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From: **Public Lands News** <[james@publiclandnewsletter.com](mailto:james@publiclandnewsletter.com)>

Date: Fri, Mar 17, 2017 at 6:57 AM

Subject: Public Lands News: Budget would hammer DoI, emphasize energy, de-emphasize many other programs

To: [james@publiclandnewsletter.com](mailto:james@publiclandnewsletter.com)

Dear Public Lands News Subscriber:

March 17, 2017: Attached is the current issue of the newsletter Public Lands News (Volume 42 Number 6), in .doc format and in PDF format. Below are the headlines. We thank you for reading Public Lands News.

The Editors

In the attached issue. . .

\* **TRUMP WOULD CUT DOI SPENDING BY 12 PERCENT.** In FY 2018 budget he would also revise allocations to BLM, FS and NPS. FY 2017 debate resumes. (The budget is available at: [https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018\\_blueprint.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018_blueprint.pdf).)

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\* **HILL AND TRUMP AXING BLM PLANNING RULE.** Senate joins House in resolution to revoke rule. Trump's OMB applauds. More revocations on tap.

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\* **HOUSE PANEL TILTS TOWARD FED LAND DISPOSAL.** Recommends to budgeteers a \$50 million set-aside to ease the way to transfer public lands.

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\* **COURT PUTS WYOMING IN CHARGE OF WOLVES AGAIN.** Reverses a lower court that

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\* DEMS: ENERGY ROYALTY RULE SUSPENSION ILLEGAL. Cantwell tells Zinke that federal law only allows suspension of laws not yet implemented.

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\* EPA JOINS HILL IN ATTACKING METHANE RULES. Pruitt halts information-gathering effort, as attorneys general request. BLM rule on Hill.

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\* SEN. BENNET WOULD FORBID ENERGY LEASING. On Thompson Divide in Colorado. Follows up on BLM's cancellation of 25 leases. Company on board.

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Steve Wells, BLM  
Division Chief, Fluid Minerals  
p 202.912.7143  
c 202.329.4551

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*...there are 10 types of people in this world, those who understand binary, and those who don't ...*

*-Author, Unknown*

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**NOTICE: PUBLISHING SCHEDULE CHANGE**

Dear Subscriber:

The next issue of *Public Lands News* will be published on April 7, one week later than the usual biweekly cycle. After that we will resume our regular biweekly publishing schedule. We thank you for your consideration. The Editors

Trump budget would slash DoI, other domestic spending

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

Despite the overall decrease the stripped-down 62-page budget request would increase spending on energy development onshore and offshore at unspecified levels.

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 recommend.

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

Speaking of fire, the budget plays with fire when it recommends an unspecified decrease in allocations for the payments-in-lieu of taxes program and a \$120 million decrease in land acquisition under the Land and Water Conservation Fund.

Finally, the fiscal 2018 budget says the budget "streamlines operations" of BLM, the Fish and Wildlife Service, and the National Park Service. The request does not say how it would streamline 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.

Still, the Trump recommendations are just recommendations. Congress will have the final say as to how much money individual agencies receive in traditional appropriations bills.

Secretary of Interior Ryan Zinke told department employees earlier this month he is "not happy" with the Trump budget request, but that he would continue to argue for more substantial spending for the department.

Ranking House Natural Resources Democrat Raúl M. Grijalva (D-Ariz.) blasted the request. "Closing national parks, hobbling critical federal agencies, and blinding ourselves to natural disasters is beyond reckless," Grijalva said. "This president is trying to run the federal budget like it's a first grade math problem. Instead of trying to comprehend the complexities of a budget for a country this size, he just wants to subtract ten percent and go to lunch early."

Meanwhile, House and Senate appropriators are reportedly attempting to wrap up fiscal 2017 appropriations bills well 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.

At the same time Senate Democrats are insisting that appropriations bills observe a spending agreement edict that Defense and domestic spending be co-equal. Suggesting that Democrats will not go along with either a different split or other Trump administration proposals, such as the construction of a Mexican wall, Senate Minority Leader Chuck Schumer (D-N.Y.) said on the Senate floor this week:

"We believe that we should stick to the spending levels that were agreed to in December, that we should maintain a parity between defense and nondefense, and that there should be no poison pill riders."

An interim fiscal 2017 spending resolution (PL 114-254 of Dec. 10, 2016) is keeping the government in money through April 28. The measure would roughly maintain 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.

**Fiscal 2018 budget:** The Trump administration's proposed 10 percent cut for the Interior Department follows his administration's philosophy of transferring the business of federal agencies to state and local governments and the private sector. By program:

**Energy:** The request is all in on energy development, saying it "Strengthens the Nation's energy security by increasing funding for DoI programs that support environmentally responsible development of energy on public lands and offshore waters. Combined with administrative reforms already in progress, this would allow DoI to streamline permitting processes

and provide industry with access to the energy resources America needs, while ensuring taxpayers receive a fair return from the development of these public resources."

*Agency operations:* For land management agencies the budget "streamlines operations while providing the necessary resources for DoI to continue to protect and conserve America's public lands and beautiful natural resources, provide access to public lands for the next generation of outdoor enthusiasts, and ensure visitor safety."

*Wildfire:* The administration says its request, "Fully funds wildland fire preparedness and suppression activities at \$2.4 billion, 100 percent of the 10-year average for suppression operations, to ensure the resources necessary to protect life and property."

*PILT:* The administration takes on the sacrosanct payments-in-lieu of taxes (PILT) program, saying it, "Supports counties through discretionary funding for the (PILT) program at a reduced level, but in line with average funding for PILT over the past decade."

*NPS operations:* The request says it, "Ensures that the National Park Service assets are preserved for future generations by increasing investment in deferred maintenance projects. Reduces funds for other DoI construction and major maintenance programs, which can rely on existing resources for 2018."

*LWCF:* The request says it, "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.

*Partnerships:* To make up for lost appropriations in part, the budget says it, "Leverages taxpayer investment with public and private resources through wildlife conservation, historic preservation, and recreation grants. These voluntary programs encourage partnerships by providing matching funds that produce greater benefits to taxpayers for the Federal dollars invested."

**Fiscal 2017 appropriations:** If and when Congress prepares an Interior appropriations bill based on HR 5538 and S 3068, here are some of the recommended House and Senate committee appropriations:

Among other things both the House and the Senate committee would block the listing of the greater sage-grouse under the Endangered Species Act; would order the Interior Department to delist the gray wolf in Wyoming from the Endangered Species Act; would forbid EPA from implementing a rule that would reduce carbon emissions from existing power plants; and would forbid EPA from implementing a May 27, 2015, rule that would expand the definition of a wetland subject to a Section 404 permit under the Clean Water Act.

The House alone approved provisions that would forbid the designation of any national monument in specific counties in eight states Arizona,



California, Colorado, Nevada, New Mexico, Oregon, Utah and Maine; forbid BLM from spending any money to change royalty rates "under Federal coal, oil, and gas leasing programs;" forbid BLM from implementing hydraulic fracturing rules (a federal court has already blocked them); prevent implementation of a plan to designate the 19 million-acre Arctic National Wildlife Refuge as wilderness; forbid EPA from spending any money to implement a May 12 methane rule; forbid the spending of any money on the gray wolf under the Endangered Species Act; forbid the Fish and Wildlife Service from completing a regulation of nonfederal oil and gas in wildlife refuges; and forbid any agency from attempting to transfer water rights to the federal government on renewal of a permit.

The fiscal 2017 House bill would actually increase land and resource management spending for BLM by \$9 million, allocating \$1.082 billion instead of the fiscal 2016 appropriation of \$1.073 billion. The Senate committee would increase the line item by \$16 million, to \$1.088 billion.

For the National Forest System the House approved a \$22 million increase, from \$1.509 billion in fiscal 2016 to \$1.531 billion in fiscal 2017. The Senate committee would increase National Forest System spending by \$11 million, to \$1.529 billion.

### Senate, House and Trump: BLM planning rule must go

The Senate joined the House March 7 in approving a resolution (HJ Res 44) that would overturn a BLM planning rule of Dec. 12, 2016, the so-called 2.0 rule.

The Senate vote was 51-to-48 with all Democrats opposed. The measure now goes to President Trump, who is expected to sign it. Said the Office of Management and Budget in endorsing the resolution, "Given its regional approach to planning, the Administration believes the rule does not adequately serve the State and local communities' interests and could potentially dilute their input in planning decisions."

This is the first action by the Senate to roll back public lands regulations posted by the Obama administration. The House on February 2 voted to revoke a BLM oil and gas methane emissions rule (HJ Res 36), but the Senate has not acted on it yet.

The 2.0 planning rule revised the substance of a previous planning rule by among other things placing a greater emphasis on broad area planning, requiring an assessment prior to the writing of a management plan and involving the public earlier in the planning process.

Resolution sponsor Sen. Lisa Murkowski (R-Alaska) objected to specific provisions of the rule, beginning with an emphasis on areawide planning over broad landscapes. She said that was just a ruse to limit commodity development.

"It all but assures that new and revised plans will not have the level of detail or specificity that is needed to properly manage our local resources," said Murkowski, chairman of the Senate Energy Committee, on the Senate floor. "It is very obvious that BLM will deploy it as a mechanism to reduce or perhaps to eliminate many reasonable uses of federal land that provide jobs and support communities all across the West."

Similarly, Murkowski objected to provisions in the rule that would make state and local governments responsible for demonstrating a BLM land use plan was inconsistent with a state or local plan.

"Under this rule, BLM shifts the burden for making sure that resource management plans are consistent with state and local governments plans away from itself and onto the states and onto the local governments," she said. "That is not right."

But Sen. Maria Cantwell (D-Wash.) said the BLM rule was a necessary update of BLM's planning policy. "This is not a rule that regulates any specific use on public land. It does not restrict any particular activity. It updates the current law and says it is better to have input from local officials so they can update (plans) earlier," said Cantwell, ranking minority member on the Senate Energy Committee.

Environmentalists agreed with Cantwell. Said The Wilderness Society President Jamie Williams, "If Congress felt that BLM's rule needed more work, it should have let the agency continue to fine-tune it, not completely nullify it. This rule was grounded in one of the cornerstones of American democracy, namely, that people most affected by public policy decisions deserve to have a voice."

Counties were pleased with the Congressional action. Said the National Association of Counties, "As partners with the federal government, we continue to encourage the BLM to engage in meaningful collaboration with local stakeholders during the development of policies and guidelines. And despite representations by the BLM to do just that, we remain unconvinced that Planning 2.0 in its final form does much to satisfy the objective of meaningful collaboration and consultation with non-federal governmental entities."

Commodity users of the public lands endorsed the Senate vote. Said Public Lands Council President Dave Eliason, a rancher in Utah, "Streamlining is needed in the planning process, but not at the expense of input from local communities and permittees or elimination of economic analysis requirements."

Said the American Exploration & Mining Association, "Many provisions of BLM's Planning 2.0 rule are contrary to and/or exceed BLM's statutory authority under (the law). The rule redefines the concept of multiple-use, prioritizes preservation and conservation over sustained yield of natural resources, relegates governors, county commissioners and other elected officials to a secondary role, and limits public involvement."

The House and Senate voted to disapprove the BLM planning 2.0 rule under the 20 year-old 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.

In addition to the BLM planning rule Republican legislators have introduced reversal resolutions against Obama administration public lands rules that regulate methane emissions from oil and gas operations, set

standards for oil and gas development in national wildlife refuges, set standards for oil and gas development in the National Park System, set standards for onshore oil and gas site security, set standards for onshore oil and gas measurements, set new royalty standards for oil and gas and coal, and limit hunting and fishing in national wildlife refuges in Alaska.

BLM's existing planning rules posted in 1979, 1983 and 2005 - guide the management of public lands, as required by the Federal Land Policy and Management Act of 1976. BLM's website on the plan was still available at press time at [www.blm.gov/plan2](http://www.blm.gov/plan2).

### Bishop panel seems inclined to dispose of fed lands

The House Natural Resources Committee took a major step recently toward disposing of federal lands, recommending that the fiscal year Congressional 2018 budget allow for such disposals.

In a Views and Estimates document submitted to the House Budget Committee, the natural resources panel said federal lands are poorly managed and, "The solution is to convey certain lands to state, local, and tribal governments, without limiting strings attached, including reversionary clauses. We request that a provision eliminating barriers for these conveyances be included in the budget resolution."

In addition to requesting that the Congressional budget offset any losses in county payments from such land transfers, the committee recommended the inclusion of a \$50 million stipend in the budget.

The committee made this case for the dramatic policy change: "Poorly managed federal lands create a burden for surrounding states and communities. These lands cannot be taxed and, in many cases, are in extreme disrepair (agencies estimate a \$20 billion dollar - and growing - maintenance backlog). Often mingled with private land, federal lands isolate communities, limit growth, adversely impact land value, and can lead to violations of private property rights."

In the first week of January the House took a separate step toward federal land disposals, approving a package of rules (H Res 5) that would not require compensation to the federal government for land transferred to states, local governments or Indian tribes. That is, under former 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.

The House Natural Resources Committee's budget recommendation was sharply criticized by The Wilderness Society. Said society senior director for conservation Matt Keller, "Make no mistake: America is wide awake to these assaults and will not let a bully like Chairman Bishop use hard-earned taxpayer dollars to ensure oil, gas and mining industries can lay waste to the forests, parks and refuges that belong to us all." Bishop is Rep. Rob Bishop (R-Utah), chairman of the House Natural Resources Committee.

During the Obama administration western Republicans stepped up their demands for greater control over the public lands. They have been particularly disturbed by the designation by Obama of 34 national monuments.

Although Congress has not been able to move legislation to transfer either ownership or management of federal lands to state and local governments, the State of Utah has. In a lead initiative Gov. Gary Herbert (R-Utah) on March 23, 2012, signed legislation (HB 148) that would require the government to turn all federal lands in Utah over to Utah, with a few exceptions a total of 31 million acres.

Besides the House rules on compensation and the Bishop committee's budget recommendation, western senators and House members have begun taking baby steps toward gaining control of public lands. For instance, the Senate Energy Committee and the Bishop committee have begun a drive to rewrite the Endangered Species Act. They will almost certainly attempt to give states a larger say in listing of species, designation of critical habitat and other activities.

There are countervailing pressures within the Republican Party. Notably, Rep. Jason Chaffetz (R-Utah) February 2 withdrew a bill (HR 621) to sell off 3.3 million acres of public lands in western states.

Feeling the heat from western sportsmen Chaffetz said, "I am withdrawing HR 621. I'm a proud gun owner, hunter and love our public lands. The bill would have disposed of small parcels of lands Pres. Clinton identified as serving no public purpose but groups I support and care about fear it sends the wrong message. The bill was originally introduced several years ago. I look forward to working with you. I hear you and HR 621 dies tomorrow."

In addition any land disposal initiative may face rough water in the Trump administration. President Trump's secretary of Interior, Ryan Zinke, said at his January 17 confirmation hearing, "I want to be clear on this point. I am absolutely against the transfer or sale of the public lands."

Plus, as we reported in the last issue of *PLN*, Leaders in the Utah legislature last month backed off somewhat from their campaign to take ownership of 31 million acres of public lands in the state.

Those leaders, including Rep. Keven Stratton (R-Orem), chairman of the Utah House Joint *Commission for the Stewardship of Public Lands Committee*, said that the election of President Donald Trump may have eased for now state concerns about federal land management.

In a related action the New Mexico Senate sponsor of legislation to transfer subsurface federal mineral rights to the State of New Mexico last month pulled her bill. The revenues would have been used for early childhood education in the state.

The House Natural Resources Committee View and Estimates are here: <https://wilderness.org/sites/default/files/Republican%20Views%20and%20Estimates%20for%20FY2018.pdf>.

### Circuit court says Wyoming wolf should remain delisted

A federal appeals court ruled March 3 that the Fish and Wildlife Service (FWS) acted correctly in turning the gray wolf in Wyoming over to the state for management.

The three-judge panel of the U.S. Circuit Court for the District of Columbia overruled a lower court judge. That judge had held that a Wyoming management plan did not adequately guarantee a baseline of 10 breeding pairs and 100 wolves in the state and FWS should manage the wolf in Wyoming.

The appeals court decision for now returns to Wyoming the responsibility for insuring the survival of the gray wolf in the state. The plan from the Wyoming Game and Fish Department says the state will maintain a population of at least 100 wolves, including 10 breeding pairs, outside of Yellowstone National Park and the Wind River Indian Reservation.

Led by Defenders of Wildlife, environmentalists maintain in the lawsuit at issue that the Wyoming plan would not guarantee the survival of a healthy, genetically-diverse population of wolves. In their lawsuit the plaintiffs focused on a portion of the plan that establishes a "predator area" over 19 percent of the wolf's habitat, which would essentially be unregulated.

But the state and FWS countered, and the court agreed, that deregulating the predator area would not harm the wolf. Said the appeals court decision, written by Judge Judith W. Rogers, "Thus, according to the Service, the predator zone cannot be deemed a 'significant portion' of the wolves' range because the species would not become endangered even if every single wolf there were killed." Rogers was a Clinton appointee.

The Wyoming Game and Fish Department said it was "aware" of the court decision and added, "Game and Fish is awaiting further direction from the State's attorneys regarding the next steps and impacts of this opinion from the Court of Appeals."

The Earthjustice law firm that represented Defenders said it was "still evaluating" the possibility of an appeal.

Then Earthjustice pivoted to criticism of Congress for attempting to intervene in the management of species under the Endangered Species Act. The House and the Senate Appropriations Committee last year both approved an amendment to a fiscal year 2017 appropriations bill (HR 5538, S 3068) that would override the lower court decision. That legislation is still pending.

Said Earthjustice's lead attorney in the case, Timothy Preso, "Although we disagree with this decision, it highlights that Congress should not step in to block judicial review under the Endangered Species Act, nor to interfere with the science-based listing status of an individual species. We will continue to fight to protect wolves against extreme and hostile state management policies."

The wolf in Wyoming was originally delisted by 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. She said FWS should have demanded stronger proof from the state.

In collaboration with several federal and state agencies, FWS said in April 2016 that the gray wolf population in the northern Rockies is not only "robust" but also spreading.

FWS said that as of the end of 2015 the number of wolves in Idaho, Montana and Wyoming far exceeded the minimum management targets of 150 per state. The service said the numbers of wolves per state respectively were 786, 536 and 382.

In addition the report said that the gray wolf is moving into Oregon and Washington, with 110 counted in Oregon and 90 in Washington.

FWS concluded, "The (Northern Rocky Mountain) wolf population continues to be robust, stable and self-sustaining."

The appeals court decision is available at:  
[https://www.cadc.uscourts.gov/internet/opinions.nsf/E2381C96826F09F4852580D80057B29F/\\$file/14-5300-1664135.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/E2381C96826F09F4852580D80057B29F/$file/14-5300-1664135.pdf).

### Dems: ONRR not authorized to block energy royalty rule

Sen. Maria Cantwell (D-Wash.) said March 7 that the indefinite delay of an oil, gas and coal royalty rule by the Trump administration is illegal.

On February 22 the Office of Natural Resources Revenue (ONRR) postponed the implementation of a July 1, 2016, rule that went into effect January 1. ONRR cited for authority for its action Section 705 of the Administrative Procedures Act that permits an agency to postpone the effective date of a rule.

But Cantwell, ranking Democrat on the Senate Energy Committee, said the 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.

Cantwell wrote Secretary of Interior Ryan Zinke, "In sum, the department's action in postponing the effective date of the new royalty valuation rule, which had already taken effect, exceeded the department's authority under section 705 of the Administrative Procedure Act and does not meet the standards the courts have long required to apply when they seek to use their authority under the section."

Ranking House Natural Resources Committee Democrat Raúl Grijalva (D-Ariz.) made the same point. Before Zinke was confirmed Grijalva wrote Acting Secretary of Interior Jack Haugrud February 28, "The legality of this action is highly questionable. I am not aware of any situation where 5 U.S.C. 705 has been successfully invoked after the effective date of a rule. It appears that ONRR has used this provision to repeal an active and in-effect regulation in contravention of the notice-and-comment procedures required by the (Administrative Procedures Act)."

In announcing the stay 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.

On March 14 conservation groups asked the U.S. District Court in Wyoming for permission to intervene in the litigation on behalf of the Obama rule.

"If companies want to mine and profit from federal coal, they need to pay a fair price for the public coal," said Bob LeResche, chair of the Powder River Basin Resource Council and a rancher near Sheridan, Wyo. "Ninety thousand Americans commented in favor of closing this loophole. The government should keep it closed."

In one major change the Obama regulations replaced an old standard that applied (and will apply again) a series of benchmarks to set the royalty price. In the new rule ONRR would begin with a first affiliated sales price, followed by index prices.

When the rule was published last July the American Petroleum Institute focused on a default provision, among other things. API Upstream and Industry Operations Director Erik Milito said the default provision would allow ONRR to "second-guess" royalty valuation set by an operator.

But critics such as the environmental group the Center for American Progress said the rule would curb a coal industry practice of selling coal to affiliates, thus reducing the price for royalty purposes and depriving federal and state governments of royalties. The center said 42 percent of coal mined in Wyoming in 2012 was sold to an affiliate company and all coal mined for export in 2013 in Montana was sold to an affiliate.

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 yet.

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 Appropriations Committee approved a counterpart bill (S 3068) on June 16, 2016, without the provision.

The ONRR letter is available at:  
<https://onrr.gov/about/PDFDocs/20170222.pdf>.

## EPA joins Hill in attempting to curb methane rules

While Congress works to remove BLM oil and gas methane emissions regulations, EPA is easing its methane emission reporting requirements.

Much to the dismay of Democrats EPA earlier this month cancelled an Obama administration information collection requirement on controls operators must establish to reduce methane emissions.

EPA Administrator Scott Pruitt himself said he was both responding to complaints of several states and to ease operations for oil and gas companies. "Today's action will reduce burdens on businesses while we take a closer look at the need for additional information from this industry," Pruitt said March 2.

On March 8 two leading House Democrats fired back. Reps. Raúl M. Grijalva (D-Ariz.) and Alan Lowenthal (D-Calif.) wrote Pruitt charging the cancellation of the collection order was inappropriate.

"This administration is giving away our public resources even faster than I thought possible and with even less regard for the consequences than I expected," Grijalva said. "Apparently we can't ask the oil and gas industry how much methane it's pumping into the air and where it's happening because that might generate answers that lead to better policy."

In their letter Grijalva, ranking House Natural Resources Committee Democrat, and Lowenthal, ranking House subcommittee on Energy Democrat, asked Pruitt to reverse course and recommence information collection. "Accurate data from oil and gas operators are essential for setting appropriate and cost-effective standards for reducing methane emissions, which are necessary for improving air quality, mitigating climate change, and ensuring that a valuable commodity does not continue to be wasted," they wrote.

But Pruitt and attorneys general in nine states disagree. The attorneys general, led by Ken Paxton in Texas, said the EPA data request was unnecessary. "The burden is disproportionate to its benefit," said the attorneys general. "We believe the EPA's requests to be an unnecessary and onerous burden on oil and gas producers that is more harassment than a genuine search for pertinent and appropriate information."

The Obama administration's EPA posted the information collection regulation on Nov. 10, 2016. EPA said at the time, "The ICR seeks a broad range of information, such as how equipment and emissions controls are, or can be, configured, and what installing those controls entails. This information will help the agency determine how best to address methane emissions from the oil and gas industry, including through rulemaking to reduce emissions."

Under its information request EPA asked 15,000 oil and gas operators for two kinds of information the identity of equipment they were using and sources of methane emissions.

EPA is also attempting to reduce methane emissions with a separate regulation. 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.

Meanwhile, the House on February 3 approved a resolution (HJ Res 36) under the Congressional Review Act (CRA) to revoke a BLM methane emissions rule. The Senate is expected to give final Congressional approval soon to 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.

President Trump would be expected to sign the resolution in that his White House reportedly worked with Congressional leaders to identify Obama administration energy regulations that should be overturned.



Although the BLM methane rule technically went into effect January 17, it would not begin phasing in required reductions in methane until 2018. Even without the Congressional resolution the Trump administration will be firmly in charge of implementing it, or not implementing it. The rule requires producers to use available technology to cut flaring in half and to inspect their operations regularly for leaks.

The Grijalva/Lowenthal letter is available at:  
<https://democrats-naturalresources.house.gov/grijalva-lowenthal-letter-to-pruitt-on-methane-emissions-march-8-2017>.

### Sen. Bennet moves to block O&G work in Thompson Divide

Following up on BLM's cancellation of the 25 most disputed oil and gas leases in the White River National Forest, Sen. Michael Bennet (D-Colo.) has introduced legislation to prevent issuance of new leases.

Bennet's bill (S 481) would withdraw much of the land in the Thompson Divide area from further leasing, allow existing lessees to exchange their leases for money they have already spent and establish a methane leasing program in existing coal mines in the area.

Whether the Trump administration would go along with a program that would largely reduce fossil fuels energy development is doubtful. Trump and his aides have long said that a fundamental plank of his administration is the encouragement of fossil fuels development.

But Bennet appears to have at least one major energy player on his side, Gunnison Energy President Brad Robinson. "We support this legislative compromise because it addresses our concerns over continued access to areas we need in order to continue production from our existing leases," he said. "This bill does that by balancing energy needs with the wishes of the community to keep some areas undeveloped along Thompson Divide and Kebler Pass."

Robinson added, "We are also excited and encouraged over the new provisions in this bill that will promote the capture of energy from methane leaks into the atmosphere from old coal mining areas. These provisions will help bring jobs and economic growth to the North Fork Valley and also help the environment."

Late last year the Obama administration cancelled a slew of oil and gas leases across the West, as follows:

On Nov. 16, 2016, the Interior Department said that the Devon Energy Corporation will return 15 oil and gas leases just outside Glacier National Park in the Badger-Two Medicine area of Montana. That makes 45 of the original 47 leases approved by BLM in 1982 that have been returned.

On Nov. 28, 2016, the department announced the completion of a record of decision to cancel 17 of 19 oil and gas leases on the Roan Plateau on Colorado issued in 2008 in the George W. Bush administration. Two leases remain on the top of the plateau and 12 on the plateau's base.

And on Nov. 17, 2016, BLM posted a final decision calling for the cancellation of 25 oil and gas leases in the White River National Forest, to the dismay of the oil and gas industry.

The 25 White River forest leases were among 65 that the Interior Board of Land Appeals in 2007 ruled had been sold without current environmental documentation, either by the Forest Service or by BLM. So BLM prepared an EIS to support a plan to cancel the 25 leases, of which 18 are located in the controversial Thompson Divide in western Colorado. BLM would modify the remaining 40 leases.

Responding to the BLM White River action the oil and gas industry rebelled and promised to seek support from Congress and the Trump administration in a campaign to reinstate the leases.

At the time in November David Ludlam, executive director of West Slope Colorado Oil and Gas Association, said, "The outcome of this month's election broadens the range of possible responses our industry may have in relation to this unprecedented breach of contract. We will remain in close contact with our congressional delegation as well as the incoming Trump administration to determine the best course of action to right a major wrong perpetuated in the final hours of a president whose tenure is marked by an agenda to eliminate production of oil and natural gas on federally managed lands."

It will be up to the Trump administration and Secretary of Interior Ryan Zinke to determine if and how leases can be instated. However, the Obama administration conducted long and torturous environmental reviews before cancelling the leases, so the Trump administration may have to write its own EISs.

### House committee on record in favor of fire money shift

The House Natural Resources Committee has committed to moving legislation in this Congress to take emergency wildfire expenditures out of appropriations bills.

In an undated submission to the House Budget Committee the panel explicitly requested help in the fiscal 2018 Congressional budget to allow that. In the last Congress the House twice passed legislation to take the wildfire pressure off spending bills, twinned with provisions to limit environmental reviews of wildfire treatment projects. But budget disagreements helped doom the legislation.

Said the House Natural Resources Committee, "The Committee plans to reintroduce and pass legislation again to address these issues to improve the health of our NFS."

To do that the committee may need what is called a "cap adjustment" in the Congressional budget. So the resources committee sought help from the budget panel, saying, "As the Budget Committee looks at disasters and wildfires, we ask that it works closely with the Committee to find a solution to the fire funding problem. If this problem is not solved in short order, the Forest Service will be unable to manage anything but wildfires and forested communities will continue to decline."

In the last Congress House and Senate Budget Committee leaders resisted proposals to make cap adjustments in the budget for the transfer of a portion of emergency wildfire costs out of appropriations bills and into disaster spending. If the costs were transferred to disaster spending, it would reduce expenditures from appropriations bills, making money available to other purposes.

In a famous August 2015 commitment, Senate Budget Committee and line committee leaders joined forces to pledge to work for a strategy to guarantee wildfire money to agencies such as the Forest Service without disrupting agency budgets.

However, Senate Budget Committee Chairman Mike Enzi (R-Wyo.) acknowledged at the time, "I know there are differences of opinion out there as to how to solve this problem, but the key to solving it is getting everyone in a room to discuss it. As cap adjustments are under the jurisdiction of the Budget Committee, I look forward to working with my colleagues on a durable and long-lasting solution that fits our fiscal priorities and is responsible budgeting."

That durable and long-lasting solution never appeared. Working against advocates of the wildfire-spending proposal are such powerful conservative forces as the Heritage Foundation.

In a 2014 paper the foundation made the case against an increased cap adjustment for the then Obama administration budget. Said the foundation at the time, "Although Congress should appropriate sufficient funding for wildfire suppression, which currently falls within the federal government's responsibility, this does not mean that Congress should do so through a spending loophole. Instead, Congress should budget appropriately for wildfire suppression costs by using the most accurate estimation method to determine funding needs and by adhering to its agreement to limit discretionary spending under a budget cap and sequestration."

The foundation concluded, "This (cap adjustment) request seeks to explicitly exempt certain funding from agreed-upon spending limits and shifts the debate from what Congress should fund in its budget to which programs Congress can fund outside the budget."

The House-passed measure of last year would transfer wildfire spending above the 10-year average to disaster spending and limit environmental reviews for wildfire-related projects. The Senate Agriculture Committee Sept. 13, 2016, approved legislation similar to the House bill.

Separately, the Obama administration, Sen. Wyden and Rep. Mike Simpson (R-Idaho) last Congress backed legislation that would transfer costs above 70 percent of average out of appropriations bills, compared to the House bill's 100 percent. In addition Wyden and Simpson would not have cut back on environmental reviews.

It is understood that Wyden is discussing with his Senate Republican colleagues from Idaho James Risch and Mike Crapo a key revision to his wildfire-borrowing bill of last year. The senators may give the recommendation that emergency wildfire costs be transferred to disaster spending when those costs reach 70 percent of the 10-year average.

As we have reported, despite the huge storms that have marched across the West this winter and eased the threat of wildfires for the early part of this upcoming season, supporters of the budget transfer strategy say the long-term fire danger has not eased.

Wyden's office said this winter's gargantuan rainfall and snowfall in the West could be one of a kind and the emergency spending provision is still needed. Indeed in most years of the last decade emergency wildfire spending exceeded appropriations, forcing federal land management agencies to borrow from line programs.

In a monthly report March 1 the National Interagency Fire Center said most of the continental West is in good shape for the early part of the year, but Alaska not so much.

### Grijalva asks Zinke to take stand on monument revoking

A ranking House Democrat last week attempted to prod Secretary of Interior Ryan Zinke into taking a position on the legality of a Presidential reversal of a national monument designation.

The Utah Congressional delegation said in January that as a top priority it would seek a reversal of the Dec. 28, 2016, designation of a 1.35 million-acre Bears Ears monument in southern Utah by President Obama.

And Zinke has said he would make a visit to the area a top priority. (However, this past week Zinke visited various department offices in Montana.)

The ranking Democrat, Rep. Raúl M. Grijalva (D-Ariz.), asked Zinke in a pointed letter March 8 that followed up on a Zinke statement in his January 17 confirmation hearing that reversal of a monument declaration is legally "untested."

Grijalva wrote, "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.

"We will work with the Trump administration to re-examine Bears Ears National Monument, as well as other ill-advised unilateral executive designations across the country," the legislators said in a statement. "What is done through executive action can be undone through executive action."

Some scholars believe a President would have limited authority under the Antiquities Act to reverse designations. Indeed, the Congressional Research Service in a report it prepared on the act questioned whether reversals would be legal.

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.

Obama also 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 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 Utahns aren't the only ones who are demanding revocation of national monuments. On March 7 New England fishermen argued in a new lawsuit March 7 that President Obama did not have authority under the Antiquities Act to designate national monuments beyond the 12-mile territorial sea limits. (See related article page 20.)

The New England fishermen in their lawsuit filed in the U.S. District Court for the District of Columbia objected to the Sept. 15, 2016, designation of a Northeast Canyons and Seamounts National Marine Monument. The 4,913 square-mile monument lies off the North Atlantic Coast.

The Atlantic monument is but one battleground for critics of Obama's monument policies. As we reported in the last issue of *PLN*, 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 manage the area.

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.

## IBLA decisions

(We post current Interior Board of Land Appeals decisions at our website, <http://www.plnfr.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:** Right-of-way.

**BLM decision:** BLM will deny a right-of-way (ROW) across a wilderness study area (WSA) to a mining claim.

**Appellant ROW applicant:** The Alaska National Interest Lands Conservation Act (ANILCA) guarantees access to inholdings.

**IBLA decision:** Affirmed denial of ROW, ANILCA doesn't apply because mining claim is not surrounded by conservation lands.

**Case identification:** *Andrew Vandeberg 189 IBLA 287*. Decided February 27, 2017. Eight pages. Appeal from a BLM decision denying a proposed right-of-way to an inholding surrounded by public lands. COC 75988.

**IBLA argument:** IBLA Administrative Judge James K. Jackson affirmed a BLM decision denying a right-of-way across a WSA to a mining claim. BLM had argued that it was forced to deny the ROW because the Federal Lands Policy and Management Act (FLPMA) requires BLM to manage a WSA to prevent its impairment. The appellant countered that

ANILCA supersedes FLPMA in this situation by guaranteeing access to inholdings within conservation areas. Jackson first said he would not rule on whether ANILCA applies to these lands in Colorado or not because, second, even if ANILCA did, the subject mining claim wouldn't qualify because it is not surrounded by conservation lands. Jackson held, "As BLM correctly notes, application of the ANILCA provision for inholdings surrounded by conservation system units, national recreation areas, national conservation areas, and WSAs would not make a difference in this case because (the appellant's) patented mining claim is not within or surrounded by such lands." In addition, he said, ANILCA requires an applicant for a ROW to file such applications under FLPMA.

**Subject:** Mineral materials royalties.

**BLM decision:** ONRR will require a minerals lessee to pay royalties based on the value of the minerals after being put in marketable conditions.

**Appellant lessee:** ONRR erred because all parties had agreed on a price of the minerals for royalty purposes.

**IBLA decision:** Affirmed ONRR.

**Case identification:** *Pacific Northwest Aggregates, Inc., 189 IBLA 316*. Decided March 13, 2017. Thirty pages. Appeal from a decision of the Director, Bureau of Indian Affairs, denying an appeal from Order to Report and Pay Additional Royalties Modifying Order to Perform Restructured Accounting, issued by the Office of Natural Resources Revenue (ONRR), requiring lessee to report and pay additional royalties found to be due on sand, gravel, and other solid minerals produced from Indian mineral lease of allotted lands. MMS-08-0197-IND.

**IBLA argument:** IBLA Administrative Judge James F. Roberts affirmed a decision by the Office of ONRR requiring a minerals material lessee operating on Indian lands to pay additional royalties of \$1,234,635. Roberts agreed with ONRR that the lessee had failed to pay royalties based on the value of minerals after they had been processed, i.e. at an arm's-length price. The lessee argued that he had an agreement with the Indian landowner to pay a lesser price. Held Roberts, "In summary, we conclude that ONRR properly determined that the royalty value of the materials produced from the Lease that were sold to (the buyer) should be based on the arm's length price at which the materials were likely to be sold after extraction, removal and processing. ONRR properly held that (the lessee) owes the Indian allottees additional royalties based on the ordinary or customary market for the Mine materials sold to (the buyer), that market being for materials placed in a marketable condition by processing, with no deduction for the costs of processing."

## Notes

**Will Trump defend frack rule in court?** The Tenth U.S. Circuit Court of Appeals March 9 asked the Trump administration's Justice Department if it intends to defend an Obama administration hydraulic fracturing rule. A U.S. District Court judge in the District Court for Wyoming, Scott Skavdahl, held June 21, 2016, the BLM rule of March 26, 2015, was invalid. Skavdahl said Congress had proscribed BLM and EPA from regulating non-diesel hydraulic fracturing. Skavdahl's decision has been appealed to the Tenth Circuit and that panel now wants to know if the Trump administration intends to defend it. Even if the administration doesn't stand up for the rule environmentalist intervenors, led by the environmental law firm Earthjustice, are sure to. The states of Wyoming and North Dakota brought the lawsuit. The appeals court has scheduled oral arguments in the suit for March 22.

**Minor Malheur occupiers convicted.** Although the main players in the January 2016 occupation of the Malheur National Wildlife Refuge in Oregon have been found innocent of criminal charges, four minor players were convicted last week. A federal jury March 10 convicted four of the occupiers of various charges, including conspiracy and damaging federal property. The jury convicted Jason Patrick and Darryl Thorn of conspiracy and Duane Ehmer

and Jake Ryan of the lesser charge of damaging the refuge. But on Oct. 27, 2016, a separate federal jury found seven defendants innocent of all charges in the occupation. Among those found innocent were occupation leaders Ammon and Ryan Bundy. In a separate court event six allies of Nevada rancher Cliven Bundy are on trial in federal court in Las Vegas for preventing BLM from rounding up cattle being illegally grazed on the public range. They are among 19 defendants who the feds say participated in a 2014 armed standoff in a case involving grazing by Cliven Bundy. The federal government is also attempting to collect more than \$1.1 million in fees and penalties from Bundy for illegally grazing on public land. Of the other 13 defendants in the Nevada confrontation, two have pleaded guilty; Cliven, Ammon and Ryan Bundy are scheduled for trial in May; and six others are expected to go to trial in August.

**Alaska senators meet with Trump.** Alaska senators said they discussed resource development in the state March 8 in an hour-long meeting with President Trump and Secretary of Interior Ryan Zinke. Neither the senators nor the administration officials commented on any agreements on public lands policy reached in the meeting, tacit or otherwise. Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) has repeatedly charged that the Obama administration prevented the state from developing oil resources under public lands, driving the state into economic distress. Murkowski and her colleague Dan Sullivan (R-Alaska) have also faulted the Obama administration for not approving a land exchange so the state could build a road to the community of King Cove. The road would have gone through wilderness in the Izembek National Wildlife Refuge.

**Huge oil discovery in Alaska announced.** Repsol and Armstrong Energy announced March 9 that they have made the "largest U.S. onshore conventional hydrocarbons discovery in 30 years" on the North Slope of Alaska. The leases are all on state land but are just east of the National Petroleum Reserve Alaska (NPRA) managed by BLM. The bureau has leased 1.5 million acres of the 23 million-acre NPRA for oil and gas development. ConocoPhillips announced January 13 that it has made a significant oil and gas discovery in the northeastern corner of NPRA. The ConocoPhillips find is in the Greater Mooses Tooth Unit of NPRA and its two drilled wells are called the Willow Discovery. The Repsol and Armstrong discoveries are in the Horseshoe -1 and 1A wells in the Nanushuk play. The Nanushuk companies say their play could contain as much as 1.2 billion barrels of oil, with first production in 2021. Because of a number of factors such as depletion of resources and market prices, the Trans Alaska Pipeline System has seen a huge decrease in oil flowing through it (Sen. Murkowski blames in part Obama administration intransigence). In 1988 738 million barrels flowed through the pipeline; production now is below 200 million barrels. The Alaska Department of Natural Resources has posted a most useful map of the various plays on the North Slope at: <http://dog.dnr.alaska.gov/GIS/Data/ActivityMaps/NorthSlope/NorthSlopeOilAndGasActivityMap-201605.pdf>.

**Enviros attack O&G sale near Zion.** Environmentalists last week gave the Trump administration notice that they will oppose all oil and gas lease sales that they consider a danger to the environment. In case number one an alliance of major environmental groups told the Utah State Office of BLM March 9 that the proposed sale of two leases on BLM land near Zion National Park was not acceptable. In case number two a pair of environmental groups challenged a proposed oil and gas lease sale in Wyoming (*see following item*). The Zion sale was proposed for June but BLM has delayed it until September

14. The Wilderness Society, Southern Utah Wilderness Alliance, Sierra Club, the National Resources Defense Council and the National Parks Conservation Association said the sale should be deferred further while BLM prepared an amendment to a resource management plan. "There are plenty of places where energy development could be appropriate in Utah, but the doorsteps of a prized national park and the banks of important waterways are not those places," said Nada Culver, senior director for agency policy at The Wilderness Society. Although the Obama administration prepared the oil and gas lease sales, the Trump administration is now in charge.

**Enviros attack Wyoming O&G sale.** Environmentalists last week gave the Trump administration notice that they oppose an upcoming oil and gas lease sale in Wyoming. The Wyoming State Office of BLM has planned a June 22 auction of 33,000 acres of federal land. On March 6 WildEarth Guardians and the Center for Biological Diversity protested the proposed sale because of the possible impact of the sale on air quality and global warming. "More fracking will only worsen air pollution in a part of Wyoming that's already exceeding national air quality standards meant to protect people," said Diana Dascalu-Joffe, senior attorney at the Center. "Destroying public land for fracking at the cost of human health and our climate future is terrible public policy." After a year of relatively small oil and gas lease sales, the BLM State Office in Wyoming hit the jackpot February 7, grossing \$129.3 million in a quarterly sale. In the previous three sales the state office garnered less than \$20 million combined. Sale results tend to be erratic in most states, depending on the price of oil and gas, the number of nominations from interested parties, and the quality of environmental reviews (thus avoiding litigation). In the competitive February sale the Wyoming office offered 285 parcels and sold 278 of them. The highest single bid was \$18.1 million for a 161-acre parcel.

**Solons ask for soda ash royalty break.** A bipartisan alliance of House and Senate members March 7 introduced legislation (HR 1399, S 546) to reduce the royalty rate on soda ash produced from the public lands from six percent to two percent. The sponsors said the six percent royalty rate leaves American producers at a disadvantage in competition with other nations, particularly China. Said lead Senate bill sponsor John Barrasso (R-Wyo.), "The last thing Washington should do is raise costs here at home. Our bipartisan bill will give American soda ash producers the certainty they need to stay competitive in the global market and keep these jobs here in the United States." In the last Congress the Obama administration on Oct. 1, 2015, testified in the Senate Energy Committee the bill was not needed. It said (1) a lower royalty would cost the government some \$21 million per year and (2) there was no evidence a higher royalty rate had affected the economics of the soda ash business. Rep. Paul Cook (R-Calif.) is the lead sponsor of the House bill.

**Georgia national forests consolidation asked.** Senate and House members from Georgia introduced legislation (S 571, HR 1434) March 8 that would authorize the sale of 30 national forest tracts in their state. The legislators say the tracts are small and isolated and are not useful for national forest purposes. The legislators say they have the Nature Conservation in Georgia on their side. Revenues from the sales would be used to acquire properties within the Chattahoochee-Oconee National Forest boundary. Sen. David Perdue (R-Ga.) and Rep. Doug Collins (R-Ga.) are the lead sponsors.



## Conference Calendar

### APRIL

**2-5. American Association of Petroleum Geologists Annual Conference & Exhibition** in Houston, Texas. Contact: American Association of Petroleum Geologists, P.O. Box 979, Tulsa, OK 74101-0979. 1 (800) 364-2274. <http://www.aapg.org/>.

### MAY

**1. National Hydropower Association Annual Conference** in Washington, D.C. Contact: National Hydropower Association, 25 Massachusetts Ave., N.W., Suite 450, Washington, DC 20001. (202) 682-1700. <http://www.hydro.org>.

**1-4. National Outdoor Recreation Conference** in Scottsdale, Ariz. Contact: The Society of Outdoor Recreation Professionals, P.O. Box 221, Marienville, PA 16239. (814) 927-8212. <http://www.recpro.org>

**5-8. National Ski Areas Association National Convention and Trade Show** in Scottsdale, Ariz. Contact: National Ski Areas Association, 133 South Van Gordon St., Suite 300, Lakewood, CO 90228. (303) 987-1111. <http://www.nsaa.org>.

**7-9. Interstate Oil and Gas Compact Commission Annual Business Meeting** in Oklahoma City, Okla. Contact: Interstate Oil and Gas Compact Commission, P.O. Box 53127, Oklahoma city, OK 75132-3127. (405) 525-3556. <http://www.iogcc.state.ok.us>.

**20-23. Association of Consulting Foresters of America National Conference** in Lake Tahoe, Nev. Contact: Association of Consulting Foresters of America, 732 North Washington St., Suite 4-A, Alexandria, VA 22314-1921. (703) 548-0990. <https://www.acf-foresters.org>.

### JUNE

**11-14. International Right-of-Way Association International Education Conference** in Anchorage, Alaska. Contact: International Right-of-Way Association, Pacifica Harbor Business Center, Suite 220, 19750 S. Vermont Ave., Torrance, CA 90502-1144. (310) 538-0233. <http://www.irwaonline.org>.

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

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

March 17

- \* Zinke launches program to expand rec access*
- \* LWCF guarantee bill has one Republican sponsor*
- \* Fishermen take Atlantic monument to court*
- \* Notes*
- \* Trump budget short on domestics (See Public Lands News article)*
- \* House might dispose of fed lands (See Public Lands News article)*

### **Zinke lines up system for increasing sportsmen's access**

Secretary of Interior Ryan Zinke kicked off his tenure with a bang March 2 by directing his department to expand access to public lands for recreational hunting and fishing.

He posted a Secretarial Order No. 3347 that requires his assistant secretaries to report to him within 30 days on steps needed to increase hunting and fishing access.

Once those recommendations have been run through hunting and fishing councils but not the general public Zinke said the department would publish the recommendations as policy.

Noting the economic benefits of outdoor recreation Zinke said, "Over the past eight years however, hunting, and recreation enthusiasts have seen trails closed and dramatic decreases in access to public lands across the board. It worries me to think about hunting and fishing becoming activities for the land-owning elite. This package of secretarial orders will expand access for outdoor enthusiasts and also make sure the community's voice is heard."

Sportsmen applauded. Said Association of Fish and Wildlife Agencies Executive Director Ron Regan, "Secretary Zinke's quick action by issuing these two secretarial on his first day at the Department of the Interior demonstrates his commitment to our outdoor recreation heritage and economy. These orders demonstrate an understanding of the important role hunters, target shooters, boaters and anglers play in the conservation of fish and wildlife resources."

The Senate on March 1 confirmed Zinke as secretary of Interior and the next day his first in office he signed the Secretarial Order on hunting and fishing access. He also signed a second Secretarial Order No. 3346 that overturns a ban on lead ammunition and lead fish tackle.

The lead order did not go over well with Defenders of Wildlife. "The Service's decision to phase out over time the use of lead shot and tackle thus followed directly from its commitment to preserve and protect species within the national wildlife refuge system," said Jamie Rappaport Clark, president of Defenders. "Unfortunately, in hastily revoking this order, the Secretary gave no sign that he embraces the same commitment to conservation. As chief steward of the nation's natural resources, its public lands and wildlife, his first step is immensely disappointing."

In a related development the day before Zinke issued his orders two old foes reached an agreement on recommendations for improving Bureau of Land Management (BLM) travel plans affecting recreational access.

The Wilderness Society environmental group and the Blue Ribbon Coalition powered recreation group recommended March 1 that BLM prioritize travel management plans. In the past the two groups have frequently fought it out in court to either limit powered recreation vehicle access in travel plans (The Wilderness Society) or to increase powered vehicle access (BlueRibbon Coalition).

Phil Hanceford, assistant director of The Wilderness Society BLM Action Center, said, "This effort reflects a new focus on collaboration between diverse interest groups that have many shared values when it comes to use and enjoyment of federal lands."

Don Amador, western representative for the BlueRibbon Coalition, said, "Having worked across the aisle with conservation groups in California for the last decade on recreation issues, I am proud of this effort at the national level to try and find common ground in support of managed recreation on public lands."

Secretary Zinke's recreational access order builds on Executive Order 13443 posted by President George W. Bush on Aug. 16, 2007. It directs federal agencies "to implement actions that expand and enhance hunting opportunities for the public."

The House and Senate in the last Congress passed numerous bills to expand access to public lands for hunters and fishermen, but the two bodies were never able to agree on a final package that the Obama administration would accept. The bills would have taken such steps as declaring BLM and Forest Service lands open to hunting and fishing unless specifically closed. And they would have allocated a piece of Land and Water Conservation Fund money to improving access to public lands.

The Secretarial order on hunting and fishing is available at: [https://www.doi.gov/sites/doi.gov/files/uploads/revised\\_so\\_3447.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/revised_so_3447.pdf). The Secretarial order on lead is available at: [https://www.doi.gov/sites/doi.gov/files/uploads/order\\_no\\_3346.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/order_no_3346.pdf).

## **Cantwell LWCF guarantee bill has single GOP sponsor**

Only one Republican senator signed on to a new bill (S 569) March 8 that would not only make the Land and Water Conservation Fund (LWCF) permanent but also guarantee \$900 million per year for the program. Without further appropriations.

However, numerous Republican senators have signed on to legislation in the past to make the program permanent, although not to guarantee money for it. Those Republicans would prefer to make the program subject to annual appropriations bills.

Still, the introduction of S 569 gives program supporters a strong negotiating position if and when legislation to reauthorize the program begins to move. Those supporters enjoy an ace in the hole in the person of Secretary of Interior Ryan Zinke (R-Mont.), who has endorsed in the past legislation in favor of a permanent LWCF with full funding of \$900 million per year.

Lead Senate sponsor of S 569 Sen. Maria Cantwell (D-Wash.) said, "For decades, the LWCF has brought together public and private resources to open access to trails, create wildlife corridors, and preserve our clean air and water. We wouldn't have some of the best outdoor recreation opportunities, like Olympic National Park and Riverside State Park, without the LWCF."

Her one Republican cosponsor, long-time program advocate Sen. Richard Burr (R-N.C.), said, "I'm proud to work with Sen. Cantwell to make sure this program continues so that future generations can enjoy North Carolina's most beautiful places and that the program has the resources it needs to continue conservation initiatives across the country."

In the House on January 12 Rep. Raúl Grijalva (D-Ariz.) and Rep. Patrick Meehan (R-Pa.) took a first step toward making LWCF permanent by introducing legislation (HR 502) to do so. Grijalva and Meehan would not guarantee money for the program, leaving it subject to appropriations.

The law is presently authorized through September 30, 2018.

In the tug of war over the Trump administration's position on LWCF the National Recreation and Park Association (NRPA) in February weighed in with the results of a pro-LWCF poll.

The survey of 1,000 holds that 82 percent of Americans believe it is important to preserve public lands. NRPA said that Millennials are most supportive of land preservation, followed by Gen X'ers and finally Baby Boomers.

NRPA said the results of the poll make the permanent authorization of LWCF now being debated in Congress "an even bigger priority for lawmakers and the new administration."

But there is significant opposition to making LWCF permanent. The Heritage Foundation has recommended elimination of LWCF. And the foundation's *Blueprint for Reform* is reportedly guiding the Trump administration in its preparation of a fiscal year 2018 budget.

Legislation to make LWCF permanent almost made it over the finish line in December 2016 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 energy 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 he did introduce a "discussion draft" bill that would have extended LWCF for seven years and substantially realigned program priorities.

The NRPA poll, available at [www.nrpa.org/Park-Pulse/](http://www.nrpa.org/Park-Pulse/), holds that 33 percent of all Americans say that preserving the natural landscapes is very important, 28 percent say that it is very important and 21 percent somewhat important, for a total of 82 percent. Only seven percent said preserving natural landscapes is not very important or not at all important,

The poll was conducted among 1,025 representative American adults between January 2 and January 9 by Wakefield Research.

## **Fishermen say Atlantic Ocean monument beyond sea limits**

New England fishermen argued in a new lawsuit March 7 that President Obama did not have authority under the Antiquities Act to designate national monuments beyond the 12-mile territorial sea limits.

Thus, said the fishermen led by the Massachusetts Lobstermen's Association, "The ocean is not 'land owned or controlled by the Federal government' and, thus, is not within the President's monument proclaiming authority."

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 Northeast Canyons and Seamounts National Marine Monument.

The 4,913 square-mile monument off the North Atlantic Coast is one of 34 President Obama designated in his tenure.

In their lawsuit the fishermen also argued the designation was illegal because it violated an Antiquities Act of 1906 edict that a monument be the smallest area required to protect a site. Filing the lawsuit are the Massachusetts Lobstermen's Association, Atlantic Offshore Lobstermen's Association, Long Island Commercial Fishing Association, Rhode Island Fisherman's Alliance and Garden State Seafood Association.

The fishermen said in the lawsuit, "The monuments boundaries bear little relation to the canyons and seamounts, thereby prohibiting much fishing outside of these areas that would have no impact on the canyons, seamounts, or the coral that grows on them. Between Retriever and Mytilus Seamounts, for instance, the monument encompasses areas that are dozens of miles from the nearest seamount."

The fishermen fear that the Atlantic monument will take away productive fishing grounds. An attorney for the Pacific Legal Foundation, which filed the lawsuit for the fishermen, said, "This illegal, unilateral presidential action threatens economic distress for individuals and families who make their living through fishing, and for New England communities that rely on a vibrant fishing industry."

The Obama White House acknowledged in its announcement that commercial fishing would be limited in the monument, but said "recreational fishing will be allowed within the boundaries of the monument." For commercial fishermen the proclamation allows red crab and lobster takes to continue for seven years but shuts off other commercial fishing in 60 days.

The Atlantic monument is but one battleground for critics of Obama's monument policies. As we reported in the last issue of *PLN*, State of Maine Gov. Paul R. LePage (R) said he 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.

Perhaps the greatest controversy still centers on the Dec. 28, 2016, designation by Obama of a 1.3 million-acre Bears Ears National Monument in southern Utah. (*See related article page 13.*)

House Natural Resources Committee Chairman Rob Bishop (R-Utah) and the entire state Congressional delegation are asking President Trump to unilaterally de-designate the Bears Ears Monument.

From the other side ranking natural resources committee Democrat Raúl Grijalva (D-Ariz.) is putting pressure on the Trump administration to go public now on the legality of reversing the Bears Ears monument designation.

He wrote Secretary of Interior Ryan Zinke March 8 and said, "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 the President has the legal authority to overturn an existing national monument designation?"

The fishing industry lawsuit is available at:  
<http://www.savingseafood.org/wp-content/uploads/2017/03/1-1536-Complaint-Mar-3.pdf>.

## Notes

**Flake would add BLM concessioners.** Sen. Jeff Flake (R-Ariz.) introduced legislation (S 614) March 13 that would expand the use of private concessions on lands managed by the Bureau of Land Management (BLM). The bill would establish up to 10 pilot programs that would lease or sell land to state and local governments. Those governments then could contract with commercial recreation concessioners to operate on BLM land. "This would allow Arizonans to enjoy more access to popular outdoor recreation activities, like horseback riding, mountain bike rentals, campgrounds, and ziplines on public lands," Flake's office said in a press release. S 614 was endorsed by, among others, the National Association of Counties, National Association of State Parks Directors, National Association of County Park and Recreation Officials, and the National Recreation and Park Association.

**Zinke weighs in on NPS visitation.** 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 announced record visitation to the national parks in 2016 of 331 million people. That is 23.7 million more than 2015. 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."

**Rec industry works the Hill.** The outdoor recreation industry briefed House and Senate staff members last week on its recommendations for this Congress. Among other things the Outdoor Recreation Industry Roundtable (ORIR) said its members were willing and able to fill a spending gap if Congress and the Trump administration slash federal land management spending. As they are almost sure to do. "As an outcome of cuts in Federal spending, many Federal agencies are reducing or eliminating recreational opportunities," said Archery Trade Association President Jay McAninch. "The ORIR member industries believe this is tragic, and are offering private investments on public lands as a way to provide all Americans with the chance to recreate outdoors an American birthright." In a related initiative ORIR is asking Congress to include a recreation title in any infrastructure legislation it develops this year, again with an emphasis on private investment. ORIR is made up of the leaders of major recreation associations, including the National Ski Areas Association, the National Marine Manufacturers Association, the International Snowmobile Manufacturers

Association, the American Sportfishing Association and the Outdoor Industry Association, to name a few.

**PEER objects to Y'stone cell plan.** The environmental group Public Employees for Environmental Responsibility (PEER) is keeping up its attacks on cell phone tower construction in Yellowstone National Park. Earlier this month PEER took issue with a park proposal to improve coverage at the Old Faithful, Grant, Lake, and Canyon developed areas. The park views the project as an all-around benefit to Yellowstone by improving connectivity at developed sites and by consolidating antenna sites. But PEER, which has for a decade objected to the expansion of cell phone coverage in the park, says the increased coverage harms the park by reducing opportunities for solitude. The park is caught in a bind, however, because visitors particularly younger visitors demand improved connectivity in parks. In an early March letter to NPS Intermountain Regional Director Sue Masica, PEER argued that the project required a new environmental review and that relying on a categorical exclusion "would not withstand legal review." Yellowstone has extended the public comment period on its proposal until March 22. More information on the project is available at: <https://parkplanning.nps.gov/projectHome.cfm?projectId=70097>. The PEER letter to Masica is available at [http://www.peer.org/assets/docs/nps/3\\_2\\_17\\_PEER\\_call\\_YNP\\_investigation.pdf](http://www.peer.org/assets/docs/nps/3_2_17_PEER_call_YNP_investigation.pdf).

# Public Lands News<sup>®</sup>

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Editor: James B. Coffin

Subscription Services: Gerrie Castaldo

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## Trump budget would slash DoI, other domestic spending

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

Despite the overall decrease the stripped-down 62-page budget request would increase spending on energy development onshore and offshore at unspecified levels.

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 recommend.



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

Speaking of fire, the budget plays with fire when it recommends an unspecified decrease in allocations for the payments-in-lieu of taxes program and a \$120 million decrease in land acquisition under the Land and Water Conservation Fund.

Finally, the fiscal 2018 budget says the budget "streamlines operations" of BLM, the Fish and Wildlife Service, and the National Park Service. The request does not say how it would streamline 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.

Still, the Trump recommendations are just recommendations. Congress will have the final say as to how much money individual agencies receive in traditional appropriations bills.

Secretary of Interior Ryan Zinke told department employees earlier this month he is "not happy" with the Trump budget request, but that he would continue to argue for more substantial spending for the department.

Ranking House Natural Resources Democrat Raúl M. Grijalva (D-Ariz.) blasted the request. "Closing national parks, hobbling critical federal agencies, and blinding ourselves to natural disasters is beyond reckless," Grijalva said. "This president is trying to run the federal budget like it's a first grade math problem. Instead of trying to comprehend the complexities of a budget for a country this size, he just wants to subtract ten percent and go to lunch early."

Meanwhile, House and Senate appropriators are reportedly attempting to wrap up fiscal 2017 appropriations bills well 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.

At the same time Senate Democrats are insisting that appropriations bills observe a spending agreement edict that Defense and domestic spending be co-equal. Suggesting that Democrats will not go along with either a different split or other Trump administration proposals, such as the construction of a Mexican wall, Senate Minority Leader Chuck Schumer (D-N.Y.) said on the Senate floor this week:

"We believe that we should stick to the spending levels that were agreed to in December, that we should maintain a parity between defense and nondefense, and that there should be no poison pill riders."

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

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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.

**Fiscal 2018 budget:** The Trump administration's proposed 10 percent cut for the Interior Department follows his administration's philosophy of transferring the business of federal agencies to state and local governments and the private sector. By program:

*Energy:* The request is all in on energy development, saying it "Strengthens the Nation's energy security by increasing funding for DoI programs that support environmentally responsible development of energy on public lands and offshore waters. Combined with administrative reforms already in progress, this would allow DoI to streamline permitting processes and provide industry with access to the energy resources America needs, while ensuring taxpayers receive a fair return from the development of these public resources."

*Agency operations:* For land management agencies the budget "streamlines operations while providing the necessary resources for DoI to continue to protect and conserve America's public lands and beautiful natural resources, provide access to public lands for the next generation of outdoor enthusiasts, and ensure visitor safety."

*Wildfire:* The administration says its request, "Fully funds wildland fire preparedness and suppression activities at \$2.4 billion, 100 percent of the 10-year average for suppression operations, to ensure the resources necessary to protect life and property."

*PILT:* The administration takes on the sacrosanct payments-in-lieu of taxes (PILT) program, saying it, "Supports counties through discretionary funding for the (PILT) program at a reduced level, but in line with average funding for PILT over the past decade."

*NPS operations:* The request says it, "Ensures that the National Park Service assets are preserved for future generations by increasing investment in deferred maintenance projects. Reduces funds for other DoI construction and major maintenance programs, which can rely on existing resources for 2018."

*LWCF:* The request says it, "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.

*Partnerships:* To make up for lost appropriations in part, the budget says it, "Leverages taxpayer investment with public and private resources through wildlife

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**NOTICE: PUBLISHING SCHEDULE CHANGE**

Dear Subscriber:

The next issue of *Public Lands News* will be published on April 7, one week later than the usual biweekly cycle. After that we will resume our regular biweekly publishing schedule. We thank you for your consideration.

The Editors

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conservation, historic preservation, and recreation grants. These voluntary programs encourage partnerships by providing matching funds that produce greater benefits to taxpayers for the Federal dollars invested."

**Fiscal 2017 appropriations:** If and when Congress prepares an Interior appropriations bill based on HR 5538 and S 3068, here are some of the recommended House and Senate committee appropriations:

Among other things both the House and the Senate committee would block the listing of the greater sage-grouse under the Endangered Species Act; would order the Interior Department to delist the gray wolf in Wyoming from the Endangered Species Act; would forbid EPA from implementing a rule that would reduce carbon emissions from existing power plants; and would forbid EPA from implementing a May 27, 2015, rule that would expand the definition of a wetland subject to a Section 404 permit under the Clean Water Act.

The House alone approved provisions that would forbid the designation of any national monument in specific counties in eight states - Arizona, California, Colorado, Nevada, New Mexico, Oregon, Utah and Maine; forbid BLM from spending any money to change royalty rates "under Federal coal, oil, and gas leasing programs;" forbid BLM from implementing hydraulic fracturing rules (a federal court has already blocked them); prevent implementation of a plan to designate the 19 million-acre Arctic National Wildlife Refuge as wilderness; forbid EPA from spending any money to implement a May 12 methane rule; forbid the spending of any money on the gray wolf under the Endangered Species Act; forbid the Fish and Wildlife Service from completing a regulation of nonfederal oil and gas in wildlife refuges; and forbid any agency from attempting to transfer water rights to the federal government on renewal of a permit.

The fiscal 2017 House bill would actually increase land and resource management spending for BLM by \$9 million, allocating \$1.082 billion instead of the fiscal 2016 appropriation of \$1.073 billion. The Senate committee would increase the line item by \$16 million, to \$1.088 billion.

For the National Forest System the House approved a \$22 million increase, from \$1.509 billion in fiscal 2016 to \$1.531 billion in fiscal 2017. The Senate committee would increase National Forest System spending by \$11 million, to \$1.529 billion.

### Senate, House and Trump: BLM planning rule must go

The Senate joined the House March 7 in approving a resolution (HJ Res 44) that would overturn a BLM planning rule of Dec. 12, 2016, the so-called 2.0 rule.

The Senate vote was 51-to-48 with all Democrats opposed. The measure now goes to President Trump, who is expected to sign it. Said the Office of Management and Budget in endorsing the resolution, "Given its regional approach to planning, the Administration believes the rule does not adequately serve the State and local communities' interests and could potentially dilute their input in planning decisions."

This is the first action by the Senate to roll back public lands regulations posted by the Obama administration. The House on February 2 voted to revoke a BLM oil and gas methane emissions rule (HJ Res 36), but the Senate has not acted on it yet.

The 2.0 planning rule revised the substance of a previous planning rule by among other things placing a greater emphasis on broad area planning, requiring an assessment prior to the writing of a management plan and involving the public earlier in the planning process.

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Resolution sponsor Sen. Lisa Murkowski (R-Alaska) objected to specific provisions of the rule, beginning with an emphasis on areawide planning over broad landscapes. She said that was just a ruse to limit commodity development.

"It all but assures that new and revised plans will not have the level of detail or specificity that is needed to properly manage our local resources," said Murkowski, chairman of the Senate Energy Committee, on the Senate floor. "It is very obvious that BLM will deploy it as a mechanism to reduce or perhaps to eliminate many reasonable uses of federal land that provide jobs and support communities all across the West."

Similarly, Murkowski objected to provisions in the rule that would make state and local governments responsible for demonstrating a BLM land use plan was inconsistent with a state or local plan.

"Under this rule, BLM shifts the burden for making sure that resource management plans are consistent with state and local governments plans away from itself and onto the states and onto the local governments," she said. "That is not right."

But Sen. Maria Cantwell (D-Wash.) said the BLM rule was a necessary update of BLM's planning policy. "This is not a rule that regulates any specific use on public land. It does not restrict any particular activity. It updates the current law and says it is better to have input from local officials so they can update (plans) earlier," said Cantwell, ranking minority member on the Senate Energy Committee.

Environmentalists agreed with Cantwell. Said The Wilderness Society President Jamie Williams, "If Congress felt that BLM's rule needed more work, it should have let the agency continue to fine-tune it, not completely nullify it. This rule was grounded in one of the cornerstones of American democracy, namely, that people most affected by public policy decisions deserve to have a voice."

Counties were pleased with the Congressional action. Said the National Association of Counties, "As partners with the federal government, we continue to encourage the BLM to engage in meaningful collaboration with local stakeholders during the development of policies and guidelines. And despite representations by the BLM to do just that, we remain unconvinced that Planning 2.0 in its final form does much to satisfy the objective of meaningful collaboration and consultation with non-federal governmental entities."

Commodity users of the public lands endorsed the Senate vote. Said Public Lands Council President Dave Eliason, a rancher in Utah, "Streamlining is needed in the planning process, but not at the expense of input from local communities and permittees or elimination of economic analysis requirements."

Said the American Exploration & Mining Association, "Many provisions of BLM's Planning 2.0 rule are contrary to and/or exceed BLM's statutory authority under (the law). The rule redefines the concept of multiple-use, prioritizes preservation and conservation over sustained yield of natural resources, relegates governors, county commissioners and other elected officials to a secondary role, and limits public involvement."

The House and Senate voted to disapprove the BLM planning 2.0 rule under the 20 year-old 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.

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In addition to the BLM planning rule Republican legislators have introduced reversal resolutions against Obama administration public lands rules that regulate methane emissions from oil and gas operations, set standards for oil and gas development in national wildlife refuges, set standards for oil and gas development in the National Park System, set standards for onshore oil and gas site security, set standards for onshore oil and gas measurements, set new royalty standards for oil and gas and coal, and limit hunting and fishing in national wildlife refuges in Alaska.

BLM's existing planning rules - posted in 1979, 1983 and 2005 - guide the management of public lands, as required by the Federal Land Policy and Management Act of 1976. BLM's website on the plan was still available at press time at [www.blm.gov/plan2](http://www.blm.gov/plan2).

### Bishop panel seems inclined to dispose of fed lands

The House Natural Resources Committee took a major step recently toward disposing of federal lands, recommending that the fiscal year Congressional 2018 budget allow for such disposals.

In a Views and Estimates [document](#) submitted to the House Budget Committee, the natural resources panel said federal lands are poorly managed and, "The solution is to convey certain lands to state, local, and tribal governments, without limiting strings attached, including reversionary clauses. We request that a provision eliminating barriers for these conveyances be included in the budget resolution."

In addition to requesting that the Congressional budget offset any losses in county payments from such land transfers, the committee recommended the inclusion of a \$50 million stipend in the budget.

The committee made this case for the dramatic policy change: "Poorly managed federal lands create a burden for surrounding states and communities. These lands cannot be taxed and, in many cases, are in extreme disrepair (agencies estimate a \$20 billion dollar - and growing - maintenance backlog). Often mingled with private land, federal lands isolate communities, limit growth, adversely impact land value, and can lead to violations of private property rights."

In the first week of January the House took a separate step toward federal land disposals, approving a package of rules (H Res 5) that would not require compensation to the federal government for land transferred to states, local governments or Indian tribes. That is, under former 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.

The House Natural Resources Committee's budget recommendation was sharply criticized by The Wilderness Society. Said society senior director for conservation Matt Keller, "Make no mistake: America is wide awake to these assaults and will not let a bully like Chairman Bishop use hard-earned taxpayer dollars to ensure oil, gas and mining industries can lay waste to the forests, parks and refuges that belong to us all." Bishop is Rep. Rob Bishop (R-Utah), chairman of the House Natural Resources Committee.

During the Obama administration western Republicans stepped up their demands for greater control over the public lands. They have been particularly disturbed by the designation by Obama of 34 national monuments.

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ownership or management of federal lands to state and local governments, the State of Utah has. In a lead initiative Gov. Gary Herbert (R-Utah) on March 23, 2012, signed legislation (HB 148) that would require the government to turn all federal lands in Utah over to Utah, with a few exceptions - a total of 31 million acres.

Besides the House rules on compensation and the Bishop committee's budget recommendation, western senators and House members have begun taking baby steps toward gaining control of public lands. For instance, the Senate Energy Committee and the Bishop committee have begun a drive to rewrite the Endangered Species Act. They will almost certainly attempt to give states a larger say in listing of species, designation of critical habitat and other activities.

There are countervailing pressures within the Republican Party. Notably, Rep. Jason Chaffetz (R-Utah) February 2 withdrew a bill (HR 621) to sell off 3.3 million acres of public lands in western states.

Feeling the heat from western sportsmen Chaffetz said, "I am withdrawing HR 621. I'm a proud gun owner, hunter and love our public lands. The bill would have disposed of small parcels of lands Pres. Clinton identified as serving no public purpose but groups I support and care about fear it sends the wrong message. The bill was originally introduced several years ago. I look forward to working with you. I hear you and HR 621 dies tomorrow."

In addition any land disposal initiative may face rough water in the Trump administration. President Trump's secretary of Interior, Ryan Zinke, said at his January 17 confirmation hearing, "I want to be clear on this point. I am absolutely against the transfer or sale of the public lands."

Plus, as we reported in the last issue of *PLN*, Leaders in the Utah legislature last month backed off somewhat from their campaign to take ownership of 31 million acres of public lands in the state.

Those leaders, including Rep. Keven Stratton (R-Orem), chairman of the Utah House Joint *Commission for the Stewardship of Public Lands Committee*, said that the election of President Donald Trump may have eased for now state concerns about federal land management.

In a related action the New Mexico Senate sponsor of legislation to transfer subsurface federal mineral rights to the State of New Mexico last month pulled her bill. The revenues would have been used for early childhood education in the state.

The House Natural Resources Committee View and Estimates are here:  
<https://wilderness.org/sites/default/files/Republican%20Views%20and%20Estimates%20for%20FY2018.pdf>.

## Circuit court says Wyoming wolf should remain delisted

A federal appeals court ruled March 3 that the Fish and Wildlife Service (FWS) acted correctly in turning the gray wolf in Wyoming over to the state for management.

The three-judge panel of the U.S. Circuit Court for the District of Columbia overruled a lower court judge. That judge had held that a Wyoming management plan did not adequately guarantee a baseline of 10 breeding pairs and 100 wolves in the state and FWS should manage the wolf in Wyoming.

The appeals court decision for now returns to Wyoming the responsibility for insuring the survival of the gray wolf in the state. The plan from the Wyoming Game and Fish Department says the state will maintain a population of at least 100

wolves, including 10 breeding pairs, outside of Yellowstone National Park and the Wind River Indian Reservation.

Led by Defenders of Wildlife, environmentalists maintain in the lawsuit at issue that the Wyoming plan would not guarantee the survival of a healthy, genetically-diverse population of wolves. In their lawsuit the plaintiffs focused on a portion of the plan that establishes a "predator area" over 19 percent of the wolf's habitat, which would essentially be unregulated.

But the state and FWS countered, and the court agreed, that deregulating the predator area would not harm the wolf. Said the appeals court decision, written by Judge Judith W. Rogers, "Thus, according to the Service, the predator zone cannot be deemed a 'significant portion' of the wolves' range because the species would not become endangered even if every single wolf there were killed." Rogers was a Clinton appointee.

The Wyoming Game and Fish Department said it was "aware" of the court decision and added, "Game and Fish is awaiting further direction from the State's attorneys regarding the next steps and impacts of this opinion from the Court of Appeals."

The Earthjustice law firm that represented Defenders said it was "still evaluating" the possibility of an appeal.

Then Earthjustice pivoted to criticism of Congress for attempting to intervene in the management of species under the Endangered Species Act. The House and the Senate Appropriations Committee last year both approved an amendment to a fiscal year 2017 appropriations bill (HR 5538, S 3068) that would override the lower court decision. That legislation is still pending.

Said Earthjustice's lead attorney in the case, Timothy Preso, "Although we disagree with this decision, it highlights that Congress should not step in to block judicial review under the Endangered Species Act, nor to interfere with the science-based listing status of an individual species. We will continue to fight to protect wolves against extreme and hostile state management policies."

The wolf in Wyoming was originally delisted by 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. She said FWS should have demanded stronger proof from the state.

In collaboration with several federal and state agencies, FWS said in April 2016 that the gray wolf population in the northern Rockies is not only "robust" but also spreading.

FWS said that as of the end of 2015 the number of wolves in Idaho, Montana and Wyoming far exceeded the minimum management targets of 150 per state. The service said the numbers of wolves per state respectively were 786, 536 and 382.

In addition the report said that the gray wolf is moving into Oregon and Washington, with 110 counted in Oregon and 90 in Washington.

FWS concluded, "The (Northern Rocky Mountain) wolf population continues to be robust, stable and self-sustaining."

The appeals court decision is available at: [https://www.cadc.uscourts.gov/internet/opinions.nsf/E2381C96826F09F4852580D80057B29F/\\$file/14-5300-1664135.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/E2381C96826F09F4852580D80057B29F/$file/14-5300-1664135.pdf).

**March 17, 2017****Page 9**Dems: ONRR not authorized to block energy royalty rule

Sen. Maria Cantwell (D-Wash.) said March 7 that the indefinite delay of an oil, gas and coal royalty rule by the Trump administration is illegal.

On February 22 the Office of Natural Resources Revenue (ONRR) postponed the implementation of a July 1, 2016, rule that went into effect January 1. ONRR 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 Cantwell, ranking Democrat on the Senate Energy Committee, said the 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.

Cantwell wrote Secretary of Interior Ryan Zinke, "In sum, the department's action in postponing the effective date of the new royalty valuation rule, which had already taken effect, exceeded the department's authority under section 705 of the Administrative Procedure Act and does not meet the standards the courts have long required to apply when they seek to use their authority under the section."

Ranking House Natural Resources Committee Democrat Raúl Grijalva (D-Ariz.) made the same point. Before Zinke was confirmed Grijalva wrote Acting Secretary of Interior Jack Haugrud February 28, "The legality of this action is highly questionable. I am not aware of any situation where 5 U.S.C. 705 has been successfully invoked after the effective date of a rule. It appears that ONRR has used this provision to repeal an active and in-effect regulation in contravention of the notice-and-comment procedures required by the (Administrative Procedures Act)."

In announcing the stay 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.

On March 14 conservation groups asked the U.S. District Court in Wyoming for permission to intervene in the litigation on behalf of the Obama rule.

"If companies want to mine and profit from federal coal, they need to pay a fair price for the public coal," said Bob LeResche, chair of the Powder River Basin Resource Council and a rancher near Sheridan, Wyo. "Ninety thousand Americans commented in favor of closing this loophole. The government should keep it closed."

In one major change the Obama regulations replaced an old standard that applied (and will apply again) a series of benchmarks to set the royalty price. In the new rule ONRR would begin with a first affiliated sales price, followed by index prices.

When the rule was published last July the American Petroleum Institute focused on a default provision, among other things. API Upstream and Industry Operations Director Erik Milito said the default provision would allow ONRR to "second-guess" royalty valuation set by an operator.

But critics such as the environmental group the Center for American Progress said the rule would curb a coal industry practice of selling coal to affiliates, thus reducing the price for royalty purposes and depriving federal and state governments of royalties. The center said 42 percent of coal mined in Wyoming in 2012 was sold to an affiliate company and all coal mined for export in 2013 in Montana was sold to an affiliate.



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 yet.

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 Appropriations Committee approved a counterpart bill (S 3068) on June 16, 2016, without the provision.

The ONRR letter is available at:  
<https://onrr.gov/about/PDFDocs/20170222.pdf>.

### EPA joins Hill in attempting to curb methane rules

While Congress works to remove BLM oil and gas methane emissions regulations, EPA is easing its methane emission reporting requirements.

Much to the dismay of Democrats EPA earlier this month cancelled an Obama administration information collection requirement on controls operators must establish to reduce methane emissions.

EPA Administrator Scott Pruitt himself said he was both responding to complaints of several states and to ease operations for oil and gas companies. "Today's action will reduce burdens on businesses while we take a closer look at the need for additional information from this industry," Pruitt said March 2.

On March 8 two leading House Democrats fired back. Reps. Raúl M. Grijalva (D-Ariz.) and Alan Lowenthal (D-Calif.) wrote Pruitt charging the cancellation of the collection order was inappropriate.

"This administration is giving away our public resources even faster than I thought possible and with even less regard for the consequences than I expected," Grijalva said. "Apparently we can't ask the oil and gas industry how much methane it's pumping into the air and where it's happening because that might generate answers that lead to better policy."

In their letter Grijalva, ranking House Natural Resources Committee Democrat, and Lowenthal, ranking House subcommittee on Energy Democrat, asked Pruitt to reverse course and recommence information collection. "Accurate data from oil and gas operators are essential for setting appropriate and cost-effective standards for reducing methane emissions, which are necessary for improving air quality, mitigating climate change, and ensuring that a valuable commodity does not continue to be wasted," they wrote.

But Pruitt and attorneys general in nine states disagree. The attorneys general, led by Ken Paxton in Texas, said the EPA data request was unnecessary. "The burden is disproportionate to its benefit," said the attorneys general. "We believe the EPA's requests to be an unnecessary and onerous burden on oil and gas producers that is more harassment than a genuine search for pertinent and appropriate information."

The Obama administration's EPA posted the information collection regulation on Nov. 10, 2016. EPA said at the time, "The ICR seeks a broad range of information, such as how equipment and emissions controls are, or can be, configured, and what installing those controls entails. This information will help the agency determine how best to address methane emissions from the oil and gas industry, including through rulemaking to reduce emissions."

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Under its information request EPA asked 15,000 oil and gas operators for two kinds of information - the identity of equipment they were using and sources of methane emissions.

EPA is also attempting to reduce methane emissions with a separate regulation. 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.

Meanwhile, the House on February 3 approved a resolution (HJ Res 36) under the Congressional Review Act (CRA) to revoke a BLM methane emissions rule. The Senate is expected to give final Congressional approval soon to 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.

President Trump would be expected to sign the resolution in that his White House reportedly worked with Congressional leaders to identify Obama administration energy regulations that should be overturned.

Although the BLM methane rule technically went into effect January 17, it would not begin phasing in required reductions in methane until 2018. Even without the Congressional resolution the Trump administration will be firmly in charge of implementing it, or not implementing it. The rule requires producers to use available technology to cut flaring in half and to inspect their operations regularly for leaks.

The Grijalva/Lowenthal letter is available at:  
<https://democrats-naturalresources.house.gov/grijalva-lowenthal-letter-to-pruitt-on-methane-emissions-march-8-2017>.

### Sen. Bennet moves to block O&G work in Thompson Divide

Following up on BLM's cancellation of the 25 most disputed oil and gas leases in the White River National Forest, Sen. Michael Bennet (D-Colo.) has introduced legislation to prevent issuance of new leases.

Bennet's bill (S 481) would withdraw much of the land in the Thompson Divide area from further leasing, allow existing lessees to exchange their leases for money they have already spent and establish a methane leasing program in existing coal mines in the area.

Whether the Trump administration would go along with a program that would largely reduce fossil fuels energy development is doubtful. Trump and his aides have long said that a fundamental plank of his administration is the encouragement of fossil fuels development.

But Bennet appears to have at least one major energy player on his side, Gunnison Energy President Brad Robinson. "We support this legislative compromise because it addresses our concerns over continued access to areas we need in order to continue production from our existing leases," he said. "This bill does that by balancing energy needs with the wishes of the community to keep some areas undeveloped along Thompson Divide and Kebler Pass."

Robinson added, "We are also excited and encouraged over the new provisions in this bill that will promote the capture of energy from methane leaks into the

atmosphere from old coal mining areas. These provisions will help bring jobs and economic growth to the North Fork Valley and also help the environment."

Late last year the Obama administration cancelled a slew of oil and gas leases across the West, as follows:

On Nov. 16, 2016, the Interior Department said that the Devon Energy Corporation will return 15 oil and gas leases just outside Glacier National Park in the Badger-Two Medicine area of Montana. That makes 45 of the original 47 leases approved by BLM in 1982 that have been returned.

On Nov. 28, 2016, the department announced the completion of a record of decision to cancel 17 of 19 oil and gas leases on the Roan Plateau on Colorado issued in 2008 in the George W. Bush administration. Two leases remain on the top of the plateau and 12 on the plateau's base.

And on Nov. 17, 2016, BLM posted a final decision calling for the cancellation of 25 oil and gas leases in the White River National Forest, to the dismay of the oil and gas industry.

The 25 White River forest leases were among 65 that the Interior Board of Land Appeals in 2007 ruled had been sold without current environmental documentation, either by the Forest Service or by BLM. So BLM prepared an EIS to support a plan to cancel the 25 leases, of which 18 are located in the controversial Thompson Divide in western Colorado. BLM would modify the remaining 40 leases.

Responding to the BLM White River action the oil and gas industry rebelled and promised to seek support from Congress and the Trump administration in a campaign to reinstate the leases.

At the time in November David Ludlam, executive director of West Slope Colorado Oil and Gas Association, said, "The outcome of this month's election broadens the range of possible responses our industry may have in relation to this unprecedented breach of contract. We will remain in close contact with our congressional delegation as well as the incoming Trump administration to determine the best course of action to right a major wrong perpetuated in the final hours of a president whose tenure is marked by an agenda to eliminate production of oil and natural gas on federally managed lands."

It will be up to the Trump administration and Secretary of Interior Ryan Zinke to determine if and how leases can be instated. However, the Obama administration conducted long and torturous environmental reviews before cancelling the leases, so the Trump administration may have to write its own EISs.

### House committee on record in favor of fire money shift

The House Natural Resources Committee has committed to moving legislation in this Congress to take emergency wildfire expenditures out of appropriations bills.

In an undated submission to the House Budget Committee the panel explicitly requested help in the fiscal 2018 Congressional budget to allow that. In the last Congress the House twice passed legislation to take the wildfire pressure off spending bills, twinned with provisions to limit environmental reviews of wildfire treatment projects. But budget disagreements helped doom the legislation.

Said the House Natural Resources Committee, "The Committee plans to reintroduce and pass legislation again to address these issues to improve the health of our NFS."

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To do that the committee may need what is called a "cap adjustment" in the Congressional budget. So the resources committee sought help from the budget panel, saying, "As the Budget Committee looks at disasters and wildfires, we ask that it works closely with the Committee to find a solution to the fire funding problem. If this problem is not solved in short order, the Forest Service will be unable to manage anything but wildfires and forested communities will continue to decline."

In the last Congress House and Senate Budget Committee leaders resisted proposals to make cap adjustments in the budget for the transfer of a portion of emergency wildfire costs out of appropriations bills and into disaster spending. If the costs were transferred to disaster spending, it would reduce expenditures from appropriations bills, making money available to other purposes.

In a famous August 2015 commitment, Senate Budget Committee and line committee leaders joined forces to pledge to work for a strategy to guarantee wildfire money to agencies such as the Forest Service without disrupting agency budgets.

However, Senate Budget Committee Chairman Mike Enzi (R-Wyo.) acknowledged at the time, "I know there are differences of opinion out there as to how to solve this problem, but the key to solving it is getting everyone in a room to discuss it. As cap adjustments are under the jurisdiction of the Budget Committee, I look forward to working with my colleagues on a durable and long-lasting solution that fits our fiscal priorities and is responsible budgeting."

That durable and long-lasting solution never appeared. Working against advocates of the wildfire-spending proposal are such powerful conservative forces as the Heritage Foundation.

In a 2014 paper the foundation made the case against an increased cap adjustment for the then Obama administration budget. Said the foundation at the time, "Although Congress should appropriate sufficient funding for wildfire suppression, which currently falls within the federal government's responsibility, this does not mean that Congress should do so through a spending loophole. Instead, Congress should budget appropriately for wildfire suppression costs by using the most accurate estimation method to determine funding needs and by adhering to its agreement to limit discretionary spending under a budget cap and sequestration."

The foundation concluded, "This (cap adjustment) request seeks to explicitly exempt certain funding from agreed-upon spending limits and shifts the debate from what Congress should fund in its budget to which programs Congress can fund outside the budget."

The House-passed measure of last year would transfer wildfire spending above the 10-year average to disaster spending and limit environmental reviews for wildfire-related projects. The Senate Agriculture Committee Sept. 13, 2016, approved legislation similar to the House bill.

Separately, the Obama administration, Sen. Wyden and Rep. Mike Simpson (R-Idaho) last Congress backed legislation that would transfer costs above 70 percent of average out of appropriations bills, compared to the House bill's 100 percent. In addition Wyden and Simpson would not have cut back on environmental reviews.

It is understood that Wyden is discussing with his Senate Republican colleagues from Idaho - James Risch and Mike Crapo - a key revision to his wildfire-borrowing bill of last year. The senators may give the recommendation that emergency wildfire costs be transferred to disaster spending when those costs reach 70 percent of the 10-year average.

As we have reported, despite the huge storms that have marched across the West

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this winter and eased the threat of wildfires for the early part of this upcoming season, supports of the budget transfer strategy say the long-term fire danger has not eased.

Wyden's office said this winter's gargantuan rainfall and snowfall in the West could be one of a kind and the emergency spending provision is still needed. Indeed in most years of the last decade emergency wildfire spending exceeded appropriations, forcing federal land management agencies to borrow from line programs.

In a monthly report March 1 the National Interagency Fire Center said most of the continental West is in good shape for the early part of the year, but Alaska not so much.

### Grijalva asks Zinke to take stand on monument revoking

A ranking House Democrat last week attempted to prod Secretary of Interior Ryan Zinke into taking a position on the legality of a Presidential reversal of a national monument designation.

The Utah Congressional delegation said in January that as a top priority it would seek a reversal of the Dec. 28, 2016, designation of a 1.35 million-acre Bears Ears monument in southern Utah by President Obama.

And Zinke has said he would make a visit to the area a top priority. (However, this past week Zinke visited various department offices in Montana.)

The ranking Democrat, Rep. Raúl M. Grijalva (D-Ariz.), asked Zinke in a pointed letter March 8 that followed up on a Zinke statement in his January 17 confirmation hearing that reversal of a monument declaration is legally "untested."

Grijalva wrote, "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.

"We will work with the Trump administration to re-examine Bears Ears National Monument, as well as other ill-advised unilateral executive designations across the country," the legislators said in a statement. "What is done through executive action can be undone through executive action."

Some scholars believe a President would have limited authority under the Antiquities Act to reverse designations. Indeed, the Congressional Research Service in a report it prepared on the act questioned whether reversals would be legal.

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.

Obama also 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 Park Service, include a Birmingham

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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 Utahns aren't the only ones who are demanding revocation of national monuments. On March 7 New England fishermen argued in a new lawsuit March 7 that President Obama did not have authority under the Antiquities Act to designate national monuments beyond the 12-mile territorial sea limits. (*See related article page 20.*)

The New England fishermen in their lawsuit filed in the U.S. District Court for the District of Columbia objected to the Sept. 15, 2016, designation of a Northeast Canyons and Seamounts National Marine Monument. The 4,913 square-mile monument lies off the North Atlantic Coast.

The Atlantic monument is but one battleground for critics of Obama's monument policies. As we reported in the last issue of *PLN*, 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 manage the area.

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.

## 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:** Right-of-way.

**BLM decision:** BLM will deny a right-of-way (ROW) across a wilderness study area (WSA) to a mining claim.

**Appellant ROW applicant:** The Alaska National Interest Lands Conservation Act (ANILCA) guarantees access to inholdings.

**IBLA decision:** Affirmed denial of ROW, ANILCA doesn't apply because mining claim is not surrounded by conservation lands.

**Case identification:** *Andrew Vandenberg 189 IBLA 287*. Decided February 27, 2017. Eight pages. Appeal from a BLM decision denying a proposed right-of-way to an inholding surrounded by public lands. COC 75988.

**IBLA argument:** IBLA Administrative Judge James K. Jackson affirmed a BLM decision denying a right-of-way across a WSA to a mining claim. BLM had argued that it was forced to deny the ROW because the Federal Lands Policy and Management Act (FLPMA) requires BLM to manage a WSA to prevent its impairment. The appellant countered that ANILCA supersedes FLPMA in this situation by guaranteeing access to inholdings within conservation areas. Jackson first said he would not rule on whether ANILCA applies to these lands in Colorado or not because, second, even if ANILCA did, the subject mining claim wouldn't qualify because it is not surrounded by conservation lands. Jackson held, "As BLM correctly notes, application of the ANILCA provision for inholdings surrounded by conservation system units, national recreation areas, national conservation areas, and WSAs would not make a difference in this case because (the appellant's) patented mining claim is not within or surrounded by such lands." In addition, he said, ANILCA requires an applicant for a ROW to file such applications under FLPMA.

**Subject:** Mineral materials royalties.

DOI-2020-04 02793

**BLM decision:** ONRR will require a minerals lessee to pay royalties based on the value of the minerals after being put in marketable conditions.

**Appellant lessee:** ONRR erred because all parties had agreed on a price of the minerals for royalty purposes.

**IBLA decision:** Affirmed ONRR.

**Case identification:** *Pacific Northwest Aggregates, Inc., 189 IBLA 316*. Decided March 13, 2017. Thirty pages. Appeal from a decision of the Director, Bureau of Indian Affairs, denying an appeal from Order to Report and Pay Additional Royalties Modifying Order to Perform Restructured Accounting, issued by the Office of Natural Resources Revenue (ONRR), requiring lessee to report and pay additional royalties found to be due on sand, gravel, and other solid minerals produced from Indian mineral lease of allotted lands. MMS-08-0197-IND.

**IBLA argument:** IBLA Administrative Judge James F. Roberts affirmed a decision by the Office of ONRR requiring a minerals material lessee operating on Indian lands to pay additional royalties of \$1,234,635. Roberts agreed with ONRR that the lessee had failed to pay royalties based on the value of minerals after they had been processed, i.e. at an arm's-length price. The lessee argued that he had an agreement with the Indian landowner to pay a lesser price. Held Roberts, "In summary, we conclude that ONRR properly determined that the royalty value of the materials produced from the Lease that were sold to (the buyer) should be based on the arm's length price at which the materials were likely to be sold after extraction, removal and processing. ONRR properly held that (the lessee) owes the Indian allottees additional royalties based on the ordinary or customary market for the Mine materials sold to (the buyer), that market being for materials placed in a marketable condition by processing, with no deduction for the costs of processing."

## Notes

**Will Trump defend frack rule in court?** The Tenth U.S. Circuit Court of Appeals March 9 asked the Trump administration's Justice Department if it intends to defend an Obama administration hydraulic fracturing rule. A U.S. District Court judge in the District Court for Wyoming, Scott Skavdahl, held June 21, 2016, the BLM rule of March 26, 2015, was invalid. Skavdahl said Congress had proscribed BLM and EPA from regulating non-diesel hydraulic fracturing. Skavdahl's decision has been appealed to the Tenth Circuit and that panel now wants to know if the Trump administration intends to defend it. Even if the administration doesn't stand up for the rule environmentalist intervenors, led by the environmental law firm Earthjustice, are sure to. The states of Wyoming and North Dakota brought the lawsuit. The appeals court has scheduled oral arguments in the suit for March 22.

**Minor Malheur occupiers convicted.** Although the main players in the January 2016 occupation of the Malheur National Wildlife Refuge in Oregon have been found innocent of criminal charges, four minor players were convicted last week. A federal jury March 10 convicted four of the occupiers of various charges, including conspiracy and damaging federal property. The jury convicted Jason Patrick and Darryl Thorn of conspiracy and Duane Ehmer and Jake Ryan of the lesser charge of damaging the refuge. But on Oct. 27, 2016, a separate federal jury found seven defendants innocent of all charges in the occupation. Among those found innocent were occupation leaders Ammon and Ryan Bundy. In a separate court event six allies of Nevada rancher Cliven Bundy are on trial in federal court in Las Vegas for preventing BLM from rounding up cattle being illegally grazed on the public range. They are among 19 defendants who the feds say participated in a 2014 armed standoff in a case involving grazing by Cliven Bundy. The federal government is also attempting to collect more than \$1.1 million in fees and penalties from Bundy for illegally grazing on public land. Of the other 13 defendants in the Nevada confrontation, two have pleaded guilty; Cliven, Ammon and Ryan Bundy are scheduled for trial in May; and six others are expected to go to trial in August.

**Alaska senators meet with Trump.** Alaska senators said they discussed resource development in the state March 8 in an hour-long meeting with President Trump and Secretary of Interior Ryan Zinke. Neither the senators nor the administration officials commented on any agreements on public lands policy reached in the meeting, tacit or otherwise. Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) has repeatedly charged that the Obama administration prevented the state from developing

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oil resources under public lands, driving the state into economic distress. Murkowski and her colleague Dan Sullivan (R-Alaska) have also faulted the Obama administration for not approving a land exchange so the state could build a road to the community of King Cove. The road would have gone through wilderness in the Izembek National Wildlife Refuge.

**Huge oil discovery in Alaska announced.** Repsol and Armstrong Energy announced March 9 that they have made the "largest U.S. onshore conventional hydrocarbons discovery in 30 years" on the North Slope of Alaska. The leases are all on state land but are just east of the National Petroleum Reserve Alaska (NPRa) managed by BLM. The bureau has leased 1.5 million acres of the 23 million-acre NPRa for oil and gas development. ConocoPhillips announced January 13 that it has made a significant oil and gas discovery in the northeastern corner of NPRa. The ConocoPhillips find is in the Greater Mooses Tooth Unit of NPRa and its two drilled wells are called the Willow Discovery. The Repsol and Armstrong discoveries are in the Horseshoe -1 and 1A wells in the Nanushuk play. The Nanushuk companies say their play could contain as much as 1.2 billion barrels of oil, with first production in 2021. Because of a number of factors such as depletion of resources and market prices, the Trans Alaska Pipeline System has seen a huge decrease in oil flowing through it (Sen. Murkowski blames in part Obama administration intransigence). In 1988 738 million barrels flowed through the pipeline; production now is below 200 million barrels. The Alaska Department of Natural Resources has posted a most useful map of the various plays on the North Slope at: <http://dog.dnr.alaska.gov/GIS/Data/ActivityMaps/NorthSlope/NorthSlopeOilAndGasActivityMap-201605.pdf>.

**Enviros attack O&G sale near Zion.** Environmentalists last week gave the Trump administration notice that they will oppose all oil and gas lease sales that they consider a danger to the environment. In case number one an alliance of major environmental groups told the Utah State Office of BLM March 9 that the proposed sale of two leases on BLM land near Zion National Park was not acceptable. In case number two a pair of environmental groups challenged a proposed oil and gas lease sale in Wyoming (*see following item*). The Zion sale was proposed for June but BLM has delayed it until September 14. The Wilderness Society, Southern Utah Wilderness Alliance, Sierra Club, the National Resources Defense Council and the National Parks Conservation Association said the sale should be deferred further while BLM prepared an amendment to a resource management plan. "There are plenty of places where energy development could be appropriate in Utah, but the doorsteps of a prized national park and the banks of important waterways are not those places," said Nada Culver, senior director for agency policy at The Wilderness Society. Although the Obama administration prepared the oil and gas lease sales, the Trump administration is now in charge.

**Enviros attack Wyoming O&G sale.** Environmentalists last week gave the Trump administration notice that they oppose an upcoming oil and gas lease sale in Wyoming. The Wyoming State Office of BLM has planned a June 22 auction of 33,000 acres of federal land. On March 6 WildEarth Guardians and the Center for Biological Diversity protested the proposed sale because of the possible impact of the sale on air quality and global warming. "More fracking will only worsen air pollution in a part of Wyoming that's already exceeding national air quality standards meant to protect people," said Diana Dascalu-Joffe, senior attorney at the Center. "Destroying public land for fracking at the cost of human health and our climate future is terrible public policy." After a year of relatively small oil and gas lease sales, the BLM State Office in Wyoming hit the jackpot February 7, grossing \$129.3 million in a quarterly sale. In the previous three sales the state office garnered less than \$20 million combined. Sale results tend to be erratic in most states, depending on the price of oil and gas, the number of nominations from interested parties, and the quality of environmental reviews (thus avoiding litigation). In the competitive February sale the Wyoming office offered 285 parcels and sold 278 of them. The highest bid was \$18.1 million for a 161-B01e2020-04.02795



**Solons ask for soda ash royalty break.** A bipartisan alliance of House and Senate members March 7 introduced legislation (HR 1399, S 546) to reduce the royalty rate on soda ash produced from the public lands from six percent to two percent. The sponsors said the six percent royalty rate leaves American producers at a disadvantage in competition with other nations, particularly China. Said lead Senate bill sponsor John Barrasso (R-Wyo.), "The last thing Washington should do is raise costs here at home. Our bipartisan bill will give American soda ash producers the certainty they need to stay competitive in the global market and keep these jobs here in the United States." In the last Congress the Obama administration on Oct. 1, 2015, testified in the Senate Energy Committee the bill was not needed. It said (1) a lower royalty would cost the government some \$21 million per year and (2) there was no evidence a higher royalty rate had affected the economics of the soda ash business. Rep. Paul Cook (R-Calif.) is the lead sponsor of the House bill, which has 22 cosponsors.

**Georgia national forests consolidation asked.** Senate and House members from Georgia introduced legislation (S 571, HR 1434) March 8 that would authorize the sale of 30 national forest tracts in their state. The legislators say the tracts are small and isolated and are not useful for national forest purposes. The legislators say they have the Nature Conservation in Georgia on their side. Revenues from the sales would be used to acquire properties within the Chattahoochee-Oconee National Forest boundary. Sen. David Perdue (R-Ga.) and Rep. Doug Collins (R-Ga.) are the lead sponsors.

## Conference Calendar

### APRIL

2-5. **American Association of Petroleum Geologists Annual Conference & Exhibition** in Houston, Texas. Contact: American Association of Petroleum Geologists, P.O. Box 979, Tulsa, OK 74101-0979. 1 (800) 364-2274. <http://www.aapg.org/>.

### MAY

1. **National Hydropower Association Annual Conference** in Washington, D.C. Contact: National Hydropower Association, 25 Massachusetts Ave., N.W., Suite 450, Washington, DC 20001. (202) 682-1700. <http://www.hydro.org>.

1-4. **National Outdoor Recreation Conference** in Scottsdale, Ariz. Contact: The Society of Outdoor Recreation Professionals, P.O. Box 221, Marienville, PA 16239. (814) 927-8212. <http://www.recpro.org>

5-8. **National Ski Areas Association National Convention and Trade Show** in Scottsdale, Ariz. Contact: National Ski Areas Association, 133 South Van Gordon St., Suite 300, Lakewood, CO 90228. (303) 987-1111. <http://www.nsaa.org>.

7-9. **Interstate Oil and Gas Compact Commission Annual Business Meeting** in Oklahoma City, Okla. Contact: Interstate Oil and Gas Compact Commission, P.O. Box 53127, Oklahoma city, OK 75132-3127. (405) 525-3556. <http://www.iogcc.state.ok.us>.

20-23. **Association of Consulting Foresters of America National Conference** in Lake Tahoe, Nev. Contact: Association of Consulting Foresters of America, 732 North Washington St., Suite 4-A, Alexandria, VA 22314-1921. (703) 548-0990. <https://www.acf-foresters.org>.

### JUNE

11-14. **International Right-of-Way Association International Education Conference** in Anchorage, Alaska. Contact: International Right-of-Way Association, Pacifica Harbor Business Center, Suite 220, 19750 S. Vermont Ave., Torrance, CA 90502-1144. (310) 538-0233. <http://www.irwaonline.org>.

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# **Federal Parks & Rec**

## **addendum to Public Lands News**

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- \* *Zinke launches program to expand rec access*
- \* *LWCF guarantee bill has one Republican sponsor*
- \* *Fishermen take Atlantic monument to court*
- \* *Notes*
- \* *Trump budget short on domestics (See Public Lands News article)*
- \* *House might dispose of fed lands (See Public Lands News article)*

### **Zinke lines up system for increasing sportsmen's access**

Secretary of Interior Ryan Zinke kicked off his tenure with a bang March 2 by directing his department to expand access to public lands for recreational hunting and fishing.

He posted a Secretarial Order No. 3347 that requires his assistant secretaries to report to him within 30 days on steps needed to increase hunting and fishing access.

Once those recommendations have been run through hunting and fishing councils - but not the general public - Zinke said the department would publish the recommendations as policy.

Noting the economic benefits of outdoor recreation Zinke said, "Over the past eight years however, hunting, and recreation enthusiasts have seen trails closed and dramatic decreases in access to public lands across the board. It worries me to think about hunting and fishing becoming activities for the land-owning elite. This package of secretarial orders will expand access for outdoor enthusiasts and also make sure the community's voice is heard."

Sportsmen applauded. Said Association of Fish and Wildlife Agencies Executive Director Ron Regan, "Secretary Zinke's quick action by issuing these two secretarial on his first day at the Department of the Interior demonstrates his commitment to our outdoor recreation heritage and economy. These orders demonstrate an understanding of the important role hunters, target shooters, boaters and anglers play in the conservation of fish and wildlife resources."

The Senate on March 1 confirmed Zinke as secretary of Interior and the next day - his first in office - he signed the Secretarial Order on hunting and fishing access. He also signed a second Secretarial Order No. 3346 that overturns a ban on lead ammunition and lead fish tackle.

The lead order did not go over well with Defenders of Wildlife. "The Service's decision to phase out over time the use of lead shot and tackle thus followed directly from its commitment to preserve and protect species within the national wildlife refuge system," said Jamie Rappaport Clark, president of Defenders. "Unfortunately, in hastily revoking this order, the Secretary gave no sign that he embraces the same commitment to conservation. As chief steward of the nation's natural resources, its public lands and wildlife, his first step is immensely disappointing."

In a related development the day before Zinke issued his orders two old foes reached an agreement on recommendations for improving Bureau of Land Management (BLM) travel plans affecting recreational access.

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The Wilderness Society environmental group and the Blue Ribbon Coalition powered recreation group recommended March 1 that BLM prioritize travel management plans. In the past the two groups have frequently fought it out in court to either limit powered recreation vehicle access in travel plans (The Wilderness Society) or to increase powered vehicle access (BlueRibbon Coalition).

Phil Hanceford, assistant director of The Wilderness Society BLM Action Center, said, "This effort reflects a new focus on collaboration between diverse interest groups that have many shared values when it comes to use and enjoyment of federal lands."

Don Amador, western representative for the BlueRibbon Coalition, said, "Having worked across the aisle with conservation groups in California for the last decade on recreation issues, I am proud of this effort at the national level to try and find common ground in support of managed recreation on public lands."

Secretary Zinke's recreational access order builds on Executive Order 13443 posted by President George W. Bush on Aug. 16, 2007. It directs federal agencies "to implement actions that expand and enhance hunting opportunities for the public."

The House and Senate in the last Congress passed numerous bills to expand access to public lands for hunters and fishermen, but the two bodies were never able to agree on a final package that the Obama administration would accept. The bills would have taken such steps as declaring BLM and Forest Service lands open to hunting and fishing unless specifically closed. And they would have allocated a piece of Land and Water Conservation Fund money to improving access to public lands.

The Secretarial order on hunting and fishing is available at: [https://www.doi.gov/sites/doi.gov/files/uploads/revised\\_so\\_3447.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/revised_so_3447.pdf). The Secretarial order on lead is available at: [https://www.doi.gov/sites/doi.gov/files/uploads/order\\_no\\_3346.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/order_no_3346.pdf).

## **Cantwell LWCF guarantee bill has single GOP sponsor**

Only one Republican senator signed on to a new bill (S 569) March 8 that would not only make the Land and Water Conservation Fund (LWCF) permanent but also guarantee \$900 million per year for the program. Without further appropriations.

However, numerous Republican senators have signed on to legislation in the past to make the program permanent, although not to guarantee money for it. Those Republicans would prefer to make the program subject to annual appropriations bills.

Still, the introduction of S 569 gives program supporters a strong negotiating position if and when legislation to reauthorize the program begins to move. Those supporters enjoy an ace in the hole in the person of Secretary of Interior Ryan Zinke (R-Mont.), who has endorsed in the past legislation in favor of a permanent LWCF with full funding of \$900 million per year.

Lead Senate sponsor of S 569 Sen. Maria Cantwell (D-Wash.) said, "For decades, the LWCF has brought together public and private resources to open access to trails, create wildlife corridors, and preserve our clean air and water. We wouldn't have some of the best outdoor recreation opportunities, like Olympic National Park and Riverside State Park, without the LWCF."

Her one Republican cosponsor, long-time program advocate Sen. Richard Burr (R-N.C.), said, "I'm proud to work with Sen. Cantwell to make sure this program continues so that future generations can enjoy North Carolina's most beautiful places and that the program has the resources it needs to continue conservation initiatives across the country."

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In the House on January 12 Rep. Raúl Grijalva (D-Ariz.) and Rep. Patrick Meehan (R-Pa.) took a first step toward making LWCF permanent by introducing legislation (HR 502) to do so. Grijalva and Meehan would not guarantee money for the program, leaving it subject to appropriations.

The law is presently authorized through September 30, 2018.

In the tug of war over the Trump administration's position on LWCF the National Recreation and Park Association (NRPA) in February weighed in with the results of a pro-LWCF poll.

The survey of 1,000 holds that 82 percent of Americans believe it is important to preserve public lands. NRPA said that Millennials are most supportive of land preservation, followed by Gen X'ers and finally Baby Boomers.

NRPA said the results of the poll make the permanent authorization of LWCF now being debated in Congress "an even bigger priority for lawmakers and the new administration."

But there is significant opposition to making LWCF permanent. The Heritage Foundation has recommended elimination of LWCF. And the foundation's *Blueprint for Reform* is reportedly guiding the Trump administration in its preparation of a fiscal year 2018 budget.

Legislation to make LWCF permanent almost made it over the finish line in December 2016 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 energy 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 he did introduce a "discussion draft" bill that would have extended LWCF for seven years and substantially realigned program priorities.

The NRPA poll, available at [www.nrpa.org/Park-Pulse/](http://www.nrpa.org/Park-Pulse/), holds that 33 percent of all Americans say that preserving the natural landscapes is very important, 28 percent say that it is very important and 21 percent somewhat important, for a total of 82 percent. Only seven percent said preserving natural landscapes is not very important or not at all important,

The poll was conducted among 1,025 representative American adults between January 2 and January 9 by Wakefield Research.

## **Fishermen say Atlantic Ocean monument beyond sea limits**

New England fishermen argued in a new lawsuit March 7 that President Obama did not have authority under the Antiquities Act to designate national monuments beyond the 12-mile territorial sea limits.

Thus, said the fishermen led by the Massachusetts Lobstermen's Association, "The ocean is not 'land owned or controlled by the Federal government' and, thus, is not within the President's monument proclaiming authority."

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 Northeast Canyons and Seamounts National Marine Monument.

The 4,913 square-mile monument off the North Atlantic Coast is one of 34 President Obama designated in his tenure.

In their lawsuit the fishermen also argued the designation was illegal because it violated an Antiquities Act of 1906 edict that a monument be the smallest area required to protect a site. Filing the lawsuit are the Massachusetts Lobstermen's Association, Atlantic Offshore Lobstermen's Association, Long Island Commercial Fishing Association, Rhode Island Fisherman's Alliance and Garden State Seafood Association.

The fishermen said in the lawsuit, "The monuments boundaries bear little relation to the canyons and seamounts, thereby prohibiting much fishing outside of these areas that would have no impact on the canyons, seamounts, or the coral that grows on them. Between Retriever and Mytilus Seamounts, for instance, the monument encompasses areas that are dozens of miles from the nearest seamount."

The fishermen fear that the Atlantic monument will take away productive fishing grounds. An attorney for the Pacific Legal Foundation, which filed the lawsuit for the fishermen, said, "This illegal, unilateral presidential action threatens economic distress for individuals and families who make their living through fishing, and for New England communities that rely on a vibrant fishing industry."

The Obama White House acknowledged in its announcement that commercial fishing would be limited in the monument, but said "recreational fishing will be allowed within the boundaries of the monument." For commercial fishermen the proclamation allows red crab and lobster takes to continue for seven years but shuts off other commercial fishing in 60 days.

The Atlantic monument is but one battleground for critics of Obama's monument policies. As we reported in the last issue of *PLN*, State of Maine Gov. Paul R. LePage (R) said he 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.

Perhaps the greatest controversy still centers on the Dec. 28, 2016, designation by Obama of a 1.3 million-acre Bears Ears National Monument in southern Utah. (See related article page 13.)

House Natural Resources Committee Chairman Rob Bishop (R-Utah) and the entire state Congressional delegation are asking President Trump to unilaterally de-designate the Bears Ears Monument.

From the other side ranking natural resources committee Democrat Raúl Grijalva (D-Ariz.) is putting pressure on the Trump administration to go public now on the legality of reversing the Bears Ears monument designation.

He wrote Secretary of Interior Ryan Zinke March 8 and said, "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 the President has the legal authority to overturn an existing national monument designation?"

The fishing industry lawsuit is available at:  
<http://www.savingseafood.org/wp-content/uploads/2017/03/1-1536-Complaint-Mar-3.pdf>.

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## Notes

**Flake would add BLM concessioners.** Sen. Jeff Flake (R-Ariz.) introduced legislation (S 614) March 13 that would expand the use of private concessions on lands managed by the Bureau of Land Management (BLM). The bill would establish up to 10 pilot programs that would lease or sell land to state and local governments. Those governments then could contract with commercial recreation concessioners to operate on BLM land. "This would allow Arizonans to enjoy more access to popular outdoor recreation activities, like horseback riding, mountain bike rentals, campgrounds, and ziplines on public lands," Flake's office said in a press release. S 614 was endorsed by, among others, the National Association of Counties, National Association of State Parks Directors, National Association of County Park and Recreation Officials, and the National Recreation and Park Association.

**Zinke weighs in on NPS visitation.** 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 announced record visitation to the national parks in 2016 of 331 million people. That is 23.7 million more than 2015. 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."

**Rec industry works the Hill.** The outdoor recreation industry briefed House and Senate staff members last week on its recommendations for this Congress. Among other things the Outdoor Recreation Industry Roundtable (ORIR) said its members were willing and able to fill a spending gap if Congress and the Trump administration slash federal land management spending. As they are almost sure to do. "As an outcome of cuts in Federal spending, many Federal agencies are reducing or eliminating recreational opportunities," said Archery Trade Association President Jay McAninch. "The ORIR member industries believe this is tragic, and are offering private investments on public lands as a way to provide all Americans with the chance to recreate outdoors - an American birthright." In a related initiative ORIR is asking Congress to include a recreation title in any infrastructure legislation it develops this year, again with an emphasis on private investment. ORIR is made up of the leaders of major recreation associations, including the National Ski Areas Association, the National Marine Manufacturers Association, the International Snowmobile Manufacturers Association, the American Sportfishing Association and the Outdoor Industry Association, to name a few.

**PEER objects to Y'stone cell plan.** The environmental group Public Employees for Environmental Responsibility (PEER) is keeping up its attacks on cell phone tower construction in Yellowstone National Park. Earlier this month PEER took issue with a park proposal to improve coverage at the Old Faithful, Grant, Lake, and Canyon developed areas. The park views the project as an all-around benefit to Yellowstone by improving connectivity at developed sites and by consolidating antenna sites. But PEER, which has for a decade objected to the expansion of cell phone coverage in the park, says the increased coverage harms the park by reducing opportunities for solitude. The park is caught in a bind, however, because visitors - particularly younger visitors - demand improved connectivity in parks. In an early March letter to NPS Intermountain Regional Director Sue Masica, PEER argued that the project required a new environmental review and that relying on a categorical exclusion "would not withstand legal review." Yellowstone has extended the public comment period on its proposal until March 22. More information on the project is available at: <https://parkplanning.nps.gov/projectHome.cfm?projectId=70097>. The PEER letter to Masica is available at [http://www.peer.org/assets/docs/nps/3\\_2\\_17\\_PEER\\_call\\_YNP\\_investigation.pdf](http://www.peer.org/assets/docs/nps/3_2_17_PEER_call_YNP_investigation.pdf).