From: blkershaw@gmail.com
Sent: 2017-03-03T14:15:07-05:00
Importance: Normal
Subject: Fwd: Public Lands News: Trump too revoking rules; budget will be slim; Zinke sails in; energy royalty rule halted
Received: 2017-03-03T14:16:00-05:00
P517March3.pdf
P517March3.doc

All,

Attached in .doc and pdf formats is the March 3, 2017 issue of the Public Lands News.

Enjoy!

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A Veteran-Owned Business

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

March 3, 2017: Attached is the current issue of the newsletter Public Lands News (Volume 42 Number 5), in .doc format and in PDF format. Below are the headlines. We thank you for reading Public Lands News.

In the attached issue. . .

* TRUMP SAYS HE'S ALSO REVOKING RULES. He takes steps on his own, such as requiring agency rule monitors. Lots on Congressional agenda.

Page 1

* TRUMP BUDGET MESSAGE FOR PUBLIC LANDS: NO MONEY. President's emphasis on Defense spending would require huge domestic cuts. Hill decides.

Page 5

* ZINKE APPROVED BY LARGE MARGIN. Some Democrats led by Tester support him. Cantwell led critics who object to support for fossil fuels.

Page 7

* ENERGY ROYALTY RULE HALTED BY ONRR. In face of three lawsuits against system based on sales prices. Critics say order came from the top.

Page 9

* UTAHNS EASE OFF LAND TRANSFER LAW/LAWSUIT. Utah legislature leaders won't put up money to demand 31 million acres, for now. Trump comforts.

Page 11

* WESTERN RAINS EASE FIRE DANGERS. For now but Sen. Wyden warn that one year of rain not enough. Bill to shift emergency costs being readied.

Page 12

* DELAY IN EPA HARD ROCK BOND RULE ASKED. Three House committee chairmen, western governors want EPA to get court permission to delay/revise.

Page 14

* ENVIROS ASK GOVERNORS TO IGNORE WGA ESA STAND. 280 groups ask National Governors Association to not endorse WGA calls for rewrite of law.

Page 15

* SRS ADVOCATES ASK FOR REVIVAL. 80 Congressional members petition for renewal of funding for county aid program. Ask OMB for help.

Page 17

* NOTES.

Page 18

* CONFERENCE CALENDAR.

Page 19

* FEDERAL PARKS & RECREATION ADDENDUM.

Page 20

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Public Lands News®

Editor: James B. Coffin
Subscription Services: Gerrie Castaldo

Volume 42 Number 5, March 3, 2017

In this issue. . . .

Trump says he's also revoking rules. *He takes steps on his own, such as requiring agency rule monitors. Lots on Congressional agenda..... Page 1*

Trump budget message for public lands: no money. *President's emphasis on Defense spending would require huge domestic cuts. Hill decides..... Page 5*

Zinke approved by large margin. *Some Democrats led by Tester support him. Cantwell led critics who object to support for fossil fuels..... Page 7*

Energy royalty rule halted by ONRR. *In face of three lawsuits against system based on sales prices. Critics say order came from the top... Page 9*

Utahns ease off land transfer law/lawsuit. *Utah legislature leaders won't put up money to demand 31 million acres, for now. Trump comforts.... Page 11*

Western rains ease fire dangers. *For now but Sen. Wyden warn that one year of rain not enough. Bill to shift emergency costs being readied..... Page 12*

Delay in EPA hard rock bond rule asked. *Three House committee chairmen, western governors want EPA to get court permission to delay/revise... Page 14*

Enviros ask governors to ignore WGA ESA stand. *280 groups ask National Governors Association to not endorse WGA calls for rewrite of law.... Page 15*

SRS advocates ask for revival. *80 Congressional members petition for renewal of funding for county aid program. Ask OMB for help..... Page 17*

Notes..... *Page 18*

Conference calendar..... *Page 19*

Federal Parks & Recreation addendum..... *Page 20*

Trump tells Congress he's on track in revoking regs

President Trump led the charge February 28 in the Republican campaign to reverse Obama administration energy and environmental regulations.

In an address to Congress Trump defended his lead in eliminating regulations. "We have undertaken a historic effort to massively reduce job-crushing regulations, creating a deregulation task force inside of every government agency," he said. "And we are imposing a new rule which mandates that for every one new regulation, two old regulations must be eliminated."

Turning his attention to coal development he said, "We are going to stop the regulations that threaten the future and livelihood of our great coal miners." Trump didn't specify which regulations hamper coal development but his administration last week put out the word that it intends to cancel soon a moratorium on coal leasing.

Published by Resources Publishing Co. • P.O. Box 41320 • Arlington, VA 22204. Annual subscription $297 for 24 issues and 10 bulletin
Phone: (703) 553-0552 • Fax: (703) 553-0558 • Website: http://www.publiclandsnews.com • E-Mail: james@publiclandnewsletter.com

DOI-2020-04-02241

The House has already moved rapidly to revoke Obama administration regulations under the Congressional Review Act. It has already approved resolutions to reverse BLM coal methane regulations (HJ Res 36) on February 2 and BLM planning rules (HJ Res 44) on February 7.

Counterparts to both resolutions are on deck in the Senate - SJ Res 11 for methane and SJ Res 15 for BLM's planning rule.

Some administration supporters are growing impatient with the Senate. The Colorado Petroleum Council, for one, is urging senators to get moving on the methane rule. That body has been tied up with confirming cabinet members.

Even though the State of Colorado has tough methane regulations in place, the council says the BLM rule of Nov. 15, 2016, complicate operations. "Despite our industry's success in reducing methane emissions, the BLM has imposed a flawed regulation that adds significant costs and reduces local revenues, without corresponding environmental or consumer benefits. We urge the Senate to support the disapproval resolution passed by the House," said Colorado Petroleum Council Executive Director Tracee Bentley.

President Trump in his address to Congress did not mention a reportedly pending action to terminate a Jan. 15, 2016, moratorium on most new coal leases instituted by former Secretary of Interior Sally Jewell. But administration officials have been quoted as saying the action is on the way.

The moratorium may be relatively easy to stop because Jewell launched it with a Secretarial Order No. 3338, not a hard regulation.

Similarly, work on a programmatic EIS on overall coal policy attendant to the leasing pause may be retrievable because no formal proposal has been made. On March 24, 2016, BLM did launch a scoping period and subsequently hosted listening sessions around the country.

However, environmentalists say the reversals are not a legal given. "I think an imminent rollback of the moratorium is not without risk for the Interior Department," warned Ted Zukoski of the Earthjustice law firm. Zukoski would not speculate on what legal arguments environmentalists might advance against an undoing of the moratorium and the EIS work.

On February 24 Trump posted an executive order giving all agencies 60 days to designate an official to run herd on regulations, a so-called Regulatory Reform Officer.

That officer is supposed to make sure the agency follows previous Trump orders, including an order of January 30 requiring the elimination of two regulations for each new rule.

Complementary to the Trump orders the House March 1 approved legislation (HR 998) that would set up an independent commission to review existing regulations that should be rescinded. The recommendations would then be bundled and considered by Congress. If Congress accepted the bundled recommendation, agencies would have 60 days to terminate rules. Rep. Jason Smith (R-Mo.) is the lead sponsor.

As for Congressional Review Act reversals now under way in Congress, in addition to the methane rule and the BLM planning rule legislators have introduced reversal resolutions against Obama administration public lands rules that 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.

The weapon of choice for western Republicans is 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.

Meanwhile, the Trump administration has put a hold on all regulations posted by the Obama administration in its final days, perhaps with unintended consequences. For instance, the Forest Service on February 8 postponed the effective date of a Dec. 19, 2016, rule that would favor coal mining in the Grand Mesa, Uncompahgre, and Gunnison National Forests of Colorado. The Trump administration is aggressively promoting coal development on public lands but his overall regulatory policy mandates a 60-day delay in the effective date of the Forest Service action.

The Forest Service rule would maintain a coal mining exception to a roadless area rule governing national forests in Colorado. The December decision does not give a go-ahead to mine; it just makes clear the roadless rule does not forbid mining

The House and Senate are taking up the regulatory reversal resolutions one-by-one under the Congressional Review Act even though the House on January 4 approved legislation (HR 21) that would allow Congress to bunch regulations under the act, rather than move them singly.

The Senate hasn't addressed HR 21 yet. Most of the action on regulatory reversals has taken place in the House thus far. The Senate may prove a greater hurdle. That's because the GOP holds only a two-vote majority (52-to-48) and a switch of only two or three votes could defeat a resolution.

Methane rule: The House approved its resolution (HJ Res 36) to revoke the BLM rule February 3 by a vote of 221-to-191. The Senate resolution (SJ Res 11) is on the floor agenda.

Although the 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.

Complicating things a bit a federal judge in Wyoming refused January 16 to halt implementation of the BLM methane emissions rule. For the time being at least U.S. District Court Judge Scott W. Skavdahl rejected the argument of oil and gas producing states and industry that BLM has no authority to regulate air quality; only EPA does. He accepted BLM's argument that the rule is designed to prevent waste, i.e. methane venting, not assume EPA's clean air responsibility.

But the Congressional approval of the revocation regulation may render that lawsuit moot.

The energy industry is enthusiastic about the methane regulation revocation resolution. Said Encana Oil & Gas Inc., "[W]e are concerned that this rule will further delay permitting on federal lands. In an atmosphere where agencies have limited financial resources and staff, we believe BLM should focus on their multiple use mission, including improving oil and gas permitting, not further delaying it."

But the Western Organization of Resource Councils Oil and Gas Campaign Team Chair Linda Weiss, of Belfield, N.D., said, "To reject the BLM waste rule using the CRA prevents the BLM from ensuring taxpayers a fair share for their publicly-owned natural gas, which runs counter to the BLM's legal obligation to American taxpayers. We will continue to work in the coming weeks to prevent the Senate from rolling back the BLM methane waste rule."

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

BLM planning: The House February 7 approved this resolution (HJ Res 44) by a 234-to-186 vote that would overturn a BLM planning rule of Dec. 12, 2016. Rep. Liz Cheney (R-Wyo.) and 10 of her Republican colleagues introduced the resolution. Sen. Lisa Murkowski (R-Alaska) and 16 of her Senate colleagues introduced a counterpart resolution (SJ Res 15).

The BLM rule, known as 2.0, would revise the substance of an existing planning rule. Among the changes are a greater emphasis on broad area planning, preparation of an assessment prior to writing a management plan and earlier public involvement in the planning process.

Said Murkowski, "The Obama administration's Planning 2.0 rule makes sweeping changes to how BLM develops resource management plans, shifts decision-making authority away from the impacted states to Washington, D.C., and disregards BLM's multiple-use mission. If left intact, it will harm grazing, timber, energy and mineral development, and recreation on our public lands."

Supporters of the BLM rule, such as Rep. Niki Tsongas (R-Mass.), said on the House floor that that it would expand opportunities for public comment, thus revocation would limit public comment. "We should be working together on proposals that strengthen management of our public lands, balance conservation with economic development, and provide sustainable benefits to the people who rely on them for their economic livelihoods," she said. "The resolution before us today flies in the face of these goals."

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 is at www.blm.gov/plan2.

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

The rule would require a minerals owner to obtain an operations permit and to obtain financial assurance, i.e. a bond to cover any possible damages and reclamation costs. FWS says that more than 100 refuges host oil and gas operations. That includes almost 1,700 producing wells, and thousands more inactive or plugged wells.

NPS oil and gas: On January 30 Rep. Paul Gosar (R-Ariz.) and five of his Republican colleagues introduced a resolution (HJ Res 46) to revoke a Park Service oil and gas management rule of Nov. 3, 2016. The NPS rule would subject all oil and gas operations in the national parks to the regulations. The rule was scheduled to go into effect Dec. 5, 2016.

Currently, 12 of the 408 National Park System units host oil and gas

operations and 60 percent of those are exempt from NPS regulations. The rule would also require operators to pay the full cost of reclamation.

Oil, gas and coal royalties: On February 13 Rep. Scott Tipton (R-Colo.) introduced a resolution (HJ Res 71) to overturn a July 1, 2016, Interior Department rule that would establish new procedures for calculating the value of oil, gas and coal for royalty purposes. For now that rule is in abeyance *(see related article page 9).*

The rule, from the Office of Natural Resources Revenue (ONRR), replaced a former rule that applied a series of benchmarks to set the royalty price. Instead ONRR now begins with a first affiliated sales price, followed by index prices.

The oil and gas industry objects because, among other things, it establishes a default provision that allows ONRR to establish valuation when an operator does not play by the rules.

Oil and gas site security: On February 1 Rep. Steve Pearce (R-N.M.) and nine of his colleagues introduced a resolution (HJ Res 56) that would reverse a BLM rule of Oct. 12, 2016, that set standards for onshore oil and gas facility site security.

Natural gas measurement order: On February 7 Rep. Cramer introduced a resolution (HJ Res 68) that would reverse a BLM rule of Oct. 17, 2016, that revised standards for measuring and reporting on *gas* produced on public lands.

On February 16 Rep. Bruce Westerman (R-Ark.) introduced a resolution (HJ Res 82) that would reverse a BLM rule of Oct. 17, 2016, that revised standards for measuring and reporting on *oil* produced on public lands.

Alaska hunting: On February 16 the House approved a resolution (HJ Res 35) from Rep. Don Young (R-Alaska) that would revoke a rule limiting hunting and fishing in national wildlife refuges in Alaska. Sen. Dan Sullivan (R-Alaska) introduced a counterpart resolution (SJ Res 18) February 1.

The rule limits predator hunting of wolves and grizzly bears under state laws. The state filed a lawsuit against the rule on January 13. *(See related article page 24."*

Trump budget implication for public lands: big cuts

The Trump administration said this week that it would request a $54 billion increase in Defense spending for fiscal year 2018 - and a concomitant reduction in domestic spending of the same amount.

The formal budget request is not expected to be sent to Congress until after the middle of the month, with details eve later in the year. But when it appears, the budget will hit domestic spending right between the eyes.

The Republican Congress of course will apply its own spending priorities. And Congressional Democrats will demand substantial increases in spending.

But if Congress adopts even some of the Trump budget request, it will almost certainly mean substantial reductions in natural resource spending.

That became clear shortly after the President was elected when it was reported that the Trump budget will be based on a Heritage Foundation paper that calls for dramatic changes in public lands policy.

The foundation in a seminal *Blueprint for Reform* calls for an overall spending

cap enforced by sequestration, privatization of federal lands, authorization of state energy management, transfer of the Forest Service to the Interior Department, elimination of the Land and Water Conservation Fund, and the opening of "all" federal lands to energy development, short of conservation lands.

In dollars the Heritage Foundation would reduce Interior Department spending in fiscal 2017 by 20 percent, a reduction of $2.8 billion from a Congressional Budget Office estimate of $14.1 billion to $11.4 billion.

Meanwhile, Congress still must complete fiscal 2017 appropriations bills. 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.

Even though appropriations subcommittees don't have a formal fiscal 2018 budget request to chew on, they have begun laying the groundwork for fiscal 2018 spending bills. Thus, on February 28 the Houses Appropriations subcommittee on Interior and Related Agencies held its annual hearing for members of Congress.

As usual individual representatives presented individual requests. They promoted such programs as Secure Rural Schools county payments, payments-in-lieu of taxes county assistance, emergency wildfire funding and the Land and Water Conservation Fund.

If by some miracle Congress actually prepares an Interior appropriations bill next year based on HR 5538 and S 3068, here are some of the recommended House and Senate committee appropriations:

The House approved its fiscal 2017 Interior bill (HR 5538) July 14 and the Senate Appropriations Committee approved its bill (S 3068) June 16. Both the House and the Senate committee packed their bills with amendments/riders that attack dozens of Obama administration public lands initiatives.

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.

The Heritage Foundation, a bedrock conservation organization, makes the following recommendations in its report, http://www.heritage.org/research/reports/2016/07/blueprint-for-reform.

Privatization of federal lands: The foundation says, "States, local governments, and individuals are the best arbiters of how to manage land, and the federal government should explore opportunities to privatize land and shift more land to state control. New leadership should shift the regulatory authority to the states for land use and environmental protection." This may be a nonstarter if Trump and Zinke continue to object to the idea.

State energy management: The foundation says, "The next President's budget should also empower states to regulate energy and environmental activities without federal interference."

Transfer of the Forest Service: The foundation says, "Its work should be moved to the U.S. Department of Interior, which currently manages national parks and public lands. This should help consolidate the work of Interior and improve communication." This is probably a nonstarter because various administrations and Congressional leaders from time immemorial have wasted political capital in such a merger.

No Land and Water Conservation Fund: The foundation says, "The federal estate is already too massive for the government to manage, and many recreation areas are underutilized." The foundation would have the program expire when its current authorization ends on Sept. 30, 2018. However, Zinke has endorsed permanence for the program and full funding of $900 million per year.

Energy development public lands: The foundation says, "(T)he President's budget should make clear that the federal government will open all federal waters and all non-wilderness, non-federal monuments to exploration and production of all of America's natural resources." This may fly. The Trump administration says it is determined to open the nation's federal lands to fossil fuel development *(see previous article.)*

Zinke approved by substantial margin; Tester endorses

The Senate March 1 confirmed Rep. Ryan Zinke (R-Mont.) as Secretary of Interior with minimal criticism. The vote was 68-to-31. No Republican voted against him.

Democrats offered little resistance with Sen. Maria Cantwell (D-Wash.) leading the critics who objected to Zinke's support for energy development on the public lands.

But Democratic Sen. Jon Tester (D-Mont.) endorsed Zinke's nomination, saying, "I feel confident that Congressman Zinke will handle the issues before him with Montana common sense — issues like our national parks, and coming up with a responsible solution to the deferred maintenance backlog that is wreaking havoc on our National Park System; the Land and Water Conservation Fund, and how to work with Congress and work in this administration to ensure full and devoted funding to

initiatives like LWCF, the visionary Land and Water Conservation Fund. . .”

Tester added he had confidence in Zinke’s ability “to responsibly manage our public lands for energy and resource development, and () to balance that with respect to clean water and clean air and wildlife.” Of course Zinke’s confirmation works to Tester’s advantage in that it removes the Congressman as a potential challenger when Sen. Tester comes up for re-election next year in 2018.

Cantwell, ranking Democrat on the Senate Energy Committee, was less than enthusiastic and voted against the nomination. “It is clear to me the (Trump) administration will do everything it can to reverse responsible management of our public lands and instead pursue an aggressive energy development agenda without regard to the environmental and public health consequences,” she said. “We have a nominee who has been all over the map as it relates to public lands. And he has certainly gone on the record that he will implement the president’s strategy.”

But Sen. John Barrasso (R-Wyo.) said Zinke is the man for the job. “We need someone in this job who can work with the people who are most invested in the good stewardship of our natural resources, and that is the people who actually live on the land,” he said. “I believe that Congressman Zinke will do exactly that. He will work with States and with communities to find solutions that work for everyone, because America’s natural resources actually belong to all of us.”

Meanwhile, the Senate Agriculture Committee has not yet scheduled a confirmation hearing on former Georgia Gov. Sonny Perdue (R) as secretary of Agriculture with oversight of the Forest Service. Perhaps as important will be the administration’s choice of under secretary for Natural Resources who, in recent administrations, handled most Forest Service policy issues.

Zinke was criticized from the left by some - but not all - environmental groups. Some 170 groups asked senators February 6 to vote against him, but the objectors did not include old-line national environmentalists such as the Sierra Club, The Wilderness Society and the Natural Resources Defense Council.

The objecting groups, including the Center for Biological Diversity, WildEarth Guardians and Friends of the Earth, did blast the choice of Zinke. They wrote, “While we commend Rep. Zinke for publicly opposing giving away America’s public lands to states or private interests, this does not lessen our concern over his record on management of these lands. The Secretary of Interior should be a steward of America’s federal public lands and natural heritage for this and future generations. His short tenure in Congress demonstrates that his views are out of step with the majority of Americans who want to see our public lands protected from rapacious development, endangered species conserved and a livable climate future. For all of these reasons, we request your opposition to Rep. Zinke’s nomination.”

Zinke also was criticized from the right by private property rights owners, who object to his past support for the Land and Water Conservation Fund (LWCF), but no Republicans voted against President Trump’s nominee.

Still, said the American Land Rights Association, “If the LWCF is fully funded with $900 million a year that means the end of Rural America over time . . . The LWCF funding must be stopped now. Zinke must be stopped now. If Zinke becomes Secretary of the Interior he will control the Park Service, BLM and Fish and Wildlife Service. He will also control LWCF funding for those agencies plus the Forest Service.”

Zinke’s nomination had been stalled for more than a month due to the press of other business, i.e. floor action on more controversial department head nominees and a Presidents’ Day holiday.

A broad spectrum of interest groups praised the confirmation. Independent Petroleum Association of America President and CEO Barry Russell said, "As a conservationist from a western energy-producing state, Congressman Zinke appreciates the need to manage our nation's lands and waters while implementing multiple use policies that enable a variety of activities from conservation and recreation to job development and energy production."

Dave Eliason, president of the Public Lands Council, which represents grazing interests, said, ""Secretary Zinke is from the West and understands the unique challenges faced by communities with a large federal footprint. We look forward to working with him and his staff at the Department of the Interior to restore the role of local input in planning and review processes, fix laws like the Endangered Species Act, and protect grazing rights that are so critical to western economies."

Outdoor recreation industry leaders also lauded Zinke. "The RV industry congratulates Secretary Zinke on his confirmation as Secretary of Interior," said Frank Hugelmeyer, president of the Recreation Vehicle Industry Association. "Secretary Zinke understands the significance of the outdoor recreation economy and RVIA is committed to working in partnership with him to expand recreational access, address infrastructure needs, embrace public private partnerships, modernize federal campgrounds and create more jobs for American workers."

In a possible complication, during his confirmation hearing Zinke said he opposed the transfer of public lands to the states. But the campaign of Utah House Rules Chairman Michael E. Noel (R) for the nomination of BLM director offers a competing position.

Noel is a noted champion of a Utah campaign to transfer 31 million acres of federal lands to the state.

The Trump administration is not expected to nominate agency heads until Zinke is in place. Now that he has been confirmed, Trump selections for a BLM director and other agency heads can begin to roll.

Energy royalty rule halted in face of industry lawsuits

The Office of Natural Resources Revenue (ONRR) has delayed indefinitely the implementation of a broad new Interior Department royalty valuation rule that went into effect January 1.

ONRR Deputy Director James D. Steward announced February 22 that any oil, gas or coal companies that had already adapted their royalty reporting to the July 1, 2016, rule should have reverted to the old system by February 28. But those companies that did not revert would not be penalized, Steward said.

In a letter addressed to lessees Steward - but not ONRR Director Gregory Gould - wrote that ONRR was postponing the rule because of pending litigation. Steward did not mention any impending policy change from the Obama administration. The director is not confirmed by the Senate.

"On December 29, 2016, several petitioners filed separate challenges to the rule in U.S. District Court for the District of Wyoming," said Steward. "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."

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

Steward said lessees that had not converted to the new system should continue to use the old system, lessees that were using the new system but could revert back by February 28 should do so, and lessees that were using the new system but could not revert back by February 28 should do so as quickly as possible.

The big change in 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.

Ranking House Natural Resources Committee Democrat Raúl Grijalva (D-Ariz.) questioned the legality of postponing a rule after it has gone into effect.

He 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)."

The oil and gas and coal industries welcomed the ONRR action. Said Cloud Peak President Colin Marshal, "Suspension of this rule is important to Cloud Peak Energy, our employees in Montana, and other coal producers and mine mouth power generators in the Powder River Basin. It was among the most egregious of the Obama administration's punitive regulations designed to close coal mines, kill coal jobs, destroy coal communities, and raise energy prices for most Americans."

But the Northern Plains Resource Council blasted ONRR. Said Steve Charter of Shepherd, Mont., who ranches above a coal mine, "This announcement is a gift to coal companies trying to avoid paying their fair share for publicly-owned minerals. These are funds our states depend on for roads and schools. This rule is a common-sense measure to stop energy corporations from using subsidiaries and shell companies to hide profits and dodge royalty payments."

Bob LeReseche, chair of the Powder River Basin Resource Council, said the postponement of the rule was the Trump administration's idea. "It's a shame that the Trump administration is backing away from the rule," he said.

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.

ONRR itself summed up industry's complaints in the rule: "These industry commenters also believe that the default provision (1) does not allow ONRR to honor arm's-length contracts and gross proceeds as the basis of valuation as in the past; (2) lacks specific criteria for determining what is reasonable valuation; (3) ONRR should not use it for simple reporting errors; and (4) is burdensome, an overreach of valuation authority, and creates uncertainty."

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.

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.

Utah legislators temper drive to obtain federal lands

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 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.

Stratton reportedly told the local Utah press February 24 that his committee doesn't intend to spend a planned $14 million to pursue a lawsuit demanding wholesale transfer of the public lands to the state.

"We do not support today at this point in time in proceeding with the litigation," the *Deseret News* quoted Stratton. He said the loss of income from the state's outdoor economy based on the public lands would be prohibitive.

Despite Stratton's assertion the Utah House Natural Resources, Agriculture and Environment Committee February 24 approved a resolution he sponsored (HCR1) that would set the stage for litigation in the future.

HCR1 says that, "if needed," the state should "prepare for potential legal action to encourage legislative progress that would lead to the state obtaining control of public lands within the state of Utah."

The House committee's action comes just a week after the Outdoor Industry Association said that it will attempt to move its annual retail show out of Salt Lake City because of state opposition to the retention of public lands in the federal domain. *(See related Federal Parks & Rec article page 20.)*

For 20 years the human-powered recreation industry has held its annual Outdoor Retailer convention in the state, generating some $45 million in economic activity.

But the recreation industry, which is heavily dependent on undeveloped federal lands, said Gov. Gary Herbert (R-Utah) refused to meet its demands for protecting those lands. Most of all the industry recommends that the lands stay federal.

On the other hand the recreation industry pitched in to persuade Rep. Jason Chaffetz (R-Utah) last month to withdraw a bill to sell off 3.3 million acres of public lands. On February 2, barely a week after he introduced the measure (HR 621), Chaffetz pulled that legislation.

In a related development on February 8 the sponsor of legislation in the New Mexico Senate followed Chaffetz's lead and pulled her bill that would have transferred subsurface federal mineral rights to the state. The subsequent development revenues would have been used for early childhood education in the state.

In the face of opposition from conservationists the sponsor, Democratic Sen. Mary Kay Papen, reportedly said "this entire approach has little support from the public."

The Backcountry Hunters and Anglers (BHA) conservation group applauded Utah's Stratton, but said the war was not over. "Western sportsmen and women, Utahans in particular, should breathe a sigh of relief after learning that our legislature has decided to back away from this unpopular and fiscally irresponsible land transfer

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lawsuit," said Braxton McCoy, a Utah BHA board member. "However, just as this was not the first attempt to steal our public lands, it surely will not be the last."

He added, "We as outdoorsmen need to recognize that short-sighted politicians have sought to sell off our land since Roosevelt was in office. This victory - while important - is just a small battle in an ongoing war."

Herbert helped begin the Utah campaign to gain control over federal lands when he signed the Transfer of Public Lands Act (TPLA), HB 148, into law on March 23, 2012. It demands the transfer of more than 31 million acres of federal land to the state, excepting only national parks (save for portions of Glen Canyon National Recreation Area), national monuments and wilderness areas.

But implementing that law is more problematic. HB 148 directed the federal government to transfer the lands to the state by Jan. 1, 2015, but that has not happened. To make it happen Stratton and company have been searching for additional legislative and legal help.

At least two reports have questioned the legality of H.B. 148. In one the Utah Office of Legislative Research said shortly before Herbert signed the law in 2012, "The Transfer of Public Lands Act requires that the United States extinguish title to public lands and transfer title to those public lands to Utah by a date certain."

"Under the Gibson case, that requirement would interfere with Congress' power to dispose of public lands," the office continued. "Thus, that requirement, and any attempt by Utah in the future to enforce the requirement, have a high probability of being declared unconstitutional."

On October 27 two University of Utah officials published a "white paper" that rejected the legal basis for the Utah state government's claim to federal lands.

As for the economics of wholesale transfer a massive report requested by the state says state management could prove to be financially risky.

Researchers from three Utah universities said in the 784-page report, "In conclusion, from a strictly financial perspective, it is likely the state of Utah could take ownership of the lands and cover the costs to manage them. Our research also suggests that it could put a strain on the state's funding priorities in the early years as the state adjusts to the loss of federal dollars, evaluates land resources and conditions, and develops programs to replace those now managed by federal agencies."

Economists from the University of Utah, Bureau of Economic and Business Research; Utah State University; and Weber State University prepared the report, *An Analysis of a Transfer of Federal Lands to the State of Utah.*

Heavy western rains ease fire danger, but for how long?

The huge storms that have marched across the West this winter have eased the threat of wildfires for at least the early part of this upcoming season, according to the National Interagency Fire Center (NIFC).

But the storms have not eased the need for legislation to transfer emergency wildfire spending to disaster spending and out of routine appropriations bills, according to Sen. Ron Wyden (D-Ore.), lead sponsor of such legislation.

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. In

DOI-2020-04 02252

most years of the last decade emergency wildfire spending exceeded appropriations, forcing federal land management agencies to borrow from line programs.

"One year of heavy rainfall won't solve the problems caused by years of drought and a backlog of fire prevention projects in our forests," said a spokeswoman for Wyden. "Without a long-term fix, the agencies will keep being forced to clean out their coffers to fight wildfires."

So Wyden is negotiating with his Senate Republican colleagues from Idaho - James Risch and Mike Crapo - to revise a wildfire borrowing bill of last year.

Bill sponsors may give up a previous recommendation that emergency wildfire costs be transferred to disaster spending when those costs reach 70 percent of the 10-year average. The House and some Senate Republicans would prefer to wait until costs reached 100 percent of the average before the transfer.

In its monthly report March 1 NIFC said most of the continental West is in good shape for the early part of the year, but Alaska not so much.

For much of the West NIFC said, "Below normal fire potential is expected across the Central Rockies and the Sierra Mountains along the California-Nevada State line where the abundant winter snowpack should translate to a later than normal melt-off which could delay the start of the western fire season in the higher elevations."

But that doesn't hold for Alaska. "In Alaska, the south central portion of the state has been abnormally dry which has resulted in a winter snowpack that is below normal. Given expected warm and dry conditions in May and June, an above normal potential for fire activity is expected to exist," said the fire center.

In 2016 federal land management agencies spent the second most amount of money ever on fighting wildfires - $1,975,545,000, according to NIFC. The record was set the year before in 2015 at $2,130,543,000.

When wildfire expenditures exceed appropriations, agencies borrow money from operations. Although Congress usually pays the agencies back, by that time the lost work on such things as trail maintenance can't be recovered.

Late last year a House-Senate conference committee on an omnibus energy bill grappled with the emergency wildfire money issue. While the measure on the table (S 2012) putatively addressed energy policy, a House version of the measure contained a major provision to revise wildfire policy.

That House-passed measure would transfer wildfire spending above the 10-year average to disaster spending and limit environmental reviews for wildfire-related projects. But the energy conference ran out of time.

The timber industry, western governors, local officials and conservationists urged Congress to move some version of legislation in the last Congress, to no avail.

Separately from the conference committee, two Senate committees attempted to produce legislation that addresses the twin wildfire fighting and wildfire financial crises in the West, if not in tandem.

The Senate Agriculture Committee Sept. 13, 2016, approved legislation (HR 2647) similar to the House bill (same bill number) that would authorize the transfer of some emergency fire-fighting costs out of a regular appropriations bill and into disaster funding. The transfer would kick in once agencies exceeded the 10-year average for fire-fighting costs. Senate Energy Committee leaders sketched out a similar recommendation for the energy conference.

Finally, 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.

House leaders, west govs ask EPA to delay mine bond

Three House committee chairmen last week asked EPA for a three-month extension on a comment period on proposed regulations that would require hard rock miners to obtain bonds when carrying out projects under the Superfund law.

The committee chairmen said the proposal is sufficiently complex as to deserve an extended comment period. The extended comment period would give incoming EPA Administrator Scott Pruitt, a long-time ally of commodity industries, an opportunity to tweak the proposed rule.

EPA is caught between a rock and a hard place because a federal court ordered EPA to write a draft regulation by Dec. 1, 2016, to require financial assurance under the Comprehensive Environmental Response, Compensation & Liability Act of 1980, also known as the Superfund law. EPA did that.

The court also directed EPA to complete regulations by Dec. 1, 2017. And under the law once an agency proposes a rule, the agency must give fair notice to all parties - and perhaps conduct further environmental analyses - before posting a substantially different final rule.

So for now House Natural Resources Committee Chairman Rob Bishop (R-Utah), House Transportation Committee Chairman Bill Shuster (R-Pa.) and House Energy and Commerce Committee Chairman Greg Walden (R-Ore.) are playing for time.

But the Western Governors' Association February 21 asked EPA to begin over. "Western Governors request that EPA reexamine the necessity of the Proposal, particularly in light of existing and effective state and federal programs," the governors said in a letter cosigned by Montana Gov. Steve Bullock (D) and South Dakota Gov. Dennis Daugaard (R).

If starting over is not possible, the western governors said, "We request further that, should EPA opt to pursue financial assurance regulation for the hardrock mining industry, the agency work collaboratively with western states to review the provisions and definitions contained in the Proposal."

The House committee chairmen in their letter faulted a proposed EPA statistical model for identifying the size of bonds. They called the model "the crux of the rule" and said it was developed without proper vetting by "States, industry experts, or stakeholders."

The chairmen said, "While we recognize the importance of financial assurance, we are especially concerned about the transparency of the process and that EPA failed to adequately seek public input during preparation of the Proposed Rule and in particular, the statistical model."

The chairmen also echoed the mining industry's argument that the EPA rule is duplicative of rules in place from BLM, the Forest Service and states. "We are also particularly concerned about whether EPA sufficiently considered the issue of preemption and whether the 108(b) rule is duplicative of existing federal and state programs," they said.

Under the proposed rule EPA is taking comments through March 13. But the chairmen said the U.S. Circuit Court of Appeals for the District of Columbia

"explicitly" allows EPA to seek an extension in the December 1 deadline for finishing the rule.

Separately, the hard rock mining industry has been asking Congress and the Obama administration to simply rescind the proposed rule. The American Exploration and Mining Association (AEMA) said it "has been working with 'pro-jobs' members of Congress and will work with the new administration to rescind this action."

But EPA last year painted its proposal as a workable response to the huge costs the federal government has incurred in cleaning up hard rock mining sites. EPA said that from 2010 to 2014 EPA spent $1.1 billion to reclaim such sites.

"Far too often the American people bear the costs of expensive environmental cleanups stemming from hard rock mining and mineral processing," said Mathy Stanislaus, assistant administrator for the agency's Office of Land and Emergency Management. "This proposed rule, once finalized, would move the financial burden from taxpayers, and ensure that industry assumes responsibility for these cleanups."

EPA has considerable flexibility as to what it puts in a bonding regulation, but it has little flexibility as to whether it writes a regulation in the first instance.

That's because the U.S. Circuit Court of Appeals for the District of Columbia on Jan. 29, 2016, ordered EPA to write a draft regulation by December 1 to require financial assurance under CERCLA, also known as the Superfund law. The court said EPA must complete regulations by Dec. 1, 2017.

Six environmental groups brought the lawsuit asking the courts to direct EPA to write financial assurance regulations under CERCLA, i.e. bonding.

EPA estimates 142 hazardous waste sites are eligible for cleanup at a cost of some $20 billion. Environmentalists say site owners frequently defer to the federal government for reclamation, rather than doing it themselves.

The EPA proposal is available at:
https://www.epa.gov/superfund/superfund-financial-responsibility.

Greens ask national govs to reject West govs' ESA stance

Major national environmental groups last month asked the National Governors Association not to follow the lead of the Western Governors' Association in demanding a rewrite of the Endangered Species Act (ESA).

The 280 environmental groups took aim at a policy resolution adopted by the western governors in June 2016 when the organization was headed by Wyoming Gov. Matt Mead (R).

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

At its annual meeting the last week of February the National Association of Governors did not adopt the resolution.

The environmentalists in their February 23 letter to the larger National Governors Association addressed the underlying assertion of the Western Governors' Association (and leading Congressional Republicans) that the ESA is not working

because few species actually recover and are removed from listing as threatened or endangered.

"It is simply not biologically possible for most species to have recovered yet, but many species are recovering at the pace expected by scientists and conservationists at the state and federal wildlife agencies," the environmentalists wrote. "Claiming that the Act does not work because it is unable to exceed what is biologically possible is not a basis for rational reform of or changes to the law."

The Center for Biological Diversity and Earthjustice are the first two listed signatories to the letter. Said Brett Hartl, government affairs director at the Center for Biological Diversity, "Republicans in Congress are looking for political cover to repeal the Endangered Species Act, and any endorsement by the national governors to allegedly improve the Act would play into their profit-driven hands."

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

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

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

As evidence, Barrasso said, "A major goal of the (ESA) is the recovery of species to the point that protection under the statute is no longer necessary." But, he said, "Of 1,652 species of animals and plants listed as either threatened or endangered since the law was passed in 1973 only 47 species have been delisted due to recovery."

Ranking committee Democrat Tom Carper (D-Del.) said don't throw the baby out with the bathwater. "We should make sure that while we make some improvements in the (ESA) we do so in a way that is true to the original intent of the law," Carper said. As evidence, he said, "According to the International Union for Conservation of Nature almost one—third of all known species of plants and animals - 22,000 species - are currently at risk of extinction."

One of the major targets of critics of the law will be the process of listing species as threatened or endangered.

The House is sure to get into the act. When the House Natural Resources Committee laid out its agenda for this Congress February 7 committee chairman Rob Bishop (R-Utah) put the ESA as a top priority. "The Committee will also continue to examine the impacts of litigation-settlement driven listings, critical habitat designations, and other executive branch regulations to ensure transparency, sound science and state, local, landowner, and tribal involvement," says the agenda.

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

In the first agreement on May 17, 2011, FWS struck a deal with WildEarth

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

Of those "sue-and-settle" agreements former Wyoming Gov. Dave Freudenthal (D) said, "States, businesses and individuals often have vital interests at stake in litigation brought by environmental groups. These vital interests are not part of the confidential settlement discussions or the agreement on terms. Even when afforded the post settlement opportunity to comment, it proves to be a futile exercise. The train has left the station."

The Government Accountability Office (GAO) said in a new report February 28 that the accelerated review of listing petitions by FWS does not appear to have affected the substance of decisions.

In a report prepared for ranking House Natural Resources Committee Democrat Raúl Grijalva (D-Ariz.) GAO said, "Other than setting schedules for completing Section 4 actions, the settlement agreements did not affect the substantive basis or procedural rule-making requirements the Services were to follow in completing the actions, such as providing opportunities for public notice and comment on proposed listing rules."

Grijalva said the report "clearly shows that lawsuits filed under the ESA after federal agencies miss statutory deadlines do not impact agencies' decisions on whether to list species, designate critical habitat, or take any other substantive action."

The report, *ENVIRONMENTAL LITIGATION: Information on Endangered Species Act Deadline Suits,* is available at: http://www.gao.gov/assets/690/683058.pdf.

Facing federal budget cuts, SRS backers keep pitching

With a super-tight fiscal year 2018 budget request in the offing, 80 members of Congress from both parties last month petitioned the Trump administration for full funding for the Secure Rural Schools (SRS) program.

For now the SRS supporters are asking Office of Management and Budget Director Mick Mulvaney to give SRS priority in shaping the fiscal 2018 budget request. "Forest counties and schools received their last authorized SRS payment in March 2016. Without SRS, existing revenue sharing payments are not sufficient to support the services these counties must provide, and counties are forced to choose between critical services for their citizens," they wrote.

Sens. Orrin Hatch (R-Utah) and Ron Wyden (D) were the lead Senate authors and Rep. Cathy McMorris Rodgers (R-Wash.) and Suzanne Bonamici (D-Ore.) were the leading House authors.

In December western legislators failed to persuade their colleagues to extend SRS into this year, perhaps costing public lands counties more than $300 million. The program was last authorized in fiscal year 2015, with $300 million in payments allocated in March of 2016.

SRS is often twinned with the payments-in-lieu of taxes (PILT) program that compensates public lands counties for property taxes foregone because of the presence of federal lands. However, both the House-approved and Senate-committee approved fiscal 2017 appropriations bills include $480 million for PILT.

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In addition the National Association of Counties is conducting a separate campaign to secure full funding of PILT in fiscal 2018.

The payments are designed to compensate western counties from revenues they received from a share of federal timber sales, back when those sales amounted to 12 billion board feet a year. The last timber sale year for which the service has data, fiscal 2015, counted 2.9 billion board feet of sales.

This SRS spending battle is actually being fought out over two fiscal years at once. Congress has not completed a fiscal 2017 appropriations bill for the Interior Department and Related Agencies yet, having simply extended fiscal 2016 spending through April 28.

House and Senate appropriators did not include an extension of SRS in a House-passed fiscal 2017 appropriations bill (HR 5538) of July 14, 2016, or a Senate Appropriations Committee-passed bill (S 3068) of June 16, 2016.

Mulvaney and his forces are expected to submit a fiscal 2018 Trump administration budget request by mid-March and that is the document that the 80 House and Senate members targeted last month in their SRS letter. And that budget request may be sketchy because the Trump team is not in place yet. For instance Secretary of Interior Ryan Zinke was not confirmed by the Senate until March 1.

President Trump has promised to scrub the fiscal 2018 budget clean, meaning Congressional Democrats will demand that he abide by budget spending ceilings. *(See related article page 5.)*

Notes

Trump: Rewrite wetlands rule. President Trump February 28 directed EPA and the Corps of Engineers to review a controversial Waters of the United States rule posted by the Obama administration on June 29, 2015. The rule is already in abeyance because of court orders. The Trump directive could take years to carry out. In it he tells the agencies to review the rule "and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law." Farmers and homebuilders celebrated. National Cattlemen's Beef Association President Craig Uden said, "This extremely flawed rule would force ranchers and feedlot operators to get permits or risk excessive federal penalties despite being miles away from any navigable water." But sportsmen said the rule would protect fishing and hunting habitat from development. Said Backcountry Hunters & Anglers Conservation Director John Gale, "Our headwaters are largely found in pristine backcountry areas. They not only sustain fisheries; they also create healthy riparian areas critical to more than 80 percent of our wildlife, including numerous species of big game. Sportsmen will not stand for shortsighted, irresponsible attacks on fundamental conservation laws like the Clean Water Act."

Online O&G lease sales hacking feared. Ranking House Natural Resources Committee Democrat Raúl Grijalva (D-Ariz.) last month asked the Government Accountability Office (GAO) to assess the possibility that third parties may hack online oil and gas lease sales. BLM is rapidly moving to all online oil and gas lease sales, as well as online processing of applications for permits to drill (APDs). Grijalva for now is just concerned about hacking of lease sales. He said in a letter to GAO that the Russian hacking of the Democratic National Committee during the last election might lead to hacking of oil and gas lease sales. So he asked GAO to study the safeguards BLM has employed against hacking. He also asked more routine questions, such as what are the differences in revenues between online and in-person sales. Environmentalists have charged that BLM is moving to online sales to avoid demonstrations from the Keep-it-in-the-Ground anti-fossil fuels movement. As we have reported a BLM rule of January 10 to move to online processing of APDs has been put on hold by a January 20 memorandum of President Trump.

DOI-2020-04 02258

Boxscore of Legislation

Fiscal year 2017 appropriations (until April 28)
HR 2028 (Simpson). President Obama signed into law December 10 as PL 114-254. Extends funding at fiscal 2016 levels through April 28.

Fiscal year 2017 appropriations (full year)
HR 5538 (Calvert), S 3068 (Murkowski). House approved July 14. Senate committee approved June 16. Both would increase wildfire, PILT appropriations. Critics say numerous riders cripple bills.

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

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

(Specific rules) HJ Res 36 (Bishop), HJ Res 44 (Cheney), HJ Res 45 (Cramer), HJ Res 46 (Gosar), HJ Res 56 (Pearce), HJ Res 68 (Cramer), HJ Res 82 (Westerman), HJ Res 35 (Young), HJ Res 71 (Tipton), SJ Res 11 (Barrasso), SJ Res 15 (Murkowski), SJ Res 18 (Sullivan). The House approved HJ Res 36, a methane rule reversal, February 2. The House approved HJ Res 41 to revoke a BLM planning rule February 7 (SJ Res 15 pending in the Senate). HJ Res 45 would reverse FWS oil and gas rule, HJ Res 46 would reverse an NPS oil and gas rule, HJ Res 35 would reverse a FWS hunting rule in Alaska (SJ Res 18 in the Senate). HJ Res 56, HJ Res 68 and HJ Res 82 would reverse BLM oil and gas orders. HJ Res 71 would revoke an ONRR oil, gas and coal royalty rule.

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

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

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

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

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

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

Critical minerals
HR 520 (Amodei). Amodei introduced January 13. Would have federal land managers establish time lines for acting on all mineral permits.

Federal Parks & Rec

addendum to Public Lands News

March 3, 2017

* *OIA may take rec retail show out of Utah*
* *Maine governor asks Trump to undo monument*
* *NPCA fears record of EPA boss Pruitt*
* *Senate up next for Alaska hunt rule*
* *Notes*
* *Trump budget short on domestics (See Public Lands News article)*
* *Senate approves Zinke with ease (See Public Lands News article)*

Outdoor industry group may take conference out of Utah

In the culmination of a decade-long dispute with the State of Utah over protection of the public lands, the Outdoor Industry Association said February 16 that it will attempt to move its annual retail show out of Salt Lake City.

For 20 years the human-powered recreation industry has held its annual Outdoor Retailer convention in the state, generating some $45 million in economic activity.

But the recreation industry, which is heavily dependent on undeveloped federal lands, said Gov. Gary Herbert (R-Utah) refused to meet its demands for protecting those lands. Most of all the industry recommends that the lands stay federal.

"It's disappointing Gov. Herbert and the Utah congressional delegation are in a different place from Republican and Democratic leaders in Washington, D.C., and across the country," said Amy Roberts, executive director of the Outdoor Industry Association. "Both President Trump and Interior Secretary nominee (Rep.) Ryan Zinke (R-Mont.) have stated their support for keeping public lands public and accessible by all Americans."

Roberts added, "Outdoor Industry Association will continue to support the efforts of Outdoor Retailer to seek a new home for the trade show."

Outdoor Retailer, the company that puts on the recreation trade show, said it has a contractual commitment to hold the event in Salt Lake City through the Summer Market 2018. The company said, "We will begin exploring location options beyond that which will include Salt Lake City as well as other cities that are viable options for Outdoor Retailer."

The company said it has not decided yet to leave Utah. "We'd like to stress that we have not made a decision to leave Salt Lake City," said Marisa Nicholson, show director.

The straw that broke the camel's back was reportedly a campaign by Herbert and the Utah Congressional delegation to reverse the Dec. 28, 2016, designation of a 1.35 million-acre Bears Ears monument in southern Utah by President Obama.

On January 24 the state's two senators and four House members jointly said they would ask Congress and President Trump to undo the 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."

As to federal land management in Utah in general the delegation said, "We will utilize all the Article One powers we possess, including the power of the purse, congressional oversight and legislation. We will support all efforts of the state, including the judicial route, to ensure Utahns control their own destiny."

The outdoor industry objected to the state's objection to the Bears Ears monument designation in a phone conversation with Herbert February 16. In the call the association said it posited four positions:

One, it asked Herbert to halt his support to the campaign to undo the Bears Ears designation. Two, it asked him to reverse his calls for the sale or transfer of federal lands to the state. Three, it asked Herbert to oppose a campaign to undo the Antiquities Act of 1906 used by Obama to designate Bears Ears. Fourth, it asked the governor to support public lands.

Herbert addressed the contretemps in an editorial in the *Salt Lake Tribune* just before the call from the outdoor industry. In that editorial Herbert said the problem the state had with Bears Ears and federal lands in general is management by public lands agencies.

"Let there be no mistake," he said. "Our criticisms of federal land management and policies should not be interpreted as a critique of the need, value, or merit of public lands. In fact, just the opposite."

Herbert added, "In recent days, Utah lawmakers have conveyed to the new administration in Washington our principled concerns about the negative impacts of the most recent use of the Antiquities Act for our state. Correspondingly, leaders in outdoor recreation, whose enterprises rely heavily on well-managed and accessible public lands, have raised principled concerns about Utah's commitment to caring for them."

He concluded, "I cannot ignore the challenges Utah sometimes faces due to federal practices that too often ignore meaningful local input. Policies change from administration to administration, creating inconsistent federal lands management practices. There are instances where federal inattention to looters, invasive species and pests has harmed these precious lands."

The State of Utah under Herbert's lead has taken the initiative in the West in demanding the transfer of federal lands to western states. In the most significant action Herbert 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.

Environmentalists view the state legislation as a follow-on to several other Herbert initiatives to gain control over public lands. They include a number of state lawsuits against the Interior Department that claim nearly 20,000 RS 2477 rights-of-way across federal lands.

However, President Trump and Zinke say they are opposed to any wholesale land transfers. At his January 17 confirmation hearing when asked by Sen. Bernie Sanders (I-Vt.) his opinion on privatization of the National Park System, Zinke said, "I want to be clear on this point. I am absolutely against the transfer or sale of the public lands."

But the Bears Ears situation is separate from the overall western states' demands for the transfer of federal lands to them. Herbert and the Congressional delegation object to the terms and conditions of the monument designation, not to federal retention of the land in the monument.

Maine governor asks Trump to undo North Woods monument

Maine Gov. Paul R. LePage (R) said last week that 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.

LePage said February 22 that he wrote Trump on February 14 and asked him to either revoke the designation or, alternatively, allow the State of Maine to manage the area.

As other Republicans before him have requested for other monument designations LePage told Trump, "I strongly urge you to undo the designation and return the land to private ownership before economic damage occurs and traditional recreational pursuits are diminished."

He added, "In the alternative, assuming the land remains in federal ownership, I believe the land should be managed by the State of Maine to ensure it can benefit all Maine people and accommodate the region 's economic and recreational needs."

President Obama designated the 87,500-acre North Woods national monument in Maine on Aug. 24, 2016. The designation of the officially-named Katahdin Woods and Waters National Monument generated immense local opposition, as has been the case with many national park units over the last century.

In his letter LePage questioned the argument of monument supporters that a Presidential revocation of a monument designation would not be legal and has never been done. "Regarding the national monument designation, 'those cold timid souls who neither know victory or defeat' argue that you, as President, cannot undo a national monument designation because it has never been done before," he wrote. "They also never envisioned President Trump."

The Maine Congressional delegation was split over the designation with Sen. Susan Collins (R-Me.) generally against and Sen. Angus King (I-Me.) in favor. The House member who represents the area, Rep. Bruce Poliquin (R-Me.), criticized the move, but said he hoped the complaints of local citizens would be accommodated. The other House member, Rep. Chellie Pingree (D-Me.) enthusiastically endorsed the designation.

The Maine monument land is, or was, owned by Roxanne Quimby, who has for a decade attempted to transfer it to the federal government as a down payment on a future Maine Woods National Park. Now the land will be included in a national monument operated by the Park Service.

The Quimby proposal also includes what former NPS Director Jonathan B. Jarvis called an unprecedented $40 million endowment - an allocation of $20 million on the day the national monument was created and the allocation of another $20 million over three years.

Local critics object to the monument because they fear it will lead to restrictions on the local timber industry and it will put recreation areas off limits to snowmobiling and other uses.

However, in an unusual provision the designation allows hunting within the entire monument and retains access for all snowmobiling trails. That will leave more than half the monument open to winter sports.

President Obama set a record by designating 34 national monuments on his watch, often to the dismay of western Republicans and plaudits from conservationists. Almost all of the opposition to his actions has come in the West.

where most of the designations were on Bureau of Land Management land, save for the Maine Woods monument.

Most aggressively, the entire Utah Congressional delegation is asking President Trump to undo a Dec. 28, 2016, designation of a 1.35 million-acre Bears Ears monument in southern Utah.

Obama capped off his monument designations January 12 by setting aside 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.

A month later of February 13 the Association of O&C Counties filed a lawsuit Cascade-Siskiyou expansion. The counties said a federal law governing most of the Cascades - the O&C Act - supersedes the law Obama used to designate the monument - the Antiquities Act of 1906. The O&C Act requires that the lands be managed to sustain timber production and the monument designation would forbid that.

NPCA fears positions of EPA's Pruitt on haze, climate

To put it mildly the National Parks Conservation Association (NPCA) is apprehensive about what the confirmation of EPA Administrator Scott Pruitt will do to the air over the national parks.

At the top of NPCA's worry list are EPA haze rules that require states to minimize pollutants over Class One areas - national parks and wilderness areas. Under the Clean Air Act if states don't act in a timely manner or aggressively enough, EPA can take over the regulations.

On January 10 EPA tightened its visibility rule, setting new deadlines for states to complete plans and new standards for the plan. In that the rule was published late in the Obama administration it might be subject to a law that allows Congress to revoke recent regulations, called the Congressional Review Act.

While serving as Oklahoma's attorney general in 2011 Pruitt sued EPA when the agency disapproved a state haze plan. Eventually, the 10th Circuit Court of Appeals ruled in EPA's favor and the Supreme Court refused to take the case.

Given that history NPCA President Theresa Pierno said on Pruitt's confirmation February 17, "I sat in the nomination hearing for Scott Pruitt and I heard his thoughts on some of the most poignant issues affecting our nation's air and water. I was alarmed that day, and remain so today. Our national parks need and deserve an EPA administrator who is committed to combatting, not questioning, climate change, who is not a legal adversary of the agency and who is transparent about potential conflicts of interest."

NPCA told us that it was worried about the future of EPA's haze rule under Pruitt. A spokesman forwarded a position paper that said, "In 2011, Mr. Pruitt suggested that the Oklahoma regional haze plan 'does nothing to address air quality with respect to public health' despite medical opinion that concluded the plan would reduce deaths and provide a cost benefit of over a million dollars annually due to reduced instances of asthma."

NPCA also objected to Pruitt's long-held skepticism about climate change. Said the association, "In addition, Mr. Pruitt denies climate science, calling it 'speculative,' a perspective that would jeopardize our nation's most treasured places, compromising them for future generations. Our national parks are a testament to the reality of climate change. Air pollution obscures many scenic views that are the hallmark of a national park visit, and can transform outdoor

recreation into a health hazard."

The Coalition to Protect America's National Parks said before EPA published its latest iteration of a haze rule, "A stronger Regional Haze Rule will mean clearer skies in national parks, healthier air throughout the country, and decreases in pollution driving climate change."

EPA said the Park Service has seen progress in reducing haze. Said EPA on publishing the January 10 rule, "The National Park Service estimates that emissions controls established under the first planning period led to approximately 500,000 tons/year of sulfur dioxide and 300,000 tons/year of oxides of nitrogen reductions."

EPA added, "Eastern Class I areas have seen dramatic visibility improvements since 2000 due to emissions reductions required by the regional haze program and by other programs such as the Acid Rain Program and the Cross-state Air Pollution Rule."

EPA did suffer one major haze rule setback last fall. On Nov. 28, 2016, facing likely defeat in federal court, the agency withdrew a rule governing haze-causing pollution over Class One federal areas in Texas.

The Fifth U.S. Circuit Court of Appeals on July 15, 2016, suspended the rule. The court said the appellant State of Texas was likely to win on the merits because EPA erred in saying its rule should be substituted for a Texas rule.

Said EPA in a filing with the court, "In light of the Court's July 15 Opinion and the fact that the parties' settlement discussions were unsuccessful, EPA intends to seek a voluntary remand of the final rule in this Court." Earlier before the court EPA had argued that Texas, instead of considering a broad range of emissions, should have focused on source specific sites, such as power plants. But the court said no.

Environmentalists said the Fifth Circuit decision would impair visibility over Big Bend and Guadalupe Mountains National Parks in Texas. Normally the U.S. Circuit Court for the District of Columbia handles national Clean Air Act litigation, but the Fifth Circuit said it was in charge because this is a local issue.

Senate may act on resolution to revoke Alaska hunt rule

The approval last month of a House resolution (HJ Res 35) to revoke a rule limiting hunting and fishing in national wildlife refuges in Alaska moves the debate to the Senate.

And there Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) and her colleague Dan Sullivan (R-Alaska) are in position to move a counterpart resolution (SJ Res 18).

After the House vote Sullivan said, "I applaud Congressman Don Young's (R-Alaska) work to pass this resolution with overwhelming support in the House, and I look forward to working with Senator Murkowski and my Senate colleagues to invalidate this overreaching rule and restore the sovereignty of Alaska in managing fish and wildlife on our lands."

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

Indeed 27 hunting and fishing groups endorsed the House resolution just before

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

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

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

The dispute over hunting bears and wolves in national refuges and national parks has erupted into a national controversy.

The FWS regulation holds that the State of Alaska may not regulate predators in 77 million acres of federal wildlife refuges unless state regulations are based on sound science. The rule does not affect subsistence hunting by Alaska Natives.

There is a major legal question underlying the dispute - how far does the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) go in authorizing either the state or the Fish and Wildlife Service to regulate game in federal conservation areas?

On the House floor Young made this federal law case for Alaska management of wildlife in wildlife refuges: "This House created the State of Alaska in 1959, under the Statehood Act. It clearly granted Alaska full authority to manage fish and game on all lands in the State of Alaska, including all Federal lands. The Alaska National Interest Lands Conservation Act in 1980 further, in fact, verified what the Statehood Act did: protecting the right of the State to manage fish and game."

Rep. Don Beyer (D-Va.) made the opposite case for federal management of wildlife in wildlife refuges: "The National Wildlife Refuge System Improvement Act and the Alaska National Interest Lands Conservation Act authorize - and, in fact, require - the Fish and Wildlife Service to maintain the natural diversity of refuges in Alaska, regardless of State wildlife laws. This includes protecting healthy populations of apex predators like wolves and bears."

The hunting and fishing conservation groups wrote House members of the Young resolution, "Many members of our organizations enjoy Alaska's bounty of fish and wildlife resources and their habitats for unrivaled hunting, fishing and outdoor experiences. The sustainable management of these natural resources needs to be led by the State working in cooperation with the FWS. We urge that you favorably consider HJ Res 49 which will restore the jurisdictional state-federal relationship as Congress has previously directed."

Jamie Rappaport Clark, president of Defenders of Wildlife, made the environmental case; "Voters deserve better from this Congress. Is running roughshod over public lands and targeting mother bears and wolves and their young on lands specifically set aside as wildlife refuges really a priority for legislators given the many challenges facing our country? Americans expect our national wildlife refuges to be managed for their conservation values for all wildlife, not just those species of particular interest to a few."

In its lawsuit against the rule the State of Alaska made the same case as Young - the feds don't have authority to regulate hunting in federal wildlife refuges. Says the lawsuit, "These regulations unlawfully preempt the State's authority to manage wildlife resources and adversely affect subsistence and non-

subsistence hunting rights protected under federal laws." The state's lawsuit is at: https://donyoung.house.gov/uploadedfiles/alaska v jewell complaint.pdf.

Notes

New York working on 750-mile trail. The State of New York has reportedly begun talking with private landowners as part of a campaign to assemble a 750-mile paved trail from one end of the state to the other. New York Gov. Andrew Cuomo (D) has made the Empire Trail a top priority for the state this year, recommending a $200 million addition in his budget for the trail. One portion of the trail would run from lower Manhattan through the Hudson Valley to Canada. A connecting "T" trail to that segment would follow the Erie Canalway west from Albany to Buffalo. The Erie Canalway is 80 percent constructed. The New York legislature has already approved almost $500 million to meet Cuomo's demands for upgrading the state park system.

Eastern states NHA bills surface. Although 11 House members introduced legislation (HR 1002) February 13 to establish standards for designating National Heritage Areas (NHAs), individual House and Senate members continue to introduce individual bills. Thus Sen. Joe Manchin (D-W.Va.) and the other senators from West Virginia and Maryland February 15 introduced a bill (S 401) to designate an Appalachian Forest National Heritage Area in the two states. Said Manchin, "As the third most forested state in the nation, West Virginians cherish the access we have to the outdoors. We must preserve the rich cultural traditions and natural beauty of this region for the next generation of West Virginians and for visitors from all over the world who visit our great state each year." On the same day Sen. Bob Casey (D-Pa.) introduced legislation (S 4004) to designate a Susquehanna National Heritage Area in Pennsylvania. For the third consecutive Congress Rep. Charlie Dent (R-Pa.) and a bipartisan group of 11 House members has introduced the bill to establish an NHA program. The legislation would establish standards for new NHAs and would permanently authorize the 50 or so existing NHAs. Past administrations, senators and House members from both parties have attempted for two decades to gain control over NHAs. Under the present system NHAs are usually established when powerful legislators attach riders to omnibus lands bills or to appropriations bills, no questions asked. Heritage areas usually consist of a mix of public and private lands with striking social, economic, historical and natural features. NHAs don't, in their entirety, quite rise to the level of national parks. However, some NHAs do actually include national park units within their borders.

Service Corps honors Derrick Crandall. The Corps Network representing the 135 service corps in the country last month gave its highest award to American Recreation Coalition President Derrick Crandall. The Network said it was presenting its Champion Award to Crandall for work he had done to connect youths to the outdoors. "Through your leadership at ARC, our work together has been strengthened and the number and diversity of youth engaged in service in their communities on recreation-enhancing projects has increased," said Mary Ellen Sprenkel, CEO of The Corps Network. ARC represents the powered and non-powered recreation industries.

Alaskans commemorate Denali Centennial. Sen. Lisa Murkowski (R-Alaska) commemorated the Centennial of Denali National Park on February 26. "One hundred years ago, President Woodrow Wilson signed the bill establishing what was then known as Mount McKinley National Park, and today we proudly call it Denali National Park and Preserve," Murkowski said. The three-member Alaska Congressional delegation - not always big fans of the Park Service - introduced resolutions last month (H Res 110 and S Res 55) to mark centennial. The Senate approved S Res 55 February 17. Murkowski and Sen. Dan Sullivan (R-Alaska) and Rep. Don Young (R-Alaska) were the sponsors. Young in particular has criticized the Park Service for limiting access to parks for Alaskans and for barring hunting in the parks.

Public Lands News
Volume 42 Number 5
March 3, 2017

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

In this issue. . . .

Trump says he's also revoking rules. *He takes steps on his own, such as requiring agency rule monitors. Lots on Congressional agenda.*
Page 1
Trump budget message for public lands: no money. *President's emphasis on Defense spending would require huge domestic cuts. Hill decides.*
Page 5
Zinke approved by large margin. *Some Democrats led by Tester support him. Cantwell led critics who object to support for fossil fuels.*
Page 7
Energy royalty rule halted by ONRR. *In face of three lawsuits against system based on sales prices. Critics say order came from the top.*
Page 9
Utahns ease off land transfer law/lawsuit. *Utah legislature leaders won't put up money to demand 31 million acres, for now. Trump comforts.*
Page 11
Western rains ease fire dangers. *For now but Sen. Wyden warn that one year of rain not enough. Bill to shift emergency costs being readied.*
Page 12
Delay in EPA hard rock bond rule asked. *Three House committee chairmen, western governors want EPA to get court permission to delay/revise.*
Page 14
Enviros ask governors to ignore WGA ESA stand. *280 groups ask National Governors Association to not endorse WGA calls for rewrite of law.*
Page 15
SRS advocates ask for revival. *80 Congressional members petition for renewal of funding for county aid program. Ask OMB for help.*
Page 17
Notes.
Page 18
Conference calendar.
Page 19
Federal Parks & Recreation addendum.
Page 20

Trump tells Congress he's on track in revoking regs

President Trump led the charge February 28 in the Republican campaign to reverse Obama administration energy and environmental regulations.

In an address to Congress Trump defended his lead in eliminating regulations. "We have undertaken a historic effort to massively reduce job-crushing regulations, creating a deregulation task force inside of every government agency," he said. "And we are imposing a new rule which mandates that for every one new regulation, two old regulations must be eliminated."

Turning his attention to coal development he said, "We are going to stop the regulations that threaten the future and livelihood of our great coal miners." Trump didn't specify which regulations hamper coal development but his administration last week put out the word that it intends to cancel soon a moratorium on coal leasing.

The House has already moved rapidly to revoke Obama administration regulations under the Congressional Review Act. It has already approved resolutions to reverse BLM coal methane regulations (HJ Res 36) on February 2 and BLM planning rules (HJ Res 44) on February 7.

Counterparts to both resolutions are on deck in the Senate SJ Res 11 for methane and SJ Res 15 for BLM's planning rule.

Some administration supporters are growing impatient with the Senate. The Colorado Petroleum Council, for one, is urging senators to get moving on the methane rule. That body has been tied up with confirming cabinet members.

Even though the State of Colorado has tough methane regulations in place, the council says the BLM rule of Nov. 15, 2016, complicate operations. "Despite our industry's success in reducing methane emissions, the BLM has imposed a flawed regulation that adds significant costs and reduces local revenues, without corresponding environmental or consumer benefits. We urge the Senate to support the disapproval resolution passed by the House," said Colorado Petroleum Council Executive Director Tracee Bentley.

President Trump in his address to Congress did not mention a reportedly pending action to terminate a Jan. 15, 2016, moratorium on most new coal leases instituted by former Secretary of Interior Sally Jewell. But administration officials have been quoted as saying the action is on the way.

The moratorium may be relatively easy to stop because Jewell launched it with a Secretarial Order No. 3338, not a hard regulation.

Similarly, work on a programmatic EIS on overall coal policy attendant to the leasing pause may be retrievable because no formal proposal has been made. On March 24, 2016, BLM did launch a scoping period and subsequently hosted listening sessions around the country.

However, environmentalists say the reversals are not a legal given. "I think an imminent rollback of the moratorium is not without risk for the Interior Department," warned Ted Zukoski of the Earthjustice law firm. Zukoski would not speculate on what legal arguments environmentalists might advance against an undoing of the moratorium and the EIS work.

On February 24 Trump posted an executive order giving all agencies 60 days to designate an official to run herd on regulations, a so-called Regulatory Reform Officer.

That officer is supposed to make sure the agency follows previous Trump orders, including an order of January 30 requiring the elimination of two regulations for each new rule.

Complementary to the Trump orders the House March 1 approved legislation (HR 998) that would set up an independent commission to review existing regulations that should be rescinded. The recommendations would then be bundled and considered by Congress. If Congress accepted the bundled recommendation, agencies would have 60 days to terminate rules. Rep. Jason Smith (R-Mo.) is the lead sponsor.

As for Congressional Review Act reversals now under way in Congress, in addition to the methane rule and the BLM planning rule legislators have introduced reversal resolutions against Obama administration public lands rules that 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.

The weapon of choice for western Republicans is 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.

Meanwhile, the Trump administration has put a hold on all regulations posted by the Obama administration in its final days, perhaps with unintended consequences. For instance, the Forest Service on February 8 postponed the effective date of a Dec. 19, 2016, rule that would favor coal mining in the Grand Mesa, Uncompahgre, and Gunnison National Forests of Colorado. The Trump administration is aggressively promoting coal development on public lands but his overall regulatory policy mandates a 60-day delay in the effective date of the Forest Service action.

The Forest Service rule would maintain a coal mining exception to a roadless area rule governing national forests in Colorado. The December decision does not give a go-ahead to mine; it just makes clear the roadless rule does not forbid mining

The House and Senate are taking up the regulatory reversal resolutions one-by-one under the Congressional Review Act even though the House on January 4 approved legislation (HR 21) that would allow Congress to bunch regulations under the act, rather than move them singly.

The Senate hasn’t addressed HR 21 yet. Most of the action on regulatory reversals has taken place in the House thus far. The Senate may prove a greater hurdle. That’s because the GOP holds only a two-vote majority (52-to-48) and a switch of only two or three votes could defeat a resolution.

Methane rule: The House approved its resolution (HJ Res 36) to revoke the BLM rule February 3 by a vote of 221-to-191. The Senate resolution (SJ Res 11) is on the floor agenda.

Although the 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.

Complicating things a bit a federal judge in Wyoming refused January 16 to halt implementation of the BLM methane emissions rule. For the time being at least U.S. District Court Judge Scott W. Skavdahl rejected the argument of oil and gas producing states and industry that BLM has no authority to regulate air quality; only EPA does. He accepted BLM's argument that the rule is designed to prevent waste, i.e. methane venting, not assume EPA's clean air responsibility.

But the Congressional approval of the revocation regulation may render that lawsuit moot.

The energy industry is enthusiastic about the methane regulation revocation resolution. Said Encana Oil & Gas Inc., "[W]e are concerned that this rule will further delay permitting on federal lands. In an atmosphere where agencies have limited financial resources and staff, we believe BLM should focus on their multiple use mission, including improving oil and gas permitting, not further delaying it."

But the Western Organization of Resource Councils Oil and Gas Campaign Team Chair Linda Weiss, of Belfield, N.D., said, "To reject the BLM waste rule using the CRA prevents the BLM from ensuring taxpayers a fair share for their publicly-owned natural gas, which runs counter to the BLM's legal obligation to American taxpayers. We will continue to work in the coming weeks to prevent the Senate from rolling back the BLM methane waste rule."

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

BLM planning: The House February 7 approved this resolution (HJ Res 44) by a 234-to-186 vote that would overturn a BLM planning rule of Dec. 12, 2016. Rep. Liz Cheney (R-Wyo.) and 10 of her Republican colleagues introduced the resolution. Sen. Lisa Murkowski (R-Alaska) and 16 of her Senate colleagues introduced a counterpart resolution (SJ Res 15).

The BLM rule, known as 2.0, would revise the substance of an existing planning rule. Among the changes are a greater emphasis on broad area planning, preparation of an assessment prior to writing a management plan and earlier public involvement in the planning process.

Said Murkowski, "The Obama administration's Planning 2.0 rule makes sweeping changes to how BLM develops resource management plans, shifts decision-making authority away from the impacted states to Washington, D.C.,

and disregards BLM's multiple-use mission. If left intact, it will harm grazing, timber, energy and mineral development, and recreation on our public lands."

Supporters of the BLM rule, such as Rep. Niki Tsongas (R-Mass.), said on the House floor that that it would expand opportunities for public comment, thus revocation would limit public comment. "We should be working together on proposals that strengthen management of our public lands, balance conservation with economic development, and provide sustainable benefits to the people who rely on them for their economic livelihoods," she said. "The resolution before us today flies in the face of these goals."

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 is at www.blm.gov/plan2.

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

The rule would require a minerals owner to obtain an operations permit and to obtain financial assurance, i.e. a bond to cover any possible damages and reclamation costs. FWS says that more than 100 refuges host oil and gas operations. That includes almost 1,700 producing wells, and thousands more inactive or plugged wells.

NPS oil and gas: On January 30 Rep. Paul Gosar (R-Ariz.) and five of his Republican colleagues introduced a resolution (HJ Res 46) to revoke a Park Service oil and gas management rule of Nov. 3, 2016. The NPS rule would subject all oil and gas operations in the national parks to the regulations. The rule was scheduled to go into effect Dec. 5, 2016.

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

Oil, gas and coal royalties: On February 13 Rep. Scott Tipton (R-Colo.) introduced a resolution (HJ Res 71) to overturn a July 1, 2016, Interior Department rule that would establish new procedures for calculating the value of oil, gas and coal for royalty purposes. For now that rule is in abeyance *(see related article page 9).*

The rule, from the Office of Natural Resources Revenue (ONRR), replaced a former rule that applied a series of benchmarks to set the royalty price. Instead ONRR now begins with a first affiliated sales price, followed by index prices.

The oil and gas industry objects because, among other things, it establishes a default provision that allows ONRR to establish valuation when an operator does not play by the rules.

Oil and gas site security: On February 1 Rep. Steve Pearce (R-N.M.) and nine of his colleagues introduced a resolution (HJ Res 56) that would reverse

a BLM rule of Oct. 12, 2016, that set standards for onshore oil and gas facility site security.

Natural gas measurement order: On February 7 Rep. Cramer introduced a resolution (HJ Res 68) that would reverse a BLM rule of Oct. 17, 2016, that revised standards for measuring and reporting on *gas* produced on public lands.

On February 16 Rep. Bruce Westerman (R-Ark.) introduced a resolution (HJ Res 82) that would reverse a BLM rule of Oct. 17, 2016, that revised standards for measuring and reporting on *oil* produced on public lands.

Alaska hunting: On February 16 the House approved a resolution (HJ Res 35) from Rep. Don Young (R-Alaska) that would revoke a rule limiting hunting and fishing in national wildlife refuges in Alaska. Sen. Dan Sullivan (R-Alaska) introduced a counterpart resolution (SJ Res 18) February 1.

The rule limits predator hunting of wolves and grizzly bears under state laws. The state filed a lawsuit against the rule on January 13. *(See related article page 24."*

Trump budget implication for public lands: big cuts

The Trump administration said this week that it would request a $54 billion increase in Defense spending for fiscal year 2018 and a concomitant reduction in domestic spending of the same amount.

The formal budget request is not expected to be sent to Congress until after the middle of the month, with details eve later in the year. But when it appears, the budget will hit domestic spending right between the eyes.

The Republican Congress of course will apply its own spending priorities. And Congressional Democrats will demand substantial increases in spending.

But if Congress adopts even some of the Trump budget request, it will almost certainly mean substantial reductions in natural resource spending.

That became clear shortly after the President was elected when it was reported that the Trump budget will be based on a Heritage Foundation paper that calls for dramatic changes in public lands policy.

The foundation in a seminal *Blueprint for Reform* calls for an overall spending cap enforced by sequestration, privatization of federal lands, authorization of state energy management, transfer of the Forest Service to the Interior Department, elimination of the Land and Water Conservation Fund, and the opening of "all" federal lands to energy development, short of conservation lands.

In dollars the Heritage Foundation would reduce Interior Department spending in fiscal 2017 by 20 percent, a reduction of $2.8 billion from a Congressional Budget Office estimate of $14.1 billion to $11.4 billion.

Meanwhile, Congress still must complete fiscal 2017 appropriations bills. 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.

Even though appropriations subcommittees don't have a formal fiscal 2018 budget request to chew on, they have begun laying the groundwork for fiscal 2018 spending bills. Thus, on February 28 the Houses Appropriations subcommittee on Interior and Related Agencies held its annual hearing for members of Congress.

As usual individual representatives presented individual requests. They promoted such programs as Secure Rural Schools county payments, payments-in-lieu of taxes county assistance, emergency wildfire funding and the Land and Water Conservation Fund.

If by some miracle Congress actually prepares an Interior appropriations bill next year based on HR 5538 and S 3068, here are some of the recommended House and Senate committee appropriations:

The House approved its fiscal 2017 Interior bill (HR 5538) July 14 and the Senate Appropriations Committee approved its bill (S 3068) June 16. Both the House and the Senate committee packed their bills with amendments/riders that attack dozens of Obama administration public lands initiatives.

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.

The Heritage Foundation, a bedrock conservation organization, makes the following recommendations in its report, http://www.heritage.org/research/reports/2016/07/blueprint-for-reform.

Privatization of federal lands: The foundation says, "States, local governments, and individuals are the best arbiters of how to manage land, and the federal government should explore opportunities to privatize land and shift more land to state control. New leadership should shift the regulatory authority to the states for land use and environmental protection." This may be a nonstarter if Trump and Zinke continue to object to the idea.

State energy management: The foundation says, "The next President's budget should also empower states to regulate energy and environmental activities without federal interference."

Transfer of the Forest Service: The foundation says, "Its work should be moved to the U.S. Department of Interior, which currently manages national parks and public lands. This should help consolidate the work of Interior and improve communication." This is probably a nonstarter because various administrations and Congressional leaders from time immemorial have wasted political capital in such a merger.

No Land and Water Conservation Fund: The foundation says, "The federal estate is already too massive for the government to manage, and many recreation areas are underutilized." The foundation would have the program expire when its current authorization ends on Sept. 30, 2018. However, Zinke has endorsed permanence for the program and full funding of $900 million per year.

Energy development public lands: The foundation says, "(T)he President's budget should make clear that the federal government will open all federal waters and all non-wilderness, non-federal monuments to exploration and production of all of America's natural resources." This may fly. The Trump administration says it is determined to open the nation's federal lands to fossil fuel development *(see previous article.)*

Zinke approved by substantial margin; Tester endorses

The Senate March 1 confirmed Rep. Ryan Zinke (R-Mont.) as Secretary of Interior with minimal criticism. The vote was 68-to-31. No Republican voted against him.

Democrats offered little resistance with Sen. Maria Cantwell (D-Wash.) leading the critics who objected to Zinke's support for energy development on the public lands.

But Democratic Sen. Jon Tester (D-Mont.) endorsed Zinke's nomination, saying, "I feel confident that Congressman Zinke will handle the issues before him with Montana common sense issues like our national parks, and coming up with a responsible solution to the deferred maintenance backlog that is wreaking havoc on our National Park System; the Land and Water

Conservation Fund, and how to work with Congress and work in this administration to ensure full and devoted funding to initiatives like LWCF, the visionary Land and Water Conservation Fund. . ."

Tester added he had confidence in Zinke's ability "to responsibly manage our public lands for energy and resource development, and () to balance that with respect to clean water and clean air and wildlife." Of course Zinke's confirmation works to Tester's advantage in that it removes the Congressman as a potential challenger when Sen. Tester comes up for re-election next year in 2018.

Cantwell, ranking Democrat on the Senate Energy Committee, was less than enthusiastic and voted against the nomination. "It is clear to me the (Trump) administration will do everything it can to reverse responsible management of our public lands and instead pursue an aggressive energy development agenda without regard to the environmental and public health consequences," she said. "We have a nominee who has been all over the map as it relates to public lands. And he has certainly gone on the record that he will implement the president's strategy."

But Sen. John Barrasso (R-Wyo.) said Zinke is the man for the job. "We need someone in this job who can work with the people who are most invested in the good stewardship of our natural resources, and that is the people who actually live on the land," he said. "I believe that Congressman Zinke will do exactly that. He will work with States and with communities to find solutions that work for everyone, because America's natural resources actually belong to all of us."

Meanwhile, the Senate Agriculture Committee has not yet scheduled a confirmation hearing on former Georgia Gov. Sonny Perdue (R) as secretary of Agriculture with oversight of the Forest Service. Perhaps as important will be the administration's choice of under secretary for Natural Resources who, in recent administrations, handled most Forest Service policy issues.

Zinke was criticized from the left by some but not all environmental groups. Some 170 groups asked senators February 6 to vote against him, but the objectors did not include old-line national environmentalists such as the Sierra Club, The Wilderness Society and the Natural Resources Defense Council.

The objecting groups, including the Center for Biological Diversity, WildEarth Guardians and Friends of the Earth, did blast the choice of Zinke. They wrote, "While we commend Rep. Zinke for publicly opposing giving away America's public lands to states or private interests, this does not lessen our concern over his record on management of these lands. The Secretary of Interior should be a steward of America's federal public lands and natural heritage for this and future generations. His short tenure in Congress demonstrates that his views are out of step with the majority of Americans who want to see our public lands protected from rapacious development, endangered species conserved and a livable climate future. For all of these reasons, we request your opposition to Rep. Zinke's nomination."

Zinke also was criticized from the right by private property rights owners, who object to his past support for the Land and Water Conservation Fund (LWCF), but no Republicans voted against President Trump's nominee.

Still, said the American Land Rights Association, "If the LWCF is fully funded with $900 million a year that means the end of Rural America over time . . . The LWCF funding must be stopped now. Zinke must be stopped now. If Zinke becomes Secretary of the Interior he will control the Park Service, BLM and Fish and Wildlife Service. He will also control LWCF funding for those agencies plus the Forest Service."

Zinke's nomination had been stalled for more than a month due to the press of other business, i.e. floor action on more controversial department head nominees and a Presidents' Day holiday.

A broad spectrum of interest groups praised the confirmation. Independent Petroleum Association of America President and CEO Barry Russell said, "As a conservationist from a western energy-producing state, Congressman Zinke appreciates the need to manage our nation's lands and waters while implementing multiple use policies that enable a variety of activities from conservation and recreation to job development and energy production."

Dave Eliason, president of the Public Lands Council, which represents grazing interests, said, ""Secretary Zinke is from the West and understands the unique challenges faced by communities with a large federal footprint. We look forward to working with him and his staff at the Department of the Interior to restore the role of local input in planning and review processes, fix laws like the Endangered Species Act, and protect grazing rights that are so critical to western economies."

Outdoor recreation industry leaders also lauded Zinke. "The RV industry congratulates Secretary Zinke on his confirmation as Secretary of Interior," said Frank Hugelmeyer, president of the Recreation Vehicle Industry Association. "Secretary Zinke understands the significance of the outdoor recreation economy and RVIA is committed to working in partnership with him to expand recreational access, address infrastructure needs, embrace public private partnerships, modernize federal campgrounds and create more jobs for American workers."

In a possible complication, during his confirmation hearing Zinke said he opposed the transfer of public lands to the states. But the campaign of Utah House Rules Chairman Michael E. Noel (R) for the nomination of BLM director offers a competing position.

Noel is a noted champion of a Utah campaign to transfer 31 million acres of federal lands to the state.

The Trump administration is not expected to nominate agency heads until Zinke is in place. Now that he has been confirmed, Trump selections for a BLM director and other agency heads can begin to roll.

Energy royalty rule halted in face of industry lawsuits

The Office of Natural Resources Revenue (ONRR) has delayed indefinitely the implementation of a broad new Interior Department royalty valuation rule that went into effect January 1.

ONRR Deputy Director James D. Steward announced February 22 that any oil, gas or coal companies that had already adapted their royalty reporting

to the July 1, 2016, rule should have reverted to the old system by February 28. But those companies that did not revert would not be penalized, Steward said.

In a letter addressed to lessees Steward but not ONRR Director Gregory Gould wrote that ONRR was postponing the rule because of pending litigation. Steward did not mention any impending policy change from the Obama administration. The director is not confirmed by the Senate.

"On December 29, 2016, several petitioners filed separate challenges to the rule in U.S. District Court for the District of Wyoming," said Steward. "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."

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

Steward said lessees that had not converted to the new system should continue to use the old system, lessees that were using the new system but could revert back by February 28 should do so, and lessees that were using the new system but could not revert back by February 28 should do so as quickly as possible.

The big change in 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.

Ranking House Natural Resources Committee Democrat Raúl Grijalva (D-Ariz.) questioned the legality of postponing a rule after it has gone into effect.

He 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)."

The oil and gas and coal industries welcomed the ONRR action. Said Cloud Peak President Colin Marshal, "Suspension of this rule is important to Cloud Peak Energy, our employees in Montana, and other coal producers and mine mouth power generators in the Powder River Basin. It was among the most egregious of the Obama administration's punitive regulations designed to close coal mines, kill coal jobs, destroy coal communities, and raise energy prices for most Americans."

But the Northern Plains Resource Council blasted ONRR. Said Steve Charter of Shepherd, Mont., who ranches above a coal mine, "This announcement is a gift to coal companies trying to avoid paying their fair share for publicly-owned minerals. These are funds our states depend on for roads and schools. This rule is a common-sense measure to stop energy corporations from using subsidiaries and shell companies to hide profits and dodge royalty payments."

Bob LeResche, chair of the Powder River Basin Resource Council, said the postponement of the rule was the Trump administration's idea. "It's a shame that the Trump administration is backing away from the rule," he said.

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.

ONRR itself summed up industry's complaints in the rule: "These industry commenters also believe that the default provision (1) does not allow ONRR to honor arm's-length contracts and gross proceeds as the basis of valuation as in the past; (2) lacks specific criteria for determining what is reasonable valuation; (3) ONRR should not use it for simple reporting errors; and (4) is burdensome, an overreach of valuation authority, and creates uncertainty."

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.

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.

Utah legislators temper drive to obtain federal lands

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 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.

Stratton reportedly told the local Utah press February 24 that his committee doesn't intend to spend a planned $14 million to pursue a lawsuit demanding wholesale transfer of the public lands to the state.

"We do not support today at this point in time in proceeding with the litigation," the *Deseret News* quoted Stratton. He said the loss of income from the state's outdoor economy based on the public lands would be prohibitive.

Despite Stratton's assertion the Utah House Natural Resources, Agriculture and Environment Committee February 24 approved a resolution he sponsored (HCR1) that would set the stage for litigation in the future.

HCR1 says that, "if needed," the state should "prepare for potential legal action to encourage legislative progress that would lead to the state obtaining control of public lands within the state of Utah."

The House committee's action comes just a week after the Outdoor Industry Association said that it will attempt to move its annual retail show out of Salt Lake City because of state opposition to the retention of public lands in the federal domain. *(See related Federal Parks & Rec article page 20.)*

For 20 years the human-powered recreation industry has held its annual Outdoor Retailer convention in the state, generating some $45 million in economic activity.

But the recreation industry, which is heavily dependent on undeveloped federal lands, said Gov. Gary Herbert (R-Utah) refused to meet its demands for protecting those lands. Most of all the industry recommends that the lands stay federal.

On the other hand the recreation industry pitched in to persuade Rep. Jason Chaffetz (R-Utah) last month to withdraw a bill to sell off 3.3 million acres of public lands. On February 2, barely a week after he introduced the measure (HR 621), Chaffetz pulled that legislation.

In a related development on February 8 the sponsor of legislation in the New Mexico Senate followed Chaffetz's lead and pulled her bill that would have transferred subsurface federal mineral rights to the state. The subsequent development revenues would have been used for early childhood education in the state.

In the face of opposition from conservationists the sponsor, Democratic Sen. Mary Kay Papen, reportedly said "this entire approach has little support from the public."

The Backcountry Hunters and Anglers (BHA) conservation group applauded Utah's Stratton, but said the war was not over. "Western sportsmen and women, Utahans in particular, should breathe a sigh of relief after learning that our legislature has decided to back away from this unpopular and fiscally irresponsible land transfer lawsuit," said Braxton McCoy, a Utah BHA board member. "However, just as this was not the first attempt to steal our public lands, it surely will not be the last."

He added, "We as outdoorsmen need to recognize that short-sighted politicians have sought to sell off our land since Roosevelt was in office. This victory while important is just a small battle in an ongoing war."

Herbert helped begin the Utah campaign to gain control over federal lands when he signed the Transfer of Public Lands Act (TPLA), HB 148, into law on March 23, 2012. It demands the transfer of more than 31 million acres of federal land to the state, excepting only national parks (save for portions of Glen Canyon National Recreation Area), national monuments and wilderness areas.

But implementing that law is more problematic. HB 148 directed the federal government to transfer the lands to the state by Jan. 1, 2015, but that has not happened. To make it happen Stratton and company have been searching for additional legislative and legal help.

At least two reports have questioned the legality of H.B. 148. In one the Utah Office of Legislative Research said shortly before Herbert signed the law in 2012, "The Transfer of Public Lands Act requires that the United States extinguish title to public lands and transfer title to those public lands to Utah by a date certain."

"Under the Gibson case, that requirement would interfere with Congress' power to dispose of public lands," the office continued. "Thus, that requirement, and any attempt by Utah in the future to enforce the requirement, have a high probability of being declared unconstitutional."

On October 27 two University of Utah officials published a "white paper" that rejected the legal basis for the Utah state government's claim to federal lands.

As for the economics of wholesale transfer a massive report requested by the state says state management could prove to be financially risky.

Researchers from three Utah universities said in the 784-page report, "In conclusion, from a strictly financial perspective, it is likely the state of Utah could take ownership of the lands and cover the costs to manage them. Our research also suggests that it could put a strain on the state's funding priorities in the early years as the state adjusts to the loss of federal dollars, evaluates land resources and conditions, and develops programs to replace those now managed by federal agencies."

Economists from the University of Utah, Bureau of Economic and Business Research; Utah State University; and Weber State University prepared the report, *An Analysis of a Transfer of Federal Lands to the State of Utah.*

Heavy western rains ease fire danger, but for how long?

The huge storms that have marched across the West this winter have eased the threat of wildfires for at least the early part of this upcoming season, according to the National Interagency Fire Center (NIFC).

But the storms have not eased the need for legislation to transfer emergency wildfire spending to disaster spending and out of routine appropriations bills, according to Sen. Ron Wyden (D-Ore.), lead sponsor of such legislation.

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. In most years of the last decade emergency wildfire spending exceeded appropriations, forcing federal land management agencies to borrow from line programs.

"One year of heavy rainfall won't solve the problems caused by years of drought and a backlog of fire prevention projects in our forests," said a spokeswoman for Wyden. "Without a long-term fix, the agencies will keep being forced to clean out their coffers to fight wildfires."

So Wyden is negotiating with his Senate Republican colleagues from Idaho James Risch and Mike Crapo to revise a wildfire borrowing bill of last year.

Bill sponsors may give up a previous recommendation that emergency wildfire costs be transferred to disaster spending when those costs reach 70 percent of the 10-year average. The House and some Senate Republicans would prefer to wait until costs reached 100 percent of the average before the transfer.

In its monthly report March 1 NIFC said most of the continental West is in good shape for the early part of the year, but Alaska not so much.

For much of the West NIFC said, "Below normal fire potential is expected across the Central Rockies and the Sierra Mountains along the California-Nevada State line where the abundant winter snowpack should translate to a later than normal melt-off which could delay the start of the western fire season in the higher elevations."

But that doesn't hold for Alaska. "In Alaska, the south central portion of the state has been abnormally dry which has resulted in a winter snowpack that is below normal. Given expected warm and dry conditions in May and June, an above normal potential for fire activity is expected to exist," said the fire center.

In 2016 federal land management agencies spent the second most amount of money ever on fighting wildfires - $1,975,545,000, according to NIFC. The record was set the year before in 2015 at $2,130,543,000.

When wildfire expenditures exceed appropriations, agencies borrow money from operations. Although Congress usually pays the agencies back, by that time the lost work on such things as trail maintenance can't be recovered.

Late last year a House-Senate conference committee on an omnibus energy bill grappled with the emergency wildfire money issue. While the measure on the table (S 2012) putatively addressed energy policy, a House version of the measure contained a major provision to revise wildfire policy.

That House-passed measure would transfer wildfire spending above the 10-year average to disaster spending and limit environmental reviews for wildfire-related projects. But the energy conference ran out of time.

The timber industry, western governors, local officials and conservationists urged Congress to move some version of legislation in the last Congress, to no avail.

Separately from the conference committee, two Senate committees attempted to produce legislation that addresses the twin wildfire fighting and wildfire financial crises in the West, if not in tandem.

The Senate Agriculture Committee Sept. 13, 2016, approved legislation (HR 2647) similar to the House bill (same bill number) that would authorize the transfer of some emergency fire-fighting costs out of a regular appropriations bill and into disaster funding. The transfer would kick in once agencies exceeded the 10-year average for fire-fighting costs. Senate Energy Committee leaders sketched out a similar recommendation for the energy conference.

Finally, 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.

House leaders, west govs ask EPA to delay mine bond

Three House committee chairmen last week asked EPA for a three-month extension on a comment period on proposed regulations that would require hard rock miners to obtain bonds when carrying out projects under the Superfund law.

The committee chairmen said the proposal is sufficiently complex as to deserve an extended comment period. The extended comment period would give incoming EPA Administrator Scott Pruitt, a long-time ally of commodity industries, an opportunity to tweak the proposed rule.

EPA is caught between a rock and a hard place because a federal court ordered EPA to write a draft regulation by Dec. 1, 2016, to require financial assurance under the Comprehensive Environmental Response, Compensation & Liability Act of 1980, also known as the Superfund law. EPA did that.

The court also directed EPA to complete regulations by Dec. 1, 2017. And under the law once an agency proposes a rule, the agency must give fair notice to all parties and perhaps conduct further environmental analyses before posting a substantially different final rule.

So for now House Natural Resources Committee Chairman Rob Bishop (R-Utah), House Transportation Committee Chairman Bill Shuster (R-Pa.) and House Energy and Commerce Committee Chairman Greg Walden (R-Ore.) are playing for time.

But the Western Governors' Association February 21 asked EPA to begin over. "Western Governors request that EPA reexamine the necessity of the Proposal, particularly in light of existing and effective state and federal programs," the governors said in a letter cosigned by Montana Gov. Steve Bullock (D) and South Dakota Gov. Dennis Daugaard (R).

If starting over is not possible, the western governors said, "We request further that, should EPA opt to pursue financial assurance regulation for the hardrock mining industry, the agency work collaboratively with western states to review the provisions and definitions contained in the Proposal."

The House committee chairmen in their letter faulted a proposed EPA statistical model for identifying the size of bonds. They called the model "the crux of the rule" and said it was developed without proper vetting by "States, industry experts, or stakeholders."

The chairmen said, "While we recognize the importance of financial assurance, we are especially concerned about the transparency of the process and that EPA failed to adequately seek public input during preparation of the Proposed Rule and in particular, the statistical model."

The chairmen also echoed the mining industry's argument that the EPA rule is duplicative of rules in place from BLM, the Forest Service and states. "We are also particularly concerned about whether EPA sufficiently

considered the issue of preemption and whether the 108(b) rule is duplicative of existing federal and state programs," they said.

Under the proposed rule EPA is taking comments through March 13. But the chairmen said the U.S. Circuit Court of Appeals for the District of Columbia "explicitly" allows EPA to seek an extension in the December 1 deadline for finishing the rule.

Separately, the hard rock mining industry has been asking Congress and the Obama administration to simply rescind the proposed rule. The American Exploration and Mining Association (AEMA) said it "has been working with 'pro-jobs' members of Congress and will work with the new administration to rescind this action."

But EPA last year painted its proposal as a workable response to the huge costs the federal government has incurred in cleaning up hard rock mining sites. EPA said that from 2010 to 2014 EPA spent $1.1 billion to reclaim such sites.

"Far too often the American people bear the costs of expensive environmental cleanups stemming from hard rock mining and mineral processing," said Mathy Stanislaus, assistant administrator for the agency's Office of Land and Emergency Management. "This proposed rule, once finalized, would move the financial burden from taxpayers, and ensure that industry assumes responsibility for these cleanups."

EPA has considerable flexibility as to what it puts in a bonding regulation, but it has little flexibility as to whether it writes a regulation in the first instance.

That's because the U.S. Circuit Court of Appeals for the District of Columbia on Jan. 29, 2016, ordered EPA to write a draft regulation by December 1 to require financial assurance under CERCLA, also known as the Superfund law. The court said EPA must complete regulations by Dec. 1, 2017.

Six environmental groups brought the lawsuit asking the courts to direct EPA to write financial assurance regulations under CERCLA, i.e. bonding.

EPA estimates 142 hazardous waste sites are eligible for cleanup at a cost of some $20 billion. Environmentalists say site owners frequently defer to the federal government for reclamation, rather than doing it themselves.

The EPA proposal is available at: https://www.epa.gov/superfund/superfund-financial-responsibility.

Greens ask national govs to reject West govs' ESA stance

Major national environmental groups last month asked the National Governors Association not to follow the lead of the Western Governors' Association in demanding a rewrite of the Endangered Species Act (ESA).

The 280 environmental groups took aim at a policy resolution adopted by the western governors in June 2016 when the organization was headed by Wyoming Gov. Matt Mead (R).

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

At its annual meeting the last week of February the National Association of Governors did not adopt the resolution.

The environmentalists in their February 23 letter to the larger National Governors Association addressed the underlying assertion of the Western Governors' Association (and leading Congressional Republicans) that the ESA is not working because few species actually recover and are removed from listing as threatened or endangered.

"It is simply not biologically possible for most species to have recovered yet, but many species are recovering at the pace expected by scientists and conservationists at the state and federal wildlife agencies," the environmentalists wrote. "Claiming that the Act does not work because it is unable to exceed what is biologically possible is not a basis for rational reform of or changes to the law."

The Center for Biological Diversity and Earthjustice are the first two listed signatories to the letter. Said Brett Hartl, government affairs director at the Center for Biological Diversity, "Republicans in Congress are looking for political cover to repeal the Endangered Species Act, and any endorsement by the national governors to allegedly improve the Act would play into their profit-driven hands."

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

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

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

As evidence, Barrasso said, "A major goal of the (ESA) is the recovery of species to the point that protection under the statute is no longer necessary." But, he said, "Of 1,652 species of animals and plants listed as either threatened or endangered since the law was passed in 1973 only 47 species have been delisted due to recovery."

Ranking committee Democrat Tom Carper (D-Del.) said don't throw the baby out with the bathwater. "We should make sure that while we make some improvements in the (ESA) we do so in a way that is true to the original intent of the law," Carper said. As evidence, he said, "According to the

International Union for Conservation of Nature almost one third of all known species of plants and animals 22,000 species are currently at risk of extinction."

One of the major targets of critics of the law will be the process of listing species as threatened or endangered.

The House is sure to get into the act. When the House Natural Resources Committee laid out its agenda for this Congress February 7 committee chairman Rob Bishop (R-Utah) put the ESA as a top priority. "The Committee will also continue to examine the impacts of litigation-settlement driven listings, critical habitat designations, and other executive branch regulations to ensure transparency, sound science and state, local, landowner, and tribal involvement," says the agenda.

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

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

Of those "sue-and-settle" agreements former Wyoming Gov. Dave Freudenthal (D) said, "States, businesses and individuals often have vital interests at stake in litigation brought by environmental groups. These vital interests are not part of the confidential settlement discussions or the agreement on terms. Even when afforded the post settlement opportunity to comment, it proves to be a futile exercise. The train has left the station."

The Government Accountability Office (GAO) said in a new report February 28 that the accelerated review of listing petitions by FWS does not appear to have affected the substance of decisions.

In a report prepared for ranking House Natural Resources Committee Democrat Raúl Grijalva (D-Ariz.) GAO said, "Other than setting schedules for completing Section 4 actions, the settlement agreements did not affect the substantive basis or procedural rule-making requirements the Services were to follow in completing the actions, such as providing opportunities for public notice and comment on proposed listing rules."

Grijalva said the report "clearly shows that lawsuits filed under the ESA after federal agencies miss statutory deadlines do not impact agencies' decisions on whether to list species, designate critical habitat, or take any other substantive action."

The report, *ENVIRONMENTAL LITIGATION: Information on Endangered Species Act Deadline Suits,* is available at: http://www.gao.gov/assets/690/683058.pdf.

Facing federal budget cuts, SRS backers keep pitching

With a super-tight fiscal year 2018 budget request in the offing, 80 members of Congress from both parties last month petitioned the Trump administration for full funding for the Secure Rural Schools (SRS) program.

For now the SRS supporters are asking Office of Management and Budget Director Mick Mulvaney to give SRS priority in shaping the fiscal 2018 budget request. "Forest counties and schools received their last authorized SRS payment in March 2016. Without SRS, existing revenue sharing payments are not sufficient to support the services these counties must provide, and counties are forced to choose between critical services for their citizens," they wrote.

Sens. Orrin Hatch (R-Utah) and Ron Wyden (D) were the lead Senate authors and Rep. Cathy McMorris Rodgers (R-Wash.) and Suzanne Bonamici (D-Ore.) were the leading House authors.

In December western legislators failed to persuade their colleagues to extend SRS into this year, perhaps costing public lands counties more than $300 million. The program was last authorized in fiscal year 2015, with $300 million in payments allocated in March of 2016.

SRS is often twinned with the payments-in-lieu of taxes (PILT) program that compensates public lands counties for property taxes foregone because of the presence of federal lands. However, both the House-approved and Senate-committee approved fiscal 2017 appropriations bills include $480 million for PILT.

In addition the National Association of Counties is conducting a separate campaign to secure full funding of PILT in fiscal 2018.

The payments are designed to compensate western counties from revenues they received from a share of federal timber sales, back when those sales amounted to 12 billion board feet a year. The last timber sale year for which the service has data, fiscal 2015, counted 2.9 billion board feet of sales.

This SRS spending battle is actually being fought out over two fiscal years at once. Congress has not completed a fiscal 2017 appropriations bill for the Interior Department and Related Agencies yet, having simply extended fiscal 2016 spending through April 28.

House and Senate appropriators did not include an extension of SRS in a House-passed fiscal 2017 appropriations bill (HR 5538) of July 14, 2016, or a Senate Appropriations Committee-passed bill (S 3068) of June 16, 2016.

Mulvaney and his forces are expected to submit a fiscal 2018 Trump administration budget request by mid-March and that is the document that the 80 House and Senate members targeted last month in their SRS letter. And that budget request may be sketchy because the Trump team is not in place yet. For instance Secretary of Interior Ryan Zinke was not confirmed by the Senate until March 1.

President Trump has promised to scrub the fiscal 2018 budget clean, meaning Congressional Democrats will demand that he abide by budget spending ceilings. *(See related article page 5.)*

Notes

Trump: Rewrite wetlands rule. President Trump February 28 directed EPA and the Corps of Engineers to review a controversial Waters of the United States rule posted by the Obama administration on June 29, 2015. The rule is already in abeyance because of court orders. The Trump directive could take years to carry out. In it he tells the agencies to review the rule "and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law." Farmers and homebuilders celebrated. National Cattlemen's Beef Association President Craig Uden said, "This extremely flawed rule would force ranchers and feedlot operators to get permits or risk excessive federal penalties despite being miles away from any navigable water." But sportsmen said the rule would protect fishing and hunting habitat from development. Said Backcountry Hunters & Anglers Conservation Director John Gale, "Our headwaters are largely found in pristine backcountry areas. They not only sustain fisheries; they also create healthy riparian areas critical to more than 80 percent of our wildlife, including numerous species of big game. Sportsmen will not stand for shortsighted, irresponsible attacks on fundamental conservation laws like the Clean Water Act."

Online O&G lease sales hacking feared. Ranking House Natural Resources Committee Democrat Raúl Grijalva (D-Ariz.) last month asked the Government Accountability Office (GAO) to assess the possibility that third parties may hack online oil and gas lease sales. BLM is rapidly moving to all online oil and gas lease sales, as well as online processing of applications for permits to drill (APDs). Grijalva for now is just concerned about hacking of lease sales. He said in a letter to GAO that the Russian hacking of the Democratic National Committee during the last election might lead to hacking of oil and gas lease sales. So he asked GAO to study the safeguards BLM has employed against hacking. He also asked more routine questions, such as what are the differences in revenues between online and in-person sales. Environmentalists have charged that BLM is moving to online sales to avoid demonstrations from the Keep-it-in-the-Ground anti-fossil fuels movement. As we have reported a BLM rule of January 10 to move to online processing of APDs has been put on hold by a January 20 memorandum of President Trump.

Boxscore of Legislation

Fiscal year 2017 appropriations (until April 28)
HR 2028 (Simpson). President Obama signed into law December 10 as PL 114-254. Extends funding at fiscal 2016 levels through April 28.

Fiscal year 2017 appropriations (full year)
HR 5538 (Calvert), S 3068 (Murkowski). House approved July 14. Senate committee approved June 16. Both would increase wildfire, PILT appropriations. Critics say numerous riders cripple bills.

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

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

(Specific rules) HJ Res 36 (Bishop), HJ Res 44 (Cheney), HJ Res 45 (Cramer), HJ Res 46 (Gosar), HJ Res 56 (Pearce), HJ Res 68 (Cramer), HJ Res 82 (Westerman), HJ Res 35 (Young), HJ Res 71 (Tipton), SJ Res 11 (Barrasso), SJ Res 15 (Murkowski), SJ Res 18 (Sullivan). The House approved HJ Res 36, a methane rule reversal, February 2. The House approved HJ Res 41 to revoke a BLM planning rule February 7 (SJ Res 15 pending in the Senate). HJ Res 45 would reverse FWS oil and gas rule, HJ Res 46 would reverse an NPS oil and gas rule, HJ Res 35 would reverse a FWS hunting rule in Alaska (SJ Res 18 in the Senate). HJ Res 56, HJ Res 68 and HJ Res 82 would reverse BLM oil and gas orders. HJ Res 71 would revoke an ONRR oil, gas and coal royalty rule.

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

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

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

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

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

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

Critical minerals
HR 520 (Amodei). Amodei introduced January 13. Would have federal land managers establish time lines for acting on all mineral permits.
0990. https://www.acf-foresters.org.

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

Land and Water Conservation Fund
HR 502 (Grijalva). Grijalva introduced January 12. Would make the program permanent.

Federal Parks & Rec

addendum to Public Lands News

March 3, 2017

* *OIA may take rec retail show out of Utah*
* *Maine governor asks Trump to undo monument*
* *NPCA fears record of EPA boss Pruitt*
* *Senate up next for Alaska hunt rule*
* *Notes*
* *Trump budget short on domestics (See Public Lands News article)*
* *Senate approves Zinke with ease (See Public Lands News article)*

Outdoor industry group may take conference out of Utah

In the culmination of a decade-long dispute with the State of Utah over protection of the public lands, the Outdoor Industry Association said February 16 that it will attempt to move its annual retail show out of Salt Lake City.

For 20 years the human-powered recreation industry has held its annual Outdoor Retailer convention in the state, generating some $45 million in economic activity.

But the recreation industry, which is heavily dependent on undeveloped federal lands, said Gov. Gary Herbert (R-Utah) refused to meet its demands for protecting those lands. Most of all the industry recommends that the lands stay federal.

"It's disappointing Gov. Herbert and the Utah congressional delegation are in a different place from Republican and Democratic leaders in Washington, D.C., and across the country," said Amy Roberts, executive director of the Outdoor Industry Association. "Both President Trump and Interior Secretary nominee (Rep.) Ryan Zinke (R-Mont.) have stated their support for keeping public lands public and accessible by all Americans."

Roberts added, "Outdoor Industry Association will continue to support the efforts of Outdoor Retailer to seek a new home for the trade show."

Outdoor Retailer, the company that puts on the recreation trade show, said it has a contractual commitment to hold the event in Salt Lake City through the Summer Market 2018. The company said, "We will begin exploring location options beyond that which will include Salt Lake City as well as other cities that are viable options for Outdoor Retailer."

The company said it has not decided yet to leave Utah. "We'd like to stress that we have not made a decision to leave Salt Lake City," said Marisa Nicholson, show director.

The straw that broke the camel's back was reportedly a campaign by Herbert and the Utah Congressional delegation to reverse the Dec. 28, 2016, designation of a 1.35 million-acre Bears Ears monument in southern Utah by President Obama.

On January 24 the state's two senators and four House members jointly said they would ask Congress and President Trump to undo the 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."

As to federal land management in Utah in general the delegation said, "We will utilize all the Article One powers we possess, including the power of the purse, congressional oversight and legislation. We will support all efforts of the state, including the judicial route, to ensure Utahns control their own destiny."

The outdoor industry objected to the state's objection to the Bears Ears monument designation in a phone conversation with Herbert February 16. In the call the association said it posited four positions:

One, it asked Herbert to halt his support to the campaign to undo the Bears Ears designation. Two, it asked him to reverse his calls for the sale or transfer of federal lands to the state. Three, it asked Herbert to oppose a campaign to undo the Antiquities Act of 1906 used by Obama to designate Bears Ears. Fourth, it asked the governor to support public lands.

Herbert addressed the contretemps in an editorial in the *Salt Lake Tribune* just before the call from the outdoor industry. In that editorial Herbert said the problem the state had with Bears Ears and federal lands in general is management by public lands agencies.

"Let there be no mistake," he said. "Our criticisms of federal land management and policies should not be interpreted as a critique of the need, value, or merit of public lands. In fact, just the opposite."

Herbert added, "In recent days, Utah lawmakers have conveyed to the new administration in Washington our principled concerns about the negative impacts of the most recent use of the Antiquities Act for our state. Correspondingly, leaders in outdoor recreation, whose enterprises rely heavily on well-managed and accessible public lands, have raised principled concerns about Utah's commitment to caring for them."

He concluded, "I cannot ignore the challenges Utah sometimes faces due to federal practices that too often ignore meaningful local input. Policies change from administration to administration, creating inconsistent federal lands management practices. There are instances where federal inattention to looters, invasive species and pests has harmed these precious lands."

The State of Utah under Herbert's lead has taken the initiative in the West in demanding the transfer of federal lands to western states. In the most significant action Herbert 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.

Environmentalists view the state legislation as a follow-on to several other Herbert initiatives to gain control over public lands. They include a number of state lawsuits against the Interior Department that claim nearly 20,000 RS 2477 rights-of-way across federal lands.

However, President Trump and Zinke say they are opposed to any wholesale land transfers. At his January 17 confirmation hearing when asked by Sen. Bernie Sanders (I-Vt.) his opinion on privatization of the National Park System, Zinke said, "I want to be clear on this point. I am absolutely against the transfer or sale of the public lands."

But the Bears Ears situation is separate from the overall western states' demands for the transfer of federal lands to them. Herbert and the Congressional delegation object to the terms and conditions of the monument designation, not to federal retention of the land in the monument.

Maine governor asks Trump to undo North Woods monument

Maine Gov. Paul R. LePage (R) said last week that 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.

LePage said February 22 that he wrote Trump on February 14 and asked him to either revoke the designation or, alternatively, allow the State of Maine to manage the area.

As other Republicans before him have requested for other monument designations LePage told Trump, "I strongly urge you to undo the designation and return the land to private ownership before economic damage occurs and traditional recreational pursuits are diminished."

He added, "In the alternative, assuming the land remains in federal ownership, I believe the land should be managed by the State of Maine to ensure it can benefit all Maine people and accommodate the region 's economic and recreational needs."

President Obama designated the 87,500-acre North Woods national monument in Maine on Aug. 24, 2016. The designation of the officially-named Katahdin Woods and Waters National Monument generated immense local opposition, as has been the case with many national park units over the last century.

In his letter LePage questioned the argument of monument supporters that a Presidential revocation of a monument designation would not be legal and has never been done. "Regarding the national monument designation, 'those cold timid souls who neither know victory or defeat' argue that you, as President, cannot undo a national monument designation because it has never been done before," he wrote. "They also never envisioned President Trump."

The Maine Congressional delegation was split over the designation with Sen. Susan Collins (R-Me.) generally against and Sen. Angus King (I-Me.) in favor. The House member who represents the area, Rep. Bruce Poliquin (R-Me.), criticized the move, but said he hoped the complaints of local citizens would be accommodated. The other House member, Rep. Chellie Pingree (D-Me.) enthusiastically endorsed the designation.

The Maine monument land is, or was, owned by Roxanne Quimby, who has for a decade attempted to transfer it to the federal government as a down payment on a future Maine Woods National Park. Now the land will be included in a national monument operated by the Park Service.

The Quimby proposal also includes what former NPS Director Jonathan B. Jarvis called an unprecedented $40 million endowment an allocation of $20

million on the day the national monument was created and the allocation of another $20 million over three years.

Local critics object to the monument because they fear it will lead to restrictions on the local timber industry and it will put recreation areas off limits to snowmobiling and other uses.

However, in an unusual provision the designation allows hunting within the entire monument and retains access for all snowmobiling trails. That will leave more than half the monument open to winter sports.

President Obama set a record by designating 34 national monuments on his watch, often to the dismay of western Republicans and plaudits from conservationists. Almost all of the opposition to his actions has come in the West, where most of the designations were on Bureau of Land Management land, save for the Maine Woods monument.

Most aggressively, the entire Utah Congressional delegation is asking President Trump to undo a Dec. 28, 2016, designation of a 1.35 million-acre Bears Ears monument in southern Utah.

Obama capped off his monument designations January 12 by setting aside 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.

A month later of February 13 the Association of O&C Counties filed a lawsuit Cascade-Siskiyou expansion. The counties said a federal law governing most of the Cascades the O&C Act supersedes the law Obama used to designate the monument the Antiquities Act of 1906. The O&C Act requires that the lands be managed to sustain timber production and the monument designation would forbid that.

NPCA fears positions of EPA's Pruitt on haze, climate

To put it mildly the National Parks Conservation Association (NPCA) is apprehensive about what the confirmation of EPA Administrator Scott Pruitt will do to the air over the national parks.

At the top of NPCA's worry list are EPA haze rules that require states to minimize pollutants over Class One areas national parks and wilderness areas. Under the Clean Air Act if states don't act in a timely manner or aggressively enough, EPA can take over the regulations.

On January 10 EPA tightened its visibility rule, setting new deadlines for states to complete plans and new standards for the plan. In that the rule was published late in the Obama administration it might be subject to a law that allows Congress to revoke recent regulations, called the Congressional Review Act.

While serving as Oklahoma's attorney general in 2011 Pruitt sued EPA when the agency disapproved a state haze plan. Eventually, the 10th Circuit Court of Appeals ruled in EPA's favor and the Supreme Court refused to take the case.

Given that history NPCA President Theresa Pierno said on Pruitt's confirmation February 17, "I sat in the nomination hearing for Scott Pruitt and I heard his thoughts on some of the most poignant issues affecting our nation's air and water. I was alarmed that day, and remain so today. Our national parks need and deserve an EPA administrator who is committed to combatting, not questioning, climate change, who is not a legal adversary of the agency and who is transparent about potential conflicts of interest."

NPCA told us that it was worried about the future of EPA's haze rule under Pruitt. A spokesman forwarded a position paper that said, "In 2011, Mr. Pruitt suggested that the Oklahoma regional haze plan 'does nothing to address air quality with respect to public health' despite medical opinion that concluded the plan would reduce deaths and provide a cost benefit of over a million dollars annually due to reduced instances of asthma."

NPCA also objected to Pruitt's long-held skepticism about climate change. Said the association, "In addition, Mr. Pruitt denies climate science, calling it 'speculative,' a perspective that would jeopardize our nation's most treasured places, compromising them for future generations. Our national parks are a testament to the reality of climate change. Air pollution obscures many scenic views that are the hallmark of a national park visit, and can transform outdoor recreation into a health hazard."

The Coalition to Protect America's National Parks said before EPA published its latest iteration of a haze rule, "A stronger Regional Haze Rule will mean clearer skies in national parks, healthier air throughout the country, and decreases in pollution driving climate change."

EPA said the Park Service has seen progress in reducing haze. Said EPA on publishing the January 10 rule, "The National Park Service estimates that emissions controls established under the first planning period led to approximately 500,000 tons/year of sulfur dioxide and 300,000 tons/year of oxides of nitrogen reductions."

EPA added, "Eastern Class I areas have seen dramatic visibility improvements since 2000 due to emissions reductions required by the regional haze program and by other programs such as the Acid Rain Program and the Cross-state Air Pollution Rule."

EPA did suffer one major haze rule setback last fall. On Nov. 28, 2016, facing likely defeat in federal court, the agency withdrew a rule governing haze-causing pollution over Class One federal areas in Texas.

The Fifth U.S. Circuit Court of Appeals on July 15, 2016, suspended the rule. The court said the appellant State of Texas was likely to win on the merits because EPA erred in saying its rule should be substituted for a Texas rule.

Said EPA in a filing with the court, "In light of the Court's July 15 Opinion and the fact that the parties' settlement discussions were unsuccessful, EPA intends to seek a voluntary remand of the final rule in this Court." Earlier before the court EPA had argued that Texas, instead of considering a broad range of emissions, should have focused on source specific sites, such as power plants. But the court said no.

Environmentalists said the Fifth Circuit decision would impair visibility over Big Bend and Guadalupe Mountains National Parks in Texas. Normally the U.S. Circuit Court for the District of Columbia handles national Clean Air Act litigation, but the Fifth Circuit said it was in charge because this is a local issue.

Senate may act on resolution to revoke Alaska hunt rule

The approval last month of a House resolution (HJ Res 35) to revoke a rule limiting hunting and fishing in national wildlife refuges in Alaska moves the debate to the Senate.

And there Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) and her colleague Dan Sullivan (R-Alaska) are in position to move a counterpart resolution (SJ Res 18).

After the House vote Sullivan said, "I applaud Congressman Don Young's (R-Alaska) work to pass this resolution with overwhelming support in the House, and I look forward to working with Senator Murkowski and my Senate colleagues to invalidate this overreaching rule and restore the sovereignty of Alaska in managing fish and wildlife on our lands."

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

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

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

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

The dispute over hunting bears and wolves in national refuges and national parks has erupted into a national controversy.

The FWS regulation holds that the State of Alaska may not regulate predators in 77 million acres of federal wildlife refuges unless state regulations are based on sound science. The rule does not affect subsistence hunting by Alaska Natives.

There is a major legal question underlying the dispute how far does the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) go in authorizing either the state or the Fish and Wildlife Service to regulate game in federal conservation areas?

On the House floor Young made this federal law case for Alaska management of wildlife in wildlife refuges: "This House created the State of Alaska in 1959, under the Statehood Act. It clearly granted Alaska full

authority to manage fish and game on all lands in the State of Alaska, including all Federal lands. The Alaska National Interest Lands Conservation Act in 1980 further, in fact, verified what the Statehood Act did: protecting the right of the State to manage fish and game."

Rep. Don Beyer (D-Va.) made the opposite case for federal management of wildlife in wildlife refuges: "The National Wildlife Refuge System Improvement Act and the Alaska National Interest Lands Conservation Act authorize - and, in fact, require the Fish and Wildlife Service to maintain the natural diversity of refuges in Alaska, regardless of State wildlife laws. This includes protecting healthy populations of apex predators like wolves and bears."

The hunting and fishing conservation groups wrote House members of the Young resolution, "Many members of our organizations enjoy Alaska's bounty of fish and wildlife resources and their habitats for unrivaled hunting, fishing and outdoor experiences. The sustainable management of these natural resources needs to be led by the State working in cooperation with the FWS. We urge that you favorably consider HJ Res 49 which will restore the jurisdictional state-federal relationship as Congress has previously directed."

Jamie Rappaport Clark, president of Defenders of Wildlife, made the environmental case; "Voters deserve better from this Congress. Is running roughshod over public lands and targeting mother bears and wolves and their young on lands specifically set aside as wildlife refuges really a priority for legislators given the many challenges facing our country? Americans expect our national wildlife refuges to be managed for their conservation values for all wildlife, not just those species of particular interest to a few."

In its lawsuit against the rule the State of Alaska made the same case as Young the feds don't have authority to regulate hunting in federal wildlife refuges. Says the lawsuit, "These regulations unlawfully preempt the State's authority to manage wildlife resources and adversely affect subsistence and non-subsistence hunting rights protected under federal laws." The state's lawsuit is at: https://donyoung.house.gov/uploadedfiles/alaska v jewell complaint.pdf.

Notes

New York working on 750-mile trail. The State of New York has reportedly begun talking with private landowners as part of a campaign to assemble a 750-mile paved trail from one end of the state to the other. New York Gov. Andrew Cuomo (D) has made the Empire Trail a top priority for the state this year, recommending a $200 million addition in his budget for the trail. One portion of the trail would run from lower Manhattan through the Hudson Valley to Canada. A connecting "T" trail to that segment would follow the Erie Canalway west from Albany to Buffalo. The Erie Canalway is 80 percent constructed. The New York legislature has already approved almost $500 million to meet Cuomo's demands for upgrading the state park system.

Eastern states NHA bills surface. Although 11 House members introduced legislation (HR 1002) February 13 to establish standards for designating National Heritage Areas (NHAs), individual House and Senate members continue to introduce individual bills. Thus Sen. Joe Manchin (D-W.Va.) and the other

senators from West Virginia and Maryland February 15 introduced a bill (S 401) to designate an Appalachian Forest National Heritage Area in the two states. Said Manchin, "As the third most forested state in the nation, West Virginians cherish the access we have to the outdoors. We must preserve the rich cultural traditions and natural beauty of this region for the next generation of West Virginians and for visitors from all over the world who visit our great state each year." On the same day Sen. Bob Casey (D-Pa.) introduced legislation (S 4004) to designate a Susquehanna National Heritage Area in Pennsylvania. For the third consecutive Congress Rep. Charlie Dent (R-Pa.) and a bipartisan group of 11 House members has introduced the bill to establish an NHA program. The legislation would establish standards for new NHAs and would permanently authorize the 50 or so existing NHAs. Past administrations, senators and House members from both parties have attempted for two decades to gain control over NHAs. Under the present system NHAs are usually established when powerful legislators attach riders to omnibus lands bills or to appropriations bills, no questions asked. Heritage areas usually consist of a mix of public and private lands with striking social, economic, historical and natural features. NHAs don't, in their entirety, quite rise to the level of national parks. However, some NHAs do actually include national park units within their borders.

Service Corps honors Derrick Crandall. The Corps Network representing the 135 service corps in the country last month gave its highest award to American Recreation Coalition President Derrick Crandall. The Network said it was presenting its Champion Award to Crandall for work he had done to connect youths to the outdoors. "Through your leadership at ARC, our work together has been strengthened and the number and diversity of youth engaged in service in their communities on recreation-enhancing projects has increased," said Mary Ellen Sprenkel, CEO of The Corps Network. ARC represents the powered and non-powered recreation industries.

Alaskans commemorate Denali Centennial. Sen. Lisa Murkowski (R-Alaska) commemorated the Centennial of Denali National Park on February 26. "One hundred years ago, President Woodrow Wilson signed the bill establishing what was then known as Mount McKinley National Park, and today we proudly call it Denali National Park and Preserve," Murkowski said. The three-member Alaska Congressional delegation not always big fans of the Park Service - introduced resolutions last month (H Res 110 and S Res 55) to mark centennial. The Senate approved S Res 55 February 17. Murkowski and Sen. Dan Sullivan (R-Alaska) and Rep. Don Young (R-Alaska) were the sponsors. Young in particular has criticized the Park Service for limiting access to parks for Alaskans and for barring hunting in the parks.

4 Top Tribal Concerns As Zinke Takes Charge Of DOI

Share us on: By **Andrew Westney**

Law360, New York (March 2, 2017, 4:32 PM EST) -- Former Montana Rep. Ryan Zinke brings a short yet solid record working with Indian Country to his role as the newly confirmed secretary of the interior, but attorneys for Native American tribes will be watching how the Republican tackles federal land management, budget restrictions, energy projects and other issues as the Trump administration moves forward. Here are four key areas to keep an eye on as Zinke takes the reins at the DOI.

Energy Development

The Trump administration's push for rapid energy infrastructure development may test Zinke's stated commitment to respecting tribal sovereignty and consulting with tribes over such projects, attorneys say.

At his **Jan. 17 confirmation hearing** before the Senate Energy and Natural Resources Committee, Zinke called for the federal government to listen to tribes' concerns over infrastructure like the Dakota Access pipeline. That project has prompted sharp conflict and ongoing litigation between those seeking to protect the Standing Rock Sioux Tribe's water near its reservation and the Energy Transfer Partners LP unit looking to complete the pipeline.

While the Dakota Access pipeline turned into a political football between the Obama administration and the Trump administration, with President Donald Trump issuing a presidential memorandum in his first days in office meant to speed up review of the project, "it would be unfair for anyone to try to hold [Zinke] to the task of unscrambling that egg," according to Holland & Knight LLP partner Philip Baker-Shenk.

"Going forward, I think it's fair to ask about the next pipeline, the next proposal that implicates tribal rights and responsibilities: How will the Zinke Interior Department — to the extent it's involved in that — provide meaningful consultation?" he said.

The DOI has a divided role with respect to energy, as it's charged with both protecting

natural resources and encouraging their development, Dorsey & Whitney LLP partner Thaddeus Lightfoot said. That may put Zinke in a squeeze between listening to tribes on the one hand, and dealing with pressure from the administration on the other, he said.

"If the protection of tribal lands conflicts with the federal desire to conduct energy development, it’s unclear where the Department of the Interior is going to land on that issue," Lightfoot said.

During his hearing, Zinke broke from earlier comments of Trump’s by saying that he didn’t believe climate change is a hoax, but he suggested that there is still a place for fossil fuel extraction on federal lands.

Leading up to his confirmation Wednesday, Zinke received strong support from tribal leaders in his home state of Montana, where he supported the Crow Tribe’s coal production efforts, and said during his hearing that he would support coal mining as part of Trump’s effort to end the Obama administration’s so-called war on coal.

But nationwide, Zinke’s support for an "all of the above" approach to energy development could benefit the diverse array of tribes who may be able to profit from not just oil, coal or gas, but from solar, wind, nuclear or water projects as well, Baker-Shenk said.

Environmental Regulation

Zinke will also have a role in implementing Trump’s plans to roll back environmental regulations, but could prove to be a less extreme figure than others in the administration, attorneys say.

In nominating Zinke as interior secretary in December, Trump said the ex-U.S. Navy SEAL would help "repeal bad regulations and use our natural resources to create jobs and wealth for the American people."

Zinke has opposed Obama administration regulations and backed construction of the Keystone XL pipeline, saying during his confirmation hearing that he would support reversing the Bureau of Land Management's rules for venting and flaring methane on public and tribal lands.

But Lightfoot said that Zinke's attitude toward the DOI appears "very different and more positive" than that of new U.S. Environmental Protection Agency head Scott Pruitt toward his agency, which Pruitt consistently attacked during his six-year tenure as attorney general of Oklahoma.

Zinke could help shape specific environmental regulation through the DOI's advisory role to the EPA on tribal issues affected by the agency's environmental programs, such as whether a tribe can claim treatment-as-state status under the Clean Air Act, and he could influence the administration's overall policy as a Cabinet member, according to Brian Gunn, a principal in the Indian tribal governments group at Powers Pyles Sutter & Verville PC.

Zinke is "generally seen as a moderate within Indian Country, and the fact that he has at least some record with tribes, I think, makes folks hopeful he can have a kind of moderating role [within the administration]," Gunn said.

Land Management

During his single full term as Montana's sole congressman, Zinke backed a strong role for the federal government in handling public lands, which could quickly put him at odds with Republican leaders in Congress over a controversial national monument that protects sacred tribal lands in Utah.

An avowed conservationist, Zinke said in an email to DOI staff Thursday that his first priority as DOI secretary is to address an estimated $12.5 billion backlog of maintenance and repair work in the National Park System. Also on Thursday, in one of his first acts as secretary, Zinke issued two secretarial orders to expand access to public lands for hunting, fishing, camping and other recreational activities.

In the email, Zinke reaffirmed his commitment not to sell, transfer or privatize public land. At his confirmation hearing, Zinke had said that he was "absolutely against transfer or sale of public land." And while in Congress, he voted against legislation that would allow the selling off of public lands.

But congressional Republicans led by Natural Resources Committee Chairman Rob Bishop, R-Utah, have pushed for Trump to rescind former President Barack Obama's Dec. 28 designation of the 1.35-million-acre Bears Ears National Monument in southeastern Utah,

saying the move was "alien to the desires of the overwhelming majority of Utahns" and Native Americans in the area.

In a statement Wednesday following Zinke's confirmation as interior secretary, Rep. Raul Grijalva, D-Ariz., called for Zinke to stick by his prior opposition to "state-level efforts to seize millions of acres of federally owned public land" as Zinke is expected to visit Utah to discuss the Bears Ears monument soon.

If Bishop's bid to have Trump rescind the Bears Ears designation under the Antiquities Act fails, Zinke is likely to be publicly drawn into the fray, according to professor Alexander T. Skibine of the University of Utah College of Law.

"If Trump does not go for revoking this [designation] through an executive order, which it's not a given he can do, legally speaking, the Utah delegation will try to push hard to get this through Congress, and Zinke would have to testify," Skibine said.

Still, his new job could position Zinke to broker an agreement over the Bears Ears monument and other land disputes in a way that respects tribal interests and property rights while lessening federal control, according to Baker-Shenk.

Stricter Budget

Anticipated budget cuts by the Trump administration could force Zinke to figure out how to sustain tribal programs at the DOI's Bureau of Indian Affairs while keeping the BLM, the National Park Service and the department's many other agencies running smoothly.

Trump announced his intention to slash federal staffing on Jan. 23, prompting fears from tribal advocates that Indian programs on which many tribes rely, including those at the BIA, could take a heavy hit.

Now, the White House may cut 10 percent from the DOI's proposed 2018 budget, according to a report cited by Grijalva in Wednesday's statement, as part of an overall paring down of federal agencies.

The Trump administration's focus on trimming the government puts Zinke in the position of having to protect tribal programs from being trimmed or cut altogether, after such programs

generally received solid support from the Obama administration, according to Gunn.

"In the last eight years, tribes haven't really had to play defense on the budget so much and have been able to advocate for gains on certain programs," he said. "Zinke in his role [at the DOI] is in a good position to be able to protect or insulate Indian Country from some of those cuts and hopefully find those cuts elsewhere outside of Indian Affairs."

In his letter to the DOI on Thursday, Zinke stressed his commitment to Indian Country, saying "sovereignty needs to mean something."

"My commitment to the [Indian] territories and nations is not lip service," Zinke said in the letter.

--Editing by Christine Chun and Mark Lebetkin.