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From: Merrill, Adam
Sent: 2017-10-20T07:54:59-04:00
Importance: Normal
Subject: Fwd: Public Lands News: ANWR leasing more likely; illness slows money bill; House okays fire money
Received: 2017-10-20T07:55:54-04:00
[P2017Oct20.pdf](#)
[P2017Oct6.doc](#)

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----- Forwarded message -----

From: **Public Lands News** <james@publiclandnewsletter.com>
Date: Fri, Oct 20, 2017 at 7:06 AM
Subject: Public Lands News: ANWR leasing more likely; illness slows money bill; House okays fire money
To: james@publiclandnewsletter.com

Dear Public Lands News Subscriber:

October 20, 2017: Attached is the current issue of the newsletter Public Lands News (Volume 42 Number 20), in .doc format and in PDF format. Below are the headlines. We thank you for reading Public Lands News.

The Editors

BREAKING NEWS: Senate approves budget with ANWR provision

The Senate last night (October 19) approved its version of a Congressional budget (H Con Res 71) that takes the first step toward authorizing oil and gas leasing in the coastal plain of the Arctic National Wildlife Refuge (ANWR). The Senate not only approved the budget but it also voted 52-to-48 to retain in H Con Res 71 the provision that could lead to ANWR leasing. The House has approved a similar ANWR provision.

In the attached newsletter we explain the procedure the Senate and the House will now take to attempt to formally authorize ANWR development.

In the attached issue. . .

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

Resource Public Lands News
Volume 42 Number 20
October 20, 2017

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

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Senate nears budget vote to open way for ANWR leasing

The Senate at press time was closing in on a final vote on a fiscal year 2018 budget (H Con Res 71) that would put oil and gas development in the coastal plain of the Arctic National Wildlife Refuge (ANWR) on the legislative fast track. The House October 5 approved a counterpart budget with a similar ANWR provision.

The Senate Congressional budget, if passed by the Senate, would give the Senate Energy Committee until November 13 to pass follow-up legislation that comes up with \$1 billion to help balance the budget. That \$1 billion almost assuredly would come from ANWR leasing.

The Senate budget provision then calls for the energy committee action again, ANWR leasing - to be incorporated in broader tax reform legislation.

Perhaps most important, the budget strategy would allow the Senate to approve the tax/ANWR package by a majority vote in a giant reconciliation bill, not the 60 votes needed when a filibuster is in play.

However, there is no guarantee that Senate leadership has the votes to approve the ANWR provision, let alone the greater budget. The Republicans only have a two-vote majority. Sen. Thad Cochran (R-Miss.) is ailing and several other moderate Republicans are reportedly on the fence. Sens. Susan Collins (R-Me.) and John McCain (R-Ariz.) have in the past opposed ANWR leasing.

The counterpart House-approved budget directs the House Natural Resources Committee to come up with \$5 billion from fiscal years 2018 through 2027, again almost certainly from ANWR. The \$5 billion figure reportedly comes from a 2012 Congressional Budget Office projection of the total revenue ANWR development would generate. Eventually, the House and Senate approaches would be combined.

The Trump administration is an enthusiastic supporter of ANWR leasing, but it remains to be seen if the President would sacrifice his tax package for it.

In the last issue of *PLN* we reported on Interior Department plans to write a regulation that would lead to oil and gas *exploration* within the coastal plain of ANWR.

There is a long way to go before ANWR development is a reality but Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) is champing at the bit. She and her Republican predecessors in the Senate have been attempting since 1980 to develop the 1.5 million-acre coastal plain.

Murkowski said of the Senate ANWR budget provision, "I am pleased to see an instruction for the Energy and Natural Resources Committee in the budget resolution for Fiscal Year 2018. This provides an excellent opportunity for our committee to raise \$1 billion in federal revenues while creating jobs and strengthening our nation's long-term energy security. I am confident that our committee is prepared to meet the instruction in this resolution."

Sen. Edward Markey (R-Mass.) promised to try to block Murkowski. "There is bipartisan opposition to drilling in our nation's most pristine wildlife refuge and any effort to include it in the tax package would only further imperil the legislation as a whole," he said. "I will fight vigorously on the Senate floor to remove this extraneous giveaway to Big Oil from the budget and protect this special place."

Yesterday (October 19) just before press time the Senate was trying to dispose of more than 100 amendments to H Con Res 71 in hopes of final passage today.

Environmentalists who have been in an all-out struggle over ANWR with Alaska Republicans since 1980 agreed with Markey that the ANWR provision in the budget could be self-defeating because it might kill the whole tax package, the Trump administration's number one priority.

Sen. Tim Kaine (D-Va.) said on the Senate floor October 17 that the ANWR provision didn't belong in the budget debate. "That is really not a budgetary matter; it is shoehorned into the budget because we like to assume we are going to get a big chunk of revenue by drilling in the Arctic National Wildlife Refuge," he said. "But this is a fundamental matter of environmental policy that shouldn't be squirreled away in a tiny detail on the budget."

In the Interior Department campaign for ANWR development a memo from Acting Fish and Wildlife Service (FWS) Director James W. Kurth tells the Alaska regional director to prepare a rule that, when completed, "will allow for applicants to [submit] requests for approval of new exploration plans."

FWS in the 1980s first authorized exploration in ANWR over an 18-month period to help estimate oil and gas reserves in the 1.5 million-acre coastal plain. Environmentalists and their supporters, including the Obama administration, have argued that the 1980 Alaska National Interest Lands Conservation Act (ANILCA) only authorized one *exploration* program.

As for oil and gas *leasing and development*, it is generally agreed that only Congress has authority to approve that under ANILCA.

The Obama administration recommended the coastal plain be designated wilderness, a recommendation that stays in place unless Congress overrules it or the Trump administration removes the wilderness recommendation.

If and when the Senate approves a fiscal 2018 Congressional budget, it will trigger a second legislative step consisting of a bill to meet the budget's demands. That second step called a reconciliation bill - would contain the meat of the ANWR legislation.

All of the 19 million-acre ANWR is off limits to oil and gas development, unless or until the new administration deems otherwise. It was put off limits on April 3, 2015, when FWS began to implement a decision of President Obama to recommend the designation of 12.28 million acres of the Arctic National Wildlife Refuge as wilderness. That includes the 1.5 million acres of the possibly oil and gas rich coastal plain of ANWR. Seven million acres of ANWR are already Congressionally-designated wilderness.

The price of oil may affect industry's interest in the coastal plain, but companies project their interest in drilling over the long-term, not just the current price of oil.

Besides, ConocoPhillips Alaska is reportedly making progress on two major oil and gas projects in the National Petroleum Reserve Alaska (NPR) adjacent to ANWR - Greater Mooses Tooth 1 and 2. Greater Mooses Tooth-1 is reportedly ready to begin production in December 2018 and BLM is working on an EIS for Greater Mooses Tooth-2.

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

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

Spending bill with DoI money hung up by chair's illness

The continued sickness of Senate Appropriations Committee Chairman Thad Cochran (R-Miss.) forced the cancellation of a scheduled committee mark-up this week of a fiscal year 2018 public lands appropriations bill. The House approved its version of a bill (HR 3354) on September 14.

Cochran did return to work last week but due to the press of other Senate business i.e. a Congressional budget the committee postponed work on fiscal 2018 spending bills until next week. That assumes Cochran's health holds up.

The delay could conceivably boot all work on the Interior appropriations bill into December, when a temporary spending measure is due to expire. But senators would like to at least have a draft bill introduced to use as a negotiating tool with the House and the Trump administration.

Subcommittee leaders in the past have introduced such a draft, as the subcommittee on Interior and Related Agencies did in 2013 for a fiscal 2014 appropriations bill. That measure was eventually completed in January 2014 in a giant, all-department appropriations bill.

If and when the Senate committee takes up a fiscal 2018 spending bill, it will have to address several major issues. 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 \$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 prevention programs. In addition the panel will surely be asked to transfer extraordinary emergency wildfire spending costs out of line appropriations and into disaster spending, although that may be a responsibility for the Senate Budget Committee.

The Senate Republican committee members will also probably propose 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. Those actions are extremely unlikely in the Trump administration, but western Republicans want to be sure.

Finally, the committee will be asked to set aside money for the payments-in-lieu of taxes (PILT) program. It received \$465 million in fiscal

2017 and the House has approved the same number for fiscal 2018. The Trump administration had recommended \$397 million for PILT. Congress has occasionally paid for PILT outside of appropriations bills.

Sen. Lisa Murkowski (R-Alaska) chairs the Senate subcommittee on Interior and Related Agencies appropriations and Sen. Tom Udall (D-N.M.) is the ranking minority member.

Cochran has been suffering for several weeks from a urinary tract infection. He had been expected back in the Senate at the first of the week for a scheduled Senate subcommittee on Interior mark-up on October 17 and a full committee mark-up on October 19, but was delayed in his return. Both meetings were canceled, even though Cochran eventually returned to the Senate midweek.

If the committee does address the Interior and Related Agencies spending bill, say next week, it is unclear what would happen after that procedurally. Complicating things, the House in passing its version of HR 3354 September 14 packaged the Interior and Related Agencies bill with seven other domestic bills.

In addition the House and Senate are expected to package all eight domestic bills and four natural security bills into one measure in December, when the hard spending decisions are to be made. To keep the federal government in money until December 8 Congress approved an interim spending bill that President Trump signed into law (PL 115-56) September 8.

The Senate Appropriations Committee spending cap for the fiscal 2018 Interior bill is \$32 billion, compared to \$31.4 billion in the House and to a Trump administration recommendation of \$27.1 billion.

The House-approved version of HR 3354 includes the following numbers, compared to fiscal 2017 allocations:

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

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

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

WILD HORSES AND BURROS: The committee approved \$80.6 million, the same as a fiscal 2017 appropriation of \$80.6 million.

ENERGY AND MINERALS: The committee approved \$168.4 million, or \$9 million less than a fiscal appropriation of \$177.4 million. Of note the committee approved \$11 million less for oil and gas than the Trump administration requested, \$118.8 million compared to a request of \$130 million.

NATIONAL LANDSCAPE CONSERVATION SYSTEM: The committee approved \$35.8 million, or \$1 million less than a fiscal 2017 appropriation of \$36.8 million. President Trump had requested \$8.1 million less.

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

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

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

The House report said a transfer of emergency wildfire costs to disaster spending is not within the panel's authority, being a budget question. But the report did express some optimism.

"While the budget request does not include a specific proposal, the Committee notes that the Administration has indicated its interest in working with Congress to find a solution," such as HR 2862 introduced by Rep. Mike Simpson (R-Idaho), the report says.

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

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

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

FWS REFUGE SYSTEM: The House approved \$483.9 million, the same as a fiscal 2017 appropriation.

Riders/amendments: The House bill includes these amendments:

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

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

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

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

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

The Interior Department on October 11 formally announced that it intends to revise the 98 sage-grouse plans written by the Obama administration, presumably to loosen up land uses on affected lands.

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

House approves fire money as disaster hits Calif.

The already urgent national wildfire crisis worsened this month with catastrophic fires in northern California.

Congress may or may not be getting the message. To help defray the costs to the Forest Service and Interior Department for wildfire borrowing in fiscal year 2017 the House October 12 approved a \$576.5 million payback in a hurricane emergency bill (HR 2266). That bill now is before the Senate.

But the damage has already been done because the fiscal 2017 wildfire borrowing forced agencies to take money out of hazardous fuels reductions, thus leaving tinder dry forests ready to explode, this fall or in future years.

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, or what was left of it after fire borrowing. The House approved \$575 million for prevention efforts in fiscal 2018, compared to the \$570 million fiscal 2017 level.

The Senate Appropriations Committee had planned to take up HR 3354 this week but canceled scheduled meetings because of the illness of committee chairman Thad Cochran (R-Miss.)

As we have reported frequently, various legislators have proposed numerous, often competing authorization bills to attack the wildlife problem. A lead bill in the House (HR 2936) would not only address fire borrowing by transferring some emergency wildfire costs to disaster funding but also speed environmental reviews of timber sales.

A lead Senate bill (S 1571) now before the Senate Banking Committee would help out with the spending by transferring out of appropriations bills all emergency wildfire costs greater than the 10-year average. But S 1571, designed primarily to extend a National Flood Insurance Program, does not address hazardous fuels elimination.

Rep. Betty McCollum (D-Minn.) said the House October 12 missed the boat by not including a fire fix in the disaster assistance bill, HR 2266. "As the duration and severity of wildfires grows, costs will continue to rise," she said. "Unfortunately, once again we have missed the opportunity to fix the way the Federal Government funds wildfire suppression. Let me be clear: the next supplemental must include a legislative fix for wildfire spending, and it must adequately support the Department of the Interior and its vital efforts to help our country rebuild from the recent fires and hurricanes."

In a separate initiative Sens. Ron Wyden (D-Ore.) and Mike Crapo (R-Idaho) October 18 asked Senate leaders to include a wildfire fix in the emergency hurricane relief bill (HR 2266) the House approved last week.

Wyden and Crapo wrote leadership, "The Senate should continue to push for a fire funding fix that treats wildfires like the natural disasters they clearly are. Together, we should work to stop the erosion of the Forest Service budget that siphons resources from important fire prevention programs, like hazardous fuels thinning and the State and Private Forestry program, to pay for fire suppression."

For now the Trump administration and California Gov. Jerry Brown (D-Calif.) are focusing on fighting fires in seven northern California counties - Butte, Lake, Napa, Nevada, Mendocino, Sonoma, and Yuba. More than 40 people have died and almost 6,000 structures have burned.

Brown asked the President last week for aid from these federal programs: Individuals and Households Program, Transitional Sheltering Assistance, Disaster Case Management, Disaster Unemployment Assistance, Crisis Counseling and Disaster Legal Services, Hazard Mitigation statewide, U.S. Small Business Administration disaster loans and funds from the U.S. Department of Agriculture Emergency Loan Program, among others.

Sen. Dianne Feinstein (D-Calif.) also focused on the immediate emergency. "California's wine country, one of the state's most beautiful regions, is under attack," she said. "Hundreds of homes have burned in the Sierra Nevada foothills, and another major fire is raging in Orange County, threatening thousands of homes there."

At press time various estimates put the fire damage in California at more than 40 people dead, some 6,000 buildings destroyed, 100,000 people evacuated from their homes, \$65 billion in property losses and the sickening

of people up to 100 miles from the fires. At press time firefighters reported good progress in containing the California conflagrations.

Rep. Greg Walden (R-Ore.), a Republican leader in the wildfire debate, wrote Office of Management and Budget Director Mick Mulvaney October 4 to ask for help in both paying for wildfire suppression and prevention.

"Accordingly, we ask that the Administration send Congress a proposal that includes comprehensive forest management and wildland fire budgeting reforms as part of the next disaster relief request as soon as possible," he wrote.

The most destructive wildfires in northern California were burning on nonfederal lands, other than in and around the Mendocino National Forest. For instance, damaging fires in Sonoma and Napa Counties have burned few federal lands.

However, the Forest Service said that even though national forests aren't involved, it is pouring personnel, aircraft and other equipment into the California fights.

"The Forest Service has boots on the ground and is providing other critical resources in California, as well as other parts of the American West, and we will remain as long as necessary," said chief Tony Tooke.

As of early this week the service had committed to the fight 1,500 firefighters, more than \$6 million in supplies, plus aircraft of all sorts.

The National Interagency Fire Center (NIFC) reported midweek 10 active large fires nationally with eight of them in California. Thus far this year in *calendar* 2017 NIFC records more than 51,000 fires have burned almost 8.8 million acres. That compares to a 10-year average of more fires, almost 57,000. However, the 8.8 million acres burned exceeds the average of just over 6 million acres.

As of the end of *fiscal* 2017 the Forest Service said it had spent \$2.4 billion on fire fighting but had an appropriation of just \$1.8 billion. The emergency appropriations bill should pay back the agency for most of its costs.

That emergency bill, as requested by the Trump administration, would put up \$526.5 million for the Forest Service and \$50 million for the Interior Department. The bill specifies that all the money is to be applied to fiscal 2017 expenses.

For fiscal 2018 the House September 14 approved a fiscal year 2018 wildfire appropriations bill (HR 3354) that would roughly maintain the status quo. For the Forest Service the House recommended \$2.898 billion, compared to a fiscal 2017 appropriation of \$2.833 billion. For an emergency account called FLAME the committee recommended no money, compared to \$342 million in fiscal 2017.

For the Interior Department the House recommendation is \$956 million, compared to a fiscal 2017 appropriation of \$943 million. For an emergency account called FLAME the committee proposed no money, compared to a fiscal 2017 FLAME appropriation of \$65 million.

There are three separate initiatives now afoot to transfer emergency wildfire costs to disaster spending, not counting the hurricane-relief bills. They are:

- a bill (S 1571) to extend the National Flood Insurance Program for six years. Senate Banking Committee Chairman Crapo on July 17 introduced the measure that includes a provision that would authorize the transfer out of appropriations bills all emergency wildfire costs greater than the 10-year average. It would do that by including emergency wildfire costs as major disasters under the national disaster relief law. Those disasters are now paid for in appropriations bills.

- a bill (HR 2936) approved by the House Natural Resources Committee June 27 introduced by Rep. Bruce Westerman (R-Ark.) It would not only address fire borrowing by transferring some emergency wildfire costs to disaster funding but also speed environmental reviews of timber sales.

- a bill (HR 2862) introduced June 8 by a bipartisan coalition of House members that would place a disaster cap on wildfire funding, without altering timber sale procedures. The measure under lead sponsor Rep. Mike Simpson (R-Idaho) would, again, transfer emergency wildfire expenses greater than the 10-year average out of discretionary appropriations and into disaster spending.

If none of those strategies work out Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) said this summer that wildfire funding is a top priority of her committee. "What we need is a comprehensive solution that addresses both wildfire budgeting and forest management," she said. "We need to tackle both of those, at once, because we know the wildfire problem is not just a budgeting problem - it's also a management problem."

Murkowski has suggested that Congress use as a starting point a draft outline that some of her committee members put together last year that includes an unspecified spending fix and unspecified procedures for expediting hazardous fuels projects.

Panel approves bill to limit monuments powers

The House Natural Resources Committee October 11 stepped up its campaign to limit the designation of national monuments a notch, approving a bill (S 3990) to set new conditions on monument 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 S 3990 would give Congressional endorsement to any attempt 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 four national monuments in the West, as recommended by Secretary of Interior Ryan Zinke. Those recommendations are presently under review by the President.

Bishop, perhaps the leading critic of national monuments in Congress, said his bill was needed to ward off the designation of monuments unwanted by localities, such as Bears Ears National Monument in Utah and the Grand Staircase-Escalante National Monument in his home state of Utah.

"This legislation provides for accountability in the Act's uses," said Bishop. "It modernizes the law to restore its intent, allowing for the protection of actual antiquities without disenfranchisement of local voices and perspectives. It standardizes and limits the president's power to reshape monuments."

Ranking House Natural Resources Committee Democrat Raúl M. Grijalva (D-Ariz.) charged that Bishop wrote his bill in haste to ward off a resolution from Grijalva requesting information about the Trump administration review of existing monuments.

"Republicans will claim that this bill gives us what we want more transparency but the truth is that it was introduced without any input from stakeholders, Tribes or the scientific community," said Grijalva. "This is further evidence that Chairman Bishop's Antiquities Act bill was thrown together at the last minute with only one special interest group in mind: the oil and gas industry."

Bishop responded by calling Grijalva's request for information about the Zinke review "futile." He said, "My bill has an H.R. in front of it, which means it carries the force of law. The Ranking Member's doesn't. It has no enforcement mechanism and is futile. Further, I find it worth noting that while the minority seeks greater transparency when it comes to a review of the national monument process, it seems entirely content to leave the monument creation process hidden, behind closed doors, outside of the public eye."

Grijalva introduced his resolution (H Res 555) because he said Zinke was not transparent in reviewing 27 existing monuments for possible elimination or shrinkage. The committee did not approve the Grijalva resolution at the October 11 mark-up, rejecting it by the same 23-to-27 margin the panel approved Bishop's bill.

On August 24 Zinke submitted to President Trump a proposal to reduce in size four national monuments in the West and increase consumptive uses in 10 monuments. Zinke neither specified how much the four monuments should shrink nor the specific uses that should be authorized in the ten monuments.

On the chopping block for reductions in size are Bears Ears National Monument in Utah, the Grand Staircase-Escalante National Monument in Utah, Cascade-Siskiyou National Monument in Oregon, and Gold Butte National Monument in Nevada.

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*.

Trump began the initiative April 26 when he signed an executive order directing the Interior Department to review the designations of national monuments of more than 100,000 acres made since 1996, plus a Katahdin Woods and Waters National Monument in Maine. The Zinke review looked at 27 monuments.

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 (AEI) report published this spring argues that he does.

A new report from public lands consultant Pamela Baldwin backs the CRS report when it argues that the Federal Land Policy Management Act of 1976 (FLPMA) effectively ended the debate when it said the *secretary of Interior* could not "modify or revoke any withdrawal creating national monuments" under the Antiquities Act of 1906.

While that prohibition applies directly to the secretary of Interior, Baldwin says by inference it also applies to a President. She says in the report that, "if there is any ambiguity, the entire statute, and the policies and intent of Congress must be considered; and that all provisions of a statute must be given effect. Applying these tenets to the provisions of FLPMA leads to the conclusion that a president lacks the authority to revoke or modify national monuments under the Antiquities Act."

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

Bishop Bill: HR 3990 would begin by banning the designation of any national monument by a President under the Antiquities Act of 1906 larger than 85,000 acres, with the exception of an emergency designation. However, an emergency designation would automatically expire after one year. That year would presumably give Congress time to step in.

HR 3990 would authorize a President to reduce the size of any existing national monument larger than 85,000 acres (1) if the reduction was approved by local government, a state and a governor and (2) if the reduction was first reviewed under the National Environmental Policy Act (NEPA).

The bill would allow a President to designate unconditionally a national monument of less than 640 acres.

For national monuments between 640 and 10,000 acres the bill would require a NEPA review with an environmental assessment or EIS for monuments between 5,000 acres and 10,000 acres.

For national monuments between 10,000 and 85,000 acres county, state and governors would have to give their approval before designation. The bill does not mention a NEPA review for monuments in this size range.

The National Cattlemen's Beef Association endorsed the committee approval of HR 3990 because the ranchers the association represents complain about reduced allotments in and around monuments.

"HR 3390 adds critical details to original, vague legislation regarding the creation and management of national monuments," said Craig Uden, president of the National Cattlemen's Beef Association. "By limiting presidential authority and restoring balance to the monument designation process, the bill would ensure local ranchers and communities are not subject to the whims of an unchecked federal government."

Sportsmen and outdoor industry officials who have praised Zinke in the past are apparently having second thoughts, at least as to the impact of Bishop's bill on the public lands.

"Congressman Bishop's bill should cause all Americans to sit up and take notice," said Backcountry Hunters and Anglers President and CEO Land Tawney. "His attack on one of America's bedrock conservation laws is bold and real and cannot be allowed to stand unchallenged."

Bill would let states run energy permits, royalties

Western states predictably endorsed draft House legislation October 13 that would turn over to them authority to approve oil and gas drilling permits on onshore public lands. 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 a hydraulic fracturing regulation in place and most do the federal government would not be able to regulate the practice.

The draft would also address royalty policy by ensuring that states would receive 50 percent of federal royalty payments; 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.

Said Cathy Foerster, engineering commissioner for the Alaska Oil and Gas Conservation Commission, at a legislative hearing hosted by the House subcommittee on Energy and Mineral Resources, "My agency has been disappointed again and again by failures of Federal governmental agencies operating in Alaska to abide by their own statutes and regulations, much less those of our state . . . My state is well equipped to relieve Federal agencies of the burdens of redundant oversight in drilling and operating oil and gas wells in Alaska and that other states have and use - the same resources Alaska does to get themselves to that same level of regulatory excellence."

The oil and gas industry was also on board. 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."

Environmentalists took issue with the bill. Sharon Buccino, director of the land & wildlife program for the Natural Resources Defense Council, said the measure could prevent public input, as authorized by the Federal Land Policy and Management Act and the National Forest Management Act.

"As proposed, the ONSHORE Act would take away these basic rights to participate," she said. "A state *might* provide something comparable, but there is no guarantee. The statutory language included in the ONSHORE Act would arguably supersede the protections currently provided under existing law."

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

"The states are more capable of assessing these responsibilities and would be able to conduct them with less cost to the taxpayer," he said.

But ranking subcommittee Democrat Alan Lowenthal (D-Calif.) said that ultimately federal lands are owned by all Americans and should be managed by the federal government.

"Yes, the federal government generally does take longer than the states to approve drilling permits, I will agree to that," he said. "But that is for a very good reason. The public lands belong to all Americans. They belong to the Americans who want to use those lands to hunt, to fish, graze cattle, to canoe, to motorize bike, to camp or simply to protect special places."

On the table at the committee hearing was a bill the committee majority drafted, with the author or authors unnamed. It resembles but is different in key aspects from 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 draft 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 the House committee draft it would give the Interior Department 180 days to approve or disapprove a state application, with provisions for appeal of a denial.

To qualify for the permit a state would have to describe its program 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 has the competence

and finances to carry out a program, that a state had held a public comment period, and that a state program would not reduce federal royalties.

In addition the bill would have the Interior Department incorporate into all land use plans designations of preferred leasing areas. Once those preferred areas were identified no lease sale or permit to drill would require an environmental review.

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 federal and 49 state. And the bill would allow states to collect royalties.

Said Gosar, "These states will also have the option of managing and collecting these revenues without the federal government serving as the middle man. The ONHSORE Act provides states with a path to maintain stewardship over their share of mineral revenues and to utilize it for the benefit of their citizens."

Finally, the hydraulic fracturing provisions would not allow BLM to regulate hydraulic fracturing if a state had such a program in place, as most do. "The Secretary of the Interior shall recognize and defer to State regulations, permitting, and guidance, for all activities related to hydraulic fracturing, or any component of that process, relating to oil, gas, or geothermal production activities on Federal land," the bill says.

Meanwhile, on the Senate floor agenda is an omnibus energy bill (S 1460) that touches on onshore energy development, but does not include any provision to delegate 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.

Sage-grouse policy may affect ongoing anti-Obama suits

If as promised the Interior Department revises 98 sage-grouse plans written by the Obama administration to loosen up land uses on affected lands, that action may affect a slew of lawsuits already on the table.

As a first order of business the revised plans may render moot lawsuits brought by the states of 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 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.

Said Erik Molvar, a wildlife biologist and executive director with Western Watersheds Project, which brought the initial lawsuit against the Obama administration, "We expect the Trump administration to significantly weaken sage grouse protections and undermine the already-compromised measures in the current sage grouse plans."

He added, "Since we are already challenging the original plans because they are too weak to protect sensitive sage-grouse habitats, the impact of this new attack on sage-grouse protections on our litigation will depend on the shape of sage-grouse habitat-protection plans after the Trump administration gets done with them."

Environmentalists contend at bottom that the Trump campaign to revise the plans is designed to open public lands to commercial users, particularly the oil and gas industry.

In that vein environmentalists are already criticizing a September 12 oil and gas lease sale offer of 15,000 acres by the Utah State Office of BLM in the Fillmore District. Although only 4,102 acres were sold, the Western Watersheds Project objected because of the impacts of the leasing on the sage-grouse.

"Why did the BLM say that Sheeprocks sage grouse need to have their habitat restored but then put that habitat up for auction?" asked Kelly Fuller, energy campaign coordinator with Western Watersheds Project. "If the BLM thinks fracking counts as sage-grouse habitat restoration, no wildlife on BLM land is safe."

But the Trump administration has powerful allies who endorse revised plans with fewer limits on commercial uses. Western Energy Alliance President Kathleen Sgamma said, "We are very pleased BLM is moving forward with amending the sage-grouse plans. The plans discouraged on-the-ground, local conservation efforts and ignored state plans, except for Wyoming's, in favor of a top-down, one-size-fits-all approach."

And National Mining Association President Hal Quinn said, "Research has shown the true threats to the sage-grouse are wildfires and invasive species, not mining. This proposal in search of a problem would have deepened our dependence on foreign countries for the minerals and metals that will help build our infrastructure, and serve as the tip of America's supply chain."

In an October 11 *Federal Register* notice (informally announced October 5) BLM said it intends to amend "some, all or none" of the plans. The bureau will take public recommendations on possible revisions until November 27. Completing revised plans would take years.

BLM said it was soliciting advice in part because of a recent district court decision that requires the agencies to prepare a supplemental EIS on the designation of sage-grouse focal areas where mining is forbidden. However, the court did not halt implementation of the plans.

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

In addition to launching the revision of the sage-grouse plans BLM outright cancelled a proposed withdrawal of 10 million acres from hard rock mining to protect the sage-grouse.

"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.

The Obama administration segregated the 10 million acres from the mining law on Sept. 24, 2015, for two years, but the two years has ended. On Dec. 30, 2016, BLM published a draft EIS to back conversion of the segregation to a 20-year withdrawal with public comments accepted until March 28 of this year. That, of course, opened the way for the Trump administration to cancel the proposed withdrawal.

The hard rock mining industry agreed with Nedd. "Secretary (of Interior) Zinke has done the right thing by ending this epic federal land grab," said Laura Skaer, executive director of the American Exploration & Mining Association. "These land-use restrictions and withdrawals were a blatant overreach by the BLM and a thinly veiled attempt to impose a top-down policy, completely disregarding states efforts, statutory requirements and public involvement."

The Backcountry Hunters & Anglers sportsmen group criticized both the proposed regulatory revision and the withdrawal cancellation. "Changing (the Obama administration) approach now would undermine not only an historic, multi-stakeholder conservation strategy; it also would hurt the Western communities that depend on a strong and growing outdoors-focused economy," said John Gale, conservation director for the association.

Secretary Zinke has offered broad clues as to what he thinks BLM should do in revising the plans. In an August 7 memo he directed BLM to make fundamental changes that would at once loosen restrictions on commodity users and defer more to state policies. High on Zinke's list of changes 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."

The western governors have not been united in their demand for wholesale changes in the 98 plans. On May 26 Wyoming Gov. Matt Mead (R-Wyo.) and Colorado Gov. John Hickenlooper (D-Colo.) wrote Zinke and asked him NOT to change course.

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.

Zinke based his August 7 memo to BLM on the recommendations of a review team made up of representatives from BLM, the Fish and Wildlife Service, the Forest Service, the U.S. Geological Survey and the Western Governors Association sage-grouse task force.

The BLM notice on changing plans is here: <https://on.doi.gov/2fNuFPt>.
The BLM notice on the cancellation of the withdrawal is here:
<https://on.doi.gov/2hOpRxn>.

DoI rapidly filling top positions, short of nominees

The somewhat beleaguered Interior Department management team got a boost last week with the appointment of six officials to leadership positions that don't require Senate confirmation.

Among them is Cally Younger to be counselor to BLM. She has most recently served as counsel to Idaho Gov. C.L. "Butch" Otter (R).

Also at BLM, the department announced the appointment of Brian Steed as the number two official as deputy director. Steed has most recently served as chief of staff to Rep. Chris Stewart (R-Utah). BLM career employee Mike Nedd is serving as acting bureau director.

In a third BLM appointment Secretary of Interior Ryan Zinke said Kathleen Benedetto of the House Natural Resources Committee staff will serve as a senior advisor to the bureau.

In addition to Younger, Steed and Benedetto at BLM, Zinke announced the appointment of Jason Larrabee as deputy assistant secretary for Fish and Wildlife and Parks; Austin Ewell as deputy assistant secretary of Water and Science; and Benjamin Cassidy as senior deputy director for Intergovernmental and External Affairs.

Larrabee comes from the staff of Rep. Jeff Denham (R-Calif.), Ewell from a regulatory consultant job and Cassidy from the National Rifle Association.

While the Trump administration is making progress in naming appointees it is doing less well in filling Interior Department positions that require Senate confirmation. Other than Ryan Zinke as secretary and David Bernhardt as deputy secretary, the department is largely operating under the guidance of acting assistant secretaries and acting agency heads.

No nomination has been forwarded to head BLM, the Fish and Wildlife Service, the Bureau of Reclamation, or the National Park Service.

The Trump administration did announce October 16 that it will nominate Tara Sweeney, the executive vice president of the Arctic Slope Regional Corporation, as assistant secretary of Interior for Indian Affairs. Alaska's Republican Sens. Lisa Murkowski and Dan Sullivan endorsed the nomination.

Sweeney has chaired the Arctic Economic Council in the past and is an Iñupiaq and a lifelong Alaskan from Ukpiagvik (Barrow). The Arctic Slope Regional Corporation is the largest Alaska-owned and operated business.

On September 19 the department edged a little closer to a complement of political nominees when the Senate Energy Committee approved the nominations of two top leaders. The committee sent to the Senate floor the nominations of Ryan Nelson as Interior Department Solicitor and Joseph Balash as assistant secretary of the Interior for Land and Minerals Management. Only

Sen. Al Franken (D-Minn.) offered a no vote, and that to Balash. However, the full Senate has yet to confirm the nominations.

Zinke is somewhat beleaguered on a couple of accounts. For one thing in laying out his plans for reorganizing the Interior Department September 25, the secretary told the National Petroleum Council that "30 percent of the crew" (i.e. department employees) are "not loyal to the flag."

The phrase "loyal to the flag" touched a raw nerve with three organizations of retired officials from BLM, the National Park Service, and the U.S. Fish and Wildlife Service.

They jointly called Zinke's remarks "ludicrous, and deeply insulting." The three groups are the Coalition to Protect America's National Parks, Public Lands Foundation, and Association of Retired Fish and Wildlife Service Employees.

In a second controversy an early move by Zinke to transfer 50 Senior Executive Service (SES) Employees to new positions is under review by the department's Office of Inspector General, it has been reported.

Senate Democrats, led by ranking energy committee minority member Maria Cantwell (D-Wash.), requested the review in July.

Cantwell and seven Democrats said in asking for the review, "Any suggestion that the Department is reassigning SES employees to force them to resign, to silence their voices, or to punish them for the conscientious performance of their public duties is extremely troubling and calls for the closest examination."

The transfer of the 50 SES employees is but one of many sweeping personnel changes proposed by the Trump administration.

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

On a more-prosaic reorganization front at a July meeting with U.S. Geological Survey (USGS) executives Zinke said the transfer of agency headquarters to the West would be part of his plan to shift personnel from Washington and regional headquarters to the front lines.

In addition Zinke said he intends to combine management of federal lands via inter-agency joint management areas (JMAs), with leadership of the JMAs shifting among agencies. The USGS notes said, "There is no target on Denver but it is likely that some Denver employees will move to the JMA locations. Denver will probably have the headquarters for BLM, FWS and BOR."

Bipartisan coalition of legislators would extend LWCF

Over the next year a bipartisan group of House and Senate members intends to campaign weekly for the permanent authorization of the nation's leading conservation program - the Land and Water Conservation Fund (LWCF).

A fortnight ago three Republican senators and three Democratic senators pledged to work to reauthorize LWCF, which is scheduled to expire on Sept. 30, 2018. They launched something called the Land and Water Conservation Fund campaign to both note the time left before expiration, 52 weeks, and the number of years the program has been in existence, 52 years.

Sen. Richard Burr (R-N.C.), long a proponent of LWCF, rang the tocsin at an event on Capitol Hill.

"If I had my choice - and I know Maria would agree with me - we'd try to do permanent reauthorization tomorrow," he said, bowing to his colleague Sen. Maria Cantwell (D-Wash.) "Let me tell you what my pitch would be to my colleagues - no taxpayer money. There is no taxpayer money in this. This is a successful bipartisan approach."

Burr wound up, "I'm proud to be here with my colleagues and to tell you that over the next 52 weeks at some point we will make sure this never expires again and is never a question about whether it is in existence."

Attending the press conference were Sens. Cantwell, Steve Daines (R-Mont.), Cory Gardner (R-Colo.), Tom Udall (D-N.M.) and Martin Heinrich (D-N.M.)

There are at least four bills on the table that would make LWCF permanent (HR 502, S 569, S 896 and S 1460). Perhaps the last one, S 1460, enjoys the greatest chance of success because it is an omnibus energy bill that is now on the Senate floor agenda.

Bill sponsors Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) and ranking Democrat Cantwell have attached the LWCF provision to it.

The Trump administration and its Secretary of Interior Ryan Zinke have offered mixed signals on LWCF's future this year. Zinke professes to be a big fan of the program, having cosponsored reauthorization legislation when he was a House member.

Indeed, Zinke told appropriators in early June he supported a "permanent fix" for LWCF. However, in his prepared testimony at the time Zinke simply said the administration would look at "options" for reauthorization.

LWCF is not in danger of expiring over the next year. Congress extended the fund for three years in a fiscal 2016 appropriations law (PL 113-114 of Dec. 18, 2015) through fiscal 2018, or until Sept. 30, 2018.

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

After Simpson introduced his bill to reauthorize LWCF and split the money with federal agency maintenance he acknowledged that has not yet identified a source of funds for the bill - always the hang-up in such campaigns.

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

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

In raw numbers the fiscal 2018 Trump budget request would slash the federal side of LWCF by \$138 million, from \$189 million in fiscal 2017 to \$51 million in fiscal 2018.

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

In approving a fiscal year 2018 appropriations bill (HR 3354) September 14 the House approved \$110 million for federal land acquisition, or \$79 million less than a fiscal 2017 appropriation of \$189 million. The Trump administration had recommended an appropriation of \$54 million for land acquisition. Under the House bill by agency BLM would receive \$12.8 million compared to \$31.4 million in fiscal 2017; the Fish and Wildlife Service would receive \$40.6 million compared to \$50 million; the Park Service would receive \$31.6 million compared to \$42 million; and the Forest Service would receive \$25 million compared to \$54.4 million.

IBLA decisions

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

Subject: Hazardous fuels project.

BLM decision: BLM will approve a fuel break on 271 miles of road in Idaho to address wildfire dangers.

Appellant environmentalists: BLM's environmental assessment was inadequate for a half-dozen reasons.

IBLA decision: Affirmed BLM.

Case identification: *Western Watersheds Project, 191 IBLA 351*. Decided October 13, 2017. Thirty-two pages. Appeal from a Decision Record of Field Managers, Owyhee Field Office, Morley Nelson Snake River Birds of Prey National Conservation Area, and Malheur Field Office, BLM, approving the Soda Fire Fuel Breaks Project. DOI-BLM-ID-B030-2016-003-EA.

IBLA argument: IBLA Administrative Judge Silvia M. Riechel upheld a BLM decision approving a large hazardous fuels treatment program in southwestern Idaho. The appellant environmental group argued in a half-dozen ways that the environmental assessment supporting the decision was inadequate, objecting to such things as an inadequate range of alternatives, lack of a full-blown EIS, etc. Judge Riechel rejected each of those arguments. In one instance the appellant Western Watersheds Project (WWP) objected to the core goal of the project - the creation of a firebreak 200-feet wide on both sides of 271 miles of roads. But Riechel said, "BLM explained its rationale for choosing a 200-foot-wide fuel break and examined its expected effectiveness. WWP has not shown error in the analysis or a failure to consider a

material issue of significance to BLM's decision to approve the fuel breaks project." The project is located in an area in and near the Soda Fire that burned 279,144 acres of federal, state and private land in 2015. Because the BLM decision involved high risk to life and property IBLA granted expedited consideration.

Subject: Grazing.

BLM decision: BLM will approve a grazing permit in Nevada after preparing an environmental assessment.

Appellant environmentalists: BLM erred because it did not adequately address the impact of grazing on sage-grouse habitat.

IBLA Administrative Law Judge: BLM should redo its environmental assessment and consider improving sage-grouse habitat.

BLM, rancher appeal: IBLA should stay judge's decision because he didn't give due deference to BLM's analysis.

IBLA decision: Approved stay, BLM and rancher make good argument.

Case identification: *Southern Nevada Water Authority & BLM, 191 IBLA 382*. Decided October 13, 2017. Thirty-four pages. Appeals from an order by an Administrative Law Judge granting a motion for summary judgment and denying cross-motions for summary judgment in a grazing appeal challenging a final grazing decision issued by the Field Manager, Schell (Nevada) Field Office, Ely District, BLM. NV-L020-14-01.

IBLA argument: IBLA Administrative Judge Amy B. Sosin granted BLM a stay of an administrative law judge decision faulting a BLM decision approving grazing permits. The administrative law judge had agreed with environmentalists that the grazing decision did not adequately address the impact of grazing on the greater sage-grouse. But Sosin seemed to say BLM did adequately address sage-grouse impacts, meriting a stay of the administrative law judge's decision. Held Sosin, "Further, we conclude that because (the (permittee's) renewed permit is more protective of sage-grouse and its habitat than the prior permit, BLM and (the permittee) have satisfied the requirement to show that without a stay, there would be immediate and irreparable harm."

Notes

Onshore O&G sales increase. BLM said last week that through the first three-quarters of calendar 2017 onshore oil and gas lease sales brought in more money than all such sales in calendar 2016 - \$316.2 million to \$192.5 million. "The Secretary's strategy for energy dominance is working and will continue to bear fruit," said Counselor to the Secretary for Energy Policy Vincent DeVito, referring to Secretary of Interior Ryan Zinke. "This pace is a reflection of our responsible energy policy and administrative changes that are making Interior a better place to do business." However, most of those sales were prepared under the Obama administration and reflect an Obama administration policy of only leasing lands that can meet legal muster. Be that as it may, the Trump administration says it is determined to increase energy development from the public lands. In the third quarter of the year BLM said it sold 218 leases for \$170.7 million. BLM New Mexico held the most productive sale, garnering \$130.9 million in bonus bids. House Natural Resources Committee Republicans are promoting draft legislation that would transfer *permitting* of oil and gas on public lands to states, but committee Democrats say plenty of permits have already been approved and are not being developed (see *related article page 11*.) More information about BLM's oil and gas program is at: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing>.

Upcoming Utah O&G sale protested. Although the Trump administration says it is stepping up leasing of onshore oil and gas tracts (see above), environmentalists are also stepping up their litigation against those sales. In exhibit one WildEarth Guardians earlier this month protested a scheduled December sale of 94,000 acres in Utah. Guardians says some of those parcels

are too close to Dinosaur National Monument or are inside the San Rafael Swell. Said Becca Fischer, climate guardian for WildEarth Guardians, "Moving forward with these leases will damage our public lands and clean air, but the BLM is turning a blind eye to these impacts to the detriment of the American people." As we have reported in the last two issues of *PLN* environmentalists are preparing to object to big oil and gas leases sales in December across the West in Wyoming, Utah, Colorado, Montana, Nevada and New Mexico. The Wyoming BLM has scheduled a sale in December of 45 parcels totaling almost 72,900 acres from its High Desert District. The Guardians protest is available at: <https://climatewest.files.wordpress.com/2017/10/fnl-utah-december-2017-protest.pdf>.

Border 'Wall' bill due. The House is expected to take up soon legislation (HR 3548) that would authorize the expenditure of \$10 billion to build President Trump's wall between the United States and Mexico. The wall would affect management of public lands in the Southwest. The bill was approved October 5 by the House Committee on Homeland Security. But before the House takes up the bill six leading House Democrats October 12 asked Republican leaders to let six other committees review it. In a brief letter to Speaker of the House Paul Ryan (R-Wis.) and six committee chairmen the Democrats said the bill is too important to bypass "regular order," i.e. consideration of other committees with oversight of such a wall. Of note the bill doesn't envision the construction of a physical wall between the countries so much as technological barriers, such as radar. The Democrats' letter is available at <http://bit.ly/2xBvzVQ>.

Wild horse board members named. BLM said October 16 that the Trump administration has chosen to retain two of the three members of the bureau's Wild Horse and Burro Advisory Board whose positions were up for possible replacement this fall. The membership of the nine-member board is rotated periodically. Staying on are Fred T. Woehl, Jr., a trainer and educator from Harrison, Ark., and Sue. M. McDonnell, a professor at the Pennsylvania School of Veterinary Medicine from West Chester, Pa. Newly appointed is James French, a former biologist with the Nevada Department of Wildlife and county commissioner from Winnemucca, Nev. The wild horse board has its work cut out for it because BLM says the nation's public range is seriously overpopulated with horses and burros. The board last year raised a stir on Sept. 9, 2016, when it recommended that BLM sell off as many of the 46,000 excess wild horses as it could that the bureau has corralled in the West. Then it recommended BLM euthanize the unadoptable animals.

NPS harassment said widespread. The Interior Department October 13 posted a report that says as many as 38 percent of National Park Service employees report some sort of harassment by their supervisors. However, three-quarters of those who said they experienced harassment did not report it. In response to the survey conducted by the CFI Group Secretary of the Interior Ryan Zinke and Acting Director of the National Park Service Mike Reynolds said they had put together an action plan to combat harassment. "From day one, I made it clear that I have zero tolerance for harassment in the workplace, and I directed leadership in the National Park Service to move rapidly to improve accountability and transparency," Zinke said. The department described a number of steps NPS will take in the action plan, such as an increased expansion of the agency's ability to investigate and resolve harassment claims. Although most of the incidents took place on the Obama administration's watch, the Trump administration is stuck with cleaning things up. The report is available at: <https://www.nps.gov/aboutus/transparency-accountability.htm>.

Conference Calendar

OCTOBER

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

26-28. **National Land Conservation Conference** in Denver. Contact: Land Trust Alliance, 1331 H St., N.W., Suite 400, Washington, DC 20005-4711. (202) 638-4725, <http://www.lta.org>.

NOVEMBER

2-3. **National Environmental Policy Act** special institute in Denver. For information see <https://www.rmmlf.org>. Contact: Rocky Mountain Mineral Law Foundation, 9191 Sheridan Blvd., #203, Westminster, CO 80031. (303) 321-8100. <http://www.rmmlf.org>.

8-10. **Independent Petroleum Association of America Annual Meeting** in Naples, Fla. Contact: Independent Petroleum Association of America, 1201 15th Street NW, Suite 300, Washington, DC 20005. (202) 857-4722. <http://www.ipaa.org>.

14-17. **The National Trust for Historic Preservation Conference** in Houston. Contact: National Trust for Historic Preservation, 1785 Massachusetts Ave., N.W., Washington, DC 20036. (202) 588-6100. <http://www.nationaltrust.org>.

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>.

Public Lands News®

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Volume 42 Number 20, October 20, 2017

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Senate nears budget vote to open way for ANWR leasing

The Senate at press time was closing in on a final vote on a fiscal year 2018 budget (H Con Res 71) that would put oil and gas development in the coastal plain of the Arctic National Wildlife Refuge (ANWR) on the legislative fast track. The House October 5 approved a counterpart budget with a similar ANWR provision.

The Senate Congressional budget, if passed by the Senate, would give the Senate Energy Committee until November 13 to pass follow-up legislation that comes up with \$1 billion to help balance the budget. That \$1 billion almost assuredly would come from ANWR leasing.

The Senate budget provision then calls for the energy committee action - again, ANWR leasing - to be incorporated in broader tax reform legislation.

Perhaps most important, the budget strategy would allow the Senate to approve the tax/ANWR package by a majority vote in a giant reconciliation bill, not the 60 votes needed when a filibuster is in play.

However, there is no guarantee that Senate leadership has the votes to approve the ANWR provision, let alone the greater budget. The Republicans only have a two-vote majority. Sen. Thad Cochran (R-Miss.) is ailing and several other moderate Republicans are reportedly on the fence. Sens. Susan Collins (R-Me.) and John McCain (R-Ariz.) have in the past opposed ANWR leasing.

The counterpart House-approved budget directs the House Natural Resources Committee to come up with \$5 billion from fiscal years 2018 through 2027, again almost certainly from ANWR. The \$5 billion figure reportedly comes from a 2012 Congressional Budget Office projection of the total revenue ANWR development would generate. Eventually, the House and Senate approaches would be combined.

The Trump administration is an enthusiastic supporter of ANWR leasing, but it remains to be seen if the President would sacrifice his tax package for it.

In the last issue of *PLN* we reported on Interior Department plans to write a regulation that would lead to oil and gas *exploration* within the coastal plain of ANWR.

There is a long way to go before ANWR development is a reality but Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) is champing at the bit. She and her Republican predecessors in the Senate have been attempting since 1980 to develop the 1.5 million-acre coastal plain.

Murkowski said of the Senate ANWR budget provision, "I am pleased to see an instruction for the Energy and Natural Resources Committee in the budget resolution for Fiscal Year 2018. This provides an excellent opportunity for our committee to raise \$1 billion in federal revenues while creating jobs and strengthening our nation's long-term energy security. I am confident that our committee is prepared to meet the instruction in this resolution."

Sen. Edward Markey (R-Mass.) promised to try to block Murkowski. "There is bipartisan opposition to drilling in our nation's most pristine wildlife refuge and any effort to include it in the tax package would only further imperil the legislation as a whole," he said. "I will fight vigorously on the Senate floor to remove this extraneous giveaway to Big Oil from the budget and protect this special place."

Yesterday (October 19) just before press time the Senate was trying to dispose of more than 100 amendments to H Con Res 71 in hopes of final passage today.

Environmentalists who have been in an all-out struggle over ANWR with Alaska Republicans since 1980 agreed with Markey that the ANWR provision in the budget could be self-defeating because it might kill the whole tax package, the Trump administration's number one priority.

Sen. Tim Kaine (D-Va.) said on the Senate floor October 17 that the ANWR provision didn't belong in the budget debate. "That is really not a budgetary matter; it is shoehorned into the budget because we like to assume we are going to get a big chunk of revenue by drilling in the Arctic National Wildlife Refuge," he said. "But this is a fundamental matter of environmental policy that shouldn't be squirreled away in a tiny detail on the budget."

In the Interior Department campaign for ANWR development a memo from Acting Fish and Wildlife Service (FWS) Director James W. Kurth tells the Alaska regional director to prepare a rule that, when completed, "will allow for applicants to [submit] requests for approval of new exploration plans."

FWS in the 1980s first authorized exploration in ANWR over an 18-month period to help estimate oil and gas reserves in the 1.5 million-acre coastal plain.

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Environmentalists and their supporters, including the Obama administration, have argued that the 1980 Alaska National Interest Lands Conservation Act (ANILCA) only authorized one *exploration* program.

As for oil and gas *leasing and development*, it is generally agreed that only Congress has authority to approve that under ANILCA.

The Obama administration recommended the coastal plain be designated wilderness, a recommendation that stays in place unless Congress overrules it or the Trump administration removes the wilderness recommendation.

If and when the Senate approves a fiscal 2018 Congressional budget, it will trigger a second legislative step consisting of a bill to meet the budget's demands. That second step - called a reconciliation bill - would contain the meat of the ANWR legislation.

All of the 19 million-acre ANWR is off limits to oil and gas development, unless or until the new administration deems otherwise. It was put off limits on April 3, 2015, when FWS began to implement a decision of President Obama to recommend the designation of 12.28 million acres of the Arctic National Wildlife Refuge as wilderness. That includes the 1.5 million acres of the possibly oil and gas rich coastal plain of ANWR. Seven million acres of ANWR are already Congressionally-designated wilderness.

The price of oil may affect industry's interest in the coastal plain, but companies project their interest in drilling over the long-term, not just the current price of oil.

Besides, ConocoPhillips Alaska is reportedly making progress on two major oil and gas projects in the National Petroleum Reserve Alaska (NPRA) adjacent to ANWR - Greater Mooses Tooth 1 and 2. Greater Mooses Tooth-1 is reportedly ready to begin production in December 2018 and BLM is working on an EIS for Greater Mooses Tooth-2.

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

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

Spending bill with DoI money hung up by chair's illness

The continued sickness of Senate Appropriations Committee Chairman Thad Cochran (R-Miss.) forced the cancellation of a scheduled committee mark-up this week of a fiscal year 2018 public lands appropriations bill. The House approved its version of a bill (HR 3354) on September 14.

. Cochran did return to work last week but due to the press of other Senate business - i.e. a Congressional budget - the committee postponed work on fiscal 2018 spending bills until next week. That assumes Cochran's health holds up.

The delay could conceivably boot all work on the Interior appropriations bill into December, when a temporary spending measure is due to expire. But senators would like to at least have a draft bill introduced to use as a negotiating tool with the House and the Trump administration.

Subcommittee leaders in the past have introduced such a draft, as the

subcommittee on Interior and Related Agencies did in 2013 for a fiscal 2014 appropriations bill. That measure was eventually completed in January 2014 in a giant, all-department appropriations bill.

If and when the Senate committee takes up a fiscal 2018 spending bill, it will have to address several major issues. 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 \$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 prevention programs. In addition the panel will surely be asked to transfer extraordinary emergency wildfire spending costs out of line appropriations and into disaster spending, although that may be a responsibility for the Senate Budget Committee.

The Senate Republican committee members will also probably propose 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. Those actions are extremely unlikely in the Trump administration, but western Republicans want to be sure.

Finally, the committee will be asked to set aside money for the payments-in-lieu of taxes (PILT) program. It received \$465 million in fiscal 2017 and the House has approved the same number for fiscal 2018. The Trump administration had recommended \$397 million for PILT. Congress has occasionally paid for PILT outside of appropriations bills.

Sen. Lisa Murkowski (R-Alaska) chairs the Senate subcommittee on Interior and Related Agencies appropriations and Sen. Tom Udall (D-N.M.) is the ranking minority member.

Cochran has been suffering for several weeks from a urinary tract infection. He had been expected back in the Senate at the first of the week for a scheduled Senate subcommittee on Interior mark-up on October 17 and a full committee mark-up on October 19, but was delayed in his return. Both meetings were canceled, even though Cochran eventually returned to the Senate midweek.

If the committee does address the Interior and Related Agencies spending bill, say next week, it is unclear what would happen after that procedurally. Complicating things, the House in passing its version of HR 3354 September 14 packaged the Interior and Related Agencies bill with seven other domestic bills.

In addition the House and Senate are expected to package all eight domestic bills and four natural security bills into one measure in December, when the hard spending decisions are to be made. To keep the federal government in money until December 8 Congress approved an interim spending bill that President Trump signed into law (PL 115-56) September 8.

The Senate Appropriations Committee spending cap for the fiscal 2018 Interior bill is \$32 billion, compared to \$31.4 billion in the House and to a Trump administration recommendation of \$27.1 billion.

The House-approved version of HR 3354 includes the following numbers, compared to fiscal 2017 allocations:

NATIONAL FOREST SYSTEM: The House approved \$1.493 billion, or \$20 million

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less than a fiscal 2017 appropriation of \$1.513 billion. The House would also shift \$392.5 million from a wildfire account for hazardous fuels management to the National Forest System line item, bringing the total to \$1.886 billion.

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

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

WILD HORSES AND BURROS: The committee approved \$80.6 million, the same as a fiscal 2017 appropriation of \$80.6 million.

ENERGY AND MINERALS: The committee approved \$168.4 million, or \$9 million less than a fiscal appropriation of \$177.4 million. Of note the committee approved \$11 million less for oil and gas than the Trump administration requested, \$118.8 million compared to a request of \$130 million.

NATIONAL LANDSCAPE CONSERVATION SYSTEM: The committee approved \$35.8 million, or \$1 million less than a fiscal 2017 appropriation of \$36.8 million. President Trump had requested \$8.1 million less.

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

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

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

The House report said a transfer of emergency wildfire costs to disaster spending is not within the panel's authority, being a budget question. But the report did express some optimism.

"While the budget request does not include a specific proposal, the Committee notes that the Administration has indicated its interest in working with Congress to find a solution," such as HR 2862 introduced by Rep. Mike Simpson (R-Idaho), the report says.

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

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

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

DOI-2020-07 00601

FWS REFUGE SYSTEM: The House approved \$483.9 million, the same as a fiscal 2017 appropriation.

Riders/amendments: The House bill includes these amendments:

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

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

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

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

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

The Interior Department on October 11 formally announced that it intends to revise the 98 sage-grouse plans written by the Obama administration, presumably to loosen up land uses on affected lands.

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

House approves fire money as disaster hits Calif.

The already urgent national wildfire crisis worsened this month with catastrophic fires in northern California.

Congress may - or may not be - getting the message. To help defray the costs to the Forest Service and Interior Department for wildfire borrowing in fiscal year 2017 the House October 12 approved a \$576.5 million payback in a hurricane emergency bill (HR 2266). That bill now is before the Senate.

But the damage has already been done because the fiscal 2017 wildfire borrowing forced agencies to take money out of hazardous fuels reductions, thus leaving tinder dry forests ready to explode, this fall or in future years.

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

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appropriation, or what was left of it after fire borrowing. The House approved \$575 million for prevention efforts in fiscal 2018, compared to the \$570 million fiscal 2017 level.

The Senate Appropriations Committee had planned to take up HR 3354 this week but canceled scheduled meetings because of the illness of committee chairman Thad Cochran (R-Miss.)

As we have reported frequently, various legislators have proposed numerous, often competing authorization bills to attack the wildlife problem. A lead bill in the House (HR 2936) would not only address fire borrowing by transferring some emergency wildfire costs to disaster funding but also speed environmental reviews of timber sales.

A lead Senate bill (S 1571) now before the Senate Banking Committee would help out with the spending by transferring out of appropriations bills all emergency wildfire costs greater than the 10-year average. But S 1571, designed primarily to extend a National Flood Insurance Program, does not address hazardous fuels elimination.

Rep. Betty McCollum (D-Minn.) said the House October 12 missed the boat by not including a fire fix in the disaster assistance bill, HR 2266. "As the duration and severity of wildfires grows, costs will continue to rise," she said. "Unfortunately, once again we have missed the opportunity to fix the way the Federal Government funds wildfire suppression. Let me be clear: the next supplemental must include a legislative fix for wildfire spending, and it must adequately support the Department of the Interior and its vital efforts to help our country rebuild from the recent fires and hurricanes."

In a separate initiative Sens. Ron Wyden (D-Ore.) and Mike Crapo (R-Idaho) October 18 asked Senate leaders to include a wildfire fix in the emergency hurricane relief bill (HR 2266) the House approved last week.

Wyden and Crapo wrote leadership, "The Senate should continue to push for a fire funding fix that treats wildfires like the natural disasters they clearly are. Together, we should work to stop the erosion of the Forest Service budget that siphons resources from important fire prevention programs, like hazardous fuels thinning and the State and Private Forestry program, to pay for fire suppression."

For now the Trump administration and California Gov. Jerry Brown (D-Calif.) are focusing on fighting fires in seven northern California counties - Butte, Lake, Napa, Nevada, Mendocino, Sonoma, and Yuba. More than 40 people have died and almost 6,000 structures have burned.

Brown asked the President last week for aid from these federal programs: Individuals and Households Program, Transitional Sheltering Assistance, Disaster Case Management, Disaster Unemployment Assistance, Crisis Counseling and Disaster Legal Services, Hazard Mitigation statewide, U.S. Small Business Administration disaster loans and funds from the U.S. Department of Agriculture Emergency Loan Program, among others.

Sen. Dianne Feinstein (D-Calif.) also focused on the immediate emergency. "California's wine country, one of the state's most beautiful regions, is under attack," she said. "Hundreds of homes have burned in the Sierra Nevada foothills, and another major fire is raging in Orange County, threatening thousands of homes there."

At press time various estimates put the fire damage in California at more than 40 people dead, some 6,000 buildings destroyed, 100,000 people evacuated from their homes, \$65 billion in property losses and the sickening of people up to 100 miles

from the fires. At press time firefighters reported good progress in containing the California conflagrations.

Rep. Greg Walden (R-Ore.), a Republican leader in the wildfire debate, wrote Office of Management and Budget Director Mick Mulvaney October 4 to ask for help in both paying for wildfire suppression and prevention.

"Accordingly, we ask that the Administration send Congress a proposal that includes comprehensive forest management and wildland fire budgeting reforms as part of the next disaster relief request as soon as possible," he wrote.

The most destructive wildfires in northern California were burning on nonfederal lands, other than in and around the Mendocino National Forest. For instance, damaging fires in Sonoma and Napa Counties have burned few federal lands.

However, the Forest Service said that even though national forests aren't involved, it is pouring personnel, aircraft and other equipment into the California fights.

"The Forest Service has boots on the ground and is providing other critical resources in California, as well as other parts of the American West, and we will remain as long as necessary," said chief Tony Tooke.

As of early this week the service had committed to the fight 1,500 firefighters, more than \$6 million in supplies, plus aircraft of all sorts.

The National Interagency Fire Center (NIFC) reported midweek 10 active large fires nationally with eight of them in California. Thus far this year in calendar 2017 NIFC records more than 51,000 fires have burned almost 8.8 million acres. That compares to a 10-year average of more fires, almost 57,000. However, the 8.8 million acres burned exceeds the average of just over 6 million acres.

As of the end of fiscal 2017 the Forest Service said it had spent \$2.4 billion on fire fighting but had an appropriation of just \$1.8 billion. The emergency appropriations bill should pay back the agency for most of its costs.

That emergency bill, as requested by the Trump administration, would put up \$526.5 million for the Forest Service and \$50 million for the Interior Department. The bill specifies that all the money is to be applied to fiscal 2017 expenses.

For fiscal 2018 the House September 14 approved a fiscal year 2018 wildfire appropriations bill (HR 3354) that would roughly maintain the status quo. For the Forest Service the House recommended \$2.898 billion, compared to a fiscal 2017 appropriation of \$2.833 billion. For an emergency account called FLAME the committee recommended no money, compared to \$342 million in fiscal 2017.

For the Interior Department the House recommendation is \$956 million, compared to a fiscal 2017 appropriation of \$943 million. For an emergency account called FLAME the committee proposed no money, compared to a fiscal 2017 FLAME appropriation of \$65 million.

There are three separate initiatives now afoot to transfer emergency wildfire costs to disaster spending, not counting the hurricane-relief bills. They are:

- a bill (S 1571) to extend the National Flood Insurance Program for six years. Senate Banking Committee Chairman Crapo on July 17 introduced the measure that includes a provision that would authorize the transfer out of appropriations bills all emergency wildfire costs greater than the 10-year average. It would do that by including emergency wildfire costs as major disasters under the national disaster relief law. Those disasters are now paid for in appropriations bills.

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- a bill (HR 2936) approved by the House Natural Resources Committee June 27 introduced by Rep. Bruce Westerman (R-Ark.) It would not only address fire borrowing by transferring some emergency wildfire costs to disaster funding but also speed environmental reviews of timber sales.

- a bill (HR 2862) introduced June 8 by a bipartisan coalition of House members that would place a disaster cap on wildfire funding, without altering timber sale procedures. The measure under lead sponsor Rep. Mike Simpson (R-Idaho) would, again, transfer emergency wildfire expenses greater than the 10-year average out of discretionary appropriations and into disaster spending.

If none of those strategies work out Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) said this summer that wildfire funding is a top priority of her committee. "What we need is a comprehensive solution that addresses both wildfire budgeting and forest management," she said. "We need to tackle both of those, at once, because we know the wildfire problem is not just a budgeting problem - it's also a management problem."

Murkowski has suggested that Congress use as a starting point a draft outline that some of her committee members put together last year that includes an unspecified spending fix and unspecified procedures for expediting hazardous fuels projects.

Panel approves bill to limit monuments powers

The House Natural Resources Committee October 11 stepped up its campaign to limit the designation of national monuments a notch, approving a bill (S 3990) to set new conditions on monument 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 S 3990 would give Congressional endorsement to any attempt 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 four national monuments in the West, as recommended by Secretary of Interior Ryan Zinke. Those recommendations are presently under review by the President.

Bishop, perhaps the leading critic of national monuments in Congress, said his bill was needed to ward off the designation of monuments unwanted by localities, such as Bears Ears National Monument in Utah and the Grand Staircase-Escalante National Monument in his home state of Utah.

"This legislation provides for accountability in the Act's uses," said Bishop. "It modernizes the law to restore its intent, allowing for the protection of actual antiquities without disenfranchisement of local voices and perspectives. It standardizes and limits the president's power to reshape monuments."

Ranking House Natural Resources Committee Democrat Raúl M. Grijalva (D-Ariz.) charged that Bishop wrote his bill in haste to ward off a resolution from Grijalva requesting information about the Trump administration review of existing monuments.

"Republicans will claim that this bill gives us what we want - more transparency - but the truth is that it was introduced without any input from stakeholders, Tribes or the scientific community," said Grijalva. "This is further evidence that Chairman Bishop's Antiquities Act bill was thrown together at the last minute with only one special interest group in mind: the oil and gas industry."

DOI-2020-07 00605

Bishop responded by calling Grijalva's request for information about the Zinke review "futile." He said, "My bill has an H.R. in front of it, which means it carries the force of law. The Ranking Member's doesn't. It has no enforcement mechanism and is futile. Further, I find it worth noting that while the minority seeks greater transparency when it comes to a review of the national monument process, it seems entirely content to leave the monument creation process hidden, behind closed doors, outside of the public eye."

Grijalva introduced his resolution (H Res 555) because he said Zinke was not transparent in reviewing 27 existing monuments for possible elimination or shrinkage. The committee did not approve the Grijalva resolution at the October 11 mark-up, rejecting it by the same 23-to-27 margin the panel approved Bishop's bill.

On August 24 Zinke submitted to President Trump a proposal to reduce in size four national monuments in the West and increase consumptive uses in 10 monuments. Zinke neither specified how much the four monuments should shrink nor the specific uses that should be authorized in the ten monuments.

On the chopping block for reductions in size are Bears Ears National Monument in Utah, the Grand Staircase-Escalante National Monument in Utah, Cascade-Siskiyou National Monument in Oregon, and Gold Butte National Monument in Nevada.

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*.

Trump began the initiative April 26 when he signed an executive order directing the Interior Department to review the designations of national monuments of more than 100,000 acres made since 1996, plus a Katahdin Woods and Waters National Monument in Maine. The Zinke review looked at 27 monuments.

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 (AEI) report published this spring argues that he does.

A new report from public lands consultant Pamela Baldwin backs the CRS report when it argues that the Federal Land Policy Management Act of 1976 (FLPMA) effectively ended the debate when it said the *secretary of Interior* could not "modify or revoke any withdrawal creating national monuments" under the Antiquities Act of 1906.

While that prohibition applies directly to the secretary of Interior, Baldwin says by inference it also applies to a President. She says in the report that, "if there is any ambiguity, the entire statute, and the policies and intent of Congress must be considered; and that all provisions of a statute must be given effect. Applying these tenets to the provisions of FLPMA leads to the conclusion that a president lacks the authority to revoke or modify national monuments under the Antiquities Act."

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

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Bishop Bill: HR 3990 would begin by banning the designation of any national monument by a President under the Antiquities Act of 1906 larger than 85,000 acres, with the exception of an emergency designation. However, an emergency designation would automatically expire after one year. That year would presumably give Congress time to step in.

HR 3990 would authorize a President to reduce the size of any existing national monument larger than 85,000 acres (1) if the reduction was approved by local government, a state and a governor and (2) if the reduction was first reviewed under the National Environmental Policy Act (NEPA).

The bill would allow a President to designate unconditionally a national monument of less than 640 acres.

For national monuments between 640 and 10,000 acres the bill would require a NEPA review with an environmental assessment or EIS for monuments between 5,000 acres and 10,000 acres.

For national monuments between 10,000 and 85,000 acres county, state and governors would have to give their approval before designation. The bill does not mention a NEPA review for monuments in this size range.

The National Cattlemen's Beef Association endorsed the committee approval of HR 3990 because the ranchers the association represents complain about reduced allotments in and around monuments.

"HR 3390 adds critical details to original, vague legislation regarding the creation and management of national monuments," said Craig Uden, president of the National Cattlemen's Beef Association. "By limiting presidential authority and restoring balance to the monument designation process, the bill would ensure local ranchers and communities are not subject to the whims of an unchecked federal government."

Sportsmen and outdoor industry officials who have praised Zinke in the past are apparently having second thoughts, at least as to the impact of Bishop's bill on the public lands.

"Congressman Bishop's bill should cause all Americans to sit up and take notice," said Backcountry Hunters and Anglers President and CEO Land Tawney. "His attack on one of America's bedrock conservation laws is bold and real - and cannot be allowed to stand unchallenged."

Bill would let states run energy permits, royalties

Western states predictably endorsed draft House legislation October 13 that would turn over to them authority to approve oil and gas drilling permits on onshore public lands. 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 a hydraulic fracturing regulation in place - and most do - the federal government would not be able to regulate the practice.

The draft would also address royalty policy by ensuring that states would receive 50 percent of federal royalty payments; 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.

Said Cathy Foerster, engineering commissioner for the Alaska Oil and Gas

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Conservation Commission, at a legislative hearing hosted by the House subcommittee on Energy and Mineral Resources, "My agency has been disappointed again and again by failures of Federal governmental agencies operating in Alaska to abide by their own statutes and regulations, much less those of our state . . . My state is well equipped to relieve Federal agencies of the burdens of redundant oversight in drilling and operating oil and gas wells in Alaska and that other states have - and use - the same resources Alaska does to get themselves to that same level of regulatory excellence."

The oil and gas industry was also on board. 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."

Environmentalists took issue with the bill. Sharon Buccino, director of the land & wildlife program for the Natural Resources Defense Council, said the measure could prevent public input, as authorized by the Federal Land Policy and Management Act and the National Forest Management Act.

"As proposed, the ONSHORE Act would take away these basic rights to participate," she said. "A state *might* provide something comparable, but there is no guarantee. The statutory language included in the ONSHORE Act would arguably supersede the protections currently provided under existing law."

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

"The states are more capable of assessing these responsibilities and would be able to conduct them with less cost to the taxpayer," he said.

But ranking subcommittee Democrat Alan Lowenthal (D-Calif.) said that ultimately federal lands are owned by all Americans and should be managed by the federal government.

"Yes, the federal government generally does take longer than the states to approve drilling permits, I will agree to that," he said. "But that is for a very good reason. The public lands belong to all Americans. They belong to the Americans who want to use those lands to hunt, to fish, graze cattle, to canoe, to motorize bike, to camp or simply to protect special places."

On the table at the committee hearing was a bill the committee majority drafted, with the author or authors unnamed. It resembles but is different in key aspects from 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 draft 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 the House committee draft it would give the Interior

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Department 180 days to approve or disapprove a state application, with provisions for appeal of a denial.

To qualify for the permit a state would have to describe its program 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 has the competence and finances to carry out a program, that a state had held a public comment period, and that a state program would not reduce federal royalties.

In addition the bill would have the Interior Department incorporate into all land use plans designations of preferred leasing areas. Once those preferred areas were identified no lease sale or permit to drill would require an environmental review.

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 federal and 49 state. And the bill would allow states to collect royalties.

Said Gosar, "These states will also have the option of managing and collecting these revenues without the federal government serving as the middle man. The ONHSORE Act provides states with a path to maintain stewardship over their share of mineral revenues and to utilize it for the benefit of their citizens."

Finally, the hydraulic fracturing provisions would not allow BLM to regulate hydraulic fracturing if a state had such a program in place, as most do. "The Secretary of the Interior shall recognize and defer to State regulations, permitting, and guidance, for all activities related to hydraulic fracturing, or any component of that process, relating to oil, gas, or geothermal production activities on Federal land," the bill says.

Meanwhile, on the Senate floor agenda is an omnibus energy bill (S 1460) that touches on onshore energy development, but does not include any provision to delegate 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.

Sage-grouse policy may affect ongoing anti-Obama suits

If as promised the Interior Department revises 98 sage-grouse plans written by the Obama administration to loosen up land uses on affected lands, that action may affect a slew of lawsuits already on the table.

As a first order of business the revised plans may render moot lawsuits brought by the states of 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 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.

Said Erik Molvar, a wildlife biologist and executive director with Western Watersheds Project, which brought the initial lawsuit against the Obama administration, "We expect the Trump administration to significantly weaken sage grouse protections and undermine the already-compromised measures in the current sage grouse plans."

He added, "Since we are already challenging the original plans because they are too weak to protect sensitive sage-grouse habitats, the impact of this new attack on sage-grouse protections on our litigation will depend on the shape of sage-grouse habitat-protection plans after the Trump administration gets done with them."

Environmentalists contend at bottom that the Trump campaign to revise the plans is designed to open public lands to commercial users, particularly the oil and gas industry.

In that vein environmentalists are already criticizing a September 12 oil and gas lease sale offer of 15,000 acres by the Utah State Office of BLM in the Fillmore District. Although only 4,102 acres were sold, the Western Watersheds Project objected because of the impacts of the leasing on the sage-grouse.

"Why did the BLM say that Sheeprocks sage grouse need to have their habitat restored but then put that habitat up for auction?" asked Kelly Fuller, energy campaign coordinator with Western Watersheds Project. "If the BLM thinks fracking counts as sage-grouse habitat restoration, no wildlife on BLM land is safe."

But the Trump administration has powerful allies who endorse revised plans with fewer limits on commercial uses. Western Energy Alliance President Kathleen Sgamma said, "We are very pleased BLM is moving forward with amending the sage-grouse plans. The plans discouraged on-the-ground, local conservation efforts and ignored state plans, except for Wyoming's, in favor of a top-down, one-size-fits-all approach."

And National Mining Association President Hal Quinn said, "Research has shown the true threats to the sage-grouse are wildfires and invasive species, not mining. This proposal in search of a problem would have deepened our dependence on foreign countries for the minerals and metals that will help build our infrastructure, and serve as the tip of America's supply chain."

In an October 11 *Federal Register* notice (informally announced October 5) BLM said it intends to amend "some, all or none" of the plans. The bureau will take public recommendations on possible revisions until November 27. Completing revised plans would take years.

BLM said it was soliciting advice in part because of a recent district court decision that requires the agencies to prepare a supplemental EIS on the designation of sage-grouse focal areas where mining is forbidden. However, the court did not halt implementation of the plans.

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

In addition to launching the revision of the sage-grouse plans BLM outright

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cancelled a proposed withdrawal of 10 million acres from hard rock mining to protect the sage-grouse.

"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.

The Obama administration segregated the 10 million acres from the mining law on Sept. 24, 2015, for two years, but the two years has ended. On Dec. 30, 2016, BLM published a draft EIS to back conversion of the segregation to a 20-year withdrawal with public comments accepted until March 28 of this year. That, of course, opened the way for the Trump administration to cancel the proposed withdrawal.

The hard rock mining industry agreed with Nedd. "Secretary (of Interior) Zinke has done the right thing by ending this epic federal land grab," said Laura Skaer, executive director of the American Exploration & Mining Association. "These land-use restrictions and withdrawals were a blatant overreach by the BLM and a thinly veiled attempt to impose a top-down policy, completely disregarding states efforts, statutory requirements and public involvement."

The Backcountry Hunters & Anglers sportsmen group criticized both the proposed regulatory revision and the withdrawal cancellation. "Changing (the Obama administration) approach now would undermine not only an historic, multi-stakeholder conservation strategy; it also would hurt the Western communities that depend on a strong and growing outdoors-focused economy," said John Gale, conservation director for the association.

Secretary Zinke has offered broad clues as to what he thinks BLM should do in revising the plans. In an August 7 memo he directed BLM to make fundamental changes that would at once loosen restrictions on commodity users and defer more to state policies. High on Zinke's list of changes 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."

The western governors have not been united in their demand for wholesale changes in the 98 plans. On May 26 Wyoming Gov. Matt Mead (R-Wyo.) and Colorado Gov. John Hickenlooper (D-Colo.) wrote Zinke and asked him NOT to change course.

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.

Zinke based his August 7 memo to BLM on the recommendations of a review team made up of representatives from BLM, the Fish and Wildlife Service, the Forest Service, the U.S. Geological Survey and the Western Governors Association sage-grouse task force.

The BLM notice on changing plans is here: <https://on.doi.gov/2fNuFPt>. The BLM notice on the cancellation of the withdrawal is here: <https://on.doi.gov/2hOpRxn>.

DoI rapidly filling top positions, short of nominees

The somewhat beleaguered Interior Department management team got a boost last week with the appointment of six officials to leadership positions that don't require Senate confirmation.

Among them is Cally Younger to be counselor to BLM. She has most recently served as counsel to Idaho Gov. C.L. "Butch" Otter (R).

Also at BLM, the department announced the appointment of Brian Steed as the number two official as deputy director. Steed has most recently served as chief of staff to Rep. Chris Stewart (R-Utah). BLM career employee Mike Nedd is serving as acting bureau director.

In a third BLM appointment Secretary of Interior Ryan Zinke said Kathleen Benedetto of the House Natural Resources Committee staff will serve as a senior advisor to the bureau.

In addition to Younger, Steed and Benedetto at BLM, Zinke announced the appointment of Jason Larrabee as deputy assistant secretary for Fish and Wildlife and Parks; Austin Ewell as deputy assistant secretary of Water and Science; and Benjamin Cassidy as senior deputy director for Intergovernmental and External Affairs.

Larrabee comes from the staff of Rep. Jeff Denham (R-Calif.), Ewell from a regulatory consultant job and Cassidy from the National Rifle Association.

While the Trump administration is making progress in naming appointees it is doing less well in filling Interior Department positions that require Senate confirmation. Other than Ryan Zinke as secretary and David Bernhardt as deputy secretary, the department is largely operating under the guidance of acting assistant secretaries and acting agency heads.

No nomination has been forwarded to head BLM, the Fish and Wildlife Service, the Bureau of Reclamation, or the National Park Service.

The Trump administration did announce October 16 that it will nominate Tara Sweeney, the executive vice president of the Arctic Slope Regional Corporation, as assistant secretary of Interior for Indian Affairs. Alaska's Republican Sens. Lisa Murkowski and Dan Sullivan endorsed the nomination.

Sweeney has chaired the Arctic Economic Council in the past and is an Iñupiaq and a lifelong Alaskan from Ukpiagvik (Barrow). The Arctic Slope Regional Corporation is the largest Alaska-owned and operated business.

On September 19 the department edged a little closer to a complement of political nominees when the Senate Energy Committee approved the nominations of two top leaders. The committee sent to the Senate floor the nominations of Ryan Nelson as Interior Department Solicitor and Joseph Balash as assistant secretary of the Interior for Land and Minerals Management. Only Sen. Al Franken (D-Minn.) offered a no vote, and that to Balash. However, the full Senate has yet to confirm the nominations.

Zinke is somewhat beleaguered on a couple of accounts. For one thing in laying out his plans for reorganizing the Interior Department September 25, the secretary told the National Petroleum Council that "30 percent of the crew" (i.e. department employees) are "not loyal to the flag."

The phrase "loyal to the flag" touched a raw nerve with three organizations of retired officials from BLM, the National Park Service, and the U.S. Fish and Wildlife Service.

They jointly called Zinke's remarks "ludicrous, and deeply insulting." The three groups are the Coalition to Protect America's National Parks, Public Lands Foundation, and Association of Retired Fish and Wildlife Service Employees.

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In a second controversy an early move by Zinke to transfer 50 Senior Executive Service (SES) Employees to new positions is under review by the department's Office of Inspector General, it has been reported.

Senate Democrats, led by ranking energy committee minority member Maria Cantwell (D-Wash.), requested the review in July.

Cantwell and seven Democrats said in asking for the review, "Any suggestion that the Department is reassigning SES employees to force them to resign, to silence their voices, or to punish them for the conscientious performance of their public duties is extremely troubling and calls for the closest examination."

The transfer of the 50 SES employees is but one of many sweeping personnel changes proposed by the Trump administration.

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

On a more-prosaic reorganization front at a July meeting with U.S. Geological Survey (USGS) executives Zinke said the transfer of agency headquarters to the West would be part of his plan to shift personnel from Washington and regional headquarters to the front lines.

In addition Zinke said he intends to combine management of federal lands via inter-agency joint management areas (JMA), with leadership of the JMAs shifting among agencies. The USGS notes said, "There is no target on Denver but it is likely that some Denver employees will move to the JMA locations. Denver will probably have the headquarters for BLM, FWS and BOR."

Bipartisan coalition of legislators would extend LWCF

Over the next year a bipartisan group of House and Senate members intends to campaign weekly for the permanent authorization of the nation's leading conservation program - the Land and Water Conservation Fund (LWCF).

A fortnight ago three Republican senators and three Democratic senators pledged to work to reauthorize LWCF, which is scheduled to expire on Sept. 30, 2018. They launched something called the Land and Water Conservation Fund campaign to both note the time left before expiration, 52 weeks, and the number of years the program has been in existence, 52 years.

Sen. Richard Burr (R-N.C.), long a proponent of LWCF, rang the tocsin at an event on Capitol Hill.

"If I had my choice - and I know Maria would agree with me - we'd try to do permanent reauthorization tomorrow," he said, bowing to his colleague Sen. Maria Cantwell (D-Wash.) "Let me tell you what my pitch would be to my colleagues - no taxpayer money. There is no taxpayer money in this. This is a successful bipartisan approach."

Burr wound up, "I'm proud to be here with my colleagues and to tell you that over the next 52 weeks at some point we will make sure this never expires again and is never a question about whether it is in existence."

Attending the press conference were Sens. Cantwell, Steve Daines (R-Mont.), Cory Gardner (R-Colo.), Tom Udall (D-N.M.) and Martin Heinrich (D-N.M.)

DOI-2020-07 00613

There are at least four bills on the table that would make LWCF permanent (HR 502, S 569, S 896 and S 1460). Perhaps the last one, S 1460, enjoys the greatest chance of success because it is an omnibus energy bill that is now on the Senate floor agenda.

Bill sponsors Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) and ranking Democrat Cantwell have attached the LWCF provision to it.

The Trump administration and its Secretary of Interior Ryan Zinke have offered mixed signals on LWCF's future this year. Zinke professes to be a big fan of the program, having cosponsored reauthorization legislation when he was a House member.

Indeed, Zinke told appropriators in early June he supported a "permanent fix" for LWCF. However, in his prepared testimony at the time Zinke simply said the administration would look at "options" for reauthorization.

LWCF is not in danger of expiring over the next year. Congress extended the fund for three years in a fiscal 2016 appropriations law (PL 113-114 of Dec. 18, 2015) through fiscal 2018, or until Sept. 30, 2018.

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

After Simpson introduced his bill to reauthorize LWCF and split the money with federal agency maintenance he acknowledged that has not yet identified a source of funds for the bill - always the hang-up in such campaigns.

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

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

In raw numbers the fiscal 2018 Trump budget request would slash the federal side of LWCF by \$138 million, from \$189 million in fiscal 2017 to \$51 million in fiscal 2018.

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

In approving a fiscal year 2018 appropriations bill (HR 3354) September 14 the House approved \$110 million for federal land acquisition, or \$79 million less than a fiscal 2017 appropriation of \$189 million. The Trump administration had recommended an appropriation of \$54 million for land acquisition. Under the House bill by agency BLM would receive \$12.8 million compared to \$31.4 million in fiscal 2017; the Fish and Wildlife Service would receive \$40.6 million compared to \$50 million; the Park Service would receive \$31.6 million compared to \$42 million; and the Forest Service would receive \$25 million compared to \$54.4 million.

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IBLA decisions

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

Subject: Hazardous fuels project.

BLM decision: BLM will approve a fuel break on 271 miles of road in Idaho to address wildfire dangers.

Appellant environmentalists: BLM's environmental assessment was inadequate for a half-dozen reasons.

IBLA decision: Affirmed BLM.

Case identification: *Western Watersheds Project, 191 IBLA 351*. Decided October 13, 2017. Thirty-two pages. Appeal from a Decision Record of Field Managers, Owyhee Field Office, Morley Nelson Snake River Birds of Prey National Conservation Area, and Malheur Field Office, BLM, approving the Soda Fire Fuel Breaks Project. DOI-BLM-ID-B030-2016-003-EA.

IBLA argument: IBLA Administrative Judge Silvia M. Riechel upheld a BLM decision approving a large hazardous fuels treatment program in southwestern Idaho. The appellant environmental group argued in a half-dozen ways that the environmental assessment supporting the decision was inadequate, objecting to such things as an inadequate range of alternatives, lack of a full-blown EIS, etc. Judge Riechel rejected each of those arguments. In one instance the appellant Western Watersheds Project (WWP) objected to the core goal of the project - the creation of a firebreak 200-feet wide on both sides of 271 miles of roads. But Riechel said, "BLM explained its rationale for choosing a 200-foot-wide fuel break and examined its expected effectiveness. WWP has not shown error in the analysis or a failure to consider a material issue of significance to BLM's decision to approve the fuel breaks project." The project is located in an area in and near the Soda Fire that burned 279,144 acres of federal, state and private land in 2015. Because the BLM decision involved high risk to life and property IBLA granted expedited consideration.

Subject: Grazing.

BLM decision: BLM will approve a grazing permit in Nevada after preparing an environmental assessment.

Appellant environmentalists: BLM erred because it did not adequately address the impact of grazing on sage-grouse habitat.

IBLA Administrative Law Judge: BLM should redo its environmental assessment and consider improving sage-grouse habitat.

BLM, rancher appeal: IBLA should stay judge's decision because he didn't give due deference to BLM's analysis.

IBLA decision: Approved stay, BLM and rancher make good argument.

Case identification: *Southern Nevada Water Authority & BLM, 191 IBLA 382*. Decided October 13, 2017. Thirty-four pages. Appeals from an order by an Administrative Law Judge granting a motion for summary judgment and denying cross-motions for summary judgment in a grazing appeal challenging a final grazing decision issued by the Field Manager, Schell (Nevada) Field Office, Ely District, BLM. NV-L020-14-01.

IBLA argument: IBLA Administrative Judge Amy B. Sosin granted BLM a stay of an administrative law judge decision faulting a BLM decision approving grazing permits. The administrative law judge had agreed with environmentalists that the grazing decision did not adequately address the impact of grazing on the greater sage-grouse. But Sosin seemed to say BLM did adequately address sage-grouse impacts, meriting a stay of the administrative law judge's decision. Held Sosin, "Further, we conclude that because (the (permittee's) renewed permit is more protective of sage-grouse and its habitat than the prior permit, BLM and (the permittee) have satisfied the requirement to show that without a stay, there would be immediate and irreparable harm."

Notes

Onshore O&G sales increase. BLM said last week that through the first three-quarters of calendar 2017 onshore oil and gas lease sales brought in more money than all such sales in calendar 2016 - \$316.2 million to \$192.5 million. "The Secretary's strategy for energy dominance is working and will continue to bear fruit," said Counselor to the Secretary for Energy Policy Vincent DeVito, referring to Secretary of Interior Ryan Zinke. "This pace is a reflection of our responsible energy policy and administrative changes that are making Interior a better place

to do business.” However, most of those sales were prepared under the Obama administration and reflect an Obama administration policy of only leasing lands that can meet legal muster. Be that as it may, the Trump administration says it is determined to increase energy development from the public lands. In the third quarter of the year BLM said it sold 218 leases for \$170.7 million. BLM New Mexico held the most productive sale, garnering \$130.9 million in bonus bids. House Natural Resources Committee Republicans are promoting draft legislation that would transfer *permitting* of oil and gas on public lands to states, but committee Democrats say plenty of permits have already been approved and are not being developed (see *related article page 11.*) More information about BLM’s oil and gas program is at: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing>.

Upcoming Utah O&G sale protested. Although the Trump administration says it is stepping up leasing of onshore oil and gas tracts (see *above*), environmentalists are also stepping up their litigation against those sales. In exhibit one WildEarth Guardians earlier this month protested a scheduled December sale of 94,000 acres in Utah. Guardians says some of those parcels are too close to Dinosaur National Monument or are inside the San Rafael Swell. Said Becca Fischer, climate guardian for WildEarth Guardians, “Moving forward with these leases will damage our public lands and clean air, but the BLM is turning a blind eye to these impacts to the detriment of the American people.” As we have reported in the last two issues of *PLN* environmentalists are preparing to object to big oil and gas leases sales in December across the West in Wyoming, Utah, Colorado, Montana, Nevada and New Mexico. The Wyoming BLM has scheduled a sale in December of 45 parcels totaling almost 72,900 acres from its High Desert District. The Guardians protest is available at: <https://climatewest.files.wordpress.com/2017/10/fnl-utah-december-2017-protest.pdf>.

Border ‘Wall’ bill due. The House is expected to take up soon legislation (HR 3548) that would authorize the expenditure of \$10 billion to build President Trump’s wall between the United States and Mexico. The wall would affect management of public lands in the Southwest. The bill was approved October 5 by the House Committee on Homeland Security. But before the House takes up the bill six leading House Democrats October 12 asked Republican leaders to let six other committees review it. In a brief letter to Speaker of the House Paul Ryan (R-Wis.) and six committee chairmen the Democrats said the bill is too important to bypass “regular order,” i.e. consideration of other committees with oversight of such a wall. Of note the bill doesn’t envision the construction of a physical wall between the countries so much as technological barriers, such as radar. The Democrats’ letter is available at <http://bit.ly/2xBvzVQ>.

Wild horse board members named. BLM said October 16 that the Trump administration has chosen to retain two of the three members of the bureau’s Wild Horse and Burro Advisory Board whose positions were up for possible replacement this fall. The membership of the nine-member board is rotated periodically. Staying on are Fred T. Woehl, Jr., a trainer and educator from Harrison, Ark., and Sue M. McDonnell, a professor at the Pennsylvania School of Veterinary Medicine from West Chester, Pa. Newly appointed is James French, a former biologist with the Nevada Department of Wildlife and county commissioner from Winnemucca, Nev. The wild horse board has its work cut out for it because BLM says the nation’s public range is seriously overpopulated with horses and burros. The board last year raised a stir on Sept. 9, 2016, when it recommended that BLM sell off as many of the 46,000 excess wild horses as it could that the bureau has corralled in the West. Then it recommended BLM euthanize the unadoptable animals.

NPS harassment said widespread. The Interior Department October 13 posted a report that says as many as 38 percent of National Park Service employees report some sort of harassment by their supervisors. However, three-quarters of those who said they experienced harassment did not report it. In response to the survey conducted by the CFI Group Secretary of the Interior Ryan Zinke and Acting Director

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of the National Park Service Mike Reynolds said they had put together an action plan to combat harassment. "From day one, I made it clear that I have zero tolerance for harassment in the workplace, and I directed leadership in the National Park Service to move rapidly to improve accountability and transparency," Zinke said. The department described a number of steps NPS will take in the action plan, such as an increased expansion of the agency's ability to investigate and resolve harassment claims. Although most of the incidents took place on the Obama administration's watch, the Trump administration is stuck with cleaning things up. The report is available at:

<https://www.nps.gov/aboutus/transparency-accountability.htm>.

Conference Calendar

OCTOBER

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

26-28. **National Land Conservation Conference** in Denver. Contact: Land Trust Alliance, 1331 H St., N.W., Suite 400, Washington, DC 20005-4711. (202) 638-4725, <http://www.lta.org>.

NOVEMBER

2-3. **National Environmental Policy Act** special institute in Denver. For information see <https://www.rmmlf.org>. Contact: Rocky Mountain Mineral Law Foundation, 9191 Sheridan Blvd., #203, Westminster, CO 80031. (303) 321-8100. <http://www.rmmlf.org>.

8-10. **Independent Petroleum Association of America Annual Meeting** in Naples, Fla. Contact: Independent Petroleum Association of America, 1201 15th Street NW, Suite 300, Washington, DC 20005. (202) 857-4722. <http://www.ipaa.org>.

14-17. **The National Trust for Historic Preservation Conference** in Houston. Contact: National Trust for Historic Preservation, 1785 Massachusetts Ave., N.W., Washington, DC 20036. (202) 588-6100. <http://www.nationaltrust.org>.

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/>.

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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>.

DOI-2020-07 00617