

# Public Lands News®

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## SAGE-GROUSE

### BLM sets tougher policy; enviros sue over non-listing

As part of the Obama administration's March 5 decision not to list the sage-grouse as threatened and endangered at this time, BLM will tighten restrictions on oil and gas development in core habitat.

In effect BLM is telling its state offices to adopt a policy that "is consistent with" a Wyoming standard that limits the number of oil and gas wells within core sagebrush habitat, a BLM spokeswoman said March 12.

The Wyoming policy limits wells to "one per 640 acres, but that's not

necessarily one per every section," said Chris Keefer, a wildlife biologist in the BLM Wyoming State Office. "It's an average landscape-scale objective."

The oil and gas restriction is but one step the administration is taking to protect the sage-grouse, short of listing it as threatened and endangered under the Endangered Species Act (ESA.)

Secretary of Interior Ken Salazar March 5 said the Obama administration would not designate the sage-grouse as threatened and endangered at this time because other species had higher priority. The word of art used by Salazar was that the backlog "precluded" the listing.

That didn't satisfy the Western Watersheds Project. It asked a federal court March 8 to order the Fish and Wildlife Service (FWS) to issue a rule designating the sage-grouse as threatened or endangered "within a set deadline."

The Western Watersheds Project filing, which supplements an original lawsuit that led to the March 5 actions, blasts the administration. "This 'precluded' determination relegates the sage-grouse to the long list of ESA 'candidate' species - a black hole from which few species ever emerge, and under which they receive no ESA protection - and represents yet another non-scientific, politicized, and arbitrary determination that prevents the sage-grouse from obtaining the ESA protection that it urgently needs." The complaint was filed in the U.S. District Court for Idaho.

Salazar laid out his goals for protecting the sage-grouse at a March 5 press conference. In response to a question on the impact to the energy industry, he said, "This gives us a window of several years to make sure we insure we meet twin goals. The first is to make sure the sage-grouse doesn't have to be put on the endangered species list, that it does not go extinct."

He added, "Second of all we are able to move forward with continued use and development of public lands that includes conventional energy and renewable energy, and grazing."

The Department of Agriculture said March 12 it would help protect the sage-grouse by allocating \$16 million to farmers to prevent harm to the birds caused by disease and invasive species. The money would be distributed through an Environmental Quality Incentives Program and a Wildlife Habitat Incentive Program.

There is some apprehension among livestock permittees and their allies in Congress. The Public Lands Council said March 11 that the decision that designation of the sage-grouse is warranted is unnecessary, even if formal action is precluded right now.

Said Public Lands Council President Skye Krebs, "However, if the sage grouse are designated for protection under the ESA, many ranchers would no longer be permitted to allow livestock to graze on or near sage grouse habitat. This would destroy the ranching industry in the west."

Rep. Mike Simpson (R-Idaho) said March 11 that he is concerned that the additional workload the sage-grouse decision will put on BLM will further delay the renewal of grazing permits. "While the Fish and Wildlife Service has stated that properly-managed grazing is not a principle threat to sage-grouse, I am concerned that this decision may only add to the problems the BLM is having in getting permits issued," he said.

Simpson, ranking Republican on the House subcommittee on Interior appropriations, said he would work to provide BLM with the resources, i.e. money, it

needs to both manage the sage-grouse and renew grazing permits on schedule.

More than 20 conservation groups petitioned FWS in 2003 for a listing of the sage-grouse under the ESA. On Jan. 6, 2005, then FWS Director Steven Williams issued a decision that a listing was not required because the efforts of federal and state agencies would protect the sage-grouse. On Dec. 4, 2007, Idaho Chief Judge B. Lynn Winmill ordered FWS to reconsider its decision. Finally, on March 5 Salazar said FWS will declare that listing of the bird is warranted but precluded.

A century ago more than 1 million sage-grouse populated the West. The birds are primarily dependent on sage-brush habitat. Since then the population has shrunk to 100,000 to 500,000 birds. Winmill said that overall the experts ranked these as the greatest threats to the sage-grouse, in order: "(1) invasive species, (2) infrastructure, (3) wildfire, (4) agriculture, (5) grazing, (6) energy development, (7) urbanization, (8) strip/coal mining, (9) weather, and (10) pinyon-juniper expansion."

The greatest population of sage-grouse - perhaps half of the domestic population - is found in Wyoming, which has taken the lead in protecting the bird from oil and gas development.

Wyoming Gov. Dave Freudenthal (D) said he would have preferred a "not-warranted" decision to the Salazar warranted-but-precluded finding. "People still need to go to work - and work in Wyoming means working on the land in the oil patch, in the mine and on the ranch, sometimes right next to or within core areas," he said.

The Wyoming oil and gas policy allows just one drilling pad per 640 acres in core sage-grouse habitat, as an average over a landscape area. Some fields in the state have as many as 64 wells per square mile.

The BLM State Office in Wyoming has already adopted the state policy. In Instruction Memorandum No. 2010-071 of March 5 the Washington headquarters of BLM asked all its field offices to adopt policies "consistent with" the Wyoming policy.

The memorandum says, "In priority habitat and where supported by NEPA analysis, attach conditions to the approval of APDs that are more protective than the stipulations or restrictions identified in the applicable Resource Management Plan, as appropriate."

BLM's Keefe, the wildlife biologist, said, "The take-home message in the Washington IM directs the BLM state offices to work with state wildlife agencies to put together a consistent standard and a range-wide approach."

The Independent Petroleum Association of the Mountain States said it was relieved that Interior didn't immediately designate the sage-grouse, but worried about a crackdown on oil and gas development. "We're concerned that land managers will nevertheless implement this decision by introducing very restrictive policies that prevent companies from investing and creating high-paying jobs in local communities within core areas, but it appears that Interior plans to balance implementation so that restrictions on energy development do not apply with a broad brush across the entire region," said IPAMS Director of Government Affairs Kathleen Sgamma.

Some conservation groups, such as the Theodore Roosevelt Conservation Partnership, have the opposite concern. They are apprehensive about BLM's ability and willingness to protect the sage-grouse. "We can't keep on applying inadequate approaches to sage-grouse management and expecting good results," said TRCP Energy Policy Manager Steve Belinda, a former BLM biologist. "The government's findings

are relevant only to the extent that they are used to produce concrete changes in the places that matter most to sage-grouse; consequently, energy developments such as the Atlantic Rim and Pinedale Anticline projects (in Wyoming) should be revisited via the adaptive management process."

### Will circuit courts differ on Clinton FS roadless rule?

A key judge on the Tenth U.S. Circuit Court of Appeals indicated March 10 that he is not sympathetic to the so-called Clinton administration national forest roadless area rule. It bars almost all road construction on 58 million acres of roadless national forests.

In an important oral hearing on the legality of the Clinton roadless rule Senior Judge Stephen Anderson reportedly said he suspected the Clinton administration issued its rule in 2001 to lock up the lands before leaving office. "It sure looks like it," Anderson said, according to the *Denver Post*.

The Tenth Circuit is in position to hand down a critical ruling on the roadless rule, which has been stymied by competing court decisions. If the Tenth Circuit agrees with the Ninth U.S. Circuit Court of Appeals, it will hold the Clinton rule valid.

But if the Tenth Circuit disagrees with the Ninth Circuit and agrees with a U.S. District Court judge's ruling in the case before it, it will hold that the Clinton rule is illegal.

The Obama administration is sympathetic to the Clinton rule, but is not going to act until the Ninth and Tenth Circuits clarify the legality of the Clinton rule. Or continue to disagree.

"This administration has been very clear we are going to protect roadless areas, we are going to protect those values," Forest Service Chief Tom Tidwell told the Senate Energy Committee February 24. "At the same time we have to consider the issues that come along with that. At this time we are not moving forward with any action. We are going to wait for the courts. In the past we have moved forward."

If the Tenth Circuit disagrees with the Ninth Circuit, the administration could be faced with a dilemma. Should it go ahead and write a new roadless rule of its own and risk having a court knock it down? Or should it wait to see if a disagreement between the circuit courts goes to the U.S. Supreme Court?

In the legal dueling the Ninth U.S. Circuit Court of Appeals on Aug. 5, 2009, upheld the Clinton rule. But on June 16, 2009, U.S. District Court Judge Clarence Brimmer in Wyoming held the rule illegal. Brimmer said the Clinton administration effectively established 58 million acres of wilderness with its rule, and only Congress has that authority. That is the reading judge Anderson inferred he believes.

Secretary of Agriculture Tom Vilsack on May 28, 2009, issued a directive that gives him authority to review all proposed projects in roadless areas. And Vilsack has said that if federal courts don't resolve their disagreements about national forest roadless areas, the Forest Service will write a new rule.

Meanwhile, the sportsmen group the Theodore Roosevelt Conservation Partnership (TRCP) March 11 urged the Obama administration to hold off on a Colorado-peculiar roadless rule sought by Gov. Bill Ritter (D) until the 10<sup>th</sup> Circuit rules. "Hunters and anglers urge the state of Colorado to wait for a ruling from the 10th Circuit before moving forward with the Colorado roadless rule," said Nick Payne, TRCP Colorado field representative.

TRCP wants as much roadless land protected as possible. "The national roadless rule upholds sportsmen's values and is the strongest option for ensuring conservation of Colorado's roadless areas in the long term," said Payne.

If the courts don't support the Clinton rule and the Obama administration doesn't act, Congress may become involved. Sen. Maria Cantwell (D-Wash.) and Rep. Jay Inslee (D-Wash.) introduced legislation (HR 3692, S 1738) Oct. 1, 2009, that would reinstate the Clinton rule. Twenty-five senators have cosponsored the Senate bill and 152 House members the House bill.

### Bennett: O&G industry may accept 20 percent royalty, if

Sen. Bob Bennett (R-Utah) said last week that oil and gas companies would be willing to pay a 20 percent oil and gas royalty to operate on public lands, if BLM processed permit applications expeditiously. The onshore royalty rate is presently 12.5 percent.

Bennett made the assertion March 10 in a back-and-forth with Secretary of Interior Ken Salazar at a Senate Energy Committee hearing on a fiscal year 2011 budget request for the Interior Department. Salazar often uses the example of Texas with its 20 percent royalty as a reference point.

"I think they would be happy to pay a 20 percent royalty if they could get on the ground within 19 days," said Bennett, who had been making a larger point that industry shouldn't pay higher fees if drilling permits take months to process and management plans take years to complete.

As he often does, Salazar put the blame for delays in approval of leases on the Bush administration. "I think what we have seen from the previous administration is that 47 percent of leases have been protested," he said. "We have seven years of delays because of litigation."

To which Bennett replied, "Seven years to produce a resource management plan has nothing to do with the environmental lawsuit."

The oil and gas industry is not yet ready to commit to a much higher royalty in exchange for some unspecified acceleration in the processing of applications for permit to drill (APD.)

But Kathleen M. Sgamma, director of government affairs for the Independent Petroleum Association of Mountain States (IPAMS), said, like Bennett, that APD delays don't tell the whole story. "The hypothetical that Sen. Bennett proposed of BLM taking 19 days to process APDs would be outstanding, but even if BLM could process APDs in 19 days, that doesn't reflect the years of background work before a company gets to the point of submitting the APD," she said.

She added, "The additional work that's not required in Texas and other states includes separate environmental analyses for leasing, exploratory work and development; and wildlife, vegetation, and cultural surveys. The process, including waiting months for APDs, regularly takes over five years, and sometimes much longer."

The Bennett-Salazar debate represents the latest round in a year-long fight over the regulation of development between the administration and environmentalists on one side and the oil and gas industry and western Republicans on the other.

The latest round of disputes was kicked off January 6 when Salazar said BLM will prepare new guidance that would give the government a greater say in identifying tracts of land for lease. He also said that BLM would develop separate

guidance to insure the bureau does not exclude activities from environmental review when extraordinary circumstances are involved.

The dispute was intensified February 1 when the Obama administration proposed a fiscal year 2011 budget with numerous fee increases. At that time Salazar promised to review the 12.5 percent onshore oil and gas royalty.

The Interior Department Service collects more than \$4 billion each year from onshore energy development and provides states with 48 percent of the take. In fiscal 2010 the government estimates it will collect \$4.041 billion. Of that \$2.473 billion would come from onshore oil and gas royalties.

The new levies proposed by the Obama administration in fiscal 2011 include a permanent \$6,500 fee to cover the cost of processing each APD. The fee is authorized temporarily by a fiscal 2010 appropriations bill. The administration also said it will propose a \$4 per acre rental fee on new nonproducing oil and gas leases. And it intends to propose an inspection fee on onshore oil and gas leases that would produce \$10 million per year, or one-quarter of BLM's \$40 million annual inspection program.

With that background at the Senate Energy Committee hearing Bennett complained of the years it took BLM to complete resource management plans in Utah and the higher fees. "It's the combination of higher fees for which you get no service," he said.

Salazar said of the budget fees: "We look at it as we're doing this from a rational economic point-of-view. We have had the Bureau of Land Management and the economists in the department look at ways to insure we are receiving a fair return to the taxpayers. The 12.5 percent onshore royalty has been the same royalty that has been in place since 1920 when the Mineral Leasing Act was passed. It was then called the King's Share. It could be called the King's Share today."

## Feinstein faults Obama public lands budget priorities

The senator who oversees public lands appropriations signaled March 9 that she is not yet willing to accept major spending increases - and major spending decreases - in the fiscal year 2011 Obama administration budget request.

At a hearing on the fiscal year 2011 Obama administration budget for the Interior Department Sen. Dianne Feinstein (D-Calif.) first cast doubt on three spending increases - land acquisition, climate change and Indian law enforcement. "My concern is in order to pay for these increases, the administration is proposing cuts elsewhere that may well be untenable," she said.

Feinstein, chairman of the Senate subcommittee on Interior appropriations, then complained of proposed reductions in three areas - agency construction, hazardous fuels treatment and agency fixed costs.

She explained her concern about the hidden impact of forcing land management agencies to absorb fixed costs. "The budget proposes having the various bureaus absorb \$108 million in unfunded fixed costs," she said. "These include Congressionally-mandated pay raises, employee health benefits and increased utility costs."

Feinstein added, "Each of these must be paid for, but in this budget they are not. Where does the Park Service come up with \$32 million it needs to cover fixed costs? The Bureau of Indian Affairs must absorb \$19 million."

Feinstein also complained about a proposed \$164 million reduction in

construction spending at the Park Service, the Fish and Wildlife Service, the Bureau of Land Management, and the Bureau of Indian Affairs. "That's a 33 percent reduction for these agencies," she said, noting much maintenance work is conducted through the construction line item. "That is a problem."

And she complained about a \$44 million decrease in hazardous fuels treatment for the Interior Department. "Given the level of fires on public lands, that's a cut that is very hard for me to understand, let alone support," she said.

MORAN CHAIRMANSHIP OFFICIAL: In a separate development, as we reported in the last issue of *PLN*, Rep. James Moran (D-Va.) will serve as Feinstein's House counterpart as the chairman of the House subcommittee that appropriates money for many park and rec programs.

The House Democratic Caucus chose Moran for the post March 9. He replaces Rep. Norman Dicks (D-Wash.), who will now chair the Defense appropriations subcommittee.

Like Feinstein, Moran will have responsibility for spending for most Interior Department agencies, the Forest Service and EPA. The League of Conservation Voters gave Moran a 93 on its scorecard for 2009 conservation votes. There are questions about Moran's familiarity with western programs.

The first proposed budget increase noted by Feinstein March 9 was a \$140 million increase for the Land and Water Conservation Fund (LWCF.) Of the \$619 million request \$384 million would go to federal land acquisition.

At a March 3 hearing of the Senate Energy Committee, Salazar offered this defense of the land acquisition increase: "The fact is we lose about two million acres of land every year to development here in the United States of America. The fact is we are seeing declines in many of our species. We have sportsmen and anglers who are concerned about conservation around the world. Treasured Landscapes is a response to that great need. So the increases in the LWCF tend to be a part of moving that conservation agenda forward."

Here's a recap of the administration's fiscal 2011 public lands budget request:

- \* BLM LAND MANAGEMENT: decrease BLM management of land and resources by \$36 million, from \$959.6 million in fiscal 2010 to \$923.6 million in fiscal 2011;
- \* NLCS: increase spending on the National Landscape Conservation System (NLCS) by \$1.3 million, from \$64.1 million in fiscal 2010 to \$65.4 million in fiscal 2011;
- \* WILD HORSES AND BURROS: increase spending two ways. To acquire land to provide storage corrals for wild horses and burros the budget requests \$42.5 million. That's a first-time program. For BLM wild horse operating costs the budget requests an increase of \$12 million, from \$64 million in fiscal 2010 to \$76 million in fiscal 2012;
- \* WILDLIFE REFUGE SYSTEM: decrease spending by \$3.3 million, from \$502.8 million in fiscal 2010 to \$499.5 million in fiscal 2011;
- \* PAYMENTS-IN-LIEU OF TAXES: increase spending by \$14.1 million under a Congressional law that guarantees funding, from \$395.3 million in fiscal 2010 to \$409.4 million in fiscal 2011;
- \* NATIONAL FOREST SYSTEM: increase spending for the National Forest System by \$35 million, from \$1.551 billion in fiscal 2010 to \$1.586 billion in fiscal 2011;
- \* FS restoration/timber: combine timber sales in a jumbo new line item with spending for vegetation and watershed management and for wildlife and fisheries management. The requested appropriation of \$694 million is \$26 million more than the fiscal 2010 levels for the three old line items; and
- \* FIRE SPENDING SHUFFLE: In the fiscal 2011 budget request the Obama

administration proposed a restructuring of sorts of its fire suppression budget. The budget calls for three levels of funding beginning with \$595 million for standard suppression spending, \$291 million for an emergency FLAME fund and \$282 million for a new contingency emergency fund controlled by the President. That's a total of \$1.168 billion, or \$242 million less than a comparable appropriation of \$1.410 billion in fiscal 2010.

However, per direction from Congressional appropriators, the budget request actually increases fire preparedness activities by \$333 million to \$1.008 billion, in a way offsetting the suppression deduction.

The Interior Department fire-fighting budget contains a similar three-tier system with a total of \$934 million compared to \$856 million in fiscal 2010. The Interior money consists of \$763 million for fire management, \$96 million for the FLAME account and \$75 million for the President's contingency fund.

## Salazar encourages Senate to prepare new omnibus bill

The Obama administration made a pitch recently for an omnibus natural resources bill this year, as a follow-on to a huge, 160-measure bill Congress passed a year ago.

Secretary of Interior Ken Salazar made the pitch at a March 3 Senate Energy Committee hearing on the fiscal year 2011 budget request for the Interior Department. While being grilled by Sen. Bob Bennett (R-Utah) about controversial department plans to designate new national monuments, Salazar said a new omnibus bill could help resolve the controversy.

"If there was a way to replicate what I've spoken with the chairman (Sen. Jeff Bingaman, D-N.M.) about, that is the need for us to come together hopefully with Congress and the administration perhaps in moving forward with a 2010 version of what we did in 2009," Salazar said, referring to the 2009 omnibus bill. "As you know that legislation was very much bottoms up. That is our intention as we move forward with a conservation agenda."

There are a lot of pieces to this puzzle. If the Senate Energy Committee does take the lead in putting together an omnibus bill, as it did last year (PL 111-11 of March 30, 2009), it will begin with committee-passed measures that affect as many states as possible, committee staff tell us.

From there the committee may draw in some additional bills with national implications, such as a southern Utah wilderness/lands bill for San Juan County that Bennett is working on. In addition a measure to reauthorize and reshape a federal land transaction law is a prime candidate. As is a bill to authorize year-round recreation in ski resorts in national forests.

Bennett said a San Juan County bill could be ready soon. "We are well along toward having a San Juan County bill moving in the same direction as the Washington County bill and we will be happy to keep you fully informed on that," he told Salazar. "I anticipate by the end of this Congress, Mr. Chairman (referring to committee chairman Bingaman), we will have a San Juan land use bill ready to go and ready to be signed by the President in the same way the Washington County one was."

The Washington County bill formed a major piece of the 2009 omnibus bill. It designated 256,338 acres of wilderness, designated two national conservation areas, designated 165.5 miles of the Virgin River as wild and scenic, and authorized the sale of significant tracts managed by BLM.

San Juan County lies in the southeastern corner of Utah adjacent to Colorado, Arizona and New Mexico. Environmentalists have long promoted wilderness designation for segments of the county managed by BLM.

Most of the bills the Senate Energy Committee has approved are of minor impact, but these do have more import:

- \* HR 1694 would authorize the acquisition of Revolutionary War and the War of 1812 battlefields under the American Battlefield Protection Program,
- \* HR 1376 would establish a Waco Mammoth National Monument in Texas.
- \* HR 2330 would authorize a study of the possibility of designating Camp Hale in Colorado as a Park Service unit,
- \* HR 3113 would authorize a study of a segment of the Elk River in West Virginia as a wild and scenic river, and
- \* S 1369 would designate segments of the Molalla River in Oregon as wild and scenic.

Dozens of other public lands bills are in the pipeline. An intriguing possible addition to the pile is a bill (S 1787) introduced by Bingaman that would allow federal land managers to sell lands cleared by all land management plans. The existing law, the Federal Land Transaction Facilitation Act of 2000, only allows the sale of land cleared by land management plans completed before 2000. The law has produced more than \$100 million for the government this decade. S 1787 has not begun to move yet.

### Salazar affirms monuments denial, but hints at action

Secretary of Interior Ken Salazar repeated for the Senate Appropriations Committee March 9 his promise to follow a public process before the White House designates more national monuments.

Responding to questions from Sen. Jon Tester (D-Mont.), Salazar said, "There are no plans to move forward. There has been no direction from the White House that we move forward with monument designation. This is a Presidential exercise of authority."

But Salazar also hinted that something was in the works. "There have been conversations, Mr. Tester, like the conversations I've had with you over the last year, and that is it has been 102 years since President (Theodore) Roosevelt called the leaders of the nation together to launch a conservation agenda."

Salazar's statements may have taken some of the steam out of Republican criticism of an internal Interior Department documents that talked of the possibility of designating 17 new national monuments. Still, the Republicans are keeping up the heat.

To wit, Idaho Sens. Mike Crapo (R) and Jim Risch (R) March 11 wrote Salazar and asked him not to use the Antiquities Act of 1906 at all. That law authorizes a President to designate national monuments unilaterally.

"We urge you to reconsider this approach, as these types of Executive actions in Western states often provoke significant discord in the communities that they affect," the senators said. "Instead, we ask that the Department of Interior support an approach that we have long advocated, whereby multi-stakeholder collaborative efforts are the driving force behind major public land management projects."

Ranking House Natural Resources Committee member Doc Hastings (R-Wash.) and ranking House subcommittee on National Parks, Forests and Public Lands member Rob Bishop (R-Utah) opened the monuments controversy. On February 18 they released a seven-page Interior Department document that indicated the Obama administration "is considering" the acquisition of billions of dollars of land, all for BLM.

In addition the Republicans say the document indicates Interior is considering the designation of 14 new national monuments on BLM land.

At a Senate Energy Committee hearing March 3 Salazar said the White House has no secret agenda. "Let me assure you there is no direction from the White House on any of this for the department of Interior," he said. "Zero. Nada."

But Salazar did recommend that the Senate Energy Committee generate an omnibus lands bill like it did last year when Congress approved 160 individual bills in one big omnibus bill (PL 111-11 of March 30, 2009.) (See *previous article on the omnibus bill.*)

One of Salazar's toughest critics, Sen. Bob Bennett (R-Utah), said he is working on a major San Juan County lands/wilderness bill and hopes to see it enacted this year. "I anticipate by the end of this Congress Mr. Chairman we will have a San Juan land use bill ready to go and ready to be signed by the President in the same way the Washington County one was," he said. His proposal could take the heat off possible BLM monuments in Utah.

The 14 possible monuments are located in Arizona (1), California (4), Colorado (1), Montana (1), Nevada (1), New Mexico (2), Oregon (1), Utah (2) and Washington (1). The Interior document says 1,618,140 acres would be involved, including 397,210 acres of state and private land. Acquisition of the land would cost more than \$2 billion.

A lead strategy of most Republican critics of the administration is to introduce legislation to exempt their states from the Antiquities Act, as Wyoming already is. Here are the bills introduced thus far:

Arizona: HR 4814 from Rep. Jeff Flake (R-Ariz.) and two of his colleagues.

California: HR 4703 from Rep. Wally Herger (R-Calif.) and seven of his colleagues.

Montana: HR 4754 from Rep. Dennis Rehberg (R-Mont.)

Nevada: HR 4675 and S 3041 from Rep. Dean Heller (R-Nev.) and Sen. John Ensign (R-Nev.)

Utah: HR 4651 and S 3016 from Bishop and Sens. Bennett and Orrin Hatch (R-Utah.)

## USDA endorses Wyden timber approach, but faults details

The Obama administration March 10 said "yes, but" to a bill (S 2895) from Sen. Ron Wyden (D-Ore.) that would guarantee that availability of salvage timber in eastern Oregon while protecting old trees.

At a hearing on the bill by the Senate subcommittee on Public Lands and Forests that Wyden chairs, Under Secretary of Agriculture Harris Sherman said the administration "supports the key concepts" in the measure.

But Sherman expressed concerns about key provisions of the bill. For instance he faulted a provision that would exempt projects over the next three years from administrative review. "With no established administrative method to review decisions and areas of disagreement, we could see more litigation during the interim period as a result of having no administrative review process," he said.

In the same vein Sherman said the specific levels of treatment in the three interim years dictated by the bill may be unrealistic. The bill would authorize thinning projects on landscape-scale areas of 25,000 acres. The bill would require management of at least 80,000 acres, 100,000 acres and 120,000 acres for years one, two and three.

Said Sherman, "These specific levels of treatment may result in unrealistic expectations on the part of communities and forest product stakeholders that the agency would accomplish the quantity of treatment required. The levels called for in the first year would require the forests involved to more than double their current levels of treatment."

Despite the administration's worries Wyden said he was committed to moving a bill. In eastern and central Oregon he said, "Only a small handful of mills have been able to survive. Without giving them greater certainty of supply of saw logs these mills are going to close. If that happens our eastern Oregon forests will pay the price and on my watch I'm not going to let that happen."

(Western Oregon: The Obama administration has already dealt Wyden's plans a blow by requesting a significant decrease in hazardous fuels spending for BLM. Of course BLM operates in western Oregon, not eastern Oregon. Still, Wyden complained directly to Secretary of Interior Ken Salazar March 3 about the proposed \$47 million reduction. The administration requested \$162 million for Interior Department hazardous fuels money, down from \$206 million in this fiscal year.

(Western Oregon: At the March 3 hearing Salazar said the agency's goal is to sell 185 million board feet in fiscal 2011 in western Oregon, compared to 230 million board feet in fiscal 2010.)

But the eastern Oregon problem was eating at Wyden March 10. His bill (S 2895) is designed to help industry clear out the dead and dying trees in the six national forests in eastern Oregon that risk major fires and the spread of bark beetles. "On my watch what we seek to do is end the timber wars in my home state of Oregon," Wyden said. "The gridlock that has come about from the timber wars has taken its toll on both the well-being of our communities and the well-being of the forests."

After two years of promises, Wyden introduced S 2895 Dec. 17, 2009, to settle the war between the timber industry and environmentalists over management of national forests in eastern Oregon. The bill, apparently supported for now by most interests, gives a little to both sides. For the timber industry it would authorize large-scale forest thinning projects that, on an interim basis, would assure specific numbers of acres would be harvested each year.

For environmentalists, the bill would protect large and old trees, protect watersheds, and limit road construction.

John Shelk, president of Ochoco Lumber Company, endorsed the bill at the March 10 hearing. "There are those who criticize this bill because they disagree with including diameter limits and other specific details, believing such decisions reduce the flexibility of our federal forest agencies to best manage our forests," he said. "For the most part, our federal land managers are already managing under these restrictions. In our view, the legislation is a necessary improvement on the status quo."

Andy Kerr, senior counselor to Oregon Wild, said that although he is a dedicated preservationist, the science is clear. "The general consensus of the best available science for dry ponderosa pine and dry mixed-conifer forests on the eastside of Oregon is that much of the forest of these types is in need of active restoration – ecological restoration that includes not only the careful reintroduction of fire to these fire-dependent forests, but often the judicious use of a chainsaw and the removal of ecologically problematic trees," he said.

Other environmental groups, such as the Sierra Club, have posted warning signs. The Sierra Club said it was not a party to the negotiations so must first

review the details of the bill. But as a fundamental position the club said a deal must go beyond protecting individual trees to protecting larger forests.

In a statement the club said any agreement must "Provide stand-level protection for old growth forests as well as codify existing rules that protect individual large diameter trees on national forests in central and eastern Oregon."

### Calif. renewables agreement looms; Alexander worries

Secretary of Interior Ken Salazar and Sen. Dianne Feinstein (D-Calif.) have apparently settled their differences about siting solar energy projects in sensitive areas of the California Desert. But at the national level Sen. Lamar Alexander (R-Tenn.) isn't ready to get on board the renewable energy bandwagon.

At a Senate Appropriations subcommittee on Interior hearing on the Interior Department budget March 9 Salazar and Feinstein appeared to agree that the department would not place solar projects in lands Feinstein has included in a proposed Mojave Trails National Monument bill (S 2921.)

Said Feinstein, chairman of the subcommittee, "My understanding is - I wanted to get you on the record - is that there are zero acres (in the proposed monument) affected by fast-track permitting. In terms of acres of study zones overlapping the monument there are zero acres as well."

Salazar and Deputy Secretary of Interior David Hayes confirmed the statement. Said Salazar, "We have been working closely with you to avoid conflicts between the siting of these facilities and protecting these areas and I think we have come up with an agreement so that we can avoid conflicts with the boundaries."

The Interior Department is committed to completing environmental analyses by the end of the year for 31 renewable energy projects, including a number of solar projects in southern California on BLM land.

Feinstein's bill would designate a 941,00-acre Mojave Trails National Monument. The bill would also designate a Sand-to-Snow National Monument of about 134,000 acres.

Sen. Alexander, ranking Republican on the subcommittee, has a broader worry - that the Obama administration's overall renewable energy policy is not protective enough of public lands. He wrote Salazar March 9 and recommended that the department put off limits to renewable energy projects national parks, national wildlife refuges, national trails, wilderness areas, wilderness study areas, national monuments, national conservation areas, wild rivers and national seashores.

In addition he appeared to call for the completion of a comprehensive renewable energy plan before BLM approves any wind energy projects, like those BLM is processing in the California desert.

"BLM siting decisions for wind energy are now made by individual land managers who process applications where and when wind companies choose a location," he said. "Without a comprehensive plan, it's impossible to understand the cumulative impact each project has on wildlife, destruction of their habitat and habitat fragmentation on public/private lands that surround them."

Alexander summed up his concerns at the Senate hearing: "As Sen. Feinstein said we don't want to destroy the environment in the name of saving the environment. At least one conservation group has talked about the renewable energy sprawl. You talked about Treasured Landscapes. We just want to work with you to make sure there are clear policies about what is appropriate and what is not."

## GAO analyzes hazardous fuels project litigation

The Government Accountability Office (GAO) released a report March 4 that indicates 18 percent of hazardous fuels projects proposed by the Forest Service over three years were appealed. Of those 217 appeals the Forest Service allowed 54 percent to proceed.

Senate Energy Committee Chairman Jeff Bingaman (D-N.M.), who requested the report, was pleased. "I think these statistics reflect a growing public understanding of fuels reduction and restoration projects, and increased collaborative efforts among stakeholders and the Forest Service," he said.

Critics have complained that environmentalists have paralyzed hazardous fuels projects with appeals and other litigation. The GAO report may still give critics ammunition because it said objections were filed on another 40 percent of projects, in addition to the appeals.

GAO analyzed 1,415 decisions involving 10.5 million acres over fiscal years 2006 through 2008. It concluded, "Of this total, 1,191 decisions, covering about 9 million acres, were subject to appeal and 217 - about 18 percent - were appealed. Another 121 decisions, covering about 1.2 million acres, were subject to objection and 49 - about 40 percent - were objected to. The remaining 103 decisions were exempt from both objection and appeal. Finally, 29 decisions - about 2 percent of all decisions - were litigated, involving about 124,000 acres."

GAO added: "For 54 percent of the appeals filed, the Forest Service allowed the project to proceed without changes; 7 percent required some changes before being implemented; and 8 percent were not allowed to be implemented. The remaining appeals were generally dismissed for procedural reasons or withdrawn before they could be resolved."

The 99-page report, *FOREST SERVICE: Information on Appeals, Objections, and Litigation Involving Fuel Reduction Activities, Fiscal Years 2006 through 2008*, is available at <http://www.gao.gov/cgi-bin/getrpt?GAO-10-337>.

The chairman of the Senate subcommittee on Public Lands and Forests, Sen. Ron Wyden (D-Ore.), has introduced legislation (S 2895) that would exempt some hazardous fuels projects from Forest Service appeals. (*See separate article page 10.*)

The Wyden bill, supported by elements of the timber industry and some conservation groups, would authorize thinning projects on landscape-scale areas of 25,000 acres on 8.3 million acres in eastern Oregon. For the first three years the bill would require management of at least 80,000 acres, 100,000 acres and 120,000 acres for years one, two and three. Administrative appeals would be forbidden during the three interim years, although an "objection process" would be established.

## IBLA decisions

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

(IBLA orders: The following are orders, not decisions.)

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

**BLM decision:** BLM will include seven parcels in a lease sale despite protests from a previous lessee of the parcels.

**Appellants:** BLM should not have included the tracts in a lease sale.

**IBLA order:** IBLA Deputy Chief Administrative Judge Bruce R. Harris dismissed the appeal because the appellant was not "adversely affected" by BLM's decision to offer the tracts in the sale. The appellant once held, directly or indirectly, six oil and gas leases in the same area as the seven parcels offered by BLM. But Harris said the appellant's interest in the former leases ended with the termination of a unit agreement in 2005 and/or the termination

of the leases themselves in 2007.

**Case identification:** James R. Isern, IBLA 2010-40. March 4, 2010. Four pages.

**Subject:** Hard rock maintenance fee.

**BLM decision:** BLM will declare three mining claims forfeited for late submittal of a small miner exemption from annual maintenance fees.

**Appellants:** BLM should have accepted a small miner exemption request during a 15-day grace period.

**IBLA order:** IBLA deputy chief Harris affirmed BLM's decision forfeiting the mining claims. He rejected the appellant's argument that it submitted to BLM a small miner waiver certification within a 15-day grace period. He said the grace period would only apply if the original small miner certification were mailed before the deadline. The grace period does not apply if the certification is mailed after the deadline, he said.

**Case identification:** Marie Slanger, IBLA 2010-7. March 4, 2010. Three pages.

## Notes

**Colorado wilderness gets cool reception.** BLM and the Forest Service March 11 expressed major misgivings about a statewide Colorado wilderness bill (HR 4289) in a hearing before the House subcommittee on National Parks, Forests and Public Lands. And House Republicans, in an extension of their all-out war against the Obama administration, signaled they will oppose ambitious wilderness bills this year. On the dais was the Colorado wilderness bill that Rep. Diane DeGette (D-Colo.) has been introducing for the last decade. The measure would designate 850,000 acres of wilderness, 615,000 acres managed by BLM and 218,000 acres managed by the Forest Service. BLM Deputy Director Marcilynn Burke recommended that DeGette utilize "a narrow geographical focus," i.e. introduce bills that target individual wilderness areas, rather than the whole state. Burke also noted that some of the areas in the bills, such as a 27,569-acre South Shale Ridge Wilderness in the Piceance Basin, would conflict with oil and gas leases. Burke said 44 leases cover every acre of the proposed wilderness. Forest Service Director of Wilderness Chris Brown had problems of his own: He said "many areas" proposed for wilderness by HR 4289 had not been recommended for wilderness in forest plans. The Republican hostility to the bill was laid out by House Natural Resources Committee Republicans. They faulted the bill for failing to meet wilderness criteria as much as 90 percent of the time, for hamstringing the oil and gas industry and for interfering with water rights. The Republicans sent a larger signal on new wilderness when it said, "Nearly 108 million acres of federal land in the United States is already designated as wilderness area that the government can't properly maintain. Yet the Obama Administration and Democrats in Congress continue to look for new opportunities to acquire even more government land."

**Wyoming faults coal lease delays.** Wyoming Gov. Dave Freudenthal (D) joined with the all-Republican Wyoming Congressional delegation March 15 to complain to the Interior Department about delays in processing coal lease applications. The object of their ire is a Dec. 23, 2009, Instruction Memorandum (IM) that requires the Washington, D.C., headquarters of the Interior Department to review extensively coal leases by application. Previously, the Wyoming State Office of BLM did almost all the processing on an expedited basis. The Wyoming political delegation wrote Wilma Lewis, assistant secretary of Interior for Land and Minerals Management, and said, "The IM creates a labyrinth of reviews within the Washington offices of the Department of Interior. The new process requires 14 separate stops within the Department every time that a (*Federal Register*) notice is needed." The delegation said the IM could delay coal production.

**Freudenthal stepping down.** Wyoming Gov. Dave Freudenthal (D) who often walked a tightrope between energy development advocates and environmental advocates for the last eight years will not run for re-election this fall. Political pundits immediately predicted Republicans will have a golden opportunity to pick up the governorship in the election in the conservative state. Freudenthal was term-limited but said he was confident he could beat the term-limit law in court, because the Wyoming Supreme Court has held the law invalid for state legislators. As governor Freudenthal has frequently defended the oil and gas industry, as when he criticized Secretary of Interior Ken Salazar's January 6 proposal to have BLM take a

larger role in identifying tracts for lease on public lands. On the other hand Freudenthal's government has imposed strict rules for oil and gas development in sage-grouse habitat. The state receives almost \$1 billion each year from public lands energy royalties.

**Moreno assumes key Justice post.** Ignacia Moreno, a veteran Justice Department attorney, was sworn in March 5 as the assistant attorney for the Environment and Natural Resources Division of the Justice Department. Moreno will oversee all public lands litigation for the Obama administration. She is a political appointee who was confirmed by the Senate. A Colombian by birth Moreno grew up in New York City. She served in the Environment and Natural Resources Division of the department during the Clinton administration.

**DoI: Climate endangers bird species.** In a new report the Fish and Wildlife Service (FWS) March 11 said that more than one-third of 800 bird species in the country are in trouble, confirming a study of a year ago. Secretary of Interior Ken Salazar said the new report shows that commercial hunting, pesticides and habitat loss has reduced bird populations. Now, Salazar said, climate change "could dramatically alter their habitat and food supply and push many species towards extinction." The FWS report, prepared in consultation with conservation groups, is available at <http://www.doi.gov/whatwedo/climate/strategy/index.cfm>.

**Vilsack seeks restoration advisors.** To carry out a forest landscape restoration program Secretary of Agriculture Tom Vilsack is seeking nominees for a Collaborative Forest Landscape Restoration Advisory Committee. Nominations must be submitted by March 22 to: *U.S. Department of Agriculture, Forest Service, Forest Management, National Forest System, Mail Stop 1103, 1400 Independence Avenue, S.W., Washington, D.C. 20250-1123*. The committee will help the Forest Service choose projects under a \$40 million forest restoration program. The committee is limited to fewer than 15 members and is to be balanced among Ecological Restoration, Fire Ecology, Fire Management, Rural Economic Development, Strategies for Ecological Adaptation to Climate Change, Fish and Wildlife Ecology, and Woody Biomass and Small-Diameter Tree Utilization.

**Salazar highlights border project; GOP sees red.** Secretary of Interior Ken Salazar visited Organ Pipe Cactus National Monument March 13 to highlight border patrol efforts of federal land management agencies. But Rep. Rob Bishop (R-Utah) charged that the department is hampering border patrol agents in their efforts to keep "terrorists, criminals, drug smugglers and human traffickers" out of the country. Bishop said the department should not hinder the Department of Homeland Security along the border. In his visit to Arizona Salazar said that eventually on its 30-mile border with Mexico the Organ Pipe Cactus National Monument will have five miles of fence, 26 miles of vehicle barriers and 10 surveillance towers.

**Van Liew to head Public Lands Council.** A livestock industry lobbyist, Dustin Van Liew, has been chosen as the administrative head of two major livestock industry organizations. Van Liew will serve as executive director of the Public Lands Council and director of Federal Lands for the National Cattlemen's Beef Association, the groups announced March 15. He comes from a California family that has been in the livestock business for seven generations. Van Liew has served as a lobbyist for the Public Lands Council since January of 2008.

**BLM asks grasshopper, cricket input.** The BLM State Office in Wyoming March 12 asked the public to comment on a new environmental assessment that lays out a proposal for controlling grasshoppers and crickets in the state. BLM said that 1.2 million acres of the 18 million acres that BLM administers in Wyoming are threatened by a grasshopper infestation that in turn threatens habitat used by wildlife and livestock. Comment by March 26 to: *BLM, P.O. Box 1828, Cheyenne, WY 82003* with a subject line of "Grasshopper Control Scoping Comments." Comment may be E-mailed to [GrasshopperEA\\_WY@blm.gov](mailto:GrasshopperEA_WY@blm.gov).

## Conference Calendar

### MARCH

22-27. **North American Wildlife** conference in Milwaukee, Wis. Contact: Wildlife Management Institute, 1146 19th Street, NW, Suite 700, Washington, DC 20036. (202) 371-1808. <http://www.wildlifemanagementinstitute.org>.

### APRIL

11-14. **American Association of Petroleum Geologists** annual meeting in New Orleans. Contact: American Association of Petroleum Geologists, P.O. Box 979, Tulsa, OK 74101-0979. 1 (800) 364-2274. <http://www.aapg.org>.

29-30. **Due Diligence in Mining and Oil and Gas Transactions** in Westminster, Colo. Contact: Rocky Mountain Mineral Law Foundation, 9191 Sheridan Blvd., #203, Westminster, CO 80031. (303) 321-8100. <http://www.rmmlf.org>.

### MAY

17-21. **Mining Law** short course in Boulder, Colo. Contact: Rocky Mountain Mineral Law Foundation, 9191 Sheridan Blvd., #203, Westminster, CO 80031. (303) 321-8100. <http://www.rmmlf.org>.

19-21. **Western Interstate Region of the National Association of Counties** conference in Billings, Mont. Contact: National Association of Counties, 440 First St., N.W., 8th Floor, Washington, DC 20001. (202) 393-6226. FAX (202) 393-2630. <http://www.naco.org>.

23-25. **Interstate Oil and Gas Compact Commission** mid-year meeting in Lexington, Ky. Contact: Interstate Oil and Gas Compact Commission, P.O. Box 53127, Oklahoma city, OK 75132-3127. (405) 525-3556. <http://www.iogcc.state.ok.us>.

### JUNE

16-18. **Independent Petroleum Association of America** mid-year meeting in Colorado Springs, Colo. Contact: Independent Petroleum Association of America, 1201 15th Street NW, Suite 300, Washington, DC 20005. (202) 857-4722. <http://www.ipaa.org>.

16-20. **National Association of Counties** annual conference in Reno, Nev. Contact: National Association of Counties, 440 First St., N.W., 8th Floor, Washington, DC 20001. (202) 393-6226. FAX (202) 393-2630. <http://www.naco.org>.

23. **Independent Petroleum Association of the Mountain States** annual meeting in Beaver Creek, Colo. Contact: Independent Petroleum Association of the Mountain States, 410 17th St., Suite 1920, Denver, CO 80202. (303) 623-0987. <http://www.ipams.org>.

26-29. **Association of Consulting Foresters of America** annual meeting in Louisville, Ky. Contact: Association of Consulting Foresters of America, 732 North Washington St., Suite 4-A, Alexandria, VA 22314-1921. (703) 548-0990. <http://www.acf-foresters.com>.

27-29. **Western Governors' Association** annual meeting in Whitefish, Mont. Contact: Western Governors' Association, 1515 Cleveland Place, Suite 200, Denver, CO 80202. (303) 623-9378. <http://www.westgov.org>.

27-30. **International Right-of-Way Association** annual meeting in Calgary, Canada. Contact: International Right-of-Way Association, Pacifica Harbor Business Center, Suite 220, 19750 S. Vermont Ave., Torrance, CA 90502-1144. (310) 538-0233. <http://www.irwaonline.org>.