November 17, 2017**Page 7**

The Department of Agriculture report is available at: https://www.eenews.net/assets/2017/11/01/document_pm_05.pdf.

The Department of Interior report is available at; https://www.doi.gov/sites/doi.gov/files/uploads/interior_energy_actions_report_final.pdf.

The Grijalva letters are available at: <http://bit.ly/2zgRyFX> and <http://bit.ly/2j0tMIh>.

Dems team up against revocation of Obama methane rule

Eighty-one Democrats got a jump on the competition a fortnight ago by recommending that BLM cancel a proposed rule to delay implementation of most of a BLM methane emissions rule.

Submitting comments three days before the November 6 deadline for comments on the proposal to block an Obama administration rule, the Democrats said the argument that the rule would harm the oil and gas industry was baseless.

"The Department's stated rationale for moving to repeal or revise the rule is not supported by the facts," said the Democrats, led by ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.) and ranking House Natural Resources Committee Democrat Raúl M. Grijalva (D-Ariz.)

"There is no credible evidence that the rule will cause marginal wells to shut-in, will drive industry away from federal and Tribal lands, or will result in job loss," they said. "The state of Colorado enacted similar methane control rules in 2014, and has not experienced any of these negative consequences."

But the Western Energy Alliance and the Independent Petroleum Association of America, which are involved in tangled litigation over the Obama regulation, are all for postponement of it.

"Given the clear overreach by BLM in the current rule, the decision to re-evaluate the rule is entirely appropriate. What BLM should have done in its original rulemaking, and appears willing to do based on this proposed rule, is focus on a tailored update to Notice to Lessees 4-A, and address the delays with pipeline infrastructure right-of-way permit approvals," the associations told BLM in a November 6 comment.

On the legal front the oil and gas associations last month petitioned U.S. District Court Judge Scott W. Skavdahl in Wyoming to issue an injunction against provisions of the rule due to go into effect this coming January. Skavdahl on June 27 had previously refused to issue an injunction because the deadlines were many months away.

But now, said the Western Energy Alliance and the Independent Petroleum Association of America, time is running short and Skavdahl should delay the provisions due to go into effect in January.

They argued in an October 27 submittal to the court that BLM's schedule for deferring the rule won't be met. "BLM did not publish the proposed Suspension Rule until nearly six weeks after its target Date . . .," they told the judge. "Even if BLM meets its December 8, 2017 target date, this timing gives Industry Petitioners little certainty ahead of the looming January 17, 2018 compliance deadlines and still requires compliance until then."

Either through the BLM suspension of the Obama rule or litigation industry thinks it will win in the end. Kathleen Sgamma, president of the Western Energy

Alliance, told *PLN*, "The suspension rulemaking is pretty cut and dried; it doesn't make sense for industry to comply with a rule that is being substantially rewritten. We have two paths, the suspension rulemaking process or a court ruling either on the merits of the case or an injunction, to make sure that the rule as it currently exists doesn't go into effect. I remain very confident that companies will not have to comply with the overreaching Obama rule."

But in a separate lawsuit involving the delay of the Obama rule brought by the states of California and New Mexico, U.S. District Court for Northern California Judge Elizabeth Laporte on October 5 held that an initial BLM attempt to delay the Obama rule in June was illegal.

She said that June delay attempt was illegal because the bureau failed to follow normal rule-making procedures, as required by the Administrative Procedures Act.

California attorney general Xavier Becerra (D), a plaintiff in the lawsuit before Laporte, on November 6 told the Interior Department that BLM's new proposal is just as illegal as the June proposal.

"BLM's current proposal to delay and suspend the Waste Prevention Rule is devoid of legal justification and violates the fundamental requirements of the Administrative Procedure Act," he said. "Indeed, BLM has failed to articulate a valid basis for suspending a rule that it recently found was needed to fulfill its statutory mandates and ensure the environmentally responsible development of oil and gas resources on federal and Indian lands, nor has it explored alternatives to address any alleged deficiencies in the Rule. "

So that's where we sit. The Obama administration's methane rule of Nov. 16, 2016, is still in effect. It would tighten up provisions dealing with leakage detection, use of storage tanks and use of pneumatic devices.

And the Trump administration with a proposed rule of October 5 for the second time is attempting to delay implementation, this time until Jan. 17, 2019, while complying with the Administrative Procedures Act strictures requiring public input.

BLM initial delay proposal: On June 15 BLM attempted to postpone several provisions of a Nov. 16, 2016, BLM methane emissions rule dealing with leakage detection, storage tanks and pneumatic device provisions.

The bureau said it was postponing those provisions because a lawsuit from the Western Energy Alliance had created "regulatory uncertainty."

Said BLM, "In light of the existence and potential consequences of the pending litigation, the BLM has concluded that justice requires it to postpone the compliance dates for certain sections of the Rule pursuant to the Administrative Procedure Act, pending judicial review." Judge Laporte then blocked that effort.

BLM said that other provisions of the methane rule that it was already implementing, such as development of a waste minimization plan, royalty free use of production, definitions of unavoidably lost and avoidably lost, limits on drilling and flaring, and downhole maintenance would continue in place.

BLM latest delay proposal: Following formal rule-making procedures BLM October 5 proposed a suspension of the Obama methane emissions rule until January 17, 2019.

The suspension would give BLM time to write a Trump administration rule to either revoke the Obama rule or revise it. Said BLM Director Mike Nedd, "Our proposal would give the BLM sufficient time to review the 2016 final rule and consider revising or rescinding its requirements."

November 17, 2017**Page 9**

In its October 5 proposal BLM asked for public comments on revisions to the methane rule within 30 days.

The bureau said it intended to write a rule consistent with Trump administration policies that promote fossil fuel energy development. BLM said it found provisions in the Obama rule that are "unnecessarily burdensome on industry."

Panel approves bill to put states in charge of O&G APDs

After a contentious two days of debate the House Natural Resources Committee November 8 approved legislation (HR 4239) to allow states to approve oil and gas drilling permits on onshore public lands. And to manage subsequent oil and gas operations. The vote was 19-to-14, with no Democrats 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.

Although Rep. Stephen Scalise (R-La.) is the title sponsor of the bill the prime mover behind it is bill cosponsor and committee chairman Rob Bishop (R-Utah.) He said, "Through cooperative federalism and commonsense regulatory practices we can fundamentally improve the way our federal lands and waters are managed for oil, gas and wind development."

The measure is contentious because critics argue that the bill is a first step toward transferring responsibility for federal land management to states and, ultimately, to commodity users, i.e. the energy industry.

Ranking House subcommittee on Energy Democrat Alan Lowenthal (D-Calif.) said the bill provides a Hobson's choice for states. They can either maintain such national environmental laws as the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA) and the National Historic Preservation Act (NHPA) or they can fail to protect the land. And if they do maintain NEPA, ESA and NHPA, the states will need to take as long to process permits as the federal government, he said.

"So you have a choice - waive NEPA, the ESA, the National Historic Preservation Act and the concept of multiple use so states can approve surface uses plans or, if you want all the laws adhered to, states would take just as long as BLM to approve permits," Lowenthal said.

The committee operated on a tight schedule. Scalise introduced the measure November 2, the Energy subcommittee held a hearing on it November 7, and the committee passed the bill November 8.

Giving the bill added heft, the committee coupled the onshore provisions with provisions that would open up substantial portions of the Outer Continental Shelf for oil and gas development.

Western states largely endorsed the measure. Lynn Helms, director of the

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North Dakota Department of Mineral Resources, said delays in drilling result in the loss of \$250 million in royalties and taxes, presumably per year.

He added, "This legislation will reduce delays in operator's abilities to conduct oil and gas production in North Dakota. In my observation, operators applying for drilling permits generally wait approximately nine months for approval of an application for permit to drill from the BLM. Operators wait less than 20 days for State approval of an application to drill in North Dakota. By imposing additional permitting requirements, BLM duplicates, frustrates, and interferes with North Dakota's regulatory role and authority."

The oil and gas industry was also on board. At a previous October 13 hearing of a draft of the onshore provisions of HR 4239 Dan T. Naatz, senior vice president for government relations & political affairs for the Independent Petroleum Association of America, singled out for praise the hydraulic fracturing provision.

"The states and tribes have a proven track record of safely and effectively regulating hydraulic fracturing operations. States and tribes understand the geology and hydrology of their regions far better than federal officials in Washington, D.C.," he said. "Rather than establishing a duplicative, 'one-size-fits-all' regulatory regime governing hydraulic fracturing, we commend the committee for deferring to state and tribal regulations, permitting and guidance for all activities related to hydraulic fracturing."

The Public Lands Foundation, which represents BLM retirees and often reflects the thinking of BLM professionals, criticized the bill at a second, November 7 hearing. "The PLF believes that public lands should continue to be managed as a unified estate by (BLM)," said Ray Brady, a member of the foundation. "While perhaps well-intentioned, the draft ONSHORE Act discussion draft creates far more problems than it solves and we would not support the proposed bill."

In a letter to chairman Bishop foundation employees said the delegation to states risked inadequate protection of the public lands. "We are deeply concerned that these provisions are not in the public interest or provide for the appropriate environmental protections in the multiple-use management of our public lands," Jesse Juen, foundation president, wrote.

At the November 7 hearing subcommittee on Energy Chairman Paul Gosar (R-Ariz.) lauded the bill and said it would lead to increased energy development on onshore public lands, and an increase in royalties for both federal and state governments.

"This legislation provides states with a path to maintain stewardship and their revenues. The multi-faceted Secure American Energy Act provides a multi-faceted approach to improving management of our natural, valuable energy resources," he said.

HR 4239 resembles but is different in key aspects from separate Republican legislation (HR 3565, S 335) introduced earlier this year that would also authorize states to assume control of permitting. However, the earlier bills would also delegate leasing authority to states; the committee bill would not.

In addition HR 3565, introduced by Rep. Diane Black (R-Tenn.), and S 335, introduced by Sen. Jim Inhofe (R-Okla.), don't mention hydraulic fracturing.

In the details of HR 4239 the bill would give the Interior Department 180 days to approve or disapprove a state application for a program, with provisions for appeal of a denial. To qualify for the program a state would have to describe its content to the Interior Department, complete with a certification of the state attorney general that state laws are adequate.

November 17, 2017**Page 11**

Then the secretary would have to determine if a state program was "at least as effective" as the federal program, that a state had the competence and finances to carry out a program, that a state would hold a public comment period, and that a state program would not reduce federal royalties.

On the royalty front the bill would ensure that states received 50 percent of all onshore federal royalties, which Gosar said would have allocated to states \$26 million in fiscal year 2016. The split is now 51 percent federal and 49 percent states. And the bill would allow states to collect royalties.

Finally, the hydraulic fracturing provisions would not allow BLM to regulate the practice if a state had such a program in place, as most do.

Meanwhile, still pending on the Senate floor agenda is an omnibus energy bill (S 1460) that touches on onshore energy development, but does not include a provision to delegate wholesale management to the states. The measure, sponsored by Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) and ranking Democrat Maria Cantwell (D-Wash.), has been on the Senate agenda since June 28, without moving.

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

With hearings completed DoI can begin new grouse policy

The Trump administration concluded yesterday (November 15) 15 hearings on its intention to revise 98 Obama administration sage-grouse plans. That helps set the stage for the Trump administration to revise those plans over the next year or so.

At the hearings held in eight states environmentalists recommended that the administration give the Obama plans an opportunity to work.

"These modest sage grouse conservation plans already include concessions to industry. The Trump administration should be strengthening them, not trying to unwind them," said Patrick Donnelly, Nevada state director at the Center for Biological Diversity.

Three western states have said roughly the same thing - Colorado, Montana and Wyoming. At an October 25 hearing of the House Natural Resources Committee, John Tubbs, director of the Montana Department of Natural Resources, questioned the need for Secretary of Interior Ryan Zinke to rewrite the 98 plans.

"It is imperative that we avoid prolonged and unnecessary work that would unravel the foundation of the 2015 'not warranted' finding to the point that we all risk a result we worked so hard to avoid," he said. "Adaptive implementation of the plans can reduce uncertainty for our partners, industry, and working ranch families who take care of the land and the wildlife on our behalf and can help address inconsistencies efficiently."

Wyoming Gov. Matt Mead (R-Wyo.) and Colorado Gov. John Hickenlooper (D-Colo.) have said the same thing.

But other western states, such as Utah and Idaho, have not only criticized the Obama plans of Sept. 24, 2015, but have also taken them to court. However, in

January U.S. District Court Judge Emmet G. Sullivan in the District of Columbia threw out the Idaho lawsuit on the grounds that the state had not demonstrated a harm from the plans and thus did not have standing to bring suit.

Utah and Idaho are backed by the oil and gas industry, which has filed its own lawsuit against the plans.

On the table is an October 11 BLM announcement that the bureau intends to revise its 2015 plans. As part of the preparation of environmental documentation BLM has conducted the 15 hearings in California, Colorado, Idaho, Montana, Nevada, Oregon, Utah and Wyoming. The public comment period on the BLM scoping announcement runs to December 1.

Zinke signaled the kinds of changes that he anticipates BLM will make in an August memo to the department. Those changes are based upon recommendations Zinke received from an interagency sage-grouse review team. High on Zinke's list is direction to "Modify or issue new policy on fluid mineral leasing and development" and "Work with the States to improve techniques and methods to allow the States to set appropriate population objectives."

On the state delegation front the House Natural Resources Committee held a hearing October 25 on the advisability of transferring to the states responsibility for managing the sage-grouse.

In addition, the Interior Department on October 25 singled out the upcoming sage-grouse regulations as a necessary prequel to opening the public lands to energy development.

In a report titled, *Review of the Department of the Interior Actions that Potentially Burden Domestic Energy*, the department said its upcoming sage-grouse revisions are "giving appropriate weight to the value of energy and other development on public lands within BLM's overall multiple-use mission."

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

If as promised the Trump Interior Department revises the 98 sage-grouse plans, that action may affect a slew of lawsuits against the Obama plans. As a first order of business the new plans may render moot the lawsuits brought by Idaho and Utah and by the oil and gas industry. Those lawsuits said the Obama plans were too limiting; the Trump plans would be less limiting.

But the changes to the plans may well revive an environmentalist lawsuit that charges the Obama plans weren't limiting enough. Even less limiting plans from the Trump administration would not only lead to an amended lawsuit but it might also bring on new litigation.

BLM's website on proposed revisions to the sage-grouse plans is at: <https://eplanning.blm.gov/epl-frontoffice/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=90121&dctmId=0b0003e880fb63b3>.

Enviros ask Zinke to insure public lands stay public

Environmentalists are pressuring the Trump administration to retain the size of national monuments with a novel Administrative Procedures Act (APA) demand.

November 17, 2017**Page 13**

That demand, in the form of a legal petition, calls on the Interior Department to write a rule that prohibits the disposal of large tracts of public lands.

"In the wake of a wildly unpopular national monument 'review,' it's easy to forget that public servants - like Department of the Interior Secretary Ryan Zinke - work for us, the American people," said Brad Brooks, director of public lands with The Wilderness Society. "It's time for Secretary Zinke to show us how serious he is about keeping public lands public."

However, we pointed out to Brooks that the Federal Land Policy and Management Act (FLPMA) already says that it is Congress's will that public lands be retained in the federal domain, except for land exchanges, etc. that are covered by land use plans.

He agreed, but said the society wanted to make sure. "FLPMA does give BLM the authority to dispose of public lands in certain circumstances under acreage restrictions," he acknowledged.

Then Brooks added, "However, we do think it is feasible that BLM or DOI could try to undergo a process to dispose or give management authority on public land to states or other non-federal entities. It is not out of the realm of possibility that political appointees could challenge long held policy around disposal of public land."

The petition itself says Congress has given "limited authority" to dispose of public lands. And, it says, "With threats to our public lands looming, now is the time for DOI to enact a rule prohibiting the widespread sale or disposal of America's public land beyond the authority granted by Congress. Only by doing so can DOI ensure the American people that our public lands will remain available for the benefit and enjoyment of present and future generations."

The petition was submitted to Zinke not only by environmental groups but also by sportsmen, including the BlueRibbon Coalition, which represents powered vehicle users and frequently bangs heads with environmentalists.

"Even though we may not always agree about how we use public lands, we all love these places and agree they ought to remain public," said Martin Hackworth, executive director of the coalition.

While there is little chance the Trump administration would up-front transfer to states or private interests large tracts of public lands, there is a chance that the President would reduce the size of large, existing national monuments.

In phone conversations in October with Utah Gov. Gary Herbert (R-Utah) and Sen. Orrin Hatch (R-Utah) President Trump reportedly suggested that he would reduce the size of the Bears Ears National Monument from 1.35 million acres to 120,000 acres.

Herbert said Trump told him he will accede to a Herbert recommendation, and Herbert has recommended reduction of the monument to 120,000 acres.

Trump also told Hatch that he would authorize coal development in the 1.9 million-acre Grand Staircase-Escalante National Monument. In addition Trump might reduce the size of the monument. Trump is expected to act in December.

On August 24 Secretary of Interior Ryan Zinke submitted a recommendation to President Trump that he take unspecified steps to reduce the size of four national monuments in the West and increase consumptive uses in 10 monuments.

On the chopping block for reductions are Bears Ears, Grand Staircase-Escalante, Cascade-Siskiyou National Monument in Oregon, and Gold Butte National Monument in Nevada. In his recommendation Zinke did not specify how many acres should be removed from each monument.

The Zinke memo argues that past Presidents have violated the Antiquities Act of 1906 by setting aside excessively large amounts of land for monuments.

"No President should use the authority under the Act to restrict public access, prevent hunting and fishing, burden private land, or eliminate traditional land uses, unless such action is needed to protect the object," Zinke said in a document titled *Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act*.

For the six major national monuments in the West up for major changes Zinke recommended that the Presidential Proclamation for each and the management plan for each be reshaped to authorize "traditional uses."

If President Trump does issue proclamations directing revisions to management plans, those revisions will take years to write. Historically, BLM has taken around five years to write a monument management plan, which then is subject to appeal or lawsuit.

Congress entered the overall battle over national monument powers October 11 when the House Natural Resources Committee approved a bill (HR 3990) to set new conditions on protected area designations. The vote was 23-to-17.

Above all, the bill from panel chairman Rob Bishop (R-Utah) would forbid the designation of any national monument larger than 85,000 acres, except in an emergency and that emergency designation could last for only one year.

In addition HR 3990 would give Congressional endorsement to any attempts by an administration to reduce existing national monuments larger than 85,000 acres.

The latter provision would give President Trump authority to reduce the size of the four national monuments in the West, as recommended by Zinke.

Contrasting reports have been posted in the last year on the legality of a President's authority to unilaterally revoke or revise a national monument designation.

A 1938 U.S. Attorney General opinion and a Congressional Research Service (CRS) [report](#) of last fall doubt Trump enjoys such authority. But an American Enterprise Institute [report](#) published this spring argues that he does.

A copy of Zinke's recommendation memorandum is here: <https://www.documentcloud.org/documents/4052225-Interior-Secretary-Ryan-Zinke-s-Report-to-the.html>.

A copy of the environmentalists' petition is here: <http://wilderness.org/sites/default/files/APA%20Petition%20Public%20Lands%20Rule%2011.16.17.pdf>.

Five House ESA bills delayed by press of other business

The House was tied up with mega-tax issues this week, preventing it from taking up five separate bills on its agenda to ease the bite of the Endangered Species Act (ESA). But when the House returns after Thanksgiving the bills, cleared by the House Natural Resources Committee, may be given priority on the floor.

November 17, 2017**Page 15**

The bills in combination would revise substantially the ESA, although individually they might have limited impacts. The measures would do such things as curb awards to environmentalists in litigation and make listing data available to states early in the game.

Most of those bills enjoyed some Democratic support, so they might succeed in the Senate. But more sweeping reforms – as championed by western Republicans – would have a harder time of it in the Senate.

House Natural Resources Committee Chairman Rob Bishop (R-Utah), who has made no secret of his ambition to enfeeble the ESA, reportedly said recently he would “love to invalidate” the act.

House Democrats said the House was wasting its time on major ESA reforms because the Senate would never accept them, what with several moderate Republicans regularly voting in support of environmentalists.

Indeed in exhibit one the Senate October 19 rejected a legislative amendment to remove from federal control management of species wholly within one state under the ESA. In effect the amendment from Sen. Mike Lee (R-Utah) would have opened the way for states to regulate endangered species that don’t cross state borders.

The vote was a close 49-to-51 with three Republicans in opposition. The three Republicans who voted against – Sens. Lamar Alexander (R-Tenn.), Susan Collins (R-Me.) and Bob Corker (R-Tenn.) – may set a precedent for more ambitious ESA reform legislation, as well as other natural resources legislation.

The House approved these ESA bills: HR 1274, which would make listing data available to states prior to a listing (approved 22-to-14); HR 424, which would forbid litigation against the delisting of the Wyoming population of the gray wolf (approved 26-to-14); HR 717, which would include economic factors in listing decisions (approved 22-to-13); HR 2603, which would bar nonnative species from being considered as imperiled under the ESA (approved 22-to-16); and HR 3131, which would limit awards to environmental plaintiffs in ESA litigation (approved 22-to-16).

In the Senate, Sen. Lee argued on the floor that the U.S. Constitution limits the federal government’s powers primarily to interstate transactions; it leaves to the states oversight of intrastate activities.

“(The constitution) does not give the Congress the power to regulate any and every activity occurring intrastate,” he said. “Yet, for the last few decades, under the Endangered Species Act, this very power has been abused to regulate species that exists only in one place, only within one State, never crossing State lines, never forming any part of any channel or instrumentality of interstate commerce.”

But Sen. Tom Carper (D-Del.), ranking minority member on the Senate Environment and Public Works Committee, disagreed, arguing that the majority of species are intrastate and many are deserving of federal protection.

“Seventy-seven percent of all listed species, including the polar bear, the Florida panther, and many more are found only in one State, and for an island State like Hawaii, all of its species would lose protection,” he said.

In the Senate Sen. John Barrasso (R-Wyo.), chairman of the Senate Environment and Public Works (EPW) Committee, is taking the lead in revising the ESA.

Barrasso led off the Republican campaign with an initial Senate EPW committee oversight hearing February 15. Barrasso laid out this bottom line at the hearing:

"Here's the problem. The Endangered Species Act is not working today and we should be concerned when the (ESA) fails to work. States, wildlife managers, home builders, construction companies, farmers, ranchers and other stakeholders are all making it clear that the (ESA) is not working today."

A central complaint of critics of the law is the legal deadline for FWS to act on petitions to list species for protection. FWS must first determine within 90 days if a petition merits study and, if so, make a listing determination within a year.

That the Republican Congress, in concert with the Trump administration, intends to make significant changes in the law is a given. But the path in the legislative process won't be smooth because the ESA traditionally has enjoyed some Republican support and strong public support, viz. the Lee amendment.

The Republican are particularly perturbed by two overarching agreements the Obama administration struck in 2011 with environmental groups to settle lawsuits. The environmentalists said FWS and the National Marine Fisheries Service were too slow in acting on 1,000 listing petitions.

In the first agreement on May 17, 2011, FWS struck a deal with WildEarth Guardians to process petitions for 251 candidate species. In return WildEarth, which had been plastering FWS with listing petitions, agreed to limit the number of future petitions. Among the 251 species is the Greater sage-grouse. On July 12, 2011, FWS reached a second agreement with the Center for Biological Diversity to protect 757 species by 2018.

IBLA decisions

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

(IBLA posted only one minor decision in the last fortnight dealing with recreation.)

Notes

Appropriations bills still stuck in neutral. The Senate Appropriations Committee did not address fiscal year 2018 appropriations legislation in the last fortnight, insuring a major spending crisis when Congress returns after a Thanksgiving holiday. Once Congress comes back the week of November 27 it will have just two weeks before an interim fiscal 2018 appropriations bill expires on December 8, so another extension is probable, but Speaker of the House Paul Ryan said November 15 he anticipates completing legislation before Christmas. A lot is working against appropriations legislation in the Senate. First, it is tied up with tax reform legislation. Second, senators disagree about how much money to put up and how many riders to include. Finally, Senate Appropriations Committee Chairman Thad Cochran (R-Miss.) is not well physically. The continued incapacitation of Cochran, 79, forced the cancellation of a scheduled committee mark-up in October of the fiscal 2018 Interior and Related Agencies appropriations bill (HR 3354). The Senate subcommittee on Interior had been scheduled to mark up October 17 and the full appropriations panel October 19. The House approved its version of a bill (HR 3354) on September 14. The House wrapped eight domestic appropriations bill into the lead Interior measure. If and when the Senate committee addresses a fiscal 2018 spending bill, it will have major obstacles to overcome. First and foremost, the committee will use a significantly higher spending cap than in the House-passed bill. The Senate committee would have \$600 million more to work with. However, the Senate cap for the Interior and Related Agencies bill is still \$224 million less than a final fiscal 2017 appropriation of \$32.224 billion. On the all-important wildfire front the Senate panel must come up with some \$4 billion for wildfire suppression and fire prevention programs. The Senate Republican money committee members will

November 17, 2017

Page 17

almost certainly demand several public lands riders. In the past the committee has supported riders that would ban the listing of the sage-grouse as threatened or endangered under the Endangered Species Act and forbid the Interior Department from delisting the gray wolf in Wyoming from the Endangered Species Act.

Sportsmen give Zinke mixed rating. A year after President Trump was elected President hunters and fishermen who often tip the political scales on public lands issues are giving pluses and minuses to Secretary of Interior Ryan Zinke. At a new [website](#) the sportsmen praise Zinke for attempting to increase hunting and fishing opportunities on the public lands. And they say he is attempting to protect some public lands they value. At the same time, Back Country Hunters and Anglers President Land Tawney criticized Zinke for recommending increased commercial uses in national monuments. "We believe that while some of these actions are commendable - and are in keeping with the values of Theodore Roosevelt - others deserve our swift and honest criticism," said Tawney. A website on the report card is at: <http://whatwouldtrdo.org/>.

PERC gets a new manager. The external affairs director for the Gulf Power Company, Brian Yablonski, will be the next executive director of the conservative think tank Property and Environment Research Center (PERC). Yablonski will replace the current executive director Reed Watson in January. Yablonski has also served as the chairman of the Florida Fish and Wildlife Conservation Commission. PERC operates out of Bozeman, Mont., and has long advocated for a greater role for private industry in managing the public lands.

Conference Calendar

DECEMBER

1-9. **Western Governors' Association Winter Meeting** in Phoenix. Contact: Western Governors' Association, 1515 Cleveland Place, Suite 200, Denver, CO 80202. (303) 623-9378. <http://www.westgov.org>.

4-8. **American Exploration & Mining Association Annual Meeting** in Reno, Nev. Check the association website at <http://www.miningamerica.org>.

14-17. **Council of State Governments 2017 National Conference** in Las Vegas, Nev. Contact: Council of State Governments, P.O. Box 11910, Lexington, KY 40578. (859) 244-8103. <http://www.csg.org/>.

JANUARY

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

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

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

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

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