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<http://www.publiclandsnews.com>.

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Trump orders wholesale revision of fossil fuel rules

Congress and the Trump administration are carrying through rapidly on their promise to reverse Obama administration public lands policies.

Most significantly, on March 28 President Trump issued a sweeping executive order that directs the Interior Department to terminate a coal-leasing moratorium declared by former Secretary of Interior Sally Jewell in January 2016.

Secretary of Interior Ryan Zinke the next day issued an executive order of his own - Secretarial Order 3348 - that terminates the moratorium. (See *following article*).

Environmentalists immediately filed a lawsuit arguing that the Trump administration should have prepared an EIS before cancelling the moratorium.

In a second major public lands energy step President Trump March 28 ordered the Interior Department to "review" for possible termination/revision four major oil and gas rules governing hydraulic fracturing, methane emissions, oil and gas development in national parks, and oil and gas development in national wildlife refuges.

Zinke again on March 29 issued an executive order of his own - Secretarial Order 3349 - directing a review of those regulations. That order tells BLM to begin immediately to take steps to rescind the hydraulic fracturing rule and to report back to him within 21 days on a review of the methane rule, the wildlife refuge oil and gas rule, and the Park Service oil and gas rule.

Zinke summed up, "American energy production benefits the economy, the environment, and national security. First, it's better for the environment that the U.S. produces energy. Thanks to advancements in drilling and mining technology, we can responsibly develop our energy resources and return the land to equal or better quality than it was before."

The energy industry is all in. Said Independent Petroleum Association of America (IPAA) President Barry Russell, who attended the executive order signing ceremony, "Today's action by President Trump calls on his administration to review existing federal agency policies that have held back American energy production, rescinding rules that have limited our economic growth with little benefit. This common sense action stands to provide clear benefits for the economy, consumers, and the environment."

Democrats and environmentalists said they would resist absolutely the Trump policy. Said ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.), "The Trump Administration is sabotaging the United States' chances of becoming the world's clean energy superpower in order to line the pockets of polluters. I will oppose this wrong-headed order with every tool at my disposal."

Said Rhea Suh, president of the Natural Resources Defense Council and a former assistant secretary of Interior in the Obama administration, "This is an all-out assault on the protections we need to avert climate catastrophe. It's a senseless betrayal of our national interests. And it's a shortsighted attempt to undermine American clean energy leadership. We won't surrender our children's future to fossil fuel profits without a fight."

As part of the opposition seven senators March 28 reintroduced the so-called "Keep-it-in-the-Ground" bill (S 750) that would forbid the leasing from onshore public lands of coal, oil, tar sands, oil shale or gas.

Lead sponsor Sen. Jeff Merkley (D-Ore.) said of Trump's climate change policies, "The damage is accelerating, making it an economic and moral imperative that we quickly transform our energy economy from fossil fuels to clean and renewable energy. In that context, it would be a monumental mistake for the U.S. to keep issuing new leases for the extraction and combustion of our citizen-owned gas, coal, and oil."

In a third action against Obama rules, on March 27 Trump signed into law a Congressional resolution (PL 115-12)) that terminates a BLM (2.0) planning rule of Dec. 12, 2016.

Finally, on March 21 the Senate joined the House in approving a resolution (HJ Res 69) that would revoke a rule limiting hunting and fishing in national wildlife refuges in Alaska moves the debate to the Senate. Trump signed HJ Res 69 into law April 3.

The actions are of a piece with the Trump/Republican Congress campaign to undo Obama administration public lands policy, particularly those initiatives that restrict commodity development.

To defeat the rules the House and Senate are attempting to use a Congressional Review Act (CRA) that authorizes the House and Senate to repeal regulations issued in the last 60 legislative days of Congress. The act requires only a simple majority of both the House and Senate, circumventing a Senate filibuster.

Of importance once a rule is revoked the CRA forbids an agency from producing a new rule "substantially" like the old one.

Deployment of the CRA by Congress could provide a shortcut to the Trump administration executive order requiring revision/termination of the Obama administration methane rule, its Park Service oil and gas management rule, and the Fish and Wildlife Service oil and gas management rule. The CRA would simply revoke the rules; the Trump order might require lengthy rule-making procedures and new EISs.

However, the BLM hydraulic fracturing is too old to come under the CRA 60-day qualifier in that it was completed on March 26, 2015. So, unless a federal court blocks the rule, the Trump administration will likely have to undertake a new rule-making effort.

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

The Trump executive order directs the Interior Department to review the rule to identify "burdensome" restrictions and, if deemed necessary, to "as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding those rules." (See separate article page 14.)

Again, the hydraulic fracturing rule is too old to come under the CRA revocation authority.

Methane rule: A signature Republican regulation reversal would undo a BLM oil and gas methane emissions rule of Nov. 15, 2016. The House on February 3 approved a resolution (HJ Res 36) to revoke the rule, but the Senate has not acted yet on a counterpart resolution (SJ Res 11).

The BLM rule would limit the rate of flaring, require frequent inspections by operators and require the replacement of outdated equipment.

The Trump executive order directs the Interior Department to revise/terminate the rule. The Zinke order begins carrying out Trump's direction.

Judge Scott W. Skavdahl in U.S. District Court in Wyoming on January 16 refused for now to halt implementation of the rule. He held that industry plaintiffs have not yet proved they would be harmed by the rule.

However, Skavdahl was skeptical about BLM's argument that the rule is designed to prevent waste, i.e. methane venting, not assume EPA's clean air responsibility. "The Court questions whether the 'social cost of methane' is an appropriate factor for BLM to consider in promulgating a resource conservation rule pursuant to its [Mineral Leasing Act] authority," he held.

Lisa DeVille, chair of Ft. Berthold Protectors of Water and Earth Rights, defended the Obama rule and criticized the Trump administration for attempting to reverse it. "People like me who live with flares want these standards to be implemented and enforced," said DeVille, who lives on the Fort Berthold Indian Reservation in North Dakota. "Night and day, we see flares wasting natural gas. Every day, we breathe polluted air from flares and leaks. These standards protect taxpayers and the health of people who live with oil and gas drilling."

FWS oil and gas rule: On January 30 Rep. Kevin Cramer (R-N.D.) and five of his colleagues introduced a resolution (HJ Res 45) to revoke a Fish and Wildlife Service (FWS) oil and gas management rule of Nov. 14, 2016. That final rule would have FWS tighten its oversight of oil and gas operations within wildlife refuges. The rule went into effect Dec. 14, 2016.

The rule would require a minerals owner to obtain an operations permit and to obtain financial assurance, i.e. a bond to cover any possible damages and reclamation costs.

FWS says that more than 100 refuges host oil and gas operations. That includes almost 1,700 producing wells, and thousands more inactive or plugged wells.

The Trump executive order directs BLM to revise/terminate the rule. The Zinke order begins carrying out Trump's direction.

NPS oil and gas rule: On January 30 Rep. Paul Gosar (R-Ariz.) and five of his Republican colleagues introduced a resolution (HJ Res 46) to revoke a Park Service oil and gas management rule of Nov. 3, 2016.

The NPS rule would subject all oil and gas operations in the national parks to the regulations. The rule was scheduled to go into effect Dec. 5, 2016.

Currently, 12 of the 408 National Park System units host oil and gas operations and 60 percent of those are exempt from NPS regulations. The rule would also require operators to pay the full cost of reclamation.

The Trump executive order directs BLM to revise/terminate the rule. The Zinke order begins carrying out Trump's direction.

BLM planning rule: Trump did not comment March 27 on signing into law the revocation of BLM's planning rule of Dec. 12, 2016, the so-called 2.0 rule.

Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) did, praising the President. "The repeal of this onerous land management planning rule returns power and decision-making authority back to local and state entities in Alaska and western states," she said. "If left intact, it would have harmed grazing, timber, energy development, mineral production, and even recreation on federal lands. Now, those who actually live near BLM lands will once again make planning decisions – not those who work thousands of miles away at BLM headquarters in Washington, D.C."

The Senate had joined the House March 7 in approving the resolution (HJ Res 44) to overturn the BLM planning rule

Alaska hunting rule: Also using the CRA, the Senate the House and Senate approved the revocation of a rule limiting hunting and fishing in national wildlife refuges in Alaska. President Trump signed the resolution into law April 3.

Said Alaska Gov. Bill Walker (I-Alaska), "Many rural communities do not have a Costco or Fred Meyer to shop at, so hunting and fishing are a basic means of survival. The rules put forward by the previous administration did not support that, and I am glad to see these corrections have been made."

Although environmentalists objected strenuously to the resolution, their cause was hampered by the support for the resolution from their hunting and fishing colleagues in the conservation community.

Indeed 27 hunting and fishing groups endorsed the House resolution just before the House approved it February 16 by a vote of 225-to-193. Such conservation groups as Ducks Unlimited, the International Association of Fish and Wildlife Agencies, and the Wildlife Management Institute signed a letter of support for the resolution to House members.

The Wilderness Society worried that the reversal of the BLM rule constitutes the first step toward opening the Arctic National Wildlife Refuge to oil and gas development.

Said the society in an unsigned statement, "But what's even scarier than that is what this vote may hint at for the future. The Arctic National Wildlife Refuge is America's last big, pristine and wild place, and it is facing challenges greater than at any time in more than a decade. When the time comes to decide its future, we must be sure these lawmakers don't repeat their mistake."

At issue is an Aug. 8, 2016, rule of the Fish and Wildlife Service (FWS) that pre-empted a State of Alaska policy authorizing "intensive predator management" in wildlife refuges in Alaska. The FWS rule curbed a state policy governing the hunting of bears and wolves.

The State of Alaska filed a lawsuit against the FWS rule on January 13 and the Safari Club International filed a separate lawsuit on January 19.

President Trump's executive order is available at:
<https://www.whitehouse.gov/the-press-office/2017/03/28/presidential-executive-order-promoting-energy-independence-and-economy-1>.

Zinke's secretarial order on the coal lease moratorium is available at:
https://www.doi.gov/sites/doi.gov/files/uploads/so_3348_coal_moratorium.pdf.

Zinke's secretarial order on reviewing other energy regulations is available at: https://www.doi.gov/sites/doi.gov/files/uploads/so_3349_american_energy_independence.pdf.

The environmentalists' lawsuit against terminating the coal lease moratorium is available at:
http://earthjustice.org/sites/default/files/files/17-03-29_Complaint-File-Stamped.pdf.

Zinke lifts coal-leasing moratorium; enviros file suit

President Trump issued March 28 a sweeping executive order that directs the Interior Department to terminate a coal-leasing moratorium declared by former Secretary of Interior Sally Jewell in January 2016.

Secretary of Interior Ryan Zinke the next day issued an executive order of his own - Secretarial Order 3348 - that terminates the moratorium. The Zinke order says "the public interest is not served by halting the federal coal program for an extended time, nor is a PEIS required to consider potential improvements to the program." In other words the administration does not believe the prior work done on an EIS by the Obama administration requires continuation of that work, or an EIS to back a reversal.

Environmentalists immediately filed a lawsuit arguing that the Trump administration should prepare an EIS before cancelling the moratorium.

"Defendants' lifting of the nationwide coal leasing moratorium is a major federal action that will result in significant environmental impacts. Defendants, however, failed to complete the PEIS, or even to prepare the less-detailed 'environmental assessment,' prior to making their decision to lift the moratorium, in violation of NEPA," says the lawsuit.

It was filed in U.S. District Court for Montana by the Earthjustice law firm on behalf of seven environmental groups and the Northern Cheyenne Tribe.

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

Still, the National Mining Association said the moratorium was unnecessary. Said association president Hal Quinn, "The moratorium on federal coal leasing was entirely without merit and rested on politically contrived reasoning. The moratorium was never about a fair return to the taxpayer, and all about capitulating to the demands of the 'keep-it-in-the-ground' movement. By every metric, the federal coal leasing program is highly profitable to taxpayers with annual leasing revenues in 2015 double the amount received 12 years ago."

By filing their lawsuit environmentalists posted notice that they will contest the termination of the moratorium in every way feasible.

Sen. Edward Markey (D-Mass.) thinks the coal industry should pay more than it does now. He introduced legislation (S 737) March 27 that would increase the federal royalty on coal from 12.5 percent of value to 18.75 percent, reduce the standard lease term from 20 years to ten years and impose a \$100 per acre rent.

Said Markey of Trump's whole climate change package, including the coal-leasing moratorium termination, "This executive order is one massive giveaway to big oil and coal corporations at the expense of taxpayers and decades of progress on climate change, clean energy and public health protections."

A lawsuit against the coal moratorium may soon be rendered moot by the Trump administration action, but it still grinds on in U.S. District Court for Utah, Central Division.

In the complaint Kane and Garfield Counties contend the Jan. 15, 2016, moratorium violated several laws, including the Mineral Leasing Act and the National Environmental Policy Act.

Finally, Congressional Democrats took aim March 31 at a provision of law that allows coal companies to self-bond, which is largely regulated by states.

The Democrats, led by ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.), introduced legislation (S 800, HR 1819) March 30 that would flat out prohibit self-bonding in the future and would have the Office of Surface Mining phase out existing self bonds.

Several major coal companies declared bankruptcy last year and negotiated agreements with states or bankruptcy courts to reduce their overall bonds.

Said Cantwell, "As coal companies emerge from bankruptcy, we should act now to avoid the mistakes of the past. That means coal companies need to set aside real resources for cleanup, not so-called 'self-bonds' that risk taxpayer dollars to clean up the mess these companies can leave behind."

The Markey and Cantwell bills are probably doomed because the Republican Congress and President Trump are going in the opposite direction by helping industry in any way they can.

President Trump's executive order is available at:

<https://www.whitehouse.gov/the-press-office/2017/03/28/presidential-executive-order-promoting-energy-independence-and-economy-1>.

Zinke's secretarial order on the coal lease moratorium is available at: https://www.doi.gov/sites/doi.gov/files/uploads/so_3348_coal_moratorium.pdf.

The environmentalists' lawsuit against terminating the coal lease moratorium is available at: http://earthjustice.org/sites/default/files/files/17-03-29_Complaint-File-Stamped.pdf.

Congress predictably heading for another approps crisis

The House and Senate are, as usual, quickly approaching a deadline over full, fiscal year 2017 omnibus appropriations. With only one week left before a current interim fiscal 2017 spending law expires on April 28, appropriators have not yet introduced a final bill.

Because Congress will be on Easter vacation for the next two weeks that leaves only the last week of April to write a bill, move it through committees, and through the House and Senate floors.

Congressional Republican leaders are reportedly struggling to assemble a full bill that can garner a majority in the House and 60 votes in the Senate.

The major obstacles right now are not public lands issues. Rather, appropriators are facing demands from the Trump administration for significantly more Defense spending than anticipated and new money for a Mexican wall.

But some Congressional Republicans are attempting to advance President Trump's call for reduced EPA funding by cutting programs now. EPA money is included in an Interior and Related Agencies spending bill.

If appropriators don't include the Defense and wall money, conservatives will rebel. If appropriators do include the money, enough Senate Democrats may rebel to prevent a 60-vote majority.

Meanwhile, the Trump administration is already addressing fiscal 2018 spending. When the administration outlined a fiscal 2018 budget request March 16, it self-admittedly came up short on the details. The dotted i's and crossed t's will come later this spring.

So the Heritage Foundation, which reportedly created the framework for the March 16 Trump budget, has stepped into the breach with more detailed recommendations. Those recommendations repeat the foundation's past call for aggressive development of natural resources on the public lands and total elimination of the Land and Water Conservation Fund (LWCF).

In a March 28 posting the foundation says of development of the natural resources of the public lands, "Congress should open all federal waters and all non-wilderness, non-federal-monument lands to exploration and production of America's natural resources."

The foundation didn't say how much money such activity would produce for the federal budget in fiscal 2018, but it estimated an increase in gross domestic product of \$3.7 *trillion* in the next 17 years from it.

Of LWCF the foundation said, "This massive amount of federal ownership has resulted in land mismanagement, stifled opportunities for recreation and resource production, and poor environmental management. Rather than placing more decisions under Washington's control, Congress should empower the states and local communities to protect their environments, maximize the value of the land, and create new opportunities for economic development."

The foundation said cancellation of LWCF would free up \$20.5 billion, the amount of offshore oil and gas royalties paid into the fund but not yet spent. (Since 1965 Congress has spent \$17.5 billion of royalty money on LWCF projects.)

For its part the Trump administration March 16 proposed a \$1.5 billion reduction in Interior Department spending for fiscal 2018, down to \$11.6 billion from the current budget of \$13.1 billion.

Despite the overall decrease the stripped-down 62-page Trump budget request (the Heritage Foundation recommendation is 245 pages long) would increase spending on energy development onshore and offshore at unspecified levels.

While the administration wouldn't eliminate LWCF, as the Heritage Foundation recommended, it said its budget, "Reduces funding for lower priority activities, such as new major acquisitions of Federal land. The Budget reduces land acquisition funding by more than \$120 million from the 2017 annualized CR level and would instead focus available discretionary funds on investing in, and maintaining, existing national parks, refuges and public lands."

Assuming the "2017 annualized level" is based on the fiscal 2016 final appropriation for LWCF, the Trump administration would decrease land acquisition from \$247 million to \$127 million in fiscal 2018.

The budget would also maintain wildfire spending in the Forest Service and the Interior Department at the 10-year average of \$2.4 billion. The administration did not suggest a shift of emergency wildfire spending out of appropriations, as both Republican and Democratic Congressional leaders have recommended.

To reach its 12 percent decrease in spending for the Interior Department the Trump administration would eliminate programs such as National Heritage Areas.

Speaking of fire, the budget plays with it in recommending an unspecified decrease in allocations for the payments-in-lieu of taxes program. That county assistance program is universally popular among Republicans and Democrats.

Finally, the fiscal 2018 budget "streamlines operations" of BLM, the Fish and Wildlife Service, and the National Park Service. The request does not say how it would streamline operations but it is presumed the administration would both decrease funding and shift employees out of regional and national headquarters to the field.

The administration action March 16 consisted of the submittal of a budget request with top-line department numbers and major program recommendations. Details will be fleshed out later this spring.

Although the spending recommendations of the Trump administration are said to be "dead on arrival" in Congress, the recommendations almost certainly forecast major spending reductions in upcoming appropriations bills.

Congress will have the final say as to how much money individual agencies receive in traditional appropriations bills.

Senate Democrats reacted negatively to the proposed administration cuts in the Interior Department budget. Led by ranking Senate Energy Committee Democrat Maria Cantwell (Wash.), 12 Democrats wrote Trump March 21, "The blueprint's proposal to boost leasing and permitting for fossil fuel production, combined with your Administration's actions to roll back regulations that keep Americans safe and healthy and ensure a fair return to taxpayers, is deeply disappointing."

Meanwhile, House and Senate appropriators are attempting to wrap up fiscal 2017 appropriations bills before a temporary spending resolution (PL 114-254 of Dec. 10, 2016) expires on April 28.

The House and Senate are operating under an overall spending agreement between the Obama White House and Congress (PL 114-74 of Nov. 2, 2015). It set an overall fiscal 2017 spending cap of \$1.070 trillion. But conservative Republicans are eager to lower that cap and add new money for the Department of Defense and the Mexican wall.

An interim fiscal 2017 spending resolution (PL 114-254 of Dec. 10, 2016) is keeping the government in money through April 28. The measure roughly maintains fiscal 2016 spending under roughly the same terms and conditions.

For the record the House approved its version of a fiscal 2017 Interior and Related Agencies spending bill (HR 5538) July 14 and the Senate Appropriations Committee approved its bill (S 3068). The two bills also include both wildfire and payments-in-lieu of taxes spending, which eat up much of annual appropriations.

Interior proposes cancellation of energy royalty rule

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

The energy industry had complained that the July 1, 2016, Obama administration rule of the Office of Natural Resources Revenue (ONRR) had unreasonably complicated the valuation of their product and the reporting of that valuation.

In a major change the Obama regulations sought to replace an old standard that applied (and may apply again) a series of benchmarks to set the

royalty price. In the Obama rule ONRR would begin with a first affiliated sales price, followed by index prices.

Said the Interior Department in announcing the proposal, "The repeal would provide certainty and clarity to the regulated community by continuing to require compliance with lawful, longstanding, and well-known procedures."

ONRR actually took two steps in the April 4 *Federal Register*. In one it proposed repeal of the Obama rule and in the other it requested recommendations on whether or not the Bush administration royalty rule should be retained.

The Bush rule is already back in place because on February 22 ONRR *postponed* the implementation of the July 1, 2016, rule that went into effect January 1. That immediately reinstalled the Bush rule, although ONRR is now proposing to review it through the regulatory process.

When Interior told the players informally last week that it intended to terminate the Obama rule, it set off celebrations in the oil and gas industry and among Republicans on the House Natural Resources Committee.

Said committee chairman Rob Bishop (R-Utah), "Endless layers of regulation don't yield greater returns for taxpayers, they paralyze economic activity. In this case, the rule hit marginal producers - the small businesses that support local economies - the hardest."

Said American Petroleum Institute Upstream Group Director Erik Milito, "Certainty and fairness in the leasing process is a critical part of ensuring consumers and businesses can benefit from domestic energy production, which is why we are pleased that ONRR recognizes the substantial burdens and potential legal flaws associated with this rule. It's lack of clarity and certainty would stifle energy production on federal lands instead of fostering oil and natural gas production, which benefits American consumers and strengthens our national security."

Secretary of Interior Ryan Zinke said March 29 that he is re-establishing a 28-member Royalty Policy Committee of stakeholders to advise on all energy royalties, including from renewable energy projects.

On April 3 the department requested nominations for the committee in the *Federal Register*. Nominations are to be submitted by May 3.

When ONRR postponed implementation of the rule in February it cited for authority for its action Section 705 of the Administration Procedures Act that permits an agency to postpone the effective date of a rule.

But Sen. Maria Cantwell (D-Wash.) at the time questioned the legality of ONRR's action. She said the Section 705 unilateral postponement authority only applies to rules that have not yet gone into effect; the oil, gas and coal royalty rule had gone into effect January 1.

Now Interior has taken one more step and proposed repeal of the rule outright.

In its April 4 *Federal Register* notice ONRR said it had found lots of problems with the Obama rule, "including but not limited to, how to value coal production in certain non-arm's length transactions, how to value coal

when the first arm's-length sale of the coal is electricity, how to value gas in certain no-sale situations, and under what circumstances, and on whom, ONRR's valuation determinations are binding."

In announcing the stay in February ONRR's Deputy Director James D. Steward said he was invoking the Administrative Procedures Act because of several lawsuits filed against the rule. "In light of the pending litigation, ONRR has decided to postpone the effective date of the 2017 Valuation Rule until the litigation is resolved pursuant to Section 705 of the Administrative Procedure Act. 5 U.S.C. 705," Steward said.

The oil, gas and coal industries have filed three separate lawsuits against the ONRR rule, one by Cloud Peak Energy, Inc., one by the American Petroleum Institute and one by Tri-State Generation and Transmission Association, Inc.

Congress is in the game on industry's side. On February 13 Rep. Scott Tipton (R-Colo.) introduced a resolution (HJ Res 71) that would overturn the royalty rule using the Congressional Review Act. That resolution has not yet begun to move in the House. In the Senate Sen. Steve Daines (R-Mont.) introduced a counterpart resolution (SJ Res 29) March 2. The Daines resolution has not begun to move either.

Separately, the full House approved a fiscal year 2017 appropriations bill (HR 5538) on July 14, 2016, that would forbid ONRR from spending any money to implement the royalty rule. The Senate Appropriations Committee approved a counterpart bill (S 3068) on June 16, 2016, without the provision.

In a related development two senior House Democrats March 30 asked the Government Accountability Office (GAO) to assess whether ONRR is collecting all the royalties it should.

"We don't know whether companies extracting and selling our resources are reporting accurately or paying their fair share to the public, and that is unacceptable," ranking House Natural Resources Democrat Raúl M. Grijalva (D-Ariz.) said. He submitted the request for a study to GAO along with Rep. Alan Lowenthal (D-Calif.)

In their letter to GAO Grijalva and Lowenthal said GAO had in the past assessed ONRR's production verification but it had not assessed ONRR's compliance program.

The Democrats' letter is available at:
<http://democrats-naturalresources.house.gov/grijalva-lowenthal-gao-request-for-onrr-royalty-and-enforcement-review-march-30-2017>.

House GOP aims ESA discontent at federal consultations

House Republicans and their allies attacked March 28 a provision of the Endangered Species Act (ESA) that requires land managers to consult with the Fish and Wildlife Service (FWS) on most major public lands projects.

Critics of the provision - Section 7 - said FWS and environmentalists use such consultations to delay projects by demanding mitigation requirements and by demanding additional reviews of new information. As a result FWS and

its sister agency the National Marine Fisheries Service often don't meet deadlines for completing reviews.

At a March 28 hearing of the House subcommittee on Oversight of the House Natural Resources Committee, chairman Raúl Labrador (R-Idaho) summed up, "Projects are stalled, federal agencies force costly surveys or studies, and often require questionable or unattainable mitigation measures, sometimes at a cost of millions of taxpayer dollars, all due to section 7. Consultations are frequently handled inconsistently between service regions, and are often delayed by local service employees."

Section 7 is but one provision of the ESA that western Republicans object to, so the Senate Environment Committee and the House resources panel have undertaken a broad campaign to rewrite the law in this Congress.

At the March 28 hearing Labrador said committee chairman Rob Bishop (R-Utah) is expected to address reform of the law "later this Congress."

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

That the Republican Congress, in concert with the Trump administration, intends to make significant changes in the law is a given. But what changes they propose won't be easy to enact in this Congress because the ESA traditionally has enjoyed some Republican support and strong public support.

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

The March 28 House hearing focused just on Section 7 consultations. In feature testimony Hecla Mining Company General Manager Douglas Stiles described a Rock Creek Project in the Cabinet Mountains Wilderness in Montana that has been subjected to 30 years of Section 7 consultations, and still has not been approved.

"Given the length of time this project has been under review you may think that the project impacts must be significant," he said. "Nothing could be further from the truth. As described above, the mine is underground in a benign ore body with less than 500 acres of total surface disturbance, none of which is within the Wilderness and most is some 3 miles away from the wilderness boundary."

Stiles concluded, "Near constant litigation combined with the need to review anew all resource areas every time any part of a decision is remanded, only lengthens the process and brings fresh litigation fodder to the table."

Committee Democrats said Hecla was not in a good position to criticize an environmental law because it had paid a \$263 million settlement in 2011 for damage done from its silver mining in the Silver Valley in Idaho. The Idaho Panhandle National Forest was affected by the case.

On behalf of Section 7 of the ESA Defenders of Wildlife Vice President Ya-Wei Li told the House subcommittee that the Rock Creek Project is an outlier and that most Section 7 consultations are wrapped up in a timely manner.

He said a 2015 study conducted by Defenders "found that out of over 88,000 projects that underwent consultations in seven years, none was stopped because of the U.S. Fish and Wildlife Service finding that a project would jeopardize a species or adversely modify critical habitat. We also found that during that time, the median duration of informal consultations was just 13 days and formal consultations was just 62 days."

He concluded, "Less than 2 percent of consultations failed to meet the 135-day timeframe allowed by ESA regulations without a mutual extension. And nearly 93 percent of the projects during that time did not even need to go beyond the first, informal stage of consultation."

Chairman Labrador said that Defenders was not in a good position to defend the ESA because it had brought more than 80 ESA lawsuits in the last five years.

The Western Governors' Association in June 2016 recommended a laundry list of major changes in the ESA, including giving the states a more substantive role in listing decisions and a larger role in management of imperiled species. The resolution would also delay judicial review of listing decisions until states had an opportunity to help a species recover.

But environmentalists said the law is working and that while not many species have recovered, it often takes decades for a species to recover.

House, Senate begin work on critical minerals measures

Can western Republicans in this Congress parlay a lack of critical minerals in this country into legislation mandating faster processing of *all* mining permits?

Such an attempt may be on the table later this year when Congress takes up massive infrastructure legislation.

Right now the House subcommittee on Energy and Minerals Resources and the Senate Energy Committee are going in slightly different directions on critical minerals legislation, with House Republicans backing more aggressive permitting legislation than their Senate counterparts.

The House subcommittee held a hearing March 21 on the need for minerals for infrastructure projects. At the hearing Rio Tinto Copper & Diamonds endorsed legislation (HR 520, S 145) that would direct the Interior Department to speed permits and limit environmental reviews. The legislation would apply to all minerals, not just critical minerals.

"The legislation carefully addresses the deficiencies of the outdated U.S. permitting system without changing environmental and other protections afforded by current laws and regulations," said Nigel Howard, managing director of the company. "The bill provides for efficient, timely and thorough permit reviews and incorporates best practices for coordination between state and federal agencies."

The Senate Energy Committee held its own hearing March 28 and committee chairman Lisa Murkowski (R-Alaska) singled out quite different lead Senate legislation. Her bill from the last Congress would encourage agencies to move faster on processing permits, but it would neither mandate quick action on permits as the House bill would nor limit environmental reviews.

Still, Murkowski criticized federal agencies for slow permitting. "When it comes to permitting delays for new mines, our nation is among the worst in the world, so fixing our broken system is one of the single most important steps we can take," she said.

In the last Congress the Senate included Murkowski's critical minerals bill in omnibus legislation that expired in the final days of the Congress.

The House has approved its more aggressive permitting bill four times in recent years: on July 12, 2012, by a 256-to-106 vote; on Sept. 13, 2013, by a 246-to-178 vote; on Sept. 18, 2014, in a package of House bills called the Jobs for America Act; and on May 25, 2016, in a House version of an omnibus energy bill.

But neither the Murkowski bill nor the House bill has come close to making it across the finish line. The ticket this Congress may be a trillion-dollar infrastructure initiative advocated by President Trump.

And that's what House subcommittee chairman Paul Gosar (R-Ariz.) focused on at his hearing. "Aggregates such as crushed stone, sand, and gravel are the literal foundation of many of our infrastructure projects," he said. "Expedited permitting regimes for infrastructure projects will have little to no effect if the mines that supply materials to those projects do not share the same accelerated process."

As we reported in February two recent independent reports are giving the hard rock mining industry hope that legislation to expedite mining permits will make it through this Congress.

The most recent report from the U.S. Geological Survey (USGS) circulated in early February said that the number of nonfuel minerals being imported that the United States depends on increased in 2016. The other report from the Government Accountability Office (GAO) on Oct. 3, 2016, held that most experts in the critical minerals field believe that slow processing of mining permits is a significant problem.

Together, industry says, these reports argue for the enactment of the bill (HR 520, S 145) that would direct the Interior Department to speed permits and limit environmental reviews.

The hard rock mining industry has long complained that permitting for hard rock mines can take as long as ten years. And industry has complained that half of the public lands in the West are off limits to hard rock mining, including 10 million acres withdrawn to protect the greater sage-grouse.

Thus industry allies Sen. Dean Heller (R-Nev.) and Rep. Mark Amodei (R-Nev.) have introduced S 145 and HR 520 that would have BLM and the Forest Service first appoint a "project lead" to oversee processing of both exploration permits and mining permits for all minerals - not just critical minerals. Then it would have the project lead "set and adhere to timelines

and schedules for completion of the permitting process, set clear permitting goals and track progress against those goals."

Environmentalists have pushed back against the Heller-Amodei bill. Says the Earthworks environmental group, "(The bill) would truncate the mine permitting process and eliminate meaningful environmental review. It threatens water resources, and limits the ability of mining-impacted communities to protect their land, water and health."

The Obama administration opposed the Heller-Amodei bill in the last Congress but there is a new administration in town that is more sympathetic to mining.

BLM directed to begin work on rescinding fracking rule

As part of the Trump administration's new pro-development energy policy Secretary of Interior Ryan Zinke March 29 ordered BLM to begin the groundwork toward rescinding a March 2015 hydraulic fracturing rule.

Unlike several other department energy regulations, the hydraulic fracturing rule is too old to come under Congressional repeal authority established by the Congressional Review Act. So BLM will presumably have to go through the lengthy process of preparing environmental documentation and proposing and completing a new rule.

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

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

The Justice Department told the 10th Circuit that the Trump administration is reviewing existing Interior Department regulations, and, "As part of this process, the Department has begun reviewing the 2015 Final Rule (and all guidance issued pursuant thereto) for consistency with the policies and priorities of the new Administration. This initial review has revealed that the 2015 Final Rule does not reflect those policies and priorities. Accordingly, the Department through the BLM has begun the process to prepare a notice of proposed rulemaking for publication in the Federal Register to rescind the 2015 Rule."

Justice said BLM anticipates publishing a notice of proposed rulemaking by June 16.

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

A March 28 executive order from President Trump and the March 29 secretarial order from Zinke directs the Interior Department and BLM to get rid of the rule. The Trump order tells the Interior Department to review the

rule to identify "burdensome" restrictions and, if deemed necessary, to "as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding those rules."

The shortcut to removing Obama administration energy rules is the Congressional Review Act (CRA) that authorizes the House and Senate to repeal regulations issued in the last 60 legislative days of Congress. The act requires only a simple majority of both the House and Senate, circumventing a Senate filibuster.

Of importance once a rule is revoked the CRA forbids an agency from producing a new rule "substantially" like the old one.

However, the hydraulic fracturing rule was published well before the CRA deadline. So, unless a federal court blocks the rule - which it has - the Trump administration will have to undertake a new rule-making effort.

Think tank thinks Trump has authority to undo monuments

The influential American Enterprise Institute (AEI) published a report last week that argues President Trump has unlimited authority to unilaterally revoke national monument designations.

The AEI report disagrees with a 1938 U.S. Attorney General opinion and a Congressional Research Service report of last fall that doubt Trump enjoys such authority.

But AEI researchers John Yoo and Todd Gaziano argue that other legal precedent does allow Trump to reverse such Obama administration national designations as a 1.35 million-acre Bears Ears monument in southern Utah.

Referring to the 1938 decision of former Attorney General Homer Cummings, Yoo and Gaziano say, "We think this opinion is poorly reasoned; misconstrued a prior opinion, which came to the opposite result; and is inconsistent with constitutional, statutory, and case law governing the president's exercise of analogous grants of power. Based on a more careful legal analysis, we believe that a general discretionary revocation power exists."

They add, "We believe a president's discretion to change monument boundaries is without limit, but even if that is not so, his power to significantly change monument boundaries is at its height if the original designation was unreasonably large under the facts as they existed then or based on changed circumstances."

Yoo is a former deputy attorney general in the Bush administration famous for his opinions during the Iraq War used by the Central Intelligence Agency.

The report was made public March 29 at an event at the American Enterprise Institute attended by House Natural Resources Committee Chairman Rob Bishop (R-Utah) and Sen. Mike Lee (R-Utah).

Bishop was quoted in the Utah press, "Before this paper, most arguments advocating against this authority were based on conjecture and agenda-driven

hyperbole. This paper elevates that debate and provides a sound legal basis for the president's ability to reduce and rescind national monuments."

From the other side ranking House Natural Resources Committee Democrat Rep. Raúl M. Grijalva (D-Ariz.) last month attempted to prod Secretary of Interior Ryan Zinke into taking a position on the legality of a Presidential reversal of a national monument designation.

Thus far Zinke has not bitten. But he said in his January confirmation hearing that he would make a visit to the Bears Ears area a top priority.

Grijalva wrote Zinke, "Now that you have been sworn in as Secretary, your role in counseling President Trump regarding the future of the special places under the jurisdiction of your Department is no longer theoretical; advising the President on the future of Bears Ears and other National Monuments is now your solemn responsibility. Do you believe that the President has the legal authority to overturn an existing national monument designation?"

In January Utah's two senators and four House members jointly said they would ask Congress and President Trump to undo the Bears Ears designation.

In its report the Congressional Research Service said, "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. 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 American Enterprise Institute report is available at:
<https://www.aei.org/publication/research/>.

The Congressional Research Service report is available at:
https://www.peer.org/assets/docs/12_5_16_CRS_memo.pdf.

President Obama set a record by designating 34 national monuments on his watch, often to the dismay of western Republicans and plaudits from Conservationists. He capped it off January 12 by designating 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, is now 114,000 acres.

The Utahns aren't the only ones who are demanding revocation of national monuments. On March 7 New England fishermen argued in a new lawsuit that President Obama did not have authority under the Antiquities Act to designate national monuments beyond the 12-mile territorial sea limits. The New England fishermen in their lawsuit in the U.S. District Court for the District of Columbia are objecting to the Sept. 15, 2016, designation of a 4,913 square-mile Northeast Canyons and Seamounts National Marine Monument.

Separately, State of Maine Gov. Paul R. LePage (R) has asked President Trump to "undo" President Obama's designation of an 87,500-acre North Woods national monument in Maine. The National Park Service manages the area. LePage said February 22 that he wrote Trump on February 14 and asked him to either revoke the designation or, alternatively, allow the State of Maine to manage the area.

IBLA decisions

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

Subject: Land exchange.

BLM decision: BLM will exchange federal lands for private lands after preparing an environmental assessment (EA).

Appellant advocacy group: The exchange is not equal because the federal lands are worth more than the private lands.

IBLA decision: Affirmed BLM decision.

Case identification: *Colorado Wild Public Lands Inc.* 189 IBLA 392. Decided March 27, 2017. Twenty-three pages. Appeal and a renewed petition to stay the effect of BLM's denial of a protest opposing a land exchange.

IBLA argument: IBLA Administrative Judge Sylvia M. Riechel affirmed a BLM decision approving a land exchange in Colorado between BLM and a noted billionaire. The appellant advocacy group argued that the federal land was worth far more than the private land, but judge Riechel held that the tracts were of equal value, some \$4 million each. The appellant also argued that BLM should have described in detail an environmental mitigation strategy. But Riechel countered that because BLM did not rely on a mitigation strategy in its EA it didn't have to detail such a strategy. The industrialist Leslie Wexner with a net worth of more than \$6 billion proposed the exchange to consolidate holdings in his estate near Aspen, Colo.

Subject: Mining claim decision reconsidered.

BLM decision: BLM will declare a mining claim void if a claimant fails to file a notice of intent to hold the claim on time.

Initial IBLA decision: Reversed, BLM should give claimant opportunity to submit notice because requirement is regulatory, not statutory.

Appellant BLM: IBLA erred because requirement is statutory and the claim should be declared void.

IBLA decision: Reversed itself and affirmed original BLM decision.

Case identification: *Barton Coffman Sarah Kuhl (On Reconsideration)*. 190 IBLA 1. Decided March 28, 2017. Ten pages. Motion for reconsideration of the Board's decision in *Barton Coffman* 187 IBLA 338 (2016), reversing and remanding a decision of the California State Office of BLM, which declared a placer mining claim abandoned and null and void for failure to file a notice of intent to hold. CAMC296745.

IBLA argument: IBLA Deputy Chief Administrative Judge James F. Roberts reversed a previous board decision involving the filing of a notice to retain a mining claim. In BLM's July 7, 2016, decision it held that Barton Coffman forfeited his mining claim by failing to file a notice of intent to retain it in a timely manner. BLM held that the requirement is statutory and it had no choice but to void the claim. In an initial IBLA decision on May 5, 2016, the board ruled the requirement was regulatory, not statutory, and BLM should give Coffman an opportunity to file the notice. When BLM appealed back the IBLA decision, the board reversed course in this decision, holding it erred in declaring the filing requirement regulatory. Said Roberts, "Because the requirement to a notice of intent to hold in any year after the year of location is required by section of FLPMA, it is a statutory requirement in addition to a regulatory requirement and therefore is not subject to cure."

Notes

Senate panel approves 65 measures. The Senate Energy Committee began its annual march toward an omnibus lands and waters bill March 30, approving 65 measures of varying degrees of gravity. One major measure (S 733) would advance demands by hunters and fishermen for greater access to the public lands. S 733 would declare BLM and Forest Service lands open to hunting and fishing unless specifically closed. And it would establish as policy the expansion of hunting and fishing opportunities on the public lands. Committee Chairman Lisa Murkowski (R-Alaska) is the lead sponsor of S 733.

Each year the energy committee and the counterpart House Natural Resources Committee approve more than 100 individual bills in anticipation they will be bunched in a giant omnibus bill at the end of the year or of the two-year Congress. Sometimes that strategy works and more often it doesn't.

BLM foundation bill introduced. Reps. Jody B. Hice (R-Ga.) and Alan Lowenthal (D-Calif.) introduced last month legislation (HR 1668) that would establish for the first time a Bureau of Land Management Foundation. The House approved a predecessor bill last year on July 6, 2016. In the last Congress Sen. Martin Heinrich (D-N.M.) introduced a counterpart bill but it did not go anywhere. Under HR 1668 foundation donors would be able to specify what programs should receive their money. On the list are wild horses and burros, national conservation areas, recreation resources and so on. By the same token donors could direct the distribution of their contributions to the reclamation of abandoned hard rock mining and energy sites. Said Lowenthal, "The establishment of a Bureau of Land Management Foundation is long overdue. It would provide the BLM with an important partner, and allow private individuals and corporations to support the BLM's diverse mission, which includes activities such as managing wild horses, protecting cultural resources and cleaning up abandoned hardrock mines." In the last Congress the bill was endorsed by the Obama administration and by a group of BLM retirees called the Public Lands Foundation. Other land management agencies already have similar foundations, including the National Park Foundation, the National Fish and Wildlife Foundation, and the National Forest Foundation. Like those foundations, a BLM entity would have the authority to operate like a nonprofit group and collect and distribute money.

Report: O&G creates jobs. The Western Energy Alliance published a new report last month that projects a significant increase in upstream oil and natural gas jobs with a 25 percent increase in production. The alliance said such an increase - fueled by pro-development Trump administration policies - would increase upstream employment by 19,363 jobs to a total of 196,421. The industry group recommended aggressive action to process permits and complete environmental documentation, among other things. "President Trump has clearly signaled a shift away from punishing the industry to actually encouraging domestic production," said Kathleen Sgamma, president of the alliance. "As a result, the western oil and natural gas industry could help him create jobs and economic opportunity across the nation." Among other things Sgamma recommended that the Senate follow the House lead and approve the revocation of a BLM methane emissions rule (HJ Res 36). More information is available at: <https://www.westernenergyalliance.org/press-room/western-producers-could-help-pres-trump-create-19363-new-jobs>.

Tongass timber sales faulted. The environmental group Public Employees for Environmental Responsibility (PEER) April 3 asked Senate Agriculture Committee leaders to pressure the Trump administration to insure that Tongass National Forest timber sales don't waste money. PEER said a June 2016 Forest Service report showed that two recent Tongass timber sales each brought in less money than anticipated, when compared to administrative costs. PEER wrote Senate Agriculture Committee Chairman Pat Roberts (R-Kansas) and ranking Democrat Debbie Stabenow (D-Mich.), "PEER is urging you to examine these concerns and to press the upcoming nominees for the Chief of the Forest Service and the Agriculture Undersecretary of Natural Resources and Environment to take steps to ensure that all future timber sales both protect both the forest Resources and the taxpayer's pocketbook." Of course the entire Alaska Congressional delegation has charged that the Obama

administration devastated the timber industry by limiting timber sales in the Tongass. The PEER letter is available at:
[https://www.peer.org/assets/docs/fs/4 3 17 Senate Cmte ltr.pdf](https://www.peer.org/assets/docs/fs/4%203%2017%20Senate%20Cmte%20ltr.pdf).

Boxscore of Legislation

Fiscal year 2017 appropriations (until April 28)

HR 2028 (Simpson). President Obama signed into law December 10 as PL 114-254. Extends funding at fiscal 2016 levels through April 28.

Fiscal year 2017 appropriations (full year)

HR 5538 (Calvert), S 3068 (Murkowski). House approved July 14. Senate committee approved June 16. Both would increase wildfire, PILT appropriations. Critics say numerous riders cripple bills.

Rule restrictions

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

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

(Specific rules) HJ Res 36 (Bishop), HJ Res 44 (Cheney), HJ Res 45 (Cramer), HJ Res 46 (Gosar), HJ Res 56 (Pearce), HJ Res 68 (Cramer), HJ Res 82 (Westerman), HJ Res 35 (Young), HJ Res 71 (Tipton), SJ Res 11 (Barrasso), SJ Res 15 (Murkowski), SJ Res 18 (Sullivan). President Trump signed into law March 27 (PL 115-12) a resolution reversing a BLM planning rule (HJ Res 44). President Trump signed into law April 3 a resolution reversing a FWS hunting rule in Alaska (HJ Res 35). The House approved HJ Res 36, a methane rule reversal, February 2. HJ Res 45 would reverse FWS oil and gas rule and HJ Res 46 would reverse an NPS oil and gas rule. HJ Res 56, HJ Res 68 and HJ Res 82 would reverse BLM oil and gas orders. HJ Res 71 would revoke an ONRR oil, gas and coal royalty rule.

Federal land transfers

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

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

National monument restrictions

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

New national monuments

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

Greater sage-grouse

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

Wolf in Wyoming

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

Critical minerals

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

Energy policy limitations

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

Arctic National Wildlife Refuge (development)

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

Arctic National Wildlife Refuge (wilderness)

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

BLM foundation

HR 1668 (Hice.) Hice introduced March 22. Would establish a BLM foundation, like those supporting NPS, FWS and FS.

Land and Water Conservation Fund

HR 502 (Grijalva), S 569 (Cantwell). Grijalva introduced January 12. Cantwell introduced March 8. Would make the program permanent.

Park Service Centennial

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

Federal Parks & Rec

Addendum to Public Lands News

April 7, 2017

- * *Senators propose NPS maintenance fund*
- * *GOP asks feds to be nicer to visitors*
- * *Notes*
- * *Appropriators face another crisis (See Public Lands News article)*
- * *Think tank weighs in on undoing monuments (See Public Lands News article)*

Senators propose fund to reduce NPS maintenance backlog

Four senators introduced legislation (S 751) March 28 that would establish an ambitious fund that would guarantee as much as \$500 million per year for Park Service maintenance.

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

The legislation may be a tough sell because the Trump administration has proposed a fiscal year 2018 budget that would slash Interior Department appropriations by \$1.5 billion. While the National Park Service Legacy Act would not subject the program to appropriations, it would increase federal spending.

Lead sponsor Sen. John Portman (R-Ohio) said the measure builds on Park Service Centennial legislation that Congress passed in December (PL 114-289 of Dec. 16, 2016).

That law includes a Centennial Challenge Fund, a National Park Foundation Endowment and expansion of National Park Foundation authorities, but with minimal funding.

Said Portman, "Last year President Obama signed into law my National Park Service Centennial Act, which created two new public-private partnerships that will partially reduce the National Park Service's \$12 billion maintenance backlog. This bill will create the Legacy Restoration Fund to provide the National Park Service with funds for deferred maintenance projects, including \$75 million of deferred maintenance in Ohio's eight national park sites."

Parks advocates are naturally on board with the new Senate bill. "This proposal will put our national parks on the right track. By investing in our national parks, we will not only start to tackle this backlog, but we will make our parks more resilient and prepared to continue welcoming visitors eager to explore our nation's most important natural and historic places," said Theresa Pierno, president of the National Parks Conservation Association.

Although the Trump administration intends to take an axe to the Interior Department budget, secretary of Interior Ryan Zinke has repeatedly said reduction of the \$12.5 billion Park Service maintenance backlog is one of his top priorities.

At his January 17 confirmation hearing he said his ambition is "to prioritize the estimated 12.5 billion dollars in backlog of maintenance and repair in our National Parks. (President Trump) is committed to a jobs and infrastructure bill, and I am going to need your help in making sure that bill includes shoring up our Nations treasures."

The program would set aside each year mineral revenues not allocated to other programs, such as the Land and Water Conservation Fund, and would build gradually. For fiscal years 2018, 2019 and 2020 the bill would allocate \$50 million per year for the NPS maintenance backlog.

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

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

S 751 would authorize private donations to the program of up to \$2 million per year. When a project used donated money at least 25 percent of it would have to be financed with the donated money.

The December Park Service Centennial law does the following:

National Park Centennial Challenge Fund: This matching fund would build on a program that Congressional appropriators have been financing the last two years with \$10 million in fiscal year 2015 and \$15 million in fiscal 2016. Partners have put up twice that amount, according to the National Parks Conservation Association.

The bill would make available for the fund any collections over \$10 million from senior citizen fees. The Western Slope No-Fee Coalition estimates annual collections between \$20 million and \$25 million. So the program couldn't expand much over the current appropriated program.

The money would be used for projects selected by the Park Service, but it recommends that NPS "prioritize deferred maintenance projects, physical improvements to visitor services facilities and trail maintenance."

The House approved a fiscal 2017 Interior appropriations bill (HR 5538) July 16 that would put up a \$30 million appropriation for the Challenge Fund and the Senate Appropriations Committee June 14 approved an Interior bill (S 3068) that would appropriate \$20 million.

National Park Foundation Endowment: This endowment would begin with senior citizen fee money of \$10 million per year (presumably money not used by the Challenge Fund) and donations to the National Park Foundation. The money could be used for "projects and activities approved by the Secretary that further the mission and purposes of the Service."

Senior citizen passes: The bill would increase senior citizen America The Beautiful Pass rates from \$10 now to either \$20 annually or \$80 permanently. This is not politically popular. When it came to the House floor ranking House subcommittee on Public Lands Democrat Niki Tsongas (R-Mass.) said, "New revenue generated by fees, especially at the expense of our Nation's seniors, will not solve the issue of deferred maintenance."

GOP calls on NPS and other agencies to welcome visitors

House Republicans reinforced this week their overarching recommendation that the Park Service - and other federal land managers - improve the visitor experience.

In the recent past western Republicans have complained bitterly about Obama administration policies that reduce visitation in hotels and other developed facilities. Republicans want NPS, the Forest Service and other federal land managers to be more welcoming.

At an April 5 hearing of the House Oversight subcommittee on Interior, panel chairman Rep. Blake Farenthold (R-Texas) House Oversight subcommittee on Interior repeated that recommendation. "Unfortunately, the amenities at many parks have aged poorly and many have not been maintained properly. The National Park Service must modernize," he said. "It has failed to meet the changing demands of its visitors."

Farenthold added, "Millennials and modern families want tech services such as Wi-Fi and internet access. Cell service is not only an amenity, it's an import safety consideration. When NPS does not keep up, our parks lose visitors to other tourism opportunities, such as privately run theme parks and other attractions."

At the hearing recreation leaders from federal and state governments and private industry described strategies for improving the visitor experience.

The Forest Service for one has adopted a default "yes" policy when permit requests are submitted. Said Glenn Casamassa, associate deputy chief of the Forest Service, "The Forest Service is working to eliminate redundant processes, simplify forms, improve external and internal communication, improve financial management through the simplification of fees, and increase permitting efficiency through the simplification of the environmental analysis process for uses of a continuing or routine nature."

Another witness from the BoatU.S. Foundation told the subcommittee that Congress has a crucial role to play in ensuring that federal land management agencies have the money to provide access to visitors.

"We ask the help of this Congress to be sure that recreational boaters - including a very large number of boaters in Texas and the U.S. Virgin Islands - and other outdoor recreation participants aren't ignored as tough budget decisions are made," said Chris Edmonston, president of the foundation.

The chairman of the subcommittee is from Texas and the ranking Democrat, Rep. Stacey Plaskett (D-V.I.), is from the Virgin Islands.

As often noted, the Park Service in its Centennial year 2016 posted all sorts of visitation records. At the end the year NPS had recorded a 5.6 percent increase over 2015, which itself was a record year. Through December 324,516,065 people entered the national parks, compared to 307,247,252 at this time last year.

The House Oversight Committee by definition does not write legislation for federal land management agencies; that is the job of the House Natural Resources Committee.

And in the resources committee the key player is House subcommittee on Federal Lands Chairman Tom McClintock (R-Calif.) In the last Congress he laid into the Park Service for not doing more to entice visitors to the park. He said total visitation numbers are misleading because of a decline in people staying in concessioners' hotels, tents and RV campers.

McClintock's office provided us with these numbers last year to prove his point: "RV Camper lodging is half (2.2 million) of what it was in 1980. In-park concessionaire lodging continues its slow downward trajectory

(3.3 million) from its peak in the early 1990's (4.1 million). Backcountry camping had a slight uptick to 2 million, but still less than the 2.6 million in the early 1980's, despite having a full 100 more NPS units. Tent campers have a significant uptick over the last decade, reaching 3.6 million in 2015, but still below its peak in the early 1990's of 4.4 million."

The Trump administration is expected to be more sympathetic to business - and less concerned about protecting natural resources of the parks - than the Obama administration. Indeed, in the delicate balance between protecting the resource of the national parks and expanding visitation, new Secretary of Interior Ryan Zinke March 10 weighed in on the side of visitation.

In a trip to Glacier National Park in his home state of Montana Zinke emphasized the importance of making parks available to visitors. "Our National Parks are our national treasures, and it's important to recognize that they are more than just beautiful landscapes," said Zinke. "Growing up near Glacier National Park, I understand the value these places bring to local economies and in preserving our heritage."

Notes

Trump donates salary to NPS. President Trump donated his first quarter salary - \$78,333 - to the Park Service for historic battlefield maintenance. That backlog is roughly \$229 million, the Interior Department said. Secretary of Interior Ryan Zinke said, "President Trump is dedicated to our veterans, our public lands, and keeping his promises, and by donating his salary to the National Park Service to repair our historic battlefields proves his commitment." Of note Trump has proposed reducing Interior Department spending in fiscal year 2018 by \$1.5 billion, or 12 percent. Assuming a \$3 billion appropriation for the Park Service in fiscal 2017, prorated that would amount to a \$360 million reduction in fiscal 2018. But the Trump contribution does indicate the President is thinking about the national parks in a positive way.

Bill would ban NHA spending. Rep Steve Russell (R-Okla.) introduced legislation (HR 1768) March 28 that would block federal spending on National Heritage Areas (NHAs). On introducing his bill Russell said the Park Service could better use the \$19 million or so Congress appropriates each year for NHAs for other purposes. "This program is not about preserving history, but rather has become an 'earmark' in a Trojan Horse," he said. "The National Park Service has begged Congress to fund vital historic sites only to have them decay further while needed funds have been funneled to useless projects. In one year, the NPS was forced to spend nearly \$20 million of needed funds on these earmarks, while the Lincoln Memorial renovation was only saved by an \$18 million gift from a generous philanthropist. The NHAP must come to an end, and we must drag this Trojan Horse outside of our fiscal gates." In fiscal year 2016 Congress appropriated \$19.8 million for NHAs, which are broad areas with significant cultural and historic sites that don't rise to the level of national parks. NHAs are popular with Republicans and Democrats alike, but Congress has set no national standards for them. In February for the third consecutive Congress Rep. Charlie Dent (R-Pa.) and a bipartisan group of 11 House members introduced a bill (HR 1002) to establish an NHA program. The legislation would establish standards for new NHAs and would permanently authorize the 50 or so existing NHAs. Past administrations, senators and House members from both parties have attempted for two decades to gain control over NHAs. Under the present system NHAs are usually

established when powerful legislators attach NHA riders to omnibus lands bills or to appropriations bills, no questions asked.

Senate panel approves Wash. heritage bill. In the course of approving 65 separate bills March 30 (*see next item*) the Senate Energy Committee approved a bill (S 713) to establish a Mountains to Sound Greenway National Heritage Area in the State of Washington. Ranking Committee Democrat Maria Cantwell (D-Wash.) is the lead sponsor of S 713. Although Congress has never established a heritage area policy, Congress has approved dozens of them and spends about \$20 million per year on planning for them (*see previous item*). Said Cantwell's office on her introduction of the bill March 29, "The Mountains to Sound Greenway National Heritage Area Act would recognize a scenic byway and historic transportation corridor through 2,400 square miles that includes the Cascade peaks, wilderness lakes and forests, as well as a network of roads, rails and trails. It includes farms and forests, historic sites, lakes, campgrounds, rivers and wildlife habitat. The area is home to 1.4 million residents in 28 cities and 1,600 miles of trails." Each year the energy committee and the counterpart House Natural Resources Committee approve more than 100 individual bills in anticipation the measures will be bunched in a giant omnibus bill at the end of the year or the Congress. Sometimes that strategy works but more often it doesn't.

Senate panel approves hunt/fish bill. The Senate Energy Committee March 30 began its annual march toward an omnibus lands and waters bills, approving 65 measures of varying degrees of gravity. One major measure (S 733) would advance demands by hunters and fishermen for greater access to the public lands. S 733 would declare BLM and Forest Service lands open to hunting and fishing unless specifically closed. And it would establish as policy the expansion of hunting and fishing opportunities on the public lands. Committee Chairman Lisa Murkowski (R-Alaska) is the lead sponsor of S 733. Each year the energy committee and the counterpart House Natural Resources Committee approve more than 100 individual bills in anticipation they will be bunched in a giant omnibus bill at the end of the year or of the two-year Congress. Sometimes that strategy works and more often it doesn't.

GAO assesses NPS concessions program. The Government Accountability Office (GAO) March 23 found in a new report pluses and minuses in the Park Service's concessions operations program. On the upside GAO said NPS had reduced the number of extended contracts from 45 percent in 2000 to 28 percent in 2016. Various controversies and lack of qualified NPS staff had led to the delay in the renewal of major concessions contracts by months and even years. Said GAO in the report, "Based on our analysis of Park Service data, the Park Service has extended fewer concessions contracts past their contract term. Specifically, as we reported in 2000, approximately 45 percent of concessions contracts and permits²² (283 of 630) had expired as of December 31, 1999, and many of these had been under extension for 5 to 10 years. In contrast, as of April 2016, 28 percent (136 of 488) of concessions contracts were under extension, and 85 percent (116 of 136) had been under extension for 3 years or less." On the downside GAO said concessioners in some instances were not filing accurate reports, perhaps causing NPS to collect less fees than were or are due. "Without timely and accurate financial data from concessioners, the agency could be limited in its ability to oversee certain aspects of the program such as determining whether concessioners paid required fees," said GAO. The report, *NATIONAL PARK SERVICE: Concessions Program Has Made Changes in Several Areas, but Challenges Remain*, is available at: <http://www.gao.gov/products/GAO-17-302>.

Farm bill has uncertain future. Facing a proposed 21 percent reduction in Department of Agriculture spending in fiscal 2018, House and Senate committees are now taking the first tentative steps toward producing a new Farm Bill. Expected to be in the crosshairs are conservation programs that receive almost \$6 billion per year from the current Farm Bill. But Senate Agriculture Committee Chairman Pat Roberts (R-Kansas) said he broadly supports conservation programs. "Federal investment in these programs has a proven track record of success to incentivize farmers and ranchers to install best management conservation practices on the ground to help address critical natural resource concerns like improving water quality, improving soil health, or enhancing wildlife habitat," he told the National Association of Conservation Districts last month. And Roberts said he was not going to accept across-the-board Trump budget cuts. "I applaud the Administration for attempting to trim some of the federal governments' excessive spending - indiscriminate, across the board cuts are not always the best approach. As I've said before, we need to use a scalpel, not an ax," he said. The present Farm Bill (PL 113-79 of Feb. 7, 2014) expires at the end of fiscal year 2018. However, the Department of Agriculture says it would like to have up to one year to prepare for implementation of a new law, so the pressure is mounting on Congress to act.