

**From:** blkershaw@gmail.com  
**Sent:** 2017-01-20T13:16:03-05:00  
**Importance:** Normal  
**Subject:** Fwd: Public Lands News: Zinke zips through; court lets methane rule stand; five new monuments  
**Received:** 2017-01-20T13:16:53-05:00  
[P217Jan20.pdf](#)  
[P217Jan20.doc](#)  
[P217Jan20.doc](#)

All,

Attached in PDF and .doc formats is the January 20, 2017 issue of the Public Lands News. Enjoy!

Byard L Kershaw  
North Rim Consulting, LLC  
1753 S. Kanab Creek Dr.  
Kanab, UT 84741  
[northrimconsulting@kanab.net](mailto:northrimconsulting@kanab.net)  
[435.644.3094](tel:435.644.3094) (H)  
[602.478.9621](tel:602.478.9621) (C)  
A Veteran-Owned Business

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

As many of you know we publish a second newsletter *Federal Parks & Recreation* that concentrates on park and recreation issues at the federal, state and local levels. At the end of December we discontinued publication of *Federal Parks & Recreation* as a free-standing publication.

We are advising you because for the first six months of 2017 we will provide some park and recreation coverage as an addendum to *Public Lands News*. That is, from January through June of this year your *Public Lands News* will include extra coverage of park and recreation policy. After July 1 *Public Lands News* will drop the park and rec coverage and go back to its present formulation.

In the attached issue. . .

\* ZINKE GETS THROUGH CONFIRMATION HEARING. Promises to both protect fed lands and develop them. A few environmental groups criticize.

Page 1

\* JUDGE REFUSES TO BLOCK BLM METHANE RULE. For now he doesn't buy argument that rule intrudes on EPA air authority, but leaves wiggle room.

Page 3

\* FIVE NEW MONUMENTS; NONE FOR GRAND CANYON. Obama expands Cascade-Siskiyou in Oregon, expands Calif. Coast. Three civil rights sites added.

Page 5

\* DEMOCRATIC SENATORS OPPOSE LAND TRANSFERS. Introduce amendment but it goes nowhere. Move follows House vote to make transfers easier.

Page 7

\* DOI COMPLETES COAL ANALYSIS. It outlines areas of possible change but doesn't make specific recommendations. Royalties are mentioned.

Page 8

\* HOUSE LEADERS TARGET METHANE RULE. As they begin work on revocation of regulations. Koch operation lays out broad regs revocation plan.

Page 10

\* OBAMA ESTABLISHES OIL SHALE ROYALTY. Roughly parallels Bush rule but gives BLM flexibility to increase. Environmental standards also.

Page 11

\* FS WORKING ON SCIENCE FOR NORTHWEST PLAN. Panel proposes 'science synthesis' to back rewrite of plan. Counties fear timber left out.

Page 13

\* ALASKANS ASK BROAD POLICY CHANGES. Elected officials oppose BLM eastern interior plan, propose ANWR leasing, propose King Cove exchange.

Page 14

\* IBLA DECISIONS.

Page 15

\* NOTES.

Page 16

\* CONFERENCE CALENDAR.

Page 17

*\* FEDERAL PARKS & RECREATION ADDENDUM.*

Page 18

# Public Lands News<sup>®</sup>

---

Editor: James B. Coffin

Subscription Services: Gerrie Castaldo

Volume 42 Number 2, January 20, 2017

*In this issue. . . .*

**Zinke gets through confirmation hearing.** *Promises to both protect fed lands and develop them. A few environmental groups criticize.....* Page 1

**Judge refuses to block BLM methane rule.** *For now he doesn't buy argument that rule intrudes on EPA air authority, but leaves wiggle room.....* Page 3

**Five new monuments; none for Grand Canyon.** *Obama expands Cascade Siskiyou in Oregon, expands Calif. Coast. Three civil rights sites added.....* Page 5

**Democratic senators oppose land transfers.** *Introduce amendment but it goes nowhere. Move follows House vote to make transfers easier.....* Page 7

**DoI completes coal analysis.** *It outlines areas of possible change but doesn't make specific recommendations. Royalties are mentioned.....* Page 8

**House leaders target methane rule.** *As they begin work on revocation of regulations. Koch operation lays out broad regs revocation plan.....* Page 10

**Obama establishes oil shale royalty.** *Roughly parallels Bush rule but gives BLM flexibility to increase. Environmental standards also.....* Page 11

**FS working on science for Northwest Plan.** *Panel proposes 'science synthesis' to back rewrite of plan. Counties fear timber left out... Page 13*

**Alaskans ask broad policy changes.** *Elected officials oppose BLM eastern interior plan, propose ANWR leasing, propose King Cove exchange.....* Page 14

**IBLA decisions.....** Page 15

**Notes.....** Page 16

**Conference calendar.....** Page 17

**Federal Parks & Recreation addendum.....** Page 18

## Zinke escapes confirmation hearing relatively unscathed

Secretary of Interior nominee Rep. Ryan Zinke (R-Mont.) performed a high-wire act January 17 - alternately promising to open public lands to increased development while being a good steward of the lands.

At a Senate Energy Committee hearing on his nomination Zinke walked the wire and sort of laid out the development case. "I fully recognize and appreciate that there are lands that deserve special recognition and are better managed under the John Muir model of wilderness, where man is more of an observer than an active participant," he began.

Then he added, "I also recognize that the preponderance of our federal holdings are better suited to be managed under the Pinchot model of multiple use using best practices, sustainable policies, and objective science."

Zinke made the conservation case explicitly, repeating his support for retention of public lands in the federal domain and for making the Land and Water Conservation Fund (LWCF) permanent. When Sen. Maria Cantwell (D-Wash.) asked if he supported a permanent LWCF, Zinke said, "I do. I think land and water conservation has been important to Montana, certainly in many states. I think we should look at it . . . Lastly, I do think the states and local communities should have a say where those funds go."

As for retention of federal lands when Sen. Bernie Sanders (I-Vt.) asked his opinion on privatization of the National Park System, Zinke said, "I want to be clear on this point. I am absolutely against the transfer or sale of the public lands."

It became clear at the hearing that Zinke's nomination is assured. One fly in the ointment is a concern that Zinke was charged with travel fraud while serving in the U.S. Navy as an officer in SEAL Team Six. But his service in the Navy was scarcely mentioned in the four-hour hearing, let alone the travel charges.

In those charges Zinke allegedly billed the military for official travel when he was actually going home to renovate his house. The Navy didn't bring charges because the Navy SEALs have a tradition of avoiding scandal, according to the reports. The infractions allegedly occurred in 1998, 1999 and the early 2000s.

Environmentalists who at first appeared to be concentrating their fire on other Trump nominees, are now attacking Zinke. WildEarth Guardians told its members January 16 in a fund-raising pitch, "Even though Zinke's says he supports public lands, he just voted to allow the House of Representatives to support public lands transfers without considering the cost to the American people."

That refers to a January 3 House vote that would make it easier for future legislation to transfer federal lands to states or local governments. The House action would exempt legislation to make such transfers from Congressional pay-as-you-go limits. (See separate article page 10.)

But sportsmen are sticking with Zinke. Backcountry Hunters and Anglers President Land Tawney said that Zinke would likely protect federal lands and backcountry hunting and fishing opportunities.

"Backcountry Hunters & Anglers believes that he can be an effective and positive leader for the Interior Department, and we will continue to work closely with him with that objective in mind," said Tawney.

The powered recreation industry agreed. "The Outdoor Recreation Industry Roundtable supports Secretary-designate Zinke and looks forward to working with him and his team at the Department of the Interior to advance the outdoor recreation sector, grow jobs in the U.S. and ensure that all Americans have access to healthy, active outdoor fun on their public lands and waters," said Derrick Crandall, president of the American Recreation Coalition.

Commodity users of the public lands, such as the livestock industry, have lined up in support of the Montanan. Said Tracy Brunner, president of the National Cattlemen's Beef Association, "During his tenure in the U.S. House of Representatives, Rep. Zinke has consistently advocated for our western communities, economies, and ranchers. He has demanded transparency and the inclusion of stakeholders when it comes to land management decisions, and has a strong understanding of the challenges that come with stewarding the West."

The Western Energy Alliance concurred. "Western oil and natural gas producers with reasonable access to federal public lands can help create hundreds of thousands of high-paying, blue-collar jobs," said Kathleen Sgamma, president DOI-2020-03-00005

**January 20, 2017****Page 3**

"Congressman Zinke is the right person to enact this vision while protecting the landscapes that all Westerners love and cherish."

It is understood that Zinke will attempt to flatten the federal bureaucracy, i.e. transfer employees out of headquarters and regional offices into the field, according to people who have talked with the Trump transition team.

Zinke hinted at that in his testimony saying one of his three top priorities is "to ensure the professionals on the front line, our rangers and field managers, have the right tools, right resources, and flexibility to make the right decisions that give a voice to the people they serve."

His two other top priorities are to restore trust in federal land management agencies and to reduce a Park Service maintenance backlog.

Cantwell aggressively questioned Zinke on the development of coal on the public lands. When she asked him if he agreed with a coal-leasing moratorium launched by former secretary of Interior Sally Jewell on Jan. 15, 2016, he said, "I think a review is good."

On the policy front, as we have reported, Zinke has generally supported commodity development of the public lands, while demanding retention of the public lands in federal ownership.

For instance of commodity development Zinke objected to a Nov. 15, 2016, BLM rule to regulate methane emission. He said at the time the bureau "has issued a duplicative and unnecessary rule against responsible oil and gas development in Montana and on sovereign Tribal lands. This rule is a stark reminder that we need to invest in infrastructure projects like the Keystone pipeline, so we don't need to flare excess gas."

Although sportsmen/conservationists have praised Zinke some environmentalists have dug in their heels, such as WildEarth Guardians. However, groups such as the Sierra Club appear to be concentrating more of their fire on the nominations of Oklahoma Attorney General Scott Pruitt to head EPA, Exxon executive Rex Tillerson as Secretary of State and Sen. Jeff Sessions (R-Alabama) as attorney general.

Support on the right for Zinke is not universal. Property rights advocates such as the American Land Rights Association last month mounted a campaign against his nomination, asking its members to contact the Trump transition team. The association objects to Zinke's past support for the Land and Water Conservation Fund.

### Judge won't block BLM methane venting rule, for now

A federal judge in Wyoming refused January 16 to halt implementation of a new BLM methane emissions rule.

For the time being at least U.S. District Court Judge Scott W. Skavdahl rejected the argument of oil and gas producing states and industry that BLM has no authority to regulate air quality; only EPA does.

He accepted BLM's argument that the rule is designed to prevent waste, i.e. methane venting, not assume EPA's clean air responsibility.

At first in his ruling Skavdahl suggested that North Dakota, Wyoming, Montana and industry had a case, noting, "Portions of BLM's stated rationale for the Rule undermine Respondents' insistence that the Rule is foremost a waste prevention regulation that simply has incidental benefits to air quality." The ~~DOI-2020-03~~ 00006

argued that only EPA has authority to regulate air quality.

But Skavdahl went on, "Nevertheless, at this point, the Court cannot conclude that the provisions of the Rule which overlap with EPA/state air quality regulations promulgated under CAA (Clean Air Act) authority lack a legitimate, independent waste prevention purpose or are otherwise so inconsistent with the CAA as to exceed BLM's authority and usurp that of the EPA, states, and tribes. Thus, Petitioners have not shown a clear and unequivocal right to relief."

One of the plaintiffs, the Western Energy Alliance, has not given up. "Even though Judge Skavdahl did not grant a preliminary injunction, we're confident about our chances during the proceedings on the full merits of the case," said Kathleen Sgamma, president at the Alliance. "The venting and flaring rule oversteps BLM's mandate from Congress by usurping Clean Air Act authority that resides only with the Environmental Protection Agency and the states."

Skavdahl is the same judge who on Sept. 29, 2015, blocked a hydraulic fracturing regulation from BLM. He said at that time the bureau has no authority from Congress to regulate hydraulic fracturing, period.

That is, the judge said BLM erred in inferring that the broad authority Congress granted it to regulate oil and gas development on public lands automatically granted specific authority to regulate new hydraulic fracturing technology.

The methane rule, published Nov. 15, 2016, is one of the Obama administration's most prominent energy regulations. It is also expected to be a target of the Republican Congress and the incoming Trump administration as they attempt to revoke such regulations.

Indeed, the House Republican leadership intends to move legislation shortly to kill the regulation. The GOP plans to include the rule in a resolution under the Congressional Review Act) that includes several environmental and other regulations. (See separate article page 10.)

Although the methane rule technically went into effect January 17, it would not begin phasing in required reductions in methane until 2018. By that time the Trump administration will be firmly in charge. The rule requires producers to use available technology to cut flaring in half and to inspect their operations regularly for leaks.

EPA is also attempting to reduce methane emissions. It completed a rule May 12, 2016, that governs methane emissions from *future* operations and said it was also in the process of gathering information about a possible new rule governing *existing* operations. In the May 12, 2016, rule EPA not only set emission limits from methane but also required operators to find and repair leaks.

In a request to Skavdahl for an injunction against the BLM rule the State of Wyoming said, "The fatal flaw, however, is that, for the first time in the Department of the Interior's existence and without congressional authorization, the Rule poses a comprehensive air quality regulatory scheme on all oil and gas facilities on federal and Indian leases. This scheme includes requirements to control emissions, inspect and replace equipment, and it extends to *existing facilities*, which the (EPA) itself has not even done."

But the Justice Department said, "Contrary to petitioners' assertions, the Waste Prevention Rule is not a pollution control rule and does not improperly infringe on (EPA's) authority under the Clean Air Act. It sets no emissions standards for particular pollutants and contains no air quality monitoring requirements."

**January 20, 2017****Page 5**

Intervening on behalf of the rule - and to insure the federal government defends it vigorously - are the States of California and New Mexico and several environmental groups.

Said California and New Mexico in their request to intervene, "Implementation of the Rule will benefit the States of California and New Mexico by generating more annual royalty revenue compared to that generated under current regulations, which allow considerable amounts of natural resources to be wasted royalty-free."

The House last year tried to block the EPA rule. It approved a fiscal year 2017 appropriations bill (HR 5538) July 14, 2016, that would forbid EPA from spending any money to implement the May 12, 2016, methane rule. Congress has yet to complete that appropriations bill.

Skavdahl's order on the coal be methane rule is available at:  
[https://cdn.westernenergyalliance.org/sites/default/files/VentingFlaringPIOOrder\\_011617.pdf](https://cdn.westernenergyalliance.org/sites/default/files/VentingFlaringPIOOrder_011617.pdf).

### Five new national monuments; Grand Canyon left out

President Obama January 12 designated land in five areas of the country as national monuments, including a 48,000-acre expansion of the Cascade-Siskiyou National Monument in southern Oregon.

The formerly 66,000-acre Cascade-Siskiyou monument, managed by BLM, now totals 114,000 acres.

In increasing the number of national monuments he has designated - 34, a record - Obama added 6,200 acres to a California Coastal National Monument (BLM manages the monument) and designated three civil rights sites in the South.

The three civil rights sites, to be managed by the National Park Service, include a Birmingham Civil Rights National Monument in Birmingham, Ala.; a Freedom Riders National Monument in Anniston, Ala.; and a Reconstruction Era National Monument in Beaufort County, S.C.

The designations drew praise from conservationists and local legislators. In Oregon Sens. Jeff Merkley and Ron Wyden, both Democrats, applauded the Cascade-Siskiyou expansion. Said Merkley, who led the charge for an expansion, "The Cascade-Siskiyou area, where three mountain ranges converge creating a unique and spectacular landscape seen nowhere else in the world, merits the recognition and expanded protection that President Obama gave it today."

But commercial users of the Cascade area, including timber interests and ranching interests, were not applauding. Said the Healthy Forests, Healthy Communities Coalition, "It is extremely disappointing to those who support multiple use management of our federal lands. By making this unilateral decision, the Obama Administration ignored citizens who are concerned about how this expansion will affect private property, public access, local economy and businesses, mitigation against catastrophic wildfire, drought and other impacts."

Not all monuments advocates are pleased. The Obama administration has rejected the recommendation of Rep. Raúl Grijalva (D-Ariz.) that the President designate a 1.7 million-acre national monument adjacent to Grand Canyon National Park.

Grijalva was perturbed because Obama has designated some 34 national monuments, including major ones last month in Utah and Nevada, but not the Grand Canyon monument in his State of Arizona.



"I can only express my profound disappointment," Grijalva said January 6. "The Grand Canyon is one of the world's most iconic and popular natural places, not just for its beauty but for its importance to tribal culture and history. Instead of building on former Secretary Salazar's work, the Interior and Agriculture departments are apparently willing to leave the future of the Grand Canyon and the health of Arizona tribes up to Donald Trump. I am not."

To that end Grijalva, ranking Democrat on the House Natural Resources Committee, last week reintroduced legislation (HR 360) that would establish a Greater Grand Canyon Heritage National Monument in Arizona. The monument would be located north and south of Grand Canyon National Park and would protect the park's watershed as well as lands held sacred by Native American tribes.

Meanwhile, western Republicans are stepping up their campaign to prevent the unilateral designation of national monuments by future presidents. Twenty-five senators joined Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) in introducing legislation (S 33) that would require Congressional *and* state approval of any monument.

Although the bill would do nothing to redress the Obama designations, Murkowski criticized the administration. "(Obama's) unilateral withdrawals have routinely come with complete disregard for local concerns and opposition, threatening energy, mining, fishing, ranching, recreation, and other reasonable uses of public land and waters," she said. "At this point, we have no choice but to reform the Antiquities Act to ensure that the people being impacted by these designations are heard and respected."

While Murkowski is concerned about future designations, her House counterpart House Natural Resources Committee Chairman Rob Bishop (R-Utah), suggests he will attempt to persuade President-elect Trump to revoke Obama's recent monuments, and perhaps some from President Clinton.

Bishop recommended to the Trump transition team December 5 that the President-elect roll back objectionable national monument designations.

After meeting with the Trump transition team Bishop said, "Any monument designation that lacks local support, is excessive, or violates the terms of the Antiquities Act will be scrutinized and is easier to abolish. Today's discussions with the transition team examined options for the incoming administration. The talks were positive and encouraging."

But some scholars believe a President would have limited authority under the Antiquities Act. Indeed, the Congressional Research Service (CRS) in a report it prepared last month on the act questioned whether reversals would be legal.

"No President has ever abolished or revoked a national monument proclamation, so the existence or scope of any such authority has not been tested in courts," said CRS. "However, some legal analyses since at least the 1930s have concluded that the Antiquities Act, by its terms, does not authorize the President to repeal proclamations, and that the President also lacks implied authority to do so."

The main object of Bishop's ire is the December 28 designation by Obama of a 1.35 million-acre Bears Ears monument in southern Utah. Late last year Bishop attempted without success to move legislation to protect Bears Ears with fewer limits on commercial activities than in an Obama monument.

Also on December 28 Obama designated a 300,000-acre Gold Butte monument adjacent to the Bundy Ranch in Nevada. Cliven Bundy is the Nevada rancher who is often described as a national leader of protests against BLM and Forest Service land managers.

January 20, 2017

Page 7

**California Desert:** Sen. Dianne Feinstein (D-Calif.) followed through January 5 on her promise to introduce legislation to complement President Obama's recent designation of 1.8 million acres of national monuments in the California Desert.

In one of his most ambitious uses of the Antiquities Act of 1906, Obama on Feb. 12, 2016, designated more than 1.8 million acres of California Desert as parts of three national monuments. BLM will oversee the areas.

Her new bill (S 32) would designate 230,000 acres of wilderness, 77 miles of wild and scenic rivers, and 142,000 acres for off-highway vehicle use. And it would address renewable energy by directing BLM to plan for thousands of acres of land exchanges with the State of California.

Said Feinstein, "While I supported President Obama's decision to create three national monuments in the Mojave Desert, his authority under the Antiquities Act did not allow him to include the many other valuable provisions in the original legislation."

The 921,000-acre Mojave Trails National Monument, 135,000-acre Sand to Snow National Monument and 8,000-acre Castle Mountains National Monument will combine with existing national parks and wilderness areas in the desert to protect nearly 10 million acres.

### Democratic senators hit back at fed land transfers

They didn't succeed but six Democratic senators last week introduced a budget amendment that would have forbid the sale of public lands to reduce the federal deficit.

The amendment (SA 110), proposed January 10 under the lead of Sen. Martin Heinrich (D-N.M.), did not come to a vote in the Senate.

The House is going in the opposite direction. It approved a procedure January 3 to make it easier for future legislation to transfer federal lands to states or local governments. The House action would exempt such legislation from Congressional pay-as-you-go limits.

Under old House rules sponsors of legislation to transfer federal lands to states would have had to come up with budgetary offsets to balance against the value of lost federal oil, gas, coal, minerals, timber, rangelands, etc. Those offsets could include either new revenues (taxes) or spending reductions.

But the package of new rules (H Res 5) the House approved 233-to-190 says "a conveyance of Federal land to a State, local government, or tribal entity shall not be considered as providing new budget authority, decreasing revenues, increasing mandatory spending or increasing outlays."

Of note, Rep. Ryan Zinke (R-Mont.) voted for the House provision. Zinke, President Trump's nominee for secretary of Interior, has repeatedly said in the past he opposes the widespread transfer of federal lands to state and local governments. As Trump himself has asserted.

In Zinke's confirmation hearing January 17 before the Senate Energy Committee he was repeatedly asked about his position opposing federal land transfers and his January 3 vote that would make such transfers easier to approve in Congress.

He told Sen. Bernie Sanders (I-Vt.), "I want to be clear on this point. I am absolutely against the transfer or sale of the public lands." (See related article page one on Zinke's confirmation hearing.)

The House approval of the land transfer provision in H Res 5 does not mean Congress is about to immediately ship federal lands to states. Congress would still have to move individual land transfer bills against immense opposition. And Senate rules still require offsets.

But H Res 5 would make it slightly easier for the House to at least approve legislation to transfer federal land to states, local governments or tribes. And that reflects the Republican Party Platform that supports conveyance of unspecified federal lands out of the public domain.

The Republican platform proposes to unload unspecified federal lands. That has sometimes been interpreted in the media to mean all federal lands, including national parks. However, the platform's plank on disposing of federal lands refers only to "certain" lands.

Besides, Republican candidate Trump has more than once said he personally opposes the disposal of not only national parks but all federal lands. As he told *Field & Stream* magazine in January, "I don't like the idea because I want to keep the lands great, and you don't know what the state is going to do."

In addition Rep. Zinke has been outspoken in opposition to the transfer of federal lands to the states. On June 15, 2015, in a House Natural Resources Committee mark-up he voted against a bill (reintroduced January 3 as HR 232) that would authorize the transfer of up to 2 million acres per state of national forest to a state.

Said Zinke of the bill introduced by senior Republican Don Young (R-Alaska), "I'm starting to wonder how many times I have to tell these guys in leadership I'm not going to allow Montana's public lands to be sold or given away."

### Obama coal report targets royalties, climate impact

A landmark analysis of BLM's public lands coal program concludes that the federal government should consider increased royalties and fees on the climate impacts of coal mining.

But the report, commissioned by former Secretary of Interior Sally Jewell a year ago and published January 11, does not make any specific recommendations. Thus it will be up to the incoming Trump administration to implement any policy changes, and Trump is not likely to climb on board.

In fact, President-elect Trump has said a top priority for him is to terminate a partial moratorium on coal leasing former Secretary of Interior Sally Jewell implemented last year. Trump said repeatedly he favors greatly increased coal development in the United States. More than 40 percent of the coal produced in this country comes from the public lands.

Still, Jewell laid down a marker for the Trump administration, and Trump nominee for secretary of Interior, Rep. Ryan Zinke (R-Mont.)

"We have a responsibility to ensure the public - including state governments - get a fair return from the sale of America's coal, operate the program efficiently and in a way that meets the needs of our neighbors in coal communities, and minimize the impact coal production has on the planet that our children and grandchildren will inherit," she said. "The only responsible next step is to undertake further review and implement these commonsense measures."

At a confirmation hearing January 17 in the Senate Energy Committee Sen. Maria Cantwell (D-Wash.) aggressively questioned Zinke on the development of coal on the

January 20, 2017

Page 9

public lands. When she asked him if he agreed with the coal-leasing moratorium launched by former Jewell on Jan. 15, 2016, he said, "I think a review is good."

When she asked his opinion of the practice of self-bonding by coal companies, Zinke said, "I think bonding is important . . . Some of the reclamation problems we have and we face in the West are still not repaired . . . I think we need to have the courage today to look 100 years forward and look back and say 'we did it right.'"

The Obama administration analysis, in the form of an EIS scoping report, makes these suggestions:

**Royalty:** The report does not identify a specific change to the existing 12.5 percent royalty paid by federal coal lessees. It just recommends that the Trump administration consider a higher royalty.

Says the report, "The BLM would identify the most appropriate metric and corresponding royalty rate for Federal coal, reflecting on analysis already conducted by other groups such as the Council of Economic Advisers."

**Climate:** The EIS scoping report suggests that BLM require compensation for damage to the climate caused by coal mining, with those revenues used to limit carbon damage. "The BLM would require lessees to carry out or fund activities that proportionally offset climate-related impacts, including through investment in a fund managed by an entity that takes on the liability to proportionally offset those greenhouse gas emissions and climate-related impacts," says the EIS scoping report.

The money would then be used "for activities including, but not limited to, carbon offsets, carbon sequestration, climate adaptation, and community resilience," the report says.

**Leasing:** The EIS scoping report suggests a complete shake-up in the leasing-by-application system now that usually leads to one bidder per application. The EIS would have BLM plan for and then hold inter-tract bidding.

"The BLM would determine a maximum tonnage of coal or maximum number of Btus to be leased consistent with projected demands," says the EIS scoping report. "Under a modified inter-tract leasing process, all interested companies would bid among themselves for the right to produce a specified quantity of coal in the location of their choice, assuming it is suitable for mining and consistent with the approved land use plan and strategic leasing plan."

The National Mining Association took sharp issue with the suggestion that federal coal lessees were not paying their fair share to the federal government. The association said the 12.5 percent royalty is only part of the story, that lessees also pay huge bonus bids and significant taxes.

Said the association, "Detailed analyses by Norwest Corp. show Federal royalty rates are 30-65 percent higher than prevailing rates for private coal, where bonus bids are seldom paid as they always are on federal coal. In the major federal coal leasing region, the combination of fees and taxes amounts to *an effective tax rate of 39 percent.*" (Emphasis in the original.)

The mining association charged that the Interior Department report kowtows to environmentalist demands for an end to fossil fuels leasing from the public lands, the Keep-It-in-the-Ground movement.

The Earthjustice environmental law firm was not shy about promoting the no-leasing program. Said Abigail Dillen, Earthjustice Vice President of Litigation for Climate and Energy, "After an intensive review, the Interior Department's 2012

DOI-2020-03-00012

the necessary conclusion that we have to seriously consider an end to federal coal leasing. That recognition is crucial, and we will do everything in our power to compel the next administration to act on it."

Ranking Senate Energy Committee Democrat Cantwell, a leading critic of the mining industry, said, "It's the Interior Department's legal responsibility to review royalty rates and leasing policy. The incoming Administration shouldn't drop the ball and shortchange taxpayers."

As has been well documented the nation's coal industry has been devastated by bankruptcies caused by either competition from cheaper energy sources or overregulation, or both, take your choice.

Further, Earthjustice and other national environmental groups have, with the support of some senators and House members, mounted a vigorous campaign against any further leasing of coal, called Keep-it-in-the-Ground.

The Keep-it-in-the-Ground campaign last year persuaded several House and Senate Democrats to introduce legislation (S 2238, HR 4535) to ban new leasing on federal lands not only of coal, but also of oil, gas and oil shale. Rep. Jared Huffman (D-Calif.) introduced the House bill and Sen. Jeff Merkley (D-Ore.) the Senate bill.

The EIS scoping analysis is available at: <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=93180>.

## Methane emissions rule a top target of House GOP

House leaders intend to move legislation as early as next week that would revoke a Nov. 15, 2016, oil and gas methane emissions rule published by BLM.

The Republicans plan to include the methane regulation in a comprehensive resolution that would reverse several Obama administration regulations. The strategy would base the resolution on a Congressional Review Act (CRA) that authorizes Congress to kill regulations dating from May 30, 2016.

Said House Majority Leader Kevin McCarthy (R-Calif.) on the House floor last week, "I expect to start with swift action on at least on the Stream Protection Rule and methane emissions standards, both of which are limits to our energy production."

The House strategy may be needed because a federal judge January 16 refused to issue an injunction against the BLM rule. *(See related article page 3.)*

McCarthy and the House have support from the powerful conservative operation of the Koch brothers and Koch Industries, Inc. An organization that they support, Freedom Partners, last week met with House Republican leaders and urged them to reverse the methane regulations under the CRA within 100 days. That law theoretically allows the House and Senate to revoke regulations with a majority vote, thus in the Senate avoiding a filibuster.

Freedom Partners has put together an action plan for Congress and the first 100 days of a Trump administration, although the conservatives admitted revocation of environmental and other rules will not be a piece of cake.

"Repealing existing federal regulations is not a simple task. Based on where a regulation is in the finalization process, different rules will need to be addressed through different policy remedies and legal avenues," said the group. "In order to successfully roll back the myriad of regulations proposed and finalized

January 20, 2017

Page 11

over the past eight years, Congress and the Trump Administration will need to pursue several methods of repeal and reform."

In addition to Congressional revocation of the methane rule, Freedom Partners is recommending that a Trump administration revoke a Jan. 15, 2016, order from Secretary of Interior Sally Jewell establishing a coal-leasing moratorium.

In a separate, but related action the House January 11 voted to require detailed economic impact assessments of Forest Service and BLM *plans* prepared under the Federal Land Policy and Management Act. Agencies already must prepare the analyses for *regulations* projected to cost more than \$100 million.

Rep. Raúl Grijalva (D-Ariz.) offered an amendment to exempt BLM and Forest Service land management plans from the lower threshold, but the House rejected it by a vote of 185-to-236. The vote came during consideration of a regulatory accountability bill (HR 5), which the House then passed.

Said Grijalva, ranking Democrat on the House Natural Resources Committee, "If this bill becomes law, the agencies that oversee our public lands won't be able to make important decisions in a timely way, and that's the last thing the American people want."

But Rep. Steve Chabot (R-Ohio) said the economic reviews are necessary to protect small businesses. "Given the potentially significant consequences to small businesses that rely on public lands and small communities that border those lands, the Forest Service and the Bureau of Land Management should assess the impacts of their plans on these small entities," said Chabot, chairman of the House Small Business Committee. "That is all this does."

There is big pushback from Democrats against all Congressional attempts to revoke Obama regulations. Grijalva wrote his House Democratic colleagues January 9 and urged them to stand united against a comprehensive CRA resolution.

Grijalva wrote that the methane rule is absolutely necessary. "The (rule) would result in the savings and productive use of up to 41 billion cubic feet annually - an amount of gas that could supply roughly 740,000 households each year," he said. "This level of waste is unconscionable, and companies should be required to make the investments necessary to capture that natural gas and pay the American people their fair share."

While the action on regulatory reversals right now is in the House, the Senate would likely prove a greater hurdle. That's because the GOP holds only a two-vote majority (52-to-48) and a switch of only two or three votes could defeat a resolution.

## Obama sets oil shale royalties, environmental standards

The Obama administration January 10 established a new royalty system for oil shale development on the public lands, if there ever is any development. Like the Bush administration the Obama rule would begin royalties at five percent.

But the Obama administration would give the secretary of Interior authority to impose a higher royalty, depending on conditions surrounding a lease. The Bush rule would have increased the royalty at one percent per year after production began, with a cap of 12.5 percent.

Said BLM, "(The Bush) system required commercial operations to pay royalties of five percent per year for the first five years of production, increasing by one percent per year beginning in year six, to a maximum rate of 12.5 percent in year

13. The final rule modifies the regulations to establish the five and 12.5 percent levels as minima. Specifically, the modified provision keeps the annual escalator clause for years six through twelve but allows the Secretary to set the initial royalty rate applicable in years one through five on a lease-by-lease basis."

BLM said it established a flexible royalty system because the oil shale industry has not grown beyond the research and development phase. "Until there is a domestic commercial oil shale industry, we can only speculate about what royalty rates those factors would support," the bureau said.

At the same time that it established the new royalty system, BLM also imposed new environmental protection standards for oil shale operations.

Said BLM, "The new requirements are a watershed protection plan for surface and groundwater resources; an airshed review of reasonably available scientific data or modeling to predict probable air quality effects of operations; an integrated waste management plan; and an environmental protection plan that includes minimization of adverse effects on air, water, wildlife, native plants, and productivity of soils, as well as monitoring, adaptive management, and mitigation of adverse effects."

The January 10 rules are the last piece of the puzzle assembled by the Obama administration governing both research and development of oil shale and production.

On March 22, 2013, the administration placed significant new limits on development by reducing acreage available for lease sale.

The 2013 plan/record of decision set aside 678,000 acres for possible future oil shale research and development leasing in Colorado, Utah and Wyoming compared to 2,017,741 acres set aside by the Bush administration in November 2008. The plan/decision reduces acreage available for tar sands development in Utah from 430,687 acres to 132,220 acres.

Although western Republicans blasted the steps at the time, commercial development is years if not decades away. To be resolved are enormous hurdles such as identifying the amount of water commercial production would soak up and how much energy would be required to produce oil from shale.

Commercial leasing would be carried out under the new regulations that BLM posted last week. That rule would establish a royalty system for commercial leases and environmental regulations for commercial leases.

**The existing R&D program:** The Bush administration on Jan. 1, 2007, issued five, 160-acre R&D leases in Colorado and on July 1, 2007, approved one lease of that size in Utah. The Obama administration issued two additional R&D leases in Colorado on Dec. 1, 2012.

BLM wrote the new plan/ROD and regulations to settle a lawsuit brought by a dozen of so environmental groups. Under the agreement BLM said it would consider a new royalty system and would require an environmental review before awarding commercial leases.

On January 16, 2009, 13 local and national environmental groups brought a National Environmental Policy Act lawsuit against the regulations. The suit, filed by the environmental law firm Earthjustice, says BLM's regulations didn't adequately consider the environmental implications of development, in part because BLM won't know what those impacts will be until the R&D program is further along. The suit was filed in U.S. District Court in Colorado.

January 20, 2017

Page 13

FS drafts 'science synthesis' to revise NW Forest Plan

The Forest Service has begun laying the scientific groundwork for the revision of 17 national forest plans that make up a Northwest Forest Plan.

Not everyone agrees that the playing field is level. The Association of O&C Counties for one says a draft science synthesis does not give sufficient weight to timber sales in Oregon, Washington and California forests.

"The socioeconomic section seems to have abandoned President Clinton's promise of predictable and sustainable supply of timber. It does not delve into the science as to how sustained yield forestry can achieve both economic and ecological goals to address the most significant failure of the NWFP," said Rocky McVay, the association's executive director.

In 1994 the Clinton administration completed a Northwest Forest Plan that governs national forests and forested BLM lands in the Pacific Northwest. Until the plan was instituted annual national forest and BLM timber sales usually exceeded 12 billion board feet per year. After the plan was executed those sales decreased to around 3 billion board feet per year.

Now the Forest Service's Region 6 (Oregon and Washington) and Region 5 (California) have asked the Forest Service's Pacific Northwest and Pacific Southwest Research Stations to prepare a scientific synthesis as a base for revising the Northwest Forest Plan.

The Ecological Society of America is coordinating the effort, which led to a draft report now undergoing public review. The comment period ended today (January 20). The Forest Service emphasizes this is not a National Environmental Policy Act process, but is guided by Office of Management and Budget research procedures.

Although the synthesis is supposed to produce an independent analysis the use of the data will be up to the incoming Trump administration, and it is expected to be more sympathetic to timber companies than the Obama administration. And less sympathetic to conservationists.

With the decrease in timber sales from public lands has come a concomitant decrease in the amount of sale revenues distributed to public lands counties. That decrease is now approaching a crisis, according to western politicians.

To compensate the counties Congress has since 2000 put up federal money under a Secure Rural Schools (SRS) program. However, in December western elected officials failed to persuade their colleagues to extend the program for another year, perhaps costing public lands counties more than \$300 million.

The program was last authorized in fiscal year 2015, with \$300 million in payments allocated in March of 2016. Oregon Sens. Ron Wyden (D-Ore.) and Jeff Merkley (D-Ore.) are criticizing the Senate leadership for not taking up legislation to extend SRS.

It was only symbolic but Wyden and Merkley last week introduced an amendment to a Senate budget resolution (S Con Res 3) to make room for an extension of the SRS program. The amendment didn't reach the floor.

The draft scientific synthesis is available at:  
<https://www.fs.fed.us/pnw/research/science-synthesis/chapter-listing.shtml>.

**O&C timber payments:** BLM does hold timber sales on the 2.4 million acres of Oregon and California lands that it manages in western Oregon. As we reported in  
 DOI-2020-03 00016



the Dec. 12, 2016, issue of *PLN* the Association of O&C Counties complained of a delay in the distribution of shared receipts from the timber sales.

BLM announced January 10 that it was distributing more than \$19 million to the 18 O&C Counties.

### Alaska leaders hope to shake up public lands management

The Alaska governor and the Alaska Congressional delegation are going all-out to revise public land management in their state.

Their immediate target is a new plan released by BLM January 6 that covers 6.5 million acres of eastern interior Alaska. Among other things the plan designates 1 million acres of the region as areas of critical environmental concern that will limit mining and other uses.

Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) suggested that she would ask Congress and the Trump administration to undo the plan, approved in five records of decisions. In a press release Murkowski's office said the senator "will work with the incoming administration to overturn many of the midnight rules and directives released in the final days of the Obama administration."

But BLM said the plan would balance development with other uses such as subsistence hunting and fishing. Said Geoff Beyersdorf, district manager of the BLM Fairbanks District Office, "With approval of these plans, we can move forward with management of these public lands in a way that balances use, development, and conservation."

**ANWR:** The Eastern Interior Plan is just the tip of the iceberg. On January 5 Sens. Murkowski and Dan Sullivan (R-Alaska) introduced legislation (S 49) to open the coastal plan of the Arctic National Wildlife Refuge (ANWR) to oil and gas development.

Alaskan officials have been attempting for 30 years to open the coastal plain without success. Although they will now have a pro-development President in the White House, they still may have to round up 60 votes in the Senate, where over the years several Republicans have sided with Democrats to block legislation to open the 1.4 million-acre coastal plain to leasing.

The Obama administration made their job more difficult on April 3, 2015, by recommending the designation of 12.28 million acres of ANWR as wilderness. That includes the coastal plain. Seven million acres of ANWR are already Congressionally-designated wilderness. Although only Congress has the authority to designate wilderness, the administration recommendation effectively means almost all of ANWR will be managed as wilderness, at least until a new administration decides otherwise or Congress overrides the decision.

**King Cove:** On January 11 Murkowski, Sullivan and Rep. Don Young (R-Alaska) introduced legislation (S 131, HR 513) to authorize a land exchange leading to the construction of a road corridor through a wildlife refuge to the community of King Cove.

The Obama administration refused to allow the construction of a road through the Izembek National Wilderness Refuge to provide access to emergency health care for the citizens of King Cove.

Secretary of Interior Sally Jewell on Dec. 23, 2013, denied authority to construct the road because she didn't want to set the precedent of harming a wilderness area.

January 20, 2017

Page 15

**State land claims:** In the last issue of *PLN* we reported that BLM intended to help the State of Alaska by expediting the state's claims to 40 million acres. But the state is not at all sure that is a good thing.

BLM said December 19 it was adopting new technology that will allow the state to lay claim to 40 million acres of land under the Alaska Statehood Act in half the time and half the cost as the existing program would require. The state has already received 60 million acres.

BLM said the new technology will use satellite navigation to identify state-claimed lands and their boundaries. Under the old system survey teams were shipped to the field for long periods. The teams then struggled through the backcountry to set monuments in the ground at regular, two-mile intervals.

BLM said that instead of taking 20 years to accomplish the task at a cost of \$120 million, it will be done in 10 years at a cost of \$60 million.

But the Alaska Department of Natural Resources says the technology is unproven and the state may get stuck with the bill.

The director of the Alaska Division of Mining, Land & Water, Brent Goodrum, told us, "The transfer of future cost obligations for the survey (and physical monumentation) of lands granted to the State of Alaska in our Statehood Act is hardly a favor, nor does it accelerate the time frame in which the State may ultimately receive its full land entitlement... something in excess of 105.8 Million acres." Goodrum is also currently president of the Western States Land Commissioners' Association.

The Eastern Interior Plan is available at:  
<https://www.blm.gov/programs/planning-and-nepa/plans-in-development/alaska/eastern-interior-rmp>

## IBLA decisions

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

**Subject:** Oil and gas lease sale.

**BLM decision:** BLM will reject competitive lease offers after a sale is held to protect other resources.

**Appellant lessee:** BLM has no authority under the Mineral Leasing Act to reject lease offers after bid payments have been made.

**IBLA decision:** Affirmed BLM decision.

**Case identification:** *Hawkwood Energy Agent Corp., Venture Energy, LLC, et al.* 189 IBLA 164. Decided January 4, 2017. Sixteen pages. Appeal from decisions of the Deputy State Director of the Nevada State Office of BLM, who rejected appellants' lease offers for Federal oil and gas lease parcels in Garden Valley, Nevada. DOI-BLM-NV-L000-2013-0004-EA.

**IBLA argument:** IBLA Administrative Judge Amy B. Sosin affirmed a BLM decision to reject competitive oil and gas lease offers, even after BLM had approved tracts for sale and accepted full payment. The appellants argued that the Mineral Leasing Act (MLA) effectively requires BLM to approve a lease after certifying tracts for sale and accepting winning bids. But Judge Sosin argued that the provisions of the MLA making winning lease offers mandatory bind only the bidders/lessees and not BLM. She said the lessees point to this provision of the MLA: "A bid shall not be withdrawn and shall constitute a legally binding commitment to execute the lease bid form and accept a lease . . . . Execution by the high bidder of a competitive lease bid form approved by the Director . . . shall constitute a binding lease offer . . . ." But, Sosin argued, "This regulation, however, binds the potential lessee, not BLM. The plain language of the regulation informs bidders that a bid constitutes a binding offer to BLM, and places a limit on bidders' actions once a bid is submitted. Nothing in the regulation limits the Secretary's discretion to accept or reject a lease offer up until lease issuance."

DOI-2020-03 00018

Notes: Public Lands News

**Sage-grouse limits bill back.** Eleven House Republicans reintroduced legislation (HR 527) January 13 that would effectively overturn an Obama administration's greater sage-grouse policy. The bill would reverse the three pillars of the policy. First, it would forbid implementation of BLM and Forest Service plans to protect the sage-grouse if states had management plans in place. Almost all of them do. Second, it would forbid listing of the greater sage-grouse under the Endangered Species Act. The Obama administration did defer listing in favor of the BLM and Forest Service plans. Finally, the bill would forbid the withdrawal of 10 million acres from hard rock mining, as begun by the administration. House Natural Resources Committee Chairman Rob Bishop (R-Utah) is the chief sponsor. Variations of the sage-grouse limits legislation made their way into House and Senate versions of fiscal year 2017 appropriations bills last year, but those bills have not been enacted.

**BLM sets interim leadership.** With the conclusion of the Obama administration today (January 20) BLM Director Neil Kornze stepped down from that position. The bureau's Kristin Bail will serve as acting director for the time being. Bail served most recently as assistant director for resources and planning. The Trump administration has not yet announced its nominee for the post. The one name that has circulated most prominently is Utah House Rules Committee Chairman Michael E. Noel (R). He is a champion of the campaign in Utah to have 31 million acres of federal land transferred to the state.

**Major oil and gas hit in NPRA.** ConocoPhillips announced January 13 that it has made a significant oil and gas discovery in the northeastern corner of the National Petroleum Reserve Alaska (NPRA). The find is in the Greater Mooses Tooth Unit and the two drilled wells are called the Willow Discovery. The two wells are about four miles apart. BLM and the Corps of Engineers took years to complete permitting for the landmark lease. On Feb. 13, 2015, BLM did give ConocoPhillips Alaska the go-ahead on Greater Mooses Tooth. Of the new discovery Joe Marushack, president of ConocoPhillips Alaska, said, "This discovery is tremendously exciting not only for ConocoPhillips, but also for the state of Alaska. Willow's proximity to existing infrastructure improves the economic viability of the discovery. Development of Willow, a potential multi-billion-dollar investment, could provide thousands of jobs during construction and could generate substantial revenue for the federal government, state, North Slope Borough, and communities in the NPRA." Alaska Gov. Bill Walker (I) congratulated ConocoPhillips and said, "We believe that continued hydrocarbon development in NPRA will benefit our state in terms of revenue, employment opportunities, and maintaining TAPS throughput." TAPS is the Trans Alaska Pipeline System. The State of Alaska has suffered a devastating economic blow in recent years because of diminished oil and gas development. TAPS has been delivering an ever-dwindling amount of oil. The NPRA discovery may help. Some 1.5 million acres of the 23 million-acre NPRA are under lease. A December 14 sale in NPRA yielded bids on 67 tracts on 613,000 for a total of \$18.8 million. ConocoPhillips bid on 65 of the 67 sold tracts.

**Panel criticizes EPA mine bond rule.** A federal small business advisory group is criticizing an EPA proposal to require hard rock miners to obtain bonds when carrying out projects under the Superfund law. The Small Business Advocacy Review Panel concludes in comments submitted to EPA, "Advocacy believes that the current approach could unnecessarily threaten the viability of small mines." Hard rock miners jumped on the report. "This report demonstrates what EPA has been told by industry, citizens, members of Congress and Western Governors all along: the rule is unnecessary and harmful to small business. EPA must do the right thing, stop wasting taxpayer funds and end this nonsense," said Laura Skaer, American Exploration & Mining Association Executive Director. EPA proposed the rule December 2 and is taking public comments until February 2, so the Trump administration will have the final say. However, the Trump administration may have to publish some rule

**January 20, 2017****Page 17**

of rule because the U.S. Circuit Court of Appeals for the District of Columbia on Jan. 29, 2016, ordered EPA to complete regulations by Dec. 1, 2017.

**Wyoming wolf delisting bill back.** Rep. Lynn Cheney (R-Wyo.) and 14 of her colleagues introduced legislation (HR 424) January 10 to delist the northern gray wolf in Wyoming under the Endangered Species Act. The House approved a predecessor bill on Feb. 26, 2016, but it was not enacted. The wolf in Wyoming was originally delisted by the Fish and Wildlife Service (FWS) in August 2012, but a federal judge in September 2014 ordered it relisted. U.S. District Court Judge Amy Berman Jackson in U.S. District Court in Washington, D.C., said a State of Wyoming rule that led to the delisting failed. She said in a Sept. 23, 2014, decision that a state plan didn't guarantee a baseline of 10 breeding pairs and 100 wolves in the state. But, Rep. Cheney said, "Wyoming should be able to manage the gray wolf without outside interference. This bill will stop the 'management by litigation' culture that has done so much damage to our state."

**Juen to head Public Lands Foundation.** Jesse Juen, a former BLM state director in New Mexico, will serve as president of the Public Lands Foundation, which represents BLM retirees. He replaces Ed Shepard, himself a former BLM state director in Oregon. Juen lives in Albuquerque.

## Conference Calendar

### JANUARY

26-27. **Advanced Public Land Law Institute** in Santa Fe, N.M. Contact: Rocky Mountain Mineral Law Foundation, 9191 Sheridan Blvd., #203, Westminster, CO 80031. (303) 321-8100. <https://www.rmmlf.org>.

Jan. 28-Feb 2. **National Association of Conservation Districts Annual Meeting** in Denver. Contact: National Association of Conservation Districts, 509 Capitol Court, N.E., Washington, D.C. 20002. (202) 547-6233. <http://www.nacdnet.org>.

Jan. 29-Feb. 2. **Society for Range Management Annual Meeting and Trade Show** in St. George, Utah. Contact: Society for Range Management, 30 W 27th Ave., Wheat Ridge, CO 80215-6601. (303) 986-3309. <http://www.rangelands.org>.

### FEBRUARY

1-3. **Cattle Industry Convention & NCBA Trade Show** in Nashville, Tenn. Contact: National Cattlemen's Beef Association Convention & Meetings Department, 9110 East Nichols Avenue, Suite 300, Centennial, CO 80112. <http://www.beef.org>.

12-16. **Public Lands Alliance Convention and Trade Show** in Arlington, Va. Contact: Association of Partners for Public Lands, 2401 Blueridge Ave, Suite 303, Wheaton, MD 20902. (301) 946-9475. <http://www.appl.org>

19-22. **119<sup>th</sup> National Western Mining Conference** at the Colorado Convention Center in Denver. Contact: [www.coloradomining.org](http://www.coloradomining.org)

19-22. **Society for Mining, Metallurgy and Exploration Annual Meeting** in Denver. Contact: <http://www.smenet.org>.

25-March 1. **National Association of Counties Legislative Conference** in Washington, D.C. Contact: National Association of Counties, 440 First St., N.W., 8th Floor, Washington, D.C. 20001. (202) 393-6226. FAX (202) 393-2630. <http://www.naco.org>.

### MARCH

4-11. **North American Wildlife and Natural Resources Conference** in Spokane, Wash. Contact: Wildlife Management Institute, 1146 19th Street, NW, Suite 700, Washington, DC 20036. (202) 371-1808. <http://www.wildlifemanagementinstitute.org>.

DOI-2020-03 00020

# ***Federal Parks & Rec***

## ***addendum to Public Lands News***

### **January 20, 2017**

- \* *Grijalva keeps up pressure for permanent LWCF*
- \* *Jarvis's policies complete; critic eases off a bit*
- \* *Yosemite has escaped flooding, thus far*
- \* *Zinke survives confirmation hearing (See Public Lands News article)*
- \* *Obama designates five new monuments (See Public Lands News article)*
- \* *Dems hit back against land shifts (See Public Lands News article)*

### **Campaign to make LWCF permanent cranked up in House**

The politics are complicated but Rep. Raúl Grijalva (D-Ariz.) took a first step January 12 toward permanent authorization of the Land and Water Conservation Fund (LWCF). He reintroduced legislation (HR 502) to make the program permanent.

The law is presently authorized through September 30, 2018.

LWCF got a significant boost from Rep. Ryan Zinke (D-Mont.) January 17 at his Senate Energy Committee confirmation hearing for secretary of Interior.

When Sen. Maria Cantwell (D-Wash.) asked if he supported making the LWCF program permanent, Zinke said, "I do. I think land and water conservation has been important to Montana, certainly in many states. I think we should look at it . . . Lastly, I do think the states and local communities should have a say where those funds go."

Legislation to make LWCF permanent almost made it over the finish line in December in an omnibus energy bill. But differences of opinion between the House and Senate on a host of provisions did the bill in.

The lead sponsor of the energy bill, Senate Energy Committee Chairman Lisa Murkowski (R-Alaska), has said she wants to renew her campaign to move the measure early in this Congress.

However, her counterpart as chairman of the House Natural Resources Committee, Rep. Rob Bishop (R-Utah), has been hesitant to give carte blanche to a permanent LWCF.

Last summer Bishop did introduce a "discussion draft" bill that would have extended LWCF for seven years and substantially realigned program priorities.

Bishop's draft would have slashed funding for the federal side of LWCF but given greater support to the state side. States traditionally receive a small fraction of the total LWCF pie; the draft Bishop bill would have guaranteed them 45 percent. In addition Bishop would have allocated five percent of LWCF to an urban recreation fund, sort of a follow-on to an Urban Parks and Recreation Recovery program. He would have allocated just 3.5 percent to federal land acquisition.

The Grijalva bill is simpler. It simply makes LWCF permanent and allocates at least 1.5 percent of the annual LWCF appropriation for sportsmen's access to public lands.

In its version of an omnibus energy bill the Senate last year would not only

**January 20, 2017****Page 19**

have made LWCF permanent, it would also have set aside \$150 million each year for Park Service maintenance from offshore royalties, but in a separate fund from LWCF.

The Senate provision also would have allotted at least 1.5 percent of LWCF to sportsmen's access, and allotted 40 percent to federal land acquisition and 40 percent to a group of programs, including state grants.

The House-passed version of the energy bill contained none of those provisions. Indeed the House rejected an amendment on the House floor May 25, 2016, that would have directed House conferees to accept the Senate LWCF provision. The House said no in a close 205-to-212 vote.

As a first order of business the Grijalva permanent LWCF bill would require the support of President-elect Trump and his nominee for secretary of Interior, Zinke. In the last Congress Zinke cosponsored Grijalva's bill, along with 25 other Republicans.

However, some conservative groups, such as the American Land Rights Association, are critics of LWCF and have faulted Zinke for cosponsoring the Grijalva bill.

To put pressure on Bishop Grijalva sent a letter asking for hearings and immediate action on his bill.

Said Grijalva, "The brinksmanship over LWCF in the last Congress was a disservice to the American people, who overwhelmingly support the program. By moving quickly to pass this bill, we can avoid a similar situation this time around and show that Congress can, in fact, get something done. Voters across the political spectrum understand the value of LWCF in their communities. There is no room for ideology here."

In an ideal world LWCF advocates would prefer legislation that Sen. Maria Cantwell (D-Wash.) introduced in the last Congress that would not only have made LWCF permanent, but also have guaranteed \$900 million per year for the program without further appropriations. Cantwell is the ranking Democrat on the Senate Energy Committee.

## **NPS finishes off Jarvis policy; PEER eases criticism**

The Park Service completed January 18 a third and final leg of former director Jonathan B. Jarvis's overarching policy for the agency - a system plan that envisions the future of the parks.

NPS described the system plan this way: "The purpose of a System Plan is to provide 'a framework for the proactive direction for the future of the national park system, identifying gaps in the nation's protected natural and cultural areas, and establishing a collaborative conservation system that fully reflects our nation's cultural and natural heritage.'"

. The other two legs of the stool are a Director's Order #100 that would have NPS tilt toward protection when the impacts of an activity were uncertain and a Director's Order #21 that governs partnerships and philanthropy.

One of the severest critics of former National Park Service Director Jonathan B. Jarvis's policy on philanthropic donations and partnerships is backing off, a little.

The environmental group Public Employees for Environmental Responsibility (PEER) said it still objects to key provisions of the December 28 Jarvis order.

DOI-2020-03 00022

(Jarvis stepped down January 3.)

PEER faulted such things as corporate labeling within parks and NPS involvement with alcoholic beverage companies.

But PEER said Jarvis eased off some on corporate logos and agency employee fundraising. "The original sweeping plan suffered from sloppy drafting and poorly thought-out concepts," said PEER Executive Director Jeff Ruch. "We are pleased the Park Service edged away from its complete corporate embrace."

Throughout last fall Ruch called for Jarvis to resign because of charges of sexual misconduct in several field offices, among other things.

Before leaving office Jarvis put in place two major policy orders - the partnership Order #21 and on December 20 an Order #100 that insures that protection of the resource is a first priority for the agency, at least for a little while.

**Order #100:** Jarvis signed the protection Order #100 in the face of criticism from Republican Congressional policy makers.

At the heart of the white paper lies a "Precautionary Principle" strategy. It would establish protection as a priority even if a threat were not clear and imminent.

Order #100 describes the policy this way: "The Precautionary Principle requires that, when an action, activity, or emerging condition raises plausible or probable threats of harm to park resources and/or human health, management should take anticipatory action even when there is uncertainty. When such uncertainty exists, NPS managers will take actions that err on the side of caution to protect resources in accordance with existing authorities, including NPS obligations to prevent resource impairment . . ."

The order is a prime candidate for a reversal or a rewrite by the Trump administration, but that may take time. NPS devoted four years to writing the Jarvis proposal.

**Order #21:** The partnership order, Director's Order #21, is designed to make it easier for partners to contribute to the National Park System, and for park employees to accept those contributions. At the same time Jarvis said the order would guard against commercialization of the parks.

The final order does include several provisions that critics have complained would lead to increased commercialization of the parks and would compromise agency employees.

One such provision would allow NPS leaders to accept donations of up to \$5 million, including associate/assistant directors, regional directors and superintendents.

A second controversial provision would outright allow partnerships with companies that produce and sell alcohol.

Says the order, "After the effective date of this Order and under its provisions and standards, the NPS may permit - after thorough review and approval by the Director - philanthropic partnerships with, and accept donations from, corporations that produce or distribute alcohol."

The final Order #21 is available at:  
[https://www.nps.gov/policy/DOrders/DO\\_21.htm](https://www.nps.gov/policy/DOrders/DO_21.htm).

**January 20, 2017****Page 21**

Director's Order #100 is available at: [https://www.nps.gov/policy/DOrders/DO\\_100.htm](https://www.nps.gov/policy/DOrders/DO_100.htm).

The system plan is available at: <https://parkplanning.nps.gov/files/NationalParkServiceSystemPlan2017.pdf>.

## **Yosemite Valley has escaped devastating floods, so far**

Yosemite Valley is threatened by flooding reminiscent of a 1997 flood that cost an estimated \$250 million to clean up.

Thus far, park officials say the 2017 West Coast Pineapple Express - a series of major rain and snow storms - have not done nearly as much damage.

The park has suffered some disruptions, though. Park officials have betimes been forced to close Yosemite to the public. And more storms are forecast for next week.

On January 9 the Merced River at Pohono Bridge reached almost three feet above flood stage of 10 feet. NPS said, "The park is currently assessing the impacts and will address any repair needs in the coming days and weeks."

But the park subsequently said that the January 9 flooding was well below the 17-foot mark that it anticipated. And, while the park and campgrounds were messy, the park is pretty much "intact," as Yosemite spokesman Scott Gediman told the local press.

Although the park was closed for several days around January 9, it is now mostly open for business. Indeed the central and northern California area has had a relatively quiet week.

If the Pineapple Express cranks up again, as is forecast, Yosemite officials hope they are ready. The repairs the park made following the 1997 flood are designed to minimize damages from future floods, such as raised roads, raised buildings and relocation of facilities.

While some repairs were made immediately after the 1997 flood, Yosemite was not able to complete a land management plan for Yosemite Valley until Feb. 14, 2014. Environmentalist litigation slowed the planning. And the park's biggest critic - Rep. Tom McClintock (R-Calif.) - strenuously objected to limitations on commercial uses in various early iterations of a plan.

But on publication of the final plan McClintock said, "I am particularly gratified that the final report has rejected radical proposals to close many traditional tourist amenities at the park, including swimming pools, raft and bike rentals, horseback riding stables, and ice skating and lodging facilities. The plan retains the historic Sugar Pine Bridge, maintains retail services to accommodate park visitors and minimizes the loss of campsites and parking - all significant improvements from the draft report."

He added, "Although I remain concerned about some aspects of the plan, my first reaction is one of relief. Yosemite Valley belongs to the American people for the express purpose of 'public use, resort and recreation.'"

The plan took a long and torturous path. NPS published a first edition in August 2000. Friends of Yosemite Valley and Mariposans for the Environment and Responsible Government took the plan to court and, in 2003, the Ninth U.S. Circuit Court of Appeals held that the plan failed because it did not consider user capacities.



**Notes: Federal Parks & Rec**

**Major ORV settlement in Utah.** The Bureau of Land Management (BLM) struck a deal January 13 with conservationists and off-road vehicle (ORV) advocates to end eight years of litigation over travel management plans on 10 million acres of public lands in Utah. Under the settlement, which has been submitted to federal court, BLM will (1) update some site-specific travel management plans, (2) conduct additional cultural surveys and (3) update an air resource strategy. In return the conservation groups including the Southern Utah Wilderness Alliance will dismiss lawsuits against six travel management plans and a November 2014 oil and gas lease sale. Several intervenors said they would accept the settlement including the Utah School and Institutional Trust Lands Administration and a number of oil and gas companies. The settlement is available here: [https://www.blm.gov/sites/blm.gov/files/documents/files/APPELLATE-%23349183-v2-SUWA - Final Settlement Agreement Signed with Maps.pdf/](https://www.blm.gov/sites/blm.gov/files/documents/files/APPELLATE-%23349183-v2-SUWA-Final%20Settlement%20Agreement%20Signed%20with%20Maps.pdf).

**GAO analyzes NPS maintenance.** The Government Accountability Office (GAO) offered a mixed report January 13 on the efforts of the Park Service and Congress to catch up with a \$11 billion maintenance backlog. On the upside GAO said that NPS in fiscal year 2015 spent about one-third of its budget on maintenance - \$1.16 billion out of a total appropriation of \$3.3 billion. In addition GAO said NPS has begun deploying a new program called a Capital Investment Strategy to prioritize projects. On the downside GAO said NPS has not developed a system to determine whether the strategy is working. Said GAO, "Evaluating the strategy may help the Park Service determine if the strategy is achieving intended outcomes or if changes need to be made." Sens. Lisa Murkowski (R-Alaska) and Mike Enzi (R-Wyo.) requested the report. Said Murkowski, who chairs the Senate Energy Committee, "The longer our parks go without the attention they need, the more costly it will become for taxpayers to properly steward and restore these historical and cultural gems. I am encouraged that NPS agrees with GAO's recommendations and look forward to seeing them implemented." The report is available at: <http://www.gao.gov/products/GAO-17-136>.

**Park Service workplace rating low.** Out of 305 federal agencies surveyed for employee satisfaction, the Park Service comes in near the bottom, 262<sup>nd</sup>. Other federal land management agencies did a little better with the Forest Service coming in 225<sup>th</sup> and the Bureau of Land Management 240<sup>th</sup>. The Fish and Wildlife Service scored in the top third at 99<sup>th</sup>. The rating was compiled by the Partnership for Public Service, a largely nonpartisan group. Tom Bernstein, president of the Chelsea Piers, is chairman of the group. The organization asked three questions of federal employees: "I recommend my organization as a good place to work. Considering everything, how satisfied are you with your job? Considering everything, how satisfied are you with your organization?" The report is available at: <https://ourpublicservice.org/>.

**Alaska sues Obama hunting regs.** The State of Alaska said January 13 that it has filed a lawsuit against a Fish and Wildlife Service (FWS) rule that limits predator hunting in refuges. The state argues that it has sole authority to regulate hunting in refuges and national parks in Alaska and that its "intensive predator management" policy should stand. FWS issued the regulation on Aug. 3, 2016. Former Fish and Wildlife Service (FWS) Director Dan Ashe detonated the controversy when he published a blog attacking the Alaska policy. "For example, over the past several years, the Alaska Board of Game has unleashed a withering attack on bears and wolves that is wholly at odds with America's long tradition of ethical, sportsmanlike, fair-chase hunting, in something they call 'intensive predator management,'" he said. But Alaska Attorney General Jahna Lindemuth said, "These regulations are about the federal government trying to control Alaskans' way of life and how Alaskans conduct their business. This is contrary to state and federal law."

P217Jan20.docW8BNMSWD: mBIN, G2m w2 8|h2STR  
ÿPì[]

**Public Lands News**  
**Volume 42 Number 2**  
**January 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>.  
-----

*In this issue. . . .*

**Zinke gets through confirmation hearing.** *Promises to both protect fed lands and develop them. A few environmental groups criticize.*

*Page 1*

**Judge refuses to block BLM methane rule.** *For now he doesn't buy argument that rule intrudes on EPA air authority, but leaves wiggle room.*

*Page 3*

**Five new monuments; none for Grand Canyon.** *Obama expands Cascade Siskiyou in Oregon, expands Calif. Coast. Three civil rights sites added.*

*Page 5*

**Democratic senators oppose land transfers.** *Introduce amendment but it goes nowhere. Move follows House vote to make transfers easier.*

*Page 7*

**DoI completes coal analysis.** *It outlines areas of possible change but doesn't make specific recommendations. Royalties are mentioned.*

*Page 8*

**House leaders target methane rule.** *As they begin work on revocation of regulations. Koch operation lays out broad regs revocation plan.*

*Page 10*

**Obama establishes oil shale royalty.** *Roughly parallels Bush rule but gives BLM flexibility to increase. Environmental standards also.*

*Page 11*

**FS working on science for Northwest Plan.** *Panel proposes 'science synthesis' to back rewrite of plan. Counties fear timber left out.*

*Page 13*

**Alaskans ask broad policy changes.** *Elected officials oppose BLM eastern interior plan, propose ANWR leasing, propose King Cove exchange.*

*Page 14*

**IBLA decisions.**

*Page 15*

**Notes.**

*Page 16*

**Conference calendar.**

*Page 17*

**Federal Parks & Recreation addendum.**

*Page 18*

Zinke escapes confirmation hearing relatively unscathed

Secretary of Interior nominee Rep. Ryan Zinke (R-Mont.) performed a high-wire act January 17 alternately promising to open public lands to increased development while being a good steward of the lands.

At a Senate Energy Committee hearing on his nomination Zinke walked the wire and sort of laid out the development case. "I fully recognize and appreciate that there are lands that deserve special recognition and are better managed under the John Muir model of wilderness, where man is more of an observer than an active participant," he began.

Then he added, "I also recognize that the preponderance of our federal holdings are better suited to be managed under the Pinchot model of multiple use using best practices, sustainable policies, and objective science."

Zinke made the conservation case explicitly, repeating his support for retention of public lands in the federal domain and for making the Land and Water Conservation Fund (LWCF) permanent. When Sen. Maria Cantwell (D-Wash.) asked if he supported a permanent LWCF, Zinke said, "I do. I think land and water conservation has been important to Montana, certainly in many states. I think we should look at it . . . Lastly, I do think the states and local communities should have a say where those funds go."

As for retention of federal lands when Sen. Bernie Sanders (I-Vt.) asked his opinion on privatization of the National Park System, Zinke said, "I want to be clear on this point. I am absolutely against the transfer or sale of the public lands."

It became clear at the hearing that Zinke's nomination is assured. One fly in the ointment is a concern that Zinke was charged with travel fraud while serving in the U.S. Navy as an officer in SEAL Team Six. But his service in the Navy was scarcely mentioned in the four-hour hearing, let alone the travel charges.

In those charges Zinke allegedly billed the military for official travel when he was actually going home to renovate his house. The Navy didn't bring charges because the Navy SEALs have a tradition of avoiding scandal, according to the reports. The infractions allegedly occurred in 1998, 1999 and the early 2000s.

Environmentalists who at first appeared to be concentrating their fire on other Trump nominees, are now attacking Zinke. WildEarth Guardians told its members January 16 in a fund-raising pitch, "Even though Zinke's says he supports public lands, he just voted to allow the House of Representatives to support public lands transfers without considering the cost to the American people."

That refers to a January 3 House vote that would make it easier for future legislation to transfer federal lands to states or local governments. The House action would exempt legislation to make such transfers from Congressional pay-as-you-go limits. *(See separate article page 10.)*

But sportsmen are sticking with Zinke. Backcountry Hunters and Anglers President Land Tawney said that Zinke would likely protect federal lands and backcountry hunting and fishing opportunities.

"Backcountry Hunters & Anglers believes that he can be an effective and positive leader for the Interior Department, and we will continue to work closely with him with that objective in mind," said Tawney.

The powered recreation industry agreed. "The Outdoor Recreation Industry Roundtable supports Secretary-designate Zinke and looks forward to working with him and his team at the Department of the Interior to advance the outdoor recreation sector, grow jobs in the U.S. and ensure that all Americans have access to healthy, active outdoor fun on their public lands and waters," said Derrick Crandall, president of the American Recreation Coalition.

Commodity users of the public lands, such as the livestock industry, have lined up in support of the Montanan. Said Tracy Brunner, president of the National Cattlemen's Beef Association, "During his tenure in the U.S. House of Representatives, Rep. Zinke has consistently advocated for our western communities, economies, and ranchers. He has demanded transparency and the inclusion of stakeholders when it comes to land management decisions, and has a strong understanding of the challenges that come with stewarding the West."

The Western Energy Alliance concurred. "Western oil and natural gas producers with reasonable access to federal public lands can help create hundreds of thousands of high-paying, blue-collar jobs," said Kathleen Sgamma, president at the alliance. "Congressman Zinke is the right person to enact this vision while protecting the landscapes that all Westerners love and cherish."

It is understood that Zinke will attempt to flatten the federal bureaucracy, i.e. transfer employees out of headquarters and regional offices into the field, according to people who have talked with the Trump transition team.

Zinke hinted at that in his testimony saying one of his three top priorities is "to ensure the professionals on the front line, our rangers and field managers, have the right tools, right resources, and flexibility to make the right decisions that give a voice to the people they serve."

His two other top priorities are to restore trust in federal land management agencies and to reduce a Park Service maintenance backlog.

Cantwell aggressively questioned Zinke on the development of coal on the public lands. When she asked him if he agreed with a coal-leasing moratorium launched by former secretary of Interior Sally Jewell on Jan. 15, 2016, he said, "I think a review is good."

On the policy front, as we have reported, Zinke has generally supported commodity development of the public lands, while demanding retention of the public lands in federal ownership.

For instance of commodity development Zinke objected to a Nov. 15, 2016, BLM rule to regulate methane emission. He said at the time the bureau "has issued a duplicative and unnecessary rule against responsible oil and gas development in Montana and on sovereign Tribal lands. This rule is a stark reminder that we need to invest in infrastructure projects like the Keystone pipeline, so we don't need to flare excess gas."

Although sportsmen/conservationists have praised Zinke some environmentalists have dug in their heels, such as WildEarth Guardians. However, groups such as the Sierra Club appear to be concentrating more of their fire on the nominations of Oklahoma Attorney General Scott Pruitt to head EPA, Exxon executive Rex Tillerson as Secretary of State and Sen. Jeff Sessions (R-Alabama) as attorney general.

Support on the right for Zinke is not universal. Property rights advocates such as the American Land Rights Association last month mounted a campaign against his nomination, asking its members to contact the Trump transition team. The association objects to Zinke's past support for the Land and Water Conservation Fund.

### Judge won't block BLM methane venting rule, for now

A federal judge in Wyoming refused January 16 to halt implementation of a new BLM methane emissions rule.

For the time being at least U.S. District Court Judge Scott W. Skavdahl rejected the argument of oil and gas producing states and industry that BLM has no authority to regulate air quality; only EPA does.

He accepted BLM's argument that the rule is designed to prevent waste, i.e. methane venting, not assume EPA's clean air responsibility.

At first in his ruling Skavdahl suggested that North Dakota, Wyoming, Montana and industry had a case, noting, "Portions of BLM's stated rationale for the Rule undermine Respondents' insistence that the Rule is foremost a waste prevention regulation that simply has incidental benefits to air quality." The plaintiffs argued that only EPA has authority to regulate air quality.

But Skavdahl went on, "Nevertheless, at this point, the Court cannot conclude that the provisions of the Rule which overlap with EPA/state air quality regulations promulgated under CAA (Clean Air Act) authority lack a legitimate, independent waste prevention purpose or are otherwise so inconsistent with the CAA as to exceed BLM's authority and usurp that of the EPA, states, and tribes. Thus, Petitioners have not shown a clear and unequivocal right to relief."

One of the plaintiffs, the Western Energy Alliance, has not given up. "Even though Judge Skavdahl did not grant a preliminary injunction, we're confident about our chances during the proceedings on the full merits of the case," said Kathleen Sgamma, president at the Alliance. "The venting and flaring rule oversteps BLM's mandate from Congress by usurping Clean Air Act authority that resides only with the Environmental Protection Agency and the states."

Skavdahl is the same judge who on Sept. 29, 2015, blocked a hydraulic fracturing regulation from BLM. He said at that time the bureau has no authority from Congress to regulate hydraulic fracturing, period.

That is, the judge said BLM erred in inferring that the broad authority Congress granted it to regulate oil and gas development on public lands automatically granted specific authority to regulate new hydraulic fracturing technology.

The methane rule, published Nov. 15, 2016, is one of the Obama administration's most prominent energy regulations. It is also expected to be a target of the Republican Congress and the incoming Trump administration as they attempt to revoke such regulations.

Indeed, the House Republican leadership intends to move legislation shortly to kill the regulation. The GOP plans to include the rule in a resolution under the Congressional Review Act) that includes several environmental and other regulations. (See *separate article page 10.*)

Although the methane rule technically went into effect January 17, it would not begin phasing in required reductions in methane until 2018. By that time the Trump administration will be firmly in charge. The rule requires producers to use available technology to cut flaring in half and to inspect their operations regularly for leaks.

EPA is also attempting to reduce methane emissions. It completed a rule May 12, 2016, that governs methane emissions from *future* operations and said it was also in the process of gathering information about a possible new rule governing *existing* operations. In the May 12, 2016, rule EPA not only set emission limits from methane but also required operators to find and repair leaks.

In a request to Skavdahl for an injunction against the BLM rule the State of Wyoming said, "The fatal flaw, however, is that, for the first time in the Department of the Interior's existence and without congressional authorization, the Rule poses a comprehensive air quality regulatory scheme on all oil and gas facilities on federal and Indian leases. This scheme includes requirements to control emissions, inspect and replace equipment, and it extends to *existing facilities*, which the (EPA) itself has not even done."

But the Justice Department said, "Contrary to petitioners' assertions, the Waste Prevention Rule is not a pollution control rule and does not improperly infringe on (EPA's) authority under the Clean Air Act. It sets no emissions standards for particular pollutants and contains no air quality monitoring requirements."

Intervening on behalf of the rule and to insure the federal government defends it vigorously are the States of California and New Mexico and several environmental groups.

Said California and New Mexico in their request to intervene, "Implementation of the Rule will benefit the States of California and New Mexico by generating more annual royalty revenue compared to that generated under current regulations, which allow considerable amounts of natural resources to be wasted royalty-free."

The House last year tried to block the EPA rule. It approved a fiscal year 2017 appropriations bill (HR 5538) July 14, 2016, that would forbid EPA from spending any money to implement the May 12, 2016, methane rule. Congress has yet to complete that appropriations bill.

Skavdahl's order on the coal be methane rule is available at: [https://cdn.westernenergyalliance.org/sites/default/files/VentingFlaringPIOrder\\_011617.pdf](https://cdn.westernenergyalliance.org/sites/default/files/VentingFlaringPIOrder_011617.pdf).

## Five new national monuments; Grand Canyon left out

President Obama January 12 designated land in five areas of the country as national monuments, including a 48,000-acre expansion of the Cascade-Siskiyou National Monument in southern Oregon.

The formerly 66,000-acre Cascade-Siskiyou monument, managed by BLM, now totals 114,000 acres.

In increasing the number of national monuments he has designated 34, a record Obama added 6,200 acres to a California Coastal National Monument (BLM manages the monument) and designated three civil rights sites in the South.

The three civil rights sites, to be managed by the National Park Service, include a Birmingham Civil Rights National Monument in Birmingham, Ala.; a Freedom Riders National Monument in Anniston, Ala.; and a Reconstruction Era National Monument in Beaufort County, S.C.

The designations drew praise from conservationists and local legislators. In Oregon Sens. Jeff Merkley and Ron Wyden, both Democrats, applauded the Cascade-Siskiyou expansion. Said Merkley, who led the charge for an expansion, "The Cascade-Siskiyou area, where three mountain ranges converge creating a unique and spectacular landscape seen nowhere else in the world, merits the recognition and expanded protection that President Obama gave it today."

But commercial users of the Cascade area, including timber interests and ranching interests, were not applauding. Said the Healthy Forests, Healthy Communities Coalition, "It is extremely disappointing to those who support multiple use management of our federal lands. By making this unilateral decision, the Obama Administration ignored citizens who are concerned about how this expansion will affect private property, public access, local economy and businesses, mitigation against catastrophic wildfire, drought and other impacts."

Not all monuments advocates are pleased. The Obama administration has rejected the recommendation of Rep. Raúl Grijalva (D-Ariz.) that the President designate a 1.7 million-acre national monument adjacent to Grand Canyon National Park.

Grijalva was perturbed because Obama has designated some 34 national monuments, including major ones last month in Utah and Nevada, but not the Grand Canyon monument in his State of Arizona.

"I can only express my profound disappointment," Grijalva said January 6. "The Grand Canyon is one of the world's most iconic and popular natural places, not just for its beauty but for its importance to tribal culture and history. Instead of building on former Secretary Salazar's work, the Interior and Agriculture departments are apparently willing to leave the future of the Grand Canyon and the health of Arizona tribes up to Donald Trump. I am not."

To that end Grijalva, ranking Democrat on the House Natural Resources Committee, last week reintroduced legislation (HR 360) that would establish a Greater Grand Canyon Heritage National Monument in Arizona. The monument



would be located north and south of Grand Canyon National Park and would protect the park's watershed as well as lands held sacred by Native American tribes.

Meanwhile, western Republicans are stepping up their campaign to prevent the unilateral designation of national monuments by future presidents. Twenty-five senators joined Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) in introducing legislation (S 33) that would require Congressional *and* state approval of any monument.

Although the bill would do nothing to redress the Obama designations, Murkowski criticized the administration. "(Obama's) unilateral withdrawals have routinely come with complete disregard for local concerns and opposition, threatening energy, mining, fishing, ranching, recreation, and other reasonable uses of public land and waters," she said. "At this point, we have no choice but to reform the Antiquities Act to ensure that the people being impacted by these designations are heard and respected."

While Murkowski is concerned about future designations, her House counterpart House Natural Resources Committee Chairman Rob Bishop (R-Utah), suggests he will attempt to persuade President-elect Trump to revoke Obama's recent monuments, and perhaps some from President Clinton.

Bishop recommended to the Trump transition team December 5 that the President-elect roll back objectionable national monument designations.

After meeting with the Trump transition team Bishop said, "Any monument designation that lacks local support, is excessive, or violates the terms of the Antiquities Act will be scrutinized and is easier to abolish. Today's discussions with the transition team examined options for the incoming administration. The talks were positive and encouraging."

But some scholars believe a President would have limited authority under the Antiquities Act. Indeed, the Congressional Research Service (CRS) in a report it prepared last month on the act questioned whether reversals would be legal.

"No President has ever abolished or revoked a national monument proclamation, so the existence or scope of any such authority has not been tested in courts," said CRS. "However, some legal analyses since at least the 1930s have concluded that the Antiquities Act, by its terms, does not authorize the President to repeal proclamations, and that the President also lacks implied authority to do so."

The main object of Bishop's ire is the December 28 designation by Obama of a 1.35 million-acre Bears Ears monument in southern Utah. Late last year Bishop attempted without success to move legislation to protect Bears Ears with fewer limits on commercial activities than in an Obama monument.

Also on December 28 Obama designated a 300,000-acre Gold Butte monument adjacent to the Bundy Ranch in Nevada. Cliven Bundy is the Nevada rancher who is often described as a national leader of protests against BLM and Forest Service land managers.

**California Desert:** Sen. Dianne Feinstein (D-Calif.) followed through January 5 on her promise to introduce legislation to complement President

Obama's recent designation of 1.8 million acres of national monuments in the California Desert.

In one of his most ambitious uses of the Antiquities Act of 1906, Obama on Feb. 12, 2016, designated more than 1.8 million acres of California Desert as parts of three national monuments. BLM will oversee the areas.

Her new bill (S 32) would designate 230,000 acres of wilderness, 77 miles of wild and scenic rivers, and 142,000 acres for off-highway vehicle use. And it would address renewable energy by directing BLM to plan for thousands of acres of land exchanges with the State of California.

Said Feinstein, "While I supported President Obama's decision to create three national monuments in the Mojave Desert, his authority under the Antiquities Act did not allow him to include the many other valuable provisions in the original legislation."

The 921,000-acre Mojave Trails National Monument, 135,000-acre Sand to Snow National Monument and 8,000-acre Castle Mountains National Monument will combine with existing national parks and wilderness areas in the desert to protect nearly 10 million acres.

## Democratic senators hit back at fed land transfers

They didn't succeed but six Democratic senators last week introduced a budget amendment that would have forbid the sale of public lands to reduce the federal deficit.

The amendment (SA 110), proposed January 10 under the lead of Sen. Martin Heinrich (D-N.M.), did not come to a vote in the Senate.

The House is going in the opposite direction. It approved a procedure January 3 to make it easier for future legislation to transfer federal lands to states or local governments. The House action would exempt such legislation from Congressional pay-as-you-go limits.

Under old House rules sponsors of legislation to transfer federal lands to states would have had to come up with budgetary offsets to balance against the value of lost federal oil, gas, coal, minerals, timber, rangelands, etc. Those offsets could include either new revenues (taxes) or spending reductions.

But the package of new rules (H Res 5) the House approved 233-to-190 says "a conveyance of Federal land to a State, local government, or tribal entity shall not be considered as providing new budget authority, decreasing revenues, increasing mandatory spending or increasing outlays."

Of note, Rep. Ryan Zinke (R-Mont.) voted for the House provision. Zinke, President Trump's nominee for secretary of Interior, has repeatedly said in the past he opposes the widespread transfer of federal lands to state and local governments. As Trump himself has asserted.

In Zinke's confirmation hearing January 17 before the Senate Energy Committee he was repeatedly asked about his position opposing federal land transfers and his January 3 vote that would make such transfers easier to approve in Congress.

He told Sen. Bernie Sanders (I-Vt.), "I want to be clear on this point. I am absolutely against the transfer or sale of the public lands." (See *related article page one on Zinke's confirmation hearing.*)

The House approval of the land transfer provision in H Res 5 does not mean Congress is about to immediately ship federal lands to states. Congress would still have to move individual land transfer bills against immense opposition. And Senate rules still require offsets.

But H Res 5 would make it slightly easier for the House to at least approve legislation to transfer federal land to states, local governments or tribes. And that reflects the Republican Party Platform that supports conveyance of unspecified federal lands out of the public domain.

The Republican platform proposes to unload unspecified federal lands. That has sometimes been interpreted in the media to mean all federal lands, including national parks. However, the platform's plank on disposing of federal lands refers only to "certain" lands.

Besides, Republican candidate Trump has more than once said he personally opposes the disposal of not only national parks but all federal lands. As he told *Field & Stream* magazine in January, "I don't like the idea because I want to keep the lands great, and you don't know what the state is going to do."

In addition Rep. Zinke has been outspoken in opposition to the transfer of federal lands to the states. On June 15, 2015, in a House Natural Resources Committee mark-up he voted against a bill (reintroduced January 3 as HR 232) that would authorize the transfer of up to 2 million acres per state of national forest to a state.

Said Zinke of the bill introduced by senior Republican Don Young (R-Alaska), "I'm starting to wonder how many times I have to tell these guys in leadership I'm not going to allow Montana's public lands to be sold or given away."

## Obama coal report targets royalties, climate impact

A landmark [analysis](#) of BLM's public lands coal program concludes that the federal government should consider increased royalties and fees on the climate impacts of coal mining.

But the report, commissioned by former Secretary of Interior Sally Jewell a year ago and published January 11, does not make any specific recommendations. Thus it will be up to the incoming Trump administration to implement any policy changes, and Trump is not likely to climb on board.

In fact, President-elect Trump has said a top priority for him is to terminate a partial moratorium on coal leasing former Secretary of Interior Sally Jewell implemented last year. Trump said repeatedly he favors greatly increased coal development in the United States. More than 40 percent of the coal produced in this country comes from the public lands.

Still, Jewell laid down a marker for the Trump administration, and Trump nominee for secretary of Interior, Rep. Ryan Zinke (R-Mont.)

"We have a responsibility to ensure the public including state governments get a fair return from the sale of America's coal, operate the program efficiently and in a way that meets the needs of our neighbors in coal communities, and minimize the impact coal production has on the planet that our children and grandchildren will inherit," she said. "The only responsible next step is to undertake further review and implement these commonsense measures."

At a confirmation hearing January 17 in the Senate Energy Committee Sen. Maria Cantwell (D-Wash.) aggressively questioned Zinke on the development of coal on the public lands. When she asked him if he agreed with the coal-leasing moratorium launched by former Jewell on Jan. 15, 2016, he said, "I think a review is good."

When she asked his opinion of the practice of self-bonding by coal companies, Zinke said, "I think bonding is important . . . Some of the reclamation problems we have and we face in the West are still not repaired . . . I think we need to have the courage today to look 100 years forward and look back and say 'we did it right.'"

The Obama administration analysis, in the form of an EIS scoping report, makes these suggestions:

**Royalty:** The report does not identify a specific change to the existing 12.5 percent royalty paid by federal coal lessees. It just recommends that the Trump administration consider a higher royalty.

Says the report, "The BLM would identify the most appropriate metric and corresponding royalty rate for Federal coal, reflecting on analysis already conducted by other groups such as the Council of Economic Advisers."

**Climate:** The EIS scoping report suggests that BLM require compensation for damage to the climate caused by coal mining, with those revenues used to limit carbon damage. "The BLM would require lessees to carry out or fund activities that proportionally offset climate-related impacts, including through investment in a fund managed by an entity that takes on the liability to proportionally offset those greenhouse gas emissions and climate-related impacts," says the EIS scoping report.

The money would then be used "for activities including, but not limited to, carbon offsets, carbon sequestration, climate adaptation, and community resilience," the report says.

**Leasing:** The EIS scoping report suggests a complete shake-up in the leasing-by-application system now that usually leads to one bidder per application. The EIS would have BLM plan for and then hold inter-tract bidding.

"The BLM would determine a maximum tonnage of coal or maximum number of Btus to be leased consistent with projected demands," says the EIS scoping report. "Under a modified inter-tract leasing process, all interested companies would bid among themselves for the right to produce a specified quantity of coal in the location of their choice, assuming it is suitable for mining and consistent with the approved land use plan and strategic leasing plan."

The National Mining Association took sharp issue with the suggestion that federal coal lessees were not paying their fair share to the federal government. The association said the 12.5 percent royalty is only part of the story, that lessees also pay huge bonus bids and significant taxes.

Said the association, "Detailed analyses by Norwest Corp. show Federal royalty rates are 30-65 percent higher than prevailing rates for private coal, where bonus bids are seldom paid as they always are on federal coal. In the major federal coal leasing region, the combination of fees and taxes amounts to *an effective tax rate of 39 percent.*" (Emphasis in the original.)

The mining association charged that the Interior Department report kowtows to environmentalist demands for an end to fossil fuels leasing from the public lands, the Keep-It-in-the-Ground movement.

The Earthjustice environmental law firm was not shy about promoting the no-leasing program. Said Abigail Dillen, Earthjustice Vice President of Litigation for Climate and Energy, "After an intensive review, the Interior Department has come to the necessary conclusion that we have to seriously consider an end to federal coal leasing. That recognition is crucial, and we will do everything in our power to compel the next administration to act on it."

Ranking Senate Energy Committee Democrat Cantwell, a leading critic of the mining industry, said, "It's the Interior Department's legal responsibility to review royalty rates and leasing policy. The incoming Administration shouldn't drop the ball and shortchange taxpayers."

As has been well documented the nation's coal industry has been devastated by bankruptcies caused by either competition from cheaper energy sources or overregulation, or both, take your choice.

Further, Earthjustice and other national environmental groups have, with the support of some senators and House members, mounted a vigorous campaign against any further leasing of coal, called Keep-it-in-the-Ground.

The Keep-it-in-the-Ground campaign last year persuaded several House and Senate Democrats to introduce legislation (S 2238, HR 4535) to ban new leasing on federal lands not only of coal, but also of oil, gas and oil shale. Rep. Jared Huffman (D-Calif.) introduced the House bill and Sen. Jeff Merkley (D-Ore.) the Senate bill.

The EIS scoping analysis is available at:  
<https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=93180>.

## Methane emissions rule a top target of House GOP

House leaders intend to move legislation as early as next week that would revoke a Nov. 15, 2016, oil and gas methane emissions rule published by BLM.

The Republicans plan to include the methane regulation in a comprehensive resolution that would reverse several Obama administration regulations. The strategy would base the resolution on a Congressional

Review Act (CRA) that authorizes Congress to kill regulations dating from May 30, 2016.

Said House Majority Leader Kevin McCarthy (R-Calif.) on the House floor last week, "I expect to start with swift action on at least on the Stream Protection Rule and methane emissions standards, both of which are limits to our energy production."

The House strategy may be needed because a federal judge January 16 refused to issue an injunction against the BLM rule. (*See related article page 3.*)

McCarthy and the House have support from the powerful conservative operation of the Koch brothers and Koch Industries, Inc. An organization that they support, Freedom Partners, last week met with House Republican leaders and urged them to reverse the methane regulations under the CRA within 100 days. That law theoretically allows the House and Senate to revoke regulations with a majority vote, thus in the Senate avoiding a filibuster.

Freedom Partners has put together an action plan for Congress and the first 100 days of a Trump administration, although the conservatives admitted revocation of environmental and other rules will not be a piece of cake.

"Repealing existing federal regulations is not a simple task. Based on where a regulation is in the finalization process, different rules will need to be addressed through different policy remedies and legal avenues," said the group. "In order to successfully roll back the myriad of regulations proposed and finalized over the past eight years, Congress and the Trump Administration will need to pursue several methods of repeal and reform."

In addition to Congressional revocation of the methane rule, Freedom Partners is recommending that a Trump administration revoke a Jan. 15, 2016, order from Secretary of Interior Sally Jewell establishing a coal-leasing moratorium.

In a separate, but related action the House January 11 voted to require detailed economic impact assessments of Forest Service and BLM *plans* prepared under the Federal Land Policy and Management Act. Agencies already must prepare the analyses for *regulations* projected to cost more than \$100 million.

Rep. Raúl Grijalva (D-Ariz.) offered an amendment to exempt BLM and Forest Service land management plans from the lower threshold, but the House rejected it by a vote of 185-to-236. The vote came during consideration of a regulatory accountability bill (HR 5), which the House then passed.

Said Grijalva, ranking Democrat on the House Natural Resources Committee, "If this bill becomes law, the agencies that oversee our public lands won't be able to make important decisions in a timely way, and that's the last thing the American people want."

But Rep. Steve Chabot (R-Ohio) said the economic reviews are necessary to protect small businesses. "Given the potentially significant consequences to small businesses that rely on public lands and small communities that border those lands, the Forest Service and the Bureau of Land Management should assess the impacts of their plans on these small entities," said

Chabot, chairman of the House Small Business Committee. "That is all this does."

There is big pushback from Democrats against all Congressional attempts to revoke Obama regulations. Grijalva wrote his House Democratic colleagues January 9 and urged them to stand united against a comprehensive CRA resolution.

Grijalva wrote that the methane rule is absolutely necessary. "The (rule) would result in the savings and productive use of up to 41 billion cubic feet annually - an amount of gas that could supply roughly 740,000 households each year," he said. "This level of waste is unconscionable, and companies should be required to make the investments necessary to capture that natural gas and pay the American people their fair share."

While the action on regulatory reversals right now is in the House, the Senate would likely prove a greater hurdle. That's because the GOP holds only a two-vote majority (52-to-48) and a switch of only two or three votes could defeat a resolution.

## Obama sets oil shale royalties, environmental standards

The Obama administration January 10 established a new royalty system for oil shale development on the public lands, if there ever is any development. Like the Bush administration the Obama rule would begin royalties at five percent.

But the Obama administration would give the secretary of Interior authority to impose a higher royalty, depending on conditions surrounding a lease. The Bush rule would have increased the royalty at one percent per year after production began, with a cap of 12.5 percent.

Said BLM, "(The Bush) system required commercial operations to pay royalties of five percent per year for the first five years of production, increasing by one percent per year beginning in year six, to a maximum rate of 12.5 percent in year 13. The final rule modifies the regulations to establish the five and 12.5 percent levels as minima. Specifically, the modified provision keeps the annual escalator clause for years six through twelve but allows the Secretary to set the initial royalty rate applicable in years one through five on a lease-by-lease basis."

BLM said it established a flexible royalty system because the oil shale industry has not grown beyond the research and development phase. "Until there is a domestic commercial oil shale industry, we can only speculate about what royalty rates those factors would support," the bureau said.

At the same time that it established the new royalty system, BLM also imposed new environmental protection standards for oil shale operations.

Said BLM, "The new requirements are a watershed protection plan for surface and groundwater resources; an airshed review of reasonably available scientific data or modeling to predict probable air quality effects of operations; an integrated waste management plan; and an environmental protection plan that includes minimization of adverse effects on air, water, wildlife, native plants, and productivity of soils, as well as monitoring, adaptive management, and mitigation of adverse effects."

The January 10 rules are the last piece of the puzzle assembled by the Obama administration governing both research and development of oil shale and production.

On March 22, 2013, the administration placed significant new limits on development by reducing acreage available for lease sale.

The 2013 plan/record of decision set aside 678,000 acres for possible future oil shale research and development leasing in Colorado, Utah and Wyoming compared to 2,017,741 acres set aside by the Bush administration in November 2008. The plan/decision reduces acreage available for tar sands development in Utah from 430,687 acres to 132,220 acres.

Although western Republicans blasted the steps at the time, commercial development is years if not decades away. To be resolved are enormous hurdles such as identifying the amount of water commercial production would soak up and how much energy would be required to produce oil from shale.

Commercial leasing would be carried out under the new regulations that BLM posted last week. That rule would establish a royalty system for commercial leases and environmental regulations for commercial leases.

**The existing R&D program:** The Bush administration on Jan. 1, 2007, issued five, 160-acre R&D leases in Colorado and on July 1, 2007, approved one lease of that size in Utah. The Obama administration issued two additional R&D leases in Colorado on Dec. 1, 2012.

BLM wrote the new plan/ROD and regulations to settle a lawsuit brought by a dozen of so environmental groups. Under the agreement BLM said it would consider a new royalty system and would require an environmental review before awarding commercial leases.

On January 16, 2009, 13 local and national environmental groups brought a National Environmental Policy Act lawsuit against the regulations. The suit, filed by the environmental law firm Earthjustice, says BLM's regulations didn't adequately consider the environmental implications of development, in part because BLM won't know what those impacts will be until the R&D program is further along. The suit was filed in U.S. District Court in Colorado.

### FS drafts 'science synthesis' to revise NW Forest Plan

The Forest Service has begun laying the scientific groundwork for the revision of 17 national forest plans that make up a Northwest Forest Plan.

Not everyone agrees that the playing field is level. The Association of O&C Counties for one says a draft science synthesis does not give sufficient weight to timber sales in Oregon, Washington and California forests.

"The socioeconomic section seems to have abandoned President Clinton's promise of predictable and sustainable supply of timber. It does not delve into the science as to how sustained yield forestry can achieve both economic and ecological goals to address the most significant failure of the NWFP," said Rocky McVay, the association's executive director.



In 1994 the Clinton administration completed a Northwest Forest Plan that governs national forests and forested BLM lands in the Pacific Northwest. Until the plan was instituted annual national forest and BLM timber sales usually exceeded 12 billion board feet per year. After the plan was executed those sales decreased to around 3 billion board feet per year.

Now the Forest Service's Region 6 (Oregon and Washington) and Region 5 (California) have asked the Forest Service's Pacific Northwest and Pacific Southwest Research Stations to prepare a scientific synthesis as a base for revising the Northwest Forest Plan.

The Ecological Society of America is coordinating the effort, which led to a draft report now undergoing public review. The comment period ended today (January 20). The Forest Service emphasizes this is not a National Environmental Policy Act process, but is guided by Office of Management and Budget research procedures.

Although the synthesis is supposed to produce an independent analysis the use of the data will be up to the incoming Trump administration, and it is expected to be more sympathetic to timber companies than the Obama administration. And less sympathetic to conservationists.

With the decrease in timber sales from public lands has come a concomitant decrease in the amount of sale revenues distributed to public lands counties. That decrease is now approaching a crisis, according to western politicians.

To compensate the counties Congress has since 2000 put up federal money under a Secure Rural Schools (SRS) program. However, in December western elected officials failed to persuade their colleagues to extend the program for another year, perhaps costing public lands counties more than \$300 million.

The program was last authorized in fiscal year 2015, with \$300 million in payments allocated in March of 2016. Oregon Sens. Ron Wyden (D-Ore.) and Jeff Merkley (D-Ore.) are criticizing the Senate leadership for not taking up legislation to extend SRS.

It was only symbolic but Wyden and Merkley last week introduced an amendment to a Senate budget resolution (S Con Res 3) to make room for an extension of the SRS program. The amendment didn't reach the floor.

The draft scientific synthesis is available at:  
<https://www.fs.fed.us/pnw/research/science-synthesis/chapter-listing.shtml>.

**O&C timber payments:** BLM does hold timber sales on the 2.4 million acres of Oregon and California lands that it manages in western Oregon. As we reported in the Dec. 12, 2016, issue of *PLN* the Association of O&C Counties complained of a delay in the distribution of shared receipts from the timber sales.

BLM announced January 10 that it was distributing more than \$19 million to the 18 O&C Counties.

Alaska leaders hope to shake up public lands management

The Alaska governor and the Alaska Congressional delegation are going all-out to revise public land management in their state.

Their immediate target is a new plan released by BLM January 6 that covers 6.5 million acres of eastern interior Alaska. Among other things the plan designates 1 million acres of the region as areas of critical environmental concern that will limit mining and other uses.

Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) suggested that she would ask Congress and the Trump administration to undo the plan, approved in five records of decisions. In a press release Murkowski's office said the senator "will work with the incoming administration to overturn many of the midnight rules and directives released in the final days of the Obama administration."

But BLM said the plan would balance development with other uses such as subsistence hunting and fishing. Said Geoff Beyersdorf, district manager of the BLM Fairbanks District Office, "With approval of these plans, we can move forward with management of these public lands in a way that balances use, development, and conservation."

**ANWR:** The Eastern Interior Plan is just the tip of the iceberg. On January 5 Sens. Murkowski and Dan Sullivan (R-Alaska) introduced legislation (S 49) to open the coastal plan of the Arctic National Wildlife Refuge (ANWR) to oil and gas development.

Alaskan officials have been attempting for 30 years to open the coastal plain without success. Although they will now have a pro-development President in the White House, they still may have to round up 60 votes in the Senate, where over the years several Republicans have sided with Democrats to block legislation to open the 1.4 million-acre coastal plain to leasing.

The Obama administration made their job more difficult on April 3, 2015, by recommending the designation of 12.28 million acres of ANWR as wilderness. That includes the coastal plain. Seven million acres of ANWR are already Congressionally-designated wilderness. Although only Congress has the authority to designate wilderness, the administration recommendation effectively means almost all of ANWR will be managed as wilderness, at least until a new administration decides otherwise or Congress overrides the decision.

**King Cove:** On January 11 Murkowski, Sullivan and Rep. Don Young (R-Alaska) introduced legislation (S 131, HR 513) to authorize a land exchange leading to the construction of a road corridor through a wildlife refuge to the community of King Cove.

The Obama administration refused to allow the construction of a road through the Izembek National Wilderness Refuge to provide access to emergency health care for the citizens of King Cove.

Secretary of Interior Sally Jewell on Dec. 23, 2013, denied authority to construct the road because she didn't want to set the precedent of harming a wilderness area.

**State land claims:** In the last issue of *PLN* we reported that BLM intended to help the State of Alaska by expediting the state's claims to 40 million acres. But the state is not at all sure that is a good thing.

BLM said December 19 it was adopting new technology that will allow the state to lay claim to 40 million acres of land under the Alaska Statehood Act in half the time and half the cost as the existing program would require. The state has already received 60 million acres.

BLM said the new technology will use satellite navigation to identify state-claimed lands and their boundaries. Under the old system survey teams were shipped to the field for long periods. The teams then struggled through the backcountry to set monuments in the ground at regular, two-mile intervals.

BLM said that instead of taking 20 years to accomplish the task at a cost of \$120 million, it will be done in 10 years at a cost of \$60 million.

But the Alaska Department of Natural Resources says the technology is unproven and the state may get stuck with the bill.

The director of the Alaska Division of Mining, Land & Water, Brent Goodrum, told us, "The transfer of future cost obligations for the survey (and physical monumentation) of lands granted to the State of Alaska in our Statehood Act is hardly a favor, nor does it accelerate the time frame in which the State may ultimately receive its full land entitlement... something in excess of 105.8 Million acres." Goodrum is also currently president of the Western States Land Commissioners' Association.

The Eastern Interior Plan is available at:  
<https://www.blm.gov/programs/planning-and-nepa/plans-in-development/alaska/eastern-interior-rmp>

## IBLA decisions

(We post current Interior Board of Land Appeals decisions at our website, <http://www.blm.gov/programs/planning-and-nepa/plans-in-development/alaska/eastern-interior-rmp>. IBLA may be contacted at: Interior Board of Land Appeals, 801 North Quincy St., MS 300 QC, Arlington, VA 22203. Phone (703) 235 3750.)

**Subject:** Oil and gas lease sale.

**BLM decision:** BLM will reject competitive lease offers after a sale is held to protect other resources.

**Appellant lessee:** BLM has no authority under the Mineral Leasing Act to reject lease offers after bid payments have been made.

**IBLA decision:** Affirmed BLM decision.

**Case identification:** *Hawkwood Energy Agent Corp., Venture Energy, LLC, et al.* 189 IBLA 164. Decided January 4, 2017. Sixteen pages. Appeal from decisions of the Deputy State Director of the Nevada State Office of BLM, who rejected appellants' lease offers for Federal oil and gas lease parcels in Garden Valley, Nevada. DOI-BLM-NV-L000-2013-0004-EA.

**IBLA argument:** IBLA Administrative Judge Amy B. Sosin affirmed a BLM decision to reject competitive oil and gas lease offers, even after BLM had approved tracts for sale and accepted full payment. The appellants argued that the Mineral Leasing Act (MLA) effectively requires BLM to approve a lease after certifying tracts for sale and accepting winning bids. But Judge Sosin argued that the provisions of the MLA making winning lease offers mandatory bind only the bidders/lessees and not BLM. She said the lessees point to this provision of the MLA: "A bid shall not be withdrawn and shall constitute a legally binding commitment to execute the lease bid form and accept a lease . . . . Execution by the high bidder of a competitive lease bid form approved by the Director . . . shall constitute a binding lease offer . . . ." But, Sosin

argued, "This regulation, however, binds the potential lessee, not BLM. The plain language of the regulation informs bidders that a bid constitutes a binding offer to BLM, and places a limit on bidders' actions once a bid is submitted. Nothing in the regulation limits the Secretary's discretion to accept or reject a lease offer up until lease issuance."

## Notes: Public Lands News

**Sage-grouse limits bill back.** Eleven House Republicans reintroduced legislation (HR 527) January 13 that would effectively overturn an Obama administration's greater sage-grouse policy. The bill would reverse the three pillars of the policy. First, it would forbid implementation of BLM and Forest Service plans to protect the sage-grouse if states had management plans in place. Almost all of them do. Second, it would forbid listing of the greater sage-grouse under the Endangered Species Act. The Obama administration did defer listing in favor of the BLM and Forest Service plans. Finally, the bill would forbid the withdrawal of 10 million acres from hard rock mining, as begun by the administration. House Natural Resources Committee Chairman Rob Bishop (R-Utah) is the chief sponsor. Variations of the sage-grouse limits legislation made their way into House and Senate versions of fiscal year 2017 appropriations bills last year, but those bills have not been enacted.

**BLM sets interim leadership.** With the conclusion of the Obama administration today (January 20) BLM Director Neil Kornze stepped down from that position. The bureau's Kristin Bail will serve as acting director for the time being. Bail served most recently as assistant director for resources and planning. The Trump administration has not yet announced its nominee for the post. The one name that has circulated most prominently is Utah House Rules Committee Chairman Michael E. Noel (R). He is a champion of the campaign in Utah to have 31 million acres of federal land transferred to the state.

**Major oil and gas hit in NPRA.** ConocoPhillips announced January 13 that it has made a significant oil and gas discovery in the northeastern corner of the National Petroleum Reserve Alaska (NPRA). The find is in the Greater Mooses Tooth Unit and the two drilled wells are called the Willow Discovery. The two wells are about four miles apart. BLM and the Corps of Engineers took years to complete permitting for the landmark lease. On Feb. 13, 2015, BLM did give ConocoPhillips Alaska the go-ahead on Greater Mooses Tooth. Of the new discovery Joe Marushack, president of ConocoPhillips Alaska, said, "This discovery is tremendously exciting not only for ConocoPhillips, but also for the state of Alaska. Willow's proximity to existing infrastructure improves the economic viability of the discovery. Development of Willow, a potential multi-billion-dollar investment, could provide thousands of jobs during construction and could generate substantial revenue for the federal government, state, North Slope Borough, and communities in the NPRA." Alaska Gov. Bill Walker (I) congratulated ConocoPhillips and said, "We believe that continued hydrocarbon development in NPRA will benefit our state in terms of revenue, employment opportunities, and maintaining TAPS throughput." TAPS is the Trans Alaska Pipeline System. The State of Alaska has suffered a devastating economic blow in recent years because of diminished oil and gas development. TAPS has been delivering an ever-dwindling amount of oil. The NPRA discovery may help. Some 1.5 million acres of the 23 million-acre NPRA are under lease. A December 14 sale in NPRA yielded bids on 67 tracts on 613,000 for a total of \$18.8 million. ConocoPhillips bid on 65 of the 67 sold tracts.

**Panel criticizes EPA mine bond rule.** A federal small business advisory group is criticizing an EPA proposal to require hard rock miners to obtain bonds when carrying out projects under the Superfund law. The Small Business Advocacy Review Panel concludes in comments submitted to EPA, "Advocacy believes that the current approach could unnecessarily threaten the viability of small mines." Hard rock miners jumped on the report. "This report demonstrates what EPA has been told by industry, citizens, members of Congress and Western Governors all along: the rule is unnecessary and harmful to small business. EPA must do the right thing, stop wasting taxpayer funds and end this nonsense," said Laura Skaer, American Exploration & Mining Association Executive Director. EPA proposed the rule December 2 and is taking public comments until February 2, so the Trump administration will have the final say. However, the Trump administration may have to publish some sort of rule because the U.S. Circuit Court of Appeals for the District of Columbia on Jan. 29, 2016, ordered EPA to complete regulations by Dec. 1, 2017.

**Wyoming wolf delisting bill back.** Rep. Lynn Cheney (R-Wyo.) and 14 of her colleagues introduced legislation (HR 424) January 10 to delist the northern gray wolf in Wyoming under the Endangered Species Act. The House approved a predecessor bill on Feb. 26, 2016, but it was not enacted. The wolf in Wyoming was originally delisted by the Fish and Wildlife Service (FWS) in August 2012, but a federal judge in September 2014 ordered it relisted. U.S. District Court Judge Amy Berman Jackson in U.S. District Court in Washington, D.C., said a State of Wyoming rule that led to the delisting failed. She said in a Sept. 23, 2014, decision that a state plan didn't guarantee a baseline of 10 breeding pairs and 100 wolves in the state. But, Rep. Cheney said, "Wyoming should be able to manage the gray wolf without outside interference. This bill will stop the 'management by litigation' culture that has done so much damage to our state."

**Juen to head Public Lands Foundation.** Jesse Juen, a former BLM state director in New Mexico, will serve as president of the Public Lands Foundation, which represents BLM retirees. He replaces Ed Shepard, himself a former BLM state director in Oregon. Juen lives in Albuquerque.

## Conference Calendar

### JANUARY

26-27. **Advanced Public Land Law Institute** in Santa Fe, N.M. Contact: Rocky Mountain Mineral Law Foundation, 9191 Sheridan Blvd., #203, Westminster, CO 80031. (303) 321-8100. <https://www.rmmlf.org>.

Jan. 28-Feb 2. **National Association of Conservation Districts Annual Meeting** in Denver. Contact: National Association of Conservation Districts, 509 Capitol Court, N.E., Washington, D.C. 20002. (202) 547-6233. <http://www.nacdnet.org>.

Jan. 29-Feb. 2. **Society for Range Management Annual Meeting and Trade Show** in St. George, Utah. Contact: Society for Range Management, 30 W 27th Ave., Wheat Ridge, CO 80215-6601. (303) 986-3309. <http://www.rangelands.org>.

### FEBRUARY

1-3. **Cattle Industry Convention & NCBA Trade Show** in Nashville, Tenn. Contact: National Cattlemen's Beef Association Convention & Meetings

Department, 9110 East Nichols Avenue, Suite 300, Centennial, CO 80112.  
<http://www.beef.org>.

12-16. **Public Lands Alliance Convention and Trade Show** in Arlington, Va.  
Contact: Association of Partners for Public Lands, 2401 Blue Ridge Ave, Suite 303, Wheaton, MD 20902. (301) 946-9475. <http://www.appl.org>

19-22. **119<sup>th</sup> National Western Mining Conference** at the Colorado Convention Center in Denver. Contact: [www.coloradomining.org](http://www.coloradomining.org)

19-22. **Society for Mining, Metallurgy and Exploration Annual Meeting** in Denver. Contact: <http://www.smenet.org>.

25-March 1. **National Association of Counties Legislative Conference** in Washington, D.C. Contact: National Association of Counties, 440 First St., N.W., 8th Floor, Washington, D.C. 20001. (202) 393-6226. FAX (202) 393-2630.  
<http://www.naco.org>.

#### MARCH

4-11. **North American Wildlife and Natural Resources Conference** in Spokane, Wash. Contact: Wildlife Management Institute, 1146 19th Street, NW, Suite 700, Washington, DC 20036. (202) 371-1808.  
<http://www.wildlifemanagementinstitute.org>.

## ***Federal Parks & Rec***

*addendum to Public Lands News*

January 20, 2017

- \* *Grijalva keeps up pressure for permanent LWCF*
- \* *Jarvis's policies complete; critic eases off a bit*
- \* *Yosemite has escaped flooding, thus far*
- \* *Zinke survives confirmation hearing (See Public Lands News article)*
- \* *Obama designates five new monuments (See Public Lands News article)*
- \* *Dems hit back against land shifts (See Public Lands News article)*

### **Campaign to make LWCF permanent cranked up in House**

The politics are complicated but Rep. Raúl Grijalva (D-Ariz.) took a first step January 12 toward permanent authorization of the Land and Water Conservation Fund (LWCF). He reintroduced legislation (HR 502) to make the program permanent.

The law is presently authorized through September 30, 2018.

LWCF got a significant boost from Rep. Ryan Zinke (D-Mont.) January 17 at his Senate Energy Committee confirmation hearing for secretary of Interior.

When Sen. Maria Cantwell (D-Wash.) asked if he supported making the LWCF program permanent, Zinke said, "I do. I think land and water

conservation has been important to Montana, certainly in many states. I think we should look at it . . . Lastly, I do think the states and local communities should have a say where those funds go."

Legislation to make LWCF permanent almost made it over the finish line in December in an omnibus energy bill. But differences of opinion between the House and Senate on a host of provisions did the bill in.

The lead sponsor of the energy bill, Senate Energy Committee Chairman Lisa Murkowski (R-Alaska), has said she wants to renew her campaign to move the measure early in this Congress.

However, her counterpart as chairman of the House Natural Resources Committee, Rep. Rob Bishop (R-Utah), has been hesitant to give carte blanche to a permanent LWCF.

Last summer Bishop did introduce a "discussion draft" bill that would have extended LWCF for seven years and substantially realigned program priorities.

Bishop's draft would have slashed funding for the federal side of LWCF but given greater support to the state side. States traditionally receive a small fraction of the total LWCF pie; the draft Bishop bill would have guaranteed them 45 percent. In addition Bishop would have allocated five percent of LWCF to an urban recreation fund, sort of a follow-on to an Urban Parks and Recreation Recovery program. He would have allocated just 3.5 percent to federal land acquisition.

The Grijalva bill is simpler. It simply makes LWCF permanent and allocates at least 1.5 percent of the annual LWCF appropriation for sportsmen's access to public lands.

In its version of an omnibus energy bill the Senate last year would not only have made LWCF permanent, it would also have set aside \$150 million each year for Park Service maintenance from offshore royalties, but in a separate fund from LWCF.

The Senate provision also would have allotted at least 1.5 percent of LWCF to sportsmen's access, and allotted 40 percent to federal land acquisition and 40 percent to a group of programs, including state grants.

The House-passed version of the energy bill contained none of those provisions. Indeed the House rejected an amendment on the House floor May 25, 2016, that would have directed House conferees to accept the Senate LWCF provision. The House said no in a close 205-to-212 vote.

As a first order of business the Grijalva permanent LWCF bill would require the support of President-elect Trump and his nominee for secretary of Interior, Zinke. In the last Congress Zinke cosponsored Grijalva's bill, along with 25 other Republicans.

However, some conservative groups, such as the American Land Rights Association, are critics of LWCF and have faulted Zinke for cosponsoring the Grijalva bill.

To put pressure on Bishop Grijalva sent a letter asking for hearings and immediate action on his bill.

Said Grijalva, "The brinksmanship over LWCF in the last Congress was a disservice to the American people, who overwhelmingly support the program. By moving quickly to pass this bill, we can avoid a similar situation this time around and show that Congress can, in fact, get something done. Voters across the political spectrum understand the value of LWCF in their communities. There is no room for ideology here."

In an ideal world LWCF advocates would prefer legislation that Sen. Maria Cantwell (D-Wash.) introduced in the last Congress that would not only have made LWCF permanent, but also have guaranteed \$900 million per year for the program without further appropriations. Cantwell is the ranking Democrat on the Senate Energy Committee.

### **NPS finishes off Jarvis policy; PEER eases criticism**

The Park Service completed January 18 a third and final leg of former director Jonathan B. Jarvis's overarching policy for the agency a system plan that envisions the future of the parks.

NPS described the system plan this way: "The purpose of a System Plan is to provide 'a framework for the proactive direction for the future of the national park system, identifying gaps in the nation's protected natural and cultural areas, and establishing a collaborative conservation system that fully reflects our nation's cultural and natural heritage.'"

The other two legs of the stool are a Director's Order #100 that would have NPS tilt toward protection when the impacts of an activity were uncertain and a Director's Order #21 that governs partnerships and philanthropy.

One of the severest critics of former National Park Service Director Jonathan B. Jarvis's policy on philanthropic donations and partnerships is backing off, a little.

The environmental group Public Employees for Environmental Responsibility (PEER) said it still objects to key provisions of the December 28 Jarvis order. (Jarvis stepped down January 3.)

PEER faulted such things as corporate labeling within parks and NPS involvement with alcoholic beverage companies.

But PEER said Jarvis eased off some on corporate logos and agency employee fundraising. "The original sweeping plan suffered from sloppy drafting and poorly thought-out concepts," said PEER Executive Director Jeff Ruch. "We are pleased the Park Service edged away from its complete corporate embrace."

Throughout last fall Ruch called for Jarvis to resign because of charges of sexual misconduct in several field offices, among other things.

Before leaving office Jarvis put in place two major policy orders the partnership Order #21 and on December 20 an Order #100 that insures that protection of the resource is a first priority for the agency, at least for a little while.



**Order #100:** Jarvis signed the protection Order #100 in the face of criticism from Republican Congressional policy makers.

At the heart of the white paper lies a "Precautionary Principle" strategy. It would establish protection as a priority even if a threat were not clear and imminent.

Order #100 describes the policy this way: "The Precautionary Principle requires that, when an action, activity, or emerging condition raises plausible or probable threats of harm to park resources and/or human health, management should take anticipatory action even when there is uncertainty. When such uncertainty exists, NPS managers will take actions that err on the side of caution to protect resources in accordance with existing authorities, including NPS obligations to prevent resource impairment . . ."

The order is a prime candidate for a reversal or a rewrite by the Trump administration, but that may take time. NPS devoted four years to writing the Jarvis proposal.

**Order #21:** The partnership order, Director's Order #21, is designed to make it easier for partners to contribute to the National Park System, and for park employees to accept those contributions. At the same time Jarvis said the order would guard against commercialization of the parks.

The final order does include several provisions that critics have complained would lead to increased commercialization of the parks and would compromise agency employees.

One such provision would allow NPS leaders to accept donations of up to \$5 million, including associate/assistant directors, regional directors and superintendents.

A second controversial provision would outright allow partnerships with companies that produce and sell alcohol.

Says the order, "After the effective date of this Order and under its provisions and standards, the NPS may permit - after thorough review and approval by the Director - philanthropic partnerships with, and accept donations from, corporations that produce or distribute alcohol."

The final Order #21 is available at:  
[https://www.nps.gov/policy/DOrders/DO\\_21.htm](https://www.nps.gov/policy/DOrders/DO_21.htm).

Director's Order #100 is available at:  
[https://www.nps.gov/policy/DOrders/DO\\_100.htm](https://www.nps.gov/policy/DOrders/DO_100.htm).

The system plan is available at:  
<https://parkplanning.nps.gov/files/NationalParkServiceSystemPlan2017.pdf>.

## **Yosemite Valley has escaped devastating floods, so far**

Yosemite Valley is threatened by flooding reminiscent of a 1997 flood that cost an estimated \$250 million to clean up.

Thus far, park officials say the 2017 West Coast Pineapple Express a series of major rain and snow storms have not done nearly as much damage.

The park has suffered some disruptions, though. Park officials have betimes been forced to close Yosemite to the public. And more storms are forecast for next week.

On January 9 the Merced River at Pohono Bridge reached almost three feet above flood stage of 10 feet. NPS said, "The park is currently assessing the impacts and will address any repair needs in the coming days and weeks."

But the park subsequently said that the January 9 flooding was well below the 17-foot mark that it anticipated. And, while the park and campgrounds were messy, the park is pretty much "intact," as Yosemite spokesman Scott Gediman told the local press.

Although the park was closed for several days around January 9, it is now mostly open for business. Indeed the central and northern California area has had a relatively quiet week.

If the Pineapple Express cranks up again, as is forecast, Yosemite officials hope they are ready. The repairs the park made following the 1997 flood are designed to minimize damages from future floods, such as raised roads, raised buildings and relocation of facilities.

While some repairs were made immediately after the 1997 flood, Yosemite was not able to complete a land management plan for Yosemite Valley until Feb. 14, 2014. Environmentalist litigation slowed the planning. And the park's biggest critic Rep. Tom McClintock (R-Calif.) strenuously objected to limitations on commercial uses in various early iterations of a plan.

But on publication of the final plan McClintock said, "I am particularly gratified that the final report has rejected radical proposals to close many traditional tourist amenities at the park, including swimming pools, raft and bike rentals, horseback riding stables, and ice skating and lodging facilities. The plan retains the historic Sugar Pine Bridge, maintains retail services to accommodate park visitors and minimizes the loss of campsites and parking all significant improvements from the draft report."

He added, "Although I remain concerned about some aspects of the plan, my first reaction is one of relief. Yosemite Valley belongs to the American people for the express purpose of 'public use, resort and recreation.'"

The plan took a long and torturous path. NPS published a first edition in August 2000. Friends of Yosemite Valley and Mariposans for the Environment and Responsible Government took the plan to court and, in 2003, the Ninth U.S. Circuit Court of Appeals held that the plan failed because it did not consider user capacities.

## **Notes: Federal Parks & Rec**

**Major ORV settlement in Utah.** The Bureau of Land Management (BLM) struck a deal January 13 with conservationists and off-road vehicle (ORV) advocates to end eight years of litigation over travel management plans on 10 million acres of public lands in Utah. Under the settlement, which has been submitted to federal court, BLM will (1) update some site-specific travel

management plans, (2) conduct additional cultural surveys and (3) update an air resource strategy. In return the conservation groups including the Southern Utah Wilderness Alliance will dismiss lawsuits against six travel management plans and a November 2014 oil and gas lease sale. Several intervenors said they would accept the settlement including the Utah School and Institutional Trust Lands Administration and a number of oil and gas companies. The settlement is available here:

<https://www.blm.gov/sites/blm.gov/files/documents/files/APPELLATE-%23349183-v2-SUWA - Final Settlement Agreement Signed with Maps.pdf/>.

**GAO analyzes NPS maintenance.** The Government Accountability Office (GAO) offered a mixed report January 13 on the efforts of the Park Service and Congress to catch up with a \$11 billion maintenance backlog. On the upside GAO said that NPS in fiscal year 2015 spent about one-third of its budget on maintenance - \$1.16 billion out of a total appropriation of \$3.3 billion. In addition GAO said NPS has begun deploying a new program called a Capital Investment Strategy to prioritize projects. On the downside GAO said NPS has not developed a system to determine whether the strategy is working. Said GAO, "Evaluating the strategy may help the Park Service determine if the strategy is achieving intended outcomes or if changes need to be made." Sens. Lisa Murkowski (R-Alaska) and Mike Enzi (R-Wyo.) requested the report. Said Murkowski, who chairs the Senate Energy Committee, "The longer our parks go without the attention they need, the more costly it will become for taxpayers to properly steward and restore these historical and cultural gems. I am encouraged that NPS agrees with GAO's recommendations and look forward to seeing them implemented." The report is available at: <http://www.gao.gov/products/GAO-17-136>.

**Park Service workplace rating low.** Out of 305 federal agencies surveyed for employee satisfaction, the Park Service comes in near the bottom, 262<sup>nd</sup>. Other federal land management agencies did a little better with the Forest Service coming in 225<sup>th</sup> and the Bureau of Land Management 240<sup>th</sup>. The Fish and Wildlife Service scored in the top third at 99<sup>th</sup>. The rating was compiled by the Partnership for Public Service, a largely nonpartisan group. Tom Bernstein, president of the Chelsea Piers, is chairman of the group. The organization asked three questions of federal employees: "I recommend my organization as a good place to work. Considering everything, how satisfied are you with your job? Considering everything, how satisfied are you with your organization?" The report is available at: <https://ourpublicservice.org/>.

**Alaska sues Obama hunting regs.** The State of Alaska said January 13 that it has filed a lawsuit against a Fish and Wildlife Service (FWS) rule that limits predator hunting in refuges. The state argues that it has sole authority to regulate hunting in refuges and national parks in Alaska and that its "intensive predator management" policy should stand. FWS issued the regulation on Aug. 3, 2016. Former Fish and Wildlife Service (FWS) Director Dan Ashe detonated the controversy when he published a blog attacking the Alaska policy. "For example, over the past several years, the Alaska Board of Game has unleashed a withering attack on bears and wolves that is wholly at odds with America's long tradition of ethical, sportsmanlike, fair-chase hunting, in something they call 'intensive predator management,'" he said. But Alaska Attorney General Jahna Lindemuth said, "These regulations are about the federal government trying to control Alaskans' way of life and how Alaskans conduct their business. This is contrary to state and federal law."