

# Public Lands News



Bulletin #9: July 13, 2015

Dear Subscriber:

This bulletin from Public Lands News newsletter reports on the following:

- \* **Approps bill would block major Obama public lands policies**
- \* **House approves disaster funding for fires, with a catch**
- \* **President designates three monuments, one controversial**

NOTE: This bulletin is a supplement to your regular edition of Public Lands News. It is NOT your regular issue. The next issue will be published July 17.

The Editors

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## House approps bill stalls; GOP adds public lands riders

The House was close to completing a fiscal year 2016 public lands appropriations bill (HR 2811) July 9 when a controversy over the Confederate flag waylaid the measure.

House leaders were unable to muster enough votes to pass the bill with an amendment authorizing display of Confederate flags in national parks because of moderate Republican opposition. Nor could they must enough votes to pass the bill without the flag amendment because of southern Republican opposition.

So Speaker of the House John Boehner (R-Ohio) withdrew HR 2822 from floor consideration and said he would convene a working group to seek a compromise on the flag issue.

Meanwhile, the House last week added numerous major public lands riders to an already rider-laden HR 2822. It approved amendments to:

- \* bar an increase in onshore oil and gas royalties;
- \* bar the completion of a new system of coal royalties;

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- \* head off the designation of national monuments in seven states;
- \* bar the implementation of an Arctic National Wildlife Refuge (ANWR) plan; and
- \* bar the implementation of BLM western Oregon management plans.

That's in addition to riders already in the bill that would:

- \* ban implementation of BLM's oil and gas hydraulic fracking rule;
- \* ban the listing the sage-grouse as threatened or endangered under the Endangered Species Act;
- \* block a court order to the Interior Department to delist the gray wolf in Wyoming from the Endangered Species Act;
  - \* ban completion of a power-plant, climate-change rule by EPA;
  - \* ban implementation of a rule by EPA that would require permits for activities in some non-navigable wetlands; and
  - \* prevent any agency from attempting to transfer water rights to the federal government on renewal of a permit (aimed at the Forest Service).

On the money side both the House and a counterpart Senate bill (S 1645) approved by the Senate Appropriations Committee June 18 squeeze the nickel. The House bill would marginally increase land and resource management spending for BLM by \$62 million, allocating \$1.015 billion instead of the fiscal 2015 appropriation of \$952.7 million. The Senate committee would provide \$1.046 billion.

Both the House and the Senate committee would use much of that extra BLM money (\$45 million) to implement sage-grouse plans the bureau completed May 29.

The House bill is not as generous to the National Forest System, recommending approximately the same appropriation as fiscal 2015. The House measure contains \$1.490 billion compared to \$1.494 billion in fiscal 2015. The Senate committee would appropriate significantly more money, \$1.517 billion.

The House would set aside \$355 million of the National Forest System money for forest products, i.e. timber sales; the Senate committee \$359.8 million.

Both the House and Senate committees approved money for an Integrated Resource Restoration (IRR) *pilot* program for Forest Service Regions 1, 3 and 4, but rejected the administration's request for a permanent IRR program. The administration had requested \$822 million, or roughly half the National Forest System appropriation, for IRR in fiscal 2016. Instead, the committees would extend a pilot IRR program.

In the House bill BLM and the Forest Service got off relatively easy compared to conservation programs, such as the Land and Water Conservation Fund (LWCF). For the traditional federal land acquisition side of LWCF the House committee approved \$91 million. That represents a \$74.7 million decrease from fiscal 2015.

The Senate committee approved \$157.5 million for the federal side, or \$66.5 million more than the House.

The House and Senate committees both across-the-board rejected Obama administration public lands initiatives. Not in the bill are proposals to assess inspection fees on onshore oil and gas lessees, to institute a hard rock mining royalty and to increase grazing costs with a \$1 per animal unit month (AUM) administrative fee (the current grazing fee is \$1.35 per AUM).

**OMB doesn't like it:** In threatening a veto the Office of Management and Budget (OMB) first complained about an overall funding level that is \$2.2 billion below the administration request. "The bill drastically underfunds core Department of the Interior programs as well as the Environmental Protection Agency's operating budget, which supports nationwide protection of human health and our vital air, water and land resources," said OMB in a Statement of Administration Policy.

OMB continued, "Funding levels in the bill would prevent investments that reduce future costs to taxpayers by facilitating increased energy development and maintaining facilities and infrastructure in national parks, refuges, forests, public lands, and Indian Country."

As for policy amendments/slash riders OMB said, "Further, the bill includes numerous highly problematic ideological provisions that have no place in funding legislation."

Of the absence of the administration's oil and gas inspection fee in HR 2822 OMB said, "The bill does not include a proposal in the FY 2016 Budget request to institute a new onshore oil and gas inspection fee program. The proposal, which is similar to the program already in place for offshore operations, would cover the cost of inspection activities and reduce the net cost to taxpayers of operating the BLM's oil and gas program."

The Senate situation is different politically. Although the Senate Appropriations Committee S 1645 June 18, the outlook for the bill on the Senate floor is problematic.

Democratic opposition there is so solid S 1645 may not be able to overcome a filibuster and make it to the floor. Thus, senators from both parties are already talking about the possibility of a significant delay in addressing the bill before the start of fiscal year 2016 on October 1.

Senate Majority Leader Mitch McConnell (R-Ky.) raised the possibility in the Senate Appropriations Committee June 18 that the Senate might still be working on a continuing resolution to finance all federal agency spending on December 23.

The House Appropriations Committee and the Senate Appropriations Committee are hampered by three factors: (1) spending caps slightly under the fiscal 2015 level; (2) an allocation of \$452 million for the payments of lieu of taxes (PILT) county assistance program that is usually funded outside spending bills and (3) emergency fire fighting.

The House bill includes \$452 million for PILT, money that Congress usually puts

up outside an appropriations bill. Said OMB, "While the Administration appreciates the Committee's support for PILT, inclusion of these funds in the bill comes at the expense of all other programs funded by the bill."

**Fires:** The Senate committee stepped up to the plate on emergency fire spending, approving \$1.054 billion for a stand-by account that would kick in when the Forest Service and the Interior Department exceeded annual fire suppression appropriations. The bill includes an additional \$3.61 billion to fight forest fires in fiscal year 2016. (See *following article*.)

As important, the bill contains legislative language that would establish a wildfire adjustment cap that would allow for the transfer of emergency fire-fighting expenses above a ten-year average to disaster funding, effectively removing those expenses from a regular appropriations bill. The House committee did not approve comparable provisions.

Although HR 2822 does not include the emergency wildfire transfer the House is moving separately on the situation. It approved legislation (HR 2647) July 9 that would shift some emergency wildfire money to the disaster account. However, the future of HR 2647 is problematic because it includes waivers of environmental laws for timber projects that the Obama administration opposes.

**APD processing money:** Both the House and the Senate Appropriations committees acknowledged a new program that would accelerate the processing of applications for permit to drill (APDs) oil and gas using higher permittee fees.

A new law approved by Congress in an omnibus public lands bill (PL 113-291 of Dec. 19, 2014) calls for a \$9,500 processing fee for each application for an APD for oil and gas on public lands. The old fee was \$6,500. The new fee money would be transferred to a BLM Permit Processing Improvement Fund for the next ten years to finance multi-agency offices to use to process permits.

A report accompanying the House committee bill says the program may get ahead of collected fees. "However, beginning in fiscal year 2016, BLM can access the fees only as they are collected," the report says. "The reliance on realized collections may result in a shortfall in funding early in the fiscal year, particularly in the first year of the transition. The Committee believes this transition can be appropriately accommodated given the flexibility to use base appropriated funding in the Oil and Gas Management program for APD permitting program operations." The Senate committee included similar language in its report.

**The spending cap:** The House Appropriations Committee in May assigned a spending cap to the Interior and Related Agencies committee bill that is \$246 million less than a fiscal 2015 ceiling of \$30.416 billion. The committee set a cap of \$30.170 billion for fiscal 2016. Still, that is marginally above the spending cap of \$30.010 billion set by the Senate Appropriations Committee May 21.

Congressional Democrats and the White House have made no secret of their plan to fight the spending caps for all domestic appropriations bills on any and all occasions. They will call on their Republican colleagues to replace or revoke a sequestration law that sets broad domestic and military spending ceilings. But Congressional Republicans are just as determined to stick with sequestration.

**RIDERS:** The House bill includes at least two-dozen riders or program blockages, more than the Senate committee bill. Here are some of the riders:

**OIL AND GAS ROYALTY:** The House bill would not allow BLM to increase onshore oil and gas royalties. On April 21 BLM posted notice that it was considering an increase to the 12.5 percent royalty. Some Democrats have recommended an 18.75 percent royalty. But Rep. Stevan Pearce (R-N.M.) persuaded his colleagues to block any increase. The vote was 231-to-198. Not in Senate bill.

**COAL ROYALTY:** The House bill would not let the Office of Office of Natural Resources Revenue (ONRR) implement new regulations it proposed January 6 to revise coal royalty valuations. The ONRR proposal would revise gas and coal royalty policy by using new standards to set the price of product for royalty purposes. Policy for oil would remain about the same. Rep. Ryan Zinke (R-Mont.) introduced the amendment, which was approved without a recorded vote. Not in Senate bill.

**NATIONAL MONUMENTS:** The House bill would block anticipated national monument designations in 17 counties in Arizona, California, Colorado, New Mexico, Nevada, Oregon and Utah. However, the amendment from Rep. Crescent Hardy (R-Nev.) came too late in the game to block the January 9 designation of a Basin and Range National Monument in Nevada. The vote was 222-to-206. (*See article below.*) Not in Senate bill.

**ANWR PLAN:** The House bill would prevent implementation of an ANWR management plan that the Fish and Wildlife Service published April 3. The plan calls for almost the entire 19.6 million-acre refuge to be managed as wilderness. Rep. Don Young (R-Alaska) introduced the amendment, on which there was no recorded vote. Not in Senate bill.

**BLM O&C PLANS:** The House bill would prevent BLM from completing western Oregon Resources Management Plans that the bureau proposed on April 24, 2015. Amendment sponsor Rep. Greg Walden (R-Oregon) said the plans would not allow enough timber sales. The amendment was approved without a recorded vote. Not in Senate bill.

**RIDER SAGE-GROUSE:** The House and Senate committee would both forbid the expenditure of any money on the writing of a rule to list the greater sage-grouse as threatened or endangered under the Endangered Species Act.

Rep. Ken Calvert (R-Calif.) defended the rider: "States are rightfully concerned that a listing or unnecessarily restrictive federal land use plans will jeopardize existing

conservation partnerships with states and private landowners that are necessary to save the sage brush ecosystem . . . As long as the sage-grouse are not under imminent threat of extinction cooperative conservation must be given a chance to work. That is why this bill maintains a one-year delay on listing of the sage-grouse, along with funding for the conservation effort.”

**RIDER GRAY WOLF:** The House and Senate committee would order the Interior Department to delist the Wyoming population of the gray wolf under the Endangered Species Act, reversing a federal court decision. The wolf was originally delisted in Wyoming by the Fish and Wildlife Service (FWS) in August 2012, but a federal judge in September 2014 ordered it delisted.

U.S. District Court Judge Amy Berman Jackson in U.S. District Court in Washington, D.C., said a Wyoming rule that led to the delisting failed. She said in a Sept. 23, 2014, decision that a state plan didn’t guarantee a baseline of 10 breeding pairs and 100 wolves in the state. She said FWS should have demanded stronger proof from the state.

**RIDER CLIMATE CHANGE:** The House and Senate committee would forbid EPA from completing a proposed rule that would reduce carbon emissions from existing power plants, a plan that environmentalists say would be a boon to the national parks. But the mining industry says the plan would place an unacceptable economic burden on society.

**RIDER WETLANDS:** The House and Senate committee would forbid EPA from implementing a May 27 rule that would expand the definition of a wetland subject to a Section 404 permit under the Clean Water Act. EPA and the Corps of Engineers said that the rule would go beyond the existing regulation that only requires a permit for navigable waters. The new rule would also require permits for seasonal streams, wetlands near navigable waters and other waters.

**RIDER WATER RIGHTS:** The House bill would forbid any agency from attempting to transfer water rights to the federal government on renewal of a permit. This is aimed at a Forest Service policy, since retracted, that would have allowed the agency to assert a water claim when a ski resort renewed a permit. Not in Senate bill.

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## **House approves disaster funding for fires, with a catch**

Although there is a significant complication, the House July 9 approved legislation (HR 2647) that would authorize the transfer of some emergency fire-fighting costs out of a regular appropriations bill and into disaster funding.

That puts the House on the same page as the Senate Appropriations Committee and the Obama administration.

The complication is an administration objection to provisions in the House bill that would authorize hazardous fuels projects to prevent forest fires. The Office of

Management and Budget (OMB) faulted the provisions that would categorically exclude many such projects from environmental review and would limit environmentalist legal actions.

Overcoming the administration objections – at least on the House floor – was support for the legislation from such key Democrats as Reps. Kurt Schrader (D-Ore.) and Peter DeFazio (D-Ore.)

The bill, formally introduced by Rep. Bruce Westerman (R-Ark.), would among other things categorically exclude from environmental review hazardous fuels projects in the national forests of up to 15,000 acres, require that at least 50 percent of burned areas be reforested, and require that 50 percent of a major category of projects paid for from the Secure Rural Schools program be spent on timber cuts.

The measure would also transfer all emergency wildfire suppression costs above the 10-year average to disaster spending and out of regular appropriations bills. That would end the practice of land management agencies borrowing money from other programs to fight fires.

The Senate is also moving in that direction on emergency wildfire spending. The Senate Appropriations Committee June 18 approved for the first time legislation (S 1645) that would authorize such transfers.

At the instigation of Sen. Lisa Murkowski (R-Alaska) and other senators the committee included the legislative language in a fiscal year 2016 appropriations bill for the Interior Department and Related Agencies. Like the House the Senate committee would kick in the emergency spending provision when wildfire suppression costs hit the 10-year average.

The administration is almost but not quite on board with the disaster-funding provisions of the House fire bill, HR 2647. OMB welcomed the House commitment to the “legislative fix.” But it recommended that the transfer to disaster funding cut in at 70 percent of the 10-year average for wildfire suppression, not at 100 percent.

That “would mean that less funding is available each year in the agencies’ budgets for restoration and risk reduction programs as it is diverted to the ever-increasing ten-year average,” said OMB in a July 8 Statement of Administration Policy.

The administration is definitely not on board with the limits on environmental protest and categorical exclusions. Said OMB, “The Administration has substantial concerns with the design and scale of the categorical exclusions, provisions related to post-fire salvage and restoration (including unrealistic timelines for environmental assessments), and unrealistic targets for reforestation given current budgetary resources.”

“Furthermore,” said OMB, “the Administration opposes provisions in the bill that require litigants to post a bond when challenging forest restoration projects. As the

Forest Service has demonstrated, the best way to address concerns about litigation is to develop restoration projects in partnership with broad stakeholder interests through a transparent process informed by the best available science.”

But Rep. Schrader criticized the administration on the House floor. “Contrary to a statement put out by the President and some of my colleagues on my side of the aisle, this is not a complete abrogation of environmental protections or NEPA process on our Federal lands,” he said. “This is a streamlined process for a very, very small portion of Federal forest land subject to catastrophic natural disasters and already subject to expensive collaborative, resource advisory committee, or wildfire protection plans - a very narrow subset of our Federal forests.”

The Senate Appropriations Committee included in the spending bill \$1.054 billion for a separate account for fiscal years 2015 and 2016 that would put up additional fire-fighting money whenever the Forest Service and the Interior Department exceeded average annual fire suppression appropriations.

Finally, in a third area the bill put up \$3.61 billion to fight forest fires in fiscal year 2016.

Murkowski’s office explained to us how the cap provision would work. First, because Congress doesn’t allow appropriators to move appropriations into a disaster account during a current-year bill, the cap would not be triggered until fiscal year 2017.

Second, to make up the gap between now and fiscal 2017, and to prevent fire borrowing, Murkowski inserted the extra \$1.054 billion in the fiscal 2016 bill, presumably to cover fiscal 2015 and 2016.

Third, the Murkowski trigger differs from the Wyden-Crapo bill by requiring Congress to appropriate 100 percent of the average 10-year emergency fire costs before tapping disaster assistance. Wyden-Crapo would trigger it at 70 percent of the average 10-year costs, moving about \$450 million off budget early.

In a counterpart money bill (HR 2822) the House Appropriations Committee June 16 did not include the fire-fighting trigger when it marked up the measure. Instead the committee approved \$3.178 billion for regular fire-fighting costs and \$407 million in an extra emergency fund called FLAME. FLAME is somewhat analogous to the Senate committee’s \$1.054 billion emergency fund.

However, the House committee did not include the legislative language that would shift emergency costs above the ten-year average to disaster spending. That is what the stand-alone hazardous fire bill would do.

**FIRE SPENDING:** For the Forest Service the House committee approved \$2.373 billion for regular fire fighting and fire prevention expenses and \$315 million for an emergency FLAME account. The Senate committee approved \$3.556 billion in total for both regular fire fighting and an emergency account. Of the \$3.556 billion, \$855 million would be allocated to the emergency account.

For the Interior Department the House committee approved \$805 million in regular firefighting and fire prevention expenses and \$92 million for FLAME. The Senate committee approved \$1.109 billion for both regular fire fighting and an emergency account.

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## **President designates three monuments, one controversial**

President Obama designated three major national monuments July 9 – a 704,000-acre Basin and Range National Monument in southern Nevada, a 330,780-acre Berryessa Snow Mountain National Monument in northern California, and a five-acre Waco Mammoth National Monument in Waco, Texas.

The Basin and Range monument on mostly BLM land is the most controversial. Secretary of Interior Sally Jewell made the case for it. “This area is a spectacular expanse of rugged public lands that tell the proud story of the West, from the ancient rock art of our First Americans to the early homesteaders looking for opportunity on the open range,” she said.

But the Congressman who represents the area, Rep. Crescent Hardy (R-Nev.), opposes the designation and is attempting to block it on the House floor. He persuaded the House July 8 to approve an amendment to a fiscal year 2016 appropriations bill (HR 2822) that would forbid the designation. The vote was 222-to-206.

The Hardy amendment would also block anticipated national monument designations in 17 counties in Arizona, California, Colorado, New Mexico, Nevada, Oregon and Utah. However, the Hardy amendment came too late in the game to block the Basin and Range designation because it is prospective – it would forbid spending money to make a national monument proclamation in fiscal year 2016.

The Nevada designation is expected in some circles to pay homage to Senate Minority Leader Harry Reid (D-Nev.) He said, “I appreciate more than I can put into words what he has done today to preserve the beauty of the Nevada desert for our grandchildren, their grandchildren, and generations to come.”

But Hardy disagreed in a July 10 House floor statement. “Madam Speaker, at 2 p.m. this afternoon, you won’t see a debate on the floor of the House, the people’s House, on the Basin and Range Monument,” he said. “There will be no vote for Nevada’s elected representatives, but there will be a photo op to capture the exchange of political favor for one Nevadan (Sen. Reid). It will be a scene demonstrating that having friends in high places is more important than popular will of the people.”

Reid predicted that many more monument designations were coming around the country. “(President Obama) has used his authority under the Antiquities Act to do great things all over the country and he’s not done yet,” he said. “There are vast landscapes and historic treasures from Idaho to California to Oregon that have languished in Congress.”

Of the Berryessa monument on both Forest Service and BLM lands Secretary of Agriculture Tom Vilsack said, "The Berryessa Snow Mountain National Monument strikes a unique balance between Northern California's urban environments of Sacramento and the San Francisco Bay Area and the wild, remote landscapes that surround the farms, ranches, orchards, and vineyards that nourish our nation."

Of the Waco site that will be managed by the Park Service Jewell said, "Our National Parks inspire and teach us about our nation's natural history – in this case, about the prehistoric animals that walked our Earth tens of thousands of years ago. The Waco Mammoth National Monument will share the wonder of these incredible mammoths with visitors from around the world and help introduce a new generation to the thrill of scientific discovery that only a special site like this can demonstrate first-hand."

House Natural Resources Committee Chairman Rob Bishop (R-Utah) objected to all three monuments. "President Obama has shown complete disdain for Congress and the people of Nevada, California, and Texas," he said. "This surreptitious land grab reveals that the Obama Administration will stop at nothing to lock up more and more land, with the stroke of a pen. I condemn this shameful power move which makes states and citizens fearful that the federal government can invade at any time to seize more lands like bandits in the night."

But ranking committee Democrat Raúl M. Grijalva (D-Ariz.) objected to Bishop's objection, particularly to a Bishop statement about Native American artifacts at Basin and Range. *Greenwire* quoted Bishop as saying, "Ah, bull crap. That's not an antiquity."

To which Grijalva said, "The natural and cultural resources protected by these designations are, in fact, antiques; species and trees and rocks and cave paintings and beautiful landscapes are all quite old. We want them to remain antique, House Republicans want them to become extinct."

The livestock industry complained that, although monument designations usually proclaim that valid existing rights to graze will be protected, in real life grazing is reduced. "Even where the Administration has historically assured the ranching community that grazing will not be curtailed as a result of national monument designation, just as they are now, we have nevertheless seen ranchers pushed out and grazing significantly decrease," said Billy Flournoy, president of the California Cattlemen's Association.

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