

**From:** Kaster, Amanda  
**To:** [James Cason](#)  
**Cc:** [Gareth Rees](#)  
**Subject:** AS-IA"s Briefing Memos for SCIA Hearing  
**Date:** Sunday, March 05, 2017 2:21:27 PM  
**Attachments:** [BIE SCHOOL OPERATIONS MAINTENANCE FOR FACILITIES FINAL\\_ver3\\_DKedit\\_170301.docx](#)  
[OIS Tiwahe Briefing 2-26-17.doc](#)  
[OTS Rights Of Way Regulations 2282017 \(1\).docx](#)  
[OIG briefing.doc](#)  
[OIG Secretarial Procedures 3.1.17.docx](#)  
[OIG Tribal-State Compacts 3.01.2017.docx](#)  
[OIEED CONSTRUCTION AGGREGATE OPPORTUNITY IN INDIAN COUNTRY MJ.docx](#)  
[OIEED OIL AND GAS OPPORTUNITY IN INDIAN COUNTRY MJ.docx](#)  
[OIEED RENEWABLE ENERGY OPPORTUNITY IN INDIAN COUNTRY MJ.docx](#)  
[OTS Indian Energy Service Center 2282017 MJ.docx](#)  
[OIS Spirit Lake Briefing 2\\_28\\_2017\\_sds.docx](#)  
[OTS WIIN Act 2282017\\_saw.docx](#)  
[OTS Agriculture and Range 2282017\\_TF.docx](#)  
[OTS Branch Of Geospatial Support 2282017\\_TF.docx](#)  
[OTS Fee to Trust 2282017\\_TF.docx](#)  
[OTS Fish Hatchery Maintenance 2282017.docx](#)  
[OTS Forestry and Fire Suppression 2282017\\_TF.docx](#)  
[OTS Forestry and Timber 2282017\\_TF.docx](#)  
[OTS Irrigation Rehabilitation and Renovation construction 2282017\\_TF.docx](#)  
[OTS Land Title Record Office 2282017\\_TF.docx](#)  
[OTS Probate Backlog 2282017\\_TF.docx](#)  
[OTS Real Estate Services 2282017\\_TF.docx](#)  
[FY 2018 OIS TRANSPORTATION 3.2.2016.docx](#)  
[OJS - Victim Services 3.3.2017.docx](#)  
[BIE Education Construction 2282017.docx](#)  
[BIE Reform Briefing Paper 2282017\\_sds \(1\).docx](#)  
[FY 2018 BIE GAO High Risk Report v\(2\)\\_sds.docx](#)  
[OFA\\_Briefing on FedAck 2282017 MJ v2.doc](#)  
[2009-01-16\\_Departmental Manual 109 DM\\_SIWRO.docx](#)  
[2017-03-03\\_Briefing for the Secretary Reporting Structure\\_SIWRO.final\\_.pdf](#)

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Jim: attached are the memos prepared by Indian Affairs for tomorrow's session with the Secretary. We will not be covering all of these but I wanted you to be aware of the materials they put together. If there are any briefing papers you want to make sure the Secretary reviews, let me know.

I will be sending you the Member profiles OCL has put together for tomorrow shortly.

Thank you.

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## **Bureau of Indian Education**

### **Issue: BIE SCHOOL OPERATIONS/MAINTENANCE FOR FACILITIES**

#### **Background:**

68 of 183 BIE schools are in “Poor” condition or eligible for replacement according to the Facilities Condition Index. These schools have a combined total deferred maintenance backlog of more than \$500 million. In total, all 183 BIE schools have more than \$797 million in total deferred maintenance. Education construction receives just over \$70 million annually for Facilities Improvement and Repair. Of these funds, just over \$42 million is directed toward major and minor deferred maintenance repairs.

The current O&M funding need for Schools (\$151+ million) is 20% (or \$30 million) greater than the FY2016 Appropriation provided (\$121+ million). The average age of BIE School facilities is 59 years with 50% of these facilities being over 50 years old and 26% being over 100 years old. Due to the advanced age of the majority of BIE Schools, the rate of deterioration of these old facilities outpaces the ability of current funding levels to maintain or extend the useful life of these facilities. O&M costs increase with age, therefore, as these BIE Schools continue to age, the current O&M funding levels will become increasingly ineffective in preventing deterioration and providing safe and healthy school environments conducive to successful learning. The Poor condition of a BIE School distracts and/or impedes teachers from providing an adequate educational program to students, thus placing the learning aptitude of students at greater risk. With repair and improvement funding levels at 5% of the total deferred maintenance need and O&M underfunded by 20%, it is expected that BIE School Facilities in Poor condition will increase at an advanced rate each subsequent year.

#### **Current Status:**

The Office of the Inspector General (OIG) performed a number of site visits at BIE-funded schools and dormitories in 2008 and again in 2010, making a number of safety operations and maintenance related findings. During the visits, OIG evaluated each site according to 18 measures. Following OIG visits, BIE increased its oversight and partnership with BIA to immediately implement the Safe School Audit. The audit was successfully completed at all BIE-funded schools.

BIE has begun the process of implementing corrective measures to all identified deficiencies. For example, BIE is conducting ongoing staff and administrator training and drafting emergency preparedness plans. BIE is also in the process of improving its procedures for students with suicidal ideations as well as training principals, teachers, and support staff on responses in such instances. However, certain findings made in the OIG inspection reports cannot be addressed by BIE until Phase II of the reorganization is complete. To date, the newly formed BIE Safety Office has filed three (3) of six (6) Safety and Occupational Health Specialist positions. Until fully staffed, the BIE Safety Office’s ability to make improvements to safety will be limited, but BIE plans to continue its coordinated partnership with BIA to ensure school safety in the interim. BIA will remain the responsible agency for addressing many of the OIG’s identified deficiencies which will continue to be outside the direct control and oversight of BIE until completion of Phase II of the BIE reorganization.

In addition, as a result of the decaying conditions of school facilities, the current level of funding is insufficient to maintain the status quo in facility conditions, nor is it sufficient to make progress in decreasing the number of recorded deferred maintenance needs. The School and Facilities replacement programs could resolve a significant portion of the deferred maintenance, but until those programs are fully funded to replace substandard structures, BIA – BIE will continue to work within the current funding limitations to maintain the current facilities at the highest quality practicable given current circumstances.

**Bureau:** Bureau of Indian Affairs

**Office:** Office of Indian Services

**Member:**

**Issue:** Tiwahe Initiative

**Background:**

To protect and promote the development of prosperous and resilient tribal communities, the Bureau of Indian Affairs (BIA) implemented the Tiwahe Initiative. Tiwahe (ti-wah-heh) means *family* in the Lakota language and symbolizes the interconnectedness of all living things and one's personal responsibility to protect family, community, and the environment. The Initiative is a five-year demonstration project that began in FY 2015 and is a collaboration between the Office of Indian Services (OIS) and Office of Justice Services (OJS). It seeks to demonstrate that effective service coordination among tribal service providers ensures that critical services reach Native families. It allows tribes to implement a coordinated service delivery model that addresses the interrelated problems of substance abuse, child abuse & neglect, poverty, domestic violence, unemployment, and high incarceration rates prevalent on many reservations. The goal is to create access to family and social services, alternatives to incarceration via solution-focused sentencing, increase employment opportunities, promote tribal and individual self-sufficiency and self-determination, and build models for other tribes to utilize in justice and program development.

**Current Status:**

In FY 2016, the Fort Belknap Indian Community (FBIC) (MT) and Pascua Yaqui Tribe (PYT) (AZ) joined the original four demonstration sites – the Association of Village Council Presidents (AVCP) (AK), the Red Lake Nation (MN), the Spirit Lake Tribe (ND) and the Ute Mountain Ute Tribe (UMUT) (CO). All tribes have completed their Tiwahe Initiative plans and are at the height of Phase Two of the Initiative – Implementation.

Total elimination of Tiwahe funding will paralyze Tiwahe tribes' ability to share with Indian Country the social and justice system models that they are in the middle of implementing. It will thwart the Spirit Lake Tribe's ability to reclaim administration of its Social Services program in direct contradiction to the purpose of the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA), which promotes tribes' control over programs and services provided to them by the Federal government<sup>1</sup>. It will eliminate the Red Lake Nation's Juvenile Healing To Wellness Court judicial salary and cut off the Nation's ability to expand this specialized court to include a Family Drug Court to increase family reunifications and reduce substance abuse. It will dissolve culturally-infused, family-focused alternative to incarceration programming for youth and adults at the PYT to reduce substance abuse and recidivism. It will dismantle UMUT's efforts to implement an information-sharing client management system that will facilitate interagency communication. It will place families at risk of continued domestic violence in the FBIC where the tribe is developing a Batterer's Intervention Program that addresses both batterer and victim therapeutic needs. An immediate loss of Alaska Native culture will occur in AVCP with elimination of the salary for the ICWA attorney who represents Alaska Native villages and advocates keeping Alaska Native children close to home thereby increasing successful family reunifications. Further immediate ramifications are: elimination of salaries for attorneys who represent children in child abuse & neglect cases in state and tribal courts and salaries for attorneys who represent and uphold due process rights for parents in the same cases. Funding to amend tribal codes and provide training will also be lost.

Tiwahe also provided an Across The Board (ATB) funding increase to all federally recognized tribes who receive BIA Social Services and Indian Child Welfare Act (ICWA) funding at 8% and 21.5% increases, respectively. No tribe had received a funding increase for these two funding streams for 20 years despite

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<sup>1</sup> See *Navajo Health Found-Sage Mem'l Hosp., Inc. v. Burwell*, No. CIV 14-0958 JB/GBW, 2016 U.S. Dis. LEXIS 15291, at \*122 (D.N.M. Nov. 3, 2016) (quoting S. REP. No. 93-862, at 13 (1974)).

continued increases in the number of Native children entering state and tribal foster care systems, which Social Services and ICWA funding primarily supports.

Loss of Tiwahe funding will impact tribes' greatest assets most of all – their children. In enactment of the 1978 ICWA, Congress found that “that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe.”<sup>2</sup> To divest tribes of Social Services and ICWA Tiwahe funding that allows them to develop programming to reduce child abuse & neglect and drug & alcohol abuse is in direct contradiction to ICWA's congressional findings and to the United States' obligation to fulfill its trust responsibility to Indian Nations.<sup>3</sup>

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<sup>2</sup> 25 U.S.C. 1901(3)

<sup>3</sup> See Secretarial Order No. 3335. *Reaffirmation of the Federal Trust Responsibility to Federally Recognized Indian Tribes and Individual Indian Beneficiaries*. (August 20, 2014).

**Bureau:** Bureau of Indian Affairs

**Office:** Office of Trust Services, Division of Real Estate Services

**Member:**

**Issue:** Rights-of-Way Regulations, implemented in April 2016

**Background:**

Rights-of-ways (ROW) are a significant and intricate part of creating infrastructure across the United States, which positively influences economic development and job creation. Revised ROW regulations were completed with an effective date of April 21, 2016. The regulations present a significant change in the business requirements and processes for rights-of-way and easements, including establishing strict timeframes. The inability to provide clear direction and guidance materials to the Bureau staff will negatively affect the processing and approving of the ROWs across the United States.

RIGHTS-OF-WAY REGULATIONS PREVALANCE

- The most common ROWs and easements are oil and gas pipelines, transmission lines, highways, canals, utility lines, and telecommunication lines
- ROWs help create infrastructure for current and future energy projects and oil and gas development
- There are over 44,000 active ROWs on Indian trust lands
- There are approximately 1,200 new ROWs issued every year

RIGHTS-OF-WAY REGULATIONS OBJECTIVES

The objective is to identify the on-going efforts to implement the new Rights-of-Way regulations, Title 25, Code of Federal Regulations Part 169. The efforts to complete implementation activities must continue, as follows:

- Issue a final Handbook (Indian Affairs Manual)
- Issue final templates for use as forms and reports for rights-of-ways and easements
- Issue final checklists and guidance documents
- Enhancements to the system of record, the Trust Asset and Accounting Management System (TAAMS) to accommodate entering, tracking and monitoring rights-of-way, easements, and ancillary documents (assignments, amendments, mortgages, etc.)
- Develop training for the field to standardize the rights-of-way business process
- Stated objectives will be accomplished by the end of the calendar year, 2017.

Completing the objectives will ensure timely processing and approving ROWs, so infrastructure and projects are able to be developed.

RIGHTS-OF-WAY REGULATIONS CONCERN AND PARTICIPATION

The new regulations present a significant change in processing and requirements, which may cause the following issues:

- Untimely review and approval of the ROW applications beyond the required timeframes, which may delay future and existing essential developments
- Inconsistency in processing and approving ROWs that may not adhere to the regulations and cause an increase in appeals
- Inadequate enhancements to the ROW module in TAAMS, which may not accommodate the regulations and may be entered incorrectly (affects data integrity, monitoring and reporting)

The Bureau has implemented a temporary national mechanism for tracking and monitoring of applications and decisions regarding new ROW applications. Additionally, a team of subject matter experts from the field were assembled, whose responsibility it is

to identify and develop various tools and reference guidance documents to assist the Bureau's field offices in utilizing the new and revamped regulations. The team will also assist in accomplishing the objectives, as noted above.

**Authorizations:**

25 U.S.C. 176 (Reorganization Plan No. 3 of 1946), 60 Stat. 1097.

25 U.S.C. 311 (The Act of March 3, 1901), 31 Stat. 1084, P.L. 56-382.

25 U.S.C. 393 (The Act of March 3, 1921), 41 Stat. 1232, P.L. 66-359.

25 U.S.C. 2201 et seq. (Indian Land Consolidation Act), 96 Stat. 2515, P.L. 97-459; 98 Stat. 3171, P.L. 98-608; P.L. 102-238.

25 U.S.C. 415 as amended by the HEARTH Act of 2012.

Prepared by: Sharlene Round Face, Division Chief, Office of Trust Services (202) 208-3615 Date: 2/27/201

**Bureau:** Assistant Secretary – Indian Affairs  
**Office:** Office of Indian Gaming  
**Member:**  
**Issue:** Indian Gaming Issues

## Land Acquisition for Indian Gaming

### Background

- The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*, was enacted in 1988 to “provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.” 25 U.S.C. § 2702(1).
- The authority to make final decisions regarding Indian gaming has been delegated from the Secretary to the Assistant Secretary – Indian Affairs.
- Section 20 of IGRA generally prohibits gaming activities on lands acquired in trust by the United States on behalf of a tribe after October 17, 1988. 25 U.S.C. §2719. However, Congress expressly provided several exceptions to the general prohibition. These include the “equal footing” exceptions and the “off-reservation” exceptions. A tribe must qualify for at least one exception to conduct gaming.
  - The equal footing exceptions include the “restoration of lands for an Indian tribe that is restored to federal recognition,” “settlement of a land claim,” and the “initial reservation” of an Indian tribe acknowledged under the federal acknowledgment process. 25 U.S.C. § 2719(B)(1)(B)(i-iii).
  - An off-reservation exception (two-part determination) requires a finding by the Assistant Secretary – Indian Affairs that the gaming facility is 1) in the best interest of the tribe, and 2) not detrimental to the surrounding community. The governor of the state must concur in the two-part determination before gaming can take place. 25 U.S.C. § 2719(B)(1)(A).
- Indian gaming is grouped into three categories: class I gaming is defined as social games solely for prizes of minimal value. Class II gaming is defined as games of chance such as bingo and pull-tabs. Class III gaming is typically characterized as “casino-style gaming.”

### Current Status

***Shawnee Tribe two part determination (OK):*** On January 19, 2017, the Principal Deputy Assistant Secretary – Indian Affairs approved a two-part determination for the Tribe. The Tribe seeks to conduct gaming on 102 acres of land outside of the city limits of Guymon, Texas County, in the Oklahoma Panhandle. The Tribe is landless and this will be its first trust land. In the 1800s, the Tribe was placed on the Cherokee Reservation in eastern Oklahoma by the United States. In 2000, Congress passed the Shawnee Status Act (STA) which authorizes trust land acquisition for the Tribe, but prohibits the acquisition of trust land within the jurisdiction of any other tribe without consent. The Cherokee Nation’s constitution prevents such consent, and no

other Oklahoma tribe has consented. The restrictions of the STA effectively preclude the Tribe from acquiring land in the area containing the greatest concentration of its members. The Department is awaiting the concurrence in the two-part determination by Governor Fallin within the prescribed one year period. If the Governor concurs, the Department must determine whether it will acquire the land in trust for the Tribe. No gaming may take place until the Governor concurs and the land is acquired in trust by the Department.

***Wilton Rancheria restored lands determination (CA):*** On January 19, 2017, the Principal Deputy Assistant Secretary – Indian Affairs approved the trust acquisition of 36 acres in the City of Elk Grove, Sacramento County, California. Until this approval, the Tribe was landless. The site is near the Tribe's headquarters and most of its population, and is 5.5 miles from the Tribe's historic Rancheria. In 1958, Congress enacted the California Rancheria Act which terminated the government-to-government relationship between the United States and the Tribe. In 2007, the Tribe filed suit against the United States which resulted in the restoration of the Tribe's federal recognition. Following the January 19, 2017, decision, the land was acquired in trust by the Department on February 10, 2017. The Department's decision is being challenged by a local citizens' group in federal court.

***Tohono O'odham Nation congressionally mandated acquisition of land in trust and settlement of a lands claim determination (AZ):*** In 2010, the Assistant Secretary - Indian Affairs issued a decision to acquire in trust 54 acres in Glendale, Arizona, for the Tribe pursuant to the Gila Bend Indian Reservation Replacement Act of 1986. Several lawsuits were filed by the State and opposing tribes in state and federal court that challenged the Department's decision, the Tribe's alleged violation of its tribal-state gaming compact, and an alleged breach of contract by the Tribe. The Department and the Tribe have prevailed on these claims. The Tribe began gaming operations in Glendale in 2015 (class II only). The State and Tribe have not yet agreed to a tribal-state compact that would authorize class III gaming. The Tribe is currently seeking to have land that was withdrawn from its original application acquired in trust.

***Coquille Indian Tribe restored lands determination (OR):*** The Tribe seeks to have 2.4 acres acquired in trust within the City of Medford, Jackson County, Oregon. The Tribe intends to renovate an existing bowling alley for a class II gaming facility. In 1954, the Tribe was terminated by the Western Oregon Termination Act. In 1989, Congress restored the Tribe's government to government relationship with the United States, and authorized the acquisition of land in trust within the Tribe's five-county service area (Coos, Curry, Douglas, Jackson and Lane Counties). In January 2017, the Solicitor's Office determined that the acquisition of the Medford site in trust would constitute the "restoration of lands for an Indian tribe that is restored to federal recognition," and the land would be eligible for gaming upon its acquisition in trust. A final decision whether to acquire the land in trust has not been made by the Department.

**BUREAU:** Assistant Secretary - Indian Affairs  
**OFFICE:** Indian Gaming  
**MEMBER:**  
**ISSUE:** Secretarial Procedures for Regulation of Indian Gaming

**Background:**

- The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*, was enacted in 1988 to “provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.” 25 U.S.C. § 2702(1).
- The authority to make final decisions regarding Indian gaming has been delegated from the Secretary to the Assistant Secretary – Indian Affairs.
- Indian gaming is grouped into three categories. Class I gaming is defined as social games solely for prizes of minimal value. Class II gaming is defined as games of chance such as bingo and pull-tabs. Class III gaming is typically characterized as “casino-style gaming.”
- IGRA requires a tribe and state to enter into a tribal-state compact which is an enforceable agreement negotiated by a tribe and a state governing the state’s regulation of casino-style class III gaming.
- When the state and tribe are unable to negotiate terms and a federal court finds that the state has negotiated in bad faith, IGRA requires the Secretary to promulgate “Secretarial Procedures” which govern the regulation of casino-style class III gaming in place of a tribal state compact. 25 U.S.C. § 2710(d)(7)(B)(vii).
  - There are two types of Secretarial Procedures that are promulgated by the Secretary. The first are promulgated pursuant to IGRA’s statutory procedures following a finding by a federal court that the state has negotiated in bad faith (IGRA Procedures). The second are promulgated pursuant to the Department’s regulations at 25 C.F.R. Part 291 after a state seeks to avoid litigation by asserting an Eleventh Amendment sovereign immunity defense, thus, precluding a finding of bad faith by the court (Part 291 Procedures). The Secretarial Procedures pursuant to Part 291 are more vulnerable to court challenge by a state.

**Current Status:**

- ***Big Lagoon Rancheria (CA)***: (IGRA Procedures) The Department is reviewing a mediator-selected compact referred by the United States District Court for the Northern District of California. Note this is the most recent development in lengthy series of disputes between the Tribe and the State which date back to 1993, and include challenges to the Secretary’s decision to take land into trust for the Tribe.
- ***Pueblo of Pojoaque (NM)***: (Part 291 Procedures) The Department and the Tribe are awaiting a decision from the 10th Circuit Court of Appeals regarding whether the regulations at 25 C.F.R. Part 291 are invalid. The Secretarial Procedures process was triggered after the State

sought to limit each tribe to two gaming facilities, with the exception of the Pueblo of Laguna. The State first raised its Eleventh Amendment sovereign immunity defense to a suit under IGRA, and then separately challenged the Secretary's authority to promulgate Secretarial Procedures under 25 CFR Part 291.

**Recently Promulgated Procedures:**

- ***Northfork Rancheria of Mono Indians of California (CA)***: (IGRA Procedures) The Secretarial Procedures published July 29, 2016, are in effect. The Secretarial Procedures process was triggered after the California electorate voted to reject a referendum that would ratify a negotiated tribal-state compact and the State then refused further negotiations as futile. The Secretarial Procedures are similar to several recent compacts between California and other tribes in the State. The State and Tribe will each have a regulatory role in the Tribe's class III gaming and the Tribe will pay the State's costs of regulating.
- ***Enterprise Rancheria of Maidu Indians of California (CA)***: (IGRA Procedures) The Secretarial Procedures published August 12, 2016, are in effect. The Secretarial Procedures process was triggered after the California legislature did not hold a hearing or a vote to ratify a negotiated tribal-state compact resulting in the compact not going into effect under its own terms. The Secretarial Procedures are similar to several recent compacts between California and other tribes in the state including the *Northfork* Secretarial Procedures. However, the Tribe is not gaming under the Secretarial Procedures due to unrelated litigation challenging the Governor's authority under California State Law to concur with the Secretary's decision to take the proposed gaming site into trust as "Indian lands" under IGRA.

Prepared by: Office of Indian Gaming  
Date: February 28, 2017

**Bureau:** Assistant Secretary – Indian Affairs  
**Office:** Office of Indian Gaming  
**Member:**  
**Issue:** Indian Gaming Issues

## **Tribal-State Gaming Compacts**

### **Background**

- The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*, was enacted in 1988 to “provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.” 25 U.S.C. § 2702(1).
- Indian gaming is grouped into three categories: class I gaming is defined as social games traditionally played by tribes solely for prizes of minimal value. Class II gaming is defined as games of chance such as bingo and pull-tabs. Class III or “casino-style gaming.”
- Class III gaming may only occur if the Tribe and the State enter into an agreement (Tribal-State Compact) regulating class III gaming. IGRA assigns to the Secretary authority to approve Tribal-State Compacts. The Secretary can disapprove a compact if the compact is in violation of IGRA, other provisions of federal law, or the trust obligations of the United States toward Indians. If the Secretary fails to approve or disapprove a compact within 45 days after it is submitted, the compact is considered approved.
- A Tribal-State Compact negotiated between a tribe and a state is a cooperative agreement to permit class III gaming on Indian lands within a state. IGRA prohibits states from assessing any tax, fee, charge or assessment on a Tribe or from using a compact as a means of regulating tribal interests unrelated to gaming.
- When Tribes or states request assistance, the Office of Indian Gaming can provide technical assistance regarding gaming provisions to be included in a compact.

### **Current Status**

The Department receives Tribal-State Compacts for review and approval on an on-going basis. Additionally, Tribes and States seek assistance from the Department when questions arise regarding specific provisions that are included in a compact or on issues that are the subject of negotiations between states and tribes.

The Department has provided technical assistance letters to tribes and states, most recently in New York and Florida, but also in Arizona, California, New Mexico, Oklahoma, Oregon, South Dakota, and others.

**Bureau: Assistant Secretary – Indian Affairs**  
**Office: Office of Indian Energy and Economic Development (IEED)**  
**Member: Division of Energy and Mineral Development (DEMD)**  
**Issue: Construction Aggregate Opportunity in Indian Country**

BACKGROUND

Tribal communities are blessed with an abundance of aggregates while the U.S. aggregate market is suffering from a lack of supply. Tribes therefore have a unique opportunity to capitalize on construction aggregate production, distribution, and utilization. Aggregates make up the largest component of nonfuel mined materials consumed in the U.S. Every \$1 million in aggregate sales creates over 19 jobs and every dollar of industry output results in a \$1.58 contribution to the local economy.

CONSTRUCTION AGGREGATE IN INDIAN COUNTRY: OBJECTIVES

Tribes have an opportunity to capitalize on a unique combination of market and resource that could net as much as \$150 million per year throughout Indian Country due to the following factors:

- 1) The Bureau of Indian Affairs Division of Transportation states “[Many] BIA roads are in failing to fair condition and are not built to any adequate design standard and have safety deficiencies.” In FY 2012, approximately 23,850 miles or 83% were considered to be in unacceptable condition based on the BIA Service Level Index condition assessment criteria. To perform minimum maintenance on 23,000 miles of roads would require almost 10 million tons of aggregate at a cost of about \$120 million, all of which could benefit Tribes directly.
- 2) The American highway system is in dire need of significant repair and upgrades. The American Society of Civil Engineers estimates \$170 billion in capital investment each year just for roads. Tribes that provide construction aggregates for these repairs and improvements could net as much as \$125 million per year.
- 3) The uptick in the economy has been a catalyst for new construction, dramatically increased demand for aggregates in urban areas.
- 4) Urban sources of construction material supplies are rapidly depleting and/or not being put into operation. Construction aggregates will be sourced from more remote locations, resulting in dramatically higher transportation costs, with correspondingly higher construction and costs. Tribes can take advantage of this shortage: 109 reservations lie within five miles of interstate highways. Tribes could supply aggregate to as many as 6,500 miles of interstate roads for construction and repair.

CONSTRUCTION AGGREGATE IN INDIAN COUNTRY: CONCERN AND PARTICIPATION

There are simple solutions to ensure that Tribes can serve as major suppliers of aggregates to new infrastructure construction projects. These solutions involve the following actions: Increased evaluation of tribal aggregate resources vis-a-vis their quality and quantity, extractability, and end-uses; rapid processing and approval of permits, environmental clearances, and mineral lease agreements. With a certified aggregate resource and a permit to mine, a Tribe can be open for business as a supplier, user and contractor using tribal resources.

**Bureau: Assistant Secretary – Indian Affairs**  
**Issue: Oil and Gas Development in Indian Country**

BACKGROUND

Income from oil and natural gas is by far the largest source of revenue generated from natural resources on Indian trust lands. Over the last ten years, the development of shale oil and gas in the U.S. has been rapid, and advances in technology continue to improve the economic returns for oil and gas production. New horizontal drilling applications have accelerated domestic production of oil and natural gas. In 2015 alone (the most recent ONRR data available), royalty income paid to Indian mineral owners from oil and natural gas development exceeded \$812 million.

Although there is a temporary oversupply, resulting in the price of natural gas and oil falling, the economic impact of hydrocarbon development for Tribes is potentially very large. This is due to the fact that many Tribes are located in areas of unconventional plays that contain large amounts of undeveloped or underdeveloped acreage.

Within Indian Affairs there are two components that serve extensive and critical roles in the Indian energy and mineral development process. The BIA Office of Trust Services and the Division of Energy and Mineral Development (DEMD) within the Office of the Assistant Secretary-Indian Affairs each play important roles in conventional energy (oil, natural gas, and coal) development in Indian Country

DEMD

DEMD offers a unique array of programs and services to assist tribes with the environmentally responsible exploration, development and management of their energy and mineral resources to promote economic self-sufficiency. This includes offering technical assistance and economic advice to Tribes to help them with planning for oil and gas development. Additionally, DEMD provides data and knowledge to Tribes that is necessary to negotiate optimally beneficial exploration and production leases.

In the last three years, DEMD has worked with Tribes to negotiate 48 Indian Mineral Development Act (IMDA) leases for oil and gas, involving approximately 2.75 million acres and about \$45 million in bonuses (*i.e.*, upfront payments). Throughout their duration, these leases have the potential to produce more than \$20 billion in additional revenue to Indian mineral owners through royalties and working interests.

Trust Services

The Office of Trust Services within the BIA is responsible for reviewing and processing approvals of new oil and gas leases, as well as non-standard agreements. Included in this responsibility is the review and approval of ancillary documents, such as assignments, bonds, designation of operators, and communitization agreements (CA). BIA also manages royalty distributions and conducts on-site inspections as warranted.

The Bureau of Indian Affairs manages an estimated 58,203,000 trust mineral acreages. It also manages 12,124 producing oil and gas leases. In FY 16, Trust Services processed and approved 867 new oil and gas leases. There are 15 oil and gas active tribes, defined as those with new leases approved within the last year.

The Bureau has been tasked with creating a tracking tool for the CA process as a result of the GAO audit Report No. GAO-16-553. The goal is to develop software enhancements to track the approval of these agreements using the Trust Asset and Accounting Management System (TAAMS). In addition, BIA is tasked with tracking all mineral contracts per GAO Report No. GAO-15-502. This task is set to be accomplished within fiscal year 2018. An interim tracking mechanism is in place until the software enhancements are accomplished through our system of record, TAAMS.

**Bureau: Assistant Secretary – Indian Affairs**  
**Office: Office of Indian Energy and Economic Development (IEED)**  
**Member: Division of Energy and Mineral Development (DEMD)**  
**Issue: Renewable Energy Opportunity in Indian Country**

BACKGROUND

DEMD views renewable energy as one of the many tools available to American Indians and Alaska Natives for creating sustainable economies on Indian land. DEMD’s team of engineers, geologists, economists, and business development specialists help Tribes to develop renewable energy opportunities that achieve tribal economic development goals.

The following table is a partial list of currently deployed renewable energy assets in Indian Country:

Resource	Installed Capacity Prior to 2016 (MW)	Installed Capacity in 2016 (MW)	2016 Renewable Generation <sup>1</sup> (kWh)
Hydro	491.77	0.00	2,589,061,806
Solar	4.69	253.87	336,685,703
Wind	51.73	1.80	105,051,125
Biomass	2.17	0.00	13,311,988
<b>Sum</b>	<b>550.36</b>	<b>255.67</b>	
<b>Total</b>	<b>806 MW</b>		<b>3,044,110,622</b>

Based on an average electricity rate of \$0.1049/kWh, the total renewable energy generation in Indian Country has an estimated sales value of over \$319 million per year.

RENEWABLE ENERGY IN INDIAN COUNTRY: OBJECTIVES

Renewable energy deployment allows Tribes to not only save on the cost of power for their members, but in many cases it allows them to strengthen their sovereignty by increasing energy independence from utility providers. Jobs will be present during the initial construction phase of all deployment; however some technologies are labor-intensive and create employment opportunities throughout a project’s lifetime. Virtually all Tribes have renewable energy resource potential and may consider evaluating development opportunities.

High local retail electricity rates and soaring heating costs can indicate an opportunity for energy savings and job creation by way of small renewable energy projects, especially where Tribes must rely on heating oil or propane.

RENEWABLE ENERGY IN INDIAN COUNTRY: CONCERN AND PARTICIPATION

Renewable Energy projects consistently maintain over 50% of DEMD’s overall project portfolio, with the highest levels of interest in small renewable energy projects, ranging from 250 kW to 3 MW. Small projects provide for several benefits as compared to large utility-scale projects where power is sold and used off-reservation. Small projects have a lower capital expense, making it more feasible for a tribe to have 100% project ownership. Also, small projects are less complicated to connect to the local utility and tribes have the opportunity to utilize micro-grid islanding technologies which allow them access to power and heat in emergency situations. The most important aspect of small projects is the economic benefit created in the tribal community.

Key Concerns for small scale projects include:

- Access to Capital – DEMD provides assistance to tribes in developing bankable documents for their projects with the intent to identify private financing and investment partners. IEED’s Loan Guarantee and Insurance Program is a valuable tool available to tribes that further assist with access to financing for community-scale projects.
- Tracking – Tribe’s commonly choose to develop small scale projects on their own, taking a different approach than the traditional leasing structure seen with oil and gas or large scale projects. Because tribes develop the projects on their own, BIA lease approval is not required. While this does streamline the permitting process, it leads to concern that there is no formal tracking of renewable energy projects installed on Indian lands.
- Permitting – For projects where tribes choose to pursue lease approval through the BIA, there is concern with the time it takes for a NEPA analysis to be completed.

**BUREAU:** Indian Affairs  
**OFFICE:** Office of Trust Services  
**ISSUE:** Indian Energy Service Center

**Key Points:**

- The Indian Energy Service Center (IESC) is a newly funded program sponsored by the U.S. Department of the Interior's (Interior) Indian Energy Mineral Steering Committee (IEMSC).
- The IESC's purpose is to provide administrative and direct program support to the core field organizations that manage Indian energy and mineral development activities. The IESC is composed of staff from Interior's Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), Office of Natural Resources Revenue (ONRR), and Office of the Special Trustee (OST).
- Each of these organizations play an active and direct role in the Federal government's trust responsibility to develop and manage Indian energy and mineral resources, a top priority within Interior's range of Indian trust responsibilities.
- The IESC is tasked with training all agencies involved in Indian Energy development with the Fluid Minerals Standard Operating Procedures affecting the streamlining and efficiency of mineral processing and management.

**Background:**

The need for the additional capacity offered by the IESC became apparent during numerous instances where increased oil and gas development demands challenged the capacity of Interior's resources to provide timely and efficient services. Examples include the rapid development seen in the Bakken Shale Formation affecting Tribal and allotted lands of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; expanded management activities prompted by regulatory revisions, enhanced environmental review, and other issues affecting lands of the Osage Nation in Oklahoma, and increased development activity in the San Juan Basin affecting allotted Navajo lands concentrated in northern New Mexico. To address this and anticipated demand, an interagency team from BIA, BLM, ONRR, and OST through the IEMSC collaborated and identified the IESC concept as the most efficient and cost-effective solution.

**Current Status:**

Though the IESC function offers a sustained capacity deployment mechanism across the Indian land base, it has already demonstrated its capability to offer short-term, rapid response actions to address immediate needs. Recent examples include: BIA detailing critical personnel to Fort Berthold, the rapid contracting of services by the Federal Indian Minerals Office at Navajo, and the BLM's "Tiger Team" formed to address backlog Applications for Permit to Drill at Fort Berthold. Additionally, the IESC has been working to fill positions as provided in the approved organizational structure.

**Bureau:** Indian Affairs

**Office:** Indian Services

**Member:**

**Issue:** Spirit Lake Tribe Social Services –Child Protection Program

**Background:**

On October 1, 2012, the Spirit Lake Sioux Tribe (Tribe) of North Dakota retroceded [voluntarily returned] the P.L. 93-638 contracted, child protection and foster care programs to the Bureau of Indian Affairs (BIA). The BIA Fort Totten Agency has been operating the programs since October, 2012. Although the BIA operates the Child Protection program, the Tribe continues to successfully operate multiple programs under a P.L. 93-638 contract including the Employment and Training Program managed under a P.L 102- 477 agreement, the BIA General Assistance program, and the Indian Child Welfare Act (ICWA) program.

In August, 2016, the Spirit Lake Tribe became a Tiwahe site under the BIA, Tiwahe Initiative. The purpose of the BIA’s Tiwahe Initiative is to demonstrate the importance of social service coordination among programs within a tribal community, so that critical services more effectively and efficiently reach American Indian and Alaskan Native children and families. Under the Tiwahe Initiative the Tribe developed its Tiwahe plan and the Tribe’s vision to establish a “One Child Welfare System.” This plan will create one comprehensive Department of Social Services dedicated to strengthening Spirit Lake children, families, and the community through Dakota values by emphasizing partnerships among service providers delivering culturally responsive family services.

**Current Status:**

The Tribe partnered with the Fort Totten Agency and Casey Family Foundation to develop a plan to help outline the steps needed to fully transition the child protection and foster care program back to the SLTSS in alignment with their Tiwahe plan. The transition plan focuses on four areas: 1) implementing family-centered services that engage families and focuses on permanency; 2) improving access and delivery of services to clients, 3) creating a stable child welfare system, and 4) developing a community-wide response model to address and combat child welfare issues.

Some of the on-going activities to support the Tribe’s vision under Tiwahe and to support the transitioning of the program back to the Tribe include establishment of Tribal Social Services positions critical to the transition, sharing of programmatic data and procedures, regular transition meetings, transition of housing units to social service office space, coordination with local and federal law enforcement, technical assistance, updating tribal policies and procedures, negotiations with the State that would affect funding, and licensing of foster homes.

**On-going Concerns Impacting the Transition:**

- As of February 27, 2017, the Tribe has not submitted a complete contract proposal package including a budget and statement of work. Initial budgets indicated that the Tribe sought almost a half million more in funding than was available. A complete proposal is needed in order for the Tribe to contract the CPS program. The BIA has 90 days to review and make a decision following the submission. The Tribe’s targeted date to reassume the Child Welfare and Child Protective Services from the BIA, Fort Totten Agency is slated for April, 2017.
- Although BIA Social Services supports the Spirit Lake Tribe’s efforts to reassume the Child Protection Program, the BIA recommends that staff undergo relevant training, and that the Tribe immediately fill leadership positions that will be vacated in March.
- The Tribe may not be in a position to contract the operation of the CPS program in April, 2017.

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## **ISSUE: The Water Infrastructure Improvement for the Nation (WIIN) Act Implementation Status (Irrigation)**

### **Key Points:**

- Completed required consultation with Tribes and Landowners/Adjacent Irrigation Districts, and Public
- Act funding is subject to appropriations; request included in FY 2018 passback, targeted for FY 2019 (Act established accounts from FY 2017 - 2023)
- Implementation Plan due to Congress April 15, 2017

### **Background:**

The BIA Safety of Dams Program was established under the Indian Dam Safety Act of 1994, making BIA responsible for high- and significant-hazard potential dams located on tribal lands. Currently, the BIA is responsible for the safety of 138 high- and significant-hazard potential dams in nine (9) BIA Regions and on forty-three (43) Indian Reservations.

The Water Infrastructure Improvement for the Nation (WIIN) Act was signed into law on December 16, 2016. Title III, Subtitle B of the WIIN Act is intended to reduce the deferred maintenance (DM) impacts at specific Indian Irrigation Projects and Indian Dam Projects. Irrigation Condition Assessment Studies have been completed at each of the 17 eligible Irrigation Projects, with a DM estimate of \$630 million. A study is underway to index all Condition Assessment DM estimates to 2016 dollars, since these studies were completed between 2006 and 2016; we anticipate the FY 2017 DM estimate to increase by 15% to 20%. Modernization Studies will be completed at 4 of the 17 Projects by the end of April 2017.

### **Current Status:**

As required in the Act, BIA held Tribal Consultations and landowner and adjacent irrigation district meetings in February 2017. Public teleconference consultations were also held in February 2017, while written comments from tribes, landowners and adjacent irrigation districts are due to BIA by March 3, 2017.

The Act also requires an Implementation Report be provided to Congress by April 15, 2017. A study to evaluate options for improving programmatic and project management and performance of projects managed and operated in whole or in part by the Bureau of Indian Affairs is due to Congress by December 15, 2018.

**BUREAU:** Indian Affairs

**OFFICE:** Office of Trust Services, Division of Natural Resource Management

**MEMBER:**

**ISSUE:** Agriculture and Rangeland Management

**Key Points:**

- Under the authority of the American Indian Agricultural Resource Management Act, P.L. 103-177, and the Indian Self Determination and Education Assistance Act (ISDEAA), P.L. 93-638, the Agriculture and Range Program promotes conservation and beneficial use of 47 million acres of trust surface land dedicated to crop and livestock agricultural production through both direct administration and support of tribal agriculture programs under an ISDEAA contract or compact.
- Program administers nearly 14,000 grazing permits, provides management expertise and technical support for over 25,000 crop agriculture and grazing leases, and monitors ecological conditions on over 3,250 grazing units.

**Background:**

The program promotes conservation, multiple-use, and sustained yield management carried out by Indian Affairs personnel or by tribes under ISDEAA agreements. The program activities focus on five principal responsibilities: soil and vegetation inventory, programmatic and conservation planning, farm and rangeland improvement, lease and permit services and administration, and rangeland protection. Services are provided to tribal programs and individual Indian land owners and land users. In addition, noxious weed activity supports over 400 control projects annually on over 100,000 acres in cooperation with as many as 75 tribes.

**Current Status:**

- Many activities of the Agriculture Program are required under AIARMA
- Participation in the management of Indian agricultural lands
- Programmatic agricultural resource management planning
- All other resource and land management programs depend on agriculture program surveys, plans and personnel to effectively address their responsibilities
- Agricultural program budgets have remained flat in real dollars – not actual dollars – for over 30 years despite increased responsibilities under AIARMA and other regulations and directives

Staffing in Agriculture and Rangeland Management has fallen to critical levels – from 441 FTE in 1987 to 121 in the 2017 budget. Due to functionally decreasing budgets, managers cannot fill vacancies; for instance, some agencies with significant agricultural management responsibilities do not have agricultural professionals on staff.

Prepared by: David Edington, Chief, Branch of Agriculture and Rangeland Management, 202-513-0886, 2/28/17

**BUREAU:** Indian Affairs

**OFFICE:** Office of Trust Services, Division of Land Titles and Records (DLTR), Branch of Geospatial Support (BOGS)

**MEMBER:**

**ISSUE:** LTRO/BOGS

**Key Points:**

- No permanent base funding.
- GIS expertise is limited in the field and at Land Title and Records Offices (LTRO)
- Responsible for the Tribal cost share which is escalating to the amount of over \$1.9 million dollars to cover the cost of three (3) DOI Enterprise License Agreements.
- Requested \$1.8 million beginning in FY 2018 for a two-year initiative to develop a BIA Enterprise Land and Resource Data Warehouse (LRDW).

**Background:**

The DLTR, Branch of Geospatial Services is the single geospatial technical center for the entire BIA, which operates in conjunction with LTRO to deliver accurate, timely and cost-effective Federal land title service to Indian beneficiaries and Tribes. The office provides GIS software, training, and technical support including geospatial database management, programming and project support. The work is required for land status title mapping and sound management of natural resources on over 10 million acres belonging to individual Indians and 46 million acres held in trust or restricted status for Indian Tribes.

BOGS consists of four main program areas: Extended Services, Geospatial Training, Enterprise License Agreements (ELA), and the Geospatial Help Desk. This Branch of the BIA has a very large stakeholder reach which leverages its expertise extending well beyond BIA DLTR and OTS to other DOI bureaus, Federal Agencies and Tribes. Connections and support can range from land title and records, rangeland leasing, irrigation, flood plain analysis, safety of dams, forestry harvest modeling, wildland fire planning, oil and gas management, and land buy back economic studies, to activities involving justice services, gaming analysis and Indian education, among others.

**Current Status:**

As of FY 2017 BOGS has taken over leadership of the Land Buy Back Program (LBBP) mapping program and has initiated an effort to implement the same procedures and techniques to map all land areas and tracts that are not eligible for the LBBP or mapped by the LBBP to ensure all Indian land is mapped to the same standard nationally. This geospatial data will also be reviewed and approved by respective LTROs before delivery to the U. S Census Bureau as part of the MOU signed in FY 2016 and prior to publication in TAAMS, to meet GAO energy management recommendations.

BOGS is managing its workload, including programming, automation, geodatabase management, security, and coordination with other programs and systems, without permanent base funding. Furthermore, GIS expertise is limited in the field and at the LTROs. Additionally, the program is responsible for the Tribal cost share, which is escalating to the amount of over \$1.9 million to cover the cost of three DOI Enterprise License Agreements (ELA). This is funding that is earmarked for trust programs, but is diverted to cover tribal and non-trust program license and related ELA costs.

The OTS has requested \$1.8 million beginning in FY 2018 for a two-year initiative to develop a BIA Enterprise Land and Resource Data Warehouse (LRDW) that will expand

data sharing capabilities while utilizing existing business data repositories and analytical tools that will serve as the critical component of a DOI-wide Enterprise Data Warehouse. The LRDW is a cross-cutting BIA-wide initiative for all data from BIA's various business subsystems within the Trust Asset and Accounting Management System (TAAMS) and other standalone data tools. Funding for this request will allow BIA to integrate data from TAAMS and other data sources into operational data views that can be easily accessed as a single point for strategic and operational reporting, enhancing compliance activities and promoting BIA's capabilities for analysis, trending, predictive analytics, statistical information gathering, and decision making.

Prepared by: Beth A. Wenstrom; Division Chief, Land Titles and Records, Office of Trust Svcs. 202-208-7284.

Date: 2-27-17

**BUREAU:** Indian Affairs

**OFFICE:** Office of Trust Services, Division of Real Estate Services

**MEMBER:**

**ISSUE:** Fee-To-Trust Program

**Background:**

The Indian Reorganization Act (IRA) provides the Secretary with the discretion to acquire trust title to land or interests in land. Congress may also authorize the Secretary to acquire title to particular land and interests in land into trust under statutes other than the IRA.

Fee-to-trust (FTT) applications affect the conversion of acquisitions in trust of whole or undivided interests in land held in fee status on behalf of individual Indians and tribes. There are three types of acquisitions and each type is addressed in the regulations as follows: 1.) On-reservation Discretionary Trust Acquisitions; 2.) Off-reservation Discretionary Trust Acquisitions; and 3.) Mandatory Trust Acquisitions by applicable policy. The Bureau of Indian Affairs (BIA) staff follows processes outlined in a reference guide, Acquisition of Title to Land held in Fee or Restricted Fee Status Handbook (Fee-to-Trust Handbook), that describes standard procedures for the transfer of fee land into trust or restricted status.

**Current Status:**

Since 2009, the BIA has assisted tribes and tribal members in placing over 630,000 acres of fee lands into trust. Over 90 million acres of land were lost by tribes as a result of the repudiated allotment policy. Restoring tribal homelands is critical to promoting tribal self-determination, strong and healthy tribal communities, and tribal culture. In addition, the previous Administration amended its fee-to-trust rules to allow for land to be placed into trust in Alaska.

In addition, we have implemented standardized guidance executed through the issuance of our Indian Affairs Manuals for Fee to Trust and other policy directives that establish time frames for the 16-step process for approving FTT cases along with certain problem solving procedures.

Prepared by: Sharlene Round Face, Division Chief, Office of Trust Services (202) 208-3615 Date: 2/27/2017

**BUREAU:** Indian Affairs  
**OFFICE:** Office of Trust Services  
**MEMBER:**  
**ISSUE:** Fish Hatchery Maintenance

**Key Points:**

- Hatcheries are key in maintaining fish sufficient for a meaningful exercise of treaty rights.
- Most treaty fisheries are terminal fisheries, where the tribal fishery and the fulfillment of treaty rights are directly related to tribal hatchery production.
- Hatcheries play a key role in the local tribal economy through barter/sale, while also being central to the culture, health and nutrition of tribal communities.
- The Endangered Species Act and other environmental regulations require periodic upgrades or other alterations to hatchery operations and planning documents.
- The majority of tribal hatcheries were constructed during the 1970's and 1980's and are in a significant state of disrepair when compared to their counterparts funded through states, U.S. Fish and Wildlife Service or NOAA Fisheries.

**Background:**

Prior to FY 2010, BIA hatchery maintenance funding was limited to \$500,000 annually. Tribal hatcheries were becoming inoperable due to increasing deferred maintenance issues and a growing concern for human safety/health due to deteriorating structures and systems. An increase of \$2 million was provided by Congress in FY 2010. These funds were originally applied to the operations line, but were moved to the maintenance portion of the Hatchery program in FY 2011 so that tribes would be able to make necessary repairs to their hatcheries. Operations funding has not seen a measurable increase in years, but the cost of operations has increased significantly over the years. In FY 2014, BIA received an increase of \$2.25M to the fish hatchery maintenance program, including \$250,000 for the operation of the Lower Elwha hatchery.

**Current Status:**

Funding supplements facility maintenance for 89 Indian hatcheries. Maintenance is mandatory to extend the life of the hatcheries and rearing facilities. Project funding is provided annually based on a competitive ranking of maintenance project proposals.

Hatchery maintenance funding has allowed BIA to address some of the maintenance project backlog and continue tribal hatchery operations. Due to the large backlog of maintenance projects, we continue a "bandaid" approach when more extensive refurbishing would likely be more cost efficient in the long run. Regulatory requirements increasingly stretch maintenance funding by requiring significant upgrades, alterations, or the development of new operating plans.

Hatchery fish drive the tribal economy at a grass roots level by allowing families and individuals to barter or sell fish as a subsistence base. This fills the equivalent of many jobs, as tribal fisherman provide for families through traditional fish harvest. Tribal hatcheries also provide fish for non-tribal fishermen in shared-use areas where tribal fishing occurs. Funding is expected to provide for approximately 164 hatchery maintenance projects in FY 2017. Tribes released more than 41 million salmon in 2016.

Prepared by (David E. Wooten, 202 513-0355, 2/27/2017)

**BUREAU:** Indian Affairs

**OFFICE:** Office of Trust Services, Division of Forestry and Wildland Fire

**MEMBER:**

**ISSUE:** Forest Management and Fire Suppression

**Key Points:**

- Forests cannot be managed economically without sound forest management that includes logging operations. Unmanaged forest lands are prone to destruction through stand replacement fires, insects and disease.
- Fires in the Northwest burned nearly 2 million acres in 2015. Nearly one quarter of that acreage was located on Tribal land supporting valuable commercial timber and wildlife habitat. An estimated 1.4 billion board feet of timber was damaged or destroyed on tribal lands in those fires. The lost timber was valued at \$203 million dollars. Nearly 92,000 burned acres require reforestation and other forest restoration activities as a result of these fires. Conservatively it will cost \$55 million to complete these restoration activities.

**Background:**

The National Indian Forest Resources Management Act (NIFRMA) directs the Secretary of the Interior to undertake forest management activities which "... develop, maintain, and enhance Indian forest land in a perpetually productive state in accordance with the principles of sustained yield and with the standards and objectives set forth in tribal forest management plans." In order to maintain forest land in a "perpetually productive state," land classified as commercial forest land must be fully stocked with trees. When catastrophic fire occurs, trees are killed, leaving the area unstocked or understocked. Land which is unstocked or understocked will not realize its full potential in terms of site occupancy by forest and of subsequent wood fiber growth and yield. Pursuant to NIFRMA, it is a trust responsibility to ensure that all land classified as commercial is fully stocked with trees.

**Current Status:**

The current backlog of forest development planting, thinning, and restoration of healthy woodlands includes 567,000 acres of planting, 620,000 acres of precommercial thinning, and 2,200,000 acres of woodlands restoration. In order for land managers to maintain healthy, productive forests capable of yielding commercial wood fiber, associated employment, and industrial capacity, a comprehensive approach to forest management that includes the sale of wood fiber is necessary. Activities such as thinning, planting, and prescribed burning are essential investments which improve forest composition, growth, and the yield and quality of marketable forest products.

Tribal commercial forest lands are capable of yielding approximately 25% more sawtimber once regulated through active forest management. This means that the National Annual Allowable Cut (NAAC) would increase from 732 to 915 million board feet. This 183 million board foot increase is valued at an additional \$29 million annually above current stumpage revenue. This increase can only be achieved if forest growing stock levels are properly maintained through planting, thinning, and fuels management operations. These activities directly employ over 2,000 people annually, and indirectly support additional jobs in rural areas and economically challenged communities.

**BUREAU:** Indian Affairs

**OFFICE:** Office of Trust Services, Division of Forestry and Wildland Fire Management

**MEMBER:**

**ISSUE:** Economic Growth through Timber Harvest

**Key Points:**

- The sale of forest products is a primary fiduciary trust responsibility and a key source of tribal revenue and employment. Forest products sales support BIA efforts to promote self-sustaining communities and healthy and resilient Indian forest resources.
- The sale of timber and other forest resources allows for the treatment of more land, increases industrial infrastructure, and provides countless employment opportunities for Tribal members, rural communities, and industries that rely on the extraction and utilization of forest products.

**Background:**

Under the National Indian Forest Resources Management Act (P.L. 101-630, Title III, 104 Stat. 4532), the Secretary is authorized to undertake forest land management activities on Indian forest land to develop, maintain, and enhance Indian forest land in a perpetually productive state. This is in accordance with the principles of sustained yield and with the standards and objectives set forth in forest management plans.

**Current Status:**

Direct return on investment in the Forestry Program is essentially 3:1; that is, for every \$1 invested, \$3 dollars is returned through stumpage receipts from timber sales. However, there is a direct correlation between staffing reductions and the ability to prepare and offer for sale the full Allowable Annual Cut (AAC). From 1991 to 2016 there has been a 59.1% reduction in Forestry staffing. The current National Allowable Annual Cut (AAC) is 732 million board feet of sawtimber. In 2016, only 314 million board feet was harvested, representing 42% of available volume.

In a recently submitted FY 2018 budget request, \$22,150,000 was requested to fund 292 additional FTE dedicated to Indian Forestry. This investment has the potential of yielding an additional \$66.5 million in direct stumpage revenue to Tribes, while also providing economic multipliers in the forest products sector and local communities.

Prepared by Dave Koch, 202-208-4837, February 27, 2017

**Bureau:** Indian Affairs

**Office:** Office of Trust Services, Division of Water & Power, Branch of Irrigation and Power

**Member:**

**ISSUE:** Irrigation Rehabilitation and Renovation (construction)

**Key Points:**

- BIA's FY16 estimate of deferred maintenance is approximately \$630 million
- BIA currently receives \$2.6 million to address deferred maintenance issues

**Background:**

The BIA has been involved with Indian irrigation since the Colorado River Indian Irrigation Project, authorized in 1868. Most facilities are reaching 100 years old and are in need of major capital improvements. Several critical structures are in such poor condition that their long-term viability to deliver irrigation water is in question. BIA irrigation projects are an important part of regional economies providing irrigation water to over 780,000 acres, through over 6,300 miles of canals and more than 52,000 irrigation structures, with receipt fund revenues of over \$35 million. The recent BIA economic study completed by the Bureau of Reclamation states that the irrigated lands served by the 17 BIA irrigation projects produce in excess of \$960 million (2013 dollars) in gross crop revenues annually with an additional \$670 million of indirect benefit for a total economic impact of approximately \$1.63 billion.

**Current Status:**

The total deferred maintenance reported in 2016 was \$630 million, due to the problems associated with aging infrastructure and years of insufficient funding. In addition, a study is underway to index all Condition Assessment deferred maintenance estimates to current dollars; we anticipate our reported value to increase by 15% to 20%.

Since FY 2006, \$26.6 million has been received through the irrigation rehabilitation fund. The irrigation rehabilitation fund is used for critical deferred maintenance and construction work on BIA owned and operated irrigation facilities, with an emphasis placed on infrastructure rehabilitation that overcomes health and safety concerns for BIA employees and the public. If irrigation rehabilitation funding remains static, the effectiveness and reliability of water delivery at several of the projects is in danger of reaching an unsafe and unusable level. While the O&M rates charged by our irrigation projects have increased approximately 26% since 2006, most are not able to fund rehabilitation activities.

The current available rehabilitation funding (\$2.6 million) falls short of the necessary amount needed to ensure additional deferred maintenance is not incurred and is not enough to address even those identified with critical health and safety deficiencies.

Prepared by: Dave Fisher, Chief, Branch of Irrigation and Power, Trust Svcs. 303-231-5225

Date: 2-27-17

**BUREAU:** Indian Affairs

**OFFICE:** Office of Trust Services, Division of Land Titles and Records

**MEMBER:**

**ISSUE:** Land Titles and Records Offices (LTRO)

**Key Points:**

- Limited funding for Land Titles and Records Offices; no increases in over 10 years.
- No dedicated funding for Central Office Program Oversight.
- Severely understaffed due to prior year buyouts, early retirements, and attrition.
- No training, developmental or retention programs for employees in this area.

**Background:**

The Land Titles and Records Program provides for the day-to-day operation and maintenance costs of nine federal and seven tribal title offices, and the oversight of one agency with title service responsibilities. These offices render support to all 12 BIA Regions and 83 Agencies, the Land Buy-Back Program (LBB) Acquisition Center, and to other Agencies who deliver trust services including the Department of Housing and Urban Development (HUD) and the mortgage industry.

LTRO records tens of thousands of conveyance, legal and right of way documents annually, including processing Office of Hearing and Appeals (OHA) probates and modifications affecting title to all trust and restricted Indian land. These offices perform detailed examination, identify defects, seek corrections, certify current ownership, issue certified title status reports (TSR), generate Land Status Maps (LSM), Individual Trust Interest Reports (ITI) and the Probate Inventory Reports (INV), and respond to legal inquiries. Title includes recordation and title management for encumbrances associated with leases managed on these lands for uses such as farming, grazing, forestry, and oil and gas production on behalf of individual Indians and Tribes.

Accurate title is critical to the distribution of over several billion dollars belonging to Indian Tribes and individual Indians. The LTRO's products provide security to real estate investors, especially as rapid and dramatic developments drive the real estate market. From a single-family home purchase to a multi-million dollar commercial transaction, real estate investors in Indian country receive title protection through the LTRO.

**Current Status:**

The Land Titles and Records Program is currently severely underfunded. Because of the low staffing levels and high demand for service, work related to sprints in various administrative initiatives competes for very limited resources, creating high operational risk at the national level. Further, this certification work of the LTROs, as of September 2016, is estimated to be over \$752 million in value added to the economy and \$1.4 billion in economic output, supporting about 9,000 jobs nationwide. This program is an excellent investment which has a direct connection to the U.S. economy, which if supported with additional funding to address staff shortages and backlogs, could substantially increase output.

Prepared by: Beth A. Wenstrom, Division Chief, Land Titles and Records, Office of Trust Svcs.  
202-208-7284

Date: 2-27-17

**BUREAU:** Indian Affairs

**OFFICE:** Office of Trust Services, Division of Probate

**MEMBER:**

**ISSUE:** Probate Backlog

**Key Points:**

- New accumulated backlog of 11,000 cases
- Over \$168 Million in Individual Indian Monies (IIM) estate accounts
- Probate program unable to keep up with new reported cases with current funding levels.

**Background:**

The Division of Probate Services is responsible for the preparation and submission of probate documentation to Federal administrative adjudicators and for the subsequent distribution of trust estates. Bureau probate activities include pre-case preparation, case preparation, and portions of case closing. In case preparation, the BIA determines if the decedent owned any trust assets that must be probated by the DOI, and BIA staff researches and prepares the asset inventory and family information needed to identify potential heirs, claimants, and interested parties. That information is then forwarded to the Office of Hearing and Appeals (OHA) for adjudication. After receiving a final probate decision from OHA, BIA staff distributes estate assets in accordance with the probate order. Probating trust estates are a statutorily mandated obligation upon the DOI. Current, reliable trust ownership records are crucial to making timely and accurate payments to the trust beneficiaries.

Probate activities must be coordinated with the BIA Land Titles and Records Office, the Office of the Special Trustee and the OHA to ensure that American Indian and Alaska Native beneficiaries receive the trust assets to which they are entitled and have a voice in the management of these assets. In addition, Bureau probate efforts rely, in part, on state and local government offices to purchase and obtain the family and vital information (i.e. Death Certificates, Birth Certificates) required for determining heirs and distributing assets.

**Current Status:**

The BIA Probate program has over 13,000 cases in case preparation status with over 8,000 of these cases with a date of death that is older than 2015. As of January 30, 2017, there are over 5,000 cases where the date of death is later than 2015. The program at this time has the capacity to prepare approximately 4,000, leaving a deficit of approximately 1,000 cases to be added to the growing backlog of cases.

In 2004, the Probate program had a backlog of over 18,000 cases. To address the backlog, additional funding was provided, and Regions and Agencies added additional full time employees (FTEs). However, the additional funding to address the backlog ended in FY 2011 creating a shortfall in funding for salaries. The program currently has over 26 FTE vacancies.

Prepared by (Charlene Toledo, Division of Probate and Special Projects, 505-977-4162, 02/27/2017)

**Bureau:** Bureau of Indian Affairs

**Office:** Office of Trust Services, Division of Real Estate Services

**Member:**

**Issue:** Real Estate Services

**Key Points:**

- Activities of the Real Estate Services program promote economic opportunity and carry out the responsibility to protect, preserve and improve the trust assets of American Indians.
- Approximately 12 million of the 69 million mineral and surface acres (2% of the US land base) are being utilized for leases, rights-of-ways, residential leases, business and mineral/energy development.
- Infrastructure is built through multi-agency collaboration and cooperation.
- Energy development is the purpose and goal of oil & gas leases and coal leases; ROWs support the development.
- Economic development typically starts with securing the land for developmental use.
- Job creation is the result of economic development opportunities on Indian lands.

**Background:**

The Real Estate Services program provides services to Indian tribes and individual Indian beneficiaries pursuant to several Congressional authorizations, including HEARTH Act of 2012 (amending 25 U.S.C. 415). These services include the development and approval of mineral leases and agreements, commercial leases, renewable energy agreements, easements and rights-of-way, conveyances and sales of land, as well as the acquisition of new trust lands. Real Estate Services has a significant, positive impact on the Reservation economies throughout the United States. Important Tribal economic activities that benefit individual Indian families who rely on BIA Real Estate Services programs include energy development, mineral leases, renewable energy agreements, agricultural leases, and home site and residential leases.

Real Estate Services manages surface lands and acres, and mineral interests and acres, which are held in trust or restricted status. Oil and gas, rights-of-way, and coal development are highly dependent upon an infrastructure of multi-agency efforts (BIA/Tribes/BLM/ONRR). Such development is built through leases, agreements, easements, and surface management protocols.

**Current Status:**

The Realty program manages 121,287 encumbrances; 11,429 new surface and sub-surface contracts, leases, and grants, which includes 6,745 new agricultural leases; 867 new oil and gas leases; 2,563 new business leases and 1,254 rights-of-way grants.

There are nearly 75,658 leases that cover approximately 866,145 acres of land and generate approximately \$211 million of trust revenue to Indian tribes and individual Indian landowners in fiscal year 2016. The leases are for business and commercial purposes, government use, healthcare facilities, religious purposes, for schools and residential use. The leases are developed, processed and approved by the local BIA Real Estate Services offices. Individuals are able to live in local communities due to the residential leases and mortgages processed by Real Estate Services, which benefits economic development and job creation.

**Bureau:**

**Office: OFFICE OF INDIAN SERVICES DIVISION OF TRANSPORTATION**

**Member:**

**Issue: CONSTRUCTION BACKLOG AND DEFERRED MAINTENANCE**

**Background:**

CONSTRUCTION BACKLOG

There is a total construction backlog for all public roads that impact Indian Country (defined in 23 USC 202(b)(1)) of \$89.3 Billion. Of this amount the backlog for BIA owned facilities is approximately \$23 Billion. The Tribal owned facilities backlog is \$21 Billion. The standard to which these roads are gauged against is defined by adequate design standards in the current 25 CFR 170 Subpart C.

DEFERRED MAINTENANCE

There is a total deferred maintenance need of \$290 Million for FY2015. This is the road maintenance program funded with DOI Appropriations Tribal Priority Allocation. The definition of road and bridge maintenance is the preservation of the structure/roadway in the as-built condition. It is not a reconstruction or improvement activity. This deferred maintenance need will increase in FY2016 because the unit cost for maintaining the various surface types to the specific service level index (excellent, good, fair, poor and failing) as prioritized by the agency or tribe, depending on who is performing the work.

TOTALS

There is a construction backlog total of all public roads providing access to or within tribal lands of \$89 Billion; of which the BIA system is \$23 Billion and the Tribal system is \$21 Billion, and A Deferred Maintenance of BIA system roads/bridges of \$290 Million.

**Current Status:**

**Bureau: Indian Affairs**

**Office: Justice Services**

**Member:**

**Issue: “Securing Urgent Resources Vital to Indian Victim Empowerment Act” (SURVIVE Act)**

**Background:**

Given the national rates of crime victimization in American Indian and Alaska Native communities, it is necessary to address the resource parity for tribal nations to improve assistance to victims in tribal communities. The Victims of Crime Act (VOCA) and the Crime Victims Fund (CVF) are the largest sources of federal funding for crime victims. While states and territories receive an annual formula based award from the Victims of Crimes Act (VOCA) fund, tribes do not. As such, the Senate Committee on Indian Affairs proposed the “Securing Urgent Resources Vital to Indian Victim Empowerment Act” (SURVIVE Act), S. 1704, to authorize tribal victims compensation and assistance grant program within the Bureau of Indian Affairs, Office of Justice Services.

VICTIM SERVICES PREVALENCE

- AI/AN communities make up approximately 1.7% of the Nation’s population, but suffer some of the highest rates of violent crime, shorter life expectancy, higher rates of suicide, and have fewer consistent resources available than non-Indians in rural and urban settings.
- AI/AN women experience the highest rates of sexual assault and domestic violence in the nation.<sup>1</sup>
- Native youth between the ages of 12 and 19 are more likely than non-Native youth to be the victim of either serious violent crime or simple assault;<sup>2</sup> and suicide is the second leading cause of death for Native youth aged 15 to 24.<sup>3</sup>

CURRENT STATUS

- To increase support and funding to create BIA Victim Specialist positions at every BIA Law Enforcement agency. Currently there are 21 BIA VS positions funded at 19 locations, (with 11 positions filled) serving more than 2,000 victims each year. The Victims Specialists are working alongside approximately 341 BIA Law Enforcement Uniform Officers and Special Agents. There is a critical need to expand the number of Victim Specialists working alongside Law Enforcement, and afford victims statutory rights to services.
- Tribes and tribal organizations currently have no source of sustainable funding to support the needs of victims across AI/AN communities.
- States and territories receive formula based funding each year from DOJ/OVC and less than one percent is used to provide discretionary programs for tribes where violent crime occurs at more than twice the rate of the Nation<sup>4</sup>.

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<sup>1</sup> www.BJS.gov.

<sup>2</sup> Indian Law and Order Commission Report, Chapter 6 “*Juvenile Justice: Failing the Next Generation*,” November 2013.

<sup>3</sup> Substance Abuse and Mental Health Services Administration (SAMHSA), National Survey on Drug Use and Health, 2003.

<sup>4</sup> A BJS Statistical Profile 1992-2002, Washington, D.C. : U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, December 2004, NCJ 203097.

**ISSUE: No Child Left Behind 2016 School Replacement List**

**Key Points:**

- Indian Affairs is responsible for the maintenance and repair for BIE-funded schools. As of FY2016 there were 78 schools identified in “Poor” condition on the Facilities Condition Index. More schools are expected to fall into “Poor” condition in FY2017 and subsequent years due to critically low funding levels for maintenance, repair, and replacement construction projects.
- In 2004 12 schools were identified for replacement pursuant to the No Child Left Behind Act (NCLB). In FY 2016, 12 years after that list was published, three schools remained unconstructed due to lack of appropriated funds. Those have now been funded for construction.
- As outlined by the NCLB Negotiated Rulemaking Committee Report, in April 2016 the acting Assistant Secretary for Indian Affairs (ASIA) approved a list of 10 schools for replacement in the next phase. The schools on this list are referred to as the 2016 Replacement School List.
- Indian Affairs could only commit to replacing 10 schools. At current funding levels completion is expected to take from 6-8 more years with a current budget forecast of approximately \$575 Million. Reduction of funding for school construction directly increases the length of time to complete design and construction of the 10 approved NCLB campus locations.
- Each of the selected NCLB schools was assessed to be in critical need of immediate replacement due to overall age and deterioration of school facilities, inadequacy of existing program space, and the resultant inability to comply with current education standards and best practices.
- The FY 2016 Appropriation funded the planning phase for all 10 schools, providing \$350,000 for each school. All replacements are subject to available appropriations.
- Construction of the schools will be prioritized by the date each completes the planning phase. The next phase is design.
- There are three schools that are close to completing the planning phase and should be ready for design in FY 2017.

**Background:**  
**Replacement School Construction Priority List**

- Indian Affairs implemented the mandates of the No Child Left Behind Act (NCLB) (Public Law 107-110, § 1042) (25 U.S.C. § 2005) to develop a new Replacement School Construction Priority List. The NCLB Act required the Secretary of the Interior, in consultation with tribes, to develop a methodology for the equitable distribution of funds for school replacement.
- A Negotiated Rulemaking Committee was formed to provide recommendations for a formula and a process for generating a prioritized list of schools. The Committee developed criteria and a process for evaluating schools needing replacement construction. The New School Replacement and Renovation Formula identified seven criteria for evaluation including critical health and safety issues as well as educational program needs.
  - Only bureau-funded schools with a Facility Condition Index of “Poor” and schools that are both 50 years or older and educating 75 percent or more students in portables were considered eligible for replacement. 78 schools were identified as eligible based on the criteria.
  - Only 54 of the 78 eligible schools submitted a Phase I application.
  - A National Review Committee (NRC), consisting of members from the nine (9) Regions with facilities programs, DFMC, and BIE ranked the applicants based on the Formula criteria and associated points.
  - The top 10 schools after the Phase I ranking by the National Review Committee (NRC) were invited to make a public presentation to the NRC for Phase II scoring.
  - The NRC submitted their rankings to the Acting ASIA. The acting ASIA approved all 10 to be on the 2016 priority list for replacement schools.

**Current Status: 2016 NCLB School Replacement Priority List**

- All 10 replacement schools are currently in the planning phase where the space allocation or Program of Requirements (POR) is agreed upon between the school and Indian Affairs, along with site selection and environmental clearances.
- Five of the schools are completing the planning using Indian Affairs as the project manager. Four chose to perform the work as PL 100-297 School Grants and one choose to perform the work under a PL 93-638 contract.

- Three of the 10 are anticipated to complete the planning phase by May 2017.

**2016 Replacement School List**

- Blackwater Community School, AZ
- Chichiltah-Jones Ranch Community School, NM
- Crystal Boarding School, NM
- Dzilth-Na-O-Dith-Hle Community School, NM
- Greasewood Springs Community School, AZ
- Laguna Elementary School, NM
- Lukachukai Community School, AZ
- Quileute Tribal School, WA
- T'iis Nazbas Community School, AZ
- Tonalea Redlake Elementary School, AZ

## **Bureau: Bureau of Indian Education and Bureau of Indian Affairs**

### **Office: Indian Affairs**

### **Issue: BIE Reform and Hiring**

#### **Background:**

Following extensive regional consultations and listening sessions with Indian tribes, the Department of the Interior published the Bureau of Indian Education (BIE) Blueprint for Reform in June, 2014, outlining strategies to improve educational outcomes. In early 2016, BIE began implementing the reform following a “notice of no objection” from Congress.

The BIE reform is guided by five overarching principles:

- **Building an Agile Organizational Environment** – BIE continues its efforts to develop a more effective and efficient organization that provides expertise, resources, direction, and services to schools and tribes, so they can help their students attain high levels of achievement.
- **Promoting Educational Self-Determination for Tribal Nations** – BIE is working to support the efforts of those tribal nations who request to directly operate BIE-funded schools.
- **Helping identify highly effective teachers and principals** – BIE is working to help identify, recruit, develop, retain and empower diverse, highly effective teachers and principals to increase achievement for students in BIE-funded schools.
- **Partnering to provide comprehensive supports** – BIE is improving its ability to support tribes as they foster parental, community, and organizational partnerships that provide the academic, emotional and social supports BIE students need to learn.
- **Budget Aligned to Support New Priorities** – BIE is improving oversight of its spending to provide greater technical assistance and guidance to tribally controlled schools for effective budget management.

#### **Current Status:**

**Phase I** – Pursuant to the reorganization, BIE is realigning its internal organization from a regional basis to a structure based on the types of schools served; namely, (1) schools in the Navajo Nation, which includes approximately one third of BIE-funded schools, (2) tribally-controlled schools, and (3) BIE-operated schools.

After securing numerous tribal letters of support as well as a “notice of no objection” from Congress, BIE began implementing Phase I of the reorganization in February 2016. Phase I replaced former Line Offices with Educational Resource Centers (“ERCs”) to provide local services and technical assistance from School Solutions Teams.

The restructuring portion of Phase I is complete. However, BIE has not yet filled all outstanding Phase I vacancies based on employment position prioritization as well as outside factors such as the Cheyenne River Sioux litigation in the Great Plains

**Phase II** – Partially initiated in January 2017, the second phase is moving forward with a portion of Bureau of Indian Affairs (BIA) Human Resources (HR) personnel being transferred to BIE (completed). The remainder of Phase II includes a realignment of additional support operations such as contracting, IT, and facilities functions to BIE and includes an expansion of the School Support Solutions Teams to include school operations staff.

The BIE continues to move forward, but efforts have been affected by the hiring freeze and further assumption of BIA operations is contingent on funding adjustments. As such, the BIE is working to acquire exemption status for vacant FTE positions that will allow the BIE to increase its ability to serve students and continue the reorganization focused on student achievement and supporting tribal self-determination.

**Hot Topics:**

- **Cheyenne River Sioux Litigation:** In October 2015, the Cheyenne River Sioux Tribe sued the U.S. Department of the Interior in an attempt to halt the proposed BIE reorganization. In September 2016, a U.S. District judge issued a memorandum opinion and order granting in part and denying in part Interior's motion to dismiss the suit.
- **Staff Morale and Communication:** In the early stages of the Reform, some BIE staff expressed concerns to leadership about their roles in the changing organization. In an effort to improve communication throughout the organization, BIE and Interior leadership held staff town hall meetings and a convening to discuss the Reform and strategize how to improve internal and external communication. However, the BIE lacks the capacity to effectively communicate, especially externally.
- **Staffing:** Throughout the Reform, the BIE has worked to fill vacancies at all levels of the organization as prioritized by the Reform phases. However, barriers such as delays in the background check process have created difficulties hiring competitively at the school level, while the current hiring freeze has also created challenges at all levels of the organization.

**Bureau: Bureau of Indian Education and Bureau of Indian Affairs**  
**Office: Indian Affairs**  
**Issue: GAO High Risk Report**

**Background:**

In September 2013, the GAO issued a report numbered 13-774, entitled Better Management and Accountability Needed to Improve Indian Education. In November 2014, the GAO issued a separate report numbered 15-121, entitled BIE Needs to Improve Oversight of School Spending. In February 2017, the GAO placed BIE on its High Risk Agency Report.

GAO-13-774 included five recommendations:

- (1) Develop and implement decision-making procedures which are documented in management directives, administrative policies, or operating manuals;
- (2) Develop a communication strategy;
- (3) Appoint permanent members to the BIE-Education committee and meet on a quarterly basis;
- (4) Draft and implement a strategic plan with stakeholder input; and
- (5) Revise the BIE strategic workforce plan.

GAO-15-121 included four recommendations:

- (1) Develop a comprehensive workforce plan;
- (2) Implement an information sharing procedure;
- (3) Draft a written procedure for making major program expenditures; and
- (4) Create a risk-based approach in managing BIE school expenditures.

**Current Status:**

BIE will continue to implement all GAO recommendations and clear its outstanding findings. To date, GAO-13-774 recommendations two, three, and five are no longer open. Closure packages have been submitted to the GAO for GAO-13-774 recommendation four and GAO-15-121 recommendations two, three, and four. BIE is waiting for GAO to provide additional feedback on its submitted packages or final closure of the recommendations.

BIE has faced significant challenges which have hindered its ability to fully implement the outstanding GAO recommendations. As identified in the conclusion section of GAO-15-121, BIE has been operating under significant human capital constraints. For example, since the November 2014 GAO-15-121 report was published there have been a total of six permanent and acting BIE Directors. Additionally, critically low staffing levels and lack of training have seriously inhibited BIE's ability to plan, draft, and implement the necessary protocols outlined in the GAO recommendations. However, new permanent leadership and staff have recently assessed BIE's internal procedure for addressing GAO findings, resulting in the identification of an internal BIE team tasked with working with Interior's Division of Internal Evaluation and Assessment to address the remaining GAO recommendations. The GAO's recommendations were also considered in the design of the BIE's Blueprint for Reform and are expected to be addressed as the Reform is fully implemented.

**BUREAU:** Indian Affairs

**ISSUE:** The Federal Acknowledgment Process

**Key Points:**

The Federal acknowledgement process, found in 25 CFR Part 83 (Part 83), is the means by which the Department establishes a formal government-to-government relationship with an Indian tribe. A group seeking Federal acknowledgment as an Indian tribe must meet the seven mandatory criteria listed in the regulation. The decision to recognize a group has been delegated to the Assistant Secretary-Indian Affairs, after receiving a recommendation from the Office of Federal Acknowledgment (OFA).

Since the Part 83 regulations were first promulgated in 1978, 51 petitioners have gone through the Department's acknowledgment process. Of those 51, 17 have been recognized and 34 have been unsuccessful.

**Background:**

In July 2015, the Department published a final rule that revised the Part 83 regulations. This was culmination of a two year process that began in June 2013, when the Assistant Secretary-Indian Affairs announced consideration of revisions to the Federal acknowledgment regulations. The final rule considered input received from tribal consultations and public meetings held throughout the United States, as well as numerous written comments that were submitted to the Department.

In 2015, Representative Bishop introduced H.R. 3764, a bill to provide that a group could only receive Federal acknowledgment through an Act of Congress. The Administration strongly opposed that bill and stated the concerns it had at a hearing before the Subcommittee on Indian, Insular, and Alaska Native Affairs in October 2015. One such concern was the fact that the bill did not implement any reforms to promote fairness, flexibility, efficiency, or to improve the transparency of the process. The bill also failed to consider the tribal and public input that went into finalizing the new regulations.

**Current Status:**

Groups that had active petitions before OFA in July 2015 were given the choice of proceeding under the old regulations or newly revised regulations. Currently, seven petitioners are under active consideration (four that elected to finish the process under the previous 1994 regulations and 3 that elected to proceed under the 2015 regulations). They are:

- Southern Sierra Miwuk Nation (old regulations)
- Georgia Tribe of Eastern Cherokee (old regulations)
- Amah Mutsun Band of Ohlone/Costanoan Indians (old regulations)
- Grand River Band of Ottawa Indians (old regulations)
- Muscogee Nation of Florida (new regulations)
- Piro/Manso/Tiwa Indian Tribe of the Pueblo of San Juan Guadalupe (new regulations)
- Fernandeno Tataviam Band of Mission Indians (new regulations)

Of these seven petitioners, the Department will issue three proposed findings and one final determination by the end FY2017. The remaining three are preparing responses to technical assistance before they proceed under 25 CFR Part 83.

Additionally, the Department is awaiting supplemental responses from six other potential groups before the Department considers their petitions under the 2015 regulations. They are:

- Little Shell Tribe of Chippewa Indians of Montana

- Meherrin Indian Tribe
- United Houma Nation
- Biloxi, Chitimacha Confederation of Muskogeans
- Pointe-au-Chien Indian Tribe
- Juaneno Band of Mission Indians, Acjachemen Nation

### **Little Shell:**

On October 27, 2009, the Department issued a final determination declining to acknowledge the Little Shell Tribe of Chippewa Indians of Montana. The Department found that the Little Shell, based on the available evidence, did not meet three of the mandatory criteria. On February 1, 2010, Little Shell filed a request for reconsideration of the final determination before the Interior Board of Indian Appeals (IBIA). On June 12, 2013, the IBIA affirmed the final determination against acknowledgment and referred issues to the Department as possible grounds for reconsideration. In 2014, the Department suspended reconsideration, after receiving a request from Little Shell, pending the publication of the revised Part 83 regulations then under consideration.

After the new regulations were finalized, Little Shell chose to have its petition evaluated under the new regulations, as well as supplement their petition with additional materials. As a result, the previous final determination and request for reconsideration are no longer in effect or under consideration. The Little Shell will have the opportunity to begin the federal acknowledgment process again, after OFA receives the supplement to their petition.

### **Lumbee:**

The “Lumbee Tribe of North Carolina” is a group located in Robeson County, North Carolina, seeking Federal recognition through Congress, and claiming 40,000 to 60,000 members. On December 22, 2016, the Department’s Solicitor issued a memorandum (M-37040), stating that the 1956 Lumbee Act does not “preclude the Lumbee Indians from petitioning for Federal Acknowledgment” under 25 CFR Part 83. Previously, the Department interpreted the act to preclude Lumbee from being able to go through the Part 83 process. Despite the previous prohibition, since 1978, eight groups have petitioned the Department for acknowledgment as descendants from families identified in the 1956 Lumbee Act. There is currently no petition under active consideration for any Lumbee group.

In 2015, Representative Hudson and Senator Burr introduced legislation to provide recognition to the Lumbee Tribe of North Carolina. At a hearing before the Senate Committee on Indian Affairs in September 2016, the Administration testified in support of the bill with suggested amendments.

### **Virginia Groups:**

Since 1978, fifteen groups from the Commonwealth of Virginia have petitioned the Department for Federal acknowledgment. In July of 2015, the Department recognized one of those groups, the Pamunkey Indian Tribe, under the Part 83 process. No other petitioner currently has an active petition pending before the Department.

On February 7, 2017, Representative Wittman introduced H.R. 984, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017. Senators Kaine and Warner also introduced a companion bill. The legislation would provide federal recognition to six groups in Virginia: Chickahominy Indian Tribe, the Chickahominy Indian Tribe—Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe. All six previously applied for Federal acknowledgment under the Part 83 process.

Similar legislation was introduced in the 114th Congress. At a hearing in September 2015 before the Subcommittee on Indian, Insular, and Alaska Native Affairs, the Administration did not object to the legislation.

## Department of the Interior Departmental Manual

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**Effective Date:** 1/16/09

**Series:** Organization

**Part 109:** Secretarial Officers

**Chapter 1:** Secretary of the Interior

**Originating Office:** Office of the Executive Secretariat and Regulatory Affairs

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### 109 DM 1

1.1 **Secretary.** The Secretary of the Interior, as head of an Executive Department, reports directly to the President and is responsible for the direction and supervision of all operations and activities of the Department. The Secretary also has certain powers or supervisory responsibilities relating to U.S. affiliated insular areas.

1.2 **Secretariat.** The Secretary is assisted in the management and direction of the Department by the Secretariat. The Secretariat is comprised of the following Secretarial Officers:

A. The Secretary.

B. The Deputy Secretary, who assists the Secretary in supervising and administering the Department and in the absence of the latter performs the functions of the Secretary. With the exception of certain matters specifically reserved to the Secretary, the Deputy Secretary has the full authority of the Secretary. The Deputy Secretary is the Chief Operating Officer for the Department.

C. The Solicitor (described in 109 DM 3).

D. The Inspector General (described in 110 DM 4).

E. Assistant Secretaries (described in 109 DM chapters following Chapter 3).

1.3 **Assistants to the Secretary.**

A. A Chief of Staff serves as confidential advisor to the Secretary, supervises the staff of the immediate office of the Secretary, and performs other duties as assigned by the Secretary.

B. The Director, Office of Communications, serves as principal advisor to the Secretary on public information matters (see 110 DM 5).

C. The Director, Office of Congressional and Legislative Affairs, serves as principal advisor to the Secretary on the Department's legislative program and carries out Congressional and intergovernmental liaison activities (see 110 DM 6).

D. The Director, Office of the Executive Secretariat and Regulatory Affairs, serves as principal advisor to the Secretary on regulatory matters and internal directives, monitoring, reviewing, and coordinating all such activities of the Department. The Director is responsible for correspondence control and processing inclusive of the committee management process as well as production of documents in response to requests from Congress and select litigation discovery activities (see 110 DM 17).

E. Other Assistants, Counselors, and Advisors.

(1) Other Assistants, Counselors, and Advisors to the Secretary serve in varying capacities and as liaison with major program areas as specifically assigned. All Assistants, Counselors, and Advisors to the Secretary may work directly with Assistant Secretaries in expediting and highlighting matters requiring immediate or specific attention.

(2) The Director, Office of Indian Water Rights, leads, coordinates, and manages the Indian water rights settlement program in consultation with the Office of the Solicitor. The Director reports to the Counselor to the Secretary assigned to such matters, unless otherwise provided by the Secretary. The primary functions of the office are coordinating communication and decision-making among the various interests of the bureaus and offices of the Department on matters concerning Indian water rights settlements and managing negotiation and implementation teams for policy consistency.

1.4 **Authority.** Except for authority specifically delegated otherwise by statute, authority to carry out Departmental functions is delegated by the Secretary to the Secretariat who in turn redelegate appropriate authority to heads of bureaus and offices which they supervise. All permanent delegations made by the Secretary and redelegations made by Assistant Secretaries are issued and documented in the Departmental Manual. Program officials to whom authority has been delegated are held directly responsible for organization and performance in their assigned program areas.

## **BRIEFING MEMORANDUM FOR THE SECRETARY**

Date: March 3, 2017

From: Pam Williams, Director, Secretary's Indian Water Rights Office, 202-262-0291

Subject: Departmental Oversight of Secretary's Indian Water Rights Office

As a threshold matter, the Secretary needs to determine the reporting structure he wishes to utilize with respect to the Department's participation in Indian water rights negotiations. Under the Departmental Manual, the Director, Office of Indian Water Rights (also known as the Secretary's Indian Water Rights Office or SIWRO), in consultation with the Office of the Solicitor, leads, coordinates and manages the Department's Indian water rights settlement program. The Departmental Manual further provides that the Director reports to the Counselor that the Secretary assigned to Indian water rights matters, unless otherwise provided by the Secretary. (See attached 109 Departmental Manual 1.3.E(2)).

There are a number of Indian water-related issues that will require attention at the Secretarial level in the near future. In addition, it is anticipated that members of the Congressional delegations from Arizona, Utah and Montana may seek to engage Departmental leadership early in 2017 concerning the approval of pending settlements in those states.

### **BACKGROUND**

Throughout the United States, there are extensive unresolved Indian water right claims based on the Federal law doctrine of reserved water rights. These claims frequently conflict with state-law based rights held by non-Indians. In many river basins, there is insufficient water to satisfy Indian and non-Indian water rights claims. Historically, water rights have been addressed in cumbersome and lengthy litigation. However, during the last thirty years, states, tribes and the United States have increasingly turned to negotiated settlement as the preferred method of dealing with water rights conflicts. To date, Congress has enacted 31 Indian water settlements. The Department is involved in 18 current settlement negotiations in 9 states as well as implementing 22 enacted settlements. To deal with tribal and state demand for settlements, the Department has developed an extensive Indian water rights settlement program led by the SIWRO.

### **DISCUSSION**

For more than three decades, the Office of the Secretary has directly guided policy on the settlement of Indian water rights claims, rather than delegating the task to any particular bureau or office. This approach allows the Secretary to manage the disparate Departmental interests implicated in Indian water settlements and facilitate effective communication within the Administration as a whole, with interested state and tribal governments, and, equally important, with the Congress, which must approve most settlements.

In 1993, the Department informally created the SIWRO to coordinate and manage the Department's Indian water rights settlement program. In January 2009, the office was formally

incorporated into the Departmental Manual. The primary functions of the SIWRO are coordinating communication and decision-making among the various interests of the bureaus and offices of the Department on matters concerning Indian water rights settlements and managing negotiation and implementation activities for policy consistency. The SIWRO is currently staffed by a Director, a Deputy Director, three policy analysts plus support staff.

Traditionally, as set forth in the Departmental Manual, the Director of the SIWRO reports directly to the Counselor to the Secretary assigned as the Department's policy lead on Indian water settlement matters. During the Obama Administration, the SIWRO reported to the Senior Counselor to the Deputy Secretary.

#### **NEXT STEPS**

The Secretary needs to determine to whom he wishes the Director of the SIWRO report.

#### **ATTACHMENT**

109 Departmental Manual 1.3.E(2)

**From:** Brubeck, Kimberly  
**To:** [Heather Swift](#); [Megan Bloomgren](#); [Paul Ross](#)  
**Subject:** BLM Daily Media Inquiry Wrap-up – March 16, 2017  
**Date:** Friday, March 17, 2017 12:34:41 AM

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BLM Daily Media Inquiry Wrap-up – March 16, 2017

Reuters- Central Coast Oil & Gas (CA): Reporter Steve Gorman requested information on the draft plan amendment for Central Coast oil and gas leasing and development currently out for public comment. He had specific questions about the preferred alternative, how many acres would be available for leasing and development, in which counties and how we address leasing in counties that have passed local ordinances that ban fracking. BLM-CA PA is working this query.

Post Register- Hiring Freeze (ID): Requested information on how the hiring freeze is affecting the hiring of the BLM seasonal workforce and firefighters, and how the BLM is dealing with vacant positions. BLM-ID PA Sarah Wheeler explained that the BLM is looking at doing internal work details or parceling out portions of the job to other positions until they can be filled, and that we are awaiting further guidance.

E&E- FY 18 Budget (WO): Reporter Scott Streater asked if the BLM had any concrete numbers on the FY 2018 budget following the release of the President's proposed budget. WO COMM AD Matthew Allen provided the following comment, "The President's budget blueprint prioritizes funding for the Bureau of Land Management and enables us to meet our multiple use mandate on America's public lands. Details of the budget are expected in the coming weeks, but the blueprint demonstrates the Administration's strong support for America's public lands."

NBC Colorado- Motorist Assist (CO): NBC affiliate KKCO contacted BLM-CO about an incident where a motorist who had been stranded east of Salida since Sunday was found by BLM staff. BLM-CO PA is working this query.

Buzzfeed- National Monuments (WO): Reporter Nidhi Subbaraman requested the number of national monuments that have been created in the U.S. so far. WO PA verified that there are currently 128 monuments in total.

Point Logic- Hydraulic Fracturing (WY): Reporter Annalisa Kraft requested comment on a motion filed with the U.S. Circuit Court of Appeals for the 10th District in WY to hold in abeyance the case regarding BLM's authority to draft hydraulic fracking rules on federal and tribal lands. Referred to DOI.

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Kimberly A. Brubeck  
Press Secretary/Spokesperson  
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**From:** Critchfield, Marshall  
**To:** [Brubeck, Kimberly](#)  
**Subject:** Re: BLM Daily Media Inquiry Wrap-up – March 20, 2017  
**Date:** Monday, March 20, 2017 5:24:21 PM

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Are we sure about that quote to the Great Falls Tribune?

On Mon, Mar 20, 2017 at 5:00 PM, Brubeck, Kimberly <kbrubeck@blm.gov> wrote:

BLM Daily Media Inquiry Wrap-up – March 20, 2017

Great Falls Tribune- Presidential Budget and Montana (MT/WO): Reporter Karl Puckett requested information on the potential impacts on the BLM in Montana regarding the President's proposed 2018 budget. BLM-WO PA provided the following comment: "The President's budget blueprint supports the Bureau of Land Management's multiple use mandate and prioritize energy and minerals development. Details of the budget are expected in the coming weeks, but the blueprint demonstrates the Administration's strong fiscal responsibility and support for America's public lands."

Science Magazine- Fracking (WO): Reporter Meredith Wadman requested comment on the 10th Circuit Court of Appeals ruling that the administration will no longer defend an Obama-era rule on fracking. Referred to DOI.

San Juan Record- Bears Ears NM Meetings (UT): Editor Bill Boyle requested confirmation of rumors of a public meeting for Bears Ears NM in March. BLM-UT PA Lance Porter explained that no public meetings were scheduled at this time, that possible venues for outreach were being looked into, that the BLM is awaiting guidance from the Secretary's office and that notice will be provided via local media when a date/location for a public meeting is decided.

Owyhee Avalanche- BLM Archaeologist Appointment (ID): Reporter Sean Cheney requested an interview with Owyhee FO Archaeologist Marissa King on her recent appointment to the Owyhee County Historic Preservation Commission. BLM-ID PA Mike Williamson facilitated the interview which focused on her work with the BLM, why she wanted to be on the commission, what she will bring to the role and her connection to the commission.

WyoFile- Coal Leasing in Wyoming (WY): Reporter Andrew Graham contacted BLM-WY PA with questions about coal leasing and the coal pause in effect from S.O. 3338. BLM-WY PA Brad Purdy talked about the six projects in WY that may be subject to the lease pause. Those projects are Rawhide (WYW83395), Black Butte (WYW6266), Belle Ayr (WYW180238), Antelope (WYW184599), Haystack (WYW159423), and Black Thunder (WYW172388), using the "Distilled Project Tables AP response" list released to the AP in February.

Freelance- Canyon Country Annual Budget ((UT): Reporter Steve Hogat is working on a story regarding this year's presidential budget for federal lands and requested information on the Annual Appropriated Operating Budget for the Canyon Country District. BLM-UT PA Mike Richardson pointed him to publicly available budget

information on the internet and referred him to DOI for any questions related to the proposed 2018 budget for the DOI.

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--

Marshall Critchfield

US Department of the Interior

Special Assistant to the Secretary  
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**From:** Brubeck, Kimberly  
**To:** [Heather Swift](#); [Megan Bloomgren](#); [Paul Ross](#)  
**Subject:** BLM Daily Media Inquiry Wrap-up – March 24, 2017  
**Date:** Friday, March 24, 2017 4:27:11 PM

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BLM Daily Media Inquiry Wrap-up – March 24, 2017

Santa Fe New Mexican- Oil and Gas Lease Sale (NM): Reporter Bruce Krasnow requested information on why the State of NM had not yet received lease payments from the September 4, 2016 O&G lease sale. He referenced a NM Legislative Finance Report that stated, "Monthly federal mineral leasing royalties were on par with amounts received a year ago; however, the state has yet to receive an expected \$69.9 million from federal Bureau of Land Management (BLM) lease sale revenues. As recently as one month ago, BLM reported this revenue should arrive by March; however, due to protests and an environmental assessment, the revenue may not be received until at least May or possibly later. If the revenue cannot be accrued to FY17, it will be a significant hit to reserve levels." BLM-NM PA Donna Hummel confirmed that the lease sale received two protests (one with over 1,200 pages) that were not resolved prior to the scheduled sale. She also explained that in cases like this, the BLM offers the leases but does not issue them until the protests are resolved which is why the state had yet to receive lease payments. BLM-NM anticipates resolving the protests by June 1. Publication is expected on Friday or Sunday.

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**From:** Kaster, Amanda  
**To:** [Lane, Michelle \(Energy\)](#)  
**Cc:** [Micah Chambers](#)  
**Subject:** BLM Law Enforcement  
**Date:** Wednesday, February 22, 2017 5:19:20 PM

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Hi Michelle,

I met with some of our BLM Law Enforcement team this afternoon, and they walked me through their authorities under FLPMA Sec. 303(c). Their authority is completely proprietary across all the land it manages, meaning that states and counties have the authority to enforce state laws on federal lands. BLM does have a number of MOUs with local law enforcement to offer additional patrols on federal lands in instances requiring supplemental coverage, such as special events or paleontological research. While there is some existing authority for BLM law enforcement to use their authorities on non-federal land, there is no appetite to actually use that authority due to liability concerns.

Let me know if you have any other questions about this.

Thanks,  
Amanda

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Amanda Kaster-Averill  
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**From:** Brubeck, Kimberly  
**To:** [BLM\\_WO\\_100](#); [BLM\\_WO\\_ADs](#); [Christine Bauserman](#); [Matthew Allen](#); [Patrick Wilkinson](#); [Lenhardt, Kristen](#)  
**Subject:** BLM Weekly Report 6-12 Mar Final  
**Date:** Tuesday, February 28, 2017 12:17:47 PM  
**Attachments:** [BLM Weekly Report March 6 -12, 2017 FINAL.docx](#)

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Attached and below is the BLM weekly report for March 6-12. If you have any questions, please don't hesitate to contact me.

Regards,  
Kimberly

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## WEEKLY REPORT

### DEPARTMENT OF THE INTERIOR/BUREAU OF LAND MANAGEMENT

**March 6 - 12, 2017**

#### **Week Ahead Announcements and Actions**

**Ongoing:** The trial continues in Las Vegas for several individuals charged with various crimes during the 2014 Gold Butte cattle gather. BLM Nevada communications are being coordinated with BLM Washington Office and with Department of Justice.

**Early March:** The BLM-Utah Salt Lake Field Office plans to issue a proposed decision and final Environmental Assessment and Finding of No Significant Impact on the Three Creeks Grazing Allotment Consolidation Proposal requested by the permittees. The decision would combine five BLM and two U.S. Forest Service allotments in Rich County, Utah, into a single allotment within the Bear River Watershed Sagebrush Focal Area.

**March 5 – 10:** The North American Wildlife and Natural Resources Conference will take place in Spokane, Washington. Peter Mali will represent the BLM National Conservation Lands Division at the Federal and Tribal Relations Committee meeting to provide an update on National Conservation Lands activities and work with state fish and game and other partners. BLM Speakers: Tentative Karen Kelleher, Acting Assistant Director or Steve Tryon, Deputy Assistant Director; Hal Hallett, Acting Division Chief Fish and Wildlife Conservation; Frank Quamen, Wildlife Program Lead; Kim Tripp, Threatened and Endangered Species Program Lead; Stephanie Carmen, Fisheries and Aquatics Program Lead; Nikki Moore, Acting Deputy Assistant Director, National Conservation Lands.

**Week of March 5 – 11:** Over the next few months, the Bureau of Land Management, Carson City District, will burn piles of tree limbs in the Pine Nut Mountains from tree thinning, weather permitting. On burn days, smoke may be visible to surrounding residents and travelers. Carson City District staff will ensure that neighbors are

aware of these operations in advance to mitigate concerns that could arise due to the Valley Fire that occurred in this area in October 2016, in which several homes burned following a prescribed fire conducted by Nevada Division of Forestry.

**Week of March 5 – 11:** BLM-Utah Moab Field Office intends to issue an EA for 15-day public comment analyzing a proposal from Dawson Geophysical Company to conduct a three-dimensional geophysical seismic survey in Grand County, Utah. The proposed project is located approximately 26 miles northwest of Moab, Utah, and encompasses approximately 38,700 acres.

**March 6:** The BLM-Wyoming Casper Field Office Field Manager, Tim Wilson, Supervisory Natural Resource Specialist, Amelia Pennington, and the High Plains District Manager, Stephanie Connolly, will meet with representatives of the Petroleum Association of Wyoming to discuss Applications for Permit to Drill and workloads in the CFO. Discussions of other oil and gas issues are likely to occur.

**March 7:** BLM-Wyoming Worland Field Office staff will participate in the Big Horn County Educational Extravaganza in Basin, Wyoming. The event is hosted by University of Wyoming Extension and provides information to the public about agriculture, range and horticulture topics. Event is open to the public and local media is likely to attend.

**March 7:** BLM-North Dakota Field Office signed decision record for the Falkirk federal coal lease-by-application (LBA). The Falkirk Mining Company submitted a LBA on November 13, 2013 for 320 acres and approximately 3.4 million tons of in-place mineable coal. The coal estate is owned 50 percent by the federal government and 50 percent privately. A public hearing on the Falkirk LBA (NDM 107039) Environmental Assessment (EA), fair market value, and maximum economic recovery was held on January 10, 2017. The scoping period ended January 23, 2017. Only one non-substantive comment was received during the scoping period which opposed issuing a coal lease. The EA is undergoing final review by BLM Montana/Dakotas, the Office of the Solicitor, and cooperating agencies.

**March 7:** Glasgow Weather Service informal visit to Lewistown Fire Dispatch to tour the facilities and meet the dispatchers and fire personnel. The two agencies are cooperators and work hand-in-hand during prescribed fire season in the spring/fall as well as the summer wildfire season. This routine interagency visit is part of an ongoing partnership in fire management.

**March 7 & 9:** Remaining public meetings for the BLM-Alaska Central Yukon resource management plan/environmental impact statement (RMP/EIS) will be held in Anaktuvuk Pass (rescheduled for March 7) and Nenana (March 9). The RMP/EIS will provide future direction for approximately 13 million acres of BLM-managed land in central and northern Alaska, including the Dalton Highway Corridor and central Yukon River watershed. The public input is on the preliminary alternatives concepts, and development of the RMP/EIS. Comments close March 17, 2017.

**March 8:** BLM-Wyoming recreation staff will give a presentation to the Wyoming Governor's Outdoor Recreation Taskforce in Cody, Wyoming. Lander Field Office

Outdoor Recreation Planner Jared Oakleaf and BLM-Wyoming State Recreation Lead Keith Brown will discuss a variety of topics including: BLM mission, RMP planning, outcome-focused management, special recreation management areas, recreation opportunities, special recreation permits and BLM's Connecting with Communities strategy. The U.S. Forest Service and the National Park Service will also present similar information. The primary audience will be other task force members, including Wyoming business leaders, other agencies and members of the public. Media can attend.

**March 8:** BLM-New Mexico Socorro Field Office Manager Mark Matthews and New Mexico State Office Project Manager Adrian Garcia will meet with staff from White Sands Missile Range and Southwestern Power for the monthly SunZia Project Technical Committee meeting at the White Sands Missile Range. The purpose of these monthly meetings is to craft and execute protocols and procedures to ensure operationally sensitive military test event data is not inadvertently garnered by the Project's equipment and infrastructure, as required by paragraph 3 of the Mitigation Proposal.

**March 8:** BLM-Wyoming Newcastle Field Office staff will participate in the 2017 Annual Operating Plan Meeting with WY State Forestry, U.S. Forest Service, Devils Tower National Monument, and Weston, Crook and Niobrara counties in Newcastle. The goal of the meeting is to prepare for the upcoming fire season with Federal, state and county fire partners. Agency fire managers and staff will attend, as well as the fire warden for each county. BLM will be represented by Kirk Strom, fire management officer for the High Plains District, and Miles Ellis, assistant fire management officer for the High Plains District. Public is not invited and media is not likely to attend. This meeting is non-controversial.

**March 8:** BLM-Wyoming Worland Field Office will host a meeting to discuss planning for the Alkali Creek Reservoir Project Environmental Impact Statement (EIS) with cooperating agencies. The State of Wyoming Water Development Commission proposes to construct a 294-acre reservoir and ancillary facilities including a portion of dam, expansion of existing ditches, access road, parking area, boat ramp and construction area across public land managed by the Worland Field Office. The water project is intended to support multiple-uses by providing for late season irrigation, flood attenuation and recreation. The proposal requires an EIS and the State of Wyoming, as the project proponent, is funding the third-party contractor to oversee the EIS process. Representatives of the following cooperating agencies were invited to attend the meeting: Big Horn County Commission, South Big Horn Conservation District, State of Wyoming, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency. The event is not open to the public or media.

**March 9:** BLM-Colorado is scheduled to hold an online oil and gas lease sale. Seventeen parcels, including approximately 16,450 acres, are currently under consideration for sale in the Tres Rios Field Office.

**March 9:** BLM-Colorado will host a meeting of the Rocky Mountain Resource Advisory Council in Cañon City, Colorado, to discuss preliminary alternatives for the

## Eastern Colorado Resource Management Plan.

**March 10:** BLM-Colorado Anasazi Heritage Center will present an exhibit featuring the Wetherill family, early archaeologists who explored and excavated cultural sites in the Four Corners area. The exhibit will showcase artifacts from the family's ventures and feature early recordings of Marietta Wetherill, who shared personal stories of working and trading near Dolores, Colorado.

**March 10:** BLM-Alaska Associate State Director Ted Murphy will provide a brief update to the council on access and navigable waters, followed by a question and answer period. The council will meet in Anchorage, AK. No press is expected.

**March 10 – 11:** Trainers for the 2017 Reno Rodeo Extreme Mustang Makeover will be picking up their wild horses from the Palomino Valley Center located north of Reno, Nevada. Due to the success of the 2016 marketing efforts, the BLM Nevada State Office will set up another media event during the pickup to encourage local media to follow trainers through the 100 day training process

**March 11:** Naturalization ceremony at Red Rock Canyon National Conservation Area, in the Las Vegas District. This annual event is organized by the U.S. Citizenship and Immigration Services.

**TBD:** The BLM-Idaho Challis Wild Horse Bait Trap gather begins in the Challis Wild Horse Herd Management Area (CHMA) and may continue through April 14. The CHMA is within a Sagebrush Focal Area and priority sage-grouse habitat. There are approximately 280 wild horses and the high end of Appropriate Management Level (AML) is 253. The operation will gather an estimated 150 wild horses, removing 50 of the horses aged four and under for the adoption program and returning 50 – 100 horses to the CHMA. It is not expected to be controversial as the team is using a more passive method of bait trapping – the first time this method has been used in the Challis Herd Management Area. The focus of this gather is to maintain a stable population through smaller removals and fertility control vaccines.

**TBD:** BLM-Utah anticipates issuing a Record of Decision on an Environmental Assessment of mixed trail use in the Recapture Canyon area, located east of Blanding and San Juan County. The ROD would lift an 1871-acre closure order in Recapture Canyon that was issued in 2007, and designate certain trails for all-terrain vehicle (ATV) use, while protecting important riparian and cultural areas. This area became the focus of national media attention in May 2014 when a group staged an unauthorized ATV ride to protest the closure of Recapture Canyon to those types of vehicles.

**TBD:** Senate Energy and Natural Resources majority staff have requested a meeting with the BLM, NPS, and FWS to discuss infrastructure project priorities. BLM participation TBD.

**TBD:** Senate Energy and Natural Resources majority staff have requested a meeting with the BLM Public Land Orders and implementation. BLM participation TBD.

## Media

***NBC Corpus Christie, TX- Oil & Gas Lease Sale (BLM-New Mexico)***: Reporter Carolyn Flores requested information on a protest to the sale of parcels in the April 2017 oil and gas lease sale which was submitted by the City of Corpus Christi. She wanted to know when the protest would be resolved, and that the leases would specify no surface occupancy. BLM-New Mexico is working this query.

***KIFI Channel 8- Wild Horses (BLM-Idaho)***: Reporter Karole Honas requested the dates of the next wild horse gather. BLM-Idaho public affairs replied that they would notify her when the dates were released.

***Craig Daily Press- Sand Wash Basin Herd (BLM-Colorado)***: Reporter requested information on the wild horses from the Sand Wash Basin Herd Management Area crossing into the adjacent road, Highway 834. BLM-Colorado public affairs stated that the horse population is higher than the appropriate management level; that as the horse population rises, so will dispersal; and that the BLM is discussing options to address the situation with the Colorado Department of Transportation, which has jurisdiction over right-of-way fencing and highway signs.

***National Geographic- Rimrock Draw Rockshelter (BLM-Oregon/Washington)***: An upcoming special featuring the BLM Burns District archaeological site Rimrock Draw Rockshelter entitled "The Journey of Mankind, Spark of Civilization" will air on March 6 at 9PM EST. It will feature Burns District Archeologist Patrick O'Grady from the University of Oregon Museum of Natural and Cultural History and Marge Helzer, Anthropology teacher at Lane Community College in Eugene, Oregon.

## 60 Day Look-Ahead

**March 13 – 16**: The American Petroleum Institute (API) Spring Meeting semi-annual meeting of industry members (technical and managers) will be held in Dallas. API is a leader in the development of petroleum and petrochemical equipment and operating standards covering topics that range from drill bits to environmental protection. Rich Estabrook/Petroleum Engineer, Ukiah Field Office, California, will represent BLM.

**March 13 – 16**: 2017 Abandoned Mines and Hazard Management and Restoration Program Workshop in Denver for State Program Leads, with participation from the BLM, DOI, DOE. The theme is Sustainable Communities, Engaging Partners and Accelerating Decisions covering program challenges and opportunities.

**March 13 – 17**: Sally Butts/Deputy Division Chief National Landscape Conservation System (NLCS) will travel to California to discuss implementation of the Desert Renewable Energy Conservation Plan and associated conservation lands, including budget and management of the area.

**March 13 – 18** – BLM-National Interagency Fire Center (NIFC) Meteorologist Edward Delgado will attend a Commission for Agricultural Meteorology conference in

Tirdentes, Brazil.

**March 14 – 16:** BLM-California will host public meetings to gather comments on the Draft Resource Management Plan Amendment and Draft Environmental Impact Statement for oil and gas leasing and development in the BLM's Central Coast Field Office. Meetings are tentatively scheduled for Hollister, Coalinga and Salinas, California.

**March 14:** BLM-Nevada will hold an online oil and gas lease sale for 67 parcels. Eureka County will offer two parcels (2,822 acres). Elko County will offer 65 parcels (113,128 acres).

**March 14 – 16:** BLM- Nevada Winnemucca District Office will host a course entitled "Expanded Dispatch Recorder" for the public which will be taught by Central Nevada Interagency Dispatch Center staff at the district office. Media outreach has begun to recruit applicants from the Winnemucca and Battle Mountain communities who will be compensated for their participation.

**March 15:** BLM-MT will begin a public scoping period for the environmental analysis of a proposal by American Prairie Reserve (APR) to reclassify grazing livestock to include stocking bison on the prairie grasslands of Northeast Montana. APR owns or leases more than 305,000 acres of deeded and public land in the area; 600 bison are already pastured on some of that land

**Mid-March:** The BLM-UT Price Field Office is planning for a second comment period, duration TBD, in March regarding the Deer Creek Coal Mine in Emery County, Utah. Total surface disturbance is estimated to be fewer than seven acres on U.S. Forest Service lands and five acres on BLM-managed public lands.

**March 16:** BLM-Eastern States and U.S. Forest Service will hold an initial public meeting on the Superior National Forest in Duluth, Minnesota to discuss the proposed withdrawal. Additional meetings in various regions of the state will be held during the 90 day period to gather information on the withdrawal proposal. BLM will participate with USFS as a cooperating agency in the preparation of their environmental impact statement (EIS) analyzing the withdrawal proposal.

**March 16:** BLM-California will implement the Section 106 Programmatic Agreement for the Desert Renewable Energy Conservation Plan with a committee meeting on mitigation scheduled in Palm Springs.

**March 16:** BLM-Montana will host a Western Montana Resource Advisory Council (RAC) meeting at the Butte Field Office. The agenda includes a discussion of "Public Access and the DNRC" by Ryan Weiss, Public Access Specialist for the MT Department of Natural Resources and Conservation.

**March 17:** BLM-Oregon/Washington Coos Bay District Woodward 11 will hold a commercial thin timber sale. The BLM has proposed the thinning treatment of 170 acres, yielding 3.3 million board feet.

**March 18:** BLM-New Mexico State Director Amy Lueders and Las Cruces District Manager Bill Childress will be meeting with Congressman Steve Pearce (R-2<sup>nd</sup> District) and Laura Riley with the New Mexico State Land Office per the Congressman's request to discuss land exchanges and issues pertaining to both agencies.

**March 18 (approx):** Deadline for Congress to respond to a proposed donation of private land to a wilderness area in New Mexico. ASLM had previously notified Congress that DOI intended to accept the gift of approximately 3,590 acres from The Wilderness Land Trust to add to the Sabinoso Wilderness, consistent with Section 6 of the Wilderness Act.

**March 18 – 22:** BLM-Nevada Arcata Field Office Interpretive Specialist Leiska Parrott will attend the National Association of Interpreters meeting in San Jose Del Cabo, Mexico.

**March 19:** BLM-California Arcata Field Office (King Range NCA) and its partner, the Lost Coast Interpretive Association, will offer a free public lecture on mountain lions and fishers. The speaker will be Phil Johnston, a wildlife expert working on the North Coast. The event in Garberville, California, is part of an annual winter lecture series.

**March 20 – 21:** The North Slope Science Initiative – Science Technical Advisory Panel spring meeting will be held in Fairbanks, Alaska, to discuss recommendations for the Oversight Group for the North Slope Science Initiative. BLM Alaska State Director Bud Cribley will represent the BLM.

**March 20 – 21:** The BLM will attend “Creating a National Recreation and Visitor Transportation Information Data Standard,” a two-day meeting hosted by the National Park Service. This will be a collaborative effort to work with other federal land management agencies to develop recreation and transportation data standards that feed into [recreation.gov](https://www.recreation.gov) and other systems to help improve the public's ability to plan trips on public lands.

**March 21:** Expected date that the BLM-Montana Lewistown Field Office would be prepared for a Director briefing for the Lewistown Draft Resource Management Plan/Draft Environmental Impact Statement in Montana.

**March 23:** BLM-Eastern States and BLM-Utah will hold online oil and gas lease sales. BLM-Utah will offer 4 parcels (4,174.46 acres) located in Canyon Country District. BLM-Eastern States will offer 21 parcels (1,186 acres) located in the Marietta Unit of the Wayne National Forest, Ohio.

**March 24 – 25:** BLM-California, the Desert Discovery Center, Hisperia Parks & Recreation and the Amargosa Conservancy will host approximately 30 people (20 youths from the Desert Discovery Center Jr. Ranger Program and 10 youths/parents from the Council of Mexican Federations (COFEM)) on a camping trip to Afton Canyon, located within the Mojave Trails National Monument. The trip is part of California State Parks FamCamp ([https://www.parks.ca.gov/?page\\_id=24915](https://www.parks.ca.gov/?page_id=24915)), and is the first time BLM-California has partnered with State Parks for a FamCamp experience. There will also be approximately 35 people from the Sierra Club participating in a stewardship event at the campground.

**March 24 – 27:** Red Rock Rendezvous, an annual event held mostly at Spring Mountain Ranch State Park, adjacent to the Red Rock National Conservation Area in Nevada.

**March 25 – 26:** BLM-Arizona Phoenix district office will host a booth at the Arizona Outdoor Expo in Phoenix, Arizona to promote Firewise information, provide OHV safety tips and route maps, and assist with Youth Day events.

**March 28 – April 2:** BLM archeologists Jeanne Moe, Joseph Keeney, and Robert King will attend the annual meeting of the Society for American Archaeology (SAA) in Vancouver, B.C. to develop and disseminate archaeology education materials to educators and state and federal partners.

**March 29 – 30:** BLM-Montana will host a Central Montana Resource Advisory Council (RAC) meeting at the Cottonwood Inn in Glasgow, Montana. The agenda includes updates on the Sweet Grass Hills Mineral Withdrawal, the environmental assessment for the American Prairie Reserve (APR) bison conversion proposal, and Keystone Pipeline.

**March 30:** The 90-day public comment period ends for the Draft Environmental Impact Statement for the Sagebrush Focal Area Proposed Mineral Withdrawal. The public comment period was coordinated by the Department of the Interior and included several open houses in various states. Idaho Governor Butch Otter requested a 120-day extension. The request is currently under consideration. The BLM has not officially responded.

**March 31:** BLM to issue the Boardman to Hemingway Record of Decision (ROD). The Biological Opinion (BO), which is being drafted by the National Marine Fisheries Service, is a necessary precursor to the ROD. The BO is targeted for completion on February 28. Oregon Plan amendments are being handled concurrently and that decision will be issued simultaneously with the ROD for the Environmental Impact Statement (EIS) and Approval to issue a grant.

**April:** BLM-Montana will begin decommissioning roads in the Upper Missouri River Breaks National Monument in April. Decommissioning consists primarily of installing road signs on roads identified as closed in the Upper Missouri River Breaks National Monument RMP. This is an ongoing process in accordance with Upper Missouri River

Breaks National Monument Record of Decision and Approved Resource Management Plan of January 2009. The travel plan was completed during the RMP process, utilizing the Bureau's road terminology in place in 2006.

**April:** BLM-California Ukiah Field Office will begin a 30-day scoping period for a programmatic environmental assessment for special recreation permits in the Point Arena Stornetta Unit of the California Coastal National Monument to establish locations, time periods and uses permissible for special recreation permits and commercial filming permits within the Monument unit in early April. The permits are needed to manage high public demand for events, as well as commercial filming, on the 1,665 acres of the unit. Public meetings dates and locations will be announced as needed, with project wrap up projected from mid-to-late summer 2017.

**April 1:** BLM-California dedication ceremony for the Luke Sheehy Memorial Fitness Park. The park is located in the BLM's Swasey Recreation Area, near Redding Point, CA, and was built in honor of Luke Sheehy, a smokejumper and former BLM hotshot firefighter, who died in the line of duty.

**April 4 – 6:** BLM-Nevada will hold an annual meeting of its three Resource Advisory Councils (Tri-RAC) in Elko, NV.

**April 4 – 5 and 11 – 12:** BLM-Nevada will hold open house meetings for the Piute-Eldorado Valley Area of Critical Environmental Concern (ACEC) Management Plan. The meetings will be held at the Boulder City Library, Searchlight Community Center, Clark County Library and Laughlin Town Hall to discuss the ACEC Management Plan and subsequent Environmental Assessment. Funding from mitigation fees in Dry Lake Solar Energy Zone north of Las Vegas is funding the plan, Environmental Assessment and restoration actions.

**April 10 – 13:** Ron Dunton, Assistant Director of Fire and Aviation, and Jolie Pollett, Division Chief of Planning and Fuels Management at the National Interagency Fire Center, will travel to Winnipeg, Canada to participate in the Canadian Wildland Fire Community's National Forum on Gender and Diversity Issues.

**April 11 & 19:** BLM-New Mexico Deputy State Director Sheila Mallory will conduct outreach with oil and gas producers in Roswell and Farmington regarding Onshore Orders 3, 4, and 5. Meetings will take place at the Roswell Convention and Civic Center and the Farmington Courtyard Marriott.

**Mid-April:** The Dixie Meadows Geothermal Utilization Project Environmental Assessment (EA) is currently being prepared for public review by the contractor. It is expected to go out for a 30-day public comment and review period in early March. The project area consists of approximately 22,021 acres of public land. The project proponent (Ormat) seeks approval to drill several types of wells (temperature gradient wells, test observation wells, and production wells) at up to 20 specific locations about 75 miles northeast of the City of Fallon, Nevada, in Churchill County, within the BLM's Carson City District.

**April 21:** Josh Chase, Acting Manager of the Upper Missouri River Breaks National

Monument, and Zane Fulbright, archaeologist, will meet with the new Tribal Archaeologist and Tribal Historical Preservation Officer for the Chippewa Cree on April 21 in Havre, Montana. They will discuss BLM's annual project list for the UMRBNM and North Central Montana District. This is a routine meeting to which the public and media have not been invited.

**April 21:** The 5th Annual Sharing Trails Education Day for central Montana sixth grade students is scheduled for April 21, 2017, at the Fergus County Fair Grounds in Lewistown. Sharing Trails Education Day includes presentations from BLM and public land user groups such as Backcountry Horsemen, OHV users, and County Search and Rescue. More than 475 students have attended since the program began.

**April 26:** Meetings will begin on Casa Diablo IV groundwater monitoring and response implementation coordination with Ormat Technologies Inc., Mammoth Community Water District, U.S. Geological Survey, Inyo National Forest and Great Basin Unified Air Pollution Control District regarding the Casa Diablo IV geothermal development project. Sen. Dianne Feinstein and Rep. Paul Cook have expressed interest in the project. Ormat is a provider of alternative and renewable energy technology based in Reno, NV. An August 2nd meeting will be held following the Mono County Long Valley Hydrologic Advisory Committee meeting.

**April 26-28:** BLM wilderness program lead Bob Wick has been invited to speak at the Outdoor Writers Association of California's annual conference in Bishop, California. He will discuss the National Conservation Lands and outdoor recreation opportunities.

**TBD:** BLM-Alaska is working with the Alaska Industrial Development and Export Authority on a "statement of work" for third-party contractor assistance with the National Environmental Protection Act process for the Ambler Road project. The project would provide an all-season access road to promote exploration, development, and production of mineral resources in the Ambler mineral belt in the Kobuk Valley of northwest Alaska. The BLM is the lead for the environmental impact statement.

**Spring 2017:** The BLM-Idaho Bruneau and Owyhee field offices will hold joint public scoping meetings for the Canyonlands West (1,102 miles of routes) and Grand View (902 miles of routes) sub-regions. The Field Offices plan to issue an Environmental Assessment for public comment in fall 2017.

**Summer 2017:** A lands with wilderness characteristics inventory and monitoring Indefinite Delivery and Indefinite Quantity Contract (IDIQ) is being developed for technical services for NGOs (including youth organizations) to conduct inventory and monitoring on National Conservation Lands in support of policies and performance measures.

**Legal**

N/A

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**WEEKLY REPORT**  
**DEPARTMENT OF THE INTERIOR/BUREAU OF LAND MANAGEMENT**  
**March 6 - 12, 2017**

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**March 5 – 10:** The North American Wildlife and Natural Resources Conference will take place in Spokane, Washington. Peter Mali will represent the BLM National Conservation Lands Division at the Federal and Tribal Relations Committee meeting to provide an update on National Conservation Lands activities and work with state fish and game and other partners. BLM Speakers: Tentative Karen Kelleher, Acting Assistant Director or Steve Tryon, Deputy Assistant Director; Hal Hallett, Acting Division Chief Fish and Wildlife Conservation; Frank Quamen, Wildlife Program Lead; Kim Tripp, Threatened and Endangered Species Program Lead; Stephanie Carmen, Fisheries and Aquatics Program Lead; Nikki Moore, Acting Deputy Assistant Director, National Conservation Lands.

**Week of March 5 – 11:** Over the next few months, the Bureau of Land Management, Carson City District, will burn piles of tree limbs in the Pine Nut Mountains from tree thinning, weather permitting. On burn days, smoke may be visible to surrounding residents and travelers. Carson City District staff will ensure that neighbors are aware of these operations in advance to mitigate concerns that could arise due to the Valley Fire that occurred in this area in October 2016, in which several homes burned following a prescribed fire conducted by Nevada Division of Forestry.

**Week of March 5 – 11:** BLM-Utah Moab Field Office intends to issue an EA for 15-day public comment analyzing a proposal from Dawson Geophysical Company to conduct a three-dimensional geophysical seismic survey in Grand County, Utah. The proposed project is located approximately 26 miles northwest of Moab, Utah, and encompasses approximately 38,700 acres.

**March 6:** The BLM-Wyoming Casper Field Office Field Manager, Tim Wilson, Supervisory Natural Resource Specialist, Amelia Pennington, and the High Plains District Manager, Stephanie Connolly, will meet with representatives of the Petroleum Association of Wyoming to discuss Applications for Permit to Drill and workloads in the CFO. Discussions of other oil and gas issues are likely to occur.

**March 7:** BLM-Wyoming Worland Field Office staff will participate in the Big Horn County Educational Extravaganza in Basin, Wyoming. The event is hosted by University of Wyoming Extension and provides information to the public about agriculture, range and horticulture topics. Event is open to the public and local media is likely to attend.

**March 7:** BLM-North Dakota Field Office signed decision record for the Falkirk federal coal lease-by-application (LBA). The Falkirk Mining Company submitted a LBA on November 13, 2013 for 320 acres and approximately 3.4 million tons of in-place mineable coal. The coal estate is owned 50 percent by the

federal government and 50 percent privately. A public hearing on the Falkirk LBA (NDM 107039) Environmental Assessment (EA), fair market value, and maximum economic recovery was held on January 10, 2017. The scoping period ended January 23, 2017. Only one non-substantive comment was received during the scoping period which opposed issuing a coal lease. The EA is undergoing final review by BLM Montana/Dakotas, the Office of the Solicitor, and cooperating agencies.

**March 7:** Glasgow Weather Service informal visit to Lewistown Fire Dispatch to tour the facilities and meet the dispatchers and fire personnel. The two agencies are cooperators and work hand-in-hand during prescribed fire season in the spring/fall as well as the summer wildfire season. This routine interagency visit is part of an ongoing partnership in fire management.

**March 7 & 9:** Remaining public meetings for the BLM-Alaska Central Yukon resource management plan/environmental impact statement (RMP/EIS) will be held in Anaktuvuk Pass (rescheduled for March 7) and Nenana (March 9). The RMP/EIS will provide future direction for approximately 13 million acres of BLM-managed land in central and northern Alaska, including the Dalton Highway Corridor and central Yukon River watershed. The public input is on the preliminary alternatives concepts, and development of the RMP/EIS. Comments close March 17, 2017.

**March 8:** BLM-Wyoming recreation staff will give a presentation to the Wyoming Governor's Outdoor Recreation Taskforce in Cody, Wyoming. Lander Field Office Outdoor Recreation Planner Jared Oakleaf and BLM-Wyoming State Recreation Lead Keith Brown will discuss a variety of topics including: BLM mission, RMP planning, outcome-focused management, special recreation management areas, recreation opportunities, special recreation permits and BLM's Connecting with Communities strategy. The U.S. Forest Service and the National Park Service will also present similar information. The primary audience will be other task force members, including Wyoming business leaders, other agencies and members of the public. Media can attend.

**March 8:** BLM-New Mexico Socorro Field Office Manager Mark Matthews and New Mexico State Office Project Manager Adrian Garcia will meet with staff from White Sands Missile Range and Southwestern Power for the monthly SunZia Project Technical Committee meeting at the White Sands Missile Range. The purpose of these monthly meetings is to craft and execute protocols and procedures to ensure operationally sensitive military test event data is not inadvertently garnered by the Project's equipment and infrastructure, as required by paragraph 3 of the Mitigation Proposal.

**March 8:** BLM-Wyoming Newcastle Field Office staff will participate in the 2017 Annual Operating Plan Meeting with WY State Forestry, U.S. Forest Service, Devils Tower National Monument, and Weston, Crook and Niobrara counties in Newcastle. The goal of the meeting is to prepare for the upcoming fire season with Federal, state and county fire partners. Agency fire managers and staff will attend, as well as the fire warden for each county. BLM will be represented by Kirk Strom, fire management officer for the High Plains District, and Miles Ellis, assistant fire management officer for the High Plains District. Public is not invited and media is not likely to attend. This meeting is non-controversial.

**March 8:** BLM-Wyoming Worland Field Office will host a meeting to discuss planning for the Alkali Creek Reservoir Project Environmental Impact Statement (EIS) with cooperating agencies. The State of Wyoming Water Development Commission proposes to construct a 294-acre reservoir and ancillary facilities including a portion of dam, expansion of existing ditches, access road, parking area, boat ramp and construction area across public land managed by the Worland Field Office. The water project is intended to support multiple-uses by providing for late season irrigation, flood attenuation and recreation. The proposal requires an EIS and the State of Wyoming, as the project proponent, is funding the third-party contractor to oversee the EIS process. Representatives of the following cooperating agencies were

invited to attend the meeting: Big Horn County Commission, South Big Horn Conservation District, State of Wyoming, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency. The event is not open to the public or media.

**March 9:** BLM-Colorado is scheduled to hold an online oil and gas lease sale. Seventeen parcels, including approximately 16,450 acres, are currently under consideration for sale in the Tres Rios Field Office.

**March 9:** BLM-Colorado will host a meeting of the Rocky Mountain Resource Advisory Council in Cañon City, Colorado, to discuss preliminary alternatives for the Eastern Colorado Resource Management Plan.

**March 10:** BLM-Colorado Anasazi Heritage Center will present an exhibit featuring the Wetherill family, early archaeologists who explored and excavated cultural sites in the Four Corners area. The exhibit will showcase artifacts from the family's ventures and feature early recordings of Marietta Wetherill, who shared personal stories of working and trading near Dolores, Colorado.

**March 10:** BLM-Alaska Associate State Director Ted Murphy will provide a brief update to the council on access and navigable waters, followed by a question and answer period. The council will meet in Anchorage, AK. No press is expected.

**March 10 – 11:** Trainers for the 2017 Reno Rodeo Extreme Mustang Makeover will be picking up their wild horses from the Palomino Valley Center located north of Reno, Nevada. Due to the success of the 2016 marketing efforts, the BLM Nevada State Office will set up another media event during the pickup to encourage local media to follow trainers through the 100 day training process

**March 11:** Naturalization ceremony at Red Rock Canyon National Conservation Area, in the Las Vegas District. This annual event is organized by the U.S. Citizenship and Immigration Services.

**TBD:** The BLM-Idaho Challis Wild Horse Bait Trap gather begins in the Challis Wild Horse Herd Management Area (CHMA) and may continue through April 14. The CHMA is within a Sagebrush Focal Area and priority sage-grouse habitat. There are approximately 280 wild horses and the high end of Appropriate Management Level (AML) is 253. The operation will gather an estimated 150 wild horses, removing 50 of the horses aged four and under for the adoption program and returning 50 – 100 horses to the CHMA. It is not expected to be controversial as the team is using a more passive method of bait trapping – the first time this method has been used in the Challis Herd Management Area. The focus of this gather is to maintain a stable population through smaller removals and fertility control vaccines.

**TBD:** BLM-Utah anticipates issuing a Record of Decision on an Environmental Assessment of mixed trail use in the Recapture Canyon area, located east of Blanding and San Juan County. The ROD would lift an 1871-acre closure order in Recapture Canyon that was issued in 2007, and designate certain trails for all-terrain vehicle (ATV) use, while protecting important riparian and cultural areas. This area became the focus of national media attention in May 2014 when a group staged an unauthorized ATV ride to protest the closure of Recapture Canyon to those types of vehicles.

**TBD:** Senate Energy and Natural Resources majority staff have requested a meeting with the BLM, NPS, and FWS to discuss infrastructure project priorities. BLM participation TBD.

**TBD:** Senate Energy and Natural Resources majority staff have requested a meeting with the BLM Public Land Orders and implementation. BLM participation TBD.

## **Media**

***NBC Corpus Christie, TX- Oil & Gas Lease Sale (BLM-New Mexico):*** Reporter Carolyn Flores requested information on a protest to the sale of parcels in the April 2017 oil and gas lease sale which was submitted by the City of Corpus Christi. She wanted to know when the protest would be resolved, and that the leases would specify no surface occupancy. BLM-New Mexico is working this query.

***KIFI Channel 8- Wild Horses (BLM-Idaho):*** Reporter Karole Honas requested the dates of the next wild horse gather. BLM-Idaho public affairs replied that they would notify her when the dates were released.

***Craig Daily Press- Sand Wash Basin Herd (BLM-Colorado):*** Reporter requested information on the wild horses from the Sand Wash Basin Herd Management Area crossing into the adjacent road, Highway 834. BLM-Colorado public affairs stated that the horse population is higher than the appropriate management level; that as the horse population rises, so will dispersal; and that the BLM is discussing options to address the situation with the Colorado Department of Transportation, which has jurisdiction over right-of-way fencing and highway signs.

***National Geographic- Rimrock Draw Rockshelter (BLM-Oregon/Washington):*** An upcoming special featuring the BLM Burns District archaeological site Rimrock Draw Rockshelter entitled “The Journey of Mankind, Spark of Civilization” will air on March 6 at 9PM EST. It will feature Burns District Archeologist Patrick O'Grady from the University of Oregon Museum of Natural and Cultural History and Marge Helzer, Anthropology teacher at Lane Community College in Eugene, Oregon.

## **60 Day Look-Ahead**

**March 13 – 16:** The American Petroleum Institute (API) Spring Meeting semi-annual meeting of industry members (technical and managers) will be held in Dallas. API is a leader in the development of petroleum and petrochemical equipment and operating standards covering topics that range from drill bits to environmental protection. Rich Estabrook/Petroleum Engineer, Ukiah Field Office, California, will represent BLM.

**March 13 – 16:** 2017 Abandoned Mines and Hazard Management and Restoration Program Workshop in Denver for State Program Leads, with participation from the BLM, DOI, DOE. The theme is Sustainable Communities, Engaging Partners and Accelerating Decisions covering program challenges and opportunities.

**March 13 – 17:** Sally Butts/Deputy Division Chief National Landscape Conservation System (NLCS) will travel to California to discuss implementation of the Desert Renewable Energy Conservation Plan and associated conservation lands, including budget and management of the area.

**March 13 – 18 –** BLM-National Interagency Fire Center (NIFC) Meteorologist Edward Delgado will attend a Commission for Agricultural Meteorology conference in Tirdentes, Brazil.

**March 14 – 16:** BLM-California will host public meetings to gather comments on the Draft Resource Management Plan Amendment and Draft Environmental Impact Statement for oil and gas leasing and development in the BLM's Central Coast Field Office. Meetings are tentatively scheduled for Hollister, Coalinga and Salinas, California.

**March 14:** BLM-Nevada will hold an online oil and gas lease sale for 67 parcels. Eureka County will offer two parcels (2,822 acres). Elko County will offer 65 parcels (113,128 acres).

**March 14 – 16:** BLM- Nevada Winnemucca District Office will host a course entitled “Expanded Dispatch Recorder” for the public which will be taught by Central Nevada Interagency Dispatch Center staff at the district office. Media outreach has begun to recruit applicants from the Winnemucca and Battle Mountain communities who will be compensated for their participation.

**March 15:** BLM-MT will begin a public scoping period for the environmental analysis of a proposal by American Prairie Reserve (APR) to reclassify grazing livestock to include stocking bison on the prairie grasslands of Northeast Montana. APR owns or leases more than 305,000 acres of deeded and public land in the area; 600 bison are already pastured on some of that land

**Mid-March:** The BLM-UT Price Field Office is planning for a second comment period, duration TBD, in March regarding the Deer Creek Coal Mine in Emery County, Utah. Total surface disturbance is estimated to be fewer than seven acres on U.S. Forest Service lands and five acres on BLM-managed public lands.

**March 16:** BLM-Eastern States and U.S. Forest Service will hold an initial public meeting on the Superior National Forest in Duluth, Minnesota to discuss the proposed withdrawal. Additional meetings in various regions of the state will be held during the 90 day period to gather information on the withdrawal proposal. BLM will participate with USFS as a cooperating agency in the preparation of their environmental impact statement (EIS) analyzing the withdrawal proposal.

**March 16:** BLM-California will implement the Section 106 Programmatic Agreement for the Desert Renewable Energy Conservation Plan with a committee meeting on mitigation scheduled in Palm Springs.

**March 16:** BLM-Montana will host a Western Montana Resource Advisory Council (RAC) meeting at the Butte Field Office. The agenda includes a discussion of "Public Access and the DNRC" by Ryan Weiss, Public Access Specialist for the MT Department of Natural Resources and Conservation.

**March 17:** BLM-Oregon/Washington Coos Bay District Woodward 11 will hold a commercial thin timber sale. The BLM has proposed the thinning treatment of 170 acres, yielding 3.3 million board feet.

**March 18:** BLM-New Mexico State Director Amy Lueders and Las Cruces District Manager Bill Childress will be meeting with Congressman Steve Pearce (R-2<sup>nd</sup> District) and Laura Riley with the New Mexico State Land Office per the Congressman’s request to discuss land exchanges and issues pertaining to both agencies.

**March 18 (approx):** Deadline for Congress to respond to a proposed donation of private land to a wilderness area in New Mexico. ASLM had previously notified Congress that DOI intended to accept the gift of approximately 3,590 acres from The Wilderness Land Trust to add to the Sabinoso Wilderness, consistent with Section 6 of the Wilderness Act.

**March 18 – 22:** BLM-Nevada Arcata Field Office Interpretive Specialist Leiska Parrott will attend the National Association of Interpreters meeting in San Jose Del Cabo, Mexico.

**March 19:** BLM-California Arcata Field Office (King Range NCA) and its partner, the Lost Coast Interpretive Association, will offer a free public lecture on mountain lions and fishers. The speaker will be Phil Johnston, a wildlife expert working on the North Coast. The event in Garberville, California, is part of an annual winter lecture series.

**March 20 – 21:** The North Slope Science Initiative – Science Technical Advisory Panel spring meeting will be held in Fairbanks, Alaska, to discuss recommendations for the Oversight Group for the North Slope Science Initiative. BLM Alaska State Director Bud Cribley will represent the BLM.

**March 20 – 21:** The BLM will attend “Creating a National Recreation and Visitor Transportation Information Data Standard,” a two-day meeting hosted by the National Park Service. This will be a collaborative effort to work with other federal land management agencies to develop recreation and transportation data standards that feed into recreation.gov and other systems to help improve the public’s ability to plan trips on public lands.

**March 21:** Expected date that the BLM-Montana Lewistown Field Office would be prepared for a Director briefing for the Lewistown Draft Resource Management Plan/Draft Environmental Impact Statement in Montana.

**March 23:** BLM-Eastern States and BLM-Utah will hold online oil and gas lease sales. BLM-Utah will offer 4 parcels (4,174.46 acres) located in Canyon Country District. BLM-Eastern States will offer 21 parcels (1,186 acres) located in the Marietta Unit of the Wayne National Forest, Ohio.

**March 24 – 25:** BLM-California, the Desert Discovery Center, Hisperia Parks & Recreation and the Amargosa Conservancy will host approximately 30 people (20 youths from the Desert Discovery Center Jr. Ranger Program and 10 youths/parents from the Council of Mexican Federations (COFEM)) on a camping trip to Afton Canyon, located within the Mojave Trails National Monument. The trip is part of California State Parks FamCamp ([https://www.parks.ca.gov/?page\\_id=24915](https://www.parks.ca.gov/?page_id=24915)), and is the first time BLM-California has partnered with State Parks for a FamCamp experience. There will also be approximately 35 people from the Sierra Club participating in a stewardship event at the campground.

**March 24 – 27:** Red Rock Rendezvous, an annual event held mostly at Spring Mountain Ranch State Park, adjacent to the Red Rock National Conservation Area in Nevada.

**March 25 – 26:** BLM-Arizona Phoenix district office will host a booth at the Arizona Outdoor Expo in Phoenix, Arizona to promote Firewise information, provide OHV safety tips and route maps, and assist with Youth Day events.

**March 28 – April 2:** BLM archeologists Jeanne Moe, Joseph Keeney, and Robert King will attend the annual meeting of the Society for American Archaeology (SAA) in Vancouver, B.C. to develop and disseminate archaeology education materials to educators and state and federal partners.

**March 29 – 30:** BLM-Montana will host a Central Montana Resource Advisory Council (RAC) meeting at the Cottonwood Inn in Glasgow, Montana. The agenda includes updates on the Sweet Grass Hills Mineral Withdrawal, the environmental assessment for the American Prairie Reserve (APR) bison conversion proposal, and Keystone Pipeline.

**March 30:** The 90-day public comment period ends for the Draft Environmental Impact Statement for the Sagebrush Focal Area Proposed Mineral Withdrawal. The public comment period was coordinated by the Department of the Interior and included several open houses in various states. Idaho Governor Butch Otter requested a 120-day extension. The request is currently under consideration. The BLM has not officially responded.

**March 31:** BLM to issue the Boardman to Hemingway Record of Decision (ROD). The Biological Opinion (BO), which is being drafted by the National Marine Fisheries Service, is a necessary precursor to the ROD. The BO is targeted for completion on February 28. Oregon Plan amendments are being

handled concurrently and that decision will be issued simultaneously with the ROD for the Environmental Impact Statement (EIS) and Approval to issue a grant.

**April:** BLM-Montana will begin decommissioning roads in the Upper Missouri River Breaks National Monument in April. Decommissioning consists primarily of installing road signs on roads identified as closed in the Upper Missouri River Breaks National Monument RMP. This is an ongoing process in accordance with Upper Missouri River Breaks National Monument Record of Decision and Approved Resource Management Plan of January 2009. The travel plan was completed during the RMP process, utilizing the Bureau's road terminology in place in 2006.

**April:** BLM-California Ukiah Field Office will begin a 30-day scoping period for a programmatic environmental assessment for special recreation permits in the Point Arena Stornetta Unit of the California Coastal National Monument to establish locations, time periods and uses permissible for special recreation permits and commercial filming permits within the Monument unit in early April. The permits are needed to manage high public demand for events, as well as commercial filming, on the 1,665 acres of the unit. Public meetings dates and locations will be announced as needed, with project wrap up projected from mid-to-late summer 2017.

**April 1:** BLM-California dedication ceremony for the Luke Sheehy Memorial Fitness Park. The park is located in the BLM's Swasey Recreation Area, near Redding Point, CA, and was built in honor of Luke Sheehy, a smokejumper and former BLM hotshot firefighter, who died in the line of duty.

**April 4 – 6:** BLM-Nevada will hold an annual meeting of its three Resource Advisory Councils (Tri-RAC) in Elko, NV.

**April 4 – 5 and 11 – 12:** BLM-Nevada will hold open house meetings for the Piute-Eldorado Valley Area of Critical Environmental Concern (ACEC) Management Plan. The meetings will be held at the Boulder City Library, Searchlight Community Center, Clark County Library and Laughlin Town Hall to discuss the ACEC Management Plan and subsequent Environmental Assessment. Funding from mitigation fees in Dry Lake Solar Energy Zone north of Las Vegas is funding the plan, Environmental Assessment and restoration actions.

**April 10 – 13:** Ron Dunton, Assistant Director of Fire and Aviation, and Jolie Pollett, Division Chief of Planning and Fuels Management at the National Interagency Fire Center, will travel to Winnipeg, Canada to participate in the Canadian Wildland Fire Community's National Forum on Gender and Diversity Issues.

**April 11 & 19:** BLM-New Mexico Deputy State Director Sheila Mallory will conduct outreach with oil and gas producers in Roswell and Farmington regarding Onshore Orders 3, 4, and 5. Meetings will take place at the Roswell Convention and Civic Center and the Farmington Courtyard Marriott.

**Mid-April:** The Dixie Meadows Geothermal Utilization Project Environmental Assessment (EA) is currently being prepared for public review by the contractor. It is expected to go out for a 30-day public comment and review period in early March. The project area consists of approximately 22,021 acres of public land. The project proponent (Ormat) seeks approval to drill several types of wells (temperature gradient wells, test observation wells, and production wells) at up to 20 specific locations about 75 miles northeast of the City of Fallon, Nevada, in Churchill County, within the BLM's Carson City District.

**April 21:** Josh Chase, Acting Manager of the Upper Missouri River Breaks National Monument, and Zane Fulbright, archaeologist, will meet with the new Tribal Archaeologist and Tribal Historical Preservation Officer for the Chippewa Cree on April 21 in Havre, Montana. They will discuss BLM's

annual project list for the UMRBNM and North Central Montana District. This is a routine meeting to which the public and media have not been invited.

**April 21:** The 5th Annual Sharing Trails Education Day for central Montana sixth grade students is scheduled for April 21, 2017, at the Fergus County Fair Grounds in Lewistown. Sharing Trails Education Day includes presentations from BLM and public land user groups such as Backcountry Horsemen, OHV users, and County Search and Rescue. More than 475 students have attended since the program began.

**April 26:** Meetings will begin on Casa Diablo IV groundwater monitoring and response implementation coordination with Ormat Technologies Inc., Mammoth Community Water District, U.S. Geological Survey, Inyo National Forest and Great Basin Unified Air Pollution Control District regarding the Casa Diablo IV geothermal development project. Sen. Dianne Feinstein and Rep. Paul Cook have expressed interest in the project. Ormat is a provider of alternative and renewable energy technology based in Reno, NV. An August 2nd meeting will be held following the Mono County Long Valley Hydrologic Advisory Committee meeting.

**April 26-28:** BLM wilderness program lead Bob Wick has been invited to speak at the Outdoor Writers Association of California's annual conference in Bishop, California. He will discuss the National Conservation Lands and outdoor recreation opportunities.

**TBD:** BLM-Alaska is working with the Alaska Industrial Development and Export Authority on a "statement of work" for third-party contractor assistance with the National Environmental Protection Act process for the Ambler Road project. The project would provide an all-season access road to promote exploration, development, and production of mineral resources in the Ambler mineral belt in the Kobuk Valley of northwest Alaska. The BLM is the lead for the environmental impact statement.

**Spring 2017:** The BLM-Idaho Bruneau and Owyhee field offices will hold joint public scoping meetings for the Canyonlands West (1,102 miles of routes) and Grand View (902 miles of routes) sub-regions. The Field Offices plan to issue an Environmental Assessment for public comment in fall 2017.

**Summer 2017:** A lands with wilderness characteristics inventory and monitoring Indefinite Delivery and Indefinite Quantity Contract (IDIQ) is being developed for technical services for NGOs (including youth organizations) to conduct inventory and monitoring on National Conservation Lands in support of policies and performance measures.

### **Legal**

N/A

**From:** Bloomgren, Megan  
**To:** [Quimby, Frank](#)  
**Cc:** [Swift, Heather](#)  
**Subject:** Re: BOEM issued this Note to Stakeholders this afternoon...  
**Date:** Friday, February 17, 2017 5:02:34 PM

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good with me - Connie came by to discuss.  
thanks Frank - have a nice weekend

On Fri, Feb 17, 2017 at 5:00 PM, Quimby, Frank <[frank\\_quimby@ios.doi.gov](mailto:frank_quimby@ios.doi.gov)> wrote:

its pretty wonky but basically says they are going to work with companies that have to provide financial assurance to cover the costs of decommissioning offshore rigs so that companies and BOEM can have more time to find a workable solution that doesn't impose severe financial hardships on oil and gas development companies that are the sole lease holders on these federal offshore leases. Earlier BOEM announcement had set a fast approaching deadline for these assurances.

BOEM Withdraws Sole Liability Orders

Further Review of Complex Financial Assurance Issues Warranted

02-17-2017

Contacts: Connie Gillette <<https://mail.google.com/mail/?view=cm&fs=1&tf=1&to=connie.gillette@boem.gov>>  
202-208-5387

The Bureau of Ocean Energy Management (BOEM) announced today that it will withdraw sole liability orders issued to Outer Continental Shelf (OCS) oil and gas lease and grant holders in December to allow time for the new Administration to review the complex financial assurance program. Additionally, any implementation issues associated with those orders will be discussed as part of the ongoing, six-month interactive process BOEM has initiated to gather input on other components of the Notice to Lessees (NTL) 2016-N01. However, BOEM may re-issue sole liability orders before the end of the six-month period if it determines there is a substantial risk of nonperformance of the interest holder's decommissioning liabilities.

While this Administration reaffirms the program's goal that the taxpayer should never have to shoulder any liability for decommissioning existing or future facilities on the OCS, and places a high priority on ensuring an effective financial assurance program is in place, it also acknowledges that financial assurance is a complex issue and welcomes continued industry engagement on this important issue.

In July 2016, after months of careful consideration and industry engagement, BOEM issued NTL 2016-N01 which detailed improved procedures to determine a lessee's ability to carry out its lease obligations - primarily the decommissioning of OCS facilities - and to make informed decisions about whether lessees should furnish additional security.

In December 2016, BOEM issued Orders to Provide Additional Security for sole liability properties. Sole liability properties are leases, rights-of-way, or rights of use and easements for which the holder is the only liable party, i.e., there are no co-lessees, operating rights owners and/or other grant holders, and no prior interest holders liable to meet the lease and/or grant obligations. This action reflects BOEM's continued assessment that sole liability properties represent the greatest programmatic risk to the American taxpayer.

On January 6, 2017, BOEM announced that it was extending the implementation timeline for NTL 2016-01 by an additional six months as to leases, rights-of-way and rights of use and easement for which there are co-lessees and/or predecessors in interest, except in circumstances in which BOEM determines there is a substantial risk of nonperformance of the interest holder's decommissioning liabilities. The extension allows an opportunity for additional time and conversation regarding issues that arise in the context of non-sole liability properties.

More information about the NTL can be found at: <http://www.boem.gov/Risk-Management/>  
<<https://www.boem.gov/Risk-Management/>> .

**From:** Chambers, Micah  
**To:** [Marino Thacker, Meghan \(Daines\)](mailto:Marino_Thacker_Meghan_(Daines)@daines.senate.gov)  
**Cc:** [Amanda Kaster](mailto:Amanda_Kaster@ios.doi.gov)  
**Subject:** Re: BOEM Release today  
**Date:** Monday, March 06, 2017 12:34:04 PM

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Thanks. Did you send BOEM info over already or should we? Just don't want to be redundant.

On Mon, Mar 6, 2017 at 12:31 PM, Marino Thacker, Meghan (Daines) <[Meghan\\_Thacker@daines.senate.gov](mailto: Meghan_Thacker@daines.senate.gov)> wrote:

Micah—here are LA office contacts:

Gillott, Chris (Cassidy) [Chris\\_Gillott@cassidy.senate.gov](mailto:Chris_Gillott@cassidy.senate.gov) Cassidy LD

Stanley, Chris (Kennedy) [Chris\\_Stanley@kennedy.senate.gov](mailto:Chris_Stanley@kennedy.senate.gov) Kennedy LD

Green, Geoffrey (Kennedy) [Geoffrey\\_Green@kennedy.senate.gov](mailto:Geoffrey_Green@kennedy.senate.gov) Kennedy Natural Resources LA

**From:** Chambers, Micah [mailto:[micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov)]  
**Sent:** Monday, March 6, 2017 12:13 PM  
**To:** Marino Thacker, Meghan (Daines) <[Meghan\\_Thacker@daines.senate.gov](mailto: Meghan_Thacker@daines.senate.gov)>  
**Cc:** Amanda Kaster <[amanda\\_kaster@ios.doi.gov](mailto:amanda_kaster@ios.doi.gov)>  
**Subject:** Fwd: BOEM Release today

Thought you might want to share this with your friends over in the Cassidy and Kennedy offices. Release going out shortly. I know know who is best POC within those offices but thought you might.

Micah

All - here's final release going out shortly.

Date: March 6, 2017

Contact: [Interior\\_Press@ios.doi.gov](mailto:Interior_Press@ios.doi.gov)

[Caryl Fagot BOEM \(504\) 736-2590](tel:(504)736-2590)

## **Secretary Zinke Announces Proposed 73-Million Acre Oil and Natural Gas Lease Sale for Gulf of Mexico**

*All available areas in federal waters will be offered  
in first region-wide sale under new Five Year Program*

WASHINGTON -- U.S. Secretary of the Interior Ryan Zinke today announced that the Department will offer 73 million acres offshore Texas, Louisiana, Mississippi, Alabama and Florida for oil and gas exploration and development. The proposed region-wide lease sale scheduled for August 16, 2017 would include all available unleased areas in federal waters of the Gulf of Mexico.

“Opening more federal lands and waters to oil and gas drilling is a pillar of President Trump’s plan to make the United States energy independent,” Secretary Zinke said. “The Gulf is a vital part of that strategy to spur economic opportunities for industry, states and local communities, to create jobs and home-grown energy and to reduce our dependence on foreign oil.”

Proposed Lease Sale 249, scheduled to be livestreamed from New Orleans, will be the first offshore sale under the new Outer Continental Shelf Oil and Gas Leasing Program for 2017-2022 (Five Year Program). Under this new program, ten region-wide lease sales are scheduled for the Gulf, where the resource potential and industry interest are high, and oil and gas infrastructure is well established. Two Gulf lease sales will be held each year and include all available blocks in the combined Western, Central, and Eastern Gulf of Mexico Planning Areas.

The estimated amount of resources projected to be developed as a result of the proposed region-wide lease sale ranges from 0.211 to 1.118 billion barrels of oil and from 0.547 to 4.424 trillion cubic feet of gas. The sale could potentially result in 1.2 to 4.2 percent of the forecasted cumulative OCS oil and gas activity in the Gulf of Mexico. Most of the activity (up to 83% of future production) of the proposed lease sale is expected to occur in the Central Planning Area.

Lease Sale 249 will include about 13,725 unleased blocks, located from three to 230 miles offshore, in the Gulf's Western, Central and Eastern planning areas in water depths ranging from nine to more than 11,115 feet (three to 3,400 meters). Excluded from the lease sale are blocks subject to the Congressional moratorium established by the [Gulf of Mexico Energy Security Act of 2006](#); blocks that are adjacent to or beyond the U.S. Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap; and whole blocks and partial blocks within the current boundary of the Flower Garden Banks National Marine Sanctuary.

“To promote responsible domestic energy production, the proposed terms of this sale have been carefully developed through extensive environmental analysis, public comment and consideration of the best scientific information available,” said Walter Cruickshank, the acting director of Interior’s Bureau of Ocean Energy Management (BOEM). “This will ensure both orderly resource development and protection of the environment.”

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###

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Micah Chambers

Special Assistant / Acting Director

Office of Congressional & Legislative Affairs

Office of the Secretary of the Interior

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Micah Chambers

Special Assistant / Acting Director

Office of Congressional & Legislative Affairs  
Office of the Secretary of the Interior

**From:** Chambers, Micah  
**To:** [Meghan\\_Thacker@daines.senate.gov](mailto:Meghan_Thacker@daines.senate.gov)  
**Cc:** [Amanda Kaster](#)  
**Subject:** Fwd: BOEM Release today  
**Date:** Monday, March 06, 2017 12:13:31 PM  
**Attachments:** [GOM Lease Sale 249 final.docx](#)

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Thought you might want to share this with your friends over in the Cassidy and Kennedy offices. Release going out shortly. I know know who is best POC within those offices but thought you might.

Micah

All - here's final release going out shortly.

Date: March 6, 2017

Contact: [Interior\\_Press@ios.doi.gov](mailto:Interior_Press@ios.doi.gov)

[Caryl Fagot](#) BOEM (504) 736-2590

## **Secretary Zinke Announces Proposed 73-Million Acre Oil and Natural Gas Lease Sale for Gulf of Mexico**

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###

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Micah Chambers  
Special Assistant / Acting Director  
Office of Congressional & Legislative Affairs

Office of the Secretary of the Interior



OFFICE OF THE SECRETARY  
**U.S. Department  
of the Interior**

[www.doi.gov](http://www.doi.gov)

## News Release

Date: March 6, 2017

Contact: [Interior\\_Press@ios.doi.gov](mailto:Interior_Press@ios.doi.gov)  
[Caryl Fagot BOEM \(504\) 736-2590](tel:5047362590)

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###

DRAFT

**From:** Bloomgren, Megan  
**To:** [Domenech, Douglas](#); [James Cason](#); [Daniel Jorjani](#); [Scott Hommel](#); [Micah Chambers](#); [Swift, Heather](#)  
**Subject:** Re: BOEM Release today  
**Date:** Monday, March 06, 2017 11:57:41 AM  
**Attachments:** [GOM Lease Sale 249 final.docx](#)

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All - here's final release going out shortly.

Date: March 6, 2017

Contact: [Interior\\_Press@ios.doi.gov](mailto:Interior_Press@ios.doi.gov)

[Caryl Fagot BOEM \(504\) 736-2590](tel:5047362590)

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###

On Mon, Mar 6, 2017 at 10:45 AM, Bloomgren, Megan <[megan\\_bloomgren@ios.doi.gov](mailto:megan_bloomgren@ios.doi.gov)> wrote:

All,  
BOEM will today announce the proposed notice of sale (for August 2017) of the entire Gulf of Mexico - 73 million acres available - for offshore leasing (Sale 249). It's in the Federal Register reading room today and we'll have a release out this afternoon.

It's the first sale of the new five year plan and conducting this sale doesn't preclude developing a new five year plan (which could offer more areas and more sales).

Here's an excerpt from the release - will send final shortly.  
Thanks,  
Meg

**Secretary Zinke Announces Proposed 73-Million Acre Oil and Natural Gas Lease Sale**

## **for Gulf of Mexico**

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OFFICE OF THE SECRETARY  
**U.S. Department  
of the Interior**

[www.doi.gov](http://www.doi.gov)

## News Release

Date: March 6, 2017

Contact: [Interior\\_Press@ios.doi.gov](mailto:Interior_Press@ios.doi.gov)  
[Caryl Fagot BOEM \(504\) 736-2590](tel:5047362590)

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###

DRAFT

**From:** Macgregor, Katharine  
**To:** [Cruikshank, Walter](#)  
**Cc:** [Cardinale, Richard](#)  
**Subject:** Re: BOEM Withdraws Sole Liability Orders  
**Date:** Friday, February 17, 2017 6:17:21 PM

---

Thank you Walter. Have a nice weekend.

On Fri, Feb 17, 2017 at 4:53 PM, Cruickshank, Walter <[walter.cruikshank@boem.gov](mailto:walter.cruikshank@boem.gov)> wrote:

The Note to Stakeholders has gone out.

----- Forwarded message -----

**From:** Bureau of Ocean Energy Management Office of Public Affairs  
<[boempublicaffairs@boem.gov](mailto:boempublicaffairs@boem.gov)>  
**Date:** Fri, Feb 17, 2017 at 4:49 PM  
**Subject:** BOEM Withdraws Sole Liability Orders  
**To:** [walter.cruikshank@boem.gov](mailto:walter.cruikshank@boem.gov)

## Note to Stakeholders

Feb. 17, 2017



### **BOEM Withdraws Sole Liability Orders**

#### ***Further Review of Complex Financial Assurance Issues Warranted***

The Bureau of Ocean Energy Management (BOEM) announced today that it will withdraw sole liability orders issued to Outer Continental Shelf (OCS) oil and gas lease and grant holders in December to allow time for the new Administration to review the complex financial assurance program. Additionally, any implementation issues associated with those orders will be discussed as part of the ongoing, six-month interactive process BOEM has initiated to gather input on other components of Notice to Lessees (NTL) 2016-N01. However, BOEM may re-issue sole liability orders before the end of the six-month period if it determines there is a substantial risk of nonperformance of the interest holder's decommissioning liabilities. [Read more...](#)

About the Bureau of Ocean Energy Management

The Bureau of Ocean Energy Management (BOEM) promotes economic development, energy independence, and environmental protection through responsible, science-based management of offshore conventional and renewable energy and marine mineral resources.



**For More Information:**  
Connie Gillette  
BOEM Office of Public Affairs  
(202) 208-5387

Please visit us at  
[www.BOEM.gov](http://www.BOEM.gov)

Bureau of Ocean Energy Management, [BOEMPublicAffairs@boem.gov](mailto:BOEMPublicAffairs@boem.gov), Washington, DC 20240

[SafeUnsubscribe™](#) [walter.cruickshank@boem.gov](mailto:walter.cruickshank@boem.gov)

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Sent by [boempublicaffairs@boem.gov](mailto:boempublicaffairs@boem.gov) in collaboration with

[Constant Contact](#)



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--

Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202-208-3671 (Direct)

**From:** Jorjani, Daniel  
**To:** [Katharine Macgregor](mailto:Katharine.Macgregor@ios.doi.gov); [kmbenedetto11@gmail.com](mailto:kmbenedetto11@gmail.com)  
**Cc:** [doug\\_domenech@ios.doi.gov](mailto:doug_domenech@ios.doi.gov); [James Cason](mailto:James.Cason@ios.doi.gov)  
**Subject:** Fwd: Briefing Paper: Superior NF Withdrawal -- Federal Register correction  
**Date:** Friday, January 27, 2017 4:48:41 AM  
**Attachments:** [FedReg ErrataNoticeRequest Briefing Memo 01.25.17.docx](#)  
[Notice of Application Superior Jan 19 2017.pdf](#)  
[Superior NF Application FS.Notice.13Jan2017.pdf](#)  
[Public Meeting Notice.pdf](#)

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Kate and Kathy - FYI re Twin Metals

----- Forwarded message -----

From: Cardinale, Richard <[richard\\_cardinale@ios.doi.gov](mailto:richard_cardinale@ios.doi.gov)>  
Date: Wed, Jan 25, 2017 at 6:41 PM  
Subject: Fwd: Briefing Paper: Superior NF Withdrawal -- Federal Register correction  
To: Daniel Jorjani <[daniel\\_jorjani@ios.doi.gov](mailto:daniel_jorjani@ios.doi.gov)>, Juliette Lillie <[juliette\\_lillie@ios.doi.gov](mailto:juliette_lillie@ios.doi.gov)>

Good Evening, Dan and Julie. Attached please find an Information Memo and attachments in connection with the Twin Metals withdrawal application and segregation to be discussed at tomorrow's 11:30 meeting.

Rich

----- Forwarded message -----

From: Bail, Kristin <[kbail@blm.gov](mailto:kbail@blm.gov)>  
Date: Wed, Jan 25, 2017 at 6:21 PM  
Subject: Fwd: Briefing Paper: Superior NF Withdrawal -- Federal Register correction  
To: Richard Cardinale <[richard\\_cardinale@ios.doi.gov](mailto:richard_cardinale@ios.doi.gov)>  
Cc: "Anderson, Michael" <[michael\\_anderson@ios.doi.gov](mailto:michael_anderson@ios.doi.gov)>, Yolando Mack-Thompson <[ymackthompson@blm.gov](mailto:ymackthompson@blm.gov)>, Anita Bilbao <[abilbao@blm.gov](mailto:abilbao@blm.gov)>

Rich -- Here are the briefing materials for the Twin Metals/Boundary Waters Federal Register notice for tomorrow's meeting. -K

----- Forwarded message -----

From: Winston, Beverly <[bwinston@blm.gov](mailto:bwinston@blm.gov)>  
Date: Wed, Jan 25, 2017 at 5:53 PM  
Subject: Briefing Paper: Superior NF Withdrawal -- Federal Register correction  
To: Kristin Bail <[kbail@blm.gov](mailto:kbail@blm.gov)>, Jerome Perez <[jperez@blm.gov](mailto:jperez@blm.gov)>  
Cc: Matthew Allen <[mrallen@blm.gov](mailto:mrallen@blm.gov)>, Janine Velasco <[jvelasco@blm.gov](mailto:jvelasco@blm.gov)>, "Leff, Craig" <[cleff@blm.gov](mailto:cleff@blm.gov)>

Hi,

Attached is ES briefing paper on the pending correction notice for the Notice of Application for the Superior withdrawal (and attachments).

Let me know if you need anything else of this.

Bev

--

Bev Winston  
Bureau of Land Management | Public Affairs  
202-912-7239 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

**INFORMATION/BRIEFING MEMORANDUM  
FOR THE ASSISTANT SECRETARY – LAND AND MINERALS MANAGEMENT**

**DATE:** January 25, 2017

**FROM:** Kristin Bail, Acting Director – Bureau of Land Management

**SUBJECT:** Request for Federal Register Errata Notice

The purpose of this memorandum is to provide background information on a *Federal Register* notice titled “Notice of Application for Withdrawal and Notification of Public Meeting” and to recommend a request to the Office of the Federal Register to publish an errata notice. The notice was published on January 19, 2017, with an error in the effective date.

**BACKGROUND**

Timeline

- In a letter dated December 14, 2016, the USDA Forest Service submitted an application for a proposed withdrawal from mineral leasing, encompassing approximately 234, 328 acres of Federal mineral estate within the Superior National Forest, northern Minnesota.
- The BLM prepared a Federal Register notice in accordance with 43 CFR §2310.2(a) to notify the public of the withdrawal application and to segregate the lands proposed for withdrawal for two-years from mineral leasing while the application is being processed.
- The BLM’s notice was published in the Federal Register on January 19, 2017.
- The BLM’s notice also announced the commencement of a 90-day public comment period and notice of a public meeting to be held March 16, 2017, in Duluth, MN.
- On January 13, 2017, the USDA Forest Service published a separate Federal Register notice of intent to prepare an environmental impact statement related to the proposed withdrawal.

The BLM’s Federal Register notice contains a typographical error: the end date for the segregation is specified as January 21, 2017 (a two-day segregation period). The BLM’s intention and consistent with the regulations at 43 CFR §2310.2(a), was to institute a two-year segregation (ending January 21, 2019), as noted in the BLM’s original submission to the Office of the Federal Register:

For a period until [INSERT DATE 2 YEARS FROM THE DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER], subject to valid existing rights, the National Forest System lands described in this notice will be segregated from the United States mineral and geothermal leasing laws, unless the application is denied or canceled or the withdrawal is approved prior to that date.

**DISCUSSION**

When an error is noted upon publication, the Office of the Federal Register will typically issue an errata notice in a subsequent Federal Register publication.

Although published separately in accordance with each agency's respective authorities, the BLM and the USDA Forest Service Federal Register notices were developed through a joint effort. The USDA Forest Service's Federal Register notice acknowledges that the withdrawal application would subject the National Forest System lands to "...temporary segregation for up to 2 years from entry under the United States mineral and geothermal leasing laws."

The error has caused confusion and a great deal of external interest resulting in telephone calls and e-mails from concerned groups to the BLM Eastern States office as well as to the USDA Forest Service. We would like to correct this error to ensure clarity in the public process. This correction would not change the substance of this issue. The analysis of the proposed withdrawal is being conducted in accordance with existing regulations, and the analysis does not pre-suppose any particular decision on granting the 20-year withdrawal request. Nor does the withdrawal notice (or correction) constitute nor propose establishment of any new regulations.

#### **NEXT STEPS**

Request that the Office of the Federal Register be directed to publish an errata notice to correct their error, and thereby clarifying the establishment of a two-year segregation period.

#### **ATTACHMENTS**

1. Notice of Application for Withdrawal and Notification of Public Meeting; Minnesota (January 19, 2017), Federal Register Vol. 82, No. 12.
2. Superior National Forest; Minnesota; Application for Withdrawal (January 13, 2017), Federal Register Vol. 82, No. 9.

THENCE South 00°06'00" West along said west line, a distance of 2502.98 feet to the point of beginning;

THENCE South 89°07'50" East, a distance of 805.67 feet;

THENCE South 15°34'27" West, a distance of 1473.72 feet to the point of intersection with the east and west center line of the southwest ¼ of said Section 1;

THENCE North 88°24'21" West, along said east and west center line, a distance of 415.55 feet to the point of intersection with the aforementioned west line of the east 1210.00 feet of the west ½ of Section 1;

THENCE North 00°06'00" East along said west line, a distance of 1420.32 feet to the point of beginning.

Containing 59.80 acres of land.

*Parcel No. 2*

Sec. 1, lots 1 and 2, S½NE¼, NE¼NW¼SE¼, S½NW¼SE¼, N½SW¼SE¼, SW¼SW¼SE¼, and N½SE¼SW¼SE¼.

Containing 224.56 acres of land.

*Parcel No. 3*

Sec. 12, E½SE¼.

Containing 80.00 acres of land.

The areas described for Parcels Nos. 1 through 3 aggregate 364.36 acres.

Section 209(b) of the FLPMA authorizes the conveyance of the federally owned mineral interests in land to the surface owner when the surface interest is not federally owned, upon payment of administrative costs. The objective is to allow consolidation of the surface and mineral interests when either one of the following conditions exist: (1) There are no known mineral values in the land; or (2) Where continued Federal ownership of the mineral interests interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than mineral development.

The applicant has deposited, a sum of funding sufficient to cover administrative costs, but not limited to, the cost for the mineral potential report.

Subject to valid existing rights, on January 19, 2017 the federally owned mineral interests in the land described above are hereby segregated from all forms of appropriation under the public lands laws, including the mining laws, while the application is being processed to determine if either one of the two specified conditions exists and, if so, to otherwise comply with the procedural requirements of 43 CFR part 2720. The segregative effect shall terminate upon: (1) Issuance of a patent or other document of conveyance as to such mineral interests; (2) Final rejection of the application; or (3) January 22, 2019, whichever occurs first.

Please submit all comments in writing to Benedict Parsons at the address listed

above. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made available to the public at any time. While you can ask in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 43 CFR 2720.1-1.

**Leon Thomas,**  
*Phoenix District Manager.*

[FR Doc. 2017-01203 Filed 1-18-17; 8:45 am]

**BILLING CODE 4310-32-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[MNES-058247]

**Notice of Application for Withdrawal and Notification of Public Meeting; Minnesota**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The United States Forest Service (USFS) has filed an application with the Bureau of Land Management (BLM) requesting that the Secretary of the Interior withdraw, for a 20-year term, approximately 234,328 acres of National Forest System lands within the Rainy River Watershed on the Superior National Forest from disposition under the United States mineral and geothermal leasing laws, subject to valid existing rights. Publication of this notice temporarily segregates the lands for up to 2 years from the United States mineral and geothermal leasing laws while the withdrawal application is being processed.

**DATES:** Comments regarding this withdrawal proposal must be received by April 19, 2017. The BLM and the USFS will hold a public meeting in connection with the proposed withdrawal on March 16, 2017, from 5 p.m. to 7:30 p.m. Central Time (CT) at the Duluth Entertainment and Convention Center, 350 Harbor Drive, Duluth, MN 55802. During this 90-day comment period, the BLM and USFS will hold additional meetings in other areas of the State, notices of which will be provided in local newspapers or on agency Web sites. The USFS' 90-day scoping period associated with preparing an environmental impact statement (EIS) was announced on January 13, 2017 in the **Federal**

**Register.** The EIS will analyze the impacts of the proposed withdrawal and an amendment to the Superior National Forest Land and Resource Management Plan. Additional opportunities for public comment will be provided during the preparation of that EIS.

**ADDRESSES:** Comments regarding this withdrawal proposal should be sent to the Deputy State Director of Geospatial Services, Bureau of Land Management, Eastern States Office, 20 M Street SE., Suite 950, Washington, DC 20003; or by facsimile at 202-912-7710. Comments sent by email will not be accepted. The March 16, 2017, BLM and USFS public meeting location is the Duluth Entertainment and Convention Center, 350 Harbor Drive, Duluth, MN 55802.

**FOR FURTHER INFORMATION CONTACT:** Dominica VanKoten, BLM Eastern States Office, 202-912-7756 during regular business hours, 8 a.m. to 4:30 p.m. Monday through Friday, except holidays. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1-800-877-8339 to contact the above individual. The Service is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The applicant is the USFS. The application requests the Secretary of the Interior to withdraw National Forest System lands in the Superior National Forest from disposition under the United States mineral and geothermal leasing laws for a period of 20 years to protect and preserve the natural resources and waters located within the Rainy River Watershed that flow into the Boundary Waters Canoe Area Wilderness (BWCAW) and the Boundary Waters Canoe Area Wilderness Mining Protection Area (MPA) in northeastern Minnesota. The lands will remain open to other forms of use and disposition as may be allowed by law on National Forest System lands, including the disposition of mineral materials.

All the National Forest System Lands identified in the townships below and any lands acquired by the Federal government within the exterior boundaries described below are included in the withdrawal application. This area excludes the BWCAW and the Boundary Waters Canoe Area Wilderness MPA, as depicted on the map entitled Appendix B: Superior National Forest, dated December 5, 2016. This map is available from the BLM Eastern States Office at the address listed above, and from the USFS Superior National Forest office, 8901

Grand Ave. Pl, Duluth, Minnesota, 55808.

### National Forest System Lands

#### Superior National Forest

4th Principal Meridian, Minnesota

Tps. 61 and 62 N., Rs. 5 W.

Tps. 60 to 62 N., Rs. 6 W.

Tps. 59 and 61 N., Rs. 7 W.

Tps. 59 to 61 N., Rs. 8 W.

Tps. 58 to 61 N., Rs. 9 W.

Tps. 57 to 62 N., Rs. 10 W.

Tps. 57 to 63 N., Rs. 11 W.

Tp. 59 N., R. 12 W.

Tps. 61 to 63 N., Rs. 12 W.

Tps. 61 to 63 N., Rs. 13 W.

Tp. 63 N., R. 15 W.

Tp. 63 N., R. 16 W.

Tps. 65 to 67 N., Rs. 16 W.

Tp. 64 N., R. 17 W.

The areas described contain approximately 234,328 acres of National Forest System lands in Cook, Lake, and Saint Louis Counties, Minnesota, located adjacent to the BWCAW and the MPA.

Non-Federal lands within the area proposed for withdrawal total approximately 190,321 acres in Cook, Lake and Saint Louis Counties. As non-Federal lands, these parcels would not be affected by the temporary segregation or proposed withdrawal unless they are subsequently acquired by the Federal Government. The temporary segregation and proposed withdrawal are subject to valid existing rights, which would be unaffected by these actions.

As stated in the application, the purpose of the requested withdrawal is to protect and preserve the natural resources and waters within the Rainy River Watershed that flow into the BWCAW and the MPA from the effects of mining and mineral exploration. Congress designated the BWCAW and established the MPA to protect and preserve the ecological richness of the lakes, waterways, and forested wilderness along the Canadian border. The protection of the Rainy River Watershed would extend the preservation of the BWCAW and MPA as well as Voyageurs National Park and Canada's Quetico Provincial Park, which are all interconnected through the unique hydrology of this region.

The application further states that the use of a right-of-way, interagency agreement, or cooperative agreement would not adequately constrain mineral and geothermal leasing to provide adequate protection throughout this pristine natural area.

According to the application, no alternative sites are feasible because the lands subject to the withdrawal application are the lands for which protection is sought from the impacts of exploration and development under the United States mineral and geothermal

leasing laws. No water will be needed to fulfill the purpose of the requested withdrawal.

The USFS will serve as the lead agency for the EIS analyzing the impacts of the proposed withdrawal. The USFS will designate the BLM as a cooperating agency. The BLM will independently evaluate and review the draft and final EISs and any other documents needed for the Secretary of the Interior to make a decision on the proposed withdrawal.

Records related to the application may be examined by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above.

For a period until April 19, 2017, all persons who wish to submit comments, suggestions, or objections in connection with the withdrawal application may present their views in writing to the BLM Deputy State Director of Geospatial Services at the BLM Eastern States Office address noted in the **ADDRESSES** section above. Comments, including the names and street addresses of respondents, will be available for public review at that address during regular business hours.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Notice is hereby given that a public meeting in connection with the application for withdrawal will be held at Duluth Entertainment and Convention Center, 350 Harbor Drive, Duluth, Minnesota 55802 on March 16, 2017, from 5 p.m. to 7:30 p.m. CT. The USFS will publish a notice of the time and place in a local newspaper at least 30 days before the scheduled date of the meeting. During this 90-day comment period, the BLM and USFS will hold additional meetings in other areas of the State, notices of which will be provided in local newspapers or on agency Web sites.

For a period until January 21, 2017, subject to valid existing rights, the National Forest System lands described in this notice will be temporarily segregated from the United States mineral and geothermal leasing laws, unless the application is denied or canceled or the withdrawal is approved prior to that date. All other activities currently consistent with the Superior National Forest Land and Resource Management Plan could continue, including public recreation, mineral

materials disposition and other activities compatible with preservation of the character of the area, subject to USFS discretionary approval, during the segregation period.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

**Karen E. Mouritsen,**

*State Director, Eastern States Office.*

[FR Doc. 2017-01202 Filed 1-18-17; 8:45 am]

**BILLING CODE 3411-15-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLNM004000 L91450000.EJ000  
16X.LVDIG16ZGK00]

### Notice of Application for a Recordable Disclaimer of Interest: Dimmit County, Texas

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management (BLM) received an application for a Recordable Disclaimer of Interest (Disclaimer of Interest) from Gringita, Ltd. pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, and the regulations in 43 CFR subpart 1864, for certain mineral estate in Dimmit County, Texas. This notice is intended to inform the public of the pending application, give notice of BLM's intention to grant the requested Disclaimer of Interest, and provide a public comment period for the proposed Disclaimer of Interest.

**DATES:** Comments on this action should be received by April 19, 2017.

**ADDRESSES:** Written comments must be sent to the Deputy State Director, Lands and Resources, BLM, New Mexico State Office, P.O. Box 27115, Santa Fe, NM 87502-0115.

**FOR FURTHER INFORMATION CONTACT:** John Ledbetter, Realty Specialist, BLM Oklahoma Field Office, (405) 579-7172. Additional information pertaining to this application can be reviewed in case file TXNM114510 located in the Oklahoma Field Office, 201 Stephenson Parkway, Room 1200, Norman, Oklahoma 73072-2037. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or question with the

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**Notice of Initiating the Assessment Phase of the Forest Plan Revision for the Salmon-Challis National Forest**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Salmon-Challis National Forest, located in east central Idaho, is initiating the first phase of the forest planning process pursuant to the 2012 National Forest System Land Management Planning rule. This process will result in a revised forest land management plan (Forest Plan) which describes the strategic direction for management of forest resources on the Salmon-Challis National Forest for the next ten to fifteen years. The planning process encompasses three-stages: assessment, plan revision, and monitoring. The first stage of the planning process involves assessing ecological, social, and economic conditions of the planning area, which is documented in an assessment report.

The Forest is inviting the public to contribute in the development of the Assessment. The Forest will be hosting public forums near the end of February into early March 2017 with a second set of meetings forthcoming in June 2017. We will invite the public to share information relevant to the assessment including existing information, current trends, and local knowledge. Public engagement opportunities associated with the development of the Assessment will be announced on the Web site cited below.

**DATES:** From January 2017 through August 2017, the public is invited to participate in the development of the Assessment. The draft assessment report for the Salmon-Challis National Forest is being initiated and is expected to be available in August 2017 on the Forest Web site at: <http://www.fs.usda.gov/scnf/>.

Following completion of the assessment, the Forest will initiate procedures pursuant to the National Environmental Policy Act (NEPA) to prepare and evaluate a revised forest plan.

**ADDRESSES:** Written correspondence can be sent to Salmon-Challis National Forest, 1206 S. Challis Street, Salmon, ID 83467, or sent via email to [jmilligan@fs.fed.us](mailto:jmilligan@fs.fed.us). All correspondence, including names and addresses when provided, are placed in the record and are available for public inspection and copying.

**FOR FURTHER INFORMATION CONTACT:** Josh Milligan, Forest Plan Revision Team Leader at 208-756-5560. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m. (Eastern time), Monday through Friday.

More information on the planning process can also be found on the Salmon-Challis National Forest Planning Web site at <http://www.fs.usda.gov/detail/scnf/home/?cid=FSEPRD522039>.

**SUPPLEMENTARY INFORMATION:** The National Forest Management Act (NFMA) of 1976 requires that every National Forest System (NFS) unit develop a land management plan (LMP). On April 9, 2012, the Forest Service finalized its land management planning rule (2012 Planning Rule, 36 CFR part 291), which describes requirements for the planning process and the content of the land management plans. Forest plans describe the strategic direction for management of forest resources for ten to fifteen years, and are adaptive and amendable as conditions change over time. Pursuant to the 2012 Forest Planning Rule (36 CFR part 219), the planning process encompasses three-stages: assessment, plan revision, and monitoring. The first stage of the planning process involves assessing social, economic, and ecological conditions of the planning area, which is documented in an assessment report. This notice announces the start of the initial stage of the planning process, which is the development of the assessment report.

The second stage, formal plan revision, involves the development of our Forest Plan in conjunction with the preparation of an Environmental Impact Statement under the NEPA. Once the plan revision is completed, it will be subject to the objection procedures of 36 CFR part 219, subpart B, before it can be approved. The third stage of the planning process is the monitoring and evaluation of the revised plan, which is ongoing over the life of the revised plan.

The assessment rapidly evaluates existing information about relevant ecological, economic, cultural and social conditions, trends, and sustainability and their relationship to land management plans within the context of the broader landscape. This information builds a common understanding prior to entering formal plan revision. The development of the assessment will include public engagement.

With this notice, the Salmon-Challis National Forest invites other governments, non-governmental parties, and the public to contribute in assessment development. The intent of public engagement during development of the assessment is to identify as much relevant information as possible to inform the upcoming plan revision process. We encourage contributors to share material about existing conditions, trends, and perceptions of social, economic, and ecological systems relevant to the planning process. The assessment also supports the development of relationships with key stakeholders that will be used throughout the plan revision process.

As public meetings, other opportunities for public engagement, and public review and comment opportunities are identified to assist with the development of the forest plan revision, public announcements will be made, notifications will be posted on the Forest's Web site at: <http://www.fs.usda.gov/scnf/> and information will be sent out to the Forest's mailing list. If anyone is interested in being on the Forest's mailing list to receive these notifications, please contact Josh Milligan at the address identified above, or by sending an email [jmilligan@fs.fed.us](mailto:jmilligan@fs.fed.us).

**Responsible Official**

The responsible official for the revision of the land management plan for the Salmon-Challis National Forest is Charles Mark, Forest Supervisor, Salmon-Challis National Forest.

Dated: January 4, 2017.

**Charles A. Mark,**  
Forest Supervisor.

[FR Doc. 2017-00684 Filed 1-12-17; 8:45 am]

**BILLING CODE 3411-15-P**

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**Superior National Forest; Minnesota; Application for Withdrawal**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The United States Forest Service (USFS) has submitted an application to the Secretary of Interior proposing a withdrawal of approximately 234,328 acres of National Forest System (NFS) lands, for a 20-year term, within the Rainy River Watershed on the Superior National Forest from disposition under United States mineral and geothermal leasing laws, subject to

valid existing rights. This proposal will also include an amendment to the Superior National Forest Land and Resource Management Plan to reflect this withdrawal.

The purpose of the withdrawal request is protection of the natural resources and waters located on NFS lands from the potential adverse environmental impacts arising from exploration and development of fully Federally-owned minerals conducted pursuant to the mineral leasing laws within the Rainy River Watershed that flow into the Boundary Waters Canoe Area Wilderness (BWCAW) and the Boundary Waters Canoe Area Wilderness Mining Protection Area (MPA) in northeastern Minnesota. The USFS acknowledges this proposed request subjects these NFS lands to temporary segregation for up to 2 years from entry under the United States mineral and geothermal leasing laws. The lands have been and will remain open to such forms of use and disposition as may be allowed by law on National Forest System lands including the disposition of mineral materials. The USFS recognizes that any segregation or withdrawal of these lands will be subject to valid existing rights and therefore inapplicable to private lands owned in fee, private mineral estates, and private fractional minerals interests. This notice also gives the public an opportunity to comment on the proposed request for withdrawal, and announces the opportunity for a future public meeting.

**DATES:** Comments concerning the proposed request for withdrawal and the scope of the environmental analysis must be received by April 13, 2017. This Notice coincides with the Bureau of Land Management's (BLM) "Notice of Application for Withdrawal and Notification of Public Meeting" announced today in the **Federal Register**. The USFS comment period for the EIS is commensurate with the BLM's 90-day comment period associated with the consideration of the USFS application to propose a withdrawal of approximately 234,328 acres of NFS lands from disposition under United States mineral and geothermal leasing laws (subject to valid existing rights) within the Rainy River Watershed on the Superior National Forest.

The draft environmental impact statement is expected June 2018 and the final environmental impact statement is expected January 2019. The USFS and BLM will hold a public meeting within the initial 90-day comment period to gather public input on the proposed request for withdrawal. This meeting

will be held at the Duluth Entertainment and Convention Center on March 16, 2017 from 5:00 to 7:30 p.m. CT (350 Harbor Drive, Duluth, MN 55802). The USFS will publish a notice of the meeting location and time in a local newspaper at least 30 days before the scheduled date of the meeting.

**ADDRESSES:** Address written comments regarding the environmental effects associated with this proposed request for withdrawal to Connie Cummins, Forest Supervisor, Superior National Forest. Written comments are to be mailed to 8901 Grand Avenue Place, Duluth, MN 55808-1122. Comments may also be sent via email to *comments-eastern-superior@fs.fed.us* or via facsimile to 218-626-4398.

**FOR FURTHER INFORMATION CONTACT:** Matt Judd, Superior National Forest (218-626-4382). The Superior National Forest Web site (<https://www.fs.usda.gov/projects/superior/landmanagement/projects>) also contains information relative to this proposed request for withdrawal.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday. This relay service is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The USFS has submitted an application on January 5, 2017 to the Secretary of the Interior proposing to withdraw the identified lands from disposition under United States mineral and geothermal leasing laws (subject to valid existing rights) for a period of 20 years.

All the NFS Lands identified in this application are described in Appendix A and displayed on a map in Appendix B. This application is available upon request at the Superior National Forest office (8901 Grand Ave Place, Duluth, MN 55808) or their Web site (<https://www.fs.usda.gov/projects/superior/landmanagement/projects>). The lands depicted on this map include NFS lands in the townships below, and all non-Federal lands within the exterior boundaries described below that are subsequently acquired by the Federal government to the boundary of the Boundary Waters Canoe Area Wilderness (BWCAW) and the Boundary Waters Canoe Area Wilderness Mining Protection Area (MPA).

## National Forest System Lands

### Superior National Forest

4th Principal Meridian, Minnesota

Tps. 61 and 62 N., Rs. 5 W.,  
Tps. 60 to 62 N., Rs. 6 W.,  
Tps. 59 and 61 N., Rs. 7 W.,  
Tps. 59 to 61 N., Rs. 8 W., to the boundary of the BWCAW  
Tps. 58 to 61 N., Rs. 9 W., to the boundary of the BWCAW  
Tps. 57 to 62 N., Rs. 10 W.,  
Tps. 57 to 63 N., Rs. 11 W.,  
Tp. 59 N., R. 12 W.,  
Tps. 61 to 63 N., Rs. 12 W.,  
Tps. 61 to 63 N., Rs. 13 W.,  
Tp. 63 N., R. 15 W.,  
Tp. 63 N., R. 16 W.,  
Tps. 65 to 67 N., Rs. 16 W.,  
Tp. 64 N., R. 17 W.,

The areas described contain approximately 234,328 acres of NFS lands that overlay Federally-owned minerals in Cook, Lake, and Saint Louis Counties, Minnesota located adjacent to the BWCAW and the MPA.

## Purpose and Need for Action

The purpose of this withdrawal request is protection of NFS lands located in the Rainy River Watershed, and preservation of NFS lands within the BWCAW, from the potential adverse environmental impacts arising from exploration and development of fully Federally-owned minerals conducted pursuant to the Federal mineral leasing laws.

The 234,328 acres of Federal land in this proposed request for withdrawal are located within the Rainy River watershed on the Superior National Forest and are adjacent to the BWCAW and MPA. There is known interest in the development of hardrock minerals that have been found—and others that are thought to exist—in sulfide-bearing rock within this portion of the Rainy River Watershed. Any development of these mineral resources could ultimately result in the creation of permanently stored waste materials and other conditions upstream of the BWCAW and the MPA with the potential to generate and release water with elevated levels of acidity, metals, and other potential contaminants. Additionally, any failure of mitigation measures, containment facilities or remediation efforts at mine sites and their related facilities located upstream of the BWCAW and the MPA could lead to irreversible impacts upon natural resources and the inability to meet the purposes for the designation of the BWCAW and the MPA specified by Sec. 2 of Public Law 95-495, 92 Stat. 1649 (1978) and the inability to comply with Section 4(b) of the 1964 Wilderness Act. These concerns are exacerbated by the likelihood that perpetual maintenance

of waste storage facilities along with the perpetual treatment of water discharge emanating from the waste storage facilities and the mines themselves would likely be required to ameliorate these adverse effects. Yet, it is not at all certain that such maintenance and treatment can be assured over many decades.

### Proposed Action

The United States Forest Service (USFS) has submitted an application to the Secretary of Interior proposing a withdrawal, for a 20-year term, of approximately 234,328 acres of NFS lands within the Rainy River Watershed on the Superior National Forest from disposition under United States mineral and geothermal leasing laws, subject to valid existing rights. This proposal will also include an amendment to the Superior National Forest Land and Resource Management Plan to reflect this withdrawal.

### Possible Alternatives

In addition to the USFS proposal, a "no action" alternative will be analyzed, and no additional alternatives have been identified at this time. No alternative sites are feasible because the lands subject to the withdrawal application are the lands for which protection is sought from the impacts of exploration and development under the United States mineral and geothermal leasing laws.

### Lead and Cooperating Agencies

The USFS will be the lead agency. The USFS will designate the BLM as a cooperating agency. The BLM shall independently evaluate and review the draft and final environmental impact statements and any other documents needed for the Secretary of Interior to make a decision on the proposed withdrawal.

### Responsible Official

Forest Supervisor, Superior National Forest.

### Nature of Decision To Be Made

The Responsible Official will complete an environmental impact statement, documenting the information and analysis necessary to support a decision on withdrawal, and to support an amendment to the Superior National Forest Land and Resource Management Plan.

The Secretary of Interior is the authorized official to approve a proposal for withdrawal.

The Responsible Official is the authorized official to approve an amendment to the Superior National

Forest Land and Resource Management Plan to reflect the proposed withdrawal.

### Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The USFS and Bureau of Land Management (BLM) will hold a public meeting within the initial 90-day comment period to gather public input on the proposed request for withdrawal. This meeting will be held at the Duluth Entertainment and Convention Center on March 16, 2017 from 5:00 to 7:30 p.m. CT (350 Harbor Drive, Duluth, MN 55802). Further opportunities for public participation will be provided upon publication of the Draft EIS, including a minimum 45-day public comment period. A plan amendment is subject to pre-decisional objection procedures at 36 CFR 219, Subpart B.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: January 6, 2017.

**Richard Periman,**

*Deputy Forest Supervisor.*

[FR Doc. 2017-00506 Filed 1-12-17; 8:45 am]

**BILLING CODE 3410-11-P**

## DEPARTMENT OF COMMERCE

### Census Bureau

#### **Generic Clearance for Proposed Information Collection; Comment Request; Generic Clearance for Internet Nonprobability Panel Pretesting and Qualitative Survey Methods Testing**

**AGENCY:** U.S. Census Bureau, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** To ensure consideration, written comments must be submitted on or before March 14, 2017.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at [jjessup@doc.gov](mailto:jjessup@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Jennifer Hunter Childs, U.S. Census Bureau, 4600 Silver Hill Road, Center for Survey Measurement, Washington, DC 20233 or (202)603-4827.

### SUPPLEMENTARY INFORMATION:

#### I. Abstract

The Census Bureau is committed to conducting research in a cost efficient manner. Prior to this generic clearance, several stages of testing occurred in research projects at the Census Bureau. As a first stage of research, the Census Bureau pretests questions on surveys or censuses and evaluates the usability and ease of use of Web sites using a small number of subjects during focus groups, usability and cognitive testing. These projects are in-person and labor-intensive, but typically only target samples of 20 to 30 respondents. This small-scale work is done through another existing OMB generic clearance. Often the second stage is a larger-scale field test with a split-panel design of a survey or a release of a Census Bureau data dissemination product with a feedback mechanism. The field tests often involve a lot of preparatory work and often are limited in the number of panels tested due to the cost considerations. They are often targeted at very large sample sizes with over 10,000 respondents per panel. These are typically done using stand-alone OMB clearances.

Cost efficiencies can occur by testing some research questions in a medium-scale test, using a smaller number of participants than what we typically use in a field test, yet a larger and more diverse set of participants than who we recruit for cognitive and usability tests. Using Internet panel pretesting, we can answer some research questions more thoroughly than in the small-scale testing, but less expensively than in the large-scale field test. This clearance established a medium-scale (defined as having sample sizes from 100-2000 per study), cost-efficient method of testing

## **Opportunity to Comment on Initiation of the Development of a Forest Plan Amendment for Superior National Forest**

The United States Forest Service (USFS) submitted an application to the Secretary of Interior requesting a 20-year withdrawal of approximately 234,328 acres of National Forest System (NFS) lands, within the Rainy River watershed on the Superior National Forest from disposition under United States mineral and geothermal leasing laws, subject to valid existing rights.

It is anticipated that the Bureau of Land Management (BLM) will soon issue a notice in the Federal Register segregating the lands for a period of two years while the Forest Service prepares an environmental impact statement analysis (EIS) under the National Environmental Policy Act. The Forest Service also plans to issue a notice of intent concurrently with the BLM to prepare an EIS in the Federal Register initiating a 90-day scoping comment period. The EIS will inform a decision by the Secretary of the Interior pertaining to the withdrawal of federal minerals. We also anticipate that the EIS will inform a decision by the Forest Supervisor of the Superior National Forest on an amendment to the Superior National Forest Land and Resource Management Plan. The Forest Service is the lead agency for the analysis.

The USFS and BLM will hold a public meeting within the initial 90-day comment period to gather public input on the proposed request for withdrawal. This meeting will be held at the Duluth Entertainment and Convention Center on March 16, 2017 from 5:00 to 7:30 p.m. CT (350 Harbor Drive, Duluth, MN 55802). The BLM and the USFS will hold additional meetings on the proposed withdrawal, in various regions of the state. A notice of the meeting location and time will be published in a local newspaper at least 30 days before the scheduled date of the meeting.

More information on this project is available on our website; go to the Superior National Forest projects website <https://www.fs.usda.gov/projects/superior/landmanagement/projects> and then open the link to the Northern Minnesota Federal Minerals Withdrawal EIS Project webpage. The project webpage contains information relative to this proposed request for withdrawal; including a copy of the Notice of Intent, the application the Forest Service submitted to the BLM, and a map of the proposed withdrawal area.

This proposed Forest Plan amendment is subject to the Pre-Decisional Administrative Review Process contained within the 2012 Planning Rule (36 CFR Part 219 Sub-Part B). This review process differs from our prior process in that the review is now pre-decisional (through an objection) rather than post-decisional (through an appeal). Therefore, public commenters should become familiar with the objections process as described within this announcement. Once the amendment decision becomes final, there will be no opportunity for it to be further reviewed by the Forest Service.

Only those who submit substantive formal comments regarding the Forest Plan amendment during a public comment period are eligible to file an objection under 36 CFR Part 219 (National Forest System Land Management Planning). Objections must be based on previously submitted substantive formal comments attributed to the objector unless the objection concerns an issue that arose after the opportunities for formal comment. In order to be eligible to object, each individual or representative from each entity submitting substantive formal comments regarding the Forest Plan amendment must either sign the comments or verify identity upon request. Substantive formal comments will be accepted for 90 days following publication of the notice in

the *Federal Register*. The publication date in the Federal Register is the exclusive means for calculating the scoping comment period. Those wishing to comment should not rely upon dates or timeframe information provided by any other source.

Address written scoping comments associated with this proposed request for withdrawal to Connie Cummins, Forest Supervisor, Superior National Forest. Written comments are to be mailed to 8901 Grand Avenue Place, Duluth, MN 55808-1122. Comments may also be sent via e-mail to [comments-eastern-superior@fs.fed.us](mailto:comments-eastern-superior@fs.fed.us) or via facsimile to 218-626-4398. Please include 'Northern Minnesota Federal Minerals Withdrawal EIS Project' in the subject line of your correspondence.

-END-

**From:** Kaster, Amanda  
**To:** [Tracy Goodluck](#)  
**Subject:** Briefing Papers  
**Date:** Monday, March 06, 2017 9:22:59 AM  
**Attachments:** [BIE SCHOOL OPERATIONS MAINTENANCE FOR FACILITIES FINAL\\_ver3\\_DKedit\\_170301.docx](#)  
[OIS Tiwahe Briefing 2-26-17.doc](#)  
[OTS Rights Of Way Regulations 2282017 \(1\).docx](#)  
[OIG briefing.doc](#)  
[OIG Secretarial Procedures 3.1.17.docx](#)  
[OIG Tribal-State Compacts 3.01.2017.docx](#)  
[OIEED CONSTRUCTION AGGREGATE OPPORTUNITY IN INDIAN COUNTRY MJ.docx](#)  
[OIEED OIL AND GAS OPPORTUNITY IN INDIAN COUNTRY MJ.docx](#)  
[OIEED RENEWABLE ENERGY OPPORTUNITY IN INDIAN COUNTRY MJ.docx](#)  
[OTS Indian Energy Service Center 2282017 MJ.docx](#)  
[OIS Spirit Lake Briefing 2\\_28\\_2017\\_sds.docx](#)  
[OTS Fee to Trust 2282017\\_sds \(1\).docx](#)  
[OTS WIIN Act 2282017\\_saw.docx](#)  
[OTS Agriculture and Range 2282017\\_TF.docx](#)  
[OTS Branch Of Geospatial Support 2282017\\_TF.docx](#)  
[OTS Fee to Trust 2282017\\_TF.docx](#)  
[OTS Fish Hatchery Maintenance 2282017.docx](#)  
[OTS Forestry and Fire Suppression 2282017\\_TF.docx](#)  
[OTS Forestry and Timber 2282017\\_TF.docx](#)  
[OTS Irrigation Rehabilitation and Renovation construction 2282017\\_TF.docx](#)  
[OTS Land Title Record Office 2282017\\_TF.docx](#)  
[OTS Probate Backlog 2282017\\_TF.docx](#)  
[OTS Real Estate Services 2282017\\_TF.docx](#)  
[FY 2018 OIS TRANSPORTATION 3.2.2016.docx](#)  
[OJS - Victim Services 3.3.2017.docx](#)  
[BIE Education Construction 2282017.docx](#)  
[BIE Reform Briefing Paper 2282017\\_sds \(1\).docx](#)  
[FY 2018 BIE GAO High Risk Report v\(2\)\\_sds.docx](#)  
[OFA\\_Briefing on FedAck 2282017 MJ v2.doc](#)  
[2009-01-16\\_Departmental Manual 109 DM\\_SIWRO.docx](#)  
[2017-03-03\\_Briefing for the Secretary Reporting Structure\\_SIWRO.final\\_.pdf](#)

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Here's what I received.

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Amanda Kaster-Averill  
Special Assistant  
Office of Congressional and Legislative Affairs  
U.S. Department of the Interior

(202) 208-3337  
amanda\_kaster@ios.doi.gov

## **Bureau of Indian Education**

### **Issue: BIE SCHOOL OPERATIONS/MAINTENANCE FOR FACILITIES**

#### **Background:**

68 of 183 BIE schools are in “Poor” condition or eligible for replacement according to the Facilities Condition Index. These schools have a combined total deferred maintenance backlog of more than \$500 million. In total, all 183 BIE schools have more than \$797 million in total deferred maintenance. Education construction receives just over \$70 million annually for Facilities Improvement and Repair. Of these funds, just over \$42 million is directed toward major and minor deferred maintenance repairs.

The current O&M funding need for Schools (\$151+ million) is 20% (or \$30 million) greater than the FY2016 Appropriation provided (\$121+ million). The average age of BIE School facilities is 59 years with 50% of these facilities being over 50 years old and 26% being over 100 years old. Due to the advanced age of the majority of BIE Schools, the rate of deterioration of these old facilities outpaces the ability of current funding levels to maintain or extend the useful life of these facilities. O&M costs increase with age, therefore, as these BIE Schools continue to age, the current O&M funding levels will become increasingly ineffective in preventing deterioration and providing safe and healthy school environments conducive to successful learning. The Poor condition of a BIE School distracts and/or impedes teachers from providing an adequate educational program to students, thus placing the learning aptitude of students at greater risk. With repair and improvement funding levels at 5% of the total deferred maintenance need and O&M underfunded by 20%, it is expected that BIE School Facilities in Poor condition will increase at an advanced rate each subsequent year.

#### **Current Status:**

The Office of the Inspector General (OIG) performed a number of site visits at BIE-funded schools and dormitories in 2008 and again in 2010, making a number of safety operations and maintenance related findings. During the visits, OIG evaluated each site according to 18 measures. Following OIG visits, BIE increased its oversight and partnership with BIA to immediately implement the Safe School Audit. The audit was successfully completed at all BIE-funded schools.

BIE has begun the process of implementing corrective measures to all identified deficiencies. For example, BIE is conducting ongoing staff and administrator training and drafting emergency preparedness plans. BIE is also in the process of improving its procedures for students with suicidal ideations as well as training principals, teachers, and support staff on responses in such instances. However, certain findings made in the OIG inspection reports cannot be addressed by BIE until Phase II of the reorganization is complete. To date, the newly formed BIE Safety Office has filed three (3) of six (6) Safety and Occupational Health Specialist positions. Until fully staffed, the BIE Safety Office’s ability to make improvements to safety will be limited, but BIE plans to continue its coordinated partnership with BIA to ensure school safety in the interim. BIA will remain the responsible agency for addressing many of the OIG’s identified deficiencies which will continue to be outside the direct control and oversight of BIE until completion of Phase II of the BIE reorganization.

In addition, as a result of the decaying conditions of school facilities, the current level of funding is insufficient to maintain the status quo in facility conditions, nor is it sufficient to make progress in decreasing the number of recorded deferred maintenance needs. The School and Facilities replacement programs could resolve a significant portion of the deferred maintenance, but until those programs are fully funded to replace substandard structures, BIA – BIE will continue to work within the current funding limitations to maintain the current facilities at the highest quality practicable given current circumstances.

**Bureau:** Bureau of Indian Affairs

**Office:** Office of Indian Services

**Member:**

**Issue:** Tiwahe Initiative

**Background:**

To protect and promote the development of prosperous and resilient tribal communities, the Bureau of Indian Affairs (BIA) implemented the Tiwahe Initiative. Tiwahe (ti-wah-heh) means *family* in the Lakota language and symbolizes the interconnectedness of all living things and one's personal responsibility to protect family, community, and the environment. The Initiative is a five-year demonstration project that began in FY 2015 and is a collaboration between the Office of Indian Services (OIS) and Office of Justice Services (OJS). It seeks to demonstrate that effective service coordination among tribal service providers ensures that critical services reach Native families. It allows tribes to implement a coordinated service delivery model that addresses the interrelated problems of substance abuse, child abuse & neglect, poverty, domestic violence, unemployment, and high incarceration rates prevalent on many reservations. The goal is to create access to family and social services, alternatives to incarceration via solution-focused sentencing, increase employment opportunities, promote tribal and individual self-sufficiency and self-determination, and build models for other tribes to utilize in justice and program development.

**Current Status:**

In FY 2016, the Fort Belknap Indian Community (FBIC) (MT) and Pascua Yaqui Tribe (PYT) (AZ) joined the original four demonstration sites – the Association of Village Council Presidents (AVCP) (AK), the Red Lake Nation (MN), the Spirit Lake Tribe (ND) and the Ute Mountain Ute Tribe (UMUT) (CO). All tribes have completed their Tiwahe Initiative plans and are at the height of Phase Two of the Initiative – Implementation.

Total elimination of Tiwahe funding will paralyze Tiwahe tribes' ability to share with Indian Country the social and justice system models that they are in the middle of implementing. It will thwart the Spirit Lake Tribe's ability to reclaim administration of its Social Services program in direct contradiction to the purpose of the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA), which promotes tribes' control over programs and services provided to them by the Federal government<sup>1</sup>. It will eliminate the Red Lake Nation's Juvenile Healing To Wellness Court judicial salary and cut off the Nation's ability to expand this specialized court to include a Family Drug Court to increase family reunifications and reduce substance abuse. It will dissolve culturally-infused, family-focused alternative to incarceration programming for youth and adults at the PYT to reduce substance abuse and recidivism. It will dismantle UMUT's efforts to implement an information-sharing client management system that will facilitate interagency communication. It will place families at risk of continued domestic violence in the FBIC where the tribe is developing a Batterer's Intervention Program that addresses both batterer and victim therapeutic needs. An immediate loss of Alaska Native culture will occur in AVCP with elimination of the salary for the ICWA attorney who represents Alaska Native villages and advocates keeping Alaska Native children close to home thereby increasing successful family reunifications. Further immediate ramifications are: elimination of salaries for attorneys who represent children in child abuse & neglect cases in state and tribal courts and salaries for attorneys who represent and uphold due process rights for parents in the same cases. Funding to amend tribal codes and provide training will also be lost.

Tiwahe also provided an Across The Board (ATB) funding increase to all federally recognized tribes who receive BIA Social Services and Indian Child Welfare Act (ICWA) funding at 8% and 21.5% increases, respectively. No tribe had received a funding increase for these two funding streams for 20 years despite

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<sup>1</sup> See *Navajo Health Found-Sage Mem'l Hosp., Inc. v. Burwell*, No. CIV 14-0958 JB/GBW, 2016 U.S. Dis. LEXIS 15291, at \*122 (D.N.M. Nov. 3, 2016) (quoting S. REP. No. 93-862, at 13 (1974)).

continued increases in the number of Native children entering state and tribal foster care systems, which Social Services and ICWA funding primarily supports.

Loss of Tiwahe funding will impact tribes' greatest assets most of all – their children. In enactment of the 1978 ICWA, Congress found that “that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe.”<sup>2</sup> To divest tribes of Social Services and ICWA Tiwahe funding that allows them to develop programming to reduce child abuse & neglect and drug & alcohol abuse is in direct contradiction to ICWA’s congressional findings and to the United States' obligation to fulfill its trust responsibility to Indian Nations.<sup>3</sup>

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<sup>2</sup> 25 U.S.C. 1901(3)

<sup>3</sup> See Secretarial Order No. 3335. *Reaffirmation of the Federal Trust Responsibility to Federally Recognized Indian Tribes and Individual Indian Beneficiaries*. (August 20, 2014).

**Bureau:** Bureau of Indian Affairs

**Office:** Office of Trust Services, Division of Real Estate Services

**Member:**

**Issue:** Rights-of-Way Regulations, implemented in April 2016

**Background:**

Rights-of-ways (ROW) are a significant and intricate part of creating infrastructure across the United States, which positively influences economic development and job creation. Revised ROW regulations were completed with an effective date of April 21, 2016. The regulations present a significant change in the business requirements and processes for rights-of-way and easements, including establishing strict timeframes. The inability to provide clear direction and guidance materials to the Bureau staff will negatively affect the processing and approving of the ROWs across the United States.

RIGHTS-OF-WAY REGULATIONS PREVALANCE

- The most common ROWs and easements are oil and gas pipelines, transmission lines, highways, canals, utility lines, and telecommunication lines
- ROWs help create infrastructure for current and future energy projects and oil and gas development
- There are over 44,000 active ROWs on Indian trust lands
- There are approximately 1,200 new ROWs issued every year

RIGHTS-OF-WAY REGULATIONS OBJECTIVES

The objective is to identify the on-going efforts to implement the new Rights-of-Way regulations, Title 25, Code of Federal Regulations Part 169. The efforts to complete implementation activities must continue, as follows:

- Issue a final Handbook (Indian Affairs Manual)
- Issue final templates for use as forms and reports for rights-of-ways and easements
- Issue final checklists and guidance documents
- Enhancements to the system of record, the Trust Asset and Accounting Management System (TAAMS) to accommodate entering, tracking and monitoring rights-of-way, easements, and ancillary documents (assignments, amendments, mortgages, etc.)
- Develop training for the field to standardize the rights-of-way business process
- Stated objectives will be accomplished by the end of the calendar year, 2017.

Completing the objectives will ensure timely processing and approving ROWs, so infrastructure and projects are able to be developed.

RIGHTS-OF-WAY REGULATIONS CONCERN AND PARTICIPATION

The new regulations present a significant change in processing and requirements, which may cause the following issues:

- Untimely review and approval of the ROW applications beyond the required timeframes, which may delay future and existing essential developments
- Inconsistency in processing and approving ROWs that may not adhere to the regulations and cause an increase in appeals
- Inadequate enhancements to the ROW module in TAAMS, which may not accommodate the regulations and may be entered incorrectly (affects data integrity, monitoring and reporting)

The Bureau has implemented a temporary national mechanism for tracking and monitoring of applications and decisions regarding new ROW applications. Additionally, a team of subject matter experts from the field were assembled, whose responsibility it is

to identify and develop various tools and reference guidance documents to assist the Bureau's field offices in utilizing the new and revamped regulations. The team will also assist in accomplishing the objectives, as noted above.

**Authorizations:**

25 U.S.C. 176 (Reorganization Plan No. 3 of 1946), 60 Stat. 1097.

25 U.S.C. 311 (The Act of March 3, 1901), 31 Stat. 1084, P.L. 56-382.

25 U.S.C. 393 (The Act of March 3, 1921), 41 Stat. 1232, P.L. 66-359.

25 U.S.C. 2201 et seq. (Indian Land Consolidation Act), 96 Stat. 2515, P.L. 97-459; 98 Stat. 3171, P.L. 98-608; P.L. 102-238.

25 U.S.C. 415 as amended by the HEARTH Act of 2012.

Prepared by: Sharlene Round Face, Division Chief, Office of Trust Services (202) 208-3615 Date: 2/27/201

**Bureau:** Assistant Secretary – Indian Affairs  
**Office:** Office of Indian Gaming  
**Member:**  
**Issue:** Indian Gaming Issues

## Land Acquisition for Indian Gaming

### Background

- The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*, was enacted in 1988 to “provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.” 25 U.S.C. § 2702(1).
- The authority to make final decisions regarding Indian gaming has been delegated from the Secretary to the Assistant Secretary – Indian Affairs.
- Section 20 of IGRA generally prohibits gaming activities on lands acquired in trust by the United States on behalf of a tribe after October 17, 1988. 25 U.S.C. §2719. However, Congress expressly provided several exceptions to the general prohibition. These include the “equal footing” exceptions and the “off-reservation” exceptions. A tribe must qualify for at least one exception to conduct gaming.
  - The equal footing exceptions include the “restoration of lands for an Indian tribe that is restored to federal recognition,” “settlement of a land claim,” and the “initial reservation” of an Indian tribe acknowledged under the federal acknowledgment process. 25 U.S.C. § 2719(B)(1)(B)(i-iii).
  - An off-reservation exception (two-part determination) requires a finding by the Assistant Secretary – Indian Affairs that the gaming facility is 1) in the best interest of the tribe, and 2) not detrimental to the surrounding community. The governor of the state must concur in the two-part determination before gaming can take place. 25 U.S.C. § 2719(B)(1)(A).
- Indian gaming is grouped into three categories: class I gaming is defined as social games solely for prizes of minimal value. Class II gaming is defined as games of chance such as bingo and pull-tabs. Class III gaming is typically characterized as “casino-style gaming.”

### Current Status

***Shawnee Tribe two part determination (OK):*** On January 19, 2017, the Principal Deputy Assistant Secretary – Indian Affairs approved a two-part determination for the Tribe. The Tribe seeks to conduct gaming on 102 acres of land outside of the city limits of Guymon, Texas County, in the Oklahoma Panhandle. The Tribe is landless and this will be its first trust land. In the 1800s, the Tribe was placed on the Cherokee Reservation in eastern Oklahoma by the United States. In 2000, Congress passed the Shawnee Status Act (STA) which authorizes trust land acquisition for the Tribe, but prohibits the acquisition of trust land within the jurisdiction of any other tribe without consent. The Cherokee Nation’s constitution prevents such consent, and no

other Oklahoma tribe has consented. The restrictions of the STA effectively preclude the Tribe from acquiring land in the area containing the greatest concentration of its members. The Department is awaiting the concurrence in the two-part determination by Governor Fallin within the prescribed one year period. If the Governor concurs, the Department must determine whether it will acquire the land in trust for the Tribe. No gaming may take place until the Governor concurs and the land is acquired in trust by the Department.

***Wilton Rancheria restored lands determination (CA):*** On January 19, 2017, the Principal Deputy Assistant Secretary – Indian Affairs approved the trust acquisition of 36 acres in the City of Elk Grove, Sacramento County, California. Until this approval, the Tribe was landless. The site is near the Tribe's headquarters and most of its population, and is 5.5 miles from the Tribe's historic Rancheria. In 1958, Congress enacted the California Rancheria Act which terminated the government-to-government relationship between the United States and the Tribe. In 2007, the Tribe filed suit against the United States which resulted in the restoration of the Tribe's federal recognition. Following the January 19, 2017, decision, the land was acquired in trust by the Department on February 10, 2017. The Department's decision is being challenged by a local citizens' group in federal court.

***Tohono O'odham Nation congressionally mandated acquisition of land in trust and settlement of a lands claim determination (AZ):*** In 2010, the Assistant Secretary - Indian Affairs issued a decision to acquire in trust 54 acres in Glendale, Arizona, for the Tribe pursuant to the Gila Bend Indian Reservation Replacement Act of 1986. Several lawsuits were filed by the State and opposing tribes in state and federal court that challenged the Department's decision, the Tribe's alleged violation of its tribal-state gaming compact, and an alleged breach of contract by the Tribe. The Department and the Tribe have prevailed on these claims. The Tribe began gaming operations in Glendale in 2015 (class II only). The State and Tribe have not yet agreed to a tribal-state compact that would authorize class III gaming. The Tribe is currently seeking to have land that was withdrawn from its original application acquired in trust.

***Coquille Indian Tribe restored lands determination (OR):*** The Tribe seeks to have 2.4 acres acquired in trust within the City of Medford, Jackson County, Oregon. The Tribe intends to renovate an existing bowling alley for a class II gaming facility. In 1954, the Tribe was terminated by the Western Oregon Termination Act. In 1989, Congress restored the Tribe's government to government relationship with the United States, and authorized the acquisition of land in trust within the Tribe's five-county service area (Coos, Curry, Douglas, Jackson and Lane Counties). In January 2017, the Solicitor's Office determined that the acquisition of the Medford site in trust would constitute the "restoration of lands for an Indian tribe that is restored to federal recognition," and the land would be eligible for gaming upon its acquisition in trust. A final decision whether to acquire the land in trust has not been made by the Department.

**BUREAU:** Assistant Secretary - Indian Affairs  
**OFFICE:** Indian Gaming  
**MEMBER:**  
**ISSUE:** Secretarial Procedures for Regulation of Indian Gaming

**Background:**

- The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*, was enacted in 1988 to “provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.” 25 U.S.C. § 2702(1).
- The authority to make final decisions regarding Indian gaming has been delegated from the Secretary to the Assistant Secretary – Indian Affairs.
- Indian gaming is grouped into three categories. Class I gaming is defined as social games solely for prizes of minimal value. Class II gaming is defined as games of chance such as bingo and pull-tabs. Class III gaming is typically characterized as “casino-style gaming.”
- IGRA requires a tribe and state to enter into a tribal-state compact which is an enforceable agreement negotiated by a tribe and a state governing the state’s regulation of casino-style class III gaming.
- When the state and tribe are unable to negotiate terms and a federal court finds that the state has negotiated in bad faith, IGRA requires the Secretary to promulgate “Secretarial Procedures” which govern the regulation of casino-style class III gaming in place of a tribal state compact. 25 U.S.C. § 2710(d)(7)(B)(vii).
  - There are two types of Secretarial Procedures that are promulgated by the Secretary. The first are promulgated pursuant to IGRA’s statutory procedures following a finding by a federal court that the state has negotiated in bad faith (IGRA Procedures). The second are promulgated pursuant to the Department’s regulations at 25 C.F.R. Part 291 after a state seeks to avoid litigation by asserting an Eleventh Amendment sovereign immunity defense, thus, precluding a finding of bad faith by the court (Part 291 Procedures). The Secretarial Procedures pursuant to Part 291 are more vulnerable to court challenge by a state.

**Current Status:**

- ***Big Lagoon Rancheria (CA)***: (IGRA Procedures) The Department is reviewing a mediator-selected compact referred by the United States District Court for the Northern District of California. Note this is the most recent development in lengthy series of disputes between the Tribe and the State which date back to 1993, and include challenges to the Secretary’s decision to take land into trust for the Tribe.
- ***Pueblo of Pojoaque (NM)***: (Part 291 Procedures) The Department and the Tribe are awaiting a decision from the 10th Circuit Court of Appeals regarding whether the regulations at 25 C.F.R. Part 291 are invalid. The Secretarial Procedures process was triggered after the State

sought to limit each tribe to two gaming facilities, with the exception of the Pueblo of Laguna. The State first raised its Eleventh Amendment sovereign immunity defense to a suit under IGRA, and then separately challenged the Secretary's authority to promulgate Secretarial Procedures under 25 CFR Part 291.

**Recently Promulgated Procedures:**

- ***Northfork Rancheria of Mono Indians of California (CA)***: (IGRA Procedures) The Secretarial Procedures published July 29, 2016, are in effect. The Secretarial Procedures process was triggered after the California electorate voted to reject a referendum that would ratify a negotiated tribal-state compact and the State then refused further negotiations as futile. The Secretarial Procedures are similar to several recent compacts between California and other tribes in the State. The State and Tribe will each have a regulatory role in the Tribe's class III gaming and the Tribe will pay the State's costs of regulating.
- ***Enterprise Rancheria of Maidu Indians of California (CA)***: (IGRA Procedures) The Secretarial Procedures published August 12, 2016, are in effect. The Secretarial Procedures process was triggered after the California legislature did not hold a hearing or a vote to ratify a negotiated tribal-state compact resulting in the compact not going into effect under its own terms. The Secretarial Procedures are similar to several recent compacts between California and other tribes in the state including the *Northfork* Secretarial Procedures. However, the Tribe is not gaming under the Secretarial Procedures due to unrelated litigation challenging the Governor's authority under California State Law to concur with the Secretary's decision to take the proposed gaming site into trust as "Indian lands" under IGRA.

Prepared by: Office of Indian Gaming  
Date: February 28, 2017

**Bureau:** Assistant Secretary – Indian Affairs  
**Office:** Office of Indian Gaming  
**Member:**  
**Issue:** Indian Gaming Issues

## **Tribal-State Gaming Compacts**

### **Background**

- The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*, was enacted in 1988 to “provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.” 25 U.S.C. § 2702(1).
- Indian gaming is grouped into three categories: class I gaming is defined as social games traditionally played by tribes solely for prizes of minimal value. Class II gaming is defined as games of chance such as bingo and pull-tabs. Class III or “casino-style gaming.”
- Class III gaming may only occur if the Tribe and the State enter into an agreement (Tribal-State Compact) regulating class III gaming. IGRA assigns to the Secretary authority to approve Tribal-State Compacts. The Secretary can disapprove a compact if the compact is in violation of IGRA, other provisions of federal law, or the trust obligations of the United States toward Indians. If the Secretary fails to approve or disapprove a compact within 45 days after it is submitted, the compact is considered approved.
- A Tribal-State Compact negotiated between a tribe and a state is a cooperative agreement to permit class III gaming on Indian lands within a state. IGRA prohibits states from assessing any tax, fee, charge or assessment on a Tribe or from using a compact as a means of regulating tribal interests unrelated to gaming.
- When Tribes or states request assistance, the Office of Indian Gaming can provide technical assistance regarding gaming provisions to be included in a compact.

### **Current Status**

The Department receives Tribal-State Compacts for review and approval on an on-going basis. Additionally, Tribes and States seek assistance from the Department when questions arise regarding specific provisions that are included in a compact or on issues that are the subject of negotiations between states and tribes.

The Department has provided technical assistance letters to tribes and states, most recently in New York and Florida, but also in Arizona, California, New Mexico, Oklahoma, Oregon, South Dakota, and others.

**Bureau: Assistant Secretary – Indian Affairs**  
**Office: Office of Indian Energy and Economic Development (IEED)**  
**Member: Division of Energy and Mineral Development (DEMD)**  
**Issue: Construction Aggregate Opportunity in Indian Country**

BACKGROUND

Tribal communities are blessed with an abundance of aggregates while the U.S. aggregate market is suffering from a lack of supply. Tribes therefore have a unique opportunity to capitalize on construction aggregate production, distribution, and utilization. Aggregates make up the largest component of nonfuel mined materials consumed in the U.S. Every \$1 million in aggregate sales creates over 19 jobs and every dollar of industry output results in a \$1.58 contribution to the local economy.

CONSTRUCTION AGGREGATE IN INDIAN COUNTRY: OBJECTIVES

Tribes have an opportunity to capitalize on a unique combination of market and resource that could net as much as \$150 million per year throughout Indian Country due to the following factors:

- 1) The Bureau of Indian Affairs Division of Transportation states “[Many] BIA roads are in failing to fair condition and are not built to any adequate design standard and have safety deficiencies.” In FY 2012, approximately 23,850 miles or 83% were considered to be in unacceptable condition based on the BIA Service Level Index condition assessment criteria. To perform minimum maintenance on 23,000 miles of roads would require almost 10 million tons of aggregate at a cost of about \$120 million, all of which could benefit Tribes directly.
- 2) The American highway system is in dire need of significant repair and upgrades. The American Society of Civil Engineers estimates \$170 billion in capital investment each year just for roads. Tribes that provide construction aggregates for these repairs and improvements could net as much as \$125 million per year.
- 3) The uptick in the economy has been a catalyst for new construction, dramatically increased demand for aggregates in urban areas.
- 4) Urban sources of construction material supplies are rapidly depleting and/or not being put into operation. Construction aggregates will be sourced from more remote locations, resulting in dramatically higher transportation costs, with correspondingly higher construction and costs. Tribes can take advantage of this shortage: 109 reservations lie within five miles of interstate highways. Tribes could supply aggregate to as many as 6,500 miles of interstate roads for construction and repair.

CONSTRUCTION AGGREGATE IN INDIAN COUNTRY: CONCERN AND PARTICIPATION

There are simple solutions to ensure that Tribes can serve as major suppliers of aggregates to new infrastructure construction projects. These solutions involve the following actions: Increased evaluation of tribal aggregate resources vis-a-vis their quality and quantity, extractability, and end-uses; rapid processing and approval of permits, environmental clearances, and mineral lease agreements. With a certified aggregate resource and a permit to mine, a Tribe can be open for business as a supplier, user and contractor using tribal resources.

**Bureau: Assistant Secretary – Indian Affairs**  
**Issue: Oil and Gas Development in Indian Country**

BACKGROUND

Income from oil and natural gas is by far the largest source of revenue generated from natural resources on Indian trust lands. Over the last ten years, the development of shale oil and gas in the U.S. has been rapid, and advances in technology continue to improve the economic returns for oil and gas production. New horizontal drilling applications have accelerated domestic production of oil and natural gas. In 2015 alone (the most recent ONRR data available), royalty income paid to Indian mineral owners from oil and natural gas development exceeded \$812 million.

Although there is a temporary oversupply, resulting in the price of natural gas and oil falling, the economic impact of hydrocarbon development for Tribes is potentially very large. This is due to the fact that many Tribes are located in areas of unconventional plays that contain large amounts of undeveloped or underdeveloped acreage.

Within Indian Affairs there are two components that serve extensive and critical roles in the Indian energy and mineral development process. The BIA Office of Trust Services and the Division of Energy and Mineral Development (DEMD) within the Office of the Assistant Secretary-Indian Affairs each play important roles in conventional energy (oil, natural gas, and coal) development in Indian Country

DEMD

DEMD offers a unique array of programs and services to assist tribes with the environmentally responsible exploration, development and management of their energy and mineral resources to promote economic self-sufficiency. This includes offering technical assistance and economic advice to Tribes to help them with planning for oil and gas development. Additionally, DEMD provides data and knowledge to Tribes that is necessary to negotiate optimally beneficial exploration and production leases.

In the last three years, DEMD has worked with Tribes to negotiate 48 Indian Mineral Development Act (IMDA) leases for oil and gas, involving approximately 2.75 million acres and about \$45 million in bonuses (*i.e.*, upfront payments). Throughout their duration, these leases have the potential to produce more than \$20 billion in additional revenue to Indian mineral owners through royalties and working interests.

Trust Services

The Office of Trust Services within the BIA is responsible for reviewing and processing approvals of new oil and gas leases, as well as non-standard agreements. Included in this responsibility is the review and approval of ancillary documents, such as assignments, bonds, designation of operators, and communitization agreements (CA). BIA also manages royalty distributions and conducts on-site inspections as warranted.

The Bureau of Indian Affairs manages an estimated 58,203,000 trust mineral acreages. It also manages 12,124 producing oil and gas leases. In FY 16, Trust Services processed and approved 867 new oil and gas leases. There are 15 oil and gas active tribes, defined as those with new leases approved within the last year.

The Bureau has been tasked with creating a tracking tool for the CA process as a result of the GAO audit Report No. GAO-16-553. The goal is to develop software enhancements to track the approval of these agreements using the Trust Asset and Accounting Management System (TAAMS). In addition, BIA is tasked with tracking all mineral contracts per GAO Report No. GAO-15-502. This task is set to be accomplished within fiscal year 2018. An interim tracking mechanism is in place until the software enhancements are accomplished through our system of record, TAAMS.

**Bureau: Assistant Secretary – Indian Affairs**  
**Office: Office of Indian Energy and Economic Development (IEED)**  
**Member: Division of Energy and Mineral Development (DEMD)**  
**Issue: Renewable Energy Opportunity in Indian Country**

BACKGROUND

DEMD views renewable energy as one of the many tools available to American Indians and Alaska Natives for creating sustainable economies on Indian land. DEMD’s team of engineers, geologists, economists, and business development specialists help Tribes to develop renewable energy opportunities that achieve tribal economic development goals.

The following table is a partial list of currently deployed renewable energy assets in Indian Country:

Resource	Installed Capacity Prior to 2016 (MW)	Installed Capacity in 2016 (MW)	2016 Renewable Generation <sup>1</sup> (kWh)
Hydro	491.77	0.00	2,589,061,806
Solar	4.69	253.87	336,685,703
Wind	51.73	1.80	105,051,125
Biomass	2.17	0.00	13,311,988
<b>Sum</b>	<b>550.36</b>	<b>255.67</b>	
<b>Total</b>	<b>806 MW</b>		<b>3,044,110,622</b>

Based on an average electricity rate of \$0.1049/kWh, the total renewable energy generation in Indian Country has an estimated sales value of over \$319 million per year.

RENEWABLE ENERGY IN INDIAN COUNTRY: OBJECTIVES

Renewable energy deployment allows Tribes to not only save on the cost of power for their members, but in many cases it allows them to strengthen their sovereignty by increasing energy independence from utility providers. Jobs will be present during the initial construction phase of all deployment; however some technologies are labor-intensive and create employment opportunities throughout a project’s lifetime. Virtually all Tribes have renewable energy resource potential and may consider evaluating development opportunities.

High local retail electricity rates and soaring heating costs can indicate an opportunity for energy savings and job creation by way of small renewable energy projects, especially where Tribes must rely on heating oil or propane.

RENEWABLE ENERGY IN INDIAN COUNTRY: CONCERN AND PARTICIPATION

Renewable Energy projects consistently maintain over 50% of DEMD’s overall project portfolio, with the highest levels of interest in small renewable energy projects, ranging from 250 kW to 3 MW. Small projects provide for several benefits as compared to large utility-scale projects where power is sold and used off-reservation. Small projects have a lower capital expense, making it more feasible for a tribe to have 100% project ownership. Also, small projects are less complicated to connect to the local utility and tribes have the opportunity to utilize micro-grid islanding technologies which allow them access to power and heat in emergency situations. The most important aspect of small projects is the economic benefit created in the tribal community.

Key Concerns for small scale projects include:

- Access to Capital – DEMD provides assistance to tribes in developing bankable documents for their projects with the intent to identify private financing and investment partners. IEED’s Loan Guarantee and Insurance Program is a valuable tool available to tribes that further assist with access to financing for community-scale projects.
- Tracking – Tribe’s commonly choose to develop small scale projects on their own, taking a different approach than the traditional leasing structure seen with oil and gas or large scale projects. Because tribes develop the projects on their own, BIA lease approval is not required. While this does streamline the permitting process, it leads to concern that there is no formal tracking of renewable energy projects installed on Indian lands.
- Permitting – For projects where tribes choose to pursue lease approval through the BIA, there is concern with the time it takes for a NEPA analysis to be completed.

**BUREAU:** Indian Affairs  
**OFFICE:** Office of Trust Services  
**ISSUE:** Indian Energy Service Center

**Key Points:**

- The Indian Energy Service Center (IESC) is a newly funded program sponsored by the U.S. Department of the Interior's (Interior) Indian Energy Mineral Steering Committee (IEMSC).
- The IESC's purpose is to provide administrative and direct program support to the core field organizations that manage Indian energy and mineral development activities. The IESC is composed of staff from Interior's Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), Office of Natural Resources Revenue (ONRR), and Office of the Special Trustee (OST).
- Each of these organizations play an active and direct role in the Federal government's trust responsibility to develop and manage Indian energy and mineral resources, a top priority within Interior's range of Indian trust responsibilities.
- The IESC is tasked with training all agencies involved in Indian Energy development with the Fluid Minerals Standard Operating Procedures affecting the streamlining and efficiency of mineral processing and management.

**Background:**

The need for the additional capacity offered by the IESC became apparent during numerous instances where increased oil and gas development demands challenged the capacity of Interior's resources to provide timely and efficient services. Examples include the rapid development seen in the Bakken Shale Formation affecting Tribal and allotted lands of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; expanded management activities prompted by regulatory revisions, enhanced environmental review, and other issues affecting lands of the Osage Nation in Oklahoma, and increased development activity in the San Juan Basin affecting allotted Navajo lands concentrated in northern New Mexico. To address this and anticipated demand, an interagency team from BIA, BLM, ONRR, and OST through the IEMSC collaborated and identified the IESC concept as the most efficient and cost-effective solution.

**Current Status:**

Though the IESC function offers a sustained capacity deployment mechanism across the Indian land base, it has already demonstrated its capability to offer short-term, rapid response actions to address immediate needs. Recent examples include: BIA detailing critical personnel to Fort Berthold, the rapid contracting of services by the Federal Indian Minerals Office at Navajo, and the BLM's "Tiger Team" formed to address backlog Applications for Permit to Drill at Fort Berthold. Additionally, the IESC has been working to fill positions as provided in the approved organizational structure.

**Bureau:** Indian Affairs

**Office:** Indian Services

**Member:**

**Issue:** Spirit Lake Tribe Social Services –Child Protection Program

**Background:**

On October 1, 2012, the Spirit Lake Sioux Tribe (Tribe) of North Dakota retroceded [voluntarily returned] the P.L. 93-638 contracted, child protection and foster care programs to the Bureau of Indian Affairs (BIA). The BIA Fort Totten Agency has been operating the programs since October, 2012. Although the BIA operates the Child Protection program, the Tribe continues to successfully operate multiple programs under a P.L. 93-638 contract including the Employment and Training Program managed under a P.L 102- 477 agreement, the BIA General Assistance program, and the Indian Child Welfare Act (ICWA) program.

In August, 2016, the Spirit Lake Tribe became a Tiwahe site under the BIA, Tiwahe Initiative. The purpose of the BIA’s Tiwahe Initiative is to demonstrate the importance of social service coordination among programs within a tribal community, so that critical services more effectively and efficiently reach American Indian and Alaskan Native children and families. Under the Tiwahe Initiative the Tribe developed its Tiwahe plan and the Tribe’s vision to establish a “One Child Welfare System.” This plan will create one comprehensive Department of Social Services dedicated to strengthening Spirit Lake children, families, and the community through Dakota values by emphasizing partnerships among service providers delivering culturally responsive family services.

**Current Status:**

The Tribe partnered with the Fort Totten Agency and Casey Family Foundation to develop a plan to help outline the steps needed to fully transition the child protection and foster care program back to the SLTSS in alignment with their Tiwahe plan. The transition plan focuses on four areas: 1) implementing family-centered services that engage families and focuses on permanency; 2) improving access and delivery of services to clients, 3) creating a stable child welfare system, and 4) developing a community-wide response model to address and combat child welfare issues.

Some of the on-going activities to support the Tribe’s vision under Tiwahe and to support the transitioning of the program back to the Tribe include establishment of Tribal Social Services positions critical to the transition, sharing of programmatic data and procedures, regular transition meetings, transition of housing units to social service office space, coordination with local and federal law enforcement, technical assistance, updating tribal policies and procedures, negotiations with the State that would affect funding, and licensing of foster homes.

**On-going Concerns Impacting the Transition:**

- As of February 27, 2017, the Tribe has not submitted a complete contract proposal package including a budget and statement of work. Initial budgets indicated that the Tribe sought almost a half million more in funding than was available. A complete proposal is needed in order for the Tribe to contract the CPS program. The BIA has 90 days to review and make a decision following the submission. The Tribe’s targeted date to reassume the Child Welfare and Child Protective Services from the BIA, Fort Totten Agency is slated for April, 2017.
- Although BIA Social Services supports the Spirit Lake Tribe’s efforts to reassume the Child Protection Program, the BIA recommends that staff undergo relevant training, and that the Tribe immediately fill leadership positions that will be vacated in March.
- The Tribe may not be in a position to contract the operation of the CPS program in April, 2017.

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**BUREAU:** Indian Affairs

**OFFICE:** Office of Trust Services, Division of Real Estate Services

**ISSUE:** Fee-To-Trust Program

**Background:**

The Indian Reorganization Act (IRA) [48 Stat. 984, 25 U.S.C. § 461 et seq. (June 18, 1934)] provides the Secretary with the discretion to acquire trust title to land or interests in land. Congress may also authorize the Secretary to acquire title to particular land and interests in land into trust under statutes other than the IRA.

Fee-to-trust (FTT) applications affect the conversion of acquisitions in trust of whole or undivided interests in land held in fee status on behalf of individual Indians and tribes. There are three types of acquisitions, each of which is addressed in the regulations.

**Current Status:**

In the last eight years, the BIA has assisted tribes and tribal members in placing 631,828 acres of fee lands into trust. In addition, implementation of the Indian Affairs Manuals for Fee to Trust and other policy directives established standardized guidance and time frames for the 16-step-by-step process for approving FTT cases along with certain problem solving procedures.

Currently, the Real Estate Services program maintains a nationwide Fee to Trust - SharePoint Site as the mechanism for tracking FTT cases in process, recorded and approved. The Bureau's FY 2017 plans include a proposal to initiate SharePoint data cleanup prior to the migration of fee to trust records centralized into BIA's current system of record, the Trust Asset and Accounting Management System (TAAMS). TAAMS must be enhanced to accommodate trust acquisitions from the beginning of an application to the final transfer into trust along with perfecting ownership and title recordation of the conveyance. The Department anticipates the successful conversion of all fee-to-trust cases stored in SharePoint into TAAMS, a projected FY 2018 goal.

## **ISSUE: The Water Infrastructure Improvement for the Nation (WIIN) Act Implementation Status (Irrigation)**

### **Key Points:**

- Completed required consultation with Tribes and Landowners/Adjacent Irrigation Districts, and Public
- Act funding is subject to appropriations; request included in FY 2018 passback, targeted for FY 2019 (Act established accounts from FY 2017 - 2023)
- Implementation Plan due to Congress April 15, 2017

### **Background:**

The BIA Safety of Dams Program was established under the Indian Dam Safety Act of 1994, making BIA responsible for high- and significant-hazard potential dams located on tribal lands. Currently, the BIA is responsible for the safety of 138 high- and significant-hazard potential dams in nine (9) BIA Regions and on forty-three (43) Indian Reservations.

The Water Infrastructure Improvement for the Nation (WIIN) Act was signed into law on December 16, 2016. Title III, Subtitle B of the WIIN Act is intended to reduce the deferred maintenance (DM) impacts at specific Indian Irrigation Projects and Indian Dam Projects. Irrigation Condition Assessment Studies have been completed at each of the 17 eligible Irrigation Projects, with a DM estimate of \$630 million. A study is underway to index all Condition Assessment DM estimates to 2016 dollars, since these studies were completed between 2006 and 2016; we anticipate the FY 2017 DM estimate to increase by 15% to 20%. Modernization Studies will be completed at 4 of the 17 Projects by the end of April 2017.

### **Current Status:**

As required in the Act, BIA held Tribal Consultations and landowner and adjacent irrigation district meetings in February 2017. Public teleconference consultations were also held in February 2017, while written comments from tribes, landowners and adjacent irrigation districts are due to BIA by March 3, 2017.

The Act also requires an Implementation Report be provided to Congress by April 15, 2017. A study to evaluate options for improving programmatic and project management and performance of projects managed and operated in whole or in part by the Bureau of Indian Affairs is due to Congress by December 15, 2018.

**BUREAU:** Indian Affairs

**OFFICE:** Office of Trust Services, Division of Natural Resource Management

**MEMBER:**

**ISSUE:** Agriculture and Rangeland Management

**Key Points:**

- Under the authority of the American Indian Agricultural Resource Management Act, P.L. 103-177, and the Indian Self Determination and Education Assistance Act (ISDEAA), P.L. 93-638, the Agriculture and Range Program promotes conservation and beneficial use of 47 million acres of trust surface land dedicated to crop and livestock agricultural production through both direct administration and support of tribal agriculture programs under an ISDEAA contract or compact.
- Program administers nearly 14,000 grazing permits, provides management expertise and technical support for over 25,000 crop agriculture and grazing leases, and monitors ecological conditions on over 3,250 grazing units.

**Background:**

The program promotes conservation, multiple-use, and sustained yield management carried out by Indian Affairs personnel or by tribes under ISDEAA agreements. The program activities focus on five principal responsibilities: soil and vegetation inventory, programmatic and conservation planning, farm and rangeland improvement, lease and permit services and administration, and rangeland protection. Services are provided to tribal programs and individual Indian land owners and land users. In addition, noxious weed activity supports over 400 control projects annually on over 100,000 acres in cooperation with as many as 75 tribes.

**Current Status:**

- Many activities of the Agriculture Program are required under AIARMA
- Participation in the management of Indian agricultural lands
- Programmatic agricultural resource management planning
- All other resource and land management programs depend on agriculture program surveys, plans and personnel to effectively address their responsibilities
- Agricultural program budgets have remained flat in real dollars – not actual dollars – for over 30 years despite increased responsibilities under AIARMA and other regulations and directives

Staffing in Agriculture and Rangeland Management has fallen to critical levels – from 441 FTE in 1987 to 121 in the 2017 budget. Due to functionally decreasing budgets, managers cannot fill vacancies; for instance, some agencies with significant agricultural management responsibilities do not have agricultural professionals on staff.

Prepared by: David Edington, Chief, Branch of Agriculture and Rangeland Management, 202-513-0886, 2/28/17

**BUREAU:** Indian Affairs

**OFFICE:** Office of Trust Services, Division of Land Titles and Records (DLTR), Branch of Geospatial Support (BOGS)

**MEMBER:**

**ISSUE:** LTRO/BOGS

**Key Points:**

- No permanent base funding.
- GIS expertise is limited in the field and at Land Title and Records Offices (LTRO)
- Responsible for the Tribal cost share which is escalating to the amount of over \$1.9 million dollars to cover the cost of three (3) DOI Enterprise License Agreements.
- Requested \$1.8 million beginning in FY 2018 for a two-year initiative to develop a BIA Enterprise Land and Resource Data Warehouse (LRDW).

**Background:**

The DLTR, Branch of Geospatial Services is the single geospatial technical center for the entire BIA, which operates in conjunction with LTRO to deliver accurate, timely and cost-effective Federal land title service to Indian beneficiaries and Tribes. The office provides GIS software, training, and technical support including geospatial database management, programming and project support. The work is required for land status title mapping and sound management of natural resources on over 10 million acres belonging to individual Indians and 46 million acres held in trust or restricted status for Indian Tribes.

BOGS consists of four main program areas: Extended Services, Geospatial Training, Enterprise License Agreements (ELA), and the Geospatial Help Desk. This Branch of the BIA has a very large stakeholder reach which leverages its expertise extending well beyond BIA DLTR and OTS to other DOI bureaus, Federal Agencies and Tribes. Connections and support can range from land title and records, rangeland leasing, irrigation, flood plain analysis, safety of dams, forestry harvest modeling, wildland fire planning, oil and gas management, and land buy back economic studies, to activities involving justice services, gaming analysis and Indian education, among others.

**Current Status:**

As of FY 2017 BOGS has taken over leadership of the Land Buy Back Program (LBBP) mapping program and has initiated an effort to implement the same procedures and techniques to map all land areas and tracts that are not eligible for the LBBP or mapped by the LBBP to ensure all Indian land is mapped to the same standard nationally. This geospatial data will also be reviewed and approved by respective LTROs before delivery to the U. S Census Bureau as part of the MOU signed in FY 2016 and prior to publication in TAAMS, to meet GAO energy management recommendations.

BOGS is managing its workload, including programming, automation, geodatabase management, security, and coordination with other programs and systems, without permanent base funding. Furthermore, GIS expertise is limited in the field and at the LTROs. Additionally, the program is responsible for the Tribal cost share, which is escalating to the amount of over \$1.9 million to cover the cost of three DOI Enterprise License Agreements (ELA). This is funding that is earmarked for trust programs, but is diverted to cover tribal and non-trust program license and related ELA costs.

The OTS has requested \$1.8 million beginning in FY 2018 for a two-year initiative to develop a BIA Enterprise Land and Resource Data Warehouse (LRDW) that will expand

data sharing capabilities while utilizing existing business data repositories and analytical tools that will serve as the critical component of a DOI-wide Enterprise Data Warehouse. The LRDW is a cross-cutting BIA-wide initiative for all data from BIA's various business subsystems within the Trust Asset and Accounting Management System (TAAMS) and other standalone data tools. Funding for this request will allow BIA to integrate data from TAAMS and other data sources into operational data views that can be easily accessed as a single point for strategic and operational reporting, enhancing compliance activities and promoting BIA's capabilities for analysis, trending, predictive analytics, statistical information gathering, and decision making.

Prepared by: Beth A. Wenstrom; Division Chief, Land Titles and Records, Office of Trust Svcs. 202-208-7284.

Date: 2-27-17

**BUREAU:** Indian Affairs

**OFFICE:** Office of Trust Services, Division of Real Estate Services

**MEMBER:**

**ISSUE:** Fee-To-Trust Program

**Background:**

The Indian Reorganization Act (IRA) provides the Secretary with the discretion to acquire trust title to land or interests in land. Congress may also authorize the Secretary to acquire title to particular land and interests in land into trust under statutes other than the IRA.

Fee-to-trust (FTT) applications affect the conversion of acquisitions in trust of whole or undivided interests in land held in fee status on behalf of individual Indians and tribes. There are three types of acquisitions and each type is addressed in the regulations as follows: 1.) On-reservation Discretionary Trust Acquisitions; 2.) Off-reservation Discretionary Trust Acquisitions; and 3.) Mandatory Trust Acquisitions by applicable policy. The Bureau of Indian Affairs (BIA) staff follows processes outlined in a reference guide, Acquisition of Title to Land held in Fee or Restricted Fee Status Handbook (Fee-to-Trust Handbook), that describes standard procedures for the transfer of fee land into trust or restricted status.

**Current Status:**

Since 2009, the BIA has assisted tribes and tribal members in placing over 630,000 acres of fee lands into trust. Over 90 million acres of land were lost by tribes as a result of the repudiated allotment policy. Restoring tribal homelands is critical to promoting tribal self-determination, strong and healthy tribal communities, and tribal culture. In addition, the previous Administration amended its fee-to-trust rules to allow for land to be placed into trust in Alaska.

In addition, we have implemented standardized guidance executed through the issuance of our Indian Affairs Manuals for Fee to Trust and other policy directives that establish time frames for the 16-step process for approving FTT cases along with certain problem solving procedures.

Prepared by: Sharlene Round Face, Division Chief, Office of Trust Services (202) 208-3615 Date: 2/27/2017

**BUREAU:** Indian Affairs  
**OFFICE:** Office of Trust Services  
**MEMBER:**  
**ISSUE:** Fish Hatchery Maintenance

**Key Points:**

- Hatcheries are key in maintaining fish sufficient for a meaningful exercise of treaty rights.
- Most treaty fisheries are terminal fisheries, where the tribal fishery and the fulfillment of treaty rights are directly related to tribal hatchery production.
- Hatcheries play a key role in the local tribal economy through barter/sale, while also being central to the culture, health and nutrition of tribal communities.
- The Endangered Species Act and other environmental regulations require periodic upgrades or other alterations to hatchery operations and planning documents.
- The majority of tribal hatcheries were constructed during the 1970's and 1980's and are in a significant state of disrepair when compared to their counterparts funded through states, U.S. Fish and Wildlife Service or NOAA Fisheries.

**Background:**

Prior to FY 2010, BIA hatchery maintenance funding was limited to \$500,000 annually. Tribal hatcheries were becoming inoperable due to increasing deferred maintenance issues and a growing concern for human safety/health due to deteriorating structures and systems. An increase of \$2 million was provided by Congress in FY 2010. These funds were originally applied to the operations line, but were moved to the maintenance portion of the Hatchery program in FY 2011 so that tribes would be able to make necessary repairs to their hatcheries. Operations funding has not seen a measurable increase in years, but the cost of operations has increased significantly over the years. In FY 2014, BIA received an increase of \$2.25M to the fish hatchery maintenance program, including \$250,000 for the operation of the Lower Elwha hatchery.

**Current Status:**

Funding supplements facility maintenance for 89 Indian hatcheries. Maintenance is mandatory to extend the life of the hatcheries and rearing facilities. Project funding is provided annually based on a competitive ranking of maintenance project proposals.

Hatchery maintenance funding has allowed BIA to address some of the maintenance project backlog and continue tribal hatchery operations. Due to the large backlog of maintenance projects, we continue a "bandaid" approach when more extensive refurbishing would likely be more cost efficient in the long run. Regulatory requirements increasingly stretch maintenance funding by requiring significant upgrades, alterations, or the development of new operating plans.

Hatchery fish drive the tribal economy at a grass roots level by allowing families and individuals to barter or sell fish as a subsistence base. This fills the equivalent of many jobs, as tribal fisherman provide for families through traditional fish harvest. Tribal hatcheries also provide fish for non-tribal fishermen in shared-use areas where tribal fishing occurs. Funding is expected to provide for approximately 164 hatchery maintenance projects in FY 2017. Tribes released more than 41 million salmon in 2016.

Prepared by (David E. Wooten, 202 513-0355, 2/27/2017)

**BUREAU:** Indian Affairs

**OFFICE:** Office of Trust Services, Division of Forestry and Wildland Fire

**MEMBER:**

**ISSUE:** Forest Management and Fire Suppression

**Key Points:**

- Forests cannot be managed economically without sound forest management that includes logging operations. Unmanaged forest lands are prone to destruction through stand replacement fires, insects and disease.
- Fires in the Northwest burned nearly 2 million acres in 2015. Nearly one quarter of that acreage was located on Tribal land supporting valuable commercial timber and wildlife habitat. An estimated 1.4 billion board feet of timber was damaged or destroyed on tribal lands in those fires. The lost timber was valued at \$203 million dollars. Nearly 92,000 burned acres require reforestation and other forest restoration activities as a result of these fires. Conservatively it will cost \$55 million to complete these restoration activities.

**Background:**

The National Indian Forest Resources Management Act (NIFRMA) directs the Secretary of the Interior to undertake forest management activities which "... develop, maintain, and enhance Indian forest land in a perpetually productive state in accordance with the principles of sustained yield and with the standards and objectives set forth in tribal forest management plans." In order to maintain forest land in a "perpetually productive state," land classified as commercial forest land must be fully stocked with trees. When catastrophic fire occurs, trees are killed, leaving the area unstocked or understocked. Land which is unstocked or understocked will not realize its full potential in terms of site occupancy by forest and of subsequent wood fiber growth and yield. Pursuant to NIFRMA, it is a trust responsibility to ensure that all land classified as commercial is fully stocked with trees.

**Current Status:**

The current backlog of forest development planting, thinning, and restoration of healthy woodlands includes 567,000 acres of planting, 620,000 acres of precommercial thinning, and 2,200,000 acres of woodlands restoration. In order for land managers to maintain healthy, productive forests capable of yielding commercial wood fiber, associated employment, and industrial capacity, a comprehensive approach to forest management that includes the sale of wood fiber is necessary. Activities such as thinning, planting, and prescribed burning are essential investments which improve forest composition, growth, and the yield and quality of marketable forest products.

Tribal commercial forest lands are capable of yielding approximately 25% more sawtimber once regulated through active forest management. This means that the National Annual Allowable Cut (NAAC) would increase from 732 to 915 million board feet. This 183 million board foot increase is valued at an additional \$29 million annually above current stumpage revenue. This increase can only be achieved if forest growing stock levels are properly maintained through planting, thinning, and fuels management operations. These activities directly employ over 2,000 people annually, and indirectly support additional jobs in rural areas and economically challenged communities.

**BUREAU:** Indian Affairs

**OFFICE:** Office of Trust Services, Division of Forestry and Wildland Fire Management

**MEMBER:**

**ISSUE:** Economic Growth through Timber Harvest

**Key Points:**

- The sale of forest products is a primary fiduciary trust responsibility and a key source of tribal revenue and employment. Forest products sales support BIA efforts to promote self-sustaining communities and healthy and resilient Indian forest resources.
- The sale of timber and other forest resources allows for the treatment of more land, increases industrial infrastructure, and provides countless employment opportunities for Tribal members, rural communities, and industries that rely on the extraction and utilization of forest products.

**Background:**

Under the National Indian Forest Resources Management Act (P.L. 101-630, Title III, 104 Stat. 4532), the Secretary is authorized to undertake forest land management activities on Indian forest land to develop, maintain, and enhance Indian forest land in a perpetually productive state. This is in accordance with the principles of sustained yield and with the standards and objectives set forth in forest management plans.

**Current Status:**

Direct return on investment in the Forestry Program is essentially 3:1; that is, for every \$1 invested, \$3 dollars is returned through stumpage receipts from timber sales. However, there is a direct correlation between staffing reductions and the ability to prepare and offer for sale the full Allowable Annual Cut (AAC). From 1991 to 2016 there has been a 59.1% reduction in Forestry staffing. The current National Allowable Annual Cut (AAC) is 732 million board feet of sawtimber. In 2016, only 314 million board feet was harvested, representing 42% of available volume.

In a recently submitted FY 2018 budget request, \$22,150,000 was requested to fund 292 additional FTE dedicated to Indian Forestry. This investment has the potential of yielding an additional \$66.5 million in direct stumpage revenue to Tribes, while also providing economic multipliers in the forest products sector and local communities.

Prepared by Dave Koch, 202-208-4837, February 27, 2017

**Bureau:** Indian Affairs

**Office:** Office of Trust Services, Division of Water & Power, Branch of Irrigation and Power

**Member:**

**ISSUE:** Irrigation Rehabilitation and Renovation (construction)

**Key Points:**

- BIA's FY16 estimate of deferred maintenance is approximately \$630 million
- BIA currently receives \$2.6 million to address deferred maintenance issues

**Background:**

The BIA has been involved with Indian irrigation since the Colorado River Indian Irrigation Project, authorized in 1868. Most facilities are reaching 100 years old and are in need of major capital improvements. Several critical structures are in such poor condition that their long-term viability to deliver irrigation water is in question. BIA irrigation projects are an important part of regional economies providing irrigation water to over 780,000 acres, through over 6,300 miles of canals and more than 52,000 irrigation structures, with receipt fund revenues of over \$35 million. The recent BIA economic study completed by the Bureau of Reclamation states that the irrigated lands served by the 17 BIA irrigation projects produce in excess of \$960 million (2013 dollars) in gross crop revenues annually with an additional \$670 million of indirect benefit for a total economic impact of approximately \$1.63 billion.

**Current Status:**

The total deferred maintenance reported in 2016 was \$630 million, due to the problems associated with aging infrastructure and years of insufficient funding. In addition, a study is underway to index all Condition Assessment deferred maintenance estimates to current dollars; we anticipate our reported value to increase by 15% to 20%.

Since FY 2006, \$26.6 million has been received through the irrigation rehabilitation fund. The irrigation rehabilitation fund is used for critical deferred maintenance and construction work on BIA owned and operated irrigation facilities, with an emphasis placed on infrastructure rehabilitation that overcomes health and safety concerns for BIA employees and the public. If irrigation rehabilitation funding remains static, the effectiveness and reliability of water delivery at several of the projects is in danger of reaching an unsafe and unusable level. While the O&M rates charged by our irrigation projects have increased approximately 26% since 2006, most are not able to fund rehabilitation activities.

The current available rehabilitation funding (\$2.6 million) falls short of the necessary amount needed to ensure additional deferred maintenance is not incurred and is not enough to address even those identified with critical health and safety deficiencies.

Prepared by: Dave Fisher, Chief, Branch of Irrigation and Power, Trust Svcs. 303-231-5225

Date: 2-27-17

**BUREAU:** Indian Affairs

**OFFICE:** Office of Trust Services, Division of Land Titles and Records

**MEMBER:**

**ISSUE:** Land Titles and Records Offices (LTRO)

**Key Points:**

- Limited funding for Land Titles and Records Offices; no increases in over 10 years.
- No dedicated funding for Central Office Program Oversight.
- Severely understaffed due to prior year buyouts, early retirements, and attrition.
- No training, developmental or retention programs for employees in this area.

**Background:**

The Land Titles and Records Program provides for the day-to-day operation and maintenance costs of nine federal and seven tribal title offices, and the oversight of one agency with title service responsibilities. These offices render support to all 12 BIA Regions and 83 Agencies, the Land Buy-Back Program (LBB) Acquisition Center, and to other Agencies who deliver trust services including the Department of Housing and Urban Development (HUD) and the mortgage industry.

LTRO records tens of thousands of conveyance, legal and right of way documents annually, including processing Office of Hearing and Appeals (OHA) probates and modifications affecting title to all trust and restricted Indian land. These offices perform detailed examination, identify defects, seek corrections, certify current ownership, issue certified title status reports (TSR), generate Land Status Maps (LSM), Individual Trust Interest Reports (ITI) and the Probate Inventory Reports (INV), and respond to legal inquiries. Title includes recordation and title management for encumbrances associated with leases managed on these lands for uses such as farming, grazing, forestry, and oil and gas production on behalf of individual Indians and Tribes.

Accurate title is critical to the distribution of over several billion dollars belonging to Indian Tribes and individual Indians. The LTRO's products provide security to real estate investors, especially as rapid and dramatic developments drive the real estate market. From a single-family home purchase to a multi-million dollar commercial transaction, real estate investors in Indian country receive title protection through the LTRO.

**Current Status:**

The Land Titles and Records Program is currently severely underfunded. Because of the low staffing levels and high demand for service, work related to sprints in various administrative initiatives competes for very limited resources, creating high operational risk at the national level. Further, this certification work of the LTROs, as of September 2016, is estimated to be over \$752 million in value added to the economy and \$1.4 billion in economic output, supporting about 9,000 jobs nationwide. This program is an excellent investment which has a direct connection to the U.S. economy, which if supported with additional funding to address staff shortages and backlogs, could substantially increase output.

Prepared by: Beth A. Wenstrom, Division Chief, Land Titles and Records, Office of Trust Svcs.  
202-208-7284

Date: 2-27-17

**BUREAU:** Indian Affairs

**OFFICE:** Office of Trust Services, Division of Probate

**MEMBER:**

**ISSUE:** Probate Backlog

**Key Points:**

- New accumulated backlog of 11,000 cases
- Over \$168 Million in Individual Indian Monies (IIM) estate accounts
- Probate program unable to keep up with new reported cases with current funding levels.

**Background:**

The Division of Probate Services is responsible for the preparation and submission of probate documentation to Federal administrative adjudicators and for the subsequent distribution of trust estates. Bureau probate activities include pre-case preparation, case preparation, and portions of case closing. In case preparation, the BIA determines if the decedent owned any trust assets that must be probated by the DOI, and BIA staff researches and prepares the asset inventory and family information needed to identify potential heirs, claimants, and interested parties. That information is then forwarded to the Office of Hearing and Appeals (OHA) for adjudication. After receiving a final probate decision from OHA, BIA staff distributes estate assets in accordance with the probate order. Probating trust estates are a statutorily mandated obligation upon the DOI. Current, reliable trust ownership records are crucial to making timely and accurate payments to the trust beneficiaries.

Probate activities must be coordinated with the BIA Land Titles and Records Office, the Office of the Special Trustee and the OHA to ensure that American Indian and Alaska Native beneficiaries receive the trust assets to which they are entitled and have a voice in the management of these assets. In addition, Bureau probate efforts rely, in part, on state and local government offices to purchase and obtain the family and vital information (i.e. Death Certificates, Birth Certificates) required for determining heirs and distributing assets.

**Current Status:**

The BIA Probate program has over 13,000 cases in case preparation status with over 8,000 of these cases with a date of death that is older than 2015. As of January 30, 2017, there are over 5,000 cases where the date of death is later than 2015. The program at this time has the capacity to prepare approximately 4,000, leaving a deficit of approximately 1,000 cases to be added to the growing backlog of cases.

In 2004, the Probate program had a backlog of over 18,000 cases. To address the backlog, additional funding was provided, and Regions and Agencies added additional full time employees (FTEs). However, the additional funding to address the backlog ended in FY 2011 creating a shortfall in funding for salaries. The program currently has over 26 FTE vacancies.

Prepared by (Charlene Toledo, Division of Probate and Special Projects, 505-977-4162, 02/27/2017)

**Bureau:** Bureau of Indian Affairs

**Office:** Office of Trust Services, Division of Real Estate Services

**Member:**

**Issue:** Real Estate Services

**Key Points:**

- Activities of the Real Estate Services program promote economic opportunity and carry out the responsibility to protect, preserve and improve the trust assets of American Indians.
- Approximately 12 million of the 69 million mineral and surface acres (2% of the US land base) are being utilized for leases, rights-of-ways, residential leases, business and mineral/energy development.
- Infrastructure is built through multi-agency collaboration and cooperation.
- Energy development is the purpose and goal of oil & gas leases and coal leases; ROWs support the development.
- Economic development typically starts with securing the land for developmental use.
- Job creation is the result of economic development opportunities on Indian lands.

**Background:**

The Real Estate Services program provides services to Indian tribes and individual Indian beneficiaries pursuant to several Congressional authorizations, including HEARTH Act of 2012 (amending 25 U.S.C. 415). These services include the development and approval of mineral leases and agreements, commercial leases, renewable energy agreements, easements and rights-of-way, conveyances and sales of land, as well as the acquisition of new trust lands. Real Estate Services has a significant, positive impact on the Reservation economies throughout the United States. Important Tribal economic activities that benefit individual Indian families who rely on BIA Real Estate Services programs include energy development, mineral leases, renewable energy agreements, agricultural leases, and home site and residential leases.

Real Estate Services manages surface lands and acres, and mineral interests and acres, which are held in trust or restricted status. Oil and gas, rights-of-way, and coal development are highly dependent upon an infrastructure of multi-agency efforts (BIA/Tribes/BLM/ONRR). Such development is built through leases, agreements, easements, and surface management protocols.

**Current Status:**

The Realty program manages 121,287 encumbrances; 11,429 new surface and sub-surface contracts, leases, and grants, which includes 6,745 new agricultural leases; 867 new oil and gas leases; 2,563 new business leases and 1,254 rights-of-way grants.

There are nearly 75,658 leases that cover approximately 866,145 acres of land and generate approximately \$211 million of trust revenue to Indian tribes and individual Indian landowners in fiscal year 2016. The leases are for business and commercial purposes, government use, healthcare facilities, religious purposes, for schools and residential use. The leases are developed, processed and approved by the local BIA Real Estate Services offices. Individuals are able to live in local communities due to the residential leases and mortgages processed by Real Estate Services, which benefits economic development and job creation.

**Bureau:**

**Office: OFFICE OF INDIAN SERVICES DIVISION OF TRANSPORTATION**

**Member:**

**Issue: CONSTRUCTION BACKLOG AND DEFERRED MAINTENANCE**

**Background:**

CONSTRUCTION BACKLOG

There is a total construction backlog for all public roads that impact Indian Country (defined in 23 USC 202(b)(1)) of \$89.3 Billion. Of this amount the backlog for BIA owned facilities is approximately \$23 Billion. The Tribal owned facilities backlog is \$21 Billion. The standard to which these roads are gauged against is defined by adequate design standards in the current 25 CFR 170 Subpart C.

DEFERRED MAINTENANCE

There is a total deferred maintenance need of \$290 Million for FY2015. This is the road maintenance program funded with DOI Appropriations Tribal Priority Allocation. The definition of road and bridge maintenance is the preservation of the structure/roadway in the as-built condition. It is not a reconstruction or improvement activity. This deferred maintenance need will increase in FY2016 because the unit cost for maintaining the various surface types to the specific service level index (excellent, good, fair, poor and failing) as prioritized by the agency or tribe, depending on who is performing the work.

TOTALS

There is a construction backlog total of all public roads providing access to or within tribal lands of \$89 Billion; of which the BIA system is \$23 Billion and the Tribal system is \$21 Billion, and A Deferred Maintenance of BIA system roads/bridges of \$290 Million.

**Current Status:**

**Bureau: Indian Affairs**

**Office: Justice Services**

**Member:**

**Issue: “Securing Urgent Resources Vital to Indian Victim Empowerment Act” (SURVIVE Act)**

**Background:**

Given the national rates of crime victimization in American Indian and Alaska Native communities, it is necessary to address the resource parity for tribal nations to improve assistance to victims in tribal communities. The Victims of Crime Act (VOCA) and the Crime Victims Fund (CVF) are the largest sources of federal funding for crime victims. While states and territories receive an annual formula based award from the Victims of Crimes Act (VOCA) fund, tribes do not. As such, the Senate Committee on Indian Affairs proposed the “Securing Urgent Resources Vital to Indian Victim Empowerment Act” (SURVIVE Act), S. 1704, to authorize tribal victims compensation and assistance grant program within the Bureau of Indian Affairs, Office of Justice Services.

VICTIM SERVICES PREVALENCE

- AI/AN communities make up approximately 1.7% of the Nation’s population, but suffer some of the highest rates of violent crime, shorter life expectancy, higher rates of suicide, and have fewer consistent resources available than non-Indians in rural and urban settings.
- AI/AN women experience the highest rates of sexual assault and domestic violence in the nation.<sup>1</sup>
- Native youth between the ages of 12 and 19 are more likely than non-Native youth to be the victim of either serious violent crime or simple assault;<sup>2</sup> and suicide is the second leading cause of death for Native youth aged 15 to 24.<sup>3</sup>

CURRENT STATUS

- To increase support and funding to create BIA Victim Specialist positions at every BIA Law Enforcement agency. Currently there are 21 BIA VS positions funded at 19 locations, (with 11 positions filled) serving more than 2,000 victims each year. The Victims Specialists are working alongside approximately 341 BIA Law Enforcement Uniform Officers and Special Agents. There is a critical need to expand the number of Victim Specialists working alongside Law Enforcement, and afford victims statutory rights to services.
- Tribes and tribal organizations currently have no source of sustainable funding to support the needs of victims across AI/AN communities.
- States and territories receive formula based funding each year from DOJ/OVC and less than one percent is used to provide discretionary programs for tribes where violent crime occurs at more than twice the rate of the Nation<sup>4</sup>.

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<sup>1</sup> www.BJS.gov.

<sup>2</sup> Indian Law and Order Commission Report, Chapter 6 “*Juvenile Justice: Failing the Next Generation*,” November 2013.

<sup>3</sup> Substance Abuse and Mental Health Services Administration (SAMHSA), National Survey on Drug Use and Health, 2003.

<sup>4</sup> A BJS Statistical Profile 1992-2002, Washington, D.C. : U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, December 2004, NCJ 203097.

**ISSUE: No Child Left Behind 2016 School Replacement List**

**Key Points:**

- Indian Affairs is responsible for the maintenance and repair for BIE-funded schools. As of FY2016 there were 78 schools identified in “Poor” condition on the Facilities Condition Index. More schools are expected to fall into “Poor” condition in FY2017 and subsequent years due to critically low funding levels for maintenance, repair, and replacement construction projects.
- In 2004 12 schools were identified for replacement pursuant to the No Child Left Behind Act (NCLB). In FY 2016, 12 years after that list was published, three schools remained unconstructed due to lack of appropriated funds. Those have now been funded for construction.
- As outlined by the NCLB Negotiated Rulemaking Committee Report, in April 2016 the acting Assistant Secretary for Indian Affairs (ASIA) approved a list of 10 schools for replacement in the next phase. The schools on this list are referred to as the 2016 Replacement School List.
- Indian Affairs could only commit to replacing 10 schools. At current funding levels completion is expected to take from 6-8 more years with a current budget forecast of approximately \$575 Million. Reduction of funding for school construction directly increases the length of time to complete design and construction of the 10 approved NCLB campus locations.
- Each of the selected NCLB schools was assessed to be in critical need of immediate replacement due to overall age and deterioration of school facilities, inadequacy of existing program space, and the resultant inability to comply with current education standards and best practices.
- The FY 2016 Appropriation funded the planning phase for all 10 schools, providing \$350,000 for each school. All replacements are subject to available appropriations.
- Construction of the schools will be prioritized by the date each completes the planning phase. The next phase is design.
- There are three schools that are close to completing the planning phase and should be ready for design in FY 2017.

**Background:**  
**Replacement School Construction Priority List**

- Indian Affairs implemented the mandates of the No Child Left Behind Act (NCLB) (Public Law 107-110, § 1042) (25 U.S.C. § 2005) to develop a new Replacement School Construction Priority List. The NCLB Act required the Secretary of the Interior, in consultation with tribes, to develop a methodology for the equitable distribution of funds for school replacement.
- A Negotiated Rulemaking Committee was formed to provide recommendations for a formula and a process for generating a prioritized list of schools. The Committee developed criteria and a process for evaluating schools needing replacement construction. The New School Replacement and Renovation Formula identified seven criteria for evaluation including critical health and safety issues as well as educational program needs.
  - Only bureau-funded schools with a Facility Condition Index of “Poor” and schools that are both 50 years or older and educating 75 percent or more students in portables were considered eligible for replacement. 78 schools were identified as eligible based on the criteria.
  - Only 54 of the 78 eligible schools submitted a Phase I application.
  - A National Review Committee (NRC), consisting of members from the nine (9) Regions with facilities programs, DFMC, and BIE ranked the applicants based on the Formula criteria and associated points.
  - The top 10 schools after the Phase I ranking by the National Review Committee (NRC) were invited to make a public presentation to the NRC for Phase II scoring.
  - The NRC submitted their rankings to the Acting ASIA. The acting ASIA approved all 10 to be on the 2016 priority list for replacement schools.

**Current Status: 2016 NCLB School Replacement Priority List**

- All 10 replacement schools are currently in the planning phase where the space allocation or Program of Requirements (POR) is agreed upon between the school and Indian Affairs, along with site selection and environmental clearances.
- Five of the schools are completing the planning using Indian Affairs as the project manager. Four chose to perform the work as PL 100-297 School Grants and one choose to perform the work under a PL 93-638 contract.

- Three of the 10 are anticipated to complete the planning phase by May 2017.

**2016 Replacement School List**

- Blackwater Community School, AZ
- Chichiltah-Jones Ranch Community School, NM
- Crystal Boarding School, NM
- Dzilth-Na-O-Dith-Hle Community School, NM
- Greasewood Springs Community School, AZ
- Laguna Elementary School, NM
- Lukachukai Community School, AZ
- Quileute Tribal School, WA
- T'iis Nazbas Community School, AZ
- Tonalea Redlake Elementary School, AZ

**Bureau: Bureau of Indian Education and Bureau of Indian Affairs**

**Office: Indian Affairs**

**Issue: BIE Reform and Hiring**

**Background:**

Following extensive regional consultations and listening sessions with Indian tribes, the Department of the Interior published the Bureau of Indian Education (BIE) Blueprint for Reform in June, 2014, outlining strategies to improve educational outcomes. In early 2016, BIE began implementing the reform following a “notice of no objection” from Congress.

The BIE reform is guided by five overarching principles:

- **Building an Agile Organizational Environment** – BIE continues its efforts to develop a more effective and efficient organization that provides expertise, resources, direction, and services to schools and tribes, so they can help their students attain high levels of achievement.
- **Promoting Educational Self-Determination for Tribal Nations** – BIE is working to support the efforts of those tribal nations who request to directly operate BIE-funded schools.
- **Helping identify highly effective teachers and principals** – BIE is working to help identify, recruit, develop, retain and empower diverse, highly effective teachers and principals to increase achievement for students in BIE-funded schools.
- **Partnering to provide comprehensive supports** – BIE is improving its ability to support tribes as they foster parental, community, and organizational partnerships that provide the academic, emotional and social supports BIE students need to learn.
- **Budget Aligned to Support New Priorities** – BIE is improving oversight of its spending to provide greater technical assistance and guidance to tribally controlled schools for effective budget management.

**Current Status:**

**Phase I** – Pursuant to the reorganization, BIE is realigning its internal organization from a regional basis to a structure based on the types of schools served; namely, (1) schools in the Navajo Nation, which includes approximately one third of BIE-funded schools, (2) tribally-controlled schools, and (3) BIE-operated schools.

After securing numerous tribal letters of support as well as a “notice of no objection” from Congress, BIE began implementing Phase I of the reorganization in February 2016. Phase I replaced former Line Offices with Educational Resource Centers (“ERCs”) to provide local services and technical assistance from School Solutions Teams.

The restructuring portion of Phase I is complete. However, BIE has not yet filled all outstanding Phase I vacancies based on employment position prioritization as well as outside factors such as the Cheyenne River Sioux litigation in the Great Plains

**Phase II** – Partially initiated in January 2017, the second phase is moving forward with a portion of Bureau of Indian Affairs (BIA) Human Resources (HR) personnel being transferred to BIE (completed). The remainder of Phase II includes a realignment of additional support operations such as contracting, IT, and facilities functions to BIE and includes an expansion of the School Support Solutions Teams to include school operations staff.

The BIE continues to move forward, but efforts have been affected by the hiring freeze and further assumption of BIA operations is contingent on funding adjustments. As such, the BIE is working to acquire exemption status for vacant FTE positions that will allow the BIE to increase its ability to serve students and continue the reorganization focused on student achievement and supporting tribal self-determination.

**Hot Topics:**

- **Cheyenne River Sioux Litigation:** In October 2015, the Cheyenne River Sioux Tribe sued the U.S. Department of the Interior in an attempt to halt the proposed BIE reorganization. In September 2016, a U.S. District judge issued a memorandum opinion and order granting in part and denying in part Interior's motion to dismiss the suit.
- **Staff Morale and Communication:** In the early stages of the Reform, some BIE staff expressed concerns to leadership about their roles in the changing organization. In an effort to improve communication throughout the organization, BIE and Interior leadership held staff town hall meetings and a convening to discuss the Reform and strategize how to improve internal and external communication. However, the BIE lacks the capacity to effectively communicate, especially externally.
- **Staffing:** Throughout the Reform, the BIE has worked to fill vacancies at all levels of the organization as prioritized by the Reform phases. However, barriers such as delays in the background check process have created difficulties hiring competitively at the school level, while the current hiring freeze has also created challenges at all levels of the organization.

**Bureau: Bureau of Indian Education and Bureau of Indian Affairs**  
**Office: Indian Affairs**  
**Issue: GAO High Risk Report**

**Background:**

In September 2013, the GAO issued a report numbered 13-774, entitled Better Management and Accountability Needed to Improve Indian Education. In November 2014, the GAO issued a separate report numbered 15-121, entitled BIE Needs to Improve Oversight of School Spending. In February 2017, the GAO placed BIE on its High Risk Agency Report.

GAO-13-774 included five recommendations:

- (1) Develop and implement decision-making procedures which are documented in management directives, administrative policies, or operating manuals;
- (2) Develop a communication strategy;
- (3) Appoint permanent members to the BIE-Education committee and meet on a quarterly basis;
- (4) Draft and implement a strategic plan with stakeholder input; and
- (5) Revise the BIE strategic workforce plan.

GAO-15-121 included four recommendations:

- (1) Develop a comprehensive workforce plan;
- (2) Implement an information sharing procedure;
- (3) Draft a written procedure for making major program expenditures; and
- (4) Create a risk-based approach in managing BIE school expenditures.

**Current Status:**

BIE will continue to implement all GAO recommendations and clear its outstanding findings. To date, GAO-13-774 recommendations two, three, and five are no longer open. Closure packages have been submitted to the GAO for GAO-13-774 recommendation four and GAO-15-121 recommendations two, three, and four. BIE is waiting for GAO to provide additional feedback on its submitted packages or final closure of the recommendations.

BIE has faced significant challenges which have hindered its ability to fully implement the outstanding GAO recommendations. As identified in the conclusion section of GAO-15-121, BIE has been operating under significant human capital constraints. For example, since the November 2014 GAO-15-121 report was published there have been a total of six permanent and acting BIE Directors. Additionally, critically low staffing levels and lack of training have seriously inhibited BIE's ability to plan, draft, and implement the necessary protocols outlined in the GAO recommendations. However, new permanent leadership and staff have recently assessed BIE's internal procedure for addressing GAO findings, resulting in the identification of an internal BIE team tasked with working with Interior's Division of Internal Evaluation and Assessment to address the remaining GAO recommendations. The GAO's recommendations were also considered in the design of the BIE's Blueprint for Reform and are expected to be addressed as the Reform is fully implemented.

**BUREAU:** Indian Affairs

**ISSUE:** The Federal Acknowledgment Process

**Key Points:**

The Federal acknowledgement process, found in 25 CFR Part 83 (Part 83), is the means by which the Department establishes a formal government-to-government relationship with an Indian tribe. A group seeking Federal acknowledgment as an Indian tribe must meet the seven mandatory criteria listed in the regulation. The decision to recognize a group has been delegated to the Assistant Secretary-Indian Affairs, after receiving a recommendation from the Office of Federal Acknowledgment (OFA).

Since the Part 83 regulations were first promulgated in 1978, 51 petitioners have gone through the Department's acknowledgment process. Of those 51, 17 have been recognized and 34 have been unsuccessful.

**Background:**

In July 2015, the Department published a final rule that revised the Part 83 regulations. This was culmination of a two year process that began in June 2013, when the Assistant Secretary-Indian Affairs announced consideration of revisions to the Federal acknowledgment regulations. The final rule considered input received from tribal consultations and public meetings held throughout the United States, as well as numerous written comments that were submitted to the Department.

In 2015, Representative Bishop introduced H.R. 3764, a bill to provide that a group could only receive Federal acknowledgment through an Act of Congress. The Administration strongly opposed that bill and stated the concerns it had at a hearing before the Subcommittee on Indian, Insular, and Alaska Native Affairs in October 2015. One such concern was the fact that the bill did not implement any reforms to promote fairness, flexibility, efficiency, or to improve the transparency of the process. The bill also failed to consider the tribal and public input that went into finalizing the new regulations.

**Current Status:**

Groups that had active petitions before OFA in July 2015 were given the choice of proceeding under the old regulations or newly revised regulations. Currently, seven petitioners are under active consideration (four that elected to finish the process under the previous 1994 regulations and 3 that elected to proceed under the 2015 regulations). They are:

- Southern Sierra Miwuk Nation (old regulations)
- Georgia Tribe of Eastern Cherokee (old regulations)
- Amah Mutsun Band of Ohlone/Costanoan Indians (old regulations)
- Grand River Band of Ottawa Indians (old regulations)
- Muscogee Nation of Florida (new regulations)
- Piro/Manso/Tiwa Indian Tribe of the Pueblo of San Juan Guadalupe (new regulations)
- Fernandeno Tataviam Band of Mission Indians (new regulations)

Of these seven petitioners, the Department will issue three proposed findings and one final determination by the end FY2017. The remaining three are preparing responses to technical assistance before they proceed under 25 CFR Part 83.

Additionally, the Department is awaiting supplemental responses from six other potential groups before the Department considers their petitions under the 2015 regulations. They are:

- Little Shell Tribe of Chippewa Indians of Montana

- Meherrin Indian Tribe
- United Houma Nation
- Biloxi, Chitimacha Confederation of Muskogees
- Pointe-au-Chien Indian Tribe
- Juaneno Band of Mission Indians, Acjachemen Nation

### **Little Shell:**

On October 27, 2009, the Department issued a final determination declining to acknowledge the Little Shell Tribe of Chippewa Indians of Montana. The Department found that the Little Shell, based on the available evidence, did not meet three of the mandatory criteria. On February 1, 2010, Little Shell filed a request for reconsideration of the final determination before the Interior Board of Indian Appeals (IBIA). On June 12, 2013, the IBIA affirmed the final determination against acknowledgment and referred issues to the Department as possible grounds for reconsideration. In 2014, the Department suspended reconsideration, after receiving a request from Little Shell, pending the publication of the revised Part 83 regulations then under consideration.

After the new regulations were finalized, Little Shell chose to have its petition evaluated under the new regulations, as well as supplement their petition with additional materials. As a result, the previous final determination and request for reconsideration are no longer in effect or under consideration. The Little Shell will have the opportunity to begin the federal acknowledgment process again, after OFA receives the supplement to their petition.

### **Lumbee:**

The “Lumbee Tribe of North Carolina” is a group located in Robeson County, North Carolina, seeking Federal recognition through Congress, and claiming 40,000 to 60,000 members. On December 22, 2016, the Department’s Solicitor issued a memorandum (M-37040), stating that the 1956 Lumbee Act does not “preclude the Lumbee Indians from petitioning for Federal Acknowledgment” under 25 CFR Part 83. Previously, the Department interpreted the act to preclude Lumbee from being able to go through the Part 83 process. Despite the previous prohibition, since 1978, eight groups have petitioned the Department for acknowledgment as descendants from families identified in the 1956 Lumbee Act. There is currently no petition under active consideration for any Lumbee group.

In 2015, Representative Hudson and Senator Burr introduced legislation to provide recognition to the Lumbee Tribe of North Carolina. At a hearing before the Senate Committee on Indian Affairs in September 2016, the Administration testified in support of the bill with suggested amendments.

### **Virginia Groups:**

Since 1978, fifteen groups from the Commonwealth of Virginia have petitioned the Department for Federal acknowledgment. In July of 2015, the Department recognized one of those groups, the Pamunkey Indian Tribe, under the Part 83 process. No other petitioner currently has an active petition pending before the Department.

On February 7, 2017, Representative Wittman introduced H.R. 984, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017. Senators Kaine and Warner also introduced a companion bill. The legislation would provide federal recognition to six groups in Virginia: Chickahominy Indian Tribe, the Chickahominy Indian Tribe—Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe. All six previously applied for Federal acknowledgment under the Part 83 process.

Similar legislation was introduced in the 114th Congress. At a hearing in September 2015 before the Subcommittee on Indian, Insular, and Alaska Native Affairs, the Administration did not object to the legislation.

## Department of the Interior Departmental Manual

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**Effective Date:** 1/16/09

**Series:** Organization

**Part 109:** Secretarial Officers

**Chapter 1:** Secretary of the Interior

**Originating Office:** Office of the Executive Secretariat and Regulatory Affairs

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### 109 DM 1

1.1 **Secretary.** The Secretary of the Interior, as head of an Executive Department, reports directly to the President and is responsible for the direction and supervision of all operations and activities of the Department. The Secretary also has certain powers or supervisory responsibilities relating to U.S. affiliated insular areas.

1.2 **Secretariat.** The Secretary is assisted in the management and direction of the Department by the Secretariat. The Secretariat is comprised of the following Secretarial Officers:

A. The Secretary.

B. The Deputy Secretary, who assists the Secretary in supervising and administering the Department and in the absence of the latter performs the functions of the Secretary. With the exception of certain matters specifically reserved to the Secretary, the Deputy Secretary has the full authority of the Secretary. The Deputy Secretary is the Chief Operating Officer for the Department.

C. The Solicitor (described in 109 DM 3).

D. The Inspector General (described in 110 DM 4).

E. Assistant Secretaries (described in 109 DM chapters following Chapter 3).

1.3 **Assistants to the Secretary.**

A. A Chief of Staff serves as confidential advisor to the Secretary, supervises the staff of the immediate office of the Secretary, and performs other duties as assigned by the Secretary.

B. The Director, Office of Communications, serves as principal advisor to the Secretary on public information matters (see 110 DM 5).

C. The Director, Office of Congressional and Legislative Affairs, serves as principal advisor to the Secretary on the Department's legislative program and carries out Congressional and intergovernmental liaison activities (see 110 DM 6).

D. The Director, Office of the Executive Secretariat and Regulatory Affairs, serves as principal advisor to the Secretary on regulatory matters and internal directives, monitoring, reviewing, and coordinating all such activities of the Department. The Director is responsible for correspondence control and processing inclusive of the committee management process as well as production of documents in response to requests from Congress and select litigation discovery activities (see 110 DM 17).

E. Other Assistants, Counselors, and Advisors.

(1) Other Assistants, Counselors, and Advisors to the Secretary serve in varying capacities and as liaison with major program areas as specifically assigned. All Assistants, Counselors, and Advisors to the Secretary may work directly with Assistant Secretaries in expediting and highlighting matters requiring immediate or specific attention.

(2) The Director, Office of Indian Water Rights, leads, coordinates, and manages the Indian water rights settlement program in consultation with the Office of the Solicitor. The Director reports to the Counselor to the Secretary assigned to such matters, unless otherwise provided by the Secretary. The primary functions of the office are coordinating communication and decision-making among the various interests of the bureaus and offices of the Department on matters concerning Indian water rights settlements and managing negotiation and implementation teams for policy consistency.

1.4 **Authority.** Except for authority specifically delegated otherwise by statute, authority to carry out Departmental functions is delegated by the Secretary to the Secretariat who in turn redelegate appropriate authority to heads of bureaus and offices which they supervise. All permanent delegations made by the Secretary and redelegations made by Assistant Secretaries are issued and documented in the Departmental Manual. Program officials to whom authority has been delegated are held directly responsible for organization and performance in their assigned program areas.

## **BRIEFING MEMORANDUM FOR THE SECRETARY**

Date: March 3, 2017

From: Pam Williams, Director, Secretary's Indian Water Rights Office, 202-262-0291

Subject: Departmental Oversight of Secretary's Indian Water Rights Office

As a threshold matter, the Secretary needs to determine the reporting structure he wishes to utilize with respect to the Department's participation in Indian water rights negotiations. Under the Departmental Manual, the Director, Office of Indian Water Rights (also known as the Secretary's Indian Water Rights Office or SIWRO), in consultation with the Office of the Solicitor, leads, coordinates and manages the Department's Indian water rights settlement program. The Departmental Manual further provides that the Director reports to the Counselor that the Secretary assigned to Indian water rights matters, unless otherwise provided by the Secretary. (See attached 109 Departmental Manual 1.3.E(2)).

There are a number of Indian water-related issues that will require attention at the Secretarial level in the near future. In addition, it is anticipated that members of the Congressional delegations from Arizona, Utah and Montana may seek to engage Departmental leadership early in 2017 concerning the approval of pending settlements in those states.

### **BACKGROUND**

Throughout the United States, there are extensive unresolved Indian water right claims based on the Federal law doctrine of reserved water rights. These claims frequently conflict with state-law based rights held by non-Indians. In many river basins, there is insufficient water to satisfy Indian and non-Indian water rights claims. Historically, water rights have been addressed in cumbersome and lengthy litigation. However, during the last thirty years, states, tribes and the United States have increasingly turned to negotiated settlement as the preferred method of dealing with water rights conflicts. To date, Congress has enacted 31 Indian water settlements. The Department is involved in 18 current settlement negotiations in 9 states as well as implementing 22 enacted settlements. To deal with tribal and state demand for settlements, the Department has developed an extensive Indian water rights settlement program led by the SIWRO.

### **DISCUSSION**

For more than three decades, the Office of the Secretary has directly guided policy on the settlement of Indian water rights claims, rather than delegating the task to any particular bureau or office. This approach allows the Secretary to manage the disparate Departmental interests implicated in Indian water settlements and facilitate effective communication within the Administration as a whole, with interested state and tribal governments, and, equally important, with the Congress, which must approve most settlements.

In 1993, the Department informally created the SIWRO to coordinate and manage the Department's Indian water rights settlement program. In January 2009, the office was formally

incorporated into the Departmental Manual. The primary functions of the SIWRO are coordinating communication and decision-making among the various interests of the bureaus and offices of the Department on matters concerning Indian water rights settlements and managing negotiation and implementation activities for policy consistency. The SIWRO is currently staffed by a Director, a Deputy Director, three policy analysts plus support staff.

Traditionally, as set forth in the Departmental Manual, the Director of the SIWRO reports directly to the Counselor to the Secretary assigned as the Department's policy lead on Indian water settlement matters. During the Obama Administration, the SIWRO reported to the Senior Counselor to the Deputy Secretary.

#### **NEXT STEPS**

The Secretary needs to determine to whom he wishes the Director of the SIWRO report.

#### **ATTACHMENT**

109 Departmental Manual 1.3.E(2)

**From:** Seidlitz, Joseph (Gene)  
**To:** [Anderson, Michael](#); [Lassiter, Tracie](#)  
**Cc:** [Richard Cardinale](#); [Jill Moran](#); [Katharine Macgregor](#); [Shannon Stewart](#); [Beverly Winston](#)  
**Subject:** Fwd: Broadband ROW Bonding paper  
**Date:** Tuesday, March 28, 2017 10:36:32 AM  
**Attachments:** [Attachment 1\\_ Executive Order 13616.pdf](#)  
[Attachment 2\\_WY-April 2016.pdf](#)  
[Attachment 3\\_WY IM October 2016.pdf](#)  
[Broadband Briefing Memo\\_03.27.17.docx](#)

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Hi

Sorry for the delay.....These documents MAY be useful for the 11:00 meeting today with the Montana Folks. Although these documents are from BLM WY, they may be useful for todays meeting.

Again, sorry for the short notice with docs.

Gene

Gene Seidlitz  
Analyst-Liaison  
Office of the Assistant Secretary  
Land and Minerals Management  
1849 C St, NW  
Room 6629  
Washington, DC 20240  
202-208-4555 (O)  
775-304-1008 (C)

----- Forwarded message -----

From: Stewart, Shannon <[scstewar@blm.gov](mailto:scstewar@blm.gov)>  
Date: Mon, Mar 27, 2017 at 6:02 PM  
Subject: Broadband ROW Bonding paper  
To: Jill Moran <[jcmoran@blm.gov](mailto:jcmoran@blm.gov)>, "Seidlitz, Joseph (Gene)" <[gseidlit@blm.gov](mailto:gseidlit@blm.gov)>  
Cc: Beverly Winston <[bwinston@blm.gov](mailto:bwinston@blm.gov)>, Jeff Brune <[jbrune@blm.gov](mailto:jbrune@blm.gov)>

Attached is a briefing paper and attachments that should serve as background information for the upcoming meeting on bonding for broadband ROWs, specifically WY.

Shannon

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Shannon Stewart  
Acting Chief of Staff  
Bureau of Land Management  
202-570-0149 (cell)  
202-208-4586 (office)  
[scstewar@blm.gov](mailto:scstewar@blm.gov) <<mailto:scstewar@blm.gov>>

## Presidential Documents

Executive Order 13616 of June 14, 2012

### Accelerating Broadband Infrastructure Deployment

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to facilitate broadband deployment on Federal lands, buildings, and rights of way, federally assisted highways, and tribal and individual Indian trust lands (tribal lands), particularly in underserved communities, it is hereby ordered as follows:

**Section 1. Policy.** Broadband access is essential to the Nation's global competitiveness in the 21st century, driving job creation, promoting innovation, and expanding markets for American businesses. Broadband access also affords public safety agencies the opportunity for greater levels of effectiveness and interoperability. While broadband infrastructure has been deployed in a vast majority of communities across the country, today too many areas still lack adequate access to this crucial resource. For these areas, decisions on access to Federal property and rights of way can be essential to the deployment of both wired and wireless broadband infrastructure. The Federal Government controls nearly 30 percent of all land in the United States, owns thousands of buildings, and provides substantial funding for State and local transportation infrastructure, creating significant opportunities for executive departments and agencies (agencies) to help expand broadband infrastructure.

**Sec. 2. Broadband Deployment on Federal Property Working Group.** (a) In order to ensure a coordinated and consistent approach in implementing agency procedures, requirements, and policies related to access to Federal lands, buildings, and rights of way, federally assisted highways, and tribal lands to advance broadband deployment, there is established a Broadband Deployment on Federal Property Working Group (Working Group), to be co-chaired by representatives designated by the Administrator of General Services and the Secretary of Homeland Security (Co-Chairs) from their respective agencies, in consultation with the Director of the Office of Science and Technology Policy (Director) and in coordination with the Chief Performance Officer (CPO).

(b) The Working Group shall be composed of:

(i) a representative from each of the following agencies, and the Co-Chairs, all of which have significant ownership of, or responsibility for managing, Federal lands, buildings, and rights of way, federally assisted highways, and tribal lands (Broadband Member Agencies):

- (1) the Department of Defense;
- (2) the Department of the Interior;
- (3) the Department of Agriculture;
- (4) the Department of Commerce;
- (5) the Department of Transportation;
- (6) the Department of Veterans Affairs; and
- (7) the United States Postal Service;

(ii) a representative from each of the following agencies or offices, to provide advice and assistance:

- (1) the Federal Communications Commission;
  - (2) the Council on Environmental Quality;
  - (3) the Advisory Council on Historic Preservation; and
  - (4) the National Security Staff; and
- (iii) representatives from such other agencies or offices as the Co-Chairs may invite to participate.
- (c) Within 1 year of the date of this order, the Working Group shall report to the Steering Committee on Federal Infrastructure Permitting and Review Process Improvement, established pursuant to Executive Order 13604 of March 22, 2012 (Improving Performance of Federal Permitting and Review of Infrastructure Projects), on the progress that has been made in implementing the actions mandated by sections 3 through 5 of this order.

**Sec. 3. *Coordinating Consistent and Efficient Federal Broadband Procedures, Requirements, and Policies.*** (a) Each Broadband Member Agency, following coordination with other Broadband Member Agencies and interested non-member agencies, shall:

- (i) develop and implement a strategy to facilitate the timely and efficient deployment of broadband facilities on Federal lands, buildings, and rights of way, federally assisted highways, and tribal lands, that:
    - (1) ensures a consistent approach across the Federal Government that facilitates broadband deployment processes and decisions, including by: avoiding duplicative reviews; coordinating review processes; providing clear notice of all application and other requirements; ensuring consistent interpretation and application of all procedures, requirements, and policies; supporting decisions on deployment of broadband service to those living on tribal lands consistent with existing statutes, treaties, and trust responsibilities; and ensuring the public availability of current information on these matters;
    - (2) where beneficial and appropriate, includes procedures for coordination with State, local, and tribal governments, and other appropriate entities;
    - (3) is coordinated with appropriate external stakeholders, as determined by each Broadband Member Agency, prior to implementation; and
    - (4) is provided to the Co-Chairs within 180 days of the date of this order; and
  - (ii) provide comprehensive and current information on accessing Federal lands, buildings, and rights of way, federally assisted highways, and tribal lands for the deployment of broadband facilities, and develop strategies to increase the usefulness and accessibility of this information, including ensuring such information is available online and in a format that is compatible with appropriate Government websites, such as the Federal Infrastructure Projects Dashboard created pursuant to my memorandum of August 31, 2011 (Speeding Infrastructure Development Through More Efficient and Effective Permitting and Environmental Review).
- (b) The activities conducted pursuant to subsection (a) of this section, particularly with respect to the establishment of timelines for permitting and review processes, shall be consistent with Executive Order 13604 and with the Federal Plan and Agency Plans to be developed pursuant to that order.
- (c) The Co-Chairs, in consultation with the Director and in coordination with the CPO, shall coordinate, review, and monitor the development and implementation of the strategies required by paragraph (a)(i) of this section.
- (d) Broadband Member Agencies may limit the information made available pursuant to paragraph (a)(ii) of this section as appropriate to accommodate national security, public safety, and privacy concerns.

**Sec. 4. *Contracts, Applications, and Permits.*** (a) Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112–96) contains provisions addressing access to Federal property for the deployment of wireless broadband facilities, including requirements that the General Services

Administration (GSA) develop application forms, master contracts, and fees for such access. The GSA shall consult with the Working Group in developing these application forms, master contracts, and fees.

(b) To the extent not already addressed by section 6409, each Broadband Member Agency with responsibility for managing Federal lands, buildings, or rights of way (as determined by the Co-Chairs) shall, in coordination with the Working Group and within 1 year of the date of this order, develop and use one or more templates for uniform contract, application, and permit terms to facilitate nongovernment entities' use of Federal property for the deployment of broadband facilities. The templates shall, where appropriate, allow for access by multiple broadband service providers and public safety entities. To ensure a consistent approach across the Federal Government and different broadband technologies, the templates shall, to the extent practicable and efficient, provide equal access to Federal property for the deployment of wireline and wireless facilities.

**Sec. 5. *Deployment of Conduit for Broadband Facilities in Conjunction with Federal or Federally Assisted Highway Construction.*** (a) The installation of underground fiber conduit along highway and roadway rights of way can improve traffic flow and safety through implementation of intelligent transportation systems (ITS) and reduce the cost of future broadband deployment. Accordingly, within 1 year of the date of this order:

(i) the Department of Transportation, in consultation with the Working Group, shall review dig once requirements in its existing programs and implement a flexible set of best practices that can accommodate changes in broadband technology and minimize excavations consistent with competitive broadband deployment;

(ii) the Department of Transportation shall work with State and local governments to help them develop and implement best practices on such matters as establishing dig once requirements, effectively using private investment in State ITS infrastructure, determining fair market value for rights of way on federally assisted highways, and reestablishing any highway assets disturbed by installation;

(iii) the Department of the Interior and other Broadband Member Agencies with responsibility for federally owned highways and rights of way on tribal lands (as determined by the Co-Chairs) shall revise their procedures, requirements, and policies to include the use of dig once requirements and similar policies to encourage the deployment of broadband infrastructure in conjunction with Federal highway construction, as well as to provide for the reestablishment of any highway assets disturbed by installation;

(iv) the Department of Transportation, after outreach to relevant nonfederal stakeholders, shall review and, if necessary, revise its guidance to State departments of transportation on allowing for-profit or other entities to accommodate or construct, safely and securely maintain, and utilize broadband facilities on State and locally owned rights of way in order to reflect changes in broadband technologies and markets and to promote competitive broadband infrastructure deployment; and

(v) the Department of Transportation, in consultation with the Working Group and the American Association of State Highway and Transportation Officials, shall create an online platform that States and counties may use to aggregate and make publicly available their rights of way laws and joint occupancy guidelines and agreements.

(b) For the purposes of this section, the term "dig once requirements" means requirements designed to reduce the number and scale of repeated excavations for the installation and maintenance of broadband facilities in rights of way.

**Sec. 6. *General Provisions.*** (a) This order shall be implemented consistent with all applicable laws, treaties, and trust obligations, and subject to the availability of appropriations.

- (b) Nothing in this order shall be construed to impair or otherwise affect:
- (i) the authority granted by law to an executive department, agency, or the head thereof; or
  - (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
- (c) Independent agencies are strongly encouraged to comply with this order.
- (d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,  
*Washington, June 14, 2012.*



## United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Wyoming State Office  
P.O. Box 1828  
Cheyenne, Wyoming 82009-1828



In Reply Refer To:  
2805/2885/2920 (920 Wrigley) P

April 18, 2016

EMS TRANSMISSION: 4/21/2016  
Instruction Memorandum No. WY-2016-018  
Expires: 09/30/2019

To: District Managers  
From: Associate State Director  
Subject: Right-of-Way (ROW) Bonds

**Program Area:** Lands and Realty Management.

**Purpose:** This Instruction Memorandum (IM) supplements the regulations and provides guidance for bonding requirements on Bureau of Land Management (BLM) Wyoming ROWs, leases and permits (grant) for authorized activities other than solar and wind energy authorizations. The guidance for bonding of solar and wind energy authorizations is set forth in Washington Office(WO) Instruction Memorandum (IM) No. 2015-138.

**Policy/Action:** Title V of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1764(i)) and Section 28 of the Mineral Leasing Act (MLA) (30 U.S.C. 185), and the ROW, lease and permit regulations (43 CFR 2805.12(g), 2885.11(b)(7) and 2920.7(g)) authorize the BLM to require a grant applicant/holder provide a bond to secure the obligations imposed by the grant (to include short term ROW and temporary use permits).

Under 43 CFR 2805.12(g), 2885.11(b)(7) and 2920.7(g) the BLM Wyoming will require a performance and reclamation bond for all new grants, amendments, renewals, and assignments to ensure compliance with the terms and conditions of a grant and the requirements of the regulations, including reclamation. The applicant/holder of any new grant, amendment, renewal, or assignment must submit a bond, which must be approved by the BLM authorized officer prior to the grant being issued. If not already bonded, existing grants (excluding wind and solar grants) will not require a bond unless a renewal, amendment or assignment is submitted for approval. An amendment will trigger the requirement for a bond for the entire grant (new plus existing).

Grants to State and/or local Governments which have statutory or constitutional authorities limiting the amount of liability or indemnification payable, only require a financial guarantee

sufficient to fund the amount over the State or local Government's limited liability. The only exception to this policy would be ROW grants to another Federal agency, which do not require a bond.

Statewide or nationwide bonds are not acceptable at this time. A bond will be required for each grant, unless the bond instrument specifies that it covers more than one grant.

**Statewide/nationwide oil and gas bonds are valid only for lease activities on the leasehold, and can't be used for ROW administration.**

Waivers to the requirement of a bond may be obtained for hardships only and may only be approved by the BLM Wyoming Deputy State Director, Lands and Minerals. The applicant/holder must submit the following information to the authorized officer for all waiver requests:

- a. A suggested alternative (adding the BLM as an insured on the homeowners insurance policy, etc.);
- b. Specific financial information to support the hardship request (submit the same information that is required for rent waivers at 43 CFR 2806.15).

The authorized officer must submit the complete package to the Wyoming Deputy State Director, Lands and Minerals with a recommendation for consideration.

*Bond Amount Determination:*

The applicant/holder shall furnish a reclamation cost estimate (RCE) to the BLM authorized officer for review and approval, estimating all the costs (see attachment 1 for example) for the BLM to fulfill the terms and conditions of the grant in the event that the holder may not be able to do so. This estimate shall be prepared by an independent state licensed engineer, who is licensed in the state of Wyoming, and shall include such information including but not limited to, direct, indirect, administrative, equipment, contracting, monitoring, and reclamation costs, as well as Davis-Bacon and Related Acts locally prevailing wages potentially incurred by the BLM. Costs for the BLM to administer a reclamation contract and inspect and monitor the reclamation activities should be commensurate with the complexity of fully reclaiming the land. This may be a percentage-based determination by the BLM which it adds to the RCE as part of its bond determination. The RCE shall detail the estimated costs and shall be accompanied by the engineer's seal and signature. All costs of preparing and submitting the RCE shall be borne solely by the applicant/holder. The RCE, along with inflationary estimates, shall be the basis for the bond amount and shall remain in effect for 5 years unless the authorized officer determines that conditions warrant a review of the bond sooner.

If the proposed grant would not allow any surface disturbance on the public land (e.g. power line corner crossing) or if the preparation cost of the RCE would be a hardship for the applicant/holder, the BLM (realty and/or engineer) may prepare the RCE for the

applicant/holder. The engineering staff in the District and Field Offices may help with completion of the RCE.

The RCE is key to determining the bond amount, and will be included as part of the plan of development (POD) required under 43 CFR 2804.25(b), 2884.22(a), and 2920.5-2. If no POD is required (assignment or renewal), then an individual RCE must be provided to the BLM for its review and consideration in determining a bond. The BLM has issued policy and guidance for determining bonding requirements under 43 CFR 3809 for mining operations on the public lands (IM 2009-153, dated June 19, 2009, [http://www.blm.gov/wo/st/en/info/regulations/Instruction\\_Memos\\_and\\_Bulletins/national\\_instruction/2009/IM\\_2009-153.html](http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2009/IM_2009-153.html)) that provides detailed information about the process for determining the appropriate financial guarantees for intensive land uses on the public lands. This guidance will be used to assist in calculating the bond amount for grants on public lands. Attachment 1 to IM 2009-153, "Guidelines for Reviewing Reclamation Cost Estimates", can be used as a guideline to assist in reviewing RCEs. The engineering staff in the District and Field Offices will assist with review of the RCE's for adequacy.

The RCE's will consist of three components of financial liability for purposes of determining its amount. Each component may individually or jointly contribute to a significant bond amount. The three required components of the RCE are:

1. Environmental liabilities including hazardous materials liabilities, such as securing, removal or use with hazardous waste and hazardous substances. This component may also account for herbicide use, petroleum-based fluids, and dust control or soil stabilization materials.
2. The decommissioning, removal, and proper disposal, as appropriate, of improvements and facilities.
3. Interim and final reclamation, revegetation, restoration, and soil stabilization. This will be determined based on the amount of vegetation retained onsite and the potential for flood events and downstream sedimentation from the site that may result in offsite impacts.

Ultimately, the performance and reclamation bond will be a single instrument to cover all potential liabilities. The entire bond amount could be used to address a single risk event such as hazardous materials release or groundwater contamination regardless of the fact that in calculating the total bond amount other risks were also considered. If the bond is used to address a particular risk, the holder would then be required to increase the bond amount to compensate for this use. This approach to establishing a bond is preferable to one allowing holders to maintain separate bonds for each contingency. If separate bonds are held, an underestimation of one type of liability may leave the BLM responsible for making up the difference, as the funds associated with one bond may not be applicable for the purposes of another. Requiring a single, larger bond will ensure that the holders are bonded with a surety that has the capacity to underwrite the entire amount associated with the grant.

Salvage value for structures, equipment, or materials should not be included in the RCE. RCE's will be calculated as if there were no such values since these are generally based upon a transient market value for commodities. An addendum to the RCE may be provided where the salvage and recycling value for the structures, equipment, or materials can be detailed. However, the addendum for salvage values will only be included in BLM's bond determination with adequate third-party documentation and justification for salvage or considering special circumstances, such as State mandates to recycle and salvage project materials. The addendum must include current local market information and be readily available for BLM review and consideration in making its bond determination.

The authorized officer may require the holder to submit a new estimate at any time during the term of the grant. The bond, in a form acceptable to the authorized officer, shall be furnished by the applicant/holder prior to any grant or decision being issued. Should the bond furnished under this authorization become unsatisfactory at any time to the authorized officer, the holder shall, within 30 days of demand, furnish a new bond satisfactory to the authorized officer.

The applicant/holder shall submit the RCE both in hard copy and in a standardized electronic format (Microsoft Excel or compatible electronic spreadsheet is preferred) that can be easily updated with current costs by the BLM for future reviews. A guide for the bond estimate is attached (attachment 1).

Based on a review of the RCE, the BLM authorized officer must provide the applicant/holder with a written decision as to the amount required for the performance and reclamation bond.

Bond determination letters must be adequately documented in the case file and supported by an RCE provided by the applicant/holder. The RCE is the basis for determining the amount of the performance and reclamation bond. The additional administrative and other such costs must also be properly documented and retained in the case file to be included in the final bond determination. The case file will have a section that fully documents the RCE for the grant, the BLM review of the RCE, the basis for the final bond determination, communications with the applicant/holder regarding the bonding requirements for the grant and records related to the bond instruments provided by the applicant/holder.

Bond determinations must also consider compliance with State of Wyoming standards for public health and safety, environmental protection, construction, operation and maintenance of a grant. Consideration must be made when the State standards are more stringent and are not inconsistent with the applicable Federal standard. If a State regulatory authority requires a bond to cover some portion of the environmental liabilities or other requirements for the grant, the BLM must be listed as an additional named insured on the bond instrument and this documentation must be included in the case file. This inclusion would suffice to cover the BLM's exposure should the holder default in any environmental liability listed in the respective State bond.

Bond Instrument:

Acceptable bond instruments include personal bonds, surety bonds or policy of insurance. Surety bonds from the approved list of sureties (U.S. Treasury Circular 570) must be payable to the BLM. The BLM will not accept a corporate guarantee as an acceptable form of bond. If a state regulatory authority requires a bond to cover some portion of environmental liabilities, such as hazardous material damages or releases, reclamation, or other requirements for the project, the BLM must be listed as an additionally named insured on the policy. This inclusion would suffice to cover the BLM's exposure should a holder default in any environmental liability listed in the respective state bond. The authorized officer shall not accept bonds from any entity or individual other than the applicant/holder, (i.e., the holder's contractors, subcontractors, lessees, or subsidiaries).

Personal Bonds:

Personal bonds will be accompanied by BLM Form 2800-17 (attachment 3) and payment for the amount required by the authorized officer.

Book entry deposits must be accompanied by a power of attorney authorizing the Secretary of the Interior to collect the proceeds in the event the holder fails to adhere to the grant stipulations covered by the bond. In the past, personal bonds in the form of a Treasury bond or note involved the physical handling by Bureau personnel. This is no longer acceptable. A change in the procedures of the Department of the Treasury in 1983 provides that the notes and bonds will be in a book entry form on deposit in the Federal Reserve System and no actual handling of the securities themselves are involved. A charge is assessed by the Federal Reserve System for security safekeeping and transfer services. This charge is to be paid by the principal.

The only acceptable forms of security for personal bonds are:

- Cash (cash, certified or cashier's check, (personal/business checks will not be accepted));
- Book entry deposits;
- Irrevocable letters of credit payable to the BLM issued by a financial institution that has the authority to issue irrevocable letters of credit and whose operations are regulated and examined by a Federal agency, or;
- A policy of insurance that provides the BLM with acceptable rights as a beneficiary and is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction and whose insurance operations are regulated and examined by a Federal agency.

Bonds which are not acceptable forms of security are negotiable bonds, notes issued by the United States, certificates of deposit, U.S. Savings Bonds, and notes or bonds issued by State or local Governments or private companies. These instruments can't be transferred to the Federal Reserve System and must be physically stored in a protected BLM facility. Fire, theft, and loss resulting from lack of long term vigilance all pose unacceptable risks to BLM.

### Surety Bonds:

Surety bonds will be accompanied by BLM Form 2800-16 (attachment 4).

A surety bond consists of a promise to the United States by the applicant/holder and a surety that the surety will correct any failure of the holder to adhere to grant stipulations or pay up to the limits of the amount of the bond. For all Federal bonds, the surety corporation must be approved by the Department of the Treasury and in Circular 570 as an acceptable surety. The acceptance of the surety bond by the authorized officer on behalf of the United States and authorization of activity based upon the bond completes the cycle and makes the bond a 3-way contract between the holder, the surety, and the United States, which can be enforced should the holder fail to comply with the grant stipulations. The money paid by the holder to obtain the surety's entry into the arrangement is normally called the premium and is solely a matter between the principal and the surety.

You can find Circular 570 at <https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm>. This circular is published annually in July.

### Bond Recordkeeping:

The LR2000 and the Bond and Surety System (B&SS) are the BLM's data systems used to track information for grants, including the status of performance and reclamation bonds. It is critically important that all managers and staff place a high priority on the timely and accurate entry and update of information in LR2000 and the B&SS, consistent with current data standards for both systems. The LR2000 and the B&SS are used for both national and local reporting and tracking purposes and are also used as a public information and data source. This IM establishes a mandatory policy that LR2000 and the B&SS data entry for all ROW authorizations occur within 10 business days of the action. Each BLM Field office will identify and designate the appropriate staff for LR2000 and the B&SS data entry for grants.

### Financial Instrument Handling:

The handling of financial instruments such as personal and surety bonds, and other instruments that are received as bond payment to the BLM must be handled in accordance with the BLM Manual 1372 – Collections, and Manual 1270 – Records Administration, and their policy guidance. Cash or checks are required to be deposited into a BLM suspense account in a timely manner, but until they are deposited, they are required to be safeguarded in a fireproof safe or file cabinet with adequate locking devices and with access limited to those designated employees with direct responsibilities for collections. The bond instrument itself received by the BLM must be properly safeguarded within a secure BLM records room or secured file cabinet, and documented in the case file. Under no circumstances should bond records be held in desk drawers or other inadequate storage containers where they are readily susceptible to loss or theft. Access to safes and financial securities are addressed within these manuals and must be adhered to when reviewing and handling furnished bond instruments. Specific attention must be given to

ensure that personally identifiable information (PII) received as part of the bond instruments and documentation is not kept for public review in case files.

It is recommended that copies of bonds and all other supporting bond information be kept in a blue envelope on the left side of the case file. This would make the information easy to locate and remove for public review of the case file. For major projects (those projects which require a National Project Manager, etc.), a separate case file containing all the bond information would be maintained in the administrative record. In an effort to keep the volume of paper at a minimum in the case files, an electronic file folder on a shared drive either in the Field Office or the State Office could be used to store the bond information. The electronic folder would limit access to only those who need it.

#### *Bond Review:*

Each year the Wyoming BLM District Offices will coordinate Field Office reviews of at least 20 percent of the RCE's and bonds for grants within their administrative boundaries that are less than 5 years of age for bond adequacy. These reviews will prioritize higher risk projects that involve greater land disturbance acreage, projects with a history of incidents of noncompliance, projects with abandoned or disabled equipment, or projects that may have potential environmental liabilities associated with use of hazardous materials and substances, hazardous waste, or herbicides.

Each bond and RCE must be reviewed at least once every 5 years, regardless of its review priority. These reviews should be completed throughout the Fiscal Year to moderate workload impacts. Within 90 days of the end of each Fiscal Year, beginning the Fiscal Year this policy is effective, these reviews must be completed and documented in each case file. For any authorization determined to have an inadequate RCE, the appropriate BLM Field Office will issue a letter to the grant holder requesting that it provide an updated RCE within 90 days of the date of the letter.

#### *Oversight and Implementation:*

Each District Office must coordinate with the Wyoming State Office Realty Officer when implementing these policy requirements. The attached Bond Review Coordination Spreadsheet will be used and filled out by each Field Office, documenting the status of each application/authorization and associated bond, as well as the basis for minimum bond amounts and the bond determinations for the grants that require bonds. An updated spreadsheet, from each district office, must be provided to the Wyoming State Office Realty Officer by the last business day of each month until all actions are completed.

All WY Field Offices must review and update data in the LR2000 (Case Recordation & the Bond and Surety System) on an annual basis. The annual certifications, using the attached memorandum form will be submitted to the Wyoming State Office Realty Officer, by each district office, within 30 days of the end of each Fiscal Year.

**Timeframe:** This IM is effective upon issuance and will remain in effect unless formally modified.

**Budget Impact:** The application of this policy will have a minimal budget impact. The bond determination, adequacy and compliance review workload are subject to the processing and monitoring fee provisions of the regulations (43 CFR 2804.14(a), 2805.16(a), 2884.12(a), 2885.24(a), and 2920.6(b)).

**Background:** Historically, the BLM Wyoming has not required a bond on all grants. With the increasing concern over changes in financial markets and corporate financial volatility, the BLM is reducing the potential liabilities to the United States associated with grants by requiring a performance and reclamation bond. The BLM would use the bond for reclamation of sites or meeting other grant requirements in the event a holder is unable to meet their obligations.

**Coordination:** This bonding policy was coordinated with the Office of the Solicitor, Washington Office Branch Chief for ROW (WO-350), Renewable Energy Coordination Office (WO-301).

**Contact:** If there are any questions related to this IM, please contact Janelle Wrigley at 307-775-6257.

Signed by:  
Larry Claypool  
Acting Associate State Director

Authenticated by:  
Jessica Camargo  
State Director's Office

4 Attachments:

- 1 - Bond calculator spreadsheet (1 p)
- 2- Bond calculator example (1 p)
- 3 - Personal bond form 2800-17 (1 p)
- 4 - Surety bond form – 2800-16 (1 p)

Distribution

Director (WO 350)  
Field Managers  
Resource Advisors  
CF

1/watch.  
1 w/atch.  
1 w/atch.  
2 w/atch.



## United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
Wyoming State Office  
P.O. Box 1828  
Cheyenne, WY 82003-1828  
[www.blm.gov/wy](http://www.blm.gov/wy)

In Reply Refer To:  
2805/2885/2920 (921Wrigley) P

October 20, 2016

EMS TRANSMISSION: 10/20/2016  
Instruction Memorandum No. WY-2016-018, Change 1  
Expires: 09/30/2018

To: District Managers  
From: Associate State Director  
Subject: Right-of-way (ROW) Bonds

**Program Area:** Lands and Realty Management.

**Purpose:** This Instruction Memorandum (IM) provides revised guidance and clarification on Right-of-Way (ROW) bonding requirements.

**Policy/Action:** Effective April 18, 2016, the Bureau of Land Management (BLM) Wyoming issued policy that would require a bond(s) for all new grants, amendments, renewals (including grants not offered prior to the effective date of the policy issued on April 18, 2016), and assignments. That Instruction Memorandum can be found at the following link - <http://web.blm.gov/Wy.im/16/WY-2016-018.pdf>. A bond is to ensure compliance with all the terms and conditions of a grant (construction, operation, maintenance and termination) and the requirements of the regulations (43 CFR 2805, 2885, and 2920), including reclamation. The changes and clarification are as follows:

1. The requirement that a bond(s) be approved by the BLM authorized officer prior to the grant being issued is changed to read: "The applicant/holder of any new grant, amendment, renewal, partial relinquishment and/or assignment must obtain a bond(s). The bond(s) must be submitted and accepted prior to the grant being issued or prior to a Notice to Proceed (NTP) as stipulated in the grant."

2. Waivers for hardships only, has been changed to read: “Waivers/exceptions will be considered.” The requirement that the waivers be approved by the BLM Wyoming Deputy State Director, Lands and Minerals have been removed from the policy. The authorized officer will have the authority to approve waivers/exceptions.
3. The Reclamation Cost Estimate (RCE) template, attachment 1 that was mentioned has been revised. The new template is attached. We will not mandate the use of the attached template but we strongly suggest the applicants use this format to expedite the review process. The template is to be used for estimates for construction, operation and maintenance as well as reclamation, depending on the ROW action the estimate is to cover.
4. The requirement that the estimate be prepared, stamped with seal and signed by an independent State Licensed Engineer has been removed from this policy. The RCE must, however, be prepared by a reclamation specialist, either employed by the company or hired by the company. A private individual would have the option to request an exception to this requirement from the Authorized Officer.
5. The requirement that the RCE be included as part of the Plan of Development (POD) has been removed. However, an RCE will be requested in a deficiency letter as additional information required in accordance with 43 CFR 2804.12(c), 2884.11(c) and 2920.5-2(b).
6. To clarify when the bond is requested. The Bond Determination Letter would be mailed to the applicant/holder prior to the project approval letter. For a new grant, amendment or renewal the Bond Determination Letter would be sent at the same time as the Offer to grant letter. For NTP’s, the Decision would be sent prior to the NTP approval. For assignments or partial relinquishments the Bond Determination Letter would be sent prior to their approval.
7. To clarify the engineering staffs role. The review of the RCE’s is the responsibility of the realty staff, but the engineering staff will help, if requested.
8. Under the heading “*Bond Amount Determination*” there seems to be some confusion on how the bond should be figured. Depending on the ROW, the estimate would be figured accordingly.
  - A. The bond is to cover the construction, operation, maintenance and termination/reclamation of the grant; therefore, normally the estimate would be figured on the reclamation costs to cover everything over the life of the grant.
  - B. In instances where reclamation may not be anticipated or would be minimal (i.e. BLM designated roads, typically small diameter (10 inches or smaller) pipelines, small scale powerlines without any ancillary facilities, etc.), the estimate would be figured on the operation and maintenance costs of the ROW over the life of the grant.
  - C. Maintenance costs for small diameter pipelines without any ancillary facilities should consider the need to dig up the line or a portion of the line for repairs and for small scale powerlines the need to replace transformers, etc.

9. For roads with multiple users, there are two options: (1) all users of the road would sign a road maintenance agreement and submit the agreement to the BLM. The lead for the road maintenance agreement will submit the RCE to the BLM for review. The BLM will then determine the bond amount for each user from the RCE and the percentages in the road maintenance agreement. When a new grant, amendment or relinquishment is approved, the maintenance agreement will need to be updated and the RCE may need to be resubmitted (depending on the age of the RCE) and new bonds will need to be submitted; or (2) all users will obtain 100 percent bonds to cover the terms and conditions of their grant.

10. Insurance policies may be accepted in place of a bond for a ROW. The policy itself must contain the following requirements: (1) the BLM must be included as an additional insured; (2) the statement *“this policy shall remain in full force and effect on a continuous basis for the term of the ROW(s) unless the Insurer provides to the insured not less than one hundred twenty (120) days advance written notice of its intent to cancel the policy. It is understood and agreed that the Insured may recover the full amount of the policy (less any previous amounts paid to the Insured under the policy) if the Insurer cancels the policy, and within thirty (30) days prior to the effective date of the cancellation, if the Insured has not received replacement Security acceptable to the BLM”* (this is an endorsement to the policy that the holder must request be added). This would be an endorsement on the policy; and 3) the ROW’s must be listed on the policy under “Description of Operations,”

The policy will be reviewed to ensure the policy covers the work spelled out in the RCE (i.e., hazardous materials, etc.) or under the road maintenance agreement. A letter accepting the policy, the same as a bond instrument, will be sent to the applicant/holder. If the policy doesn’t include the necessary coverage or statements required, a letter returning the policy to the applicant/holder will be sent.

Insurance policies cannot be put in the Bond Surety System, so an electronic spreadsheet of the ROW’s with their RCE values has been developed and will be kept on the State Office shared drive so all Field Office Realty Staff have access. The insurance policy General Liability and Umbrella Liability total must exceed the total of all the estimates to be acceptable.

11. Bonds for Film Permits will only be required when the land involved in a filming permit will need to be reclaimed or cleaned up after completion of the filming project. A certificate of liability insurance for not less than \$1,000,000 (U.S. dollars) must be provided to the BLM prior to issuance of a commercial filming permit. The Bureau of Land Management must be named as an additional insured party on the policy as well as the statement pertaining to cancellation as stated above.

**Timeframe:** This IM is effective upon issuance and will remain in effect unless formally modified.

**Budget Impact:** The application of this policy will have a minimal budget impact. The bond determination, adequacy and compliance review workload are subject to the processing and monitoring fee provisions of the regulations (43 CFR 2804.14(a), 2805.16(a), 2884.12(a), 2885.24(a), and 2920.6(b)).

**Background:** Historically, BLM Wyoming has not required a bond on all grants. With the increasing concern over changes in financial markets and corporate financial volatility, the BLM is reducing the potential liabilities to the United States associated with grants by requiring a performance and reclamation bond. The BLM would use the bond for reclamation of sites or meeting other grant requirements in the event a holder is unable to meet their obligations.

**Coordination:** This bonding policy was coordinated with the Office of the Solicitor, Washington Office Branch Chief for Rights-of-Way (WO-350), Renewable Energy Coordination Office (WO-301), and the BLM Wyoming Office of Communications (WY-912).

**Contact:** If there are any questions related to this IM, please contact Janelle Wrigley at 307-775-6257.

Signed by:  
Larry Claypool  
Associate State Director

Authenticated by:  
Jessica Camargo  
State Director's Office

1 Attachment:

1 – Reclamation Construction cost – Bid Estimate Sheet(s) (7 pp)

Distribution:

Director (WO-350)	1 w/atch.
Field Managers	1 w/atch.
Resource Advisors	1 w/atch.
CF	2 w/atch.

**INFORMATION/BRIEFING MEMORANDUM  
FOR THE ASSISTANT SECRETARY – LAND AND MINERALS MANAGEMENT**

**DATE:** March 27, 2017

**FROM:** Michael D. Nedd, Acting Director – Bureau of Land Management (BLM)

**SUBJECT:** Broadband and Bonding

The purpose of this memo is to provide information on broadband and bonding for rights-of-way (ROWs), specifically the Wyoming State Office bonding policy. It also contains some information on the Bureau of Indian Affairs’ (BIA) bonding policy, which at times may be inconsistent with that of BLM.

**BACKGROUND**

The BLM communication site program manages broadband ROWs. The ROWs generally fall under telephone types of actions, but sometimes include other types of actions as shown below:

**Pending ROWs with Fiber Optic Commodity by State**

State	Roads	Power Facilities	Comm Sites	Telephone	ROW Other	Total
Alaska	unk	unk	unk	unk	unk	unk
Arizona	--	--	--	3	1	4
California	--	3	--	9	1	13
Colorado	--	--	--	3	1	4
Eastern States	--	--	--	--	--	--
Idaho	--	--	1	10	--	11
Montana	--	--	--	5	--	5
New Mexico	--	5	2	17	--	24
Nevada	--	1	--	7	--	8
Oregon/Wash	--	1	--	5	--	6
Utah	1	1	2	6	--	10
Wyoming	--	--	--	14	--	14
<b>TOTALS</b>	<b>1</b>	<b>11</b>	<b>5</b>	<b>79</b>	<b>3</b>	<b>99</b>

From BLM’s LR2000 land database as of March 27, 2017

On June 14, 2012, Executive Order 13616 (Attachment 1), titled “Accelerating Broadband Infrastructure Deployment,” was issued to promote and expedite development of broadband facilities on Federal lands, buildings, and ROWs, by taking a number of steps, including forming a Broadband Deployment on Federal Property Working Group, that the BLM has been involved with.

## **DISCUSSION**

Bonds are required to ensure compliance with all the terms and conditions of a ROW grant (construction, operation, maintenance and termination) and the requirements of the regulations, including reclamation. Bonds allow the BLM to reduce the potential liabilities to the United States associated with ROW grants. By requiring performance and reclamation bonds on ROW grants, the BLM is able to recoup the costs of maintaining, removing and cleaning up sites where a company has failed to meet its responsibilities. For example, during the cellular communications expansion in the early 2000s, equipment was quickly outdated and companies often merged or filed bankruptcy, leaving communication sites abandoned and in disrepair. On a broadband site, performance and reclamation measures could include weed and erosion control during operation and repair/dismantling of broadband underground access holes and the regeneration stations that are placed on the land above the buried equipment.

The BLM has discretion to bond ROWs under section 504(i) of the Federal Land Policy and Management Act, under section 28(m) of the Mineral Leasing Act (MLA), and under the regulations at 43 CFR 2805.20, 43 CFR 2885.11(b)(7), and 43 CFR 2885.11(b)(7). The BLM also addresses bonds in Manuals 2805 and 2885.

The BLM Wyoming State Office issued ROW bond policy on April 18, 2016, and amended it on October 20, 2016, which requires bonding on all new grant, amendment, renewal, and assignment of ROWs (Attachments 2 and 3). The policy allows for waivers of bonding requirements at the Field Manager's discretion.

The BIA administers ROW grants on Indian lands and has regulations and policies that may differ from those of the BLM. The BIA published a rule on November 19, 2015, to comprehensively update and streamline the process for obtaining BIA ROW grants on Indian land, while supporting tribal self-determination and self-governance. The rule allows the BIA to provide relief from its bond requirements for utility cooperatives and tribal utilities to encourage ROWs that meet infrastructure needs.

## **NEXT STEPS**

The Wyoming State Office is currently reviewing the effectiveness of the existing bonding policy. They are reviewing the waiver policy, for instance, to see if the BLM Field Offices are implementing the policy correctly and consistently.

## **ATTACHMENTS**

- 1) Executive Order 13616
- 2) Wyoming Bonding IM dated April 21, 2016
- 3) Wyoming Bonding IM dated October 20, 2016

**From:** Stewart, Shannon  
**To:** [mike nedd](#); [Jerome Perez](#); [Kathleen Benedetto](#)  
**Subject:** Fwd: Broadband ROW Bonding paper  
**Date:** Tuesday, March 28, 2017 9:24:29 AM  
**Attachments:** [Attachment 1\\_Executive Order 13616.pdf](#)  
[Attachment 2\\_WY-April 2016.pdf](#)  
[Attachment 3\\_WY IM October 2016.pdf](#)  
[Broadband Briefing Memo 03.27.17.docx](#)

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Should have CC'd you on these, they were sent up yesterday (no policy items, just background).

Shannon

----- Forwarded message -----

From: Stewart, Shannon <[sctestar@blm.gov](mailto:sctestar@blm.gov)>  
Date: Mon, Mar 27, 2017 at 6:02 PM  
Subject: Broadband ROW Bonding paper  
To: Jill Moran <[jcmoran@blm.gov](mailto:jcmoran@blm.gov)>, "Seidlitz, Joseph (Gene)" <[gseidlit@blm.gov](mailto:gseidlit@blm.gov)>  
Cc: Beverly Winston <[bwinston@blm.gov](mailto:bwinston@blm.gov)>, Jeff Brune <[jbrune@blm.gov](mailto:jbrune@blm.gov)>

Attached is a briefing paper and attachments that should serve as background information for the upcoming meeting on bonding for broadband ROWs, specifically WY.

Shannon

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Shannon Stewart  
Acting Chief of Staff  
Bureau of Land Management  
202-570-0149 (cell)  
202-208-4586 (office)  
[sctestar@blm.gov](mailto:sctestar@blm.gov)

--

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## Presidential Documents

Executive Order 13616 of June 14, 2012

### Accelerating Broadband Infrastructure Deployment

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to facilitate broadband deployment on Federal lands, buildings, and rights of way, federally assisted highways, and tribal and individual Indian trust lands (tribal lands), particularly in underserved communities, it is hereby ordered as follows:

**Section 1. Policy.** Broadband access is essential to the Nation's global competitiveness in the 21st century, driving job creation, promoting innovation, and expanding markets for American businesses. Broadband access also affords public safety agencies the opportunity for greater levels of effectiveness and interoperability. While broadband infrastructure has been deployed in a vast majority of communities across the country, today too many areas still lack adequate access to this crucial resource. For these areas, decisions on access to Federal property and rights of way can be essential to the deployment of both wired and wireless broadband infrastructure. The Federal Government controls nearly 30 percent of all land in the United States, owns thousands of buildings, and provides substantial funding for State and local transportation infrastructure, creating significant opportunities for executive departments and agencies (agencies) to help expand broadband infrastructure.

**Sec. 2. Broadband Deployment on Federal Property Working Group.** (a) In order to ensure a coordinated and consistent approach in implementing agency procedures, requirements, and policies related to access to Federal lands, buildings, and rights of way, federally assisted highways, and tribal lands to advance broadband deployment, there is established a Broadband Deployment on Federal Property Working Group (Working Group), to be co-chaired by representatives designated by the Administrator of General Services and the Secretary of Homeland Security (Co-Chairs) from their respective agencies, in consultation with the Director of the Office of Science and Technology Policy (Director) and in coordination with the Chief Performance Officer (CPO).

(b) The Working Group shall be composed of:

(i) a representative from each of the following agencies, and the Co-Chairs, all of which have significant ownership of, or responsibility for managing, Federal lands, buildings, and rights of way, federally assisted highways, and tribal lands (Broadband Member Agencies):

- (1) the Department of Defense;
- (2) the Department of the Interior;
- (3) the Department of Agriculture;
- (4) the Department of Commerce;
- (5) the Department of Transportation;
- (6) the Department of Veterans Affairs; and
- (7) the United States Postal Service;

(ii) a representative from each of the following agencies or offices, to provide advice and assistance:

- (1) the Federal Communications Commission;
  - (2) the Council on Environmental Quality;
  - (3) the Advisory Council on Historic Preservation; and
  - (4) the National Security Staff; and
- (iii) representatives from such other agencies or offices as the Co-Chairs may invite to participate.
- (c) Within 1 year of the date of this order, the Working Group shall report to the Steering Committee on Federal Infrastructure Permitting and Review Process Improvement, established pursuant to Executive Order 13604 of March 22, 2012 (Improving Performance of Federal Permitting and Review of Infrastructure Projects), on the progress that has been made in implementing the actions mandated by sections 3 through 5 of this order.

**Sec. 3. *Coordinating Consistent and Efficient Federal Broadband Procedures, Requirements, and Policies.*** (a) Each Broadband Member Agency, following coordination with other Broadband Member Agencies and interested non-member agencies, shall:

- (i) develop and implement a strategy to facilitate the timely and efficient deployment of broadband facilities on Federal lands, buildings, and rights of way, federally assisted highways, and tribal lands, that:
    - (1) ensures a consistent approach across the Federal Government that facilitates broadband deployment processes and decisions, including by: avoiding duplicative reviews; coordinating review processes; providing clear notice of all application and other requirements; ensuring consistent interpretation and application of all procedures, requirements, and policies; supporting decisions on deployment of broadband service to those living on tribal lands consistent with existing statutes, treaties, and trust responsibilities; and ensuring the public availability of current information on these matters;
    - (2) where beneficial and appropriate, includes procedures for coordination with State, local, and tribal governments, and other appropriate entities;
    - (3) is coordinated with appropriate external stakeholders, as determined by each Broadband Member Agency, prior to implementation; and
    - (4) is provided to the Co-Chairs within 180 days of the date of this order; and
  - (ii) provide comprehensive and current information on accessing Federal lands, buildings, and rights of way, federally assisted highways, and tribal lands for the deployment of broadband facilities, and develop strategies to increase the usefulness and accessibility of this information, including ensuring such information is available online and in a format that is compatible with appropriate Government websites, such as the Federal Infrastructure Projects Dashboard created pursuant to my memorandum of August 31, 2011 (Speeding Infrastructure Development Through More Efficient and Effective Permitting and Environmental Review).
- (b) The activities conducted pursuant to subsection (a) of this section, particularly with respect to the establishment of timelines for permitting and review processes, shall be consistent with Executive Order 13604 and with the Federal Plan and Agency Plans to be developed pursuant to that order.
- (c) The Co-Chairs, in consultation with the Director and in coordination with the CPO, shall coordinate, review, and monitor the development and implementation of the strategies required by paragraph (a)(i) of this section.
- (d) Broadband Member Agencies may limit the information made available pursuant to paragraph (a)(ii) of this section as appropriate to accommodate national security, public safety, and privacy concerns.

**Sec. 4. *Contracts, Applications, and Permits.*** (a) Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112–96) contains provisions addressing access to Federal property for the deployment of wireless broadband facilities, including requirements that the General Services

Administration (GSA) develop application forms, master contracts, and fees for such access. The GSA shall consult with the Working Group in developing these application forms, master contracts, and fees.

(b) To the extent not already addressed by section 6409, each Broadband Member Agency with responsibility for managing Federal lands, buildings, or rights of way (as determined by the Co-Chairs) shall, in coordination with the Working Group and within 1 year of the date of this order, develop and use one or more templates for uniform contract, application, and permit terms to facilitate nongovernment entities' use of Federal property for the deployment of broadband facilities. The templates shall, where appropriate, allow for access by multiple broadband service providers and public safety entities. To ensure a consistent approach across the Federal Government and different broadband technologies, the templates shall, to the extent practicable and efficient, provide equal access to Federal property for the deployment of wireline and wireless facilities.

**Sec. 5. *Deployment of Conduit for Broadband Facilities in Conjunction with Federal or Federally Assisted Highway Construction.*** (a) The installation of underground fiber conduit along highway and roadway rights of way can improve traffic flow and safety through implementation of intelligent transportation systems (ITS) and reduce the cost of future broadband deployment. Accordingly, within 1 year of the date of this order:

(i) the Department of Transportation, in consultation with the Working Group, shall review dig once requirements in its existing programs and implement a flexible set of best practices that can accommodate changes in broadband technology and minimize excavations consistent with competitive broadband deployment;

(ii) the Department of Transportation shall work with State and local governments to help them develop and implement best practices on such matters as establishing dig once requirements, effectively using private investment in State ITS infrastructure, determining fair market value for rights of way on federally assisted highways, and reestablishing any highway assets disturbed by installation;

(iii) the Department of the Interior and other Broadband Member Agencies with responsibility for federally owned highways and rights of way on tribal lands (as determined by the Co-Chairs) shall revise their procedures, requirements, and policies to include the use of dig once requirements and similar policies to encourage the deployment of broadband infrastructure in conjunction with Federal highway construction, as well as to provide for the reestablishment of any highway assets disturbed by installation;

(iv) the Department of Transportation, after outreach to relevant nonfederal stakeholders, shall review and, if necessary, revise its guidance to State departments of transportation on allowing for-profit or other entities to accommodate or construct, safely and securely maintain, and utilize broadband facilities on State and locally owned rights of way in order to reflect changes in broadband technologies and markets and to promote competitive broadband infrastructure deployment; and

(v) the Department of Transportation, in consultation with the Working Group and the American Association of State Highway and Transportation Officials, shall create an online platform that States and counties may use to aggregate and make publicly available their rights of way laws and joint occupancy guidelines and agreements.

(b) For the purposes of this section, the term "dig once requirements" means requirements designed to reduce the number and scale of repeated excavations for the installation and maintenance of broadband facilities in rights of way.

**Sec. 6. *General Provisions.*** (a) This order shall be implemented consistent with all applicable laws, treaties, and trust obligations, and subject to the availability of appropriations.

- (b) Nothing in this order shall be construed to impair or otherwise affect:
- (i) the authority granted by law to an executive department, agency, or the head thereof; or
  - (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
- (c) Independent agencies are strongly encouraged to comply with this order.
- (d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,  
*Washington, June 14, 2012.*



## United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Wyoming State Office  
P.O. Box 1828  
Cheyenne, Wyoming 82009-1828



In Reply Refer To:  
2805/2885/2920 (920 Wrigley) P

April 18, 2016

EMS TRANSMISSION: 4/21/2016  
Instruction Memorandum No. WY-2016-018  
Expires: 09/30/2019

To: District Managers  
From: Associate State Director  
Subject: Right-of-Way (ROW) Bonds

**Program Area:** Lands and Realty Management.

**Purpose:** This Instruction Memorandum (IM) supplements the regulations and provides guidance for bonding requirements on Bureau of Land Management (BLM) Wyoming ROWs, leases and permits (grant) for authorized activities other than solar and wind energy authorizations. The guidance for bonding of solar and wind energy authorizations is set forth in Washington Office(WO) Instruction Memorandum (IM) No. 2015-138.

**Policy/Action:** Title V of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1764(i)) and Section 28 of the Mineral Leasing Act (MLA) (30 U.S.C. 185), and the ROW, lease and permit regulations (43 CFR 2805.12(g), 2885.11(b)(7) and 2920.7(g)) authorize the BLM to require a grant applicant/holder provide a bond to secure the obligations imposed by the grant (to include short term ROW and temporary use permits).

Under 43 CFR 2805.12(g), 2885.11(b)(7) and 2920.7(g) the BLM Wyoming will require a performance and reclamation bond for all new grants, amendments, renewals, and assignments to ensure compliance with the terms and conditions of a grant and the requirements of the regulations, including reclamation. The applicant/holder of any new grant, amendment, renewal, or assignment must submit a bond, which must be approved by the BLM authorized officer prior to the grant being issued. If not already bonded, existing grants (excluding wind and solar grants) will not require a bond unless a renewal, amendment or assignment is submitted for approval. An amendment will trigger the requirement for a bond for the entire grant (new plus existing).

Grants to State and/or local Governments which have statutory or constitutional authorities limiting the amount of liability or indemnification payable, only require a financial guarantee

sufficient to fund the amount over the State or local Government's limited liability. The only exception to this policy would be ROW grants to another Federal agency, which do not require a bond.

Statewide or nationwide bonds are not acceptable at this time. A bond will be required for each grant, unless the bond instrument specifies that it covers more than one grant.

**Statewide/nationwide oil and gas bonds are valid only for lease activities on the leasehold, and can't be used for ROW administration.**

Waivers to the requirement of a bond may be obtained for hardships only and may only be approved by the BLM Wyoming Deputy State Director, Lands and Minerals. The applicant/holder must submit the following information to the authorized officer for all waiver requests:

- a. A suggested alternative (adding the BLM as an insured on the homeowners insurance policy, etc.);
- b. Specific financial information to support the hardship request (submit the same information that is required for rent waivers at 43 CFR 2806.15).

The authorized officer must submit the complete package to the Wyoming Deputy State Director, Lands and Minerals with a recommendation for consideration.

*Bond Amount Determination:*

The applicant/holder shall furnish a reclamation cost estimate (RCE) to the BLM authorized officer for review and approval, estimating all the costs (see attachment 1 for example) for the BLM to fulfill the terms and conditions of the grant in the event that the holder may not be able to do so. This estimate shall be prepared by an independent state licensed engineer, who is licensed in the state of Wyoming, and shall include such information including but not limited to, direct, indirect, administrative, equipment, contracting, monitoring, and reclamation costs, as well as Davis-Bacon and Related Acts locally prevailing wages potentially incurred by the BLM. Costs for the BLM to administer a reclamation contract and inspect and monitor the reclamation activities should be commensurate with the complexity of fully reclaiming the land. This may be a percentage-based determination by the BLM which it adds to the RCE as part of its bond determination. The RCE shall detail the estimated costs and shall be accompanied by the engineer's seal and signature. All costs of preparing and submitting the RCE shall be borne solely by the applicant/holder. The RCE, along with inflationary estimates, shall be the basis for the bond amount and shall remain in effect for 5 years unless the authorized officer determines that conditions warrant a review of the bond sooner.

If the proposed grant would not allow any surface disturbance on the public land (e.g. power line corner crossing) or if the preparation cost of the RCE would be a hardship for the applicant/holder, the BLM (realty and/or engineer) may prepare the RCE for the

applicant/holder. The engineering staff in the District and Field Offices may help with completion of the RCE.

The RCE is key to determining the bond amount, and will be included as part of the plan of development (POD) required under 43 CFR 2804.25(b), 2884.22(a), and 2920.5-2. If no POD is required (assignment or renewal), then an individual RCE must be provided to the BLM for its review and consideration in determining a bond. The BLM has issued policy and guidance for determining bonding requirements under 43 CFR 3809 for mining operations on the public lands (IM 2009-153, dated June 19, 2009, [http://www.blm.gov/wo/st/en/info/regulations/Instruction\\_Memos\\_and\\_Bulletins/national\\_instrument/2009/IM\\_2009-153.html](http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instrument/2009/IM_2009-153.html)) that provides detailed information about the process for determining the appropriate financial guarantees for intensive land uses on the public lands. This guidance will be used to assist in calculating the bond amount for grants on public lands. Attachment 1 to IM 2009-153, “Guidelines for Reviewing Reclamation Cost Estimates”, can be used as a guideline to assist in reviewing RCEs. The engineering staff in the District and Field Offices will assist with review of the RCE’s for adequacy.

The RCE’s will consist of three components of financial liability for purposes of determining its amount. Each component may individually or jointly contribute to a significant bond amount. The three required components of the RCE are:

1. Environmental liabilities including hazardous materials liabilities, such as securing, removal or use with hazardous waste and hazardous substances. This component may also account for herbicide use, petroleum-based fluids, and dust control or soil stabilization materials.
2. The decommissioning, removal, and proper disposal, as appropriate, of improvements and facilities.
3. Interim and final reclamation, revegetation, restoration, and soil stabilization. This will be determined based on the amount of vegetation retained onsite and the potential for flood events and downstream sedimentation from the site that may result in offsite impacts.

Ultimately, the performance and reclamation bond will be a single instrument to cover all potential liabilities. The entire bond amount could be used to address a single risk event such as hazardous materials release or groundwater contamination regardless of the fact that in calculating the total bond amount other risks were also considered. If the bond is used to address a particular risk, the holder would then be required to increase the bond amount to compensate for this use. This approach to establishing a bond is preferable to one allowing holders to maintain separate bonds for each contingency. If separate bonds are held, an underestimation of one type of liability may leave the BLM responsible for making up the difference, as the funds associated with one bond may not be applicable for the purposes of another. Requiring a single, larger bond will ensure that the holders are bonded with a surety that has the capacity to underwrite the entire amount associated with the grant.

Salvage value for structures, equipment, or materials should not be included in the RCE. RCE's will be calculated as if there were no such values since these are generally based upon a transient market value for commodities. An addendum to the RCE may be provided where the salvage and recycling value for the structures, equipment, or materials can be detailed. However, the addendum for salvage values will only be included in BLM's bond determination with adequate third-party documentation and justification for salvage or considering special circumstances, such as State mandates to recycle and salvage project materials. The addendum must include current local market information and be readily available for BLM review and consideration in making its bond determination.

The authorized officer may require the holder to submit a new estimate at any time during the term of the grant. The bond, in a form acceptable to the authorized officer, shall be furnished by the applicant/holder prior to any grant or decision being issued. Should the bond furnished under this authorization become unsatisfactory at any time to the authorized officer, the holder shall, within 30 days of demand, furnish a new bond satisfactory to the authorized officer.

The applicant/holder shall submit the RCE both in hard copy and in a standardized electronic format (Microsoft Excel or compatible electronic spreadsheet is preferred) that can be easily updated with current costs by the BLM for future reviews. A guide for the bond estimate is attached (attachment 1).

Based on a review of the RCE, the BLM authorized officer must provide the applicant/holder with a written decision as to the amount required for the performance and reclamation bond.

Bond determination letters must be adequately documented in the case file and supported by an RCE provided by the applicant/holder. The RCE is the basis for determining the amount of the performance and reclamation bond. The additional administrative and other such costs must also be properly documented and retained in the case file to be included in the final bond determination. The case file will have a section that fully documents the RCE for the grant, the BLM review of the RCE, the basis for the final bond determination, communications with the applicant/holder regarding the bonding requirements for the grant and records related to the bond instruments provided by the applicant/holder.

Bond determinations must also consider compliance with State of Wyoming standards for public health and safety, environmental protection, construction, operation and maintenance of a grant. Consideration must be made when the State standards are more stringent and are not inconsistent with the applicable Federal standard. If a State regulatory authority requires a bond to cover some portion of the environmental liabilities or other requirements for the grant, the BLM must be listed as an additional named insured on the bond instrument and this documentation must be included in the case file. This inclusion would suffice to cover the BLM's exposure should the holder default in any environmental liability listed in the respective State bond.

Bond Instrument:

Acceptable bond instruments include personal bonds, surety bonds or policy of insurance. Surety bonds from the approved list of sureties (U.S. Treasury Circular 570) must be payable to the BLM. The BLM will not accept a corporate guarantee as an acceptable form of bond. If a state regulatory authority requires a bond to cover some portion of environmental liabilities, such as hazardous material damages or releases, reclamation, or other requirements for the project, the BLM must be listed as an additionally named insured on the policy. This inclusion would suffice to cover the BLM's exposure should a holder default in any environmental liability listed in the respective state bond. The authorized officer shall not accept bonds from any entity or individual other than the applicant/holder, (i.e., the holder's contractors, subcontractors, lessees, or subsidiaries).

Personal Bonds:

Personal bonds will be accompanied by BLM Form 2800-17 (attachment 3) and payment for the amount required by the authorized officer.

Book entry deposits must be accompanied by a power of attorney authorizing the Secretary of the Interior to collect the proceeds in the event the holder fails to adhere to the grant stipulations covered by the bond. In the past, personal bonds in the form of a Treasury bond or note involved the physical handling by Bureau personnel. This is no longer acceptable. A change in the procedures of the Department of the Treasury in 1983 provides that the notes and bonds will be in a book entry form on deposit in the Federal Reserve System and no actual handling of the securities themselves are involved. A charge is assessed by the Federal Reserve System for security safekeeping and transfer services. This charge is to be paid by the principal.

The only acceptable forms of security for personal bonds are:

- Cash (cash, certified or cashier's check, (personal/business checks will not be accepted));
- Book entry deposits;
- Irrevocable letters of credit payable to the BLM issued by a financial institution that has the authority to issue irrevocable letters of credit and whose operations are regulated and examined by a Federal agency, or;
- A policy of insurance that provides the BLM with acceptable rights as a beneficiary and is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction and whose insurance operations are regulated and examined by a Federal agency.

Bonds which are not acceptable forms of security are negotiable bonds, notes issued by the United States, certificates of deposit, U.S. Savings Bonds, and notes or bonds issued by State or local Governments or private companies. These instruments can't be transferred to the Federal Reserve System and must be physically stored in a protected BLM facility. Fire, theft, and loss resulting from lack of long term vigilance all pose unacceptable risks to BLM.

### Surety Bonds:

Surety bonds will be accompanied by BLM Form 2800-16 (attachment 4).

A surety bond consists of a promise to the United States by the applicant/holder and a surety that the surety will correct any failure of the holder to adhere to grant stipulations or pay up to the limits of the amount of the bond. For all Federal bonds, the surety corporation must be approved by the Department of the Treasury and in Circular 570 as an acceptable surety. The acceptance of the surety bond by the authorized officer on behalf of the United States and authorization of activity based upon the bond completes the cycle and makes the bond a 3-way contract between the holder, the surety, and the United States, which can be enforced should the holder fail to comply with the grant stipulations. The money paid by the holder to obtain the surety's entry into the arrangement is normally called the premium and is solely a matter between the principal and the surety.

You can find Circular 570 at <https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm>. This circular is published annually in July.

### Bond Recordkeeping:

The LR2000 and the Bond and Surety System (B&SS) are the BLM's data systems used to track information for grants, including the status of performance and reclamation bonds. It is critically important that all managers and staff place a high priority on the timely and accurate entry and update of information in LR2000 and the B&SS, consistent with current data standards for both systems. The LR2000 and the B&SS are used for both national and local reporting and tracking purposes and are also used as a public information and data source. This IM establishes a mandatory policy that LR2000 and the B&SS data entry for all ROW authorizations occur within 10 business days of the action. Each BLM Field office will identify and designate the appropriate staff for LR2000 and the B&SS data entry for grants.

### Financial Instrument Handling:

The handling of financial instruments such as personal and surety bonds, and other instruments that are received as bond payment to the BLM must be handled in accordance with the BLM Manual 1372 – Collections, and Manual 1270 – Records Administration, and their policy guidance. Cash or checks are required to be deposited into a BLM suspense account in a timely manner, but until they are deposited, they are required to be safeguarded in a fireproof safe or file cabinet with adequate locking devices and with access limited to those designated employees with direct responsibilities for collections. The bond instrument itself received by the BLM must be properly safeguarded within a secure BLM records room or secured file cabinet, and documented in the case file. Under no circumstances should bond records be held in desk drawers or other inadequate storage containers where they are readily susceptible to loss or theft. Access to safes and financial securities are addressed within these manuals and must be adhered to when reviewing and handling furnished bond instruments. Specific attention must be given to

ensure that personally identifiable information (PII) received as part of the bond instruments and documentation is not kept for public review in case files.

It is recommended that copies of bonds and all other supporting bond information be kept in a blue envelope on the left side of the case file. This would make the information easy to locate and remove for public review of the case file. For major projects (those projects which require a National Project Manager, etc.), a separate case file containing all the bond information would be maintained in the administrative record. In an effort to keep the volume of paper at a minimum in the case files, an electronic file folder on a shared drive either in the Field Office or the State Office could be used to store the bond information. The electronic folder would limit access to only those who need it.

#### *Bond Review:*

Each year the Wyoming BLM District Offices will coordinate Field Office reviews of at least 20 percent of the RCE's and bonds for grants within their administrative boundaries that are less than 5 years of age for bond adequacy. These reviews will prioritize higher risk projects that involve greater land disturbance acreage, projects with a history of incidents of noncompliance, projects with abandoned or disabled equipment, or projects that may have potential environmental liabilities associated with use of hazardous materials and substances, hazardous waste, or herbicides.

Each bond and RCE must be reviewed at least once every 5 years, regardless of its review priority. These reviews should be completed throughout the Fiscal Year to moderate workload impacts. Within 90 days of the end of each Fiscal Year, beginning the Fiscal Year this policy is effective, these reviews must be completed and documented in each case file. For any authorization determined to have an inadequate RCE, the appropriate BLM Field Office will issue a letter to the grant holder requesting that it provide an updated RCE within 90 days of the date of the letter.

#### *Oversight and Implementation:*

Each District Office must coordinate with the Wyoming State Office Realty Officer when implementing these policy requirements. The attached Bond Review Coordination Spreadsheet will be used and filled out by each Field Office, documenting the status of each application/authorization and associated bond, as well as the basis for minimum bond amounts and the bond determinations for the grants that require bonds. An updated spreadsheet, from each district office, must be provided to the Wyoming State Office Realty Officer by the last business day of each month until all actions are completed.

All WY Field Offices must review and update data in the LR2000 (Case Recordation & the Bond and Surety System) on an annual basis. The annual certifications, using the attached memorandum form will be submitted to the Wyoming State Office Realty Officer, by each district office, within 30 days of the end of each Fiscal Year.

**Timeframe:** This IM is effective upon issuance and will remain in effect unless formally modified.

**Budget Impact:** The application of this policy will have a minimal budget impact. The bond determination, adequacy and compliance review workload are subject to the processing and monitoring fee provisions of the regulations (43 CFR 2804.14(a), 2805.16(a), 2884.12(a), 2885.24(a), and 2920.6(b)).

**Background:** Historically, the BLM Wyoming has not required a bond on all grants. With the increasing concern over changes in financial markets and corporate financial volatility, the BLM is reducing the potential liabilities to the United States associated with grants by requiring a performance and reclamation bond. The BLM would use the bond for reclamation of sites or meeting other grant requirements in the event a holder is unable to meet their obligations.

**Coordination:** This bonding policy was coordinated with the Office of the Solicitor, Washington Office Branch Chief for ROW (WO-350), Renewable Energy Coordination Office (WO-301).

**Contact:** If there are any questions related to this IM, please contact Janelle Wrigley at 307-775-6257.

Signed by:  
Larry Claypool  
Acting Associate State Director

Authenticated by:  
Jessica Camargo  
State Director's Office

4 Attachments:

- 1 - Bond calculator spreadsheet (1 p)
- 2- Bond calculator example (1 p)
- 3 - Personal bond form 2800-17 (1 p)
- 4 - Surety bond form – 2800-16 (1 p)

Distribution

Director (WO 350)  
Field Managers  
Resource Advisors  
CF

1/watch.  
1 w/atch.  
1 w/atch.  
2 w/atch.



## United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
Wyoming State Office  
P.O. Box 1828  
Cheyenne, WY 82003-1828  
[www.blm.gov/wy](http://www.blm.gov/wy)

In Reply Refer To:  
2805/2885/2920 (921Wrigley) P

October 20, 2016

EMS TRANSMISSION: 10/20/2016  
Instruction Memorandum No. WY-2016-018, Change 1  
Expires: 09/30/2018

To: District Managers  
From: Associate State Director  
Subject: Right-of-way (ROW) Bonds

**Program Area:** Lands and Realty Management.

**Purpose:** This Instruction Memorandum (IM) provides revised guidance and clarification on Right-of-Way (ROW) bonding requirements.

**Policy/Action:** Effective April 18, 2016, the Bureau of Land Management (BLM) Wyoming issued policy that would require a bond(s) for all new grants, amendments, renewals (including grants not offered prior to the effective date of the policy issued on April 18, 2016), and assignments. That Instruction Memorandum can be found at the following link - <http://web.blm.gov/Wy.im/16/WY-2016-018.pdf>. A bond is to ensure compliance with all the terms and conditions of a grant (construction, operation, maintenance and termination) and the requirements of the regulations (43 CFR 2805, 2885, and 2920), including reclamation. The changes and clarification are as follows:

1. The requirement that a bond(s) be approved by the BLM authorized officer prior to the grant being issued is changed to read: "The applicant/holder of any new grant, amendment, renewal, partial relinquishment and/or assignment must obtain a bond(s). The bond(s) must be submitted and accepted prior to the grant being issued or prior to a Notice to Proceed (NTP) as stipulated in the grant."

2. Waivers for hardships only, has been changed to read: “Waivers/exceptions will be considered.” The requirement that the waivers be approved by the BLM Wyoming Deputy State Director, Lands and Minerals have been removed from the policy. The authorized officer will have the authority to approve waivers/exceptions.
3. The Reclamation Cost Estimate (RCE) template, attachment 1 that was mentioned has been revised. The new template is attached. We will not mandate the use of the attached template but we strongly suggest the applicants use this format to expedite the review process. The template is to be used for estimates for construction, operation and maintenance as well as reclamation, depending on the ROW action the estimate is to cover.
4. The requirement that the estimate be prepared, stamped with seal and signed by an independent State Licensed Engineer has been removed from this policy. The RCE must, however, be prepared by a reclamation specialist, either employed by the company or hired by the company. A private individual would have the option to request an exception to this requirement from the Authorized Officer.
5. The requirement that the RCE be included as part of the Plan of Development (POD) has been removed. However, an RCE will be requested in a deficiency letter as additional information required in accordance with 43 CFR 2804.12(c), 2884.11(c) and 2920.5-2(b).
6. To clarify when the bond is requested. The Bond Determination Letter would be mailed to the applicant/holder prior to the project approval letter. For a new grant, amendment or renewal the Bond Determination Letter would be sent at the same time as the Offer to grant letter. For NTP’s, the Decision would be sent prior to the NTP approval. For assignments or partial relinquishments the Bond Determination Letter would be sent prior to their approval.
7. To clarify the engineering staffs role. The review of the RCE’s is the responsibility of the realty staff, but the engineering staff will help, if requested.
8. Under the heading “*Bond Amount Determination*” there seems to be some confusion on how the bond should be figured. Depending on the ROW, the estimate would be figured accordingly.
  - A. The bond is to cover the construction, operation, maintenance and termination/reclamation of the grant; therefore, normally the estimate would be figured on the reclamation costs to cover everything over the life of the grant.
  - B. In instances where reclamation may not be anticipated or would be minimal (i.e. BLM designated roads, typically small diameter (10 inches or smaller) pipelines, small scale powerlines without any ancillary facilities, etc.), the estimate would be figured on the operation and maintenance costs of the ROW over the life of the grant.
  - C. Maintenance costs for small diameter pipelines without any ancillary facilities should consider the need to dig up the line or a portion of the line for repairs and for small scale powerlines the need to replace transformers, etc.

9. For roads with multiple users, there are two options: (1) all users of the road would sign a road maintenance agreement and submit the agreement to the BLM. The lead for the road maintenance agreement will submit the RCE to the BLM for review. The BLM will then determine the bond amount for each user from the RCE and the percentages in the road maintenance agreement. When a new grant, amendment or relinquishment is approved, the maintenance agreement will need to be updated and the RCE may need to be resubmitted (depending on the age of the RCE) and new bonds will need to be submitted; or (2) all users will obtain 100 percent bonds to cover the terms and conditions of their grant.

10. Insurance policies may be accepted in place of a bond for a ROW. The policy itself must contain the following requirements: (1) the BLM must be included as an additional insured; (2) the statement *“this policy shall remain in full force and effect on a continuous basis for the term of the ROW(s) unless the Insurer provides to the insured not less than one hundred twenty (120) days advance written notice of its intent to cancel the policy. It is understood and agreed that the Insured may recover the full amount of the policy (less any previous amounts paid to the Insured under the policy) if the Insurer cancels the policy, and within thirty (30) days prior to the effective date of the cancellation, if the Insured has not received replacement Security acceptable to the BLM”* (this is an endorsement to the policy that the holder must request be added). This would be an endorsement on the policy; and 3) the ROW’s must be listed on the policy under “Description of Operations,”

The policy will be reviewed to ensure the policy covers the work spelled out in the RCE (i.e., hazardous materials, etc.) or under the road maintenance agreement. A letter accepting the policy, the same as a bond instrument, will be sent to the applicant/holder. If the policy doesn’t include the necessary coverage or statements required, a letter returning the policy to the applicant/holder will be sent.

Insurance policies cannot be put in the Bond Surety System, so an electronic spreadsheet of the ROW’s with their RCE values has been developed and will be kept on the State Office shared drive so all Field Office Realty Staff have access. The insurance policy General Liability and Umbrella Liability total must exceed the total of all the estimates to be acceptable.

11. Bonds for Film Permits will only be required when the land involved in a filming permit will need to be reclaimed or cleaned up after completion of the filming project. A certificate of liability insurance for not less than \$1,000,000 (U.S. dollars) must be provided to the BLM prior to issuance of a commercial filming permit. The Bureau of Land Management must be named as an additional insured party on the policy as well as the statement pertaining to cancellation as stated above.

**Timeframe:** This IM is effective upon issuance and will remain in effect unless formally modified.

**Budget Impact:** The application of this policy will have a minimal budget impact. The bond determination, adequacy and compliance review workload are subject to the processing and monitoring fee provisions of the regulations (43 CFR 2804.14(a), 2805.16(a), 2884.12(a), 2885.24(a), and 2920.6(b)).

**Background:** Historically, BLM Wyoming has not required a bond on all grants. With the increasing concern over changes in financial markets and corporate financial volatility, the BLM is reducing the potential liabilities to the United States associated with grants by requiring a performance and reclamation bond. The BLM would use the bond for reclamation of sites or meeting other grant requirements in the event a holder is unable to meet their obligations.

**Coordination:** This bonding policy was coordinated with the Office of the Solicitor, Washington Office Branch Chief for Rights-of-Way (WO-350), Renewable Energy Coordination Office (WO-301), and the BLM Wyoming Office of Communications (WY-912).

**Contact:** If there are any questions related to this IM, please contact Janelle Wrigley at 307-775-6257.

Signed by:  
Larry Claypool  
Associate State Director

Authenticated by:  
Jessica Camargo  
State Director's Office

1 Attachment:

1 – Reclamation Construction cost – Bid Estimate Sheet(s) (7 pp)

Distribution:

Director (WO-350)	1 w/atch.
Field Managers	1 w/atch.
Resource Advisors	1 w/atch.
CF	2 w/atch.

**INFORMATION/BRIEFING MEMORANDUM  
FOR THE ASSISTANT SECRETARY – LAND AND MINERALS MANAGEMENT**

**DATE:** March 27, 2017

**FROM:** Michael D. Nedd, Acting Director – Bureau of Land Management (BLM)

**SUBJECT:** Broadband and Bonding

The purpose of this memo is to provide information on broadband and bonding for rights-of-way (ROWs), specifically the Wyoming State Office bonding policy. It also contains some information on the Bureau of Indian Affairs’ (BIA) bonding policy, which at times may be inconsistent with that of BLM.

**BACKGROUND**

The BLM communication site program manages broadband ROWs. The ROWs generally fall under telephone types of actions, but sometimes include other types of actions as shown below:

**Pending ROWs with Fiber Optic Commodity by State**

State	Roads	Power Facilities	Comm Sites	Telephone	ROW Other	Total
Alaska	unk	unk	unk	unk	unk	unk
Arizona	--	--	--	3	1	4
California	--	3	--	9	1	13
Colorado	--	--	--	3	1	4
Eastern States	--	--	--	--	--	--
Idaho	--	--	1	10	--	11
Montana	--	--	--	5	--	5
New Mexico	--	5	2	17	--	24
Nevada	--	1	--	7	--	8
Oregon/Wash	--	1	--	5	--	6
Utah	1	1	2	6	--	10
Wyoming	--	--	--	14	--	14
<b>TOTALS</b>	<b>1</b>	<b>11</b>	<b>5</b>	<b>79</b>	<b>3</b>	<b>99</b>

From BLM’s LR2000 land database as of March 27, 2017

On June 14, 2012, Executive Order 13616 (Attachment 1), titled “Accelerating Broadband Infrastructure Deployment,” was issued to promote and expedite development of broadband facilities on Federal lands, buildings, and ROWs, by taking a number of steps, including forming a Broadband Deployment on Federal Property Working Group, that the BLM has been involved with.

## **DISCUSSION**

Bonds are required to ensure compliance with all the terms and conditions of a ROW grant (construction, operation, maintenance and termination) and the requirements of the regulations, including reclamation. Bonds allow the BLM to reduce the potential liabilities to the United States associated with ROW grants. By requiring performance and reclamation bonds on ROW grants, the BLM is able to recoup the costs of maintaining, removing and cleaning up sites where a company has failed to meet its responsibilities. For example, during the cellular communications expansion in the early 2000s, equipment was quickly outdated and companies often merged or filed bankruptcy, leaving communication sites abandoned and in disrepair. On a broadband site, performance and reclamation measures could include weed and erosion control during operation and repair/dismantling of broadband underground access holes and the regeneration stations that are placed on the land above the buried equipment.

The BLM has discretion to bond ROWs under section 504(i) of the Federal Land Policy and Management Act, under section 28(m) of the Mineral Leasing Act (MLA), and under the regulations at 43 CFR 2805.20, 43 CFR 2885.11(b)(7), and 43 CFR 2885.11(b)(7). The BLM also addresses bonds in Manuals 2805 and 2885.

The BLM Wyoming State Office issued ROW bond policy on April 18, 2016, and amended it on October 20, 2016, which requires bonding on all new grant, amendment, renewal, and assignment of ROWs (Attachments 2 and 3). The policy allows for waivers of bonding requirements at the Field Manager's discretion.

The BIA administers ROW grants on Indian lands and has regulations and policies that may differ from those of the BLM. The BIA published a rule on November 19, 2015, to comprehensively update and streamline the process for obtaining BIA ROW grants on Indian land, while supporting tribal self-determination and self-governance. The rule allows the BIA to provide relief from its bond requirements for utility cooperatives and tribal utilities to encourage ROWs that meet infrastructure needs.

## **NEXT STEPS**

The Wyoming State Office is currently reviewing the effectiveness of the existing bonding policy. They are reviewing the waiver policy, for instance, to see if the BLM Field Offices are implementing the policy correctly and consistently.

## **ATTACHMENTS**

- 1) Executive Order 13616
- 2) Wyoming Bonding IM dated April 21, 2016
- 3) Wyoming Bonding IM dated October 20, 2016

**From:** Megan Bloomgren  
**To:** [Heather swift](#)  
**Subject:** Fwd: Budget Blueprint  
**Date:** Thursday, March 16, 2017 8:59:30 AM  
**Attachments:** [ATT00001.htm](#)  
[2018\\_blueprint \(1\).pdf](#)

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Begin forwarded message:

From: "Ferriter, Olivia" <[olivia\\_ferriter@ios.doi.gov](mailto:olivia_ferriter@ios.doi.gov)>  
To: James Cason <[james\\_cason@ios.doi.gov](mailto:james_cason@ios.doi.gov)>, Megan Bloomgren <[megan\\_bloomgren@ios.doi.gov](mailto:megan_bloomgren@ios.doi.gov)>  
Subject: Budget Blueprint

Jim, I left you a hard copy of this.

Olivia Barton Ferriter  
Deputy Assistant Secretary - Budget, Finance, Performance and Acquisition  
U.S. Department of the Interior  
1849 C St. NW MS 7228, Washington, DC 20240  
Desk: 202-208-4881 Cell: 202-251-4139 FAX: 202-208-1067  
[Olivia\\_Ferriter@ios.doi.gov](mailto:Olivia_Ferriter@ios.doi.gov)

# **America First**

## **A Budget Blueprint to Make America Great Again**



**Office of Management and Budget**



# **America First**

## **A Budget Blueprint to Make America Great Again**



**Office of Management and Budget**



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#### **GENERAL NOTES**

1. All years referenced for economic data are calendar years unless otherwise noted. All years referenced for budget data are fiscal years unless otherwise noted.
2. At the time of this writing, only one of the annual appropriations bills for 2017 had been enacted (the Military Construction and Veterans Affairs Appropriations Act), as well as the Further Continuing and Security Assistance Appropriations Act, which provided 2017 discretionary funding for certain Department of Defense accounts; therefore, the programs provided for in the remaining 2017 annual appropriations bills were operating under a continuing resolution (Public Law 114-223, division C, as amended). For these programs, references to 2017 spending in the text and tables reflect the levels provided by the continuing resolution.
3. Details in the tables may not add to the totals due to rounding.
4. Web address: <http://www.budget.gov>

# AMERICA FIRST

## Beginning a New Chapter of American Greatness

### A MESSAGE TO THE CONGRESS OF THE UNITED STATES:

The American people elected me to fight for their priorities in Washington, D.C. and deliver on my promise to protect our Nation. I fully intend to keep that promise.

One of the most important ways the Federal Government sets priorities is through the Budget of the United States.

Accordingly, I submit to the Congress this Budget Blueprint to reprioritize Federal spending so that it advances the safety and security of the American people.

Our aim is to meet the simple, but crucial demand of our citizens—a Government that puts the needs of its own people first. When we do that, we will set free the dreams of every American, and we will begin a new chapter of American greatness.

A budget that puts America first must make the safety of our people its number one priority—because without safety, there can be no prosperity.

That is why I have instructed my Budget Director, Mick Mulvaney, to craft a budget that emphasizes national security and public safety. That work is reflected in this Budget Blueprint. To keep Americans safe, we have made tough choices that have been put off for too long. But we have also made necessary investments that are long overdue.

My Budget Blueprint for 2018:

- provides for one of the largest increases in defense spending without increasing the debt;
- significantly increases the budget for immigration enforcement at the Department of Justice and the Department of Homeland Security;
- includes additional resources for a wall on the southern border with Mexico, immigration judges, expanded detention capacity, U.S. Attorneys, U.S. Immigration and Customs Enforcement, and Border Patrol;
- increases funding to address violent crime and reduces opioid abuse; and
- puts America first by keeping more of America's hard-earned tax dollars here at home.

The core of my first Budget Blueprint is the rebuilding of our Nation's military without adding to our Federal deficit. There is a \$54 billion increase in defense spending in 2018 that is offset by targeted reductions elsewhere. This defense funding is vital to rebuilding and preparing our Armed Forces for the future.

We must ensure that our courageous servicemen and women have the tools they need to deter war, and when called upon to fight, do only one thing: Win.

In these dangerous times, this public safety and national security Budget Blueprint is a message to the world—a message of American strength, security, and resolve.

This Budget Blueprint follows through on my promise to focus on keeping Americans safe, keeping terrorists out of our country, and putting violent offenders behind bars.

The defense and public safety spending increases in this Budget Blueprint are offset and paid for by finding greater savings and efficiencies across the Federal Government. Our Budget Blueprint insists on \$54 billion in reductions to non-Defense programs. We are going to do more with less, and make the Government lean and accountable to the people.

This includes deep cuts to foreign aid. It is time to prioritize the security and well-being of Americans, and to ask the rest of the world to step up and pay its fair share.

Many other Government agencies and departments will also experience cuts. These cuts are sensible and rational. Every agency and department will be driven to achieve greater efficiency and to eliminate wasteful spending in carrying out their honorable service to the American people.

I look forward to engaging the Congress and enacting this *America First Budget*.

Donald J. Trump

## **A Message from the Director, Office of Management and Budget**

I am proud to introduce the “America First” Budget.

While recognizing this Blueprint is not the full Federal budget, it does provide lawmakers and the public with a view of the priorities of the President and his Administration.

The Federal budget is a complex document. However, working for a President committed to keeping his promises means my job is as simple as translating his words into numbers.

That is why you will find here a familiar focus on rebuilding and restoring our Nation’s security. Under the Obama Administration, our shrinking military has been stretched far too thin. The military has been forced to make aging ships, planes, and other vehicles last well beyond their intended life spans. The President will reverse this dangerous trend. From rebuilding our Armed Forces to beefing up our border security and safeguarding our Nation’s sovereignty, this Budget makes security priority one.

It does so while meeting another of the President’s core commitments: addressing our Nation’s priorities without sending future generations an even bigger credit card bill.

This 2018 Budget Blueprint will not add to the deficit. It has been crafted much the same way any American family creates its own budget while paying bills around their kitchen table; it makes hard choices.

The President’s commitment to fiscal responsibility is historic. Not since early in President Reagan’s first term have more tax dollars been saved and more Government inefficiency and waste been targeted. Every corner of the Federal budget is scrutinized, every program tested, every penny of taxpayer money watched over.

Our \$20 trillion national debt is a crisis, not just for the Nation, but for every citizen. Each American’s share of this debt is more than \$60,000 and growing. It is a challenge of great stakes, but one the American people can solve. American families make tough decisions every day about their own budgets; it is time Washington does the same.

Mick Mulvaney



## MAJOR AGENCY BUDGET HIGHLIGHTS

The 2018 Budget is being unveiled sequentially in that this Blueprint provides details only on our discretionary funding proposals. The full Budget that will be released later this spring will include our specific mandatory and tax proposals, as well as a full fiscal path.

For instance, the President has emphasized that one of his top priorities is modernizing the outdated infrastructure that the American public depends upon. To spearhead his infrastructure initiative, the President has tapped a group of infrastructure experts to evaluate investment options along with commonsense regulatory, administrative, organizational, and policy changes to encourage investment and speed project delivery. Through this initiative, the President is committed to making sure that taxpayer dollars are expended for the highest return projects and that all levels of government maximize leverage to get the best deals and exercise vigorous oversight. The Administration will provide more budgetary, tax, and legislative details in the coming months.

In the chapters that follow, Budget highlights are presented for major agencies. Consistent

with the President's approach to move the Nation toward fiscal responsibility, the Budget eliminates and reduces hundreds of programs and focuses funding to redefine the proper role of the Federal Government.

The Budget also proposes to eliminate funding for other independent agencies, including: the African Development Foundation; the Appalachian Regional Commission; the Chemical Safety Board; the Corporation for National and Community Service; the Corporation for Public Broadcasting; the Delta Regional Authority; the Denali Commission; the Institute of Museum and Library Services; the Inter-American Foundation; the U.S. Trade and Development Agency; the Legal Services Corporation; the National Endowment for the Arts; the National Endowment for the Humanities; the Neighborhood Reinvestment Corporation; the Northern Border Regional Commission; the Overseas Private Investment Corporation; the United States Institute of Peace; the United States Interagency Council on Homelessness; and the Woodrow Wilson International Center for Scholars.



# MANAGEMENT

## Making Government Work Again

The Federal Government can—and should—operate more effectively, efficiently, and securely. For decades, leaders on both sides of the aisle have talked about the need to make Government work better. The President is taking bold action now to make Government work again for the American people.

As one of his first acts as President, on January 23, 2017, the President issued a memorandum imposing a Federal “Hiring Freeze” and requiring a long-term plan to reduce the size of the Federal Government’s workforce. In addition, on March 13, 2017, the President signed Executive Order 13781 establishing a “Comprehensive Plan for Reorganizing the Executive Branch,” which set in motion the important work of reorganizing executive departments and agencies. These two actions are complementary and plans should reflect both Presidential actions. Legislation will be required before major reorganization of the Executive Branch can take place, but the White House is best situated to review and recommend changes to the Congress. In roughly a year, the Congress will receive from the President and the Director of the Office of Management and Budget (OMB) a comprehensive plan for reorganization proposals. The White House will work closely with congressional committees with jurisdiction over Government organization to ensure the needed reforms actually happen.

Simultaneously, the Administration will develop the President’s Management Agenda focused on achieving significant improvements in the effectiveness of its core management

functions. The President’s Management Agenda will set goals in areas that are critical to improving the Federal Government’s effectiveness, efficiency, cybersecurity, and accountability. The Administration will take action to ensure that by 2020 we will be able to say the following:

- 1. Federal agencies are managing programs and delivering critical services more effectively.** The Administration will take an evidence-based approach to improving programs and services—using real, hard data to identify poorly performing organizations and programs. We will hold program managers accountable for improving performance and delivering high-quality and timely services to the American people and businesses. We will use all tools available and create new ones as needed to ensure the workforce is appropriately prepared.
- 2. Federal agencies are devoting a greater percentage of taxpayer dollars to mission achievement rather than costly, unproductive compliance activities.** Past management improvement initiatives resulted in the creation of hundreds of guidance documents aimed at improving Government management by adding more requirements to information technology (IT), human capital, acquisition, financial management, and real property. Furthermore, these Government-wide policies often tie agencies’ hands and keep managers from making commonsense decisions.

As a result, costs often increase without corresponding benefits. The Administration will roll back low-value activities and let managers manage, while holding them accountable for finding ways to reduce the cost of agency operations. As part of this effort, OMB will review requirements placed on agencies and identify areas to reduce obsolete, low-value requirements.

- 3. Federal agencies are more effective and efficient in supporting program outcomes.** Delivering high-performing program results and services to citizens and businesses depends on effective and efficient mission support services. However, despite years of efforts to improve these critical management processes, managers remain frustrated with hiring methodologies that do not consistently bring in top talent, acquisition approaches that are too cumbersome, and IT that is outdated by the time it is

deployed. The Administration will use available data to develop targeted solutions to problems Federal managers face, and begin fixing them directly by sharing and adopting leading practices from the private and public sectors. Among the areas that will be addressed are how agencies buy goods and services, hire talent, use their real property, pay their bills, and utilize technology.

- 4. Agencies have been held accountable for improving performance.** All Federal agencies will be responsible for reporting critical performance metrics and showing demonstrable improvement. OMB will also regularly review agency progress in implementing these reforms to ensure there is consistent improvement.

Through this bold agenda, we will improve the effectiveness, efficiency, cybersecurity, and accountability of the Federal Government and make government work again.

# REGULATION

## Cutting Burdensome Regulations

The American people deserve a regulatory system that works for them, not against them—a system that is both effective and efficient.

Each year, however, Federal agencies issue thousands of new regulations that, taken together, impose substantial burdens on American consumers and businesses big and small. These burdens function much like taxes that unnecessarily inhibit growth and employment. Many regulations, though well intentioned, do not achieve their intended outcomes, are not structured in the most cost-effective manner, and often have adverse, unanticipated consequences. Many more regulations that have been on the books for years—even if they made sense at the time—have gone unexamined and may no longer be effective or necessary.

The President is committed to fixing these problems by eliminating unnecessary and wasteful regulations. To that end, the President has already taken three significant steps:

- 1. Regulatory freeze.** On January 20, 2017, the President's Chief of Staff issued a memorandum to all agencies, directing them to pull back any regulations that had been sent to, but not yet published by, the Office of the Federal Register; to not publish any new regulations unless approved by an Administration political appointee; and to delay the effective date of any pending regulations for 60 days to provide the Administration time to review and reconsider those regulations. Federal agencies responded by pulling

back, delaying, and not publishing all possible regulations.

- 2. Controlling costs and eliminating unnecessary regulations.** On January 30, 2017, the President signed Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs." This Executive Order represents a fundamental change in the regulatory state. It requires Federal agencies to eliminate at least two existing regulations for each new regulation they issue. It also requires agencies to ensure that for 2017, the total incremental cost of all new regulations be no greater than \$0. For 2018 and beyond, the Order establishes and institutionalizes a disciplined process for imposing regulatory cost caps for each Federal agency.

The significant structural reforms instituted by this Executive Order provide the necessary framework for Federal agencies to carry out the President's bold regulatory reform agenda.

- 3. Enforcing the regulatory reform agenda.** As a successful businessman, the President knows that achievement requires accountability. That basic principle is the reason the President signed Executive Order 13777, "Enforcing the Regulatory Reform Agenda," on February 24, 2017. This Order establishes within each agency a Regulatory Reform Officer and a Regulatory Reform Task Force to carry out the President's regulatory reform priorities. These new teams will

work hard to identify regulations that eliminate jobs or inhibit job creation; are outdated, unnecessary, or ineffective; or impose costs that exceed benefits.

They will also be responsible for ensuring that agencies comply with the President's instruction to eliminate two regulations for each new regulation; impose no new incremental costs through regulation; and undertake efforts to repeal, replace, or modify existing regulations.

This Order builds upon a widely recognized and bi-partisan consensus that many existing regulations are likely to be ineffective and no longer necessary, and explicitly builds upon the retrospective review efforts initiated through Executive Order 13563. The difference, however, is accountability, and these teams will be a critical means by which Federal agencies will identify and cut regulations in a smart and efficient manner.

The President recently told Americans, "The era of empty talk is over." When it comes to regulatory reform, it is abundantly clear that the President means business. The President has put into place truly significant new structural mechanisms that will help to ensure that major regulatory reforms are finally achieved on behalf of the hardworking and forgotten men and women of America.

The Office of Information and Regulatory Affairs within OMB is already working hard to support the implementation of these critical new reforms, and it looks forward to making sure that they are fully and successfully implemented over the coming months and years.



## DEPARTMENT OF AGRICULTURE

The Department of Agriculture (USDA) provides leadership to promote sustainable agricultural production, protect the long-term availability of food through innovative research, and safeguard the health and productivity of the Nation's forests, grasslands, and private working lands based on sound public policy and efficient management. USDA also works to ensure food safety, provide nutrition assistance, and support rural communities. The Budget request supports core Departmental and mission critical activities while streamlining, reducing, or eliminating duplicative, redundant, or lower priority programs where the Federal role competes with the private sector or other levels of government.

The President's 2018 Budget requests \$17.9 billion for USDA, a \$4.7 billion or 21 percent decrease from the 2017 annualized continuing resolution (CR) level (excluding funding for P.L. 480 Title II food aid which is reflected in the Department of State and USAID budget).

### **The President's 2018 Budget:**

- Safeguards the Nation's supply of meat, poultry, and egg products by fully funding the Food Safety and Inspection Service, which employs more than 8,000 in-plant and other frontline personnel who protect public health in approximately 6,400 federally inspected slaughter and processing establishments nationwide.
- Provides \$6.2 billion to serve all projected participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). WIC provides grants to States for supplemental foods, health care referrals, and nutrition education for low-income pregnant and postpartum women, infants, and children who are at nutritional risk.
- Fully funds wildland fire preparedness and suppression activities at \$2.4 billion, 100 percent of the 10-year average for suppression operations, to ensure the resources necessary to protect life and property.
- Reduces funding for lower priority activities in the National Forest System, such as major new Federal land acquisition; instead, the Budget focuses on maintaining existing forests and grasslands.
- Continues to support farmer-focused research and extension partnerships at land-grant universities and provides about \$350 million for USDA's flagship competitive research program. In addition, the Budget focuses in-house research funding within the Agricultural Research Service to the highest

priority agriculture and food issues such as increasing farming productivity, sustaining natural resources, including those within rural communities, and addressing food safety and nutrition priorities.

- Reduces funding for USDA's statistical capabilities, while maintaining core Departmental analytical functions, such as the funding necessary to complete the Census of Agriculture.
- Eliminates the duplicative Water and Wastewater loan and grant program, a savings of \$498 million from the 2017 annualized CR level. Rural communities can be served by private sector financing or other Federal investments in rural water infrastructure, such as the Environmental Protection Agency's State Revolving Funds.
- Reduces staffing in USDA's Service Center Agencies to streamline county office operations, reflect reduced Rural Development workload, and encourage private sector conservation planning.
- Reduces duplicative and underperforming programs by eliminating discretionary activities of the Rural Business and Cooperative Service, a savings of \$95 million from the 2017 annualized CR level.
- Eliminates the McGovern-Dole International Food for Education program, which lacks evidence that it is being effectively implemented to reduce food insecurity.



## DEPARTMENT OF COMMERCE

The Department of Commerce promotes job creation and economic growth by ensuring fair and secure trade, providing the data necessary to support commerce, and fostering innovation by setting standards and conducting foundational research and development. The Budget prioritizes and protects investments in core Government functions such as preparing for the 2020 Decennial Census, providing the observational infrastructure and staff necessary to produce timely and accurate weather forecasts, supporting the Government's role in managing marine resources and ocean and coastal navigation, and enforcing laws that promote fair and secure trade. The Budget also reduces or eliminates grant programs that have limited impact and reflect an expansion beyond core missions of the bureaus.

The President's 2018 Budget requests \$7.8 billion for the Department of Commerce, a \$1.5 billion or 16 percent decrease from the 2017 annualized CR level.

### **The President's 2018 Budget:**

- Strengthens the International Trade Administration's trade enforcement and compliance functions, including the anti-dumping and countervailing duty investigations, while rescaling the agency's export promotion and trade analysis activities.
- Provides \$1.5 billion, an increase of more than \$100 million, for the U.S. Census Bureau to continue preparations for the 2020 Decennial Census. This additional funding prioritizes fundamental investments in information technology and field infrastructure, which would allow the bureau to more effectively administer the 2020 Decennial Census.
- Consolidates the mission, policy support, and administrative functions of the Economics and Statistics Administration within the Bureau of Economic Analysis, the U.S. Census Bureau, and the Department of Commerce's Office of the Secretary.
- Eliminates the Economic Development Administration, which provides small grants with limited measurable impacts and duplicates other Federal programs, such as Rural Utilities Service grants at the U.S. Department of Agriculture and formula grants to States from the Department of Transportation. By terminating this agency, the Budget saves \$221 million from the 2017 annualized CR level.

- Eliminates the Minority Business Development Agency, which is duplicative of other Federal, State, local, and private sector efforts that promote minority business entrepreneurship including Small Business Administration District Offices and Small Business Development Centers.
- Saves \$124 million by discontinuing Federal funding for the Manufacturing Extension Partnership (MEP) program, which subsidizes up to half the cost of State centers, which provide consulting services to small- and medium-size manufacturers. By eliminating Federal funding, MEP centers would transition solely to non-Federal revenue sources, as was originally intended when the program was established.
- Zeroes out over \$250 million in targeted National Oceanic and Atmospheric Administration (NOAA) grants and programs supporting coastal and marine management, research, and education including Sea Grant, which primarily benefit industry and State and local stakeholders. These programs are a lower priority than core functions maintained in the Budget such as surveys, charting, and fisheries management.
- Maintains the development of NOAA's current generation of polar orbiting and geostationary weather satellites, allowing the Joint Polar Satellite System and Geostationary Operational Environmental Satellite programs to remain on schedule in order to provide forecasters with critical weather data to help protect life and property.
- Achieves annual savings from NOAA's Polar Follow On satellite program from the current program of record by better reflecting the actual risk of a gap in polar satellite coverage, and provides additional opportunities to improve robustness of the low earth orbit satellite architecture by expanding the utilization of commercially provided data to improve weather models.
- Maintains National Weather Service forecasting capabilities by investing more than \$1 billion while continuing to promote efficient and effective operations.
- Continues to support the National Telecommunications and Information Administration (NTIA) in representing the United States interest at multi-stakeholder forums on internet governance and digital commerce. The Budget supports the commercial sector's development of next generation wireless services by funding NTIA's mission of evaluating and ensuring the efficient use of spectrum by Government users.



## DEPARTMENT OF DEFENSE

The Department of Defense (DOD) provides the military forces needed to deter war and to protect the security of the United States. The budget for DOD ends the depletion of our military and pursues peace through strength, honoring the Federal Government's first responsibility: to protect the Nation. It fully repeals the defense sequestration, while providing the needed resources for accelerating the defeat of the Islamic State of Iraq and Syria (ISIS) and for beginning to rebuild the U.S. Armed Forces.

The President's 2018 Budget requests \$639 billion for DOD, a \$52 billion increase from the 2017 annualized CR level. The total includes \$574 billion for the base budget, a 10 percent increase from the 2017 annualized CR level, and \$65 billion for Overseas Contingency Operations.

### **The President's 2018 Budget:**

- Repeals the defense sequestration by restoring \$52 billion to DOD, as well as \$2 billion to other national defense programs outside DOD, for a \$54 billion total increase for national defense discretionary budget authority above the sequestration level budget cap. When the Budget Control Act (BCA) of 2011 was enacted, the defense sequestration was not meant to occur, yet it has never been fully repealed. This has resulted in nearly \$200 billion of national defense cuts since 2013 and over \$200 billion of further projected cuts through 2021, relative to the original BCA caps alone. Reversing this indiscriminate neglect of the last administration is not only a fulfillment of the President's promise, but it is also a requirement if this Nation's security is to be maintained. The military's depletion under President Obama is our foremost challenge. The President's 2018 Budget ends the arbitrary depletion of our strength and security, and begins to rebuild the U.S. Armed Forces.
- Increases DOD's budget authority by \$52 billion above the current 2017 level of \$587 billion. This increase alone exceeds the entire defense budget of most countries, and would be one of the largest one-year DOD increases in American history. It is exceeded only by the peak increases of the Reagan Administration and a few of the largest defense increases during the World Wars and the conflicts in Korea, Vietnam, Iraq, and Afghanistan (in constant dollars, based on GDP chained price index). Unlike spending increases for war, which mostly consume resources in combat, the increases in the President's Budget primarily invest in a stronger military.

- Provides the resources needed to accelerate the defeat of ISIS. The Budget ensures that DOD has the tools to stop ISIS from posing a threat to the United States by funding the Department's critical efforts to strike ISIS targets, support our partners fighting on the ground, disrupt ISIS' external operations, and cut off its financing.
- Addresses urgent warfighting readiness needs. Fifteen years of conflict, accompanied in recent years by budget cuts, have stressed the Armed Forces. The President's Budget would ensure we remain the best led, best equipped, and most ready force in the world.
- Begins to rebuild the U.S. Armed Forces by addressing pressing shortfalls, such as insufficient stocks of critical munitions, personnel gaps, deferred maintenance and modernization, cyber vulnerabilities, and degraded facilities. The military must reset war losses, address recapitalization and maintenance requirements, and recover from years of deferred investment forced by budget cuts. The President's Budget would ensure the Armed Forces have the training, equipment, and infrastructure they need.
- Lays the groundwork for a larger, more capable, and more lethal joint force, driven by a new National Defense Strategy that recognizes the need for American superiority not only on land, at sea, in the air, and in space, but also in cyberspace. As the world has become more dangerous—through the rise of advanced potential adversaries, the spread of destructive technology, and the expansion of terrorism—our military has gotten smaller and its technological edge has eroded. The President's Budget begins to put an end to this trend, reversing force reductions and restoring critical investments.
- Initiates an ambitious reform agenda to build a military that is as effective and efficient as possible, and underscores the President's commitment to reduce the costs of military programs wherever feasible.
- Strengthens the U.S. Army by rebuilding readiness, reversing end strength reductions, and preparing for future challenges. This Budget is an initial step toward restoring an Army that has been stressed by high operational demand and constrained funding levels in recent years.
- Rebuilds the U.S. Navy to better address current and future threats by increasing the total number of ships. This Budget reflects a down payment on the President's commitment to expanding the fleet.
- Ensures a ready and fully equipped Marine Corps. The Budget lays the foundation for a force that meets the challenges of the 21<sup>st</sup> Century.
- Accelerates Air Force efforts to improve tactical air fleet readiness, ensure technical superiority, and repair aging infrastructure. Key investments in maintenance capacity, training systems, and additional F-35 Joint Strike Fighters would enable the Air Force, which is now the smallest it has been in history, to counter the growing number of complex threats from sophisticated state actors and transnational terrorist groups.



## DEPARTMENT OF EDUCATION

The Department of Education promotes improving student achievement and access to opportunity in elementary, secondary, and postsecondary education. The Department would refocus its mission on supporting States and school districts in their efforts to provide high quality education to all our students. Also, it would focus on streamlining and simplifying funding for college, while continuing to help make college education more affordable. The 2018 Budget places power in the hands of parents and families to choose schools that are best for their children by investing an additional \$1.4 billion in school choice programs. It continues support for the Nation's most vulnerable populations, such as students with disabilities. Overall, the Department would support these investments and carry out its core mission while lowering costs to the taxpayer by reducing or eliminating funding for programs that are not effective, that duplicate other efforts, or that do not serve national needs.

The President's 2018 Budget provides \$59 billion in discretionary funding for the Department of Education, a \$9 billion or 13 percent reduction below the 2017 annualized CR level.

### **The President's 2018 Budget:**

- Increases investments in public and private school choice by \$1.4 billion compared to the 2017 annualized CR level, ramping up to an annual total of \$20 billion, and an estimated \$100 billion including matching State and local funds. This additional investment in 2018 includes a \$168 million increase for charter schools, \$250 million for a new private school choice program, and a \$1 billion increase for Title I, dedicated to encouraging districts to adopt a system of student-based budgeting and open enrollment that enables Federal, State, and local funding to follow the student to the public school of his or her choice.
- Maintains approximately \$13 billion in funding for IDEA programs to support students with special education needs. This funding provides States, school districts, and other grantees with the resources needed to provide high quality special education and related services to students and young adults with disabilities.
- Eliminates the \$2.4 billion Supporting Effective Instruction State Grants program, which is poorly targeted and spread thinly across thousands of districts with scant evidence of impact.
- Eliminates the 21st Century Community Learning Centers program, which supports before- and after-school programs as well as summer programs, resulting in savings of \$1.2 billion from the 2017 annualized CR level. The programs lacks strong evidence of meeting its objectives, such as improving student achievement.

- Eliminates the Federal Supplemental Educational Opportunity Grant program, a less well-targeted way to deliver need-based aid than the Pell Grant program, to reduce complexity in financial student aid and save \$732 million from the 2017 annualized CR level.
- Safeguards the Pell Grant program by level funding the discretionary appropriation while proposing a cancellation of \$3.9 billion from unobligated carryover funding, leaving the Pell program on sound footing for the next decade.
- Protects support for Historically Black Colleges and Universities and Minority-Serving Institutions, which provide opportunities for communities that are often underserved, maintaining \$492 million in funding for programs that serve high percentages of minority students.
- Reduces Federal Work-Study significantly and reforms the poorly-targeted allocation to ensure funds go to undergraduate students who would benefit most.
- Provides \$808 million for the Federal TRIO Programs and \$219 million for GEAR UP, resulting in savings of \$193 million from the 2017 annualized CR level. Funding to TRIO programs is reduced in areas that have limited evidence on the overall effectiveness in improving student outcomes. The Budget funds GEAR UP continuation awards only, pending the completion of an upcoming rigorous evaluation of a portion of the program.
- Eliminates or reduces over 20 categorical programs that do not address national needs, duplicate other programs, or are more appropriately supported with State, local, or private funds, including Striving Readers, Teacher Quality Partnership, Impact Aid Support Payments for Federal Property, and International Education programs.



## DEPARTMENT OF ENERGY

The Department of Energy (DOE) is charged with ensuring the Nation's security and prosperity by addressing its energy, environmental, and nuclear challenges through transformative science and technology solutions. The Budget for DOE demonstrates the Administration's commitment to reasserting the proper role of what has become a sprawling Federal Government and reducing deficit spending. It reflects an increased reliance on the private sector to fund later-stage research, development, and commercialization of energy technologies and focuses resources toward early-stage research and development. It emphasizes energy technologies best positioned to enable American energy independence and domestic job-growth in the near to mid-term. It also ensures continued progress on cleaning up sites contaminated from nuclear weapons production and energy research and includes a path forward to accelerate progress on the disposition of nuclear waste. At the same time, the Budget demonstrates the Administration's strong support for the United States' nuclear security enterprise and ensures that we have a nuclear force that is second to none.

The President's 2018 Budget requests \$28.0 billion for DOE, a \$1.7 billion or 5.6 percent decrease from the 2017 annualized CR level. The Budget would strengthen the Nation's nuclear capability by providing a \$1.4 billion increase above the 2017 annualized CR level for the National Nuclear Security Administration, an 11 percent increase.

### **The President's 2018 Budget:**

- Provides \$120 million to restart licensing activities for the Yucca Mountain nuclear waste repository and initiate a robust interim storage program. These investments would accelerate progress on fulfilling the Federal Government's obligations to address nuclear waste, enhance national security, and reduce future taxpayer burden.
- Supports the goals of moving toward a responsive nuclear infrastructure and advancing the existing program of record for warhead life extension programs through elimination of defense sequestration for the National Nuclear Security Administration (NNSA).
- Enables NNSA to begin to address its critical infrastructure maintenance backlog.
- Protects human health and the environment by providing \$6.5 billion to advance the Environmental Management program mission of cleaning up the legacy of waste and contamination from energy research and nuclear weapons production, including addressing excess facilities to support modernization of the nuclear security enterprise.
- Eliminates the Advanced Research Projects Agency-Energy, the Title 17 Innovative Technology Loan Guarantee Program, and the Advanced Technology Vehicle Manufacturing Program because

the private sector is better positioned to finance disruptive energy research and development and to commercialize innovative technologies.

- Ensures the Office of Science continues to invest in the highest priority basic science and energy research and development as well as operation and maintenance of existing scientific facilities for the community. This includes a savings of approximately \$900 million compared to the 2017 annualized CR level.
- Focuses funding for the Office of Energy Efficiency and Renewable Energy, the Office of Nuclear Energy, the Office of Electricity Delivery and Energy Reliability, and the Fossil Energy Research and Development program on limited, early-stage applied energy research and development activities where the Federal role is stronger. In addition, the Budget eliminates the Weatherization Assistance Program and the State Energy Program to reduce Federal intervention in State-level energy policy and implementation. Collectively, these changes achieve a savings of approximately \$2 billion from the 2017 annualized CR level.
- Supports the Office of Electricity Delivery and Energy Reliability's capacity to carry out cybersecurity and grid resiliency activities that would help harden and evolve critical grid infrastructure that the American people and the economy rely upon.
- Continues the necessary research, development, and construction to support the Navy's current nuclear fleet and enhance the capabilities of the future fleet.



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

The Department of Health and Human Services (HHS) works to enhance the health and well-being of Americans by providing effective health and human services and by fostering sound, sustained advances in the sciences underlying medicine, public health, and social services. The Budget supports the core mission of HHS through the most efficient and effective health and human service programs. In 2018, HHS funds the highest priorities, such as: health services through community health centers, Ryan White HIV/AIDS providers, and the Indian Health Service; early care and education; and medical products review and innovation. In addition, it funds urgent public health issues, such as prescription drug overdose, and program integrity for Medicare and Medicaid. The Budget eliminates programs that are duplicative or have limited impact on public health and well-being. The Budget allows HHS to continue to support priority activities that reflect a new and sustainable approach to long-term fiscal stability across the Federal Government.

The President's 2018 Budget requests \$69.0 billion for HHS, a \$15.1 billion or 17.9 percent decrease from the 2017 annualized CR level. This funding level excludes certain mandatory spending changes but includes additional funds for program integrity and implementing the 21st Century CURES Act.

### **The President's 2018 Budget:**

- Supports direct health care services, such as those delivered by community health centers, Ryan White HIV/AIDS providers, and the Indian Health Service. These safety net providers deliver critical health care services to low-income and vulnerable populations.
- Strengthens the integrity and sustainability of Medicare and Medicaid by investing in activities to prevent fraud, waste, and abuse and promote high quality and efficient health care. Additional funding for the Health Care Fraud and Abuse Control (HCFAC) program has allowed the Centers for Medicare & Medicaid Services in recent years to shift away from a “pay-and-chase” model toward identifying and preventing fraudulent or improper payments from being paid in the first place. The return on investment for the HCFAC account was \$5 returned for every \$1 expended from 2014-2016. The Budget proposes HCFAC discretionary funding of \$751 million in 2018, which is \$70 million higher than the 2017 annualized CR level.
- Supports efficient operations for Medicare, Medicaid, and the Children's Health Insurance Program and focuses spending on the highest priority activities necessary to effectively operate these programs.

- Supports substance abuse treatment services for the millions of Americans struggling with substance abuse disorders. The opioid epidemic, which took more than 33,000 lives in calendar year 2015, has a devastating effect on America's families and communities. In addition to funding Substance Abuse and Mental Health Services Administration substance abuse treatment activities, the Budget also includes a \$500 million increase above 2016 enacted levels to expand opioid misuse prevention efforts and to increase access to treatment and recovery services to help Americans who are misusing opioids get the help they need.
- Recalibrates Food and Drug Administration (FDA) medical product user fees to over \$2 billion in 2018, approximately \$1 billion over the 2017 annualized CR level, and replaces the need for new budget authority to cover pre-market review costs. To complement the increase in medical product user fees, the Budget includes a package of administrative actions designed to achieve regulatory efficiency and speed the development of safe and effective medical products. In a constrained budget environment, industries that benefit from FDA's approval can and should pay for their share.
- Reduces the National Institutes of Health's (NIH) spending relative to the 2017 annualized CR level by \$5.8 billion to \$25.9 billion. The Budget includes a major reorganization of NIH's Institutes and Centers to help focus resources on the highest priority research and training activities, including: eliminating the Fogarty International Center; consolidating the Agency for Healthcare Research and Quality within NIH; and other consolidations and structural changes across NIH organizations and activities. The Budget also reduces administrative costs and rebalance Federal contributions to research funding.
- Reforms key public health, emergency preparedness, and prevention programs. For example, the Budget restructures similar HHS preparedness grants to reduce overlap and administrative costs and directs resources to States with the greatest need. The Budget also creates a new Federal Emergency Response Fund to rapidly respond to public health outbreaks, such as Zika Virus Disease. The Budget also reforms the Centers for Disease Control and Prevention through a new \$500 million block grant to increase State flexibility and focus on the leading public health challenges specific to each State.
- Invests in mental health activities that are awarded to high-performing entities and focus on high priority areas, such as suicide prevention, serious mental illness, and children's mental health.
- Eliminates \$403 million in health professions and nursing training programs, which lack evidence that they significantly improve the Nation's health workforce. The Budget continues to fund health workforce activities that provide scholarships and loan repayments in exchange for service in areas of the United States where there is a shortage of health professionals.
- Eliminates the discretionary programs within the Office of Community Services, including the Low Income Home Energy Assistance Program (LIHEAP) and the Community Services Block Grant (CSBG), a savings of \$4.2 billion from the 2017 annualized CR level. Compared to other income support programs that serve similar populations, LIHEAP is a lower-impact program and is unable to demonstrate strong performance outcomes. CSBG funds services that are duplicative of other Federal programs, such as emergency food assistance and employment services, and is also a limited-impact program.



## DEPARTMENT OF HOMELAND SECURITY

The Department of Homeland Security (DHS) has a vital mission: to secure the Nation from the many threats it faces. This requires the dedication of more than 240,000 employees in jobs that ensure the security of the U.S. borders, support the integrity of its immigration system, protect air travelers and national leaders, reduce the threat of cyber attacks, and stand prepared for emergency response and disaster recovery. The Budget prioritizes DHS law enforcement operations, proposes critical investments in frontline border security, and funds continued development of strong cybersecurity defenses. The Budget would aggressively implement the President's commitment to construct a physical wall along the southern border as directed by his January 25, 2017 Executive Order, and ensures robust funding for other important DHS missions.

The President's 2018 Budget requests \$44.1 billion in net discretionary budget authority for DHS, a \$2.8 billion or 6.8 percent increase from the 2017 annualized CR level. The Budget would allocate \$4.5 billion in additional funding for programs to strengthen the security of the Nation's borders and enhance the integrity of its immigration system. This increased investment in the Nation's border security and immigration enforcement efforts now would ultimately save Federal resources in the future.

### **The President's 2018 Budget:**

- Secures the borders of the United States by investing \$2.6 billion in high-priority tactical infrastructure and border security technology, including funding to plan, design, and construct a physical wall along the southern border as directed by the President's January 25, 2017 Executive Order. This investment would strengthen border security, helping stem the flow of people and drugs illegally crossing the U.S. borders.
- Advances the President's plan to strengthen border security and immigration enforcement with \$314 million to recruit, hire, and train 500 new Border Patrol Agents and 1,000 new Immigration and Customs Enforcement law enforcement personnel in 2018, plus associated support staff. These new personnel would improve the integrity of the immigration system by adding capacity to interdict those aliens attempting to cross the border illegally, as well as to identify and remove those already in the United States who entered illegally.
- Enhances enforcement of immigration laws by proposing an additional \$1.5 billion above the 2017 annualized CR level for expanded detention, transportation, and removal of illegal immigrants.

These funds would ensure that DHS has sufficient detention capacity to hold prioritized aliens, including violent criminals and other dangerous individuals, as they are processed for removal.

- Invests \$15 million to begin implementation of mandatory nationwide use of the E-Verify Program, an internet-based system that allows businesses to determine the eligibility of their new employees to work in the United States. This investment would strengthen the employment verification process and reduce unauthorized employment across the U.S.
- Safeguards cyberspace with \$1.5 billion for DHS activities that protect Federal networks and critical infrastructure from an attack. Through a suite of advanced cyber security tools and more assertive defense of Government networks, DHS would share more cybersecurity incident information with other Federal agencies and the private sector, leading to faster responses to cybersecurity attacks directed at Federal networks and critical infrastructure.
- Restructures selected user fees for the Transportation Security Administration (TSA) and the National Flood Insurance Program (NFIP) to ensure that the cost of Government services is not subsidized by taxpayers who do not directly benefit from those programs. The Budget proposes to raise the Passenger Security Fee to recover 75 percent of the cost of TSA aviation security operations. The Budget proposes eliminating the discretionary appropriation for the NFIP's Flood Hazard Mapping Program, a savings of \$190 million, to instead explore other more effective and fair means of funding flood mapping efforts.
- Eliminates or reduces State and local grant funding by \$667 million for programs administered by the Federal Emergency Management Agency (FEMA) that are either unauthorized by the Congress, such as FEMA's Pre-Disaster Mitigation Grant Program, or that must provide more measurable results and ensure the Federal Government is not supplanting other stakeholders' responsibilities, such as the Homeland Security Grant Program. For that reason, the Budget also proposes establishing a 25 percent non-Federal cost match for FEMA preparedness grant awards that currently require no cost match. This is the same cost-sharing approach as FEMA's disaster recovery grants. The activities and acquisitions funded through these grant programs are primarily State and local functions.
- Eliminates and reduces unauthorized and underperforming programs administered by TSA in order to strengthen screening at airport security checkpoints, a savings of \$80 million from the 2017 annualized CR level. These savings include reductions to the Visible Intermodal Prevention and Response program, which achieves few Federal law enforcement priorities, and elimination of TSA grants to State and local jurisdictions, a program intended to incentivize local law enforcement patrols that should already be a high priority for State and local partners. In addition, the Budget reflects TSA's decision in the summer of 2016 to eliminate the Behavior Detection Officer program, reassigning all of those personnel to front line airport security operations. Such efforts refocus TSA on its core mission of protecting travelers and ensuring Federal security standards are enforced throughout the transportation system.



## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The Department of Housing and Urban Development (HUD) promotes decent, safe, and affordable housing for Americans and provides access to homeownership opportunities. This Budget reflects the President's commitment to fiscal responsibility while supporting critical functions that provide rental assistance to low-income and vulnerable households and help work-eligible families achieve self-sufficiency. The Budget also recognizes a greater role for State and local governments and the private sector to address community and economic development needs.

The President's 2018 Budget requests \$40.7 billion in gross discretionary funding for HUD, a \$6.2 billion or 13.2 percent decrease from the 2017 annualized CR level.

### **The President's 2018 Budget:**

- Provides over \$35 billion for HUD's rental assistance programs and proposes reforms that reduce costs while continuing to assist 4.5 million low-income households.
- Eliminates funding for the Community Development Block Grant program, a savings of \$3 billion from the 2017 annualized CR level. The Federal Government has spent over \$150 billion on this block grant since its inception in 1974, but the program is not well-targeted to the poorest populations and has not demonstrated results. The Budget devolves community and economic development activities to the State and local level, and redirects Federal resources to other activities.
- Promotes fiscal responsibility by eliminating funding for a number of lower priority programs, including the HOME Investment Partnerships Program, Choice Neighborhoods, and the Self-help Homeownership Opportunity Program, a savings of over \$1.1 billion from the 2017 annualized CR level. State and local governments are better positioned to serve their communities based on local needs and priorities.
- Promotes healthy and lead-safe homes by providing \$130 million, an increase of \$20 million over the 2017 annualized CR level, for the mitigation of lead-based paint and other hazards in low-income homes, especially those in which children reside. This also funds enforcement, education, and research activities to further support this goal, all of which contributes to lower healthcare costs and increased productivity.

- Eliminates funding for Section 4 Capacity Building for Community Development and Affordable Housing, a savings of \$35 million from the 2017 annualized CR level. This program is duplicative of efforts funded by philanthropy and other more flexible private sector investments.
- Supports homeownership through provision of Federal Housing Administration mortgage insurance programs.



## DEPARTMENT OF THE INTERIOR

The Department of the Interior (DOI) is responsible for protecting and managing vast areas of U.S. lands and waters, providing scientific and other information about its natural resources, and meeting the Nation's trust responsibilities and other commitments to American Indians, Alaska Natives, and U.S.-affiliated island communities. The Budget requests an increase in funding for core energy development programs while supporting DOI's priority agency mission and trust responsibilities, including public safety, land conservation and revenue management. It eliminates funding for unnecessary or duplicative programs while reducing funds for lower priority activities, such as acquiring new lands.

The President's 2018 Budget requests \$11.6 billion for DOI, a \$1.5 billion or 12 percent decrease from the 2017 annualized CR level.

### **The President's 2018 Budget:**

- Strengthens the Nation's energy security by increasing funding for DOI programs that support environmentally responsible development of energy on public lands and offshore waters. Combined with administrative reforms already in progress, this would allow DOI to streamline permitting processes and provide industry with access to the energy resources America needs, while ensuring taxpayers receive a fair return from the development of these public resources.
- Sustains funding for DOI's Office of Natural Resources Revenue, which manages the collection and disbursement of roughly \$10 billion annually from mineral development, an important source of revenue to the Federal Treasury, States, and Indian mineral owners.
- Eliminates unnecessary, lower priority, or duplicative programs, including discretionary Abandoned Mine Land grants that overlap with existing mandatory grants, National Heritage Areas that are more appropriately funded locally, and National Wildlife Refuge fund payments to local governments that are duplicative of other payment programs.
- Supports stewardship capacity for land management operations of the National Park Service, Fish and Wildlife Service and Bureau of Land Management. The Budget streamlines operations while providing the necessary resources for DOI to continue to protect and conserve America's public lands and beautiful natural resources, provide access to public lands for the next generation of outdoor enthusiasts, and ensure visitor safety.

- Supports tribal sovereignty and self-determination across Indian Country by focusing on core funding and services to support ongoing tribal government operations. The Budget reduces funding for more recent demonstration projects and initiatives that only serve a few Tribes.
- Reduces funding for lower priority activities, such as new major acquisitions of Federal land. The Budget reduces land acquisition funding by more than \$120 million from the 2017 annualized CR level and would instead focus available discretionary funds on investing in, and maintaining, existing national parks, refuges and public lands.
- Ensures that the National Park Service assets are preserved for future generations by increasing investment in deferred maintenance projects. Reduces funds for other DOI construction and major maintenance programs, which can rely on existing resources for 2018.
- Provides more than \$900 million for DOI's U.S. Geological Survey to focus investments in essential science programs. This includes funding for the Landsat 9 ground system, as well as research and data collection that informs sustainable energy development, responsible resource management, and natural hazard risk reduction.
- Leverages taxpayer investment with public and private resources through wildlife conservation, historic preservation, and recreation grants. These voluntary programs encourage partnerships by providing matching funds that produce greater benefits to taxpayers for the Federal dollars invested.
- Budgets responsibly for wildland fire suppression expenses. The Budget would directly provide the full 10-year rolling average of suppression expenditures.
- Invests over \$1 billion in safe, reliable, and efficient management of water resources throughout the western United States.
- Supports counties through discretionary funding for the Payments in Lieu of Taxes (PILT) program at a reduced level, but in line with average funding for PILT over the past decade.



## DEPARTMENT OF JUSTICE

The Department of Justice is charged with enforcing the laws and defending the interests of the United States, ensuring public safety against foreign and domestic threats, providing Federal leadership in preventing and controlling crime, seeking just punishment for those guilty of unlawful behavior, and ensuring the fair and impartial administration of justice for all Americans. The budget for the Department of Justice saves taxpayer dollars by consolidating, reducing, streamlining, and making its programs and operations more efficient. The Budget also makes critical investments to confront terrorism, reduce violent crime, tackle the Nation's opioid epidemic, and combat illegal immigration.

The President's 2018 Budget requests \$27.7 billion for the Department of Justice, a \$1.1 billion or 3.8 percent decrease from the 2017 annualized CR level. This program level excludes mandatory spending changes involving the Crime Victims Fund and the Assets Forfeiture Fund. However, significant targeted increases would enhance the ability to address key issues, including public safety, law enforcement, and national security. Further, the Administration is concerned about so-called sanctuary jurisdictions and will be taking steps to mitigate the risk their actions pose to public safety.

### **The President's 2018 Budget:**

- Strengthens counterterrorism, counterintelligence, and Federal law enforcement activities by providing an increase of \$249 million, or 3 percent, above the 2017 annualized CR level for the Federal Bureau of Investigation (FBI). The FBI would devote resources toward its world-class cadre of special agents and intelligence analysts, as well as invest \$61 million more to fight terrorism and combat foreign intelligence and cyber threats and address public safety and national security risks that result from malicious actors' use of encrypted products and services. In addition, the FBI would dedicate \$35 million to gather and share intelligence data with partners and together with the Department of Defense (DOD) lead Federal efforts in biometric identity resolution, research, and development. The FBI would also spend an additional \$9 million to provide accurate and timely response for firearms purchase background checks, and develop and refine evidence and data to target violent crime in some cities and communities.
- Supports efforts at the Department's law enforcement components by providing a combined increase of \$175 million above the 2017 annualized CR level to target the worst of the worst criminal organizations and drug traffickers in order to address violent crime, gun-related deaths, and the opioid epidemic.

- Enhances national security and counterterrorism efforts by linking skilled prosecutors and intelligence attorneys with law enforcement investigations and the intelligence community to stay ahead of threats.
- Combats illegal entry and unlawful presence in the United States by providing an increase of nearly \$80 million, or 19 percent, above the 2017 annualized CR level to hire 75 additional immigration judge teams to bolster and more efficiently adjudicate removal proceedings—bringing the total number of funded immigration judge teams to 449.
- Enhances border security and immigration enforcement by providing 60 additional border enforcement prosecutors and 40 deputy U.S. Marshals for the apprehension, transportation, and prosecution of criminal aliens.
- Supports the addition of 20 attorneys to pursue Federal efforts to obtain the land and holdings necessary to secure the Southwest border and another 20 attorneys and support staff for immigration litigation assistance.
- Assures the safety of the public and law enforcement officers by providing \$171 million above the 2017 annualized CR level for additional short-term detention space to hold Federal detainees, including criminal aliens, parole violators, and other offenders awaiting trial or sentencing.
- Safeguards Federal grants to State, local, and tribal law enforcement and victims of crime to ensure greater safety for law enforcement personnel and the people they serve. Critical programs aimed at protecting the life and safety of State and local law enforcement personnel, including Preventing Violence Against Law Enforcement Officer Resilience and Survivability and the Bulletproof Vest Partnership, are protected.
- Eliminates approximately \$700 million in unnecessary spending on outdated programs that either have met their goal or have exceeded their usefulness, including \$210 million for the poorly targeted State Criminal Alien Assistance Program, in which two-thirds of the funding primarily reimburses four States for the cost of incarcerating certain illegal criminal aliens.
- Achieves savings of almost a billion dollars from the 2017 annualized CR level in Federal prison construction spending due to excess capacity resulting from an approximate 14 percent decrease in the prison population since 2013. However, the Budget provides \$80 million above the 2017 annualized CR level for the activation of an existing facility to reduce high security Federal inmate overcrowding and a total of \$113 million to repair and modernize outdated prisons.
- Increases bankruptcy-filing fees to produce an additional \$150 million over the 2017 annualized CR level to ensure that those that use the bankruptcy court system pay for its oversight. By increasing quarterly filing fees, the total estimated United States Trustee Program offsetting receipts would reach \$289 million in 2018.



## DEPARTMENT OF LABOR

The Department of Labor fosters the welfare of wage earners, job seekers, and retirees by safeguarding their working conditions, benefits, and wages. With the need to rebuild the Nation's military without increasing the deficit, this Budget focuses the Department of Labor on its highest priority functions and disinvests in activities that are duplicative, unnecessary, unproven, or ineffective.

The President's 2018 Budget requests \$9.6 billion for the Department of Labor, a \$2.5 billion or 21 percent decrease from the 2017 annualized CR level.

### **The President's 2018 Budget:**

- Expands Reemployment and Eligibility Assessments, an evidence-based activity that saves an average of \$536 per claimant in unemployment insurance benefit costs by reducing improper payments and getting claimants back to work more quickly and at higher wages.
- Reduces funding for ineffective, duplicative, and peripheral job training grants. As part of this, eliminates the Senior Community Service Employment Program (SCSEP), for a savings of \$434 million from the 2017 annualized CR level. SCSEP is ineffective in meeting its purpose of transitioning low-income unemployed seniors into unsubsidized jobs. As many as one-third of participants fail to complete the program and of those who do, only half successfully transition to unsubsidized employment.
- Focuses the Bureau of International Labor Affairs on ensuring that U.S. trade agreements are fair for American workers. The Budget eliminates the Bureau's largely noncompetitive and unproven grant funding, which would save at least \$60 million from the 2017 annualized CR level.
- Improves Job Corps for the disadvantaged youth it serves by closing centers that do a poor job educating and preparing students for jobs.
- Decreases Federal support for job training and employment service formula grants, shifting more responsibility for funding these services to States, localities, and employers.
- Helps States expand apprenticeship, an evidence-based approach to preparing workers for jobs.

- Refocuses the Office of Disability Employment Policy, eliminating less critical technical assistance grants and launching an early intervention demonstration project to allow States to test and evaluate methods that help individuals with disabilities remain attached to or reconnect to the labor market.
- Eliminates the Occupational Safety and Health Administration's unproven training grants, yielding savings of almost \$11 million from the 2017 annualized CR level and focusing the agency on its central work of keeping workers safe on the job.



## DEPARTMENT OF STATE, USAID, AND TREASURY INTERNATIONAL PROGRAMS

The Department of State, the U.S. Agency for International Development (USAID), and the Department of the Treasury's International Programs help to advance the national security interests of the United States by building a more democratic, secure, and prosperous world. The Budget for the Department of State and USAID diplomatic and development activities is being refocused on priority strategic objectives and renewed attention is being placed on the appropriate U.S. share of international spending. In addition, the Budget seeks to reduce or end direct funding for international organizations whose missions do not substantially advance U.S. foreign policy interests, are duplicative, or are not well-managed. Additional steps will be taken to make the Department and USAID leaner, more efficient, and more effective. These steps to reduce foreign assistance free up funding for critical priorities here at home and put America first.

The President's 2018 Budget requests \$25.6 billion in base funding for the Department of State and USAID, a \$10.1 billion or 28 percent reduction from the 2017 annualized CR level. The Budget also requests \$12.0 billion as Overseas Contingency Operations funding for extraordinary costs, primarily in war areas like Syria, Iraq, and Afghanistan, for an agency total of \$37.6 billion. The 2018 Budget also requests \$1.5 billion for Treasury International Programs, an \$803 million or 35 percent reduction from the 2017 annualized CR level.

### **The President's 2018 Budget:**

- Maintains robust funding levels for embassy security and other core diplomatic activities while implementing efficiencies. Consistent with the Benghazi Accountability Review Board recommendation, the Budget applies \$2.2 billion toward new embassy construction and maintenance in 2018. Maintaining adequate embassy security levels requires the efficient and effective use of available resources to keep embassy employees safe.
- Provides \$3.1 billion to meet the security assistance commitment to Israel, currently at an all-time high; ensuring that Israel has the ability to defend itself from threats and maintain its Qualitative Military Edge.
- Eliminates the Global Climate Change Initiative and fulfills the President's pledge to cease payments to the United Nations' (UN) climate change programs by eliminating U.S. funding related to the Green Climate Fund and its two precursor Climate Investment Funds.
- Provides sufficient resources on a path to fulfill the \$1 billion U.S. pledge to Gavi, the Vaccine Alliance. This commitment helps support Gavi to vaccinate hundreds of millions of children in low-resource countries and save millions of lives.

- Provides sufficient resources to maintain current commitments and all current patient levels on HIV/AIDS treatment under the President's Emergency Plan for AIDS Relief (PEPFAR) and maintains funding for malaria programs. The Budget also meets U.S. commitments to the Global Fund for AIDS, Tuberculosis, and Malaria by providing 33 percent of projected contributions from all donors, consistent with the limit currently in law.
- Shifts some foreign military assistance from grants to loans in order to reduce costs for the U.S. taxpayer, while potentially allowing recipients to purchase more American-made weaponry with U.S. assistance, but on a repayable basis.
- Reduces funding to the UN and affiliated agencies, including UN peacekeeping and other international organizations, by setting the expectation that these organizations rein in costs and that the funding burden be shared more fairly among members. The amount the U.S. would contribute to the UN budget would be reduced and the U.S. would not contribute more than 25 percent for UN peacekeeping costs.
- Refocuses economic and development assistance to countries of greatest strategic importance to the U.S. and ensures the effectiveness of U.S. taxpayer investments by rightsizing funding across countries and sectors.
- Allows for significant funding of humanitarian assistance, including food aid, disaster, and refugee program funding. This would focus funding on the highest priority areas while asking the rest of the world to pay their fair share. The Budget eliminates the Emergency Refugee and Migration Assistance account, a duplicative and stovepiped account, and challenges international and non-governmental relief organizations to become more efficient and effective.
- Reduces funding for the Department of State's Educational and Cultural Exchange (ECE) Programs. ECE resources would focus on sustaining the flagship Fulbright Program, which forges lasting connections between Americans and emerging leaders around the globe.
- Improves efficiency by eliminating overlapping peacekeeping and security capacity building efforts and duplicative contingency programs, such as the Complex Crises Fund. The Budget also eliminates direct appropriations to small organizations that receive funding from other sources and can continue to operate without direct Federal funds, such as the East-West Center.
- Recognizes the need for State and USAID to pursue greater efficiencies through reorganization and consolidation in order to enable effective diplomacy and development.
- Reduces funding for multilateral development banks, including the World Bank, by approximately \$650 million over three years compared to commitments made by the previous administration. Even with the proposed decreases, the U.S. would retain its current status as a top donor while saving taxpayer dollars.



## DEPARTMENT OF TRANSPORTATION

The Department of Transportation (DOT) is responsible for ensuring a fast, safe, efficient, accessible, and convenient transportation system that meets our vital national interests and enhances the quality of life of the American people today, and into the future. The Budget request reflects a streamlined DOT that is focused on performing vital Federal safety oversight functions and investing in nationally and regionally significant transportation infrastructure projects. The Budget reduces or eliminates programs that are either inefficient, duplicative of other Federal efforts, or that involve activities that are better delivered by States, localities, or the private sector.

The President's 2018 Budget requests \$16.2 billion for DOT's discretionary budget, a \$2.4 billion or 13 percent decrease from the 2017 annualized CR level.

### **The President's 2018 Budget:**

- Initiates a multi-year reauthorization proposal to shift the air traffic control function of the Federal Aviation Administration to an independent, non-governmental organization, making the system more efficient and innovative while maintaining safety. This would benefit the flying public and taxpayers overall.
- Restructures and reduces Federal subsidies to Amtrak to focus resources on the parts of the passenger rail system that provide meaningful transportation options within regions. The Budget terminates Federal support for Amtrak's long distance train services, which have long been inefficient and incur the vast majority of Amtrak's operating losses. This would allow Amtrak to focus on better managing its State-supported and Northeast Corridor train services.
- Limits funding for the Federal Transit Administration's Capital Investment Program (New Starts) to projects with existing full funding grant agreements only. Future investments in new transit projects would be funded by the localities that use and benefit from these localized projects.
- Eliminates funding for the Essential Air Service (EAS) program, which was originally conceived of as a temporary program nearly 40 years ago to provide subsidized commercial air service to rural airports. EAS flights are not full and have high subsidy costs per passenger. Several EAS-eligible communities are relatively close to major airports, and communities that have EAS could be served by other existing modes of transportation. This proposal would result in a discretionary savings of \$175 million from the 2017 annualized CR level.

- Eliminates funding for the unauthorized TIGER discretionary grant program, which awards grants to projects that are generally eligible for funding under existing surface transportation formula programs, saving \$499 million from the 2017 annualized CR level. Further, DOT's Nationally Significant Freight and Highway Projects grant program, authorized by the FAST Act of 2015, supports larger highway and multimodal freight projects with demonstrable national or regional benefits. This grant program is authorized at an annual average of \$900 million through 2020.



## DEPARTMENT OF THE TREASURY

The Department of the Treasury is charged with maintaining a strong economy, promoting conditions that enable economic growth and stability, protecting the integrity of the financial system, and managing the U.S. Government's finances and resources effectively. The Budget will bring renewed discipline to the Department by focusing resources on collecting revenue, managing the Nation's debt, protecting the financial system from threats, and combating financial crime and terrorism financing.

The President's 2018 Budget requests \$12.1 billion in discretionary resources for the Department of the Treasury's domestic programs, a \$519 million or 4.1 percent decrease from the 2017 annualized CR level. This program level excludes mandatory spending changes involving the Treasury Forfeiture Fund.

### **The President's 2018 Budget:**

- Preserves key operations of the Internal Revenue Service (IRS) to ensure that the IRS could continue to combat identity theft, prevent fraud, and reduce the deficit through the effective enforcement and administration of tax laws. Diverting resources from antiquated operations that are still reliant on paper-based review in the era of electronic tax filing would achieve significant savings, a funding reduction of \$239 million from the 2017 annualized CR level.
- Strengthens cybersecurity by investing in a Department-wide plan to strategically enhance existing security systems and preempt fragmentation of information technology management across the bureaus, positioning Treasury to anticipate and nimbly respond in the event of a cyberattack.
- Prioritizes funding for Treasury's array of economic enforcement tools. Key Treasury programs that freeze the accounts of terrorists and proliferators, implement sanctions on rogue nations, and link law enforcement agencies with financial institutions are critical to the continued safety and financial stability of the Nation.
- Eliminates funding for Community Development Financial Institutions (CDFI) Fund grants, a savings of \$210 million from the 2017 annualized CR level. The CDFI Fund was created more than 20 years ago to jump-start a now mature industry where private institutions have ready access to the capital needed to extend credit and provide financial services to underserved communities.

- Empowers the Treasury Secretary, as Chairperson of the Financial Stability Oversight Council, to end taxpayer bailouts and foster economic growth by advancing financial regulatory reforms that promote market discipline and ensure the accountability of financial regulators.
- Shrinks the Federal workforce and increases its efficiency by redirecting resources away from duplicative policy offices to staff that manage the Nation's finances.



## DEPARTMENT OF VETERANS AFFAIRS

The Department of Veterans Affairs (VA) provides health care and a wide variety of benefits to military veterans and their survivors. The 2018 Budget fulfills the President's commitment to the Nation's veterans by requesting the resources necessary to provide the support our veterans have earned through sacrifice and service to our Nation. The Budget significantly increases funding for VA Medical Care so that VA can continue to meet the ever-growing demand for health care services while building an integrated system of care that strengthens services within VA and makes effective use of community services. The Budget request includes increased funding for and extension of the Veterans Choice Program, making it easier for eligible veterans to access the medical care they need, close to home.

The President's 2018 Budget requests \$78.9 billion in discretionary funding for VA, a \$4.4 billion or 6 percent increase from the 2017 enacted level. The Budget also requests legislative authority and \$3.5 billion in mandatory budget authority in 2018 to continue the Veterans Choice Program.

### **The President's 2018 Budget:**

- Ensures the Nation's veterans receive high-quality health care and timely access to benefits and services. An estimated 11 million veterans participate in VA programs. This Budget provides the resources necessary to ensure veterans receive the care and support earned through their service to the Nation.
- Provides a \$4.6 billion increase in discretionary funding for VA health care to improve patient access and timeliness of medical care services for over nine million enrolled veterans. This funding would enable the Department to provide a broad range of primary care, specialized care, and related medical and social support services to enrolled veterans, including services that are uniquely related to veterans' health and special needs.
- Extends and funds the Veterans Choice Program to ensure that every eligible veteran continues to have the choice to seek care at VA or through a private provider. Without action, this critical program will expire in August 2017, which would result in veterans having fewer choices of where to receive care.
- Supports VA programs that provide services to homeless and at-risk veterans and their families to help keep them safe and sheltered.
- Provides access to education benefits, enhanced services, and other programs to assist veterans' transition to civilian life. VA partners with other agencies to provide critical training, support services, and counseling throughout a veteran's transition and their post-military career.

- Continues critical investments aimed at optimizing productivity and transforming VA's claims processes. Provides resources to reduce the time required to process and adjudicate veterans' disability compensation claims.
- Invests in information technology to improve the efficiency and efficacy of VA services. Provides sufficient funding for sustainment, development, and modernization initiatives that would improve the quality of services provided to veterans and avoid the costs of maintaining outdated, inefficient systems.



## ENVIRONMENTAL PROTECTION AGENCY

The Environmental Protection Agency (EPA) is responsible for protecting human health and the environment. The budget for EPA reflects the success of environmental protection efforts, a focus on core legal requirements, the important role of the States in implementing the Nation's environmental laws, and the President's priority to ease the burden of unnecessary Federal regulations that impose significant costs for workers and consumers without justifiable environmental benefits. This would result in approximately 3,200 fewer positions at the agency. EPA would primarily support States and Tribes in their important role protecting air, land, and water in the 21<sup>st</sup> Century.

The President's 2018 Budget requests \$5.7 billion for the Environmental Protection Agency, a savings of \$2.6 billion, or 31 percent, from the 2017 annualized CR level.

### **The President's 2018 Budget:**

- Provides robust funding for critical drinking and wastewater infrastructure. These funding levels further the President's ongoing commitment to infrastructure repair and replacement and would allow States, municipalities, and private entities to continue to finance high priority infrastructure investments that protect human health. The Budget includes \$2.3 billion for the State Revolving Funds, a \$4 million increase over the 2017 annualized CR level. The Budget also provides \$20 million for the Water Infrastructure Finance and Innovation Act program, equal to the funding provided in the 2017 annualized CR. This credit subsidy could potentially support \$1 billion in direct Federal loans.
- Discontinues funding for the Clean Power Plan, international climate change programs, climate change research and partnership programs, and related efforts—saving over \$100 million for the American taxpayer compared to 2017 annualized CR levels. Consistent with the President's America First Energy Plan, the Budget reorients EPA's air program to protect the air we breathe without unduly burdening the American economy.
- Reins in Superfund administrative costs and emphasizes efficiency efforts by funding the Hazardous Substance Superfund Account at \$762 million, \$330 million below the 2017 annualized CR level. The agency would prioritize the use of existing settlement funds to clean up hazardous waste sites and look for ways to remove some of the barriers that have delayed the program's ability to return sites to the community.
- Avoids duplication by concentrating EPA's enforcement of environmental protection violations on programs that are not delegated to States, while providing oversight to maintain consistency and assistance across State, local, and tribal programs. This reduces EPA's Office of Enforcement

and Compliance Assurance budget to \$419 million, which is \$129 million below the 2017 annualized CR level.

- Better targets EPA's Office of Research and Development (ORD) at a level of approximately \$250 million, which would result in a savings of \$233 million from the 2017 annualized CR level. ORD would prioritize activities that support decision-making related to core environmental statutory requirements, as opposed to extramural activities, such as providing STAR grants.
- Supports Categorical Grants with \$597 million, a \$482 million reduction below 2017 annualized CR levels. These lower levels are in line with the broader strategy of streamlining environmental protection. This funding level eliminates or substantially reduces Federal investment in State environmental activities that go beyond EPA's statutory requirements.
- Eliminates funding for specific regional efforts such as the Great Lakes Restoration Initiative, the Chesapeake Bay, and other geographic programs. These geographic program eliminations are \$427 million lower than the 2017 annualized CR levels. The Budget returns the responsibility for funding local environmental efforts and programs to State and local entities, allowing EPA to focus on its highest national priorities.
- Eliminates more than 50 EPA programs, saving an additional \$347 million compared to the 2017 annualized CR level. Lower priority and poorly performing programs and grants are not funded, nor are duplicative functions that can be absorbed into other programs or that are State and local responsibilities. Examples of eliminations in addition to those previously mentioned include: Energy Star; Targeted Airshed Grants; the Endocrine Disruptor Screening Program; and infrastructure assistance to Alaska Native Villages and the Mexico Border.



## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

The National Aeronautics and Space Administration (NASA) is responsible for increasing understanding of the universe and our place in it, advancing America's world-leading aerospace technology, inspiring the Nation, and opening the space frontier. The Budget increases cooperation with industry through the use of public-private partnerships, focuses the Nation's efforts on deep space exploration rather than Earth-centric research, and develops technologies that would help achieve U.S. space goals and benefit the economy.

The President's 2018 Budget requests \$19.1 billion for NASA, a 0.8 percent decrease from the 2017 annualized CR level, with targeted increases consistent with the President's priorities.

### **The President's 2018 Budget:**

- Supports and expands public-private partnerships as the foundation of future U.S. civilian space efforts. The Budget creates new opportunities for collaboration with industry on space station operations, supports public-private partnerships for deep-space habitation and exploration systems, funds data buys from companies operating small satellite constellations, and supports work with industry to develop and commercialize new space technologies.
- Paves the way for eventual over-land commercial supersonic flights and safer, more efficient air travel with a strong program of aeronautics research. The Budget provides \$624 million for aeronautics research and development.
- Reinvigorates robotic exploration of the Solar System by providing \$1.9 billion for the Planetary Science program, including funding for a mission to repeatedly fly by Jupiter's icy ocean moon Europa and a Mars rover that would launch in 2020. To preserve the balance of NASA's science portfolio and maintain flexibility to conduct missions that were determined to be more important by the science community, the Budget provides no funding for a multi-billion-dollar mission to land on Europa. The Budget also supports initiatives that use smaller, less expensive satellites to advance science in a cost-effective manner.
- Provides \$3.7 billion for continued development of the Orion crew vehicle, Space Launch System, and associated ground system, to send American astronauts on deep-space missions. To accommodate increasing development costs, the Budget cancels the multi-billion-dollar Asteroid Redirect Mission. NASA will investigate approaches for reducing the costs of exploration missions to enable a more expansive exploration program.
- Provides \$1.8 billion for a focused, balanced Earth science portfolio that supports the priorities of the science and applications communities, a savings of \$102 million from the 2017 annualized CR level. The Budget terminates four Earth science missions (PACE, OCO-3, DSCOVR

Earth-viewing instruments, and CLARREO Pathfinder) and reduces funding for Earth science research grants.

- Eliminates the \$115 million Office of Education, resulting in a more focused education effort through NASA's Science Mission Directorate. The Office of Education has experienced significant challenges in implementing a NASA-wide education strategy and is performing functions that are duplicative of other parts of the agency.
- Restructures a duplicative robotic satellite refueling demonstration mission to reduce its cost and better position it to support a nascent commercial satellite servicing industry, resulting in a savings of \$88 million from the 2017 annualized CR level.
- Strengthens NASA's cybersecurity capabilities, safeguarding critical systems and data.



## SMALL BUSINESS ADMINISTRATION

The Small Business Administration (SBA) ensures that small businesses have the tools and resources needed to start and develop their operations, drive U.S. competitiveness, and help grow the economy. The President is committed to assisting small businesses succeed through reducing the regulatory and tax burdens that can impede the development of small firms. The Budget increases efficiency through responsible reductions to redundant programs and by eliminating programs that deliver services better provided by the private sector.

The President's 2018 Budget requests \$826.5 million for SBA, a \$43.2 million or 5.0 percent decrease from the 2017 annualized CR level.

### **The President's 2018 Budget:**

- Supports more than \$45 billion in loan guarantees to assist America's small business owners with access to affordable capital to start or expand their businesses.
- Strengthens SBA's outreach center programs by reducing duplicative services, coordinating best practices, and investing in communities that would benefit from SBA's business center support. As a result, SBA would be better positioned to strengthen local partnerships and more efficiently serve program participants while achieving savings over the 2017 annualized CR level.
- Supports over \$1 billion in disaster relief lending to businesses, homeowners, renters, and property owners to help American communities recover quickly in the wake of declared disasters. Through the disaster loan program, SBA is able to provide affordable, accessible, and immediate direct assistance to those hardest hit when disaster strikes.
- Achieves \$12 million in cost savings from the 2017 annualized CR level through identifying and eliminating those SBA grant programs where the private sector provides effective mechanisms to foster local business development and investment. Eliminations include PRIME technical assistance grants, Regional Innovation Clusters, and Growth Accelerators.
- Provides training and support services for transitioning service members and veterans to promote entrepreneurship and business ownership. These programs help to fulfill the President's commitment to support the Nation's veterans by providing business counseling, lending, and contracting assistance.
- Maintains \$28 million in microloan financing and technical assistance to help serve, strengthen, and sustain the smallest of small businesses and startups.
- Allows SBA to advocate and assist small businesses in accessing Federal contracts and small business research opportunities Government-wide.



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## Summary Tables

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**Table 1. Proposed Discretionary Caps for 2018 Budget**

(Budget authority in billions of dollars)

	Caps	
	2017	2018
<b>Current Law Base Caps: <sup>1</sup></b>		
Defense .....	551	549
Non-Defense .....	519	516
<b>Total, Current Law Base Caps .....</b>	<b>1,070</b>	<b>1,065</b>
<b>Proposed Base Cap Changes: <sup>2</sup></b>		
Defense .....	+25	+54
Non-Defense .....	-15	-54
<b>Total, Proposed Changes .....</b>	<b>+10</b>	<b>.....</b>
<b>Proposed Base Caps:</b>		
Defense .....	576	603
Non-Defense .....	504	462
<b>Total, Proposed Base Caps .....</b>	<b>1,080</b>	<b>1,065</b>
<b>Enacted and Proposed Cap Adjustments:</b>		
Overseas Contingency Operations (OCO) <sup>2</sup> .....	89	77
Emergency Funding .....	3	.....
Program Integrity .....	2	2
Disaster Relief .....	8	7
<b>Total, Cap Adjustments .....</b>	<b>102</b>	<b>86</b>
<b>Total, Discretionary Budget Authority .....</b>	<b>1,181</b>	<b>1,151</b>
<i>21st Century CURES appropriations</i> <sup>3</sup> .....	<i>1</i>	<i>1</i>

<sup>1</sup> The caps presented here are equal to the levels specified for 2017 and 2018 in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (BBED-CA). The 2017 caps were revised in the Bipartisan Budget Act of 2015 and the 2018 caps include OMB estimates of Joint Committee enforcement (also known as “sequestration”).

<sup>2</sup> The Administration proposes an increase in the existing defense caps for 2017 and 2018 that is offset with decreases to the non-defense caps. About 60 percent of the 2017 defense increase is offset by non-defense decreases in 2017 while the entire defense increase in 2018 is offset by non-defense decreases. An additional \$5 billion in defense funding is proposed as OCO in 2017.

<sup>3</sup> The 21st Century CURES Act permitted funds to be appropriated each year for certain activities outside of the discretionary caps so long as the appropriations were specifically provided for the authorized purposes. These amounts are displayed outside of the discretionary totals for this reason.

**Table 2. 2018 Discretionary Overview by Major Agency**

(Net discretionary BA in billions of dollars)

	2017 CR/Enacted <sup>1,2</sup>	2018 Request <sup>2</sup>	2018 Request Less 2017 CR/Enacted	
			Dollar	Percent
<b>Base Discretionary Funding:</b>				
<b>Cabinet Departments:</b>				
Agriculture <sup>3</sup> .....	22.6	17.9	-4.7	-20.7%
Commerce .....	9.2	7.8	-1.5	-15.7%
Defense .....	521.7	574.0	+52.3	+10.0%
Education .....	68.2	59.0	-9.2	-13.5%
Energy .....	29.7	28.0	-1.7	-5.6%
<i>National Nuclear Security Administration</i> .....	12.5	13.9	+1.4	+11.3%
<i>Other Energy</i> .....	17.2	14.1	-3.1	-17.9%
Health and Human Services <sup>4</sup> .....	77.7	65.1	-12.6	-16.2%
Homeland Security .....	41.3	44.1	+2.8	+6.8%
Housing and Urban Development (HUD):				
<i>HUD gross total (excluding receipts)</i> .....	46.9	40.7	-6.2	-13.2%
<i>HUD receipts</i> <sup>5</sup> .....	-10.9	-9.0	+1.9	N/A
Interior .....	13.2	11.6	-1.5	-11.7%
Justice (DOJ):				
<i>DOJ program level (excluding offsets)</i> .....	28.8	27.7	-1.1	-3.8%
<i>DOJ mandatory spending changes (CHIMPs)</i> .....	-8.5	-11.5	-2.9	N/A
Labor .....	12.2	9.6	-2.5	-20.7%
State, U.S. Agency for International Development (USAID), and Treasury International Programs <sup>3</sup> .....	38.0	27.1	-10.9	-28.7%
Transportation .....	18.6	16.2	-2.4	-12.7%
Treasury .....	11.7	11.2	-0.5	-4.4%
Veterans Affairs .....	74.5	78.9	+4.4	+5.9%
<b>Major Agencies:</b>				
Corps of Engineers .....	6.0	5.0	-1.0	-16.3%
Environmental Protection Agency .....	8.2	5.7	-2.6	-31.4%
General Services Administration .....	0.3	0.5	+0.3	N/A
National Aeronautics and Space Administration .....	19.2	19.1	-0.2	-0.8%
Small Business Administration .....	0.9	0.8	-.*	-5.0%
Social Security Administration <sup>4</sup> .....	9.3	9.3	+*	+0.2%
Other Agencies .....	29.4	26.5	-2.9	-9.8%
<b>Subtotal, Discretionary Base Budget Authority .....</b>	<b>1,068.1</b>	<b>1,065.4</b>	<b>-2.7</b>	<b>-0.3%</b>
<b>Cap Adjustment Funding:</b>				
Overseas Contingency Operations:				
Defense .....	65.0	64.6	-0.4	-0.6%
State and USAID .....	19.2	12.0	-7.2	-37.4%
Other Agencies .....	0.2	.....	-0.2	-100.0%
Subtotal, Overseas Contingency Operations .....	84.3	76.6	-7.8	-9.2%
Emergency Requirements:				
Transportation .....	1.0	.....	-1.0	-100.0%
Corps of Engineers .....	1.0	.....	-1.0	-100.0%
Other Agencies .....	0.7	.....	-0.7	-100.0%
Subtotal, Emergency Requirements .....	2.7	.....	-2.7	-100.0%
Program Integrity:				
Health and Human Services .....	0.4	0.4	+0.1	+17.3%
Social Security Administration .....	1.2	1.5	+0.3	+26.8%
Subtotal, Program Integrity .....	1.5	1.9	+0.4	+24.5%

**Table 2. 2018 Discretionary Overview by Major Agency—Continued**

(Net discretionary BA in billions of dollars)

	2017 CR/Enacted <sup>1,2</sup>	2018 Request <sup>2</sup>	2018 Request Less 2017 CR/Enacted	
			Dollar	Percent
Disaster Relief: <sup>6</sup>				
Homeland Security and Other Agencies .....	6.7	7.4	+0.7	+9.7%
Housing and Urban Development .....	1.4	.....	-1.4	-100.0%
Subtotal, Disaster Relief .....	8.1	7.4	-0.8	-9.4%
<b>Subtotal, Cap Adjustment Funding .....</b>	<b>96.7</b>	<b>85.9</b>	<b>-10.8</b>	<b>-11.2%</b>
<b>Total, Discretionary Budget Authority .....</b>	<b>1,164.8</b>	<b>1,151.2</b>	<b>-13.6</b>	<b>-1.2%</b>
<i>Memorandum: 21st Century CURES appropriations <sup>7</sup></i>				
<i>Health and Human Services .....</i>	<i>0.9</i>	<i>1.1</i>	<i>+0.2</i>	<i>+21.1%</i>

\* \$50 million or less.

<sup>1</sup> The 2017 CR/Enacted column reflects enacted appropriations and levels of continuing appropriations provided under the Continuing Appropriations Act, 2017 (Division C of Public Law 114–223, as amended by Division A of Public Law 114–254) that are due to expire on April 28. The levels presented here are the amounts OMB scores under the caps; therefore, the levels for 2017 may differ in total from those on Table 1.

<sup>2</sup> Enacted, continuing, and proposed changes in mandatory programs (CHIMPs) are included in both 2017 and 2018. Some agency presentations in this volume where noted reflect a program level that excludes these amounts.

<sup>3</sup> Funding for Food for Peace Title II Grants is included in the State, USAID, and Treasury International programs total. Although the funds are appropriated to the Department of Agriculture, the funds are administered by USAID.

<sup>4</sup> Funding from the Hospital Insurance and Supplementary Medical Insurance trust funds for administrative expenses incurred by the Social Security Administration that support the Medicare program are included in the Health and Human Services total and not in the Social Security Administration total.

<sup>5</sup> HUD receipt levels for 2018 are a placeholder and subject to change as detailed estimates under the Administration’s economic and technical assumptions for the full Budget are finalized.

<sup>6</sup> The Balanced Budget and Emergency Deficit Control Act of 1985 authorizes an adjustment to the discretionary spending caps for appropriations that are designated by the Congress as being for "disaster relief" provided those appropriations are for activities carried out pursuant to a determination under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Currently, based on enacted and continuing appropriations, OMB estimates the total adjustment available for disaster funding for 2018 at \$7,366 million. Further details, including any revisions necessary to account for final 2017 appropriations and the specific amounts of disaster relief funding requested for individual agencies in 2018 authorized to administer disaster relief programs, will be provided in subsequent Administration proposals.

<sup>7</sup> The 21st Century CURES Act permitted funds to be appropriated each year for certain activities outside of the discretionary caps so long as the appropriations were specifically provided for the authorized purposes. These amounts are displayed outside of the discretionary totals for this reason.

**Table 3. Major 2018 Budget Changes from Current Law**

(Budget authority in billions of dollars)

	2018 Caps <sup>1</sup>		Change:	
	Current Law <sup>2</sup>	Proposed	Dollars	Percent
<b>Discretionary Categories:</b>				
Defense .....	549	603	+54	+10%
Non-Defense .....	516	462	-54	-10%
<b>Total, 2018 Base Caps .....</b>	<b>1,065</b>	<b>1,065</b>	<b>.....</b>	<b>.....</b>

\* \$500 million or less.

<sup>1</sup> Only base funding caps are represented on this table and cap adjustments permitted by the Balanced Budget and Emergency Deficit Control Act of 1985 for overseas contingency operations, disaster relief, program integrity, and emergency requirements are excluded.<sup>2</sup> The current law caps are equal to the levels specified for 2018 in the Balanced Budget and Emergency Deficit Control Act of 1985, including OMB estimates for Joint Committee enforcement (also known as "sequestration").

**Table 4. Major 2017 Changes from Security Supplemental Request**

(Budget authority in billions of dollars)

	2017 Caps		Change:	
	Current Law	Proposed <sup>1</sup>	Dollars	Percent
<b>Discretionary Categories:</b>				
Defense .....	551	576	+25	+5%
Non-Defense .....	519	504	-15	-3%
<i>Major Changes:</i>				
<i>Border Wall and implementation of Executive Orders ..</i>	.....	3	+3	N/A
<i>Other Non-Defense programs .....</i>	519	501	-18	-3%
Total, 2018 Base Caps .....	1,070	1,080	+10	+1%
<b>Cap Adjustments:</b>				
Defense Overseas Contingency Operations (OCO) .....	65	70	+5	+8%

<sup>1</sup> The Administration proposes an increase in the existing defense cap for 2017 that is partially offset with a decrease to the non-defense cap while an additional \$5 billion defense request in 2017 is requested as OCO.







Executive Office of the President

**From:** Swift, Heather  
**To:** [Quimby, Frank](#)  
**Subject:** Re: draft gulf oil sale materials for next week  
**Date:** Friday, March 17, 2017 12:19:27 PM

---

Thanks, Frank. Are we sure it's the last of the old plan and not the first of the new plan?

-

Heather Swift  
Department of the Interior

@DOIPressSec  
Heather\_Swift@ios.doi.gov | Interior\_Press@ios.doi.gov

On Fri, Mar 17, 2017 at 11:46 AM, Quimby, Frank <frank\_quimby@ios.doi.gov> wrote:

attached are draft media advisory and comms plan for next week's gulf oil and gas lease sale...the last gulf sale under the current Five Year Program

worked with boem to beef up their usual media advisory alerting media to sale as per your ideas about getting more upfront on these energy sales while also following them with results announcements. If you prefer we can make this a boem media advisory or a doi news release instead of a doi media advisory either way we get the sec out front with appropriate quotes...this could go out on monday or tuesday the sale is wednesday and the results will be announced online via a teleconference and with a boem or doi news release.

boem typically does not do advance headsup on these sales since they are well publicized in advance but we can make arrangements to do stakeholder, cong and gov headsup calls if you want.

two blanks in this announcement to be filled when we know who has submitted bids

**From:** Bloomgren, Megan  
**To:** [Cynthia Moses-Nedd](#)  
**Subject:** Draft statement from Secretary Zinke on EO  
**Date:** Tuesday, March 28, 2017 8:46:22 AM

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Today, President Trump took bold and decisive action to end the War on Coal and put us on track for American energy independence. American energy independence has three major benefits to the environment, economy, and national security.

First, it's better for the environment that the U.S. produces energy. Thanks to advancements in drilling and mining technology, we can responsibly develop our energy resources and return the land to equal or better quality than it was before. I've spent a lot of time in the Middle East, and I can tell you with 100 percent certainty it is better to develop our energy here under reasonable regulations and export it to our allies, rather than have it produced overseas under little or no regulations.

Second, energy production is an absolute boon to the economy, supporting more than 6.4 million jobs [h1] and supplying affordable power for manufacturing, home heating, and transportation needs. In many communities coal jobs are the only jobs. Former Chairman Old Coyote of the Crow Tribe in my home state of Montana said it best, "there are no jobs like coal jobs." I hope to return those jobs to the Crow people.

And lastly, achieving American energy independence will strengthen our national security by reducing our reliance on foreign oil and allowing us to assist our allies with their energy needs. As a military commander, I saw how the power of the American economy and American energy defeated our adversaries around the world. We can do it again to keep Americans safe.

Now let's get to work.

---

**From:** Benedetto, Kathleen  
**To:** [James Cason](#); [Scott Hommel](#); [Jorjani, Daniel](#); [Douglas Domenech](#); [Katharine Macgregor](#); [Cardinale, Richard](#)  
**Subject:** Fwd: EARLY ALERT: Possible protest rallies at BLM oil and gas public meetings  
**Date:** Tuesday, March 14, 2017 5:08:23 PM

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FYI -

----- Forwarded message -----

From: Lenhardt, Kristen <klenhard@blm.gov>  
Date: Tue, Mar 14, 2017 at 4:33 PM  
Subject: Fwd: EARLY ALERT: Possible protest rallies at BLM oil and gas public meetings  
To: BLM\_WO\_100 <blm\_wo\_100@blm.gov>, BLM\_ADs@blm.gov  
Cc: Amy Krause <alkrause@blm.gov>, Beverly Winston <bwinston@blm.gov>, Cynthia Moses-Nedd <cnedd@blm.gov>, Jill Ralston <jralston@blm.gov>, Kathleen Benedetto <kathleen\_benedetto@ios.doi.gov>, Kimberly Brubeck <kbrubeck@blm.gov>, Megan Crandall <mcrandal@blm.gov>, Patrick Wilkinson <p2wilkin@blm.gov>, Matthew Allen <mrallen@blm.gov>, Salvatore Lauro <slauro@blm.gov>

Internal Working Document

Early Alert

Date: 3/14/17  
To: WO DOI/BLM Officials  
From: BLM California State Office  
What: Possible protest rallies at BLM oil and gas public meetings  
Where: Coalinga, Hollister and Salinas, CA  
Who: Activist Groups  
When: March 14-16, 2017

Background: Activist groups with Yes on Measure Z Protect our Water, Protect Monterey County, 350.org, and Keep It in the Ground are organizing protest rallies at BLM public meetings for the Central Coast Field Office's Draft Resource Management Plan for oil and gas leasing and development. The public meetings will be held on March 14 in Coalinga, March 15 in Hollister, and March 16 in Salinas. The largest crowd is expected at the Salinas meeting in Monterey County.

The groups organizing the protests are using Facebook and websites to promote the rallies and encourage participants to bring signs and to "Rally to Protest Trump's BLM". Disparate protesters are anticipated to be in attendance to possibly disrupt the event. The groups have invited media to attend.

BLM is coordinating with local law enforcement agencies, an operations plan focused on employee safety has been prepared, and law enforcement will be present at the meetings. The BLM Threat Mitigation Unit has been notified and is currently assessing social media chatter.

Ballot Measure Z was passed by local voters in Nov. 2016, and prohibits drilling new oil and gas wells in Monterey County, and bans well stimulation treatments, including hydraulic fracturing.

In September 2011 and December 2012, the Center for Biological Diversity (CBD) litigated the environmental

assessments for Hollister lease sales. The U.S. District Court ruled in favor of CBD, and found that the BLM violated the National Environmental Policy Act because the Reasonably Foreseeable Development scenario did not adequately consider the impacts of fracking.

Through a Settlement Agreement, BLM agreed to prepare a RMP Amendment/EIS for oil and gas leasing that further addressed fracking within the boundaries of the Central Coast Field Office. The plan addresses oil and gas leasing and development on 793,000 acres of federal mineral estate for Alameda, Contra Costa, Fresno, Merced, Monterey, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz and Stanislaus counties.

Contact: Joe Stout, Acting State Director, BLM California (916) 978-4600

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Kristen Lenhardt  
Acting Division Chief of Public Affairs  
Bureau of Land Management  
202-912-7629 | 307-214-7968

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<<http://www.blm.gov/wy/st/en/rss/newsreleases/wy.xml>> BLM Wyoming Twitter.  
<<http://twitter.com/BLMWyoming>>

**From:** Macgregor, Katharine  
**To:** [Megan Bloomgren](#); [Heather Swift](#)  
**Subject:** Fwd: EARLY ALERT: Possible protest rallies at BLM oil and gas public meetings  
**Date:** Tuesday, March 14, 2017 5:02:23 PM

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Heads up.

----- Forwarded message -----

**From:** **Moran, Jill** <[jcmoran@blm.gov](mailto:jcmoran@blm.gov)>  
**Date:** Tue, Mar 14, 2017 at 4:59 PM  
**Subject:** Fwd: EARLY ALERT: Possible protest rallies at BLM oil and gas public meetings  
**To:** Richard Cardinale <[richard\\_cardinale@ios.doi.gov](mailto:richard_cardinale@ios.doi.gov)>, Katharine Macgregor <[katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov)>

FYI

----- Forwarded message -----

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**Date:** Tue, Mar 14, 2017 at 4:33 PM  
**Subject:** Fwd: EARLY ALERT: Possible protest rallies at BLM oil and gas public meetings  
**To:** BLM\_WO\_100 <[blm\\_wo\\_100@blm.gov](mailto:blm_wo_100@blm.gov)>, [BLM\\_ADs@blm.gov](mailto:BLM_ADs@blm.gov)  
**Cc:** Amy Krause <[alkrause@blm.gov](mailto:alkrause@blm.gov)>, Beverly Winston <[bwinston@blm.gov](mailto:bwinston@blm.gov)>, Cynthia Moses-Nedd <[cnedd@blm.gov](mailto:cnedd@blm.gov)>, Jill Ralston <[jralston@blm.gov](mailto:jralston@blm.gov)>, Kathleen Benedetto <[kathleen\\_benedetto@ios.doi.gov](mailto:kathleen_benedetto@ios.doi.gov)>, Kimberly Brubeck <[kbrubeck@blm.gov](mailto:kbrubeck@blm.gov)>, Megan Crandall <[mcrandal@blm.gov](mailto:mcrandal@blm.gov)>, Patrick Wilkinson <[p2wilkin@blm.gov](mailto:p2wilkin@blm.gov)>, Matthew Allen <[mrallen@blm.gov](mailto:mrallen@blm.gov)>, Salvatore Lauro <[slauro@blm.gov](mailto:slauro@blm.gov)>

Internal Working Document

Early Alert

**Date:** 3/14/17  
**To:** WO DOI/BLM Officials  
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**When:** March 14-16, 2017

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Contact: Joe Stout, Acting State Director, BLM California (916) 978-4600

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### **Kristen Lenhardt**

Acting Division Chief of Public Affairs  
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#### **Connect with BLM Wyoming**

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### **Jill Moran**

Energy Program Analyst - BLM Liaison  
Office of the Assistant Secretary - Land and Mineral Management  
(202) 208-4114

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Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202-208-3671 (Direct)

**From:** Moran, Jill  
**To:** [Richard Cardinale](#); [Katharine Macgregor](#)  
**Subject:** Fwd: EARLY ALERT: Possible protest rallies at BLM oil and gas public meetings  
**Date:** Tuesday, March 14, 2017 5:00:13 PM

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FYI

----- Forwarded message -----

From: Lenhardt, Kristen <klenhard@blm.gov>  
Date: Tue, Mar 14, 2017 at 4:33 PM  
Subject: Fwd: EARLY ALERT: Possible protest rallies at BLM oil and gas public meetings  
To: BLM\_WO\_100 <blm\_wo\_100@blm.gov>, BLM\_ADs@blm.gov  
Cc: Amy Krause <alkrause@blm.gov>, Beverly Winston <bwinston@blm.gov>, Cynthia Moses-Nedd <cnedd@blm.gov>, Jill Ralston <jralston@blm.gov>, Kathleen Benedetto <kathleen\_benedetto@ios.doi.gov>, Kimberly Brubeck <kbrubeck@blm.gov>, Megan Crandall <mcrandal@blm.gov>, Patrick Wilkinson <p2wilkin@blm.gov>, Matthew Allen <mrallen@blm.gov>, Salvatore Lauro <slauro@blm.gov>

Internal Working Document

Early Alert

Date: 3/14/17  
To: WO DOI/BLM Officials  
From: BLM California State Office  
What: Possible protest rallies at BLM oil and gas public meetings  
Where: Coalinga, Hollister and Salinas, CA  
Who: Activist Groups  
When: March 14-16, 2017

Background: Activist groups with Yes on Measure Z Protect our Water, Protect Monterey County, 350.org, and Keep It in the Ground are organizing protest rallies at BLM public meetings for the Central Coast Field Office's Draft Resource Management Plan for oil and gas leasing and development. The public meetings will be held on March 14 in Coalinga, March 15 in Hollister, and March 16 in Salinas. The largest crowd is expected at the Salinas meeting in Monterey County.

The groups organizing the protests are using Facebook and websites to promote the rallies and encourage participants to bring signs and to "Rally to Protest Trump's BLM". Disparate protesters are anticipated to be in attendance to possibly disrupt the event. The groups have invited media to attend.

BLM is coordinating with local law enforcement agencies, an operations plan focused on employee safety has been prepared, and law enforcement will be present at the meetings. The BLM Threat Mitigation Unit has been notified and is currently assessing social media chatter.

Ballot Measure Z was passed by local voters in Nov. 2016, and prohibits drilling new oil and gas wells in Monterey County, and bans well stimulation treatments, including hydraulic fracturing.

In September 2011 and December 2012, the Center for Biological Diversity (CBD) litigated the environmental

assessments for Hollister lease sales. The U.S. District Court ruled in favor of CBD, and found that the BLM violated the National Environmental Policy Act because the Reasonably Foreseeable Development scenario did not adequately consider the impacts of fracking.

Through a Settlement Agreement, BLM agreed to prepare a RMP Amendment/EIS for oil and gas leasing that further addressed fracking within the boundaries of the Central Coast Field Office. The plan addresses oil and gas leasing and development on 793,000 acres of federal mineral estate for Alameda, Contra Costa, Fresno, Merced, Monterey, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz and Stanislaus counties.

Contact: Joe Stout, Acting State Director, BLM California (916) 978-4600

--

Kristen Lenhardt  
Acting Division Chief of Public Affairs  
Bureau of Land Management  
202-912-7629 | 307-214-7968

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<<http://twitter.com/BLMWyoming>>

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Jill Moran

Energy Program Analyst - BLM Liaison

Office of the Assistant Secretary - Land and Minerals Management

(202) 208-4114

**From:** Lenhardt, Kristen  
**To:** [BLM\\_WO\\_100](#); [BLM\\_ADs@blm.gov](mailto:BLM_ADs@blm.gov)  
**Cc:** [Amy Krause](#); [Beverly Winston](#); [Cynthia Moses-Nedd](#); [Jill Ralston](#); [Kathleen Benedetto](#); [Kimberly Brubeck](#); [Megan Crandall](#); [Patrick Wilkinson](#); [Matthew Allen](#); [Salvatore Lauro](#)  
**Subject:** Fwd: EARLY ALERT: Possible protest rallies at BLM oil and gas public meetings  
**Date:** Tuesday, March 14, 2017 4:33:46 PM

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## Internal Working Document

### Early Alert

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Kristen Lenhardt  
Acting Division Chief of Public Affairs  
Bureau of Land Management  
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<<http://www.blm.gov/wy/st/en/rss/newsreleases/wy.xml>> BLM Wyoming Twitter.  
<<http://twitter.com/BLMWyoming>>

**From:** Moran, Jill  
**To:** [Richard Cardinale](#); [Katharine Macgregor](#)  
**Cc:** [Kathleen Lacko](#)  
**Subject:** Fwd: Early and sale results: BLM Colorado March oil and gas lease sale  
**Date:** Friday, March 10, 2017 8:40:16 AM  
**Attachments:** [NR-March 17 lease sale.docx](#)  
[Sale Results March2017.pdf](#)  
[Early Alert-BLM CO March 17 Lease Sale.docx](#)

---

Yesterday's lease sale results...

----- Forwarded message -----

**From:** Lenhardt, Kristen <klenhard@blm.gov>  
**Date:** Fri, Mar 10, 2017 at 8:23 AM  
**Subject:** Early and sale results: BLM Colorado March oil and gas lease sale  
**To:** BLM\_WO\_100 <blm\_wo\_100@blm.gov>, BLM\_ADs@blm.gov  
**Cc:** Amy Krause <alkrause@blm.gov>, Beverly Winston <bwinston@blm.gov>, Cynthia Moses-Nedd <cnedd@blm.gov>, Jill Ralston <jralston@blm.gov>, Kathleen Benedetto <kathleen\_benedetto@ios.doi.gov>, Megan Crandall <mcrandal@blm.gov>, Kimberly Brubeck <kbrubeck@blm.gov>, Matthew Allen <mrallen@blm.gov>, Patrick Wilkinson <p2wilkin@blm.gov>

Early Alert

**To:** WO BLM/DOI Officials

**From:** Colorado State Office

**Through:** WO Public Affairs Group Manager

**Subject:** BLM Colorado March 9, 2017, lease sale nets \$90,9423

**What:** Today, the Bureau of Land Management Colorado State Office sold 17 parcels totaling 16,447.18 acres for \$90,943 including rentals and fees at its quarterly oil and gas lease sale. The highest per-acre price was for an 880-acre parcel in San Miguel County, sold to Retamco Operating, Inc. for \$10 per acre.

The BLM held the lease sale online via [www.energynet.com](http://www.energynet.com) <<http://www.energynet.com>>, under authority granted by Congress in the 2015 National Defense Authorization Act and in the Code of Federal Regulations. BLM Colorado conducted the first online lease sale as a pilot in 2009.

Who: BLM Colorado State Office.

Where: All parcels sold were located in Archuleta, Dolores, Montezuma and San Miguel counties within the Tres Rios Field Office.

When: March 9, 2017

Background: The BLM offered 17 parcels covering 16,447.18 acres in the Tres Rios Field Office. All parcels were leased.

The BLM received five protests to the sale and resolved all protests prior to leasing the parcels. The sale has not received media coverage and is not expected to receive significant coverage. Some environmental groups have shown interest in the sale results.

Contact: Ruth Welch, Colorado State Director, 303-239-3700

--

Kristen Lenhardt  
Acting Division Chief of Public Affairs  
Bureau of Land Management  
202-912-7629 | 307-214-7968

Connect with BLM Wyoming

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<<http://www.blm.gov/wy/st/en/rss/newsreleases/wy.xml>> BLM Wyoming Twitter.  
<<http://twitter.com/BLMWyoming>>

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Jill Moran  
Energy Program Analyst - BLM Liaison  
Office of the Assistant Secretary - Land and Minerals Management

(202) 208-4114



U.S. Department of the Interior  
Bureau of Land Management

# News Release

BLM Colorado

For Immediate Release: March 9, 2017

Contact: Courtney Whiteman, Public Affairs Specialist, 303-239-3668

## *BLM Colorado's oil and gas lease sale nets nearly \$1 million*

DENVER – Today, the Bureau of Land Management Colorado State Office sold 17 parcels totaling 16,447 acres for \$90,943 including rentals and fees at its quarterly oil and gas lease sale. The highest per-acre price was for an 880-acre parcel in San Miguel County, sold to Retamco Operating, Inc. for \$10 per acre.

Under authority granted the BLM by Congress in the 2015 National Defense Authorization Act and in the Code of Federal Regulations, BLM Colorado conducted the lease sale online via [www.energynet.com](http://www.energynet.com). Each parcel had its own bidding period that lasted two hours, and the public could observe the sale in real time by logging on to the website.

A lease is the first step before eventually applying to develop and produce oil and gas from the public mineral estate. Additional planning, environmental analysis and public input must occur before drilling can begin. If drilling occurs, every lease will require reclamation and contain standard terms and stipulations designed to protect air, water, wildlife, and historic and cultural resources.

In Fiscal Year 2016, oil and gas development on public lands directly contributed \$796 million to Colorado's economy. BLM Colorado received more than \$98 million in federal revenues, including royalties, rents and bonus bids, from oil and gas development on public lands. The State of Colorado receives 49 percent of these revenues. Statewide, more than 22,900 jobs are tied to mineral and energy development on public lands.

For information about BLM Colorado's oil and gas lease sales, visit: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/colorado>.

-BLM-

Bureau of Land Management  
Colorado State Office  
Competitive Oil & Gas Lease Sale  
Summary of Mar 09, 2017 Sale

3/9/2017

<b>Number of Parcels Offered:</b>	17
<b>Number of Parcels Sold:</b>	17
<b>Percentage of Parcels Sold:</b>	100.00 %
<b>Number of Acres Offered:</b>	16,447.180
<b>Number of Acres Sold:</b>	16,447.180
<b>Percentage of Acres Sold:</b>	100.00 %
<b>Average Bid Per Acre:</b>	\$3.86
<b>Highest Bid Per Acre:</b>	\$10.00
<b>High Bonus Bid:</b>	\$9,240.00
<b>Total Bonus Bid:</b>	\$63,546.00
<b>Total Rentals:</b>	\$24,676.50
<b>Total Administrative Fees:</b>	\$2,720.00
<b>Total Revenues:</b>	\$90,942.50
<b>Total Paid at Sale:</b>	\$60,682.50

**High Bidder: \$10.00 / acre Bid**

RETAMCO OPERATING, INC  
PO BOX 790  
RED LODGE, MT 59068

**High Bidder: \$9,240.00 Total Bonus**

ROBERT L. BAYLESS, PRODUCER LLC  
621 17TH STREET, SUITE 2300  
DENVER, CO 80111

Bureau of Land Management  
Colorado State Office  
Competitive Oil & Gas Lease Sale  
Parcels Sold at the Mar 09, 2017 Sale

<b>Parcel Number</b>	<b>Applicant's Name and Address</b>	<b>Bid Per Acre</b>	<b>Bonus Bid</b>
COC78157	RETAMCO OPERATING, INC PO BOX 790 RED LODGE, MT 59068	\$2.00	\$720.00
COC78158	RETAMCO OPERATING, INC PO BOX 790 RED LODGE, MT 59068	\$2.00	\$394.00
COC78159	RETAMCO OPERATING, INC PO BOX 790 RED LODGE, MT 59068	\$2.00	\$2,932.00
COC78160	ROBERT L. BAYLESS, PRODUCER LLC 621 17TH STREET, SUITE 2300 DENVER, CO 80111	\$6.00	\$9,240.00
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COC78165	RETAMCO OPERATING, INC PO BOX 790 RED LODGE, MT 59068	\$5.00	\$1,200.00
COC78166	LIBERTY PETROLEUM CORPORATION C/O KLURFELD, P.O. BOX 1549 NEW YORK, NY 10028	\$6.00	\$6,480.00
COC78167	LIBERTY PETROLEUM CORPORATION C/O KLURFELD, P.O. BOX 1549 NEW YORK, NY 10028	\$6.00	\$2,460.00

3/9/2017

Page 2

COC78168	RETAMCO OPERATING, INC PO BOX 790 RED LODGE, MT 59068	\$10.00	\$8,600.00
COC78169	LIBERTY PETROLEUM CORPORATION C/O KLURFELD, P.O. BOX 1549 NEW YORK, NY 10028	\$5.00	\$5,950.00
COC78170	RETAMCO OPERATING, INC PO BOX 790 RED LODGE, MT 59068	\$6.00	\$1,920.00
COC78171	RETAMCO OPERATING, INC PO BOX 790 RED LODGE, MT 59068	\$2.00	\$4,794.00
COC78172	TERRY A. MOORES P.O. BOX 128 MANCOS, CO 81328	\$2.00	\$3,588.00
COC78173	TERRY A. MOORES P.O. BOX 128 MANCOS, CO 81328	\$3.00	\$1,152.00

## Early Alert

To: WO BLM/DOI Officials  
From: Colorado State Office  
Through: WO Public Affairs Group Manager  
Subject: BLM Colorado March 9, 2017, lease sale nets \$90,942.50

What: Today, the Bureau of Land Management Colorado State Office sold 17 parcels totaling 16,447.18 acres for \$90,942.50 including rentals and fees at its quarterly oil and gas lease sale. The highest per-acre price was for an 880-acre parcel in San Miguel County, sold to Retamco Operating, Inc. for \$10 per acre.

The BLM held the lease sale online via [www.energynet.com](http://www.energynet.com), under authority granted by Congress in the 2015 National Defense Authorization Act and in the Code of Federal Regulations. BLM Colorado conducted the first online lease sale as a pilot in 2009.

Who: BLM Colorado State Office.

Where: All parcels sold were located in Archuleta, Dolores, Montezuma and San Miguel counties within the Tres Rios Field Office.

When: March 9, 2017

Background: The BLM offered 17 parcels covering 16,447.18 acres in the Tres Rios Field Office. All parcels were leased.

The BLM received five protests to the sale and resolved all protests prior to leasing the parcels. The sale has not received media coverage and is not expected to receive significant coverage. Some environmental groups have shown interest in the sale results.

Contact: Ruth Welch, Colorado State Director, 303-239-3700

**From:** Bail, Kristin  
**To:** [Richard Cardinale](#); [Katharine Macgregor](#)  
**Subject:** Fwd: Early and sale results: BLM Colorado March oil and gas lease sale  
**Date:** Friday, March 10, 2017 8:30:14 AM  
**Attachments:** [NR-March 17 lease sale.docx](#)  
[Sale Results March2017.pdf](#)  
[Early Alert-BLM CO March 17 Lease Sale.docx](#)

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YI. -K

----- Forwarded message -----

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**Date:** Fri, Mar 10, 2017 at 8:23 AM  
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<<http://twitter.com/BLMWyoming>>



U.S. Department of the Interior  
Bureau of Land Management

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Contact: Courtney Whiteman, Public Affairs Specialist, 303-239-3668

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-BLM-

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Colorado State Office  
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**From:** Lenhardt, Kristen  
**To:** [BLM\\_WO\\_100](#); [BLM\\_ADs@blm.gov](mailto:BLM_ADs@blm.gov)  
**Cc:** [Amy Krause](#); [Beverly Winston](#); [Cynthia Moses-Nedd](#); [Jill Ralston](#); [Kathleen Benedetto](#); [Megan Crandall](#); [Kimberly Brubeck](#); [Matthew Allen](#); [Patrick Wilkinson](#)  
**Subject:** Early and sale results: BLM Colorado March oil and gas lease sale  
**Date:** Friday, March 10, 2017 8:27:35 AM  
**Attachments:** [NR-March 17 lease sale.docx](#)  
[Sale Results March2017.pdf](#)  
[Early Alert-BLM CO March 17 Lease Sale.docx](#)

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Early Alert

**To:** WO BLM/DOI Officials

**From:** Colorado State Office

**Through:** WO Public Affairs Group Manager

**Subject:** BLM Colorado March 9, 2017, lease sale nets \$90,9423

**What:** Today, the Bureau of Land Management Colorado State Office sold 17 parcels totaling 16,447.18 acres for \$90,943 including rentals and fees at its quarterly oil and gas lease sale. The highest per-acre price was for an 880-acre parcel in San Miguel County, sold to Retamco Operating, Inc. for \$10 per acre.

The BLM held the lease sale online via [www.energynet.com](http://www.energynet.com) <<http://www.energynet.com/>>, under authority granted by Congress in the 2015 National Defense Authorization Act and in the Code of Federal Regulations. BLM Colorado conducted the first online lease sale as a pilot in 2009.

**Who:** BLM Colorado State Office.

**Where:** All parcels sold were located in Archuleta, Dolores, Montezuma and San Miguel counties within the Tres Rios Field Office.

**When:** March 9, 2017

Background: The BLM offered 17 parcels covering 16,447.18 acres in the Tres Rios Field Office. All parcels were leased.

The BLM received five protests to the sale and resolved all protests prior to leasing the parcels. The sale has not received media coverage and is not expected to receive significant coverage. Some environmental groups have shown interest in the sale results.

Contact: Ruth Welch, Colorado State Director, 303-239-3700

--

Kristen Lenhardt  
Acting Division Chief of Public Affairs  
Bureau of Land Management  
202-912-7629 | 307-214-7968

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U.S. Department of the Interior  
Bureau of Land Management

# News Release

BLM Colorado

For Immediate Release: March 9, 2017

Contact: Courtney Whiteman, Public Affairs Specialist, 303-239-3668

## *BLM Colorado's oil and gas lease sale nets nearly \$1 million*

DENVER – Today, the Bureau of Land Management Colorado State Office sold 17 parcels totaling 16,447 acres for \$90,943 including rentals and fees at its quarterly oil and gas lease sale. The highest per-acre price was for an 880-acre parcel in San Miguel County, sold to Retamco Operating, Inc. for \$10 per acre.

Under authority granted the BLM by Congress in the 2015 National Defense Authorization Act and in the Code of Federal Regulations, BLM Colorado conducted the lease sale online via [www.energynet.com](http://www.energynet.com). Each parcel had its own bidding period that lasted two hours, and the public could observe the sale in real time by logging on to the website.

A lease is the first step before eventually applying to develop and produce oil and gas from the public mineral estate. Additional planning, environmental analysis and public input must occur before drilling can begin. If drilling occurs, every lease will require reclamation and contain standard terms and stipulations designed to protect air, water, wildlife, and historic and cultural resources.

In Fiscal Year 2016, oil and gas development on public lands directly contributed \$796 million to Colorado's economy. BLM Colorado received more than \$98 million in federal revenues, including royalties, rents and bonus bids, from oil and gas development on public lands. The State of Colorado receives 49 percent of these revenues. Statewide, more than 22,900 jobs are tied to mineral and energy development on public lands.

For information about BLM Colorado's oil and gas lease sales, visit: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/colorado>.

-BLM-

Bureau of Land Management  
Colorado State Office  
Competitive Oil & Gas Lease Sale  
Summary of Mar 09, 2017 Sale

3/9/2017

<b>Number of Parcels Offered:</b>	17
<b>Number of Parcels Sold:</b>	17
<b>Percentage of Parcels Sold:</b>	100.00 %
<b>Number of Acres Offered:</b>	16,447.180
<b>Number of Acres Sold:</b>	16,447.180
<b>Percentage of Acres Sold:</b>	100.00 %
<b>Average Bid Per Acre:</b>	\$3.86
<b>Highest Bid Per Acre:</b>	\$10.00
<b>High Bonus Bid:</b>	\$9,240.00
<b>Total Bonus Bid:</b>	\$63,546.00
<b>Total Rentals:</b>	\$24,676.50
<b>Total Administrative Fees:</b>	\$2,720.00
<b>Total Revenues:</b>	\$90,942.50
<b>Total Paid at Sale:</b>	\$60,682.50

**High Bidder: \$10.00 / acre Bid**

RETAMCO OPERATING, INC  
PO BOX 790  
RED LODGE, MT 59068

**High Bidder: \$9,240.00 Total Bonus**

ROBERT L. BAYLESS, PRODUCER LLC  
621 17TH STREET, SUITE 2300  
DENVER, CO 80111

Bureau of Land Management  
Colorado State Office  
Competitive Oil & Gas Lease Sale  
Parcels Sold at the Mar 09, 2017 Sale

<b>Parcel Number</b>	<b>Applicant's Name and Address</b>	<b>Bid Per Acre</b>	<b>Bonus Bid</b>
COC78157	RETAMCO OPERATING, INC PO BOX 790 RED LODGE, MT 59068	\$2.00	\$720.00
COC78158	RETAMCO OPERATING, INC PO BOX 790 RED LODGE, MT 59068	\$2.00	\$394.00
COC78159	RETAMCO OPERATING, INC PO BOX 790 RED LODGE, MT 59068	\$2.00	\$2,932.00
COC78160	ROBERT L. BAYLESS, PRODUCER LLC 621 17TH STREET, SUITE 2300 DENVER, CO 80111	\$6.00	\$9,240.00
COC78161	ROBERT L. BAYLESS, PRODUCER LLC 621 17TH STREET, SUITE 2300 DENVER, CO 80111	\$7.00	\$5,390.00
COC78162	RETAMCO OPERATING, INC PO BOX 790 RED LODGE, MT 59068	\$4.00	\$3,680.00
COC78163	RETAMCO OPERATING, INC PO BOX 790 RED LODGE, MT 59068	\$2.00	\$4,722.00
COC78164	RETAMCO OPERATING, INC PO BOX 790 RED LODGE, MT 59068	\$2.00	\$324.00
COC78165	RETAMCO OPERATING, INC PO BOX 790 RED LODGE, MT 59068	\$5.00	\$1,200.00
COC78166	LIBERTY PETROLEUM CORPORATION C/O KLURFELD, P.O. BOX 1549 NEW YORK, NY 10028	\$6.00	\$6,480.00
COC78167	LIBERTY PETROLEUM CORPORATION C/O KLURFELD, P.O. BOX 1549 NEW YORK, NY 10028	\$6.00	\$2,460.00

3/9/2017

Page 2

COC78168	RETAMCO OPERATING, INC PO BOX 790 RED LODGE, MT 59068	\$10.00	\$8,600.00
COC78169	LIBERTY PETROLEUM CORPORATION C/O KLURFELD, P.O. BOX 1549 NEW YORK, NY 10028	\$5.00	\$5,950.00
COC78170	RETAMCO OPERATING, INC PO BOX 790 RED LODGE, MT 59068	\$6.00	\$1,920.00
COC78171	RETAMCO OPERATING, INC PO BOX 790 RED LODGE, MT 59068	\$2.00	\$4,794.00
COC78172	TERRY A. MOORES P.O. BOX 128 MANCOS, CO 81328	\$2.00	\$3,588.00
COC78173	TERRY A. MOORES P.O. BOX 128 MANCOS, CO 81328	\$3.00	\$1,152.00

## Early Alert

To: WO BLM/DOI Officials  
From: Colorado State Office  
Through: WO Public Affairs Group Manager  
Subject: BLM Colorado March 9, 2017, lease sale nets \$90,942.50

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Contact: Ruth Welch, Colorado State Director, 303-239-3700

**From:** Schindler, James  
**To:** [Daniel Jorjani](#); [Downey Magallanes](#)  
**Subject:** Fwd: February 8 -- Greenwire is ready  
**Date:** Thursday, February 09, 2017 11:44:50 AM  
**Attachments:** -- [NATIONAL MONUMENTS: Fans of abolishing sites aim to build on past examples -- Wednesday, February 8, 2017 -- www.eenews.pdf](#)

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"President Theodore Roosevelt designated the Mount Olympus National Monument there in 1909, but it faced three rounds of reductions before its conversion into Olympic National Park in 1938. The largest of those cuts reduced Mount Olympus by nearly half its acreage. According to National Park Service records, that cut occurred in 1915, when then President Wilson reduced the monument by more than 313,000 acres as "an urgent need for timber supplies, including spruce for airplane construction," arose with the advent of World War I. "It was very controversial, but it was never challenged in court," said Squillace, who cited the Mount Olympus boundary amendments as the best known monument changes. Olympic National Park contains around 923,000 acres.

Similarly, Franklin Roosevelt in 1940 slashed the Grand Canyon II National Monument by about one quarter of its original size, nearly 72,000 acres. Squillace noted that the reduction was "done almost certainly at the behest of the grazing industry." The monument would be redesignated as Grand Canyon National Park in 1975. "There are interesting legal arguments about whether these are appropriate modifications," he added.

A Congressional Research Service report on monument modification notes that the Muir Woods National Monument in California has similarly undergone repeated boundary changes — as four presidents enlarged the site between its 1908 founding and 1959. But a boundary reduction — whether at Bears Ears or Grand Staircase Escalante — would likely prompt a lawsuit against the Trump administration, Pidot asserts."

----- Forwarded message -----

**From:** **Moody, Aaron** <[aaron.moody@sol.doi.gov](mailto:aaron.moody@sol.doi.gov)>  
**Date:** Wed, Feb 8, 2017 at 1:52 PM  
**Subject:** Fwd: February 8 -- Greenwire is ready  
**To:** Downey Magallanes <[downey\\_magallanes@ios.doi.gov](mailto:downey_magallanes@ios.doi.gov)>, James Schindler <[james\\_schindler@ios.doi.gov](mailto:james_schindler@ios.doi.gov)>, Kevin Haugrud <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>, "Keable, Edward" <[edward.keable@sol.doi.gov](mailto:edward.keable@sol.doi.gov)>, "Brown, Laura" <[Laura.Brown@sol.doi.gov](mailto:Laura.Brown@sol.doi.gov)>

See article #3 below, which may be of interest. If you don't have access, let me know and I can get you a copy.

Aaron G. Moody  
Assistant Solicitor, Branch of Public Lands  
Division of Land Resources  
Office of the Solicitor  
U.S. Department of the Interior  
202-208-3495

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Subject: February 8 -- Greenwire is ready

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**GREENWIRE — Wed., February 8, 2017**

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#### TOP STORIES

#### 2. **CLIMATE:**

### **GOP statesmen launch 'uphill slog' for carbon tax**

#### 3. **NATIONAL MONUMENTS:**

### **Fans of abolishing sites aim to build on past examples**

#### 4. **CALIFORNIA:**

### **5 key players in climate showdown with Trump**

#### POLITICS

#### 5. **REGULATIONS:**

### **Environmentalists sue Trump over executive order**

#### 6. **EPA:**

## **Judge sets hearing on Pruitt open records lawsuit**

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**Trump may repeal 'conflict mineral' disclosure**

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### **8. FEDERAL AGENCIES:**

**Lawmakers scrutinize nondisclosure agreements**

### **9. PUBLIC LANDS:**

**Sportsmen aim to derail Chaffetz bill to cut police units**

### **10. AGRICULTURE:**

**Farmland conservation tops state priority list for rewrite**

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### **11. EVERGLADES:**

**Bid to buy sugar fields for reservoir advances in Fla. Senate**

### **12. WEATHER:**

**Calif. spillway crumbles as rains max out reservoirs**

### **13. FISHERIES:**

**Army Corps looks to privatize 7 Ore. hatcheries**

### **14. WEATHER:**

**Tornadoes rip through New Orleans, damage NASA facility**

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### **15. REGULATIONS:**

**Trump DOJ appeals order forcing EPA to tally lost coal jobs**

### **16. WATER POLLUTION:**

**Homebuilders sue EPA over stormwater permit**

### **17. COAL:**

**Settlement paves way for women in underground mines**

### **18. PIPELINES:**

**Company files eminent domain suit to clear trees**

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### **19. DAKOTA ACCESS:**

**Seattle cuts ties with Wells Fargo over pipeline**

### **20. OIL AND GAS:**

**Cracks, holes found in Valdez tank liner**

## **AIR AND WATER**

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### **21. WATER POLLUTION:**

## Trump company still on hook for S.C. cleanup

### 22. WATER POLLUTION:

#### EPA OKs slower regs for Wis. pollutant discharge

### 23. DRINKING WATER:

#### Trump list gives new life to desert pumping project

## TRANSPORTATION

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### 24. AUTOS:

#### Toyota, Suzuki aim to jointly develop eco technology

## STATES

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### 25. VIRGINIA:

#### State Senate moves to weaken executive, agency power

### 26. MISSOURI:

#### Power-purchase bill gathers major business backers

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 THE LEADER IN ENERGY AND ENVIRONMENT NEWS
 

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## NATIONAL MONUMENTS

### Fans of abolishing sites aim to build on past examples

Jennifer Yachnin, E&E News reporter

Published: Wednesday, February 8, 2017



Col. William F. "Buffalo Bill" Cody, center, and others visited Spirit Mountain Cave in 1909. Photo courtesy of Wyoming State Archives and Wyoming Geological Survey 1979.

More than 1,100 people make their way up Cedar Mountain in Wyoming each year, trekking 3 miles west of Cody and up a gravel road to explore the expansive Spirit Mountain Cave.

While spelunkers might appreciate the limestone cavern for both its beauty and its solitude — it's accessible only after securing a permit from the Bureau of Land Management and submitting a \$20 deposit to unlock the facility's gate — Congress might have more interest in the site's historical lessons.

The cave claims a status as one of the first national monuments to be created in the wake of the Antiquities Act of 1906, as well as one of the few to be formally abolished by Congress and transferred to state ownership, in 1954. But the land eventually made a round trip two decades later back to federal status — though not as a national monument.

Along the way, the 210-acre site changed its name from Frost Cave, in honor of the rancher who discovered it, to Shoshone Cavern National Monument and now to Spirit Mountain Cave.

"It turns out these monuments are quite popular even in the states where some of the politicians object," said University of Colorado Law School professor Mark Squillace, who has studied the Antiquities Act.

Previous attempts to change monuments — including an unwanted harbor island in South Carolina and iconic Western areas wanted for grazing or timber — show there's no easy path for proponents of either abolishing them or simply amending their boundaries.

As Utah's state government, its congressional delegation and the Trump administration contemplate whether and how to reverse former President Obama's designation of the 1.35-million-acre Bears Ears National Monument in southeast Utah, there is relatively little precedent to rely on.

Congress itself has abolished fewer than a dozen national monuments — typically small sites like Spirit Mountain Cave that have been returned to state ownership or transferred to other agencies — and converted the status of another 50-odd monuments to national parks or preserves.

"Congress has never reversed a decision on a major national monument. That seems to suggest that there really isn't much appetite in the Congress for reversing these things once they are dedicated," Squillace said.

It may be that reluctance on Capitol Hill that has prompted House Natural Resources Chairman Rob Bishop (R-Utah) and his fellow legislators as well as the state Legislature to urge President Trump to undo the Bears Ears designation, as well as to shrink the

boundaries of the state's Grand Staircase-Escalante National Monument.

"The fact that you can modify a monument, that's OK, means you can also just rescind a monument," Bishop told E&E News late last year, before Bears Ears was announced ([E&E News PM](#), Nov. 17, 2016).

But conservationists and some legal observers dispute that notion, asserting that the Antiquities Act does not give presidents that kind of authority. To date, no president has attempted to abolish a monument designation made by his predecessor, an action that would likely become entangled in legal challenges.

"There's really no precedent for a president abolishing a monument," said former Interior Department Deputy Solicitor for Land Resources Justin Pidot, who is now an associate professor at the University of Denver Sturm College of Law.

Both Pidot and Squillace pointed to an opinion then-Attorney General Homer Cummings issued in 1938 in response to whether President Franklin Roosevelt could abolish a monument designated by former President Coolidge.

In that decision, Cummings found that there was no statutory authority to revoke a monument, and that because such designations are equivalent to an act of Congress, only lawmakers could abolish a monument.

"The Antiquities Act explicitly delegates to the president the authority to proclaim a national monument but says nothing about revocation or modification," Squillace said. "There's a good policy reason for this, as well. The point of the Antiquities Act is to protect lands that have some sort of historic or scientific interest that the president thinks are worthy of protection."

The handful of monuments abolished by Congress itself include the one targeted by Roosevelt that prompted the 1938 opinion.

The former Castle Pinckney National Monument, a fort built in 1810 in the harbor of Charleston, S.C., gained its monument status in 1924. The 3.5-acre site was abolished by Congress in 1956 and transferred to South Carolina, where it was later purchased by the South Carolina Ports Authority.

News reports indicate that the dilapidated structure, which is not open to the public, was sold in 2011 to a local chapter of the Sons of Confederate Veterans for a nominal sum of \$10.

### Boundary changes

Trump could, however, opt to rein in the boundaries of any national monuments — since the Antiquities Act requires only the "smallest area compatible with the proper care and management of the objects to be protected."

One of the most prominent examples of presidential reductions can be found in Washington state.

President Theodore Roosevelt designated the Mount Olympus National Monument there in 1909, but it faced three rounds of reductions before its conversion into Olympic National Park in 1938.

The largest of those cuts reduced Mount Olympus by nearly half its acreage.

According to National Park Service records, that cut occurred in 1915, when then-President Wilson reduced the monument by more than 313,000 acres as "an urgent need for timber supplies, including spruce for airplane construction," arose with the advent of World War I.

"It was very controversial, but it was never challenged in court," said Squillace, who cited the Mount Olympus boundary amendments as the best-known monument changes. Olympic National Park contains around 923,000 acres.

Similarly, Franklin Roosevelt in 1940 slashed the Grand Canyon II National Monument by about one-quarter of its original size, nearly 72,000 acres. Squillace noted that the reduction was "done almost certainly at the behest of the grazing industry."

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A Congressional Research Service report on monument modification notes that the Muir Woods National Monument in California has similarly undergone repeated boundary changes — as four presidents enlarged the site between its 1908 founding and 1959.



Early cave explorers pose in the main passage of Spirit Mountain Cave. Photo courtesy of Wyoming State Archives and Wyoming Geological Survey 1979.

But a boundary reduction — whether at Bears Ears or Grand-Staircase Escalante — would likely prompt a lawsuit against the Trump administration, Pidot asserts.

"The president lacks authority to adjust a boundary if, in so doing, an object of scientific or historic interest that was included in the public proclamation would be outside the boundary of the monument," he said.

Critics of the Bears Ears monument, including Utah House Speaker Greg Hughes (R), have questioned the designation's protection of animals including skunks and its stated desire to protect "natural and quiet, deafening silence" ([Greenwire](#), Feb. 1).

Pidot acknowledged that defending the designation could be an "uphill battle" compared with changes to a boundary.

Still, he added: "That part of the world is full of cultural and historical resources all over the place, and the president's proclamation identifies a wide range of sites that are throughout the area. Anything other than a very surgical and limited modification of the boundary is inevitably going to leave some site that was inhabited thousands of years ago or continues to have spiritual significance to the tribes out of the boundary. That's where the most aggressive legal challenges are going to be brought."

Such challenges could include tribes who have been given a role in the Bears Ears Commission to advise the Interior Department on the monument's management ([E&E News PM](#), Jan. 30).

"The thing to me about Bears Ears that is so special ... is that it's the first time where tribes that have inhabited that landscape for generations upon generations were both so strongly seeking protection for their cultural and sacred sites and given an important advisory role in the way the federal government is going to manage these sites going forward," Pidot added. "I think it would be a real loss for a monument that in some sense is trying to change the dynamic between the federal government and tribes."

### Conversion to parks

While more than 50 former national monuments have been converted to national parks, national historical parks or national preserves, those shifts tend to ruffle fewer feathers, explained former National Park Service Chief Historian Bob Sutton.

A spate of modifications to monuments in the 1970s and 1980s sought to address sites established in some cases before NPS itself was created in 1916.

The sites "had no money, no administration, nothing. They were designated, but beyond that there was no real mechanism to manage or fund any of these sites," he said.

Recent conversions include the First State National Historical Park in Delaware and the Oregon Caves National Monument and Preserve.

The former spent a little more than a year as a national monument before Congress approved its new status in fall 2014, while the Oregon Caves National Monument was first created in 1909.

Still, while national monument status generally prohibits new mineral leasing or extraction and limits road construction, Sutton said national park status can offer even more safeguards to public lands.

"Generally, they're far more protected, and there's usually a budget for NPS units as opposed to national monuments," Sutton said, noting that parks are typically created with both a fee boundary and a congressional boundary to allow NPS to purchase additional lands.

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"The Antiquities Act explicitly delegates to the president the authority to proclaim a national monument but says nothing about revocation or modification," Squillace said. "There's a good policy reason for this, as well. The point of the Antiquities Act is to protect lands that have some sort of historic or scientific interest that the president thinks are worthy of protection."

The handful of monuments abolished by Congress itself include the one targeted by Roosevelt that prompted the 1938 opinion.

The former Castle Pinckney National Monument, a fort built in 1810 in the harbor of Charleston, S.C., gained its monument status in 1924. The 3.5-acre site was abolished by Congress in 1956 and transferred to South Carolina, where it was later purchased by the South Carolina Ports Authority.

News reports indicate that the dilapidated structure, which is not open to the public, was sold in 2011 to a local chapter of the Sons of Confederate Veterans for a nominal sum of \$10.

### Boundary changes

Trump could, however, opt to rein in the boundaries of any national monuments — since the Antiquities Act requires only the "smallest area compatible with the proper care and management of the objects to be protected."

One of the most prominent examples of presidential reductions can be found in Washington state.

President Theodore Roosevelt designated the Mount Olympus National Monument there in 1909, but it faced three rounds of reductions before its conversion into Olympic National Park in 1938.

The largest of those cuts reduced Mount Olympus by nearly half its acreage.

According to National Park Service records, that cut occurred in 1915, when then-President Wilson reduced the monument by more than 313,000 acres as "an urgent need for timber supplies, including spruce for airplane construction," arose with the advent of World War I.

"It was very controversial, but it was never challenged in court," said Squillace, who cited the Mount Olympus boundary amendments as the best-known monument changes. Olympic National Park contains around 923,000 acres.

Similarly, Franklin Roosevelt in 1940 slashed the Grand Canyon II National Monument by about one-quarter of its original size, nearly 72,000 acres. Squillace noted that the reduction was "done almost certainly at the behest of the grazing industry."

The monument would be redesignated as Grand Canyon National Park in 1975.

"There are interesting legal arguments about whether these are appropriate modifications," he added.

A Congressional Research Service report on monument modification notes that the Muir Woods National Monument in California has similarly undergone repeated boundary changes — as four presidents enlarged the site between its 1908 founding and 1959.



Early cave explorers pose in the main passage of Spirit Mountain Cave. Photo courtesy of Wyoming State Archives and Wyoming Geological Survey 1979.

But a boundary reduction — whether at Bears Ears or Grand-Staircase Escalante — would likely prompt a lawsuit against the Trump administration, Pidot asserts.

"The president lacks authority to adjust a boundary if, in so doing, an object of scientific or historic interest that was included in the public proclamation would be outside the boundary of the monument," he said.

Critics of the Bears Ears monument, including Utah House Speaker Greg Hughes (R), have questioned the designation's protection of animals including skunks and its stated desire to protect "natural and quiet, deafening silence" ([Greenwire](#), Feb. 1).

Pidot acknowledged that defending the designation could be an "uphill battle" compared with changes to a boundary.

Still, he added: "That part of the world is full of cultural and historical resources all over the place, and the president's proclamation identifies a wide range of sites that are throughout the area. Anything other than a very surgical and limited modification of the boundary is inevitably going to leave some site that was inhabited thousands of years ago or continues to have spiritual significance to the tribes out of the boundary. That's where the most aggressive legal challenges are going to be brought."

Such challenges could include tribes who have been given a role in the Bears Ears Commission to advise the Interior Department on the monument's management ([E&E News PM](#), Jan. 30).

"The thing to me about Bears Ears that is so special ... is that it's the first time where tribes that have inhabited that landscape for generations upon generations were both so strongly seeking protection for their cultural and sacred sites and given an important advisory role in the way the federal government is going to manage these sites going forward," Pidot added. "I think it would be a real loss for a monument that in some sense is trying to change the dynamic between the federal government and tribes."

### Conversion to parks

While more than 50 former national monuments have been converted to national parks, national historical parks or national preserves, those shifts tend to ruffle fewer feathers, explained former National Park Service Chief Historian Bob Sutton.

A spate of modifications to monuments in the 1970s and 1980s sought to address sites established in some cases before NPS itself was created in 1916.

The sites "had no money, no administration, nothing. They were designated, but beyond that there was no real mechanism to manage or fund any of these sites," he said.

Recent conversions include the First State National Historical Park in Delaware and the Oregon Caves National Monument and Preserve.

The former spent a little more than a year as a national monument before Congress approved its new status in fall 2014, while the Oregon Caves National Monument was first created in 1909.

Still, while national monument status generally prohibits new mineral leasing or extraction and limits road construction, Sutton said national park status can offer even more safeguards to public lands.

"Generally, they're far more protected, and there's usually a budget for NPS units as opposed to national monuments," Sutton said, noting that parks are typically created with both a fee boundary and a congressional boundary to allow NPS to purchase additional lands.

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**From:** Chambers, Micah  
**To:** [Salotti, Christopher](#); [Quinn, Matthew](#)  
**Subject:** Fwd: Federal Land Freedom Act  
**Date:** Wednesday, February 22, 2017 3:00:44 PM  
**Attachments:** [FLFA\\_BLACK\\_012\\_xml.pdf](#)

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This is really a technical assistance request from Rep. Black's office. I know it was marked up in committee last year, so I thought you might have already provided input via sap. Or you might just have some insight. Thanks

----- Forwarded message -----

From: Micah Chambers <[micahdchambers@gmail.com](mailto:micahdchambers@gmail.com)>  
Date: Wed, Feb 22, 2017 at 2:39 PM  
Subject: Fwd: Federal Land Freedom Act  
To: [micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov)

----- Forwarded message -----

From: Burch, Ace <[ABurch@mail.house.gov](mailto:ABurch@mail.house.gov)>  
Date: Wed, Feb 22, 2017 at 1:06 PM  
Subject: Federal Land Freedom Act  
To: "micahdchambers@gmail.com" <[micahdchambers@gmail.com](mailto:micahdchambers@gmail.com)>

Micah,

My boss is re-introducing the Federal Lands Freedom Act. We were happy to have your boss's support on our version in the previous Congress. Once you are settled in your new position, we were hoping you could put us in contact with a staff member we could run our legislative proposal by. We want to be as helpful to your boss as possible and discuss this legislation sooner rather than later as we move forward with the process.

Thank you.

Ace Burch

Legislative Aide

Rep. Diane Black (TN-06)

--

Micah Chambers  
Special Assistant / Acting Director  
Office of Congressional & Legislative Affairs  
Office of the Secretary of the Interior

.....  
(Original Signature of Member)

115TH CONGRESS  
1ST SESSION

# H. R.

To achieve domestic energy independence by empowering States to control the exploration, development, and production of oil and gas on all available Federal land, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

Mrs. BLACK introduced the following bill; which was referred to the  
Committee on

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# A BILL

To achieve domestic energy independence by empowering States to control the exploration, development, and production of oil and gas on all available Federal land, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Land Freedom  
5 Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1           (1) as of the date of the enactment of this  
2 Act—

3           (A) 113,000,000 acres of onshore Federal  
4 land are open and accessible for oil and gas de-  
5 velopment; and

6           (B) approximately 166,000,000 acres of  
7 onshore Federal land are off-limits or inaccess-  
8 sible for oil and gas development;

9           (2) despite the recent oil and gas boom in the  
10 United States, the number of acres of Federal land  
11 leased for oil and gas exploration has decreased by  
12 31 percent since 2008;

13           (3) in 2015, the Federal Government leased  
14 only 36,000,000 acres of Federal land, in contrast to  
15 the 131,000,000 acres that were leased in 1984;

16           (4) the reduction in leasing of Federal land  
17 harms economic growth and Federal revenues;

18           (5) in 2015, it took, on average, 220 days to  
19 process applications for permits to drill on Federal  
20 land; and

21           (6) States have extensive and sufficient regu-  
22 latory frameworks for permitting oil and gas devel-  
23 opment.

24 **SEC. 3. DEFINITIONS.**

25 In this Act:

1           (1) AVAILABLE FEDERAL LAND.—The term  
2           “available Federal land” means any Federal land  
3           that, as of May 31, 2017—

4                   (A) is located within the boundaries of a  
5           State;

6                   (B) is not held by the United States in  
7           trust for the benefit of a federally recognized  
8           Indian tribe;

9                   (C) is not a unit of the National Park Sys-  
10          tem;

11                   (D) is not a unit of the National Wildlife  
12          Refuge System;

13                   (E) is not Congressionally approved wilder-  
14          ness area under the Wilderness Act (16 U.S.C.  
15          1131 et seq.); and

16                   (F) has been identified as land available  
17          for lease for the exploration, development, and  
18          production of oil or gas—

19                           (i) by the Bureau of Land Manage-  
20                           ment under a Resource Management Plan  
21                           pursuant to the process provided for in the  
22                           Federal Land Management and Policy Act  
23                           of 1976 (43 U.S.C. 1701 et seq.); or

24                           (ii) by the Forest Service under a  
25                           Forest Management Plan pursuant to the

1 process provided for in the National Forest  
2 Management Act of 1976 (16 U.S.C. 1600  
3 et seq.).

4 (2) STATE.—The term “State” means—

5 (A) one of the several States; and

6 (B) the District of Columbia.

7 (3) STATE REGULATORY PROGRAM.—The term  
8 “State regulatory program” means a program estab-  
9 lished pursuant to State law that regulates oil and  
10 gas exploration, development, and production on  
11 land located in the State.

12 **SEC. 4. STATE CONTROL OF OIL AND GAS EXPLORATION,**  
13 **DEVELOPMENT, AND PRODUCTION ON ALL**  
14 **AVAILABLE FEDERAL LAND.**

15 (a) SUBMISSION OF STATE REGULATORY PRO-  
16 GRAM.—Each State in which there may be the leasing,  
17 permitting, or regulating of oil and gas exploration, devel-  
18 opment, and production activities on available Federal  
19 lands, and which wishes to assume exclusive jurisdiction  
20 over the leasing, permitting, and regulation of such oil and  
21 gas activities, shall submit to the Secretaries of the Inte-  
22 rior and Agriculture a State regulatory program which  
23 demonstrates that such State has the capability of car-  
24 rying out the provisions of this Act and meeting its pur-  
25 poses through—

1           (1) a State law which provides for the leasing,  
2           regulation and permitting of oil and gas exploration,  
3           development, and production activities;

4           (2) a State law which provides sanctions for  
5           violations of State laws, regulations, or conditions of  
6           permits concerning oil and gas exploration, develop-  
7           ment, and production activities;

8           (3) a State regulatory authority with sufficient  
9           administrative and technical personnel, and suffi-  
10          cient funding to enable the State to lease, regulate  
11          and permit oil and gas exploration, development, and  
12          production activities; and

13          (4) a State law which provides for the effective  
14          implementation, maintenance, and enforcement of a  
15          permit system for oil and gas exploration, develop-  
16          ment, and production activities coal on available  
17          Federal lands within the State.

18          (b) APPROVAL OF STATE REGULATORY PROGRAM.—  
19          The State regulatory program submitted under subsection  
20          (a) shall be deemed approved, unless, within 60 days, the  
21          Secretaries of the Interior and Agriculture find approval  
22          of a State regulatory program would result in decreased  
23          royalty payments to the Federal Government or the Secre-  
24          taries of the Interior and Agriculture determine the State  
25          Regulatory Program submitted under subsection (a) does

1 not have the capability of carrying out the provisions of  
2 this Act.

3 (c) EFFECT OF APPROVAL OF STATE REGULATORY  
4 PROGRAM.—Notwithstanding any other provision of law,  
5 on approval of a State regulatory program under sub-  
6 section (b), the State shall assume the Federal leasing,  
7 permitting and regulatory responsibilities for oil and gas  
8 exploration, development, and production on available  
9 Federal land located in the State in accordance with the  
10 approved plan.

11 (d) EFFECT OF STATE ACTION.—Any action by a  
12 State to lease, permit, or regulate oil and gas exploration,  
13 development, and production in accordance with an ap-  
14 proved State regulatory program shall not be subject to,  
15 or considered a Federal action, Federal permit, or Federal  
16 license under—

17 (1) subchapter II of chapter 5, and chapter 7,  
18 of title 5, United States Code (commonly known as  
19 the “Administrative Procedure Act”);

20 (2) chapter 3001 of title 54, United States  
21 Code;

22 (3) the Endangered Species Act of 1973 (16  
23 U.S.C. 1531 et seq.); or

24 (4) the National Environmental Policy Act of  
25 1969 (42 U.S.C. 4321 et seq.).

1 (e) REASSUMPTION OF REGULATORY AUTHORITY BY  
2 THE SECRETARY.—

3 (1) VOLUNTARY SURRENDER OF AUTHORITY.—

4 If a State regulatory program has been approved  
5 under subsection (b), such state may voluntarily re-  
6 voke such approval, and relinquish the duties under  
7 subsection (c) upon providing a 60-day notice to the  
8 Secretaries of the Interior and Agriculture. Upon  
9 the expiration of the 60-day period, the state shall  
10 no longer be permitted to lease, regulate, or permit  
11 oil and gas exploration, development, and production  
12 activities on available Federal lands.

13 (2) INVOLUNTARY SURRENDER OF AUTHOR-  
14 ITY.—If the Secretaries of the Interior or Agri-  
15 culture determine a State regulatory program has  
16 resulted in a 20 percent decrease in royalties to the  
17 Federal government from the preceding year, the  
18 Secretaries shall notify the state of such decrease.  
19 Such notified state shall have 180 days to address  
20 the royalty deficiency. If a state fails to improve the  
21 amount of royalties paid to the federal government,  
22 then the Secretaries of the Interior and Agriculture  
23 may jointly determine to revoke the approval of the  
24 state regulatory program under subsection (b).

1 **SEC. 5. NO EFFECT ON FEDERAL REVENUES.**

2 (a) IN GENERAL.—Any lease or permit issued by a  
3 State under section 4 shall include provisions for the col-  
4 lection of royalties or other revenues in an amount equal  
5 to the amount of royalties or revenues that would have  
6 been collected if the lease or permit had been issued by  
7 the Federal Government.

8 (b) DISPOSITION OF REVENUES.—Any revenues col-  
9 lected under a lease or permit issued by a State under  
10 section 4 shall be deposited in the same Federal account  
11 in which the revenues would have been deposited if the  
12 lease or permit had been issued by the Federal Govern-  
13 ment.

14 (c) EFFECT ON STATE PROCESSING FEES.—Nothing  
15 in this Act prohibits a State from collecting and retaining  
16 a fee from an applicant to cover the administrative costs  
17 of processing an application for a lease or permit.

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<subparagraph id="HF434B57A86D948AEBDCFC73D15BDCCE9"><enum>(A)</enum><text display-inline="yes-display-inline">113,000,000 acres of onshore Federal land are open and accessible for oil and gas development; and</text></subparagraph>  
<subparagraph id="HBDD9B099E00F4425909FC3ACB7734F4D"><enum>(B)</enum><text>approximately 166,000,000 acres of onshore Federal land are off-limits or inaccessible for oil and gas development;</text></subparagraph></paragraph>  
<paragraph id="H9F9FF002530547008B172B4DE50373D3"><enum>(2)</enum><text>despite the recent oil and gas boom in the United States, the number of acres of Federal land leased for oil and gas exploration has decreased by 31 percent since 2008;</text></paragraph>  
<paragraph id="H6A29AF04F2BA4731AD49B0294DA8405E"><enum>(3)</enum><text>in 2015,

the Federal Government leased only 36,000,000 acres of Federal land, in contrast to the 131,000,000 acres that were leased in 1984;

(4) the reduction in leasing of Federal land harms economic growth and Federal revenues;

(5) in 2015, it took, on average, 220 days to process applications for permits to drill on Federal land; and

(6) States have extensive and sufficient regulatory frameworks for permitting oil and gas development.

3. **Definitions**  
In this Act:

(1) **Available federal land**—The term **available Federal land** means any Federal land that, as of May 31, 2017—

(A) is located within the boundaries of a State;

(B) is not held by the United States in trust for the benefit of a federally recognized Indian tribe;

(C) is not a unit of the National Park System;

(D) is not a unit of the National Wildlife Refuge System;

(E) is not Congressionally approved wilderness area under the Wilderness Act (16 U.S.C. 1131 et seq.); and

(F) has been identified as land available for lease for the exploration, development, and production of oil or gas—

(i) by the Bureau of Land Management under a Resource Management Plan pursuant to the process provided for in the Federal Land Management and Policy Act of 1976 (43 U.S.C. 1701 et seq.); or

(ii) by the Forest Service under a Forest Management Plan pursuant to the process provided for in the National Forest Management Act of 1976 (16 U.S.C. 1600 et seq.).

(2) **State**—The term **State** means—

(A) one of the several States; and

(B) the District of Columbia.

(3) **State regulatory program**—The term **State regulatory program** means a program established pursuant to State law that regulates oil and gas exploration, development, and production on land located in the State.

4. **State control of oil and gas exploration, development, and production on all available Federal land**

(a) **Submission of State regulatory program**—Each State in which there may be the leasing, permitting, or regulating of oil and gas exploration, development, and production activities on available Federal lands, and which wishes to assume exclusive jurisdiction over the leasing, permitting, and regulation of such oil and gas activities, shall submit to the Secretary of the Interior and Agriculture a State regulatory program which demon

strates that such State has the capability of carrying out the provisions of this Act and meeting its purposes through

<paragraph id="H07958B96480B4311A7CB6B24F5F0F278"><enum>(1)</enum><text>a State law which provides for the leasing, regulation and permitting of oil and gas exploration, development, and production activities;</text></paragraph>

<paragraph id="H732345DA41424905BCBC41983C9670DB"><enum>(2)</enum><text>a State law which provides sanctions for violations of State laws, regulations, or conditions of permits concerning oil and gas exploration, development, and production activities;</text></paragraph>

<paragraph id="HDF2A0A61C48546E8A0A61D082A449255"><enum>(3)</enum><text>a State regulatory authority with sufficient administrative and technical personnel, and sufficient funding to enable the State to lease, regulate and permit oil and gas exploration, development, and production activities; and</text></paragraph>

<paragraph id="H9723276459314EA8A7D7539998BD58B1"><enum>(4)</enum><text>a State law which provides for the effective implementation, maintenance, and enforcement of a permit system for oil and gas exploration, development, and production activities on available Federal lands within the State.</text></paragraph></sub

subsection><subsection id="HE2C54FC8BAF84CCD8358FF18F95A08F0"><enum>(b)</enum><header>Approval of state regulatory program</header><text display-inline="yes-display-inline">

The State regulatory program submitted under subsection (a) shall be deemed approved, unless, within 60 days, the Secretaries of the Interior and Agriculture find approval of a State regulatory program would result in decreased royalty payments to the Federal Government or the Secretaries of the Interior and Agriculture determine the State Regulatory Program submitted under subsection (a) does not have the capability of carrying out the provisions of this Act.</text></sub

section><subsection id="HE3FAAB31412443458C69EC192CAD04F4" commented="no"><enum>(c)</enum><header>Effect of Approval of State regulatory program</header><text display-

inline="yes-display-inline">Notwithstanding any other provision of law, on approval of a State regulatory program under subsection (b), the State shall assume the Federal leasing, permitting and regulatory responsibilities for oil and gas exploration, development, and production on available Federal land located in the State in accordance with the approved plan.</text></subsection>

<subsection id="HD469D5618EB440FFA0A5349FAFF801EB"><enum>(d)</enum><header>Effect of State action</header><text display-inline="yes-display-inline">

Any action by a State to lease, permit, or regulate oil and gas exploration, development, and production in accordance with an approved State regulatory program shall not be subject to, or considered a Federal action, Federal permit, or Federal license under

<paragraph id="HB8CA6583EFF94642BA5F7C9B9E8E3CC6"><enum>(1)</enum><text>subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the Administrative Procedure Act);</text></paragraph>

<paragraph id="H4BC37E1619654265ACC387278A8E72E7"><enum>(2)</enum><text>chapter 3001 of title 54, United States Code;</text></paragraph>

<paragraph id="HE4E116B629A04F6FA2423839FA8C2FC1"><enum>(3)</enum><text>the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); or</text></paragraph>

<paragraph id="H5351142A55134687B62ADC7B3A750A25"><enum>(4)</enum><text>the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).</text></paragraph>

<subsection id="HA807F47833154D7895BC96762725BAD0" commented="no"><enum>(e)</enum><header>Reassumption of regulatory authority by the Secretary</header>

<paragraph id="H718E230B9A134173BC9A0AFE012638A7" commented="no"><enum>(1)</enum><header>Voluntary surrender of authority</header><text display-inline="yes-disp-

lay-inline">If a State regulatory program has been approved under subsection (b), such state may voluntarily revoke such approval, and relinquish the duties under subsection (c) upon providing a 60-day notice to the Secretaries of the Interior and Agriculture. Upon the expiration of the 60-day period, the state shall no longer be permitted to lease, regulate, or permit oil and gas exploration, development, and production activities on available Federal lands.</text></paragraph>

<paragraph id="HC3122D2FFDB445DD9EB39E4235FE1DFD" commented="no"><enum>(2)</enum>

><header>Involuntary surrender of authority</header><text display-inline="yes-display-inline">If the Secretaries of the Interior or Agriculture determine a State regulatory program has resulted in a 20 percent decrease in royalties to the Federal government from the preceding year, the Secretaries shall notify the state of such decrease. Such notified state shall have 180 days to address the royalty deficiency. If a state fails to improve the amount of royalties paid to the Federal government, then the Secretaries of the Interior and Agriculture may jointly determine to revoke the approval of the state regulatory program under subsection (b).</text></paragraph></subsection></section>

<section id="H773AB92C2AFB4B7D8F141007B136931C"><enum>5.</enum><header>No effect on Federal revenues</header>

<subsection id="H2CC5F0754C4C4416BB496FBD7D2EDF5C"><enum>(a)</enum><header>In general</header><text>Any lease or permit issued by a State under section 4 shall include provisions for the collection of royalties or other revenues in an amount equal to the amount of royalties or revenues that would have been collected if the lease or permit had been issued by the Federal Government.</text></subsection>

<subsection id="HEFD2C97772E143B3942F251B48B000B4"><enum>(b)</enum><header>Disposition of revenues</header><text>Any revenues collected under a lease or permit issued by a State under section 4 shall be deposited in the same Federal account in which the revenues would have been deposited if the lease or permit had been issued by the Federal Government.</text></subsection>

<subsection id="H4A7D777717A74FF38408FA166BA6462B"><enum>(c)</enum><header>Effect on State processing fees</header><text>Nothing in this Act prohibits a State from collecting and retaining a fee from an applicant to cover the administrative costs of processing an application for a lease or permit.</text></subsection></section>

</legis-body>

</bill>

**From:** Winston, Beverly  
**To:** [Richard Cardinale](#); [Katharine Macgregor](#); [Kristin Bail](#); [Jerome Perez](#)  
**Cc:** [Janine Velasco](#); [Matthew Allen](#); [Leff, Craig](#); [Phyllis Seitts](#); [Michael Anderson](#)  
**Subject:** Federal Register briefing papers: RACs and Wyo Plats  
**Date:** Thursday, January 26, 2017 11:24:15 PM  
**Attachments:** [WY FRN Filing of Plats of Survey BP\\_01.25.17\\_final.docx](#)  
[BLM RAC meetings\\_BP\\_01.25.17.docx](#)  
[Attachment 1\\_Dakotas RAC FRN.doc](#)  
[Attachment 2\\_Utah RAC FRN.doc](#)  
[Attachment 3\\_NW Oregon RAC FRN.docx](#)  
[Attachment 4\\_RAC meeting schedule\\_01.25.17.docx](#)  
[Attachment 5\\_BLM Vacancy Table\\_1.25.17.docx](#)

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Everyone,  
Attached are the updated briefing materials on the Wyo. plats and survey notice and the meeting notices for three resource advisory councils.

Bev

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Bev Winston  
Bureau of Land Management | Public Affairs  
202-912-7239 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

**INFORMATION/BRIEFING MEMORANDUM  
FOR THE ASSISTANT SECRETARY – LAND AND MINERALS MANAGEMENT**

**DATE:** January 25, 2017

**FROM:** Kristin Bail, Acting Director – Bureau of Land Management

**SUBJECT:** Filing of Plats of Survey, Wyoming Federal Register Notice

The purpose of this memo is to provide background information on a Filing of Plats of Survey Federal Register notice from BLM Wyoming. The notice is scheduled to publish January 25, 2017.

**BACKGROUND**

Cadastral surveys are a frequent part of the Bureau of Land Management’s mission in order to ensure land ownership boundaries are accurate and clearly marked. Federal Register notices for filing of plats of survey are published routinely to inform the public that the survey was completed and that the BLM is beginning the process of filing the survey plats as official documents. The notice also begins a 30-day opportunity for the public to file a protest with the Interior Board of Land Appeals if someone has an objection to the surveys.

**DISCUSSION**

The Federal Register notice scheduled to publish on January 25 discusses two filings of plats of survey. The first survey was requested by the U.S. Forest Service for the BLM to resurvey a land exchange that occurred approximately 3 years ago in Wyoming between a private land owner and the U.S. Forest Service. What was once a Federal to private land boundary is now a private to private land boundary and a short distance away, the land that was exchanged became a Federal to Federal land boundary (now between the BLM and USFS). While the land exchange itself was not controversial, it took three years for the USFS to budget the necessary funds to survey the lands, which are located near Esterbrook in southeast Wyoming. The purpose of the survey was to mark the new boundaries and clearly identify the ownership for the users in the area, i.e. neighbors, public land visitors, etc.

The second survey identified in the Federal Register notice was a result of an unauthorized gravel pit developed on public lands. During the unauthorized activity, two survey monuments (iron pipes sticking out of the ground to mark the boundary) were removed. The BLM resurveyed the area to mark where the boundary is and put the monuments back in place.

The surveys are low profile and not controversial.

**NEXT STEPS**

BLM Wyoming requests to publish the Federal Register notice as soon as possible in order to begin the official filing process for these plats of survey.

**ATTACHMENTS**

No attachments

**INFORMATION/BRIEFING MEMORANDUM  
FOR THE ASSISTANT SECRETARY – LAND AND MINERALS MANAGEMENT**

**DATE:** January 25, 2017

**FROM:** Kristin Bail, Acting Director – Bureau of Land Management

**SUBJECT:** Withdrawn Federal Register Notices for scheduled public meetings of the BLM Dakotas (Montana), Utah, and Northwest Oregon Resource Advisory Councils

The purpose of this memo is to explain the importance of the BLM Resource Advisory Councils (RACs). The RACs are important tools for improving both local stakeholder outreach and the quality of BLM decisions on important issues impacting the management of the public lands and their resources.

**BACKGROUND:** The BLM RACs are chartered under the Federal Advisory Committee Act (FACA) and provide advice to the BLM on the management of public lands and resources. The BLM has 38 RACs covering various units and jurisdiction of the public lands, including full states, districts, and individual units of the National Conservation Lands. The BLM relies on RACs to advise the Bureau on a broad range of its responsibilities, including travel management, oil and gas development, transmission planning, renewable energy development, grazing, recreation planning, and management of conservation areas. The BLM has benefitted from 20 years of experience in selecting and utilizing RACs and has developed best practices for making the optimal use of this valuable stakeholder resource.

Every year the BLM Washington Office issues a national Call for Nominations Instruction Memorandum (IM) and an accompanying Federal Register Notice (FRN) to fill expired or vacant positions on the RACs. The IM and FRN for 2017 are being developed. The RAC members, appointed by the Secretary of the Interior, generally meet two to four times a year, but no less than one time. Per BLM advisory committee regulations, notices of meetings of advisory committees and any subcommittees that may be formed shall be published in the Federal Register and distributed to the media 30 days before a meeting. If urgent matters arise, such meeting notices shall be published and distributed at least 15 days in advance of a meeting. Meeting minutes once approved by the RAC are uploaded to the BLM website by state. Information regarding each RAC is also available at <http://www.facadatabase.gov/>

**DISCUSSION:** The Federal Register public meeting notices for the three above subject RACs were withdrawn on January 24, 2017. The Dakotas RAC meeting is scheduled for February 16; the Utah RAC meeting is scheduled for February 23-24, and, the Northwest Oregon RAC meeting is scheduled for March 16. These public meetings cannot be held without a quorum and the attendance of an elected official, and scheduling involves extensive coordination among the RAC members, presenters, and Bureau personnel. Forty-two RAC members on the three RACs have already been notified on the respective meetings. Agenda items for the three RAC meetings include topics on which the RACs are being asked to recommend an action such as resource management planning efforts and major projects, recreation fees, implementation of

Greater Sage-Grouse plans, an update on the Planning 2.0 Rule, introduction of new BLM managers, and selection of a new chairperson. We recommend that the public meetings be held as expected by the RACs to ensure continuity and avoid disruption to the local public participation process.

**NEXT STEPS:** Resubmission of Notices of Public Meetings to the Federal Register.

**ATTACHMENTS:** (1) Federal Register Notices of Public Meetings for the Dakotas (Montana), Utah, and Northwest Oregon RACs; (2) List of public meetings scheduled through March, 2017, and, (3) RAC Vacancy Table as of January 20, 2017.

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**[LLMTC 00900.L16100000.DP0000 MO#4500103670]**

**Notice of Public Meeting, Dakotas Resource Advisory Council Meeting**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Public Meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Dakotas Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The Dakotas Resource Advisory Council meeting will be held on February 16, 2017, at the BLM South Dakota Field Office, 309 Bonanza Street in Belle Fourche, South Dakota. The meeting location and times will also be announced in a local news release.

**FOR FURTHER INFORMATION CONTACT:** Mark Jacobsen, Public Affairs Specialist, BLM Eastern Montana/Dakotas District, 111 Garryowen Road, Miles City, Montana, 59301; (406) 233-2831; [mjacobse@blm.gov](mailto:mjacobse@blm.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-677-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week to leave a message or

question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The 15-member council advises the Secretary of the Interior through the BLM on a variety of planning and management issues associated with public land management in North and South Dakota. At this meeting, topics will include: an Eastern Montana/Dakotas District report, North Dakota Field Office and South Dakota Field Office manager reports, new member introductions, discussion on the Montana/Dakotas RAC chair meeting, individual RAC member reports and other topics and issues the council may wish to cover. All meetings are open to the public and the public may present written comments to the council. Each formal RAC meeting will have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations should contact the BLM as provided above.

**Authority:** 43 CFR 1784.4-2

Diane M. Friez  
Eastern Montana/Dakotas District Manager

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**[17X L1109AF LLUT980300-L10100000.PH0000-24-1A]**

**Utah Resource Advisory Council Meeting**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act, the Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC) will host a meeting.

**DATES:** On Feb. 23 and 24, 2017, the Utah RAC will hold a meeting in St. George, Utah. On Feb. 23, the RAC will meet from 8:30 a.m. to 5:00 p.m. On Feb. 24, the RAC will meet from 8:00 a.m. to 10:00 a.m. An optional field tour of the Red Cliffs National Conservation Area will take place on Feb. 24 from 10:00 a.m. to 1:00 p.m.

**ADDRESSES:** The RAC will meet at the BLM Arizona Strip District Office, 345 E. Riverside Drive, St. George, Utah 84770.

**FOR FURTHER INFORMATION CONTACT:** If you wish to attend the field tour, contact Lola Bird, Public Affairs Specialist, Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101; phone (801) 539-4033; or, [lbird@blm.gov](mailto:lbird@blm.gov) no later than Wednesday, Feb. 15, 2017.

**SUPPLEMENTARY INFORMATION:** Agenda topics will include an introduction of new BLM managers, an update on the Planning 2.0 Rule, implementation of Greater Sage-Grouse plans, and updates on current resource management planning efforts and major projects.

A public comment period will take place on Feb. 23 from 3:00–4:00 p.m., where the public may address the RAC. Written comments may also be sent to the BLM at the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

The meeting is open to the public; however, transportation, lodging, and meals are the responsibility of the participating individuals.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to leave a message or question for the above individual. The FRS is available 24 hours a day, seven days a week. Replies are provided during normal business hours.

**Authority:** 43 CFR 1784.4-1

Approved: \_\_\_\_\_ Edwin L. Roberson \_\_\_\_\_

Edwin L. Roberson

State Director

**DEPARTMENT OF THE INTERIOR**

**BUREAU OF LAND MANAGEMENT**

**[LLORN00100.L63340000.PH0000.17XL1116AF.LXSSH1020000.HAG 17-0069]**

**Notice of Public Meeting for the Northwest Oregon Resource Advisory Council**

**AGENCY:** Bureau of Land Management, Interior

**ACTION:** Notice of Public Meeting

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the Bureau of Land Management's (BLM) Northwest Oregon Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The RAC will meet on Thursday, March 16, 2017 from 9:00 a.m. to 5:00 p.m. The meeting will be held at the BLM Northwest Oregon District Office, 1717 Fabry Rd SE, Salem, OR 97306. The RAC members will consider recreation-related subcommittee work and approve a new Chairperson among other topics. Members of the public will have the opportunity to make comments to the RAC during a public comment period at 12:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Velez, Coordinator for the Northwest Oregon RAC, 1717 Fabry Road SE, Salem, OR 97306, (541) 222-9241, [jvelez@blm.gov](mailto:jvelez@blm.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1(800) 877-8339 to contact the above individuals during normal business hours. The service is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The fifteen-member Northwest Oregon RAC was chartered to serve in an advisory capacity concerning the planning and management of the public land resources located within the BLMs Northwest Oregon District. Members represent an array of stakeholder interests in the land and resources from within the local area and statewide. All advisory council meetings are open to the public. Persons wishing to make comments during the public comment period should register in person with the BLM, at the meeting location, preceding that meeting day's comment period. Depending on the number of persons wishing to comment, the length of comments may be limited. The public may also send written comments to the RAC at the Northwest Oregon District office, 1717 Fabry Road SE, Salem, OR 97306. The BLM appreciates all comments.

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David O. Howell

Acting Northwest Oregon District Manager

## Meeting Schedule for BLM Federal Advisory Committees

*January 25, 2017*

**Alaska RAC:** RAC to meet Feb. 2-3 in Fairbanks. The meeting was noticed Dec. 29.

<https://www.federalregister.gov/documents/2016/12/29/2016-31654/notice-of-public-meeting-blm-alaska-resource-advisory-council>

Another meeting is being planned for July 13-14 at Coldfoot.

**Arizona RAC:** Tentatively planning an April meeting and have no FACA-related meeting notices pending with the Federal Register.

### **California:**

**Carrizo Plain:** None

**California Desert:** The DAC is meeting Feb. 24-25. The FRN published Jan. 23, 2017.

**Central California:** The RAC will meet on May 18-19.

**Northern California:** Tentatively planning a meeting for late March or early April.

### **Colorado:**

**Dominguez-Escalante:** RAC meeting is set for Feb. 22.

**Northwest:** Meetings planned for March 2, June 1, Aug. 24, and Dec. 7.

**Rocky Mountain:** Meeting scheduled for March 9.

**Southwest:** Meeting scheduled for March 31.

### **Idaho:**

**Boise District:** The RAC is meeting on Jan. 25. There are no further meetings planned at this time.

**Coeur d'Alene District:** The RAC is planning on meeting in April.

**Idaho Falls District:** The RAC is meeting on Jan. 24.

**Twin Falls District:** The RAC meeting is scheduled for Feb. 22.

### **Montana:**

**Central Montana:** None

**Dakotas:** The RAC is planning to meet on Feb. 16. The FRN was pulled back on Jan. 24. \*\*\*

**Eastern Montana:** None

**Western Montana:** None

### **New Mexico:**

**Albuquerque District:** Meeting considered for March.

**Farmington District:** Meeting considered for March.

**Las Cruces District:** None

**Pecos District:** None

**Nevada:**

**Mojave-Southern Great Basin:** The RAC is planning to meet on March 2.

**Northeastern Great Basin:** None.

**Sierra Front-Northwestern Great Basin:** RAC will meet on Jan. 26.

**Gold Butte National MAC:** Call for Nominations FRN pulled back on Jan. 23.\*\*\*

**Oregon:**

**Coastal:** Coastal plans to meet March 13-15.

**Eastern Washington:** None

**John Day-Snake:** John Day/Snake RAC meets in Bend. on Jan. 26-27.

**Northwest:** Meeting scheduled for March 16; FRN pulled back on Jan. 24. \*\*\*

**San Juan Islands National MAC:** None

**Southeast Oregon:** SE RAC will meet in Bend on Jan. 30-31.

**Southwest:** A meeting in March/April timeframe is being planned.

**Steens Mountain Advisory Council:** Steens Mountain Advisory Council is meeting March 16-17 in Burns. I have not sent a FR notice up for this request yet.

**Utah:**

**Utah State:** Our RAC was planning to meet Feb. 23-24. FRN pulled backed on Jan. 24.\*\*\*

**Grand Staircase-Escalante National MAC:**

**Bears Ears National MAC:** Call for Nominations FRN pulled back Jan. 23. \*\*\*

**Wyoming:**

**Wyoming RAC:** Meeting scheduled for March 1 and 2. Planning to send the FRN to WO for review.

**Wild Horse and Burro Advisory Board:** None

Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	Alaska Resource Advisory Council	This Resource Advisory Council is composed of 15 members, representing three categories - commodity, non-commodity, and local area interest. Each category has at least three members.	3 years	<ol style="list-style-type: none"> <li>1. Martineau, K. I.</li> <li>2. Martin, Kathryn</li> <li>3. Foo, Stanley</li> <li>4. Morrison, Gary</li> <li>5. Jorgensen, Bronk</li>   <li>6. Krause, David R.</li> <li>7. Simon, Pollack</li> <li>8. Hart, Lee Ann</li> <li>9. Billingsley, Mark</li> <li>10. Little, Suzanne R.</li>   <li>11. Barr, Rosie</li> <li>12. Hopson, Jr , John</li> <li>13. Cain, Brennan</li> <li>14. Imm, Teresa</li> <li>15. Longan, Sara</li> </ol>	Energy/Minerals Transportation/ROW Energy and Minerals Energy and Minerals Energy and Minerals  Environmental Environmental Dispersed Recreation Dispersed Recreation Environmental  Alaska Native Interests Elected Official Alaska Native Interests Alaska Native Interests State Agency Representative	1/17/2017 1/7/2014 10/2/2015 12/20/2010 1/19/2016  1/17/2017 10/2/2015 1/17/2017 10/2/2015 12/12/2012  4/10/2014 10/2/2015 10/2/2015 1/19/2016 1/19/2016	1/17/2020 1/17/2020 10/2/2018 10/2/2018 1/19/2019  1/17/2020 10/2/2018 1/17/2020 10/2/2018 1/19/2019  4/10/2017 10/2/2018 10/2/2018 1/19/2019 1/19/2019
BLM	Albuquerque District Resource Advisory Council	This Resource Advisory Council is composed of 10 members, representing three categories - commodity, non-commodity, and local area interest. Each category has at least three members.	3 years	<ol style="list-style-type: none"> <li>1. Banks, Keith L.</li> <li>3. Giedraitis, Ethan A.</li> <li>2. Salisbury, Kristin L.</li>   <li>4. VACANT (Clary,James)*</li> <li>5. Brown, Sharon</li> <li>6. Vigil, Juan R.</li>   <li>7. Kelly, John P.</li> <li>8. Coleman, Michael Walter</li> <li>9. MoQuino, Robert Lee</li> <li>10. Hand, Anita</li>   <li>*Resigned 12/10/2015</li> </ol>	Federal Grazing Transportation/ROW Outdoor Recreation  <b>Dispersed Recreation</b> Environmental Dispersed Recreation  Public-at-Large State Agency Representative Native American Tribe Elected Official	9/27/2011 9/27/2011 9/29/2014  <b>9/28/2012</b> 1/11/2017 9/27/2011  12/4/2015 9/27/2011 9/29/2013 1/11/2017	<b>1/11/2020</b> 12/4/2018 9/29/2017  <b>12/4/2018</b> 1/11/2020 9/29/2017  12/4/2018 9/29/2017 9/29/2017 1/11/2020

Recently Appointed

Vacant or Term Expires in 2017

Existing nominee recommendations through  
2016 Call for Nominations received too late  
To process with prior Administration

**BLM FACA COMMITTEE VACANCY REPORT THROUGH January 19, 2017**

Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	Arizona Resource Advisory Council	The Arizona RAC is composed of 15 members, representing 3 categories: commodity, non-commodity, and local area interest. Each category has five members.	3 years	<ol style="list-style-type: none"> <li>1. Parameswaran, Krishna</li> <li>2. Brake, Leland</li> <li>3. Sanders, John</li> <li>4. Sturgill, Emmett</li> <li>5. Sacher, Maggie</li> <li>6. Torrens, Sharma</li> <li>7. Duncan Hubbs, Dawn</li> <li>8. Quigley, Michael</li> <li>9. Hulen, Thomas G.</li> <li>10. Tenney, David</li> <li>11. Metzger, Mandy</li> <li>12. Marsh, Stuart</li> <li>13. Watson, Gary</li> <li>14. Trussell, Stephen</li> <li>15. Williams, Stephen</li> </ol>	Energy/Minerals Federal Grazing Outdoor Recreation Federal grazing Commercial Recreation  Archaeological/Historical Archaeological/Historical Environmental Dispersed Recreation Dispersed Recreation  Elected Official Academician Elected Official Public-at-Large Public-at-Large	9/22/2014 11/22/2010 1/8/2016 11/22/2010 9/21/2012  1/17/2017 9/22/2014 11/22/2010 11/20/2009 9/22/2014  9/22/2014 11/20/2009 9/22/2014 1/8/2016 1/17/2017	9/22/2017 1/17/2020 1/8/2019 1/17/2020 1/8/2019  1/17/2020 9/22/2017 1/17/2020 1/8/2019 9/22/2017  9/22/2017 1/8/2019 9/22/2017 1/8/2019 1/17/2020

Recently Appointed

Vacant or Term Expires in 2017

Existing nominee recommendations through  
2016 Call for Nominations received too late  
To process with prior Administration

**BLM FACA COMMITTEE VACANCY REPORT THROUGH January 19, 2017**

Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	Boise District Resource Advisory Council	The Boise District RAC is composed of 15 members, representing 3 categories: commodity, non-commodity, and local area interest. Each category has five members.	3 years	<ol style="list-style-type: none"> <li>1. Baczkowski, Stacey L.</li> <li>2. Gibson, Michael</li> <li>3. Lyons, Charles A.</li> <li>4. Oxarango, Rochelle</li> <li>5. Bennett, Donna</li> <li>6. Gray, Gene M.</li> <li>7. Raymondi, R.</li> <li>8. Talsma, Arthur R.</li> <li>9. Reay, Tina D.</li> <li>10. Steenhof, Karen</li> <li>11. Merrick, Arthur</li> <li>12. McAdams, Jerry</li> <li>13. Howard, Ted</li> <li>14. Yensen, Eric</li> <li>15. Walsh, Bill</li> </ol>	Energy/Minerals Outdoor Recreation Federal Grazing Federal Grazing Federal Grazing  Environmental Organization Dispersed Recreation Environmental Organization Wild Horse & Burro Environmental Organization  Elected Official Public-at-Large Tribal Academician Public-at-Large	10/18/2011 1/18/2017 9/20/2012 1/18/2017 9/30/2007  1/7/2009 12/31/2013 3/17/2015 9/20/2012 10/18/2011  3/17/2015 3/17/2015 9/30/1998 1/18/2017 1/22/2016	1/22/2019 1/18/2020 9/22/2019 1/18/2020 3/17/2018  3/17/2018 1/18/2020 3/17/2018 1/22/2019 3/17/2018  3/17/2018 3/17/2018 1/18/2020 1/18/2020 1/22/2019

Recently Appointed

Vacant or Term Expires in 2017

Existing nominee recommendations through  
2016 Call for Nominations received too late  
To process with prior Administration

**BLM FACA COMMITTEE VACANCY REPORT THROUGH January 19, 2017**

Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	California Desert District Advisory Council	Council membership is balanced with respect to geographic considerations; members' interests, points of view, and place of residence; composition of the population of the area being served; Council functions to be performed; and the major issues and problems relating to planning and management of the public lands within the District.	3 years	1. Banis, Randy 2. Mitchell, William 3. Kenney, James 4. Algazy, Mark 5. Muth, Francis A. 6. Burke, Robert 7. Barrett, Leslie 8. Martin, Paul 9. Benoit, John 10. Robinson, Robert 11. Long, Michelle 12. Castillo, Ray 13. Maguire, Mariana 14. Francis, Nathan W. 15. Haney, Frazier	Recreation Groups Renewable Resources Public-At-Large Public-At-Large Wildlife Organizations Public-At-Large Renewable Resources Non-Renewable Resources Elected Official Public-At-Large TRANSPORTATION/ROW Elected Official Public at Large Non-Renewable Energy Environmental Protection	12/7/2011 2/19/2016 5/30/2014 5/30/2014 12/7/2011 12/7/2011 5/30/2014 1/12/2017 2/19/2016 2/19/2016 1/12/2017 5/30/2014 1/12/2017 2/19/2016 1/12/2017	2/19/2019 2/19/2019 5/30/2017 5/30/2017 2/19/2019 2/19/2019 5/30/2017 1/12/2020 2/19/2019 2/19/2019 1/12/2020 5/30/2017 1/12/2020 2/19/2019 1/12/2020

Recently Appointed

Vacant or Term Expires in 2017

Existing nominee recommendations through  
2016 Call for Nominations received too late  
To process with prior Administration

**BLM FACA COMMITTEE VACANCY REPORT THROUGH January 19, 2017**

Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	<b>Carrizo Plain National Monument Advisory Committee</b>	Members include representatives of the San Luis Obispo County Board of Supervisors, the Kern County Board of Supervisors, the Carrizo Native American Advisory Committee, the Central California Resource Advisory Council, those authorized to graze livestock within the National Monument, and the public-at-large.	3 years	<ol style="list-style-type: none"> <li>1. <b>VACANT</b>(James Patterson)</li> <li>2. Cypher, Ellen A.</li> <li>3. Deutsche, Craig W.</li> <li>4. Debbie Arnold</li> <li>5. Twisselman, Carl F.</li> <li>6. David Couch</li> <li>7. <b>VACANT**</b></li> <li>8. <b>VACANT</b>(Dale Kuhnle)</li> <li>9. <b>VACANT</b>(Michael Khus-Zarate)</li> <li>10. <b>VACANT</b></li> </ol> <p><b>** Raymond Hatch resigned 8/1/2015.</b></p>	<b>Public-at-Large</b> Public-at-Large Public-at-Large Elected Official  Central California RAC Elected Official  Public-at-Large Federal Grazing Tribal  <b>VACANT</b>	<b>8/26/2009</b> 8/26/2009 7/24/2012 6/28/2013  7/24/2012 6/28/2013  6/28/2013 6/28/2013 6/28/2013  <b>VACANT</b>	<b>11/18/2016</b> 1/14/2019 1/14/2019 1/14/2019  1/14/2019 1/14/2019  <b>6/28/2016</b> <b>6/28/2016</b> <b>6/28/2016</b>  <b>VACANT</b>
BLM	<b>Central California Resource Advisory Council</b>	The RAC membership is balanced geographically with members throughout central California: from the Bishop area to Folsom, and as far west as the coast. They also are balanced by interest from ranching, oil and gas, and environmental.	3 years	<ol style="list-style-type: none"> <li>1. <b>VACANT</b>(Armstrong, G.)</li> <li>2. Knox, Blair</li> <li>3. <b>VACANT</b>(Rosenlieb, Trent)</li> <li>4. <b>VACANT</b>(Twisselman, C)</li> <li>5. Monaco, Reb</li> <li>6. Schneider, Robert</li> <li>7. <b>VACANT</b>(Miller, Sarah)</li> <li>8. Gorden, Mary</li> <li>9. Collom, Laurie</li> <li>10. <b>VACANT</b>(Kingsley, M.)</li> <li>11. Mitchell, Roger</li> <li>12. Froke, Jeffrey</li> </ol>	<b>Outdoor Recreation</b> Energy and Minerals <b>Energy and Minerals</b> <b>Federal Grazing</b>  Dispersed Recreation Environmental <b>Environmental</b> Archaeology and Historical  Public at Large <b>Elected Official</b> Public at Large Public at Large	<b>12/6/2010</b> 12/22/2011 <b>12/9/2013</b> <b>12/6/2010</b>  9/20/2007 5/17/2016 <b>12/6/2010</b> 10/13/2005  5/17/2016 <b>12/6/2010</b> 10/28/2015 5/17/2016	<b>12/9/2016</b> 10/26/2018 <b>12/9/2016</b> <b>12/9/2016</b>  5/17/2019 5/17/2019 <b>12/9/2016</b> 10/26/2018  5/17/2019 <b>12/9/2016</b> 10/28/2018 5/17/2019

Recently Appointed

Vacant or Term Expires in 2017

Existing nominee recommendations through

2016 Call for Nominations received too late

To process with prior Administration

**BLM FACA COMMITTEE VACANCY REPORT THROUGH January 19, 2017**

Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	Central Montana Resource Advisory Council	The Central Montana RAC is composed of 15 members, representing three categories - commodity, non-commodity, and local area interest. Each category has five members.	3 years	1. Darlington, Dana K. 2. Fairchild, Wayne Frederick 3. Kluck, Dan E. 4. Patnode, Jeff 5. Schultz, John S.  6. Janssen, Hayden T. 7. Austin, Damien 8. Tureck, Hugo J. 9. Frieze, Mary J. 10. Knapp, Ralph  11. Henderson, Brian 12. Blunt, Troy 13. LaVoi, Jeff 14. Rooney, Clive L. 15. Wilson, Mark	Federal Grazing Commercial Recreation Federal Grazing Outdoor recreation Federal Grazing  Dispersed Recreation Environmental Environmental Environmental Environmental  Public-at-Large Public-at-Large Elected Official State Resource Employee Public at Large	1/30/2015 1/7/2014 1/30/2015 12/15/2015 1/9/2017  1/30/2015 1/7/2014 1/7/2014 12/15/2015 12/14/2012  1/9/2017 1/7/2014 1/30/2015 1/30/2015 12/15/2015	1/30/2018 1/9/2020 1/30/2018 12/15/2018 1/9/2020  1/30/2018 1/9/2020 1/9/2020 12/15/2018 12/15/2018  1/9/2020 1/9/2020 1/30/2018 1/30/2018 12/15/2018

Recently Appointed

Vacant or Term Expires in 2017

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**BLM FACA COMMITTEE VACANCY REPORT THROUGH January 19, 2017**

Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	Coastal Oregon RAC	This Resource Area is composed of 15 members representing 3 categories – commodity, non-commodity and local area interest. Each category has 5 members	2-3 years	1. <b>Finnerty, Dean</b>	Commercial Recreation	7/31/2015	7/31/2017
				2. Olson, Kurt	Outdoor Recreation/OHV	7/31/2015	7/31/2018
				3. Tressider, Kent	Non-industrial private	7/31/2015	9/14/2019
				4. LaFrance, Donald	Commercial Timber	7/31/2015	7/31/2018
				5. Slater, Timm	Commercial Timber	9/14/2016	9/14/2019
				6. Brainard, Warren	Archaeological/Historical	9/14/2016	9/14/2019
				7. <b>LeGue, Chandra</b>	Regional environmental	7/31/2015	7/31/2017
				8. <b>Cruse, Ryan</b>	National environmental	7/31/2015	7/31/2017
				9. Kennedy, Mike	Historical/Archaeologic	7/31/2015	7/31/2018
				10. Riley, Eric	Environmental Org	9/14/2019	9/14/2019
				11. Cellura, Keven	Teacher	7/31/2015	7/31/2018
				12. <b>Cribbins, Melissa</b>	Elected official	7/31/2015	7/31/2017
				13. <b>Brown, Susan</b>	Elected official	7/31/2015	7/31/2017
				14. Schragger, Hannah	State Agency Rep	9/14/2016	9/14/2019
				15. Villers, Mark	Elected Official	7/31/2015	9/14/2019

Recently Appointed

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**BLM FACA COMMITTEE VACANCY REPORT THROUGH January 19, 2017**

Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	Coeur d'Alene District Resource Advisory Council	This RAC is composed of 15 members, representing 3 categories: commodity, non-commodity, and local area interest. Each category has five members.	3 years	<ol style="list-style-type: none"> <li>1. Casile, Almer</li> <li>2. Reggear, Michael</li> <li>3. Marshall, John W. (JW)</li> <li>4. Orr, William</li> <li>5. Rider, Linda</li> <li>6. Balsler, Robert</li> <li>7. Swanson, Clifford</li> <li>8. Boggan, Doug</li> <li>9. Cook, Wm.</li> <li>10. <b>VACANT (Shriner, Jerry)</b></li> <li>11. Dinning, Dan</li> <li>12. Perry, Patricia</li> <li>13. Fulton, Trevor</li> <li>14. White, David Edward</li> <li>15. Goetz, Chris</li> </ol>	Outdoor Recreation Commercial Timber Off-Highway Vehicles Energy and Minerals Grazing  Dispersed Recreation Dispersed Recreation Dispersed Recreation Environmental Organizations <b>Wild Horse and Burro</b>  Elected Official Tribal Representative Academician State Agency Representative Elected Official	1/17/2017 7/21/2015 7/21/15 7/21/15 10/18/2012  1/17/2017 7/21/15 10/18/2012 1/17/2017 <b>10/18/2012</b>  7/21/15 7/21/15 1/17/2017 5/17/2016 10/18/2012	1/17/2020 7/21/18 7/21/18 7/21/18 5/17/2019  1/17/2020 7/21/18 7/21/18 5/17/2019 1/17/2020 <b>10/18/2015</b>  7/21/18 7/21/18 1/17/2020 5/17/2019 5/17/2019

Recently Appointed

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**BLM FACA COMMITTEE VACANCY REPORT THROUGH January 19, 2017**

Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	Dakotas Resource Advisory Council	This RAC is composed of 15 members, representing 3 categories: commodity, non-commodity, and local area interest. Each category has five members.	3 years	<ol style="list-style-type: none"> <li>1. Bowman, Bruce T.</li> <li>2. Gilbert, Ray</li> <li>3. Timmerman, Vern</li> <li>4. Combs, Drew</li> <li>5. Rettinger, Brenda</li> <li>6. Waterland, Ronald</li> <li>7. <b>VACANT*</b></li> <li>8. Jagim, Nathan</li> <li>9. Kain, John</li> <li>10. Forrester, Kevin</li> <li>11. Brown, Debra</li> <li>12. Brunner, Ryan</li> <li>13. Johnson, Robert</li> <li>14. Bleich, Vernon</li> <li>15. Volk, Jay</li> </ol> <p><b>*Gary Colbath resigned 1/26/16</b></p>	Federal Grazing Federal Grazing Energy/Minerals Energy/Minerals Energy/Minerals Archaeological/Historical <b>Dispersed Recreation</b> Dispersed Recreation Dispersed Recreation Dispersed Recreation Elected Official State Official Public at Large Academician Public-at-Large	10/20/2014 1/7/2014 1/7/2014 12/12/2012 10/20/2014 10/20/2014 <b>10/20/2014</b> 1/12/2017 10/20/2014 12/12/2012 1/7/2014 10/20/2014 1/7/2014 12/12/2012 10/20/2014	10/20/2017 1/12/2020 1/12/2020 12/14/2018 10/20/2017 10/20/2017 <b>10/20/2017</b> 1/12/2020 10/20/2017 12/14/2018 1/12/2020 10/20/2017 1/12/2020 12/14/2018 10/20/2017
BLM	Dominguez-Escalante National Conservation Area Advisory Council	The Committee is composed of 10 members representing interests related to the Conservation Area and individuals possessing expertise related to the Conservation Area's purposes.	3 years	<ol style="list-style-type: none"> <li>1. Simonson, K</li> <li>2. Atchley, C. Douglas</li> <li>3. Grother, Craig</li> <li>4. Files, Ralph</li> <li>5. Harris, William</li> <li>6. Massey, Oscar</li> <li>7. Minnick, T.J.</li> <li>8. Schenk, Sherry</li> <li>9. Steele, Katie A.</li> <li>10. Janowski, Robert</li> </ol>	Mesa County Delta County Resident Montrose County Resident Federal Grazing Resident Stakeholder Stakeholder Stakeholder	11/20/2013 1/19/2012 7/10/2015 11/20/2013 11/18/2010 11/18/2010 11/18/2010 1/10/2017 11/18/2010 11/20/2013	1/10/2020 7/10/2018 7/10/2018 1/10/2020 1/10/2020 1/10/2020 1/10/2020 1/10/2020 1/10/2020

Recently Appointed

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**BLM FACA COMMITTEE VACANCY REPORT THROUGH January 19, 2017**

Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	Eastern Montana Resource Advisory Council	This RAC is composed of 15 members, representing 3 categories: commodity, non-commodity, and local area interest. Each category has five members.	3 years	<ol style="list-style-type: none"> <li>1. Kalfell, Lance</li> <li>2. VACANT</li> <li>3. Clark, Bradley</li> <li>4. Line, Lucas</li> <li>5. Pilster, Larry</li>   <li>6. Hayes, Arthur</li> <li>7. Bukoskey, Ralph</li> <li>8. Cumin, Calvin</li> <li>9. Harding, Rita</li> <li>10. Hanson, Steven</li>   <li>11. Olson (Esp), Jennifer</li> <li>12. Guse, Harold D.</li> <li>13. Sackman, Sharla</li> <li>14. Lehman, Tim</li> <li>15. Kary, Douglas L.</li> </ol>	Federal Grazing <b>VACANT</b> Energy/Minerals Federal Grazing Federal Grazing  Dispersed Recreation Dispersed Recreation Environmental Environmental Dispersed Recreation  Public-at-Large Public-at-Large Public-at-Large Academician Elected Official/State of Montana	10/1/2014 <b>VACANT</b> 4/3/2014 11/17/2015 10/19/2012  4/3/2014 4/3/2014 10/1/2014 10/19/2012 11/17/2015  10/1/2014 4/3/2014 10/1/2014 4/3/2014 10/1/2014	10/1/2017 <b>VACANT</b> 4/3/2017 11/17/2018 11/17/2018  4/3/2017 4/3/2017 10/1/2017 11/17/2018 11/17/2018  10/1/2017 4/3/2017 10/1/2017 4/3/2017 10/1/2017

Recently Appointed

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Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	<b>Eastern Washington Resource Advisory Council</b>	This RAC is composed of 15 members, representing 3 categories: commodity, non-commodity, and local area interest. Each category has five members.	3 years	1. Hubbard, David 2. Billingsley, Brent 3. Kiss, Stephen 4. Parrish, Bradley 5. Williamson, Maurice  6. Odell, Richard 7. <b>Huckabay, James</b> 8. Mellick, Paul 9. Hoke, Dan 10. Carmichael, Kenneth  11. Hein, Adam 12. Morgan, Mary 13. Lindholdt, Paul 14. Mackie, Alexander 15. Ritter, Michael	Federal Grazing Grazing Commercial Timber Outdoor Recreation Commercial Timber  Environmental Dispersed Recreation Dispersed Recreation Outdoor Recreation Wild Horse and Burro  State Agency Elected Official Academician Public-at-Large State Agency	1/12/2011 4/7/2015 4/7/2015 10/5/2016 10/5/2016  1/12/2011 4/16/2014 12/20/2012 4/7/2015 4/7/2015  4/7/2015 10/5/2016 10/5/2016 10/5/2016 10/5/2016 1/08/2016	4/7/2018 4/7/2018 4/7/2018 10/5/2019 10/5/2019  4/7/2018 4/16/2017 1/8/2019 4/7/2018 4/7/2018  4/7/2018 10/5/2019 10/5/2019 10/5/2019 10/5/2019 1/08/2019
BLM	<b>Farmington District Resource Advisory Council</b>  <b>*M. Lane resigned 10/9/16</b>	This Resource Advisory Council is composed of 10 members, representing three categories - commodity, non-commodity, and local area interest. Each category has at least three members.	3 years	1. <b>Styron, Cory</b> 2. <b>VACANT(Lane, Michael)*</b> 3. <b>Verner, Frederick</b>  4. Brown, Martha 5. O'Neill, Michael 6. <b>VACANT(Sims, Jerry L. )</b>  7. <b>Martinez, Leonard</b> 8. Hageman, Wendy 9. <b>Johnson, Carmen</b> 10. Pasqual, Theresa	Dev. Outdoor Recreation Energy/Minerals Energy/Minerals  Environmental Dispersed Recreation Dispersed Recreation  Elected Official Public at Large Public-at-Large Tribal Representative	1/4/2017 7/13/2011 1/4/2017  1/30/2015 12/04/2015 8/13/2013  1/4/2017 12/04/2015 1/4/2017 12/04/2015	1/4/2020 <b>1/30/2018</b> 1/4/2020  1/30/2018 12/04/2018 <b>8/13/2016</b>  1/30/2018 12/04/2018 1/4/2020 12/04/2018

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Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	Rocky Mountain Resource Advisory Council	This RAC is composed of 15 members, representing 3 categories: commodity, non-commodity, and local area interest. Each category has five members.	3 years	1. Dvorak, William	Commercial Recreation	8/21/2009	3/11/2019
				2. Cocciolone, Ashley	Energy/Mineral Development	3/11/2016	3/11/2019
				3. Wadsworth, Katherine	Outdoor Recreation	3/11/2016	3/11/2019
				4. Irby, Dale	Federal Grazing	11/3/2010	1/12/2019
				5. Leiker, Diana L.	Transportation/ROW	3/11/2015	3/11/2018
				6. Cesario, Roger	Dispersed Recreation	12/19/2016	1/12/2019
				7. Johnson, Jara	Environmental	8/21/2012	3/11/2019
				8. Braden, Scott R.	Environmental	3/11/2015	3/11/2018
				9. Mach, Julie	Environmental	3/11/2015	3/11/2018
				10. Anderson, Jason	Dispersed Recreation	12/19/2016	12/19/2019
				11. Chamberland, Philip	Elected	12/19/2016	1/12/2019
				12. Sandoval, Dean	Public-at-Large	3/11/2011	3/11/2018
				13. Shy, Christopher Loren	State Agency Representative	11/3/2010	12/19/2019
				14. Koepsell, Arthur W.	State Agency Representative	3/11/2015	3/11/2018
				15. Ackerman, Brett A.	State Agency Representative	3/11/2015	3/11/2018

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Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	<b>Grand Staircase-Escalante National Monument Advisory Committee</b>	The Committee is composed of members representing interests related to the Monument and individuals possessing expertise related to the Monument's purposes.	3 years	1. Thompson, Wesley Kent 2. <b>VACANT(Bosworth, G.)</b> 3. Reagan, Douglas 4. <b>VACANT(Burr, Steven W).*</b> 5. Clayson, Dirk 6. Friedman, Michael B. 7. Hanceford. Phillip Howard 8. Heaton, Kevin McKay 9. Irmis, Randall 10. Timican, Ganaver 11. McKee, Norman Ray 12. Pollock, Leland 13. Howard, Julie A. 14. Watts, Keith Fred 15. Chynoweth, Link  <b>*S. Burr resigned 5/16</b>	Geology <b>Botany</b> Systems Ecology <b>Social Science</b>  Kane County Outfitter Environmental State Representative Paleontology Tribal Representative Wildlife Biology Garfield County Archaeological/Historical Educator Livestock Operator	5/27/2016 8/2/2011 6/12/2014 <b>6/12/2014</b>  8/2/2011 6/12/2014 6/12/2014 8/2/2011 12/7/2015 5/27/2016 6/12/2014 8/2/2011 5/27/2016 6/12/2014 6/12/2014	5/27/2019 <b>8/2/2015</b> 12/7/2018 <b>6/12/2017</b>  5/27/2019 6/12/2017 6/12/2017 12/7/2018 12/7/2018 5/27/2019 6/12/2017 5/27/2019 6/12/2017 12/7/2018

Recently Appointed

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Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	Idaho Falls District Resource Advisory Council	This RAC is composed of 15 members, representing 3 categories: commodity, non-commodity, and local area interest. Each category has five members.	3 years	1. Wixom, Ken 2. Bauchman, S. 3. Christensen, Morris 4. Prouty, Alan 5. Beaupre, Adam J.  6. Stuart, Chuck 7. Goode, Jon 8. Tigert, Coby 9. Smith, Becky 10. Woodard, Matthew  11. Colter, Chad G. 13. Radford, David 12. Schutte, William 14. Raymond, Jerald 15. Mende, Jim	Federal Grazing Transportation/ROW Outdoor Recreation Energy/Minerals Commercial Recreation  Dispersed Recreation Dispersed Recreation Environmental Org Archaeological/Historical Environmental Org  Tribal Representative Elected Official Public-at-Large Elected Official State Agency Rep	3/16/2015 10/29/2013 1/29/2016 1/18/2017 1/29/2016  1/18/2017 1/18/2017 3/16/2015 1/29/2016 3/16/2015  3/16/2015 1/29/2016 1/29/2016 3/16/2015 1/18/2017	3/16/2018 1/18/2020 1/29/2019 1/18/2020 1/29/2019 3/16/2018 1/29/2019 3/16/2018  3/16/2018 1/29/2019 1/29/2019 3/16/2018 1/18/2020

Recently Appointed

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Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	<b>John Day-Snake Resource Advisory Council**</b>	This RAC is composed of 15 members, representing 3 categories: commodity, non-commodity, and local area interest. Each category has five members.  * Steven Lent reassigned 10/4/2016  ***BertaYoutie resigned 6/20/16	3 years	1. Dalgaard, Harry 2. Drever-Gee, Terry 3. Burleigh, Glenn 4. Waugh, Arthur M. 5. Sykes, Brian  6. Reiss, James Timothy 7. <b>VACANT(Lent, Steven)*</b> 8. Unterwegner, Tim 9. Doggett, Kenneth (aka Brian Jennings) 10. Gordon, Benjamin  11. Jones, Randall 12.. Lent, Steven* 13. Jackle, Greg 14. Maltz, Erica 15. <b>VACANT***</b>	Outdoor Recreation Energy/Minerals Commercial Timber Outdoor Recreation Commercial Recreation  Dispersed Recreation <b>Archaeological and Historical</b> Dispersed Recreation Environmental  Environmental Interest  State Resource Employee Elected Official State Resource Employee Tribal <b>Academician</b>	11/12/2014 9/14/1995 10/17/2016 9/30/2013 11/20/2015  11/12/2011 <b>10/24/2014</b> 11/20/2015 11/20/2015  11/12/2014  11/12/2014 10/24/2017 11/12/2014 9/30/2013 <b>11/12/2014</b>	11/12/2017 11/12/2017 10/17/2019 10/4/2019 11/20/2018  11/27/2017 <b>10/24/17</b> 11/20/2018 10/4/2019  11/12/2017  11/12/2017 10/24/2017 11/12/2017 10/4/2019 <b>11/12/2017</b>
BLM	<b>Las Cruces District Resource Advisory Council</b>	This Resource Advisory Council is composed of 10 members, representing three categories - commodity, non-commodity, and local area interest. Each category has at least three members.	3 years	1. Bartoo, Jr., Howard R. 2. Holguin, Teofilo 3. Hyatt, Jim T.  4. Gray, Randall L. 5. Cornell, John 6. Popp, Anthony V.  7. <b>VACANT(Ellins, Lynn J.)</b> 8. Quintana, Michael 9. Levy, Maxine 10. Pettit, Kimberly	Energy/Minerals Transportation/ROW Grazing  Dispersed Recreation Environmental Environmental  <b>Elected Official</b> Agency Representative Public at Large Public at Large	4/28/2011 4/28/2011 12/04/2015  3/9/2015 12/4/2015 4/28/2011  <b>3/9/2015</b> 4/28/2011 12/04/15 12/04/15	9/30/2019 3/9/2018 12/04/2018  3/9/2018 12/4/2018 9/30/2019  <b>3/9/2018</b> 3/9/2018 12/04/2018 9/30/2019

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Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	Mojave-Southern Great Basin Resource Advisory Council	This RAC is composed of 15 members, representing 3 categories: commodity, non-commodity, and local area interest. Each category has five members.  *Lorinda Wichman resigned 9/2015	3 years	1. Baker, Douglas L. 2. Agee, Susan 3. Garcia-Vause, Stephanie D 4. Folks, Daryl 5. Higgins, Jason  6. Zablocki, John A 7. Hiatt, John 8. McAllister, Elise 9. Phillips, George 10. Kilpatrick, Tara  11. Lee, John J. 12. VACANT(Wichman, Lorinda)* 13. Mathews, Paul H. 14. Smith, Stanley 15. Harris, Annette	Transportation/ROW Federal Grazing Transportation/ROW Outdoor Recreation Energy and Minerals  Environmental Organizations Environmental Organizations Dispersed Recreation Archaeological and Historical Wild Horse & Burro  Elected Official <b>Elected Official</b>  Public-at-Large Academician Tribal	2/20/2015 5/6/2014 2/20/2015 2/4/2016 10/18/2012  2/4/2016 2/4/2016 11/15/2010 2/4/2016 2/4/2016  2/20/2015 5/6/2014  2/20/2015 11/15/2010 5/6/2014	2/20/2018 5/6/2017 2/20/2018 2/4/2019 2/4/2019  5/6/2017 5/6/2017 5/6/2017 2/4/2019 2/4/2019  2/20/2018 <b>5/6/2017</b>  2/20/2018 5/6/2017 5/6/2017

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Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	North Slope Science Technical Panel	The Science Panel consists of not more than 15 scientists and technical experts from among, but not limited to, the following disciplines: North Slope traditional and local knowledge, landscape ecology, petroleum engineering, civil engineering, geology, botany, hydrology, limnology, habitat biology, wildlife biology, biometrics, sociology, cultural anthropology, economics, ornithology, oceanography, fisheries biology, and climatology.	3 years	<ol style="list-style-type: none"> <li>1. Cairns, David M.</li> <li>2. <b>Orgonek, Jeffrey</b></li> <li>3. <b>McBeath, Gerald</b></li> <li>4. Wisdom, Sheyna</li> <li>5. <b>Meyer, Robert</b></li> <li>6. Robards, Martin</li> <li>7. <b>Angliss, Robyn</b></li> <li>8. Pegau, William S.</li> <li>9. Bolton, Robert</li> <li>10. Brewer, Linda Y.</li> <li>11. <b>Shuchman, Robert</b></li> <li>12. Lynn, Lorene</li> <li>13. <b>Synder, Elizabeth</b></li> <li>14. Suydam, Robert</li> <li>15. Hemsath, James</li> </ol>	Landscape Ecology Permafrost/Landscape Ecology Civil Engineering/Hydrology Marine Ecology Wildlife Biology Ornithology/Landscape Ecology Oceanography/Marine Ecology Oceanography Hydrology Anthropology Remote Sensing/GIS Permafrost Landscape Ecology/Hydrology Wildlife Biology Petroleum Engineering	10/30/2015 4/16/2014 4/16/2014 10/30/2015 4/16/2014 3/11/2016 4/16/2014 1/27/2012 10/30/2015 10/30/2015 6/28/2010 10/30/2015 4/16/2014 1/16/2009 10/30/2015	10/30/2018 4/16/2017 4/16/2017 10/30/2018 4/16/2017 10/30/2018 4/16/2017 10/30/2018 10/30/2018 4/16/2017 10/30/2018 4/16/2017 10/30/2018 10/30/2018
BLM	Northern California Resource Advisory Council	This RAC is composed of 15 members, representing 3 categories: commodity, non-commodity, and local area interest. Each category has five members.	3 years	<ol style="list-style-type: none"> <li>1. Abbs, Alan</li> <li>2. Swickard, Todd</li> <li>3. <b>Hawkins, Russ</b></li> <li>4. <b>VACANT(Willmore, Skip)</b></li> <li>5. <b>VACANT(Kirkpatrick, Roger)</b></li> <li>6. Powell, Jennifer</li> <li>7. <b>Montgomery, Carol</b></li> <li>8. <b>Bayham, Frank</b></li> <li>9. <b>VACANT(Phillips, Bill)</b></li> <li>10. Bernstein, John</li> </ol>	Transportation/Rights of Way Grazing Permit Holders Timber Industry Timber/Forest Products  Commercial Recreation/OHV  Dispersed Recreation Dispersed Recreation History/Archaeology Wild Horses and Burros  Environmental Groups	6/1/15 6/1/15 6/1/15 6/1/15  6/1/15 6/1/15 6/1/15 6/1/15  6/1/15	6/1/18 6/1/18 6/1/17 6/1/16  6/1/16 6/1/18 6/1/17 6/1/17 6/1/16  6/1/18

Recently Appointed

Vacant or Term Expires in 2017

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BLM FACA COMMITTEE VACANCY REPORT THROUGH January 19, 2017

Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
				11. Nordstrom, Mary 12. VACANT(Diermier, Jessica) 13. VACANT(Frost, Pat) 14. Balding, Martin 15. Moty, Leonard	Public at Large Acaddemician  Public at Large State Agency Representative Elected Officials	6.1/15 6/1/15  6/1/15 6/1/15 6/1/15	6/1/18 6/1/16  6/1/16 6/1/17 6/1/17
BLM	Northeastern Great Basin Resource Advisory Council	This RAC is composed of 15 members, representing 3 categories: commodity, non-commodity, and local area interest. Each category has five members.  *Rodney Davis resigned 3/2016	3 years	1. Carter, Jacob L. 2. Conley, Kenneth E.. 3. Lee, Kevin J. 4. Pierce, David W. 5. Anderson, Dan  6. Hughes, Julie A. 7. Nations, Jeanne 8. VACANT(Cyndee McMullen) 9. Prier, John Michael 10. Gleason-Tobel, Julie Von.  11. Rice, John 12. Lutz, Jeremy 13. VACANT( Davis, Rodney)* 14. Williams, Jeff 15. Wolf, William Louis	Federal Grazing Federal Grazing Transportation/ROW Energy/Minerals Energy/Minerals  Dispersed Recreation Wild Horses & Burros VACANT  Environmental Wild Horses & Burro  Elected Official State Agency Academician  Public at Large Public-at-Large	5/16/2014 2/20/2015 2/20/2015 9/21/2012 2/4/2016  2/20/2015 2/4/2016  5/6/2014 2/20/2015  2/4/2016 9/15/2010 2/20/2015  2/4/2016 9/15/2010	5/6/2017 2/20/2018 2/20/2018 2/4/2019 2/4/2019  2/20/2018 2/4/2019 9/21/2015  5/6/2017 2/20/2018  2/4/2019 5/6/2017 2/20/2018  2/4/2019 5/6/2017

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Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	Northwest (CO) Resource Advisory Council	This RAC is composed of 15 members, representing 3 categories: commodity, non-commodity, and local area interest. Each category has five members.  <b>*Reassigned to SW RAC</b>	3 years	1. <b>VACANT(Buck, Lori)*</b>	<b>Outdoor Recreation</b> Energy and Minerals Energy/Minerals Federal Grazing Federal Grazing  Dispersed Recreation Archaeological/Historical Dispersed Recreation Environmental Environmental  <b>Public-at-Large</b> State Natural Resource Agency Elected Official Elected Official Public-at-Large	<b>1/27/2016</b>	<b>1/27/2019</b>
				2. Ludlam, David		1/27/2016	1/27/2019
				3. <b>Mattern, James</b>		11/5/2014	11/5/2017
				4. McStay, Harold		11/15/2010	11/30/2019
				5. Robertson, Scott		11/30/2016	11/30/2019
				9. Pritchard, Mike		1/27/2016	1/27/2019
				6. Conner, Carl		11/15/2010	11/30/2019
				7. Vasquez, Barbara		11/15/2010	11/30/2019
				8. Coleman, Connor		1/27/2016	1/27/2019
				10. <b>Schafer, Luke</b>		11/5/2014	11/5/2017
				11. <b>VACANT(Neuhof,J.)</b>		<b>11/15/2010</b>	<b>11/18/2016</b>
				12. <b>Riggs, N. Dean</b>		11/5/2014	11/5/2017
				13. Newman, George		1/27/2016	1/27/2019
				14. Jankovsky, Tom		11/30/2016	11/30/2019
				15. <b>Weddle, Landel R.</b>		11/5/2014	11/5/2017
BLM	NW Oregon Resource Advisory Council	This Resource Area is composed of 15 members representing 3 categories – commodity, non-commodity and local area interest. Each category has 5 members	2-3 years	1. Price, Jeremiah A.	OffHighway Vehicle Users Commercial Timber Dev Outdr Recreation Dev Outdr Recreation Commercial Recreation  Wildlife/Hunting Local Environmental Regional Environmental Dispersed Recreation Dispersed Recreation  Polk County Commissioner Linn County Commissioner Benton County Comm.	8/3/2015	8/3/2018
				2. <b>Schmidt, David R.</b>		8/3/2015	8/3/2017
				3. Price, Ron		9/14/2016	9/14/2019
				4. Ripley, Mike W.		8/3/2015	9/14/2019
				5. <b>Giordano, Peter A.</b>		8/3/2015	8/3/2017
				6. Dundon, James A.		8/3/2015	8/3/2018
				7. Atkins, John H Jr.		8/3/2015	8/3/2018
				8. Otterby, Lon D.		8/3/2015	9/14/2019
				9. Omlin, John		8/3/2015	9/14/2019
				10. <b>Crinklaw, Glen P.</b>		8/3/2015	8/3/2017
				11. <b>Pope, Craig A.</b>		8/3/2015	8/3/2017
				12. Tucker, William C.		8/3/2015	8/3/2018
				13. Jaramillo, Annabelle E.		8/3/2015	8/3/2018

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Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
				14. Bailey, Jerry J. 15. Porter, Deborah	Tribal Interests Public at Large	8/3/2015 9/14/2016	8/3/2017 9/14/2019
<b>BLM</b>	<b>Pecos District Resource Advisory Council</b>	This Resource Advisory Council is composed of 10 members, representing three categories - commodity, non-commodity, and local area interest. Each category has at least three members.	3 years	1. Hillman, Ron 2. Callaway, Jack 3. Derrick, Millard  4. McDaniel, Patricia S. 5. Peerman, Steve 6. West, Phillip Stephen  7. Veni, George 8. Farmer, George 9. Black, Robert 10. Richey, Reginald Wade	Energy and Minerals Transportation/ROW Federal Grazing  Environmental Dispersed Recreation Environmental  Public at Large State Agency Representative Elected Official Public-at-Large	11/17/2015 4/28/2011 9/30/2016  4/28/2011 11/17/2015 4/28/2011  11/17/2015 4/28/2011 9/30/2016 4/28/2011	11/17/2018 9/11/2017 9/30/2019  9/30/2019 11/17/2018 9/11/2017  11/17/2018 9/11/2017 9/30/2019 9/11/2017

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Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	<b>Rio Grande Natural Area Commission</b>  <b>INACTIVE</b>	The Committee is composed of 9 members representing interests related to the Conservation Area and individuals possessing expertise related to the Conservation Area's purposes.	5 years	<ol style="list-style-type: none"> <li>1. Anderson, Harold A.</li> <li>2. Basagoitia, Ricky M.</li> <li>3. Blenden, Michael Dale</li> <li>4. Cotton, Craig Wayne</li> <li>5. de la Vista, Rio</li> <li>6. Hankins, Helen M.</li> <li>7. Gibson, Michael</li> <li>8. Vandiver, Steven E.</li> <li>9. Willet, Michael J.</li> </ol>	Citizens of the Local Region Colorado Division of Wildlife Alamosa National Wildlife Refuge Colorado Division of Water Resources Citizens of the Local Region BLM Colorado State Director Citizens of the Local Region Rio Grande Water Conservation District Citizens of the Local Region	2/15/2011 2/15/2011 2/15/2011 2/15/2011 2/15/2011 2/15/2011 5/30/2014 2/15/2011 2/15/2011	2/15/2016 2/15/2016 2/15/2016 2/15/2016 2/15/2016 2/15/2016 5/30/2017 2/15/2016 2/15/2016
BLM	<b>San Juan Islands National Monument Advisory Committee</b>	The Committee is composed of members representing interests related to the Monument and individuals possessing experites related to the Monument's purposes.	1-3 years	<ol style="list-style-type: none"> <li>1. Thomas Reynolds</li> <li>2. <b>Barbara Marrett</b></li> <li>3. <b>Gene Helfman</b></li> <li>4. Joseph Jones</li> <li>5. <b>Michael Jonas</b></li> <li>6. Jacquelyn Ferry</li> <li>7. Erin Corra</li> <li>8. Rhea Miller</li> <li>9. <b>Thomas Reeve</b></li> <li>10. Jamie Stephens</li> <li>11. MacDonald, Leslie</li> <li>12. Williams, Shirley</li> </ol>	Recreation/Tourism Recreation/Tourism Wildlife/Ecological Wildlife/Ecological Cultural/Heritage Cultural/Heritage Education/Interpretation Public-at-Large Public-at-Large Local Government Private Landowners Tribal	7/24/14 7/24/14 7/24/14 11/17/15 7/24/14 7/24/14 7/24/14 7/24/14 7/24/14 7/24/14 9/30/16 11/23/16	11/17/18 7/24/17 7/24/17 11/17/18 7/24/17 11/17/18 11/17/18 9/30/19 7/24/17 9/30/19 9/30/19 11/23/19

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Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	Sierra-Front Northwestern Great Basin Resource Advisory Council	This RAC is composed of 15 members, representing 3 categories: commodity, non-commodity, and local area interest. Each category has five members.  <b>*Wm Campbell resigned 4/5/2016</b>	3 years	1. Ugalde, John 2. Gingerich, Matthew E. 3. Hendrix, Verl R. 4. Lassiter, Deborah Ann 5. Synder, Kyle A.  6. Cerri, Ronald 7. Hendricks, Gregory 8. Molini, William A. 9. Von Seggern, David 10. Haynal, Patrick  11. Irwin, Patrick S. 12. Keil, Ronald F. 13. <b>VACANT(Campbell,W)*</b> 14. Freese, Mark Thomas 15. Hogan, Douglas E.	Federal Grazing Transportation/ROW Federal Grazing Energy/Minerals Energy/Minerals  Dispersed Recreation Wild Horse & Burro Environmental Environmental Archaeological/Historical  Elected Official Public-at-Large <b>Tribal</b> State Agency Academician	2/4/2016 11/9/2010 2/20/2015 11/9/2010 2/20/2015  9/26/2012 5/23/2014 2/20/2015 11/9/2010 2/4/2016  2/20/2015 2/20/2015 <b>2/4/2016</b> 2/20/2015 2/20/2015	2/4/2019 2/4/2019 2/20/2018 5/23/2017 2/20/2018  2/4/2019 5/23/2017 2/20/2018 5/23/2017 2/4/2019  2/20/2018 2/20/2018 <b>2/4/2019</b> 2/20/2018 2/20/2018

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Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	Southeast Oregon Resource Advisory Council	This RAC is composed of 15 members, representing 3 categories: commodity, non-commodity, and local area interest. Each category has five members.	3 years	1. Stout, Ralph	Commercial Timber	4/2/2015	4/2/2018
				2. Hodge, Donald Wayne	Transportation/ROW	1/23/2012	4/2/2018
				3. Beverly, Brent	Outdoor Recreation	4/2/2015	4/2/2018
				4. Cunningham, Sean	Federal Grazing	12/22/2015	12/22/2018
				5. Poole, Kenneth	Energy/Minerals	1/4/2017	1/4/2020
				6. Hiller-Clark, A	Archaeological/Historical	12/20/2010	1/4/2020
				7. Sheppard, Mia	Environmental	4/2/2015	4/2/2018
				8. Watts, Richard	Dispersed Recreation	4/2/2015	4/2/2018
				9. Weikel, Julie Marie	Wild Horse & Burro	1/23/2012	4/2/2018
				10. Morse, Daniel	Environmental	12/22/2015	12/22/2018
				11. Bishop, James Allen	Public-at-Large	1/23/2012	4/2/2018
				12. Runnels, Peter David	Elected Official	1/23/2012	4/2/2018
				13. Kesling, Jason	Tribal	12/20/2010	1/4/2020
				14. Johnson, Gary	Public at Large	12/22/2009	12/22/2018
				15. Milburn, Philip	State Agency	12/22/2015	12/22/2018

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Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	Southwest (CO) Resource Advisory Council	This RAC is composed of 15 members, representing 3 categories: commodity, non-commodity, and local area interest. Each category has five members.  *	3 years	1. Potter, John	Federal Grazing	12/20/2016	11/5/2017
				2. Roeber, Mark	Federal grazing	8/20/2010	12/20/2019
				3. Reams, John	Energy/Minerals	10/6/2014	10/6/2017
				4. Welt, Kathleen	Energy/Minerals	12/20/2016	12/20/2019
				5. Buck, Lori	Outdoor Recreation	8/20/2010	1/17/2019
				6. Brandt, Laurie	Dispersed Recreation	10/6/2014	1/12/2019
				7. Buickerood, James	Environmental	1/12/2016	1/12/2019
				8. Neuhof, Joseph	Dispersed Recreation	12/20/2016	12/20/2019
				9. Rodriguez, Latifia	Wild Horse & Burro	8/20/2013	12/20/2019
				10. Dietrich, James	Dispersed Recreation	10/6/2014	10/6/2017
				11. Justman, John	Elected Official	1/11/2017	1/11/2020
				12. DelPiccolo, Renzo J.	State Employee	1/12/2016	10/6/2017
				13. Gleason, William	Public-at-Large	10/6/2011	10/6/2017
				14. Williams, Ernest	Elected Official	10/6/2014	12/20/2019
				15. Zeller, Christi	Public at Large	1/11/2017	1/11/2020
BLM	Southwest Oregon Advisory Council	This Resource Advisory Council is composed of 15 members, representing three categories - commodity, non-commodity, and local area interest. Each category has at least three members.	2 years	1. Leever, Richard B.	Dispersed Recreation	07/31/15	07/31/17
			3 year	2. Ratty, Daniel	Organized Labor	07/31/15	09/15/19
			3 years	3. Schott, David R.	Commercial Timber Industry	07/31/15	07/31/18
			3 year	4. Ballard, Timothy	Non-ind Private Forests	07/31/15	09/15/19
			3 years	5. Anderson, Neal G.	Non-industrial Private Forests	07/31/15	07/31/18
			3 year	6. Houck, Kendall	Public At-Large	07/31/15	09/15/19
			2 years	7. Petrowski, Stanley J.	Public At-Large	07/31/15	07/31/17
			3 years	8. Robison, Jason A.	Tribal	07/31/15	07/31/18
			3 year	9. Carloni, Ken	Teacher	09/15/16	09/15/19
			3 years	10. Morris, Kelley	Elected Official	07/31/15	07/31/18
			2 years	11. McKinley, George W.	Regional Environmental Org.	07/31/15	07/31/17
			2 years	12. Vejtasa, Stanley A.	Watershed Associations	07/31/15	07/31/17
			2 years	13. Vaile, Joseph E.	Regional Environmental Org.	07/31/15	07/31/17
			3 year	14. Quinn, Joseph	Local Environmental Org.	09/15/16	09/15/19
			3 years	15. Morison, Molly O.	National Environmental Org.	07/31/15	07/31/18

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Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	<b>Steens Mountain Advisory Council</b>	The membership (established by statute) is representative of the varied groups with an interest in the management of the Steens Mountain area.	3 years	<ol style="list-style-type: none"> <li>1. Hovekamp, Nathan R.</li> <li>2. Bilyeu, David</li> <li>3. Davies, Stacy L.</li> <li>4. Bagett, Mark</li> <li>5. Finding, Karl J.</li> <li>6. Jenkins, Richard</li> <li>7. Otley, Fred</li> <li>8. Dick, Cecil</li> <li>9. Klus, Rodney J.</li> <li>10. Dr. Leon Pielstick</li> <li>11. Helmer, John</li> <li>12. Weikel-Magden, Owyhee</li> <li>13. Wilson, Katherine A.</li> </ol>	Public-at-Large State Environmental Grazing Permittee Fish & Recreational Fishing Mechanized Recreation Recreational Permit Holder Private Landowner Burns Paiute Tribe State Liaison Wild Horse & Burro Dispersed Recreation Local Environmental Grazing Permittee	3/23/2015 9/28/2006 8/14/2001 4/14/2014 3/23/2015 4/14/2014 9/28/2006 4/14/2014 3/23/2015 12/21/2015 10/19/2016 3/23/2015 3/23/2015	3/23/2018 4/14/2017 3/23/2018 4/14/2017 3/23/2018 4/14/2017 4/14/2017 3/23/2018 12/21/2018 10/19/2019 3/23/2018 3/23/2018

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Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	Twin Falls District Resource Advisory Council	This RAC is composed of 15 members, representing 3 categories: commodity, non-commodity, and local area interest. Each category has five members.  <b>**Dayna Gross resigned on 6/15/2015</b>	3 years	1. Gregory Moore	Outdoor Recreation	2/4/2016	2/4/2019
				2. Henslee, M.	Federal Grazing	11/18/2010	1/9/2020
				3. Austin, Richard R.	Energy/Minerals	3/17/2015	3/17/2018
				4. Brett Meyer	Federal Grazing	2/4/2016	2/4/2019
				5. Wills, James E.	Outdoor Recreation	3/17/2015	3/17/2018
				6. Howard, Shell	Dispersed Recreation	1/18/2017	3/17/2018
				7. VACANT**	Environmental		<b>11/19/2016</b>
				8. Orton, LaMar M.	Environmental	3/17/2015	3/17/2018
				9. Robinson, Shauna L.	Archaeological/Historical	9/20/2012	2/4/2019
				10. Ford, Brad	Dispersed Recreation	1/9/2017	1/9/2020
				11. Howell, Charles M.	Elected Official	11/24/2009	2/4/2019
				12. Courtney, Tom	Public-at-Large	11/18/2010	1/9/2020
				13. Michelle Richman	State of Idaho	2/4/2016	2/4/2019
				14. Hawkins, Joseph F.	Academician	3/17/2015	3/17/2018
				15. Osborne, H	Native American Tribe	11/19/2013	1/9/2020

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Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	Utah Resource Advisory Council	This RAC is composed of 15 members, representing 3 categories: commodity, non-commodity, and local area interest. Each category has five members.	3 years	1. Redd, Heidi	Grazing	6/22/2015	6/22/2018
				2. Baker, Chad	Energy/Minerals	5/30/2014	5/30/2017
				3. Butcher, Callee	Energy/Minerals	5/30/2014	5/30/2017
				4. Tanner, Jay	Grazing	1/12/2016	1/12/2019
				5. McClendon, Daniel	Energy/Minerals	6/12/2015	6/12/2018
				6. Allison, James	Archaeology/History	5/30/2014	5/30/2017
				7. Burr, Stephen Wright	Dispersed Recreation	6/12/2015	6/12/2018
				8. <b>VACANT (Ellis, Rick)</b>	<b>Wild Horse &amp; Burro</b>	<b>1/7/2013</b>	<b>1/7/2016</b>
				9. Slater, Stephen J.	Environmental	1/12/2016	1/12/2019
				10. Robinson, Christopher	Environmental	1/12/2016	1/12/2019
				11. Cox, William	Elected Official	6/12/2015	6/12/2018
				12. <b>VACANT*</b>	<b>State Agency</b>	<b>6/22/2015</b>	<b>6/22/2018</b>
				13. Forrest, Troy	State Agency	1/12/2016	1/12/2019
				14. Grayeyes, Willie	Tribal	6/12/2015	6/12/2018
				15. Chacon, Cimarron	Public-at-Large	5/30/2014	5/30/2017
				<b>*John Harja resigned 1/21/16</b>			

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Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	<b>Western Montana Resource Advisory Council</b>	This RAC is composed of 15 members, representing 3 categories: commodity, non-commodity, and local area interest. Each category has five members.	3 years	<ol style="list-style-type: none"> <li>Holland, Koy C.</li> <li>Walker, Robert</li> <li>Hoffman, Larry</li> <li>Krueger, David</li> <li>Belangie-Nye, Jean</li> <li>Tussing, Ronald</li> <li>Happel, Dan A.</li> <li>Martinka, Robert</li> <li>Putz, Paul M.</li> <li>Gorski, Margaret</li> <li>Hart, James</li> <li>Brown, Nichole R.</li> <li>Midgett, Douglas</li> <li>Sweeney, Mark</li> <li>Tilt, Whitney C.</li> </ol>	Federal Grazing Commercial Recreation Energy/Minerals Timber Outdoor Recreation  Dispersed Recreation Environmental Environmental Archaeological/Historical Archaeological/Historical  Elected Official Public-at-large Public-at-large Public-at-large Public-at-large	3/12/2015 4/3/2014 1/8/2016 1/8/2016 1/8/2016  3/12/2015 4/3/2014 4/3/2014 4/3/2014 3/12/2015 1/8/2016  3/12/2015 3/12/2015 4/3/2014 4/3/2014 4/3/2014 3/12/2015	3/12/2018 4/3/2017 1/8/2019 1/8/2019 1/8/2019  3/12/2018 4/3/2017 4/3/2017 4/3/2017 3/12/2018 1/8/2019  3/12/2018 3/12/2018 4/3/2017 4/3/2017 4/3/2017 3/12/2018
BLM	<b>Wild Horse and Burro Advisory Board</b>	Advisory Board membership is balanced in terms of categories of interest represented and come from different locations across the U.S.	3 years	<ol style="list-style-type: none"> <li>McDonnell, Sue</li> <li>Kathrens, Ginger</li> <li>Masters, B. Cody.</li> <li>Sall, Jennifer</li> <li>Sewing, June C.</li> <li>Weikel, Dr. Julie M.</li> <li>Cope, Robert</li> <li>Woehl, Fred, Jr.</li> <li>Yardley, Steven</li> </ol>	Wild Horse & Burro Research Humane Advocay Wildlife Management General Public Wild Horse and Burro Advocacy  Veterinary Medicine Natural Resources Mgt General Public Livestock Management	3/28/2011 3/21/2016 3/21/2016 3/30/2015 3/30/2015  3/30/2015 3/28/2011 3/28/2011 3/21/2016	4/3/2017 3/21/2019 3/21/2019 3/30/2018 3/30/2018  3/30/2018 4/3/2017 4/3/2017 3/21/2019

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Bureau	Committee Name	Membership Criteria	Term Length	Member	Interest Represented <small>*Key located at the bottom</small>	Term Begin	Term End
BLM	<b>Wyoming Resource Advisory Council</b>	This RAC is composed of 10 members, representing 3 categories: commodity, non-commodity, and local area interest. The commodity and non-commodity categories each have three members and the local area interest has four members.	3 years	<ol style="list-style-type: none"> <li>1. Bellah, Penny</li> <li>2. Bolinger, Jim</li> <li>3. Mackey, Marilyn Ruth</li> <li>4. Haswell, Christi</li> <li>5. Stuble, Julia A.</li> <li>6. Corra, John</li> <li>7. Schladweiler, Brenda</li> <li>8. Julian, Truman D.</li> <li>9. Konkol, Lyle</li> <li>10. Espy, John R.</li> </ol>	Energy and Mineral Energy and Mineral Federal Grazing Environmental Environmental Environmental Academician Public-at-Large Public-at-Large Elected Official	7/20/15 10/26/16 8/8/14 7/20/15 8/8/14 3/18/13 7/20/15 8/8/14 7/20/15 3/18/13	7/20/18 10/26/19 8/8/17 7/20/18 8/8/17 10/26/19 7/20/18 8/8/17 10/26/19 10/26/19

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Existing nominee recommendations through  
2016 Call for Nominations received too late  
To process with prior Administration

## BLM FACA COMMITTEE VACANCY REPORT THROUGH January 19, 2017

Resource Advisory Council categories:

- **Commodity**—Federal grazing, energy/minerals, transportation/rights-of-way (ROW), off-highway vehicles, commercial recreation
- **Non-Commodity**—environmental organization, dispersed recreation, archaeological interests, wild horse and burro interest groups
- **Local Area Interest**—State/local government (elected officials), Tribal representatives, public-at-large, State natural resource agency, academician

**From:** Williams, Timothy  
**To:** [Tim Williams](#)  
**Subject:** Federal Register: Designated Tribal Agents  
**Date:** Wednesday, March 08, 2017 9:15:11 AM  
**Attachments:** [DesignatedTribalAgents.pdf](#)

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FYI:

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Department Of The Interior  
External and Intergovernmental Affairs  
Timothy Williams  
timothy\_williams@ios.doi.gov  
Office: (202) 208-6015  
Cell: (202) 706-4982

electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Freedom of Information/Privacy Act Request.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G-639; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form G-639 is provided as a convenient means for persons to provide data necessary for identification of a particular record desired under Freedom of Information/Privacy Act (FOIA/PA).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G-639 is 163,000 and the estimated hour burden per response is .25 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 40,750 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$859,450.

Dated: March 1, 2017.

**Samantha Deshommes,**  
Chief, Regulatory Coordination Division,  
Office of Policy and Strategy, U.S. Citizenship  
and Immigration Services, Department of  
Homeland Security.

[FR Doc. 2017-04481 Filed 3-7-17; 8:45 am]

BILLING CODE 9111-97-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

[178A2100DD/AAKC001030/  
AOA501010.999900 253G]

**Indian Child Welfare Act; Designated Tribal Agents for Service of Notice**

**AGENCY:** Bureau of Indians Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** The regulations implementing the Indian Child Welfare Act provide that Indian Tribes may designate an agent other than the Tribal chairman for service of notice of proceedings under the Act. This notice includes the current list of designated Tribal agents for service of notice.

**FOR FURTHER INFORMATION CONTACT:** Evangeline Campbell, Bureau of Indian Affairs, Division of Human Services, 1849 C Street NW., MS-4513-MIB, Washington, DC 20240; Phone: (202) 513-7642.

**SUPPLEMENTARY INFORMATION:** The regulations implementing the Indian Child Welfare Act, 25 U.S.C. 1901 *et seq.*, provide that Indian Tribes may designate an agent other than the Tribal chairman for service of notice of proceedings under the Act. See 25 CFR 23.12. The Secretary of the Interior is required to update and publish in the **Federal Register** as necessary the names and addresses of the designated Tribal agents. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.

In any involuntary proceeding in a State court where the court knows or has reason to know that an Indian child is involved, and where the identity and location of the child's parent or Indian custodian or Tribe is known, the party seeking the foster-care placement of, or termination of parental rights to, an Indian child must directly notify the parents, the Indian custodians, and the child's Tribe by registered or certified mail with return receipt requested, of the pending child-custody proceedings and their right of intervention. Copies of these notices must be sent to the appropriate Regional Director by registered or certified mail with return

receipt requested or by personal delivery. See 25 CFR 23.11.

If the identity or location of the child's parents, the child's Indian custodian, or the Tribes in which the Indian child is a member or eligible for membership cannot be ascertained, but there is reason to know the child is an Indian child, notice of the child-custody proceeding must be sent to the appropriate Bureau of Indian Affairs (BIA) Regional Director (see [www.bia.gov](http://www.bia.gov)). See 25 CFR 23.111.

*No notices, except for final adoption decrees, are required to be sent to the BIA Central Office in Washington, DC.*

This notice presents, in two different formats, the names and addresses of current designated Tribal agents for service of notice, and includes each designated Tribal agent received by the Secretary of the Interior prior to the date of this publication. Part A, published in this notice, lists designated Tribal agents by region and alphabetically by Tribe within each region. Part A is also available electronically at: <http://www.bia.gov/WhoWeAre/BIA/OIS/HumanServices/index.htm>.

Part B is a table that lists designated Tribal agents alphabetically by the Tribal affiliation (first listing American Indian Tribes, then listing Alaska Native Tribes). Part B is only available electronically at: <http://www.bia.gov/WhoWeAre/BIA/OIS/HumanServices/index.htm>.

Each format also lists the BIA's contact(s) for each of the twelve regions.

**A. List of Designated Tribal Agents by Region**

1. Alaska Region
2. Eastern Region
3. Eastern Oklahoma Region
4. Great Plains Region
5. Midwest Region
6. Navajo Region
7. Northwest Region
8. Pacific Region
9. Rocky Mountain Region
10. Southern Plains Region
11. Southwest Region
12. Western Region

**A. List of Designated Tribal Agents by Region**

**1. Alaska Region**

Alaska Regional Director, Bureau of Indian Affairs, 3601 C Street, Suite 1100 Anchorage, Alaska 99503; Phone: (907) 271-4111.

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Afognak, Native Village of .....	Denise Malutin, ICWA Worker; Taletha Gertz, ICWA Worker.	323 Carolyn Street Kodiak, AK 99615.	(907) 486-6357	(907) 486-6529	<a href="mailto:denise@afognak.org">denise@afognak.org</a> ; <a href="mailto:taletha@afognak.org">taletha@afognak.org</a>
Agdaagux Tribe of King Cove	Amanda McAdoo, ICWA Coordinator; Ozzy E. Escarate, Director, Department of Family & Community Development.	Aleutian/Pribilof Islands Association, 1131 East International Airport Road, Anchorage, AK 99518-1408.	(907) 276-2700	(907) 222-9735	<a href="mailto:icwa@apiai.org">icwa@apiai.org</a>

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Akhiok, Native Village of .....	Cassie Keplinger, ICWA Coordinator.	Kodiak Area Native Association, 3449 Rezanof Drive East, Kodiak, AK 99615.	(907) 486-1370	(907) 486-4829	<i>cassie.keplinger@kodiakhealthcare.org</i>
Akiachak Native Community ..	Georgianna Wassilie, ICWA Worker.	P.O. Box 51070, Akiachak, AK 99551.	(907) 825-4626 Ext. 204.	(907) 825-4029	<i>gwassilie@avcp.org</i>
Akiachak Native Community ..	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Akiak Native Community .....	Leann Jackson, ICWA Director.	P.O. Box 52127, Akiak, AK 99552.	(907) 765-7112	(907) 765-7512	<i>Akiak.icwa16@gmail.com</i>
Akutan, Native Village of .....	Amanda McAdoo, ICWA Coordinator; Ozzy E. Escarate, Director, Department of Family & Community Development.	Aleutian/Pribilof Islands Association, 1131 East International Airport Road, Anchorage, AK 99518-1408.	(907) 276-2700	(907) 222-9735	<i>icwa@apiai.org</i>
Alakanuk, Native Village of ....	Charlene Striling, ICWA Worker.	Box 149, Alakanuk, AK 99554.	(907) 238-3704	(907) 238-3705; (907) 238-3429.	<i>cstriling@avcp.org</i>
Alakanuk, Native Village of ....	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Alatna Village .....	Tribal Family Specialist .....	P.O. Box 70, Allakaket, AK 99720.	(907) 968-2261	(907) 968-2305	
Alatna Village .....	.....	Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953	
Aleknagik, Native Village of ...	Allen Ilutsik, Tribal Administrator; Marie Aloysius, President.	ICWA, P.O. Box 115, Aleknagik, AK 99555.	(907) 842-2080	(907) 842-2081	
Aleknagik, Native Village of ...	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576.	(907) 842-4139	(907) 842-4106	<i>cnixon@bbna.com</i>
Algaaciq Native Village (St. Mary's).	Theresa Kelly, ICWA Worker and Sven Paukan, Tribal Administrator.	Box 48, St. Mary's, AK 99658.	(907) 438-2335	(907) 438-2227	<i>tkelly@avcp.org</i>
Algaaciq Native Village (St. Mary's).	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Allakaket Village .....	Tribal Family Youth Specialist.	P.O. Box 50, Allakaket, AK 99720.	(907) 968-2237	(907) 968-2233	<i>allakaket@tanachiefs.org</i>
Allakaket Village .....	.....	Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Ambler, Native Village of .....	Beatrice Miller, ICWA Coordinator; Katherine Cleveland, First Chief Tribal Council.	P.O. Box 47, Ambler, AK 99786.	(907) 445-2189; (907) 445-5051; (907) 445-5051.	(907) 445-2257	<i>icwa@ivisaappaat.org</i>
Anaktuvuk Pass Village of .....	Joshua Stein, ICWA Program Manager.	Arctic Slope Native Association, P.O. Box 1232, Barrow, AK 99723.	(907) 852-9374	(907) 852-2763	<i>Joshua.stein@arcticslope.org</i>
Andreafski (see Yupiit of Andreafski).	Marcie Kookesh, ICWA Worker.	P.O. Box 328, Angoon, AK, 99820.	(907) 788-3411	(907) 788-3412	<i>mkookesh.agntribe@gmail.com</i>
Angoon Community Association.	Muriel Morgan, ICWA Worker; Laura Simeon, Tribal Administrator.	P.O. Box 349, Aniak, AK 99557.	(907) 675-4349	(907) 675-4513	<i>twinksmorgan@gmail.com; aniaktribe@gmail.com</i>
Aniak, Village of .....	Tami Jerue, Tribal Family Youth Specialist.	P.O. Box 10, Anvik, AK 99558.	(907) 663-6388	(907) 663-6357	<i>tamijerue59@gmail.com</i>
Anvik Village .....	.....	Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Arctic Village .....	Margorie Gemmill, Tribal Family Youth Specialist.	P.O. Box 22069, Arctic Village, AK 99722.	(907) 587-5523	(907) 587-5523.	
Arctic Village .....	.....	Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Asa'carsarmiut Tribe (formerly Native Village of Mountain Village).	Evelyn Peterson, Director of Social Services & Education; Daphne Joe, Director of Social Services & Education.	P.O. Box 32107, Mountain Village, AK 99632.	(907) 591-2814; (907) 591-2815.	(907) 591-2428	<i>aticwa@gci.net</i>
Atka, Native Village of .....	Amanda McAdoo, ICWA Coordinator; Ozzy E. Escarate, Director, Department of Family & Community Development.	Aleutian/Pribilof Islands Association, 1131 East International Airport Road, Anchorage, AK 99518-1408.	(907) 276-2700	(907) 222-9735	<i>icwa@apiai.org</i>
Atmaultuak, Village of .....	Daniel Waska, Tribal Administrator.	P.O. Box 6568, Atmaultuak, AK 99559.	(907) 553-5610	(907) 553-5610	<i>atmaultuaktc@gmail.com</i>
Atqasuk Village .....	.....	P.O. Box 91108, Atqasuk, AK 99791.	(907) 633-2575	(907) 633-2576.	
Atqasuk Village .....	Joshua Stein, ICWA Program Manager.	Arctic Slope Native Association, P.O. Box 1232, Barrow, AK 99723.	(907) 852-9374	(907) 852-9152	<i>Joshua.stein@arcticslope.org</i>
Barrow Inupiat Traditional Government.	Marjorie Solomon, Social Services Workforce Director.	P.O. Box 1130 Barrow, AK 99723.	(907) 852-4411	(907) 852-4413	<i>marjorie.solomon@nvbarrow.net</i>

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Beaver Village .....	Arlene Pitka, Tribal Family Youth Specialist.	P.O. Box 24029, Beaver, AK 99724.	(907) 628-6126; (907) 628-2252.	(907) 628-6185.	
Beaver Village .....		Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Belkofski Native Village of .....	Amanda McAdoo, ICWA Coordinator; Ozzy E. Escarate, Director, Department of Family & Community Development.	Aleutian/Pribilof Islands Association, 1131 East International Airport Road, Anchorage, AK 99518-1408.	(907) 276-2700	(907) 222-9735	<i>icwa@apiai.org</i>
Bethel (see Orutsarmuit Native Council).					
Bettles Field (see Evansville Village).					
Bill Moore's Slough, Village of	Nancy C. Andrews, ICWA Worker; Philomena Keyes, Tribal Administrator.	P.O. Box 20288, Kotlik, AK 99620.	(907) 899-4232; (907) 899-4236.	(907) 899-4002	<i>nacnadrews123@gmail.com; bms99620@gmail.com</i>
Birch Creek Tribe .....	Jackie Balaam, Tribal Family Youth Specialist.	3202 Shell Street, Fairbanks, AK 99701.	(907) 378-1573	(907) 374-9925.	
Birch Creek Tribe .....		Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Brevig Mission, Native Village of.	Linda Divers, Tribal Family Coordinator.	P.O. Box 85039, Brevig Mission, AK 99785.	(907) 642-2185	(907) 642-3042	<i>tfc.kts@kawerak.org</i>
Brevig Mission, Native Village of.	Traci McGarry, Program Director.	Kawerak, Inc., Children & Family Services, P.O. Box 948 Nome, AK 99762.	(907) 443-4376	(907) 443-4474	<i>cfsdir@kawerak.org</i>
Buckland, Native Village of .....	Mona Washington, IRA Administrator.	P.O. Box 67, Buckland, AK 99727.	(907) 494-2171	(907) 494-2192	<i>tribeadmin@nunachiak.org</i>
Cantwell, Native Village of .....	Ashley Hicks, ICWA Advocate.	P.O. Box 94, Cantwell, AK 99729, Drawer H, Copper Center, AK 99573.	(907) 822-5241 Ext. 2071.	(907) 822-8800	<i>ahicks@cmative.org</i>
Central Council of the Tlingit and Haida Indian Tribes of Alaska.	Barbara Dude, Child Welfare Program Specialist.	320 W. Willoughby Ave., Suite 300, Juneau, AK 99801.	(907) 463-7169	(907) 885-0032	<i>icwamail@cchitha-nsn.gov</i>
Chalkyitsik Village .....	Tamara Henry, Tribal Family Youth Specialist.	P.O. Box 57, Chalkyitsik, AK 99788.	(907) 848-8117	(907) 848-8986.	
Chalkyitsik Village .....		Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Chenegas, Native Village of .....	Norma J. Selanoff, ICWA Representative.	P.O. Box 8079, Chenega Bay, AK 99574-8079.	(907) 573-5386	.....	<i>taaira@nativevillageofchenega.com</i>
Cheesh-Na Tribe .....	Cecil Sanford, Tribal Administrator.	P.O. Box 241, Gakona, AK 99586.	(907) 822-3503	(907) 822-5179	<i>csanford@cheeshna.com</i>
Chefornak, Village of .....	Edward Kinegak, ICWA Specialist; Bernadette Lewis, Tribal Administrator.	P.O. Box 110, Chefornak, AK, 99651.	(907) 867-8808	(907) 867-8711	<i>ekinegak@avcp.org; tcctribe@gmail.com</i>
Chefornak, Village of .....	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Chevak Native Village .....	Natasia Ulroan, ICWA Worker.	Box 140, Chevok, AK 99563	(907) 858-7918	(907) 858-7919; (907) 858-7812.	<i>nulroan@avcp.org</i>
Chevok Native Village .....	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Chickaloon Native Village .....	Penny Westing, ICWA Case Manager.	P.O. Box 1105, Chickaloon, AK 99674-1105.	(907) 745-0749	(907) 745-0709	<i>penny@chickaloon.org</i>
Chignik Bay Tribal Council .....	Debbie Carlson, Administrator; Roberick Carlson, President.	Box 11, Chignik Bay, AK 99564.	(907) 749-2445	(907) 749-2423.	
Chignik Bay Tribal Council .....	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kakanak Road, Dillingham, AK 99576.	(907) 842-4139	(907) 842-4106	<i>cnixon@bbna.com</i>
Chignik Lagoon, Native Village of.	Delissa McCormick, Tribal Administrator; Clemenes Grunert, President.	ICWA, P.O. Box 09, Chignik Lagoon, AK 99565.	(907) 840-2281	(907) 840-2217	<i>chigniklagoonicwa@bbna.com</i>
Chignik Lagoon, Native Village of.	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, 1500 Kakanak Road, Dillingham, AK 99576.	(907) 842-4139	(907) 842-4106	<i>cnixon@bbna.com</i>
Chignik Lake Village .....	Shirley Kalmakoff, Administrator; John Lind, President.	P.O. Box 33, Chignik Lake, AK 99548.	(907) 845-2212	(907) 845-2217	<i>chigniklakevillagecouncil@gmail.com</i>
Chignik Lake Village .....	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, P.O. Box 310, 1500 Kakanak Road, Dillingham, AK 99576.	(907) 842-4139	(907) 842-4106	<i>cnixon@bbna.com</i>
Chilkat Indian Village .....	Carrie-Ann Durr, ICWA Caseworker.	HC 60, Box 2207, Haines, AK 99827.	(907) 767-5505 Ext. 228.	(907) 767-5408	<i>cdurr@chilkat-nsn.gov</i>
Chilkoot Indian Association .....	Kelsey Taylor, Family Caseworker.	P.O. Box 624, Haines, AK 99827.	(907) 766-2323	(907) 885-0032.	
Chinik Eskimo Community (aka Golovin).	Kirstie Ione, Tribal Family Coordinator.	P.O. Box 62019, Golovin, AK 99762.	(907) 779-3489	(907) 779-2000	<i>tfc.glv@kawerak.org</i>
Chinik Eskimo Community (aka Golovin).	Traci McGarry, Program Director.	Kawerak, Inc., Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443-4376	(907) 443-4474	<i>cfsdir@kawerak.org</i>
Chistochina (see Cheesh-na Tribe).					

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Chitina, Native Village of .....	Tribal President and Tribal Administrator.	P.O. Box 31, Chitina, AK 99566.	(907) 823-2215	(907) 823-2233.	
Chuathbaluk, Native Village of	Teresa Simeon-Hunter, ICWA Worker.	Box CHU, Chuathbaluk, AK 99557.	(907) 467-4313	(907) 467-4113	<i>ctc.teresahunter@gmail.com</i>
Chuathbaluk, Native Village of	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Chuloonawick Native Village ..	Tribal Administrator .....	P.O. Box 245, Emmonak, AK 99581.	(907) 949-1345	(907) 949-1346.	
Circle Native Community .....	Jessica Fields, Tribal Family Youth Specialist.	P.O. Box 89, Circle, AK 99733.	(907) 773-2822	(907) 773-2823	<i>Jessica.boyle@tananachiefs.org</i>
Circle Native Community .....	.....	Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Clarks Point, Village of .....	Danielle Aikins, Administrator; Betty Gardiner, President.	P.O. Box 90, Clarks Point, AK 99569.	(907) 236-1427	(907) 236-1428	<i>clarkspointadmin@bbna.com</i>
Clarks Point, Village of .....	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576.	(907) 842-4139	(907) 842-4106	<i>cnixon@bbna.com</i>
Copper River Native Association.	Ashley Hicks, ICWA Advocate.	Drawer H, Copper Center, Alaska 99573.	(907) 822-5241 Ext. 2071.	(907) 822-8800	<i>ahicks@crnative.org</i>
Copper Center (see Native Village of Kluti-Kaah). Cordova (see Eyak). Council, Native Village of .....	Leo Charles, Tribal Family Coordinator.	P.O. Box 2050, Nome, AK 99762.	(907) 443-7649	(907) 443-6433	<i>tfc.cou@kawerak.org</i>
Council, Native Village of .....	Traci McGarry, Program Director.	Kawerak, Inc., Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443-4376	(907) 443-4474	<i>cfsdir@kawerak.org</i>
Craig Tribal Association .....	Roberta Patten, Family Caseworker I.	P.O. Box, 746, Craig, AK 99921.	(907) 826-3948	(907) 885-0032.	
Craig Tribal Association .....	Barbara Dude, Child Welfare Program Specialist.	Central Council of the Tlingit and Haida Indian Tribes of Alaska, 320 W. Willoughby Ave., Suite 300, Juneau, AK 99801.	(907) 463-7169	(907) 885-0032	<i>icwamail@cchita.org</i>
Crooked Creek, Native Village of.	Helen Macar, ICWA Worker and Tribal Administrator.	P.O. Box 69, Crooked Creek, AK 99575.	(907) 432-2200	(907) 432-2201	<i>bbcc@starband.net</i>
Curyung Tribal Council, (formerly the Native Village of Dillingham).	Dorothy B. Lason, Administrator; Christopher Maines, Clerk; Thomas Tilden, President.	ICWA, P.O. Box 216, Dillingham, AK 99576.	(907) 842-2384	(907) 842-4510	<i>dorothy@curyungtribe.com; chrism@curyungtribe.com</i>
Curyung Tribal Council, (formerly the Native Village of Dillingham).	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576.	(907) 842-2384	(907) 842-4106	<i>cnixon@bbna.com</i>
Deering, Native Village of .....	Pearl Moto, ICWA Coordinator; Delores Iyatunguk, Administrator.	P.O. Box 36089, Deering, AK 99736.	(907) 363-2138	(907) 363-2195	<i>drgicwa@gmail.com; Tribaladmin@ipnatchiaq.org</i>
Deering, Native Village of .....	Jackie Hill, Director Tribal Assistance Programs.	Maniilaq Association, Family Services, P.O. Box 256, Kotzebue, AK 99752.	(907) 442-7879	(907) 442-7833	<i>Jackie.hill@maniilaq.org</i>
Dillingham (see Curyung Tribal Council).					
Diomedes (aka Inalik) Native Village of.	Leo Charles, Tribal Family Coordinator.	P.O. Box 7079, Nome, AK 99762.	(907) 443-4261	(907) 443-4464	<i>tfc.dio@kawerak.org</i>
Diomedes (aka Inalik) Native Village of.	Traci McGarry, Program Director.	Kawerak, Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443-4376	(907) 443-4474	<i>cfsdir@kawerak.org</i>
Dot Lake, Village of .....	Clara Perdue, Tribal Family Youth Specialist.	P.O. Box 2279, Dot Lake, AK 99737.	(907) 882-2695	(907) 882-5558.	
Dot Lake, Village of .....	.....	Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Douglas Indian Association ....	Loretta (Betty) Marvin, Family Caseworker.	811 West 12th Street, Juneau, AK 99801.	(907) 364-2983; (907) 364-2916.	(907) 364-2917	<i>bmarvin-dia@gci.net</i>
Eagle, Native Village of .....	Claire Ashley, Tribal Family Youth Specialist.	P.O. Box 19, Eagle, AK 99738.	(907) 547-2271	(907) 547-2318	<i>Claire.ashley@tananachiefs.org</i>
Eagle, Native Village of .....	.....	Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Edzeno (see Nikolai Village).					
Eek, Native Village of .....	Lillian Cleveland, ICWA Worker.	Box 89, Eek, AK 99578 .....	(907) 536-5572	(907) 536-5582; (907) 536-5711.	<i>lcleveland@avcp.org</i>
Eek, Native Village of .....	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Egegik Village .....	Pamela Hainsel, Administrator; Kevin Deigh, President.	ICWA, P.O. Box 29, Egegik, AK 99579.	(907) 233-2211	(907) 233-2312.	

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Egegik Village .....	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576.	(907) 842-4139	(907) 842-4106	<i>cnixon@bbna.com</i>
Eklutna, Native Village of .....	Jamison M. Cole, ICWA Worker, Social Services Director; Richard Farber, Tribal Administrator.	P.O. Box 26339, Chugiak, AK 99567.	(907) 688-6031; (907) 688-1808.	(907) 688-6032	<i>nve.icwa@eklutna-nsn.gov; nvess@mtaonline.net</i>
Ekuk Native Village of .....	Kristy Peters, Administrator; Robert Heyano, President.	P.O. Box 530, Dillingham, AK 99576.	(907) 842-3842	(907) 842-3843	<i>kristy@ekukbc.net</i>
Ekuk Native Village of .....	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576.	(907) 842-4139	(907) 842-4106	<i>cnixon@bbna.com</i>
Ekwok, Native Village of .....	Richard King, Administrator; Luki Akelkok Sr., President.	P.O. Box 70, Ekwok, AK 99580.	(907) 464-3336	(907) 464-3378.	
Ekwok, Native Village of .....	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576.	(907) 842-4139	(907) 842-4106	<i>cnixon@bbna.com</i>
Elim, Native Village of .....	Joseph Murray, Tribal Family Coordinator.	P.O. Box 70, Elim, AK 99739.	(907) 890-2457	(907) 890-2458	<i>jmurrayjr@kawerak.org</i>
Elim, Native Village of .....	Traci McGarry, Program Director.	Kawerak, Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443-4376	(907) 443-4474	<i>cfsdir@kawerak.org</i>
Emmonak Village .....	Sharon Oktoyak, Tribal Administrator.	P.O. Box 126, Emmonak, AK 99581.	(907) 949-1720	(907) 949-1384	<i>emktribal@gmail.com</i>
English Bay (see Native Village of Nanwalek).					
Evansville Village (aka Bettles Field).	Naomi Costello, Tribal Administrator.	P.O. Box 26087, Bettles Field, AK 99726.	(907) 692-5005	(907) 692-5006	<i>evansvillealaska@gmail.com</i>
Evansville Village (aka Bettles Field).	.....	Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953	
Eyak, Native Village, (Cordova).	Cheryl Evridge, ICWA Coordinator.	P.O. Box 1388, Cordova, AK 99574.	(907) 424-2232	(907) 424-7809	<i>cheryl@eyak-nsn.gov; icwa@eyak-nsn.gov</i>
False Pass Native Village of ..	Amanda McAdoo, ICWA Coordinator; Ozzy E. Escarate, Director, Department of Family & Community Development.	Aleutian/Pribilof Islands Association, 1131 East International Airport Road, Anchorage, AK 99518-1408.	(907) 276-2700	(907) 222-9735	<i>icwa@apiai.org</i>
Fort Yukon, Native Village (See Gwichyaa Zhee Gwich'in).					
Fortuna Ledge (see Native Village of Marshall).					
Gakona, Native Village of .....	Lisa Nicolai, ICWA Worker ..	P.O. Box 102, Gakona, AK 99586.	(907) 822-5777	(907) 822-5997	<i>gakonaprojects@gmail.com</i>
Galena Village (aka Loudon Village).	Tribal Administrator .....	P.O. Box 244, Galena, AK 99741.	(907) 656-1711	(907) 656-2491	<i>suziej.sam@loudentribe.com</i>
Gambell, Native Village of .....	Susie Sam, Tribal Administrator/ICWA Director.	P.O. Box 90, Gambell, AK 99742.	(907) 985-5346	(907) 985-5014	<i>tfc.gam@kawerakj.org</i>
Georgetown, Native Village of	Will Hartman, Tribal Administrator.	5313 Arctic Blvd., Suite 104, Anchorage, AK 99518.	(907) 274-2195	(907) 274-2196	<i>gtc@gci.net</i>
Golovin (see Chinik Eskimo Community).					
Goodnews Bay, Native Village of.	Pauline Echuk, ICWA Worker.	P.O. Box 138, Goodnews Bay, AK 99589.	(907) 967-8331	(907) 967-8330	<i>pechuck@avcp.org</i>
Goodnews Bay, Native Village of.	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Grayling (see Organized Village of Grayling).					
Gulkana Village .....	Rachel Stratton, Family Services Specialist.	P.O. Box 254, Gakona, AK 99586.	(907) 822-5363	(907) 822-3976	<i>icwa@gulkanacouncil.org</i>
Gwichyaa Zhee Gwich'in (formerly Native Village of Fort Yukon).	Arlene Peter, Tribal Family Youth Specialist.	P.O. Box 10, Fort Yukon, AK 99740.	(907) 662-3625	(907) 662-3118	<i>arlene.peter@fortyukon.org</i>
Gwichyaa Zhee Gwich'in (formerly Native Village of Fort Yukon).	.....	Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Haines (see Chilkoot Indian Association).					
Hamilton Native Village of .....	Henrietta Teeluk, ICWA Worker.	P.O. Box 20248, Hamilton, AK 99620.	(907) 899-4252; (907) 899-4255.	(907) 899-4202.	
Hamilton Native Village of .....	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Healy Lake Village .....	Tribal Family Youth Specialist.	P.O. Box 60300, Healy Lake, AK 99706.	(907) 876-5018	(907) 876-5013.	
Healy Lake Village .....	.....	Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Holikachuk (see Grayling).					

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Holy Cross Village .....	Rebecca Demientieff, Tribal Family Youth Specialist.	P.O. Box 191, Holy Cross, AK 99602.	(907) 476-7249	(907) 476-7132	<i>rebecca.demientieff@tanachiefs.org</i>
Holy Cross Village .....	.....	Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Hoonah Indian Association ....	Candy Keown, Human Services Department Director.	P.O. Box 602, Hoonah, AK 99829.	(907) 945-3545	(907) 945-3703	<i>ckeown@hiatribe.org</i>
Hooper Bay, Native Village ....	Irene Smith, ICWA Worker ..	Box 69, Hooper Bay, AK 99604.	(907) 758-4006	(907) 758-4606; (907) 758-4066.	<i>psemaken@avcp.org</i>
Hooper Bay, Native Village ....	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Hughes Village .....	Ella Sam, Tribal Family Youth Specialist.	P.O. Box 45029, Hughes, AK 99745.	(907) 889-2261	(907) 889-2252	<i>ella.sam@tanachiefs.org</i>
Hughes Village .....	.....	Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Huslia Village .....	Vivian Robb, Tribal Family Youth Specialist.	P.O. Box 70, Huslia, AK 99746.	(907) 829-2202	(907) 829-2214	<i>huslia@tanachief.org</i>
Huslia Village .....	.....	Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Hydaburg Cooperative Association.	Colleen Kashevarof, Human Services Director.	P.O. Box 349, Hydaburg, AK 99922.	(907) 285-3662	(907) 285-3541	<i>Hcahumanservices@gmail.com</i>
Igiugig Village .....	Tanya Salmon, ICWA Worker; Alex Anna Salmon, Tribal Administrator.	P.O. Box 4054, Igiugig, AK 99613.	(907) 533-3211	(907) 533-3217	<i>tanya.jo.salmon@gmail.com; igiugig.vc@gmail.com</i>
Iliamna, Village of .....	Louise Anelon, ICWA Worker; Dolly Ann Trefon, Tribal Administrator.	P.O. Box 286, Iliamna, AK 99606.	(907) 571-3532; (907) 571-1246.	(907) 571-3539	<i>louise.anelon@iliamnnavc.org</i>
Inupiat Community of the Arctic Slope.	Marie H. Ahsok, Social Services Director.	P.O. Box 934, Barrow, AK 99723.	(907) 852-5923	(907) 852-5924	<i>social@inupiatgov.com</i>
Iqurmit Traditional Council (aka Russian Mission).	Katie Nick, ICWA Worker .....	P.O. Box 38, Russian Mission, AK 99657.	(907) 584-5594	(907) 584-5596; (907) 584-5593.	<i>knick@avcp.org</i>
Iqurmit Traditional Council (aka Russian Mission).	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Ivanoff Bay, Village of .....	Nicole Cabrera, Administrator; Edgar Shangin, President.	6407 Brayton Dr., Ste. 201, Anchorage, AK 99507.	(907) 522-2263	(907) 522-2363	<i>ivanoffbayadmin@bbna.com</i>
Ivanoff Bay, Village of .....	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576.	(907) 842-4139	(907) 842-4106	<i>cnixon@bbna.com</i>
Kaguyak Village .....	Phyllis Amodo, Tribal President.	P.O. Box 5078, Akhiok, AK 99615.	(907) 836-2231	(907) 836-2345.	
Kake (see Organized Village of Kake).	.....	P.O. Box 52, Kaktovik, AK 99747.	(907) 640-2042	(907) 640-2044.	
Kaktovik Village of, (aka Barter Island).	.....	Arctic Slope Native Association, P.O. Box 1232, Barrow, AK 99723.	(907) 852-9374	(907) 852-2763	<i>Joshua.stein@arcticslope.org</i>
Kaktovik Village of, (aka Barter Island).	Joshua Stein, ICWA Program Manager.	Arctic Slope Native Association, P.O. Box 1232, Barrow, AK 99723.	(907) 852-9374	(907) 852-2763	
Kalskag, Village of, (aka Upper Kalskag).	Nastasia Evan, ICWA Worker.	P.O. Box 50, Kalskag, AK 99607.	(907) 471-2296	(907) 471-2399.	
Kalskag, Village of, (aka Upper Kalskag).	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Lower Kalskag (See Lower Kalskag).	.....	.....	.....	.....	.....
Kaltag, Village of .....	Kendra Ekada, Tribal Family Youth Specialist.	P.O. Box 129, Kaltag, AK 99748.	(907) 534-2243; (907) 534-2224.	(907) 534-2264	<i>kendra.ekada@tanachiefs.org</i>
Kaltag, Village of .....	.....	Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Kanatak, Native Village .....	Shawn Shanigan, Administrator; Henry Foster, President.	P.O. Box 876822, Wasilla, AK 99687.	(907) 315-3878; (907) 357-5991.	(907) 357-5992	<i>kanatak@mtaonline.net</i>
Kanatak, Native Village .....	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576.	(907) 842-4139	(907) 842-4106	<i>cnixon@bbna.com</i>
Karluk, Native Village of .....	Kristeen Reft, Tribal Council Clerk.	P.O. Box 22, Karluk, AK 99608.	(907) 241-2218	(907) 241-2208	<i>karlukiracouncil@aol.com</i>
Kassan (see Organized Village of Kasaan).	.....	.....	.....	.....	.....
Kashnumiut Tribe (see Chevak).	.....	.....	.....	.....	.....
Kasigluk Traditional Elders Council.	Balasia Tinker, Tribal Administrator.	P.O. Box 19, Kasigluk, AK 99609.	(907) 477-6405; (907) 477-6406.	(907) 477-6412	<i>kasigluk.admin@gmail.com</i>

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Kenaitze Indian Tribe .....	Katie Watkins, Director of Human and Community Services; Jaylene Petersom-Nyren, Executive Director.	P.O. Box 988, Kenai, AK 99611.	(907) 335-7610; (907) 335-7600.	(907) 202-8359	<a href="mailto:kwatkins@kenaitze.org">kwatkins@kenaitze.org</a>
Ketchikan Indian Corporation	Susan Pickrell, Deputy Social Services Director.	615 Stedman St., Suite 201, Ketchikan, AK 99901; 2960 Tongass Avenue, Ketchikan, AK 99901.	(907) 228-9378; (907) 228-9371; (907) 254-2251.	(800) 865-6310	<a href="mailto:spickrell@kictribe.org">spickrell@kictribe.org</a> ; <a href="mailto:edewitt@kictribe.org">edewitt@kictribe.org</a>
Kiana, Native Village of .....	Susan Pickrell, Deputy Social Services Director.	P.O. Box 69, Kiana, AK 99749.	(907) 475-2226	(907) 475-2266	<a href="mailto:icwa@katyaaq.org">icwa@katyaaq.org</a>
King Cove (see Agdaagux).	Leo Charles, Tribal Family Coordinator.	P.O. Box 682, Nome, AK 99762.	(907) 443-5181	(907) 443-8049	<a href="mailto:tfc.ki@kawerak.org">tfc.ki@kawerak.org</a>
King Island Native Community	Traci McGarry, Program Director.	Kawerak, Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443-4376	(907) 443-4474	<a href="mailto:cfsdir@kawerak.org">cfsdir@kawerak.org</a>
King Salmon Tribe .....	Ralph Angasan, Jr., Tribal Administrator; Ralph Angasan Sr., President.	P.O. Box 68, King Salmon, AK 99613.	(907) 246-3553	(907) 246-3449	<a href="mailto:kstvc@starband.net">kstvc@starband.net</a>
Kipnuk, Native Village of .....	Helen Paul, ICWA Worker	P.O. Box 57, Kipnuk, AK 99614.	(907) 896-5430	(907) 896-5704; (907) 869-5240.	<a href="mailto:hpaul@avcp.org">hpaul@avcp.org</a>
Kipnuk, Native Village of .....	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<a href="mailto:VAndrew@avcp.com">VAndrew@avcp.com</a>
Kivalina, Native Village of .....	Stanley Hawley, Administrator.	P.O. Box 50051, Kivalina, AK 99750.	(907) 645-2201	(907) 645-2193	<a href="mailto:tribeadmin@kivalini.org">tribeadmin@kivalini.org</a> ; <a href="mailto:millie.hawley@manillaq.org">millie.hawley@manillaq.org</a>
Kivalina, Native Village of .....	Jackie Hill, Tribal Director Assistance Program.	Manillaq Association, Family Services, P.O. Box 256, Kotzebue, AK 99752.	(907) 442-7870	(907) 442-7833	<a href="mailto:Jackie.hill@manillaq.org">Jackie.hill@manillaq.org</a>
Klawock Cooperative Association.	Cynthia Mills, Family Case-worker II.	P.O. Box 173, Klawock, AK 99925.	(907) 755-2326	(907) 885-2326.	
Klukwan (see Chilkat Indian Village).					
Kluti-Kaah, Native Village of, (aka Copper Center).	Ashley Hicks, ICWA Advocate.	P.O. Box 68, Copper Center, AK 99573.	(907) 822-5241 Ext. 2071.	(907) 822-8800	<a href="mailto:ahicks@crnative.org">ahicks@crnative.org</a>
Knik Tribe .....	Geraldine Nicoli, ICWA Worker.	P.O. Box 871565, Wasilla, AK 99687.	(907) 373-7938	(907) 373-2153	<a href="mailto:gnicoli@kniktribe.org">gnicoli@kniktribe.org</a>
Kobuk, Native Village of .....	Tribal Administrator .....	P.O. Box 39, Kobuk, AK 99751.	(907) 948-2007; (907) 442-7879.	(907) 948-2123	<a href="mailto:tribeadmin@laugvik.org">tribeadmin@laugvik.org</a>
Kobuk, Native Village of .....	Jackie Hill, Tribal Director Assistance Program.	Manillaq Association, Family Services, P.O. Box 256, Kotzebue, AK 99752.	(907) 442-7870	(907) 442-7833	<a href="mailto:Jackie.hill@manillaq.org">Jackie.hill@manillaq.org</a>
Kodiak Native Village of (see Sun'aq Tribe of Kodiak).					
Kokhanok Village .....	Sassa Wassillie, Administrator; Peducia Andrew, President.	ICWA, P.O. Box 1007, Kokhanok, AK 99606.	(907) 282-2202	(907) 282-2264	<a href="mailto:kokhanokicwa@bbna.com">kokhanokicwa@bbna.com</a>
Kokhanok Village .....	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kakanak Road, Dillingham, AK 99576.	(907) 842-4139	(907) 842-4106	<a href="mailto:cnixon@bbna.com">cnixon@bbna.com</a>
Koliganek Village (see New Koliganek).					
Kongiganak Traditional Council.	Janet Otto, ICWA Worker	P.O. Box 5069, Kongiganak, AK 99545.	(907) 557-5311	(907) 557-5348; (907) 557-5224.	
Kongiganak Traditional Council.	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<a href="mailto:VAndrew@avcp.com">VAndrew@avcp.com</a>
Kotlik, Village of .....	Reynold Okitkun, ICWA Worker.	P.O. Box 20210, Kotlik, AK 99620.	(907) 899-4459	(907) 899-4467	<a href="mailto:ROkitkun@avcp.org">ROkitkun@avcp.org</a>
Kotlik, Village of .....	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<a href="mailto:VAndrew@avcp.com">VAndrew@avcp.com</a>
Kotzebue, Native Village of ....	Wendie Schaeffer, Tribal Family Services Director.	P.O. Box 296, Kotzebue, AK 99752.	(907) 442-3467	(907) 442-4013	<a href="mailto:wendie.schaeffer@qira.org">wendie.schaeffer@qira.org</a>
Koyuk, Native Village of .....	Leo Charles Sr., Tribal Family Coordinator.	P.O. Box 53030, Koyuk, AK 99753.	(907) 963-2215	(907) 963-2300.	
Koyuk, Native Village of .....	Traci McGarry, Program Director.	Kawerak, Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443-4376	(907) 443-4474	<a href="mailto:cfsdir@kawerak.org">cfsdir@kawerak.org</a>
Koyukuk, Native Village of .....	Euphrasia Dayton-Demoski, Tribal Family Youth Specialist.	P.O. Box 109, Koyukuk, AK 99754.	(907) 927-2208	(907) 927-2220	<a href="mailto:euphrasia.daytondemoski@tananachiefs.org">euphrasia.daytondemoski@tananachiefs.org</a>
Koyukuk, Native Village of .....		Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Kwethluk (see Organized Village of Kwethluk).					
Kwigillingok, Native Village of	Andrew Beaver, Tribal Administrator.	P.O. Box 90, Kwigillingok, AK 99622.	(907) 588-8114; (907) 588-8212.	(907) 588-8429.	
Kwinhagak (aka Quinhagak), Native Village of.	Martha Nicolai, Health & Human Service Director, ICWA Worker.	P.O. Box 149, Quinhagak, AK 99655.	(907) 556-8393	(907) 556-8166	<a href="mailto:m.mark@kwinhagak.org">m.mark@kwinhagak.org</a>
Larsen Bay, Native Village of	Cassie Keplinger, ICWA Coordinator.	Kodiak Area Native Association, 3449 Rezanof Drive East, Kodiak, AK 99615.	(907) 486-1370	(907) 486-4829	<a href="mailto:cassie.keplinger@kodiakhealthcare.org">cassie.keplinger@kodiakhealthcare.org</a>
Lesnoi Village (see Tangirnaq aka Woody Island).	Robert Stauffer .....	194 Alimaq Dr., Kodiak, AK 99615.	(907) 486-9806.		

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Levelock Village .....	Jennie Apokedak, Administrator; Alexander Tallekpalek, President.	ICWA, P.O. Box 70, Levelock, AK 99625.	(907) 287-3031; (907) 287-3030.	(907) 287-3032	<i>levelockadmin@bbna.com</i>
Levelock Village .....	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576.	(907) 842-4139	(907) 842-4106	<i>cnixon@bbna.com</i>
Lime Village .....	Jennifer John, Tribal Administrator.	P.O. Box LVD—Lime Village McGrath, AK 99627.	(907) 526-5236	(907) 526-5235	<i>limevillage@gmail.com</i>
Lime Village .....	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Louden (see Galena). Lower Kalskag, Village of .....	Nastasia Evan, ICWA Worker.	P.O. Box 27 Lower Kalskag, AK 99626.	(907) 471-2412	(907) 471-2378; (907) 471-2378.	<i>nevan@avcp.org</i>
Lower Kalskag, Village of .....	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Manley Hot Springs Village ....	Elizabeth Woods, Tribal Family Youth Specialist.	P.O. Box 105 Manley Hot Springs, AK 99756.	(907) 672-3177	(907) 672-3200	<i>ewoods57@gmail.com</i>
Manley Hot Springs Village ....	.....	Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	.....
Manokotak Village .....	Adrewski Toyakuk, Administrator; Jaclyn Alakayak, Clerk; Diane Mochin, President.	ICWA, P.O. Box 169, Manokotak, AK 99628.	(907) 289-2074	(907) 289-1235	<i>manokotakicwa@bbna.com; manokotakclerk@bbna.com</i>
Manokotak Village .....	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576.	(907) 842-4139	(907) 842-4106	<i>cnixon@bbna.com</i>
Marshall, Native Village of .....	Robert Pitka, ICWA Worker; Sophie Tiffert, Tribal Administrator.	P.O. Box 110, Marshall, AK 99585.	(907) 679-6302/ 6128.	(907) 676-6187	<i>rpitka@avcp.org</i>
Marshall, Native Village of .....	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Mary's Igloo, Native Village of	Dolly Kugzruk, Tribal Family Coordinator.	P.O. Box 629, Teller, AK 99778.	(907) 642-2185	(907) 642-3000	<i>dkugzruk@kawerak.org</i>
Mary's Igloo, Native Village of	Traci McGarry, Program Director.	Kawerak, Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443-4376	(907) 443-4474	<i>cfmdir@kawerak.org</i>
McGrath Native Village .....	Gina McKindy, Tribal Family Youth Specialist.	P.O. Box 134, McGrath, AK 99627.	(907) 524-3023	(907) 524-3899.	.....
McGrath Native Village .....	.....	Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	.....
Mekoryuk, Native Village of ...	Melanie Shavings, ICWA Coordinator; Albert Williams, Tribal President.	P.O. Box 66, Mekoryuk, AK 99630.	(907) 827-8828; (907) 827-8827.	(907) 827-8133	<i>melanie.s@mekoryuktc.org; nvmicwa@gci.net</i>
Mentasta Traditional Council ..	Anita Andrews, Tribal Administrator.	P.O. Box 6076, Mentasta Lake, AK 99780.	(907) 291-2319	(907) 291-2305	<i>907mlv99780ta@gmail.com</i>
Metlakatla Indian Community	Darlene Booth, ICWA Worker.	P.O. Box 8, Metlakatla, AK 99926.	(907) 886-6914	(907) 886-6913.	.....
Minto, Native Village of .....	Lou Ann Williams, Tribal Family Youth Specialist.	P.O. Box 26, Minto, AK 99758.	(907) 798-7007	(907) 798-7008	<i>lou.williams@tananachiefs.org</i>
Minto, Native Village of .....	.....	Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	.....
Mountain Village (see Asa'carsarmiut). Naknek, Native Village .....	Judy Jo Matson, ICWA Coordinator.	P.O. Box 210, Naknek, AK 99633.	(907) 246-4210	(907) 246-3563	<i>nnvc.judyjo@gmail.com</i>
Nanwalek, Native Village of ...	Desiree Swenning, ICWA Advocate.	P.O. Box 8028, Nanwalek, AK 99603.	(907) 281-2274	(907) 281-2252	<i>nanwalekicwa@gmail.com</i>
Napaimute, Native Village .....	ICWA Worker, Tribal Administrator.	P.O. Box 1301, Bethel, AK 99559.	(907) 543-2887	.....	<i>napaimute@gci.net</i>
Napaimute Native Village .....	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>cofft@avcp.org</i>
Napakiak, Native Village of ....	David Andrew, Tribal Administrator.	P.O. Box 34114, Napakiak, AK 99634.	(907) 589-2814; (907) 589-2135.	(907) 589-2136	<i>lpavilla@avcp.org</i>
Napakiak, Native Village of ....	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.org</i>
Napaskiak, Native Village of ..	Elizabeth Steven, ICWA Worker.	P.O. Box 369, Napaskiak, AK 99559.	.....	.....	<i>esteven@avcp.org</i>
Napaskiak, Native Village of ..	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrews@avcp.org</i>
Nelson Lagoon, Native Village of.	Amanda McAdoo, ICWA Coordinator; Ozzy E. Escarate, Director, Department of Family & Community Development.	Aleutian/Pribilof Islands Association, 1131 East International Airport Road, Anchorage, AK 99518-1408.	(907) 276-2700	(907) 222-9735	<i>icwa@apiai.org</i>
Nenana Native Association ....	Jo Ellen Noble, Tribal Family Youth Specialist.	P.O. Box 369, Nenana, AK 99760.	(907) 832-5461	(907) 832-5447	<i>nenanatfys@gmail.com</i>

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Nenana Native Association		Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
New Koliganek Village Council.	Robert Larson, Administrator; Herman Nelson Sr., President.	P.O. Box 5057, Koliganek, AK 99576.	(907) 596-3434	(907) 596-3462	<i>newkoliganekadmin@bbna.com</i>
New Koliganek Village Council.	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576.	(907) 842-4139	(907) 842-4106	<i>cnixon@bbna.com</i>
New Stuyahok Village	William C. Peterson, Administrator; Mary Kusma, Clerk; Peter Christopher Sr., President.	ICWA, P.O. Box 49, New Stuyahok, AK 99636.	(907) 693-3173; (907) 693-3171.	(907) 693-3179	<i>newstuyahokadmin@bbna.com;</i> <i>newstuyahokclerk@bbna.comand</i>
New Stuyahok Village	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576.	(907) 842-4139	(907) 842-4106	<i>cnixon@bbna.com</i>
Newhalen Village	Maxine Wassillie, ICWA Worker; Joanne Wassillie, Supervisor.	P.O. Box 207, Newhalen, AK 99606.	(907) 571-1410	(907) 571-1537	<i>maxinewassillie@newhalentribal.com</i>
Newtok Village	Bertha Queenie, ICWA Worker.	P.O. Box 96, Newtok, AK 99559.	(907) 237-2222		<i>BQueenie@avcp.org</i>
Nightmute, Native Village of	Tribal President & Tribal Administrator.	P.O. Box 90021, Nightmute, AK 99690.	(907) 647-6215	(907) 647-6112.	
Nikolai Village (aka Edzeno)	Elizabeth Paterson, Tribal Family Youth Specialist.	P.O. Box 9107, Nikolai, AK, 99691.	(907) 293-2210	(907) 293-2216.	
Nikolai Village (aka Edzeno)		Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Nikolski IRA Council	Amanda McAdoo, ICWA Coordinator; Ozyz E. Escarate, Director, Department of Family & Community Development.	Aleutian/Pribilof Islands Association, 1131 East International Airport Road, Anchorage, AK 99518-1408.	(907) 276-2700	(907) 222-9735	<i>icwa@apiai.org</i>
Ninilchik Village	Bettyann Steciw, ICWA Specialist.	P.O. Box 39444, Ninilchik, AK 99639.	(907) 567-3313	(907) 567-3354	<i>bettyann@ninilchiktribe-nsn.gov</i>
Noatak, Native Village of	Pauline Mills, ICWA Coordinator.	P.O. Box 89, Noatak, AK 99761.	(907) 485-2173 Ext. 22.	(907) 485-2137	<i>icwa@nautaaq.org</i>
Nome Eskimo Community	Lola Stepetin, Family Services Director.	3600 San Jeronimo, Suite 138, Anchorage, AK 99508.	(907) 793-3145	(907) 793-3127	<i>lola.stepetin@necalaska.org</i>
Nondalton Village	Susan Bobby, Social Service/ICWA Worker; Fawn Silas, Administrator.	P.O. Box 49, Nondalton, AK 99640.	(907) 294-2257	(907) 294-2271	<i>ntcssicwa@gmail.com</i>
Noorvik Native Community	Nellie Ballot, ICWA Worker	P.O. Box 209, Noorvik, AK, 99763.	(907) 636-2144	(907) 636-2284	<i>icwa@nuurvik.org</i>
Noorvik Native Community	Jackie Hill, Tribal Director Assistance Program.	Maniilaq Association, Family Services, P.O. Box 256, Kotzebue, AK 99752.	(907) 442-7870	(907) 442-7833	<i>Jackie.hill@maniilaq.org</i>
Northway Village	Tasha Demit, ICWA Worker	P.O. Box 516, Northway, AK 99764.	(907) 778-2311	(907) 778-2220	<i>icwa@aptalaska.net</i>
Nuiqsut, Native Village of	Joshua Stein, ICWA Program Manager.	Arctic Slope Native Association, P.O. Box 1232, Barrow, AK 99723.	(907) 852-9374	(907) 852-2763	<i>Joshua.stein@arcticslope.org</i>
Nulato, Native Village of	Sharon Agnes, Director of Human Services.	P.O. Box 65049, Nulato, AK 99765.	(907) 898-2329	(907) 898-2207	<i>Sharon.agnes62@outlook.com</i>
Nunakauyarmut Tribe (formerly Toksook Bay Native Village).	Marcella White, ICWA Worker.	P.O. Box 37048, Toksook Bay, AK 99637.	(907) 427-7114; (907) 427-7615.	(907) 427-7714.	
Nunam Iqua, Native Village of, (formerly Sheldon's Point).	Darlene Pete, Tribal Administrator.	P.O. Box 27, Nunam Iqua, AK 99666.	(907) 498-4184	(907) 498-4185	<i>nunamtribe@gmail.com</i>
Nunam Iqua, Native Village of, (formerly Sheldon's Point).	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Nunapitchuk, Native Village of	Aldine Simon, Community Family Service Specialist.	P.O. Box 104, Nunapitchuk, AK 99641.	(907) 527-5731	(907) 527-5740	<i>nunap.icwa@yuik.org</i>
Ohagamiut, Native Village of	Sophie Tiffert, Tribal Administrator.	P.O. Box 49, Marshall, AK 99585.	(907) 679-6517.		
Ohagamiut, Native Village of	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Old Harbor Village	Jim Cedeno, ICWA Advocate; Bobbi Anne Barnowsky, Tribal Administrator.	P.O. Box 62, Old Harbor, AK 99643.	(907) 286-2315	(907) 286-2301	<i>Jim.cedeno@ohtcmail.org;</i> <i>Bobbi.barnowsky@ohtcmail.org</i>
Organized Village of Grayling	Johanna Hamilton, Tribal Family Youth Specialist.	P.O. Box 49, Grayling, AK 99590.	(907) 453-5142	(907) 453-5146	<i>johannahamilton87@gmail.com</i>
Organized Village of Grayling		Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Organized Village of Kake	Ann Jackson, Social Services Director.	P.O. Box 316, Kake, AK 99830.	(907) 785-6471	(907) 785-4902.	
Organized Village of Kasaan	Cynthia Mills, Family Caseworker II.	P.O. Box 173, Klawock, AK 99925.	(907) 755-2326	(907) 885-0032.	
Organized Village of Kwethluk	Chariton Epchook, ICWA Coordinator.	P.O. Box 210, Kwethluk, AK 99621-0130.	(907) 757-6714; (907) 757-6715.	(907) 757-6328	<i>ovkicwa@gmail.com</i>

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Organized Village of Saxman	Patti Green, Family Case-worker.	Route 2, Box 2, Ketchikan, AK 99901.	(907) 247-2502	(907) 247-2504.	
Orutsararmuit Native Council	Rosemary Paul, ICWA Advocate.	P.O. Box 927, Bethel, AK 99559.	(907) 543-2608 Ext. 1520.	(907) 543-2639	<i>rpaul@nativecouncil.org</i>
Oscarville Traditional Village ..	Andrew J. Larson Jr., ICWA Worker.	P.O. Box 6129, Oscarville, AK 99559.	(907) 737-7100	(907) 737-7101; (907) 737-7428.	<i>alarson@avcp.org</i>
Oscarville Traditional Village ..	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Ouzinkie, Native Village of .....	Cassie Keplinger, ICWA Coordinator.	Kodiak Area Native Association, 3449 Rezanof Drive East, Kodiak, AK 99615.	(907) 486-1370	(907) 486-4829	<i>cassie.keplinger@kodiakhealthcare.org</i>
Paiumt, Native Village of .....	Tribal President or Tribal Administrator.	P.O. Box 230, Hooper Bay, AK 99604.	(907) 561-9878	(907) 563-5398.	
Pauloff Harbor Village .....	Amanda McAdoo, ICWA Coordinator; Ozzy E. Escarate, Director, Department of Family & Community Development.	Aleutian/Pribilof Islands Association, 1131 East International Airport Road, Anchorage, AK 99518-1408.	(907) 276-2700	(907) 222-9735	<i>icwa@apii.org</i>
Pedro Bay Village .....	Verna Kolyaha; Program Services.	Program Services, P.O. Box 47020, Pedro Bay, AK 99647.	(907) 850-2341	(907) 885-0001	<i>vjkolyha@pedrobay.com</i>
Perryville, Native Village of ....	Dana Lee Phillips, Administrator; Gerald Kosbruk, President.	ICWA, P.O. Box 97, Perryville, AK 99648.	(907) 853-2203	(907) 853-2230.	
Perryville, Native Village of ....	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576.	(907) 842-4139	(907) 842-4106	<i>cnixon@bbna.com</i>
Petersburg Indian Association	Jeanette Ness, ICWA Case-worker.	P.O. Box 1418, Petersburg, AK 99833.	(907) 772-3636	(907) 772-3637	<i>icwa@piatribal.org</i>
Pilot Point Native Village of ....	Suzanne Evanoff, Administrator; Victor Seybert, President.	P.O. Box 449, Pilot Point, AK 99649.	(907) 797-2208	(907) 797-2258.	
Pilot Point Native Village of ....	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576.	(907) 842-4139	(907) 842-4106	<i>cnixon@bbna.com</i>
Pilot Station Traditional Village.	Olga Xavier, ICWA Worker ..	P.O. Box 5119, Pilot Station, AK 99650.	(907) 549-3550	.....	<i>oxavier@avcp.org</i>
Pilot Station Traditional Village.	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Pitka's Point, Native Village of	Karen Thompson, Tribal Administrator.	P.O. Box 127, St. Mary's, AK 99658.	(907) 438-2833.		
Pitka's Point, Native Village of	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Platinum Traditional Village ....	Lou Adams, Tribal Administrator.	P.O. Box 8, Platinum, AK 99651.	(907) 979-8220	(907) 979-8178.	
Platinum Traditional Village ....	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Point Hope, Native Village of	Martha Douglas, Family Caseworker.	P.O. Box 109, Point Hope, AK 99766.	(907) 368-3122	(907) 368-2332	<i>martha.douglas@tikigaq.org</i>
Point Lay, Native Village of ....	Marie Ahsoak, Social Services Director.	Inupiat Community of the Arctic Slope, P.O. Box 934, Barrow, AK 99723.	(907) 852-5923	(907) 852-5923	<i>social@inupiatgov.com</i>
Port Graham, Native Village of.	Patrick Norman, Chief .....	ICWA Program, P.O. Box 5510, Port Graham, AK 99603.	(907) 284-2227	(907) 284-2222.	
Port Heiden, Native Village of, (Native Council of Port Heiden).	Adriene Active, ICWA Worker.	2200 James Street, Port Heiden, AK 99549.	(907) 837-2296	(907) 837-2297	<i>adriene@portheidenalaska.com</i>
Port Lions, Native Village .....	Charlea Kewan, Tribal Family Services Coordinator.	P.O. Box 69, Port Lions, AK 99550.	(907) 454-2234	(907) 454-2985	<i>cj.kewan@gmail.com</i>
Portage Creek Village (aka Ohgensakale).	MaryAnn K. Johnson, Administrator; Charlie Johnson, President.	1057 fireweed Lane, Anchorage, AK 99503.	(907) 277-1105	(907) 277-1104.	
Portage Creek Village (aka Ohgensakale).	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576.	(907) 842-4139	(907) 842-4106	<i>cnixon@bbna.com</i>
Qagan Tayagyngin Tribe of Sand Point Village.	Amanda McAdoo, ICWA Coordinator; Ozzy E. Escarate, Director, Department of Family & Community Development.	Aleutian/Pribilof Islands Association, 1131 East International Airport Road, Anchorage, AK 99518-1408.	(907) 276-2700	(907) 222-9735	<i>icwa@apii.org</i>
Qawalangin Tribe of Unalaska	Amanda McAdoo, ICWA Coordinator; Ozzy E. Escarate, Director, Department of Family & Community Development.	Aleutian/Pribilof Islands Association, 1131 East International Airport Road, Anchorage, AK 99518-1408.	(907) 276-2700	(907) 222-9735	<i>icwa@apii.org</i>
Quinhagak (see Kwinhagak). Qissunaimut Tribe (see Chevak).					
Rampart Village .....	Tribal Family Youth Specialist.	P.O. Box 29, Rampart, AK 99767.	(907) 358-3312	(907) 358-3115	<i>rampart@tananchiefs.org</i>

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Rampart Village .....		Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Red Devil, Native Village of ...	Tribal Administrator .....	P.O. Box 27, Red Devil, AK 99656.			
Red Devil, Native Village of ...	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	VAndrew@avcp.com
Ruby, Native Village of .....	Shaelene Nickoli, Tribal Family Youth Specialist.	P.O. Box 117, Ruby, AK 99768.	(907) 468-4400	(907) 468-4500	elaine.wright@tananachiefs.org
Ruby, Native Village of .....		Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Russian Mission (see Iqurmit Native Village).					
Saint George (see St. George).					
Saint Michael (see St. Michael).					
Salamatoff, Native Village of ..	Katie Watkins, Director of Human and Community Services, Jaylene Petersom-Nyren, Executive Director.	Kenaitze Indian Tribe, P.O. Box 988, Kenai, AK 99611.	(907) 335-7610; (907) 335-7600.	(907) 202-8359	kwatkins@kenaitze.org
Sand Point (see Qagan Tayaguyngin Tribe of Sand Point Village).					
Savoonga, Native Village of ...	Ruthie Okoomealingok, Tribal Family Coordinator.	P.O. Box 120, Savoonga, AK 99769.	(907) 984-6758	(907) 984-6759	tfc.sva@kawerak.org
Savoonga, Native Village of ...	Traci McGarry, Program Director.	Kawerak, Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443-4376	(907) 443-4474	cfsdir@kawerak.org
Saxman (see Organized Village of Saxman).					
Scammon Bay, Native Village of.	Michelle Akerealrea, ICWA Worker.	P.O. Box 110, Scammon Bay, AK 99662.	(907) 558-5078	.....	makerealrea@avcp.org
Scammon Bay, Native Village of.	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	VAndrew@avcp.com
Selawik, Native Village of .....	Trina Walton, ICWA Coordinator.	P.O. Box 59, Selawik, AK 99770.	(907) 484-2165 Ext. 12.	(907) 424-2001	trinawalton1@gmail.com
Selawik, Native Village of .....	Jackie Hill, Tribal Director Assistance Program.	Maniilaq Association, Family Services, P.O. Box 256, Kotzebue, AK 99752.	(907) 442-7870	(907) 442-7833	Jackie.hill@maniilaq.org
Seldovia Village Tribe .....	Shannon Custer, ICWA Representative.	P.O. Drawer L, Seldovia, AK 99663.	(907) 435-3252	(907) 234-7865	scuster@svt.org
Shageluk Native Village .....	Alana Notti, Tribal Family Youth Specialist.	P.O. Box 109, Shageluk, AK 99665.	(907) 473-8229	(907) 473-8275	Alana.notti@tananachiefs.org
Shageluk Native Village .....		Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Shaktoolik, Native Village of ..	Katelynn Evan, Tribal Family Coordinator.	P.O. Box 100, Shaktoolik, AK 99771.	(907) 955-2444	(907) 955-2443	tfc.skk@kawerak.org
Shaktoolik, Native Village of ..	Traci McGarry, Program Director.	Kawerak, Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443-4376	(907) 443-4474	cfsdir@kawerak.org
Sheldon's Point (see Nunam Iqua).					
Shishmaref, Native Village of	Karla Nayokpuk, Tribal Family Coordinator.	P.O. Box 72110, Shishmaref, AK 99772.	(907) 649-3078	(907) 649-2278	knayokpuk@kawerak.org
Shishmaref, Native Village of	Traci McGarry, Program Director.	Kawerak, Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443-4376	(907) 443-4474	cfsdir@kawerak.org
Shungnak, Native Village of ...	Amanda Johnson, ICWA Coordinator.	P.O. Box 73064, Shungnak, AK 99773.	(907) 437-2163	(907) 437-2183	icwa@issingnak.org
Shungnak, Native Village of ...	Jackie Hill, Tribal Director Assistance Program.	Maniilaq Association, Family Services, P.O. Box 256, Kotzebue, AK 99752.	(907) 442-7870	(907) 442-7833	Jackie.hill@maniilaq.org
Sitka Tribe of Alaska .....	Krista Perala, Lead ICWA Case Worker.	456 Katlian Street, Sitka, AK 99835.	(907) 747-3759	(907) 747-7643	krista.perala@sitkatriben-sn.gov
Skagway Village .....	Marla Belisle, ICWA Worker	P.O. Box 1157, Skagway, AK 99840.	(907) 983-4068	(907) 983-3068	marla@skagwaytraditional.org
Sleetmute, Village of .....	Cheryl Mellick, ICWA Worker	P.O. Box 109, Sleetmute, AK 99668.	(907) 449-4263	(907) 449-4265	SLQICWA@hughes.net
Solomon, Village of .....	Elizabeth Johnson, Tribal Coordinator.	P.O. Box 2053, Nome, AK 99762.	(907) 443-4985	(907) 443-5189	tc.sol@kawerak.org
South Naknek Village .....	Lorraine Zimin, ICWA Coordinator.	2521 E. Mountain Village Dr. B. 388, Wasilla, AK 99654.	(907) 631-3648	(907) 631-0949.	
South Naknek Village .....	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kananak Road, Dillingham, AK 99576.	(907) 842-4139	(907) 842-4106	cnixon@bbna.com
St. Mary's (see Algaaciq).					
St. Mary's Igloo (see Teller).					
St. George, Native Village of	Amanda McAdoo, ICWA Coordinator; Ozzy E. Escarate, Director, Department of Family & Community Development.	Aleutian/Pribilof Islands Association, 1131 East International Airport Road, Anchorage, AK 99518-1408.	(907) 276-2700	(907) 222-9735	icwa@apiai.org
St. Michael, Native Village of	Shirley Martin, Tribal Family Coordinator.	P.O. Box 59050, St. Michael, AK 99659.	(907) 923-2546	(907) 923-2474	tfc.smk@kawerak.org

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
St. Michael, Native Village of	Traci McGarry, Program Director.	Kawerak, Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443-4376	(907) 443-4474	<i>cfsdir@kawerak.org</i>
St. Paul, Pribilof Islands Aleut Community of.	Charlene Naulty, M.S .....	4720 Business Park Blvd, Suite G-40, Anchorage, AK 99503.	(907) 546-3200; (907) 546-8308.	(907) 546-3254	<i>cjnaluty@aleut.com</i>
St. Paul, Pribilof Islands Aleut Community of.	Dylan Conduzzi, Director .....	P.O. Box 86, St. Paul Island, AK 99660.	(907) 546-3200; (907) 546-8308.	(907) 546-3254	<i>dconduzzi@aleut.com</i>
Stebbins Community Association.	Jennil Lockwood, Tribal Family Coordinator.	P.O. Box 7100, Stebbins, AK 99762.	(907) 934-2334	(907) 934-2675	<i>tfc.wbb@kawerak.org</i>
Stebbins Community Association.	Traci McGarry, Program Director.	Kawerak, Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443-4376	(907) 443-4474	<i>cfsdir@kawerak.org</i>
Stevens, Native Village of .....	Cheryl Mayo, ICWA Worker; Jessica Kozevnikoff, Tribal Administrator.	P.O. Box 71372, Stevens Village, AK 99774.	(907) 478-7228	(907) 478-7229	<i>svs.ira.council@gmail.com</i>
Stony River, Native Village of	Mary Willis, Tribal Administrator.	P.O. Box SRV, Stony River, AK 99557.	(907) 537-3258.		
Stony River, Native Village of	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Sun'aq Tribe of Kodiak .....	Linda Resoff, Social Services Director.	312 West Marine Way, Kodiak, AK 99615.	(907) 486-4449	(907) 486-3361	<i>socialservices@sunaq.org</i>
Takotna Village .....	Tribal Family Youth Specialist.	P.O. Box 7529, Takotna, AK 99675.	(907) 298-2212	(907) 298-2314.	
Takotna Village .....		Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Tanacross, Native Village of ..	Colleen Denny, Tribal Family Youth Specialist.	P.O. Box 76009, Tanacross, AK 99776.	(907) 883-5024	(907) 883-4497	<i>colleen.denny@tananachiefs.org</i>
Tanacross, Native Village of ..		Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Tanana, Native Village of .....	Donna May Folger, Tribal Family Youth Specialist.	Box 77130, Tanana, AK 99777.	(907) 366-7160	(907) 366-7195	<i>tananatyls@gmail.com</i>
Tanana, Native Village of .....		Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Tangirnaq (Lesnoi Village aka Woody Island).	Robert Stauffer .....	194 Alimaq Dr., Kodiak, AK 99615.	(907) 486-9806.		
Tatitlek, Native Village of .....	Victoria Vlasoff, Tribal Administrator.	P.O. Box 171, Tatitlek, AK 99677.	(907) 325-2311	(907) 325-2289.	
Tazlina, Native Village of .....	Marce Simeon, ICWA Coordinator.	P.O. Box 87, Glennallen, AK 99588.	(907) 822-4375	(907) 822-5865	<i>icwa.tazlina@cvinternet.net</i>
Telida Village .....	Josephine Royal, Tribal Administrator/Tribal Family Youth Specialist.	3131 N. Lazy Eight Ct., Wasilla, AK 99654.	(907) 864-0629	(907) 376-3540.	
Telida Village .....		Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Teller, Native Village of .....	Dolly Kugzruk, Tribal Family Coordinator.	P.O. Box 629, Teller, AK 99778.	(907) 642-2185	(907) 642-3000	<i>drugzruk@kawerak.org</i>
Teller, Native Village of .....	Traci McGarry, Program Director.	Kawerak, Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443-4376	(907) 443-4474	<i>cfsdir@kawerak.org</i>
Tetlin, Native Village of .....	Nettie Warbelow, Tribal Family Youth Specialist.	P.O. Box 797, Tok, AK 99780.	(907) 378-3608	(907) 883-1269	<i>nwarbelow@acsalaska.net</i>
Tetlin, Native Village of .....		Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Tlingit & Haida Indian Tribes of Alaska (see Central Council Tlingit and Haida Tribes).					
Togiak, Traditional Village of ..	Deanna Snyder, Clerk; Jimmy Coopchiak, President.	ICWA, P.O. Box 310, Togiak, AK 99678.	(907) 493-5003	(907) 493-5005	<i>togiakicwa@bbna.com</i>
Togiak, Traditional Village of ..	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576.	(907) 842-4139	(907) 842-4106	<i>cnixon@bbna.com</i>
Toksook Bay (see Nunakauyarmiut Tribe).					
Tuluksak Native Community ..	Laura Kashatok, ICWA Worker.	P.O. Box 95, Tuluksak, AK 99679.	(907) 695-6902	.....	<i>cofft@avcp.org</i>
Tuluksak Native Community ..	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Tuntutuliak, Native Village of	Samantha White, ICWA Worker.	P.O. Box 8086, Tuntutuliak, AK 99680.	(907) 256-2311	.....	<i>swhite1@avcp.org</i>
Tuntutuliak, Native Village of	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Tununak, Native Village of .....	James James, Tribal Administrator.	P.O. Box 77, Tununak, AK 99681.	(907) 652-6220.		
Tununak, Native Village of .....	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Twin Hills Village Council .....	Beverly Cano, Administrator	P.O. Box TWA, Twin Hills, AK 99576.	(907) 525-4821	(907) 525-4822	<i>twinhillsadmin@bbna.com</i>
Twin Hills Village Council .....	Crystal Nixon-Luckhurst, Children's Services Division Manager.	Bristol Bay Native Association, Children's Services Division Manager, P.O. Box 310, 1500 Kanakanak Road, Dillingham, AK 99576.	(907) 842-4139	(907) 842-4106	<i>cnixon@bbna.com</i>
Tyonek, Native Village of .....	Arthur Standifer, ICWA Worker.	P.O. Box 82009, Tyonek, AK 99682-0009.	(907) 583-2209	(907) 583-2219	<i>tyonekicwa@gmail.com</i>
Ugashik Village .....	Steven Alvarez, Tribal Administrator.	2525 Blueberry Road, Suite 205, Anchorage, AK 99503.	(907) 338-7611	(907) 338-7659	<i>icwa@ugashikvillage.com</i>
Umkumiut Native Village .....	Tribal Administrator .....	P.O. Box 90062, Nightmute, AK 99690.	(907) 647-6145.		
Umkumiut Native Village .....	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>
Unalakleet, Native Village of ..	Aurora Mosely, ICWA Caseworker.	P.O. Box 270, Unalakleet, AK 99684.	(907) 624-3526	(907) 624-5104	<i>ffc.unk@kawerak.org</i>
Unalakleet, Native Village of ..	Traci McGarry, Program Director.	Kawerak, Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443-4376	(907) 443-4474	<i>cfsdir@kawerak.org</i>
Unalaska (see Qawalangin Tribe of Unalaska).					
Unga Native Village of .....	Amanda McAdoo, ICWA Coordinator; Ozzy E. Escarate, Director, Department of Family & Community Development.	Aleutian/Pribilof Islands Association, 1131 East International Airport Road, Anchorage, AK 99518-1408.	(907) 276-2700	(907) 222-9735	<i>icwa@apiai.org</i>
Upper Kalskag Native Village (see Kalskag).					
Venetie, Native Village of .....	Larry Williams Sr., ICWA Worker.	P.O. Box 81080, Venetie, AK 99781.	(907) 849-8212; (907) 849-8610.	(907) 849-8216.	
Venetie, Native Village of .....		Tanana Chiefs Conference, Legal Department, 122 First Avenue, Suite 600, Fairbanks, AK 99701.	(907) 452-8251 Ext. 3178.	(907) 459-3953.	
Wainwright, Native Village of .....		P.O. Box 143, 1212 Airport Road, Wainwright, AK, 99782.	(907) 763-2575	(907) 763-2576.	
Wainwright, Native Village of .....	Joshua Stein, ICWA Program Manager.	Arctic Slope Native Association, P.O. Box 29, Barrow, AK 99723.	(907) 852-9374	(907) 852-2763	<i>joshua.stein@arcticslope.org</i>
Wales, Native Village of .....	Rachel Ozenna, Tribal Family Coordinator.	P.O. Box 549, Wales, AK 99783.	(907) 644-2185	(907) 644-3983	<i>ffc.waa@kawerak.org</i>
Wales, Native Village of .....	Traci McGarry, Program Director.	Kawerak, Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443-4376	(907) 443-4474	<i>cfsdir@kawerak.org</i>
White Mountain, Native Village of.	Carol Smith, Tribal Family Coordinator.	P.O. Box 84090, White Mountain, AK 99784.	(907) 638-2008	(907) 638-2009	<i>ffc.wmo@kawerak.org</i>
White Mountain, Native Village of.	Traci McGarry, Program Director.	Kawerak, Inc. Children & Family Services, P.O. Box 948, Nome, AK 99762.	(907) 443-4376	(907) 443-4474	<i>cfsdir@kawerak.org</i>
Woody Island (see Lesnoi Village).					
Wrangell Cooperative Association.	Cynthia Mills, Family Caseworker II.	P.O. Box 1198, Wrangell, AK 99929.	(907) 755-2326	(907) 855-0032.	
Yakutat Tlingit Tribe .....	Penny James, ICWA Program.	P.O. Box 378, Yakutat, AK 99689.	(907) 784-3368	(907) 784-3664	<i>pjames@ytttribe.org</i>
Yupiit of Andreafski .....	Danielle Greene, ICWA Director.	P.O. Box 88, St. Mary's, AK 99658.	(907) 438-2572	(907) 438-2573.	
Yupiit of Andreafski .....	Valerie Andrew, ICWA Director.	Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559.	(907) 543-7461	(907) 543-5759	<i>VAndrew@avcp.com</i>

2. Eastern Region

Eastern Regional Director, Bureau of Indian Affairs, 545 Marriott Drive, Suite

700, Nashville, Tennessee 37214; Phone: (615) 564-6700; Fax: (615) 564-6701.

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Aroostook Band of Micmac Indians.	Luke Joseph, ICWA Director	7 Northern Road, Presque Isle, ME 04769.	(207) 764-1972	(207) 764-7667	<i>ljoseph@micmac-nsn.gov</i>
Catawba Indian Nation of South Carolina.	Linda Love, MSW, LMSW, Social Services Director.	Catawba Indian Nation, 996 Avenue of Nations, Rock Hill, SC 29730.	803-412-3521 ...	(803) 325-1242	<i>Linda.love@catawbaindian.net</i>
Cayuga Nation of New York ..	Sharon Leroy, Executor .....	P.O. Box 803, Seneca Falls, NY 13148.	(315) 568-0750	(315) 568-0752	<i>sharon.leroy@nscayuganation-nsn.gov</i>
Coushatta Tribe of Louisiana	Milton Hebert, Social Service Director.	P.O. Box 967, Elton, LA 70532.	(337) 584-1433	(337) 584-1474	<i>mhebert@coushattatribela.org</i>
Eastern Band of Cherokee Indians.	Jenny Bean, Family Safety Supervisor.	P.O. Box 666, Cherokee, NC 28719.	(828) 359-6149	(828) 359-0216	<i>jennbean@nc-chokeee.com</i>
Houlton Band of Maliseet Indians.	Lori Jewell, LMSW/cc, ICWA Director.	13-2 Clover Court, Houlton, ME 04730.	(207) 532-7260; (207) 538-2266.	(207) 532-7287	<i>ljewell@maliseets.com</i>
Jena Band of Choctaw Indians.	Mona Maxwell, Social Services Director.	P.O. Box 14, Jena, LA 71342.	(318) 992-0136; Cell: (318) 419-8432.	(318) 992-4162	<i>mmaxwell@jenachoctaw.org</i>

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Mashantucket Pequot Tribal Nation.	Valerie Burgess, Director Child Protective Services.	102 Muhshee Mahchaq, P.O. Box 3313, Mashantucket, CT 06338.	(860) 396-2007	(860) 396-2144	vburgess@mptr-nsn.gov
Miccosukee Tribe of Indians of Florida.	Jennifer Prieto, Director of Social Services.	P.O. Box 440021, Tumiami Station, Miami, FL 33144.	(305) 223-8380 Ext. 2267.	(305) 894-5232	jenniferp@miccosukeetribe.com
Mississippi Band of Choctaw Indians.	Natasha Wesley, Legal Secretary.	P.O. Box 6258, Choctaw, MS 39350.	(601) 656-4507	(601) 656-1357	Natasha.wesley@choctaw.org
Mohegan Indian Tribe	Irene Miller, APRN, Director, Family Services.	13 Crow Hill Road, Uncasville, CT 06382.	(860) 862-6236	(860) 862-6324	imiller@moheganmail.com
Narragansett Indian Tribe	Wenonah Harris, Director, Tribal Child Advocate.	4375B South County Trail or P.O. Box 268, Charlestown, RI 02813.	(401) 824-9034; (401) 364-1100 Ext. 233; Ext. 203.	(401) 364-1104	Wenonah@nithpo.com
Oneida Indian Nation	Kim Jacobs, Nation Clerk	Box 1 Vernon, NY 13476	(315) 829-8337	(315) 366-9231	kjacobs@oneida-nation.org
Onondaga Nation	Laverne Lyons	104 W. Conklin Ave, Nedrow, NY 13120.	(315) 469-9196	(315) 469-3250	llyons@syr.edu
Passamaquoddy Tribe of Maine-Indian Township Reservation.	Tene Downing, Director of Child Welfare.	P.O. Box 301, Princeton, ME 04668.	(207) 796-6133	(207) 796-5606	tfdowning5@gmail.com
Passamaquoddy Tribe-Pleasant Point.	Frances LaCoute, Social Services Director.	P.O. Box 343, Perry, ME 04667.	(207) 853-2600 Ext. 211.	(207) 853-9618	flacoute@wabanaki.com
Penobscot Nation	Brooke Loring, Director of Social Services.	12 Wabanaki Way, Indian Island, ME 04468.	(207) 817-3461	(207) 817-3166	Brooke.loring@panobscotnation.org
Poarch Band of Creek Indians	Michealine Deese, Child and Family Welfare Coordinator.	5811 Jack Springs Rd., Atmore, AL 36502.	(251) 368-9136 Ext. 2603.	(251) 368-0828	mdeese@pci-nsn.gov
Sac & Fox Tribe of the Mississippi in Iowa—Meskwaki.	Mylene Wanatee, Meskwaki Family Services Director; Pam Gegener, ICWA Coordinator.	P.O. Box 245, Tama, IA 52339.	(641) 484-4444	(641) 484-2103	recruiter.mfs@meskwaki-nsn.gov
Saint Regis Mohawk Tribe	Jean Square, Interim—ICWA Program Manager; Tsiawente Jackson, Administrative Assistant.	412 State Route 37, Akwesasne, NY 13655.	(518) 358-2360	(518) 358-9107	icwa@srmt-nsn.gov
Seminole Tribe of Florida	Shamika Patton, Tribal Family & Child Advocacy Compliance & Quality Assurance Manager.	3006 Josie Billie Avenue, Hollywood, FL 33024.	(954) 965-1314	(954) 965-1304	shamikabeasley@semtribe.com
Seneca Nation of Indians	Tracy Pacini, Child and Family Services Program Coordinator.	P.O. Box 500, Salamanca, NY 14779.	(716) 945-5894	(716) 945-7881	tracy.pacini@senecahealth.org
Tonawanda Band of Seneca	Darwin Hill, Chief	Council of Chiefs, 7027 Meadville Road, Basom, NY 14013.	(716) 542-4244	(716) 542-4008	Tonseneca@aol.com
Tunica-Biloxi Indian Tribe of Louisiana.	Evelyn Cass, Registered Social Worker.	P.O. Box 493, Marksville, LA 71351.	(318) 240-6444	(318) 500-3011	ecass@tunica.org
Tuscarora Nation of New York	Chief Leo Henry, Clerk	206 Mount Hope Road, Lewistown, NY 14092.	(716) 601-4737	888-800-9787	
Wampanoag Tribe of Gay Head (Aquinnah).	Bonnie Chalifoux, Director Human Services.	20 Black Brook Road, Aquinnah, MA 02539.	(508) 645-9265 Ext 133.	(508) 645-2755	bonnie@wampanoagtribe.net

### 3. Eastern Oklahoma Region

Eastern Oklahoma Regional Director,  
Bureau of Indian Affairs, P.O. Box 8002,

Muskogee, Oklahoma 74402-8002;  
Phone: (918) 781-4600; Fax: (918) 781-4604.

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Alabama Quassarte Tribal Town.	Malinda Noon, ICWA Director.	P.O. Box 187, Wetumka, OK 74883.	(405) 452-3659	(405) 452-3435	mnoon@alabama-quassarte.org
Cherokee Nation	Nikki Baker-Linmore, Director Division of Children Youth and Family Services.	P.O. Box 948, Tahlequah, OK 74465.	(918) 458-6900	(918) 458-6146	nikki-baker@cherokee.org
Chickasaw Nation	Michelle Price, Interim Director Child Welfare Services.	1401 Hoppe Blvd., Ada, OK 74820.	(580) 272-5550	(580) 272-5553	michelle.price@chickasaw.net
Choctaw Nation of Oklahoma	Melissa Middleton, ICW Director.	Children & Family Services, P.O. Box 1210, Durant, OK 74702.	(580) 924-8280 Ext 2550.	(580) 920-3197	mmiddleton@choctawnation.com
Eastern Shawnee Tribe of Oklahoma.	Tamara Gibson, Child and Family Services Coordinator.	10100 S. Bluejacket Road, Suite 3, Wyandotte, OK 74370.	(918) 666-7710	(888) 971-3908	tgibson@estoo.net
Kialegee Tribal Town	Angie Beaver, ICW Director	P.O. Box 332, Wetumka, OK 74883.	(405) 452-5388	(405) 452-3413	angie.beaver@kialegeetribe.net
Miami Tribe of Oklahoma	Janet Grant, Social Services Director.	P.O. Box 1326, Miami, OK 74355.	(918) 541-1381	(918) 540-2814	Jgrant@miamination.com
Modoc Tribe of Oklahoma	Regina Shelton, Division of Children and Family Services.	625 6th SE, Miami, OK 74354.	(918) 542-7890	(918) 542-7878	modoc.ccdf@yahoo.com
Muscogee (Creek) Nation	Kimee Wind-Hummingbird, Director of Child and Family Services.	P.O. Box 580, Okmulgee, OK 74447.	(918) 732-7859	(918) 732-7855	Kwind-hummingbird@mcn-nsn.gov
Osage Tribe	Leah Bighorse, Intake-Supervisor.	255 Senior Drive, Pawhuska, OK 74056.	(918) 287-5341	(918) 287-5231	lbighorse@osagenation-nsn.gov
Ottawa Tribe of Oklahoma	Roy A. Ross, Social Services and CPS Director.	P.O. Box 110, Miami, OK 74355.	(918) 540-1536	(918) 542-3214	ross.oto@gmail.com
Peoria Tribe of Indians of Oklahoma.	Doug Journeycake, Indian Child Welfare Director.	P.O. Box 1527, Miami, OK 74355.	(918) 540-2535	(918) 540-4370	djourneycake@peoriatribe.com
Quapaw Tribe of Oklahoma	Mandy Dement, Family Services, ICW Director.	P.O. Box 765, Quapaw, OK 74363.	(918) 238-3152	(918) 674-2581	mdement@quapawtribe.com
Seminole Nation of Oklahoma	Tracy Haney, Director, Indian Child Welfare.	P.O. Box 1498, Wewoka, OK 74884.	(405) 257-9038	(405) 257-9036	Haney.t@sno-nsn.gov

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Seneca-Cayuga Nation of Oklahoma.	Mark Westfall, ICW Director	Indian Child Program, 23701 South 655 Road, Grove, OK 74344.	(918) 516-3508	(918) 516-0248	<i>mwestfall@sctribe.com</i>
Thlopthlocco Tribal Town .....	Shane Berry, Social Service Manager.	P.O. Box 188, Okemah, OK 74859.	(918) 560-6121	(918) 623-3023	<i>Sberry@ttown.org</i>
United Keetoowah Band of Cherokee Indians in Oklahoma.	Raven Owl, ICW Advocate ..	P.O. Box 746, Tahlequah, OK 74465.	(918) 772-4300	(918) 431-0152	<i>rowl@ukb-nsn.gov</i>
Wyandotte Nation .....	Tara Gragg, Social Worker ..	64700 E. Hwy 60, Wyandotte, OK 74370.	(918) 678-6355	(918) 678-3087	<i>tgragg@wyandotte-nation.org</i>
Wyandotte Tribe of Oklahoma	Tara Gragg, Social Worker ..	64700 E. Hwy 60, Wyandotte, OK 74370.	(918) 678-6355	(918) 678-3087	<i>tgragg@wyandotte-nation.org</i>

4. Great Plains Region

Great Plains Regional Director, Bureau of Indian Affairs, 115 4th Avenue SE.,

Aberdeen, South Dakota 57401; Phone: (605) 226-7343; Fax: (605) 226-7446.

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Cheyenne River Sioux Tribe ..	Diane Garreau, Indian Child Welfare Act Program Director.	PO Box 590, Eagle Butte, SD 57625.	(605) 964-6460	(605) 964-6463	<i>Dgarreau@hotmail.com</i>
Crow Creek River Sioux Tribe	LeeAnn Piskule, ICWA Director.	35505 239th St., Kimball, SD 57355.	(605) 245-2581 or (605) 680-2475.	(605) 245-2343	<i>ccst.icwa@hotmail.com</i>
Flandreau Santee Sioux Tribe	Jessica Morson, ICWA Administrator.	Flandreau Santee Sioux Tribal Social Services, P.O. Box 283, Flandreau, SD 57028.	(605) 997-5055	(605) 997-3694	<i>jessica.morrison@fsst.org</i>
Lower Brule Sioux Tribe .....	Rose R. McCauley and Jera Brouse-Koster, Designated Tribal Agent-ICWA.	187 Oyate Circle, Lower Brule, SD 57548.	(605) 473-8000 Ext. 48163.	(605) 473-8051	<i>J_lou_koster@yahoo.com</i>
Oglala Sioux Tribe .....	Shirley Blackstone, ICWA Supervisor.	Oglala Sioux Tribe—ONTRAC, P.O. Box 2080, Pine Ridge, SD 57770.	(605) 867-5752	(605) 867-1893	<i>sblackstone@ogla.org</i>
Omaha Tribe of Nebraska .....	Ansley Griffin, ICWA Specialist.	Omaha Tribe of Nebraska, P.O. Box 500, Macy NE 68039.	(402) 837-5331 Ext. 301.	(402) 837-5362	<i>ansley.griffin@nebraska.gov</i>
Ponca Tribe of Nebraska .....	Lynn Schultz, ICWA Specialist.	Ponca Tribe of Nebraska Social Services, 1800 Syracuse Avenue Norfolk, NE 68701.	(402) 371-8834	(402) 371-7564	<i>lschultz@poncatribene.org</i>
Rosebud Sioux Tribe .....	Shirley J. Bad Wound, ICWA Specialist.	Rosebud Sioux Tribe ICWA Program, P.O. Box 609, Mission, SD 57555.	(605) 856-5270	(605) 856-5268	<i>rsticwa9@gwtc.net</i>
Santee Sioux Nation .....	Karen RedOwl, ICWA Specialist.	Dakota Tiwaha Social Services Program, Route 2, Box 5191, Niobrara, NE 68760.	(402) 857-2342	(402) 857-2361	<i>karen.redowl@nebraska.gov</i>
Sisseton-Wahpeton Sioux Tribe.	Evelyn Pilcher, ICWA Director.	PO Box 509 Agency Village, SD 57262.	(605) 698-3992	(605) 698-3999	<i>evelyn.pilcher@state.sd.us</i>
Spirit Lake Sioux Tribe .....	Marie Martin, ICWA Coordinator.	Spirit Lake Tribal Social Services, P.O. Box 356, Fort Totten, ND 58335.	(701) 766-4404	(701) 766-4722	<i>stlicwadir@spiritlakenation.com</i>
Standing Rock Sioux Tribe ....	Raquel Franklin, ICWA Director.	Standing Rock Sioux Tribe ICWA, P.O. Box 770, Fort Yates, ND 58538.	(701) 854-3095	(701) 854-5575	<i>rfranklin@standingrock.org</i>
Three Affiliated Tribes (Mandan, Arikara & Hidatsa).	Vincent Roehr, ICWA Specialist.	404 Frontage Drive, New Town, ND 58763.	(701) 627-8168	(701) 627-4225	<i>vroehn@mhnation.com</i>
Turtle Mountain Band of Chippewa Indians.	Marilyn Poitra, ICWA Coordinator.	Child Welfare and Family Services, P.O. Box 900 Belcourt, ND 58316.	(701) 477-5688	(701) 477-5797	<i>marilyn@tmcwfs.net</i>
Winnebago Tribe of Nebraska	Ellexa Mollet, ICWA Specialist.	ICWA Program, P.O. Box 723, Winnebago, NE 68071.	(402) 878-2379 Ext. 115.	(402) 878-2228	<i>candace.payer@winnebagotribe.com</i>
Yankton Sioux Tribe of South Dakota.	Melissa Sanchez-Chrans, ICWA Director.	Yankton Sioux Tribe ICWA Department, P.O. Box 1153, Wagner, SD 57361.	(605) 384-5712	(605) 384-5014	<i>yst_icwa@outlook.com</i>

5. Midwest Region

Midwest Regional Director, Bureau of Indian Affairs, 5600 West American

Blvd., Suite 500, Norman Pointe II Building, Bloomington, Minnesota

55437; Phone: (612) 725-4500; Fax: (612) 713-4401.

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Bad River Band of the Lake Superior Tribe of Chippewa Indians.	Gina Secord, Abinoojiyag Resource Center Program Manager.	P.O. Box 55, Odanah, WI 54861.	(715) 682-7135 Ext. 3.	.....	<i>ARCMgr@badriver-nsn.gov</i>
Bay Mills Indian Community ...	Phyllis Kinney, Tribal Court Administrator.	12140 W. Lakeshore Dr., Brimley, MI 49715.	(906) 248-3241	(906) 248-5817	<i>phyllisk@baymills.org</i>
Bois Forte Reservation Business Committee.	Angela Wright, Indian Child Welfare Supervisor.	13071 Nett Lake Road Suite A, Nett Lake, MN 55771.	(218) 757-3295	(218) 757-3335	<i>amwright@boisforte.nsn.gov</i>
Fond du Lac Reservation Business Committee.	Chairperson, Fond du Lac Reservation Business Committee.	1720 Big Lake Road, Cloquet, MN 55720.	(218) 879-4593	(218) 879-4146	<i>LisaPollack@fdlrez.com</i>

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Forest County Potawatomi Community of Wisconsin.	Abbey Lukowski, Family Services Division Director.	5415 Everybody's Road, Crandon, WI 54520.	(715) 478-4812	(715) 478-7442	<a href="mailto:Abbey.lukowski@fcpotawatomi-nsn.gov">Abbey.lukowski@fcpotawatomi-nsn.gov</a>
Grand Portage Reservation Business Center.	Roger Linehan, Human Service Director.	P.O. Box 428, Grand Portage, MN 55605.	(218) 475-2453	(218) 475-2455	<a href="mailto:rlinehan@grandportage.com">rlinehan@grandportage.com</a>
Grand Traverse Band of Ottawa and Chippewa Indians.	Helen Cook, Anishinaabek Family Services Supervisor.	2605 N. West Bayshore Drive, Peshawbestown, MI 49682-9275.	(231) 534-7681	(231) 534-7706	<a href="mailto:helen.cook@gtbndians.com">helen.cook@gtbndians.com</a>
Hannahville Indian Community of Michigan.	Jessica Brock, ICWA Worker	N15019 Hannahville B1 Road, Wilson, MI 49896.	(906) 723-2514	(906) 466-7397	<a href="mailto:Jessica.brock@nichealth.org">Jessica.brock@nichealth.org</a>
Ho-Chunk Nation .....	ICWA Supervisor .....	P.O. Box 40, Black River Falls, WI 54615.	(715) 284-2622	(715) 284-0097	<a href="mailto:ICW@ho-chunk.com">ICW@ho-chunk.com</a>
Keweenaw Bay Indian Community of the L'Anse Reservation of Michigan.	Judith Heath, Director Social Services.	16429 Bear Town Road, Baraga, MI 49908.	(906) 353-4201	(906) 353-8171	<a href="mailto:judy@kbic-nsn.gov">judy@kbic-nsn.gov</a>
Lac Courte Oreilles Band of Lake Superior Chippewa Indian of Wisconsin.	LuAnn Kolumbus, Tribal Social Services Director.	13394 W. Trepania Road, Hayward, WI 54843.	(715) 634-8934 ext. 7435.	(715) 634-2981	<a href="mailto:lcoicw@nsn.gov">lcoicw@nsn.gov</a>
Lac du Flambeau Band of Lake Superior Chippewa Indians.	Kristin Allen, ICW Director ...	P.O. Box 216, Lac du Flambeau, WI 54538.	(715) 588-4275	(715) 588-3855	<a href="mailto:ldfcw@ldftribe.com">ldfcw@ldftribe.com</a>
Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan.	Dee Dee McGeshick, Social Services Director and Marisa Vanzile, ICW Caseworker.	P.O. Box 249, Watersmeet, MI 49969.	(906) 358-4940	(906) 358-4900	<a href="mailto:dee.mcgeshick@lvdtribal.com">dee.mcgeshick@lvdtribal.com</a>
Leech Lake Band of Ojibwe ...	Laurie Chase, Child Welfare Director.	190 Sailstar Drive NW, Cass Lake, MN 56633; P.O. Box 967, Cass Lake, MN 56633.	(218) 335-8270	(218) 335-3768	<a href="mailto:laurie.chase@llojibwe.com">laurie.chase@llojibwe.com</a>
Little River Band of Ottawa Indians, Inc.	William Gregory, Tribal Prosecutor.	3031 Domes Road, Manistee, MI 49660.	(213) 398-2242 or Cell: (616) 490-3300.	(231) 398-3404	<a href="mailto:bgregory@lrboi.com">bgregory@lrboi.com</a>
Little Traverse Band of Odawa Indians.	Denneen Smith, Human Services Director.	7500 Odawa Circle, Harbor Springs, MI 49740.	(231) 242-1620	(213) 242-1635	<a href="mailto:dmsmith@ltbodawansn.gov">dmsmith@ltbodawansn.gov</a>
Lower Sioux Indian Community of Minnesota.	Reanna Jacobs, ICWA Advocate and Darin Prescott, Director.	39568 Reservation Highway 1, Morton, MN 56270.	(507) 697-9108	(507) 697-9111	<a href="mailto:reanna.jacobs@lowersioux.com">reanna.jacobs@lowersioux.com</a>
Match-E-Be-Nash-She-Wish Band of Potawatomi Indians of Michigan (Gun Lake Tribe).	Sarah Jane Watrous, LMSW, Human Services Coordinator.	2880 Mission Dr., Shelbyville, MI 49344.	(616) 681-0360 Ext. 1108.	(269) 397-1763	<a href="mailto:SarahJane.Watrous@hhs.glt-nsn.gov">SarahJane.Watrous@hhs.glt-nsn.gov</a>
Menominee Indian Tribe of Wisconsin.	Mary Husby, Director of Social Services and Carol Corn, Acting Director of Social Services.	P.O. Box 520, Keshena, WI 54135.	(715) 799-5161	(715) 799-6061	<a href="mailto:mhusby@mitw.org">mhusby@mitw.org</a> ; <a href="mailto:ccorn@mitw.org">ccorn@mitw.org</a>
Mille Lacs Band of Ojibwe .....	Mishelle Ballinger, Administrative Case Aid—Family Services.	17230 Noopiming Drive, Onamia, MN 56359.	(320) 532-7776	(320) 532-7583	<a href="mailto:mishelle.ballinger@hhs.millelacsband-nsn.gov">mishelle.ballinger@hhs.millelacsband-nsn.gov</a>
Nottawaseppi Huron Band of the Potawatomi.	Meg Fairchild, LMSW, CAAC, Clinical Social Worker.	1474 Mno Bradzewen Way, Fulton, MI 49052.	(269) 729-4422	(269) 729-4460	<a href="mailto:socialwpc@nhbp.org">socialwpc@nhbp.org</a>
Omaha Tribe of Nebraska .....	Raquel Morris, Director .....	Omaha Tribe of Nebraska, Child Protection Services, P.O. Box 444, Macy, NE 68039.	(402) 837-5287	(402) 837-5275	<a href="mailto:raquel.morris@omahatribe.com">raquel.morris@omahatribe.com</a>
Oneida Tribe of Indians of Wisconsin.	Heather Lee, ICWA Supervisor.	Attn: Children and Family Services, P.O. Box 365, Oneida, WI 54155.	(920) 490-3724	(920) 490-3820	<a href="mailto:icw@oneidanation.org">icw@oneidanation.org</a>
Pokagon Band of Potawatomi	Mark Pompey, Social Services Director.	58620 Sink Road, Dowagiac, MI 49047.	(269) 782-8998	(269) 782-4295	<a href="mailto:rwallace@pic.org">rwallace@pic.org</a>
Prairie Island Indian Community Mdwakanton Dakota Sioux of Minnesota.	Renae Wallace, Family Service Manager.	5636 Sturgeon Lake Road, Welch, MN 55089.	(651) 385-4185	(651) 385-4183	<a href="mailto:rwallace@pic.org">rwallace@pic.org</a>
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin.	Chally Topping-Thompson, Indian Child Welfare Director.	88385 Pike Road, Highway 13, Bayfield, WI 54814.	(715) 779-3785	(715) 779-3783	<a href="mailto:chally.topping-thompson@redcliff-nsn.gov">chally.topping-thompson@redcliff-nsn.gov</a>
Red Lake Band of Chippewa Indians.	Cheri Goodwin, Executive Director-Family & Children Services.	P.O. Box 427, Red Lake, MN 56671.	(218) 679-2122	(218) 679-1665	<a href="mailto:cheri.goodwin@redlakenation.org">cheri.goodwin@redlakenation.org</a>
Saginaw Chippewa Tribe of Michigan.	Angela Gonzalez, ICWA & Licensing Supervisor.	7070 East Broadway Road, Mt. Pleasant, MI 48858.	(989) 775-4901	(989) 775-4912	<a href="mailto:agonzalez@sagchip.org">agonzalez@sagchip.org</a>
Sault Ste. Marie Tribe of Chippewa Indians of Michigan.	Juanita Bye, ACFS Division Director.	2218 Shunk Rd, Sault Ste. Marie, MI 49783.	(906) 632-5250	(906) 632-5266	<a href="mailto:jbye@saulttribe.net">jbye@saulttribe.net</a>
Shakopee Mdwakanton Sioux Community.	Karen Ross, ICWA Representative.	2330 Sioux Trail NW, Prior Lake, MN 55372.	(952) 445-8900 or (952) 496-6112.	(952) 445-8906	<a href="mailto:amanda.vanzile@scc-sns.gov">amanda.vanzile@scc-sns.gov</a>
Sokaogon Chippewa Community of Wisconsin.	Amanda Vanzile, Director Family Services.	10808 Sokaogon Drive, Crandon, WI 54520.	(715) 478-3265	(715) 478-7618	<a href="mailto:amanda.vanzile@scc-sns.gov">amanda.vanzile@scc-sns.gov</a>
St. Croix Chippewa Indians of Wisconsin.	Elizabeth Lowe, Indian Child Welfare Director.	4404 State Rd. 70, Webster, WI 54893.	(715) 349-8554 Ext. 5264 or (715) 349-2671.	(715) 349-8665	<a href="mailto:elizabethl@stcroixtribalcenter.com">elizabethl@stcroixtribalcenter.com</a>
St. Croix Chippewa Indians of Wisconsin.	Erin Fowler, Indian Child Welfare Director.	24670 State Road 35/70, Suite 800, Siren, WI 54872.	(715) 349-2195 Ext. 5339.	(715) 349-8665	<a href="mailto:erinf@stcroixtribalcenter.com">erinf@stcroixtribalcenter.com</a>
Stockbridge-Munsee Community of Wisconsin.	Teresa Juga, ICWA Manager.	Stockbridge Munsee Health and Wellness Center, W12802 County A, Bowler, WI 54416.	(715) 793-4580	(715) 793-1312	<a href="mailto:teresa.juga@mohican.com">teresa.juga@mohican.com</a>
Upper Sioux Community of Minnesota.	Lynette Tellinghuisen, ICWA Manager.	PO Box 147, 5744 Hwy. 67, Granite Falls, MN 56241.	(320) 564-6315	(320) 564-2550	<a href="mailto:linette@upperSiouxcommunity-nsn.gov">linette@upperSiouxcommunity-nsn.gov</a>
White Earth Reservation Business Committee.	Laurie York, Program Director.	White Earth Indian Child Welfare, P.O. Box 358, White Earth, MN 56591.	(218) 983-4647	(218) 983-3712	<a href="mailto:laurie.york@whiteearth-nsn.gov">laurie.york@whiteearth-nsn.gov</a>

6. Navajo Region

Navajo Regional Director, Bureau of Indian Affairs, P.O. Box 1060, Gallup,

New Mexico 87305; Phone: (505) 863-8314; Fax: (505) 863-8324.

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Navajo Nation .....	Regina Yazzie, MSW, Director, Navajo Children and Family Services (ICWA).	P.O. Box 1930, Window Rock, AZ 86515.	(928) 871-6806	(928) 871-7667	reginayazzie@navajo-nsn.gov

7. Northwest Region

Northwest Regional Director, Bureau of Indian Affairs, 911 NE 11th Avenue,

Portland, Oregon 97232; Phone: (503) 231-6702; Fax: (503) 231-2201.

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Burns Paiute Tribe .....	Michelle Bradach, Social Service Director.	100 Pasigo Street, Burns, OR 97720.	(541) 573-8043	(541) 573-4217	bradachma@burnspaiute-nsn.gov
Coeur d'Alene Tribe .....	Jennie Louie, Indian Child Welfare Manager.	P.O. Box 408, Plummer, ID 83851.	(208) 686-2061	(208) 686-2059	jlouie@cdatribe-nsn.gov
Confederated Salish & Kootenai Tribes.	Lena Tewawina, ICWA Worker.	P.O. Box 278 Pablo, MT 59855.	(406) 675-2700 ext. 6109.	(406) 275-2749	lenat@cskt.org
Confederated Tribes and Bands of the Yakama Nation.	June Adams, ICW Manager	P.O. Box 151, Toppenish, WA 98948.	(509) 865-5121 Ext. 6807.	(509) 865-6869	june_adams@yakama.com
Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians.	Vicki Faciane, Health & Human Services Director.	P.O. Box 3279, Coos Bay, OR 97420.	(541) 888-7515	(541) 888-1027	VFaciane@ctclusi.org
Confederated Tribes of Siletz Indians.	Cheryl Duprau, ICW Administrator.	P.O. Box 549, Siletz, OR 97380.	(541) 444-8272	(541) 444-8370	cheryld@ctsi.nsn.us
Confederated Tribes of the Chehalis Reservation.	Heather Hoyal, Family Services Director.	420 Howanut Road, Oakville, WA 98568.	(360) 709-1871	(360) 273-5207	hhoyal@chehalistribe.org
Confederated Tribes of the Colville.	Preston Boyd, Children and Family Services Director.	P.O. Box 150, Nespelem, WA 99155-011.	(509) 634-2774 or Cell: (509) 322-2328.	(509) 634-2633	Preston.boyd@colvilletribes.gov
Confederated Tribes of the Grande Ronde Community of Oregon.	Kristi Petite, ICWA Contact ..	9615 Grand Ronde Road, Grand Ronde, OR 97347-0038.	(503) 879-2034	(503) 879-2142	kristi.petite@grandronde.org
Confederated Tribes of the Umatilla Indian Reservation.	M. Brent Leonhard, Attorney	46411 Timine Way, Pendleton, OR 97801.	(541) 429-7406	(541) 429-7402	brentleonhard@ctuir.org
Confederated Tribes of Warm Springs Reservation.	Lisa Lomas, Associate Judge.	P.O. Box 850, Warm Springs, OR 97761.	(541) 553-3287	(541) 553-3281	lisa.loma@wstribe.org
Coquille Indian Tribe .....	Roni Jackson, ICWA Caseworker.	600 Miluk Drive, P.O. Box 3190, Coos Bay, OR 97420.	(541) 888-9494 Ext. 2219.	(541) 888-0673	ronijackson@coquilletribe.org
Coushatta Tribe of Louisiana	Milton Hebert, MSW, CADC, CGAC, Social Service Director.	P.O. Box 967, Elton, LA 70532.	(337) 584-1433	(337) 584-1474	mhebert@coushattatribela.org
Cow Creek Band of Umpqua Tribe of Indians.	Michelle Moore, Human Services Director, ICWA Specialist.	2371 NE Stephens Street, Roseburg, OR 97470.	(541) 677-5575	(541) 677-5565	mmoore@cowcreek.com
Cowlitz Indian Tribe .....	Mike Yates, ICWA Director ..	P.O. Box 2547, Longview, WA 98632-8594.	(360) 577-8140	(360) 577-7432.	
Hoh Indian Tribe .....	Katie Pullon, ICWA Case Manager.	P.O. Box 2196, Forks, WA 98331.	(360) 374-3271	(360) 374-5426	katie.pullon@hohtribe-nsn.org
Jamestown S'Klallam Tribe ....	Tanya Pankoski, ICW Case Worker.	Social and Community Services, 1033 Old Blyn Hwy, Sequim, WA 98382.	(360) 681-4639	(360) 681-3402	t.pankoski@jamestowntribe.org
Kalispel Tribe of Indians .....	Wendy Thomas, MSW, Social Services Director.	934 S Garfield Road, Airway Heights, WA 99001.	(509) 789-7630	(509) 789-7675	wthomas@camashealth.com
Klamath Tribes .....	Candi Uses Arrow, Child Welfare Program Manager.	P.O. Box 436 Chiloquin, OR 97624.	(541) 783-2219	(541) 783-2219	candi.usesarrow@klamathtribes.com
Kootenai Tribal Council .....	Velma Bahe, ICWA Contact ..	P.O. Box 1269 Bonners Ferry, ID 83805-1269.	(208) 267-8451.		
Lower Elwha Tribal Community Council.	Rebecca Sampson Weed, ICWA Case Worker.	2851 Lower Elwha Road, Port Angeles, WA 98363.	(360) 452-8471 ext.7456.	(360) 452-3428	becca.weed@elwha.org
Lummi Tribe of the Lummi Reservation.	Ralph Jefferson, Child Welfare Director and Kim Goesbehind, ICWA Supervisor.	P.O. Box 1024, Ferndale, WA 98248.	(360) 384-2324	(360) 384-2341	kymg@lummi-nsn.gov
Makah Indian Tribal Council ..	Robin Denney, Social Services Manager and Isan Simpson, ICW Caseworker.	P.O. Box 115, Neah Bay, WA 98357.	(360) 645-3251/3257.	(360) 645-2806	robin.denney@makah.com
Metlakatla Indian Community	Craig H. White, Director, Darlene Booth, ICW Case Worker, Jacqueline Wilson, ICW Case Worker.	P.O. Box 8 Metlakatla, AK 99926.	(907) 886-6914	(907) 886-6913	jwilsonm4@outlook.com
Muckleshoot Indian Tribe .....	Cynthia Orie, Social Services Manager.	39015 172nd Avenue SE., Auburn, WA 98092.	(254) 876-3396	(254) 876-3095	cynthia.orie@muckleshoot-nsn.us
Nez Perce Tribe .....	Joni Williams, LSW, MSW, Indian Child Welfare Social Worker II.	271 B Street, P.O. Box 365, Lapwai, ID 83540.	(208) 843-7302 Ext. 4666.	(208) 843-9401	jeanettep@nezperce.org
Nisqually Indian Community ...	Lorraine Van Brunt, Child and Family Services and Alana Begay, ICW Case Worker and Deborah Guerrero, ICW Case Worker.	4820 She-Nah-Num Drive SE., Olympia, WA 98513.	(360) 456-5221	(360) 486-9555	alana.begay@nisqually-nsn.gov; rah.guerrero@nisqually-nsns.gov
Nooksack Indian Tribe of Washington.	Ken Levinson, ICW Program Manager and Denise Jefferson, ICW Manager.	5061 Deming Road, Deming, WA 98244.	(360) 306-5090	(360) 306-5099	klevinson@nooksack-nsn.gov; djefferson@nooksack-nsn.gov

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Northwestern Band of Shoshoni Nation.	Patty Timbimboo .....	Enrollment Department, 707 North Main, Brigham City, UT 84302.	(435) 734-2286	(435) 734-0424	<i>ptimbimboo@nwbshoshone.com</i>
Port Gamble Indian Community.	Cheryl Miller, Children and Family Community Services Director and Joylina Gonzales.	31912 Little Boston Road NE., Kingston, WA 98346.	(360) 297-9665	(360) 297-9666	<i>cmiller@pgst.nsn.gov; jgonzales@pgst.nsn.gov</i>
Puyallup Tribe .....	Sandra Cooper, ICWA Liaison and Drew Wilson, ICWA Liaison.	3009 E. Portland Avenue, Tacoma, WA 98404.	(253) 405-7544 or (253) 358-0431.	(253) 680-5769	<i>sandra.Cooper@puyalluptribe.com; DrewWilson@puyalluptribe.com</i>
Quileute Tribal Council .....	Bonita Cleveland, Tribal Chair.	P.O. Box 279, LaPush, WA 98350.	(360) 374-6155	(360) 374-6311	<i>bonita.cleveland@quileutenation.org</i>
Quinault Indian Nation .....	Aliza Brown, Family Services Supervisor.	P.O. Box 189, Taholah, WA 98587.	(360) 276-8215 Ext. 355 or Cell: (360) 590-1933.	(360) 276-4152	<i>abrown@quinault.org</i>
Samish Indian Nation .....	Michelle Johnson, Family Services Specialist.	Samish Nation Social Services, P.O. Box 217, Anacortes, WA 98221.	(360) 899-5282	(360) 299-4357	<i>mjohnson@samishtribe.nsn.us</i>
Sauk-Suiattle Indian Tribe of Washington.	Donna Furchert, ICW Director.	5318 Chief Brown Lane, Darrington, WA 98241.	(360) 436-2849	(360) 436-0471	<i>dfucgert@sauk-suiattle.com</i>
Shoalwater Bay Tribal Council	Katherine Horne, Director, Social Services.	P.O. Box 130, Tokeland, WA 98590.	(360) 267-6766 Ext. 8134.	(360) 267-0247	<i>khorne@shoalwaterbay-nsn.gov</i>
Shoshone Bannock Tribes of the Fort Hall Reservation.	Brandelle Whitworth, Tribal Attorney.	P.O. Box 306, Ft. Hall, ID 83203.	(208) 478-3923	(208) 237-9736	<i>bwhitworth@sbtribes.com</i>
Skokomish Tribal Council .....	Linda Charrette, ICWA Caseworker and Rosetta LaClair, ICWA Caseworker.	N. 80 Tribal Center Road, Shelton, WA 98584-9748.	(360) 426-7788	(360) 877-2151	<i>rlaclair@skokomish.org</i>
Snoqualmie Tribe .....	Marilee Mai, ICW Program Manager.	P.O. Box 96, Snoqualmie, WA 98045.	(425) 888-6551 Ext. 6235.	(509) 258-7029	<i>tawhneec@spokanetribe.com</i>
Spokane Tribe of Indians .....	Tawhnee Colvin, Program Manager/Case Manager.	P.O. Box 540, Wellpinit, WA 99040.	(509) 258-7502	(509) 258-7029	<i>tawhneec@spokanetribe.com</i>
Squaxin Island Tribal Council	Donald Whitener, Tribal Administrator.	10 SE Squaxin Lane, Shelton, WA 98584-9200.	(360) 432-3900	(360) 426-6577	<i>dwhitener@squaxin.us</i>
Stillaquamish Tribe of Washington.	Gloria Green, ICW Director ..	P.O. Box 3782 or 17014 59th Ave NE., Arlington, WA 98223.	(360) 435-5029 Ext. 21.	(360) 435-2867	<i>ggreen@stillaquamish.com</i>
Suquamish Tribe of the Port Madison Reservation.	Dennis Deaton, ICWA Contact.	P.O. Box 498, Suquamish, WA 98392.	(360) 394-8478	(360) 697-6774.	
Swinomish Indians .....	Tracy Parker, Swinomish Family Services Coordinator.	17337 Reservation Rd, LaConner, WA 98257.	(360) 466-7222	(360) 466-1632	<i>tparker@swinomish.nsn.us</i>
Tulalip Tribe .....	Jennifer Walls, Lead ICW Worker and Roberta Hillaire, ICW Manager.	2828 Mission Hill Road, Tulalip, WA 98271.	(360) 716-3284	(360) 716-0750	<i>jwalls@tulaliptribe-nsn.gov; rhallaire@tulaliptribe-nsn.gov</i>
Upper Skagit Indian Tribe of Washington.	Felice Keegahn, Indian Child Welfare Coordinator.	25959 Community Plaza Way, Sedro Woolley, WA 98284.	(360) 854-7077	(360) 854-7125	<i>felicek@upperskagit.com</i>
Washoe Tribe of Nevada and California.	Cynthia Blacksmith, Social Services Director.	919 US Highway 395 S., Gardnerville, NV 89410.	(775) 265-8600	(775) 265-4593	<i>cindy.blacksmith@washoetribe.us</i>

## 8. Pacific Region

Pacific Regional Director, Bureau of Indian Affairs, Federal Building, 2800

Cottage Way, Room W-2820,  
Sacramento, California 95825; Phone:  
(916) 978-6000; Fax: (916) 978-6099.

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Agua Caliente Band of Cahuilla Indians.	John T. Plata, General Counsel.	5401 Dinah Shore Drive, Palm Springs, CA 92264.	(760) 669-6837	(760) 699-6863	<i>jplata@aguacaliente.net</i>
Alturas Rancheria .....	Chairman .....	P.O. Box 340, Alturas, CA 96101.	(530) 233-5571	(530) 223-4165	
Auburn Rancheria .....	Judy Beck, Director Community Services.	United Auburn Indian Community, 935 Indian Rancheria Road, Auburn, CA 95603.	(916) 251-1550	(530) 887-1028	<i>jbeck@auburnrancheria.com</i>
Augustine Band of Cahuilla Indians.	Amanda Vance, Chairperson	P.O. Box 846, Coachella, CA 92236.	(760) 398-4722	(760) 369-7161	<i>hhaines@augustinetribe.com</i>
Barona Band of Mission Indians.	Jahari Weir Harrison, Indian Child Social Services Program Coordinator.	Southern Indian Health Council, Inc., 4058 Willow Rd., Alpine, CA 91903.	(619) 445-1188 Ext. 208.	(619) 659-9782	<i>jharrison@sihc.org</i>
Barona Band of Mission Indians.	Kumeyaay Family Services Director.	Southern Indian Health Council, Inc., 4058 Willow Rd., Alpine, CA 91903.	(619) 445-1188	(619) 445-0765.	
Bear River of Rhonerville Rancheria.	Chisa Oros, ICWA Advocate	266 Keisner Rd., Loleta, CA 95551.	(707) 773-1900 Ext. 169.	(707) 875-7229	<i>chisaoros@brb-nsn.gov</i>
Big Lagoon Rancheria .....	Chairperson .....	P.O. Box 3060, Trinidad, CA 95570.	(707) 826-2079	(707) 826-0495.	
Big Pine Paiute Tribe .....	Jill Paydon, Tribal Administrator/ICWA Representative.	P.O. Box 700, Big Pine, CA 93513; 825 S. Main St., Big Pine, CA 93513.	(760) 938-2003 Ext. 223.	(760) 938-2942	<i>jpaydon@bigpinepaiute.org</i>
Big Sandy Rancheria .....	Regina Riley, Tribal Council Secretary.	P.O. Box 337, Auberry, CA 93602.	(559) 374-0066	(559) 374-0055	<i>GRiley@bsmation.com</i>
Big Valley Rancheria .....	Nancy Hernandez, ICWA Representative.	ICWA, 2726 Mission Rancheria Road, Lakeport, CA 95453.	(707) 263-3924	(707) 533-2941	<i>nhernandez@big-valley.net</i>
Bishop Paiute Tribe .....	Arlene Brown, Social Services Director.	50 TuSu Lane, Bishop, CA 93514.	(760) 873-4414	(760) 582-8141	<i>arlene.brown@bishoppaiute.org</i>
Blue Lake Rancheria .....	Arlea Ramsey, Tribal Administrator.	P.O. Box 428, Blue Lake, CA 95525.	(707) 668-5101	(707) 668-4272	<i>aramsey@blueakerancheria-nsn.gov</i>

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Bridgeport Indian Colony .....	John Glazier, Tribal Chairman.	P.O. Box 37 Bridgeport, CA 93517; 355 Sage Brush Drive, Bridgeport, CA 93517.	(760) 932-7083	(760) 932-7846	chair@bridgeportindiancolony.com
Buena Vista Rancheria of Me-Wuik Indians.	Jocelyn Pastram, Tribal Secretary.	1418 20th Street, Suite 200, Sacramento, CA 95811.	(916) 491-0011	(916) 491-0012	jocelyn@buenavistatribe.com
Cabazon Band of Mission Indians.	Chairman .....	84-245 Indio Springs Drive, Indio, CA 92201.	(760) 342-2593	(760) 347-7880	
Cachil DeHe Wintun/Colusa Indian Community.	Yvonne Page, Counselor .....	3730 Highway 45, Colusa, CA 95932.	(530) 458-6571	(530) 458-8061	ypage@colusa-nsn.gov
Cahuilla Band of Mission Indians.	Tribal Council .....	52701 Hwy 371, Anza, CA 92539.	(951) 763-5549	(951) 763-2808	tribalcouncil@cahuilla.net
California Valley Miwok Tribe	As of this date, there is no recognized government for this federally recognized tribe. Please contact Pacific Regional Director for up to date information.				
Campo Band of Mission Indians.	Jahari Weir Harrison, Indian Child Social Services Program Coordinator.	Southern Indian Health Council, Inc., 4058 Willow Rd., Alpine, CA 91903.	(619) 445-1188 Ext. 208.	(619) 659-9782	jharrison@sihc.org
Campo Band of Mission Indians.	Charity White-Voth, Kumeyaay Family Services Director.	Kumeyaay, Southern Indian Health Council, Inc. 4058 Willow Rd., Alpine, CA 91903.	(619) 445-1188	(619) 445-0765	jharrison@sihc.org
Cedarville Rancheria .....	Nikki Munholand, Tribal Administrator.	300 West First Street, Alturas, CA 96101.	(530) 233-3969	(530) 233-4776	cr.munholand@gmail.com
Cher-Ae Heights Indian Community of the Trinidad Rancheria.	Amy Atkins, Executive Manager.	P.O. Box 630, Trinidad, CA 95570.	(707) 677-0211	(707) 677-3921	aatkins@trinidadrancheria.com
Chicken Ranch Rancheria .....	Monica Fox, Office Manager	P.O. Box 1159, Jamestown, CA 95327.	(209) 984-9066	(209) 984-9269	mfox@ctibal.com
Cloverdale Rancheria of Pomo Indians.	Trina Vega, ICWA Advocate	555 S. Cloverdale Blvd., Cloverdale, CA 95425.	(707) 894-5775	(707) 894-5727	trina@cloverdalerancheria.com
Cold Spring Rancheria .....	ICWA Coordinator .....	P.O. Box 209 Tollhouse, CA 93667.	(559) 855-5043.		
Cortina Band of Wintun Indians (Cortina Indian Rancheria).	Charlie Wright, Tribal Chairman.	P.O. Box 1630, Williams, CA 95987.	(530) 473-3274	(530) 473-3301.	
Coyote Valley Band of Pomo Indians.	Lorraine Laiwa .....	Indian Child And Family Preservation Program, 684 South Orchard Avenue, Ukiah, CA 95482.	(707) 463-2644	(707) 463-8956.	
Dry Creek Rancheria Band of Pomo Indians.	Percy Tejada, ICWA Advocate.	P.O. Box 607, Geyserville, CA 95441.	(707) 431-4090	(707) 522-4291	percyt@drycreekrancheria.com
Elem Indian Colony .....	Agustin Garcia, Chairman .....	P.O. Box 757, Lower Lake, CA 95457.	(707) 994-3400	(707) 994-3408	t.brown@elemindiancolony.org
Elk Valley Rancheria .....	Christina Jones, Council Enrollment Officer & Secretary.	2332 Howland Hill Rd, Crescent City, CA 95531.	(707) 464-4680	(707) 464-4519	lquinnell@elk-valley.com
Enterprise Rancheria .....	Shari Ghalayini, ICWA Director.	2133 Monte Vista Ave, Oroville, CA 95966.	(530) 532-9214	(530) 532-1768	sharig@enterpriserancheria.org
Ewiiapaayp (Cuyapaipae) Band of Kumeyaay Indians.	Will Micklin, CEO .....	4050 Willow Road, Alpine, CA 91901.	(619) 445-6315	(619) 445-9126	wmicklin@leaningrock.net
Federated Indians of Graton Rancheria.	Lara Walker .....	Human Services, 6400 Redwood Drive, Suite 300, Rohnert Park, CA 94928.	(707) 586-6110	(707) 586-2982	lwalker@gratonrancheria.com
Fort Bidwell Reservation .....	Bernold Pollard, Chairperson	P.O. Box 129, Fort Bidwell, CA 96112.	(530) 279-6310	(530) 279-2233.	
Fort Independence Reservation.	Stephanie Arman, Secretary/Treasurer.	P.O. Box 67 or 131 North Hwy 395, Independence, CA 93526.	(760) 878-5160	(760) 878-2311	secretarytreasurer@fortindependence.com
Fort Mojave Indian Tribe .....	Melvin Lewis, Sr., Social Services Department Director.	500 Merriman Avenue, Needles, CA 92363.	(928) 346-1550; (866) 346-6010.	(928) 346-1552	ssdir@ftmojave.com
Greenville Rancheria .....	Patty Allen, ICWA Coordinator.	P.O. Box 279, Greenville, CA 95947.	(530) 284-7990	(530) 284-7299	pallen@greenvillerrancheria.com
Grindstone Rancheria .....	Aaston Bill .....	ICWA, P.O. Box 63, Elk Creek, CA 95939.	(530) 968-5365	(530) 968-5366	
Guidiville Rancheria .....	Merlene Sanchez, Tribal Chairperson.	P.O. Box 339, Talmage, CA 95481.	(707) 462-3682	(707) 462-9183	admin@guidiville.net
Habematolel Pomo of Upper Lake Rancheria.	Angelina Arroyo, ICWA Advocate.	375 E. Hwy 20, Suite I, P.O. Box 516, Upper Lake, CA 95485-0516.	(707) 275-0737 Ext. 2; (707) 275-9050 Ext. 202.	(707) 275-0757	aarroyo@hputribe-NSN.gov
Hoopa Valley Tribe .....	Director, Human Services .....	P.O. Box 1348, Hoopa, CA 95546.	(530) 625-4211.		
Hopland Band of Pomo Indians.	Josephine Loomis, ICWA Social Case Manager.	3000 Shanell Rd., Hopland, CA 95449.	(707) 472-2100 Ext. 1114.	(707) 744-8643	jloomis@hoplandtribe.com
Inaja & Cosmit Band of Mission Indians.	Director of Social Services .....	Tribal Family Services, Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061.	(760) 749-1410	(760) 749-5518	kkolb@indianhealth.com
Ione Band of Miwok Indians ...	Tracy Tripp, Vice-Chair .....	P.O. Box 699, Plymouth, CA 95669.	(209) 257-9196	(209) 245-6377	tracy@ionemiwok.org
Jackson Rancheria Band of Miwok Indians.	Marshawn Morla, Tribal Secretary.	P.O. Box 1090, Jackson, CA 95642.	(209) 223-1935	(209) 223-5366	mmorla@jacksoncasino.com
Jamul Indian Village .....	Charity White-Voth, Kumeyaay Family Services Director.	Southern Indian Health Council, Inc., 4058 Willow Rd., Alpine, CA 91903.	(619) 445-1188	(619) 445-0765.	
Karuk Tribe of California .....	Patricia Hobbs, LCSW, Director Child and Family Services.	1519 S. Oregon Street, Yreka, CA 96097.	(530) 841-3141 Ext. 6304.	(530) 841-5150	phobbs@karuk.us
Kashia Band of Pomo Indians of the Stewarts Point Rancheria.	Melissa Cerda, Administrative Assistant.	1420 Guerneville Rd, Suite 1, Santa Rosa, CA 95403.	(707) 591-0580	(707) 591-0583	melissa@stewartspoint.org

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Koi Nation of Northern California (Previously Lower Lake Rancheria).	Chairperson .....	P.O. Box 3162, Santa Rosa, CA 95402.	(707) 575-5586	(707) 575-5506	
La Jolla Band of Luiseno Indians.	Director of Social Services ...	P.O. Box 406, Pauma Valley, CA 92061.	(760) 749-5518	(707) 749-5518	<i>kkolb@indianhealth.com</i>
La Posta Band of Mission Indians.	Jahari Weir Harrison, Indian Child Social Services Program Coordinator.	Kumeyaay, Southern Indian Health Council, Inc., 4058 Willow Rd., Alpine, CA 91903.	(619) 445-1188	(619) 445-0765	<i>jarrison@sihc.org</i>
Laytonville Rancheria .....	Cherie Smith-Gibson, Tribal Administrator.	P.O. Box 1239, Laytonville, CA 95454.	(707) 984-6197 Ext. 104.	(707) 984-6201	<i>ta@cahto.org</i>
Lone Pine Paiute Shoshone Reservation.	Kathy Brancroft, Enrollment Committee Chairperson.	P.O. Box 747, Lone Pine, CA 93545.	(760) 876-1034	(760) 876-8302	
Los Coyotes Band of Cahuilla & Cupeno Indians.	Tribal Family Services; Director of Social Services; Indian Health Council, Inc..	P.O. Box 406, Pauma Valley, CA 92061.	(760) 749-1410	(760) 749-5518	<i>kkolb@indianhealth.com</i>
Lytton Rancheria .....	Liz DeRouen .....	Indian Child and Family Preservation Program, 2525 Cleveland Ave, Suite H, Santa Rosa, CA 95403.	(707) 544-8509	(707) 544-8729	<i>lizderouen@sbcglobal.net</i>
Manchester-Point Arena Band of Pomo Indians.	Lorraine Laiwa, Program Director.	Indian Child & Family Preservation Program 684 S. Orchard Ave. Ukiah, CA 95482.	(707) 463-2644	(707) 463-8956	<i>lizderouen@sbcglobal.net</i>
Manzanita Band of Mission Indians.	Chairperson .....	P.O. Box 1302, Boulevard, CA 91905.	(619) 766-4930	(619) 766-4957.	
Mechoopda Indian Tribe of the Chico Rancheria.	Susan Bromley, Office Manager.	125 Mission Ranch Boulevard, Chico, CA 95926.	(530) 899-8922 Ext. 210.	(530) 899-8517	<i>sbromley@mechoopda-nsn.gov</i>
Mesa Grande Band of Mission Indians.	Director of Social Services ...	Tribal Family Services, Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061.	(760) 749-1410	(760) 749-5518	<i>kkolb@indianhealth.com</i>
Middletown Rancheria .....	Mary Comito, ICWA Director	P.O. Box 1829, Middletown, CA 95461.	(707) 987-8288; (707) 326-6876.	(707) 987-8205	<i>mcomito@middletownrancheria.com</i>
Mooretown Rancheria of Maidu Indians in California.	Gary Archuleta, Tribal Chairman.	1 Alverda Drive, Oroville, CA 95966.	(530) 533-3625	(530) 533-4080	<i>gwarchuleta@mooretown.org</i>
Morongo Band of Cahuilla Mission Indians.	Paula Tobler, Social Worker	11581 Potrero Road, Banning, CA 92220.	(951) 849-4697	(951) 922-0338	
North Fork Rancheria of Mono Indians.	Elaine Fink, Tribal Chairwoman.	P.O. Box 929, North Fork, CA 93643.	(559) 877-2484	(559) 877-2467	<i>efink@northforkrancheria-nsn.gov</i>
Pala Band of Mission Indians	Season Lattin, ICWA Manager.	Department of Social Services, 35008 Pala-Temecula Road, PMB 50, Pala, CA 92059.	(760) 891-3542	(760) 742-1293.	
Paskenta Band of Nomlaki Indians.	Ines Crosby, Tribal Administrator.	1012 South Street, Orland, CA 95963.	(530) 865-2010	(530) 865-1870	<i>office@paskenta.org</i>
Pauma & Yuima Band of Mission Indians.	Tribal Family Services, Director of Social Services Indian Health Council, Inc..	P.O. Box 406, Pauma Valley, CA 92061.	(760) 749-1410	(760) 749-5518	<i>kkolb@indianhealth.com</i>
Pechanga Band of Mission Indians.	Mark Macarro, Chairman .....	P.O. Box 1477, Temecula, CA 92593.	(951) 770-6105	(951) 693-5543	<i>cfs@pechanga-nsn.gov</i>
Picayune Rancheria of Chukchansi Indians.	Orianna C. Walker, ICWA Coordinator.	46575 Road 417, Coarsegold, CA 93614.	(559) 683-6633 Ext. 212.	(559) 683-0599	<i>orianna.walker@chukchansi.net</i>
Pinoleville Pomo Nation .....	Veronica Timberlake, Social Services Director/ICWA Advocate.	500 B Pinoleville Drive, Ukiah, CA 95482.	(707) 463-1454	(707) 463-6601	<i>veronicat@pinoleville-nsn.us</i>
Pit River Tribe .....	Vernon Ward, Jr., Coordinator, Social Services.	36970 Park Avenue, Burney, CA 96013.	(530) 335-5530	(530) 335-3140	
Potter Valley Tribe .....	Salvador Rosales, Tribal Chairman.	2251 South State Street, Ukiah, CA 95482.	(707) 462-1213	(707) 462-1240	<i>pottervalleytribe@pottervalleytribe.com</i>
Quartz Valley Indian Reservation.	Mike Slizewski, ICWA Director.	13601 Quartz Valley Rd., Fort Jones, CA 96032.	(530) 468-5907 Ext. 312.	(530) 468-5908	<i>Mike.Slizewski@qvir-nsn.gov</i>
Ramona Band or Village of Cahuilla Mission Indians.	Susan Reckker, Tribal Administrator.	P.O. Box 391670, Anza, CA 92539.	(951) 763-4105	(951) 763-4325	<i>sreckker@ramonatribem.com</i>
Redding Rancheria .....	Director, Social Services .....	2000 Rancheria Road, Redding, CA 96001-5528.	(530) 225-8979.		
Redwood Valley Rancheria-Band of Pomo.	Chris Piekarski, ICWA Coordinator.	3250 Road I, "B" Building, Redwood Valley, CA 95470.	(707) 485-0361	(707) 485-5726	<i>icwa@rvrpomo.net</i>
Resighini Rancheria .....	Keshan Dowd, Social Services Director.	P.O. Box 529, Klamath, CA 95548.	(707) 482-2431	(707) 482-3425	<i>keshandowd08@gmail.com</i>
Rincon Band of Luiseno Mission Indians.	Director of Social Services ...	Tribal Family Services, Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 2062.	(760) 749-1410	(760) 749-5518	<i>kkolb@indianhealth.com</i>
Robinson Rancheria .....	ICWA Coordinator .....	P.O. Box 4015, Nice, CA 95464.	(707) 275-0527	(707) 275-0235	<i>mvasquez@robinsonrancheria.com</i>
Round Valley Reservation .....	Steven Luna, Director .....	77826 Covelo Road, Covelo, CA 95428.	(707) 983-8008	(707) 983-6060	<i>sluna@icwa.rvit.org</i>
San Manuel Band of Mission Indians.	Tribal Secretary .....	26569 Community Center Drive, Highland, CA 92346.	(909) 864-8933	(909) 864-0890	<i>broberson@sanmanual-nsn.gov</i>
San Pasqual Band of Diegueno Mission Indians.	Director of Social Services ...	Tribal Family Services, Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061.	(760) 749-1410	(760) 749-5518	<i>kkolb@indianhealth.com</i>
Santa Rosa Band of Cahuilla Mission Indians.	Terrance Hughes, Tribal Administrator.	P.O. Box 391820, Anza, CA 92539.	(951) 659-2700	(951) 689-2228	<i>thughes@santarosacahuilla-nsn.gov</i>
Santa Rosa Rancheria Tachi-Yokut Tribe.	Janice Cuara, Tribal Administrator.	16835 Alkali Drive, P.O. Box 8, Lemoore, CA 93245.	(559) 924-1278 Ext. 4051; (559) 381-4928.	(559) 925-2931	<i>jcuaara@tachi-yokut.com</i>
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez.	Caren Romero, ICWA Representative.	90 Via Juana Lane, Santa Ynez, CA 93460.	(805) 694-2671	(805) 686-2060	<i>cromero@sythc.com</i>

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Santa Ysabel Band of Mission Indians-lipay Nation.	Linda Ruis, Director .....	Santa Ysabel Social Services Dept., P.O. Box 701, Santa Ysabel, CA 92070.	(760) 765-1106	(760) 765-0312	
Scotts Valley Band of Pomo Indians.	Tribal ICWA Worker .....	301 Industrial Ave., Lakeport, CA 95453.	(707) 263-4220	(707) 263-4345	<i>cmiller@svpomo.org</i>
Sherwood Valley Rancheria ...	Michael Fitzgerral, Tribal Chairman.	190 Sherwood Hill Drive, Willits, CA 95490.	(707) 459-9690	(707) 459-6936	<i>svrchair@gmail.com</i>
Shingle Springs Band of Miwok Indians (Shingle Springs Rancheria).	Malissa Tayaba, Social Services Director.	P.O. Box 1340, Shingle Springs, CA 95682.	(530) 698-1436; (530) 698-1400.	(530) 387-8041	<i>mtayaba@ssband.org</i>
Soboba Band of Luiseno Indians.	Cathryn L. Leff, Director of Tribal Family Services.	Soboba Tribal Family Services Dept., P.O. Box 487, San Jacinto, CA 92581.	(951) 487-0283	(951) 487-1738	<i>cleff@soboba-nsn.gov</i>
Susanville Indian Rancheria ...	Deborah Olstad, Tribal Office Manager.	745 Joaquin St., Susanville, CA 96130.	(530) 251-5153	(530) 257-7986	<i>dolstad@citlink.net</i>
Sycuan Band of Mission Indians.	Charity White-Voth, Kumeyaay Family Services Director.	Southern Indian Health Council, Inc., 4058 Willow Rd., Alpine, CA 91903.	(619) 445-1188	(619) 445-0765	
Table Mountain Rancheria .....	Frank Marquez Jr., Tribal Chief of Police.	23736 Sky Harbour Rd., Friant, CA 93626.	(559) 822-6336	(559) 822-6340	<i>fmarquezjr@tmr.org</i>
Timbi-sha Shoshone Tribe .....	Wallace Eddy, ICWA Representative.	621 West Line Street, Suite 109, Bishop, CA 93514.	(760) 872-3614	(760) 872-3670	<i>icwa@timbisha.com</i>
Tolowa Dee-ni' Nation (Smith River Rancheria).	Dorothy Perry, Director .....	Community & Family Services 110 W. 11 St., Smith River, CA 95567.	(707) 487-9255	(707) 487-0137	<i>dwait@tolowa.com</i>
Torres Martinez Desert Cahulla Indians.	Annette Chihuahua, ICWA Case Assistant/Tribal Delegate.	TMDCI 66-725 Martinez Rd., Thermal, CA 92274.	(760) 578-8334; (760) 397-0455.	(760) 397-1019	<i>achihuahua@tmhci.org</i>
Trinidad Rancheria (Cher-Ae Heights Indian Community of the Trinidad Rancheria).	Amy Atkins, Executive Manager.	P.O. Box 630, Trinidad, CA 95570.	(707) 677-0211	(707) 677-3921	<i>aatkins@trinidadrancheria.com</i>
Tule River Reservation .....	Lolita Garfield, MSW, Director Family Social Services.	340 North Reservation Road, Porterville, CA 93258.	(559) 781-4271 Ext. 1013.	(559) 791-2122	<i>icwadir@tulerivertribe-nsn.gov</i>
Tuolumne Band of Me-Wuk Indians.	Diana Carpenter, ICWA Representative.	P.O. Box 615, Tuolumne, CA 95379.	(209) 928-5357.		
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.	Diana Carpenter, ICWA Representative.	P.O. Box 615, Tuolumne, CA 95379.	(209) 928-5357.		
Twenty-Nine Palms Band of Mission Indians.	Executive Director, Indian Child & Family Services.	P.O. Box 2269, Temecula, CA 92590.	(951) 676-8832	(951) 676-3950.	
Tyme Maidu Tribe (Berry Creek Rancheria).	Terilyn Steel, ICWA Supervisor.	5 Tyme Way, Oroville, CA 95966.	(530) 534-3859	(530) 534-1151	<i>jessebrown@berrycreekrancheria.com</i>
United Auburn Indian Community of the Auburn Rancheria of California.	Judy Beck, Director Community Services.	United Auburn Indian Community, 935 Indian Rancheria Road, Auburn, CA 95603.	(916) 251-1550	(530) 887-1028	<i>jbeck@auburnrancheria.com</i>
Utu Utu Gwaitu Paiute Tribe of the Benton Reservation.	Megan Leplat, ICWA Worker	25669 Hwy 6, PMB I, Benton, CA 93512.	(760) 933-2321	(760) 933-2412	<i>meganleplat@gmail.com</i>
Viejas (Baron Long) Band of Mission Indian.	Jahari Weir Harrison, Indian Child Social Services Program Coordinator.	Southern Indian Health Council, Inc., 4058 Willow Rd., Alpine, CA 91903.	(619) 445-1188	(619) 445-0765	<i>jharrison@sihc.org</i>
Wilton Rancheria .....	Vanessa Pady, Director .....	ICWA 9728 Kent St. Elk Grove, CA 95624.	(707) 683-6000 Ext. 2014.	(916) 683-6015	<i>vpady@wiltonrancheria-nsn.gov</i>
Wiyot Tribe .....	Sarah Vevoda, Director of Social Services.	1000 Wiyot Drive, Loleta, CA 95551.	(707) 733-5055	(707) 482-1377.	
Yocha Dehe Wintun Nation (previously listed as the Rumsey Indian Rancheria of Wintun Indians).	James Kinter, Tribal Council Secretary.	P.O. Box 18, Brooks, CA 95606.	(530) 796-3400	(530) 796-2143	<i>djones@yochadehe-nsn.gov</i>
Yurok Tribe .....	Social Services Director .....	P.O. Box 1027, Klamath, CA 95548.	(707) 482-1350	(707) 482-1368	<i>sweldon@yuroktribe.nsn.us</i>

9. Rocky Mountain Region

Rocky Mountain Regional Director,  
Bureau of Indian Affairs, 2021 4th

Avenue, Billings, Montana 59101;  
Phone: (406) 247-7943; Fax: (406) 247-7976.

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Blackfeet Tribe of Montana ....	Kathy Calf Boss Ribs, ICWA Coordinator, Darlene H. Peterson, ICWA Inquiry Technician.	P.O. Box 588, Browning, MT 59417.	(406) 338-7806	(406) 338-7726	<i>kathybossribs@yahoo.com</i>
Chippewa Cree Tribe of the Rocky Boy's Reservation of Montana.	Shaneen Raining Bird Hammond, Designated Tribal Agent.	31 Agency Square, Box Elder, MT 59521.	(406) 395-5709	(406) 395-5702	<i>rainingbirds@yahoo.com</i>
Confederated Salish & Kootenai Tribes.	Patricia Courchane, IVE/IVB/ICWA Program Manager.	P.O. Box 278, Pablo, MT 59855.	(406) 675-2700 Ext. 1184.	(406) 275-2749	<i>Patricia.Courchane@cstk.org</i>
Crow Tribe of the Crow Reservation of Montana.	Melveen Paula Fisher, ICWA Coordinator.	P.O. Box 340, Crow Agency, MT 59022.	(406) 679-3041	.....	<i>melveenpaula.fisher@crow-nsn.gov</i>
Eastern Shoshone Tribe of the Wind River Reservation.	Amella Oldman, ICWA Coordinator.	P.O. Box 1796, Fort Washakie, WY 82514.	(307) 332-6591	(307) 332-6593	<i>artoldman@gmail.com</i>
Fort Peck Assiniboine and Sioux Tribes.	Phyllis Spotted Wolf, Designated Tribal Agent.	P.O. Box 1027, Poplar, MT 59255.	(406) 768-2308	(406) 768-3710	<i>pspottedwolf@fortpecktribes.net</i>
Gros Ventre and Assiniboine Tribe of Fort Belknap Community Council.	Director of Tribal Social Services.	Rural Route 1, Box 66, Harlem, MT 59526.	(406) 353-2205.		
Northern Arapaho Tribe of the Wind River Reservation.	June Shakespeare, ICWA Coordinator.	P.O. Box 77, St. Stevens, WY 82524.	(307) 857-5728	(307) 857-5741	<i>june.shakespeare@wyo.gov</i>

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Northern Cheyenne Tribe .....	Mark Roundstone, ICWA Coordinator.	P.O. Box 128, Lame Deer, MT 59043.	(406) 477-4830	(406) 477-8333	mark.roundstone@cheyennation.com

### 10. Southern Plains Region

Southern Plains Regional Director,  
Bureau of Indian Affairs, P.O. Box 368,

Anadarko, Oklahoma 73005; Phone:  
(405) 247-6673 Ext. 217; Fax: (405) 247-  
5611.

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Absentee-Shawnee Tribe of Oklahoma Indians.	Ronell Baker, ICW Director ..	2025 S. Gordon Cooper Drive, Shawnee, OK 74801.	(405) 275-4030, ext. 6375.	(405) 878-4543.	
Alabama Coushatta Tribe of Texas.	Melissa Celestine, ICW Director.	571 State Park Road, #56, Livingston, Texas 77351.	(936) 563-1253	(936) 563-1254.	
Apache Tribe of Oklahoma (Kiowa).	Shannon Ahtone, ICW Director.	P.O. Box 369, Carnegie, Oklahoma 73015.	(580) 654-2439	(580) 654-2363.	
Caddo Nation of Oklahoma (Wichita & Affiliated Tribes).	Pamela Satepauhoodle, ICW Caseworker.	P.O. Box 729, Anadarko, OK 73005.	(405) 247-8624	(405) 247-3256	johnna.hurt@wichitatribe.com
Cheyenne and Arapaho Tribes of Oklahoma.	Katy Towell, ICW Coordinator.	P.O. Box 38, Concho, OK 73022.	(405) 422-7737 (405) 422-7479.	(405) 422-8249	ktowell@c-a-tribes.org
Citizen Potawatomi Nation .....	Janet Draper, ICW Director	1601 S. Gordon Cooper Drive, Shawnee, OK 74801.	(405) 878-4831	(405) 878-4659	jdraper@potawatomi.org
Comanche Nation-Oklahoma	Carol Mithlo, ICW Director ...	P.O. Box 908, Lawton, OK 73502.	(580) 280-4751	(580) 280-4751	ramonap@comanchenation.com
Delaware Nation .....	Cassandra Acuna, ICW Director.	P.O. Box 825, Anadarko, OK 73005.	(405) 247-2448 Ext. 1152.	(405) 247-5942	jfeliciano@delawarenation.com
Fort Sill Apache Tribe of Oklahoma.	Ramona Austin, ICWA Director.	Rt. 2, Box 121, Apache, OK 73006.	(580) 522-2298 Ext. 109.	(580) 588-3133	mona.austin@fortsillapache-nsn.gov
Iowa Tribe of Kansas .....	Native Amercian Family Services, Inc.	3303 B. Thrasher Rd., White Cloud, KS 66094.	(785) 595-3260.		
Iowa Tribe of Oklahoma .....	Ashley Hall, ICW Director ....	Rt. 1, Box 721, Perkins, OK 74059.	(405) 547-2402	(405) 547-1060	amoore@iowanation.org
Kaw Nation .....	Roger Sober, ICW Director ..	Drawer 50, Kaw City, Oklahoma 74641.	(580) 269-2003	(580) 269-2113.	
Kickapoo Traditional Tribe in Texas.	Arianna Perez, ICW Director	162 Whick Kazen Street, Eagle Pass, Texas 78852.	(830) 421-6300.		
Kickapoo Tribe of Indians of The Kickapoo Reservation in Kansas.	Timothy Oliver, ICW Director	P.O. Box 271, Horton, KS 66439.	(785) 486-2662, Ext 237.	(785) 486-2724.	
Kickapoo Tribe of Oklahoma ..	Mary Davenport, Indian Child Welfare Director.	P.O. Box 469, McLoud, OK 74851.	(405) 964-5426	(405) 964-5431	mdavenport@kickapootribeofoklahoma.com
Kiowa Tribe of Oklahoma .....	Shannon Ahtone, ICW Director.	P.O. Box 369, Carnegie, Oklahoma 73015.	(580) 654-2439	(580) 654-2363.	
Otoe-Missouria Indian Tribe of Oklahoma.	Rebecca Monhatwa, Social Services Director.	8151 Highway 177, Red Rock, OK 74651.	(580) 723-4466 Ext. 256 or Cell Phone: (580) 307-7303.	(580) 723-1016	amehojah@omtribe.org
Pawnee Nation of Oklahoma	Melisalyn Harris, ICWA Director.	P.O. Box 470, Pawnee, OK 74058.	(918) 762-3873	(918) 762-6449.	
Ponca Tribe of Oklahoma .....	Amy Oldfield, ICW Director ..	20 White Eagle Drive, Ponca City, OK 74601.	(580) 763-0133	(580) 763-0134.	
Prairie Band of Potawatomi Nation.	Tammy Sweeney, ICW Supervisor.	11400 158 Road, Mayetta, KS 66509.	(785) 966-8325,	(785) 966-8378.	
Sac and Fox Nation in Kansas and Nebraska.	Chasity Davis, ICW Director	305 N. Main Street, Reserve, KS 66434.	(785) 742-4708	(785) 288-1163	egreen@sacandfoxcasino.com
Sac and Fox Nation, Oklahoma.	Karen Hamilton, ICW Director.	Route 2, Box 246, Stroud, OK 74079.	(918) 968-3526, ext 1711.	(918) 968-4207.	
Tonkawa Tribe of Oklahoma ..	Christi Gonzalez, ICW Director.	P.O. Box 70, Tonkawa, OK 74653.	(580) 628-7025.		
Wichita and Affiliated Tribe of Oklahoma.	Joan Williams, ICW Director	P.O. Box 729, Anadarko, OK 73005.	(405) 247-8627	(405) 247-3256	johnna.hurt@wichitatribe.com

### 11. Southwest Region

Southwest Regional Director, Bureau  
of Indian Affairs, 1001 Indian School

Road, NW., Albuquerque, New Mexico  
87104; Phone: (505) 563-3103; Fax:  
(505) 563-3101.

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Jicarilla Apache Nation .....	Regina Keeswood, ICW Coordinator.	P.O. Box 546, Dulce, NM 87528.	(575) 759-1712	(575) 759-3757	rkeeswood@jbdh.org
Mescalero Apache Tribe .....	Crystal Lester, Tribal Census Clerk.	P.O. Box 227, Mescalero, NM 88340.	(575) 464-4494	(575) 464-9191	clester@mescaleroapachetribe.com
Ohkay Owingeh .....	Rochelle Thompson, ICWA Manager.	P.O. Box 1187, Ohkay Owingeh, NM 87566.	(575) 852-4400	(505) 692-0333	rochelle.thompson@ohkayowingeh-nsn.org
Pueblo of Acoma .....	Marsha Vallo, Child Welfare Coordinator.	P.O. Box 354, Acoma, NM 87034.	(505) 552-5162	(505) 552-0903	mlvallo@puebloofacoma.org
Pueblo of Cochito .....	Tanya Devon Torres, ICWA Specialist.	P.O. Box 70, Cochiti Pueblo, NM 87072.	(505) 465-3139	(505) 465-0125	tanya_torres@pueblodecochiti.org
Pueblo of Isleta .....	Caroline Dailey, Social Services Director and Jacqueline Yalch, ICWA Coordinator.	P.O. Box 1270, Isleta, NM 87022.	(505) 869-2772 or (505) 869-5283.	(505) 869-7575	poi05001@isletapueblo.com
Pueblo of Jemez .....	Annette Gachupin, Child Advocate.	P.O. Box 340, Jemez Pueblo, NM 87024.	(575) 834-7117	(575) 834-7103	agachupin@jemezpueblo.us

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Pueblo of Laguna	Marie A. Alarid, Program Manager.	Social Services Department, P.O. Box 194, Laguna, NM 87026.	(505) 552-6513 or (505) 552-5677.	(505) 552-6387	malarid@lagunapueblo-nsn.gov
Pueblo of Nambe	Rhonda Padilla, ICWA Manager.	Rte. 1, Box 117-BB, Santa Fe, NM 87506.	(505) 445-0133	(505) 455-4457	rpadilla@nambepueblo.org
Pueblo of Picuris	J. Albert Valdez	ICWA, P.O. Box 127, Penasco, NM 87553.	(575) 587-1003	(575) 587-1003	jav.icwa@picurispueblo.org
Pueblo of Pojoaque	Elizabeth Duran, MSW, MPH Director.	58 Cities of Gold Rd., Suite 4, Santa Fe, NM 87506.	(505) 455-0238	(505) 455-2363	eduran@pojoaque.org
Pueblo of San Felipe	Darlene J. Valencia, ICW Representative.	P.O. Box 4339, San Felipe Pueblo, NM 87001.	(505) 771-9900 Ext. 1150.	(505) 771-9978	dvalencia@sfpueblo.com
Pueblo of San Ildelfonso	Jacqueline X. Benitez, ICWA/Family Advocate.	02 Tunyo Po, Santa Fe, NM 87506.	(505) 455-4164; (505) 699-0164.		jbenitez@sanipueblo.org
Pueblo of Sandia	Kimberly Lorenzini, Case Manager.	481 Sandia Loop, Bernalillo, NM 87004.	(505) 771-5117	(505) 867-7099	klorenzini@sandiapueblo.nsn.us
Pueblo of Santa Ana	Mary E. Templin, Social Services Manager.	02 Dove Road, Santa Ana Pueblo, NM 87004.	(505) 771-6737	(505) 771-6537	mary.templin@santaana-nsn.gov
Pueblo of Santa Clara	Dennis Silva, Director of Social Services.	P.O. Box 580, Espanola, NM 87532.	(505) 753-0419	(505) 753-0420	dsilva@santaclarapueblo.org
Pueblo of Santo Domingo-Kewa.	Doris Bailon, Social Services Director.	P.O. Box 129, Santo Domingo, NM 87052.	(505) 465-0630	(505) 465-2554	dbailon@kewa-nsn.gov
Pueblo of Taos	Ezra Bayles, Division Director.	P.O. Box 1846, Taos, NM 87571.	(575) 758-7824	(575) 758-3346	ebayles@taospueblo.com
Pueblo of Tesuque	Donna Quintana, ICW Coordinator.	Box 360-T, Route 42, Santa Fe, NM 87506.	(505) 955-7715; (505) 231-7717.	(505) 820-7783	donna.quintana@pueblooftesuque.org
Pueblo of Zia	Kateri Chino, MSW, Health & Wellness Director.	135 Capital Square Drive, Zia Pueblo, NM 87053.	(505) 401-6830	(505) 867-6014	kchino@ziapueblo.org
Pueblo of Zuni	Betty Nez, Social Services Director.	P.O. Box 339, Zuni, NM 87327.	(505) 782-7166	(505) 782-7221	betty.nez@ashiwi.org
Ramah Navajo	Loretta Martinez, Social Service Director.	Ramah Navajo School Board, Inc., Ramah Navajo Social Service Program, P.O. Box 250, Pinehill, NM 87357.	(505) 775-3221	(505) 775-3520	lorettamtrnz@yahoo.com
Southern Ute Indian Tribe	Jeri Sindelar, Caseworker; Peg Rogers, Social Services Attorney.	MS 53, P.O. Box 737, Ignacio, CO 81137.	(970) 563-0100 Ext. 2332.	(970) 563-4854	jsindelar@southernute-nsn.gov; dsattorney@southernute-nsn.gov
Ute Mountain Ute Tribe (Colorado & Utah).	Shemeah Richardson, Social Services Director.	P.O. Box 309, Towaoc, CO, 81334.	(970) 564-5307	(970) 564-5300	srichardson@utemountain.org
Ute Mountain Ute Tribe (Colorado & Utah).	Peter Ortego, General Counsel.	P.O. Box 128, Towaoc, CO, 81335.	(970) 564-5641	(970) 565-0750	portego@utemountain.org
Ysleta Del Sur Pueblo	Jesus A Donacio, ICWA Program Specialist.	9314 Juanchido Ln., El Paso, TX 79907.	(915) 860-6170	(915) 242-6556	e3

12. Western Region

Western Regional Director, Bureau of Indian Affairs, 2600 North Central

Avenue, Phoenix, Arizona 85004; Phone: (602) 379-6600; Fax: (602) 379-4413

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Ak-Chin Indian Community	Carole Lopez, Enrollment Specialist.	42507 West Peters & Nail Road, Maricopa, AZ 85138.	(520) 568-1029	(520) 568-1079	clopez@ak-chin.nsn.us
Battle Mountain Band Council	Bertha Cazares, ICWA Coordinator.	37 Mountain View Drive, Battle Mountain, NV 89820.	(775) 455-1663	(775) 635-8528	bmbicwa@outlook.com
Chemehuevi Indian Tribe	Dawn Macelwain, ICWA Director.	P.O. Box 1976, Havasu Lake, CA 92363.	(760) 858-5426	(760) 858-5400	citiwa@yahoo.com
Cocopah Indian Tribe	Rafael D. Morales, Jr., ICWA	14515 South Veterans Drive, Somerton, AZ 85350.	(928) 627-3729; (928) 503-7055.	(928) 627-3316	moralesr@cocopah.com
Colorado River Indian Tribes	Elizabeth Lorina-Mills, Deputy Attorney General.	26600 Mohave Road, Parker, AZ 85344.	(928) 669-1271	(928) 669-5675	emills@critdoj.com
Confederated Tribes of the Goshute Reservation.	Debbie McCollum, ICWA Coordinator.	HC61 Box 6104, Imapah, UT 84034.	(435) 234-1178	(435) 234-1162	ctgricwa@gmail.com
Duckwater Shoshone Tribe	Iskandar Alexander, LCSW, Social Worker.	P.O. Box 140087, Duckwater, NV 89314.	(775) 863-0222	(775) 863-0142	Iskandar.alexandar@ihs.gov
Elko Band Council of Te-Moak Tribe.	Social Worker and ICWA Coordinator.	1745 Silver Eagle Drive, Elko, NV 89801.	(775) 738-9310	(775) 778-3397	ssworker@elkoband.org; icwa@elkoband.org
Ely Shoshone Tribe	Georgia Valdez, Social Services Worker.	16 Shoshone Circle, Ely, NV 89301.	(775) 289-4133	(775) 289-3237.	
Fallon Paiute-Shoshone Tribe	Jennifer Pishon, Social Services Director.	1007 Rio Vista Drive, Fallon, NV 89406.	(775) 423-1215	(775) 423-8960	ssdirector@fpst.org
Fort McDermitt Paiute-Shoshone Tribe.	Dee Crutcher, ICWA Advocate.	P.O. Box 68, McDermitt, NV 89421.	(775) 532-8263 Ext. 111.	(775) 532-8060	dee.crutcher@fmpst.org
Fort McDowell Yavapai Tribe	James Esquirell, ICWA Coordinator/CPS Worker, Wassaja Family Services.	P.O. Box 17779, Fountain Hills, AZ 85269.	(480) 789-7990	(480) 837-4809	jesquirell@ftmcdowell.org
Gila River Indian Community	Sara Bissen, Child & Family Welfare Administrator.	P.O. Box 427, Sacaton, AZ 85147.	(520) 562-3396	(520) 562-3633	Sara.bissen@gric.nsn.us
Gila River Pima-Maricopa Indian Community.	Sara Bissen, Child & Family Welfare Administrator.	P.O. Box 427, Sacaton, AZ 85147.	(520) 562-3396	(520) 562-3633	Sara.bissen@gric.nsn.us
Havasupai Tribe	Erika Marshall, ICWA Coordinator.	P.O. Box 10, Supai, AZ 86435.	(928) 448-2661		hticwa@havasupai-nsn.gov
Hualapai Tribe	Janet Silversmith, ICWA Worker.	P.O. Box 480, Peach Springs, AZ 86434.	(928) 769-2269/2383/2384/2397.	(928) 769-2659.	
Kaibab Band of Paiute Indians	Vincent A. Toya	HC 65 Box 2, Fredonia, AZ 86022.	(928) 643-7245	(888) 822-3734	vtoya@kaibabpaiute-nsn.gov

Tribe	ICWA POC	Mailing address	Phone number	Fax number	Email address
Las Vegas Paiute Tribe .....	Ruth Fitz-Patrick, Social Services Caseworker.	1257 Paiute Circle, Las Vegas, NV 89106.	(702) 382-0784, #410.	(702) 384-5272	<i>rfitzpatrick@lvpaiute.com</i>
Lovelock Paiute Tribe .....	Fran Machado, Social Services Director.	201 Bowean Street, Lovelock, NV 89419.	(775) 273-5081	(775) 273-5151	<i>fmachado@lovelockpaiutetribe.com</i>
Moapa Band of Paiutes .....	Darren Daboda, Chairman ...	One Lincoln Street, Moapa, NV 89025.	(702) 865-2787	(702) 864-2875	<i>d_daboda@yahoo.com</i>
Paiute Indian Tribe of Utah ....	Tyler Goddard, Behavioral Care Director.	440 North Paiute Drive, Cedar City, UT 84721.	(435) 586-1112	(435) 867-1516	<i>tyler.goddard@ihs.gov</i>
Pascua Yaqui Tribe .....	Tamara Walters, Assistant Attorney General.	Office of the Attorney General, 7777 S. Camino Huivisim, Bldg. C, Tucson, AZ 85757.	(520) 883-5108	(520) 883-5084	<i>tamara.walters@pascuayaqui-nsn.gov</i>
Pyramid Lake Paiute Tribe .....	Charlene Dressler, Social Services Director.	P.O. Box 256, Nixon, NV 89424.	(775) 574-1047	(775) 574-1052	<i>cdressler@plpt.nsn.us</i>
Quechan Indian Tribe .....	Cody Hartt, ICWA Specialist Assistant.	P.O. Box 189, Yuma, AZ 85364.	(760) 570-0201	(760) 572-2099	<i>icwaspecialist@quechantribe.com</i>
Reno-Sparks Indian Colony ...	Adriana Botello, Human Services Director.	405 Golden Lane, Reno, NV 89502.	(775) 329-5071	(775) 785-8758	<i>abotello@rsic.org</i>
Salt River Pima-Maricopa Indian Community.	Allison Miller, ICWA Coordinator.	SRPMIC Social Services Division, 10005 East Osborn Road, Scottsdale, AZ 85256.	(480) 362-5645; (480) 362-7533.	(480) 362-5574	<i>Allison.Miller@srpmic-nsn.gov</i>
San Carlos Apache Tribe .....	Aaron Begay, ICWA Coordinator.	P.O. Box 0, San Carlos, AZ 85550.	(928) 475-2313	(928) 475-2342	<i>abegay09@tss.scat-nsn.gov</i>
San Juan Southern Paiute Tribe.	Carlene Yellowhair, President.	P.O. Box 2950, Tuba City, AZ 86045.	(928) 283-4762	(928) 283-4762	<i>cyellowhairspt.president@outlook.com</i>
Shoshone-Paiute Tribes of the Duck Valley Reservation.	Zannetta Hanks, LSW, Social Worker.	P.O. Box 219, Owyhee, NV 89832.	(775) 757-2921 Ext. 26.	(775) 757-2253	<i>hanks.zannetta@shopai.org</i>
Skull Valley Band of Goshute Indians.	Lori Bear, Chairwoman .....	P.O. Box 448, Grantsville, UT 84029.	.....	(435) 882-4889	<i>ibear@svgoshutes.com</i>
South Fork Band of Te-Moak Tribe.	Debbie Honeyestewa, Interim Social Worker.	21 Lee, B-13, Spring Creek, NV 89815.	(775) 744-4273	(775) 744-4523	<i>debbiehoneyestewa@yahoo.com</i>
Summit Lake Paiute Tribe .....	Page Linton, Chairwoman ....	1001 Rock Blvd., Sparks, NV 89431.	(775) 827-9670	(775) 827-9678	<i>page.linton@summitlaketribe.org</i>
The Hopi Tribe .....	Eva Sekayumptewa, MSW, Social Services Program, Clinical Supervisor.	P.O. Box 945, Polacca, AZ 86042.	(928) 737-1800	(928) 737-2697	
Tohono O'odham Nation .....	Laura Berglan, Acting Attorney General.	P.O. Box 830, Sells, AZ 85634.	(520) 383-3410	(520) 383-2689	<i>laura.berglan@tonation-nsn.gov</i>
Tonto Apache Tribe of Arizona.	Brian Echols, Social Services Director.	T.A.R. #30, Payson, AZ 85541.	(928) 474-5000 Ext. 8120.	(928) 474-4159	<i>bechols@tontoapache.org</i>
Ute Indian Tribe .....	Floyd M. Wyasket, Social Services Director.	Box 190, Fort Duchesne, UT 84026.	(435) 725-4026 or (435) 823-0141.	(435) 722-5030	<i>floydw@utetribe.com</i>
Walker River Paiute Tribe .....	Elliott Aguilar, ICWA Specialist.	Social Services Department, P.O. Box 146, 1029 Hospital Road, Schurz, NV 89427.	(775) 773-2058 Ext. 11.	(775) 773-2096	<i>eaguilar@wrpt.gov</i>
Wells Band Council of Te-Moak Tribe.	Dialina Blackhat, Social Worker/ICWA Coordinator.	P.O. Box 809, Wells, NV 89835.	(775) 345-3045 Ext. 1009.	(775) 752-2179	<i>wellsbandssicwa@gmail.com</i>
White Mountain Apache Tribe of the Fort Apache Reservation.	Cora Hinton, ICWA Representative/CPS Supervisor.	P.O. Box 1870, Whiteriver, AZ 85941.	(928) 338-4164	(928) 338-1469	<i>chinton@wmat.us</i>
Winnemucca Tribe .....	Judy Rojo, Chairperson .....	595 Humboldt Street, Reno, NV 89509.	(775) 329-5800	(775) 329-5819.	
Yavapai-Apache Nation of the Camp Verde Indian Reservation.	Delight Lyons, ICWA Coordinator.	2400 West Datsi Street, Camp Verde, AZ 86322.	(928) 649-7108	(928) 567-6832	<i>dkplunkett@yan-tribe.org</i>
Yavapai-Prescott Indian Tribe	Virgil R. Amos, Family Support Supervisor.	530 East Merritt, Prescott, AZ 86301.	(928) 515-7351	(928) 541-7945	<i>vamos@ypit.com</i>
Yomba Shoshone Tribe .....	Samantha Gentry, Social Services Eligibility Worker.	HC 61 Box 6275, Austin, NV 89310.	(775) 964-2463 Ext. 107.	(775) 964-1352	<i>yombasocialservices@gmail.com</i>

## B. Tribal Agents by Tribal Affiliation

See: <http://www.bia.gov/WhoWeAre/BIA/OIS/HumanServices/index.htm>.

Dated: February 27, 2017.

**Michael S. Black,**

*Acting Assistant Secretary—Indian Affairs.*

[FR Doc. 2017-04546 Filed 3-7-17; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLORV00000.L10200000.DF0000.LXSSH1050000.17X.HAG 17-0077]**

### Notice of Public Meeting for the Southeast Oregon Resource Advisory Council, Lands With Wilderness Characteristics Subcommittee

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the Bureau of Land Management's (BLM) Southeast Oregon Resource Advisory Council

(RAC), Lands with Wilderness Characteristics (LWC) Subcommittee will meet as indicated below.

**DATES:** The Southeast Oregon RAC, LWC Subcommittee will hold a public meeting via teleconference on Wednesday, March 15, 2017, from 1 p.m. to 3 p.m. The final agenda will be released online no later than March 7, 2017, at <https://www.blm.gov/site-page/get-involved-resource-advisory-council-near-you-oregon-washington-southeast-oregon-rac%20>.

**ADDRESSES:** Members of the public can call in to the meeting using the telephone conference line number 1-866-524-6456, Participant Code: 608605. They may also listen in at the Lakeview BLM District Office, 1301 S. G Street, Lakeview, OR 97630. Written comments should be addressed to Don

**From:** Kaster, Amanda  
**To:** [Jill Ralston](#)  
**Cc:** [Quinn, Matthew](#); [Patrick Wilkinson](#)  
**Subject:** Re: FLPMA 201 inventory?  
**Date:** Wednesday, February 22, 2017 1:07:08 PM

---

Yes, I can make 2pm work.

On Wed, Feb 22, 2017 at 1:06 PM, Jill Ralston <jralston@blm.gov> wrote:

I just got pulled into a 1pm. Are you all available at 2?

Sent from my iPhone

On Feb 22, 2017, at 1:01 PM, Kaster, Amanda <amanda\_kaster@ios.doi.gov> wrote:

Jill, would you be free around 1:30pm to chat in person?

On Wed, Feb 22, 2017 at 12:35 PM, Ralston, Jill <jralston@blm.gov> wrote:

Hi Matt,

A conversation would likely be easier. I just tried giving you a call. Let me know when you are available and I will try again (or I can run upstairs and visit).

Thanks!!

Jill Ralston

Legislative Affairs

Bureau of Land Management

Phone: (202) 912-7173

Cell: (202) 577-4299

On Wed, Feb 22, 2017 at 11:46 AM, Quinn, Matthew <matthew\_quinn@ios.doi.gov> wrote:

Jill and Pat:

What kind of inventory does BLM keep pursuant to FLPMA sec. 201? How frequently does it get updated?

Can you shed any light? We can do a telephone chat if that would be easier.

Thanks,  
Matt

Matthew J. Quinn | Attorney - Advisor | Office of Congressional and Legislative Affairs | U.S.  
Department of the Interior | 202.208.3146

--

Amanda Kaster-Averill  
Special Assistant  
Office of Congressional and Legislative Affairs  
U.S. Department of the Interior

(202) 208-3337  
amanda\_kaster@ios.doi.gov

--

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**To:** [Kaster, Amanda](#)  
**Cc:** [Quinn, Matthew](#); [Patrick Wilkinson](#)  
**Subject:** Re: FLPMA 201 inventory?  
**Date:** Wednesday, February 22, 2017 1:06:20 PM

---

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**From:** Kaster, Amanda  
**To:** [Ralston, Jill](#)  
**Cc:** [Quinn, Matthew](#); [Patrick Wilkinson](#)  
**Subject:** Re: FLPMA 201 inventory?  
**Date:** Wednesday, February 22, 2017 1:02:04 PM

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Jill, would you be free around 1:30pm to chat in person?

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U.S. Department of the Interior

(202) 208-3337  
[amanda\\_kaster@ios.doi.gov](mailto:amanda_kaster@ios.doi.gov)

**From:** Ralston, Jill  
**To:** [Quinn, Matthew](#)  
**Cc:** [Patrick Wilkinson](#); [Amanda Kaster](#)  
**Subject:** Re: FLPMA 201 inventory?  
**Date:** Wednesday, February 22, 2017 12:35:16 PM

---

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Matthew J. Quinn | Attorney - Advisor | Office of Congressional and Legislative Affairs | U.S. Department of the Interior | 202.208.3146

**From:** Seidlitz, Joseph (Gene)  
**To:** [Katharine Macgregor](#); [Richard Cardinale](#)  
**Cc:** [Beverly Winston](#); [Jill Moran](#); [Shannon Stewart](#)  
**Subject:** Fwd: Follow Up Documents - WSA  
**Date:** Wednesday, March 22, 2017 12:34:42 PM  
**Attachments:** [Wilderness Study Area Briefing Memo\\_03.15.17.docx](#)  
[Wilderness and Roadless Area Release Act of 2011.pdf](#)  
[WSA Fact Sheet\\_1-30-17.pdf](#)

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Rich and Kate

Good Afternoon. I am must following up on the documents that were sent to you. Do you have all the information you need? Do you need more?

Please advise. Thanks in advance  
Gene

Gene Seidlitz  
Analyst-Liaison  
Office of the Assistant Secretary  
Land and Minerals Management  
1849 C St, NW  
Room 6629  
Washington, DC 20240  
202-208-4555 (O)  
775-304-1008 (C)

----- Forwarded message -----

From: Seidlitz, Joseph (Gene) <[gseidlit@blm.gov](mailto:gseidlit@blm.gov)>  
Date: Thu, Mar 16, 2017 at 12:08 PM  
Subject: Follow Up Documents - WSA  
To: Katharine Macgregor <[katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov)>, Richard Cardinale <[richard\\_cardinale@ios.doi.gov](mailto:richard_cardinale@ios.doi.gov)>  
Cc: "Lassiter, Tracie" <[tracie\\_lassiter@ios.doi.gov](mailto:tracie_lassiter@ios.doi.gov)>, "Anderson, Michael" <[michael\\_anderson@ios.doi.gov](mailto:michael_anderson@ios.doi.gov)>, Beverly Winston <[bwinston@blm.gov](mailto:bwinston@blm.gov)>, Shannon Stewart <[scstewar@blm.gov](mailto:scstewar@blm.gov)>

Kate and Rich

Per a follow up item from a briefing last week, please find attached materials regarding Wilderness Study Areas (WSA's)

Shannon/Bev - Thank you

Best  
Gene

Gene Seidlitz  
Analyst-Liaison  
Office of the Assistant Secretary  
Land and Minerals Management  
1849 C St, NW

Room 6629  
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202-208-4555 (O)  
775-304-1008 (C)

**INFORMATION/BRIEFING MEMORANDUM  
FOR THE ASSISTANT SECRETARY – LAND AND MINERALS MANAGEMENT**

**DATE:** March 15, 2017

**FROM:** Kristin Bail, Acting Director – Bureau of Land Management (BLM)

**SUBJECT:** BLM’s Wilderness Study Areas

The purpose of this briefing paper is to provide background on the BLM’s Wilderness Program and its management of wilderness study areas (WSAs)

**BACKGROUND**

The BLM’s Wilderness Program conserves, protects, and restores the values of the National Conservation Lands by managing nearly 8.8 million acres of federally designated wilderness and more than 12.6 million acres of wilderness study areas (WSAs) in the Western States and Alaska. The Bureau also manages other lands that have wilderness values, known as lands with wilderness characteristics, though such lands are not part of the National Conservation Lands.

**DISCUSSION**

The BLM manages 517 WSAs in 12 Western States and Alaska (see attached fact sheet). WSAs are roadless units that the BLM has identified as having wilderness characteristics. Until Congress makes a determination on a WSA, the BLM manages it to preserve its suitability for designation as wilderness.

Section 603 of the Federal Land Policy and Management Act of 1976 directs the BLM to inventory its lands and, within 15 years of the law’s enactment, identify parcels that met the definition of “wilderness” as described in the Wilderness Act of 1964. In carrying out Section 603, the BLM divided its work into three phases: 1) inventorying BLM public lands for wilderness characteristics; 2) studying the WSAs identified as a result of the inventory; and 3) reporting the recommended areas to Congress.

By 1980, the BLM had completed the process of identifying which parcels of the public lands qualified for further study to determine whether such areas should be recommended for wilderness designation. Between 1980 and 1991, the BLM performed the study phase, which consisted of comparing a WSA’s wilderness values to other land uses and devising a recommendation as to whether a given WSA was suitable to be managed as wilderness. The recommendation phase consisted of BLM submitting its statewide wilderness reports to the President, which the Bureau completed in 1991. After a two-year evaluation period, the President concurred with the recommendations and transmitted the last of them to Congress in 1993.

For reference, the Nevada BLM Statewide Wilderness Report is available at:  
<https://archive.org/details/nevadablstatewi01unit>

(Note: Volume I of BLM Nevada's report appears at the top of the site; scroll down to see the other volumes).

The BLM Utah Statewide Wilderness Study Report is available at:  
<https://catalog.hathitrust.org/Record/007398790>

**Statement of  
Robert Abbey, Director  
Bureau of Land Management  
Department of the Interior  
before the  
House Natural Resources Committee  
Subcommittee on National Parks, Forests and Public Lands  
H.R. 1581, Wilderness and Roadless Area Release Act of 2011  
July 26, 2011**

Thank you for the invitation to testify on H.R. 1581, the Wilderness and Roadless Area Release Act. The Administration strongly supports the constructive resolution of wilderness designation and Wilderness Study Area (WSA) release issues on public lands across the western United States. However, the Administration strongly opposes H.R. 1581 which would unilaterally release 6.6 million acres of WSAs on public lands. H.R. 1581 is a top-down, one-size-fits-all approach, that fails to reflect local conditions and community-based interests regarding WSAs managed by the Department of the Interior.

Much as the Department of the Interior would oppose a blanket designation of all WSAs as wilderness, we oppose this proposal to release over 6.6 million acres of WSAs from interim protection. We encourage Members of Congress to work with local and national constituencies on designation and release proposals, and the Bureau of Land Management (BLM) stands ready to provide technical support in this process. Public Law 111-11, the Omnibus Public Land Management Act of 2009, serves as an excellent model for wilderness designation and WSA release decisions thoughtfully conceived and effectively implemented.

The Department of the Interior defers to the Department of Agriculture on provisions of the bill affecting lands managed by the U.S. Forest Service.

**Background**

In 1976, Congress passed the Federal Land Policy and Management Act (FLPMA), which provides a clear statement on the retention and management of lands administered by the BLM. Section 603 of FLPMA provided direction under which the BLM became a full partner in the National Wilderness Preservation System established by the Wilderness Act of 1964.

The first step of the Section 603 process, to identify areas with wilderness characteristics, was completed in 1980. The BLM identified over 800 WSAs encompassing over 26 million acres of BLM-managed lands. Each of these WSAs met the criteria for wilderness designation established by the Wilderness Act: sufficient size (5,000 roadless acres or more), as well as naturalness, and outstanding opportunities for solitude or a primitive and unconfined type of recreation. Today, approximately 12.8 million acres (545 units) of the original 26 million acres remain as WSAs and are awaiting final Congressional resolution. Section 603(c) of FLPMA directs the BLM to manage all of these WSAs “in a manner so as not to impair the suitability of

such areas for preservation as wilderness . . .” WSAs are managed under the BLM’s “Interim Management Policy for Lands Under Wilderness Review.”

The second step of the process, begun in 1980 and concluded in 1991, was to study each of the WSAs to make a recommendation to the President on “the suitability or nonsuitability of each such area or island for preservation as wilderness . . .” The central issue addressed by the studies was not to determine whether or not areas possessed wilderness characteristics, this fact had been previously established. Rather the question asked was “is this area more suitable for wilderness designation or more suitable for nonwilderness uses?” Among the elements considered were: mineral surveys conducted by the U.S. Geological Survey and Bureau of Mines, conflicts with other potential uses, manageability, public opinion, and a host of other elements. This process was not a scientific one, but rather a consideration of various factors to reach a recommendation. Between July 1991 and January 1993, President George H. W. Bush submitted these state-by-state recommendations to Congress.

These recommendations are now 20 years old, and the on-the-ground work associated with them is as much as 30 years old. During that time in a number of places, resource conditions have changed, our understanding of mineral resources has changed, and public opinion has changed. If these suitability recommendations were made today, many of them would undoubtedly be different.

### ***Examples of Recent Designations***

Examples abound of WSAs recommended nonsuitable which Congress later designated as wilderness after careful review, updated analysis, and thoughtful local discussions. A number of such designations were incorporated into Public Law 111-11, the Omnibus Public Land Management Act of 2009, which designated over 900,000 acres of new BLM-managed wilderness and also released well over 250,000 acres from WSA status.

The Granite Mountain Wilderness designated by P.L. 111-11 is located east of Mono Lake in central California. In 1991, the entire WSA was recommended nonsuitable in large part due to reports of high potential for geothermal resources. Subsequent reviews of mineral potential, including several test wells on nearby lands, showed a low potential for geothermal resources. In 2008, the BLM provided testimony in support of Representative Buck McKeon’s legislation, H.R. 6156, designating the Granite Mountain Wilderness.

P.L. 111-11 also included broad-scale wilderness designation and WSA release in Utah’s Washington County and Idaho’s Owyhee County. Both of these successful efforts were the result of hard work by the local Congressional delegations, working with local elected officials, stakeholders, and user groups along with technical support from the BLM. They did not rely on decades old suitability studies, but rather sought common ground and comprehensive solutions to specific land management issues. In Owyhee County, what was once 22 individual WSAs is now over half a million acres of wilderness in six distinct wilderness areas, as well as nearly 200,000 acres of released WSAs. Many acres the BLM recommended nonsuitable in 1992 were designated; likewise acres recommended suitable were released by the legislation.

Similarly, the Northern California Coastal Wild Heritage Wilderness Act, P.L. 109-362, designated a number of wilderness areas in northern California, including Cache Creek Wilderness located 60 miles northwest of Sacramento in the Northern Coast Range. Cache Creek WSA was recommended nonsuitable in 1991 due in large part to the presence of 550 mining claims within the area. Fifteen years later, when designating legislation was proposed, all of these claims had been abandoned due to the area's low mineral potential.

Numerous other examples exist, but suffice it to say, every situation with every WSA is distinct and deserves to be examined individually in a congressionally-driven process involving local and national interests and a wide range of stakeholders. This process should place stronger emphasis on current resource conditions and opportunities for protection, than on decades old recommendations. The Wilderness Act and FLPMA put the responsibility for wilderness designation and release squarely with Congress. It is an awesome responsibility, which has in the past, and must in the future, be carefully discharged.

### **H.R. 1581**

H.R. 1581(section 2) provides that BLM-managed WSAs which were recommended "nonsuitable" have been adequately studied for wilderness designation, and are released from the nonimpairment standard established in section 603(c) of FLPMA. This section further provides that these released lands are to be managed consistent with the applicable land use plan and that the Secretary may not provide for any system-wide policies that direct the management of these released lands other than in a manner consistent with the applicable land use plan. Finally, section 2(e) provides that Secretarial Order 3310 (Wild Lands Order) shall not apply to these released lands.

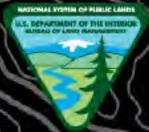
The Administration strongly opposes section 2 of H.R. 1581. A blanket release of lands from WSA status does not allow for a meaningful review of these lands and their resource values. Every acre of WSA should not be designated as wilderness; neither should 6.6 million acres of WSAs be released from consideration without careful thought and analysis.

The status of WSAs needs to be resolved but in the interim they should continue to be managed to keep Congressional options open. I share the frustration of many Members of Congress that resolution has taken much too long. The answer is to move forward in the footsteps of Washington County, Utah and Owyhee County, Idaho, and so many other collaborative efforts reflected in Public Law 111-11, not to seek an all encompassing solution to a complex issue.

We concur with the bill's approach in section 2(c) that lands released from interim protection, which we would hope would take place in a thoughtful process in the context of overall wilderness designation and release legislation, should be managed consistent with local land use plans. It is the local planning process through which the BLM makes important decisions on management of these lands, including, among other things, conventional and renewable energy production, grazing, mining, off-highway vehicle use, hunting, and the consideration of natural values.

## **Conclusion**

America's wilderness system includes many of the Nation's most treasured landscapes, and ensures that these untrammelled lands and resources will be passed down from one generation of Americans to the next. Through our wilderness decisions, we demonstrate a sense of stewardship and conservation that is uniquely American and is sensibly balanced with the other decisions we make that affect public lands. These decisions should be thoughtfully made and considered, not the result of a top-down, one-size-fits-all edict. Resolution and certainty will serve all parties — including the conservation community, extractive industries, OHV enthusiasts and other recreationists, local communities, State government, and Federal land managers. The Administration stands ready to work cooperatively with Congress toward that end.



# NATIONAL CONSERVATION LANDS



## Wilderness Study Area

### What is a Wilderness Study Area?

The Bureau of Land Management's National Conservation Lands comprise more than 36 million acres located primarily in the West. These lands are recognized for their spectacular ecological, cultural, historic, recreational, and scientific value. These lands include about 12.6 million acres of Wilderness Study Areas (WSAs) in 517 units containing some of the wildest and most remote lands in America.

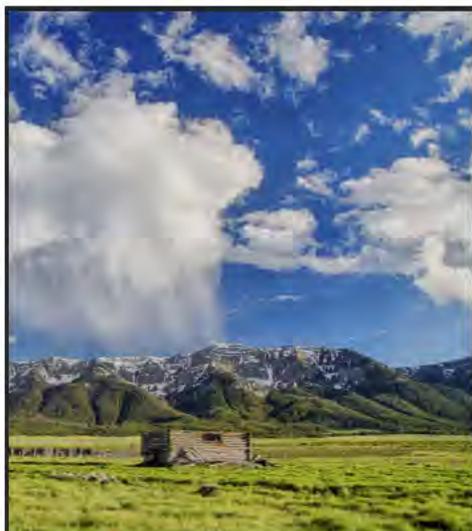
WSAs are areas that the BLM inventoried in a 1980 congressionally directed study and found to have legally defined wilderness characteristics. These lands are generally roadless areas of at least 5,000 acres, largely undeveloped and natural, and provide outstanding opportunities for solitude or primitive and unconfined recreation. Until Congress decides whether to release a WSA or designate it as wilderness, BLM will manage WSAs to protect their wilderness characteristics and suitability for wilderness designation.



Adobe Town WSA, Wyoming



Handies Peak WSA, Colorado



Centennial Peak WSA, Idaho/Montana

### Did you know...

- BLM WSAs are open to a wide variety of non-motorized, primitive recreational activities, including horseback riding, rafting, fishing, hunting, backpacking, wildlife viewing, and camping.
- At 260,000 acres, Alaska's Central Arctic Management Area WSA is the largest WSA.
- The smallest WSA is the 10-acre Hack Lake in Colorado.
- WSAs often have special qualities such as ecological, geological, educational, historical, scientific, and scenic values.

### By the Numbers

State	# of Units	Acreage
Alaska	1	260,000
Arizona	2	63,930
California	67	821,870
Colorado	53	546,969
Idaho	40	655,512
Montana	35	435,084
Nevada	60	2,516,855
New Mexico	57	960,335
Oregon	87	2,645,791
Utah	86	3,232,402
Washington	1	5,554
Wyoming	42	574,401
<b>Total*</b>	<b>517</b>	<b>12,607,811</b>

\*Total does not double-count the 14 WSAs that cross into more than one state.

**From:** Seidlitz, Joseph (Gene)  
**To:** [Katharine Macgregor](#); [Richard Cardinale](#)  
**Cc:** [Lassiter, Tracie](#); [Anderson, Michael](#); [Beverly Winston](#); [Shannon Stewart](#)  
**Subject:** Follow Up Documents - WSA  
**Date:** Thursday, March 16, 2017 12:12:38 PM  
**Attachments:** [Wilderness Study Area Briefing Memo\\_03.15.17.docx](#)  
[Wilderness and Roadless Area Release Act of 2011.pdf](#)  
[WSA Fact Sheet\\_1-30-17.pdf](#)

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Robert Abbey, Director  
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before the  
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These recommendations are now 20 years old, and the on-the-ground work associated with them is as much as 30 years old. During that time in a number of places, resource conditions have changed, our understanding of mineral resources has changed, and public opinion has changed. If these suitability recommendations were made today, many of them would undoubtedly be different.

### *Examples of Recent Designations*

Examples abound of WSAs recommended nonsuitable which Congress later designated as wilderness after careful review, updated analysis, and thoughtful local discussions. A number of such designations were incorporated into Public Law 111-11, the Omnibus Public Land Management Act of 2009, which designated over 900,000 acres of new BLM-managed wilderness and also released well over 250,000 acres from WSA status.

The Granite Mountain Wilderness designated by P.L. 111-11 is located east of Mono Lake in central California. In 1991, the entire WSA was recommended nonsuitable in large part due to reports of high potential for geothermal resources. Subsequent reviews of mineral potential, including several test wells on nearby lands, showed a low potential for geothermal resources. In 2008, the BLM provided testimony in support of Representative Buck McKeon’s legislation, H.R. 6156, designating the Granite Mountain Wilderness.

P.L. 111-11 also included broad-scale wilderness designation and WSA release in Utah’s Washington County and Idaho’s Owyhee County. Both of these successful efforts were the result of hard work by the local Congressional delegations, working with local elected officials, stakeholders, and user groups along with technical support from the BLM. They did not rely on decades old suitability studies, but rather sought common ground and comprehensive solutions to specific land management issues. In Owyhee County, what was once 22 individual WSAs is now over half a million acres of wilderness in six distinct wilderness areas, as well as nearly 200,000 acres of released WSAs. Many acres the BLM recommended nonsuitable in 1992 were designated; likewise acres recommended suitable were released by the legislation.

Similarly, the Northern California Coastal Wild Heritage Wilderness Act, P.L. 109-362, designated a number of wilderness areas in northern California, including Cache Creek Wilderness located 60 miles northwest of Sacramento in the Northern Coast Range. Cache Creek WSA was recommended nonsuitable in 1991 due in large part to the presence of 550 mining claims within the area. Fifteen years later, when designating legislation was proposed, all of these claims had been abandoned due to the area's low mineral potential.

Numerous other examples exist, but suffice it to say, every situation with every WSA is distinct and deserves to be examined individually in a congressionally-driven process involving local and national interests and a wide range of stakeholders. This process should place stronger emphasis on current resource conditions and opportunities for protection, than on decades old recommendations. The Wilderness Act and FLPMA put the responsibility for wilderness designation and release squarely with Congress. It is an awesome responsibility, which has in the past, and must in the future, be carefully discharged.

### **H.R. 1581**

H.R. 1581(section 2) provides that BLM-managed WSAs which were recommended "nonsuitable" have been adequately studied for wilderness designation, and are released from the nonimpairment standard established in section 603(c) of FLPMA. This section further provides that these released lands are to be managed consistent with the applicable land use plan and that the Secretary may not provide for any system-wide policies that direct the management of these released lands other than in a manner consistent with the applicable land use plan. Finally, section 2(e) provides that Secretarial Order 3310 (Wild Lands Order) shall not apply to these released lands.

The Administration strongly opposes section 2 of H.R. 1581. A blanket release of lands from WSA status does not allow for a meaningful review of these lands and their resource values. Every acre of WSA should not be designated as wilderness; neither should 6.6 million acres of WSAs be released from consideration without careful thought and analysis.

The status of WSAs needs to be resolved but in the interim they should continue to be managed to keep Congressional options open. I share the frustration of many Members of Congress that resolution has taken much too long. The answer is to move forward in the footsteps of Washington County, Utah and Owyhee County, Idaho, and so many other collaborative efforts reflected in Public Law 111-11, not to seek an all encompassing solution to a complex issue.

We concur with the bill's approach in section 2(c) that lands released from interim protection, which we would hope would take place in a thoughtful process in the context of overall wilderness designation and release legislation, should be managed consistent with local land use plans. It is the local planning process through which the BLM makes important decisions on management of these lands, including, among other things, conventional and renewable energy production, grazing, mining, off-highway vehicle use, hunting, and the consideration of natural values.

## **Conclusion**

America's wilderness system includes many of the Nation's most treasured landscapes, and ensures that these untrammelled lands and resources will be passed down from one generation of Americans to the next. Through our wilderness decisions, we demonstrate a sense of stewardship and conservation that is uniquely American and is sensibly balanced with the other decisions we make that affect public lands. These decisions should be thoughtfully made and considered, not the result of a top-down, one-size-fits-all edict. Resolution and certainty will serve all parties — including the conservation community, extractive industries, OHV enthusiasts and other recreationists, local communities, State government, and Federal land managers. The Administration stands ready to work cooperatively with Congress toward that end.



## Wilderness Study Area

### What is a Wilderness Study Area?

The Bureau of Land Management’s National Conservation Lands comprise more than 36 million acres located primarily in the West. These lands are recognized for their spectacular ecological, cultural, historic, recreational, and scientific value. These lands include about 12.6 million acres of Wilderness Study Areas (WSAs) in 517 units containing some of the wildest and most remote lands in America.

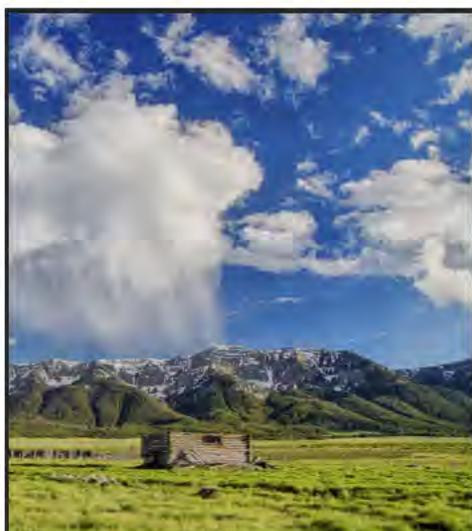
WSAs are areas that the BLM inventoried in a 1980 congressionally directed study and found to have legally defined wilderness characteristics. These lands are generally roadless areas of at least 5,000 acres, largely undeveloped and natural, and provide outstanding opportunities for solitude or primitive and unconfined recreation. Until Congress decides whether to release a WSA or designate it as wilderness, BLM will manage WSAs to protect their wilderness characteristics and suitability for wilderness designation.



Adobe Town WSA, Wyoming



Handies Peak WSA, Colorado



Centennial Peak WSA, Idaho/Montana

### Did you know...

- BLM WSAs are open to a wide variety of non-motorized, primitive recreational activities, including horseback riding, rafting, fishing, hunting, backpacking, wildlife viewing, and camping.
- At 260,000 acres, Alaska’s Central Arctic Management Area WSA is the largest WSA.
- The smallest WSA is the 10-acre Hack Lake in Colorado.
- WSAs often have special qualities such as ecological, geological, educational, historical, scientific, and scenic values.

### By the Numbers

State	# of Units	Acreage
Alaska	1	260,000
Arizona	2	63,930
California	67	821,870
Colorado	53	546,969
Idaho	40	655,512
Montana	35	435,084
Nevada	60	2,516,855
New Mexico	57	960,335
Oregon	87	2,645,791
Utah	86	3,232,402
Washington	1	5,554
Wyoming	42	574,401
<b>Total*</b>	<b>517</b>	<b>12,607,811</b>

\*Total does not double-count the 14 WSAs that cross into more than one state.

**From:** Kaster, Amanda  
**To:** [Neely, Amanda \(HSGAC\)](#)  
**Cc:** [Micah Chambers](#); [Pearce, Sarah \(Portman\)](#); [Owen, Matt \(HSGAC\)](#)  
**Subject:** Re: Follow up from the call  
**Date:** Friday, March 17, 2017 11:00:48 AM  
**Attachments:** [ARTICLE A COST-BENEFIT INTERPRETATION OF THE SUBSTANTI \(2\).pdf](#)  
[Con Rec E571 Hyde Remarks 4-19-96.pdf](#)  
[Con Rec S3683 Nickles Remarks 4-18-96.pdf](#)  
[Judicial Citations CRA 3-15-17.docx](#)

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Amanda: please see attached.

- The joint statements read into the record in 1996 in lieu of legislative history for the Congressional Review Act.
- A list of the judicial opinions referenced Wednesday.
- The 2011 law review article we referenced yesterday, entitled "A Cost-Benefit Interpretation of the 'Substantially-Similar' Hurdle in the Congressional Review Act: Can OSHA Ever Utter the E-Word (Ergonomics) Again?"
  - Note: these commentators cite the joint statement and conclude that "[a]lthough the text of the CRA significantly limits judicial review of a congressional veto (or failure to veto), the statute does *not* prohibit judicial review for noncompliance with the substantial similarity clause of a rule promulgated after a congressional veto." (P. 732). Note also that the authors' interpretation of the joint statement does not necessarily comport with judicial interpretation of the judicial limitation provision as they suggest that the limitation applies only to congressional action under the CRA.

On Fri, Mar 17, 2017 at 10:56 AM, Neely, Amanda (HSGAC)  
<[Amanda\\_Neely@hsgac.senate.gov](mailto:Amanda_Neely@hsgac.senate.gov)> wrote:

Micah and Amanda,

Per our discussion on Wednesday, would you please send me the cases regarding the CRA's judicial review clause and the law review article that argues that a "substantially the same as" analysis should be based on economic impact? I've found the joint statement, so no need to send that. Given the timeliness of this issue, it would be great if you would send those on today.

Thanks,

Amanda

Amanda H. Neely

Deputy Chief Counsel

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS (PSI)

U.S. SENATE

(202) 224-9877

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**From:** Micah Chambers [mailto:[micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov)]  
**Sent:** Tuesday, March 14, 2017 7:07 PM  
**To:** Pearce, Sarah (Portman)  
**Cc:** Amanda Kaster; Owen, Matt (HSGAC); Neely, Amanda (HSGAC)

**Subject:** Re: Follow up from the call

We will be there. I just got confirmation from Sen. Collins staff Mary Grace and I believe one SENR staffer will be attending as well. Thanks again for taking the time.

Micah

Sent from my iPhone

On Mar 14, 2017, at 6:56 PM, Pearce, Sarah (Portman) <[Sarah\\_Pearce@portman.senate.gov](mailto:Sarah_Pearce@portman.senate.gov)> wrote:

Hi All,

I'm writing to confirm our meeting tomorrow, Wednesday March 15<sup>th</sup> at 12:30 in Russell 199.

Looking forward to seeing everyone then.

Thanks,

Sarah

**From:** Chambers, Micah [mailto:[micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov)]  
**Sent:** Monday, March 13, 2017 6:52 PM  
**To:** Pearce, Sarah (Portman) <[Sarah\\_Pearce@portman.senate.gov](mailto:Sarah_Pearce@portman.senate.gov)>  
**Cc:** Amanda Kaster <[amanda\\_kaster@ios.doi.gov](mailto:amanda_kaster@ios.doi.gov)>; Owen, Matt (HSGAC) <[Matt\\_Owen@hsgac.senate.gov](mailto:Matt_Owen@hsgac.senate.gov)>; Neely, Amanda (HSGAC) <[Amanda\\_Neely@hsgac.senate.gov](mailto:Amanda_Neely@hsgac.senate.gov)>  
**Subject:** Re: Follow up from the call

We will plan on 1230 Wednesday. Just give the location and we'll plan on seeing you there. Thank you

Micah

On Mon, Mar 13, 2017 at 5:17 PM, Pearce, Sarah (Portman) <[Sarah\\_Pearce@portman.senate.gov](mailto:Sarah_Pearce@portman.senate.gov)> wrote:

Hi Micah,

12:30PM on Wednesday works for Matt, Amanda, and me. Would this work on your end?

Thanks,

Sarah

**From:** Chambers, Micah [mailto:[micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov)]

**Sent:** Friday, March 10, 2017 5:16 PM

**To:** Amanda Kaster <[amanda\\_kaster@ios.doi.gov](mailto:amanda_kaster@ios.doi.gov)>

**Cc:** Pearce, Sarah (Portman) <[Sarah\\_Pearce@portman.senate.gov](mailto:Sarah_Pearce@portman.senate.gov)>; Owen, Matt (HSGAC) <[Matt\\_Owen@hsgac.senate.gov](mailto:Matt_Owen@hsgac.senate.gov)>; Neely, Amanda (HSGAC) <[Amanda\\_Neely@hsgac.senate.gov](mailto:Amanda_Neely@hsgac.senate.gov)>

**Subject:** Re: Follow up from the call

Sarah. Can we coordinate a time to sit down next Wednesday?

Micah

On Fri, Mar 10, 2017 at 12:53 PM, Micah Chambers <[micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov)> wrote:

Sarah. If you're free, give me a call 202.706.9093

Sent from my iPhone

On Mar 10, 2017, at 12:32 PM, Amanda Kaster  
<[amanda\\_kaster@ios.doi.gov](mailto:amanda_kaster@ios.doi.gov)> wrote:

Thanks, Sarah. I'll be in touch ASAP with more information about availability.

Sent from my iPhone

On Mar 10, 2017, at 12:24 PM, Pearce, Sarah (Portman)  
<[Sarah\\_Pearce@portman.senate.gov](mailto:Sarah_Pearce@portman.senate.gov)> wrote:

Hi Micah and Amanda,

Happy Friday! I am following up on Senator Portman's call with Secretary Zinke yesterday on the BLM methane rule. I understand that our bosses discussed Secretary Zinke's ability to address methane venting and flaring.

At Senator Portman's request, I'd like to connect the Senator's staff on the HSGAC committee - Matt Owen and Amanda Neely - with DOI's Solicitor Office. If possible, could a call be arranged between them as soon as this afternoon, or at your earliest convenience?

Thanks for your help. Please let me know if you have any questions. My direct line is 202-224-7523.

Best,

Sarah

Sarah Pearce

Office of Senator Rob Portman

(202) 224-3353

448 Russell Senate Office Building

Washington, DC 20510

[Sarah\\_Pearce@portman.senate.gov](mailto:Sarah_Pearce@portman.senate.gov)

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Micah Chambers

Special Assistant / Acting Director

Office of Congressional & Legislative Affairs

Office of the Secretary of the Interior

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Micah Chambers

Special Assistant / Acting Director

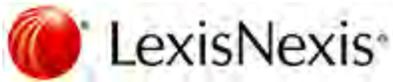
Office of Congressional & Legislative Affairs

Office of the Secretary of the Interior

--

Amanda Kaster-Averill  
Special Assistant

Office of Congressional and Legislative Affairs  
U.S. Department of the Interior  
(202) 208-3337  
[amanda\\_kaster@ios.doi.gov](mailto:amanda_kaster@ios.doi.gov)



**User Name:** Robert Johnston

**Date and Time:** Thursday, February 09, 2017 1:51:00 PM EST

**Job Number:** 43192602

## Document (1)

1. [ARTICLE:A COST-BENEFIT INTERPRETATION OF THE "SUBSTANTIALLY SIMILAR" HURDLE IN THE CONGRESSIONAL REVIEW ACT: CAN OSHA EVER UTTER THE E-WORD \(ERGONOMICS\) AGAIN?, 63 ADMIN. L. REV. 707](#)

**Client/Matter:** -None-

**Search Terms:** "cost-benefit interpretation of the substantially similar hurdle"

**Search Type:** Natural Language

**Narrowed by:**

**Content Type**  
Secondary Materials

**Narrowed by**  
-None-

# ARTICLE: A COST-BENEFIT INTERPRETATION OF THE "SUBSTANTIALLY SIMILAR" HURDLE IN THE CONGRESSIONAL REVIEW ACT: CAN OSHA EVER UTTER THE E-WORD (ERGONOMICS) AGAIN?

Fall 2011

## Reporter

63 ADMIN. L. REV. 707 \*

**Length:** 42998 words

**Author:** ADAM M. FINKEL\* & JASON W. SULLIVAN\*\*

\* Senior Fellow and Executive Director, Penn Program on Regulation, University of Pennsylvania Law School. Sc.D., Harvard School of Public Health. 1987; A.B., Harvard College, 1979. Professor Finkel gratefully acknowledges the support for his Occupational Safety and Health Administration reform work provided by the Public Welfare Foundation.

\*\* Associate, Irell & Manella LLP, Los Angeles, California. J.D., University of Pennsylvania Law School, 2009; B.A., Rutgers College, 2005.

We are grateful to Valerie Baron, James O'Reilly, and Stuart Shapiro for their comments and suggestions.

## Text

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### [\*708] INTRODUCTION

Congress has always had the power to overturn a specific regulation promulgated by an executive branch agency and, as the author of the underlying statutes under which the agencies regulate, has also always been able to amend those statutes so as to thwart entire lines of regulatory activity before they begin. But in 1996, Congress carved out for itself a shortcut path to regulatory oversight with the passage of the Congressional Review Act (CRA),<sup>1</sup> and can now veto a regulation by passing a joint resolution rather than by passing a law.<sup>2</sup> There is no question that Congress can now kill a regulation with relative ease, although it has only exercised that ability once in the fifteen years since the passage of the [\*709] CRA.<sup>3</sup> It remains ambiguous, however, whether Congress can use this new mechanism to, in effect, due to a regulation what the Russian nobles reputedly did to Rasputin--poison it, shoot it, stab it, and throw its weighted body into a river--that is, to veto not only the instant rule it objects to, but forever bar an agency from regulating in that area. From the point of view of the agency, the question is, "What kind of phoenix, if any, is allowed to rise from the ashes of a dead regulation?" This subject has, in our view, been surrounded by mystery and misinterpretations, and is the area we hope to clarify via this Article.

A coherent and correct interpretation of the key clause in the CRA, which bars an agency from issuing a new rule that is "substantially the same" as one vetoed under the CRA,<sup>4</sup> matters most generally as a verdict on the precise

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<sup>1</sup> Congressional Review Act of 1996, Pub. L. No. 104-121, tit. II, subtit. E, 110 Stat. 868-74 (codified as amended at 5 U.S.C. §§ 801-808 (2006)).

<sup>2</sup> See 5 U.S.C. §§ 801-802 (2006).

<sup>3</sup> See *infra* Parts II.A and IV.A.4 (discussing the Occupational Safety and Health Administration (OSHA) ergonomics rule and the congressional veto thereof in 2001).

<sup>4</sup> 5 U.S.C. § 801(b)(2).

demarcation of the relative power of Congress and the Executive. It matters broadly for the administrative state, as all agencies puzzle out what danger they court by issuing a rule that Congress might veto (can they and their affected constituents be worse off for having awakened the sleeping giant than had they issued no rule at all?). And it matters most specifically for the U.S. Occupational Safety and Health Administration (OSHA), whose new Assistant Secretary<sup>5</sup> is almost certainly concerned whether any attempt by the agency to regulate musculoskeletal disorders ("ergonomic" hazards) in any fashion would run afoul of the "substantially the same" prohibition in the CRA.

The prohibition is a crucial component of the CRA, as without it the CRA is merely a reassertion of authority Congress always had, albeit with a streamlined process. But whereas prior to the CRA Congress would have had to pass a law invalidating a rule *and* specifically state exactly what the agency could not do to reissue it, Congress can now kill certain future rules semiautomatically and perhaps render them unenforceable in court. This judicial component is vital to an understanding of the "substantially the same" prohibition as a legal question, in addition to a political one: whereas Congress can choose whether to void a subsequent rule that is substantially similar to an earlier vetoed rule (either for violation of the "substantially the same" prohibition or on a new substantive basis), if a court rules that a reissued rule is in fact "substantially the same" it would be obligated to treat the new rule as void *ab initio* even if Congress had failed to enact a new veto.<sup>6</sup>

[\*710] In this Article, we offer the most reasonable interpretation of the three murky words "substantially the same" in the CRA. Because neither Congress nor any reviewing court has yet been faced with the need to consider a reissued regulation for substantial similarity to a vetoed one, this is "uncharted legal territory."<sup>7</sup> The range of plausible interpretations runs the gamut from the least daunting to the most ominous (from the perspective of the agencies), as we will describe in detail in Part III.A. To foreshadow the extreme cases briefly, it is conceivable that even a verbatim identical rule might not be "substantially similar" if scientific understanding of the hazard or the technology to control it had changed radically over time. At the other extreme, it is also conceivable that any subsequent attempt to regulate in any way whatsoever in the same broad topical area would be barred.<sup>8</sup> We will show, however, that considering the legislative history of the CRA, the subsequent expressions of congressional intent issued during the one legislative veto of an agency rule to date, and the bedrock principles of good government in the administrative state, an interpretation of "substantially similar" much closer to the former than the latter end of this spectrum is most reasonable and correct. *We conclude that the CRA permits an agency to reissue a rule that is very similar in content to a vetoed rule, so long as it produces a rule with a significantly more favorable balance of costs and benefits than the vetoed rule.*<sup>9</sup>

We will assert that our interpretation of "substantially similar" is not only legally appropriate, but arises naturally when one grounds the interpretation in the broader context that motivated the passage of the CRA and that has come to dominate both legislative and executive branch oversight of the regulatory agencies: the insistence that regulations should generate benefits in excess of their costs. We assert that even if the hazards addressed match exactly those covered in the vetoed rule, if a reissued rule has a substantially different cost-benefit equation than

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<sup>5</sup> David Michaels was confirmed December 3, 2009. See 155 CONG. REC. S12,351 (daily ed. Dec. 3, 2009).

<sup>6</sup> See *infra* notes 122-125 and accompanying text.

<sup>7</sup> Kristina Sherry, 'Substantially the Same' Restriction Poses Legal Question Mark for Ergonomics, INSIDE OSHA, Nov. 9, 2009, at 1, 1, 8.

<sup>8</sup> See *infra* Part III.A.

<sup>9</sup> For a thorough defense of cost-benefit (CBA) analysis as a valuable tool in saving lives, rather than an antiregulatory sword, see generally John D. Graham, *Saving Lives Through Administrative Law and Economics*, 157 U. PA. L. REV. 395 (2008). But cf. James K. Hammitt, *Saving Lives: Benefit-Cost Analysis and Distribution*, 157 U. PA. L. REV. PENNUMBRA 189 (2009), <http://www.pennumbra.com/responses/03-2009/Hammitt.pdf> (noting the difficulties in accounting for equitable distribution of benefits and harms among subpopulations when using cost-benefit analysis).

the vetoed rule, then it cannot be regarded as "substantially similar" in the sense in which those words were (and also should have been) intended.

The remainder of this Article will consist of seven Parts. In Part I, we [\*711] will lay out the political background of the 104th Congress, and then explain both the substance and the legislative history of the Congressional Review Act. In Part II, we discuss the one instance in which the fast-track congressional veto procedure has been successfully used, and mention other contexts in which Congress has considered using it to repeal regulations. In this Part, we also discuss the further "uncharted legal territory" of how the courts might handle a claim that a reissued rule was "substantially similar." In Part III, we present a detailed hierarchy of possible interpretations of "substantially similar," and in Part IV, we explain why the substantial similarity provision should be interpreted in among the least ominous ways available. In Part V, we summarize the foregoing arguments and give a brief verdict on exactly where, in the seven-level hierarchy we developed, we think the interpretation of "substantially similar" must fall. In Part VI, we discuss some of the practical implications of our interpretation for OSHA as it considers its latitude to propose another ergonomics rule. Finally, in Part VII, we recommend some changes in the system to help achieve Congress's original aspirations with less inefficiency and ambiguity.

## I. REGULATORY REFORM AND THE CONGRESSIONAL REVIEW ACT

The Republican Party's electoral victory in the 1994 midterm elections brought with it the prospect of sweeping regulatory reform. As the Republicans took office in the 104th Congress, they credited their victory to public antigovernment sentiment, especially among the small business community. Regulatory reform was central to the House Republicans' ten-plank Contract with America proposal, which included provisions for congressional review of pending agency regulations and an opportunity for both houses of Congress and the President to veto a pending regulation via an expedited process.<sup>10</sup> This Part discusses the Contract with America and the political climate in which it was enacted.

### A. *The 1994 Midterm Elections and Antiregulatory Sentiment*

An understanding of Congress's goal for regulatory reform requires some brief familiarity with the shift in political power that occurred prior to the enactment of the Contract with America. In the 1994 elections, the Republican Party attained a majority in both houses of Congress. In the House of Representatives, Republicans gained a twenty-six-seat advantage over the House Democrats.<sup>11</sup> Similarly, in the Senate, Republicans turned [\*712] their minority into a four-seat advantage.<sup>12</sup>

The 1994 election included a large increase in participation among the business community. In fact, a significant majority of the incoming Republican legislators were members of that community.<sup>13</sup> Small business issues--and in particular the regulatory burden upon them--were central in the midterm election, and many credited the Republican Party's electoral victory to its antiregulatory position.<sup>14</sup> Of course, it was not only business owners who

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<sup>10</sup> Congressional Review Act of 1996, Pub. L. No. 104-121, tit. II, subtit. E, **110 Stat. 868-74** (codified as amended at **5 U.S.C. §§ 801-808** (2006)).

<sup>11</sup> See ROBIN H. CARLE, OFFICE OF THE CLERK, U.S. HOUSE OF REPRESENTATIVES, STATISTICS OF THE CONGRESSIONAL ELECTION OF NOVEMBER 8, 1994, at 50 (1995), [http://clerk.house.gov/member\\_info/electionInfo/1994election.pdf](http://clerk.house.gov/member_info/electionInfo/1994election.pdf) (reporting the results of the 1994 U.S. House elections, in which the Republicans won a majority of 230-204).

<sup>12</sup> See *id.* (reporting the results of the 1994 U.S. Senate elections, after which the Republicans held a majority of 52-48).

<sup>13</sup> Newt Gingrich, *Foreword* to RICHARD LESHER, MELTDOWN ON MAIN STREET: WHY SMALL BUSINESS IS LEADING THE REVOLUTION AGAINST BIG GOVERNMENT, at xi, xiv (1996) ("Of the 73 freshman Republicans elected to the House in 1994, 60 were small businesspeople . . .").

<sup>14</sup> See, e.g., Linda Grant, *Shutting Down the Regulatory Machine*, U.S. NEWS & WORLD REP., Feb. 13, 1995, at 70, 70 ("Resentment against excessive government regulation helped deliver election victory to Republicans . . .").

campaigned to decrease the volume of federal regulation--seeking more autonomy and fewer compliance costs, farmers and local governments also aimed to decrease the size of the federal government.<sup>15</sup>

One catalyst for the wave of antigovernment sentiment and the Republicans' related electoral victory was the increasing regulatory burden. By some estimates, the annual costs of federal regulation had increased to more than \$ 600 billion by 1995.<sup>16</sup>

Regulatory reform was not merely an idle campaign promise. Republicans had spent a great deal of effort in prior years to push for fewer regulations, to little avail. When the 104th Congress was sworn in, changes to the regulatory process ranked highly on the Republican Party's agenda.<sup>17</sup> The party leaders were aggressive in their support of regulatory reform. Senator Don Nickles of Oklahoma declared, "We're going to get regulatory reform . . . . We can do it with a rifle or we can do it with a shotgun, but we're going to do it."<sup>18</sup>

**[\*713]** The case that the federal government had been hurtling toward a coercive "nanny state," and the need to deregulate (or at least to slam on the brakes) in response, was bolstered in the early 1990s by a confluence of new ideas, new institutions, and new advocates.<sup>19</sup> The rise of quantitative risk assessment (QRA), and the rapid increase in the capability of analytical chemistry to detect lower and lower amounts of contaminants in all environmental media and human tissues, made possible an ongoing stream of revelations about the apparent failure to provide an ample margin of safety below safe levels of substances capable of causing chronic disease and ecological damage. But at the same time, the successes of the 1970s and 1980s at picking the low-hanging fruit of the most visible manifestations of environmental pollution (for example, flaming rivers or plumes of soot rising from major point sources) made possible a compelling counterargument: that unlike the first generation of efficient remedies for intolerable problems, the mopping up of the purportedly last small increments of pollution threatened to cost far more than the (dubious) benefits achieved. This view was supported by the passage of time and the apparent lack of severe long-term consequences from some of the environmental health crises of the early 1980s (for example, Love Canal, New York and Times Beach, Missouri).<sup>20</sup> In the early 1990s, several influential books advanced the thesis that regulation was imposing (or was poised to impose) severe harm for little or nonexistent benefit. Among the most notable of these were *The Death of Common Sense: How Law Is Suffocating America*,<sup>21</sup> which decried the purported insistence on inflexible and draconian strictures on business, and *Breaking the Vicious Circle*.<sup>22</sup> In this latter book, then-Judge Stephen Breyer posited a cycle of mutual amplification between a public eager to insist on zero risk and a cadre of **[\*714]** risk assessors and bureaucrats happy to invoke

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<sup>15</sup> See *id.* at 72 ("Business has gained a number of allies in its quest to rein in regulation. State and local governments, ranchers and farmers, for example, also want to limit Washington's role in their everyday dealings.").

<sup>16</sup> *Id.* at 70 (reporting the annual costs of federal regulation in 1991 dollars).

<sup>17</sup> See, e.g., Bob Tutt, *Election '94: State; Hutchinson Pledges to Help Change Things*, HOUS. CHRON., NOV. 9, 1994, at A35 (reporting that Senator Kay Bailey Hutchinson of Texas named "reduction of regulations that stifle small business" as one of the items that "had her highest priority").

<sup>18</sup> Stan Crock et al., *A GOP Jihad Against Red Tape*, Bus. WK., NOV. 28, 1994, at 48 (quoting Senator Nickles).

<sup>19</sup> This section, and the subsequent section on the regulatory reform legislation of the mid-1990s, is informed by one of our (Adam Finkel's) experiences as an expert in methods of quantitative risk assessment, and (when he was Director of Health Standards at OSHA from 1995-2000) one of the scientists in the executive agencies providing expertise in risk assessment and cost-benefit analysis during the series of discussions between the Clinton Administration and congressional staff and members.

<sup>20</sup> See generally *Around the Nation: Times Beach, Mo., Board Moves to Seal Off Town*, N.Y. TIMES, Apr. 27, 1983, at A18 (reporting attempts by officials to blockade a St. Louis suburb that had been contaminated by dioxin); Eckardt C. Beck, *The Love Canal Tragedy*, EPA J., Jan. 1979, at 16, available at <http://www.epa.gov/aboutepa/history/topics/lovecanal/01.html> (describing the events following the discovery of toxic waste buried beneath the neighborhood of Love Canal in Niagara Falls, New York).

<sup>21</sup> PHILIP K. HOWARD, *THE DEATH OF COMMON SENSE: How LAW IS SUFFOCATING AMERICA* (1995).

<sup>22</sup> STEPHEN BREYER, *BREAKING THE VICIOUS CIRCLE: TOWARD EFFECTIVE RISK REGULATION* (1994).

conservative interpretations of science to exaggerate the risks that remained uncontrolled.<sup>23</sup> Although the factual basis for the claim that risk assessment is too "conservative" (or even that it does not routinely *underestimate* risk) was and remains controversial,<sup>24</sup> enough of the individual common assumptions used in risk assessment were so clearly "conservative" (for example, the use of the upper confidence limit when fitting a dose-response function to cancer bioassay data) that this claim had considerable intuitive appeal. Around the same time, influential think tanks and trade associations (for example, the Cato Institute and the American Council on Science and Health) echoed the indictment against overregulation, and various media figures (notably John Stossel) advanced the view that the U.S. public was not just desirous of a safer world than common sense would dictate, but had scared itself into irrationality about how dangerous the status quo really was.<sup>25</sup>

The scholars and advocates who made the most headway with Congress in the period leading up to the passage of the CRA made three related, compelling, and in our opinion very politically astute arguments that still influence the landscape of regulation fifteen years later. First, they embraced risk assessment--thereby proffering a "sound science" alternative to the disdain for risk assessment that most mainstream and grassroots environmental groups have historically expressed<sup>26</sup>--although they insisted that each allegedly conservative assumption should be ratcheted back. Second, they advocated for the routine quantitative comparison of benefits (risks reduced) to the cost of regulation, thereby throwing cold water even on large risks if it could be shown that once monetized, the good done by controlling them was outweighed by the economic costs of that control. And perhaps most significantly, they emphasized--particularly in the writings and testimony of John Graham, who went on to lead the White House's Office of Information and Regulatory Affairs (OIRA) in the George W. Bush Administration--that regulatory overkill was tragic not just because it was economically expensive, but because it could ill serve the very goal of maximizing human longevity and quality of life. Some regulations, Graham and others emphasized,<sup>27</sup> could create or exacerbate [\*715] similar or disparate risks and do more harm to health and the environment than inaction would. Many other stringent regulations could produce non-negative net benefits, but far less benefit than smarter regulation could produce. Graham famously wrote and testified that going after trace amounts of environmental pollution, while failing to regulate risky consumer products (for example, bicycle helmet requirements) or to support highly cost-effective medical interventions, amounted to the "statistical murder" of approximately 60,000 Americans annually whose lives could have been saved with *different* regulation, as opposed to deregulation per se.<sup>28</sup>

The stage was thus set for congressional intervention to rationalize (or, perhaps, to undermine) the federal regulatory system.

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<sup>23</sup> See *id.* at 9-13.

<sup>24</sup> See Adam M. Finkel, *Is Risk Assessment Really Too Conservative?: Revising the Revisionists*, 14 COLUM. J. ENVTL. L. 427 (1989) (discussing numerous flaws in the assertion that risk assessment methods systematically exaggerate risk, citing aspects of the methods that work in the opposite direction and citing empirical evidence contrary to the assertion).

<sup>25</sup> *Special Report: Are We Scaring Ourselves to Death? The People Respond* (ABC television broadcast Apr. 21, 1994).

<sup>26</sup> See Alon Tal, *A Failure to Engage*, 14 ENVTL. F., Jan.-Feb. 1997, at 13.

<sup>27</sup> See John D. Graham & Jonathan Baert Wiener, *Confronting Risk Tradeoffs*, in RISK VERSUS RISK: TRADEOFFS IN PROTECTING HEALTH AND THE ENVIRONMENT 1,1-5 John D. Graham & Jonathan Baert Wiener eds., 1995); see also Cass R. Sunstein, *Health-Health Tradeoffs* (Chi. Working Papers on Law & Econ., Working Paper No. 42, 1996), available at [http://www.law.uchicago.edu/files/files/42.CRS\\_Health.pdf](http://www.law.uchicago.edu/files/files/42.CRS_Health.pdf).

<sup>28</sup> n28 Republican Representative John Mica stated:

Let me quote John Graham, a Harvard professor, who said, "Sound science means saving the most lives and achieving the most ecological protection with our scarce budgets. Without sound science, we are engaging in a form of 'statistical murder,' where we squander our resources on phantom risks when our families continue to be endangered by real risks.

141 CONG. REC. 6101 (1995) (statement of Rep. Mica).

## B. The Contract with America and the CRA

When the Republicans in the 104th Congress first began drafting the Contract with America, they intended to stop the regulatory process in its tracks by imposing a moratorium on the issuance of any new regulations. After the Clinton Administration resisted calls for a moratorium, Congress compromised by instead suggesting an amendment to the Administrative Procedure Act (APA) that allowed Congress and the President to veto pending regulations via an expedited process. This compromise led to a subtitle in the Contract with America now known as the Congressional Review Act of 1996. This Part describes the history of the CRA and its substance as enacted.

### 1. From Moratorium to Congressional Review

Even before being sworn in, Republican leaders had their sights set on imposing a moratorium on the issuance of all new federal regulation and urged President Clinton to implement a moratorium himself.<sup>29</sup> When he [\*716] declined to do so,<sup>30</sup> House Republicans called for a legislative solution--they intended to enact a statute that would put a moratorium on new regulations<sup>31</sup> so that Congress could implement regulatory reform without the distraction of having the federal bureaucracy continue to operate. A moratorium would also allow any new procedural or substantive requirements to be applied to all pending regulations without creating a "moral hazard"--agencies rushing to get more rules out (especially more unpalatable ones) in advance of a new set of strictures.<sup>32</sup> Members of Congress put particular emphasis on the importance of cost-benefit analysis (CBA) and risk assessment, noting that the moratorium might be lifted early if stricter CBA guidelines were implemented.<sup>33</sup> These ideas formed the basis of House Bill 450, the proposed Regulatory Transition Act of 1995, which would have imposed a retroactive moratorium period starting November 20, 1994, and lasting until either December 31, 1995, or the date that CBA or risk assessment requirements were imposed, whichever came earlier.<sup>34</sup>

The proposed moratorium, despite passing in the House,<sup>35</sup> met strong opposition in the Senate. Although Senate committees recommended enactment of the moratorium for largely the same reasons as the House leadership,<sup>36</sup> a

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<sup>29</sup> See Melissa Healy, *GOP Seeks Moratorium on New Federal Regulations*, L.A. TIMES, Dec. 13, 1994, at A32 (reporting that House Speaker Newt Gingrich of Georgia and Senate Majority Leader Bob Dole of Kansas sent a letter to the White House urging President Clinton to issue an executive order imposing a moratorium on new federal rules).

<sup>30</sup> See Letter from Sally Katzen, Exec. Office of the President, Office of Mgmt. & Budget, to Tom DeLay, U.S. House of Representatives (Dec. 14, 1994), *reprinted in* H.R. REP. NO. 104-39, pt. 1, at 38-39 (1995) (expressing, on behalf of President Clinton, concern about the efficiency of federal regulation but declining to issue an executive order imposing a moratorium on federal regulation).

<sup>31</sup> See Grant, *supra* note 14, at 70 ("To halt the rampant rule making, Rep. David McIntosh . . . co-sponsored a bill with House Republican Whip Tom DeLay that calls for a moratorium on all new federal regulation . . .").

<sup>32</sup> See H.R. REP. NO. 104-39, pt. 1, at 9-10 (1995) ("[A] moratorium will provide both the executive and the legislative branches . . . with more time to focus on ways to fix current regulations and the regulatory system. Everyone involved in the regulatory process will be largely freed from the daily burden of having to review, consider and correct newly promulgated regulations . . ."); S. REP. No. 104-15, at 5 (1995) (same).

<sup>33</sup> See H.R. REP. NO. 104-39, pt. 1, at 4 ("The moratorium can be lifted earlier, but only if substantive regulatory reforms (cost/benefit analysis and risk assessment) are enacted."); *see also id.* (noting that agencies would not be barred from conducting CBA during the moratorium).

<sup>34</sup> H.R. 450, 104th Cong. §§ 3(a), 6(2) (1995) (as passed by House of Representatives, Feb. 24, 1995).

<sup>35</sup> 141 CONG. REC. 5880 (1995) (recording the House roll call vote of 276-146, **with** 13 Representatives not voting).

<sup>36</sup> See S. 219, 104th Cong. §§ 3(a), 6(2) (1995) (as reported by S. Comm. on Governmental Affairs, Mar. 16, 1995) (proposing a moratorium similar to that considered in the House, but with a retroactivity clause that reached even further back); *see also* S. REP. No. 104-15, at 1 ("The Committee on Governmental Affairs . . . reports favorably [on S. 219] . . . and recommends that the bill . . . pass.").

strong minority joined the Clinton Administration in [\*717] opposition to the bill.<sup>37</sup> Six of the fourteen members of the Senate Committee on Governmental Affairs argued that a moratorium was overbroad and wasteful, and "does not distinguish between good and bad regulations."<sup>38</sup> In their view, a moratorium would hurt more than it would help, since it would "create delays in good regulations, waste money, and create great uncertainty for citizens, businesses, and others."<sup>39</sup> The Republicans, with only a slim majority in the Senate,<sup>40</sup> would face difficulty enacting a moratorium.

While House Bill 450 worked its way through the House, Senate Republicans drafted a more moderate (and, from the Senate's perspective, more realistic) proposal for regulatory reform through congressional oversight. Senate Bill 348 would have set up an expedited congressional review process for all new federal regulations and allowed for their invalidation by enactment of a joint resolution.<sup>41</sup> Faced with a Senate that was closely split over the moratorium bill, Senators Don Nickles of Oklahoma and Harry Reid of Nevada reached a compromise: they introduced the text of Senate Bill 348 as a substitute for the moratorium proposal, which became known as the Nickles-Reid Amendment.<sup>42</sup> Senate Democrats saw the more nuanced review process as a significant improvement over the moratorium's prophylactic approach,<sup>43</sup> and the Nickles-Reid Amendment (Senate Bill 219) passed the chamber by a roll call vote of 100-0.<sup>44</sup>

Disappointed in the defeat of their moratorium proposal, House leaders did not agree to a conference to reconcile House Bill 450 with Senate Bill [\*718] 219.<sup>45</sup> Pro-environment House Republicans eventually convinced House leaders that their antiregulatory plans were too far-reaching,<sup>46</sup> and over the following year, members of Congress attempted to include the review provision in several bills.<sup>47</sup> The provision was finally successfully included in the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), a part of the larger Contract with America

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<sup>37</sup> See S. REP. NO. 104-15, at 25-32 (calling the moratorium "dangerous" and "unnecessary"); see also Letter from Sally Katzen to Tom DeLay, *supra* note 30 (calling the moratorium a "blunderbuss" and noting that it was so overbroad that it would impede regulations addressing tainted meat in the food supply and assisting the diagnosis of illnesses that veterans may have suffered while serving in the Persian Gulf War).

<sup>38</sup> S. REP. No. 104-15, at 25.

<sup>39</sup> *Id.* at 26.

<sup>40</sup> See *supra* note 12 and accompanying text.

<sup>41</sup> S. 348, 104th Cong. (as introduced in Senate, Feb. 2, 1995).

<sup>42</sup> See 141 CONG. REC. 9426-27 (1995) (statement of Sen. Baucus) (noting withdrawal of the moratorium in favor of a fast-track process for congressional review).

<sup>43</sup> See *id.* ("To my mind, this amendment is much closer to the mark . . . Congress can distinguish good rules from bad. . . . [I]f an agency is doing a good job, the rule will go into effect, and public health will not be jeopardized.").

<sup>44</sup> *Id.* at 9580 (recording the roll call vote); see S. 219, 104th Cong. § 103 (as passed by Senate, Mar. 29, 1995) (including the congressional review procedure in lieu of the moratorium proposal).

<sup>45</sup> See 142 CONG. REC. 6926-27 (1996) (statement of Rep. Hyde) (summarizing the procedural history of the Congressional Review Act (CRA)).

<sup>46</sup> See John H. Cushman Jr., *House G. O.P. Chiefs Back Off on Stiff Antiregulatory Plan*, N.Y. TIMES, Mar. 6, 1996, at A19 ("Representative Sherwood Boehlert, a Republican from upstate New York who has emerged as the leader of a block of pro-environment House members, persuaded Speaker Newt Gingrich at a meeting today that this legislation went too far.").

<sup>47</sup> However, each bill eventually failed for reasons unrelated to the congressional review provision. See 142 CONG. REC. 6926-27 (statement of Rep. Hyde) (discussing the procedural history of the CRA).

Advancement Act (CWAA), as Subtitle E.<sup>48</sup> The congressional review provision was ultimately enacted without debate, as more controversial parts of the Contract with America occupied Congress's attention.<sup>49</sup> On March 28, 1996, the CWAA passed both houses of Congress.<sup>50</sup> In a signing statement, President Clinton stated that he had "long supported" the idea of increasing agency accountability via a review procedure, but he also noted his reservations about some of the provision's specific terms, which he said "will unduly complicate and extend" the process.<sup>51</sup>

## 2. Regulatory "Reform"

At the same time as they considered the idea of a regulatory moratorium, both houses of Congress considered far more detailed and sweeping changes to the way federal agencies could regulate. As promised by Speaker Newt Gingrich, within 100 days of the installation of 104th Congress, House Bill 9, the Job Creation and Wage Enhancement Act was [\*719] introduced and voted on.<sup>52</sup> This bill would have required most regulations to be justified by a judicially reviewable QRA, performed under a set of very specific requirements regarding the appropriate models to select and the statistical procedures to use.<sup>53</sup> It also would have required agencies to certify that each rule produced benefits to human health or the environment that justified the costs incurred.<sup>54</sup> Although the House passed this bill by a vote of 277-141, the Republican Senate majority made no public pledge to reform regulation as had their House counterparts,<sup>55</sup> and the analogous Senate Bill 343 (the Comprehensive Regulatory Reform Act, sponsored primarily by Republican Robert Dole of Kansas and Democrat J. Bennett Johnston of Louisiana), occupied that body for months of debate.<sup>56</sup> The Senate took three separate cloture votes during the summer of 1995, the final one falling only two votes shy of the sixty needed to end debate.<sup>57</sup>

Professors Landy and Dell attribute the failure of Senate Bill 343 largely to presidential politics: Senator Dole (who won the Republican nomination that year) may have been unwilling to tone down the judicial review provisions (under which agencies would face remand for deficiencies in their risk assessments or disputes over their cost-benefit pronouncements) because he was looking to his base, while President Clinton threatened a veto as an

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<sup>48</sup> See Congressional Review Act of 1996, Pub. L. No. 104-121, tit. II, subtit. E, **110 Stat. 868-74** (codified as amended at **5 U.S.C. §§ 801-808** (2006)).

<sup>49</sup> See 142 CONG. REC. 6922-30 (statement of Rep. Hyde) (inserting documents into the legislative history of the Contract with America Advancement Act (CWAA) several weeks after its enactment, and noting that "no formal legislative history document was prepared to explain the [CRA] or the reasons for changes in the final language negotiated between the House and Senate"); see *also id.* at 8196-8201 (joint statement of Sens. Nickles, Reid, and Stevens).

<sup>50</sup> See *id.* at 6940 (recording the House roll call vote of 328-91 with 12 nonvoting Representatives, including several liberals voting for the bill and several conservatives voting against it); see *also id.* at 6808 (reporting the Senate unanimous consent agreement).

<sup>51</sup> Presidential Statement on Signing the Contract with America Advancement Act of 1996, 32 WEEKLY COMP. PRES. DOC. 593 (Apr. 29, 1996).

<sup>52</sup> See H.R. 9, 104th Cong. §§ 411-24 (1995) (as passed by House, Mar. 3, 1995).

<sup>53</sup> See, e.g., *id.* § 414(b)(2) (setting forth specific requirements for the conduct of risk assessments).

<sup>54</sup> *Id.* § 422(a)(2).

<sup>55</sup> See Marc Landy & Kyle D. Dell, *The Failure of Risk Reform Legislation in the 104th Congress*, [9 DUKE ENVTL. L. & POL'Y F. 113, 115-16 \(1998\)](#).

<sup>56</sup> S. 343, 104th Cong. (1995) (as introduced in Senate, Feb. 2, 1995).

<sup>57</sup> 141 CONG. REC. 19,661 (1995) (recording the roll call vote of 58-40).

attempt to "tap into the public's longstanding support for environmental regulation."<sup>58</sup> However, serious substantive issues existed as well. Public interest groups actively opposed the bill; with each untoward event in the news as the debate continued (notably a cluster of deaths and illnesses caused by fast-food hamburgers contaminated with *E. coli*<sup>59</sup>), the [\*720] bill's "green eyeshade" tone (dissect all costs and benefits, giving inaction the seeming benefit of the doubt) became a flashpoint for concern. For its part, the White House aggressively charted its own course of reform, strengthening the executive order giving OIRA broad authority over regulatory agencies and making regulatory transparency and plain language cornerstones of Vice President Gore's broader Reinventing Government initiative.<sup>60</sup> As Professor John Graham concluded, "The Democratic leadership made a calculation that it was more profitable to accuse Republicans of rolling back protections (in the guise of reform) than it was to work collaboratively toward passage of a bipartisan regulatory reform measure."<sup>61</sup>

Nevertheless, the majority of both houses of Congress believed that each federal regulation should be able to pass a formal benefit-cost test, and perhaps that agencies should be required to certify this in each case. Although no law enshrined this requirement or the blueprint for how to quantify benefits and costs, the CRA's passage less than a year after the failure of the Dole-Johnston bill can most parsimoniously be interpreted as Congress asserting that if the agencies remained free to promulgate rules with an unfavorable cost-benefit balance, Congress could veto at the finish line what a regulatory reform law would have instead nipped in the bud.

The CRA can also be interpreted as one of four contemporaneous attempts to salvage as much as possible of the cost-benefit agenda embodied in the failed omnibus regulatory reform legislation.<sup>62</sup> During 1995 and 1996, Congress also enacted the Unfunded Mandates Reform Act (which requires agencies to quantify regulatory costs to state and local governments, and to respond in writing to suggestions from these stakeholders for alternative regulatory provisions that could be more cost-effective),<sup>63</sup> the Regulatory Compliance Simplification Act (which requires [\*721] agencies to prepare compliance guides directed specifically at small businesses),<sup>64</sup> and a series of

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<sup>58</sup> See Landy & Dell, *supra* note 55, at 125.

<sup>59</sup> n59 In a hearing on Senate Bill 343, Senator Paul Simon read from a February 22 letter in the *Washington Post*:

"Eighteen months ago, my only child, Alex, died after eating hamburger meat contaminated with *E. coli* 0157H7 bacteria. Every organ, except for Alex's liver, was destroyed . . . My son's death did not have to happen and would not have happened if we had a meat and poultry inspection system that actually protected our children."

*Regulatory Reform: Hearing on S. 343 Before the S. Comm. on the Judiciary*, 104th Cong. 19 (1995) (statement of Sen. Simon). Simon urged caution in burdening the agencies with new-requirements, saying, "The food we have is safer than for any other people on the face of the earth. I don't think the American people want to move away from that." *Id.*; see also James S. Kunen, *Rats: What's for Dinner? Don't Ask*, NEW YORKER, Mar. 6, 1995, at 7 (discussing the continuing importance of Upton Sinclair's *The Jungle* as it relates to regulation of food contaminants).

<sup>60</sup> See Exec. Order No. 12,866, 3 C.F.R. 638 (1994), *reprinted as amended* in **5 U.S.C. § 601** app. at 745 (2006); AL GORE, CREATING A GOVERNMENT THAT WORKS BETTER AND COSTS LESS: REPORT OF THE NATIONAL PERFORMANCE REVIEW (1993).

<sup>61</sup> John D. Graham, *Legislative Approaches to Achieving More Protection Against Risk at Less Cost*, [1997 U. CHI. LEGAL F. 13, 57 \(1997\)](#). However, as a participant in numerous executive-branch and congressional discussions at the time, one of us (Adam Finkel) hastens to add that many in the executive agencies believed that the specific provisions in the Dole-Johnston bill were in fact punitive, and were indeed offered merely "in the guise of reform."

<sup>62</sup> James T. O'Reilly, *EPA Rulemaking After the 104th Congress: Death from Four Near-Fatal Wounds?*, [3 ENVTL. LAW. 1, 1 \(1996\)](#).

<sup>63</sup> Unfunded Mandates Reform Act of 1995, Pub. L. No. 104-4, **109 Stat. 48** (codified in amended at scattered sections of 2 U.S.C.).

<sup>64</sup> Contract with America Advancement Act of 1996, Pub. L. No. 104-121, tit. II, subtit. A, **110 Stat. 858-59** (codified as amended in scattered sections of 2, 5, 15, and 42 U.S.C.).

amendments to the Regulatory Flexibility Act (which makes judicially reviewable the agency's required analysis of why it should not adopt less costly regulatory alternatives favoring small businesses).<sup>65</sup> Against this backdrop, the CRA is more clearly seen as serving the primary purpose of giving special scrutiny--before aggrieved parties would have to plead their case in court--to rules that arguably conflict with other strong signals from Congress about the desired flexibility and cost-effectiveness of agency regulatory proposals.

### 3. *The CRA*

The CRA established a procedure by which Congress can oversee and, with the assent of the President, veto rules promulgated by federal agencies. Before any rule can take effect, the promulgating agency must submit to the Senate, House of Representatives, and the Comptroller General of the Government Accountability Office (GAO) a report containing, among other things, the rule and its complete CBA (if one is required).<sup>66</sup> The report is then submitted for review to the chairman and ranking member of each relevant committee in each chamber.<sup>67</sup> Some rules--for example, rules pertaining to internal agency functioning, or any rule promulgated by the Federal Reserve System--are exempted from this procedure.<sup>68</sup>

During this review process, the effective date of any major rule is postponed.<sup>69</sup> However, the President has discretion to allow a major rule [\*722] that would otherwise be suspended to go into effect for a limited number of purposes, such as national security.<sup>70</sup> The Act also exempts from suspension any rule for which the agency finds "for good cause . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."<sup>71</sup>

If Congress chooses to repeal any rule through the CRA, it may pass a joint resolution of disapproval via an expedited process. The procedure is expedited "to try to provide Congress with an opportunity to act on resolutions of disapproval before regulated parties must invest the significant resources necessary to comply with a major rule."<sup>72</sup> From the date that the agency submits its report of the rule, Congress has sixty days in session to pass a joint

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<sup>65</sup> *Id.* subtit. D, **110 Stat. 864-68** (codified as amended at **5 U.S.C. §§ 601-605, 609, 611** (2006)).

<sup>66</sup> **5 U.S.C. § 801(a)(1)(A)-(B)** (2006). Senator Pete Domenici of New Mexico inserted the provision requiring submission of the report to the Comptroller General because the Government Accountability Office (GAO) would be able to effectively review the CBA and ensure that the regulation complies with legal requirements, such as unfunded mandates legislation. See 141 CONG. REC. 9428-29 (1995) (statement of Sen. Domenici).

<sup>67</sup> **5 U.S.C. § 801(a)(1)(C)**.

<sup>68</sup> *Id.* § 804(3) (defining *rule* for the purposes of the CRA so as to exclude certain categories); *id.* § 807 (exempting all regulations promulgated by the Federal Reserve and Federal Open Market Committee from CRA requirements).

<sup>69</sup> *Id.* § 801(a)(3). A "major rule" under the CRA is any rule that: (1) has an annual effect on the economy of \$ 100 million or more; (2) results in a "major increase in costs or prices" for various groups, such as consumers and industries; or (3) is likely to result in "significant adverse effects on competition, employment, investment," or other types of enterprise abilities. *Id.* § 804(2). Any rule promulgated under the Telecommunications Act of 1996 is not a major rule for purposes of the CRA. *Id.*

<sup>70</sup> *Id.* § 801(c).

<sup>71</sup> *Id.* § 808. The good cause exception is intended to be limited to only those rules that are exempt from notice and comment by statute. See 142 CONG. REC. 6928 (1996) (statement of Rep. Hyde).

<sup>72</sup> 142 CONG. REC. 8198 (joint statement of Sens. Nickles, Reid, and Stevens); see also 147 CONG. REC. 2816 (2001) (statement of Sen. Jeffords) (noting that "scarce agency resources are also a concern" that justifies a stay on the enforcement of major rules).

resolution.<sup>73</sup> The procedure is further expedited in the Senate, where debate over a joint resolution of disapproval is limited to a maximum of ten hours, effectively preventing any possibility of a filibuster.<sup>74</sup> The House does not have a similar expedited procedure.<sup>75</sup> When a disapproval resolution passes both houses of Congress, it is presented to the President for signing.<sup>76</sup> The CRA drafters developed this structure to meet the bicameralism and presentment requirements of the Constitution, which had thwarted an earlier congressional attempt to retain veto power over certain agency actions.<sup>77</sup>

[\*723] Upon the enactment of a joint resolution against a federal agency rule, the rule will not take effect.<sup>78</sup> If the rule has already taken effect by the time a joint resolution is enacted--for example, if the rule is not a major rule, or if the President has exercised the authority to override suspension of the rule's effective date<sup>79</sup>--then it cannot continue in force.<sup>80</sup> The effect of a joint resolution of disapproval is also retroactive: any regulation overridden by the CRA process is "treated as though [it] had never taken effect."<sup>81</sup>

The CRA places a further limitation on agency action following a successful veto, which is the focus of this Article. Not only does the regulation not take effect as submitted to Congress, but the agency may not be free to reissue another rule to replace the one vetoed. Specifically, the CRA provides that:

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<sup>73</sup> **5 U.S.C. § 802(a)**. The sixty-day window excludes "days either House of Congress is adjourned for more than 3 days during a session of Congress." *Id.* If an agency submits a report with fewer than sixty days remaining in the session of Congress, the sixty-day window is reset, beginning on the fifteenth day of the succeeding session of Congress. See *id.* § 801(d)(1), (2)(A).

<sup>74</sup> *Id.* § 802(d)(2); *cf.* STANDING RULES OF THE SENATE R. XXII § 2 (2007) (requiring the affirmative vote of three-fifths of Senators to close debate on most legislative actions).

<sup>75</sup> See Morton Rosenberg, *Whatever Happened to Congressional Review of Agency Rulemaking?: A Brief Overview, Assessment, and Proposal for Reform*, [51 ADMIN. L. REV. 1051, 1063 \(1999\)](#) (criticizing the CRA for its lack of an expedited House procedure because, "As a practical matter, no expedited procedure will mean engaging the House leadership each time a rule is deemed important enough by a committee or group of members to seek speedy access to the floor").

<sup>76</sup> **5 U.S.C. § 801(a)(3)(B)**. If the President vetoes a resolution disapproving of a major rule, the suspension of the effective date is extended, at a minimum, until the earlier of thirty session days or the date that Congress votes and fails to override the President's veto. *Id.*

<sup>77</sup> U.S. CONST. art. I, § 7, cls. 2-3 (requiring, for a bill to become law, passage by both houses of Congress and either signing by the President or a presidential veto followed by a two-thirds congressional override in each house of Congress). Under these principles, the Supreme Court struck down § 224(c)(2) of the Immigration and Nationality Act, which allowed a single house of Congress to override the Attorney General's determination that deportation of an alien should be suspended. See [INS v. Chadha](#), [462 U.S. 919, 959 \(1983\)](#), invalidating [8 U.S.C. § 1254\(c\)\(2\)](#) (1982). Curiously, while the CRA was intended to give respect to the Constitution's bicameralism and presentment requirements, 142 CONG. REC. 6926 (statement of Rep. Hyde) (noting that, after *Chadha*, "the one-house or two-house legislative veto . . . was thus voided," and as a consequence the authors of the CRA developed a procedure that would require passage by both houses and presentment to the President); 142 CONG. REC. 8197 (joint statement of Sens. Nickles, Reid, and Stevens) (same), the 104th Congress enacted the unconstitutional line item veto in violation of those very principles less than two weeks after it had enacted the CRA. See Line Item Veto Act, Pub. L. No. 104-130, [110 Stat. 1200 \(1996\)](#) (codified as amended at [2 U.S.C. §§ 691-692](#) (Supp. II 1997)), *invalidated by Clinton v. City of New York*, [524 U.S. 417 \(1998\)](#).

<sup>78</sup> **5 U.S.C. § 801(b)(1)**.

<sup>79</sup> See *supra* notes 69-70 and accompanying text.

<sup>80</sup> **5 U.S.C. § 801(b)(1)**.

<sup>81</sup> *Id.* § 801(f). For a summary of the disapproval procedure created by the CRA, with emphasis on its possible use as a tool to check midnight regulation, see Jerry Brito & Veronique de Rugy, *Midnight Regulations and Regulatory Review*, [61 ADMIN. L. REV. 163, 189-90 \(2009\)](#).

A rule that does not take effect (or does not continue) under [a joint resolution of disapproval] may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.<sup>82</sup>

An agency's ability to promulgate certain rules after a veto thus turns on the CRA's meaning of "substantially the same form." We will discuss the range of scholarly and editorial interpretations of how ominously executive agencies should regard the prohibition against reissuance of "substantially similar" rules in Part III.B. But to foreshadow the main argument, we [\*724] believe that most commentators have offered an unduly pessimistic reading of this provision. One of the most respected experts in administrative law, Professor Peter Strauss, testified before Congress a year after the enactment of the CRA that the substantial similarity provision has a "doomsday effect."<sup>83</sup> Because, Strauss opined, the provision precludes the affected agency from ever attempting to regulate in the same topical area, Congress may well have tied its own hands and as a result will refrain from vetoing rules altogether.<sup>84</sup> Although we agree wholeheartedly with Strauss's recommendation that Congress should amend the CRA to require a statement of the reasons for the initial veto, we simply observe here that events subsequent to his 1997 testimony demonstrate that Congress did *not* in fact blanch from invoking a veto even when it was not primarily concerned about an agency exceeding its statutory authority: Congress overturned the OSHA ergonomics rule in 2001 ostensibly because of concern about excessive compliance costs and illusory risk-reduction benefits.<sup>85</sup> Therefore, § 801 (b)(2) of the CRA represents a very influential consequence of a veto power that Congress is clearly willing to use, and its correct interpretation is therefore of great importance to administrative law and process.

With very little evidence in the CRA's legislative history discussing this provision,<sup>86</sup> and only one instance in which the congressional veto has actually been carried out,<sup>87</sup> neither Congress nor the Judiciary has clearly established the meaning of this crucial clause. In the next several Parts, we will attempt to give the CRA's substantial similarity provision a coherent and correct meaning by interpreting it in the context of its legislative history, the political climate in which it was enacted and has been applied, and the broader administrative state.

## II. EXERCISE OF THE CONGRESSIONAL VETO

The CRA procedure for congressional override of a federal regulation [\*725] has only been used once.<sup>88</sup> In 2001, when the Bush Administration came into office, Republicans in Congress led an attempt to use the measure to

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<sup>82</sup> **5 U.S.C. § 801(b)(2)**.

<sup>83</sup> *Congressional Review Act: Hearing Before the Subcomm. on Commercial & Admin. Law of the H. Comm. on the Judiciary*, 105th Cong. 89 (1997) [hereinafter *Hearing on the CRA*] (statement of Peter L. Strauss, Betts Professor of Law, Columbia University), available at [http://commdocs.house.gov/committees/judiciary/hju40524.000/hju40524\\_of.htm](http://commdocs.house.gov/committees/judiciary/hju40524.000/hju40524_of.htm).

<sup>84</sup> *Id.*

<sup>85</sup> See *infra* Part VI and VII.

<sup>86</sup> See 142 CONG. REC. 6926 (1996) (statement of Rep. Hyde) (noting that, although the measure had already been enacted into law, "no formal legislative history document was prepared to explain the [CRA]"); *id.* at 8197 (joint statement of Sens. Nickles, Reid, and Stevens) (same).

<sup>87</sup> See *infra* Part II.A (discussing Congress's use of the veto in 2001 to disapprove of OSHA's ergonomics rule).

<sup>88</sup> See U.S. GOV'T ACCOUNTABILITY OFFICE, CONGRESSIONAL REVIEW ACT (CRA) FAQs, [http://www.gao.gov/legal/congressact/cra\\_faq.html#9](http://www.gao.gov/legal/congressact/cra_faq.html#9) (last visited Nov. 3, 2011) (explaining that the Department of Labor's ergonomics rule is the only rule that Congress has disapproved under the CRA).

strike down a workplace ergonomics regulation promulgated by OSHA.<sup>89</sup> The joint resolution generated much debate, in Washington and nationwide, over whether Congress should use the CRA procedure.<sup>90</sup> This Part discusses the joint resolution disapproving OSHA's ergonomics rule and briefly notes some other instances in which Congress has brought up but has not successfully executed the CRA. It then explores potential means by which the substantial similarity provision might be enforced.

#### A. The OSHA Ergonomics Rule

In 1990, Secretary of Labor Elizabeth Dole stated that ergonomic injuries were one "of the nation's most debilitating across-the-board worker safety and health illnesses," and announced that the Labor Department, under President George H.W. Bush, was "committed to taking the most effective steps necessary to address the problem of ergonomic hazards."<sup>91</sup> As we will discuss briefly in Part VI, in 1995 OSHA circulated a complete regulatory text of an ergonomics rule, but it met with such opposition that it was quickly scuttled. Five years after abandoning the first ergonomics proposal, OSHA proposed a new section to Title 20 of the *Code of Federal Regulations* "to reduce the number and severity of musculoskeletal disorders (MSDs) caused by exposure to risk factors in the workplace."<sup>92</sup> The regulation would, among other things, have required employers to provide employees with certain information about ergonomic injuries and MSDs and implement "feasible" controls to reduce MSD hazards if certain [\*726] triggers were met.<sup>93</sup> OSHA published the final rule in the *Federal Register* during the lame-duck period of the Clinton Administration, and it met strong opposition from Republicans and pro-business interest groups.

After the 107th Congress was sworn in, Senate Republicans led the charge against the ergonomics rule and proposed a joint resolution to disapprove of the regulation pursuant to the CRA.<sup>94</sup> Opponents of the OSHA regulation argued that it was the product of a flawed, last-minute rulemaking process in the outgoing Clinton Administration.<sup>95</sup> Although the Department of Labor had been attempting to develop an ergonomics program for at least the previous ten years,<sup>96</sup> the opponents called this particular rule "a regulation crammed through in the last couple of days of the Clinton administration" as a "major gift to organized labor."<sup>97</sup> Senator Mike Enzi of Wyoming argued that the proposed regulation was not published in the *Federal Register* until "a mere 358 days before

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<sup>89</sup> See Ergonomics Rule Disapproval, Pub. L. No. 107-5, 115 Stat. 7 (2001), *invalidating Ergonomics Program*, 65 Fed. Reg. 68,262 (Nov. 14, 2000).

<sup>90</sup> Compare Robert A. Jordan, *Heavy Lifting Not W's Thing*, BOS. SUNDAY GLOBE, Mar. 11, 2001, at E4 (arguing that President Bush's support of the joint resolution to overturn OSHA's ergonomics rule sends the message, "I do not share--or care about--your pain"), with Editorial, *Roll Back the OSHA Work Rules*, CHI. TRIB., Mar. 6, 2001, at N14 (calling the ergonomics rule "bad rule-making" and arguing that Congress should "undo it"). See generally 147 CONG. REC. 3055-80 (2001) (chronicling the floor debates in the House); *id.* at 2815-74 (chronicling the floor debates in the Senate).

<sup>91</sup> Press Release, Elizabeth H. Dole, Sec'y, Dep't of Labor, Secretary Dole Announces Ergonomics Guidelines to Protect Workers from Repetitive Motion Illnesses/Carpal Tunnel Syndrome (Aug. 30, 1990), *reprinted in* 145 CONG. REC. 24,467-68 (1999).

<sup>92</sup> Ergonomics Program, 65 Fed. Reg. at 68,846; see also Ergonomics Program, 64 Fed. Reg. 65,768-66,078 (proposed Nov. 23, 1999).

<sup>93</sup> Ergonomics Program, 65 Fed. Reg. at 68,847, 68,850-51.

<sup>94</sup> See S.J. Res. 6, 107th Cong. (2001) (enacted).

<sup>95</sup> See, e.g., 147 CONG. REC. 2815-16 (statement of Sen. Jeffords) ("[T]he ergonomics rule certainly qualifies as a 'midnight' regulation . . .").

<sup>96</sup> See Ergonomics Program, 65 Fed. Reg. at 68,264 (presenting an OSHA Ergonomics Chronology); see also *supra* note 91 and accompanying text (noting the Department of Labor's commitment in 1990 to address ergonomic injuries).

<sup>97</sup> 147 CONG. REC. 2817-18 (statement of Sen. Nickles).

[OSHA] made it the law of the land, one-quarter of the time they typically take." <sup>98</sup> He further suggested that OSHA ignored criticisms received during the notice-and-comment period, and instead relied on "hired guns" to provide information and tear apart witness testimony against the rule. <sup>99</sup>

This allegedly flawed and rushed procedure, OSHA's opponents argued, coupled with an overly aggressive posture toward the regulated industries, <sup>100</sup> led to an inefficient and unduly burdensome rule. Congressional Republicans and other critics seemed unconvinced by the agency's estimate of the costs and benefits. OSHA estimated that the regulation would cost \$ 4.5 billion annually, while others projected that it could cost up to \$100 billion--Senator Don Nickles of Oklahoma noted this wide range of estimates and said, "There is no way to know how much this would cost." <sup>101</sup> Democrats, however, argued that the rule was not [\*727] wasteful. Senator Edward Kennedy of Massachusetts said, in contrast, that the ergonomics rule was "flexible and cost-effective for businesses, and . . . overwhelmingly based upon scientific evidence." <sup>102</sup> The rule's proponents also emphasized its benefits, arguing that the rule's true cost of \$ 4.5 billion would be more than offset by a savings of "\$ 9.1 billion annually . . . recouped from the lost productivity, lost tax payments, administrative costs, and workers comp." <sup>103</sup> Critics argued that these benefits were overstated as businesses were naturally becoming more ergonomically friendly on their own. <sup>104</sup> Democrats also noted scientific evidence favoring the rule, including two reports by the National Academy of Sciences (NAS) and the Institute of Medicine reporting the enormous costs of work-related ergonomic injuries. <sup>105</sup> But critics cited reports in their favor, <sup>106</sup> and responded that the NAS report did not endorse the rule and could not possibly have shaped it, as the report was not released until after OSHA went forward with the regulation. <sup>107</sup>

Following expedited debate in Congress during which the legislators argued about the costs and benefits of the OSHA rule, both houses passed the joint resolution in March 2001. <sup>108</sup> When President Bush signed the joint

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<sup>98</sup> *Id.* at 2823 (statement of Sen. Enzi).

<sup>99</sup> *Id.* (estimating that "close to 2 million pages" of materials were submitted to OSHA during the public comment period, yet "there were only 94 days between the end of the public comment period and the date of the OSHA-published [rule]").

<sup>100</sup> See, e.g., Lisa Junker, *Marthe Kent: A Second Life in the Public Eye*, SYNERGIST, May 2000, at 28, 30 (quoting former OSHA Director of Safety Standards as saying: "I was born to regulate.," and "I don't know why, but that's very true. So as long as I'm regulating, I'm happy. . . . I think that's really where the thrill comes from. And it is a thrill; it's a high").

<sup>101</sup> 147 CONG. REC. 2818 (statement of Sen. Nickles); see also Editorial, *supra* note 90, at N14 ("Although [OSHA] puts the price tag on its rules at \$ 4.5 billion, the Economic Policy Foundation gauges the cost to business at a staggering \$ 125.6 billion.").

<sup>102</sup> 147 CONG. REC. 2818 (statement of Sen. Kennedy).

<sup>103</sup> *Id.* at 2827 (statement of Sen. Wellstone).

<sup>104</sup> *Id.* at 2815-16 (statement of Sen. Jeffords). Of course, if a market-driven move toward ergonomically friendly business meant that the future benefits of OSHA's rule were overstated, then its future costs must have been simultaneously overstated as well.

<sup>105</sup> See *id.* at 2830 (statement of Sen. Dodd) (citing a report finding that "nearly 1 million people took time from work to treat or recover from work-related ergonomic injuries" and that the cost was "about \$ 50 billion annually").

<sup>106</sup> See *id.* at 2833-34 (statement of Sen. Hutchinson) (citing a report that "shows that the cost-to-benefit ratio of this rule may be as much as 10 times higher for small businesses than for large businesses").

<sup>107</sup> See *id.* at 3056 (statement of Rep. Boehner) ("OSHA completed its ergonomics regulation without the benefit of the National Academy study.").

<sup>108</sup> See Ergonomics Rule Disapproval, Pub. L. No. 107-5, 115 Stat. 7 (2001), *invalidating* Ergonomics Program, 65 Fed. Reg. 68,262 (Nov. 14, 2000); 147 CONG. REC. 3079 (recording the House roll call vote of 223-206, with 4 Representatives not voting); *id.* at 2873 (recording the Senate roll call vote of 56-44).

resolution into law, he emphasized the need for "an understanding of the costs and benefits" and his Administration's intent to continue to "pursue a comprehensive approach to ergonomics."<sup>109</sup>

However, OSHA has never since made any attempt to regulate in this area, although it has issued four sets of voluntary ergonomics guidelines-- [\*728] for nursing homes, retail grocery stores, poultry processing, and the shipbuilding industry. Even without a specific standard, OSHA could use its general duty authority<sup>110</sup> to issue citations for ergonomic hazards that it can show are likely to cause serious physical harm, are recognized as such by a reasonable employer, and can be feasibly abated. However, in the more than ten years after the congressional veto of the ergonomics rule, OSHA issued fewer than one hundred such citations nationwide.<sup>111</sup> For purposes of comparison, in an average year, federal and state OSHA plans collectively issue more than 210,000 violations of all kinds nationwide.<sup>112</sup>

### *B. Midnight Regulations and Other Threats to Use the CRA*

The repeal of the OSHA ergonomics regulation has so far been the only instance in which Congress has successfully used the CRA to veto a federal regulation. However, the option of congressional repeal of rules promulgated by federal agencies has been considered in several other arenas, and in some instances threats by legislators to call for a CRA veto have led to a type of "soft veto" in which the agency responds to the threat by changing its proposed regulation. This has surfaced often, though not always, in the context of possibly repealing so-called midnight regulations.<sup>113</sup>

Some Republican lawmakers argued that the OSHA ergonomics standard circumvented congressional oversight because it was finalized in the closing weeks of the Clinton Administration.<sup>114</sup> Years later, these same arguments were echoed by the Obama Administration and some [\*729] Democrats in the 111th Congress with respect to other rules. As the Bush Administration left office in January 2009, it left behind several last-minute regulations, including rules that would decrease protection of endangered species, allow development of oil shale on some federal lands, and open up oil drilling in the Utah wilderness.<sup>115</sup> The Bush Administration also left behind a conscientious objector regulation that would allow certain healthcare providers to refuse to administer abortions or

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<sup>109</sup> Presidential Statement on Signing Legislation to Repeal Federal Ergonomics Regulations, 37 WEEKLY COMP. PRES. DOC. 477 (Mar. 20, 2001).

<sup>110</sup> See Occupational Safety and Health (OSH) Act of 1970 § 5(a)(1), [29 U.S.C. § 654](#) (2006).

<sup>111</sup> The OSHA website permits users to word-search the text of all general duty violations. See OCCUPATIONAL SAFETY & HEALTH ADMIN., DEPT OF LABOR, GENERAL DUTY STANDARD SEARCH, <http://www.osha.gov/pls/imis/generalsearch.html> (last visited Nov. 3, 2011). A search for all instances of the word *ergonomic* between March 7, 2001, (the day after the congressional veto) and August 18, 2011, (the day we ran this search) yielded sixty violations. The busiest year was 2003 (fifteen violations), and there were eight violations in 2010. An additional search for the term *MSD* yielded thirteen violations during this ten-year span, although some of these were duplicative of the first group of sixty.

<sup>112</sup> See SAFETY & HEALTH DEP'T, AFL-CIO, DEATH TOLL ON THE JOB: THE TOLL OF NEGLECT 61 (19th ed. 2010), [http://www.aflcio.org/issues/safety/memorial/upload/dotj\\_2010.pdf](http://www.aflcio.org/issues/safety/memorial/upload/dotj_2010.pdf).

<sup>113</sup> See Jack M. Beermann, [Combating Midnight Regulation, 103 NW. U. L. REV. COLLOQUY 352, 352 n.1 \(2009\)](#), <http://www.law.northwestern.edu/lawreview/colloquy/2009/9/LRColl2009n9Beermann.pdf> ("Midnight regulation" is loosely defined as late-term action by an outgoing administration."). Colloquially, the term is usually reserved for situations in which the White House changes parties.

<sup>114</sup> See *supra* notes 95-99 and accompanying text.

<sup>115</sup> See, e.g., Stephen Power, *U.S. Watch: Obama Shelves Rule Easing Environmental Reviews*, WALL ST. J., Mar. 4, 2009, at A4 (noting executive and administrative decisions to "shelve" a Bush Administration rule allowing federal agencies to "bypass" consultation on whether new projects could harm endangered wildlife).

dispense contraception.<sup>116</sup> Congressional Democrats brought up the CRA as an option for repealing the Bush Administration's midnight regulations, while the Obama Administration searched for an executive strategy to scuttle them.<sup>117</sup> Although the CRA may be at its most useful when there is a significant realignment in party control over the Legislative and Executive Branches (as occurred in 2001 and 2009),<sup>118</sup> the Democrats of the **111th** Congress did not use the CRA to achieve their goal of overturning the Bush Administration's regulations--in the end, the Obama Administration used executive procedures.<sup>119</sup>

However, not all threats to use the CRA have occurred immediately [\*730] following a party change. In early 2010, one year after President Obama's inauguration, Senator Lisa Murkowski of Alaska considered proposing a resolution to disapprove of the Environmental Protection Agency's (EPA's) "endangerment finding" that greenhouse gases threaten the environment and human health.<sup>120</sup> Senator Murkowski's idea never came to fruition.

### C. Enforcement of the Substantial Similarity Provision

Since there has never yet been an attempt by an agency to reissue a rule following a CRA veto, there remains ambiguity not only over what kinds of rules are barred, but how any such restrictions would be enforced. In this Part, we briefly discuss three possible ways the substantial similarity provision may affect agency action: one administrative response, one legislative, and one judicial.

One possible means of application of the substantial similarity provision begins in the Executive Branch, most likely within the administrative department whose regulation has been vetoed. With the threat of invalidation hanging overhead, an agency may be deterred from promulgating regulations within a certain area for fear of having its work nullified--or worse, of having ruined for posterity the ability to regulate in a given area (if it interprets the CRA

<sup>116</sup> See Jennifer Lubell, *Conscientious Objectors: Obama Plan to Rescind Rule Draws Catholic Criticism*, MOD. HEALTHCARE, Mar. 23, 2009, at 33 (discussing the Obama Administration's plans to prevent the Bush Administration's conscientious objector rule from going into effect); Charlie Savage, *Democrats Look for Ways to Undo Late Bush Administration Rules*, N.Y. TIMES, Jan. 12, 2009, at A10 ("Democrats are hoping to roll back a series of regulations issued late in the Bush administration that weaken environmental protections and other restrictions.").

<sup>117</sup> See Peter Nicholas & Christi Parsons, *Obama Plans a Swift Start*, L.A. TIMES, Jan. 20, 2009, at A1 (reporting that "Obama aides have been reviewing the so-called midnight regulations" and noting that "Obama can change some Bush policies through executive fiat"); Savage, *supra* note 116 (reporting that "Democrats . . . are also considering using the Congressional Review Act of 1996" to overturn some Bush Administration regulations).

<sup>118</sup> See Brito & de Rugy, *supra* note 81, at 190 ("[T]he CRA will only be an effective check on midnight regulations if the incoming president and the Congress are of the same party. If not, there is little reason to expect that the Congress will use its authority under the CRA to repeal midnight regulations. Conversely, if the president is of the same party as his predecessor and the Congress is of the opposite party, it is likely that the new president will veto a congressional attempt to overturn his predecessor's last-minute rules." (footnote omitted)). *But see* Rosenberg, *supra* note 75 (pointing out flaws in the CRA and proposing a new scheme of congressional review of federal regulation).

<sup>119</sup> See, e.g., Rescission of the Regulation Entitled "Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law," [74 Fed. Reg. 10,207, 10,209-10](#) (proposed Mar. 10, 2009) (rescinding the Bush Administration's "conscientious objector" rule).

<sup>120</sup> See Editorial, *Ms. Murkowski's Mischief*, NY. TIMES, Jan. 19, 2010, at A30. Note, however, that it is unclear that an agency "finding" is sufficiently final agency action for a CRA veto. *But cf. infra* note 268 (noting attempts to bring a broader range of agency actions under congressional review, including the recently introduced Closing Regulatory Loopholes Act of 2011). Nor is it clear that a joint resolution of disapproval may be inserted as part of a large bill, as Senator Murkowski considered. *Cf. 5 U.S.C. § 802(a)* (2006) (setting forth the exact text to be used in a joint resolution of disapproval). Murkowski intended to insert the resolution into the bill raising the debt ceiling. See Editorial, *supra*. Doing so would not only have run afoul of the provision setting the joint resolution text, but would impermissively have either expanded debate on the resolution, see [5 U.S.C. § 802\(d\)\(2\)](#) (limiting debate in the Senate to ten hours), or limited debate on the debt ceiling bill, which is not subject to the CRA's procedural restrictions.

ominously). In other words, agencies might engage in a sort of self-censorship that itself enforces the CRA. Indeed, the continuous absence of ergonomics from the regulatory agenda for an entire decade following the veto of OSHA's rule--and well into the Obama Administration--arguably provides evidence of such self-censorship. In prepared testimony before a Senate subcommittee of the Committee on Appropriations, Secretary of Labor Elaine Chao testified that, due to the exercise of the veto, the Department of Labor would need to work with Congress to determine what principles to apply to any future regulation in the ergonomics field. She did not want to "expend valuable--and limited--resources on a new effort" if another regulation would be [\*731] invalidated as substantially similar.<sup>121</sup>

In addition to agency self-censorship, there is, of course, a potential Legislative application of the substantial similarity provision. If an agency were to reissue a vetoed rule "in substantially the same form," then Congress could use the substantial similarity provision as a compelling justification for enacting another joint resolution, perhaps voicing its objection to the substance of the new rule, but using "similarity" to bypass a discussion of the merits. For example, if OSHA reissued an ergonomics rule that members of Congress thought was substantially similar to the Clinton Administration rule, then they might be motivated to repeal the rule simply because they would see the new rule as outside the law, and a disrespect to their prior action under the CRA. Of course, as with the original ergonomics rule, the notion that an agency is acting outside its authority may be considered as merely one factor among others--procedural, cost-benefit related, and even political--in determining whether to strike down an agency rule. But a congressional belief that an agency is reissuing a rule in violation of the CRA may cut in favor of enacting a second joint resolution of disapproval, even if certain members of Congress would not be inclined to veto the rule on more substantive grounds. Indeed, this could even turn Congress's gaze away from the rule's substance entirely--a sort of "us against them" drama might be played out in which opponents could use the alleged circumvention as a means to stir [\*732] up opposition to a rule that the majority might find perfectly acceptable if seeing it de novo.

The Judiciary might also weigh in on the issue. If an agency were to reissue a rule that is substantially similar to a vetoed rule, and Congress chose not to exercise its power of veto under the CRA, then a regulated party might convince the courts to strike down the rule as outside of the agency's statutory authority. Although the text of the CRA significantly limits judicial review of a congressional veto (or failure to veto), the statute does *not* prohibit judicial review for noncompliance with the substantial similarity clause of a rule promulgated after a congressional veto.<sup>122</sup> In other words, while Congress may have successfully insulated its own pronouncements from judicial

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<sup>121</sup> *Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations for Fiscal Year 2002: Hearing on H.R. 3061/S. 1536 Before a Subcomm. of the S. Comm. on Appropriations*, 107th Cong. 72 (2001) [hereinafter *Hearing on H.R. 3061/S. 1536*] (statement of Elaine L. Chao, Secretary, U.S. Department of Labor). However, Secretary Chao had promised immediately before the veto that she would do exactly the opposite and treat a CRA action as an impetus to reissue an improved rule. See Letter from Elaine L. Chao, Sec'y, U.S. Dep't of Labor, to Arlen Specter, Chairman, Subcomm. on Labor, Health & Human Servs., Educ, S. Comm. on Appropriations, U.S. Senate (Mar. 6, 2001) (promising to take future action to address ergonomics), *reprinted in* 147 CONG. REC. 2844 (2001) (statement of Sen. Specter). More recently, OSHA Assistant Secretary David Michaels, appointed by President Obama, has repeatedly indicated that OSHA has no plans to propose a new ergonomics regulation. For example, in February 2010, he addressed the ORG Worldwide Occupational Safety and Health Group (an audience of corporate health directors for large U.S. companies) and explained his proposal to restore a separate column for musculoskeletal disorder (MSD) cases in the required establishment-specific log of occupational injuries with this caveat: "It appears from press reports that our announcement of this effort may have confused some observers. So, let me be clear: This is *nota* prelude to a broader ergonomics standard." David Michaels, Assistant Sec'y of Labor for Occupational Safety & Health Administration, Remarks at the Quarterly Meeting of the ORC Worldwide Occupational Safety & Health Group & Corp. Health Dirs. Network (Feb. 3, 2010), [http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=SPEECHES&p\\_id=2134](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=SPEECHES&p_id=2134). For a discussion of similar about-faces in statements by members of Congress immediately before and after the veto, see *infra* Part III.B.

<sup>122</sup> See 5 U.S.C. § 805 (2006) ("No determination, finding, action, or omission under this chapter shall be subject to judicial review."). The legislative record makes clear that "a court with proper jurisdiction may review the resolution of disapproval and the law that authorized the disapproved rule to determine whether the issuing agency has the legal authority to issue a substantially different rule." 142 CONG. REC. 8199 (1996) (statement of Sen. Nickles). Indeed, the CRA prohibits a court only

review, that does not stop a plaintiff from asking a court to rule--without considering Congress's silence or statements--whether a rule that was allowed through should have been struck down as substantially similar.

There appear to be two primary ways in which judicial review would arise. First, a party might raise invalidity as a defense if an agency were to try enforcing a rule it arguably did not have authority to promulgate under the CRA. The defendant in the administrative proceedings could appeal agency enforcement of the rule to the federal courts under Chapter 7 of the APA, and a court might then strike down the regulation as a violation of [\*733] the substantial similarity provision.<sup>123</sup> But a regulated party need not wait until an agency attempts to enforce the rule in order to raise a challenge; as a second option, one may go on the offensive and bring suit for declaratory judgment or injunctive relief to prevent the agency from ever enforcing the rule in the first place.<sup>124</sup> In either of these situations, assuming a justiciable case or controversy under Article III,<sup>125</sup> a federal court would need to interpret the CRA to determine whether the reissued rule was substantially similar to a vetoed rule and thus invalid.

Since such a lawsuit has not yet been brought to the federal courts, there is no authoritative interpretation of the CRA to guide agency rulemaking following a congressional veto.<sup>126</sup> Where an agency does not wish to risk invalidation of a rule that merely *may* skirt the outer margins of substantial similarity (whatever those might be), the effect of the CRA may be to overdeter agency action via "self-censorship" even where its regulation may be legally valid. Until the federal courts provide an authoritative interpretation of the CRA, those outer margins of substantial similarity are quite large.<sup>127</sup> For this reason, it is important to provide a workable and realistic interpretation of the CRA to guide agency action and avoid overdeterrence. It is also important to set boundaries with an eye toward the problem of agency *inaction*--agencies should not hide behind the CRA as an excuse not to do anything in an area where the public expects some action and where Congress did not intend to block all rulemaking.

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from inferring the intent of Congress in *refusing* to enact a joint resolution of disapproval, implying that courts should (1) consider congressional intent in considering enacted resolutions, and (2) not infer substantial dissimilarity from Congress's failure to veto a second rule. See 5 U.S.C. § 801(g) ("If the Congress does not enact a joint resolution of disapproval under section 802 respecting a rule, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval."); see also 142 CONG. REC. 8199 (statement of Sen. Nickles) (referring to § 801(g) and noting that the "limitation on judicial review in no way prohibits a court from determining whether a rule is in effect"). While some may call into question the constitutionality of such strong limits on judicial review, the CRA drafters' constitutional argument defending the provisions suggests that the limits are meant to address procedure. See *id.* ("This . . . limitation on the scope of judicial review was drafted in recognition of the constitutional right of each House of Congress to 'determine the Rules of its Proceedings' which includes being the final arbiter of compliance with such Rules." (citing U.S. CONST. art. I, § 5, cl. 2)). Thus, since a court may rule upon whether a rule is in effect, yet lacks the power to weigh Congress's omission of a veto *against* a finding of substantial similarity, a court could conduct its own analysis to determine whether a non-vetoed second rule is substantially similar and hence invalid.

<sup>123</sup> See 5 U.S.C. § 702 (conferring a right of judicial review to persons "suffering legal wrong because of agency action"); *id.* § 706(2)(C) (granting courts the authority to strike down agency action that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right"); see also *id.* § 704 (requiring that an aggrieved party exhaust its administrative remedies before challenging a final agency action in federal court).

<sup>124</sup> See, e.g., *Babbitt v. Sweet Home Chapter of Cmty. for a Great Or.*, 515 U.S. 687 (1995) (entertaining a declaratory relief action brought by parties challenging a regulation promulgated by the Department of Interior under the Endangered Species Act).

<sup>125</sup> U.S. CONST. art. III, § 2 (granting the federal courts jurisdiction only over cases and controversies); see also *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) (explaining the requirement of plaintiff standing); *O'Shea v. Littleton*, 414 U.S. 488 (1974) (requiring that the plaintiffs case be ripe for adjudication).

<sup>126</sup> See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is.").

<sup>127</sup> See *infra* Part III (providing a spectrum of possible interpretations, and noting the vastly different interpretations of the substantial similarity provision during the debates over the ergonomics rule).

In the next two Parts we will attempt to reconcile the vast spectrum of possible "substantial similarity" interpretations with the political and legislative history of the CRA, with the joint resolution overturning the OSHA ergonomics rule, and with the background principles of CBA and administrative law.

### [\*734] III. THE SPECTRUM OF INTERPRETATIONS OF "SUBSTANTIALLY SIMILAR"

In this Part, we develop seven possible interpretations of the key term "substantially similar," argue that interpretations offered by partisans during the ergonomics debate should be uniformly ignored as posturing, and suggest that interpretations offered after the ergonomics veto are too pessimistic.

#### *A. Hierarchy of Possible Interpretations*

Rather than constructing a definition of "substantially the same" from first principles, we will ground this discussion with reference to the spectrum of plausible interpretations of that key phrase, arrayed in ascending order from the least troublesome to the issuing agency to the most daunting. We use this device not to suggest that the center of gravity in the struggle of competing ideologies in Congress at the time the CRA was enacted should point the way toward a particular region of this spectrum, but rather to erect some markers that can be rejected as implausible interpretations of "substantially the same" and thereby help narrow this range. Although we will support our interpretation with reference to specific items in the legislative history of the CRA, starting out with this hierarchy also allows us to focus on what Congress could have made less frustratingly vague in its attempt to prevent agencies from reissuing rules that would force duplicative congressional debate.

We can imagine at least seven different levels of stringency that Congress could plausibly have chosen when it wrote the CRA and established the "substantially the same" test to govern the reissuance of related rules:

**Interpretation 1: An identical rule can be reissued if the agency asserts that external conditions have changed.** A reissued rule only becomes "substantially the same," in any sense that matters, if Congress votes to veto it again on these grounds. Therefore, an agency could simply wait until the makeup of Congress changes, or the same members indicate a change of heart about the rule at hand or about regulatory politics more generally, and reissue a wholly identical rule. The agency could then simply claim that although the regulation was certainly in "substantially the same form," the effect of the rule is now substantially different from what it would have been the first time around.

**Interpretation 2: An identical rule can be reissued if external conditions truly *have* changed.** We will discuss this possibility in detail in Part V. This interpretation of "substantially the same" recognizes that the effects of regulation--or the estimates of those effects--can change over time even if the rule itself does not change. Our understanding of the [\*735] science or economics behind a rule can change our understanding of its benefits or costs, or those benefits and costs themselves can change as technologies improve or new hazards emerge. For example, a hypothetical Federal Aviation Administration (FAA) rule banning smoking on airliners might have seemed draconian if proposed in 1960, given the understanding of the risks of second-hand smoking at the time, but it was clearly received much differently when actually issued thirty years later.<sup>128</sup> Safety technologies such as antilock brake systems that would have been viewed as experimental and prohibitively expensive when first developed came to be viewed as extremely cost-effective when their costs decreased with time. In either type of situation, an identical rule might become "substantially different" not because the vote count had changed, but because the same regulatory language had evolved a new meaning, and then Congress might welcome another opportunity to evaluate the costs and benefits.

**Interpretation 3: The reissued rule must be altered so as to have significantly greater benefits and/or significantly lower costs than the original rule.** Under this interpretation, the notion of "similar form" would not be judged via a word-by-word comparison of the two versions, but by a common-sense comparison of the stringency and impact of the rule. We will discuss in Part IV a variety of reasons why we believe Congress intended that the

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<sup>128</sup> Prohibition Against Smoking, [55 Fed. Reg. 8364](#) (Mar. 7, 1990) (codified at 14 C.F.R. pts. 121, 129, 135) (2006).

currency for judging similarity should be costs and benefits rather than the extent of narrative revision to the regulatory text per se or the extent to which a reissued rule contains wholly different provisions or takes a different approach. At this point, it should suffice to point out that as a practical matter, two versions of a regulation that have vastly different impacts on society might contain 99.99% or more of their individual words in common, and thus be almost identical in "form" if that word was used in its most plebian sense. An OSHA rule requiring controls on a toxic substance in the workplace, for example, might contain thousands of words mandating engineering controls, exposure monitoring, recordkeeping, training, issuance of personal protective equipment, and other elements, all triggered when the concentration of the contaminant exceeded some numerical limit. If OSHA reissued a vetoed toxic substance rule *with one single word changed* (the number setting the limit), the costs and burdens could drop precipitously. We suggest it would be bizarre to constrain the agency from attempting to satisfy congressional concerns by fundamentally changing the substance and import of a vetoed rule merely because doing so might affect only a [\*736] small fraction of the individual words in the regulatory text.<sup>129</sup>

**Interpretation 4: In addition to changing the overall costs and benefits of the rule, the agency must fix all of the specific problems Congress identified when it vetoed the rule.** This interpretation would recognize that despite the paramount importance of costs, benefits, and stringency, Congress may have reacted primarily to specific aspects of the regulation. Perhaps it makes little sense for an agency to attempt to reissue a rule that is substantially different in broad terms, but that pushes the same buttons with respect to the way it imposes costs, or treats the favored sectors or constituents that it chooses not to exempt. However, as we will discuss in Part IV.B, the fact that Congress chose not to accompany statements of disapproval with any language explaining the consensus of what the objections were may make it inadvisable to require the agency to fix problems that were never formally defined and that may not even have been seen as problems by more than a few vocal representatives.

**Interpretation 5: In addition to changing the costs and benefits and fixing specific problems, the agency must do more to show it has "learned its lesson."** This interpretation would construe "substantially the same form" in an expansive way befitting the colloquial use of the word *form* as more than, or even perpendicular to, substance. In other words, the original rule deserved a veto because of how it was issued, not just because of what was issued, and the agency needs to change its attitude, not just its output. This interpretation comports with Senator Enzi's view of why the CRA was written, as he expressed during the ergonomics floor debate: "I assume that some agency jerked the Congress around, and Congress believed it was time to jerk them back to reality. Not one of you voted against the CRA."<sup>130</sup> If the CRA was created as a mechanism to assert the reality of congressional power, then merely fixing the regulatory text may not be sufficient to avoid repeating the same purported mistakes that doomed the rule upon its first issuance.

**Interpretation 6: In addition to the above, the agency must devise a wholly different regulatory approach if it wishes to regulate in an area Congress has cautioned it about.** This would interpret the word *form* in the way that scholars of regulation use to distinguish fundamentally different kinds of regulatory instruments--if the [\*737] vetoed rule was, for example, a specification standard, the agency would have to reissue it as a performance standard in order to devise something that was not in "substantially the same form." An even more restrictive reading would divide *form* into the overarching dichotomy between command-and-control and voluntary (or market-based) designs: if Congress nixed a "you must" standard, the agency would have to devise a "you may" alternative to avoid triggering a "substantially similar" determination.

**Interpretation 7: An agency simply cannot attempt to regulate (in any way) in an area where Congress has disapproved of a specific regulation.** This most daunting interpretation would take its cue from a particular reading of the clause that follows the "same form" prohibition: "unless the reissued or new rule is specifically

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<sup>129</sup> It is even conceivable that a wholly identical regulatory text could have very different stringency if the accompanying preamble made clear that it would be enforced in a different way than the agency had intended when it first issued the rule (or that Congress had misinterpreted it when it vetoed the rule).

<sup>130</sup> 147 CONG. REC. 2821 (2001) (statement of Sen. Enzi).

authorized by a law enacted after the date of the joint resolution disapproving the original rule." <sup>131</sup> Such a reading could have been motivating the dire pronouncements of congressional Democrats who argued, as did Senator Russ Feingold of Wisconsin, that a "vote for this resolution is a vote to block any Federal ergonomics standard for the foreseeable future." <sup>132</sup> However, we will argue below that it is clear that Congress meant this interpretation only to apply in the rare cases where the organic statute only allowed the exact rule that the agency brought forward, and thus the veto created a paradox because the agency was never authorized to promulgate a different regulation.

#### *B. How Others Have Interpreted "Substantially the Same"*

By far the majority of all the statements ever made interpreting the meaning of "substantially the same" were uttered by members of Congress during the floor debate over the OSHA ergonomics standard. None of these statements occupied the wide middle ground within the spectrum of possible interpretations presented above. Rather, at one extreme were many statements trivializing the effect of the veto, such as, "the CRA will not act as an impediment to OSHA should the agency decide to engage in ergonomics rulemaking." The members who disagreed with this sanguine assessment did so in stark, almost apocalyptic terms, as in, "make no mistake about the resolution of disapproval that is before us. It is an atom bomb for the ergonomics rule . . . . Until Congress gives it permission, OSHA will be powerless to adopt an ergonomics rule

Surely the Democrats in Congress generally prefer an interpretation of legislative control over the regulatory system that defers maximally to the [\*738] executive agencies, allowing them to regulate with relatively few constraints or delays, while Republicans generally favor an interpretation that gives Congress the power to kill whole swaths of regulatory activity "with extreme prejudice." But in both cases, what they want the CRA to mean in general is the opposite of what they wanted their colleagues to think it meant in the run-up to a vote on a specific resolution of disapproval. Hence the fact that the first quote above, and dozens like it, came not from the left wing but from Republican James Jeffords of Vermont; <sup>133</sup> whereas the "atom bomb" and similarly bleak interpretations of the CRA came from Democrats such as Edward Kennedy of Massachusetts. <sup>134</sup> Clearly, both the trivialization of a possible veto by those hoping to convince swing voters that their disapproval was a glancing blow, as well as the statements cowering before the power of the CRA by those hoping to dissuade swing voters from "dropping the bomb," should not be taken at face value, and should instead be dismissed as posturing to serve an expedient purpose. Indeed, when the smoke cleared after the ergonomics veto, the partisans went back to their usual stances. <sup>135</sup>

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<sup>131</sup> **5 U.S.C. § 801(b)(2)** (2006).

<sup>132</sup> 147 CONG. REC. 2860 (statement of Sen. Feingold).

<sup>133</sup> *Id.* at 2816 (statement of Sen. Jeffords).

<sup>134</sup> *Id.* at 2820 (statement of Sen. Kennedy). This particular pattern was also clearly evident in the House floor debate on ergonomics. Consider, for example, this sanguine assessment from a strident opponent of the OSHA rule, Republican Representative Roy Blunt: "When we look at the legislative history of the Congressional Review Act, it is clear that this issue can be addressed again . . . . [T]he same regulation cannot be sent back essentially with one or two words changed . . . . [But] this set of regulations can be brought back in a much different and better way." *Id.* at 3057 (statement of Rep. Blunt). At the opposite end of the spectrum were proponents of ergonomics regulation such as Democratic Representative Rob Andrews: "Do not be fooled by those who say they want a better ergonomics rule, because if this resolution passes . . . [t]his sends ergonomics to the death penalty . . . ." *Id.* at 3059 (statement of Rep. Andrews).

<sup>135</sup> For example, in June 2001, Republican Senator Judd Gregg strongly criticized the Breaux Bill for encouraging OSHA to promulgate what he called a regulation "like the old Clinton ergonomics rule, super-sized." See James Nash, *Senate Committee Approves Bill Requiring Ergonomics Rule*, EHS TODAY (June 20, 2002, 12:00 AM), [http://ehstoday.com/news/ehs\\_imp\\_35576/](http://ehstoday.com/news/ehs_imp_35576/); see also *infra* Part IV.A.5 (describing the Breaux Bill). But at roughly the same time, Democratic Senator Edward Kennedy was encouraging OSHA to reissue a rule, with no mention of any possible impediment posed by the CRA: "It has been a year now that America's workers have been waiting for the Department of Labor to adopt a new ergonomics standard. We must act boldly to protect immigrant workers from the nation's leading cause of workplace injury." *Workplace Safety and Health for Immigrants*

The set of less opportunistic interpretations of "substantially the same," on the other hand, has a well-defined center of gravity. Indeed, most legal and political science scholars, as well as experts in OSHA rulemaking, seem to agree that a veto under the CRA is at least a harsh punishment, and [\*739] perhaps a death sentence. For example, Charles Tiefer described the substantial similarity provision as a "disabling of the agency from promulgating another rule on the same subject."<sup>136</sup> Morton Rosenberg, the resident expert on the CRA at the Congressional Research Service, wrote after the ergonomics veto that "substantially the same" is ambiguous, but he only reached a sanguine conclusion about one narrow aspect of it: an agency does not need express permission from Congress to reissue a "substantially different" rule when it is compelled to act by a statutory or judicial deadline.<sup>137</sup> He concluded, most generally, that whatever the correct legal interpretation, "[T]he practical effect . . . may be to dissuade an agency from taking any action until Congress provides clear authorization."<sup>138</sup> Similarly, Julie Parks criticized § 801(b)(2) as "unnecessarily vague," but concluded that it at least "potentially withdraws substantive authority from OSHA to issue *any* regulation concerning ergonomics."<sup>139</sup>

Advocates for strong OSHA regulation, who presumably would have no interest in demonizing the CRA after the ergonomics veto had already passed, nevertheless also take a generally somber view. Vernon Mogensen interprets "substantially the same" such that "the agency that issued the regulation is prohibited from promulgating it again without congressional authorization."<sup>140</sup> A.B. (Butch) de Castro--who helped write the ergonomics standard while an OSHA staff member--similarly opined in 2006 that "OSHA is barred from pursuing development of another ergonomics standard unless ordered so by Congress."<sup>141</sup> In 2002, Parks interviewed Charles Jeffress, who was the OSHA Assistant Secretary who "bet the farm" on the ergonomics rule, and he reportedly believed (presumably with chagrin) that "OSHA does not have the authority to issue [\*740] another ergonomics rule, because the substantially similar language is vague and ambiguous."<sup>142</sup>

As we will argue in detail below, we believe that all of these pronouncements ascribe to Congress more power to preemptively bar reissued regulations than the authors of the CRA intended, and certainly more anticipatory power than Congress should be permitted to wield.

#### IV. WHY "SUBSTANTIALLY THE SAME" SHOULD NOT BE INTERPRETED OMINOUSLY

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*and Low Wage Workers: Hearing Before the Subcomm. on Emp't, Safety & Training of the S. Comm. on Health, Educ., Labor & Pensions*, 107th Cong. 3 (2002) (statement of Sen. Kennedy).

<sup>136</sup> Charles Tiefer, *How to Steal a Trillion: The Uses of Laws About lawmaking in 2001*, [17 J.L.&POL. 409, 476 \(2001\)](#).

<sup>137</sup> MORTON ROSENBERG, CONG. RESEARCH SERV., RL 30116, CONGRESSIONAL REVIEW OF AGENCY RULEMAKING: AN UPDATE AND ASSESSMENT AFTER NULLIFICATION OF OSHA'S ERGONOMICS STANDARD 23 (2003).

<sup>138</sup> *Id.*

<sup>139</sup> Julie A. Parks, Comment, *Lessons in Politics: Initial Use of the Congressional Review Act*, [55 ADMIN. L. REV. 187, 200 \(2003\)](#) (emphasis added); see also Stuart Shapiro, *The Role of Procedural Controls in OSHA's Ergonomics Rulemaking*, 67 PUB. ADMIN. REV. 688, 696 (2007) (concluding that "[a]ttempts to create an ergonomics regulation effectively ended" with the 2001 veto because of the language of § 801(b)(2)).

<sup>140</sup> Vernon Mogensen, *The Slow Rise and Sudden Fall of OSHA's Ergonomics Standard*, WORKINGUSA, Fall 2003, at 54, 72.

<sup>141</sup> A.B. de Castro, *Handle with Care: The American Nurses Association's Campaign to Address Work-Related Musculoskeletal Disorders*, 4 CLINICAL REVS. BONE & MIN. METABOLISM 45, 50 (2006).

<sup>142</sup> Parks, *supra* note 139, at 200 n.69. Note that Jeffress' statement that the language is "vague and ambiguous" expresses uncertainty and risk aversion from within the agency, rather than a confident stance that issuance of another ergonomics standard would actually be illegal. See also *supra* Part II.C (noting agency self-censorship as one means of enforcing the CRA's substantial similarity provision).

In this Part, we argue that so long as the rule as reissued makes enough changes to alter the cost-benefit ratio in a significant and favorable way (and, we recommend, as long as the issuing agency also corrects any procedural flaws that Congress deplored as essentially arbitrary and capricious), the purposes of the CRA will be served, and the new rule should not be barred as "substantially the same" (although it would not be immunized against a second veto on new substantive grounds). We find four sets of reasons for this interpretation of the substantial similarity provision. First, the legislative history--both in the mid-1990s when the Republicans took control of Congress and enacted the CRA, and when Congress struck down the OSHA ergonomics rule in 2001--indicates that CBA and risk assessment were the intended emphases.<sup>143</sup> Congress wanted more efficient regulations, and requiring an agency to go back and rewrite rules that failed a cost-benefit test served Congress's needs.<sup>144</sup> Along with the legislative history, the signing statement interpreting the Act and Senate Bill 2184 introduced in the wake of the ergonomics veto also provide some strong clues as to the intended definition of "substantially the same." Secondly, the constraint that the text of any joint resolution of disapproval must be all-or-nothing--all nonoffending portions of the vetoed rule must fall along with the offending ones--argues for a limited interpretation, as a far-reaching interpretation of "substantially the same" would limit an agency's authority in ways Congress did not intend in exercising the veto. Third, in a system in which courts generally defer to an agency's own interpretation of its authority under an organic statute, agency action [\*741] following a joint resolution of disapproval should also be given deference. Finally, since a joint resolution of disapproval, read along with too broad an interpretation of "substantially the same," could significantly alter the scope of an agency's authority under its organic statute, one should avoid such a broad interpretation, since it seems implausible (or at least unwise) that Congress would intend to significantly alter an agency's delegated authority via the speedy and less-than-deliberative process it created to effect the CRA.

#### A. Congressional Intent and Language

Whether the plain language of the CRA is viewed on its own or in the context of the events leading up to the passage of the statute and the events surrounding the first and only congressional disapproval action in 2001, it is clear that Congress intended the new streamlined regulatory veto process to serve two purposes: one pragmatic and one symbolic. Congress needed to create a chokepoint whereby it could focus its ire on the worst of the worst--those specific regulations that did the greatest offense to the general concept of "do more good than harm" or the ones that gored the oxen of specific interest groups with strong allies in Congress. Congress also felt it needed, as the floor debate on the ergonomics standard made plain, to move the fulcrum on the scales governing the separation of powers so as to assert greater congressional control over the regulatory agencies whose budgets--but not always whose behavior--it authorizes. Neither of these purposes requires Congress to repudiate whole categories of agency activity when it rejects a single rule, as we will discuss in detail below. To use a mundane behavioral analogy, a parent who wants her teenager to bring home the right kind of date will clearly achieve that goal more efficiently, and with less backlash, by rejecting a specific suitor (perhaps with specific detail about how to avoid a repeat embarrassment) than by grounding her or forbidding her from ever dating again. Even if Congress had wanted to be nefarious, with the only goal that of tying the offending agency in knots, it would actually better achieve that goal by vetoing a series of attempts to regulate, one after the other, then by barring the instant rule and all future rules in that area in one fell swoop.

The plain language of the statute also shows that the regulatory veto was intended to preclude repetitious actions, *not to preclude related actions informed by the lessons imparted through the first veto*. Simply put, Congress put so much detail in the CRA about when and how an agency could try to reissue a vetoed rule that it seems bizarre for analysts to interpret "substantially the same" as a blanket prohibition against regulating in an area. We will explain how congressional intent sheds light on the precise meaning of [\*742] "substantially the same" by examining five facets of the legislative arena: (1) the events leading up to the passage of the CRA; (2) the plain text of the statute; (3) the explanatory statement issued a few weeks after the CRA's passage by the three major leaders of the

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<sup>143</sup> See *infra* Parts IV.A. 1, IV.A.4.

<sup>144</sup> *But see* Parks, *supra* note 139, at 199-205 (arguing that in practice the CRA has been used not to increase accountability, but to appease special interest groups, leaving no clear statutory guidance for agencies).

legislation in the Senate (and contemporaneously issued verbatim in the House); (4) the substantive (as opposed to the polemical) aspects of the ergonomics floor debate; and (5) the provisions of Senate Bill 2184 subsequently proposed to restart the ergonomics regulatory process.

### 1. Events Leading up to Passage

One cannot interpret the CRA without looking at the political history behind it--both electoral and legislative. The political climate of the mid-1990s reveals that congressional Republicans sought to reform the administrative process in order to screen for rules whose benefits did not outweigh their costs.<sup>145</sup> A Senate report on the moratorium proposal stated, "As taxpayers, the American people have a right to ask whether they are getting their money's worth. Currently, too few regulations are subjected to stringent cost-benefit analysis or risk assessment based on sound science. Without such protections, regulations can have unintended results."<sup>146</sup> This led to the inclusion in the CRA, for example, of a requirement that agencies submit the report of their rule not only to Congress, but also to GAO so that it can evaluate the CBA.<sup>147</sup> Although there were some complaints about the number or volume of regulations as opposed to merely their efficiency<sup>148</sup> --possibly suggesting that some members of Congress would not support even regulations whose benefits strongly outweighed their costs--the overall political history of the CRA in the period from 1994 to 1996 sends a clear sign that CBA and risk assessment were key. A statute enacted to improve regulation should not be interpreted so as to foreclose regulation.

### 2. Statutory Text

The plain language of the CRA provides at least three hints to the intended meaning and import of the "substantially the same" provision. [\*743] First, we note that in the second sentence of the statute, the first obligation of the agency issuing a rule (other than to submit a copy of the rule itself to the House and Senate) is to submit "a complete copy of the cost-benefit analysis of the rule, if any" to the Comptroller General and each house of Congress.<sup>149</sup> Clearly, as we have discussed above, the CRA is a mechanism for Congress to scrutinize the costs and benefits of individual regulations for possible veto of rules that appear to have costs in excess of benefits (a verdict that Congress either infers in the absence of an agency statement on costs and benefits, makes using evidence contained in the agency CBA, or makes by rejecting conclusions to the contrary in the CBA).<sup>150</sup> Moreover, the CRA's application only to major rules--a phrase defined in terms of the rule's economic impact<sup>151</sup> -- suggests that Congress was primarily concerned with the overall financial cost of regulations. As we discuss in detail below, we believe the first place Congress therefore should and will look to see if the reissued rule is "in substantially the same form" as a vetoed rule is the CBA; a similar-looking rule that has a wholly different (and more favorable) balance between costs and benefit is simply not the same. Such a rule will be different along precisely the key dimension over which Congress expressed paramount concern.

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<sup>145</sup> See *supra* Parts I.A-B; see also *infra* Part IV.D (arguing that allowing an agency to reissue a rule with a significantly better cost-benefit balance is a victory for congressional oversight).

<sup>146</sup> S. REP. NO. 104-15, at 5 (1995).

<sup>147</sup> See 5 U.S.C. § 801(a)(1)(B) (2006); 141 CONG. REC. 9428-29 (1995) (statement of Sen. Domenici).

<sup>148</sup> See, e.g., S. REP. NO. 104-15, at 5 ("Without significant new controls, the volume of regulations will only grow larger.").

<sup>149</sup> 5 U.S.C. § 801(a)(1)(B).

<sup>150</sup> Though not the subject of this Article, it is worth noting that CBA's quantitative nature still leaves plenty of room for argument, particularly in regards to valuation of the benefits being measured. See Graham, *supra* note 9, at 483-516 (defending the use of cost-benefit analysis despite its "technical challenges" as applied to lifesaving regulations).

<sup>151</sup> 5 U.S.C. § 804(2).

In addition, in the very sentence that bars an agency from reissuing a "substantially similar" rule, the Act provides for Congress to specifically authorize it to do just that via a new law enacted after the veto resolution passes.<sup>152</sup> We will discuss below, in the context of the April 1996 signing statement, how Congress in part intended this provision to apply in the special case in which Congress had previously instructed the agency to issue almost precisely the rule it did issue, thereby leaving the agency caught between an affirmative requirement and a prohibition. So, other than needing such a mechanism to cover the rare cases where the agency is obligated to reissue a similar rule, why would Congress have specifically reserved the right to authorize a very similar rule to one it had recently taken the trouble to veto? We assert that there are only two logical explanations for this: (1) Congress might use the new specific authorization to clarify exactly what minor changes that might *appear* to leave the rule [\*744] "substantially the same" would instead be sufficient to reverse all concerns that prompted the original veto; or (2) Congress might come to realize that new information about the harm(s) addressed by the rules or about the costs of remedying them made the original rule desirable (albeit in hindsight). Because the passage of time can make the original veto look unwise (see *supra* interpretations 1 and 2 in the hierarchy in Part III.A), Congress needed a way to allow something "substantially similar" to pass muster despite the prohibition in the first part of § 801(b)(2). Whatever the precise circumstances of such a clarifying or about-face authorization, the very fact that Congress also anticipated occasional instances where similar or even identical rules could be reissued means, logically, that it clearly expected different rules to be reissued, making the interpretation of "substantially the same" as barring all further activity in a given problem area quite far-fetched.

Finally, § 803 of the CRA establishes a special rule for a regulation originally promulgated pursuant to a deadline set by Congress, the courts, or by another regulation. This section gives the agency whose rule is vetoed a one-year period to fulfill the original obligation to regulate. Such deadlines always specify at least the problem area the agency is obligated to address,<sup>153</sup> so there is little or no question that Congress intended to allow agencies to reissue rules covering the same hazard(s) as a vetoed rule, when needed to fulfill an obligation, so long as the revised rule approaches the problem(s) in ways not "substantially the same." Further support for this common-sense interpretation of "substantially the same" is found in the one-year time period established by § 803: one year to repropose and finalize a new rule is a breakneck pace in light of the three or more years it not uncommonly takes agencies to regulate from start to finish.<sup>154</sup> Thus, in § 803, Congress chose a time frame compatible only with a very circumscribed set of "fixes" to respond to the original resolution of disapproval. If "not substantially the same" meant "unrecognizably different from," one year would generally be quite insufficient to re-promulgate under these circumstances. Admittedly, Congress could have [\*745] intended a different meaning for "substantially the same" in cases where no judicial, statutory, or regulatory deadline existed, but then one might well have expected § 803 to cross-reference § 802(b)(2) and make clear that a more liberal interpretation of "substantially the same" only applies to compliance with preexisting deadlines.

### 3. The Signing Statement

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<sup>152</sup> See *id.* § 801(b)(2) ("[A] new rule that is substantially the same as [a vetoed] rule may not be issued, *unless* the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving of the original rule." (emphasis added)).

<sup>153</sup> See, e.g., Needlestick Safety and Prevention Act, Pub. L. No. 106-430, § 5, **114 Stat. 1901, 1903-04 (2000)** (establishing the procedure and deadline by which OSHA was required to promulgate amendments to its rule to decrease worker exposure to bloodborne pathogens). In this case, Congress went further and actually wrote the exact language it required OSHA to insert in amending the existing rule.

<sup>154</sup> See Stuart Shapiro, *Presidents and Process: A Comparison of the Regulatory Process Under the Clinton and Bush (43) Administrations*, **23 J.L. & POL. 393, 416 (2007)** (showing that, on average, it takes almost three years for a regulation to move from first publication in the *Unified Agenda* of rules in development to final promulgation, with outliers in both the Clinton and Bush (43) Administrations exceeding ten years in duration).

In the absence of a formal legislative history, the explanatory statement written by the prime sponsors of the CRA<sup>155</sup> serves its intended purpose as "guidance to the agencies, the courts, and other interested parties when interpreting the act's terms."<sup>156</sup> This document contains various elaborations that shed light on congressional expectations regarding agency latitude to reissue rules after disapproval.

The background section clarifies that Congress sought not to "become a super regulatory agency" speaking directly to the regulated community, but needed the CRA to tip the "delicate balance" between congressional enactment and executive branch implementation of laws toward slightly more policymaking authority for Congress.<sup>157</sup> Notably, the sponsors repeatedly referred to "a rule" in the singular noun form, rather than to whole regulatory programs, whenever they discussed the need for review (for example, "Congress may find *a rule* to be too burdensome, excessive, inappropriate or duplicative"<sup>158</sup>). In other words, agencies may take specific actions that usurp policymaking activity from Congress, so the remedy is for Congress to send them back to try again (to regulate consistent with their delegated authority), not to shut down the regulatory apparatus in an area. A CRA that had a "one strike and you're out" mechanism would, we believe, not redress the "delicate balance," but rewrite it entirely.

As discussed above,<sup>159</sup> the passage of time or the advance of knowledge [\*746] can ruin a well-intentioned rule and demand congressional intervention--Nickles, Reid, and Stevens explain how "during the time lapse between passage of legislation and its implementation, the nature of the problem addressed, and its proper solution, can change."<sup>160</sup> The principle that costs and benefits can be a moving target must, we believe, also inform the meaning of "substantially the same." If the "proper solution" Congress envisioned to an environmental or other problem has changed such that an agency regulation no longer comports with congressional expectations, then it must also be possible for circumstances to change *again* such that a vetoed rule could turn out to effect "the proper solution." The signing statement sets up a predicate for intervention when the regulatory solution and the proper solution diverge--which in turn implies that an agency certainly cannot reissue "the same rule in the same fact situation," but in rare cases it should be permitted to argue that what once was improper has now become proper.<sup>161</sup> Whether in the ten years since the ergonomics veto the 2000 rule may still look "improper" does not change the logic that costs and benefits can change by agency action or by exogenous factors, and that the purpose of the CRA is to block rules that fail a cost-benefit test.

The signing statement also offers up the "opportunity to act . . . before regulated parties must invest the significant resources necessary to comply with a major rule"<sup>162</sup> as the sole reason for a law that delays the effectiveness of rules while Congress considers whether to veto them. Again, this perspective is consistent with the purpose of the CRA as a filter against agencies requiring costs in excess of their accompanying benefits, not as a means for Congress to reject all solutions to a particular problem by disapproving one particular way to solve it.

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<sup>155</sup> 142 CONG. REC. 8196-8201 (1996) (joint statement of Sens. Nickles, Reid, and Stevens).

<sup>156</sup> *Id.* at 8197.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* (emphasis added). In one instance only, the authors of this statement refer to "regulatory schemes" as perhaps being "at odds with Congressional expectations," possibly in contrast to individual rules that conflict with those expectations. *Id.* However, four sentences later in the same paragraph, they say that "[i]f these concerns are sufficiently serious, Congress can stop *the rule*," *id.* (emphasis added), suggesting that "schemes" does not connote an entire regulatory program or refer to all conceivable attempts to regulate to control a particular problem area, but simply refers to a single offending rule that constitutes a "scheme."

<sup>159</sup> *See supra* Part III.A.

<sup>160</sup> 142 CONG. REC. 8197 (joint statement of Sens. Nickles, Reid, and Stevens).

<sup>161</sup> *See infra* Part V.

<sup>162</sup> 142 CONG. REC. 8198 (joint statement of Sens. Nickles, Reid, and Stevens).

The (brief) direct explanation of the "substantially the same" paragraph provides additional general impressions of likely congressional intent, as well as some specific elaboration of the remainder of § 801(b)(2). The only mention given to the purpose of the "substantially the same" prohibition is as follows: "Subsection 801 (b)(2) is necessary to prevent circumvention of a resolution [of] disapproval."<sup>163</sup> The use of the pejorative word *circumvention* seems clearly to signal congressional concern that an agency could fight and win a war of attrition simply by continuing to promulgate near-identical variants of a vetoed rule until it finally caught Congress asleep at the switch or wary of having said "no" too many times. This rationale for invoking the substantial similarity prohibition was echoed many times in the [\*747] ergonomics floor debate, notably in this statement by Senator James Jeffords of Vermont: "an agency should not be able to reissue a disapproved rule merely by making minor changes, thereby claiming that the reissued regulation was a different entity."<sup>164</sup> Viewed in this light, "substantially the same" means something akin to "different enough that it is clear the agency is not acting in bad faith."

The remainder of the paragraph explaining § 801 (b)(2) sheds more light on the process whereby Congress can even specifically authorize an agency to reissue a rule that is *not* "substantially different." Here the sponsors made clear that if the underlying statute under which the agency issued the vetoed rule does not constrain the substance of such a rule, "the agency may exercise its broad discretion to issue a substantially different rule."<sup>165</sup> *Notice that the sponsors make no mention of the agency needing any permission from Congress to do so.* However, in some cases Congress has obliged an agency to issue a rule *and* has imposed specific requirements governing what such a rule should and should not contain.<sup>166</sup> When Congress disapproves of this sort of rule, "the enactment of a resolution of disapproval for that rule may work to prohibit the reissuance of *any* rule."<sup>167</sup> In these unusual cases, the sponsors clarify, the "debate on any resolution of disapproval . . . [should] make the congressional intent clear regarding the agency's options or lack thereof."<sup>168</sup> If an agency is allowed by the original statute to issue a substantially different rule, Congress has no obligation to speak further, but if the veto and the statute collide, then Congress must explain the seeming paradox. Such a case has never occurred, of course (the Occupational Safety and Health (OSH) Act does not require OSHA to issue any kind of ergonomics rule), but we can offer informed speculation about the likely contours of such an event. Suppose that in 2015, Congress was to pass a law requiring the Department of Transportation (DOT) to issue a regulation by January 1, 2018, prohibiting drivers from writing text messages while driving. But by 2018, suppose the makeup of Congress had changed, as had the party in control of the White House, and the new Congress was not pleased that DOT had followed the old Congress's instructions to the letter. It could veto the rule and make clear that DOT had no options left--perhaps Congress could save face in light of this flip-flop by claiming that new technology had made it possible to text safely, and it could simply assert that the original order to regulate was now moot. [\*748] Or, Congress could observe (or claim) that DOT had followed the original instructions in a particularly clumsy way: perhaps it had brushed aside pleas from certain constituency groups (physicians, perhaps) who asserted that more harm to public safety would ensue if they were not exempted from the regulations. Congress could resolve this paradox by instructing DOT to reissue the rule with one additional sentence carving out such an exemption. That new document would probably be "substantially the same" as the vetoed rule and might have costs and benefits virtually unchanged from those of the previous rule, but it would be permissible because Congress had in effect amended its original instructions from 2015 to express its will more clearly.

Because Congress specifically provided the agency with an escape valve (a written authorization on how to proceed) in the event of a head-on conflict between a statutory obligation and a congressional veto, it is clear that

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<sup>163</sup> See *id.* at 8199.

<sup>164</sup> 147 CONG. REC. 2816 (2001) (statement of Sen. Jeffords).

<sup>165</sup> 142 CONG. REC. 8199 (joint statement of Sens. Nickles, Reid, and Stevens).

<sup>166</sup> See, e.g., *supra* note 153.

<sup>167</sup> 142 CONG. REC. 8199 (joint statement of Sens. Nickles, Reid, and Stevens) (emphasis added).

<sup>168</sup> *Id.*

no such authorization is needed if the agency can craft on its own a "substantially different" rule that still comports with the original statute. Although Democratic Senators did introduce a bill in the several years after the ergonomics veto that (had it passed) would have required OSHA to promulgate a new ergonomics rule,<sup>169</sup> we believe it is clear that a new law requiring an agency to act (especially when an agency appears more than content with the prior veto) is not necessary to allow that agency to act, as long as it could produce a revision sufficiently different from the original so as not to circumvent the veto. The special process designed to avoid situations when the veto might preclude all regulation in a particular area simply suggests that Congress intended that none of its vetoes should ever have such broad repercussions.

#### 4. *Ergonomics Floor Debate--Substantive Clues*

Although we argued above that many of the general statements about the CRA itself during the ergonomics debate should be dismissed as political posturing, during that debate there were also statements for or against the specific resolution of disapproval that provide clues to the intended meaning of "substantially similar." Statements about the actual rule being debated, rather than the hypothetical future effect of striking it down, can presumably be interpreted at face value--in particular, opponents of the rule would have a disincentive to play down their substantive concerns, lest swing voters decide that the rule was not so bad after all. And yet, while several of the key opponents emphasized very specific concerns with the rule at hand, and stated their objections in heated [\*749] terms, they yet clearly left open the door for OSHA to take specific steps to improve the rule. For example, Republican Representative John Sweeney of New York made plain: "My vote of no confidence on the ergonomics regulations does not mean I oppose an ergonomics standard; I just oppose this one"--primarily in his view because it did not specify impermissible levels of repetitive stress along the key dimensions of workplace ergonomics (force, weight, posture, vibration, etc.) that would give employers confidence they knew what constituted compliance with the regulation.<sup>170</sup> Similarly, Republican Representative Charles Norwood of Georgia emphasized that the vagueness of the OSHA rule "will hurt the workers," and said that "when we have [a rule] that is bad and wrong . . . then we should do away with it and begin again."<sup>171</sup>

Interpretations of "substantially similar" that assume the agency is barred from re-regulating in the same subject area therefore seem to ignore how focused the ergonomics debate was on the consternation of the majority in Congress with the specific provisions of the OSHA final rule. Although opponents might have felt wary of stating emphatically that they opposed any attempt to control ergonomic hazards, it nevertheless was the case that even the staunchest opponents focused on the "wrong ways to solve the ergonomics problem" rather than on the inappropriateness of any rule in this area.

#### 5. *Subsequent Activity*

Legislative activity following the veto of the ergonomics rule might seem to suggest that at least some in Congress thought that OSHA might have required a specific authorization to propose a new ergonomics rule. In particular, in 2002 Senator John Breaux of Louisiana introduced Senate Bill 2184, which included a specific authorization pursuant to the CRA for OSHA to issue a new ergonomics rule.<sup>172</sup> The presence of a specific authorization in Senate Bill 2184 may imply that the bill's sponsors believed that such an authorization was necessary in order for OSHA to promulgate a new ergonomics regulation.

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<sup>169</sup> See *infra* Part IV.A.5.

<sup>170</sup> 147 CONG. REC. 3074-75 (2001) (statement of Rep. Sweeney); see also *infra* Part VLB.

<sup>171</sup> *Id.* at 3056 (statement of Rep. Norwood)

<sup>172</sup> See S. 2184, 107th Cong. § 1(b)(4) (as introduced in the Senate, Apr. 17, 2002) ("Paragraph (1) [which requires OSHA to issue a new ergonomics rule] shall be considered a specific authorization by Congress in accordance with section 801(b)(2) of title 5, United States Code . . ."). Senate Bill 2184 never became law.

Other circumstances, however, suggest more strongly that the inclusion of this specific authorization may have been merely a safeguard rather than [\*750] the purpose of the bill. The bill's mandate that OSHA issue a new rule within two years of the enactment of Senate Bill 2184<sup>173</sup> clearly indicates that the sponsors intended to spur a recalcitrant agency to take some action under the Republican administration. The bill's findings do not state that OSHA had been otherwise prohibited from issuing a new ergonomics rule--indeed, the findings do not mention Congress's 2001 veto at all.<sup>174</sup> Thus, the congressional authorization may have instead served to preempt a Bush Administration belief (or pretext) that Congress's earlier veto prohibited OSHA from further regulating workplace ergonomics.<sup>175</sup>

### *B. All or Nothing*

Another tool for interpreting the substantial similarity provision lies in the CRA's choice to provide only a "nuclear option" to deal with a troublesome rule. The CRA provides a nonamendable template for any joint resolution of disapproval, which allows only for repealing an entire rule, not just specific provisions.<sup>176</sup> Furthermore, there is "no language anywhere [in the CRA that] expressly refers in any manner to a part of any rule under review."<sup>177</sup> An inability to sever certain provisions while upholding others is consistent with the CRA contemplating a "speedy, definitive and limited process" because "piecemeal consideration would delay and perhaps obstruct legislative resolution."<sup>178</sup>

Because an offending portion of the rule is not severable, Congress has decided to weigh only whether, on balance, the bad aspects of the rule outweigh the good. For example, even when they argued against certain provisions of the OSHA ergonomics regulation, congressional Republicans still noted that they supported some type of ergonomics rule.<sup>179</sup> Since the CRA strikes down an entire rule even though Congress may support certain portions of that rule, it only makes sense to read the substantial [\*751] similarity provision as allowing the nonoffending provisions to be incorporated into a future rule. If an agency were not allowed to even reissue the parts of a rule that Congress does support, that would lead to what some have called "a draconian result"<sup>180</sup>--and what we would be tempted to call a nonsensical result. To the extent that interpreting the CRA prevents agencies from issuing congressionally approved portions of a rule, such an interpretation should be avoided.

### *C. Deference to Agency Expertise*

Because courts are generally deferential to an agency's interpretation of its delegated authority,<sup>181</sup> a joint resolution of disapproval should not be interpreted to apply too broadly if an agency wishes to use its authority to

<sup>173</sup> *Id.* § 1(b)(1) ("Notwithstanding any other provision of law, not later than 2 years after the date of enactment of this Act, the Secretary of Labor shall, in accordance with section 6 of the [OSH Act], issue a final rule relating to ergonomics.").

<sup>174</sup> *See id.* § 1(a).

<sup>175</sup> *Cf. supra* note 121, at 72 (statement of Elaine L. Chao, Secretary, U.S. Department of Labor) (hesitating to "expend valuable--and limited--resources on a new effort" to regulate workplace ergonomics following Congress's 2001 veto).

<sup>176</sup> *See* 5 U.S.C. § 802 (2006) (requiring that a joint resolution of disapproval read: "That Congress disapproves the rule submitted by the \_\_ relating to \_\_, and such rule shall have no force or effect").

<sup>177</sup> Rosenberg, *supra* note 75, at 1065.

<sup>178</sup> *Id.* at 1066.

<sup>179</sup> *See, e.g.,* 147 CONG. REC. 2843-44 (2001) (statement of Sen. Nickles) (expressing support for a "more cost effective" ergonomics rule).

<sup>180</sup> Rosenberg, *supra* note 75, at 1066.

<sup>181</sup> *See infra* Part IV.C.1.

promulgate one or more rules addressing the same issues as the repealed rule. There are, however, two important limitations to this general principle of deference that may apply to agency actions taking place after Congress overturns a rule. First, where Congress overturns a rule because it believes the agency acted outside the scope of its delegated authority under the organic statute, a court might choose to weigh this congressional intent as a factor against deference to the agency, if the reissued rule offends against this principle in a similar way. Second, where Congress overturns a rule because it finds that the agency was "lawmaking," this raises another statutory--if not constitutional--reason why agency deference might not be applied. This section presents the issue of deference generally, and then lays forth the two exceptions to this general rule.

### 1. Chevron Deference

In *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, the Supreme Court held that, unless the organic statute is itself clear and contrary, a court should defer to an agency's reasonable interpretation of its own delegated authority.<sup>182</sup> The Court's decision was based on the notion of agency expertise: since agencies are more familiar with the subject matter over which they regulate, they are better equipped than courts to understand their grant of rulemaking authority.<sup>183</sup> Where Congress delegates rulemaking authority to an administrative agency, it is inevitable that the delegation will include some ambiguities or gaps.<sup>184</sup> But in order [\*752] for an agency to effectively carry out its delegated authority, there must be a policy in place that fills the gaps left by Congress. In *Chevron*, the Court reasoned that gaps were delegations, either express or implicit, granting the agency the authority "to elucidate a specific provision of the statute by regulation."<sup>185</sup> Explaining the reason for deference to agencies, the Court has recognized that "[t]he responsibilities for assessing the wisdom of such policy choices and resolving the struggle between competing views of the public interest are not judicial ones."<sup>186</sup> The *Chevron* Court thus created a two-part test that respects agency expertise by deferring to reasonable interpretations of ambiguity in a delegation of authority. First, a court must determine "whether Congress has directly spoken to the precise question at issue."<sup>187</sup> If so, both the court and the agency "must give effect to the unambiguously expressed intent of Congress."<sup>188</sup> If Congress has not spoken to the issue directly, however, the second step of *Chevron* requires a court to defer to the agency's construction of the statute if it is a "permissible" interpretation, whether or not the court agrees that the interpretation is the correct one.<sup>189</sup>

Because a resolution repealing a rule under the CRA limits an agency's delegated authority by prohibiting it from promulgating a rule that is substantially similar, the *Chevron* doctrine should apply here. The CRA proscription against an agency reissuing a vetoed rule "in substantially the same form" is an ambiguous limitation to an agency's delegated authority. That limitation could have been made less hazy but probably not made crystal clear, since a detailed elucidation of the substantial similarity standard would necessarily be rather complex in order to cover the wide range of agencies whose rules are reviewable by Congress. However, the other relevant statutory text, the joint resolution of disapproval itself, does not resolve the ambiguity. It cannot provide any evidence that Congress

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<sup>182</sup> [467 U.S. 837\(1984\)](#).

<sup>183</sup> [Id. at 866](#).

<sup>184</sup> See [Morton v. Ruiz, 415 U.S. 199, 231 \(1974\)](#) (noting that such a "gap" may be explicit or implicit).

<sup>185</sup> [Chevron, 467 U.S. at 843-44](#).

<sup>186</sup> [Id. at 866](#).

<sup>187</sup> [Id. at 842](#).

<sup>188</sup> [Id. at 842-43](#).

<sup>189</sup> [Id. at 843](#).

has "directly spoken to the precise question at issue"<sup>190</sup> --namely, what form of regulation would constitute a substantially similar reissuance of the rejected rule--because the text can only effect a repeal of the rule and no more.<sup>191</sup> Although a court, in the absence of clear, enacted statutory [\*753] language, might look to legislative history to determine whether Congress has "spoken to" the issue, too many disparate (and perhaps disingenuous) arguments on the floor make this unworkable as a judicial doctrine without any textual hook to hang it on.<sup>192</sup>

*Chevron* step one, then, cannot end the inquiry; we must proceed to step two. The agency's interpretation, if permissible, should then receive deference. While some minor transposition of a rejected rule's language effecting no substantive change could certainly be deemed impermissible under the CRA, changes that are significant enough to affect the cost-benefit ratio are similar to the "policy choices" that the Court has held are not within the responsibility of the Judiciary to balance.<sup>193</sup> Thus, comparing side-by-side the language of a vetoed rule and the subsequently promulgated rule is inadequate without considering the substantive changes effected by any difference in language, however minor. Under the reasoning in *Chevron*, a court should give substantial deference to an agency in determining whether, for purposes of the CRA, a rule is substantially different from the vetoed rule.

## 2. *Ultra Vires* Limitation

Admittedly, there are important considerations that may counsel against applying *Chevron* deference in particular situations. One such situation might occur if Congress's original veto were built upon a finding that the agency misunderstood its own power under the organic statute. In that case, a court might choose to consider Congress's findings as a limitation on the applicability of *Chevron* deference. Such a consideration provided the background for the Supreme Court's decision in *FDA v. Brown & Williamson Tobacco Corp.*, in which the Court struck down regulation of tobacco products by the Food and Drug Administration (FDA).<sup>194</sup> The Court looked to congressional intent in determining the boundaries of FDA's authority under the Food, Drug and Cosmetic Act (FDCA), finding that the statute's use of the words *drug* and *device* clearly did not grant FDA the power to regulate tobacco products, and the regulation thus failed the first [\*754] prong of the *Chevron* test.<sup>195</sup> The FDCA "clearly" spoke to the issue, according to the Court, and therefore FDA's contrary interpretation of its power was not entitled to deference. Importantly, the Court found this clarity not within the text of the FDCA itself, but in other legislative actions since the FDCA's enactment. In writing for the majority, Justice O'Connor pointed out that, in the decades following the FDCA's enactment, Congress had passed various pieces of legislation restricting--but not entirely prohibiting--certain behavior of the tobacco industry, indicating a congressional presumption that sale of tobacco products

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<sup>190</sup> [Id. at 842.](#)

<sup>191</sup> See *supra* Part IV.B (discussing the limited text of the joint resolution and its effect on severability). Trying to infer congressional intent, however, may be relevant to the scope of an agency's authority following action under the CRA in cases where the subject matter is politically and economically significant, and where there is a broader legislative scheme in place. See *infra* Part IV.C.2 (discussing the effect of [FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120 \(2000\)](#), on the application of the *Chevron* doctrine).

<sup>192</sup> See, e.g., [Zedner v. United States, 547 U.S. 489, 509-11 \(2006\)](#) (Scalia, J. concurring) (filing a separate opinion for the specific purpose of admonishing the majority's citation to legislative history, noting that use of legislative history in statutory interpretation "accustoms us to believing that what is said by a single person in a floor debate or by a committee report represents the view of Congress as a whole").

<sup>193</sup> [Chevron, 467 U.S. at 866.](#)

<sup>194</sup> [529 U.S. 120\(2000\).](#)

<sup>195</sup> [Id. at 160-61](#) ("It is . . . clear, based on the [Food, Drug, and Cosmetic Act's (FDCA's)] overall regulatory scheme and the subsequent tobacco legislation, that Congress has directly spoken to the question at issue and precluded the [Food and Drug Administration (FDA)] from regulating tobacco products.").

would still be permitted.<sup>196</sup> The Court found that this presumption clearly contradicted FDA's interpretation that "drug" and "device" in the FDCA included tobacco products because, if FDA's interpretation were correct, the agency would be *required* to ban the sale of tobacco products because safety is a prerequisite for sale of a drug or device under the FDCA, and no tobacco product is "safe."<sup>197</sup> The four dissenting Justices criticized the majority's reliance on inferred congressional intent, arguing that the *Chevron* approach to statutory interpretation should principally focus on the text of the organic statute.<sup>198</sup>

If Congress, in enacting a joint resolution pursuant to the CRA, was to make clear that it thought an agency's regulation was outside the scope of its statutory grant of authority,<sup>199</sup> a court might consider this a factor limiting its deference to the agency. In other words, the CRA veto might be considered a "clarification" of the organic statute in a way similar to the tobacco-related legislative activity considered by the Court in *Brown & Williamson*.<sup>200</sup> Republicans hinted at this issue in the congressional debates over the ergonomics rule, where they argued that part of the rule contravened a provision in the OSH Act because, under their [\*755] interpretation, the regulation superseded state worker's compensation laws.<sup>201</sup> In a more obvious instance of an agency acting outside of its delegated authority, however, *Brown & Williamson* might require (or at least encourage) a court to consider the congressional rationale for overturning a rule as a factor in evaluating the validity of a new rule issued in the same area. Like the decision in *Brown & Williamson*, however, the factor might only be compelling if there was also a broader legislative scheme in place.

### 3. Lawmaking Limitation

Another limiting principle on agency discretion is found where the agency action blurs the lines of regulation and steps into the field of lawmaking. Where such an action takes place, the nondelegation doctrine is implicated and can present questions of constitutionality and agency adherence to its limited grant of authority. In the debates over the ergonomics rule, opponents of the regulation contended that OSHA was writing the "law of the land" and that the elected members of Congress, not bureaucrats, are supposed to exercise that sort of authority.<sup>202</sup> Senator Nickles made clear that he saw the ergonomics rule as a usurpation of Congress's legislative power. He referred to the rule as "legislation" and argued, "we are the legislative body. If we want to legislate in this area, introduce a bill and we will consider it."<sup>203</sup> This argument that an administrative agency has exercised legislative power has

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<sup>196</sup> [Id. at 137-39.](#)

<sup>197</sup> [Id. at 133-35](#) ("These findings logically imply that, if tobacco products were 'devices' under the FDCA, the FDA would be required to remove them from the market.").

<sup>198</sup> [Id. at 167-81](#) (Breyer, J., dissenting) (arguing for a "literal" interpretation of the FDCA).

<sup>199</sup> Because of the one-sentence limit on the text of the CRA joint resolution, see [5 U.S.C. § 802](#) (2006), the clarity would have to come from other legislative enactments as in *Brown & Williamson*, see [529 U.S. at 137-39](#), or from the legislative history of the joint resolution. *But see supra* note 192 and accompanying text (criticizing reliance on legislative history). Alternatively, if Congress were to amend the CRA to allow alteration of the resolution's text, a clear legislative intent might be more easily discerned. See *infra* Part VII.

<sup>200</sup> See *supra* note 196 and accompanying text.

<sup>201</sup> See Occupational Safety and Health Act of 1970 § 4(b)(4), [29 U.S.C. § 653\(b\)\(4\)](#) (2006) ("Nothing in this [Act] shall be construed to supersede or in any manner affect any workmen's compensation law . . . ."); 147 CONG. REC. 2816 (2001) (statement of Sen. Jeffords) ("[OSHA] ignored, in issuing its ergo standard, the clear statutory mandate in section 4 of the OSH Act not to regulate in the area of workmen's compensation law."). Senator Nickles argued that, even if it were within OSHA's delegated power, the regulation would supersede "more generous" state worker's compensation law. 147 CONG. REC. 2817 (statement of Sen. Nickles). We argue below that this interpretation may have been incorrect on its face. See *infra* Part VLB.

<sup>202</sup> 147 CONG. REC. 2817 (statement of Sen. Nickles).

<sup>203</sup> *Id.*

constitutional implications. Article I of the Constitution provides that the Senate and House of Representatives have the sole legislative power.<sup>204</sup> In the administrative state, this constitutional provision has given rise to the nondelegation doctrine, by which Congress may not delegate its lawmaking authority to an executive agency.<sup>205</sup> To meet constitutional requirements [\*756] under this doctrine, the organic statute needs to provide the agency with an "intelligible principle to which [the agency] is directed to conform."<sup>206</sup>

Violations of the nondelegation doctrine, however, are rarely found. Instead, the courts employ a canon of constitutional avoidance to minimize delegation problems. Under this canon of interpretation, a court confronted with a statute that appears to delegate lawmaking power to an agency will search for a narrower, constitutionally permissible interpretation of the statute. If such an interpretation is available, the court will not invalidate the statute, but will instead strike down agency action that exceeds the (narrower, constitutionally permissible) grant of authority.<sup>207</sup> The *Benzene Case* is one example in which the Supreme Court has employed this canon to avoid striking down a delegation of authority to an administrative agency.<sup>208</sup> In that case, the Court considered an OSHA rule which limited permissible workplace exposure levels to airborne benzene to one part per million (ppm). OSHA set that standard pursuant to the statutory delegation of authority instructing it to implement standards "reasonably necessary or appropriate to provide safe or healthful employment."<sup>209</sup> Rather than finding that the "reasonably necessary or appropriate" standard was unintelligible and unconstitutionally broad, the Court instead held that OSHA exceeded its rulemaking authority because the agency did not make the necessary scientific findings and based its exposure rule on impermissible qualitative assumptions about the relationship between cancer risks and small exposures to benzene, rather than on a quantitative assessment that found a "significant risk" predicate for regulating to one ppm.<sup>210</sup>

[\*757] If Congress vetoes an agency regulation on the ground that it is lawmaking, this may be taken to mean one of two things: either Congress believes that the agency was acting outside of its delegated authority, or it believes that the organic statute unconstitutionally grants the agency legislative power. Since, reflecting the avoidance

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<sup>204</sup> U.S. CONST. art. I, § 1 ("All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.").

<sup>205</sup> See, e.g., [A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 \(1935\)](#) (holding that the National Industrial Recovery Act's authorization to the President to prescribe "codes of fair competition" was an unconstitutional delegation of legislative power because the statutory standard was insufficient to curb the discretion of the Executive Branch).

<sup>206</sup> [J.W. Hampton, Jr., & Co. v. United States, 276 U.S. 394, 409 \(1928\)](#).

<sup>207</sup> See generally Matthew D. Adler, *Judicial Restraint in the Administrative State: Beyond the Countermajoritarian Difficulty*, [145 U. PA. L. REV. 759, 835-39 \(1997\)](#) (describing the canon of constitutional avoidance and arguing that "the criteria bearing on constitutionality figure in the best interpretation of statutes, at least where statutes are otherwise taken to be indeterminate").

<sup>208</sup> [Indus. Union Dep't v. Am. Petroleum Inst. \(Benzene Case\), 448 U.S. 607 \(1980\)](#).

<sup>209</sup> *Id.* at 613 (quoting [Am. Petroleum Inst. v. OSHA, 581 F.2d 493, 502 \(1978\)](#)).

<sup>210</sup> *Id.* at 662. For two contrasting views on whether the *Benzene Case* either curtailed OSHA's ability to regulate effectively, or gave OSHA a license (that it has failed to employ) to use science to promulgate highly worker-protective standards, compare Wendy Wagner, Univ. of Tex. Sch. of Law, Presentation at the Society for Risk Analysis Annual Meeting 2010, *The Bad Side of Benzene* (Dec. 6, 2010), <http://birenheide.com/sra/2010AM/program/presentations/M4-A.3%20Wagner.pdf>, with Adam M. Finkel, Exec. Dir., Penn Program on Regulation, Univ. of Pa., Presentation at the Society for Risk Analysis Annual Meeting 2010, *Waiting for the Cavalry: The Role of Risk Assessors in an Enlightened Occupational Health Policy* (Dec. 6, 2010), <http://birenheide.com/sra/2010AM/program/presentations/M4-A.4%20Finkel.pdf>.

canon, unconstitutional delegations have only been found twice<sup>211</sup> in the history of our administrative state, and since repealing a single rule would be insufficient to correct that type of constitutional defect in the organic statute, it seems clear that by "lawmaking" Congress must mean that the agency exceeded its lawfully-granted statutory authority.<sup>212</sup> In other words, if Congress actually did mean that the organic statute is impermissibly broad, the legislature's responsibilities lie far beyond vetoing the single rule, and would seem to require curing the constitutional defect by amending the organic statute. But if instead the veto means only that the agency has exceeded its authority, this brings us back to the *Brown & Williamson* issue, discussed above, where an agency still deserves deference in promulgating subsequent rules, although congressional intent may limit that deference if there is a legislative scheme in place.<sup>213</sup>

On the other hand, it is possible--even likely--that Senator Nickles and his colleagues were merely speaking colloquially in accusing OSHA of lawmaking, and meant that the agency was "legislating" in a softer, nonconstitutional sense. If their objection meant that they found the regulation a statutorily--but not constitutionally--excessive exercise, then they are in essence making the ultra vires objection discussed above.<sup>214</sup> Alternatively, if their objection meant that OSHA did have both the statutory and constitutional authority to promulgate the regulation, but that the agency was flexing more power than it should simply as a matter of policy, then a veto on those grounds would in essence be an attempt to [\*758] retract some of the authority that Congress had delegated to the agency. As discussed below, Congress should be hesitant to use the CRA to substantively change an intelligible principle provided in the organic statute, and a court should hesitate to interpret the CRA to allow for such a sweeping change--the CRA process is an expedited mechanism that decreases deliberativeness by imposing strict limitations on time and procedure.<sup>215</sup>

In any case, the lawmaking objection during a congressional veto essentially folds back up into one of the problems discussed previously--either it presents an issue of the agency exceeding its statutory authority and possibly affecting the deference due subsequent agency actions, or, failing that, it means that some members of Congress are attempting to grab back via an expedited process some authority properly delegated to the agency.

In summary, the issue of deference to an agency ought not differ too much between the CRA and the traditional (pre-1996) context. Both of these contexts involve an agency's judgment about what policies it can make under its authorizing legislation, since the "substantial similarity" provision is an after-the-fact limitation on the agency's statutorily-authorized rulemaking power. Neither the CRA nor its joint resolution template provide enough guidance to end the inquiry at *Chevron* step one. A court, then, should employ a narrow interpretation of the CRA's substantial similarity provision, giving significant deference to an agency's determination that the new version of a rejected rule is not "substantially similar" to its vetoed predecessor. This interpretation would, however, be limited by the permissibility requirement of *Chevron* step two.

#### D. Good Government Principles

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<sup>211</sup> The two cases are [A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 \(1935\)](#), and [Panama Refining Co. v. Ryan, 293 U.S. 388 \(1935\)](#). For a discussion of the constitutionality of OSHA's organic statute, see Cass R. Sunstein, *Is OSHA Unconstitutional?*, [94 VA. L. REV. 1407\(2008\)](#).

<sup>212</sup> In this respect, it is worth noting that the Republicans' lawmaking objections during the ergonomics rule debate were rather nonspecific. The legislators did not point to any "unintelligible" principle under which the rule was promulgated, or define what characteristics of the ergonomics rule brought it out of the normal rulemaking category and into the realm of lawmaking, besides voicing their displeasure with some of its substance. Indeed, the lawmaking argument was apparently conflated with the notion that OSHA had acted outside of its authority, properly delegated. See *supra* note 201 and accompanying text.

<sup>213</sup> See *supra* Part IV.C.2.

<sup>214</sup> See *id.*

<sup>215</sup> See *infra* Part IV.D.1.

Various members of Congress argued during the ergonomics floor debate that OSHA and other regulatory agencies should be chastened when they stray from their mission (regulation) into congressional territory (legislation). Arguably, Congress itself should also eschew legislation by regulation, even though Congress clearly has the legislative authority. In this section, we argue that Congress should not use a veto of an isolated piece of rulemaking to effect statutory change--it should do so through a direct and deliberative process that the CRA does not offer. In addition, we offer a second "good government" rationale for interpreting "substantially the same" in a narrow way.

**[\*759]** 1. *Reluctance to Amend Congress's Delegation to the Agency*

One should be hesitant to interpret the substantial similarity provision too broadly, because doing so could allow expedited joint resolutions to serve as de facto amendments to the original delegation of authority under the relevant organic statute. If the bar against reissuing a rule "in substantially the same form" applied to a wide swath of rules that could be promulgated within the agency's delegated rulemaking authority, this would be tantamount to substantively amending the organic statute.

The OSHA ergonomics regulation illustrates this point nicely. Section 6 of the OSH Act grants OSHA broad authority to promulgate regulations setting workplace safety and health standards.<sup>216</sup> With the exception of one aspect of the ergonomics rule,<sup>217</sup> congressional Republicans admitted that OSHA's broad authority did in fact include the power to promulgate the regulation as issued.<sup>218</sup> If it is within OSHA's delegated authority to promulgate rules setting ergonomics standards, and enactment of the joint resolution would prevent OSHA from promulgating any ergonomics standards in the future, then the joint resolution would constitute a significant amendment to the organic statute. Indeed, one of the two parts of OSHA's mission as put in place by the OSH Act--the responsibility to promulgate and enforce standards that lessen the risk of chronic occupational disease, as opposed to instantaneous occupational accidents--in turn involves regulating four basic types of risk factors: chemical, biological, radiological, and ergonomic hazards. In this case, vetoing the topic by vetoing one rule within that rubric would amount to taking a significant subset of the entire agency mission away from the Executive Branch, without actually opening up the statute to any scrutiny.

We see two major reasons why courts should not interpret the CRA in such a way that would allow it effectively to amend an organic statute via an expedited joint resolution. First, there is a rule of statutory interpretation whereby, absent clear intent by Congress to overturn a prior law, legislation should not be read to conflict with the prior law.<sup>219</sup> Second, **[\*760]** it seems especially doubtful that Congress would intend to allow modification of an organic statute via an expedited legislative process.<sup>220</sup> Significant changes, such as major changes to a federal agency's

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<sup>216</sup> See OSH Act § 6, [29 U.S.C. § 655](#) (2006); see also 147 CONG. REC. 2816 (2001) (statement of Sen. Jeffords) ("OSHA, of course, has enormously broad regulatory authority. Section 6 of the OSH Act is a grant of broad authority to issue workplace safety and health standards.").

<sup>217</sup> See *supra* note 201 and accompanying text.

<sup>218</sup> See 147 CONG. REC. 2822 (statement of Sen. Enzi) ("The power for OSHA to write this rule did not materialize out of thin air. We in Congress did give that authority to OSHA . . .").

<sup>219</sup> See, e.g., [Finley v. United States, 490 U.S. 545, 554 \(1989\)](#) ("[N]o changes in law or policy are to be presumed from changes of language in [a] revision unless an intent to make such changes is clearly expressed." (internal quotation marks omitted) (quoting [Fourco Glass Co. v. Transmirra Prods. Corp., 353 U.S. 222, 227 \(1957\)](#))), *superseded by statute*, [28 U.S.C. § 1367](#) (2006); [Williams v. Taylor, 529 U.S. 362, 379 \(2000\)](#) (plurality opinion) (arguing that if Congress intended the Antiterrorism and Effective Death Penalty Act to overturn prior rules regarding deference to state courts on questions of federal law in habeas proceedings, then Congress would have expressed that intent more clearly); cf. [United States v. Republic Steel Corp., 264 F.2d 289, 299 \(7th Cir. 1959\)](#) ("[T]here should not be attributed to Congress an intent to produce such a drastic change, in the absence of clear and compelling statutory language."), *rev'd on other grounds*, [362 U.S. 482 \(1960\)](#).

<sup>220</sup> See also Rosenberg, *supra* note 75, at 1066 (noting that the CRA "contemplates a speedy, definitive and limited process").

statutory grant of rulemaking authority, generally take more deliberation and debate. The CRA process, on the other hand, creates both a ten-hour limit for floor debates and a shortened time frame in which Congress may consider the rule after the agency reports it.<sup>221</sup> For these reasons, it would be implausible to read the substantial similarity provision as barring reissuance of a rule simply because it dealt with the same subject as a repealed rule.

## 2. A Cost-Benefit Justification for Rarely Invoking the Circumvention Argument

Allowing an agency to reissue a vetoed rule with a significantly more favorable cost-benefit balance is a victory for congressional oversight, not a circumvention of it. "Substantially the same" is unavoidably a subjective judgment, so we urge that such judgments give the benefit of the doubt to the agency--not so that a prior veto would immunize the agency against bad conduct, but so that the second rule would allow the agency (through its allies in Congress, if any) to defend the rule a second time on its merits, rather than having it summarily dismissed as a circumvention. A "meta-cost-benefit" analysis of the decision to allow a rule of arguable dissimilarity back into the CRA veto process would look something like this: the cost of allowing debate on a rule that the majority comes to agree is either a circumvention of § 801 (b)(2), or needs to be struck down a second time on the merits, can be measured in person-hours--roughly 10 hours or less of debate in each house. The benefits of allowing such a debate to proceed can be measured in the positive net benefit accruing to society from allowing the rule to take effect--assuming that Congress will act to veto a rule with negative net benefit.<sup>222</sup> The benefits of the additional [\*761] discussion will not always outweigh the costs thereof, but we suggest that whenever "substantially the same" is a controversial or close call, the opportunity for another brief discussion of the rule's merits is a safer and more sensible call to make than a "silent veto" invoking § 801(b)(2).

## V. WHAT DOES "SUBSTANTIALLY THE SAME" REALLY MEAN?

In light of the foregoing analysis, we contend that only among the first four interpretations in Part III.A above can the correct meaning of "substantially the same" possibly be found. Again, to comport literally with the proper instructions of § 801 (b)(2) does not insulate the agency against a subsequent veto on substantive grounds, but it should force Congress to debate the reissued rule on its merits, rather than the "faster fast-track" of simply declaring it to be an invalid circumvention of the original resolution of disapproval. To home in more closely on exactly what we think "substantially the same" requires, we will examine each of the four more "permissive" interpretations in Part III.A, in reverse order of their presentation--and we will argue that any of the four, except for Interpretation 1, might be correct in particular future circumstances.

Interpretation 4 (the agency must change the cost-benefit balance and must fix any problems Congress identified when it vetoed the rule) has some appeal, but only if Congress either would amend the CRA to require a vote on a bill of particulars listing the specific reasons for the veto, or at least did so sua sponte in future cases.<sup>223</sup> Arguably, the agency should not have unfettered discretion to change the costs and benefits of a rule as it sees fit, if Congress had already objected to specific provisions that contributed to the overall failure of a benefit-cost test. A new ergonomics rule that had far lower costs, far greater benefits, or both, but that persisted in establishing a payout system that made specific reference to state workers' compensation levels, might come across as "substantially the same" in a way Congress could interpret as OSHA being oblivious to the previous veto.<sup>224</sup> However, absent a clear statement of particulars from Congress, the agencies should not be forced to read Congress's mind. A member who strenuously objected to a particular provision should be free to urge a second

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<sup>221</sup> See *supra* Part I.B.3 (describing the CRA procedure).

<sup>222</sup> As for the number of such possibly cost-ineffective debates, we simply observe that if OSHA were to repropose an ergonomics rule, and Congress were to allow brief debate on it despite possible arguments that any ergonomics rule would be a circumvention of § 801(b)(2), this would be the first such "wasteful" debate in at least ten years.

<sup>223</sup> See *infra* Part VII.

<sup>224</sup> In this specific case, though, we might argue that OSHA could instead better explain how Congress misinterpreted the original provision in the rule. See *infra* Part VI.B.

veto if the reissued rule contains an unchanged version of that provision, but if she cannot convince a majority in each house to call for that specific provision's removal, Congress, or a court, should not dismiss as "substantially the same" a rule containing a provision that might have been, and might still be, supported by most or nearly all members.

**[\*762]** Interpretation 3 (the agency's task is to significantly improve the cost-benefit balance, nothing more) makes the most sense in light of our analysis and should become the commonly understood default position. The CRA is essentially the ad hoc version of the failed Dole-Johnston regulatory reform bill<sup>225</sup> --rather than requiring agencies to produce cost-beneficial rules, and prescribing how Congress thought they should do so, the CRA simply reserves to Congress the right to reject on a case-by-case basis any rule whose stated costs exceed stated benefits, or, if the votes are there, one for which third-party assertions about costs exceed stated or asserted benefits. The way to reissue something distinctly different is to craft a rule whose benefit-cost balance is much more favorable. Again, this could be effected with a one-word change in a massive document, if that word, for example, halved the stringency as compared to the original, halved the cost, or both. Or, a rule missing one word--thereby exempting an industry-sector that the original rule would have regulated--could be "distinctly different" with far lower costs. If the original objection had merit this change would not drastically diminish total benefits, and it could arouse far less opposition than the previous nearly identical rule.

Interpretation 2 (even an identical rule can be reissued under "substantially different" external conditions), while it may seem to make a mockery of § 801(b)(2), also has merit. Congress clearly did not want agencies to circumvent the CRA by waiting for the vote count to change, or for the White House to change hands and make a simple majority in Congress no longer sufficient, and then reissuing an identical rule. Even that might not be such a bad outcome; after all, a parent's answer to a sixteen-year-old's question, "Can I have the car keys?," might be different if the child waits patiently and asks again in two years. But we accept that the passage of time alone should not be an excuse for trying out an identical rule again. However, time can also change everything, and the CRA needs to be interpreted such that time can make an identical rule into something "substantially different" than what used to be. Indeed, the Nickles-Reid signing statement already acknowledged how important this is, when it cited the following as a good reason for an initial veto: "agencies sometimes develop regulatory schemes at odds with congressional expectations. Moreover, during the time lapse between passage of legislation and its implementation, the nature of the problem addressed, and its proper solution, can change."<sup>226</sup> In other words, a particular rule Congress might have favored at the time it created the organic statute might not be appropriate anymore when finally promulgated because time can change **[\*763]** both problems and solutions. We fail to see any difference between that idea and the following related assertion: "During the time lapse between *the veto of a rule and its subsequent reissuance*, the nature of the problem addressed, and its proper solution, can change." It may, of course, change such that the original rule seems even less sensible, but what if it changes such that the costs of the original rule have plummeted and the benefits have skyrocketed? In such a circumstance, we believe it would undercut the entire purpose of regulatory oversight and reform to refuse to debate on the merits a reissued rule whose costs and benefits--even if not its regulatory text--were far different than they were when the previous iteration was struck down.

Interpretation 1 (anything goes so long as the agency merely *asserts* that external conditions have changed), on the other hand, would contravene all the plain language and explanatory material in the CRA. Even if the agency believes it now has better explanations for an identical reissued rule, the appearance of asking the same question until you get a different answer is offensive enough to bedrock good government principles that the regulation should be required to have different costs and benefits after a veto, not just new rhetoric about them.<sup>227</sup>

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<sup>225</sup> See *supra* Part I.B.2.

<sup>226</sup> 142 CONG. REC. 8197 (1996) (joint statement of Sens. Nickles, Reid, and Stevens).

<sup>227</sup> We conclude this notwithstanding the irony that in one sense, the congressional majority did just that in the ergonomics case--it delayed the rule for several years to require the National Academy of Sciences (NAS) to study the problem, and when it did not like the NAS conclusion that ergonomics was a serious public health problem with cost-effective solutions, it forced NAS to

We therefore believe Interpretation 3 is the most reasonable general case, but that Interpretations 2 or 4 may be more appropriate in various particular situations. But there is one additional burden we think agencies should be asked to carry, even though it is nowhere mentioned in the CRA. The process by which a rule is developed can undermine its content, and beneficial changes in that content may not fix a suspect process, even though Congress modified with "substantially the same" the word "form," not the word "process." Indeed, much of the floor debate about ergonomics decried various purported procedural lapses: the OSHA [\*764] leadership allegedly paid expert witnesses for their testimony, edited their submissions, and made closed-minded conclusory statements about the science and economics while the rulemaking record was still open, among other flaws.<sup>228</sup> We think agencies should be expected to fix procedural flaws specifically identified as such by Congress during a veto debate, even if this is not needed to effectuate a "substantially different form."<sup>229</sup>

## VI. PRACTICAL IMPLICATIONS FOR OSHA OF A COST-BENEFIT INTERPRETATION OF THE CRA

We have argued above that the agency's fundamental obligation under the CRA is to craft a reissued rule with substantially greater benefits, substantially lower costs, or both, than the version that Congress vetoed. As a practical matter, we contend it should focus on aspects of the regulation that Congress identified as driving the overall unfavorable cost-benefit balance. When, as is often the case, the regulation hinges on a single quantitative judgment about stringency (How low should the ambient ozone concentration be? How many miles per gallon must each automobile manufacturer's fleet achieve? What trace amount of fat per serving can a product contain and still be labeled fat-free?), a new rule can be made "substantially different" with a single change in the regulatory text to change the stringency, along with, of course, parallel changes to the Regulatory Impact Analysis tracking the new estimates of costs and benefits. The 2000 OSHA ergonomics rule does not fit this pattern, however. Although we think it might be plausible for OSHA to argue that the underlying science, the methods of control, and the political landscape have changed enough after a decade of federal inactivity on ergonomic issues that the 2000 rule could be repropounded verbatim as a solution to a "substantially different" problem, we recognize the political impracticality of such a strategy. But changing the costs and benefits of the 2000 rule will require major thematic and textual revisions, because the original rule had flaws much more to do with regulatory design and philosophy than with [\*765] stringency per se. In this Part, therefore, we offer some broad suggestions for how OSHA could make substantially more favorable the costs and benefits of a new ergonomics regulation.

### A. *Preconditions for a Sensible Discussion About the Stringency of an Ergonomics Rule*

In our opinion, reasonable observers have little room to question the fact of an enormous market failure in which occupational ergonomic stressors cause musculoskeletal disorders (MSDs) in hundreds of thousands of U.S.

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convene a different panel and answer the question again. See, e.g., *Ergonomics in the Workplace; NewsHour with Jim Lehrer* (PBS television broadcast Nov. 22, 1999), [www.pbs.org/newshour/bb/business/july-dec99/ergonomics\\_11-22.html](http://www.pbs.org/newshour/bb/business/july-dec99/ergonomics_11-22.html) ("We've already had one [NAS] study . . . [T]hey brought in experts, they looked at all the evidence in this area and they reached the conclusion that workplace factors cause these injuries and that they can be prevented. The industry didn't like the results of that study so they went to their Republican friends in the Congress and got another study asking the exact same seven questions . . . The study is basically just being used as a way to delay a regulation, to delay protection for workers. We'll get the same answers from the NAS-2 that we got from NAS-1." (Peg Seminario, Director, Occupational Safety and Health for the AFL-CIO)). For the NAS studies, see *infra* note 231.

<sup>228</sup> See 147 CONG. REC. 2823 (2001) (statement of Sen. Enzi) ("Maybe OSHA didn't think it needed to pay attention to these [public] comments because it could get all the information it wanted from its hired guns. . . . OSHA paid some 20 contractors \$ 10,000 each to testify on the proposed rule. They not only testified on it; they had their testimony edited by the Department . . . . Then--and this is the worst part of it all--they paid those witnesses to tear apart the testimony of the other folks who were testifying, at their own expense. . . . Regardless of whether these tactics actually violate any law, it clearly paints OSHA as a zealous advocate, not an impartial decisionmaker.").

<sup>229</sup> See *infra* Part VI.B (urging OSHA to consider, among many possible substantive changes to the 2000 ergonomics rule, specific changes in the process by which it might be analyzed and promulgated).

workers annually.<sup>230</sup> Hundreds of peer-reviewed epidemiologic studies have concluded that prolonged or repeated exposures to risk factors such as lifting heavy objects, undertaking relentless fine-motor actions, and handling tools that vibrate forcefully can cause debilitating MSDs that affect the hands, wrists, neck, arms, legs, back, and other body parts.<sup>231</sup> Most of these studies have also documented dose--response relationships: more intense, frequent, or forceful occupational stress results in greater population incidence, more severe individual morbidity, or both. In this respect, ergonomic risk factors resemble the chemical, radiological, and [\*766] biological exposures OSHA has regulated for decades under the OSH Act and the 1980 Supreme Court decision in the *Benzene Case*--if prevailing exposures are sufficient to cause a "significant risk" of serious impairment of health, OSHA can impose "highly protective"<sup>232</sup> controls to reduce the risk substantially, as long as the controls are technologically feasible and not so expensive that they threaten the fundamental competitive structure<sup>233</sup> of an entire industry.<sup>234</sup>

The fundamental weakness of OSHA's ergonomics regulation was that it did not target ergonomic risk factors specifically or directly, but instead would have required an arguably vague, indirect, and potentially never-ending

<sup>230</sup> According to the Bureau of Labor Statistics, there were more than 560,000 injuries, resulting in one or more lost workdays, from the category of "sprains, strains, tears"; by 2009, that number had declined, for whatever reason(s), to roughly 380,000. See *Nonfatal Cases Involving Days Away from Work: Selected Characteristics (2003)*, U.S. BUREAU OF LABOR STATISTICS, <http://data.bls.gov/timeseries/CHU00X021XXX6N100> (last visited Nov. 14, 2011).

<sup>231</sup> For a very comprehensive survey of the epidemiologic literature as it existed at the time OSHA was writing its 1999 ergonomics proposal, see NAT'L INST. FOR OCCUPATIONAL SAFETY & HEALTH, U.S. DEPT OF HEALTH & HUMAN SERVS., *MUSCULOSKELETAL DISORDERS AND WORKPLACE FACTORS: A CRITICAL REVIEW OF EPIDEMIOLOGIC EVIDENCE FOR WORK-RELATED MUSCULOSKELETAL DISORDERS OF THE NECK, UPPER EXTREMITY, AND LOW BACK*, NO. 97B141 (Bruce P. Bernard ed., 1997), <http://www.cdc.gov/niosh/docs/97-141/pdfs/97-141.pdf>. See also PANEL ON MUSCULOSKELETAL DISORDERS & THE WORKPLACE, COMM'N ON BEHAVIORAL & SOC. SCIS. & EDUC., NAT'L RESEARCH COUNCIL & INST. OF MED., *MUSCULOSKELETAL DISORDERS AND THE WORKPLACE: LOW BACK AND UPPER EXTREMITIES* (2001), available at <http://www.nap.edu/catalog/10032.html> (reviewing the complexities of factors that cause or elevate the risk of musculoskeletal injury); STEERING COMM. FOR THE WORKSHOP ON WORK-RELATED MUSCULOSKELETAL INJURIES: THE RESEARCH BASE, NAT'L RESEARCH COUNCIL, *WORK-RELATED MUSCULOSKELETAL DISORDERS: REPORT, WORKSHOP SUMMARY, AND WORKSHOP PAPERS* (1999), available at <http://www.nap.edu/catalog/6431.html> (examining the state of research on work-related musculoskeletal disorders); STEERING COMM. FOR THE WORKSHOP ON WORK-RELATED MUSCULOSKELETAL INJURIES: THE RESEARCH BASE, NAT'L RESEARCH COUNCIL, *WORK-RELATED MUSCULOSKELETAL DISORDERS: A REVIEW OF THE EVIDENCE* (1998), available at <http://www.nap.edu/catalog/6309.html> (reflecting on the role that work procedures, physical features of the employee, and other similar factors have on musculoskeletal disorders).

<sup>232</sup> *Indus. Union Dep't v. Am. Petroleum Inst. (Benzene Case)*, 448 U.S. 607, 643 n.48 (1980).

<sup>233</sup> See *Am. Textile Mfrs. Inst., Inc. v. Donovan (Cotton Dust Case)*, 452 U.S. 490, 513 (1981).

<sup>234</sup> Ergonomic stressors may appear to be very different from chemical exposures, in that person-to-person variation in fitness obviously affects the MSD risk. Some people cannot lift a seventy-five-pound package even once, whereas others can do so over and over again without injury. However, substantial (though often unacknowledged) inter-individual variability is known to exist in susceptibility to chemical hazards as well. See COMM. ON IMPROVING RISK ANALYSIS APPROACHES USED BY THE U.S. EPA, NAT'L RESEARCH COUNCIL, *SCIENCE AND DECISIONS: ADVANCING RISK ASSESSMENT* ch.5 (2009), available at <http://www.nap.edu/catalog/12209.html> (recommending that the EPA adjust its estimates of risk for carcinogens upwards to account for the above-average susceptibility to carcinogenesis of substantial portions of the general population); COMM. ON RISK ASSESSMENT OF HAZARDOUS AIR POLLUTANTS, NAT'L RESEARCH COUNCIL, *SCIENCE AND JUDGMENT IN RISK ASSESSMENT* ch.10 (1994), available at <http://www.nap.edu/catalog/2125.html>. For both kinds of hazards, each person has his or her own dose-response curve, and regulatory agencies can reduce population morbidity and mortality by reducing exposures (and hence risks) for relatively "resistant," relatively "sensitive" individuals, or both--with or without special regulatory tools to benefit these subgroups differentially. See Adam M. Finkel, *Protecting People in Spite of--or Thanks to--the "Veil of Ignorance,"* in *GENOMICS AND ENVIRONMENTAL REGULATION: SCIENCE, ETHICS, AND LAW* 290, 290-341 (Richard R. Sharp et al. eds., 2008) (arguing that the government should use its technological capacities to estimate individualized assessments of risk and benefit).

series of ill-defined improvements in broader industrial management systems at the firm level, ones that in turn could have reduced stressors and thereby reduced MSDs. The decision to craft a management-based regulation<sup>235</sup> rather than one that directly specified improvements in technological controls (a design standard) or reductions in specific exposures (a performance standard) was perhaps an understandable [\*767] reaction on OSHA Assistant Secretary Charles Jeffress' part to history and contemporary political pressures.

In 1995, OSHA drafted a complete regulatory text and preamble to a proposed ergonomics regulation that would have specified performance targets for the common risk factors in many industrial sectors. Of necessity, these targets in some cases involved slightly more complicated benchmarks than the one-dimensional metrics industry was used to seeing from OSHA (e.g., ppm of some contaminant in workplace air). For example, a "lifting limit" might have prohibited employers from requiring a worker to lift more than X objects per hour, each weighing Y pounds, if the lifting maneuver required rotating the trunk of the body through an angle of more than Z degrees. OSHA circulated this proposed rule widely, and it generated such intense opposition from the regulated community, and such skepticism during informal review by the Office of Information and Regulatory Affairs, that the agency withdrew it and went back to the drawing board. Because the most vehement opposition arose in response to the easily caricatured extent of "micro-management" in the 1995 text,<sup>236</sup> when OSHA began to rework the ergonomics rule in 1998, it acted as if the most important complexion of the new rule would be its reversal of each feature of the old one. Where the 1995 text was proactive and targeted exposures, the 2000 text<sup>237</sup> was reactive, and imposed on an employer no obligation to control exposures until at least one employee in a particular job category had already developed a work-related MSD. Where the 1995 text provided performance goals so an employer could know, but also object to, how much exposure reduction would satisfy an OSHA inspector, the revised text emphasized that inspectors would be looking for evidence of management leadership in creating an ergonomically appropriate workplace and employee participation in decisions about ergonomic design.

OSHA intended this pendulum swing with respect to the earlier version [\*768] in large part to provide the opposition with what it said it wanted--a "user-friendly" rule that allowed each employer to reduce MSDs according to the unique circumstances of his operation and workforce. Instead, these attributes doomed the revised ergonomics rule, but with hindsight they provide a partial blueprint for how OSHA could sensibly craft a "substantially different" regulation in the future. American business interpreted OSHA's attempt to eschew one-size-fits-all requirements not as a concession to the opposition around the 1995 text, but as a declaration of war. The "flexibility" to respond idiosyncratically to the unique ergonomic problems in each workplace was almost universally interpreted by industry trade associations as the worst kind of vagueness. Having beaten back a rule that seemed to tell employers exactly what to do, industry now argued that a rule with too much flexibility was a rule without any clear indication of where

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<sup>235</sup> See, e.g., Cary Coglianese & David Lazer, *Management-Based Regulation: Prescribing Private Management to Achieve Public Goals*, [37 LAW & SOC'Y REV. 691, 726 \(2003\)](#) ("The challenge for governmental enforcement of management-based regulation may be made more difficult because the same conditions that make it difficult for government to impose technological and performance standards may also tend to make it more difficult for government to determine what constitutes 'good management.'").

<sup>236</sup> n236 For two examples cited by Congressmen of each political party, see *OSHA's Regulatory Activities and Processes Regarding Ergonomics: Hearing Before the Subcomm. on Nat'l Econ. Growth, Natural Res. & Regulatory Affairs of the H. Comm. on Gov't Reform & Oversight*, 104th Cong. (1995). At that hearing, Republican Representative David McIntosh stated:

A questionnaire in the draft proposal asks employers of computer users if their employees are allowed to determine their own pace, and discourages employers from using any incentives to work faster. In other words, employers would not be allowed to encourage productivity. If the Ergonomics rulemaking is truly dead, we have saved more than just the enormous cost involved.

*Id.* at 7 (statement of Rep. McIntosh). Similarly, Democratic Representative Collin Peterson expressed concern about governmental micromanagement of industrial processes: "I have to say that I am skeptical that any bureaucrat can sit around and try to figure out this sort of thing." *Id.* at 9 (statement of Rep. Peterson).

<sup>237</sup> See Ergonomics Program, [64 Fed. Reg. 65,768](#) (proposed Nov. 23, 1999).

the compliance burden would end. Small business in particular characterized the lack of specific marching orders as being "left to their own devices," in the sense of federal abdication of responsibility to state plainly what would suffice.<sup>238</sup> But in light of what had already transpired in 1995, and exacerbated by the publication of the final rule after the votes were cast in the Bush v. Gore election, but before the outcome was known, it turned out that OSHA opened itself up to much worse than charges of insufficient detail--it became dogged by charges that the regulatory text was a Trojan horse, hiding an apparatus that was specific and onerous, but one it was keeping secret.<sup>239</sup> The requirement--not found in the OSH Act or in its interpretations in the *Benzene Case* or *Cotton Dust Case*,<sup>240</sup> but having [\*769] evolved out of OSHA's deference to the instructions issued by OIRA--that OSHA compare the costs and benefits of compliance with each final rule<sup>241</sup> played into this conspiratorial interpretation: because OSHA provided cost information, it was reasonable for industry to infer that OSHA knew what kinds of controls it would be requiring, and that inspectors would be evaluating these controls rather than management leadership and employee participation to gauge the presence of violations and the severity of citations. Both the extreme flexibility of the rule and the detail of the cost-benefit information may have been a road paved with good intentions, but ironically or otherwise these factors combined to fuel the opposition and to provide a compelling narrative of a disingenuous agency, a story that receptive ears in Congress were happy to amplify.

Not only was OSHA's attempt to write a regulation whose crux was "choose your controls" misinterpreted as "choose our controls by reading our minds," but it undermined any tendency of Congress to defer to the agency's conclusion that the rule had a favorable benefit-cost balance. Because the projected extent of compliance expenditures depended crucially on how many firms would have to create or improve their ergonomics management systems, and what those improvements would end up looking like, rather than on the more traditional cost accounting scenario--the price of specified controls multiplied by the number of controls necessary for regulated firms to come into compliance--opponents of the rule did not need to contest OSHA's data or price estimates; they simply needed to assert that the extreme ambiguity of the regulatory target could lead to much greater expenditures than OSHA's rosy scenarios predicted. The ominous pronouncements of ergonomic costs<sup>242</sup> were the single most important factor in justifying the congressional veto, on the grounds that the costs of the regulation swamped benefits it would deliver, and the vagueness of the rule played into the hands of those who could benefit from fancifully large cost estimates. The reactive nature of the rule--most of the new controls would not have to be implemented until one or more MSD injuries occurred in a given job category in a particular workplaces--also made OSHA's benefits estimates precarious. All estimates of reduced health effects as a function

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<sup>238</sup> 147 CONG. REC. 2837 (2001) (statement of Sen. Bond) ("The Clinton OSHA ergonomics regulation . . . will be devastating both to small businesses and their employers because it is incomprehensible and outrageously burdensome. Too many of the requirements are . . . like posting a speed limit on the highway that says, 'Do not drive too fast,' but you never know what 'too fast' is until a State trooper pulls you over and tells you that you were driving too fast.").

<sup>239</sup> n239 One author opined:

The [2000] ergonomics standard . . . is one of the most vague standards OSHA has ever adopted. It leaves the agency with tremendous discretion to shape its actual impact on industry through enforcement strategy. In other words, OSHA's information guidance documents will likely play a large role in the practical meaning of the standard. This will allow the agency to work out details while bypassing the rigors of notice-and-comment rulemaking. However, it will also expose OSHA to more accusations of "back door" rulemaking.

Timothy G. Pepper, *Understanding OSHA: A Look at the Agency's Complex Legal and Political Environment*, 46 PROF. SAFETY, Feb. 2001, at 14, 16, available at <http://www.allbusiness.com/government/government-bodies-offices-legislative/1443343-1.html>.

<sup>240</sup> *Am. Textile Mfrs. Inst., Inc. v. Donovan (Cotton Dust Case)*, 452 U.S. 490, 513 (1981).

<sup>241</sup> See Exec. Order No. 12,866, 3 C.F.R. 638 (1994), *reprinted as amended in 5 U.S.C. § 601* app. at 745 (2006).

<sup>242</sup> For cost estimates ranging up to \$ 125 billion annually, see *supra* note 101. See also Editorial, *supra* note 90 ("Although the Occupational Safety and Health Administration puts the price tag on its rules at \$ 4.5 billion, the Economic Policy Foundation gauges the cost to business at a staggering \$ 125.6 billion.").

of reduced exposures involve uncertainty in dose-response, whether or not the promulgating agency quantifies that uncertainty, but to make future costs and benefits contingent [\*770] on future cases of harm, not merely on exposures, added another level of (unacknowledged) uncertainty to the exercise.

Whatever the reasons for a veto under the CRA, we argued above that the affected agency's first responsibility, if it wants to avoid being thwarted by the "substantially similar" trap, is to craft a revised rule with a much more favorable balance of benefits to costs. But because the 2000 ergonomics rule had chosen no particular stringency per se, at least not one whose level the agency and its critics could even begin to agree existed, OSHA cannot tweak the benefit-cost balance with any straightforward concessions. In the case of ergonomics, we contend that OSHA probably needs to abandon the strategy of a flexible, management-based standard, since that approach probably guarantees pushback on the grounds that the true cost of complying with a vague set of mandates dwarfs any credible estimates of benefits, in addition to pushing the hot button of the "hidden enforcement manual." In the next section, we list some practical steps OSHA could take to comport with the CRA, motivated by a catalog of the strongest criticisms made during the floor debate on the 2000 rule, as well as our own observations about costs, benefits, and regulatory design.

### *B. Specific Suggestions for Worthwhile Revisions to the Ergonomics Rule*

A "substantially different" ergonomics rule would have benefits that exceeded costs, to a high degree of confidence. We believe OSHA could navigate between the rock of excessive flexibility--leading to easy condemnation that costs would swamp benefits--and the hard place of excessive specificity--leading essentially to condemnation that the unmeasured cost of losing control of one's own industrial process would dwarf any societal benefits--simply by combining the best features of each approach. The basic pitfall of the technology-based approach to setting standards--other than, of course, the complaint from the left wing that it freezes improvements based on what can be achieved technologically, rather than what needs to be achieved from a moral vantage point--is that it precludes clever businesses from achieving or surpassing the desired level of performance using cheaper methods. However, a hybrid rule--one that provides enough specificity about how to comply that small businesses cannot claim they are adrift without guidance, and that also allows innovation so long as it is at least as effective as the recommended controls would be--could perhaps inoculate the issuing agency against claims of too little or too much intrusiveness. From a cost--benefit perspective, such a design would also yield the very useful output of a lower bound on the net benefit estimate because by definition any of the more efficient controls some firms would freely opt to undertake would either lower total costs, [\*771] reap additional benefits, or both. It would also yield a much less controversial, and less easily caricatured, net benefit estimate because the lower-bound estimate would be based not on OSHA's hypotheses of how much management leadership and employee participation would cost and how many MSDs these programs would avert, but on the documented costs of controls and the documented effectiveness of specific workplace interventions on MSD rates. In other words, we urge OSHA to take a fresh look at the 1995 ergonomics proposal, but to recast specific design and exposure-reduction requirements therein as recommended controls--the specifications would become safe harbors that employers could implement and know they are in compliance, but that they could choose to safely ignore in favor of better site-specific, one-size-fits-one solutions to reduce intolerable ergonomic stressors.

The other major philosophical step toward a "substantially different" rule we urge OSHA to consider involves replacing ergonomic "exposure floors" with "exposure ceilings." With the intention of reassuring many employers that they would have no compliance burden if their employees were subjected only to minimal to moderate ergonomic stressors, OSHA created a Basic Screening Tool demarcating exposures above which employers *might* have to implement controls.<sup>243</sup> For example, even if one or more employees developed a work-related MSD, the employer would have no obligation to assess the jobs or tasks for possible exposure controls, unless the affected employees were routinely exposed to stressors at or above the screening levels. These levels are low, as befits a screening tool used to exclude trivial hazards; for example, only a task that involved lifting twenty-five pounds or more with arms fully extended, more than twenty-five times per workday, would exceed the screening level and possibly trigger the obligation to further assess the situation. Unfortunately, it was easy for trade associations and

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<sup>243</sup> See Ergonomics Program, 65 Fed. Reg. 68,262, 68,848-49 (Nov. 14, 2000).

their allies in Congress to misrepresent these floors as ceilings, as if OSHA had set out to eliminate *all* "twenty-five times twenty-five pounds workdays" rather than to treat any lifting injuries caused by occupational duties below this level as the employee's tough luck.<sup>244</sup> Hence the debate degenerated into warnings about "the end of Thanksgiving" under an OSHA rule that "prohibited" grocery checkout workers from lifting twenty-six-pound turkeys off the conveyor belt.<sup>245</sup> In a [\*772] revised rule, approaching the dose-response continuum from above rather than from below might make much more practical and political sense. As with all of its health standards for chemicals, OSHA's goal, as reinforced by the "significant risk" language of the *Benzene* decision, is to eliminate where feasible exposures that are intolerably high; defining instead exposures that are not insignificantly low may help narrow this window, but it obviously backfired in the case of ergonomics. Making the tough science-policy decisions about which levels of ergonomic stressors must be ameliorated wherever feasible, just as OSHA and other agencies do routinely for toxic substances with observed or modeled dose-response relationships, would have four huge advantages: (1) it would clearly transform the ergonomics rule into something "substantially different" than the 2000 version; (2) it would ally OSHA with the science of MSD dose-response--because the 2000 version triggered controls upon the appearance of an MSD, instead of treating certain exposures as intolerably risky regardless of whether they had already been associated with demonstrable harm, it certainly made it at least appear that OSHA regarded MSDs as mysterious events, rather than the logical result of specific conditions;<sup>246</sup> (3) it could insulate OSHA from some of the political wrangling that caused it to exempt some obviously risky major industries (e.g., construction) from the rule entirely, while subjecting less risky industries to the specter of costly controls, because controlling intolerable exposures wherever they are found is a neutral means of delimiting the scope of the rule; and (4) it would shift the rhetorical burden from government having to argue that small exertions might be worthy of attention to industry having to argue that herculean exertions must be permitted. Adjusting the ceiling to focus mandatory controls on the most intolerable conditions is, of course, the quintessential regulatory act and the most direct force that keeps costs down and pushes benefits up--and this is the act that OSHA's management-based ergonomics rule abdicated.

Continuing with recommendations that improve the cost-benefit [\*773] balance and also respond to specific hot buttons from the congressional veto debate, we believe that OSHA should also consider targeting an ergonomics rule more squarely at MSDs that are truly caused or exacerbated by occupational risk factors. The 2000 rule defined a work-related MSD as one that workplace exposure "caused or contributed to,"<sup>247</sup> but the latter part of this definition, intentionally or otherwise, subsumes MSDs that primarily arise from off-the-job activity and that repetitive motion merely *accompanied* (the easily mocked tennis elbow hypothetical). On the other hand, a redefinition that simply required a medical opinion that *the MSD would not have occurred absent the occupational exposure(s)* would cover any exposures that pushed a worker over the edge to a full-blown injury (and, of course, any exposures that alone sufficed to cause the injury), but not those that added marginally to off-work exposures that were already sufficient by themselves to cause the MSD. In this regard, however, it will be important for OSHA to correct an egregious misinterpretation of the science of ergonomics bandied about freely during the congressional veto debate. Various members made much of the fact that one of the NAS panel reports concluded that "[n]one of

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<sup>244</sup> For example, Republican Senator Don Nickles of Oklahoma began the Senate debate on the rule by flatly stating, "Federal bureaucrats are saying you can do this; you can't do that. You can only move 25 pounds 25 times a day . . . . Employees would say: I have to stop; it is 8:25 [a.m.], but I have already moved 25 things. Time out. Hire more people." 147 CONG. REC. 2817 (statement of Sen. Nickles).

<sup>245</sup> Republican Representative Ric Keller of Florida said, "It is also true that if a bagger in a grocery store lifts a turkey up and we are in the Thanksgiving season, that is 16 pounds, he is now violating Federal law in the minds of some OSHA bureaucrats because they think you should not be able to lift anything over 15 pounds. We need a little common sense here." 147 CONG. REC. 3059-60 (statement of Rep. Keller). Although the Basic Screening Tool nowhere mentions fifteen pounds (but rather twenty-five), or fewer than twenty-five repetitions per day, this exaggeration is over and above the basic misinterpretation of the function of the screening level.

<sup>246</sup> The decision to make the ergonomics rule reactive rather than proactive arguably played right into the hands of opponents, who essentially argued that OSHA had come to agree with them that science did not support any dose-response conclusions about MSD origins.

<sup>247</sup> Ergonomics Program, 65 Fed. Reg. at 68,854 (defining work-related).

the common MSDs is uniquely caused by work exposures." <sup>248</sup> Senator Kit Bond and others took this literally true statement about the totality of all cases of one single kind of MSD--for example, all the cases of carpal tunnel syndrome, all the cases of Raynaud's phenomenon--and made it sound as if it referred to every individual MSD case, which is of course ridiculous. "Crashing your car into a telephone pole is not uniquely caused by drunk driving," to be sure--of the thousands of such cases each year, some are certainly unrelated to alcohol, but this in no way means that we cannot be quite sure that what was to blame in a *particular* case in which the victim was found with a blood alcohol concentration of, say, 0.25 percent by volume, enough to cause stupor. Many individual MSDs are caused solely by occupational exposure, and any regulation worth anything must effect reductions in those exposures that make a resulting MSD inevitable or nearly so.

The other hot-button issue specifically mentioned repeatedly in the veto debate was OSHA's supposed attempt to create a separate workers' compensation system for injured employees. Paragraph (r) of the final ergonomics rule <sup>249</sup> would have required employers who had to remove an employee from her job due to a work-related MSD to pay her at least ninety percent of her salary for a maximum of ninety days, or until a health care professional determined that her injury would prevent her from ever [\*774] resuming that job, whichever came first. OSHA deemed such a "work restriction protection" program necessary so that employees would not be deterred from admitting they were injured and risk losing their jobs immediately. But various members of Congress decried this provision of the rule as "completely overrid[ing] the State's rights to make an independent determination about what constitutes a work-related injury and what level of compensation injured workers should receive." <sup>250</sup> Worse yet, because § 4(b)(4) of the OSH Act states that "[n]othing in this [Act] shall be construed to supersede or in any manner affect any workmen's compensation law," <sup>251</sup> various members argued that OSHA "exceeded [its] constitutional authority" by legislating a new workers' compensation system rather than regulating. <sup>252</sup> Other members disputed these allegations, noting that providing temporary and partial restoration of salary that would otherwise be lost during a period of incapacity is very different from compensating someone for an injury. As Senator Edward Kennedy said, "It has virtually nothing to do with workers compensation, other than what has been done traditionally with other kinds of OSHA rules and regulations such as for cadmium and lead." <sup>253</sup> Indeed, the Court of Appeals for the District of Columbia Circuit settled this issue years ago in upholding the much more generous eighteen-month protection program in the OSHA lead standard. In *United Steelworkers of America v. Marshall*, <sup>254</sup> that court held that § 4(b)(4) of the OSH Act bars workers from using an OSHA standard to assert a private cause of action against their employers and from obtaining state compensation for a noncompensable injury just because OSHA may protect a worker against such an injury. <sup>255</sup> But more generally, the circuit court concluded that "the statute and the legislative history both demonstrate unmistakably that OSHA's statutory mandate is, as a general matter, broad enough to include such a regulation as [medical removal protection (MRP)]." <sup>256</sup>

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<sup>248</sup> 147 CONG. REC. 2838 (statement of Sen. Bond).

<sup>249</sup> Ergonomics Program, 65 Fed. Reg. at 68,851.

<sup>250</sup> 147 CONG. REC. 2824 (statement of Sen. Enzi)

<sup>251</sup> OSH Act § 4(b)(4), [29 U.S.C. § 653](#) (2006).

<sup>252</sup> 147 CONG. REC. 2817 (2001) (statement of Sen. Nickles); see also *supra* Part II.A.

<sup>253</sup> 147 CONG. REC. 2818 (2001) (statement of Sen. Kennedy).

<sup>254</sup> [647 F.2d 1189 \(D.C. Cir. 1980\)](#).

<sup>255</sup> [Id. at 1235-36](#).

<sup>256</sup> [Id. at 1230](#). Medical removal protection (MRP) is the provision of salary while an employee with a high blood lead level (or a similar biomarker of exposure to cadmium, methylene chloride, etc.) is removed from ongoing exposure until his level declines. See *id.* at 1206. The court's decision stated in relevant part: "We conclude that though MRP may indeed have a great practical effect on workmen's compensation claims, it leaves the state schemes wholly intact as a *legal* matter, and so does not violate Section 4(b)(4)." [Id. at 1236](#).

It is ironic, therefore, that the only mention of workers' compensation in the vetoed ergonomics rule was a provision that allowed the employer to [\*775] reduce the work restriction reimbursement dollar for dollar by any amount that the employee receives under her state's compensation program!<sup>257</sup> If OSHA had not explicitly sought to prohibit double dipping, the ergonomics rule would never have even trespassed semantically on the workers' compensation system. It is tempting, then, to suggest that OSHA could make the work restriction program "substantially different" by removing the reference to workers' compensation and making it a more expensive program for employers to implement. However, both the spirit of responding to specific congressional objections and of improving the cost-benefit balance would argue against such a tactic, as would the practical danger of arousing congressional ire by turning its objections against the interests of its favored constituents. It is possible that an exposure-based ergonomics rule that does not rely on the discovery of an MSD to trigger possible controls would reduce the disincentive for workers to self-report injuries, but the problem remains that without some form of insurance against job loss, workers will find it tempting to hide injuries until they become debilitating and possibly irreversible. Perhaps the Administration could approach Congress before OSHA issued a new ergonomics proposal, and suggest it consider creating a trust fund for temporary benefits for the victims of MSD injuries, as has been done for black lung disease and vaccine-related injuries.<sup>258</sup> Employers might find work-restriction payments from a general fund less offensive than they apparently found the notion of using company funds alone to help their own injured workers.

OSHA could obviously consider a wide variety of other revisions to make a new ergonomics rule "substantially different" and more likely to survive a second round of congressional review. Some of the other changes that would accede to specific congressional concerns from 2001--such as making sure that businesses could obtain all the necessary guidance materials to implement an ergonomics program free of charge, rather than having to purchase them from private vendors at a possible cost of several hundred dollars<sup>259</sup>--are presumably no-brainers; this one being even easier to accommodate now than it would have been before the boom in online [\*776] access to published reports. Other redesigns are up to OSHA to choose among based on its appraisal of the scientific and economic information with, we would recommend, an eye toward changes that would most substantially increase total benefits, reduce total costs, or both.

There is one other category of change that we recommend even though it calls for more work for the agency than any literal reading of "substantially the same form" would require. The CRA is concerned with rules that reappear in the same "form," but it is also true that the process leading up to the words on the page matters to proponents and opponents of every regulation. The ergonomics rule faced withering criticism for several purported deficiencies in how it was produced.<sup>260</sup> We think the CRA imposes no legal obligation upon OSHA to develop a "substantially different" process the second time around--after all, "form" is essentially perpendicular to "process," and had Congress wanted to force an agency to change how it arrived at an offensive form, it surely could have said "reissued in substantially the same form or via substantially the same process" in § 801(b)(2). Nevertheless, well-founded complaints about flawed process should, we believe, be addressed at the same time an agency is attempting to improve the rule's form in the cost-benefit sense. Although courts have traditionally been very reluctant to rescind rules signed by an agency head who has telegraphed his personal views on the subject at

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<sup>257</sup> See Ergonomics Program, 65 Fed. Reg. 68,262, 68,851 (Nov. 14, 2000) ("Your obligation to provide [work restriction protection] benefits . . . is reduced to the extent that the employee receives compensation for earnings lost during the work restriction period from either a publicly or an employer-funded compensation or insurance program . . .").

<sup>258</sup> See 26 U.S.C. § 9501 (2006) (creating the Black Lung Disability Trust Fund with the purpose of providing benefits to those who were injured from the Black Lung); *id.* § 9510 (forming the Vaccine Injury Compensation Trust Fund for the purpose of providing benefits to those who were injured by certain vaccinations).

<sup>259</sup> See 147 CONG. REC. 2825-26 (2001) (statement of Sen. Enzi).

<sup>260</sup> See *supra* note 228 and accompanying text.

issue,<sup>261</sup> we assume the Obama Administration or a future Executive would be more careful to avoid the appearance of a general bias for regulation as a "thrill" (or, for that matter, against it as a "menace") by the career official leading the regulatory effort.<sup>262</sup> We, however, do not expect OSHA to overreact to ten-year-old complaints about the zeal with which it may have sought to regulate then. Other complaints about the rulemaking process in ergonomics may motivate a "substantially different" process, if OSHA seeks to re-promulgate. For example, Senator Tim Hutchinson accused OSHA of orchestrating a process with "witnesses who were paid, instructed, coached, practiced, to arrive at a preordained outcome,"<sup>263</sup> and although an agency need not confine itself to outside experts who will testify pro bono, we suggest it would be politically unwise for OSHA to edit again the testimony of the experts it enlists. Similarly, a different ergonomics rule that still had the cloud of improper and undisclosed conflict of interest in [\*777] the choice of specific outside contractors to do the bulk of the regulatory impact analysis work<sup>264</sup> would, we believe, fail to comport with the spirit of § 801(b)(2), in that it would have circumvented the instructions of at least some in Congress to "clean up" the process.

On the other hand, we think some objections to the process by which a rule is developed ought more properly to be the subject of judicial review rather than congressional interference. Some members of Congress accused OSHA of not having enough time to read, let alone digest and thoughtfully respond to, the more than 7000 public comments received as late as August 10, 2000, before the final rule was issued barely three months later.<sup>265</sup> Senator Enzi also said that OSHA "took the comments they got, and they opposed everything and incorporated things in this that were worse than in the law that was passed."<sup>266</sup> But although a reviewing court could not punish OSHA per se for crafting a rule with costs exceeding benefits, or for engaging in conduct with expert witnesses that Congress might find unseemly, the courts are empowered and required to judge whether OSHA arbitrarily ignored evidence in the record, or twisted its meaning.<sup>267</sup> The CRA, therefore, should emphasize those substantive--and procedural--concerns for which aggrieved parties have no other remedy.

## VII. RECOMMENDATIONS TO AMEND THE CRA

Congress has voted on just one attempt to amend the CRA in the fourteen years since its passage: the inconsequential Congressional Review Act Improvement Act, which unanimously passed the House in June 2009, and that would have eliminated the requirement that an agency transmit each final rule to each house of Congress, leaving the Comptroller General as the only recipient.<sup>268</sup> Here we suggest several more substantive changes

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<sup>261</sup> See, e.g., *United Steelworkers of Am. v Marshall*, 647 F.2d 1189, 1208 (D.C. Cir. 1980) (finding that the head of OSHA "served her agency poorly by making statements so susceptible to an inference of bias," but also finding that she was not "so biased as to be incapable of finding facts and setting policy on the basis of the objective record before her").

<sup>262</sup> See *supra* note 100.

<sup>263</sup> 147 CONG. REC. 2832 (statement of Sen. Hutchinson).

<sup>264</sup> See Letter from Rep. David M. McIntosh, Chairman, Subcomm. on Nat'l Econ. Growth, to Alexis M. Herman, Sec'y of Labor, U.S. Dep't of Labor (Oct. 30, 2000), available at <http://insidehealthpolicy.com/Inside-OSHA/Inside-OSHA-11/13/2000/mcintosh-letter-to-herman/menu-id-219.html>. McIntosh alleged that the career OSHA official who led the ergonomics rulemaking did (with OSHA's approval) assign task orders to a consulting firm that she had been an owner of before coming to government (and after signing a Conflict of Interest Disqualification requiring her to recuse herself from any such contractual decisions involving her former firm).

<sup>265</sup> See, e.g., 147 CONG. REC. 2823 (statement of Sen. Enzi).

<sup>266</sup> *Id.* at 2821.

<sup>267</sup> See **5 U.S.C. § 706**(2)(A) (2006) (mandating that the reviewing court shall set aside arbitrary and capricious agency actions, findings, and conclusions).

<sup>268</sup> See Congressional Review Act Improvement Act, H.R. 2247, 111th Cong. (2009) (as passed by House of Representatives, June 16, 2009); 155 CONG. REC. H6849 (daily ed. June 16, 2009) (recording the House roll call vote). The Senate did not take

[\*779] Congress should consider to improve the CRA, emphasizing the reissued-rules problem but including broader suggestions as well. We make these suggestions in part to contrast with several of the pending proposals to change the CRA that have been criticized as mischievous and possibly unconstitutional.<sup>269</sup>

**Improvement 1: Codification of the Cost-Benefit-Based Standard.** First, Congress should explicitly clarify within the CRA text the meaning of "substantially the same" along the lines we suggest: any rule with a substantially more favorable balance between benefits and costs should be considered "substantially different" and not vulnerable to a preemptory veto. In the rare cases where a prior congressional mandate to produce a narrowly tailored rule collides head-on with the veto of the rule [\*780] as promulgated, Congress has already admitted that it owes it to the agency to "make the congressional intent clear regarding the agency's options or lack thereof after enactment of a joint resolution of disapproval."<sup>270</sup> But there is currently no legal obligation for Congress to do so. In a hypothetical case where Congress has effectively said, "Promulgate this particular rule," and then vetoed a good-faith attempt to do just that, it seems particularly inappropriate for Congress not to bind itself to resolve the paradox. But we believe it is also inappropriate for Congress to perpetuate the ambiguity of "substantially the same" for the much more common cases in which the agency is not obligated to try again, but for good reasons wishes to.

**Improvement 2A: Severability.** The CRA veto process might also be improved by permitting a resolution of disapproval to strike merely the offending portion(s) of a proposed rule, leaving the rest intact. If, as a clearly hypothetical example, the only thing that Congress disliked about the ergonomics regulation was the additional entitlement to benefits different from those provided by state workers' compensation laws, it could have simply struck that provision. Charles Tiefer has made the interesting observation that one would not want to close military bases this way (but rather craft a take-it-or-leave-it approach for the proposed list as a whole) to avoid horse-trading,<sup>271</sup> but a set of regulatory provisions can be different: it is not zero-sum in the same way. The allowance for severability would pinpoint the offending portion(s) of a proposed regulation and therefore give the agency clearer guidance as to what sort of provisions are and are not approved.

Severability would have the added benefit of lowering the chances of there being a null set of reasons for veto. In other words, a generic joint resolution may be passed and overturn a regulation even though no single substantive reason has majority support in Congress. Suppose, for example, that the FAA proposed an updated comprehensive passenger safety regulation that included two unrelated provisions. First, due to passengers' disobeying the limitations on in-flight use of personal electronic devices and mobile phones, the rule banned possession of personal electronics as carry-on items. Second, in order to ensure the dexterity and mobility of those assisting with an emergency evacuation, the rule increased the minimum age for exit-row seating from fifteen to eighteen. If thirty

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significant action on the bill. See *H.R. 2247: Congressional Review Act Improvement Act*, GOVTRACK.US, <http://www.govtrack.us/congress/bill.xpd?bill=h111-2247> (last visited Nov. 14, 2011).

Various legislators have drafted other bills that have not made it to a vote. Recently, Republican Senator Mike Johanns of Nebraska introduced a bill that would bring administrative "guidance documents" within the purview of the CRA, making them subject to the expedited veto if they meet the same economic impact guidelines that subject rules to congressional scrutiny under the CRA in its current form. See *Closing Regulatory Loopholes Act of 2011*, S. 1530, 112th Cong. (2011) (as referred to committee, Sept. 8, 2011); cf. *supra* note 69 (describing the economic criteria currently used to determine whether a rule is subject to congressional review). Importantly, the bill would make vetoed guidance documents subject to the CRA's "substantially the same" provision. See S. 1530 § 2(b)(1)(B). Supporters of the bill have argued that agencies have used such guidance documents to craft enforceable policies while sidestepping congressional review, while opponents take issue with the potential new costs the bill would impose on agencies. See Stephen Lee, *Agency Guidance Would Be Subject To Congressional Review Under House Bill*, 41 OCCUPATIONAL SAFETY & HEALTH REP. 788, 788-89 (Sept. 15, 2011). At the time this Article went to press, the bill had only been introduced and referred to committee. See *S. 1530: Closing Regulatory Loopholes Act of 2011*, GOVTRACK.US, <http://www.govtrack.us/congress/bill.xpd?bill=s112-1530> (last visited Nov. 14, 2011).

<sup>269</sup> See *supra* note 268.

<sup>270</sup> 142 CONG. REC. 8199 (1996) (joint statement of Sens. Nickles, Reid, and Stevens).

<sup>271</sup> Tiefer, *supra* note 136, at 479 & n.311 (relying on the Supreme Court's reasoning in *Dalton v. Specter*, 511 U.S. 462 (1994)).

senators disliked solely the electronics ban, but thirty different senators disliked only the exit row seating restriction, then under the current law the [\*781] entire regulation is at risk of veto even though a majority of Senators approved of all of the rule's provisions. An ability to strike just the offending portion of a regulation decreases the potential<sup>272</sup> for this sort of null set veto.

**Improvement 2B: Codified Rationale.** On the other hand, some might well consider a scalpel to be a dangerous tool when placed into the hands of Congress. Although Congress may understand what it means to send an agency back to square one with a rule under the current procedure, the availability of a partial veto might lead to overuse of the CRA, turning it into a forum for tinkering with specific words in complicated regulations produced with fidelity to the science and to public comment, perhaps in ways that a court would consider arbitrary and capricious if done by the issuing agency.

Alternatively, Congress could also go much further than the limited resolution template<sup>273</sup> and take on more responsibility by living up to the literal promise embodied in the signing statement. The drafters of the CRA stated: "The authors intend the debate on *any* resolution of disapproval to focus on the law that authorized the rule . . . ." <sup>274</sup> This goal would be served (though admittedly at the expense of some speed) by requiring the joint resolution of disapproval to include a statement of the reason(s) for the veto. That is to say, whenever Congress disapproves of a rule, it should surround what Cohen and Strauss called the "Delphic 'No!'" <sup>275</sup> with some attempt to explain the "why 'No'?" question the agency will rightly be preoccupied with as it regroups or retreats. From the agency's point of view, it is bad enough that Congress can undo in ten hours what it took OSHA ten years to craft, but to do so without a single word of explanation, beyond the ping-pong balls of opposing rhetoric during a floor debate, smacks more of Congress flexing its muscle than truly teaching the agency a lesson. Indeed, it is quite possible that the act of articulating an explanatory statement to be voted on might reveal that there

"That Congress disapproves the rule submitted by the \_\_\_ relating to \_\_\_, and such rule shall have no force or effect"). [\*782] might be fifty or more unhappy Senators, but no majority for any particular view of whether and why the rule should be scrapped.

**Improvement 3: Early Veto.** We hasten to add, however, that this bow to transparency and logic should be a two-way street; we also enthusiastically endorse the proposal Professor Strauss made in 1997 that the CRA should be "amended to provide that an agency adopting the same or 'substantially the same' rule to one that has been disapproved must fully explain in its statement of basis and purpose how any issues ventilated during the initial disapproval process have been met." <sup>276</sup> We would go further, however, and suggest that the overwhelmingly logical time to have the discussion about whether a reissued rule runs afoul of the "substantially the same" provision is when the new rule is *proposed*, not after it is later issued as a final rule. Surely, needless costs will be incurred by the agency and the interested public, needless uncertainty will plague the regulated industries, and other benefits will be needlessly foregone in the bargain, if Congress silently watches a regulatory proposal go through notice and comment that it believes may be invalid on "substantially the same" grounds, only to veto it at

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<sup>272</sup> Admittedly, severability would not entirely eliminate this possibility- the risk would still remain where dueling minorities of legislators opposed the *same* provision but for different reasons. For example, if the Environmental Protection Agency were to propose an ozone standard of 60 parts per billion (ppb), the regulation is at risk of being vetoed if thirty senators think the standard should be 25 ppb while another thirty Senators think it should be 200 ppb.

<sup>273</sup> See 5 U.S.C. § 802 (2006) (requiring that a joint resolution of disapproval read:

<sup>274</sup> 142 CONG. REG. 8199 (1996) (joint statement of Sens. Nickles, Reid, and Stevens) (emphasis added).

<sup>275</sup> Daniel Cohen & Peter L. Strauss, *Congressional Review of Agency Regulations*, 49 ADMIN. L. REV. 95, 105(1997).

<sup>276</sup> *Hearing on CRA*, *supra* note 83, at 135 (statement of Peter L. Strauss, Betts Professor of Law, Columbia University). Assuming that our proposal immediately above was adopted, we would interpret Strauss' amendment as then applying only to issues specifically called out in the list of particulars contained in the expanded text of the actual resolution of disapproval--not necessarily to every issue raised by any individual member of Congress during the floor debate.

the finish line. We suggest that whenever an agency is attempting to reissue a vetoed rule on the grounds that it is not "substantially the same," it should be obligated to transmit the notice of proposed rulemaking (NPRM) to both houses, and then that Congress should have a window of time--we suggest sixty legislative days--to decide whether the proposal should not be allowed to go forward on "substantially the same" grounds, with silence denoting assent. Under this process, failure to halt the NPRM would preclude Congress from raising a "substantially the same" objection at the time of final promulgation, but it would of course not preclude a second veto on any substantive grounds.<sup>277</sup> The [\*783] agency would still be vulnerable to charges that it had found a second way to issue a rule that did more harm than good. With this major improvement in place, a vague prohibition against reissuing a similar rule would at worst cause an agency to waste half of its rulemaking resources in an area.

**Improvement 4: Agency Confrontation.** Currently, the CRA does not afford the agency issuing a rule the opportunity that a defendant would have under the Confrontation Clause<sup>278</sup> to face his accusers about the conduct at issue. Even within the confines of an expedited procedure, and recognizing that the floor of Congress is a place for internecine debate as opposed to a hearing, the CRA could still be amended to allow some limited dialogue between the agency whose work is being undone and the members. Perhaps in conjunction with a requirement that Congress specify the reasons for a resolution of disapproval, the agency should be allowed to enter a response into the official record indicating any concerns about misinterpretation of the rule or the accompanying risk and cost analyses. This could, of course, become somewhat farcical in a case (like the ergonomics standard) where the leadership of the agency had changed hands between the time of promulgation and the time of the vote on the disapproval--presumably, Secretary Chao would have declined the opportunity to defend the previous administration's ergonomics standard on factual grounds. However, each agency's Regulatory Policy Officer could be empowered to craft such a statement.<sup>279</sup>

## CONCLUSION

The CRA can be a helpful hurdle to check excesses and spur more favorable actions from a CBA standpoint, but it makes no sense to foreclose the agency from doing what Congress wants under the guise of the substantial similarity provision. OSHA should not reissue the ergonomics rule in anything like its past form--not because of "substantial similarity," but because it was such a flawed rule in the first place. But a different rule with a more favorable cost-benefit ratio has been needed for decades, and [\*784] "substantial similarity" should not be raised again lightly, especially since at least ten years will have passed and times will have changed.

The history and structure of the CRA, and its role in the larger system of administrative law, indicate that the substantial similarity provision should be interpreted narrowly. More specifically, it seems that if, following disapproval of a rule, the agency changes its provisions enough that it alters the cost-benefit ratio in a significant and favorable way, and at least tries in good faith to fix substantive and procedural flaws, then the new rule should

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<sup>277</sup> Enforcement of a limit on tardy congressional "substantial similarity" vetoes would require additional amendments to the CRA. First, the section governing judicial review would need to be amended so that a court can review and invalidate a CRA veto on the basis that Congress was making an after-the-fact "substantial similarity" objection. Cf. [5 U.S.C. § 805](#) ("No determination, finding, action, or omission under this chapter shall be subject to judicial review."). Second, Congress would need to insert its substantive basis for the veto into the text of the joint resolution, which is currently not allowed (but which we recommend as Improvement 2B above). Absent a textual explanation of the substantive basis for a veto, the ban on a tardy congressional "substantial similarity" veto would be an empty prohibition; members of Congress could vote in favor of a blanket veto without any substantive reason, and courts would likely decline to review the veto under the political question doctrine.

<sup>278</sup> See U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . .").

<sup>279</sup> Note that these officers usually were career appointees, who would therefore generally hold over when administrations changed. See Exec. Order No. 12,866, 3 C.F.R. 638 (1994), *reprinted as amended in* [5 U.S.C. § 601](#) app. at 745 (2006). President Bush issued an executive order that redefined these officers as being political appointees, but President Obama rescinded that order in January 2009, redefining these officials as careerists who might be better able to fulfill this function objectively. See Exec. Order No. 13,497, 3 C.F.R. 218 (2010), *invalidating* Exec. Order No. 13,422, 3 C.F.R. 191 (2007).

not be barred under the CRA. The rule can still be vetoed a second time, but for substantive reasons rather than for a technicality. The framers of the CRA were concerned with federal agencies creating costly regulatory burdens with few benefits, and this consideration arose again in the debates over the OSHA ergonomics rule. The disapproval procedure--with its expedited debates, narrow timeframe, and failure to provide for severability of rule provisions--suggests that the substantial similarity provision is not intended to have broad effects on an agency's power to issue rules under its organic statute, especially in a system in which we generally defer to agencies in interpreting their own delegated authority. Instead, the history and structure of the procedure suggest that the CRA is intended to give agencies a second chance to "get it right." In an ideal world, Congress would monitor major regulations and weigh in at the proposal stage, but sending them back to the drawing board, even though regrettably not until after the eleventh hour, is what the CRA most fundamentally does, and therefore it is fundamentally important that such a drawing board not be destroyed. If one believes, as we do, that well-designed regulations are among "those wise restraints that make us free," then Congress should not preclude wise regulations as it seeks to detect and rework regulations it deems deficient.

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# EXTENSIONS OF REMARKS

PROVIDING FOR CONSIDERATION OF H.R. 3136, CONTRACT WITH AMERICA ADVANCEMENT ACT OF 1996

SPEECH OF

**HON. HENRY J. HYDE**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 28, 1996

Mr. HYDE. Mr. Speaker, I submit for the RECORD a summary of the Small Business Regulatory Enforcement Fairness Act, included in H.R. 3136.

**SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT VIEWS OF THE HOUSE COMMITTEES OF JURISDICTION ON THE CONGRESSIONAL INTENT REGARDING THE "SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT OF 1996"**

I. SUMMARY OF THE LEGISLATION

The Hyde amendment to H.R. 3136 replaced Title III of the Contract with America Advancement Act of 1996 to incorporate a revised version of the Small Business Regulatory Enforcement Fairness Act of 1996 (the "Act"). As enacted, Title III of H.R. 3136 became Title II of Public Law 104-121. This legislation was originally passed by the Senate as S. 942. The Hyde amendment makes a number of changes to the Senate bill to better implement certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations, including judicial review of agency actions under the Regulatory Flexibility Act (RFA). The amendment also provides for expedited procedures for Congress to review agency rules and to enact Resolutions of Disapproval voiding agency rules.

The goal of the legislation is to foster a more cooperative, less threatening regulatory environment among agencies, small businesses and other small entities. The legislation provides a framework to make federal regulators more accountable for their enforcement actions by providing small entities with an opportunity for redress of arbitrary enforcement actions. The centerpiece of the legislation is the RFA which requires a regulatory flexibility analysis of all rules that have a "significant economic impact on a substantial number" of small entities. Under the RFA, this term "small entities" includes small businesses, small non-profit organizations, and small governmental units.

II. SECTION-BY-SECTION ANALYSIS

Section 201

This section entitles the Act the "Small Business Regulatory Enforcement Fairness Act of 1996."

Section 202

This section of the Act sets forth findings as to the need for a strong small business sector, the disproportionate impact of regulations on small businesses, the recommendations of the 1995 White House Conference on Small Business, and the need for judicial review of the Regulatory Flexibility Act.

Section 203

This section of the Act sets forth the purposes of this legislation. These include the

need to address some of the key Federal regulatory recommendations of the 1995 White House Conference on Small Business. The White House Conference produced a consensus that small businesses should be included earlier and more effectively in the regulatory process. The Act seeks to create a more cooperative and less threatening regulatory environment to help small businesses in their compliance efforts. The Act also provides small businesses with legal redress from arbitrary enforcement actions by making Federal regulators accountable for their actions. Additionally, the Act provides for judicial review of the RFA.

Subtitle A—Regulatory Compliance Simplification

Agencies would be required to publish easily understood guides to assist small businesses in complying with regulations and provide them informal, non-binding advice about regulatory compliance. This subtitle creates permissive authority for Small Business Development Centers to offer regulatory compliance information to small businesses and to establish resource centers to disseminate reference materials. Federal agencies are directed to cooperate with states to create guides that fully integrate Federal and state regulatory requirements on small businesses.

Section 211

This section defines certain terms as used in this subtitle. The term "small entity" is currently defined in the RFA (5 U.S.C. 601) to include small business concerns, as defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)) small nonprofit organizations and small governmental jurisdictions. The process of determining whether a given business qualifies as a small business is straightforward, using size standard thresholds established by the SBA based on Standard Industrial Classification codes. The RFA also defines small organization and small governmental jurisdiction (5 U.S.C. 601). Any definition established by an agency for purposes of implementing the RFA would also apply to this Act.

Section 212

This section requires agencies to publish "small entity compliance guides" to assist small entities in complying with regulations which are the subject of a final regulatory flexibility analysis. The bill does not allow judicial review of the guide itself. However, the agency's claim that the guide provides "plain English" assistance would be a matter of public record. In addition, the small business compliance guide would be available as evidence of the reasonableness of any proposed fine on the small entity.

Agencies should endeavor to make these "plain English" guides available to small entities through a coordinated distribution system for regulatory compliance information utilizing means such as the SBA's U.S. Business Advisor, the Small Business Ombudsman at the Environmental Protection Agency, state-run compliance assistance programs established under section 507 of the Clean Air Act, Manufacturing Technology Centers or Small Business Development Centers established under the Small Business Act.

Section 213

This section directs agencies that regulate small entities to answer inquiries of small

entities seeking information on and advice about regulatory compliance. Some agencies already have established successful programs to provide compliance assistance and the amendment intends to encourage these efforts. For example, the IRS, SEC and the Customs Service have an established practice of issuing private letter rulings applying the law to a particular set of facts. This legislation does not require other agencies to establish programs with the same level of formality as found in the current practice of issuing private letter rulings. The use of toll free telephone numbers and other informal means of responding to small entities is encouraged. This legislation does not mandate changes in current programs at the IRS, SEC and Customs Service, but these agencies should consider establishing less formal means of providing small entities with informal guidance in accordance with this section.

This section gives agencies discretion to establish procedures and conditions under which they would provide advice to small entities. There is no requirement that the agency's advice to small entities be binding as to the legal effects of the actions of other entities. Any guidance provided by the agency applying statutory or regulatory provisions to facts supplied by the small entity would be available as relevant evidence of the reasonableness of any subsequently proposed fine on the small entity.

Section 214

This section creates permissive authority for Small Business Development Centers (SBDC) to provide information to small businesses regarding compliance with regulatory requirements. SBDCs would not become the predominant source of regulatory information, but would supplement agency efforts to make such information widely available. This section is not intended to grant an exclusive franchise to SBDC's for providing information on regulatory compliance.

There are small business information and technical assistance programs, both Federal and state, in various forms throughout this country. Some of the manufacturing technology centers and other similar extension programs administered by the National Institute of Standards and Technology are providing environmental compliance assistance in addition to general technology assistance. The small business stationary source technical and environmental compliance assistance programs established under section 507 of the Clean Air Act Amendments of 1990 is also providing compliance assistance to small businesses. This section is designed to add to the currently available resources for small businesses.

Compliance assistance programs can save small businesses money, improve their environmental performance and increase their competitiveness. They can help small businesses learn about cost-saving pollution prevention programs and new environmental technologies. Most importantly, they can help small business owners avoid potentially costly regulatory citations and adjudications. Comments from small business representatives in a variety of fora support the need for expansion of technical information assistance programs.

Section 215

This section directs agencies to cooperate with states to create guides that fully integrate Federal and state requirements on

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in **this typeface** indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

small entities. Separate guides may be created for each state, or states may modify or supplement a guide to Federal requirements. Since different types of small entities are affected by different agency regulations, or are affected in different ways, agencies should consider preparing separate guides for the various sectors of the small business community and other small entities subject to their jurisdiction. Priority in producing these guides should be given to areas of law where rules are complex and where the regulated community tend to be small entities. Agencies may contract with outside providers to produce these guides and, to the extent practicable, agencies should utilize entities with the greatest experience in developing similar guides.

#### Section 216

This section provides that the effective date for this subtitle is 90 days after the date of enactment. The requirement for agencies to publish compliance guides applies to final rules published after the effective date. Agencies have one year from the date of enactment to develop their programs for informal small entity guidance, but these programs should assist small entities with regulatory questions regardless of the date of publication of the regulation at issue.

#### Subtitle B—Regulatory Enforcement Reforms

This subtitle creates a Small Business and Agriculture Regulatory Enforcement Ombudsman at the Small Business Administration to give small businesses a confidential means to comment on and rate the performance of agency enforcement personnel. It also creates Regional Small Business Regulatory Fairness Boards at the Small Business Administration to coordinate with the Ombudsman and to provide small businesses a greater opportunity to come together on a regional basis to assess the enforcement activities of the various Federal regulatory agencies.

This subtitle directs all Federal agencies that regulate small entities to develop policies or programs providing for waivers or reductions of civil penalties for violations by small entities, under appropriate circumstances.

#### Section 221

This section provides definitions for the terms as used in the subtitle. [See discussion set forth under "Section 211" above.]

#### Section 222

The Act creates a Small Business and Agriculture Regulatory Enforcement Ombudsman at the SBA to give small businesses a confidential means to comment on Federal regulatory agency enforcement activities. This might include providing toll-free telephone numbers, computer access points, or mail-in forms allowing businesses to comment on the enforcement activities of inspectors, auditors and other enforcement personnel. As used in this section of the bill, the term "audit" is not intended to refer to audits conducted by Inspectors General. This Ombudsman would not replace or diminish any similar ombudsman programs in other agencies.

Concerns have arisen in the Inspector General community that this Ombudsman might have new enforcement powers that would conflict with those currently held by the Inspectors General. Nothing in the Act is intended to supersede or conflict with the provisions of the Inspector General Act of 1978, as amended, or to otherwise restrict or interfere with the activities of any Office of the Inspector General.

The Ombudsman will compile the comments of small businesses and provide an annual evaluation similar to a "customer satis-

faction" rating for different agencies, regions, or offices. The goal of this rating system is to see whether agencies and their personnel are in fact treating small businesses more like customers than potential criminals. Agencies will be provided an opportunity to comment on the Ombudsman's draft report, as is currently the practice with reports by the General Accounting Office. The final report may include a section in which an agency can address any concerns that the Ombudsman does not choose to address.

The Act states that the Ombudsman shall "work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel." The SBA shall publicize the existence of the Ombudsman generally to the small business community and also work cooperatively with enforcement agencies to make small businesses aware of the program at the time of agency enforcement activity. The Ombudsman shall report annually to Congress based on substantiated comments received from small business concerns and the Boards, evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each regulatory agency. The report to Congress shall in part be based on the findings and recommendation of the Boards as reported by the Ombudsman to affected agencies. While this language allows for comment on the enforcement activities of agency personnel in order to identify potential abuses of the regulatory process, it does not provide a mandate for the boards and the Ombudsman to create a public performance rating of individual agency employees.

The goal of this section is to reduce the instances of excessive and abusive enforcement actions. Those actions clearly originate in the acts of individual enforcement personnel. Sometimes the problem is with the policies of an agency, and the goal of this section is also to change the culture and policies of Federal regulatory agencies. At other times, the problem is not agency policy, but individuals who violate the agency's enforcement policy. To address this issue, the legislation includes a provision to allow the Ombudsman, where appropriate, to refer serious problems with individuals to the agency's Inspector General for proper action.

The intent of the Act is to give small businesses a voice in evaluating the overall performances of agencies and agency offices in their dealings with the small business community. The purpose of the Ombudsman's reports is not to rate individual agency personnel, but to assess each program's or agency's performance as a whole. The Ombudsman's report to Congress should not single out individual agency employees by name or assign an individual evaluation or rating that might interfere with agency management and personnel policies.

The Act also creates Regional Small Business Regulatory Fairness Boards at the SBA to coordinate with the Ombudsman and to provide small businesses a greater opportunity to track and comment on agency enforcement policies and practices. These boards provide an opportunity for representatives of small businesses to come together on a regional basis to assess the enforcement activities of the various federal regulatory agencies. The boards may meet to collect information about these activities, and report and make recommendations to the Ombuds-

man about the impact of agency enforcement policies or practices on small businesses. The boards will consist of owners, operators or officers of small entities who are appointed by the Administrator of the Small Business Administration. Prior to appointing any board members, the Administrator must consult with the leadership of the House and Senate Small Business Committees. There is nothing in the bill that would exempt the boards from the Federal Advisory Committee Act, which would apply according to its terms. The Boards may accept donations of services such as the use of a regional SBA office for conducting their meetings.

#### Section 223

The Act directs all federal agencies that regulate small entities to develop policies or programs providing for waivers or reductions of civil penalties for violations by small entities in certain circumstances. This section builds on the current Executive Order on small business enforcement practices and is intended to allow agencies flexibility to tailor their specific programs to their missions and charters. Agencies should also consider the ability of a small entity to pay in determining penalty assessments under appropriate circumstances. Each agency would have discretion to condition and limit the policy or program on appropriate conditions. For purposes of illustration, these could include requiring the small entity to act in good faith, requiring that violations be discovered through participation in agency supported compliance assistance programs, or requiring that violations be corrected within a reasonable time.

An agency's policy or program could also provide for suitable exclusions. Again, for purposes of illustration, these could include circumstances where the small entity has been subject to multiple enforcement actions, the violation involves criminal conduct, or poses a grave threat to worker safety, public health, safety or the environment.

In establishing their programs, it is up to each agency to develop the boundaries of their program and the specific circumstances for providing for a waiver or reduction of penalties; but once established, an agency must implement its program in an even-handed fashion. Agencies may distinguish among types of small entities and among classes of civil penalties. Some agencies have already established formal or informal policies or programs that would meet the requirements of this section. For example, the Environmental Protection Agency has adopted a small business enforcement policy that satisfies this section. While this legislation sets out a general requirement to establish penalty waiver and reduction programs, some agencies may be subject to other statutory requirements or limitations applicable to the agency or to a particular program. For example, this section is not intended to override, amend or affect provisions of the Occupational Safety and Health Act or the Mine Safety and Health Act that may impose specific limitations on the operation of penalty reduction or waiver programs.

#### Section 224

This section provides that this subtitle takes effect 90 days after the date of enactment.

#### Subtitle C—Equal Access to Justice Act Amendments

The Equal Access to Justice Act (EAJA) provides a means for prevailing parties to recover their attorneys fees in a wide variety of civil and administrative actions between eligible parties and the government. This Act amends EAJA to create a new avenue for parties to recover a portion of their attorneys fees and costs where the government

makes excessive demands in enforcing compliance with a statutory or regulatory requirement, either in an adversary adjudication or judicial review of the agency's enforcement action, or in a civil enforcement action. While this is a significant change from current law, the legislation is not intended to result in the awarding of attorneys fees as a matter of course. Rather, the legislation is intended to assist in changing the culture among government regulators to increase the reasonableness and fairness of their enforcement practices. Past agency practice too often has been to treat small businesses like suspects. One goal of this bill is to encourage government regulatory agencies to treat small businesses as partners sharing in a common goal of informed regulatory compliance. Government enforcement attorneys often take the position that they must zealously advocate for their client, in this case a regulatory agency, to the maximum extent permitted by law, as if they were representing an individual or other private party. But in the new regulatory climate for small businesses under this legislation, government attorneys with the advantages and resources of the federal government behind them in dealing with small entities must adjust their actions accordingly and not routinely issue original penalties or other demands at the high end of the scale merely as a way of pressuring small entities to agree to quick settlements.

Sections 231 and 232

H.R. 3136 will allow parties which do not prevail in a case involving the government to nevertheless recover a portion of their fees and cost in certain circumstances. The test for recovering attorneys fees is whether the agency or government demand that led to the administrative or civil action is substantially in excess of the final outcome of the case and is unreasonable when compared to the final outcome (whether a fine, injunctive relief or damages) under the facts and circumstances of the case.

For purposes of this Act, the term "party" is amended to include a "small entity" as that term is defined in section 601(6) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This will ensure consistency of coverage between the provisions of this subtitle and those of the Small Business Act (15 U.S.C. 632 (a)). This broadening of the term "party" is intended solely for purposes of the amendments to the EAJA effected under this subtitle. Other portions of the EAJA will continue to be governed by the definition of "party" as appears in current law.

The comparison called for in the Act is always between a "demand" by the government for injunctive and monetary relief taken as a whole and the final outcome of the case in terms of injunctive and monetary relief taken as a whole. As used in these amendments, the term "demand" means an express written demand that leads directly to an adversary adjudication or civil action. Thus, the "demand" at issue would be the government's demand that was pending upon commencement of the adjudication or action. A written demand by the government for performance or payment qualifies under this section regardless of form; it would include, but not be limited to, a fine, penalty notice, demand letter or citation. In the case of an adversary adjudication, the demand would often be a statement of the "Definitive Penalty Amount." In the case of a civil action brought by the United States, the demand could be in the form of a demand for settlement issued prior to commencement of the litigation. In a civil action to review the determination of an administrative proceeding, the demand could be the demand that led to such proceeding. However, the term

"demand" should not be read to extend to a mere recitation of facts and law in a complaint. The bill's definition of the term "demand" expressly excludes a recitation of the maximum statutory penalty in the complaint or elsewhere when accompanied by an express demand for a lesser amount. This definition is not intended to suggest that a statement of the maximum statutory penalty somewhere other than the complaint, which is not accompanied by an express demand for a lesser amount, is per se a demand, but would depend on the circumstances.

This test should not be a simple mathematical comparison. The Committee intends for it to be applied in such a way that it identifies and corrects situations where the agency's demand is so far in excess of the true value of the case, as compared to the final outcome, and where it appears the agency's assessment or enforcement action did not represent a reasonable effort to match the penalty to the actual facts and circumstances of the case.

In addition, the bill excludes awards in connection with willful violations, bad faith actions and in special circumstances that would make such an award unjust. These additional factors are intended to provide a "safety valve" to ensure that the government is not unduly deterred from advancing its case in good faith. Whether a violation is "willful" should be determined in accordance with existing judicial construction of the subject matter to which the case relates. Special circumstances are intended to include both legal and factual considerations which may make it unjust to require the public to pay attorneys fees and costs, even in situations where the ultimate award is significantly less than the amount demanded. Special circumstances could include instances where the party seeking fees engaged in a flagrant violation of the law, endangered the lives of others, or engaged in some other type of conduct that would make the award of the fees unjust. The actions covered by "bad faith" include the conduct of the party seeking fees both at the time of the underlying violation, and during the enforcement action. For example, if the party seeking fees attempted to elude government officials, cover up its conduct, or otherwise impede the government's law enforcement activities, then attorneys' fees and costs should not be awarded.

The Committee does not intend by this provision to compensate a party for fees and costs which it would have been expended even had the government demand been reasonable under the circumstances. The amount of the award which a party may recover under this section is limited to the proportion of attorneys' fees and costs attributable to the excessive demand. Thus, for example, if the ultimate decision of the administrative law judge or the judgment of the court is twenty percent of the relevant government demand, the defendant might be entitled to eighty percent of fees and costs. The ultimate determination of the amount of fees and costs to be awarded is to be made by the administrative law judge or the court, based on the facts and circumstances of each case.

The Act also increases the maximum hourly rate for attorneys fees under the EAJA from \$75 to \$125. Agencies could avoid the possibility of paying attorneys fees by settling with the small entity prior to final judgement. The Committee anticipates that if a settlement is reached, all further claims of either party, including claims for attorneys fees, could be included as part of the settlement. The government may obtain a release specifically including attorneys fees under EAJA.

Additional language is included in the Act to ensure that the legislation did not violate of the PAYGO requirements of the Budget Act. This language requires agencies to satisfy any award of attorneys fees or expenses arising from an agency enforcement action from their discretionary appropriated funds, but does not require that an agency seek or obtain an individual line item or earmarked appropriation for these amounts.

Section 233

The new provisions of the EAJA apply to civil actions and adversary adjudications commenced on or after the date of enactment.

#### Subtitle D—Regulatory Flexibility Act Amendments

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) was first enacted in 1980. Under its terms, federal agencies are directed to consider the special needs and concerns of small entities—small businesses, small local governments, farmers, etc.—whenever they engage in a rulemaking subject to the Administrative Procedure Act. The agencies must then prepare and publish a regulatory flexibility analysis of the impact of the proposed rule on small entities, unless the head of the agency certifies that the proposed rule will not "have a significant economic impact on a substantial number of small entities."

Under current law, there is no provision for judicial review of agency action under the RFA. This makes the agencies completely unaccountable for their failure to comply with its requirements. This current prohibition on judicial enforcement of the RFA is contrary to the general principle of administrative law, and it has long been criticized by small business owners. Many small business owners believe that agencies have given lip service at best to the RFA, and small entities have been denied legal recourse to enforce the Act's requirements. Subtitle D gives teeth to the RFA by specifically providing for judicial review of selected sections.

Section 241

H.R. 3136 expands the coverage of the RFA to include Internal Revenue Service interpretative rules that provide for a "collection of information" from small entities. Many IRS rulemakings involve "interpretative rules" that IRS contends need not be promulgated pursuant to section 553 of the Administrative Procedures Act. However, these interpretative rules may have significant economic effects on small entities and should be covered by the RFA. The amendment applies to those IRS interpretative rulemakings that are published in the Federal Register for notice and comment and that will be codified in the Code of Federal Regulations. This limitation is intended to exclude from the RFA other, less formal IRS publications such as revenue rulings, revenue procedures, announcements, publications or private letter rulings.

The requirement that IRS interpretative rules comply with the RFA is further limited to those involving a "collection of information." The term "collection of information" is defined in the Act to include the obtaining, causing to be obtained, soliciting of facts or opinions by an agency through a variety of means that would include the use of written report forms, schedules, or reporting or other record keeping requirements. It would also include any requirements that require the disclosure to third parties of any information. The intent of this phrase "collection of information" in the context of the RFA is to include all IRS interpretative rules of general applicability that lead to or result in small entities keeping records, filing reports or otherwise providing information to IRS or third parties.

While the term "collection of information" also is used in the Paperwork Reduction Act (44 U.S.C. 3502(4)) ("PRA"), the purpose of the term in the context of the RFA is different than the purpose of the term in the PRA. Thus, while some courts have interpreted the PRA to exempt from its requirements certain recordkeeping requirements that are explicitly required by statute, such an interpretation would be inappropriate in the context of the RFA. If a collection of information is explicitly required by a regulation that will ultimately be codified in the Code of Federal Regulations ("CFR"), the effect might be to limit the possible regulatory alternatives available to the IRS in the proposed rulemaking, but would not exempt the IRS from conducting a regulatory flexibility analysis.

Some IRS interpretative rules merely reiterate or restate the statutorily required tax liability. While a small entity's tax liability may be a burden, the RFA cannot act to supersede the statutorily required tax rate. However, most IRS interpretative rules involve some aspect of defining or establishing requirements for compliance with the CFR, or otherwise require small entities to maintain records to comply with the CFR now covered by the RFA. One of the primary purposes of the RFA is to reduce the compliance burdens on small entities whenever possible under the statute. To accomplish this purpose, the IRS should take an expansive approach in interpreting the phrase "collection of information" when considering whether to conduct a regulatory flexibility analysis.

The courts generally are given broad discretion to formulate appropriate remedies under the facts and circumstances of each individual case. The rights of judicial review and remedial authority of the courts provided in the Act as to IRS interpretative rules should be applied in a manner consistent with the purposes of the Anti-Injunction Act (26 U.S.C. 7421), which may limit remedies available in particular circumstances. The RFA, as amended by the Act, permits the court to remand a rule to an Agency for further consideration of the rule's impact on small entities. The amendment also directs the court to consider the public interest in determining whether or not to delay enforcement of a rule against small entities pending agency compliance with the court's findings. The filing of an action requesting judicial review pursuant to this section does not automatically stay the implementation of the rule. Rather, the court has discretion in determining whether enforcement of the rule shall be deferred as it relates to small entities. In the context of IRS interpretative rulemakings, this language should be read to require the court to give appropriate deference to the legitimate public interest in the assessment and collection of taxes reflected by the Anti-Injunction Act. The court should not exercise its discretion more broadly than necessary under the circumstances or in a way that might encourage excessive litigation.

If an agency is required to publish an initial regulatory flexibility analysis, the agency also must publish a final regulatory flexibility analysis. In the final regulatory flexibility analysis, agencies will be required to describe the impacts of the rule on small entities and to specify the actions taken by the agency to modify the proposed rule to minimize the regulatory impact on small entities. Nothing in the bill directs the agency to choose a regulatory alternative that is not authorized by the statute granting regulatory authority. The goal of the final regulatory flexibility analysis is to demonstrate how the agency has minimized the impact on small entities consistent with the underlying statute and other applicable legal requirements.

#### Section 242

H.R. 3136 removes the current prohibition on judicial review of agency compliance with certain sections of the RFA. It allows adversely affected small entities to seek judicial review of agency compliance with the RFA within one year after final agency action, except where a provision of law requires a shorter period for challenging a final agency action. The amendment is not intended to encourage or allow spurious lawsuits which might hinder important governmental functions. The Act does not subject all regulations issued since the enactment of the RFA to judicial review. The one-year limitation on seeking judicial review ensures that this legislation will not permit indefinite, retroactive application of judicial review.

For rules promulgated after the effective date, judicial review will be available pursuant to this Act. The procedures and standards for review to be used are those set forth in the Administrative Procedure Act at Chapter 7 of Title 5. If the court finds that a final agency action was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law, the court may set aside the rule or order the agency to take other corrective action. The court may also decide that the failure to comply with the RFA warrants remanding the rule to the agency or delaying the application of the rule to small entities pending completion of the court ordered corrective action. However, in some circumstances, the court may find that there is good cause to allow the rule to be enforced and to remain in effect pending the corrective action.

Judicial review of the RFA is limited to agency compliance with the requirements of sections 601, 604, 605(b), 608(b) and 610. Review under these sections is not limited to the agency's compliance with the procedural aspects of the RFA; final agency action under these sections will be subject to the normal judicial review standards of Chapter 7 of Title 5. While the Committees determined that agency compliance with sections 607 and 609(a) of the RFA is important, it did not believe that a party should be entitled to judicial review of agency compliance with those sections in the absence of a judicable claim for review of agency compliance with section 604. Therefore, under the Act, an agency's failure to comply with sections 607 or 609(a) may be reviewed only in conjunction with a challenge under section 604 of the RFA.

#### Section 243

Section 243 of the Act alters the content of the statement which an agency must publish when making a certification under section 605 of the RFA that a regulation will not impose a significant economic impact on a substantial number of small entities. Current law requires only that the agency publish a "succinct statement explaining the reasons for such certification." The Committee believes that more specific justification for its determination should be provided by the agency. Under the amendment, the agency must state its factual basis for the certification. This will provide a record upon which a court may review the agency's determination in accordance with the judicial review provisions of the Administrative Procedure Act.

#### Section 244

H.R. 3136 amends the existing requirements of section 609 of the RFA for small business participation in the rulemaking process by incorporating a modified version of S. 917, the Small Business Advocacy Act, which was introduced by Senator Domenici, to provide early input from small businesses into the

regulatory process. For proposed rules with a significant economic impact on a substantial number of small entities, EPA and OSHA would have to collect advice and recommendations from small businesses to better inform the agency's regulatory flexibility analysis on the potential impacts of the rule. The House version drops the provision of the Senate bill that would have required the panels to reconvene prior to publication of the final rule.

The agency promulgating the rule would consult with the SBA's Chief Counsel for Advocacy to identify individuals who are representative of affected small businesses. The agency would designate a senior level official to be responsible for implementing this section and chairing an interagency review panel for the rule. Before the publication of an initial regulatory flexibility analysis for a proposed EPA or OSHA rule, the SBA's Chief Counsel for Advocacy will gather information from individual representatives of small businesses and other small entities, such as small local governments, about the potential impacts of that proposed rule. This information will then be reviewed by a panel composed of members from EPA or OSHA, OIRA, and the Chief Counsel for Advocacy. The panel will then issue a report on those individuals' comments, which will become part of the rulemaking record. The review panel's report and related rulemaking information will be placed in the rulemaking record in a timely fashion so that others who are interested in the proposed rule may have an opportunity to review that information and submit their own responses for the record before the close of the agency's public comment period for the proposed rule. The legislation includes limits on the period during which the review panel conducts its review. It also creates a limited process allowing the Chief Counsel for Advocacy to waive certain requirements of the section after consultation with the Office of Information and Regulatory Affairs and small businesses.

Section 245  
This section provides that the effective date of subtitle D is 90 days after enactment. Proposed rules published after the effective date must be accompanied by an initial regulatory flexibility analysis or a certification under section 605 of the RFA. Final rules published after the effective date must be accompanied by a final regulatory flexibility analysis or a certification under section 605 of the RFA, regardless of when the rule was first proposed. Thus judicial review shall apply to any final regulation published after the effective date regardless of when the rule was proposed. However, IRS interpretative rules proposed prior to enactment will not be subject to the amendments made in this subchapter expanding the scope of the RFA to include IRS interpretative rules. Thus, the IRS could finalize previously proposed interpretative rules according to the terms of currently applicable law, regardless of when the final interpretative rule is published.

Subtitle E—Congressional review subtitle  
Subtitle E adds a new chapter to the Administrative Procedure Act (APA), "Congressional Review of Agency Rulemaking," which is codified in the United States Code as chapter 8 of title 5. The congressional review chapter creates a special mechanism for Congress to review new rules issued by federal agencies (including modification, repeal, or reissuance of existing rules). During the review period, Congress may use expedited procedures to enact joint resolutions of disapproval to overrule the federal rulemaking actions. In the 104th Congress, four slightly different versions of this legislation passed the Senate and two different versions passed the House. Yet, no formal legislative history

document was prepared to explain the legislation or the reasons for changes in the final language negotiated between the House and Senate. This joint statement of the committees of jurisdiction on the congressional review subtitle is intended to cure this deficiency.

#### Background

As the number and complexity of federal statutory programs has increased over the last fifty years, Congress has come to depend more and more upon Executive Branch agencies to fill out the details of the programs it enacts. As complex as some statutory schemes passed by Congress are, the implementing regulation is often more complex by several orders of magnitude. As more and more of Congress' legislative functions have been delegated to federal regulatory agencies, many have complained that Congress has effectively abdicated its constitutional role as the national legislature in allowing federal agencies so much latitude in implementing and interpreting congressional enactments.

In many cases, this criticism is well founded. Our constitutional scheme creates a delicate balance between the appropriate roles of the Congress in enacting laws, and the Executive Branch in implementing those laws. This legislation will help to redress the balance, reclaiming for Congress some of its policymaking authority, without at the same time requiring Congress to become a super regulatory agency.

This legislation establishes a government-wide congressional review mechanism for most new rules. This allows Congress the opportunity to review a rule before it takes effect and to disapprove any rule to which Congress objects. Congress may find a rule to be too burdensome, excessive, inappropriate or duplicative. Subtitle E uses the mechanism of a joint resolution of disapproval which requires passage by both houses of Congress and the President (or veto by the President and a two-thirds' override by Congress) to be effective. In other words, enactment of a joint resolution of disapproval is the same as enactment of a law.

Congress has considered various proposals for reviewing rules before they take effect for almost twenty years. Use of a simple (one-house), concurrent (two-house), or joint (two houses plus the President) resolution are among the options that have been debated and in some cases previously implemented on a limited basis. In *INS v. Chadha*, 462 U.S. 919 (1983), the Supreme Court struck down as unconstitutional any procedure where executive action could be overturned by less than the full process required under the Constitution to make laws—that is, approval by both houses of Congress and presentment to the President. That narrowed Congress' options to use a joint resolution of disapproval. The one-house or two-house legislative veto (as procedures involving simple and concurrent resolutions were previously called), was thus voided.

Because Congress often is unable to anticipate the numerous situations to which the laws it passes must apply, Executive Branch agencies sometimes develop regulatory schemes at odds with congressional expectations. Moreover, during the time lapse between passage of legislation and its implementation, the nature of the problem addressed, and its proper solution, can change. Rules can be surprisingly different from the expectations of Congress or the public. Congressional review gives the public the opportunity to call the attention of politically accountable, elected officials to concerns about new agency rules. If these concerns are sufficiently serious, Congress can stop the rule.

Brief procedural history of congressional review chapter

In the 104th Congress, the congressional review legislation originated as S. 348, the "Regulatory Oversight Act," which was introduced on February 2, 1995. The text of S. 348 was offered by its sponsors, Senators Don Nickles and Harry Reid, as a substitute amendment to S. 219, the "Regulatory Transition Act of 1995." As amended, S. 219 provided for a 45-day delay on the effectiveness of a major rule, and provided expedited procedures that Congress could use to pass resolutions disapproving of the rule. On March 29, 1995, the Senate passed the amended version of S. 219 by a vote of 100-0. The Senate later substituted the text of S. 219 for the text of H.R. 450, the House passed "Regulatory Transition Act of 1995." Although the House did not agree to a conference on H.R. 450 and S. 219, both Houses continued to incorporate the congressional review provisions in other legislative packages. On May 25, the Senate Governmental Affairs Committee reported out S. 343, the "Comprehensive Regulatory Reform Act of 1995," and S. 291, the "Regulatory Reform Act of 1995," both with congressional review provisions. On May 26, 1995, the Senate Judiciary Committee reported out a different version of S. 343, the "Comprehensive Regulatory Reform Act of 1995," which also included a congressional review provision. The congressional review provision in S. 343 that was debated by the Senate was quite similar to S. 219, except that the delay period in the effectiveness of a major rule was extended to 60 days and the legislation did not apply to rules issued prior to enactment. A filibuster of S. 343, unrelated to the congressional review provisions, led to the withdrawal of that bill.

The House next took up the congressional review legislation by attaching a version of it (as section 3006) to H.R. 2586, the first debt limit extension bill. The House made several changes in the legislation that was attached to H.R. 2586, including a provision that would allow the expedited procedures also to apply to resolutions disapproving of proposed rules, and provisions that would have extended the 60-day delay on the effectiveness of a major rule for any period when the House or Senate was in recess for more than three days. On November 9, 1995 both the House and Senate passed this version of the congressional review legislation as part of the first debt limit extension bill. President Clinton vetoed the bill a few days later, for reasons unrelated to the congressional review provision.

On February 29, 1996, a House version of the congressional review legislation was published in the Congressional Record as title III of H.R. 994, which was scheduled to be brought to the House floor in the coming weeks. The congressional review title was almost identical to the legislation approved by both Houses in H.R. 2586. On March 19, 1996, the Senate adopted a congressional review amendment by voice vote to S. 942, which bill passed the Senate 100-0. The congressional review legislation in S. 942 was similar to the original version of S. 219 that passed the Senate on March 29, 1995.

Soon after passage of S. 942, representatives of the relevant House and Senate committees and principal sponsors of the congressional review legislation met to craft a congressional review subtitle that was acceptable to both Houses and would be added to the debt limit bill that was scheduled to be taken up in Congress the week of March 24. The final compromise language was the result of these joint discussions and negotiations.

On March 28, 1996, the House and Senate passed title III, the "Small Business Regu-

latory Enforcement Fairness Act of 1996," as part of the second debt limit bill, H.R. 3136. There was no separate vote in either body on the congressional review subtitle or on title III of H.R. 3136. However, title III received broad support in the House and the entire bill passed in the Senate by unanimous consent. The President signed H.R. 3136 into law on March 29, 1996, exactly one year after the first congressional review bill passed the Senate.

#### Submission of rules to Congress and to GAO

Pursuant to subsection 801(a)(1)(A), a federal agency promulgating a rule must submit a copy of the rule and a brief report about it to each House of Congress and to the Comptroller General before the rule can take effect. In addition to a copy of the rule, the report shall contain a concise general statement relating to the rule, including whether it is a major rule under the chapter, and the proposed effective date of the rule. Because most rules covered by the chapter must be published in the Federal Register before they can take effect, it is not expected that the submission of the rule and the report to Congress and the Comptroller General will lead to any additional delay.

Section 808 provides the only exception to the requirement that rules must be submitted to each House of Congress and the Comptroller General before they can take effect. Subsection 808(1) excepts specified rules relating to commercial, recreational, or subsistence hunting, fishing, and camping. Subsection 808(2) excepts certain rules that are not subject to notice-and-comment procedures. It provides that if the relevant agency finds "for good cause ... that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, [such rules] shall take effect at such time as the Federal agency promulgating the rule determines." Although rules described in section 808 shall take effect when the relevant Federal agency determines pursuant to other provisions of law, the federal agency still must submit such rules and the accompanying report to each House of Congress and to the Comptroller General as soon as practicable after promulgation. Thus, rules described in section 808 are subject to congressional review and the expedited procedures governing joint resolutions of disapproval. Moreover, the congressional review period will not begin to run until such rules and the accompanying reports are submitted to each House of Congress and the Comptroller General.

In accordance with current House and Senate rules, covered agency rules and the accompanying report must be separately addressed and transmitted to the Speaker of the House (the Capitol, Room H-209), the President of the Senate (the Capitol, Room S-212), and the Comptroller General (GAO Building, 441 G Street, N.W., Room 1139). Except for rules described in section 808, any covered rule not submitted to Congress and the Comptroller General will remain ineffective until it is submitted pursuant to subsection 801(a)(1)(A). In almost all cases, there will be sufficient time for an agency to submit notice-and-comment rules or other rules that must be published to these legislative officers during normal office hours. There may be a rare instance, however, when a federal agency must issue an emergency rule that is effective upon actual notice and does not meet one of the section 808 exceptions. In such a rare case, the federal agency may provide contemporaneous notice to the Speaker of the House, the President of the Senate, and the Comptroller General. These legislative officers have accommodated the receipt of similar, emergency communications in the past and will utilize the same means to

receive emergency rules and reports during non-business hours. If no other means of delivery is possible, delivery of the rule and related report by telefax to the Speaker of the House, the President of the Senate, and the Comptroller General shall satisfy the requirements of subsection 801(a)(1)(A).

Additional delay in the effectiveness of major rules

Subsection 553(d) of the APA requires publication or service of most substantive rules at least 30 days prior to their effective date. Pursuant to subsection 801(a)(3)(A), a major rule (as defined in subsection 804(2)) shall not take effect until at least 60 calendar days after the later of the date on which the rule and accompanying information is submitted to Congress or the date on which the rule is published in the Federal Register, if it is so published. If the Congress passes a joint resolution of disapproval and the President vetoes such resolution, the delay in the effectiveness of a major rule is extended by subsection 801(a)(3)(B) until the earlier date on which either House of Congress votes and fails to override the veto or 30 session days<sup>1</sup> after the date on which the Congress receives the veto and objections from the President. By necessary implication, if the Congress passes a joint resolution of disapproval within the 60 calendar days provided in subsection 801(a)(3)(A), the delay period in the effectiveness of a major rule must be extended at least until the President acts on the joint resolution or until the time expires for the President to act. Any other result would be inconsistent with subsection 801(a)(3)(B), which extends the delay in the effectiveness of a major rule for a period of time after the President vetoes a resolution.

Of course, if Congress fails to pass a joint resolution of disapproval within the 60-day period provided by subsection 801(a)(3)(A), subsection 801(a)(3)(B) would not apply and would not further delay the effective date of the rule. Moreover, pursuant to subsection 801(a)(5), the effective date of a rule shall not be delayed by this chapter beyond the date on which either house of Congress votes to reject a joint resolution of disapproval.

Although it is not expressly provided in the congressional review chapter, it is the committees' intent that a rule may take effect if an adjournment of Congress prevents the President from returning his veto and objections within the meaning of the Constitution. Such will be the case if the President does not act on a joint resolution within 10 days (Sundays excepted) after it is presented to him, and "the Congress by their Adjournment prevent its Return" within the meaning of Article I, §7, cl. 2, or when the President affirmatively vetoes a resolution during such an adjournment. This is the logical result because Congress cannot act to override these vetoes. Congress would have to begin anew, pass a second resolution, and present it to the President in order for it to become law. It is also the committees' intent that a rule may take effect immediately if the President returns a veto and his objections to Congress but Congress adjourns its last session sine die before the expiration of time provided in subsection 801(a)(3)(B). Like the situations described immediately above, no subsequent Congress can act further on the veto, and the next Congress would have to begin anew, pass a second resolution of

disapproval, and present it to the President in order for it to become law.

Purpose of and exceptions to the delay of major rules

The reason for the delay in the effectiveness of a major rule beyond that provided in APA subsection 553(d) is to try to provide Congress with an opportunity to act on resolutions of disapproval before regulated parties must invest the significant resources necessary to comply with a major rule. Congress may continue to use the expedited procedures to pass resolutions of disapproval for a period of time after a major rule takes effect, but it would be preferable for Congress to act during the delay period so that fewer resources would be wasted. To increase the likelihood that Congress would act before a major rule took effect, the committees agreed on an approximately 60-day delay period in the effective date of a major rule, rather than an approximately 45-day delay period in some earlier versions of the legislation.

There are four exceptions to the required delay in the effectiveness of a major rule in the congressional review chapter. The first is in subsection 801(c), which provides that a major rule is not subject to the delay period of subsection 801(a)(3) if the President determines in an executive order that one of four specified situations exist and notifies Congress of his determination. The second is in subsection 808(1), which excepts specified rules relating to commercial, recreational, or subsistence hunting, fishing, and camping from the initial delay specified in subsection 801(a)(1)(A) and from the delay in the effective date of a major rule provided in subsection 801(a)(3). The third is in subsection 808(2), which excepts certain rules from the initial delay specified in subsection 801(a)(1)(A) and from the delay in the effective date of a major rule provided in subsection 801(a)(3) if the relevant agency finds "for good cause . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." This "good cause" exception in subsection 808(2) is taken from the APA and applies only to rules which are exempt from notice and comment under subsection 553(b)(B) or an analogous statute. The fourth exception is in subsection 804(2). Any rule promulgated under the Telecommunications Act of 1996 or any amendments made by that Act that otherwise could be classified as a "major rule" is exempt from that definition and from the 60-day delay in section 801(a)(3). However, such an issuance still would fall within the definition of "rule" and would be subject to the requirements of the legislation for non-major rules. A determination under subsection 801(c), subsection 804(2), or section 808 shall have no effect on the procedures to enact joint resolutions of disapproval.

A court may not stay or suspend the effectiveness of a rule beyond the period specified in section 801 simply because a resolution of disapproval is pending in Congress

The committees discussed the relationship between the period of time that a major rule is delayed and the period of time during which Congress could use the expedited procedures in section 802 to pass a resolution of disapproval. Although it would be best for Congress to act pursuant to this chapter before a major rule goes into effect, it was recognized that Congress could not often act immediately after a rule was issued because it may be issued during a recesses of Congress, shortly before such recesses, or during other periods when Congress cannot devote the time to complete prompt legislative action. Accordingly, the committees determined that the proper public policy was to give Congress an adequate opportunity to de-

liberate and act on joint resolutions of disapproval, while ensuring that major rules could go into effect without unreasonable delay. In short, the committees decided that major rules could take effect after an approximate 60-day delay, but the period governing the expedited procedures in section 802 for review of joint resolution of disapproval would extend for a period of time beyond that.

Accordingly, courts may not stay or suspend the effectiveness of any rule beyond the periods specified in section 801 simply because a joint resolution is pending before Congress. Such action would be contrary to the many express provisions governing when different types of rules may take effect. Such court action also would be contrary to the committees' intent because it would upset an important compromise on how long a delay there should be on the effectiveness of a major rule. The final delay period was selected as a compromise between the period specified in the version that passed the Senate on March 19, 1995 and the version that passed both Houses on November 9, 1995. It is also the committees' belief that such court action would be inconsistent with the principles of (and potentially violate) the Constitution, art. I, §7, cl. 2, in that courts may not give legal effect to legislative action unless it results in the enactment of law pursuant to Clause. See *INS v. Chadha*, 462 U.S. 919 (1983). Finally, the committees believe that a court may not predicate a stay on the basis of possible future congressional action because it would be improper for a court to rule that the movant had demonstrated a "likelihood of success on the merits," unless and until a joint resolution is enacted into law. A judicial stay prior to that time would raise serious separation of powers concerns because it would be tantamount to the court making a prediction of what Congress is likely to do and then exercising its own power in furtherance of that prediction. Indeed, the committees believe that Congress may have been reluctant to pass congressional review legislation at all if its action or inaction pursuant to this chapter would be treated differently than its action or inaction regarding any other bill or resolution.

Time periods governing passage of joint resolutions of disapproval

Subsection 802(a) provides that a joint resolution disapproving of a particular rule may be introduced in either House beginning on the date the rule and accompanying report are received by Congress until 60 calendar days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress). But if Congress did not have sufficient time in a previous session to introduce or consider a resolution of disapproval, as set forth in subsection 801(d), the rule and accompanying report will be treated as if it were first received by Congress on the 15th session day in the Senate, or 15th legislative day in the House, after the start of its next session. When a rule was submitted near the end of a Congress or prior to the start of the next Congress, a joint resolution of disapproval regarding that rule may be introduced in the next Congress beginning on the 15th session day in the Senate or the 15th legislative day in the House until 60 calendar days thereafter (excluding days either House of Congress is adjourned for more than 3 days during the session) regardless of whether such a resolution was introduced in the prior Congress. Of course, any joint resolution pending from the first session of a Congress, may be considered further in the next session of the same Congress.

Subsections 802(c)-(d) specify special procedures that apply to the consideration of a

<sup>1</sup> In the Senate, a "session day" is a calendar day in which the Senate is in session. In the House of Representatives, the same term is normally expressed as a "legislative day." In the congressional review chapter, however, the term "session day" means both a "session day" of the Senate and a "legislative day" of the House of Representatives unless the context of the sentence or paragraph indicates otherwise.

joint resolution of disapproval in the Senate. Subsection 802(c) allows 30 Senators to petition for the discharge of resolution from a Senate committee after a specified period of time (the later of 20 calendar days after the rule is submitted to Congress or published in the Federal Register, if it is so published). Subsection 802(d) specifies procedures for the consideration of a resolution on the Senate floor. Such a resolution is highly privileged, points of order are waived, a motion to postpone consideration is not in order, the resolution is unamendable, and debate on the joint resolution and "on all debatable motions and appeals in connection therewith" (including a motion to proceed) is limited to no more than 10 hours.

Subsection 802(e) provides that the special Senate procedures specified in subsections 802(c)-(d) shall not apply to the consideration of any joint resolution of disapproval of a rule after 60 session days of the Senate beginning with the later date that rule is submitted to Congress or published, if it is so published. However, if a rule and accompanying report are submitted to Congress shortly before the end of a session or during an intersession recess as described in subsection 801(d)(1), the special Senate procedures specified in subsections 802(c)-(d) shall expire 60 session days after the 15th session day of the succeeding session of Congress—or on the 75th session day after the succeeding session of Congress first convenes. For purposes of subsection 802(e), the term "session day" refers only to a day the Senate is in session, rather than a day both Houses are in session. However, in computing the time specified in subsection 801(d)(1), that subsection specifies that there shall be an additional period of review in the next session if either House did not have an adequate opportunity to complete action on a joint resolution. Thus, if either House of Congress did not have adequate time to consider a joint resolution in a given session (60 session days in the Senate and 60 legislative days in the House), resolutions of disapproval may be introduced or reintroduced in both Houses in the next session, and the special Senate procedures specified in subsection 802(c)-(d) shall apply in the next session of the Senate.

If a joint resolution of disapproval is pending when the expedited Senate procedures specified in subsections 802(c)-(d) expire, the resolution shall not die in either House but shall simply be considered pursuant to the normal rules of either House—with one exception. Subsection 802(f) sets forth one unique provision that does not expire in either House. Subsection 802(f) provides procedures for passage of a joint resolution of disapproval when one House passes a joint resolution and transmits it to the other House that has not yet completed action. In both Houses, the joint resolution of the first House to act shall not be referred to a committee but shall be held at the desk. In the Senate, a House-passed resolution may be considered directly only under normal Senate procedures, regardless of when it is received by the Senate. A resolution of disapproval that originated in the Senate may be considered under the expedited procedures only during the period specified in subsection 802(e). Regardless of the procedures used to consider a joint resolution in either House, the final vote of the second House shall be on the joint resolution of the first House (no matter when that vote takes place). If the second House passes the resolution, no conference is necessary and the joint resolution will be presented to the President for his signature. Subsection 802(f) is justified because subsection 802(a) sets forth the required language of a joint resolution in each House, and thus, permits little variance in the joint resolutions that could be introduced in each House.

#### Effect of enactment of a joint resolution of disapproval

Subsection 801(b)(1) provides that: "A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule." Subsection 801(b)(2) provides that such a disapproved rule "may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule." Subsection 801(b)(2) is necessary to prevent circumvention of a resolution of disapproval. Nevertheless, it may have a different impact on the issuing agencies depending on the nature of the underlying law that authorized the rule.

If the law that authorized the disapproved rule provides broad discretion to the issuing agency regarding the substance of such rule, the agency may exercise its broad discretion to issue a substantially different rule. If the law that authorized the disapproved rule did not mandate the promulgation of any rule, the issuing agency may exercise its discretion not to issue any new rule. Depending on the law that authorized the rule, an issuing agency may have both options. But if an agency is mandated to promulgate a particular rule and its discretion in issuing the rule is narrowly circumscribed, the enactment of a resolution of disapproval for that rule may work to prohibit the reissuance of any rule. The committees intend the debate on any resolution of disapproval to focus on the law that authorized the rule and make the congressional intent clear regarding the agency's options or lack thereof after enactment of a joint resolution of disapproval. It will be the agency's responsibility in the first instance when promulgating the rule to determine the range of discretion afforded under the original law and whether the law authorizes the agency to issue a substantially different rule. Then, the agency must give effect to the resolution of disapproval.

#### Limitation on judicial review of congressional or administrative actions

Section 805 provides that a court may not review any congressional or administrative "determination, finding, action, or omission under this chapter." Thus, the major rule determinations made by the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget are not subject to judicial review. Nor may a court review whether Congress complied with the congressional review procedures in this chapter. This latter limitation on the scope of judicial review was drafted in recognition of the constitutional right of each House of Congress to "determine the Rules of its Proceedings," U.S. Const., art. I, §5, cl. 2, which includes being the final arbiter of compliance with such Rules.

The limitation on a court's review of subsidiary determination or compliance with congressional procedures, however, does not bar a court from giving effect to a resolution of disapproval that was enacted into law. A court with proper jurisdiction may treat the congressional enactment of a joint resolution of disapproval as it would treat the enactment of any other federal law. Thus, a court with proper jurisdiction may review the resolution of disapproval and the law that authorized the disapproved rule to determine whether the issuing agency has the legal authority to issue a substantially different rule. The language of subsection 801(g) is also instructive. Subsection 801(g) prohibits a court or agency from inferring any intent of the Congress only when "Congress does not enact a joint resolution of disapproval," or by implication, when it has not

yet done so. In deciding cases or controversies properly before it, a court or agency must give effect to the intent of the Congress when such a resolution is enacted and becomes the law of the land. The limitation on judicial review in no way prohibits a court from determining whether a rule is in effect. For example, the committees expect that a court might recognize that a rule has no legal effect due to the operation of subsections 801(a)(1)(A) or 801(a)(3).

#### Enactment of a joint resolution of disapproval for a rule that was already in effect

Subsection 801(f) provides that: "Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect." Application of this subsection should be consistent with existing judicial precedents on rules that are deemed never to have taken effect.

#### Agency information required to be submitted to GAO

Pursuant to subsection 801(a)(1)(B), the federal agency promulgating the rule shall submit to the Comptroller General (and make available to each House) (i) a complete copy of the cost-benefit analysis of the rule, if any, (ii) the agency's actions related to the Regulatory Flexibility Act, (iii) the agency's actions related to the Unfunded Mandates Reform Act, and (iv) "any other relevant information or requirements under any other Act and any relevant Executive Orders." Pursuant to subsection 801(a)(1)(B), this information must be submitted to the Comptroller General on the day the agency submits the rule to Congress and to GAO.

The committees intend information supplied in conformity with subsection 801(a)(1)(B)(iv) to encompass both agency-specific statutes and government-wide statutes and executive orders that impose requirements relevant to each rule. Examples of agency-specific statutes include information regarding compliance with the law that authorized the rule and any agency-specific procedural requirements, such as section 9 of the Consumer Product Safety Act, as amended, 15 U.S.C. §2054 (procedures for consumer product safety rules); section 6 of the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §655 (promulgation of standards); section 307(d) of the Clean Air Act, as amended, 42 U.S.C. §7607(d) (promulgation of rules); and section 501 of the Department of Energy Organization Act, 42 U.S.C. §7191 (procedure for issuance of rules, regulations, and orders). Examples of government-wide statutes include other chapters of the Administrative Procedure Act, 5 U.S.C. §§551-559 and 701-706; and the Paperwork Reduction Act, as amended, 44 U.S.C. §§3501-3520.

Examples of relevant executive orders include E.O. No. 12866 (Sept. 30, 1993) (Regulatory Planning and Review); E.O. No. 12606 (Sept. 2, 1987) (Family Considerations in Policy Formulation and Implementation); E.O. No. 12612 (Oct. 26, 1987) (Federalism Considerations in Policy Formulation and Implementation); E.O. No. 12630 (Mar. 15, 1988) (Government Actions and Interference with Constitutionally Protected Property Rights); E.O. No. 12875 (Oct. 26, 1993) (Enhancing the Intergovernmental Partnership); E.O. No. 12778 (Oct. 23, 1991) (Civil Justice Reform); E.O. No. 12988 (Feb. 5, 1996) (Civil Justice Reform) (effective May 5, 1996).

#### GAO reports on major rules

Fifteen days after the federal agency submits a copy of a major rule and report to each House of Congress and the Comptroller General, the Comptroller General shall prepare and provide a report on the major rule

to the committees of jurisdiction in each House. Subsection 801(a)(2)(B) requires agencies to cooperate with the Comptroller General in providing information relevant to the Comptroller General's reports on major rules. Given the 15-day deadline for these reports, it is essential that the agencies' initial submission to the General Accounting Office (GAO) contain all of the information necessary for GAO to conduct its analysis. At a minimum, the agency's submission must include the information required of all rules pursuant to 801(a)(1)(B). Whenever possible, OMB should work with GAO to alert GAO when a major rule is likely to be issued and to provide as much advance information to GAO as possible on such proposed major rule. In particular, OMB should attempt to provide the complete cost-benefit analysis on a major rule, if any, well in advance of the final rule's promulgation.

It also is essential for the agencies to present this information in a format that will facilitate the GAO's analysis. The committees expect that GAO and OMB will work together to develop, to the greatest extent practicable, standard formats for agency submissions. OMB also should ensure that agencies follow such formats. The committees also expect that agencies will provide expeditiously any additional information that GAO may require for a thorough report. The committees do not intend the Comptroller General's reports to be delayed beyond the 15-day deadline due to lack of information or resources unless the committees of jurisdiction indicate a different preference. Of course, the Comptroller General may supplement his initial report at any time with any additional information, on its own, or at the request of the relevant committees of jurisdiction.

#### Covered agencies and entities in the executive branch

The committees intend this chapter to be comprehensive in the agencies and entities that are subject to it. The term "Federal agency" in subsection 804(l) was taken from 5 U.S.C. § 551(l). That definition includes "each authority of the Government" that is not expressly excluded by subsection 551(l)(A)-(H). With those few exceptions, the objective was to cover each and every government entity, whether it is a department, independent agency, independent establishment, or government corporation. This is because Congress is enacting the congressional review chapter, in large part, as an exercise of its oversight and legislative responsibility. Regardless of the justification for excluding or granting independence to some entities from the coverage of other laws, that justification does not apply to this chapter, where Congress has an interest in exercising its constitutional oversight and legislative responsibility as broadly as possible over all agencies and entities within its legislative jurisdiction.

In some instances, federal entities and agencies issue rules that are not subject to the traditional 5 U.S.C. § 553(c) rulemaking process. However, the committees intend the congressional review chapter to cover every agency, authority, or entity covered by subsection 551(l) that establishes policies affecting any segment of the general public. Where it was necessary, a few special exceptions were provided, such as the exclusion for the monetary policy activities of the Board of Governors of the Federal Reserve System, rules of particular applicability, and rules of agency management and personnel. Where it was not necessary, no exemption was provided and no exemption should be inferred from other law. This is made clear by the provision of section 806 which states that the Act applies notwithstanding any other provision of law.

#### Definition of a "major rule"

The definition of a "major rule" in subsection 804(2) is taken from President Reagan's Executive Order 12291. Although President Clinton's Executive Order 12866 contains a definition of a "significant regulatory action" that is seemingly as broad, several of the Administration's significant rule determinations under Executive Order 12866 have been called into question. The committees intend the term "major rule" in this chapter to be broadly construed, including the non-numerical factors contained in the subsections 804(2) (B) and (C).

Pursuant to subsection 804(2), the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget (the Administrator) must make the major rule determination. The committees believe that centralizing this function in the Administrator will lead to consistency across agency lines. Moreover, from 1981-93, OIRA staff interpreted and applied the same major rule definition under E.O. 12291. Thus, the Administrator should rely on guidance documents prepared by OIRA during that time and previous major rule determinations from that Office as a guide in applying the statutory definition to new rules.

Certain covered agencies, including many "independent agencies," include their proposed rules in the Unified Regulatory Agenda published by OMB but do not normally submit their final rules to OMB for review. Moreover, interpretative rules and general statements of policy are not normally submitted to OMB for review. Nevertheless, it is the Administrator that must make the major rule determination under this chapter whenever a new rule is issued. The Administrator may request the recommendation of any agency covered by this chapter on whether a proposed rule is a major rule within the meaning of subsection 804(2), but the Administrator is responsible for the ultimate determination. Thus, all agencies or entities covered by this chapter will have to coordinate their rulemaking activity with OIRA so that the Administrator may make the final, major rule determination.

#### Scope of rules covered

The committees intend this chapter to be interpreted broadly with regard to the type and scope of rules that are subject to congressional review. The term "rule" in subsection 804(3) begins with the definition of a "rule" in subsection 551(4) and excludes three subsets of rules that are modeled on APA sections 551 and 553. This definition of a rule does not turn on whether a given agency must normally comply with the notice-and-comment provisions of the APA, or whether the rule at issue is subject to any other notice-and-comment procedures. The definition of "rule" in subsection 551(4) covers a wide spectrum of activities. First, there is formal rulemaking under section 553 that must adhere to procedures of sections 556 and 557 of title 5. Second, there is informal rulemaking, which must comply with the notice-and-comment requirements of subsection 553(c). Third, there are rules subject to the requirements of subsection 552(a)(1) and (2). This third category of rules normally either must be published in the Federal Register before they can adversely affect a person, or must be indexed and made available for inspection and copying or purchase before they can be used as precedent by an agency against a non-agency party. Documents covered by subsection 552(a) include statements of general policy, interpretations of general applicability, and administrative staff manuals and instructions to staff that affect a member of the public. Fourth, there is a body of materials that fall within the APA definition of "rule" and are the product of

agency process, but that meet none of the procedural specifications of the first three classes. These include guidance documents and the like. For purposes of this section, the term rule also includes any rule, rule change, or rule interpretation by a self-regulatory organization that is approved by a Federal agency. Accordingly, all "rules" are covered under this chapter, whether issued at the agency's initiative or in response to a petition, unless they are expressly excluded by subsections 804(3)(A)-(C). The committees are concerned that some agencies have attempted to circumvent notice-and-comment requirements by trying to give legal effect to general statements of policy, "guidelines," and agency policy and procedure manuals. The committees admonish the agencies that the APA's broad definition of "rule" was adopted by the authors of this legislation to discourage circumvention of the requirements of chapter 8.

The definition of a rule in subsection 551(4) covers most agency statements of general applicability and future effect. Subsection 804(3)(A) excludes "any rule of particular applicability, including a rule that approves or prescribes rates, wages, prices, services, or allowances therefore, corporate and financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing" from the definition of a rule. Many agencies, including the Treasury, Justice, and Commerce Departments, issue letter rulings or other opinion letters to individuals who request a specific ruling on the facts of their situation. These letter rulings are sometimes published and relied upon by other people in similar situations, but the agency is not bound by the earlier rulings even on facts that are analogous. Thus, such letter rulings or opinion letters do not fall within the definition of a rule within the meaning of subsection 804(3).

The different types of rules issued pursuant to the internal revenue laws of the United States are good examples of the distinction between rules of general and particular applicability. IRS private letter rulings and Customs Service letter rulings are classic examples of rules of particular applicability, notwithstanding that they may be cited as authority in transactions involving the same circumstances. Examples of substantive and interpretative rules of general applicability will include most temporary and final Treasury regulations issued pursuant to notice-and-comment rulemaking procedures, and most revenue rulings, revenue procedures, IRS notices, and IRS announcements. It does not matter that these later types of rules are issued without notice-and-comment rulemaking procedures or that they are accorded less deference by the courts than notice-and-comment rules. In fact, revenue rulings have been described by the courts as the "classic example of an interpretative rul[e]" within the meaning of the APA. See *Wing v. Commissioner*, 81 T.C. 17, 26 (1983). The test is whether such rules announce a general statement of policy or an interpretation of law of general applicability.

Most rules or other agency actions that grant an approval, license, registration, or similar authority to a particular person or particular entities, or grant or recognize an exemption or relieve a restriction for a particular person or particular entities, or permit new or improved applications of technology for a particular person or particular entities, or allow the manufacture, distribution, sale, or use of a substance or product are exempted under subsection 804(3)(A) from the definition of a rule. This is probably the largest category of agency actions excluded from the definition of a rule. Examples include import and export licenses, individual

rate and tariff approvals, wetlands permits, grazing permits, plant licenses or permits, drug and medical device approvals, new source review permits, hunting and fishing take limits, incidental take permits and habitat conservation plans, broadcast licenses, and product approvals, including approvals that set forth the conditions under which a product may be distributed.

Subsection 804(3)(B) excludes "any rule relating to agency management or personnel" from the definition of a rule. Pursuant to subsection 804(3)(C), however, a "rule of agency organization, procedure, or practice," is only excluded if it "does not substantially affect the rights or obligations of non-agency parties." The committees' intent in these subsections is to exclude matters of purely internal agency management and organization, but to include matters that substantially affect the rights or obligations of outside parties. The essential focus of this inquiry is not on the type of rule but on its effect on the rights or obligations of non-agency parties.

GRAND OPENING OF MAIN  
BRANCH, SAN FRANCISCO LI-  
BRARY

**HON. TOM LANTOS**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 18, 1996

Mr. LANTOS. Mr. Speaker, I rise today, on the 90th anniversary of the devastating 1906 San Francisco earthquake, to celebrate with the city of San Francisco a monumental achievement of community cooperation and commitment. I invite my colleagues to join me in conveying our congratulations and admiration to the people of San Francisco who have committed their precious resources to the construction of the new main branch of the San Francisco Library, a beautiful and highly functional testament to the love that San Franciscans have for their city and for books and education. It is a love that has found its voice through the coordinated efforts of corporations, foundations, and individuals.

A library should reflect the pride, the culture, and the values of the diverse communities that it serves. The San Francisco main library will undoubtedly be successful in reaching this goal. The library will be home to special centers dedicated to the history and interests of African-Americans, Chinese-Americans, Filipino-Americans, Latino-Americans, and gays and lesbians. The library will be designed to serve the specialized needs of the businessman as well as the immigrant newcomer. It will become home to the diverse communities that make San Francisco unique among metropolitan areas of the world. It will also become a home, most importantly, that serves to unite.

The new San Francisco main library represents an opportunity to preserve and disperse the knowledge of times long since passed. The book serves as man's most lasting testament and the library serves as our version of a time machine into the past, the present and the future. This library, built upon the remains of the old City Hall destroyed 90 years ago today, is a befitting tribute to the immortality of thought. Buildings will come as they will most definitely pass, but the books of this new library and the information that they hold are eternal and serve as an indelible

foundation that cannot be erased by the passage of time.

The expanded areas of the new main library will provide space for numerous hidden treasures that no longer will be hidden. The people of San Francisco will have the opportunity to reacquire themselves with numerous literary treasures previously locked behind the dusty racks of unsightly storage rooms.

Although the new San Francisco main library serves as a portal into our past, it also serves to propel us into the future. It is an edifice designed to stoke the imagination by providing access to the numerous streams of information that characterize our society today. The technologically designed library will provide hundreds of public computer terminals to locate materials on-line, 14 multimedia stations, as well as access to data bases and the Information Superhighway. It will provide education and access for those previously unable to enter the "computer revolution." The library will provide vital access and communication links so that it can truly serve as a resource for the city and for other libraries and educational institutions throughout the region. The new library will serve as an outstanding model for libraries around the world to emulate.

Like an educational institution, the San Francisco library will be a repository of human knowledge, organized and made accessible for writers, students, lifelong learners and leisure readers. It will serve to compliment and expand San Francisco's existing civic buildings—City Hall, Davies Symphony Hall, Brooks Hall, and the War Memorial and Performing Arts Center. The library serves as a symbiotic commitment between the city of San Francisco and its people. In 1988, when electorates across the country refused to support new bond issues, the people of San Francisco committed themselves to a \$109.5 million bond measure to build the new main library building and to strengthen existing branch libraries. Eight years later those voices are still clearly heard and they resonate with the dedication of this unique library, built by a community to advance themselves and their neighbors.

Mr. Speaker, on this day, when we celebrate the opening of the new main branch of the San Francisco Library, I ask my colleagues to join me in congratulating the community of San Francisco for their admirable accomplishments and outstanding determination.

TRIBUTE TO DAVID J. WHEELER

**HON. WES COOLEY**

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 18, 1996

Mr. COOLEY of Oregon. Mr. Speaker, on February 1, 1996, the President signed H.R. 2061, a bill to designate the Federal building in Baker City, OR in honor of the late David J. Wheeler. As the congressional representative for Baker City, and as the sponsor of H.R. 2061, I recently returned to Baker City for the building dedication ceremony. Mr. Wheeler, a Forest Service employee, was a model father and an active citizen. In honor of Mr. Wheeler, I would like to submit, for the record, my speech at the dedication ceremony.

Thank you for inviting me here today. It has been an honor to sponsor the congress-

sional bill to designate this building in memory of David Wheeler. I did not have the privilege of knowing Mr. Wheeler myself, but from my discussions with Mayor Griffith—and from researching his accomplishments—I've come to know what a fine man he was. I know that Mr. Wheeler was a true community leader, and I know that the community is that much poorer for his passing. With or without this dedication, his spirit will remain within the Baker City community.

Mayor Griffith, I have brought a copy of H.R. 2061—the law to honor David Wheeler. The bill has been signed by the President of the United States, by the Speaker of the House, and by the President of the Senate. Hopefully, this bill will find a suitable place within the new David J. Wheeler Federal Building.

I'd like to offer my deepest sympathy to the Wheeler family, and to everyone here who knew him. And, I'd like to offer a few words from Henry Wadsworth Longfellow—who once commented on the passing-away of great men. His words—I think—describe Mr. Wheeler well:

If a star were quenched on high,  
For ages would its light,  
Still traveling down from the sky,  
Shine on our mortal sight.

So when a great man dies,  
For years beyond our ken,  
The light he leaves behind him lies  
Upon the paths of men."

So too with David Wheeler. His light will shine on the paths of us all—particularly of his family—for the rest of our days.

THE MINIMUM WAGE

**HON. LEE H. HAMILTON**

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 18, 1996

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, April 17, 1996, into the CONGRESSIONAL RECORD.

RAISING THE MINIMUM WAGE

Rewarding work is a fundamental American value. There are many ways to achieve that goal, including deficit reduction to boost the economy, opening markets abroad to our products, improving education and skills training, and investing in technology and infrastructure. Increasing wages must be a central objective of government policies.

The economy is improving. It has in recent years reduced the unemployment rate of 5.6%, cut the budget deficit nearly in half, and spurred the creation of 8.4 million additional jobs. Real hourly earning has now begun to rise modestly, and the tax cut in 1993 for 15 million working families helped spur economic growth.

But much work needs to be done. We must build on the successes of the last few years, and address the key challenges facing our economy, including the problem of stagnant wages. This problem will not be solved overnight, but one action we can take immediately, and which I support, is to raise the minimum wage.

RAISING THE MINIMUM WAGE

The minimum wage was established in 1938 in an attempt to assist the working poor, usually non-union workers with few skills and little bargaining power. The wage has been increased 17 times, from 25 cents per hour in 1938 to \$4.25 per hour in 1991. Currently some 5 million people work for wages at or below \$4.25 per hour, and most of them are adults rather than teenagers.

percent since 1960. In 1982, the tax share stood at 19.8 percent of GDP. By 1989, the tax share had declined slightly to 19.2 percent of GDP—much the same as it had been back in 1960.

In short, whether we have raised or lowered tax rates, the percentage of GDP in taxes has hovered at 19 percent. The issue, of course, is 19 percent of what? Is it 19 percent of a large and growing GDP, or of an anemic, stagnant one?

Here again, the real numbers destroy the myths and tell the true story. According to the federal Office of Management and Budget (OMB), in 1982, the year the tax cuts were implemented, tax receipts stood at \$617.8 billion. By 1989, tax receipts had increased to \$990.7 billion.

How did this come about? By lowering taxes, the government freed up capital and entrepreneurial spirit, creating jobs and wealth and expanding the size of the economic pie. From 1982 to 1989, GDP increased from \$3.1 to \$5.4 trillion. Therefore, while tax revenues as a share of GDP remained relatively constant at just over 19 percent, the dollar amount of tax revenues collected by the federal government rose dramatically, because the economy grew dramatically.

Tax cuts will increase economic growth and thereby reduce the deficit. The question is, by how much? Economist Bruce Bartlett, a former assistant secretary of the Treasury, notes that the OMB figures show that increases in real GDP significantly reduce the deficit. By the year 2000, the deficit would be diminished by more than \$150 billion if the economy grew just 1 percent faster than currently projected over the next five years.

Of course, Bartlett says, there is no guarantee that the Republican tax cuts will achieve a 1 percent faster growth rate. But there is no doubt they will increase growth above what would otherwise have occurred. If growth is just 0.4 percent faster per year it would be enough to make the tax cut deficit-neutral, based on the OMB data.

Thus, a dispassionate review of the figures shatters the myth that the Reagan tax cuts increased the deficit. The problem was not our revenue stream, either in terms of the percentage of GDP paid in taxes, or in real tax dollars received. The problem was too much spending. From 1982 to 1989, government spending rose from \$745 billion to \$1.14 trillion, a 53 percent jump.

Tax cuts in the 1990s can help produce the same type of economic growth they generated in the 1980s. This growth in turn will help us reduce the deficit. All we must do is reduce the rate at which government spending grows. CBO figures show that, if we simply hold the rate at which federal spending grows to a little over 2 percent per year, we can cut taxes by \$189 billion and balance the budget by the year 2002.

MYTH NO. 3

But this reference to tax cuts brings us face to face with another myth, namely, that tax cuts disproportionately benefit the rich at the expense of the poor.

The myth explodes, however, on contact with IRS data conclusively show that lower income-tax rates actually increase the percentage of the total tax bill paid by the rich while decreasing the tax burden on the poor.

There is an amazing historical correlation between decreases in the marginal tax rate and increases in the share of revenue paid by the top 1 percent of income earners. And, of course, along with this increase in taxes paid by the most wealthy went a decrease in the taxes paid by the lower 50 percent of income earners.

For example, by 1988, the share of income taxes paid by the bottom 50 percent of taxpayers assumed just 5.7 percent of the in-

come tax burden. Also in 1988, the average tax payment of the top 1 percent of taxpayers amounted to 27.5 percent of the total.

On the other hand, after the budget summit deal of 1990, the top marginal tax rate was increased from 28 to 31 percent. This produced a 3.5 percent decrease in the revenue share paid by the top 1 percent—down to 24.6 percent of the total. That is, as marginal rates decreased, the rich paid more, and as marginal rates increased the rich paid less, leaving more for the middle class and poor to pay.

Clearly, then, if we want to help the middle class, the last thing we should do is increase marginal tax rates. Such an increase will lead to lower productivity, lower tax revenues from the rich, and an increased tax burden for those who are not rich.

The answer to our dilemma, then, is not to keep our current high taxes but to cut taxes while bringing spending under control.

By bringing together disparate kinds of tax cuts, from a \$500-per-child tax credit to a reduction in the capital-gains tax rate that will strengthen small businesses and entrepreneurs, we can increase the well-being and productivity of America's middle-class families. These tax cuts would allow middle-class families to build a better future for their children.

The proposed \$500-per-child tax credit directly benefits the middle class. The Joint Committee on Taxation has reported that three-quarters of the benefits from this tax cut will go to people with incomes less than \$75,000.

A capital-gains tax cut will accrue to the middle class as well. IRS data show that 55 percent of taxpayers who report long-term capital gains earn \$50,000 or less. And 75 percent of them earn \$75,000 or less.

These tax cuts will bring real relief to America's middle class. They will help the economy and thereby help lower the deficit.

The 1980s teach us—if only we will examine their lessons properly—that a vibrant economy, spurred by low taxes and fewer regulations, will produce balanced budgets and economic well-being for the middle class. We need only trust Americans to spend and invest their own money as they see fit. We need only trust the people, rather than government, to make their own decisions about how to take care of their families and improve their lot in life. ●

CONGRESSIONAL REVIEW TITLE  
OF H.R. 3136

● Mr. NICKLES. Mr. President, I will submit for the RECORD a statement which serves to provide a detailed explanation and a legislative history for the congressional review title of H.R. 3136, the Small Business Regulatory Enforcement Fairness Act of 1996. H.R. 3136 was passed by the Senate on March 28, 1996, and was signed by the President the next day. Ironically, the President signed the legislation on the first anniversary of the passage of S. 219, the forerunner to the congressional review title. Last year, S. 219, passed the Senate by a vote of 100 to 0 on March 29, 1995. Because title III of H.R. 3136 was the product of negotiation with the Senate and did not go through the committee process, no other expression of its legislative history exists other than the joint statement made by Senator REID and myself immediately before passage of H.R. 3136 on March 28. I am submitting a joint

statement to be printed in the RECORD on behalf of myself, as the sponsor of the S. 219, Senator REID, the prime cosponsor of S. 219, and Senator STEVENS, the chairman of the Committee on Governmental Affairs. This joint statement is intended to provide guidance to the agencies, the courts, and other interested parties when interpreting the act's terms. The same statement has been submitted today in the House by the chairmen of the committees of jurisdiction over the congressional review legislation.

The joint statement follows:

STATEMENT FOR THE RECORD BY SENATORS  
NICKLES, REID, AND STEVENS

SUBTITLE E—CONGRESSIONAL REVIEW SUBTITLE

Subtitle E adds a new chapter to the Administrative Procedure Act (APA), "Congressional Review of Agency Rulemaking," which is codified in the United States Code as chapter 8 of title 5. The congressional review chapter creates a special mechanism for Congress to review new rules issued by federal agencies (including modification, repeal, or reissuance of existing rules). During the review period, Congress may use expedited procedures to enact joint resolutions of disapproval to overrule the federal rulemaking actions. In the 104th Congress, four slightly different versions of this legislation passed the Senate and two different versions passed the House. Yet, no formal legislative history document was prepared to explain the legislation or the reasons for changes in the final language negotiated between the House and Senate. This joint statement of the authors on the congressional review subtitle is intended to cure this deficiency.

Background

As the number and complexity of federal statutory programs has increased over the last fifty years, Congress has come to depend more and more upon Executive Branch agencies to fill out the details of the programs it enacts. As complex as some statutory schemes passed by Congress are, the implementing regulations are often more complex by several orders of magnitude. As more and more of Congress' legislative functions have been delegated to federal regulatory agencies, many have complained that Congress has effectively abdicated its constitutional role as the national legislature in allowing federal agencies so much latitude in implementing and interpreting congressional enactments.

In many cases, this criticism is well founded. Our constitutional scheme creates a delicate balance between the appropriate roles of the Congress in enacting laws, and the Executive Branch in implementing those laws. This legislation will help to redress the balance, reclaiming for Congress some of its policymaking authority, without at the same time requiring Congress to become a super regulatory agency.

This legislation establishes a government-wide congressional review mechanism for most new rules. This allows Congress the opportunity to review a rule before it takes effect and to disapprove any rule to which Congress objects. Congress may find a rule to be too burdensome, excessive, inappropriate or duplicative. Subtitle E uses the mechanism of a joint resolution of disapproval which requires passage by both houses of Congress and the President (or veto by the President and a two-thirds' override by Congress) to be effective. In other words, enactment of a joint resolution of disapproval is the same as enactment of a law.

Congress has considered various proposals for reviewing rules before they take effect

for almost twenty years. Use of a simple (one-house), concurrent (two-house), or joint (two houses plus the President) resolution are among the options that have been debated and in some cases previously implemented on a limited basis. In *INS v. Chadha*, 462 U.S. 919 (1983), the Supreme Court struck down as unconstitutional any procedure where executive action could be overturned by less than the full process required under the Constitution to make laws—that is, approval by both houses of Congress and presentment to the President. That narrowed Congress' options to use a joint resolution of disapproval. The one-house or two-house legislative veto (as procedures involving simple and concurrent resolutions were previously called), was thus voided.

Because Congress often is unable to anticipate the numerous situations to which the laws it passes must apply, Executive Branch agencies sometimes develop regulatory schemes at odds with congressional expectations. Moreover, during the time lapse between passage of legislation and its implementation, the nature of the problem addressed, and its proper solution, can change. Rules can be surprisingly different from the expectations of Congress or the public. Congressional review gives the public the opportunity to call the attention of politically accountable, elected officials to concerns about new agency rules. If these concerns are sufficiently serious, Congress can stop the rule.

Brief procedural history of congressional review chapter

In the 104th Congress, the congressional review legislation originated as S. 348, the "Regulatory Oversight Act," which was introduced on February 2, 1995. The text of S. 348 was offered by its sponsors, Senators Don Nickles and Harry Reid, as a substitute amendment to S. 219, the "Regulatory Transition Act of 1995." As amended, S. 219 provided for a 45-day delay on the effectiveness of a major rule, and provided expedited procedures that Congress could use to pass resolutions disapproving of the rule. On March 29, 1995, the Senate passed the amended version of S. 219 by a vote of 100-0. The Senate later substituted the text of S. 219 for the text of H.R. 450, the House passed "Regulatory Transition Act of 1995." Although the House did not agree to a conference on H.R. 450 and S. 219, both Houses continued to incorporate the congressional review provisions in other legislative packages. On May 25, the Senate Governmental Affairs Committee reported out S. 343, the "Comprehensive Regulatory Reform Act of 1995," and S. 291, the "Regulatory Reform Act of 1995," both with congressional review provisions. On May 26, 1995, the Senate Judiciary Committee reported out a different version of S. 343, the "Comprehensive Regulatory Reform Act of 1995," which also included a congressional review provision. The congressional review provision in S. 343 that was debated by the Senate was quite similar to S. 219, except that the delay period in the effectiveness of a major rule was extended to 60 days and the legislation did not apply to rules issued prior to enactment. A filibuster of S. 343, unrelated to the congressional review provisions, led to the withdrawal of that bill.

The House next took up the congressional review legislation by attaching a version of it (as section 3006) to H.R. 2586, the first debt limit extension bill. The House made several changes in the legislation that was attached to H.R. 2586, including a provision that would allow the expedited procedures also to apply to resolutions disapproving of proposed rules, and provisions that would have extended the 60-day delay on the effectiveness of a major rule for any period when the House or Senate was in recess for more than

three days. On November 9, 1995 both the House and Senate passed this version of the congressional review legislation as part of the first debt limit extension bill. President Clinton vetoed the bill a few days later, for reasons unrelated to the congressional review provision.

On February 29, 1996, a House version of the congressional review legislation was published in the Congressional Record as title III of H.R. 994, which was scheduled to be brought to the House floor in the coming weeks. The congressional review title was almost identical to the legislation approved by both Houses in H.R. 2586. On March 19, 1996, the Senate adopted a congressional review amendment by voice vote to S. 942, which bill passed the Senate 100-0. The congressional review legislation in S. 942 was similar to the original version of S. 219 that passed the Senate on March 29, 1995.

Soon after passage of S. 942, representatives of the relevant House and Senate committees and principal sponsors of the congressional review legislation met to craft a congressional review subtitle that was acceptable to both Houses and would be added to the debt limit bill that was scheduled to be taken up in Congress the week of March 24. The final compromise language was the result of these joint discussions and negotiations.

On March 28, 1996, the House and Senate passed title III, the "Small Business Regulatory Enforcement Fairness Act of 1996," as part of the second debt limit bill, H.R. 3136. There was no separate vote in either body on the congressional review subtitle or on title III of H.R. 3136. However, title III received broad support in the House and the entire bill passed in the Senate by unanimous consent. The President signed H.R. 3136 into law on March 29, 1996, exactly one year after the first congressional review bill passed the Senate.

#### Submission of rules to Congress and to GAO

Pursuant to subsection 801(a)(1)(A), a federal agency promulgating a rule must submit a copy of the rule and a brief report about it to each House of Congress and to the Comptroller General before the rule can take effect. In addition to a copy of the rule, the report shall contain a concise general statement relating to the rule, including whether it is a major rule under the chapter, and the proposed effective date of the rule. Because most rules covered by the chapter must be published in the Federal Register before they can take effect, it is not expected that the submission of the rule and the report to Congress and the Comptroller General will lead to any additional delay.

Section 808 provides the only exception to the requirement that rules must be submitted to each House of Congress and the Comptroller General before they can take effect. Subsection 808(1) excepts specified rules relating to commercial, recreational, or subsistence hunting, fishing, and camping. Subsection 808(2) excepts certain rules that are not subject to notice-and-comment procedures. It provides that if the relevant agency finds "for good cause . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, [such rules] shall take effect at such time as the Federal agency promulgating the rule determines." Although rules described in section 808 shall take effect when the relevant Federal agency determines pursuant to other provisions of law, the federal agency still must submit such rules and the accompanying report to each House of Congress and to the Comptroller General as soon as practicable after promulgation. Thus, rules described in section 808 are subject to congressional review and the expedited proce-

dures governing joint resolutions of disapproval. Moreover, the congressional review period will not begin to run until such rules and the accompanying reports are submitted to each House of Congress and the Comptroller General.

In accordance with current House and Senate rules, covered agency rules and the accompanying report must be separately addressed and transmitted to the Speaker of the House (the Capitol, Room H-209), the President of the Senate (the Capitol, Room S-212), and the Comptroller General (GAO Building, 441 G Street, N.W., Room 1139). Except for rules described in section 808, any covered rule not submitted to Congress and the Comptroller General will remain ineffective until it is submitted pursuant to subsection 801(a)(1)(A). In almost all cases, there will be sufficient time for an agency to submit notice-and-comment rules or other rules, that must be published to these legislative officers during normal office hours. There may be rare instance, however, when a federal agency must issue an emergency rule that is effective upon actual notice and does not meet one of the section 808 exceptions. In such a rare case, the federal agency may provide contemporaneous notice to the Speaker of the House, the President of the Senate, and the Comptroller General. These legislative officers have accommodated the receipt of similar, emergency communications in the past and will utilize the same means to receive emergency rules and reports during nonbusiness hours. If no other means of delivery is possible, delivery of the rule and related report by telefax to the Speaker of the House, the President of the Senate, and the Comptroller General shall satisfy the requirements of subsection 801(a)(1)(A).

Additional delay in the effectiveness of major rules

Subsection 553(d) of the APA requires publication or service of most substantive rules at least 30 days prior to their effective date. Pursuant to subsection 801(a)(3)(A), a major rule (as defined in subsection 804(2)) shall not take effect until at least 60 calendar days after the later of the date on which the rule and accompanying information is submitted to Congress or the date on which the rule is published in the Federal Register, if it is so published. If the Congress passes a joint resolution of disapproval and the President vetoes such resolution, the delay in the effectiveness of a major rule is extended by subsection 801(a)(3)(B) until the earlier date on which either House of Congress votes and fails to override the veto or 30 session days<sup>1</sup> after the date on which the Congress receives the veto and objections from the President. By necessary implication, if the Congress passes a joint resolution of disapproval within the 60 calendar days provided in subsection 801(a)(3)(A), the delay period in the effectiveness of a major rule must be extended at least until the President acts on the joint resolution or until the time expires for the President to act. Any other result would be inconsistent with subsection 801(a)(3)(B), which extends the delay in the effectiveness of a major rule for a period of time after the President vetoes a resolution.

Of course, if Congress fails to pass a joint resolution of disapproval within the 60-day period provided by subsection 801(a)(3)(A), subsection 801(a)(3)(B) would not apply and

<sup>1</sup>In the Senate, a "session day" is a calendar day in which the Senate is in session. In the House of Representatives, the same term is normally expressed as a "legislative day." In the congressional review chapter, however, the term "session day" means both a "session day" of the Senate and a "legislative day" of the House of Representatives unless the context of the sentence or paragraph indicates otherwise.

would not further delay the effective date of the rule. Moreover, pursuant to subsection 801(a)(5), the effective date of a rule shall not be delayed by this chapter beyond the date on which either house of Congress votes to reject a joint resolution of disapproval.

Although it is not expressly provided in the congressional review chapter, it is the authors' intent that a rule may take effect if an adjournment of Congress prevents the President from returning his veto and objections within the meaning of the Constitution. Such will be the case if the President does not act on a joint resolution within 10 days (Sundays excepted) after it is presented to him, and "the Congress by their Adjournment prevent its Return" within the meaning of Article I, § 7, cl. 2, or when the President affirmatively vetoes a resolution during such an adjournment. This is the logical result because Congress cannot act to override these vetoes. Congress would have to begin anew, pass a second resolution, and present it to the President in order for it to become law. It is also the authors' intent that a rule may take effect immediately if the President returns a veto and his objections to Congress but Congress adjourns its last session sine die before the expiration of time provided in subsection 801(a)(3)(B). Like the situations described immediately above, no subsequent Congress can act further on the veto, and the next Congress would have to begin anew, pass a second resolution of disapproval, and present it to the President in order for it to become law.

#### Purpose of and exceptions to the delay of major rules

The reason for the delay in the effectiveness of a major rule beyond that provided in APA subsection 553(d) is to try to provide Congress with an opportunity to act on resolutions of disapproval before regulated parties must invest the significant resources necessary to comply with a major rule. Congress may continue to use the expedited procedures to pass resolutions of disapproval for a period of time after a major rule takes effect, but it would be preferable for Congress to act during the delay period so that fewer resources would be wasted. To increase the likelihood that Congress would act before a major rule took effect, the authors agreed on an approximately 60-day delay period in the effective date of a major rule, rather than an approximately 45-day delay period in some earlier versions of the legislation.

There are four exceptions to the required delay in the effectiveness of a major rule in the congressional review chapter. The first is in subsection 801(c), which provides that a major rule is not subject to the delay period of subsection 801(a)(3) if the President determines in an executive order that one of four specified situations exist and notifies Congress of his determination. The second is in subsection 808(1), which excepts specified rules relating to commercial, recreational, or subsistence hunting, fishing, and camping from the initial delay specified in subsection 801(a)(1)(A) and from the delay in the effective date of a major rule provided in subsection 801(a)(3). The third is in subsection 808(2), which excepts certain rules from the initial delay specified in subsection 801(a)(1)(A) and from the delay in the effective date of a major rule provided in subsection 801(a)(3) if the relevant agency finds "for good cause . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." This "good cause" exception in subsection 808(2) is taken from the APA and applies only to rules which are exempt from notice and comment under subsection 553(b)(B) or an analogous statute. The fourth exception is in subsection 804(2). Any rule promulgated

under the Telecommunications Act of 1996 or any amendments made by that Act that otherwise could be classified as a "major rule" is exempt from that definition and from the 60-day delay in section 801(a)(3). However, such an issuance still would fall within the definition of "rule" and would be subject to the requirements of the legislation for non-major rules. A determination under subsection 801(c), subsection 804(2), or section 808 shall have no effect on the procedures to enact joint resolutions of disapproval.

A court may not stay or suspend the effectiveness of a rule beyond the period specified in section 801 simply because a resolution of disapproval is pending in Congress.

The authors discussed the relationship between the period of time that a major rule is delayed and the period of time during which Congress could use the expedited procedures in section 802 to pass a resolution of disapproval. Although it would be best for Congress to act pursuant to this chapter before a major rule goes into effect, it was recognized that Congress could not often act immediately after a rule was issued because it may be issued during a recesses of Congress, shortly before such recesses, or during other periods when Congress cannot devote the time to complete prompt legislative action. Accordingly, the authors determined that the proper public policy was to give Congress an adequate opportunity to deliberate and act on joint resolutions of disapproval, while ensuring that major rules could go into effect without unreasonable delay. In short, the authors decided that major rules could take effect after an approximate 60-day delay, but the period governing the expedited procedures in section 802 for review of joint resolution of disapproval would extend for a period of time beyond that.

Accordingly, courts may not stay or suspend the effectiveness of any rule beyond the periods specified in section 801 simply because a joint resolution is pending before Congress. Such action would be contrary to the many express provisions governing when different types of rules may take effect. Such court action also would be contrary to the authors' intent because it would upset an important compromise on how long a delay there should be on the effectiveness of a major rule. The final delay period was selected as a compromise between the period specified in the version that passed the Senate on March 19, 1995, and the version that passed both Houses on November 9, 1995. It is also the authors' belief that such court action would be inconsistent with the principles of (and potentially violate) the Constitution, art. I, § 7, cl. 2, in that courts may not give legal effect to legislative action unless it results in the enactment of law pursuant to Clause. See *INS v. Chadha*, 462 U.S. 919 (1983). Finally, the authors intend that a court may not predicate a stay on the basis of possible future congressional action because it would be improper for a court to rule that the movant had demonstrated a "likelihood of success on the merits," unless and until a joint resolution is enacted into law. A judicial stay prior to that time would raise serious separation of powers concerns because it would be tantamount to the court making a prediction of what Congress is likely to do and then exercising its own power in furtherance of that prediction. Indeed, the authors intend that Congress may have been reluctant to pass congressional review legislation at all if its action or inaction pursuant to this chapter would be treated differently than its action or inaction regarding any other bill or resolution.

#### Time periods governing passage of joint resolutions of disapproval

Subsection 802(a) provides that a joint resolution disapproving of a particular rule may

be introduced in either House beginning on the date of the rule and accompanying report are received by Congress until 60 calendar days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress). But if Congress did not have sufficient time in a previous session to introduce or consider a resolution of disapproval, as set forth in subsection 801(d), the rule and accompanying report will be treated as if it were first received by Congress on the 15th session day in the Senate, or 15th legislative day in the House, after the start of its next session. When a rule was submitted near the end of a Congress or prior to the start of the next Congress, a joint resolution of disapproval regarding that rule may be introduced in the next Congress beginning on the 15th session day in the Senate or the 15th legislative day in the House until 60 calendar days thereafter (excluding days either House of Congress is adjourned for more than 3 days during the session) regardless of whether such a resolution was introduced in the prior Congress. Of course, any joint resolution pending from the first session of a Congress, may be considered further in the next session of the same Congress.

Subsections 802(c)-(d) specify special procedures that apply to the consideration of a joint resolution of disapproval in the Senate. Subsection 803(c) allows 30 Senators to petition for the discharge of resolution from a Senate committee after a specified period of time (the later of 20 calendar days after the rule is submitted to Congress or published in the Federal Register, if it is so published). Subsection 802(d) specifies procedures for the consideration of a resolution on the Senate floor. Such a resolution is highly privileged, points or order are waived, a motion to postpone consideration is not in order, the resolution is unamendable, and debate on the joint resolution and "on all debatable motions and appeals in connection therewith" (including a motion to proceed) is limited to no more than 10 hours.

Subsection 802(e) provides that the special Senate procedures specified in subsections 802(c)-(d) shall not apply to the consideration of any joint resolution of disapproval of a rule after 60 session days of the Senate beginning with the later date that rule is submitted to Congress or published, if it is so published. However, if a rule and accompanying report are submitted to Congress shortly before the end of a session or during an intercession recess as described in subsection 801(d)(1), the special Senate procedures specified in subsections 802(c)-(d) shall expire 60 session days after the 15th session day of the succeeding session of Congress—or on the 75th session day after the succeeding session of Congress first convenes. For purposes of subsection 802(e), the term "session day" refers only to a day the Senate is in session, rather than a day both Houses are in session. However, in computing the time specified in subsection 801(d)(1), that subsection specifies that there shall be an additional period of review in the next session if either House did not have an adequate opportunity to complete action on a joint resolution. Thus, if either House of Congress did not have adequate time to consider a joint resolution in a given session (60 session days in the Senate and 60 legislative days in the House), resolutions of disapproval may be introduced or re-introduced in both Houses in the next session, and the special Senate procedures specified in subsection 802(c)-(d) shall apply in the next session of the Senate.

If a joint resolution of disapproval is pending when the expedited Senate procedures specified in subsections 802(c)-(d) expire, the resolution shall not die in either House but shall simply be considered pursuant to the

normal rules of either House—with one exception. Subsection 802(f) sets forth one unique provision that does not expire in either House. Subsection 802(f) provides procedures for passage of a joint resolution of disapproval when one House passes a joint resolution and transmits it to the other House that has not yet completed action. In both Houses, the joint resolution of the first House to act shall not be referred to a committee but shall be held at the desk. In the Senate, a House-passed resolution may be considered directly only under normal Senate procedures, regardless of when it is received by the Senate. A resolution of disapproval that originated in the Senate may be considered under the expedited procedures only during the period specified in subsection 802(e). Regardless of the procedures used to consider a joint resolution in either House, the final vote of the second House shall be on the joint resolution of the first House (no matter when that vote takes place). If the second House passes the resolution, no conference is necessary and the joint resolution will be presented to the President for his signature. Subsection 802(f) is justified because subsection 802(a) sets forth the required language of a joint resolution in each House, and thus, permits little variance in the joint resolutions that could be introduced in each House.

#### Effect of enactment of a joint resolution of disapproval

Subsection 801(b)(1) provides that: "A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule." Subsection 801(b)(2) provides that such a disapproved rule "may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule." Subsection 801(b)(2) is necessary to prevent circumvention of a resolution disapproval. Nevertheless, it may have a different impact on the issuing agencies depending on the nature of the underlying law that authorized the rule.

If the law that authorized the disapproved rule provides broad discretion to the issuing agency regarding the substance of such rule, the agency may exercise its broad discretion to issue a substantially different rule. If the law that authorized the disapproved rule did not mandate the promulgation of any rule, the issuing agency may exercise its discretion not to issue any new rule. Depending on the law that authorized the rule, an issuing agency may have both options. But if an agency is mandated to promulgate a particular rule and its discretion in issuing the rule is narrowly circumscribed, the enactment of a resolution of disapproval for that rule may work to prohibit the reissuance of any rule. The authors intend the debate on any resolution of disapproval to focus on the law that authorized the rule and make the congressional intent clear regarding the agency's options or lack thereof after enactment of a joint resolution of disapproval. It will be the agency's responsibility in the first instance when promulgating the rule to determine the range of discretion afforded under the original law and whether the law authorizes the agency to issue a substantially different rule. Then, the agency must give effect to the resolution of disapproval.

#### Limitation on judicial review of congressional or administrative actions

Section 805 provides that a court may not review any congressional or administrative "determination, finding, action, or omission under this chapter." Thus, the major rule determinations made by the Administrator of

the Office of Information and Regulatory Affairs of the Office of Management and Budget are not subject to judicial review. Nor may a court review whether Congress complied with the congressional review procedures in this chapter. This latter limitation on the scope of judicial review was drafted in recognition of the constitutional right of each House of Congress to "determine the Rules of its Proceedings," U.S. Const., art. I, §5, cl. 2, which includes being the final arbiter of compliance with such Rules.

The limitation on a court's review of subsidiary determination or compliance with congressional procedures, however, does not bar a court from giving effect to a resolution of disapproval that was enacted into law. A court with proper jurisdiction may treat the congressional enactment of a joint resolution of disapproval as it would treat the enactment of any other federal law. Thus, a court with proper jurisdiction may review the resolution of disapproval and the law that authorized the disapproved rule to determine whether the issuing agency has the legal authority to issue a substantially different rule. The language of subsection 801(g) is also instructive. Subsection 801(g) prohibits a court or agency from inferring any intent of the Congress only when "Congress does not enact a joint resolution of disapproval," or by implication, when it has not yet done so. In deciding cases or controversies properly before it, a court or agency must give effect to the intent of the Congress when such a resolution is enacted and becomes the law of the land. The limitation on judicial review in no way prohibits a court from determining whether a rule is in effect. For example, the authors expect that a court might recognize that a rule has no legal effect due to the operation of subsections 801(a)(1)(A) or 801(a)(3).

#### Enactment of a joint resolution of disapproval for a rule that was already in effect

Subsection 801(f) provides that: "Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect." Application of this subsection should be consistent with existing judicial precedents on rules that are deemed never to have taken effect.

#### Agency information required to be submitted to GAO

Pursuant to subsection 801(a)(1)(B), the federal agency promulgating the rule shall submit to the Comptroller General (and make available to each House) (i) a complete copy of the cost-benefit analysis of the rule, if any, (ii) the agency's actions related to the Regulatory Flexibility Act, (iii) the agency's actions related to the Unfunded Mandates Reform Act, and (iv) "any other relevant information or requirements under any other Act and any relevant Executive Orders." Pursuant to subsection 801(a)(1)(B), this information must be submitted to the Comptroller General on the day the agency submits the rule to Congress and to GAO.

The authors intend information supplied in conformity with subsection 801(a)(1)(B)(iv) to encompass both agency-specific statutes and government-wide statutes and executive orders that impose requirements relevant to each rule. Examples of agency-specific statutes include information regarding compliance with the law that authorized the rule and any agency-specific procedural requirements, such as section 9 of the Consumer Product Safety Act, as amended, 15 U.S.C. §2054 (procedures for consumer product safety rules); section 6 of the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §655 (promulgation of standards); section 307(d) of the Clean Air Act, as amended,

42 U.S.C. §7607(d) (promulgation of rules); and section 501 of the Department of Energy Organization Act, 42 U.S.C. §7191 (procedure for issuance of rules, regulations, and orders). Examples of government-wide statutes include other chapters of the Administrative Procedure Act, 5 U.S.C. §§551-559 and 701-706; and the Paperwork Reduction Act, as amended, 44 U.S.C. §§3501-3520.

Examples of relevant executive orders include E.O. No. 12866 (Sept. 30, 1993) (Regulatory Planning and Review); E.O. No. 12606 (Sept. 2, 1987) (Family Considerations in Policy Formulation and Implementation); E.O. No. 12612 (Oct. 26, 1987) (Federalism Considerations in Policy Formulation and Implementation); E.O. No. 12630 (Mar. 15, 1988) (Government Actions and Interference with Constitutionally Protected Property Rights); E.O. No. 23875 (Oct. 26, 1993) (Enhancing the Intergovernmental Partnership); E.O. No. 12778 (Oct. 23, 1991) (Civil Justice Reform); E.O. No. 12988 (Feb. 5, 1996) (Civil Justice Reform) (effective May 5, 1996).

#### GAO reports on major rules

Fifteen days after the federal agency submits a copy of a major rule and report to each House of Congress and the Comptroller General, the Comptroller General shall prepare and provide a report on the major rule to the committee of jurisdiction in each House. Subsection 801(a)(2)(B) requires agencies to cooperate with the Comptroller General in providing information relevant to the Comptroller General's reports on major rules. Given the 15-day deadline for these reports, it is essential that the agencies' initial submission to the General Accounting Office (GAO) contain all of the information necessary for GAO to conduct its analysis. At a minimum, the agency's submission must include the information required of all rules pursuant to 801(a)(1)(B). Whenever possible, OMB should work with GAO to alert GAO when a major rule is likely to be issued and to provide as much advance information to GAO as possible on such proposed major rule. In particular, OMB should attempt to provide the complete cost-benefit analysis on a major rule, if any, well in advance of the final rule's promulgation.

It also is essential for the agencies to present this information in a format that will facilitate the GAO's analysis. The authors expect that GAO and OMB will work together to develop, to the greatest extent practicable, standard formats for agency submissions. OMB also should ensure that agencies follow such formats. The authors also expect that agencies will provide expeditiously any additional information that GAO may require for a thorough report. The authors do not intend the Comptroller General's reports to be delayed beyond the 15-day deadline due to lack of information or resources unless the committees of jurisdiction indicate a different preference. Of course, the Comptroller General may supplement his initial report at any time with any additional information, on its own, or at the request of the relevant committees or jurisdiction.

#### Covered agencies and entities in the executive branch

The authors intend this chapter to be comprehensive in the agencies and entities that are subject to it. The term "Federal agency" in subsection 804(1) was taken from 5 U.S.C. §551(1). That definition includes "each authority of the Government" that is not expressly excluded by subsection 551(1)(A)-(H). With those few exceptions, the objective was to cover each and every government entity, whether it is a department, independent agency, independent establishment, or government corporation. This is because Congress is enacting the congressional review

chapter, in large part, as an exercise of its oversight and legislative responsibility. Regardless of the justification for excluding or granting independence to some entities from the coverage of other laws, that justification does not apply to this chapter, where Congress has an interest in exercising its constitutional oversight and legislative responsibility as broadly as possible over all agencies and entities within its legislative jurisdiction.

In some instances, federal entities and agencies issue rules that are not subject to the traditional 5 U.S.C. §553(c) rulemaking process. However, the authors intend the congressional review chapter to cover every agency, authority, or entity covered by subsection 551(1) that establishes policies affecting any segment of the general public. Where it was necessary, a few special exceptions were provided, such as the exclusion for the monetary policy activities of the Board of Governors of the Federal Reserve System, rules of particular applicability, and rules of agency management and personnel. Where it was not necessary, no exemption was provided and no exemption should be inferred from other law. This is made clear by the provision of section 806 which states that the Act applies notwithstanding any other provision of law.

#### Definition of a "major rule"

The definition of a "major rule" in subsection 804(2) is taken from President Reagan's Executive Order 12291. Although President Clinton's Executive Order 12866 contains a definition of a "significant regulatory action" that is seemingly as broad, several of the Administration's significant rule determinations under Executive Order 12866 have been called into question. The authors intend the term "major rule" in this chapter to be broadly construed, including the non-numerical factors contained in the subsections 804(2)(B) and (C).

Pursuant to subsection 804(2), the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget (the Administrator) must make the major rule determination. The authors intend that centralizing this function in the Administrator will lead to consistency across agency lines. Moreover, from 1981-93 OIRA staff interpreted and applied the same major rule definition under E.O. 12291. Thus, the Administrator should rely on guidance documents prepared by OIRA during that time and previous major rule determinations from that Office as a guide in applying the statutory definition to new rules.

Certain covered agencies, including many "independent agencies," include their proposed rules in the Unified Regulatory Agenda published by OMB but do not normally submit their final rules to OMB for review. Moreover, interpretative rules and general statements of policy are not normally submitted to OMB for review. Nevertheless, it is the Administrator that must make the major rule determination under this chapter whenever a new rule is issued. The Administrator may request the recommendation of any agency covered by this chapter on whether a proposed rule is a major rule within the meaning of subsection 804(2), but the Administrator is responsible for the ultimate determination. Thus, all agencies or entities covered by this chapter will have to coordinate their rulemaking activity with OIRA so that the Administrator may make the final, major rule determination.

#### Scope of rules covered

The authors intend this chapter to be interpreted broadly with regard to the type and scope of rules that are subject to congressional review. The term "rule" in subsection 804(3) begins with the definition of a

"rule" in subsection 551(4) and excludes three subsets of rules that are modeled on APA sections 551 and 553. This definition of a rule does not turn on whether a given agency must normally comply with the notice-and-comment provisions of the APA, or whether the rule at issue is subject to any other notice-and-comment procedures. The definition of "rule" in subsection 551(4) covers a wide spectrum of activities. First, there is formal rulemaking under section 553 that must adhere to procedures of sections 556 and 557 of title 5. Second, there is informal rulemaking, which must comply with the notice-and-comment requirements of subsection 553(c). Third, there are rules subject to the requirements of subsection 552(a)(1) and (2). This third category of rules normally either must be published in the Federal Register before they can adversely affect a person, or must be indexed and made available for inspection and copying or purchase before they can be used as precedent by an agency against a non-agency party. Documents covered by subsection 552(a) include statements of general policy, interpretations of general applicability, and administrative staff manuals and instructions to staff that affect a member of the public. Fourth, there is a body of materials that fall within the APA definition of "rule" and are the product of agency process, but that meet none of the procedural specifications of the first three classes. These include guidance documents and the like. For purposes of this section, the term rule also includes any rule, rule change, or rule interpretation by a self regulatory organization that is approved by a Federal agency. Accordingly, all "rules" are covered under this chapter, whether issued at the agency's initiative or in response to a petition, unless they are expressly excluded by subsections 804(3)(A)-(C). The authors are concerned that some agencies have attempted to circumvent notice-and-comment requirements by trying to give legal effect to general statements of policy, "guidelines," and agency policy and procedure manuals. The authors admonish the agencies that the APA's broad definition of "rule" was adopted by the authors of this legislation to discourage circumvention of the requirements of chapter 8.

The definition of a rule in subsection 551(4) covers most agency statements of general applicability and future effect. Subsection 804(3)(A) excludes "any rule of particular applicability, including a rule that approves or prescribes rates, wages, prices, services, or allowances therefore, corporate and financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing" from the definition of a rule. Many agencies, including the Treasury, Justice, and Commerce Departments, issue letter rulings or other opinion letters to individuals who request a specific ruling on the facts of their situation. These letter rulings are sometimes published and relied upon by other people in similar situations, but the agency is not bound by the earlier rulings even on facts that are analogous. Thus, such letter rulings or opinion letters do not fall within the definition of a rule within the meaning of subsection 804(3).

The different types of rules issued pursuant to the internal revenue laws of the United States are good examples of the distinction between rules of general and particular applicability. IRS private letter rulings and Customs Service letter rulings are classic examples of rules of particular applicability, notwithstanding that they may be cited as authority in transactions involving the same circumstances. Examples of substantive and interpretative rules of general applicability will include most temporary and final Treas-

ury regulations issued pursuant to notice-and-comment rulemaking procedures, and most revenue rulings, revenue procedures, IRS notices, and IRS announcements. It does not matter that these later types of rules are issued without notice-and-comments rulemaking procedures or that they are accorded less deference by the courts than notice-and-comment rules. In fact, revenue rulings have been described by the courts as the "classic example of an interpretative rul[e]" within the meaning of the APA. See *Wing v. Commissioner*, 81 T.C. 17, 26 (1983). The test is whether such rules announce a general statement of policy or an interpretation of law of general applicability.

Most rules or other agency actions that grant an approval, license, registration, or similar authority to a particular person or particular entities, or grant or recognize an exemption or relieve a restriction for a particular person or particular entities, or permit new or improved applications of technology for a particular person or particular entities, or allow the manufacture, distribution, sale, or use of a substance or product are exempted under subsection 804(3)(A) from the definition of a rule. This is probably the largest category of agency actions excluded from the definition of a rule. Examples include import and export licenses, individual rate and tariff approvals, wetlands permits, grazing permits, plant licenses or permits, drug and medical device approvals, new source review permits, hunting and fishing take limits, incidental take permits and habitat conservation plans, broadcast licenses, and product approvals, including approvals that set forth the conditions under which a product may be distributed.

Subsection 804(3)(B) excludes "any rule relating to agency management or personnel" from the definition of a rule. Pursuant to subsection 804(3)(C), however, a "rule of agency organization, procedure, or practice," is only excluded if it "does not substantially affect the rights or obligations of non-agency parties." The authors' intent in these subsections is to exclude matters of purely internal agency management and organization, but to include matters that substantially affect the rights or obligations of outside parties. The essential focus of this inquiry is not on the type of rule but on its effect on the rights or obligations of non-agency parties. •

#### 10TH ANNIVERSARY OF CHERNOBYL

• Mr. LEVIN. Mr. President, on April 26, 1986, reactor number 4 at the V.I. Lenin Atomic Power Plant in Chernobyl near Kiev, Ukraine exploded. The explosion released a cloud of radioactive steam into the atmosphere reported to contain about 200 times more radio activity than was released at Hiroshima and Nagasaki.

The explosion took an enormous toll on the people directly exposed to the radiation emitted from the plant. Shortly after the explosion, Soviet officials admitted to 31 deaths among reactor operators and the team attempting to contain the damage. Thousands of workers were eventually exposed at the site.

However, children have been the first among the general population to suffer from the effects of the explosion at Chernobyl. Children are most susceptible to the radioactive iodine emitted from Chernobyl because of their active

**Montanans for Multiple Use v. Barbouletos**, 568 F.3d 225, 229 (D.C. Cir. 2009): when confronted with a claim that an agency action should be invalidated based on the agency's failure to comply with the submission requirements of the CRA, found that "the language in § 805 is unequivocal and precludes review of this claim...."

**Via Christi Reg'l Med. Ctr. V. Leavitt**, 509 F.3d 1259, 1271 n. 11 (10<sup>th</sup> Cir. 2007): "[t]he Congressional Review Act specifically precludes judicial review of an agency's compliance with its terms."

The 5th Circuit affirmed, without discussion of the CRA, a district court opinion that concluded "the language could not be plainer" and that the alleged failure to comply with the CRA "is not subject to review by this [c]ourt." **Tex. Savings and Cmty Bankers Assoc. v. Fed. Hous. Fin. Bd.**, 1998 U.S. Dist. LEXIS 13470, 27 (W.D. Tex. 1998), *aff'd* **Tex. Savings & Cmty Bankers Assoc. v. Fed. Hous. Fin. Bd.**, 201 F.3d 551 (5th Cir. 2000); *see also* **United States v. Calson**, 2013 U.S. Dist. LEXIS 130893 (D. Minn. 2013); **United States v. Ameren Mo.**, 2012 U.S. Dist. LEXIS 95065 (E.D. Mo. 2012); **Forsyth Mem'l Hosp. v. Sebelius**, 667 F.Supp. 2d 143, 150 (D.D.C. 2009); **New York v. Am. Elec. Power Serv. Corp.**, 2006 U.S. Dist. LEXIS 32829 (S.D. Ohio 2006).

*But see* **United States v. S. Ind. Gas & Elec. Comp.**, 2002 U.S. Dist. LEXIS 20936 (S.D. Ind. 2002).

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**Date:** Friday, March 17, 2017 11:14:22 AM  
**Attachments:** [ARTICLE\\_A\\_COST-BENEFIT\\_INTERPRETATION\\_OF\\_THE\\_SUBSTANTI\(2\).pdf](#)  
[Con\\_Rec\\_E571\\_Hyde\\_Remarks\\_4-19-96.pdf](#)  
[Con\\_Rec\\_S3683\\_Nickles\\_Remarks\\_4-18-96.pdf](#)  
[Judicial Citations CRA\\_3-15-17.docx](#)

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Mary Grace: thanks again for your time on Wednesday. We wanted to share the following information that was requested during the meeting.

- \* The joint statements read into the record in 1996 in lieu of legislative history for the Congressional Review Act.
- \* A list of the judicial opinions referenced Wednesday.
- \* The 2011 law review article we referenced yesterday, entitled "A Cost-Benefit Interpretation of the 'Substantially-Similar' Hurdle in the Congressional Review Act: Can OSHA Ever Utter the E-Word (Ergonomics) Again?"

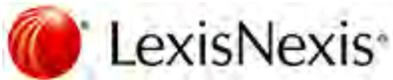
\* Note: these commentators cite the joint statement and conclude that "[a]lthough the text of the CRA significantly limits judicial review of a congressional veto (or failure to veto), the statute does not prohibit judicial review for noncompliance with the substantial similarity clause of a rule promulgated after a congressional veto." (P. 732). Note also that the authors' interpretation of the joint statement does not necessarily comport with judicial interpretation of the judicial limitation provision as they suggest that the limitation applies only to congressional action under the CRA.

Please let us know if you need anything else.

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## Document (1)

1. [ARTICLE:A COST-BENEFIT INTERPRETATION OF THE "SUBSTANTIALLY SIMILAR" HURDLE IN THE CONGRESSIONAL REVIEW ACT: CAN OSHA EVER UTTER THE E-WORD \(ERGONOMICS\) AGAIN?, 63 ADMIN. L. REV. 707](#)

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# ARTICLE: A COST-BENEFIT INTERPRETATION OF THE "SUBSTANTIALLY SIMILAR" HURDLE IN THE CONGRESSIONAL REVIEW ACT: CAN OSHA EVER UTTER THE E-WORD (ERGONOMICS) AGAIN?

Fall 2011

## Reporter

63 ADMIN. L. REV. 707 \*

**Length:** 42998 words

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We are grateful to Valerie Baron, James O'Reilly, and Stuart Shapiro for their comments and suggestions.

## Text

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### [\*708] INTRODUCTION

Congress has always had the power to overturn a specific regulation promulgated by an executive branch agency and, as the author of the underlying statutes under which the agencies regulate, has also always been able to amend those statutes so as to thwart entire lines of regulatory activity before they begin. But in 1996, Congress carved out for itself a shortcut path to regulatory oversight with the passage of the Congressional Review Act (CRA),<sup>1</sup> and can now veto a regulation by passing a joint resolution rather than by passing a law.<sup>2</sup> There is no question that Congress can now kill a regulation with relative ease, although it has only exercised that ability once in the fifteen years since the passage of the [\*709] CRA.<sup>3</sup> It remains ambiguous, however, whether Congress can use this new mechanism to, in effect, due to a regulation what the Russian nobles reputedly did to Rasputin--poison it, shoot it, stab it, and throw its weighted body into a river--that is, to veto not only the instant rule it objects to, but forever bar an agency from regulating in that area. From the point of view of the agency, the question is, "What kind of phoenix, if any, is allowed to rise from the ashes of a dead regulation?" This subject has, in our view, been surrounded by mystery and misinterpretations, and is the area we hope to clarify via this Article.

A coherent and correct interpretation of the key clause in the CRA, which bars an agency from issuing a new rule that is "substantially the same" as one vetoed under the CRA,<sup>4</sup> matters most generally as a verdict on the precise

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<sup>1</sup> Congressional Review Act of 1996, Pub. L. No. 104-121, tit. II, subtit. E, 110 Stat. 868-74 (codified as amended at 5 U.S.C. §§ 801-808 (2006)).

<sup>2</sup> See 5 U.S.C. §§ 801-802 (2006).

<sup>3</sup> See *infra* Parts II.A and IV.A.4 (discussing the Occupational Safety and Health Administration (OSHA) ergonomics rule and the congressional veto thereof in 2001).

<sup>4</sup> 5 U.S.C. § 801(b)(2).

demarcation of the relative power of Congress and the Executive. It matters broadly for the administrative state, as all agencies puzzle out what danger they court by issuing a rule that Congress might veto (can they and their affected constituents be worse off for having awakened the sleeping giant than had they issued no rule at all?). And it matters most specifically for the U.S. Occupational Safety and Health Administration (OSHA), whose new Assistant Secretary<sup>5</sup> is almost certainly concerned whether any attempt by the agency to regulate musculoskeletal disorders ("ergonomic" hazards) in any fashion would run afoul of the "substantially the same" prohibition in the CRA.

The prohibition is a crucial component of the CRA, as without it the CRA is merely a reassertion of authority Congress always had, albeit with a streamlined process. But whereas prior to the CRA Congress would have had to pass a law invalidating a rule *and* specifically state exactly what the agency could not do to reissue it, Congress can now kill certain future rules semiautomatically and perhaps render them unenforceable in court. This judicial component is vital to an understanding of the "substantially the same" prohibition as a legal question, in addition to a political one: whereas Congress can choose whether to void a subsequent rule that is substantially similar to an earlier vetoed rule (either for violation of the "substantially the same" prohibition or on a new substantive basis), if a court rules that a reissued rule is in fact "substantially the same" it would be obligated to treat the new rule as void *ab initio* even if Congress had failed to enact a new veto.<sup>6</sup>

[\*710] In this Article, we offer the most reasonable interpretation of the three murky words "substantially the same" in the CRA. Because neither Congress nor any reviewing court has yet been faced with the need to consider a reissued regulation for substantial similarity to a vetoed one, this is "uncharted legal territory."<sup>7</sup> The range of plausible interpretations runs the gamut from the least daunting to the most ominous (from the perspective of the agencies), as we will describe in detail in Part III.A. To foreshadow the extreme cases briefly, it is conceivable that even a verbatim identical rule might not be "substantially similar" if scientific understanding of the hazard or the technology to control it had changed radically over time. At the other extreme, it is also conceivable that any subsequent attempt to regulate in any way whatsoever in the same broad topical area would be barred.<sup>8</sup> We will show, however, that considering the legislative history of the CRA, the subsequent expressions of congressional intent issued during the one legislative veto of an agency rule to date, and the bedrock principles of good government in the administrative state, an interpretation of "substantially similar" much closer to the former than the latter end of this spectrum is most reasonable and correct. *We conclude that the CRA permits an agency to reissue a rule that is very similar in content to a vetoed rule, so long as it produces a rule with a significantly more favorable balance of costs and benefits than the vetoed rule.*<sup>9</sup>

We will assert that our interpretation of "substantially similar" is not only legally appropriate, but arises naturally when one grounds the interpretation in the broader context that motivated the passage of the CRA and that has come to dominate both legislative and executive branch oversight of the regulatory agencies: the insistence that regulations should generate benefits in excess of their costs. We assert that even if the hazards addressed match exactly those covered in the vetoed rule, if a reissued rule has a substantially different cost-benefit equation than

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<sup>5</sup> David Michaels was confirmed December 3, 2009. See 155 CONG. REC. S12,351 (daily ed. Dec. 3, 2009).

<sup>6</sup> See *infra* notes 122-125 and accompanying text.

<sup>7</sup> Kristina Sherry, 'Substantially the Same' Restriction Poses Legal Question Mark for Ergonomics, INSIDE OSHA, Nov. 9, 2009, at 1, 1, 8.

<sup>8</sup> See *infra* Part III.A.

<sup>9</sup> For a thorough defense of cost-benefit (CBA) analysis as a valuable tool in saving lives, rather than an antiregulatory sword, see generally John D. Graham, *Saving Lives Through Administrative Law and Economics*, 157 U. PA. L. REV. 395 (2008). But cf. James K. Hammitt, *Saving Lives: Benefit-Cost Analysis and Distribution*, 157 U. PA. L. REV. PENNUMBRA 189 (2009), <http://www.pennumbra.com/responses/03-2009/Hammitt.pdf> (noting the difficulties in accounting for equitable distribution of benefits and harms among subpopulations when using cost-benefit analysis).

the vetoed rule, then it cannot be regarded as "substantially similar" in the sense in which those words were (and also should have been) intended.

The remainder of this Article will consist of seven Parts. In Part I, we [\*711] will lay out the political background of the 104th Congress, and then explain both the substance and the legislative history of the Congressional Review Act. In Part II, we discuss the one instance in which the fast-track congressional veto procedure has been successfully used, and mention other contexts in which Congress has considered using it to repeal regulations. In this Part, we also discuss the further "uncharted legal territory" of how the courts might handle a claim that a reissued rule was "substantially similar." In Part III, we present a detailed hierarchy of possible interpretations of "substantially similar," and in Part IV, we explain why the substantial similarity provision should be interpreted in among the least ominous ways available. In Part V, we summarize the foregoing arguments and give a brief verdict on exactly where, in the seven-level hierarchy we developed, we think the interpretation of "substantially similar" must fall. In Part VI, we discuss some of the practical implications of our interpretation for OSHA as it considers its latitude to propose another ergonomics rule. Finally, in Part VII, we recommend some changes in the system to help achieve Congress's original aspirations with less inefficiency and ambiguity.

## I. REGULATORY REFORM AND THE CONGRESSIONAL REVIEW ACT

The Republican Party's electoral victory in the 1994 midterm elections brought with it the prospect of sweeping regulatory reform. As the Republicans took office in the 104th Congress, they credited their victory to public antigovernment sentiment, especially among the small business community. Regulatory reform was central to the House Republicans' ten-plank Contract with America proposal, which included provisions for congressional review of pending agency regulations and an opportunity for both houses of Congress and the President to veto a pending regulation via an expedited process.<sup>10</sup> This Part discusses the Contract with America and the political climate in which it was enacted.

### A. *The 1994 Midterm Elections and Antiregulatory Sentiment*

An understanding of Congress's goal for regulatory reform requires some brief familiarity with the shift in political power that occurred prior to the enactment of the Contract with America. In the 1994 elections, the Republican Party attained a majority in both houses of Congress. In the House of Representatives, Republicans gained a twenty-six-seat advantage over the House Democrats.<sup>11</sup> Similarly, in the Senate, Republicans turned [\*712] their minority into a four-seat advantage.<sup>12</sup>

The 1994 election included a large increase in participation among the business community. In fact, a significant majority of the incoming Republican legislators were members of that community.<sup>13</sup> Small business issues--and in particular the regulatory burden upon them--were central in the midterm election, and many credited the Republican Party's electoral victory to its antiregulatory position.<sup>14</sup> Of course, it was not only business owners who

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<sup>10</sup> Congressional Review Act of 1996, Pub. L. No. 104-121, tit. II, subtit. E, **110 Stat. 868-74** (codified as amended at **5 U.S.C. §§ 801-808** (2006)).

<sup>11</sup> See ROBIN H. CARLE, OFFICE OF THE CLERK, U.S. HOUSE OF REPRESENTATIVES, STATISTICS OF THE CONGRESSIONAL ELECTION OF NOVEMBER 8, 1994, at 50 (1995), [http://clerk.house.gov/member\\_info/electionInfo/1994election.pdf](http://clerk.house.gov/member_info/electionInfo/1994election.pdf) (reporting the results of the 1994 U.S. House elections, in which the Republicans won a majority of 230-204).

<sup>12</sup> See *id.* (reporting the results of the 1994 U.S. Senate elections, after which the Republicans held a majority of 52-48).

<sup>13</sup> Newt Gingrich, *Foreword* to RICHARD LESHER, MELTDOWN ON MAIN STREET: WHY SMALL BUSINESS IS LEADING THE REVOLUTION AGAINST BIG GOVERNMENT, at xi, xiv (1996) ("Of the 73 freshman Republicans elected to the House in 1994, 60 were small businesspeople . . .").

<sup>14</sup> See, e.g., Linda Grant, *Shutting Down the Regulatory Machine*, U.S. NEWS & WORLD REP., Feb. 13, 1995, at 70, 70 ("Resentment against excessive government regulation helped deliver election victory to Republicans . . .").

campaigned to decrease the volume of federal regulation--seeking more autonomy and fewer compliance costs, farmers and local governments also aimed to decrease the size of the federal government.<sup>15</sup>

One catalyst for the wave of antigovernment sentiment and the Republicans' related electoral victory was the increasing regulatory burden. By some estimates, the annual costs of federal regulation had increased to more than \$ 600 billion by 1995.<sup>16</sup>

Regulatory reform was not merely an idle campaign promise. Republicans had spent a great deal of effort in prior years to push for fewer regulations, to little avail. When the 104th Congress was sworn in, changes to the regulatory process ranked highly on the Republican Party's agenda.<sup>17</sup> The party leaders were aggressive in their support of regulatory reform. Senator Don Nickles of Oklahoma declared, "We're going to get regulatory reform . . . . We can do it with a rifle or we can do it with a shotgun, but we're going to do it."<sup>18</sup>

**[\*713]** The case that the federal government had been hurtling toward a coercive "nanny state," and the need to deregulate (or at least to slam on the brakes) in response, was bolstered in the early 1990s by a confluence of new ideas, new institutions, and new advocates.<sup>19</sup> The rise of quantitative risk assessment (QRA), and the rapid increase in the capability of analytical chemistry to detect lower and lower amounts of contaminants in all environmental media and human tissues, made possible an ongoing stream of revelations about the apparent failure to provide an ample margin of safety below safe levels of substances capable of causing chronic disease and ecological damage. But at the same time, the successes of the 1970s and 1980s at picking the low-hanging fruit of the most visible manifestations of environmental pollution (for example, flaming rivers or plumes of soot rising from major point sources) made possible a compelling counterargument: that unlike the first generation of efficient remedies for intolerable problems, the mopping up of the purportedly last small increments of pollution threatened to cost far more than the (dubious) benefits achieved. This view was supported by the passage of time and the apparent lack of severe long-term consequences from some of the environmental health crises of the early 1980s (for example, Love Canal, New York and Times Beach, Missouri).<sup>20</sup> In the early 1990s, several influential books advanced the thesis that regulation was imposing (or was poised to impose) severe harm for little or nonexistent benefit. Among the most notable of these were *The Death of Common Sense: How Law Is Suffocating America*,<sup>21</sup> which decried the purported insistence on inflexible and draconian strictures on business, and *Breaking the Vicious Circle*.<sup>22</sup> In this latter book, then-Judge Stephen Breyer posited a cycle of mutual amplification between a public eager to insist on zero risk and a cadre of **[\*714]** risk assessors and bureaucrats happy to invoke

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<sup>15</sup> See *id.* at 72 ("Business has gained a number of allies in its quest to rein in regulation. State and local governments, ranchers and farmers, for example, also want to limit Washington's role in their everyday dealings.").

<sup>16</sup> *Id.* at 70 (reporting the annual costs of federal regulation in 1991 dollars).

<sup>17</sup> See, e.g., Bob Tutt, *Election '94: State; Hutchinson Pledges to Help Change Things*, HOUS. CHRON., NOV. 9, 1994, at A35 (reporting that Senator Kay Bailey Hutchinson of Texas named "reduction of regulations that stifle small business" as one of the items that "had her highest priority").

<sup>18</sup> Stan Crock et al., *A GOP Jihad Against Red Tape*, Bus. WK., NOV. 28, 1994, at 48 (quoting Senator Nickles).

<sup>19</sup> This section, and the subsequent section on the regulatory reform legislation of the mid-1990s, is informed by one of our (Adam Finkel's) experiences as an expert in methods of quantitative risk assessment, and (when he was Director of Health Standards at OSHA from 1995-2000) one of the scientists in the executive agencies providing expertise in risk assessment and cost-benefit analysis during the series of discussions between the Clinton Administration and congressional staff and members.

<sup>20</sup> See generally *Around the Nation: Times Beach, Mo., Board Moves to Seal Off Town*, N.Y. TIMES, Apr. 27, 1983, at A18 (reporting attempts by officials to blockade a St. Louis suburb that had been contaminated by dioxin); Eckardt C. Beck, *The Love Canal Tragedy*, EPA J., Jan. 1979, at 16, available at <http://www.epa.gov/aboutepa/history/topics/lovecanal/01.html> (describing the events following the discovery of toxic waste buried beneath the neighborhood of Love Canal in Niagara Falls, New York).

<sup>21</sup> PHILIP K. HOWARD, *THE DEATH OF COMMON SENSE: How LAW IS SUFFOCATING AMERICA* (1995).

<sup>22</sup> STEPHEN BREYER, *BREAKING THE VICIOUS CIRCLE: TOWARD EFFECTIVE RISK REGULATION* (1994).

conservative interpretations of science to exaggerate the risks that remained uncontrolled.<sup>23</sup> Although the factual basis for the claim that risk assessment is too "conservative" (or even that it does not routinely *underestimate* risk) was and remains controversial,<sup>24</sup> enough of the individual common assumptions used in risk assessment were so clearly "conservative" (for example, the use of the upper confidence limit when fitting a dose-response function to cancer bioassay data) that this claim had considerable intuitive appeal. Around the same time, influential think tanks and trade associations (for example, the Cato Institute and the American Council on Science and Health) echoed the indictment against overregulation, and various media figures (notably John Stossel) advanced the view that the U.S. public was not just desirous of a safer world than common sense would dictate, but had scared itself into irrationality about how dangerous the status quo really was.<sup>25</sup>

The scholars and advocates who made the most headway with Congress in the period leading up to the passage of the CRA made three related, compelling, and in our opinion very politically astute arguments that still influence the landscape of regulation fifteen years later. First, they embraced risk assessment--thereby proffering a "sound science" alternative to the disdain for risk assessment that most mainstream and grassroots environmental groups have historically expressed<sup>26</sup>--although they insisted that each allegedly conservative assumption should be ratcheted back. Second, they advocated for the routine quantitative comparison of benefits (risks reduced) to the cost of regulation, thereby throwing cold water even on large risks if it could be shown that once monetized, the good done by controlling them was outweighed by the economic costs of that control. And perhaps most significantly, they emphasized--particularly in the writings and testimony of John Graham, who went on to lead the White House's Office of Information and Regulatory Affairs (OIRA) in the George W. Bush Administration--that regulatory overkill was tragic not just because it was economically expensive, but because it could ill serve the very goal of maximizing human longevity and quality of life. Some regulations, Graham and others emphasized,<sup>27</sup> could create or exacerbate [\*715] similar or disparate risks and do more harm to health and the environment than inaction would. Many other stringent regulations could produce non-negative net benefits, but far less benefit than smarter regulation could produce. Graham famously wrote and testified that going after trace amounts of environmental pollution, while failing to regulate risky consumer products (for example, bicycle helmet requirements) or to support highly cost-effective medical interventions, amounted to the "statistical murder" of approximately 60,000 Americans annually whose lives could have been saved with *different* regulation, as opposed to deregulation per se.<sup>28</sup>

The stage was thus set for congressional intervention to rationalize (or, perhaps, to undermine) the federal regulatory system.

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<sup>23</sup> See *id.* at 9-13.

<sup>24</sup> See Adam M. Finkel, *Is Risk Assessment Really Too Conservative?: Revising the Revisionists*, 14 COLUM. J. ENVTL. L. 427 (1989) (discussing numerous flaws in the assertion that risk assessment methods systematically exaggerate risk, citing aspects of the methods that work in the opposite direction and citing empirical evidence contrary to the assertion).

<sup>25</sup> *Special Report: Are We Scaring Ourselves to Death? The People Respond* (ABC television broadcast Apr. 21, 1994).

<sup>26</sup> See Alon Tal, *A Failure to Engage*, 14 ENVTL. F., Jan.-Feb. 1997, at 13.

<sup>27</sup> See John D. Graham & Jonathan Baert Wiener, *Confronting Risk Tradeoffs*, in RISK VERSUS RISK: TRADEOFFS IN PROTECTING HEALTH AND THE ENVIRONMENT 1,1-5 John D. Graham & Jonathan Baert Wiener eds., 1995); see also Cass R. Sunstein, *Health-Health Tradeoffs* (Chi. Working Papers on Law & Econ., Working Paper No. 42, 1996), available at [http://www.law.uchicago.edu/files/files/42.CRS\\_Health.pdf](http://www.law.uchicago.edu/files/files/42.CRS_Health.pdf).

<sup>28</sup> n28 Republican Representative John Mica stated:

Let me quote John Graham, a Harvard professor, who said, "Sound science means saving the most lives and achieving the most ecological protection with our scarce budgets. Without sound science, we are engaging in a form of 'statistical murder,' where we squander our resources on phantom risks when our families continue to be endangered by real risks.

141 CONG. REC. 6101 (1995) (statement of Rep. Mica).

## B. *The Contract with America and the CRA*

When the Republicans in the 104th Congress first began drafting the Contract with America, they intended to stop the regulatory process in its tracks by imposing a moratorium on the issuance of any new regulations. After the Clinton Administration resisted calls for a moratorium, Congress compromised by instead suggesting an amendment to the Administrative Procedure Act (APA) that allowed Congress and the President to veto pending regulations via an expedited process. This compromise led to a subtitle in the Contract with America now known as the Congressional Review Act of 1996. This Part describes the history of the CRA and its substance as enacted.

### 1. *From Moratorium to Congressional Review*

Even before being sworn in, Republican leaders had their sights set on imposing a moratorium on the issuance of all new federal regulation and urged President Clinton to implement a moratorium himself.<sup>29</sup> When he [\*716] declined to do so,<sup>30</sup> House Republicans called for a legislative solution--they intended to enact a statute that would put a moratorium on new regulations<sup>31</sup> so that Congress could implement regulatory reform without the distraction of having the federal bureaucracy continue to operate. A moratorium would also allow any new procedural or substantive requirements to be applied to all pending regulations without creating a "moral hazard"--agencies rushing to get more rules out (especially more unpalatable ones) in advance of a new set of strictures.<sup>32</sup> Members of Congress put particular emphasis on the importance of cost-benefit analysis (CBA) and risk assessment, noting that the moratorium might be lifted early if stricter CBA guidelines were implemented.<sup>33</sup> These ideas formed the basis of House Bill 450, the proposed Regulatory Transition Act of 1995, which would have imposed a retroactive moratorium period starting November 20, 1994, and lasting until either December 31, 1995, or the date that CBA or risk assessment requirements were imposed, whichever came earlier.<sup>34</sup>

The proposed moratorium, despite passing in the House,<sup>35</sup> met strong opposition in the Senate. Although Senate committees recommended enactment of the moratorium for largely the same reasons as the House leadership,<sup>36</sup> a

<sup>29</sup> See Melissa Healy, *GOP Seeks Moratorium on New Federal Regulations*, L.A. TIMES, Dec. 13, 1994, at A32 (reporting that House Speaker Newt Gingrich of Georgia and Senate Majority Leader Bob Dole of Kansas sent a letter to the White House urging President Clinton to issue an executive order imposing a moratorium on new federal rules).

<sup>30</sup> See Letter from Sally Katzen, Exec. Office of the President, Office of Mgmt. & Budget, to Tom DeLay, U.S. House of Representatives (Dec. 14, 1994), *reprinted in* H.R. REP. NO. 104-39, pt. 1, at 38-39 (1995) (expressing, on behalf of President Clinton, concern about the efficiency of federal regulation but declining to issue an executive order imposing a moratorium on federal regulation).

<sup>31</sup> See Grant, *supra* note 14, at 70 ("To halt the rampant rule making, Rep. David McIntosh . . . co-sponsored a bill with House Republican Whip Tom DeLay that calls for a moratorium on all new federal regulation . . .").

<sup>32</sup> See H.R. REP. NO. 104-39, pt. 1, at 9-10 (1995) ("[A] moratorium will provide both the executive and the legislative branches . . . with more time to focus on ways to fix current regulations and the regulatory system. Everyone involved in the regulatory process will be largely freed from the daily burden of having to review, consider and correct newly promulgated regulations . . ."); S. REP. No. 104-15, at 5 (1995) (same).

<sup>33</sup> See H.R. REP. NO. 104-39, pt. 1, at 4 ("The moratorium can be lifted earlier, but only if substantive regulatory reforms (cost/benefit analysis and risk assessment) are enacted."); see also *id.* (noting that agencies would not be barred from conducting CBA during the moratorium).

<sup>34</sup> H.R. 450, 104th Cong. §§ 3(a), 6(2) (1995) (as passed by House of Representatives, Feb. 24, 1995).

<sup>35</sup> 141 CONG. REC. 5880 (1995) (recording the House roll call vote of 276-146, **with** 13 Representatives not voting).

<sup>36</sup> See S. 219, 104th Cong. §§ 3(a), 6(2) (1995) (as reported by S. Comm. on Governmental Affairs, Mar. 16, 1995) (proposing a moratorium similar to that considered in the House, but with a retroactivity clause that reached even further back); see also S. REP. No. 104-15, at 1 ("The Committee on Governmental Affairs . . . reports favorably [on S. 219] . . . and recommends that the bill . . . pass.").

strong minority joined the Clinton Administration in [\*717] opposition to the bill.<sup>37</sup> Six of the fourteen members of the Senate Committee on Governmental Affairs argued that a moratorium was overbroad and wasteful, and "does not distinguish between good and bad regulations."<sup>38</sup> In their view, a moratorium would hurt more than it would help, since it would "create delays in good regulations, waste money, and create great uncertainty for citizens, businesses, and others."<sup>39</sup> The Republicans, with only a slim majority in the Senate,<sup>40</sup> would face difficulty enacting a moratorium.

While House Bill 450 worked its way through the House, Senate Republicans drafted a more moderate (and, from the Senate's perspective, more realistic) proposal for regulatory reform through congressional oversight. Senate Bill 348 would have set up an expedited congressional review process for all new federal regulations and allowed for their invalidation by enactment of a joint resolution.<sup>41</sup> Faced with a Senate that was closely split over the moratorium bill, Senators Don Nickles of Oklahoma and Harry Reid of Nevada reached a compromise: they introduced the text of Senate Bill 348 as a substitute for the moratorium proposal, which became known as the Nickles-Reid Amendment.<sup>42</sup> Senate Democrats saw the more nuanced review process as a significant improvement over the moratorium's prophylactic approach,<sup>43</sup> and the Nickles-Reid Amendment (Senate Bill 219) passed the chamber by a roll call vote of 100-0.<sup>44</sup>

Disappointed in the defeat of their moratorium proposal, House leaders did not agree to a conference to reconcile House Bill 450 with Senate Bill [\*718] 219.<sup>45</sup> Pro-environment House Republicans eventually convinced House leaders that their antiregulatory plans were too far-reaching,<sup>46</sup> and over the following year, members of Congress attempted to include the review provision in several bills.<sup>47</sup> The provision was finally successfully included in the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), a part of the larger Contract with America

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<sup>37</sup> See S. REP. NO. 104-15, at 25-32 (calling the moratorium "dangerous" and "unnecessary"); see also Letter from Sally Katzen to Tom DeLay, *supra* note 30 (calling the moratorium a "blunderbuss" and noting that it was so overbroad that it would impede regulations addressing tainted meat in the food supply and assisting the diagnosis of illnesses that veterans may have suffered while serving in the Persian Gulf War).

<sup>38</sup> S. REP. No. 104-15, at 25.

<sup>39</sup> *Id.* at 26.

<sup>40</sup> See *supra* note 12 and accompanying text.

<sup>41</sup> S. 348, 104th Cong. (as introduced in Senate, Feb. 2, 1995).

<sup>42</sup> See 141 CONG. REC. 9426-27 (1995) (statement of Sen. Baucus) (noting withdrawal of the moratorium in favor of a fast-track process for congressional review).

<sup>43</sup> See *id.* ("To my mind, this amendment is much closer to the mark . . . Congress can distinguish good rules from bad. . . . [I]f an agency is doing a good job, the rule will go into effect, and public health will not be jeopardized.").

<sup>44</sup> *Id.* at 9580 (recording the roll call vote); see S. 219, 104th Cong. § 103 (as passed by Senate, Mar. 29, 1995) (including the congressional review procedure in lieu of the moratorium proposal).

<sup>45</sup> See 142 CONG. REC. 6926-27 (1996) (statement of Rep. Hyde) (summarizing the procedural history of the Congressional Review Act (CRA)).

<sup>46</sup> See John H. Cushman Jr., *House G. O.P. Chiefs Back Off on Stiff Antiregulatory Plan*, N.Y. TIMES, Mar. 6, 1996, at A19 ("Representative Sherwood Boehlert, a Republican from upstate New York who has emerged as the leader of a block of pro-environment House members, persuaded Speaker Newt Gingrich at a meeting today that this legislation went too far.").

<sup>47</sup> However, each bill eventually failed for reasons unrelated to the congressional review provision. See 142 CONG. REC. 6926-27 (statement of Rep. Hyde) (discussing the procedural history of the CRA).

Advancement Act (CWAA), as Subtitle E.<sup>48</sup> The congressional review provision was ultimately enacted without debate, as more controversial parts of the Contract with America occupied Congress's attention.<sup>49</sup> On March 28, 1996, the CWAA passed both houses of Congress.<sup>50</sup> In a signing statement, President Clinton stated that he had "long supported" the idea of increasing agency accountability via a review procedure, but he also noted his reservations about some of the provision's specific terms, which he said "will unduly complicate and extend" the process.<sup>51</sup>

## 2. Regulatory "Reform"

At the same time as they considered the idea of a regulatory moratorium, both houses of Congress considered far more detailed and sweeping changes to the way federal agencies could regulate. As promised by Speaker Newt Gingrich, within 100 days of the installation of 104th Congress, House Bill 9, the Job Creation and Wage Enhancement Act was [\*719] introduced and voted on.<sup>52</sup> This bill would have required most regulations to be justified by a judicially reviewable QRA, performed under a set of very specific requirements regarding the appropriate models to select and the statistical procedures to use.<sup>53</sup> It also would have required agencies to certify that each rule produced benefits to human health or the environment that justified the costs incurred.<sup>54</sup> Although the House passed this bill by a vote of 277-141, the Republican Senate majority made no public pledge to reform regulation as had their House counterparts,<sup>55</sup> and the analogous Senate Bill 343 (the Comprehensive Regulatory Reform Act, sponsored primarily by Republican Robert Dole of Kansas and Democrat J. Bennett Johnston of Louisiana), occupied that body for months of debate.<sup>56</sup> The Senate took three separate cloture votes during the summer of 1995, the final one falling only two votes shy of the sixty needed to end debate.<sup>57</sup>

Professors Landy and Dell attribute the failure of Senate Bill 343 largely to presidential politics: Senator Dole (who won the Republican nomination that year) may have been unwilling to tone down the judicial review provisions (under which agencies would face remand for deficiencies in their risk assessments or disputes over their cost-benefit pronouncements) because he was looking to his base, while President Clinton threatened a veto as an

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<sup>48</sup> See Congressional Review Act of 1996, Pub. L. No. 104-121, tit. II, subtit. E, **110 Stat. 868-74** (codified as amended at **5 U.S.C. §§ 801-808** (2006)).

<sup>49</sup> See 142 CONG. REC. 6922-30 (statement of Rep. Hyde) (inserting documents into the legislative history of the Contract with America Advancement Act (CWAA) several weeks after its enactment, and noting that "no formal legislative history document was prepared to explain the [CRA] or the reasons for changes in the final language negotiated between the House and Senate"); see *also id.* at 8196-8201 (joint statement of Sens. Nickles, Reid, and Stevens).

<sup>50</sup> See *id.* at 6940 (recording the House roll call vote of 328-91 with 12 nonvoting Representatives, including several liberals voting for the bill and several conservatives voting against it); see *also id.* at 6808 (reporting the Senate unanimous consent agreement).

<sup>51</sup> Presidential Statement on Signing the Contract with America Advancement Act of 1996, 32 WEEKLY COMP. PRES. DOC. 593 (Apr. 29, 1996).

<sup>52</sup> See H.R. 9, 104th Cong. §§ 411-24 (1995) (as passed by House, Mar. 3, 1995).

<sup>53</sup> See, e.g., *id.* § 414(b)(2) (setting forth specific requirements for the conduct of risk assessments).

<sup>54</sup> *Id.* § 422(a)(2).

<sup>55</sup> See Marc Landy & Kyle D. Dell, *The Failure of Risk Reform Legislation in the 104th Congress*, [9 DUKE ENVTL. L. & POL'Y F. 113, 115-16 \(1998\)](#).

<sup>56</sup> S. 343, 104th Cong. (1995) (as introduced in Senate, Feb. 2, 1995).

<sup>57</sup> 141 CONG. REC. 19,661 (1995) (recording the roll call vote of 58-40).

attempt to "tap into the public's longstanding support for environmental regulation."<sup>58</sup> However, serious substantive issues existed as well. Public interest groups actively opposed the bill; with each untoward event in the news as the debate continued (notably a cluster of deaths and illnesses caused by fast-food hamburgers contaminated with *E. coli*<sup>59</sup>), the [\*720] bill's "green eyeshade" tone (dissect all costs and benefits, giving inaction the seeming benefit of the doubt) became a flashpoint for concern. For its part, the White House aggressively charted its own course of reform, strengthening the executive order giving OIRA broad authority over regulatory agencies and making regulatory transparency and plain language cornerstones of Vice President Gore's broader Reinventing Government initiative.<sup>60</sup> As Professor John Graham concluded, "The Democratic leadership made a calculation that it was more profitable to accuse Republicans of rolling back protections (in the guise of reform) than it was to work collaboratively toward passage of a bipartisan regulatory reform measure."<sup>61</sup>

Nevertheless, the majority of both houses of Congress believed that each federal regulation should be able to pass a formal benefit-cost test, and perhaps that agencies should be required to certify this in each case. Although no law enshrined this requirement or the blueprint for how to quantify benefits and costs, the CRA's passage less than a year after the failure of the Dole-Johnston bill can most parsimoniously be interpreted as Congress asserting that if the agencies remained free to promulgate rules with an unfavorable cost-benefit balance, Congress could veto at the finish line what a regulatory reform law would have instead nipped in the bud.

The CRA can also be interpreted as one of four contemporaneous attempts to salvage as much as possible of the cost-benefit agenda embodied in the failed omnibus regulatory reform legislation.<sup>62</sup> During 1995 and 1996, Congress also enacted the Unfunded Mandates Reform Act (which requires agencies to quantify regulatory costs to state and local governments, and to respond in writing to suggestions from these stakeholders for alternative regulatory provisions that could be more cost-effective),<sup>63</sup> the Regulatory Compliance Simplification Act (which requires [\*721] agencies to prepare compliance guides directed specifically at small businesses),<sup>64</sup> and a series of

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<sup>58</sup> See Landy & Dell, *supra* note 55, at 125.

<sup>59</sup> n59 In a hearing on Senate Bill 343, Senator Paul Simon read from a February 22 letter in the *Washington Post*:

"Eighteen months ago, my only child, Alex, died after eating hamburger meat contaminated with *E. coli* 0157H7 bacteria. Every organ, except for Alex's liver, was destroyed . . . My son's death did not have to happen and would not have happened if we had a meat and poultry inspection system that actually protected our children."

*Regulatory Reform: Hearing on S. 343 Before the S. Comm. on the Judiciary*, 104th Cong. 19 (1995) (statement of Sen. Simon). Simon urged caution in burdening the agencies with new-requirements, saying, "The food we have is safer than for any other people on the face of the earth. I don't think the American people want to move away from that." *Id.*; see also James S. Kunen, *Rats: What's for Dinner? Don't Ask*, NEW YORKER, Mar. 6, 1995, at 7 (discussing the continuing importance of Upton Sinclair's *The Jungle* as it relates to regulation of food contaminants).

<sup>60</sup> See Exec. Order No. 12,866, 3 C.F.R. 638 (1994), *reprinted as amended* in **5 U.S.C. § 601** app. at 745 (2006); AL GORE, CREATING A GOVERNMENT THAT WORKS BETTER AND COSTS LESS: REPORT OF THE NATIONAL PERFORMANCE REVIEW (1993).

<sup>61</sup> John D. Graham, *Legislative Approaches to Achieving More Protection Against Risk at Less Cost*, [1997 U. CHI. LEGAL F. 13, 57 \(1997\)](#). However, as a participant in numerous executive-branch and congressional discussions at the time, one of us (Adam Finkel) hastens to add that many in the executive agencies believed that the specific provisions in the Dole-Johnston bill were in fact punitive, and were indeed offered merely "in the guise of reform."

<sup>62</sup> James T. O'Reilly, *EPA Rulemaking After the 104th Congress: Death from Four Near-Fatal Wounds?*, [3 ENVTL. LAW. 1, 1 \(1996\)](#).

<sup>63</sup> Unfunded Mandates Reform Act of 1995, Pub. L. No. 104-4, **109 Stat. 48** (codified in amended at scattered sections of 2 U.S.C.).

<sup>64</sup> Contract with America Advancement Act of 1996, Pub. L. No. 104-121, tit. II, subtit. A, **110 Stat. 858-59** (codified as amended in scattered sections of 2, 5, 15, and 42 U.S.C.).

amendments to the Regulatory Flexibility Act (which makes judicially reviewable the agency's required analysis of why it should not adopt less costly regulatory alternatives favoring small businesses).<sup>65</sup> Against this backdrop, the CRA is more clearly seen as serving the primary purpose of giving special scrutiny--before aggrieved parties would have to plead their case in court--to rules that arguably conflict with other strong signals from Congress about the desired flexibility and cost-effectiveness of agency regulatory proposals.

### 3. The CRA

The CRA established a procedure by which Congress can oversee and, with the assent of the President, veto rules promulgated by federal agencies. Before any rule can take effect, the promulgating agency must submit to the Senate, House of Representatives, and the Comptroller General of the Government Accountability Office (GAO) a report containing, among other things, the rule and its complete CBA (if one is required).<sup>66</sup> The report is then submitted for review to the chairman and ranking member of each relevant committee in each chamber.<sup>67</sup> Some rules--for example, rules pertaining to internal agency functioning, or any rule promulgated by the Federal Reserve System--are exempted from this procedure.<sup>68</sup>

During this review process, the effective date of any major rule is postponed.<sup>69</sup> However, the President has discretion to allow a major rule [\*722] that would otherwise be suspended to go into effect for a limited number of purposes, such as national security.<sup>70</sup> The Act also exempts from suspension any rule for which the agency finds "for good cause . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."<sup>71</sup>

If Congress chooses to repeal any rule through the CRA, it may pass a joint resolution of disapproval via an expedited process. The procedure is expedited "to try to provide Congress with an opportunity to act on resolutions of disapproval before regulated parties must invest the significant resources necessary to comply with a major rule."<sup>72</sup> From the date that the agency submits its report of the rule, Congress has sixty days in session to pass a joint

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<sup>65</sup> *Id.* subtit. D, **110 Stat. 864-68** (codified as amended at **5 U.S.C. §§ 601-605, 609, 611** (2006)).

<sup>66</sup> **5 U.S.C. § 801(a)(1)(A)-(B)** (2006). Senator Pete Domenici of New Mexico inserted the provision requiring submission of the report to the Comptroller General because the Government Accountability Office (GAO) would be able to effectively review the CBA and ensure that the regulation complies with legal requirements, such as unfunded mandates legislation. See 141 CONG. REC. 9428-29 (1995) (statement of Sen. Domenici).

<sup>67</sup> **5 U.S.C. § 801(a)(1)(C)**.

<sup>68</sup> *Id.* § 804(3) (defining *rule* for the purposes of the CRA so as to exclude certain categories); *id.* § 807 (exempting all regulations promulgated by the Federal Reserve and Federal Open Market Committee from CRA requirements).

<sup>69</sup> *Id.* § 801(a)(3). A "major rule" under the CRA is any rule that: (1) has an annual effect on the economy of \$ 100 million or more; (2) results in a "major increase in costs or prices" for various groups, such as consumers and industries; or (3) is likely to result in "significant adverse effects on competition, employment, investment," or other types of enterprise abilities. *Id.* § 804(2). Any rule promulgated under the Telecommunications Act of 1996 is not a major rule for purposes of the CRA. *Id.*

<sup>70</sup> *Id.* § 801(c).

<sup>71</sup> *Id.* § 808. The good cause exception is intended to be limited to only those rules that are exempt from notice and comment by statute. See 142 CONG. REC. 6928 (1996) (statement of Rep. Hyde).

<sup>72</sup> 142 CONG. REC. 8198 (joint statement of Sens. Nickles, Reid, and Stevens); see also 147 CONG. REC. 2816 (2001) (statement of Sen. Jeffords) (noting that "scarce agency resources are also a concern" that justifies a stay on the enforcement of major rules).

resolution.<sup>73</sup> The procedure is further expedited in the Senate, where debate over a joint resolution of disapproval is limited to a maximum of ten hours, effectively preventing any possibility of a filibuster.<sup>74</sup> The House does not have a similar expedited procedure.<sup>75</sup> When a disapproval resolution passes both houses of Congress, it is presented to the President for signing.<sup>76</sup> The CRA drafters developed this structure to meet the bicameralism and presentment requirements of the Constitution, which had thwarted an earlier congressional attempt to retain veto power over certain agency actions.<sup>77</sup>

[\*723] Upon the enactment of a joint resolution against a federal agency rule, the rule will not take effect.<sup>78</sup> If the rule has already taken effect by the time a joint resolution is enacted--for example, if the rule is not a major rule, or if the President has exercised the authority to override suspension of the rule's effective date<sup>79</sup>--then it cannot continue in force.<sup>80</sup> The effect of a joint resolution of disapproval is also retroactive: any regulation overridden by the CRA process is "treated as though [it] had never taken effect."<sup>81</sup>

The CRA places a further limitation on agency action following a successful veto, which is the focus of this Article. Not only does the regulation not take effect as submitted to Congress, but the agency may not be free to reissue another rule to replace the one vetoed. Specifically, the CRA provides that:

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<sup>73</sup> **5 U.S.C. § 802(a)**. The sixty-day window excludes "days either House of Congress is adjourned for more than 3 days during a session of Congress." *Id.* If an agency submits a report with fewer than sixty days remaining in the session of Congress, the sixty-day window is reset, beginning on the fifteenth day of the succeeding session of Congress. See *id.* § 801(d)(1), (2)(A).

<sup>74</sup> *Id.* § 802(d)(2); cf. STANDING RULES OF THE SENATE R. XXII § 2 (2007) (requiring the affirmative vote of three-fifths of Senators to close debate on most legislative actions).

<sup>75</sup> See Morton Rosenberg, *Whatever Happened to Congressional Review of Agency Rulemaking?: A Brief Overview, Assessment, and Proposal for Reform*, [51 ADMIN. L. REV. 1051, 1063 \(1999\)](#) (criticizing the CRA for its lack of an expedited House procedure because, "As a practical matter, no expedited procedure will mean engaging the House leadership each time a rule is deemed important enough by a committee or group of members to seek speedy access to the floor").

<sup>76</sup> **5 U.S.C. § 801(a)(3)(B)**. If the President vetoes a resolution disapproving of a major rule, the suspension of the effective date is extended, at a minimum, until the earlier of thirty session days or the date that Congress votes and fails to override the President's veto. *Id.*

<sup>77</sup> U.S. CONST. art. I, § 7, cls. 2-3 (requiring, for a bill to become law, passage by both houses of Congress and either signing by the President or a presidential veto followed by a two-thirds congressional override in each house of Congress). Under these principles, the Supreme Court struck down § 224(c)(2) of the Immigration and Nationality Act, which allowed a single house of Congress to override the Attorney General's determination that deportation of an alien should be suspended. See [INS v. Chadha](#), [462 U.S. 919, 959 \(1983\)](#), invalidating [8 U.S.C. § 1254\(c\)\(2\)](#) (1982). Curiously, while the CRA was intended to give respect to the Constitution's bicameralism and presentment requirements, 142 CONG. REC. 6926 (statement of Rep. Hyde) (noting that, after *Chadha*, "the one-house or two-house legislative veto . . . was thus voided," and as a consequence the authors of the CRA developed a procedure that would require passage by both houses and presentment to the President); 142 CONG. REC. 8197 (joint statement of Sens. Nickles, Reid, and Stevens) (same), the 104th Congress enacted the unconstitutional line item veto in violation of those very principles less than two weeks after it had enacted the CRA. See Line Item Veto Act, Pub. L. No. 104-130, [110 Stat. 1200 \(1996\)](#) (codified as amended at [2 U.S.C. §§ 691-692](#) (Supp. II 1997)), *invalidated by Clinton v. City of New York*, [524 U.S. 417 \(1998\)](#).

<sup>78</sup> **5 U.S.C. § 801(b)(1)**.

<sup>79</sup> See *supra* notes 69-70 and accompanying text.

<sup>80</sup> **5 U.S.C. § 801(b)(1)**.

<sup>81</sup> *Id.* § 801(f). For a summary of the disapproval procedure created by the CRA, with emphasis on its possible use as a tool to check midnight regulation, see Jerry Brito & Veronique de Rugy, *Midnight Regulations and Regulatory Review*, [61 ADMIN. L. REV. 163, 189-90 \(2009\)](#).

A rule that does not take effect (or does not continue) under [a joint resolution of disapproval] may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.<sup>82</sup>

An agency's ability to promulgate certain rules after a veto thus turns on the CRA's meaning of "substantially the same form." We will discuss the range of scholarly and editorial interpretations of how ominously executive agencies should regard the prohibition against reissuance of "substantially similar" rules in Part III.B. But to foreshadow the main argument, we [\*724] believe that most commentators have offered an unduly pessimistic reading of this provision. One of the most respected experts in administrative law, Professor Peter Strauss, testified before Congress a year after the enactment of the CRA that the substantial similarity provision has a "doomsday effect."<sup>83</sup> Because, Strauss opined, the provision precludes the affected agency from ever attempting to regulate in the same topical area, Congress may well have tied its own hands and as a result will refrain from vetoing rules altogether.<sup>84</sup> Although we agree wholeheartedly with Strauss's recommendation that Congress should amend the CRA to require a statement of the reasons for the initial veto, we simply observe here that events subsequent to his 1997 testimony demonstrate that Congress did *not* in fact blanch from invoking a veto even when it was not primarily concerned about an agency exceeding its statutory authority: Congress overturned the OSHA ergonomics rule in 2001 ostensibly because of concern about excessive compliance costs and illusory risk-reduction benefits.<sup>85</sup> Therefore, § 801 (b)(2) of the CRA represents a very influential consequence of a veto power that Congress is clearly willing to use, and its correct interpretation is therefore of great importance to administrative law and process.

With very little evidence in the CRA's legislative history discussing this provision,<sup>86</sup> and only one instance in which the congressional veto has actually been carried out,<sup>87</sup> neither Congress nor the Judiciary has clearly established the meaning of this crucial clause. In the next several Parts, we will attempt to give the CRA's substantial similarity provision a coherent and correct meaning by interpreting it in the context of its legislative history, the political climate in which it was enacted and has been applied, and the broader administrative state.

## II. EXERCISE OF THE CONGRESSIONAL VETO

The CRA procedure for congressional override of a federal regulation [\*725] has only been used once.<sup>88</sup> In 2001, when the Bush Administration came into office, Republicans in Congress led an attempt to use the measure to

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<sup>82</sup> **5 U.S.C. § 801(b)(2)**.

<sup>83</sup> *Congressional Review Act: Hearing Before the Subcomm. on Commercial & Admin. Law of the H. Comm. on the Judiciary*, 105th Cong. 89 (1997) [hereinafter *Hearing on the CRA*] (statement of Peter L. Strauss, Betts Professor of Law, Columbia University), available at [http://commdocs.house.gov/committees/judiciary/hju40524.000/hju40524\\_of.htm](http://commdocs.house.gov/committees/judiciary/hju40524.000/hju40524_of.htm).

<sup>84</sup> *Id.*

<sup>85</sup> See *infra* Part VI and VII.

<sup>86</sup> See 142 CONG. REC. 6926 (1996) (statement of Rep. Hyde) (noting that, although the measure had already been enacted into law, "no formal legislative history document was prepared to explain the [CRA]"); *id.* at 8197 (joint statement of Sens. Nickles, Reid, and Stevens) (same).

<sup>87</sup> See *infra* Part II.A (discussing Congress's use of the veto in 2001 to disapprove of OSHA's ergonomics rule).

<sup>88</sup> See U.S. GOV'T ACCOUNTABILITY OFFICE, CONGRESSIONAL REVIEW ACT (CRA) FAQs, [http://www.gao.gov/legal/congressact/cra\\_faq.html#9](http://www.gao.gov/legal/congressact/cra_faq.html#9) (last visited Nov. 3, 2011) (explaining that the Department of Labor's ergonomics rule is the only rule that Congress has disapproved under the CRA).

strike down a workplace ergonomics regulation promulgated by OSHA.<sup>89</sup> The joint resolution generated much debate, in Washington and nationwide, over whether Congress should use the CRA procedure.<sup>90</sup> This Part discusses the joint resolution disapproving OSHA's ergonomics rule and briefly notes some other instances in which Congress has brought up but has not successfully executed the CRA. It then explores potential means by which the substantial similarity provision might be enforced.

#### A. The OSHA Ergonomics Rule

In 1990, Secretary of Labor Elizabeth Dole stated that ergonomic injuries were one "of the nation's most debilitating across-the-board worker safety and health illnesses," and announced that the Labor Department, under President George H.W. Bush, was "committed to taking the most effective steps necessary to address the problem of ergonomic hazards."<sup>91</sup> As we will discuss briefly in Part VI, in 1995 OSHA circulated a complete regulatory text of an ergonomics rule, but it met with such opposition that it was quickly scuttled. Five years after abandoning the first ergonomics proposal, OSHA proposed a new section to Title 20 of the *Code of Federal Regulations* "to reduce the number and severity of musculoskeletal disorders (MSDs) caused by exposure to risk factors in the workplace."<sup>92</sup> The regulation would, among other things, have required employers to provide employees with certain information about ergonomic injuries and MSDs and implement "feasible" controls to reduce MSD hazards if certain [\*726] triggers were met.<sup>93</sup> OSHA published the final rule in the *Federal Register* during the lame-duck period of the Clinton Administration, and it met strong opposition from Republicans and pro-business interest groups.

After the 107th Congress was sworn in, Senate Republicans led the charge against the ergonomics rule and proposed a joint resolution to disapprove of the regulation pursuant to the CRA.<sup>94</sup> Opponents of the OSHA regulation argued that it was the product of a flawed, last-minute rulemaking process in the outgoing Clinton Administration.<sup>95</sup> Although the Department of Labor had been attempting to develop an ergonomics program for at least the previous ten years,<sup>96</sup> the opponents called this particular rule "a regulation crammed through in the last couple of days of the Clinton administration" as a "major gift to organized labor."<sup>97</sup> Senator Mike Enzi of Wyoming argued that the proposed regulation was not published in the *Federal Register* until "a mere 358 days before

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<sup>89</sup> See Ergonomics Rule Disapproval, Pub. L. No. 107-5, 115 Stat. 7 (2001), *invalidating Ergonomics Program*, 65 Fed. Reg. 68,262 (Nov. 14, 2000).

<sup>90</sup> Compare Robert A. Jordan, *Heavy Lifting Not W's Thing*, BOS. SUNDAY GLOBE, Mar. 11, 2001, at E4 (arguing that President Bush's support of the joint resolution to overturn OSHA's ergonomics rule sends the message, "I do not share--or care about--your pain"), with Editorial, *Roll Back the OSHA Work Rules*, CHI. TRIB., Mar. 6, 2001, at N14 (calling the ergonomics rule "bad rule-making" and arguing that Congress should "undo it"). See generally 147 CONG. REC. 3055-80 (2001) (chronicling the floor debates in the House); *id.* at 2815-74 (chronicling the floor debates in the Senate).

<sup>91</sup> Press Release, Elizabeth H. Dole, Sec'y, Dep't of Labor, Secretary Dole Announces Ergonomics Guidelines to Protect Workers from Repetitive Motion Illnesses/Carpal Tunnel Syndrome (Aug. 30, 1990), *reprinted in* 145 CONG. REC. 24,467-68 (1999).

<sup>92</sup> Ergonomics Program, 65 Fed. Reg. at 68,846; see also Ergonomics Program, 64 Fed. Reg. 65,768-66,078 (proposed Nov. 23, 1999).

<sup>93</sup> Ergonomics Program, 65 Fed. Reg. at 68,847, 68,850-51.

<sup>94</sup> See S.J. Res. 6, 107th Cong. (2001) (enacted).

<sup>95</sup> See, e.g., 147 CONG. REC. 2815-16 (statement of Sen. Jeffords) ("[T]he ergonomics rule certainly qualifies as a 'midnight' regulation . . .").

<sup>96</sup> See Ergonomics Program, 65 Fed. Reg. at 68,264 (presenting an OSHA Ergonomics Chronology); see also *supra* note 91 and accompanying text (noting the Department of Labor's commitment in 1990 to address ergonomic injuries).

<sup>97</sup> 147 CONG. REC. 2817-18 (statement of Sen. Nickles).

[OSHA] made it the law of the land, one-quarter of the time they typically take." <sup>98</sup> He further suggested that OSHA ignored criticisms received during the notice-and-comment period, and instead relied on "hired guns" to provide information and tear apart witness testimony against the rule. <sup>99</sup>

This allegedly flawed and rushed procedure, OSHA's opponents argued, coupled with an overly aggressive posture toward the regulated industries, <sup>100</sup> led to an inefficient and unduly burdensome rule. Congressional Republicans and other critics seemed unconvinced by the agency's estimate of the costs and benefits. OSHA estimated that the regulation would cost \$ 4.5 billion annually, while others projected that it could cost up to \$100 billion--Senator Don Nickles of Oklahoma noted this wide range of estimates and said, "There is no way to know how much this would cost." <sup>101</sup> Democrats, however, argued that the rule was not [\*727] wasteful. Senator Edward Kennedy of Massachusetts said, in contrast, that the ergonomics rule was "flexible and cost-effective for businesses, and . . . overwhelmingly based upon scientific evidence." <sup>102</sup> The rule's proponents also emphasized its benefits, arguing that the rule's true cost of \$ 4.5 billion would be more than offset by a savings of "\$ 9.1 billion annually . . . recouped from the lost productivity, lost tax payments, administrative costs, and workers comp." <sup>103</sup> Critics argued that these benefits were overstated as businesses were naturally becoming more ergonomically friendly on their own. <sup>104</sup> Democrats also noted scientific evidence favoring the rule, including two reports by the National Academy of Sciences (NAS) and the Institute of Medicine reporting the enormous costs of work-related ergonomic injuries. <sup>105</sup> But critics cited reports in their favor, <sup>106</sup> and responded that the NAS report did not endorse the rule and could not possibly have shaped it, as the report was not released until after OSHA went forward with the regulation. <sup>107</sup>

Following expedited debate in Congress during which the legislators argued about the costs and benefits of the OSHA rule, both houses passed the joint resolution in March 2001. <sup>108</sup> When President Bush signed the joint

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<sup>98</sup> *Id.* at 2823 (statement of Sen. Enzi).

<sup>99</sup> *Id.* (estimating that "close to 2 million pages" of materials were submitted to OSHA during the public comment period, yet "there were only 94 days between the end of the public comment period and the date of the OSHA-published [rule]").

<sup>100</sup> See, e.g., Lisa Junker, *Marthe Kent: A Second Life in the Public Eye*, SYNERGIST, May 2000, at 28, 30 (quoting former OSHA Director of Safety Standards as saying: "I was born to regulate.," and "I don't know why, but that's very true. So as long as I'm regulating, I'm happy. . . . I think that's really where the thrill comes from. And it is a thrill; it's a high").

<sup>101</sup> 147 CONG. REC. 2818 (statement of Sen. Nickles); see also Editorial, *supra* note 90, at N14 ("Although [OSHA] puts the price tag on its rules at \$ 4.5 billion, the Economic Policy Foundation gauges the cost to business at a staggering \$ 125.6 billion.").

<sup>102</sup> 147 CONG. REC. 2818 (statement of Sen. Kennedy).

<sup>103</sup> *Id.* at 2827 (statement of Sen. Wellstone).

<sup>104</sup> *Id.* at 2815-16 (statement of Sen. Jeffords). Of course, if a market-driven move toward ergonomically friendly business meant that the future benefits of OSHA's rule were overstated, then its future costs must have been simultaneously overstated as well.

<sup>105</sup> See *id.* at 2830 (statement of Sen. Dodd) (citing a report finding that "nearly 1 million people took time from work to treat or recover from work-related ergonomic injuries" and that the cost was "about \$ 50 billion annually").

<sup>106</sup> See *id.* at 2833-34 (statement of Sen. Hutchinson) (citing a report that "shows that the cost-to-benefit ratio of this rule may be as much as 10 times higher for small businesses than for large businesses").

<sup>107</sup> See *id.* at 3056 (statement of Rep. Boehner) ("OSHA completed its ergonomics regulation without the benefit of the National Academy study.").

<sup>108</sup> See Ergonomics Rule Disapproval, Pub. L. No. 107-5, 115 Stat. 7 (2001), *invalidating* Ergonomics Program, 65 Fed. Reg. 68,262 (Nov. 14, 2000); 147 CONG. REC. 3079 (recording the House roll call vote of 223-206, with 4 Representatives not voting); *id.* at 2873 (recording the Senate roll call vote of 56-44).

resolution into law, he emphasized the need for "an understanding of the costs and benefits" and his Administration's intent to continue to "pursue a comprehensive approach to ergonomics."<sup>109</sup>

However, OSHA has never since made any attempt to regulate in this area, although it has issued four sets of voluntary ergonomics guidelines-- [\*728] for nursing homes, retail grocery stores, poultry processing, and the shipbuilding industry. Even without a specific standard, OSHA could use its general duty authority<sup>110</sup> to issue citations for ergonomic hazards that it can show are likely to cause serious physical harm, are recognized as such by a reasonable employer, and can be feasibly abated. However, in the more than ten years after the congressional veto of the ergonomics rule, OSHA issued fewer than one hundred such citations nationwide.<sup>111</sup> For purposes of comparison, in an average year, federal and state OSHA plans collectively issue more than 210,000 violations of all kinds nationwide.<sup>112</sup>

### *B. Midnight Regulations and Other Threats to Use the CRA*

The repeal of the OSHA ergonomics regulation has so far been the only instance in which Congress has successfully used the CRA to veto a federal regulation. However, the option of congressional repeal of rules promulgated by federal agencies has been considered in several other arenas, and in some instances threats by legislators to call for a CRA veto have led to a type of "soft veto" in which the agency responds to the threat by changing its proposed regulation. This has surfaced often, though not always, in the context of possibly repealing so-called midnight regulations.<sup>113</sup>

Some Republican lawmakers argued that the OSHA ergonomics standard circumvented congressional oversight because it was finalized in the closing weeks of the Clinton Administration.<sup>114</sup> Years later, these same arguments were echoed by the Obama Administration and some [\*729] Democrats in the 111th Congress with respect to other rules. As the Bush Administration left office in January 2009, it left behind several last-minute regulations, including rules that would decrease protection of endangered species, allow development of oil shale on some federal lands, and open up oil drilling in the Utah wilderness.<sup>115</sup> The Bush Administration also left behind a conscientious objector regulation that would allow certain healthcare providers to refuse to administer abortions or

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<sup>109</sup> Presidential Statement on Signing Legislation to Repeal Federal Ergonomics Regulations, 37 WEEKLY COMP. PRES. DOC. 477 (Mar. 20, 2001).

<sup>110</sup> See Occupational Safety and Health (OSH) Act of 1970 § 5(a)(1), [29 U.S.C. § 654](#) (2006).

<sup>111</sup> The OSHA website permits users to word-search the text of all general duty violations. See OCCUPATIONAL SAFETY & HEALTH ADMIN., DEPT OF LABOR, GENERAL DUTY STANDARD SEARCH, <http://www.osha.gov/pls/imis/generalsearch.html> (last visited Nov. 3, 2011). A search for all instances of the word *ergonomic* between March 7, 2001, (the day after the congressional veto) and August 18, 2011, (the day we ran this search) yielded sixty violations. The busiest year was 2003 (fifteen violations), and there were eight violations in 2010. An additional search for the term *MSD* yielded thirteen violations during this ten-year span, although some of these were duplicative of the first group of sixty.

<sup>112</sup> See SAFETY & HEALTH DEP'T, AFL-CIO, DEATH TOLL ON THE JOB: THE TOLL OF NEGLECT 61 (19th ed. 2010), [http://www.aflcio.org/issues/safety/memorial/upload/dotj\\_2010.pdf](http://www.aflcio.org/issues/safety/memorial/upload/dotj_2010.pdf).

<sup>113</sup> See Jack M. Beermann, [Combating Midnight Regulation, 103 NW. U. L. REV. COLLOQUY 352, 352 n.1 \(2009\)](#), <http://www.law.northwestern.edu/lawreview/colloquy/2009/9/LRColl2009n9Beermann.pdf> ("Midnight regulation" is loosely defined as late-term action by an outgoing administration."). Colloquially, the term is usually reserved for situations in which the White House changes parties.

<sup>114</sup> See *supra* notes 95-99 and accompanying text.

<sup>115</sup> See, e.g., Stephen Power, *U.S. Watch: Obama Shelves Rule Easing Environmental Reviews*, WALL ST. J., Mar. 4, 2009, at A4 (noting executive and administrative decisions to "shelve" a Bush Administration rule allowing federal agencies to "bypass" consultation on whether new projects could harm endangered wildlife).

dispense contraception.<sup>116</sup> Congressional Democrats brought up the CRA as an option for repealing the Bush Administration's midnight regulations, while the Obama Administration searched for an executive strategy to scuttle them.<sup>117</sup> Although the CRA may be at its most useful when there is a significant realignment in party control over the Legislative and Executive Branches (as occurred in 2001 and 2009),<sup>118</sup> the Democrats of the **111th** Congress did not use the CRA to achieve their goal of overturning the Bush Administration's regulations--in the end, the Obama Administration used executive procedures.<sup>119</sup>

However, not all threats to use the CRA have occurred immediately [\*730] following a party change. In early 2010, one year after President Obama's inauguration, Senator Lisa Murkowski of Alaska considered proposing a resolution to disapprove of the Environmental Protection Agency's (EPA's) "endangerment finding" that greenhouse gases threaten the environment and human health.<sup>120</sup> Senator Murkowski's idea never came to fruition.

### C. Enforcement of the Substantial Similarity Provision

Since there has never yet been an attempt by an agency to reissue a rule following a CRA veto, there remains ambiguity not only over what kinds of rules are barred, but how any such restrictions would be enforced. In this Part, we briefly discuss three possible ways the substantial similarity provision may affect agency action: one administrative response, one legislative, and one judicial.

One possible means of application of the substantial similarity provision begins in the Executive Branch, most likely within the administrative department whose regulation has been vetoed. With the threat of invalidation hanging overhead, an agency may be deterred from promulgating regulations within a certain area for fear of having its work nullified--or worse, of having ruined for posterity the ability to regulate in a given area (if it interprets the CRA

<sup>116</sup> See Jennifer Lubell, *Conscientious Objectors: Obama Plan to Rescind Rule Draws Catholic Criticism*, MOD. HEALTHCARE, Mar. 23, 2009, at 33 (discussing the Obama Administration's plans to prevent the Bush Administration's conscientious objector rule from going into effect); Charlie Savage, *Democrats Look for Ways to Undo Late Bush Administration Rules*, N.Y. TIMES, Jan. 12, 2009, at A10 ("Democrats are hoping to roll back a series of regulations issued late in the Bush administration that weaken environmental protections and other restrictions.").

<sup>117</sup> See Peter Nicholas & Christi Parsons, *Obama Plans a Swift Start*, L.A. TIMES, Jan. 20, 2009, at A1 (reporting that "Obama aides have been reviewing the so-called midnight regulations" and noting that "Obama can change some Bush policies through executive fiat"); Savage, *supra* note 116 (reporting that "Democrats . . . are also considering using the Congressional Review Act of 1996" to overturn some Bush Administration regulations).

<sup>118</sup> See Brito & de Rugy, *supra* note 81, at 190 ("[T]he CRA will only be an effective check on midnight regulations if the incoming president and the Congress are of the same party. If not, there is little reason to expect that the Congress will use its authority under the CRA to repeal midnight regulations. Conversely, if the president is of the same party as his predecessor and the Congress is of the opposite party, it is likely that the new president will veto a congressional attempt to overturn his predecessor's last-minute rules." (footnote omitted)). *But see* Rosenberg, *supra* note 75 (pointing out flaws in the CRA and proposing a new scheme of congressional review of federal regulation).

<sup>119</sup> See, e.g., Rescission of the Regulation Entitled "Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law," [74 Fed. Reg. 10,207, 10,209-10](#) (proposed Mar. 10, 2009) (rescinding the Bush Administration's "conscientious objector" rule).

<sup>120</sup> See Editorial, *Ms. Murkowski's Mischief*, NY. TIMES, Jan. 19, 2010, at A30. Note, however, that it is unclear that an agency "finding" is sufficiently final agency action for a CRA veto. *But cf. infra* note 268 (noting attempts to bring a broader range of agency actions under congressional review, including the recently introduced Closing Regulatory Loopholes Act of 2011). Nor is it clear that a joint resolution of disapproval may be inserted as part of a large bill, as Senator Murkowski considered. *Cf. 5 U.S.C. § 802(a)* (2006) (setting forth the exact text to be used in a joint resolution of disapproval). Murkowski intended to insert the resolution into the bill raising the debt ceiling. See Editorial, *supra*. Doing so would not only have run afoul of the provision setting the joint resolution text, but would impermissively have either expanded debate on the resolution, see [5 U.S.C. § 802\(d\)\(2\)](#) (limiting debate in the Senate to ten hours), or limited debate on the debt ceiling bill, which is not subject to the CRA's procedural restrictions.

ominously). In other words, agencies might engage in a sort of self-censorship that itself enforces the CRA. Indeed, the continuous absence of ergonomics from the regulatory agenda for an entire decade following the veto of OSHA's rule--and well into the Obama Administration--arguably provides evidence of such self-censorship. In prepared testimony before a Senate subcommittee of the Committee on Appropriations, Secretary of Labor Elaine Chao testified that, due to the exercise of the veto, the Department of Labor would need to work with Congress to determine what principles to apply to any future regulation in the ergonomics field. She did not want to "expend valuable--and limited--resources on a new effort" if another regulation would be [\*731] invalidated as substantially similar.<sup>121</sup>

In addition to agency self-censorship, there is, of course, a potential Legislative application of the substantial similarity provision. If an agency were to reissue a vetoed rule "in substantially the same form," then Congress could use the substantial similarity provision as a compelling justification for enacting another joint resolution, perhaps voicing its objection to the substance of the new rule, but using "similarity" to bypass a discussion of the merits. For example, if OSHA reissued an ergonomics rule that members of Congress thought was substantially similar to the Clinton Administration rule, then they might be motivated to repeal the rule simply because they would see the new rule as outside the law, and a disrespect to their prior action under the CRA. Of course, as with the original ergonomics rule, the notion that an agency is acting outside its authority may be considered as merely one factor among others--procedural, cost-benefit related, and even political--in determining whether to strike down an agency rule. But a congressional belief that an agency is reissuing a rule in violation of the CRA may cut in favor of enacting a second joint resolution of disapproval, even if certain members of Congress would not be inclined to veto the rule on more substantive grounds. Indeed, this could even turn Congress's gaze away from the rule's substance entirely--a sort of "us against them" drama might be played out in which opponents could use the alleged circumvention as a means to stir [\*732] up opposition to a rule that the majority might find perfectly acceptable if seeing it de novo.

The Judiciary might also weigh in on the issue. If an agency were to reissue a rule that is substantially similar to a vetoed rule, and Congress chose not to exercise its power of veto under the CRA, then a regulated party might convince the courts to strike down the rule as outside of the agency's statutory authority. Although the text of the CRA significantly limits judicial review of a congressional veto (or failure to veto), the statute does *not* prohibit judicial review for noncompliance with the substantial similarity clause of a rule promulgated after a congressional veto.<sup>122</sup> In other words, while Congress may have successfully insulated its own pronouncements from judicial

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<sup>121</sup> *Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations for Fiscal Year 2002: Hearing on H.R. 3061/S. 1536 Before a Subcomm. of the S. Comm. on Appropriations*, 107th Cong. 72 (2001) [hereinafter *Hearing on H.R. 3061/S. 1536*] (statement of Elaine L. Chao, Secretary, U.S. Department of Labor). However, Secretary Chao had promised immediately before the veto that she would do exactly the opposite and treat a CRA action as an impetus to reissue an improved rule. See Letter from Elaine L. Chao, Sec'y, U.S. Dep't of Labor, to Arlen Specter, Chairman, Subcomm. on Labor, Health & Human Servs., Educ, S. Comm. on Appropriations, U.S. Senate (Mar. 6, 2001) (promising to take future action to address ergonomics), *reprinted in* 147 CONG. REC. 2844 (2001) (statement of Sen. Specter). More recently, OSHA Assistant Secretary David Michaels, appointed by President Obama, has repeatedly indicated that OSHA has no plans to propose a new ergonomics regulation. For example, in February 2010, he addressed the ORG Worldwide Occupational Safety and Health Group (an audience of corporate health directors for large U.S. companies) and explained his proposal to restore a separate column for musculoskeletal disorder (MSD) cases in the required establishment-specific log of occupational injuries with this caveat: "It appears from press reports that our announcement of this effort may have confused some observers. So, let me be clear: This is *nota* prelude to a broader ergonomics standard." David Michaels, Assistant Sec'y of Labor for Occupational Safety & Health Administration, Remarks at the Quarterly Meeting of the ORC Worldwide Occupational Safety & Health Group & Corp. Health Dirs. Network (Feb. 3, 2010), [http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=SPEECHES&p\\_id=2134](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=SPEECHES&p_id=2134). For a discussion of similar about-faces in statements by members of Congress immediately before and after the veto, see *infra* Part III.B.

<sup>122</sup> See 5 U.S.C. § 805 (2006) ("No determination, finding, action, or omission under this chapter shall be subject to judicial review."). The legislative record makes clear that "a court with proper jurisdiction may review the resolution of disapproval and the law that authorized the disapproved rule to determine whether the issuing agency has the legal authority to issue a substantially different rule." 142 CONG. REC. 8199 (1996) (statement of Sen. Nickles). Indeed, the CRA prohibits a court only

review, that does not stop a plaintiff from asking a court to rule--without considering Congress's silence or statements--whether a rule that was allowed through should have been struck down as substantially similar.

There appear to be two primary ways in which judicial review would arise. First, a party might raise invalidity as a defense if an agency were to try enforcing a rule it arguably did not have authority to promulgate under the CRA. The defendant in the administrative proceedings could appeal agency enforcement of the rule to the federal courts under Chapter 7 of the APA, and a court might then strike down the regulation as a violation of [\*733] the substantial similarity provision.<sup>123</sup> But a regulated party need not wait until an agency attempts to enforce the rule in order to raise a challenge; as a second option, one may go on the offensive and bring suit for declaratory judgment or injunctive relief to prevent the agency from ever enforcing the rule in the first place.<sup>124</sup> In either of these situations, assuming a justiciable case or controversy under Article III,<sup>125</sup> a federal court would need to interpret the CRA to determine whether the reissued rule was substantially similar to a vetoed rule and thus invalid.

Since such a lawsuit has not yet been brought to the federal courts, there is no authoritative interpretation of the CRA to guide agency rulemaking following a congressional veto.<sup>126</sup> Where an agency does not wish to risk invalidation of a rule that merely *may* skirt the outer margins of substantial similarity (whatever those might be), the effect of the CRA may be to overdeter agency action via "self-censorship" even where its regulation may be legally valid. Until the federal courts provide an authoritative interpretation of the CRA, those outer margins of substantial similarity are quite large.<sup>127</sup> For this reason, it is important to provide a workable and realistic interpretation of the CRA to guide agency action and avoid overdeterrence. It is also important to set boundaries with an eye toward the problem of agency *inaction*--agencies should not hide behind the CRA as an excuse not to do anything in an area where the public expects some action and where Congress did not intend to block all rulemaking.

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from inferring the intent of Congress in *refusing* to enact a joint resolution of disapproval, implying that courts should (1) consider congressional intent in considering enacted resolutions, and (2) not infer substantial dissimilarity from Congress's failure to veto a second rule. See 5 U.S.C. § 801(g) ("If the Congress does not enact a joint resolution of disapproval under section 802 respecting a rule, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval."); see also 142 CONG. REC. 8199 (statement of Sen. Nickles) (referring to § 801(g) and noting that the "limitation on judicial review in no way prohibits a court from determining whether a rule is in effect"). While some may call into question the constitutionality of such strong limits on judicial review, the CRA drafters' constitutional argument defending the provisions suggests that the limits are meant to address procedure. See *id.* ("This . . . limitation on the scope of judicial review was drafted in recognition of the constitutional right of each House of Congress to 'determine the Rules of its Proceedings' which includes being the final arbiter of compliance with such Rules." (citing U.S. CONST. art. I, § 5, cl. 2)). Thus, since a court may rule upon whether a rule is in effect, yet lacks the power to weigh Congress's omission of a veto *against* a finding of substantial similarity, a court could conduct its own analysis to determine whether a non-vetoed second rule is substantially similar and hence invalid.

<sup>123</sup> See 5 U.S.C. § 702 (conferring a right of judicial review to persons "suffering legal wrong because of agency action"); *id.* § 706(2)(C) (granting courts the authority to strike down agency action that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right"); see also *id.* § 704 (requiring that an aggrieved party exhaust its administrative remedies before challenging a final agency action in federal court).

<sup>124</sup> See, e.g., *Babbitt v. Sweet Home Chapter of Cmty. for a Great Or.*, 515 U.S. 687 (1995) (entertaining a declaratory relief action brought by parties challenging a regulation promulgated by the Department of Interior under the Endangered Species Act).

<sup>125</sup> U.S. CONST. art. III, § 2 (granting the federal courts jurisdiction only over cases and controversies); see also *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) (explaining the requirement of plaintiff standing); *O'Shea v. Littleton*, 414 U.S. 488 (1974) (requiring that the plaintiffs case be ripe for adjudication).

<sup>126</sup> See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is.").

<sup>127</sup> See *infra* Part III (providing a spectrum of possible interpretations, and noting the vastly different interpretations of the substantial similarity provision during the debates over the ergonomics rule).

In the next two Parts we will attempt to reconcile the vast spectrum of possible "substantial similarity" interpretations with the political and legislative history of the CRA, with the joint resolution overturning the OSHA ergonomics rule, and with the background principles of CBA and administrative law.

### [\*734] III. THE SPECTRUM OF INTERPRETATIONS OF "SUBSTANTIALLY SIMILAR"

In this Part, we develop seven possible interpretations of the key term "substantially similar," argue that interpretations offered by partisans during the ergonomics debate should be uniformly ignored as posturing, and suggest that interpretations offered after the ergonomics veto are too pessimistic.

#### *A. Hierarchy of Possible Interpretations*

Rather than constructing a definition of "substantially the same" from first principles, we will ground this discussion with reference to the spectrum of plausible interpretations of that key phrase, arrayed in ascending order from the least troublesome to the issuing agency to the most daunting. We use this device not to suggest that the center of gravity in the struggle of competing ideologies in Congress at the time the CRA was enacted should point the way toward a particular region of this spectrum, but rather to erect some markers that can be rejected as implausible interpretations of "substantially the same" and thereby help narrow this range. Although we will support our interpretation with reference to specific items in the legislative history of the CRA, starting out with this hierarchy also allows us to focus on what Congress could have made less frustratingly vague in its attempt to prevent agencies from reissuing rules that would force duplicative congressional debate.

We can imagine at least seven different levels of stringency that Congress could plausibly have chosen when it wrote the CRA and established the "substantially the same" test to govern the reissuance of related rules:

**Interpretation 1: An identical rule can be reissued if the agency asserts that external conditions have changed.** A reissued rule only becomes "substantially the same," in any sense that matters, if Congress votes to veto it again on these grounds. Therefore, an agency could simply wait until the makeup of Congress changes, or the same members indicate a change of heart about the rule at hand or about regulatory politics more generally, and reissue a wholly identical rule. The agency could then simply claim that although the regulation was certainly in "substantially the same form," the effect of the rule is now substantially different from what it would have been the first time around.

**Interpretation 2: An identical rule can be reissued if external conditions truly *have* changed.** We will discuss this possibility in detail in Part V. This interpretation of "substantially the same" recognizes that the effects of regulation--or the estimates of those effects--can change over time even if the rule itself does not change. Our understanding of the [\*735] science or economics behind a rule can change our understanding of its benefits or costs, or those benefits and costs themselves can change as technologies improve or new hazards emerge. For example, a hypothetical Federal Aviation Administration (FAA) rule banning smoking on airliners might have seemed draconian if proposed in 1960, given the understanding of the risks of second-hand smoking at the time, but it was clearly received much differently when actually issued thirty years later.<sup>128</sup> Safety technologies such as antilock brake systems that would have been viewed as experimental and prohibitively expensive when first developed came to be viewed as extremely cost-effective when their costs decreased with time. In either type of situation, an identical rule might become "substantially different" not because the vote count had changed, but because the same regulatory language had evolved a new meaning, and then Congress might welcome another opportunity to evaluate the costs and benefits.

**Interpretation 3: The reissued rule must be altered so as to have significantly greater benefits and/or significantly lower costs than the original rule.** Under this interpretation, the notion of "similar form" would not be judged via a word-by-word comparison of the two versions, but by a common-sense comparison of the stringency and impact of the rule. We will discuss in Part IV a variety of reasons why we believe Congress intended that the

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<sup>128</sup> Prohibition Against Smoking, [55 Fed. Reg. 8364](#) (Mar. 7, 1990) (codified at 14 C.F.R. pts. 121, 129, 135) (2006).

currency for judging similarity should be costs and benefits rather than the extent of narrative revision to the regulatory text per se or the extent to which a reissued rule contains wholly different provisions or takes a different approach. At this point, it should suffice to point out that as a practical matter, two versions of a regulation that have vastly different impacts on society might contain 99.99% or more of their individual words in common, and thus be almost identical in "form" if that word was used in its most plebian sense. An OSHA rule requiring controls on a toxic substance in the workplace, for example, might contain thousands of words mandating engineering controls, exposure monitoring, recordkeeping, training, issuance of personal protective equipment, and other elements, all triggered when the concentration of the contaminant exceeded some numerical limit. If OSHA reissued a vetoed toxic substance rule *with one single word changed* (the number setting the limit), the costs and burdens could drop precipitously. We suggest it would be bizarre to constrain the agency from attempting to satisfy congressional concerns by fundamentally changing the substance and import of a vetoed rule merely because doing so might affect only a [\*736] small fraction of the individual words in the regulatory text.<sup>129</sup>

**Interpretation 4: In addition to changing the overall costs and benefits of the rule, the agency must fix all of the specific problems Congress identified when it vetoed the rule.** This interpretation would recognize that despite the paramount importance of costs, benefits, and stringency, Congress may have reacted primarily to specific aspects of the regulation. Perhaps it makes little sense for an agency to attempt to reissue a rule that is substantially different in broad terms, but that pushes the same buttons with respect to the way it imposes costs, or treats the favored sectors or constituents that it chooses not to exempt. However, as we will discuss in Part IV.B, the fact that Congress chose not to accompany statements of disapproval with any language explaining the consensus of what the objections were may make it inadvisable to require the agency to fix problems that were never formally defined and that may not even have been seen as problems by more than a few vocal representatives.

**Interpretation 5: In addition to changing the costs and benefits and fixing specific problems, the agency must do more to show it has "learned its lesson."** This interpretation would construe "substantially the same form" in an expansive way befitting the colloquial use of the word *form* as more than, or even perpendicular to, substance. In other words, the original rule deserved a veto because of how it was issued, not just because of what was issued, and the agency needs to change its attitude, not just its output. This interpretation comports with Senator Enzi's view of why the CRA was written, as he expressed during the ergonomics floor debate: "I assume that some agency jerked the Congress around, and Congress believed it was time to jerk them back to reality. Not one of you voted against the CRA."<sup>130</sup> If the CRA was created as a mechanism to assert the reality of congressional power, then merely fixing the regulatory text may not be sufficient to avoid repeating the same purported mistakes that doomed the rule upon its first issuance.

**Interpretation 6: In addition to the above, the agency must devise a wholly different regulatory approach if it wishes to regulate in an area Congress has cautioned it about.** This would interpret the word *form* in the way that scholars of regulation use to distinguish fundamentally different kinds of regulatory instruments--if the [\*737] vetoed rule was, for example, a specification standard, the agency would have to reissue it as a performance standard in order to devise something that was not in "substantially the same form." An even more restrictive reading would divide *form* into the overarching dichotomy between command-and-control and voluntary (or market-based) designs: if Congress nixed a "you must" standard, the agency would have to devise a "you may" alternative to avoid triggering a "substantially similar" determination.

**Interpretation 7: An agency simply cannot attempt to regulate (in any way) in an area where Congress has disapproved of a specific regulation.** This most daunting interpretation would take its cue from a particular reading of the clause that follows the "same form" prohibition: "unless the reissued or new rule is specifically

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<sup>129</sup> It is even conceivable that a wholly identical regulatory text could have very different stringency if the accompanying preamble made clear that it would be enforced in a different way than the agency had intended when it first issued the rule (or that Congress had misinterpreted it when it vetoed the rule).

<sup>130</sup> 147 CONG. REC. 2821 (2001) (statement of Sen. Enzi).

authorized by a law enacted after the date of the joint resolution disapproving the original rule." <sup>131</sup> Such a reading could have been motivating the dire pronouncements of congressional Democrats who argued, as did Senator Russ Feingold of Wisconsin, that a "vote for this resolution is a vote to block any Federal ergonomics standard for the foreseeable future." <sup>132</sup> However, we will argue below that it is clear that Congress meant this interpretation only to apply in the rare cases where the organic statute only allowed the exact rule that the agency brought forward, and thus the veto created a paradox because the agency was never authorized to promulgate a different regulation.

#### *B. How Others Have Interpreted "Substantially the Same"*

By far the majority of all the statements ever made interpreting the meaning of "substantially the same" were uttered by members of Congress during the floor debate over the OSHA ergonomics standard. None of these statements occupied the wide middle ground within the spectrum of possible interpretations presented above. Rather, at one extreme were many statements trivializing the effect of the veto, such as, "the CRA will not act as an impediment to OSHA should the agency decide to engage in ergonomics rulemaking." The members who disagreed with this sanguine assessment did so in stark, almost apocalyptic terms, as in, "make no mistake about the resolution of disapproval that is before us. It is an atom bomb for the ergonomics rule . . . . Until Congress gives it permission, OSHA will be powerless to adopt an ergonomics rule

Surely the Democrats in Congress generally prefer an interpretation of legislative control over the regulatory system that defers maximally to the [\*738] executive agencies, allowing them to regulate with relatively few constraints or delays, while Republicans generally favor an interpretation that gives Congress the power to kill whole swaths of regulatory activity "with extreme prejudice." But in both cases, what they want the CRA to mean in general is the opposite of what they wanted their colleagues to think it meant in the run-up to a vote on a specific resolution of disapproval. Hence the fact that the first quote above, and dozens like it, came not from the left wing but from Republican James Jeffords of Vermont; <sup>133</sup> whereas the "atom bomb" and similarly bleak interpretations of the CRA came from Democrats such as Edward Kennedy of Massachusetts. <sup>134</sup> Clearly, both the trivialization of a possible veto by those hoping to convince swing voters that their disapproval was a glancing blow, as well as the statements cowering before the power of the CRA by those hoping to dissuade swing voters from "dropping the bomb," should not be taken at face value, and should instead be dismissed as posturing to serve an expedient purpose. Indeed, when the smoke cleared after the ergonomics veto, the partisans went back to their usual stances. <sup>135</sup>

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<sup>131</sup> **5 U.S.C. § 801(b)(2)** (2006).

<sup>132</sup> 147 CONG. REC. 2860 (statement of Sen. Feingold).

<sup>133</sup> *Id.* at 2816 (statement of Sen. Jeffords).

<sup>134</sup> *Id.* at 2820 (statement of Sen. Kennedy). This particular pattern was also clearly evident in the House floor debate on ergonomics. Consider, for example, this sanguine assessment from a strident opponent of the OSHA rule, Republican Representative Roy Blunt: "When we look at the legislative history of the Congressional Review Act, it is clear that this issue can be addressed again . . . . [T]he same regulation cannot be sent back essentially with one or two words changed . . . . [But] this set of regulations can be brought back in a much different and better way." *Id.* at 3057 (statement of Rep. Blunt). At the opposite end of the spectrum were proponents of ergonomics regulation such as Democratic Representative Rob Andrews: "Do not be fooled by those who say they want a better ergonomics rule, because if this resolution passes . . . [t]his sends ergonomics to the death penalty . . . ." *Id.* at 3059 (statement of Rep. Andrews).

<sup>135</sup> For example, in June 2001, Republican Senator Judd Gregg strongly criticized the Breaux Bill for encouraging OSHA to promulgate what he called a regulation "like the old Clinton ergonomics rule, super-sized." See James Nash, *Senate Committee Approves Bill Requiring Ergonomics Rule*, EHS TODAY (June 20, 2002, 12:00 AM), [http://ehstoday.com/news/ehs\\_imp\\_35576/](http://ehstoday.com/news/ehs_imp_35576/); see also *infra* Part IV.A.5 (describing the Breaux Bill). But at roughly the same time, Democratic Senator Edward Kennedy was encouraging OSHA to reissue a rule, with no mention of any possible impediment posed by the CRA: "It has been a year now that America's workers have been waiting for the Department of Labor to adopt a new ergonomics standard. We must act boldly to protect immigrant workers from the nation's leading cause of workplace injury." *Workplace Safety and Health for Immigrants*

The set of less opportunistic interpretations of "substantially the same," on the other hand, has a well-defined center of gravity. Indeed, most legal and political science scholars, as well as experts in OSHA rulemaking, seem to agree that a veto under the CRA is at least a harsh punishment, and [\*739] perhaps a death sentence. For example, Charles Tiefer described the substantial similarity provision as a "disabling of the agency from promulgating another rule on the same subject."<sup>136</sup> Morton Rosenberg, the resident expert on the CRA at the Congressional Research Service, wrote after the ergonomics veto that "substantially the same" is ambiguous, but he only reached a sanguine conclusion about one narrow aspect of it: an agency does not need express permission from Congress to reissue a "substantially different" rule when it is compelled to act by a statutory or judicial deadline.<sup>137</sup> He concluded, most generally, that whatever the correct legal interpretation, "[T]he practical effect . . . may be to dissuade an agency from taking any action until Congress provides clear authorization."<sup>138</sup> Similarly, Julie Parks criticized § 801(b)(2) as "unnecessarily vague," but concluded that it at least "potentially withdraws substantive authority from OSHA to issue *any* regulation concerning ergonomics."<sup>139</sup>

Advocates for strong OSHA regulation, who presumably would have no interest in demonizing the CRA after the ergonomics veto had already passed, nevertheless also take a generally somber view. Vernon Mogensen interprets "substantially the same" such that "the agency that issued the regulation is prohibited from promulgating it again without congressional authorization."<sup>140</sup> A.B. (Butch) de Castro--who helped write the ergonomics standard while an OSHA staff member--similarly opined in 2006 that "OSHA is barred from pursuing development of another ergonomics standard unless ordered so by Congress."<sup>141</sup> In 2002, Parks interviewed Charles Jeffress, who was the OSHA Assistant Secretary who "bet the farm" on the ergonomics rule, and he reportedly believed (presumably with chagrin) that "OSHA does not have the authority to issue [\*740] another ergonomics rule, because the substantially similar language is vague and ambiguous."<sup>142</sup>

As we will argue in detail below, we believe that all of these pronouncements ascribe to Congress more power to preemptively bar reissued regulations than the authors of the CRA intended, and certainly more anticipatory power than Congress should be permitted to wield.

#### IV. WHY "SUBSTANTIALLY THE SAME" SHOULD NOT BE INTERPRETED OMINOUSLY

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*and Low Wage Workers: Hearing Before the Subcomm. on Emp't, Safety & Training of the S. Comm. on Health, Educ., Labor & Pensions*, 107th Cong. 3 (2002) (statement of Sen. Kennedy).

<sup>136</sup> Charles Tiefer, *How to Steal a Trillion: The Uses of Laws About lawmaking in 2001*, [17 J.L.&POL. 409, 476 \(2001\)](#).

<sup>137</sup> MORTON ROSENBERG, CONG. RESEARCH SERV., RL 30116, CONGRESSIONAL REVIEW OF AGENCY RULEMAKING: AN UPDATE AND ASSESSMENT AFTER NULLIFICATION OF OSHA'S ERGONOMICS STANDARD 23 (2003).

<sup>138</sup> *Id.*

<sup>139</sup> Julie A. Parks, Comment, *Lessons in Politics: Initial Use of the Congressional Review Act*, [55 ADMIN. L. REV. 187, 200 \(2003\)](#) (emphasis added); see also Stuart Shapiro, *The Role of Procedural Controls in OSHA's Ergonomics Rulemaking*, 67 PUB. ADMIN. REV. 688, 696 (2007) (concluding that "[a]ttempts to create an ergonomics regulation effectively ended" with the 2001 veto because of the language of § 801(b)(2)).

<sup>140</sup> Vernon Mogensen, *The Slow Rise and Sudden Fall of OSHA's Ergonomics Standard*, WORKINGUSA, Fall 2003, at 54, 72.

<sup>141</sup> A.B. de Castro, *Handle with Care: The American Nurses Association's Campaign to Address Work-Related Musculoskeletal Disorders*, 4 CLINICAL REVS. BONE & MIN. METABOLISM 45, 50 (2006).

<sup>142</sup> Parks, *supra* note 139, at 200 n.69. Note that Jeffress' statement that the language is "vague and ambiguous" expresses uncertainty and risk aversion from within the agency, rather than a confident stance that issuance of another ergonomics standard would actually be illegal. See also *supra* Part II.C (noting agency self-censorship as one means of enforcing the CRA's substantial similarity provision).

In this Part, we argue that so long as the rule as reissued makes enough changes to alter the cost-benefit ratio in a significant and favorable way (and, we recommend, as long as the issuing agency also corrects any procedural flaws that Congress deplored as essentially arbitrary and capricious), the purposes of the CRA will be served, and the new rule should not be barred as "substantially the same" (although it would not be immunized against a second veto on new substantive grounds). We find four sets of reasons for this interpretation of the substantial similarity provision. First, the legislative history--both in the mid-1990s when the Republicans took control of Congress and enacted the CRA, and when Congress struck down the OSHA ergonomics rule in 2001--indicates that CBA and risk assessment were the intended emphases.<sup>143</sup> Congress wanted more efficient regulations, and requiring an agency to go back and rewrite rules that failed a cost-benefit test served Congress's needs.<sup>144</sup> Along with the legislative history, the signing statement interpreting the Act and Senate Bill 2184 introduced in the wake of the ergonomics veto also provide some strong clues as to the intended definition of "substantially the same." Secondly, the constraint that the text of any joint resolution of disapproval must be all-or-nothing--all nonoffending portions of the vetoed rule must fall along with the offending ones--argues for a limited interpretation, as a far-reaching interpretation of "substantially the same" would limit an agency's authority in ways Congress did not intend in exercising the veto. Third, in a system in which courts generally defer to an agency's own interpretation of its authority under an organic statute, agency action [\*741] following a joint resolution of disapproval should also be given deference. Finally, since a joint resolution of disapproval, read along with too broad an interpretation of "substantially the same," could significantly alter the scope of an agency's authority under its organic statute, one should avoid such a broad interpretation, since it seems implausible (or at least unwise) that Congress would intend to significantly alter an agency's delegated authority via the speedy and less-than-deliberative process it created to effect the CRA.

#### A. Congressional Intent and Language

Whether the plain language of the CRA is viewed on its own or in the context of the events leading up to the passage of the statute and the events surrounding the first and only congressional disapproval action in 2001, it is clear that Congress intended the new streamlined regulatory veto process to serve two purposes: one pragmatic and one symbolic. Congress needed to create a chokepoint whereby it could focus its ire on the worst of the worst--those specific regulations that did the greatest offense to the general concept of "do more good than harm" or the ones that gored the oxen of specific interest groups with strong allies in Congress. Congress also felt it needed, as the floor debate on the ergonomics standard made plain, to move the fulcrum on the scales governing the separation of powers so as to assert greater congressional control over the regulatory agencies whose budgets--but not always whose behavior--it authorizes. Neither of these purposes requires Congress to repudiate whole categories of agency activity when it rejects a single rule, as we will discuss in detail below. To use a mundane behavioral analogy, a parent who wants her teenager to bring home the right kind of date will clearly achieve that goal more efficiently, and with less backlash, by rejecting a specific suitor (perhaps with specific detail about how to avoid a repeat embarrassment) than by grounding her or forbidding her from ever dating again. Even if Congress had wanted to be nefarious, with the only goal that of tying the offending agency in knots, it would actually better achieve that goal by vetoing a series of attempts to regulate, one after the other, then by barring the instant rule and all future rules in that area in one fell swoop.

The plain language of the statute also shows that the regulatory veto was intended to preclude repetitious actions, *not to preclude related actions informed by the lessons imparted through the first veto*. Simply put, Congress put so much detail in the CRA about when and how an agency could try to reissue a vetoed rule that it seems bizarre for analysts to interpret "substantially the same" as a blanket prohibition against regulating in an area. We will explain how congressional intent sheds light on the precise meaning of [\*742] "substantially the same" by examining five facets of the legislative arena: (1) the events leading up to the passage of the CRA; (2) the plain text of the statute; (3) the explanatory statement issued a few weeks after the CRA's passage by the three major leaders of the

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<sup>143</sup> See *infra* Parts IV.A. 1, IV.A.4.

<sup>144</sup> *But see* Parks, *supra* note 139, at 199-205 (arguing that in practice the CRA has been used not to increase accountability, but to appease special interest groups, leaving no clear statutory guidance for agencies).

legislation in the Senate (and contemporaneously issued verbatim in the House); (4) the substantive (as opposed to the polemical) aspects of the ergonomics floor debate; and (5) the provisions of Senate Bill 2184 subsequently proposed to restart the ergonomics regulatory process.

### 1. Events Leading up to Passage

One cannot interpret the CRA without looking at the political history behind it--both electoral and legislative. The political climate of the mid-1990s reveals that congressional Republicans sought to reform the administrative process in order to screen for rules whose benefits did not outweigh their costs.<sup>145</sup> A Senate report on the moratorium proposal stated, "As taxpayers, the American people have a right to ask whether they are getting their money's worth. Currently, too few regulations are subjected to stringent cost-benefit analysis or risk assessment based on sound science. Without such protections, regulations can have unintended results."<sup>146</sup> This led to the inclusion in the CRA, for example, of a requirement that agencies submit the report of their rule not only to Congress, but also to GAO so that it can evaluate the CBA.<sup>147</sup> Although there were some complaints about the number or volume of regulations as opposed to merely their efficiency<sup>148</sup> --possibly suggesting that some members of Congress would not support even regulations whose benefits strongly outweighed their costs--the overall political history of the CRA in the period from 1994 to 1996 sends a clear sign that CBA and risk assessment were key. A statute enacted to improve regulation should not be interpreted so as to foreclose regulation.

### 2. Statutory Text

The plain language of the CRA provides at least three hints to the intended meaning and import of the "substantially the same" provision. [\*743] First, we note that in the second sentence of the statute, the first obligation of the agency issuing a rule (other than to submit a copy of the rule itself to the House and Senate) is to submit "a complete copy of the cost-benefit analysis of the rule, if any" to the Comptroller General and each house of Congress.<sup>149</sup> Clearly, as we have discussed above, the CRA is a mechanism for Congress to scrutinize the costs and benefits of individual regulations for possible veto of rules that appear to have costs in excess of benefits (a verdict that Congress either infers in the absence of an agency statement on costs and benefits, makes using evidence contained in the agency CBA, or makes by rejecting conclusions to the contrary in the CBA).<sup>150</sup> Moreover, the CRA's application only to major rules--a phrase defined in terms of the rule's economic impact<sup>151</sup> -- suggests that Congress was primarily concerned with the overall financial cost of regulations. As we discuss in detail below, we believe the first place Congress therefore should and will look to see if the reissued rule is "in substantially the same form" as a vetoed rule is the CBA; a similar-looking rule that has a wholly different (and more favorable) balance between costs and benefit is simply not the same. Such a rule will be different along precisely the key dimension over which Congress expressed paramount concern.

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<sup>145</sup> See *supra* Parts I.A-B; see also *infra* Part IV.D (arguing that allowing an agency to reissue a rule with a significantly better cost-benefit balance is a victory for congressional oversight).

<sup>146</sup> S. REP. NO. 104-15, at 5 (1995).

<sup>147</sup> See 5 U.S.C. § 801(a)(1)(B) (2006); 141 CONG. REC. 9428-29 (1995) (statement of Sen. Domenici).

<sup>148</sup> See, e.g., S. REP. NO. 104-15, at 5 ("Without significant new controls, the volume of regulations will only grow larger.").

<sup>149</sup> 5 U.S.C. § 801(a)(1)(B).

<sup>150</sup> Though not the subject of this Article, it is worth noting that CBA's quantitative nature still leaves plenty of room for argument, particularly in regards to valuation of the benefits being measured. See Graham, *supra* note 9, at 483-516 (defending the use of cost-benefit analysis despite its "technical challenges" as applied to lifesaving regulations).

<sup>151</sup> 5 U.S.C. § 804(2).

In addition, in the very sentence that bars an agency from reissuing a "substantially similar" rule, the Act provides for Congress to specifically authorize it to do just that via a new law enacted after the veto resolution passes.<sup>152</sup> We will discuss below, in the context of the April 1996 signing statement, how Congress in part intended this provision to apply in the special case in which Congress had previously instructed the agency to issue almost precisely the rule it did issue, thereby leaving the agency caught between an affirmative requirement and a prohibition. So, other than needing such a mechanism to cover the rare cases where the agency is obligated to reissue a similar rule, why would Congress have specifically reserved the right to authorize a very similar rule to one it had recently taken the trouble to veto? We assert that there are only two logical explanations for this: (1) Congress might use the new specific authorization to clarify exactly what minor changes that might *appear* to leave the rule [\*744] "substantially the same" would instead be sufficient to reverse all concerns that prompted the original veto; or (2) Congress might come to realize that new information about the harm(s) addressed by the rules or about the costs of remedying them made the original rule desirable (albeit in hindsight). Because the passage of time can make the original veto look unwise (see *supra* interpretations 1 and 2 in the hierarchy in Part III.A), Congress needed a way to allow something "substantially similar" to pass muster despite the prohibition in the first part of § 801(b)(2). Whatever the precise circumstances of such a clarifying or about-face authorization, the very fact that Congress also anticipated occasional instances where similar or even identical rules could be reissued means, logically, that it clearly expected different rules to be reissued, making the interpretation of "substantially the same" as barring all further activity in a given problem area quite far-fetched.

Finally, § 803 of the CRA establishes a special rule for a regulation originally promulgated pursuant to a deadline set by Congress, the courts, or by another regulation. This section gives the agency whose rule is vetoed a one-year period to fulfill the original obligation to regulate. Such deadlines always specify at least the problem area the agency is obligated to address,<sup>153</sup> so there is little or no question that Congress intended to allow agencies to reissue rules covering the same hazard(s) as a vetoed rule, when needed to fulfill an obligation, so long as the revised rule approaches the problem(s) in ways not "substantially the same." Further support for this common-sense interpretation of "substantially the same" is found in the one-year time period established by § 803: one year to repropose and finalize a new rule is a breakneck pace in light of the three or more years it not uncommonly takes agencies to regulate from start to finish.<sup>154</sup> Thus, in § 803, Congress chose a time frame compatible only with a very circumscribed set of "fixes" to respond to the original resolution of disapproval. If "not substantially the same" meant "unrecognizably different from," one year would generally be quite insufficient to re-promulgate under these circumstances. Admittedly, Congress could have [\*745] intended a different meaning for "substantially the same" in cases where no judicial, statutory, or regulatory deadline existed, but then one might well have expected § 803 to cross-reference § 802(b)(2) and make clear that a more liberal interpretation of "substantially the same" only applies to compliance with preexisting deadlines.

### 3. The Signing Statement

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<sup>152</sup> See *id.* § 801(b)(2) ("[A] new rule that is substantially the same as [a vetoed] rule may not be issued, *unless* the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving of the original rule." (emphasis added)).

<sup>153</sup> See, e.g., Needlestick Safety and Prevention Act, Pub. L. No. 106-430, § 5, **114 Stat. 1901, 1903-04 (2000)** (establishing the procedure and deadline by which OSHA was required to promulgate amendments to its rule to decrease worker exposure to bloodborne pathogens). In this case, Congress went further and actually wrote the exact language it required OSHA to insert in amending the existing rule.

<sup>154</sup> See Stuart Shapiro, *Presidents and Process: A Comparison of the Regulatory Process Under the Clinton and Bush (43) Administrations*, **23 J.L. & POL. 393, 416 (2007)** (showing that, on average, it takes almost three years for a regulation to move from first publication in the *Unified Agenda* of rules in development to final promulgation, with outliers in both the Clinton and Bush (43) Administrations exceeding ten years in duration).

In the absence of a formal legislative history, the explanatory statement written by the prime sponsors of the CRA<sup>155</sup> serves its intended purpose as "guidance to the agencies, the courts, and other interested parties when interpreting the act's terms."<sup>156</sup> This document contains various elaborations that shed light on congressional expectations regarding agency latitude to reissue rules after disapproval.

The background section clarifies that Congress sought not to "become a super regulatory agency" speaking directly to the regulated community, but needed the CRA to tip the "delicate balance" between congressional enactment and executive branch implementation of laws toward slightly more policymaking authority for Congress.<sup>157</sup> Notably, the sponsors repeatedly referred to "a rule" in the singular noun form, rather than to whole regulatory programs, whenever they discussed the need for review (for example, "Congress may find *a rule* to be too burdensome, excessive, inappropriate or duplicative"<sup>158</sup>). In other words, agencies may take specific actions that usurp policymaking activity from Congress, so the remedy is for Congress to send them back to try again (to regulate consistent with their delegated authority), not to shut down the regulatory apparatus in an area. A CRA that had a "one strike and you're out" mechanism would, we believe, not redress the "delicate balance," but rewrite it entirely.

As discussed above,<sup>159</sup> the passage of time or the advance of knowledge [\*746] can ruin a well-intentioned rule and demand congressional intervention--Nickles, Reid, and Stevens explain how "during the time lapse between passage of legislation and its implementation, the nature of the problem addressed, and its proper solution, can change."<sup>160</sup> The principle that costs and benefits can be a moving target must, we believe, also inform the meaning of "substantially the same." If the "proper solution" Congress envisioned to an environmental or other problem has changed such that an agency regulation no longer comports with congressional expectations, then it must also be possible for circumstances to change *again* such that a vetoed rule could turn out to effect "the proper solution." The signing statement sets up a predicate for intervention when the regulatory solution and the proper solution diverge--which in turn implies that an agency certainly cannot reissue "the same rule in the same fact situation," but in rare cases it should be permitted to argue that what once was improper has now become proper.<sup>161</sup> Whether in the ten years since the ergonomics veto the 2000 rule may still look "improper" does not change the logic that costs and benefits can change by agency action or by exogenous factors, and that the purpose of the CRA is to block rules that fail a cost-benefit test.

The signing statement also offers up the "opportunity to act . . . before regulated parties must invest the significant resources necessary to comply with a major rule"<sup>162</sup> as the sole reason for a law that delays the effectiveness of rules while Congress considers whether to veto them. Again, this perspective is consistent with the purpose of the CRA as a filter against agencies requiring costs in excess of their accompanying benefits, not as a means for Congress to reject all solutions to a particular problem by disapproving one particular way to solve it.

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<sup>155</sup> 142 CONG. REC. 8196-8201 (1996) (joint statement of Sens. Nickles, Reid, and Stevens).

<sup>156</sup> *Id.* at 8197.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* (emphasis added). In one instance only, the authors of this statement refer to "regulatory schemes" as perhaps being "at odds with Congressional expectations," possibly in contrast to individual rules that conflict with those expectations. *Id.* However, four sentences later in the same paragraph, they say that "[i]f these concerns are sufficiently serious, Congress can stop *the rule*," *id.* (emphasis added), suggesting that "schemes" does not connote an entire regulatory program or refer to all conceivable attempts to regulate to control a particular problem area, but simply refers to a single offending rule that constitutes a "scheme."

<sup>159</sup> *See supra* Part III.A.

<sup>160</sup> 142 CONG. REC. 8197 (joint statement of Sens. Nickles, Reid, and Stevens).

<sup>161</sup> *See infra* Part V.

<sup>162</sup> 142 CONG. REC. 8198 (joint statement of Sens. Nickles, Reid, and Stevens).

The (brief) direct explanation of the "substantially the same" paragraph provides additional general impressions of likely congressional intent, as well as some specific elaboration of the remainder of § 801(b)(2). The only mention given to the purpose of the "substantially the same" prohibition is as follows: "Subsection 801 (b)(2) is necessary to prevent circumvention of a resolution [of] disapproval."<sup>163</sup> The use of the pejorative word *circumvention* seems clearly to signal congressional concern that an agency could fight and win a war of attrition simply by continuing to promulgate near-identical variants of a vetoed rule until it finally caught Congress asleep at the switch or wary of having said "no" too many times. This rationale for invoking the substantial similarity prohibition was echoed many times in the [\*747] ergonomics floor debate, notably in this statement by Senator James Jeffords of Vermont: "an agency should not be able to reissue a disapproved rule merely by making minor changes, thereby claiming that the reissued regulation was a different entity."<sup>164</sup> Viewed in this light, "substantially the same" means something akin to "different enough that it is clear the agency is not acting in bad faith."

The remainder of the paragraph explaining § 801 (b)(2) sheds more light on the process whereby Congress can even specifically authorize an agency to reissue a rule that is *not* "substantially different." Here the sponsors made clear that if the underlying statute under which the agency issued the vetoed rule does not constrain the substance of such a rule, "the agency may exercise its broad discretion to issue a substantially different rule."<sup>165</sup> *Notice that the sponsors make no mention of the agency needing any permission from Congress to do so.* However, in some cases Congress has obliged an agency to issue a rule *and* has imposed specific requirements governing what such a rule should and should not contain.<sup>166</sup> When Congress disapproves of this sort of rule, "the enactment of a resolution of disapproval for that rule may work to prohibit the reissuance of *any* rule."<sup>167</sup> In these unusual cases, the sponsors clarify, the "debate on any resolution of disapproval . . . [should] make the congressional intent clear regarding the agency's options or lack thereof."<sup>168</sup> If an agency is allowed by the original statute to issue a substantially different rule, Congress has no obligation to speak further, but if the veto and the statute collide, then Congress must explain the seeming paradox. Such a case has never occurred, of course (the Occupational Safety and Health (OSH) Act does not require OSHA to issue any kind of ergonomics rule), but we can offer informed speculation about the likely contours of such an event. Suppose that in 2015, Congress was to pass a law requiring the Department of Transportation (DOT) to issue a regulation by January 1, 2018, prohibiting drivers from writing text messages while driving. But by 2018, suppose the makeup of Congress had changed, as had the party in control of the White House, and the new Congress was not pleased that DOT had followed the old Congress's instructions to the letter. It could veto the rule and make clear that DOT had no options left--perhaps Congress could save face in light of this flip-flop by claiming that new technology had made it possible to text safely, and it could simply assert that the original order to regulate was now moot. [\*748] Or, Congress could observe (or claim) that DOT had followed the original instructions in a particularly clumsy way: perhaps it had brushed aside pleas from certain constituency groups (physicians, perhaps) who asserted that more harm to public safety would ensue if they were not exempted from the regulations. Congress could resolve this paradox by instructing DOT to reissue the rule with one additional sentence carving out such an exemption. That new document would probably be "substantially the same" as the vetoed rule and might have costs and benefits virtually unchanged from those of the previous rule, but it would be permissible because Congress had in effect amended its original instructions from 2015 to express its will more clearly.

Because Congress specifically provided the agency with an escape valve (a written authorization on how to proceed) in the event of a head-on conflict between a statutory obligation and a congressional veto, it is clear that

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<sup>163</sup> See *id.* at 8199.

<sup>164</sup> 147 CONG. REC. 2816 (2001) (statement of Sen. Jeffords).

<sup>165</sup> 142 CONG. REC. 8199 (joint statement of Sens. Nickles, Reid, and Stevens).

<sup>166</sup> See, e.g., *supra* note 153.

<sup>167</sup> 142 CONG. REC. 8199 (joint statement of Sens. Nickles, Reid, and Stevens) (emphasis added).

<sup>168</sup> *Id.*

no such authorization is needed if the agency can craft on its own a "substantially different" rule that still comports with the original statute. Although Democratic Senators did introduce a bill in the several years after the ergonomics veto that (had it passed) would have required OSHA to promulgate a new ergonomics rule,<sup>169</sup> we believe it is clear that a new law requiring an agency to act (especially when an agency appears more than content with the prior veto) is not necessary to allow that agency to act, as long as it could produce a revision sufficiently different from the original so as not to circumvent the veto. The special process designed to avoid situations when the veto might preclude all regulation in a particular area simply suggests that Congress intended that none of its vetoes should ever have such broad repercussions.

#### 4. *Ergonomics Floor Debate--Substantive Clues*

Although we argued above that many of the general statements about the CRA itself during the ergonomics debate should be dismissed as political posturing, during that debate there were also statements for or against the specific resolution of disapproval that provide clues to the intended meaning of "substantially similar." Statements about the actual rule being debated, rather than the hypothetical future effect of striking it down, can presumably be interpreted at face value--in particular, opponents of the rule would have a disincentive to play down their substantive concerns, lest swing voters decide that the rule was not so bad after all. And yet, while several of the key opponents emphasized very specific concerns with the rule at hand, and stated their objections in heated [\*749] terms, they yet clearly left open the door for OSHA to take specific steps to improve the rule. For example, Republican Representative John Sweeney of New York made plain: "My vote of no confidence on the ergonomics regulations does not mean I oppose an ergonomics standard; I just oppose this one"--primarily in his view because it did not specify impermissible levels of repetitive stress along the key dimensions of workplace ergonomics (force, weight, posture, vibration, etc.) that would give employers confidence they knew what constituted compliance with the regulation.<sup>170</sup> Similarly, Republican Representative Charles Norwood of Georgia emphasized that the vagueness of the OSHA rule "will hurt the workers," and said that "when we have [a rule] that is bad and wrong . . . then we should do away with it and begin again."<sup>171</sup>

Interpretations of "substantially similar" that assume the agency is barred from re-regulating in the same subject area therefore seem to ignore how focused the ergonomics debate was on the consternation of the majority in Congress with the specific provisions of the OSHA final rule. Although opponents might have felt wary of stating emphatically that they opposed any attempt to control ergonomic hazards, it nevertheless was the case that even the staunchest opponents focused on the "wrong ways to solve the ergonomics problem" rather than on the inappropriateness of any rule in this area.

#### 5. *Subsequent Activity*

Legislative activity following the veto of the ergonomics rule might seem to suggest that at least some in Congress thought that OSHA might have required a specific authorization to propose a new ergonomics rule. In particular, in 2002 Senator John Breaux of Louisiana introduced Senate Bill 2184, which included a specific authorization pursuant to the CRA for OSHA to issue a new ergonomics rule.<sup>172</sup> The presence of a specific authorization in Senate Bill 2184 may imply that the bill's sponsors believed that such an authorization was necessary in order for OSHA to promulgate a new ergonomics regulation.

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<sup>169</sup> See *infra* Part IV.A.5.

<sup>170</sup> 147 CONG. REC. 3074-75 (2001) (statement of Rep. Sweeney); see also *infra* Part VLB.

<sup>171</sup> *Id.* at 3056 (statement of Rep. Norwood)

<sup>172</sup> See S. 2184, 107th Cong. § 1(b)(4) (as introduced in the Senate, Apr. 17, 2002) ("Paragraph (1) [which requires OSHA to issue a new ergonomics rule] shall be considered a specific authorization by Congress in accordance with section 801(b)(2) of title 5, United States Code . . ."). Senate Bill 2184 never became law.

Other circumstances, however, suggest more strongly that the inclusion of this specific authorization may have been merely a safeguard rather than [\*750] the purpose of the bill. The bill's mandate that OSHA issue a new rule within two years of the enactment of Senate Bill 2184<sup>173</sup> clearly indicates that the sponsors intended to spur a recalcitrant agency to take some action under the Republican administration. The bill's findings do not state that OSHA had been otherwise prohibited from issuing a new ergonomics rule--indeed, the findings do not mention Congress's 2001 veto at all.<sup>174</sup> Thus, the congressional authorization may have instead served to preempt a Bush Administration belief (or pretext) that Congress's earlier veto prohibited OSHA from further regulating workplace ergonomics.<sup>175</sup>

### *B. All or Nothing*

Another tool for interpreting the substantial similarity provision lies in the CRA's choice to provide only a "nuclear option" to deal with a troublesome rule. The CRA provides a nonamendable template for any joint resolution of disapproval, which allows only for repealing an entire rule, not just specific provisions.<sup>176</sup> Furthermore, there is "no language anywhere [in the CRA that] expressly refers in any manner to a part of any rule under review."<sup>177</sup> An inability to sever certain provisions while upholding others is consistent with the CRA contemplating a "speedy, definitive and limited process" because "piecemeal consideration would delay and perhaps obstruct legislative resolution."<sup>178</sup>

Because an offending portion of the rule is not severable, Congress has decided to weigh only whether, on balance, the bad aspects of the rule outweigh the good. For example, even when they argued against certain provisions of the OSHA ergonomics regulation, congressional Republicans still noted that they supported some type of ergonomics rule.<sup>179</sup> Since the CRA strikes down an entire rule even though Congress may support certain portions of that rule, it only makes sense to read the substantial [\*751] similarity provision as allowing the nonoffending provisions to be incorporated into a future rule. If an agency were not allowed to even reissue the parts of a rule that Congress does support, that would lead to what some have called "a draconian result"<sup>180</sup>--and what we would be tempted to call a nonsensical result. To the extent that interpreting the CRA prevents agencies from issuing congressionally approved portions of a rule, such an interpretation should be avoided.

### *C. Deference to Agency Expertise*

Because courts are generally deferential to an agency's interpretation of its delegated authority,<sup>181</sup> a joint resolution of disapproval should not be interpreted to apply too broadly if an agency wishes to use its authority to

<sup>173</sup> *Id.* § 1(b)(1) ("Notwithstanding any other provision of law, not later than 2 years after the date of enactment of this Act, the Secretary of Labor shall, in accordance with section 6 of the [OSH Act], issue a final rule relating to ergonomics.").

<sup>174</sup> *See id.* § 1(a).

<sup>175</sup> *Cf. supra* note 121, at 72 (statement of Elaine L. Chao, Secretary, U.S. Department of Labor) (hesitating to "expend valuable--and limited--resources on a new effort" to regulate workplace ergonomics following Congress's 2001 veto).

<sup>176</sup> *See* 5 U.S.C. § 802 (2006) (requiring that a joint resolution of disapproval read: "That Congress disapproves the rule submitted by the \_\_ relating to \_\_, and such rule shall have no force or effect").

<sup>177</sup> Rosenberg, *supra* note 75, at 1065.

<sup>178</sup> *Id.* at 1066.

<sup>179</sup> *See, e.g.,* 147 CONG. REC. 2843-44 (2001) (statement of Sen. Nickles) (expressing support for a "more cost effective" ergonomics rule).

<sup>180</sup> Rosenberg, *supra* note 75, at 1066.

<sup>181</sup> *See infra* Part IV.C.1.

promulgate one or more rules addressing the same issues as the repealed rule. There are, however, two important limitations to this general principle of deference that may apply to agency actions taking place after Congress overturns a rule. First, where Congress overturns a rule because it believes the agency acted outside the scope of its delegated authority under the organic statute, a court might choose to weigh this congressional intent as a factor against deference to the agency, if the reissued rule offends against this principle in a similar way. Second, where Congress overturns a rule because it finds that the agency was "lawmaking," this raises another statutory--if not constitutional--reason why agency deference might not be applied. This section presents the issue of deference generally, and then lays forth the two exceptions to this general rule.

### 1. Chevron Deference

In *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, the Supreme Court held that, unless the organic statute is itself clear and contrary, a court should defer to an agency's reasonable interpretation of its own delegated authority.<sup>182</sup> The Court's decision was based on the notion of agency expertise: since agencies are more familiar with the subject matter over which they regulate, they are better equipped than courts to understand their grant of rulemaking authority.<sup>183</sup> Where Congress delegates rulemaking authority to an administrative agency, it is inevitable that the delegation will include some ambiguities or gaps.<sup>184</sup> But in order [\*752] for an agency to effectively carry out its delegated authority, there must be a policy in place that fills the gaps left by Congress. In *Chevron*, the Court reasoned that gaps were delegations, either express or implicit, granting the agency the authority "to elucidate a specific provision of the statute by regulation."<sup>185</sup> Explaining the reason for deference to agencies, the Court has recognized that "[t]he responsibilities for assessing the wisdom of such policy choices and resolving the struggle between competing views of the public interest are not judicial ones."<sup>186</sup> The *Chevron* Court thus created a two-part test that respects agency expertise by deferring to reasonable interpretations of ambiguity in a delegation of authority. First, a court must determine "whether Congress has directly spoken to the precise question at issue."<sup>187</sup> If so, both the court and the agency "must give effect to the unambiguously expressed intent of Congress."<sup>188</sup> If Congress has not spoken to the issue directly, however, the second step of *Chevron* requires a court to defer to the agency's construction of the statute if it is a "permissible" interpretation, whether or not the court agrees that the interpretation is the correct one.<sup>189</sup>

Because a resolution repealing a rule under the CRA limits an agency's delegated authority by prohibiting it from promulgating a rule that is substantially similar, the *Chevron* doctrine should apply here. The CRA proscription against an agency reissuing a vetoed rule "in substantially the same form" is an ambiguous limitation to an agency's delegated authority. That limitation could have been made less hazy but probably not made crystal clear, since a detailed elucidation of the substantial similarity standard would necessarily be rather complex in order to cover the wide range of agencies whose rules are reviewable by Congress. However, the other relevant statutory text, the joint resolution of disapproval itself, does not resolve the ambiguity. It cannot provide any evidence that Congress

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<sup>182</sup> [467 U.S. 837\(1984\)](#).

<sup>183</sup> [Id. at 866](#).

<sup>184</sup> See [Morton v. Ruiz, 415 U.S. 199, 231 \(1974\)](#) (noting that such a "gap" may be explicit or implicit).

<sup>185</sup> [Chevron, 467 U.S. at 843-44](#).

<sup>186</sup> [Id. at 866](#).

<sup>187</sup> [Id. at 842](#).

<sup>188</sup> [Id. at 842-43](#).

<sup>189</sup> [Id. at 843](#).

has "directly spoken to the precise question at issue"<sup>190</sup> --namely, what form of regulation would constitute a substantially similar reissuance of the rejected rule--because the text can only effect a repeal of the rule and no more.<sup>191</sup> Although a court, in the absence of clear, enacted statutory [\*753] language, might look to legislative history to determine whether Congress has "spoken to" the issue, too many disparate (and perhaps disingenuous) arguments on the floor make this unworkable as a judicial doctrine without any textual hook to hang it on.<sup>192</sup>

*Chevron* step one, then, cannot end the inquiry; we must proceed to step two. The agency's interpretation, if permissible, should then receive deference. While some minor transposition of a rejected rule's language effecting no substantive change could certainly be deemed impermissible under the CRA, changes that are significant enough to affect the cost-benefit ratio are similar to the "policy choices" that the Court has held are not within the responsibility of the Judiciary to balance.<sup>193</sup> Thus, comparing side-by-side the language of a vetoed rule and the subsequently promulgated rule is inadequate without considering the substantive changes effected by any difference in language, however minor. Under the reasoning in *Chevron*, a court should give substantial deference to an agency in determining whether, for purposes of the CRA, a rule is substantially different from the vetoed rule.

## 2. *Ultra Vires* Limitation

Admittedly, there are important considerations that may counsel against applying *Chevron* deference in particular situations. One such situation might occur if Congress's original veto were built upon a finding that the agency misunderstood its own power under the organic statute. In that case, a court might choose to consider Congress's findings as a limitation on the applicability of *Chevron* deference. Such a consideration provided the background for the Supreme Court's decision in *FDA v. Brown & Williamson Tobacco Corp.*, in which the Court struck down regulation of tobacco products by the Food and Drug Administration (FDA).<sup>194</sup> The Court looked to congressional intent in determining the boundaries of FDA's authority under the Food, Drug and Cosmetic Act (FDCA), finding that the statute's use of the words *drug* and *device* clearly did not grant FDA the power to regulate tobacco products, and the regulation thus failed the first [\*754] prong of the *Chevron* test.<sup>195</sup> The FDCA "clearly" spoke to the issue, according to the Court, and therefore FDA's contrary interpretation of its power was not entitled to deference. Importantly, the Court found this clarity not within the text of the FDCA itself, but in other legislative actions since the FDCA's enactment. In writing for the majority, Justice O'Connor pointed out that, in the decades following the FDCA's enactment, Congress had passed various pieces of legislation restricting--but not entirely prohibiting--certain behavior of the tobacco industry, indicating a congressional presumption that sale of tobacco products

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<sup>190</sup> [Id. at 842.](#)

<sup>191</sup> See *supra* Part IV.B (discussing the limited text of the joint resolution and its effect on severability). Trying to infer congressional intent, however, may be relevant to the scope of an agency's authority following action under the CRA in cases where the subject matter is politically and economically significant, and where there is a broader legislative scheme in place. See *infra* Part IV.C.2 (discussing the effect of [FDA v. Brown & Williamson Tobacco Corp.](#), 529 U.S. 120 (2000), on the application of the *Chevron* doctrine).

<sup>192</sup> See, e.g., [Zedner v. United States](#), 547 U.S. 489, 509-11 (2006) (Scalia, J., concurring) (filing a separate opinion for the specific purpose of admonishing the majority's citation to legislative history, noting that use of legislative history in statutory interpretation "accustoms us to believing that what is said by a single person in a floor debate or by a committee report represents the view of Congress as a whole").

<sup>193</sup> [Chevron](#), 467 U.S. at 866.

<sup>194</sup> [529 U.S. 120\(2000\).](#)

<sup>195</sup> [Id. at 160-61](#) ("It is . . . clear, based on the [Food, Drug, and Cosmetic Act's (FDCA's)] overall regulatory scheme and the subsequent tobacco legislation, that Congress has directly spoken to the question at issue and precluded the [Food and Drug Administration (FDA)] from regulating tobacco products.").

would still be permitted.<sup>196</sup> The Court found that this presumption clearly contradicted FDA's interpretation that "drug" and "device" in the FDCA included tobacco products because, if FDA's interpretation were correct, the agency would be *required* to ban the sale of tobacco products because safety is a prerequisite for sale of a drug or device under the FDCA, and no tobacco product is "safe."<sup>197</sup> The four dissenting Justices criticized the majority's reliance on inferred congressional intent, arguing that the *Chevron* approach to statutory interpretation should principally focus on the text of the organic statute.<sup>198</sup>

If Congress, in enacting a joint resolution pursuant to the CRA, was to make clear that it thought an agency's regulation was outside the scope of its statutory grant of authority,<sup>199</sup> a court might consider this a factor limiting its deference to the agency. In other words, the CRA veto might be considered a "clarification" of the organic statute in a way similar to the tobacco-related legislative activity considered by the Court in *Brown & Williamson*.<sup>200</sup> Republicans hinted at this issue in the congressional debates over the ergonomics rule, where they argued that part of the rule contravened a provision in the OSH Act because, under their [\*755] interpretation, the regulation superseded state worker's compensation laws.<sup>201</sup> In a more obvious instance of an agency acting outside of its delegated authority, however, *Brown & Williamson* might require (or at least encourage) a court to consider the congressional rationale for overturning a rule as a factor in evaluating the validity of a new rule issued in the same area. Like the decision in *Brown & Williamson*, however, the factor might only be compelling if there was also a broader legislative scheme in place.

### 3. Lawmaking Limitation

Another limiting principle on agency discretion is found where the agency action blurs the lines of regulation and steps into the field of lawmaking. Where such an action takes place, the nondelegation doctrine is implicated and can present questions of constitutionality and agency adherence to its limited grant of authority. In the debates over the ergonomics rule, opponents of the regulation contended that OSHA was writing the "law of the land" and that the elected members of Congress, not bureaucrats, are supposed to exercise that sort of authority.<sup>202</sup> Senator Nickles made clear that he saw the ergonomics rule as a usurpation of Congress's legislative power. He referred to the rule as "legislation" and argued, "we are the legislative body. If we want to legislate in this area, introduce a bill and we will consider it."<sup>203</sup> This argument that an administrative agency has exercised legislative power has

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<sup>196</sup> [Id. at 137-39.](#)

<sup>197</sup> [Id. at 133-35](#) ("These findings logically imply that, if tobacco products were 'devices' under the FDCA, the FDA would be required to remove them from the market.").

<sup>198</sup> [Id. at 167-81](#) (Breyer, J., dissenting) (arguing for a "literal" interpretation of the FDCA).

<sup>199</sup> Because of the one-sentence limit on the text of the CRA joint resolution, see [5 U.S.C. § 802](#) (2006), the clarity would have to come from other legislative enactments as in *Brown & Williamson*, see [529 U.S. at 137-39](#), or from the legislative history of the joint resolution. *But see supra* note 192 and accompanying text (criticizing reliance on legislative history). Alternatively, if Congress were to amend the CRA to allow alteration of the resolution's text, a clear legislative intent might be more easily discerned. See *infra* Part VII.

<sup>200</sup> See *supra* note 196 and accompanying text.

<sup>201</sup> See Occupational Safety and Health Act of 1970 § 4(b)(4), [29 U.S.C. § 653\(b\)\(4\)](#) (2006) ("Nothing in this [Act] shall be construed to supersede or in any manner affect any workmen's compensation law . . . ."); 147 CONG. REC. 2816 (2001) (statement of Sen. Jeffords) ("[OSHA] ignored, in issuing its ergo standard, the clear statutory mandate in section 4 of the OSH Act not to regulate in the area of workmen's compensation law."). Senator Nickles argued that, even if it were within OSHA's delegated power, the regulation would supersede "more generous" state worker's compensation law. 147 CONG. REC. 2817 (statement of Sen. Nickles). We argue below that this interpretation may have been incorrect on its face. See *infra* Part VLB.

<sup>202</sup> 147 CONG. REC. 2817 (statement of Sen. Nickles).

<sup>203</sup> *Id.*

constitutional implications. Article I of the Constitution provides that the Senate and House of Representatives have the sole legislative power.<sup>204</sup> In the administrative state, this constitutional provision has given rise to the nondelegation doctrine, by which Congress may not delegate its lawmaking authority to an executive agency.<sup>205</sup> To meet constitutional requirements [\*756] under this doctrine, the organic statute needs to provide the agency with an "intelligible principle to which [the agency] is directed to conform."<sup>206</sup>

Violations of the nondelegation doctrine, however, are rarely found. Instead, the courts employ a canon of constitutional avoidance to minimize delegation problems. Under this canon of interpretation, a court confronted with a statute that appears to delegate lawmaking power to an agency will search for a narrower, constitutionally permissible interpretation of the statute. If such an interpretation is available, the court will not invalidate the statute, but will instead strike down agency action that exceeds the (narrower, constitutionally permissible) grant of authority.<sup>207</sup> The *Benzene Case* is one example in which the Supreme Court has employed this canon to avoid striking down a delegation of authority to an administrative agency.<sup>208</sup> In that case, the Court considered an OSHA rule which limited permissible workplace exposure levels to airborne benzene to one part per million (ppm). OSHA set that standard pursuant to the statutory delegation of authority instructing it to implement standards "reasonably necessary or appropriate to provide safe or healthful employment."<sup>209</sup> Rather than finding that the "reasonably necessary or appropriate" standard was unintelligible and unconstitutionally broad, the Court instead held that OSHA exceeded its rulemaking authority because the agency did not make the necessary scientific findings and based its exposure rule on impermissible qualitative assumptions about the relationship between cancer risks and small exposures to benzene, rather than on a quantitative assessment that found a "significant risk" predicate for regulating to one ppm.<sup>210</sup>

[\*757] If Congress vetoes an agency regulation on the ground that it is lawmaking, this may be taken to mean one of two things: either Congress believes that the agency was acting outside of its delegated authority, or it believes that the organic statute unconstitutionally grants the agency legislative power. Since, reflecting the avoidance

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<sup>204</sup> U.S. CONST. art. I, § 1 ("All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.").

<sup>205</sup> See, e.g., [A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 \(1935\)](#) (holding that the National Industrial Recovery Act's authorization to the President to prescribe "codes of fair competition" was an unconstitutional delegation of legislative power because the statutory standard was insufficient to curb the discretion of the Executive Branch).

<sup>206</sup> [J.W. Hampton, Jr., & Co. v. United States, 276 U.S. 394, 409 \(1928\)](#).

<sup>207</sup> See generally Matthew D. Adler, *Judicial Restraint in the Administrative State: Beyond the Countermajoritarian Difficulty*, [145 U. PA. L. REV. 759, 835-39 \(1997\)](#) (describing the canon of constitutional avoidance and arguing that "the criteria bearing on constitutionality figure in the best interpretation of statutes, at least where statutes are otherwise taken to be indeterminate").

<sup>208</sup> [Indus. Union Dep't v. Am. Petroleum Inst. \(Benzene Case\), 448 U.S. 607 \(1980\)](#).

<sup>209</sup> *Id.* at 613 (quoting [Am. Petroleum Inst. v. OSHA, 581 F.2d 493, 502 \(1978\)](#)).

<sup>210</sup> *Id.* at 662. For two contrasting views on whether the *Benzene Case* either curtailed OSHA's ability to regulate effectively, or gave OSHA a license (that it has failed to employ) to use science to promulgate highly worker-protective standards, compare Wendy Wagner, Univ. of Tex. Sch. of Law, Presentation at the Society for Risk Analysis Annual Meeting 2010, *The Bad Side of Benzene* (Dec. 6, 2010), <http://birenheide.com/sra/2010AM/program/presentations/M4-A.3%20Wagner.pdf>, with Adam M. Finkel, Exec. Dir., Penn Program on Regulation, Univ. of Pa., Presentation at the Society for Risk Analysis Annual Meeting 2010, *Waiting for the Cavalry: The Role of Risk Assessors in an Enlightened Occupational Health Policy* (Dec. 6, 2010), <http://birenheide.com/sra/2010AM/program/presentations/M4-A.4%20Finkel.pdf>.

canon, unconstitutional delegations have only been found twice<sup>211</sup> in the history of our administrative state, and since repealing a single rule would be insufficient to correct that type of constitutional defect in the organic statute, it seems clear that by "lawmaking" Congress must mean that the agency exceeded its lawfully-granted statutory authority.<sup>212</sup> In other words, if Congress actually did mean that the organic statute is impermissibly broad, the legislature's responsibilities lie far beyond vetoing the single rule, and would seem to require curing the constitutional defect by amending the organic statute. But if instead the veto means only that the agency has exceeded its authority, this brings us back to the *Brown & Williamson* issue, discussed above, where an agency still deserves deference in promulgating subsequent rules, although congressional intent may limit that deference if there is a legislative scheme in place.<sup>213</sup>

On the other hand, it is possible--even likely--that Senator Nickles and his colleagues were merely speaking colloquially in accusing OSHA of lawmaking, and meant that the agency was "legislating" in a softer, nonconstitutional sense. If their objection meant that they found the regulation a statutorily--but not constitutionally--excessive exercise, then they are in essence making the ultra vires objection discussed above.<sup>214</sup> Alternatively, if their objection meant that OSHA did have both the statutory and constitutional authority to promulgate the regulation, but that the agency was flexing more power than it should simply as a matter of policy, then a veto on those grounds would in essence be an attempt to [\*758] retract some of the authority that Congress had delegated to the agency. As discussed below, Congress should be hesitant to use the CRA to substantively change an intelligible principle provided in the organic statute, and a court should hesitate to interpret the CRA to allow for such a sweeping change--the CRA process is an expedited mechanism that decreases deliberativeness by imposing strict limitations on time and procedure.<sup>215</sup>

In any case, the lawmaking objection during a congressional veto essentially folds back up into one of the problems discussed previously--either it presents an issue of the agency exceeding its statutory authority and possibly affecting the deference due subsequent agency actions, or, failing that, it means that some members of Congress are attempting to grab back via an expedited process some authority properly delegated to the agency.

In summary, the issue of deference to an agency ought not differ too much between the CRA and the traditional (pre-1996) context. Both of these contexts involve an agency's judgment about what policies it can make under its authorizing legislation, since the "substantial similarity" provision is an after-the-fact limitation on the agency's statutorily-authorized rulemaking power. Neither the CRA nor its joint resolution template provide enough guidance to end the inquiry at *Chevron* step one. A court, then, should employ a narrow interpretation of the CRA's substantial similarity provision, giving significant deference to an agency's determination that the new version of a rejected rule is not "substantially similar" to its vetoed predecessor. This interpretation would, however, be limited by the permissibility requirement of *Chevron* step two.

#### D. Good Government Principles

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<sup>211</sup> The two cases are [A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 \(1935\)](#), and [Panama Refining Co. v. Ryan, 293 U.S. 388 \(1935\)](#). For a discussion of the constitutionality of OSHA's organic statute, see Cass R. Sunstein, *Is OSHA Unconstitutional?*, [94 VA. L. REV. 1407\(2008\)](#).

<sup>212</sup> In this respect, it is worth noting that the Republicans' lawmaking objections during the ergonomics rule debate were rather nonspecific. The legislators did not point to any "unintelligible" principle under which the rule was promulgated, or define what characteristics of the ergonomics rule brought it out of the normal rulemaking category and into the realm of lawmaking, besides voicing their displeasure with some of its substance. Indeed, the lawmaking argument was apparently conflated with the notion that OSHA had acted outside of its authority, properly delegated. See *supra* note 201 and accompanying text.

<sup>213</sup> See *supra* Part IV.C.2.

<sup>214</sup> See *id.*

<sup>215</sup> See *infra* Part IV.D.1.

Various members of Congress argued during the ergonomics floor debate that OSHA and other regulatory agencies should be chastened when they stray from their mission (regulation) into congressional territory (legislation). Arguably, Congress itself should also eschew legislation by regulation, even though Congress clearly has the legislative authority. In this section, we argue that Congress should not use a veto of an isolated piece of rulemaking to effect statutory change--it should do so through a direct and deliberative process that the CRA does not offer. In addition, we offer a second "good government" rationale for interpreting "substantially the same" in a narrow way.

**[\*759]** 1. *Reluctance to Amend Congress's Delegation to the Agency*

One should be hesitant to interpret the substantial similarity provision too broadly, because doing so could allow expedited joint resolutions to serve as de facto amendments to the original delegation of authority under the relevant organic statute. If the bar against reissuing a rule "in substantially the same form" applied to a wide swath of rules that could be promulgated within the agency's delegated rulemaking authority, this would be tantamount to substantively amending the organic statute.

The OSHA ergonomics regulation illustrates this point nicely. Section 6 of the OSH Act grants OSHA broad authority to promulgate regulations setting workplace safety and health standards.<sup>216</sup> With the exception of one aspect of the ergonomics rule,<sup>217</sup> congressional Republicans admitted that OSHA's broad authority did in fact include the power to promulgate the regulation as issued.<sup>218</sup> If it is within OSHA's delegated authority to promulgate rules setting ergonomics standards, and enactment of the joint resolution would prevent OSHA from promulgating any ergonomics standards in the future, then the joint resolution would constitute a significant amendment to the organic statute. Indeed, one of the two parts of OSHA's mission as put in place by the OSH Act--the responsibility to promulgate and enforce standards that lessen the risk of chronic occupational disease, as opposed to instantaneous occupational accidents--in turn involves regulating four basic types of risk factors: chemical, biological, radiological, and ergonomic hazards. In this case, vetoing the topic by vetoing one rule within that rubric would amount to taking a significant subset of the entire agency mission away from the Executive Branch, without actually opening up the statute to any scrutiny.

We see two major reasons why courts should not interpret the CRA in such a way that would allow it effectively to amend an organic statute via an expedited joint resolution. First, there is a rule of statutory interpretation whereby, absent clear intent by Congress to overturn a prior law, legislation should not be read to conflict with the prior law.<sup>219</sup> Second, **[\*760]** it seems especially doubtful that Congress would intend to allow modification of an organic statute via an expedited legislative process.<sup>220</sup> Significant changes, such as major changes to a federal agency's

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<sup>216</sup> See OSH Act § 6, [29 U.S.C. § 655](#) (2006); see also 147 CONG. REC. 2816 (2001) (statement of Sen. Jeffords) ("OSHA, of course, has enormously broad regulatory authority. Section 6 of the OSH Act is a grant of broad authority to issue workplace safety and health standards.").

<sup>217</sup> See *supra* note 201 and accompanying text.

<sup>218</sup> See 147 CONG. REC. 2822 (statement of Sen. Enzi) ("The power for OSHA to write this rule did not materialize out of thin air. We in Congress did give that authority to OSHA . . .").

<sup>219</sup> See, e.g., [Finley v. United States, 490 U.S. 545, 554 \(1989\)](#) ("[N]o changes in law or policy are to be presumed from changes of language in [a] revision unless an intent to make such changes is clearly expressed." (internal quotation marks omitted) (quoting [Fourco Glass Co. v. Transmirra Prods. Corp., 353 U.S. 222, 227 \(1957\)](#))), *superseded by statute*, [28 U.S.C. § 1367](#) (2006); [Williams v. Taylor, 529 U.S. 362, 379 \(2000\)](#) (plurality opinion) (arguing that if Congress intended the Antiterrorism and Effective Death Penalty Act to overturn prior rules regarding deference to state courts on questions of federal law in habeas proceedings, then Congress would have expressed that intent more clearly); cf. [United States v. Republic Steel Corp., 264 F.2d 289, 299 \(7th Cir. 1959\)](#) ("[T]here should not be attributed to Congress an intent to produce such a drastic change, in the absence of clear and compelling statutory language."), *rev'd on other grounds*, [362 U.S. 482 \(1960\)](#).

<sup>220</sup> See also Rosenberg, *supra* note 75, at 1066 (noting that the CRA "contemplates a speedy, definitive and limited process").

statutory grant of rulemaking authority, generally take more deliberation and debate. The CRA process, on the other hand, creates both a ten-hour limit for floor debates and a shortened time frame in which Congress may consider the rule after the agency reports it.<sup>221</sup> For these reasons, it would be implausible to read the substantial similarity provision as barring reissuance of a rule simply because it dealt with the same subject as a repealed rule.

## 2. A Cost-Benefit Justification for Rarely Invoking the Circumvention Argument

Allowing an agency to reissue a vetoed rule with a significantly more favorable cost-benefit balance is a victory for congressional oversight, not a circumvention of it. "Substantially the same" is unavoidably a subjective judgment, so we urge that such judgments give the benefit of the doubt to the agency--not so that a prior veto would immunize the agency against bad conduct, but so that the second rule would allow the agency (through its allies in Congress, if any) to defend the rule a second time on its merits, rather than having it summarily dismissed as a circumvention. A "meta-cost-benefit" analysis of the decision to allow a rule of arguable dissimilarity back into the CRA veto process would look something like this: the cost of allowing debate on a rule that the majority comes to agree is either a circumvention of § 801 (b)(2), or needs to be struck down a second time on the merits, can be measured in person-hours--roughly 10 hours or less of debate in each house. The benefits of allowing such a debate to proceed can be measured in the positive net benefit accruing to society from allowing the rule to take effect--assuming that Congress will act to veto a rule with negative net benefit.<sup>222</sup> The benefits of the additional [\*761] discussion will not always outweigh the costs thereof, but we suggest that whenever "substantially the same" is a controversial or close call, the opportunity for another brief discussion of the rule's merits is a safer and more sensible call to make than a "silent veto" invoking § 801(b)(2).

## V. WHAT DOES "SUBSTANTIALLY THE SAME" REALLY MEAN?

In light of the foregoing analysis, we contend that only among the first four interpretations in Part III.A above can the correct meaning of "substantially the same" possibly be found. Again, to comport literally with the proper instructions of § 801 (b)(2) does not insulate the agency against a subsequent veto on substantive grounds, but it should force Congress to debate the reissued rule on its merits, rather than the "faster fast-track" of simply declaring it to be an invalid circumvention of the original resolution of disapproval. To home in more closely on exactly what we think "substantially the same" requires, we will examine each of the four more "permissive" interpretations in Part III.A, in reverse order of their presentation--and we will argue that any of the four, except for Interpretation 1, might be correct in particular future circumstances.

Interpretation 4 (the agency must change the cost-benefit balance and must fix any problems Congress identified when it vetoed the rule) has some appeal, but only if Congress either would amend the CRA to require a vote on a bill of particulars listing the specific reasons for the veto, or at least did so sua sponte in future cases.<sup>223</sup> Arguably, the agency should not have unfettered discretion to change the costs and benefits of a rule as it sees fit, if Congress had already objected to specific provisions that contributed to the overall failure of a benefit-cost test. A new ergonomics rule that had far lower costs, far greater benefits, or both, but that persisted in establishing a payout system that made specific reference to state workers' compensation levels, might come across as "substantially the same" in a way Congress could interpret as OSHA being oblivious to the previous veto.<sup>224</sup> However, absent a clear statement of particulars from Congress, the agencies should not be forced to read Congress's mind. A member who strenuously objected to a particular provision should be free to urge a second

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<sup>221</sup> See *supra* Part I.B.3 (describing the CRA procedure).

<sup>222</sup> As for the number of such possibly cost-ineffective debates, we simply observe that if OSHA were to repropose an ergonomics rule, and Congress were to allow brief debate on it despite possible arguments that any ergonomics rule would be a circumvention of § 801(b)(2), this would be the first such "wasteful" debate in at least ten years.

<sup>223</sup> See *infra* Part VII.

<sup>224</sup> In this specific case, though, we might argue that OSHA could instead better explain how Congress misinterpreted the original provision in the rule. See *infra* Part VI.B.

veto if the reissued rule contains an unchanged version of that provision, but if she cannot convince a majority in each house to call for that specific provision's removal, Congress, or a court, should not dismiss as "substantially the same" a rule containing a provision that might have been, and might still be, supported by most or nearly all members.

**[\*762]** Interpretation 3 (the agency's task is to significantly improve the cost-benefit balance, nothing more) makes the most sense in light of our analysis and should become the commonly understood default position. The CRA is essentially the ad hoc version of the failed Dole-Johnston regulatory reform bill<sup>225</sup> --rather than requiring agencies to produce cost-beneficial rules, and prescribing how Congress thought they should do so, the CRA simply reserves to Congress the right to reject on a case-by-case basis any rule whose stated costs exceed stated benefits, or, if the votes are there, one for which third-party assertions about costs exceed stated or asserted benefits. The way to reissue something distinctly different is to craft a rule whose benefit-cost balance is much more favorable. Again, this could be effected with a one-word change in a massive document, if that word, for example, halved the stringency as compared to the original, halved the cost, or both. Or, a rule missing one word--thereby exempting an industry-sector that the original rule would have regulated--could be "distinctly different" with far lower costs. If the original objection had merit this change would not drastically diminish total benefits, and it could arouse far less opposition than the previous nearly identical rule.

Interpretation 2 (even an identical rule can be reissued under "substantially different" external conditions), while it may seem to make a mockery of § 801(b)(2), also has merit. Congress clearly did not want agencies to circumvent the CRA by waiting for the vote count to change, or for the White House to change hands and make a simple majority in Congress no longer sufficient, and then reissuing an identical rule. Even that might not be such a bad outcome; after all, a parent's answer to a sixteen-year-old's question, "Can I have the car keys?," might be different if the child waits patiently and asks again in two years. But we accept that the passage of time alone should not be an excuse for trying out an identical rule again. However, time can also change everything, and the CRA needs to be interpreted such that time can make an identical rule into something "substantially different" than what used to be. Indeed, the Nickles-Reid signing statement already acknowledged how important this is, when it cited the following as a good reason for an initial veto: "agencies sometimes develop regulatory schemes at odds with congressional expectations. Moreover, during the time lapse between passage of legislation and its implementation, the nature of the problem addressed, and its proper solution, can change."<sup>226</sup> In other words, a particular rule Congress might have favored at the time it created the organic statute might not be appropriate anymore when finally promulgated because time can change **[\*763]** both problems and solutions. We fail to see any difference between that idea and the following related assertion: "During the time lapse between *the veto of a rule and its subsequent reissuance*, the nature of the problem addressed, and its proper solution, can change." It may, of course, change such that the original rule seems even less sensible, but what if it changes such that the costs of the original rule have plummeted and the benefits have skyrocketed? In such a circumstance, we believe it would undercut the entire purpose of regulatory oversight and reform to refuse to debate on the merits a reissued rule whose costs and benefits--even if not its regulatory text--were far different than they were when the previous iteration was struck down.

Interpretation 1 (anything goes so long as the agency merely *asserts* that external conditions have changed), on the other hand, would contravene all the plain language and explanatory material in the CRA. Even if the agency believes it now has better explanations for an identical reissued rule, the appearance of asking the same question until you get a different answer is offensive enough to bedrock good government principles that the regulation should be required to have different costs and benefits after a veto, not just new rhetoric about them.<sup>227</sup>

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<sup>225</sup> See *supra* Part I.B.2.

<sup>226</sup> 142 CONG. REC. 8197 (1996) (joint statement of Sens. Nickles, Reid, and Stevens).

<sup>227</sup> We conclude this notwithstanding the irony that in one sense, the congressional majority did just that in the ergonomics case--it delayed the rule for several years to require the National Academy of Sciences (NAS) to study the problem, and when it did not like the NAS conclusion that ergonomics was a serious public health problem with cost-effective solutions, it forced NAS to

We therefore believe Interpretation 3 is the most reasonable general case, but that Interpretations 2 or 4 may be more appropriate in various particular situations. But there is one additional burden we think agencies should be asked to carry, even though it is nowhere mentioned in the CRA. The process by which a rule is developed can undermine its content, and beneficial changes in that content may not fix a suspect process, even though Congress modified with "substantially the same" the word "form," not the word "process." Indeed, much of the floor debate about ergonomics decried various purported procedural lapses: the OSHA [\*764] leadership allegedly paid expert witnesses for their testimony, edited their submissions, and made closed-minded conclusory statements about the science and economics while the rulemaking record was still open, among other flaws.<sup>228</sup> We think agencies should be expected to fix procedural flaws specifically identified as such by Congress during a veto debate, even if this is not needed to effectuate a "substantially different form."<sup>229</sup>

## VI. PRACTICAL IMPLICATIONS FOR OSHA OF A COST-BENEFIT INTERPRETATION OF THE CRA

We have argued above that the agency's fundamental obligation under the CRA is to craft a reissued rule with substantially greater benefits, substantially lower costs, or both, than the version that Congress vetoed. As a practical matter, we contend it should focus on aspects of the regulation that Congress identified as driving the overall unfavorable cost-benefit balance. When, as is often the case, the regulation hinges on a single quantitative judgment about stringency (How low should the ambient ozone concentration be? How many miles per gallon must each automobile manufacturer's fleet achieve? What trace amount of fat per serving can a product contain and still be labeled fat-free?), a new rule can be made "substantially different" with a single change in the regulatory text to change the stringency, along with, of course, parallel changes to the Regulatory Impact Analysis tracking the new estimates of costs and benefits. The 2000 OSHA ergonomics rule does not fit this pattern, however. Although we think it might be plausible for OSHA to argue that the underlying science, the methods of control, and the political landscape have changed enough after a decade of federal inactivity on ergonomic issues that the 2000 rule could be repropounded verbatim as a solution to a "substantially different" problem, we recognize the political impracticality of such a strategy. But changing the costs and benefits of the 2000 rule will require major thematic and textual revisions, because the original rule had flaws much more to do with regulatory design and philosophy than with [\*765] stringency per se. In this Part, therefore, we offer some broad suggestions for how OSHA could make substantially more favorable the costs and benefits of a new ergonomics regulation.

### A. *Preconditions for a Sensible Discussion About the Stringency of an Ergonomics Rule*

In our opinion, reasonable observers have little room to question the fact of an enormous market failure in which occupational ergonomic stressors cause musculoskeletal disorders (MSDs) in hundreds of thousands of U.S.

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convene a different panel and answer the question again. See, e.g., *Ergonomics in the Workplace; NewsHour with Jim Lehrer* (PBS television broadcast Nov. 22, 1999), [www.pbs.org/newshour/bb/business/july-dec99/ergonomics\\_11-22.html](http://www.pbs.org/newshour/bb/business/july-dec99/ergonomics_11-22.html) ("We've already had one [NAS] study . . . [T]hey brought in experts, they looked at all the evidence in this area and they reached the conclusion that workplace factors cause these injuries and that they can be prevented. The industry didn't like the results of that study so they went to their Republican friends in the Congress and got another study asking the exact same seven questions . . . The study is basically just being used as a way to delay a regulation, to delay protection for workers. We'll get the same answers from the NAS-2 that we got from NAS-1." (Peg Seminario, Director, Occupational Safety and Health for the AFL-CIO)). For the NAS studies, see *infra* note 231.

<sup>228</sup> See 147 CONG. REC. 2823 (2001) (statement of Sen. Enzi) ("Maybe OSHA didn't think it needed to pay attention to these [public] comments because it could get all the information it wanted from its hired guns. . . . OSHA paid some 20 contractors \$ 10,000 each to testify on the proposed rule. They not only testified on it; they had their testimony edited by the Department . . . . Then--and this is the worst part of it all--they paid those witnesses to tear apart the testimony of the other folks who were testifying, at their own expense. . . . Regardless of whether these tactics actually violate any law, it clearly paints OSHA as a zealous advocate, not an impartial decisionmaker.").

<sup>229</sup> See *infra* Part VI.B (urging OSHA to consider, among many possible substantive changes to the 2000 ergonomics rule, specific changes in the process by which it might be analyzed and promulgated).

workers annually.<sup>230</sup> Hundreds of peer-reviewed epidemiologic studies have concluded that prolonged or repeated exposures to risk factors such as lifting heavy objects, undertaking relentless fine-motor actions, and handling tools that vibrate forcefully can cause debilitating MSDs that affect the hands, wrists, neck, arms, legs, back, and other body parts.<sup>231</sup> Most of these studies have also documented dose--response relationships: more intense, frequent, or forceful occupational stress results in greater population incidence, more severe individual morbidity, or both. In this respect, ergonomic risk factors resemble the chemical, radiological, and [\*766] biological exposures OSHA has regulated for decades under the OSH Act and the 1980 Supreme Court decision in the *Benzene Case*--if prevailing exposures are sufficient to cause a "significant risk" of serious impairment of health, OSHA can impose "highly protective"<sup>232</sup> controls to reduce the risk substantially, as long as the controls are technologically feasible and not so expensive that they threaten the fundamental competitive structure<sup>233</sup> of an entire industry.<sup>234</sup>

The fundamental weakness of OSHA's ergonomics regulation was that it did not target ergonomic risk factors specifically or directly, but instead would have required an arguably vague, indirect, and potentially never-ending

<sup>230</sup> According to the Bureau of Labor Statistics, there were more than 560,000 injuries, resulting in one or more lost workdays, from the category of "sprains, strains, tears"; by 2009, that number had declined, for whatever reason(s), to roughly 380,000. See *Nonfatal Cases Involving Days Away from Work: Selected Characteristics (2003)*, U.S. BUREAU OF LABOR STATISTICS, <http://data.bls.gov/timeseries/CHU00X021XXX6N100> (last visited Nov. 14, 2011).

<sup>231</sup> For a very comprehensive survey of the epidemiologic literature as it existed at the time OSHA was writing its 1999 ergonomics proposal, see NAT'L INST. FOR OCCUPATIONAL SAFETY & HEALTH, U.S. DEPT OF HEALTH & HUMAN SERVS., *MUSCULOSKELETAL DISORDERS AND WORKPLACE FACTORS: A CRITICAL REVIEW OF EPIDEMIOLOGIC EVIDENCE FOR WORK-RELATED MUSCULOSKELETAL DISORDERS OF THE NECK, UPPER EXTREMITY, AND LOW BACK*, NO. 97B141 (Bruce P. Bernard ed., 1997), <http://www.cdc.gov/niosh/docs/97-141/pdfs/97-141.pdf>. See also PANEL ON MUSCULOSKELETAL DISORDERS & THE WORKPLACE, COMM'N ON BEHAVIORAL & SOC. SCIS. & EDUC., NAT'L RESEARCH COUNCIL & INST. OF MED., *MUSCULOSKELETAL DISORDERS AND THE WORKPLACE: LOW BACK AND UPPER EXTREMITIES* (2001), available at <http://www.nap.edu/catalog/10032.html> (reviewing the complexities of factors that cause or elevate the risk of musculoskeletal injury); STEERING COMM. FOR THE WORKSHOP ON WORK-RELATED MUSCULOSKELETAL INJURIES: THE RESEARCH BASE, NAT'L RESEARCH COUNCIL, *WORK-RELATED MUSCULOSKELETAL DISORDERS: REPORT, WORKSHOP SUMMARY, AND WORKSHOP PAPERS* (1999), available at <http://www.nap.edu/catalog/6431.html> (examining the state of research on work-related musculoskeletal disorders); STEERING COMM. FOR THE WORKSHOP ON WORK-RELATED MUSCULOSKELETAL INJURIES: THE RESEARCH BASE, NAT'L RESEARCH COUNCIL, *WORK-RELATED MUSCULOSKELETAL DISORDERS: A REVIEW OF THE EVIDENCE* (1998), available at <http://www.nap.edu/catalog/6309.html> (reflecting on the role that work procedures, physical features of the employee, and other similar factors have on musculoskeletal disorders).

<sup>232</sup> *Indus. Union Dep't v. Am. Petroleum Inst. (Benzene Case)*, 448 U.S. 607, 643 n.48 (1980).

<sup>233</sup> See *Am. Textile Mfrs. Inst., Inc. v. Donovan (Cotton Dust Case)*, 452 U.S. 490, 513 (1981).

<sup>234</sup> Ergonomic stressors may appear to be very different from chemical exposures, in that person-to-person variation in fitness obviously affects the MSD risk. Some people cannot lift a seventy-five-pound package even once, whereas others can do so over and over again without injury. However, substantial (though often unacknowledged) inter-individual variability is known to exist in susceptibility to chemical hazards as well. See COMM. ON IMPROVING RISK ANALYSIS APPROACHES USED BY THE U.S. EPA, NAT'L RESEARCH COUNCIL, *SCIENCE AND DECISIONS: ADVANCING RISK ASSESSMENT* ch.5 (2009), available at <http://www.nap.edu/catalog/12209.html> (recommending that the EPA adjust its estimates of risk for carcinogens upwards to account for the above-average susceptibility to carcinogenesis of substantial portions of the general population); COMM. ON RISK ASSESSMENT OF HAZARDOUS AIR POLLUTANTS, NAT'L RESEARCH COUNCIL, *SCIENCE AND JUDGMENT IN RISK ASSESSMENT* ch.10 (1994), available at <http://www.nap.edu/catalog/2125.html>. For both kinds of hazards, each person has his or her own dose-response curve, and regulatory agencies can reduce population morbidity and mortality by reducing exposures (and hence risks) for relatively "resistant," relatively "sensitive" individuals, or both--with or without special regulatory tools to benefit these subgroups differentially. See Adam M. Finkel, *Protecting People in Spite of--or Thanks to--the "Veil of Ignorance,"* in *GENOMICS AND ENVIRONMENTAL REGULATION: SCIENCE, ETHICS, AND LAW* 290, 290-341 (Richard R. Sharp et al. eds., 2008) (arguing that the government should use its technological capacities to estimate individualized assessments of risk and benefit).

series of ill-defined improvements in broader industrial management systems at the firm level, ones that in turn could have reduced stressors and thereby reduced MSDs. The decision to craft a management-based regulation<sup>235</sup> rather than one that directly specified improvements in technological controls (a design standard) or reductions in specific exposures (a performance standard) was perhaps an understandable [\*767] reaction on OSHA Assistant Secretary Charles Jeffress' part to history and contemporary political pressures.

In 1995, OSHA drafted a complete regulatory text and preamble to a proposed ergonomics regulation that would have specified performance targets for the common risk factors in many industrial sectors. Of necessity, these targets in some cases involved slightly more complicated benchmarks than the one-dimensional metrics industry was used to seeing from OSHA (e.g., ppm of some contaminant in workplace air). For example, a "lifting limit" might have prohibited employers from requiring a worker to lift more than *X* objects per hour, each weighing *Y* pounds, if the lifting maneuver required rotating the trunk of the body through an angle of more than *Z* degrees. OSHA circulated this proposed rule widely, and it generated such intense opposition from the regulated community, and such skepticism during informal review by the Office of Information and Regulatory Affairs, that the agency withdrew it and went back to the drawing board. Because the most vehement opposition arose in response to the easily caricatured extent of "micro-management" in the 1995 text,<sup>236</sup> when OSHA began to rework the ergonomics rule in 1998, it acted as if the most important complexion of the new rule would be its reversal of each feature of the old one. Where the 1995 text was proactive and targeted exposures, the 2000 text<sup>237</sup> was reactive, and imposed on an employer no obligation to control exposures until at least one employee in a particular job category had already developed a work-related MSD. Where the 1995 text provided performance goals so an employer could know, but also object to, how much exposure reduction would satisfy an OSHA inspector, the revised text emphasized that inspectors would be looking for evidence of management leadership in creating an ergonomically appropriate workplace and employee participation in decisions about ergonomic design.

OSHA intended this pendulum swing with respect to the earlier version [\*768] in large part to provide the opposition with what it said it wanted--a "user-friendly" rule that allowed each employer to reduce MSDs according to the unique circumstances of his operation and workforce. Instead, these attributes doomed the revised ergonomics rule, but with hindsight they provide a partial blueprint for how OSHA could sensibly craft a "substantially different" regulation in the future. American business interpreted OSHA's attempt to eschew one-size-fits-all requirements not as a concession to the opposition around the 1995 text, but as a declaration of war. The "flexibility" to respond idiosyncratically to the unique ergonomic problems in each workplace was almost universally interpreted by industry trade associations as the worst kind of vagueness. Having beaten back a rule that seemed to tell employers exactly what to do, industry now argued that a rule with too much flexibility was a rule without any clear indication of where

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<sup>235</sup> See, e.g., Cary Coglianese & David Lazer, *Management-Based Regulation: Prescribing Private Management to Achieve Public Goals*, [37 LAW & SOC'Y REV. 691, 726 \(2003\)](#) ("The challenge for governmental enforcement of management-based regulation may be made more difficult because the same conditions that make it difficult for government to impose technological and performance standards may also tend to make it more difficult for government to determine what constitutes 'good management.'").

<sup>236</sup> n236 For two examples cited by Congressmen of each political party, see *OSHA's Regulatory Activities and Processes Regarding Ergonomics: Hearing Before the Subcomm. on Nat'l Econ. Growth, Natural Res. & Regulatory Affairs of the H. Comm. on Gov't Reform & Oversight*, 104th Cong. (1995). At that hearing, Republican Representative David McIntosh stated:

A questionnaire in the draft proposal asks employers of computer users if their employees are allowed to determine their own pace, and discourages employers from using any incentives to work faster. In other words, employers would not be allowed to encourage productivity. If the Ergonomics rulemaking is truly dead, we have saved more than just the enormous cost involved.

*Id.* at 7 (statement of Rep. McIntosh). Similarly, Democratic Representative Collin Peterson expressed concern about governmental micromanagement of industrial processes: "I have to say that I am skeptical that any bureaucrat can sit around and try to figure out this sort of thing." *Id.* at 9 (statement of Rep. Peterson).

<sup>237</sup> See Ergonomics Program, [64 Fed. Reg. 65,768](#) (proposed Nov. 23, 1999).

the compliance burden would end. Small business in particular characterized the lack of specific marching orders as being "left to their own devices," in the sense of federal abdication of responsibility to state plainly what would suffice.<sup>238</sup> But in light of what had already transpired in 1995, and exacerbated by the publication of the final rule after the votes were cast in the Bush v. Gore election, but before the outcome was known, it turned out that OSHA opened itself up to much worse than charges of insufficient detail--it became dogged by charges that the regulatory text was a Trojan horse, hiding an apparatus that was specific and onerous, but one it was keeping secret.<sup>239</sup> The requirement--not found in the OSH Act or in its interpretations in the *Benzene Case* or *Cotton Dust Case*,<sup>240</sup> but having [\*769] evolved out of OSHA's deference to the instructions issued by OIRA--that OSHA compare the costs and benefits of compliance with each final rule<sup>241</sup> played into this conspiratorial interpretation: because OSHA provided cost information, it was reasonable for industry to infer that OSHA knew what kinds of controls it would be requiring, and that inspectors would be evaluating these controls rather than management leadership and employee participation to gauge the presence of violations and the severity of citations. Both the extreme flexibility of the rule and the detail of the cost-benefit information may have been a road paved with good intentions, but ironically or otherwise these factors combined to fuel the opposition and to provide a compelling narrative of a disingenuous agency, a story that receptive ears in Congress were happy to amplify.

Not only was OSHA's attempt to write a regulation whose crux was "choose your controls" misinterpreted as "choose our controls by reading our minds," but it undermined any tendency of Congress to defer to the agency's conclusion that the rule had a favorable benefit-cost balance. Because the projected extent of compliance expenditures depended crucially on how many firms would have to create or improve their ergonomics management systems, and what those improvements would end up looking like, rather than on the more traditional cost accounting scenario--the price of specified controls multiplied by the number of controls necessary for regulated firms to come into compliance--opponents of the rule did not need to contest OSHA's data or price estimates; they simply needed to assert that the extreme ambiguity of the regulatory target could lead to much greater expenditures than OSHA's rosy scenarios predicted. The ominous pronouncements of ergonomic costs<sup>242</sup> were the single most important factor in justifying the congressional veto, on the grounds that the costs of the regulation swamped benefits it would deliver, and the vagueness of the rule played into the hands of those who could benefit from fancifully large cost estimates. The reactive nature of the rule--most of the new controls would not have to be implemented until one or more MSD injuries occurred in a given job category in a particular workplaces--also made OSHA's benefits estimates precarious. All estimates of reduced health effects as a function

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<sup>238</sup> 147 CONG. REC. 2837 (2001) (statement of Sen. Bond) ("The Clinton OSHA ergonomics regulation . . . will be devastating both to small businesses and their employers because it is incomprehensible and outrageously burdensome. Too many of the requirements are . . . like posting a speed limit on the highway that says, 'Do not drive too fast,' but you never know what 'too fast' is until a State trooper pulls you over and tells you that you were driving too fast.").

<sup>239</sup> n239 One author opined:

The [2000] ergonomics standard . . . is one of the most vague standards OSHA has ever adopted. It leaves the agency with tremendous discretion to shape its actual impact on industry through enforcement strategy. In other words, OSHA's information guidance documents will likely play a large role in the practical meaning of the standard. This will allow the agency to work out details while bypassing the rigors of notice-and-comment rulemaking. However, it will also expose OSHA to more accusations of "back door" rulemaking.

Timothy G. Pepper, *Understanding OSHA: A Look at the Agency's Complex Legal and Political Environment*, 46 PROF. SAFETY, Feb. 2001, at 14, 16, available at <http://www.allbusiness.com/government/government-bodies-offices-legislative/1443343-1.html>.

<sup>240</sup> *Am. Textile Mfrs. Inst., Inc. v. Donovan (Cotton Dust Case)*, 452 U.S. 490, 513 (1981).

<sup>241</sup> See Exec. Order No. 12,866, 3 C.F.R. 638 (1994), *reprinted as amended in 5 U.S.C. § 601* app. at 745 (2006).

<sup>242</sup> For cost estimates ranging up to \$ 125 billion annually, see *supra* note 101. See also Editorial, *supra* note 90 ("Although the Occupational Safety and Health Administration puts the price tag on its rules at \$ 4.5 billion, the Economic Policy Foundation gauges the cost to business at a staggering \$ 125.6 billion.").

of reduced exposures involve uncertainty in dose-response, whether or not the promulgating agency quantifies that uncertainty, but to make future costs and benefits contingent [\*770] on future cases of harm, not merely on exposures, added another level of (unacknowledged) uncertainty to the exercise.

Whatever the reasons for a veto under the CRA, we argued above that the affected agency's first responsibility, if it wants to avoid being thwarted by the "substantially similar" trap, is to craft a revised rule with a much more favorable balance of benefits to costs. But because the 2000 ergonomics rule had chosen no particular stringency per se, at least not one whose level the agency and its critics could even begin to agree existed, OSHA cannot tweak the benefit-cost balance with any straightforward concessions. In the case of ergonomics, we contend that OSHA probably needs to abandon the strategy of a flexible, management-based standard, since that approach probably guarantees pushback on the grounds that the true cost of complying with a vague set of mandates dwarfs any credible estimates of benefits, in addition to pushing the hot button of the "hidden enforcement manual." In the next section, we list some practical steps OSHA could take to comport with the CRA, motivated by a catalog of the strongest criticisms made during the floor debate on the 2000 rule, as well as our own observations about costs, benefits, and regulatory design.

### *B. Specific Suggestions for Worthwhile Revisions to the Ergonomics Rule*

A "substantially different" ergonomics rule would have benefits that exceeded costs, to a high degree of confidence. We believe OSHA could navigate between the rock of excessive flexibility--leading to easy condemnation that costs would swamp benefits--and the hard place of excessive specificity--leading essentially to condemnation that the unmeasured cost of losing control of one's own industrial process would dwarf any societal benefits--simply by combining the best features of each approach. The basic pitfall of the technology-based approach to setting standards--other than, of course, the complaint from the left wing that it freezes improvements based on what can be achieved technologically, rather than what needs to be achieved from a moral vantage point--is that it precludes clever businesses from achieving or surpassing the desired level of performance using cheaper methods. However, a hybrid rule--one that provides enough specificity about how to comply that small businesses cannot claim they are adrift without guidance, and that also allows innovation so long as it is at least as effective as the recommended controls would be--could perhaps inoculate the issuing agency against claims of too little or too much intrusiveness. From a cost--benefit perspective, such a design would also yield the very useful output of a lower bound on the net benefit estimate because by definition any of the more efficient controls some firms would freely opt to undertake would either lower total costs, [\*771] reap additional benefits, or both. It would also yield a much less controversial, and less easily caricatured, net benefit estimate because the lower-bound estimate would be based not on OSHA's hypotheses of how much management leadership and employee participation would cost and how many MSDs these programs would avert, but on the documented costs of controls and the documented effectiveness of specific workplace interventions on MSD rates. In other words, we urge OSHA to take a fresh look at the 1995 ergonomics proposal, but to recast specific design and exposure-reduction requirements therein as recommended controls--the specifications would become safe harbors that employers could implement and know they are in compliance, but that they could choose to safely ignore in favor of better site-specific, one-size-fits-one solutions to reduce intolerable ergonomic stressors.

The other major philosophical step toward a "substantially different" rule we urge OSHA to consider involves replacing ergonomic "exposure floors" with "exposure ceilings." With the intention of reassuring many employers that they would have no compliance burden if their employees were subjected only to minimal to moderate ergonomic stressors, OSHA created a Basic Screening Tool demarcating exposures above which employers *might* have to implement controls.<sup>243</sup> For example, even if one or more employees developed a work-related MSD, the employer would have no obligation to assess the jobs or tasks for possible exposure controls, unless the affected employees were routinely exposed to stressors at or above the screening levels. These levels are low, as befits a screening tool used to exclude trivial hazards; for example, only a task that involved lifting twenty-five pounds or more with arms fully extended, more than twenty-five times per workday, would exceed the screening level and possibly trigger the obligation to further assess the situation. Unfortunately, it was easy for trade associations and

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<sup>243</sup> See Ergonomics Program, 65 Fed. Reg. 68,262, 68,848-49 (Nov. 14, 2000).

their allies in Congress to misrepresent these floors as ceilings, as if OSHA had set out to eliminate *all* "twenty-five times twenty-five pounds workdays" rather than to treat any lifting injuries caused by occupational duties below this level as the employee's tough luck.<sup>244</sup> Hence the debate degenerated into warnings about "the end of Thanksgiving" under an OSHA rule that "prohibited" grocery checkout workers from lifting twenty-six-pound turkeys off the conveyor belt.<sup>245</sup> In a [\*772] revised rule, approaching the dose-response continuum from above rather than from below might make much more practical and political sense. As with all of its health standards for chemicals, OSHA's goal, as reinforced by the "significant risk" language of the *Benzene* decision, is to eliminate where feasible exposures that are intolerably high; defining instead exposures that are not insignificantly low may help narrow this window, but it obviously backfired in the case of ergonomics. Making the tough science-policy decisions about which levels of ergonomic stressors must be ameliorated wherever feasible, just as OSHA and other agencies do routinely for toxic substances with observed or modeled dose-response relationships, would have four huge advantages: (1) it would clearly transform the ergonomics rule into something "substantially different" than the 2000 version; (2) it would ally OSHA with the science of MSD dose-response--because the 2000 version triggered controls upon the appearance of an MSD, instead of treating certain exposures as intolerably risky regardless of whether they had already been associated with demonstrable harm, it certainly made it at least appear that OSHA regarded MSDs as mysterious events, rather than the logical result of specific conditions;<sup>246</sup> (3) it could insulate OSHA from some of the political wrangling that caused it to exempt some obviously risky major industries (e.g., construction) from the rule entirely, while subjecting less risky industries to the specter of costly controls, because controlling intolerable exposures wherever they are found is a neutral means of delimiting the scope of the rule; and (4) it would shift the rhetorical burden from government having to argue that small exertions might be worthy of attention to industry having to argue that herculean exertions must be permitted. Adjusting the ceiling to focus mandatory controls on the most intolerable conditions is, of course, the quintessential regulatory act and the most direct force that keeps costs down and pushes benefits up--and this is the act that OSHA's management-based ergonomics rule abdicated.

Continuing with recommendations that improve the cost-benefit [\*773] balance and also respond to specific hot buttons from the congressional veto debate, we believe that OSHA should also consider targeting an ergonomics rule more squarely at MSDs that are truly caused or exacerbated by occupational risk factors. The 2000 rule defined a work-related MSD as one that workplace exposure "caused or contributed to,"<sup>247</sup> but the latter part of this definition, intentionally or otherwise, subsumes MSDs that primarily arise from off-the-job activity and that repetitive motion merely *accompanied* (the easily mocked tennis elbow hypothetical). On the other hand, a redefinition that simply required a medical opinion that *the MSD would not have occurred absent the occupational exposure(s)* would cover any exposures that pushed a worker over the edge to a full-blown injury (and, of course, any exposures that alone sufficed to cause the injury), but not those that added marginally to off-work exposures that were already sufficient by themselves to cause the MSD. In this regard, however, it will be important for OSHA to correct an egregious misinterpretation of the science of ergonomics bandied about freely during the congressional veto debate. Various members made much of the fact that one of the NAS panel reports concluded that "[n]one of

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<sup>244</sup> For example, Republican Senator Don Nickles of Oklahoma began the Senate debate on the rule by flatly stating, "Federal bureaucrats are saying you can do this; you can't do that. You can only move 25 pounds 25 times a day . . . . Employees would say: I have to stop; it is 8:25 [a.m.], but I have already moved 25 things. Time out. Hire more people." 147 CONG. REC. 2817 (statement of Sen. Nickles).

<sup>245</sup> Republican Representative Ric Keller of Florida said, "It is also true that if a bagger in a grocery store lifts a turkey up and we are in the Thanksgiving season, that is 16 pounds, he is now violating Federal law in the minds of some OSHA bureaucrats because they think you should not be able to lift anything over 15 pounds. We need a little common sense here." 147 CONG. REC. 3059-60 (statement of Rep. Keller). Although the Basic Screening Tool nowhere mentions fifteen pounds (but rather twenty-five), or fewer than twenty-five repetitions per day, this exaggeration is over and above the basic misinterpretation of the function of the screening level.

<sup>246</sup> The decision to make the ergonomics rule reactive rather than proactive arguably played right into the hands of opponents, who essentially argued that OSHA had come to agree with them that science did not support any dose-response conclusions about MSD origins.

<sup>247</sup> Ergonomics Program, 65 Fed. Reg. at 68,854 (defining work-related).

the common MSDs is uniquely caused by work exposures." <sup>248</sup> Senator Kit Bond and others took this literally true statement about the totality of all cases of one single kind of MSD--for example, all the cases of carpal tunnel syndrome, all the cases of Raynaud's phenomenon--and made it sound as if it referred to every individual MSD case, which is of course ridiculous. "Crashing your car into a telephone pole is not uniquely caused by drunk driving," to be sure--of the thousands of such cases each year, some are certainly unrelated to alcohol, but this in no way means that we cannot be quite sure that what was to blame in a *particular* case in which the victim was found with a blood alcohol concentration of, say, 0.25 percent by volume, enough to cause stupor. Many individual MSDs are caused solely by occupational exposure, and any regulation worth anything must effect reductions in those exposures that make a resulting MSD inevitable or nearly so.

The other hot-button issue specifically mentioned repeatedly in the veto debate was OSHA's supposed attempt to create a separate workers' compensation system for injured employees. Paragraph (r) of the final ergonomics rule <sup>249</sup> would have required employers who had to remove an employee from her job due to a work-related MSD to pay her at least ninety percent of her salary for a maximum of ninety days, or until a health care professional determined that her injury would prevent her from ever [\*774] resuming that job, whichever came first. OSHA deemed such a "work restriction protection" program necessary so that employees would not be deterred from admitting they were injured and risk losing their jobs immediately. But various members of Congress decried this provision of the rule as "completely overrid[ing] the State's rights to make an independent determination about what constitutes a work-related injury and what level of compensation injured workers should receive." <sup>250</sup> Worse yet, because § 4(b)(4) of the OSH Act states that "[n]othing in this [Act] shall be construed to supersede or in any manner affect any workmen's compensation law," <sup>251</sup> various members argued that OSHA "exceeded [its] constitutional authority" by legislating a new workers' compensation system rather than regulating. <sup>252</sup> Other members disputed these allegations, noting that providing temporary and partial restoration of salary that would otherwise be lost during a period of incapacity is very different from compensating someone for an injury. As Senator Edward Kennedy said, "It has virtually nothing to do with workers compensation, other than what has been done traditionally with other kinds of OSHA rules and regulations such as for cadmium and lead." <sup>253</sup> Indeed, the Court of Appeals for the District of Columbia Circuit settled this issue years ago in upholding the much more generous eighteen-month protection program in the OSHA lead standard. In *United Steelworkers of America v. Marshall*, <sup>254</sup> that court held that § 4(b)(4) of the OSH Act bars workers from using an OSHA standard to assert a private cause of action against their employers and from obtaining state compensation for a noncompensable injury just because OSHA may protect a worker against such an injury. <sup>255</sup> But more generally, the circuit court concluded that "the statute and the legislative history both demonstrate unmistakably that OSHA's statutory mandate is, as a general matter, broad enough to include such a regulation as [medical removal protection (MRP)]." <sup>256</sup>

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<sup>248</sup> 147 CONG. REC. 2838 (statement of Sen. Bond).

<sup>249</sup> Ergonomics Program, 65 Fed. Reg. at 68,851.

<sup>250</sup> 147 CONG. REC. 2824 (statement of Sen. Enzi)

<sup>251</sup> OSH Act § 4(b)(4), [29 U.S.C. § 653](#) (2006).

<sup>252</sup> 147 CONG. REC. 2817 (2001) (statement of Sen. Nickles); see also *supra* Part II.A.

<sup>253</sup> 147 CONG. REC. 2818 (2001) (statement of Sen. Kennedy).

<sup>254</sup> [647 F.2d 1189 \(D.C. Cir. 1980\)](#).

<sup>255</sup> [Id. at 1235-36](#).

<sup>256</sup> [Id. at 1230](#). Medical removal protection (MRP) is the provision of salary while an employee with a high blood lead level (or a similar biomarker of exposure to cadmium, methylene chloride, etc.) is removed from ongoing exposure until his level declines. See *id.* at 1206. The court's decision stated in relevant part: "We conclude that though MRP may indeed have a great practical effect on workmen's compensation claims, it leaves the state schemes wholly intact as a *legal* matter, and so does not violate Section 4(b)(4)." [Id. at 1236](#).

It is ironic, therefore, that the only mention of workers' compensation in the vetoed ergonomics rule was a provision that allowed the employer to [\*775] reduce the work restriction reimbursement dollar for dollar by any amount that the employee receives under her state's compensation program!<sup>257</sup> If OSHA had not explicitly sought to prohibit double dipping, the ergonomics rule would never have even trespassed semantically on the workers' compensation system. It is tempting, then, to suggest that OSHA could make the work restriction program "substantially different" by removing the reference to workers' compensation and making it a more expensive program for employers to implement. However, both the spirit of responding to specific congressional objections and of improving the cost-benefit balance would argue against such a tactic, as would the practical danger of arousing congressional ire by turning its objections against the interests of its favored constituents. It is possible that an exposure-based ergonomics rule that does not rely on the discovery of an MSD to trigger possible controls would reduce the disincentive for workers to self-report injuries, but the problem remains that without some form of insurance against job loss, workers will find it tempting to hide injuries until they become debilitating and possibly irreversible. Perhaps the Administration could approach Congress before OSHA issued a new ergonomics proposal, and suggest it consider creating a trust fund for temporary benefits for the victims of MSD injuries, as has been done for black lung disease and vaccine-related injuries.<sup>258</sup> Employers might find work-restriction payments from a general fund less offensive than they apparently found the notion of using company funds alone to help their own injured workers.

OSHA could obviously consider a wide variety of other revisions to make a new ergonomics rule "substantially different" and more likely to survive a second round of congressional review. Some of the other changes that would accede to specific congressional concerns from 2001--such as making sure that businesses could obtain all the necessary guidance materials to implement an ergonomics program free of charge, rather than having to purchase them from private vendors at a possible cost of several hundred dollars<sup>259</sup>--are presumably no-brainers; this one being even easier to accommodate now than it would have been before the boom in online [\*776] access to published reports. Other redesigns are up to OSHA to choose among based on its appraisal of the scientific and economic information with, we would recommend, an eye toward changes that would most substantially increase total benefits, reduce total costs, or both.

There is one other category of change that we recommend even though it calls for more work for the agency than any literal reading of "substantially the same form" would require. The CRA is concerned with rules that reappear in the same "form," but it is also true that the process leading up to the words on the page matters to proponents and opponents of every regulation. The ergonomics rule faced withering criticism for several purported deficiencies in how it was produced.<sup>260</sup> We think the CRA imposes no legal obligation upon OSHA to develop a "substantially different" process the second time around--after all, "form" is essentially perpendicular to "process," and had Congress wanted to force an agency to change how it arrived at an offensive form, it surely could have said "reissued in substantially the same form or via substantially the same process" in § 801(b)(2). Nevertheless, well-founded complaints about flawed process should, we believe, be addressed at the same time an agency is attempting to improve the rule's form in the cost-benefit sense. Although courts have traditionally been very reluctant to rescind rules signed by an agency head who has telegraphed his personal views on the subject at

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<sup>257</sup> See Ergonomics Program, 65 Fed. Reg. 68,262, 68,851 (Nov. 14, 2000) ("Your obligation to provide [work restriction protection] benefits . . . is reduced to the extent that the employee receives compensation for earnings lost during the work restriction period from either a publicly or an employer-funded compensation or insurance program . . .").

<sup>258</sup> See 26 U.S.C. § 9501 (2006) (creating the Black Lung Disability Trust Fund with the purpose of providing benefits to those who were injured from the Black Lung); *id.* § 9510 (forming the Vaccine Injury Compensation Trust Fund for the purpose of providing benefits to those who were injured by certain vaccinations).

<sup>259</sup> See 147 CONG. REC. 2825-26 (2001) (statement of Sen. Enzi).

<sup>260</sup> See *supra* note 228 and accompanying text.

issue,<sup>261</sup> we assume the Obama Administration or a future Executive would be more careful to avoid the appearance of a general bias for regulation as a "thrill" (or, for that matter, against it as a "menace") by the career official leading the regulatory effort.<sup>262</sup> We, however, do not expect OSHA to overreact to ten-year-old complaints about the zeal with which it may have sought to regulate then. Other complaints about the rulemaking process in ergonomics may motivate a "substantially different" process, if OSHA seeks to re-promulgate. For example, Senator Tim Hutchinson accused OSHA of orchestrating a process with "witnesses who were paid, instructed, coached, practiced, to arrive at a preordained outcome,"<sup>263</sup> and although an agency need not confine itself to outside experts who will testify pro bono, we suggest it would be politically unwise for OSHA to edit again the testimony of the experts it enlists. Similarly, a different ergonomics rule that still had the cloud of improper and undisclosed conflict of interest in [\*777] the choice of specific outside contractors to do the bulk of the regulatory impact analysis work<sup>264</sup> would, we believe, fail to comport with the spirit of § 801(b)(2), in that it would have circumvented the instructions of at least some in Congress to "clean up" the process.

On the other hand, we think some objections to the process by which a rule is developed ought more properly to be the subject of judicial review rather than congressional interference. Some members of Congress accused OSHA of not having enough time to read, let alone digest and thoughtfully respond to, the more than 7000 public comments received as late as August 10, 2000, before the final rule was issued barely three months later.<sup>265</sup> Senator Enzi also said that OSHA "took the comments they got, and they opposed everything and incorporated things in this that were worse than in the law that was passed."<sup>266</sup> But although a reviewing court could not punish OSHA per se for crafting a rule with costs exceeding benefits, or for engaging in conduct with expert witnesses that Congress might find unseemly, the courts are empowered and required to judge whether OSHA arbitrarily ignored evidence in the record, or twisted its meaning.<sup>267</sup> The CRA, therefore, should emphasize those substantive--and procedural--concerns for which aggrieved parties have no other remedy.

## VII. RECOMMENDATIONS TO AMEND THE CRA

Congress has voted on just one attempt to amend the CRA in the fourteen years since its passage: the inconsequential Congressional Review Act Improvement Act, which unanimously passed the House in June 2009, and that would have eliminated the requirement that an agency transmit each final rule to each house of Congress, leaving the Comptroller General as the only recipient.<sup>268</sup> Here we suggest several more substantive changes

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<sup>261</sup> See, e.g., *United Steelworkers of Am. v Marshall*, 647 F.2d 1189, 1208 (D.C. Cir. 1980) (finding that the head of OSHA "served her agency poorly by making statements so susceptible to an inference of bias," but also finding that she was not "so biased as to be incapable of finding facts and setting policy on the basis of the objective record before her").

<sup>262</sup> See *supra* note 100.

<sup>263</sup> 147 CONG. REC. 2832 (statement of Sen. Hutchinson).

<sup>264</sup> See Letter from Rep. David M. McIntosh, Chairman, Subcomm. on Nat'l Econ. Growth, to Alexis M. Herman, Sec'y of Labor, U.S. Dep't of Labor (Oct. 30, 2000), available at <http://insidehealthpolicy.com/Inside-OSHA/Inside-OSHA-11/13/2000/mcintosh-letter-to-herman/menu-id-219.html>. McIntosh alleged that the career OSHA official who led the ergonomics rulemaking did (with OSHA's approval) assign task orders to a consulting firm that she had been an owner of before coming to government (and after signing a Conflict of Interest Disqualification requiring her to recuse herself from any such contractual decisions involving her former firm).

<sup>265</sup> See, e.g., 147 CONG. REC. 2823 (statement of Sen. Enzi).

<sup>266</sup> *Id.* at 2821.

<sup>267</sup> See **5 U.S.C. § 706**(2)(A) (2006) (mandating that the reviewing court shall set aside arbitrary and capricious agency actions, findings, and conclusions).

<sup>268</sup> See Congressional Review Act Improvement Act, H.R. 2247, 111th Cong. (2009) (as passed by House of Representatives, June 16, 2009); 155 CONG. REC. H6849 (daily ed. June 16, 2009) (recording the House roll call vote). The Senate did not take

[\*779] Congress should consider to improve the CRA, emphasizing the reissued-rules problem but including broader suggestions as well. We make these suggestions in part to contrast with several of the pending proposals to change the CRA that have been criticized as mischievous and possibly unconstitutional.<sup>269</sup>

**Improvement 1: Codification of the Cost-Benefit-Based Standard.** First, Congress should explicitly clarify within the CRA text the meaning of "substantially the same" along the lines we suggest: any rule with a substantially more favorable balance between benefits and costs should be considered "substantially different" and not vulnerable to a preemptory veto. In the rare cases where a prior congressional mandate to produce a narrowly tailored rule collides head-on with the veto of the rule [\*780] as promulgated, Congress has already admitted that it owes it to the agency to "make the congressional intent clear regarding the agency's options or lack thereof after enactment of a joint resolution of disapproval."<sup>270</sup> But there is currently no legal obligation for Congress to do so. In a hypothetical case where Congress has effectively said, "Promulgate this particular rule," and then vetoed a good-faith attempt to do just that, it seems particularly inappropriate for Congress not to bind itself to resolve the paradox. But we believe it is also inappropriate for Congress to perpetuate the ambiguity of "substantially the same" for the much more common cases in which the agency is not obligated to try again, but for good reasons wishes to.

**Improvement 2A: Severability.** The CRA veto process might also be improved by permitting a resolution of disapproval to strike merely the offending portion(s) of a proposed rule, leaving the rest intact. If, as a clearly hypothetical example, the only thing that Congress disliked about the ergonomics regulation was the additional entitlement to benefits different from those provided by state workers' compensation laws, it could have simply struck that provision. Charles Tiefer has made the interesting observation that one would not want to close military bases this way (but rather craft a take-it-or-leave-it approach for the proposed list as a whole) to avoid horse-trading,<sup>271</sup> but a set of regulatory provisions can be different: it is not zero-sum in the same way. The allowance for severability would pinpoint the offending portion(s) of a proposed regulation and therefore give the agency clearer guidance as to what sort of provisions are and are not approved.

Severability would have the added benefit of lowering the chances of there being a null set of reasons for veto. In other words, a generic joint resolution may be passed and overturn a regulation even though no single substantive reason has majority support in Congress. Suppose, for example, that the FAA proposed an updated comprehensive passenger safety regulation that included two unrelated provisions. First, due to passengers' disobeying the limitations on in-flight use of personal electronic devices and mobile phones, the rule banned possession of personal electronics as carry-on items. Second, in order to ensure the dexterity and mobility of those assisting with an emergency evacuation, the rule increased the minimum age for exit-row seating from fifteen to eighteen. If thirty

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significant action on the bill. See *H.R. 2247: Congressional Review Act Improvement Act*, GOVTRACK.US, <http://www.govtrack.us/congress/bill.xpd?bill=h111-2247> (last visited Nov. 14, 2011).

Various legislators have drafted other bills that have not made it to a vote. Recently, Republican Senator Mike Johanns of Nebraska introduced a bill that would bring administrative "guidance documents" within the purview of the CRA, making them subject to the expedited veto if they meet the same economic impact guidelines that subject rules to congressional scrutiny under the CRA in its current form. See *Closing Regulatory Loopholes Act of 2011*, S. 1530, 112th Cong. (2011) (as referred to committee, Sept. 8, 2011); cf. *supra* note 69 (describing the economic criteria currently used to determine whether a rule is subject to congressional review). Importantly, the bill would make vetoed guidance documents subject to the CRA's "substantially the same" provision. See S. 1530 § 2(b)(1)(B). Supporters of the bill have argued that agencies have used such guidance documents to craft enforceable policies while sidestepping congressional review, while opponents take issue with the potential new costs the bill would impose on agencies. See Stephen Lee, *Agency Guidance Would Be Subject To Congressional Review Under House Bill*, 41 OCCUPATIONAL SAFETY & HEALTH REP. 788, 788-89 (Sept. 15, 2011). At the time this Article went to press, the bill had only been introduced and referred to committee. See *S. 1530: Closing Regulatory Loopholes Act of 2011*, GOVTRACK.US, <http://www.govtrack.us/congress/bill.xpd?bill=s112-1530> (last visited Nov. 14, 2011).

<sup>269</sup> See *supra* note 268.

<sup>270</sup> 142 CONG. REC. 8199 (1996) (joint statement of Sens. Nickles, Reid, and Stevens).

<sup>271</sup> Tiefer, *supra* note 136, at 479 & n.311 (relying on the Supreme Court's reasoning in *Dalton v. Spector*, 511 U.S. 462 (1994)).

senators disliked solely the electronics ban, but thirty different senators disliked only the exit row seating restriction, then under the current law the [\*781] entire regulation is at risk of veto even though a majority of Senators approved of all of the rule's provisions. An ability to strike just the offending portion of a regulation decreases the potential<sup>272</sup> for this sort of null set veto.

**Improvement 2B: Codified Rationale.** On the other hand, some might well consider a scalpel to be a dangerous tool when placed into the hands of Congress. Although Congress may understand what it means to send an agency back to square one with a rule under the current procedure, the availability of a partial veto might lead to overuse of the CRA, turning it into a forum for tinkering with specific words in complicated regulations produced with fidelity to the science and to public comment, perhaps in ways that a court would consider arbitrary and capricious if done by the issuing agency.

Alternatively, Congress could also go much further than the limited resolution template<sup>273</sup> and take on more responsibility by living up to the literal promise embodied in the signing statement. The drafters of the CRA stated: "The authors intend the debate on *any* resolution of disapproval to focus on the law that authorized the rule . . . ." <sup>274</sup> This goal would be served (though admittedly at the expense of some speed) by requiring the joint resolution of disapproval to include a statement of the reason(s) for the veto. That is to say, whenever Congress disapproves of a rule, it should surround what Cohen and Strauss called the "Delphic 'No!'" <sup>275</sup> with some attempt to explain the "why 'No'?" question the agency will rightly be preoccupied with as it regroups or retreats. From the agency's point of view, it is bad enough that Congress can undo in ten hours what it took OSHA ten years to craft, but to do so without a single word of explanation, beyond the ping-pong balls of opposing rhetoric during a floor debate, smacks more of Congress flexing its muscle than truly teaching the agency a lesson. Indeed, it is quite possible that the act of articulating an explanatory statement to be voted on might reveal that there

"That Congress disapproves the rule submitted by the \_\_\_ relating to \_\_\_, and such rule shall have no force or effect"). [\*782] might be fifty or more unhappy Senators, but no majority for any particular view of whether and why the rule should be scrapped.

**Improvement 3: Early Veto.** We hasten to add, however, that this bow to transparency and logic should be a two-way street; we also enthusiastically endorse the proposal Professor Strauss made in 1997 that the CRA should be "amended to provide that an agency adopting the same or 'substantially the same' rule to one that has been disapproved must fully explain in its statement of basis and purpose how any issues ventilated during the initial disapproval process have been met." <sup>276</sup> We would go further, however, and suggest that the overwhelmingly logical time to have the discussion about whether a reissued rule runs afoul of the "substantially the same" provision is when the new rule is *proposed*, not after it is later issued as a final rule. Surely, needless costs will be incurred by the agency and the interested public, needless uncertainty will plague the regulated industries, and other benefits will be needlessly foregone in the bargain, if Congress silently watches a regulatory proposal go through notice and comment that it believes may be invalid on "substantially the same" grounds, only to veto it at

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<sup>272</sup> Admittedly, severability would not entirely eliminate this possibility- the risk would still remain where dueling minorities of legislators opposed the *same* provision but for different reasons. For example, if the Environmental Protection Agency were to propose an ozone standard of 60 parts per billion (ppb), the regulation is at risk of being vetoed if thirty senators think the standard should be 25 ppb while another thirty Senators think it should be 200 ppb.

<sup>273</sup> See 5 U.S.C. § 802 (2006) (requiring that a joint resolution of disapproval read:

<sup>274</sup> 142 CONG. REG. 8199 (1996) (joint statement of Sens. Nickles, Reid, and Stevens) (emphasis added).

<sup>275</sup> Daniel Cohen & Peter L. Strauss, *Congressional Review of Agency Regulations*, 49 ADMIN. L. REV. 95, 105(1997).

<sup>276</sup> *Hearing on CRA*, *supra* note 83, at 135 (statement of Peter L. Strauss, Betts Professor of Law, Columbia University). Assuming that our proposal immediately above was adopted, we would interpret Strauss' amendment as then applying only to issues specifically called out in the list of particulars contained in the expanded text of the actual resolution of disapproval--not necessarily to every issue raised by any individual member of Congress during the floor debate.

the finish line. We suggest that whenever an agency is attempting to reissue a vetoed rule on the grounds that it is not "substantially the same," it should be obligated to transmit the notice of proposed rulemaking (NPRM) to both houses, and then that Congress should have a window of time--we suggest sixty legislative days--to decide whether the proposal should not be allowed to go forward on "substantially the same" grounds, with silence denoting assent. Under this process, failure to halt the NPRM would preclude Congress from raising a "substantially the same" objection at the time of final promulgation, but it would of course not preclude a second veto on any substantive grounds.<sup>277</sup> The [\*783] agency would still be vulnerable to charges that it had found a second way to issue a rule that did more harm than good. With this major improvement in place, a vague prohibition against reissuing a similar rule would at worst cause an agency to waste half of its rulemaking resources in an area.

**Improvement 4: Agency Confrontation.** Currently, the CRA does not afford the agency issuing a rule the opportunity that a defendant would have under the Confrontation Clause<sup>278</sup> to face his accusers about the conduct at issue. Even within the confines of an expedited procedure, and recognizing that the floor of Congress is a place for internecine debate as opposed to a hearing, the CRA could still be amended to allow some limited dialogue between the agency whose work is being undone and the members. Perhaps in conjunction with a requirement that Congress specify the reasons for a resolution of disapproval, the agency should be allowed to enter a response into the official record indicating any concerns about misinterpretation of the rule or the accompanying risk and cost analyses. This could, of course, become somewhat farcical in a case (like the ergonomics standard) where the leadership of the agency had changed hands between the time of promulgation and the time of the vote on the disapproval--presumably, Secretary Chao would have declined the opportunity to defend the previous administration's ergonomics standard on factual grounds. However, each agency's Regulatory Policy Officer could be empowered to craft such a statement.<sup>279</sup>

## CONCLUSION

The CRA can be a helpful hurdle to check excesses and spur more favorable actions from a CBA standpoint, but it makes no sense to foreclose the agency from doing what Congress wants under the guise of the substantial similarity provision. OSHA should not reissue the ergonomics rule in anything like its past form--not because of "substantial similarity," but because it was such a flawed rule in the first place. But a different rule with a more favorable cost-benefit ratio has been needed for decades, and [\*784] "substantial similarity" should not be raised again lightly, especially since at least ten years will have passed and times will have changed.

The history and structure of the CRA, and its role in the larger system of administrative law, indicate that the substantial similarity provision should be interpreted narrowly. More specifically, it seems that if, following disapproval of a rule, the agency changes its provisions enough that it alters the cost-benefit ratio in a significant and favorable way, and at least tries in good faith to fix substantive and procedural flaws, then the new rule should

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<sup>277</sup> Enforcement of a limit on tardy congressional "substantial similarity" vetoes would require additional amendments to the CRA. First, the section governing judicial review would need to be amended so that a court can review and invalidate a CRA veto on the basis that Congress was making an after-the-fact "substantial similarity" objection. Cf. [5 U.S.C. § 805](#) ("No determination, finding, action, or omission under this chapter shall be subject to judicial review."). Second, Congress would need to insert its substantive basis for the veto into the text of the joint resolution, which is currently not allowed (but which we recommend as Improvement 2B above). Absent a textual explanation of the substantive basis for a veto, the ban on a tardy congressional "substantial similarity" veto would be an empty prohibition; members of Congress could vote in favor of a blanket veto without any substantive reason, and courts would likely decline to review the veto under the political question doctrine.

<sup>278</sup> See U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . .").

<sup>279</sup> Note that these officers usually were career appointees, who would therefore generally hold over when administrations changed. See Exec. Order No. 12,866, 3 C.F.R. 638 (1994), *reprinted as amended in* [5 U.S.C. § 601](#) app. at 745 (2006). President Bush issued an executive order that redefined these officers as being political appointees, but President Obama rescinded that order in January 2009, redefining these officials as careerists who might be better able to fulfill this function objectively. See Exec. Order No. 13,497, 3 C.F.R. 218 (2010), *invalidating* Exec. Order No. 13,422, 3 C.F.R. 191 (2007).

not be barred under the CRA. The rule can still be vetoed a second time, but for substantive reasons rather than for a technicality. The framers of the CRA were concerned with federal agencies creating costly regulatory burdens with few benefits, and this consideration arose again in the debates over the OSHA ergonomics rule. The disapproval procedure--with its expedited debates, narrow timeframe, and failure to provide for severability of rule provisions--suggests that the substantial similarity provision is not intended to have broad effects on an agency's power to issue rules under its organic statute, especially in a system in which we generally defer to agencies in interpreting their own delegated authority. Instead, the history and structure of the procedure suggest that the CRA is intended to give agencies a second chance to "get it right." In an ideal world, Congress would monitor major regulations and weigh in at the proposal stage, but sending them back to the drawing board, even though regrettably not until after the eleventh hour, is what the CRA most fundamentally does, and therefore it is fundamentally important that such a drawing board not be destroyed. If one believes, as we do, that well-designed regulations are among "those wise restraints that make us free," then Congress should not preclude wise regulations as it seeks to detect and rework regulations it deems deficient.

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# EXTENSIONS OF REMARKS

PROVIDING FOR CONSIDERATION OF H.R. 3136, CONTRACT WITH AMERICA ADVANCEMENT ACT OF 1996

SPEECH OF

**HON. HENRY J. HYDE**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 28, 1996

Mr. HYDE. Mr. Speaker, I submit for the RECORD a summary of the Small Business Regulatory Enforcement Fairness Act, included in H.R. 3136.

**SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT VIEWS OF THE HOUSE COMMITTEES OF JURISDICTION ON THE CONGRESSIONAL INTENT REGARDING THE "SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT OF 1996"**

I. SUMMARY OF THE LEGISLATION

The Hyde amendment to H.R. 3136 replaced Title III of the Contract with America Advancement Act of 1996 to incorporate a revised version of the Small Business Regulatory Enforcement Fairness Act of 1996 (the "Act"). As enacted, Title III of H.R. 3136 became Title II of Public Law 104-121. This legislation was originally passed by the Senate as S. 942. The Hyde amendment makes a number of changes to the Senate bill to better implement certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations, including judicial review of agency actions under the Regulatory Flexibility Act (RFA). The amendment also provides for expedited procedures for Congress to review agency rules and to enact Resolutions of Disapproval voiding agency rules.

The goal of the legislation is to foster a more cooperative, less threatening regulatory environment among agencies, small businesses and other small entities. The legislation provides a framework to make federal regulators more accountable for their enforcement actions by providing small entities with an opportunity for redress of arbitrary enforcement actions. The centerpiece of the legislation is the RFA which requires a regulatory flexibility analysis of all rules that have a "significant economic impact on a substantial number" of small entities. Under the RFA, this term "small entities" includes small businesses, small non-profit organizations, and small governmental units.

II. SECTION-BY-SECTION ANALYSIS

Section 201

This section entitles the Act the "Small Business Regulatory Enforcement Fairness Act of 1996."

Section 202

This section of the Act sets forth findings as to the need for a strong small business sector, the disproportionate impact of regulations on small businesses, the recommendations of the 1995 White House Conference on Small Business, and the need for judicial review of the Regulatory Flexibility Act.

Section 203

This section of the Act sets forth the purposes of this legislation. These include the

need to address some of the key Federal regulatory recommendations of the 1995 White House Conference on Small Business. The White House Conference produced a consensus that small businesses should be included earlier and more effectively in the regulatory process. The Act seeks to create a more cooperative and less threatening regulatory environment to help small businesses in their compliance efforts. The Act also provides small businesses with legal redress from arbitrary enforcement actions by making Federal regulators accountable for their actions. Additionally, the Act provides for judicial review of the RFA.

Subtitle A—Regulatory Compliance Simplification

Agencies would be required to publish easily understood guides to assist small businesses in complying with regulations and provide them informal, non-binding advice about regulatory compliance. This subtitle creates permissive authority for Small Business Development Centers to offer regulatory compliance information to small businesses and to establish resource centers to disseminate reference materials. Federal agencies are directed to cooperate with states to create guides that fully integrate Federal and state regulatory requirements on small businesses.

Section 211

This section defines certain terms as used in this subtitle. The term "small entity" is currently defined in the RFA (5 U.S.C. 601) to include small business concerns, as defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)) small nonprofit organizations and small governmental jurisdictions. The process of determining whether a given business qualifies as a small business is straightforward, using size standard thresholds established by the SBA based on Standard Industrial Classification codes. The RFA also defines small organization and small governmental jurisdiction (5 U.S.C. 601). Any definition established by an agency for purposes of implementing the RFA would also apply to this Act.

Section 212

This section requires agencies to publish "small entity compliance guides" to assist small entities in complying with regulations which are the subject of a final regulatory flexibility analysis. The bill does not allow judicial review of the guide itself. However, the agency's claim that the guide provides "plain English" assistance would be a matter of public record. In addition, the small business compliance guide would be available as evidence of the reasonableness of any proposed fine on the small entity.

Agencies should endeavor to make these "plain English" guides available to small entities through a coordinated distribution system for regulatory compliance information utilizing means such as the SBA's U.S. Business Advisor, the Small Business Ombudsman at the Environmental Protection Agency, state-run compliance assistance programs established under section 507 of the Clean Air Act, Manufacturing Technology Centers or Small Business Development Centers established under the Small Business Act.

Section 213

This section directs agencies that regulate small entities to answer inquiries of small

entities seeking information on and advice about regulatory compliance. Some agencies already have established successful programs to provide compliance assistance and the amendment intends to encourage these efforts. For example, the IRS, SEC and the Customs Service have an established practice of issuing private letter rulings applying the law to a particular set of facts. This legislation does not require other agencies to establish programs with the same level of formality as found in the current practice of issuing private letter rulings. The use of toll free telephone numbers and other informal means of responding to small entities is encouraged. This legislation does not mandate changes in current programs at the IRS, SEC and Customs Service, but these agencies should consider establishing less formal means of providing small entities with informal guidance in accordance with this section.

This section gives agencies discretion to establish procedures and conditions under which they would provide advice to small entities. There is no requirement that the agency's advice to small entities be binding as to the legal effects of the actions of other entities. Any guidance provided by the agency applying statutory or regulatory provisions to facts supplied by the small entity would be available as relevant evidence of the reasonableness of any subsequently proposed fine on the small entity.

Section 214

This section creates permissive authority for Small Business Development Centers (SBDC) to provide information to small businesses regarding compliance with regulatory requirements. SBDCs would not become the predominant source of regulatory information, but would supplement agency efforts to make such information widely available. This section is not intended to grant an exclusive franchise to SBDC's for providing information on regulatory compliance.

There are small business information and technical assistance programs, both Federal and state, in various forms throughout this country. Some of the manufacturing technology centers and other similar extension programs administered by the National Institute of Standards and Technology are providing environmental compliance assistance in addition to general technology assistance. The small business stationary source technical and environmental compliance assistance programs established under section 507 of the Clean Air Act Amendments of 1990 is also providing compliance assistance to small businesses. This section is designed to add to the currently available resources for small businesses.

Compliance assistance programs can save small businesses money, improve their environmental performance and increase their competitiveness. They can help small businesses learn about cost-saving pollution prevention programs and new environmental technologies. Most importantly, they can help small business owners avoid potentially costly regulatory citations and adjudications. Comments from small business representatives in a variety of fora support the need for expansion of technical information assistance programs.

Section 215

This section directs agencies to cooperate with states to create guides that fully integrate Federal and state requirements on

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in **this typeface** indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

small entities. Separate guides may be created for each state, or states may modify or supplement a guide to Federal requirements. Since different types of small entities are affected by different agency regulations, or are affected in different ways, agencies should consider preparing separate guides for the various sectors of the small business community and other small entities subject to their jurisdiction. Priority in producing these guides should be given to areas of law where rules are complex and where the regulated community tend to be small entities. Agencies may contract with outside providers to produce these guides and, to the extent practicable, agencies should utilize entities with the greatest experience in developing similar guides.

#### Section 216

This section provides that the effective date for this subtitle is 90 days after the date of enactment. The requirement for agencies to publish compliance guides applies to final rules published after the effective date. Agencies have one year from the date of enactment to develop their programs for informal small entity guidance, but these programs should assist small entities with regulatory questions regardless of the date of publication of the regulation at issue.

#### Subtitle B—Regulatory Enforcement Reforms

This subtitle creates a Small Business and Agriculture Regulatory Enforcement Ombudsman at the Small Business Administration to give small businesses a confidential means to comment on and rate the performance of agency enforcement personnel. It also creates Regional Small Business Regulatory Fairness Boards at the Small Business Administration to coordinate with the Ombudsman and to provide small businesses a greater opportunity to come together on a regional basis to assess the enforcement activities of the various Federal regulatory agencies.

This subtitle directs all Federal agencies that regulate small entities to develop policies or programs providing for waivers or reductions of civil penalties for violations by small entities, under appropriate circumstances.

#### Section 221

This section provides definitions for the terms as used in the subtitle. [See discussion set forth under "Section 211" above.]

#### Section 222

The Act creates a Small Business and Agriculture Regulatory Enforcement Ombudsman at the SBA to give small businesses a confidential means to comment on Federal regulatory agency enforcement activities. This might include providing toll-free telephone numbers, computer access points, or mail-in forms allowing businesses to comment on the enforcement activities of inspectors, auditors and other enforcement personnel. As used in this section of the bill, the term "audit" is not intended to refer to audits conducted by Inspectors General. This Ombudsman would not replace or diminish any similar ombudsman programs in other agencies.

Concerns have arisen in the Inspector General community that this Ombudsman might have new enforcement powers that would conflict with those currently held by the Inspectors General. Nothing in the Act is intended to supersede or conflict with the provisions of the Inspector General Act of 1978, as amended, or to otherwise restrict or interfere with the activities of any Office of the Inspector General.

The Ombudsman will compile the comments of small businesses and provide an annual evaluation similar to a "customer satis-

faction" rating for different agencies, regions, or offices. The goal of this rating system is to see whether agencies and their personnel are in fact treating small businesses more like customers than potential criminals. Agencies will be provided an opportunity to comment on the Ombudsman's draft report, as is currently the practice with reports by the General Accounting Office. The final report may include a section in which an agency can address any concerns that the Ombudsman does not choose to address.

The Act states that the Ombudsman shall "work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel." The SBA shall publicize the existence of the Ombudsman generally to the small business community and also work cooperatively with enforcement agencies to make small businesses aware of the program at the time of agency enforcement activity. The Ombudsman shall report annually to Congress based on substantiated comments received from small business concerns and the Boards, evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each regulatory agency. The report to Congress shall in part be based on the findings and recommendation of the Boards as reported by the Ombudsman to affected agencies. While this language allows for comment on the enforcement activities of agency personnel in order to identify potential abuses of the regulatory process, it does not provide a mandate for the boards and the Ombudsman to create a public performance rating of individual agency employees.

The goal of this section is to reduce the instances of excessive and abusive enforcement actions. Those actions clearly originate in the acts of individual enforcement personnel. Sometimes the problem is with the policies of an agency, and the goal of this section is also to change the culture and policies of Federal regulatory agencies. At other times, the problem is not agency policy, but individuals who violate the agency's enforcement policy. To address this issue, the legislation includes a provision to allow the Ombudsman, where appropriate, to refer serious problems with individuals to the agency's Inspector General for proper action.

The intent of the Act is to give small businesses a voice in evaluating the overall performances of agencies and agency offices in their dealings with the small business community. The purpose of the Ombudsman's reports is not to rate individual agency personnel, but to assess each program's or agency's performance as a whole. The Ombudsman's report to Congress should not single out individual agency employees by name or assign an individual evaluation or rating that might interfere with agency management and personnel policies.

The Act also creates Regional Small Business Regulatory Fairness Boards at the SBA to coordinate with the Ombudsman and to provide small businesses a greater opportunity to track and comment on agency enforcement policies and practices. These boards provide an opportunity for representatives of small businesses to come together on a regional basis to assess the enforcement activities of the various federal regulatory agencies. The boards may meet to collect information about these activities, and report and make recommendations to the Ombuds-

man about the impact of agency enforcement policies or practices on small businesses. The boards will consist of owners, operators or officers of small entities who are appointed by the Administrator of the Small Business Administration. Prior to appointing any board members, the Administrator must consult with the leadership of the House and Senate Small Business Committees. There is nothing in the bill that would exempt the boards from the Federal Advisory Committee Act, which would apply according to its terms. The Boards may accept donations of services such as the use of a regional SBA office for conducting their meetings.

#### Section 223

The Act directs all federal agencies that regulate small entities to develop policies or programs providing for waivers or reductions of civil penalties for violations by small entities in certain circumstances. This section builds on the current Executive Order on small business enforcement practices and is intended to allow agencies flexibility to tailor their specific programs to their missions and charters. Agencies should also consider the ability of a small entity to pay in determining penalty assessments under appropriate circumstances. Each agency would have discretion to condition and limit the policy or program on appropriate conditions. For purposes of illustration, these could include requiring the small entity to act in good faith, requiring that violations be discovered through participation in agency supported compliance assistance programs, or requiring that violations be corrected within a reasonable time.

An agency's policy or program could also provide for suitable exclusions. Again, for purposes of illustration, these could include circumstances where the small entity has been subject to multiple enforcement actions, the violation involves criminal conduct, or poses a grave threat to worker safety, public health, safety or the environment.

In establishing their programs, it is up to each agency to develop the boundaries of their program and the specific circumstances for providing for a waiver or reduction of penalties; but once established, an agency must implement its program in an even-handed fashion. Agencies may distinguish among types of small entities and among classes of civil penalties. Some agencies have already established formal or informal policies or programs that would meet the requirements of this section. For example, the Environmental Protection Agency has adopted a small business enforcement policy that satisfies this section. While this legislation sets out a general requirement to establish penalty waiver and reduction programs, some agencies may be subject to other statutory requirements or limitations applicable to the agency or to a particular program. For example, this section is not intended to override, amend or affect provisions of the Occupational Safety and Health Act or the Mine Safety and Health Act that may impose specific limitations on the operation of penalty reduction or waiver programs.

#### Section 224

This section provides that this subtitle takes effect 90 days after the date of enactment.

#### Subtitle C—Equal Access to Justice Act Amendments

The Equal Access to Justice Act (EAJA) provides a means for prevailing parties to recover their attorneys fees in a wide variety of civil and administrative actions between eligible parties and the government. This Act amends EAJA to create a new avenue for parties to recover a portion of their attorneys fees and costs where the government

makes excessive demands in enforcing compliance with a statutory or regulatory requirement, either in an adversary adjudication or judicial review of the agency's enforcement action, or in a civil enforcement action. While this is a significant change from current law, the legislation is not intended to result in the awarding of attorneys fees as a matter of course. Rather, the legislation is intended to assist in changing the culture among government regulators to increase the reasonableness and fairness of their enforcement practices. Past agency practice too often has been to treat small businesses like suspects. One goal of this bill is to encourage government regulatory agencies to treat small businesses as partners sharing in a common goal of informed regulatory compliance. Government enforcement attorneys often take the position that they must zealously advocate for their client, in this case a regulatory agency, to the maximum extent permitted by law, as if they were representing an individual or other private party. But in the new regulatory climate for small businesses under this legislation, government attorneys with the advantages and resources of the federal government behind them in dealing with small entities must adjust their actions accordingly and not routinely issue original penalties or other demands at the high end of the scale merely as a way of pressuring small entities to agree to quick settlements.

Sections 231 and 232

H.R. 3136 will allow parties which do not prevail in a case involving the government to nevertheless recover a portion of their fees and cost in certain circumstances. The test for recovering attorneys fees is whether the agency or government demand that led to the administrative or civil action is substantially in excess of the final outcome of the case and is unreasonable when compared to the final outcome (whether a fine, injunctive relief or damages) under the facts and circumstances of the case.

For purposes of this Act, the term "party" is amended to include a "small entity" as that term is defined in section 601(6) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This will ensure consistency of coverage between the provisions of this subtitle and those of the Small Business Act (15 U.S.C. 632 (a)). This broadening of the term "party" is intended solely for purposes of the amendments to the EAJA effected under this subtitle. Other portions of the EAJA will continue to be governed by the definition of "party" as appears in current law.

The comparison called for in the Act is always between a "demand" by the government for injunctive and monetary relief taken as a whole and the final outcome of the case in terms of injunctive and monetary relief taken as a whole. As used in these amendments, the term "demand" means an express written demand that leads directly to an adversary adjudication or civil action. Thus, the "demand" at issue would be the government's demand that was pending upon commencement of the adjudication or action. A written demand by the government for performance or payment qualifies under this section regardless of form; it would include, but not be limited to, a fine, penalty notice, demand letter or citation. In the case of an adversary adjudication, the demand would often be a statement of the "Definitive Penalty Amount." In the case of a civil action brought by the United States, the demand could be in the form of a demand for settlement issued prior to commencement of the litigation. In a civil action to review the determination of an administrative proceeding, the demand could be the demand that led to such proceeding. However, the term

"demand" should not be read to extend to a mere recitation of facts and law in a complaint. The bill's definition of the term "demand" expressly excludes a recitation of the maximum statutory penalty in the complaint or elsewhere when accompanied by an express demand for a lesser amount. This definition is not intended to suggest that a statement of the maximum statutory penalty somewhere other than the complaint, which is not accompanied by an express demand for a lesser amount, is per se a demand, but would depend on the circumstances.

This test should not be a simple mathematical comparison. The Committee intends for it to be applied in such a way that it identifies and corrects situations where the agency's demand is so far in excess of the true value of the case, as compared to the final outcome, and where it appears the agency's assessment or enforcement action did not represent a reasonable effort to match the penalty to the actual facts and circumstances of the case.

In addition, the bill excludes awards in connection with willful violations, bad faith actions and in special circumstances that would make such an award unjust. These additional factors are intended to provide a "safety valve" to ensure that the government is not unduly deterred from advancing its case in good faith. Whether a violation is "willful" should be determined in accordance with existing judicial construction of the subject matter to which the case relates. Special circumstances are intended to include both legal and factual considerations which may make it unjust to require the public to pay attorneys fees and costs, even in situations where the ultimate award is significantly less than the amount demanded. Special circumstances could include instances where the party seeking fees engaged in a flagrant violation of the law, endangered the lives of others, or engaged in some other type of conduct that would make the award of the fees unjust. The actions covered by "bad faith" include the conduct of the party seeking fees both at the time of the underlying violation, and during the enforcement action. For example, if the party seeking fees attempted to elude government officials, cover up its conduct, or otherwise impede the government's law enforcement activities, then attorneys' fees and costs should not be awarded.

The Committee does not intend by this provision to compensate a party for fees and costs which it would have been expended even had the government demand been reasonable under the circumstances. The amount of the award which a party may recover under this section is limited to the proportion of attorneys' fees and costs attributable to the excessive demand. Thus, for example, if the ultimate decision of the administrative law judge or the judgment of the court is twenty percent of the relevant government demand, the defendant might be entitled to eighty percent of fees and costs. The ultimate determination of the amount of fees and costs to be awarded is to be made by the administrative law judge or the court, based on the facts and circumstances of each case.

The Act also increases the maximum hourly rate for attorneys fees under the EAJA from \$75 to \$125. Agencies could avoid the possibility of paying attorneys fees by settling with the small entity prior to final judgement. The Committee anticipates that if a settlement is reached, all further claims of either party, including claims for attorneys fees, could be included as part of the settlement. The government may obtain a release specifically including attorneys fees under EAJA.

Additional language is included in the Act to ensure that the legislation did not violate of the PAYGO requirements of the Budget Act. This language requires agencies to satisfy any award of attorneys fees or expenses arising from an agency enforcement action from their discretionary appropriated funds, but does not require that an agency seek or obtain an individual line item or earmarked appropriation for these amounts.

Section 233

The new provisions of the EAJA apply to civil actions and adversary adjudications commenced on or after the date of enactment.

#### Subtitle D—Regulatory Flexibility Act Amendments

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) was first enacted in 1980. Under its terms, federal agencies are directed to consider the special needs and concerns of small entities—small businesses, small local governments, farmers, etc.—whenever they engage in a rulemaking subject to the Administrative Procedure Act. The agencies must then prepare and publish a regulatory flexibility analysis of the impact of the proposed rule on small entities, unless the head of the agency certifies that the proposed rule will not "have a significant economic impact on a substantial number of small entities."

Under current law, there is no provision for judicial review of agency action under the RFA. This makes the agencies completely unaccountable for their failure to comply with its requirements. This current prohibition on judicial enforcement of the RFA is contrary to the general principle of administrative law, and it has long been criticized by small business owners. Many small business owners believe that agencies have given lip service at best to the RFA, and small entities have been denied legal recourse to enforce the Act's requirements. Subtitle D gives teeth to the RFA by specifically providing for judicial review of selected sections.

Section 241

H.R. 3136 expands the coverage of the RFA to include Internal Revenue Service interpretative rules that provide for a "collection of information" from small entities. Many IRS rulemakings involve "interpretative rules" that IRS contends need not be promulgated pursuant to section 553 of the Administrative Procedures Act. However, these interpretative rules may have significant economic effects on small entities and should be covered by the RFA. The amendment applies to those IRS interpretative rulemakings that are published in the Federal Register for notice and comment and that will be codified in the Code of Federal Regulations. This limitation is intended to exclude from the RFA other, less formal IRS publications such as revenue rulings, revenue procedures, announcements, publications or private letter rulings.

The requirement that IRS interpretative rules comply with the RFA is further limited to those involving a "collection of information." The term "collection of information" is defined in the Act to include the obtaining, causing to be obtained, soliciting of facts or opinions by an agency through a variety of means that would include the use of written report forms, schedules, or reporting or other record keeping requirements. It would also include any requirements that require the disclosure to third parties of any information. The intent of this phrase "collection of information" in the context of the RFA is to include all IRS interpretative rules of general applicability that lead to or result in small entities keeping records, filing reports or otherwise providing information to IRS or third parties.

While the term "collection of information" also is used in the Paperwork Reduction Act (44 U.S.C. 3502(4)) ("PRA"), the purpose of the term in the context of the RFA is different than the purpose of the term in the PRA. Thus, while some courts have interpreted the PRA to exempt from its requirements certain recordkeeping requirements that are explicitly required by statute, such an interpretation would be inappropriate in the context of the RFA. If a collection of information is explicitly required by a regulation that will ultimately be codified in the Code of Federal Regulations ("CFR"), the effect might be to limit the possible regulatory alternatives available to the IRS in the proposed rulemaking, but would not exempt the IRS from conducting a regulatory flexibility analysis.

Some IRS interpretative rules merely reiterate or restate the statutorily required tax liability. While a small entity's tax liability may be a burden, the RFA cannot act to supersede the statutorily required tax rate. However, most IRS interpretative rules involve some aspect of defining or establishing requirements for compliance with the CFR, or otherwise require small entities to maintain records to comply with the CFR now covered by the RFA. One of the primary purposes of the RFA is to reduce the compliance burdens on small entities whenever possible under the statute. To accomplish this purpose, the IRS should take an expansive approach in interpreting the phrase "collection of information" when considering whether to conduct a regulatory flexibility analysis.

The courts generally are given broad discretion to formulate appropriate remedies under the facts and circumstances of each individual case. The rights of judicial review and remedial authority of the courts provided in the Act as to IRS interpretative rules should be applied in a manner consistent with the purposes of the Anti-Injunction Act (26 U.S.C. 7421), which may limit remedies available in particular circumstances. The RFA, as amended by the Act, permits the court to remand a rule to an Agency for further consideration of the rule's impact on small entities. The amendment also directs the court to consider the public interest in determining whether or not to delay enforcement of a rule against small entities pending agency compliance with the court's findings. The filing of an action requesting judicial review pursuant to this section does not automatically stay the implementation of the rule. Rather, the court has discretion in determining whether enforcement of the rule shall be deferred as it relates to small entities. In the context of IRS interpretative rulemakings, this language should be read to require the court to give appropriate deference to the legitimate public interest in the assessment and collection of taxes reflected by the Anti-Injunction Act. The court should not exercise its discretion more broadly than necessary under the circumstances or in a way that might encourage excessive litigation.

If an agency is required to publish an initial regulatory flexibility analysis, the agency also must publish a final regulatory flexibility analysis. In the final regulatory flexibility analysis, agencies will be required to describe the impacts of the rule on small entities and to specify the actions taken by the agency to modify the proposed rule to minimize the regulatory impact on small entities. Nothing in the bill directs the agency to choose a regulatory alternative that is not authorized by the statute granting regulatory authority. The goal of the final regulatory flexibility analysis is to demonstrate how the agency has minimized the impact on small entities consistent with the underlying statute and other applicable legal requirements.

#### Section 242

H.R. 3136 removes the current prohibition on judicial review of agency compliance with certain sections of the RFA. It allows adversely affected small entities to seek judicial review of agency compliance with the RFA within one year after final agency action, except where a provision of law requires a shorter period for challenging a final agency action. The amendment is not intended to encourage or allow spurious lawsuits which might hinder important governmental functions. The Act does not subject all regulations issued since the enactment of the RFA to judicial review. The one-year limitation on seeking judicial review ensures that this legislation will not permit indefinite, retroactive application of judicial review.

For rules promulgated after the effective date, judicial review will be available pursuant to this Act. The procedures and standards for review to be used are those set forth in the Administrative Procedure Act at Chapter 7 of Title 5. If the court finds that a final agency action was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law, the court may set aside the rule or order the agency to take other corrective action. The court may also decide that the failure to comply with the RFA warrants remanding the rule to the agency or delaying the application of the rule to small entities pending completion of the court ordered corrective action. However, in some circumstances, the court may find that there is good cause to allow the rule to be enforced and to remain in effect pending the corrective action.

Judicial review of the RFA is limited to agency compliance with the requirements of sections 601, 604, 605(b), 608(b) and 610. Review under these sections is not limited to the agency's compliance with the procedural aspects of the RFA; final agency action under these sections will be subject to the normal judicial review standards of Chapter 7 of Title 5. While the Committees determined that agency compliance with sections 607 and 609(a) of the RFA is important, it did not believe that a party should be entitled to judicial review of agency compliance with those sections in the absence of a judicable claim for review of agency compliance with section 604. Therefore, under the Act, an agency's failure to comply with sections 607 or 609(a) may be reviewed only in conjunction with a challenge under section 604 of the RFA.

#### Section 243

Section 243 of the Act alters the content of the statement which an agency must publish when making a certification under section 605 of the RFA that a regulation will not impose a significant economic impact on a substantial number of small entities. Current law requires only that the agency publish a "succinct statement explaining the reasons for such certification." The Committee believes that more specific justification for its determination should be provided by the agency. Under the amendment, the agency must state its factual basis for the certification. This will provide a record upon which a court may review the agency's determination in accordance with the judicial review provisions of the Administrative Procedure Act.

#### Section 244

H.R. 3136 amends the existing requirements of section 609 of the RFA for small business participation in the rulemaking process by incorporating a modified version of S. 917, the Small Business Advocacy Act, which was introduced by Senator Domenici, to provide early input from small businesses into the

regulatory process. For proposed rules with a significant economic impact on a substantial number of small entities, EPA and OSHA would have to collect advice and recommendations from small businesses to better inform the agency's regulatory flexibility analysis on the potential impacts of the rule. The House version drops the provision of the Senate bill that would have required the panels to reconvene prior to publication of the final rule.

The agency promulgating the rule would consult with the SBA's Chief Counsel for Advocacy to identify individuals who are representative of affected small businesses. The agency would designate a senior level official to be responsible for implementing this section and chairing an interagency review panel for the rule. Before the publication of an initial regulatory flexibility analysis for a proposed EPA or OSHA rule, the SBA's Chief Counsel for Advocacy will gather information from individual representatives of small businesses and other small entities, such as small local governments, about the potential impacts of that proposed rule. This information will then be reviewed by a panel composed of members from EPA or OSHA, OIRA, and the Chief Counsel for Advocacy. The panel will then issue a report on those individuals' comments, which will become part of the rulemaking record. The review panel's report and related rulemaking information will be placed in the rulemaking record in a timely fashion so that others who are interested in the proposed rule may have an opportunity to review that information and submit their own responses for the record before the close of the agency's public comment period for the proposed rule. The legislation includes limits on the period during which the review panel conducts its review. It also creates a limited process allowing the Chief Counsel for Advocacy to waive certain requirements of the section after consultation with the Office of Information and Regulatory Affairs and small businesses.

Section 245

This section provides that the effective date of subtitle D is 90 days after enactment. Proposed rules published after the effective date must be accompanied by an initial regulatory flexibility analysis or a certification under section 605 of the RFA. Final rules published after the effective date must be accompanied by a final regulatory flexibility analysis or a certification under section 605 of the RFA, regardless of when the rule was first proposed. Thus judicial review shall apply to any final regulation published after the effective date regardless of when the rule was proposed. However, IRS interpretative rules proposed prior to enactment will not be subject to the amendments made in this subchapter expanding the scope of the RFA to include IRS interpretative rules. Thus, the IRS could finalize previously proposed interpretative rules according to the terms of currently applicable law, regardless of when the final interpretative rule is published.

Subtitle E—Congressional review subtitle

Subtitle E adds a new chapter to the Administrative Procedure Act (APA), "Congressional Review of Agency Rulemaking," which is codified in the United States Code as chapter 8 of title 5. The congressional review chapter creates a special mechanism for Congress to review new rules issued by federal agencies (including modification, repeal, or reissuance of existing rules). During the review period, Congress may use expedited procedures to enact joint resolutions of disapproval to overrule the federal rulemaking actions. In the 104th Congress, four slightly different versions of this legislation passed the Senate and two different versions passed the House. Yet, no formal legislative history

document was prepared to explain the legislation or the reasons for changes in the final language negotiated between the House and Senate. This joint statement of the committees of jurisdiction on the congressional review subtitle is intended to cure this deficiency.

#### Background

As the number and complexity of federal statutory programs has increased over the last fifty years, Congress has come to depend more and more upon Executive Branch agencies to fill out the details of the programs it enacts. As complex as some statutory schemes passed by Congress are, the implementing regulation is often more complex by several orders of magnitude. As more and more of Congress' legislative functions have been delegated to federal regulatory agencies, many have complained that Congress has effectively abdicated its constitutional role as the national legislature in allowing federal agencies so much latitude in implementing and interpreting congressional enactments.

In many cases, this criticism is well founded. Our constitutional scheme creates a delicate balance between the appropriate roles of the Congress in enacting laws, and the Executive Branch in implementing those laws. This legislation will help to redress the balance, reclaiming for Congress some of its policymaking authority, without at the same time requiring Congress to become a super regulatory agency.

This legislation establishes a government-wide congressional review mechanism for most new rules. This allows Congress the opportunity to review a rule before it takes effect and to disapprove any rule to which Congress objects. Congress may find a rule to be too burdensome, excessive, inappropriate or duplicative. Subtitle E uses the mechanism of a joint resolution of disapproval which requires passage by both houses of Congress and the President (or veto by the President and a two-thirds' override by Congress) to be effective. In other words, enactment of a joint resolution of disapproval is the same as enactment of a law.

Congress has considered various proposals for reviewing rules before they take effect for almost twenty years. Use of a simple (one-house), concurrent (two-house), or joint (two houses plus the President) resolution are among the options that have been debated and in some cases previously implemented on a limited basis. In *INS v. Chadha*, 462 U.S. 919 (1983), the Supreme Court struck down as unconstitutional any procedure where executive action could be overturned by less than the full process required under the Constitution to make laws—that is, approval by both houses of Congress and presentment to the President. That narrowed Congress' options to use a joint resolution of disapproval. The one-house or two-house legislative veto (as procedures involving simple and concurrent resolutions were previously called), was thus voided.

Because Congress often is unable to anticipate the numerous situations to which the laws it passes must apply, Executive Branch agencies sometimes develop regulatory schemes at odds with congressional expectations. Moreover, during the time lapse between passage of legislation and its implementation, the nature of the problem addressed, and its proper solution, can change. Rules can be surprisingly different from the expectations of Congress or the public. Congressional review gives the public the opportunity to call the attention of politically accountable, elected officials to concerns about new agency rules. If these concerns are sufficiently serious, Congress can stop the rule.

Brief procedural history of congressional review chapter

In the 104th Congress, the congressional review legislation originated as S. 348, the "Regulatory Oversight Act," which was introduced on February 2, 1995. The text of S. 348 was offered by its sponsors, Senators Don Nickles and Harry Reid, as a substitute amendment to S. 219, the "Regulatory Transition Act of 1995." As amended, S. 219 provided for a 45-day delay on the effectiveness of a major rule, and provided expedited procedures that Congress could use to pass resolutions disapproving of the rule. On March 29, 1995, the Senate passed the amended version of S. 219 by a vote of 100-0. The Senate later substituted the text of S. 219 for the text of H.R. 450, the House passed "Regulatory Transition Act of 1995." Although the House did not agree to a conference on H.R. 450 and S. 219, both Houses continued to incorporate the congressional review provisions in other legislative packages. On May 25, the Senate Governmental Affairs Committee reported out S. 343, the "Comprehensive Regulatory Reform Act of 1995," and S. 291, the "Regulatory Reform Act of 1995," both with congressional review provisions. On May 26, 1995, the Senate Judiciary Committee reported out a different version of S. 343, the "Comprehensive Regulatory Reform Act of 1995," which also included a congressional review provision. The congressional review provision in S. 343 that was debated by the Senate was quite similar to S. 219, except that the delay period in the effectiveness of a major rule was extended to 60 days and the legislation did not apply to rules issued prior to enactment. A filibuster of S. 343, unrelated to the congressional review provisions, led to the withdrawal of that bill.

The House next took up the congressional review legislation by attaching a version of it (as section 3006) to H.R. 2586, the first debt limit extension bill. The House made several changes in the legislation that was attached to H.R. 2586, including a provision that would allow the expedited procedures also to apply to resolutions disapproving of proposed rules, and provisions that would have extended the 60-day delay on the effectiveness of a major rule for any period when the House or Senate was in recess for more than three days. On November 9, 1995 both the House and Senate passed this version of the congressional review legislation as part of the first debt limit extension bill. President Clinton vetoed the bill a few days later, for reasons unrelated to the congressional review provision.

On February 29, 1996, a House version of the congressional review legislation was published in the Congressional Record as title III of H.R. 994, which was scheduled to be brought to the House floor in the coming weeks. The congressional review title was almost identical to the legislation approved by both Houses in H.R. 2586. On March 19, 1996, the Senate adopted a congressional review amendment by voice vote to S. 942, which bill passed the Senate 100-0. The congressional review legislation in S. 942 was similar to the original version of S. 219 that passed the Senate on March 29, 1995.

Soon after passage of S. 942, representatives of the relevant House and Senate committees and principal sponsors of the congressional review legislation met to craft a congressional review subtitle that was acceptable to both Houses and would be added to the debt limit bill that was scheduled to be taken up in Congress the week of March 24. The final compromise language was the result of these joint discussions and negotiations.

On March 28, 1996, the House and Senate passed title III, the "Small Business Regu-

latory Enforcement Fairness Act of 1996," as part of the second debt limit bill, H.R. 3136. There was no separate vote in either body on the congressional review subtitle or on title III of H.R. 3136. However, title III received broad support in the House and the entire bill passed in the Senate by unanimous consent. The President signed H.R. 3136 into law on March 29, 1996, exactly one year after the first congressional review bill passed the Senate.

#### Submission of rules to Congress and to GAO

Pursuant to subsection 801(a)(1)(A), a federal agency promulgating a rule must submit a copy of the rule and a brief report about it to each House of Congress and to the Comptroller General before the rule can take effect. In addition to a copy of the rule, the report shall contain a concise general statement relating to the rule, including whether it is a major rule under the chapter, and the proposed effective date of the rule. Because most rules covered by the chapter must be published in the Federal Register before they can take effect, it is not expected that the submission of the rule and the report to Congress and the Comptroller General will lead to any additional delay.

Section 808 provides the only exception to the requirement that rules must be submitted to each House of Congress and the Comptroller General before they can take effect. Subsection 808(1) excepts specified rules relating to commercial, recreational, or subsistence hunting, fishing, and camping. Subsection 808(2) excepts certain rules that are not subject to notice-and-comment procedures. It provides that if the relevant agency finds "for good cause ... that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, [such rules] shall take effect at such time as the Federal agency promulgating the rule determines." Although rules described in section 808 shall take effect when the relevant Federal agency determines pursuant to other provisions of law, the federal agency still must submit such rules and the accompanying report to each House of Congress and to the Comptroller General as soon as practicable after promulgation. Thus, rules described in section 808 are subject to congressional review and the expedited procedures governing joint resolutions of disapproval. Moreover, the congressional review period will not begin to run until such rules and the accompanying reports are submitted to each House of Congress and the Comptroller General.

In accordance with current House and Senate rules, covered agency rules and the accompanying report must be separately addressed and transmitted to the Speaker of the House (the Capitol, Room H-209), the President of the Senate (the Capitol, Room S-212), and the Comptroller General (GAO Building, 441 G Street, N.W., Room 1139). Except for rules described in section 808, any covered rule not submitted to Congress and the Comptroller General will remain ineffective until it is submitted pursuant to subsection 801(a)(1)(A). In almost all cases, there will be sufficient time for an agency to submit notice-and-comment rules or other rules that must be published to these legislative officers during normal office hours. There may be a rare instance, however, when a federal agency must issue an emergency rule that is effective upon actual notice and does not meet one of the section 808 exceptions. In such a rare case, the federal agency may provide contemporaneous notice to the Speaker of the House, the President of the Senate, and the Comptroller General. These legislative officers have accommodated the receipt of similar, emergency communications in the past and will utilize the same means to

receive emergency rules and reports during non-business hours. If no other means of delivery is possible, delivery of the rule and related report by telefax to the Speaker of the House, the President of the Senate, and the Comptroller General shall satisfy the requirements of subsection 801(a)(1)(A).

Additional delay in the effectiveness of major rules

Subsection 553(d) of the APA requires publication or service of most substantive rules at least 30 days prior to their effective date. Pursuant to subsection 801(a)(3)(A), a major rule (as defined in subsection 804(2)) shall not take effect until at least 60 calendar days after the later of the date on which the rule and accompanying information is submitted to Congress or the date on which the rule is published in the Federal Register, if it is so published. If the Congress passes a joint resolution of disapproval and the President vetoes such resolution, the delay in the effectiveness of a major rule is extended by subsection 801(a)(3)(B) until the earlier date on which either House of Congress votes and fails to override the veto or 30 session days<sup>1</sup> after the date on which the Congress receives the veto and objections from the President. By necessary implication, if the Congress passes a joint resolution of disapproval within the 60 calendar days provided in subsection 801(a)(3)(A), the delay period in the effectiveness of a major rule must be extended at least until the President acts on the joint resolution or until the time expires for the President to act. Any other result would be inconsistent with subsection 801(a)(3)(B), which extends the delay in the effectiveness of a major rule for a period of time after the President vetoes a resolution.

Of course, if Congress fails to pass a joint resolution of disapproval within the 60-day period provided by subsection 801(a)(3)(A), subsection 801(a)(3)(B) would not apply and would not further delay the effective date of the rule. Moreover, pursuant to subsection 801(a)(5), the effective date of a rule shall not be delayed by this chapter beyond the date on which either house of Congress votes to reject a joint resolution of disapproval.

Although it is not expressly provided in the congressional review chapter, it is the committees' intent that a rule may take effect if an adjournment of Congress prevents the President from returning his veto and objections within the meaning of the Constitution. Such will be the case if the President does not act on a joint resolution within 10 days (Sundays excepted) after it is presented to him, and "the Congress by their Adjournment prevent its Return" within the meaning of Article I, §7, cl. 2, or when the President affirmatively vetoes a resolution during such an adjournment. This is the logical result because Congress cannot act to override these vetoes. Congress would have to begin anew, pass a second resolution, and present it to the President in order for it to become law. It is also the committees' intent that a rule may take effect immediately if the President returns a veto and his objections to Congress but Congress adjourns its last session sine die before the expiration of time provided in subsection 801(a)(3)(B). Like the situations described immediately above, no subsequent Congress can act further on the veto, and the next Congress would have to begin anew, pass a second resolution of

disapproval, and present it to the President in order for it to become law.

Purpose of and exceptions to the delay of major rules

The reason for the delay in the effectiveness of a major rule beyond that provided in APA subsection 553(d) is to try to provide Congress with an opportunity to act on resolutions of disapproval before regulated parties must invest the significant resources necessary to comply with a major rule. Congress may continue to use the expedited procedures to pass resolutions of disapproval for a period of time after a major rule takes effect, but it would be preferable for Congress to act during the delay period so that fewer resources would be wasted. To increase the likelihood that Congress would act before a major rule took effect, the committees agreed on an approximately 60-day delay period in the effective date of a major rule, rather than an approximately 45-day delay period in some earlier versions of the legislation.

There are four exceptions to the required delay in the effectiveness of a major rule in the congressional review chapter. The first is in subsection 801(c), which provides that a major rule is not subject to the delay period of subsection 801(a)(3) if the President determines in an executive order that one of four specified situations exist and notifies Congress of his determination. The second is in subsection 808(1), which excepts specified rules relating to commercial, recreational, or subsistence hunting, fishing, and camping from the initial delay specified in subsection 801(a)(1)(A) and from the delay in the effective date of a major rule provided in subsection 801(a)(3). The third is in subsection 808(2), which excepts certain rules from the initial delay specified in subsection 801(a)(1)(A) and from the delay in the effective date of a major rule provided in subsection 801(a)(3) if the relevant agency finds "for good cause . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." This "good cause" exception in subsection 808(2) is taken from the APA and applies only to rules which are exempt from notice and comment under subsection 553(b)(B) or an analogous statute. The fourth exception is in subsection 804(2). Any rule promulgated under the Telecommunications Act of 1996 or any amendments made by that Act that otherwise could be classified as a "major rule" is exempt from that definition and from the 60-day delay in section 801(a)(3). However, such an issuance still would fall within the definition of "rule" and would be subject to the requirements of the legislation for non-major rules. A determination under subsection 801(c), subsection 804(2), or section 808 shall have no effect on the procedures to enact joint resolutions of disapproval.

A court may not stay or suspend the effectiveness of a rule beyond the period specified in section 801 simply because a resolution of disapproval is pending in Congress

The committees discussed the relationship between the period of time that a major rule is delayed and the period of time during which Congress could use the expedited procedures in section 802 to pass a resolution of disapproval. Although it would be best for Congress to act pursuant to this chapter before a major rule goes into effect, it was recognized that Congress could not often act immediately after a rule was issued because it may be issued during a recesses of Congress, shortly before such recesses, or during other periods when Congress cannot devote the time to complete prompt legislative action. Accordingly, the committees determined that the proper public policy was to give Congress an adequate opportunity to de-

liberate and act on joint resolutions of disapproval, while ensuring that major rules could go into effect without unreasonable delay. In short, the committees decided that major rules could take effect after an approximate 60-day delay, but the period governing the expedited procedures in section 802 for review of joint resolution of disapproval would extend for a period of time beyond that.

Accordingly, courts may not stay or suspend the effectiveness of any rule beyond the periods specified in section 801 simply because a joint resolution is pending before Congress. Such action would be contrary to the many express provisions governing when different types of rules may take effect. Such court action also would be contrary to the committees' intent because it would upset an important compromise on how long a delay there should be on the effectiveness of a major rule. The final delay period was selected as a compromise between the period specified in the version that passed the Senate on March 19, 1995 and the version that passed both Houses on November 9, 1995. It is also the committees' belief that such court action would be inconsistent with the principles of (and potentially violate) the Constitution, art. I, §7, cl. 2, in that courts may not give legal effect to legislative action unless it results in the enactment of law pursuant to Clause. See *INS v. Chadha*, 462 U.S. 919 (1983). Finally, the committees believe that a court may not predicate a stay on the basis of possible future congressional action because it would be improper for a court to rule that the movant had demonstrated a "likelihood of success on the merits," unless and until a joint resolution is enacted into law. A judicial stay prior to that time would raise serious separation of powers concerns because it would be tantamount to the court making a prediction of what Congress is likely to do and then exercising its own power in furtherance of that prediction. Indeed, the committees believe that Congress may have been reluctant to pass congressional review legislation at all if its action or inaction pursuant to this chapter would be treated differently than its action or inaction regarding any other bill or resolution.

Time periods governing passage of joint resolutions of disapproval

Subsection 802(a) provides that a joint resolution disapproving of a particular rule may be introduced in either House beginning on the date the rule and accompanying report are received by Congress until 60 calendar days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress). But if Congress did not have sufficient time in a previous session to introduce or consider a resolution of disapproval, as set forth in subsection 801(d), the rule and accompanying report will be treated as if it were first received by Congress on the 15th session day in the Senate, or 15th legislative day in the House, after the start of its next session. When a rule was submitted near the end of a Congress or prior to the start of the next Congress, a joint resolution of disapproval regarding that rule may be introduced in the next Congress beginning on the 15th session day in the Senate or the 15th legislative day in the House until 60 calendar days thereafter (excluding days either House of Congress is adjourned for more than 3 days during the session) regardless of whether such a resolution was introduced in the prior Congress. Of course, any joint resolution pending from the first session of a Congress, may be considered further in the next session of the same Congress.

Subsections 802(c)-(d) specify special procedures that apply to the consideration of a

<sup>1</sup> In the Senate, a "session day" is a calendar day in which the Senate is in session. In the House of Representatives, the same term is normally expressed as a "legislative day." In the congressional review chapter, however, the term "session day" means both a "session day" of the Senate and a "legislative day" of the House of Representatives unless the context of the sentence or paragraph indicates otherwise.

joint resolution of disapproval in the Senate. Subsection 802(c) allows 30 Senators to petition for the discharge of resolution from a Senate committee after a specified period of time (the later of 20 calendar days after the rule is submitted to Congress or published in the Federal Register, if it is so published). Subsection 802(d) specifies procedures for the consideration of a resolution on the Senate floor. Such a resolution is highly privileged, points of order are waived, a motion to postpone consideration is not in order, the resolution is unamendable, and debate on the joint resolution and "on all debatable motions and appeals in connection therewith" (including a motion to proceed) is limited to no more than 10 hours.

Subsection 802(e) provides that the special Senate procedures specified in subsections 802(c)-(d) shall not apply to the consideration of any joint resolution of disapproval of a rule after 60 session days of the Senate beginning with the later date that rule is submitted to Congress or published, if it is so published. However, if a rule and accompanying report are submitted to Congress shortly before the end of a session or during an intersession recess as described in subsection 801(d)(1), the special Senate procedures specified in subsections 802(c)-(d) shall expire 60 session days after the 15th session day of the succeeding session of Congress—or on the 75th session day after the succeeding session of Congress first convenes. For purposes of subsection 802(e), the term "session day" refers only to a day the Senate is in session, rather than a day both Houses are in session. However, in computing the time specified in subsection 801(d)(1), that subsection specifies that there shall be an additional period of review in the next session if either House did not have an adequate opportunity to complete action on a joint resolution. Thus, if either House of Congress did not have adequate time to consider a joint resolution in a given session (60 session days in the Senate and 60 legislative days in the House), resolutions of disapproval may be introduced or reintroduced in both Houses in the next session, and the special Senate procedures specified in subsection 802(c)-(d) shall apply in the next session of the Senate.

If a joint resolution of disapproval is pending when the expedited Senate procedures specified in subsections 802(c)-(d) expire, the resolution shall not die in either House but shall simply be considered pursuant to the normal rules of either House—with one exception. Subsection 802(f) sets forth one unique provision that does not expire in either House. Subsection 802(f) provides procedures for passage of a joint resolution of disapproval when one House passes a joint resolution and transmits it to the other House that has not yet completed action. In both Houses, the joint resolution of the first House to act shall not be referred to a committee but shall be held at the desk. In the Senate, a House-passed resolution may be considered directly only under normal Senate procedures, regardless of when it is received by the Senate. A resolution of disapproval that originated in the Senate may be considered under the expedited procedures only during the period specified in subsection 802(e). Regardless of the procedures used to consider a joint resolution in either House, the final vote of the second House shall be on the joint resolution of the first House (no matter when that vote takes place). If the second House passes the resolution, no conference is necessary and the joint resolution will be presented to the President for his signature. Subsection 802(f) is justified because subsection 802(a) sets forth the required language of a joint resolution in each House, and thus, permits little variance in the joint resolutions that could be introduced in each House.

#### Effect of enactment of a joint resolution of disapproval

Subsection 801(b)(1) provides that: "A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule." Subsection 801(b)(2) provides that such a disapproved rule "may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule." Subsection 801(b)(2) is necessary to prevent circumvention of a resolution of disapproval. Nevertheless, it may have a different impact on the issuing agencies depending on the nature of the underlying law that authorized the rule.

If the law that authorized the disapproved rule provides broad discretion to the issuing agency regarding the substance of such rule, the agency may exercise its broad discretion to issue a substantially different rule. If the law that authorized the disapproved rule did not mandate the promulgation of any rule, the issuing agency may exercise its discretion not to issue any new rule. Depending on the law that authorized the rule, an issuing agency may have both options. But if an agency is mandated to promulgate a particular rule and its discretion in issuing the rule is narrowly circumscribed, the enactment of a resolution of disapproval for that rule may work to prohibit the reissuance of any rule. The committees intend the debate on any resolution of disapproval to focus on the law that authorized the rule and make the congressional intent clear regarding the agency's options or lack thereof after enactment of a joint resolution of disapproval. It will be the agency's responsibility in the first instance when promulgating the rule to determine the range of discretion afforded under the original law and whether the law authorizes the agency to issue a substantially different rule. Then, the agency must give effect to the resolution of disapproval.

#### Limitation on judicial review of congressional or administrative actions

Section 805 provides that a court may not review any congressional or administrative "determination, finding, action, or omission under this chapter." Thus, the major rule determinations made by the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget are not subject to judicial review. Nor may a court review whether Congress complied with the congressional review procedures in this chapter. This latter limitation on the scope of judicial review was drafted in recognition of the constitutional right of each House of Congress to "determine the Rules of its Proceedings," U.S. Const., art. I, §5, cl. 2, which includes being the final arbiter of compliance with such Rules.

The limitation on a court's review of subsidiary determination or compliance with congressional procedures, however, does not bar a court from giving effect to a resolution of disapproval that was enacted into law. A court with proper jurisdiction may treat the congressional enactment of a joint resolution of disapproval as it would treat the enactment of any other federal law. Thus, a court with proper jurisdiction may review the resolution of disapproval and the law that authorized the disapproved rule to determine whether the issuing agency has the legal authority to issue a substantially different rule. The language of subsection 801(g) is also instructive. Subsection 801(g) prohibits a court or agency from inferring any intent of the Congress only when "Congress does not enact a joint resolution of disapproval," or by implication, when it has not

yet done so. In deciding cases or controversies properly before it, a court or agency must give effect to the intent of the Congress when such a resolution is enacted and becomes the law of the land. The limitation on judicial review in no way prohibits a court from determining whether a rule is in effect. For example, the committees expect that a court might recognize that a rule has no legal effect due to the operation of subsections 801(a)(1)(A) or 801(a)(3).

#### Enactment of a joint resolution of disapproval for a rule that was already in effect

Subsection 801(f) provides that: "Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect." Application of this subsection should be consistent with existing judicial precedents on rules that are deemed never to have taken effect.

#### Agency information required to be submitted to GAO

Pursuant to subsection 801(a)(1)(B), the federal agency promulgating the rule shall submit to the Comptroller General (and make available to each House) (i) a complete copy of the cost-benefit analysis of the rule, if any, (ii) the agency's actions related to the Regulatory Flexibility Act, (iii) the agency's actions related to the Unfunded Mandates Reform Act, and (iv) "any other relevant information or requirements under any other Act and any relevant Executive Orders." Pursuant to subsection 801(a)(1)(B), this information must be submitted to the Comptroller General on the day the agency submits the rule to Congress and to GAO.

The committees intend information supplied in conformity with subsection 801(a)(1)(B)(iv) to encompass both agency-specific statutes and government-wide statutes and executive orders that impose requirements relevant to each rule. Examples of agency-specific statutes include information regarding compliance with the law that authorized the rule and any agency-specific procedural requirements, such as section 9 of the Consumer Product Safety Act, as amended, 15 U.S.C. §2054 (procedures for consumer product safety rules); section 6 of the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §655 (promulgation of standards); section 307(d) of the Clean Air Act, as amended, 42 U.S.C. §7607(d) (promulgation of rules); and section 501 of the Department of Energy Organization Act, 42 U.S.C. §7191 (procedure for issuance of rules, regulations, and orders). Examples of government-wide statutes include other chapters of the Administrative Procedure Act, 5 U.S.C. §§551-559 and 701-706; and the Paperwork Reduction Act, as amended, 44 U.S.C. §§3501-3520.

Examples of relevant executive orders include E.O. No. 12866 (Sept. 30, 1993) (Regulatory Planning and Review); E.O. No. 12606 (Sept. 2, 1987) (Family Considerations in Policy Formulation and Implementation); E.O. No. 12612 (Oct. 26, 1987) (Federalism Considerations in Policy Formulation and Implementation); E.O. No. 12630 (Mar. 15, 1988) (Government Actions and Interference with Constitutionally Protected Property Rights); E.O. No. 12875 (Oct. 26, 1993) (Enhancing the Intergovernmental Partnership); E.O. No. 12778 (Oct. 23, 1991) (Civil Justice Reform); E.O. No. 12988 (Feb. 5, 1996) (Civil Justice Reform) (effective May 5, 1996).

#### GAO reports on major rules

Fifteen days after the federal agency submits a copy of a major rule and report to each House of Congress and the Comptroller General, the Comptroller General shall prepare and provide a report on the major rule

to the committees of jurisdiction in each House. Subsection 801(a)(2)(B) requires agencies to cooperate with the Comptroller General in providing information relevant to the Comptroller General's reports on major rules. Given the 15-day deadline for these reports, it is essential that the agencies' initial submission to the General Accounting Office (GAO) contain all of the information necessary for GAO to conduct its analysis. At a minimum, the agency's submission must include the information required of all rules pursuant to 801(a)(1)(B). Whenever possible, OMB should work with GAO to alert GAO when a major rule is likely to be issued and to provide as much advance information to GAO as possible on such proposed major rule. In particular, OMB should attempt to provide the complete cost-benefit analysis on a major rule, if any, well in advance of the final rule's promulgation.

It also is essential for the agencies to present this information in a format that will facilitate the GAO's analysis. The committees expect that GAO and OMB will work together to develop, to the greatest extent practicable, standard formats for agency submissions. OMB also should ensure that agencies follow such formats. The committees also expect that agencies will provide expeditiously any additional information that GAO may require for a thorough report. The committees do not intend the Comptroller General's reports to be delayed beyond the 15-day deadline due to lack of information or resources unless the committees of jurisdiction indicate a different preference. Of course, the Comptroller General may supplement his initial report at any time with any additional information, on its own, or at the request of the relevant committees of jurisdiction.

#### Covered agencies and entities in the executive branch

The committees intend this chapter to be comprehensive in the agencies and entities that are subject to it. The term "Federal agency" in subsection 804(l) was taken from 5 U.S.C. § 551(l). That definition includes "each authority of the Government" that is not expressly excluded by subsection 551(l)(A)-(H). With those few exceptions, the objective was to cover each and every government entity, whether it is a department, independent agency, independent establishment, or government corporation. This is because Congress is enacting the congressional review chapter, in large part, as an exercise of its oversight and legislative responsibility. Regardless of the justification for excluding or granting independence to some entities from the coverage of other laws, that justification does not apply to this chapter, where Congress has an interest in exercising its constitutional oversight and legislative responsibility as broadly as possible over all agencies and entities within its legislative jurisdiction.

In some instances, federal entities and agencies issue rules that are not subject to the traditional 5 U.S.C. § 553(c) rulemaking process. However, the committees intend the congressional review chapter to cover every agency, authority, or entity covered by subsection 551(l) that establishes policies affecting any segment of the general public. Where it was necessary, a few special exceptions were provided, such as the exclusion for the monetary policy activities of the Board of Governors of the Federal Reserve System, rules of particular applicability, and rules of agency management and personnel. Where it was not necessary, no exemption was provided and no exemption should be inferred from other law. This is made clear by the provision of section 806 which states that the Act applies notwithstanding any other provision of law.

#### Definition of a "major rule"

The definition of a "major rule" in subsection 804(2) is taken from President Reagan's Executive Order 12291. Although President Clinton's Executive Order 12866 contains a definition of a "significant regulatory action" that is seemingly as broad, several of the Administration's significant rule determinations under Executive Order 12866 have been called into question. The committees intend the term "major rule" in this chapter to be broadly construed, including the non-numerical factors contained in the subsections 804(2) (B) and (C).

Pursuant to subsection 804(2), the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget (the Administrator) must make the major rule determination. The committees believe that centralizing this function in the Administrator will lead to consistency across agency lines. Moreover, from 1981-93, OIRA staff interpreted and applied the same major rule definition under E.O. 12291. Thus, the Administrator should rely on guidance documents prepared by OIRA during that time and previous major rule determinations from that Office as a guide in applying the statutory definition to new rules.

Certain covered agencies, including many "independent agencies," include their proposed rules in the Unified Regulatory Agenda published by OMB but do not normally submit their final rules to OMB for review. Moreover, interpretative rules and general statements of policy are not normally submitted to OMB for review. Nevertheless, it is the Administrator that must make the major rule determination under this chapter whenever a new rule is issued. The Administrator may request the recommendation of any agency covered by this chapter on whether a proposed rule is a major rule within the meaning of subsection 804(2), but the Administrator is responsible for the ultimate determination. Thus, all agencies or entities covered by this chapter will have to coordinate their rulemaking activity with OIRA so that the Administrator may make the final, major rule determination.

#### Scope of rules covered

The committees intend this chapter to be interpreted broadly with regard to the type and scope of rules that are subject to congressional review. The term "rule" in subsection 804(3) begins with the definition of a "rule" in subsection 551(4) and excludes three subsets of rules that are modeled on APA sections 551 and 553. This definition of a rule does not turn on whether a given agency must normally comply with the notice-and-comment provisions of the APA, or whether the rule at issue is subject to any other notice-and-comment procedures. The definition of "rule" in subsection 551(4) covers a wide spectrum of activities. First, there is formal rulemaking under section 553 that must adhere to procedures of sections 556 and 557 of title 5. Second, there is informal rulemaking, which must comply with the notice-and-comment requirements of subsection 553(c). Third, there are rules subject to the requirements of subsection 552(a)(1) and (2). This third category of rules normally either must be published in the Federal Register before they can adversely affect a person, or must be indexed and made available for inspection and copying or purchase before they can be used as precedent by an agency against a non-agency party. Documents covered by subsection 552(a) include statements of general policy, interpretations of general applicability, and administrative staff manuals and instructions to staff that affect a member of the public. Fourth, there is a body of materials that fall within the APA definition of "rule" and are the product of

agency process, but that meet none of the procedural specifications of the first three classes. These include guidance documents and the like. For purposes of this section, the term rule also includes any rule, rule change, or rule interpretation by a self-regulatory organization that is approved by a Federal agency. Accordingly, all "rules" are covered under this chapter, whether issued at the agency's initiative or in response to a petition, unless they are expressly excluded by subsections 804(3)(A)-(C). The committees are concerned that some agencies have attempted to circumvent notice-and-comment requirements by trying to give legal effect to general statements of policy, "guidelines," and agency policy and procedure manuals. The committees admonish the agencies that the APA's broad definition of "rule" was adopted by the authors of this legislation to discourage circumvention of the requirements of chapter 8.

The definition of a rule in subsection 551(4) covers most agency statements of general applicability and future effect. Subsection 804(3)(A) excludes "any rule of particular applicability, including a rule that approves or prescribes rates, wages, prices, services, or allowances therefore, corporate and financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing" from the definition of a rule. Many agencies, including the Treasury, Justice, and Commerce Departments, issue letter rulings or other opinion letters to individuals who request a specific ruling on the facts of their situation. These letter rulings are sometimes published and relied upon by other people in similar situations, but the agency is not bound by the earlier rulings even on facts that are analogous. Thus, such letter rulings or opinion letters do not fall within the definition of a rule within the meaning of subsection 804(3).

The different types of rules issued pursuant to the internal revenue laws of the United States are good examples of the distinction between rules of general and particular applicability. IRS private letter rulings and Customs Service letter rulings are classic examples of rules of particular applicability, notwithstanding that they may be cited as authority in transactions involving the same circumstances. Examples of substantive and interpretative rules of general applicability will include most temporary and final Treasury regulations issued pursuant to notice-and-comment rulemaking procedures, and most revenue rulings, revenue procedures, IRS notices, and IRS announcements. It does not matter that these later types of rules are issued without notice-and-comment rulemaking procedures or that they are accorded less deference by the courts than notice-and-comment rules. In fact, revenue rulings have been described by the courts as the "classic example of an interpretative rul[e]" within the meaning of the APA. See *Wing v. Commissioner*, 81 T.C. 17, 26 (1983). The test is whether such rules announce a general statement of policy or an interpretation of law of general applicability.

Most rules or other agency actions that grant an approval, license, registration, or similar authority to a particular person or particular entities, or grant or recognize an exemption or relieve a restriction for a particular person or particular entities, or permit new or improved applications of technology for a particular person or particular entities, or allow the manufacture, distribution, sale, or use of a substance or product are exempted under subsection 804(3)(A) from the definition of a rule. This is probably the largest category of agency actions excluded from the definition of a rule. Examples include import and export licenses, individual

rate and tariff approvals, wetlands permits, grazing permits, plant licenses or permits, drug and medical device approvals, new source review permits, hunting and fishing take limits, incidental take permits and habitat conservation plans, broadcast licenses, and product approvals, including approvals that set forth the conditions under which a product may be distributed.

Subsection 804(3)(B) excludes "any rule relating to agency management or personnel" from the definition of a rule. Pursuant to subsection 804(3)(C), however, a "rule of agency organization, procedure, or practice," is only excluded if it "does not substantially affect the rights or obligations of non-agency parties." The committees' intent in these subsections is to exclude matters of purely internal agency management and organization, but to include matters that substantially affect the rights or obligations of outside parties. The essential focus of this inquiry is not on the type of rule but on its effect on the rights or obligations of non-agency parties.

GRAND OPENING OF MAIN  
BRANCH, SAN FRANCISCO LI-  
BRARY

**HON. TOM LANTOS**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 18, 1996

Mr. LANTOS. Mr. Speaker, I rise today, on the 90th anniversary of the devastating 1906 San Francisco earthquake, to celebrate with the city of San Francisco a monumental achievement of community cooperation and commitment. I invite my colleagues to join me in conveying our congratulations and admiration to the people of San Francisco who have committed their precious resources to the construction of the new main branch of the San Francisco Library, a beautiful and highly functional testament to the love that San Franciscans have for their city and for books and education. It is a love that has found its voice through the coordinated efforts of corporations, foundations, and individuals.

A library should reflect the pride, the culture, and the values of the diverse communities that it serves. The San Francisco main library will undoubtedly be successful in reaching this goal. The library will be home to special centers dedicated to the history and interests of African-Americans, Chinese-Americans, Filipino-Americans, Latino-Americans, and gays and lesbians. The library will be designed to serve the specialized needs of the businessman as well as the immigrant newcomer. It will become home to the diverse communities that make San Francisco unique among metropolitan areas of the world. It will also become a home, most importantly, that serves to unite.

The new San Francisco main library represents an opportunity to preserve and disperse the knowledge of times long since passed. The book serves as man's most lasting testament and the library serves as our version of a time machine into the past, the present and the future. This library, built upon the remains of the old City Hall destroyed 90 years ago today, is a befitting tribute to the immortality of thought. Buildings will come as they will most definitely pass, but the books of this new library and the information that they hold are eternal and serve as an indelible

foundation that cannot be erased by the passage of time.

The expanded areas of the new main library will provide space for numerous hidden treasures that no longer will be hidden. The people of San Francisco will have the opportunity to reacquire themselves with numerous literary treasures previously locked behind the dusty racks of unsightly storage rooms.

Although the new San Francisco main library serves as a portal into our past, it also serves to propel us into the future. It is an edifice designed to stoke the imagination by providing access to the numerous streams of information that characterize our society today. The technologically designed library will provide hundreds of public computer terminals to locate materials on-line, 14 multimedia stations, as well as access to data bases and the Information Superhighway. It will provide education and access for those previously unable to enter the "computer revolution." The library will provide vital access and communication links so that it can truly serve as a resource for the city and for other libraries and educational institutions throughout the region. The new library will serve as an outstanding model for libraries around the world to emulate.

Like an educational institution, the San Francisco library will be a repository of human knowledge, organized and made accessible for writers, students, lifelong learners and leisure readers. It will serve to compliment and expand San Francisco's existing civic buildings—City Hall, Davies Symphony Hall, Brooks Hall, and the War Memorial and Performing Arts Center. The library serves as a symbiotic commitment between the city of San Francisco and its people. In 1988, when electorates across the country refused to support new bond issues, the people of San Francisco committed themselves to a \$109.5 million bond measure to build the new main library building and to strengthen existing branch libraries. Eight years later those voices are still clearly heard and they resonate with the dedication of this unique library, built by a community to advance themselves and their neighbors.

Mr. Speaker, on this day, when we celebrate the opening of the new main branch of the San Francisco Library, I ask my colleagues to join me in congratulating the community of San Francisco for their admirable accomplishments and outstanding determination.

TRIBUTE TO DAVID J. WHEELER

**HON. WES COOLEY**

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 18, 1996

Mr. COOLEY of Oregon. Mr. Speaker, on February 1, 1996, the President signed H.R. 2061, a bill to designate the Federal building in Baker City, OR in honor of the late David J. Wheeler. As the congressional representative for Baker City, and as the sponsor of H.R. 2061, I recently returned to Baker City for the building dedication ceremony. Mr. Wheeler, a Forest Service employee, was a model father and an active citizen. In honor of Mr. Wheeler, I would like to submit, for the record, my speech at the dedication ceremony.

Thank you for inviting me here today. It has been an honor to sponsor the congress-

sional bill to designate this building in memory of David Wheeler. I did not have the privilege of knowing Mr. Wheeler myself, but from my discussions with Mayor Griffith—and from researching his accomplishments—I've come to know what a fine man he was. I know that Mr. Wheeler was a true community leader, and I know that the community is that much poorer for his passing. With or without this dedication, his spirit will remain within the Baker City community.

Mayor Griffith, I have brought a copy of H.R. 2061—the law to honor David Wheeler. The bill has been signed by the President of the United States, by the Speaker of the House, and by the President of the Senate. Hopefully, this bill will find a suitable place within the new David J. Wheeler Federal Building.

I'd like to offer my deepest sympathy to the Wheeler family, and to everyone here who knew him. And, I'd like to offer a few words from Henry Wadsworth Longfellow—who once commented on the passing-away of great men. His words—I think—describe Mr. Wheeler well:

If a star were quenched on high,  
For ages would its light,  
Still traveling down from the sky,  
Shine on our mortal sight.

So when a great man dies,  
For years beyond our ken,  
The light he leaves behind him lies  
Upon the paths of men."

So too with David Wheeler. His light will shine on the paths of us all—particularly of his family—for the rest of our days.

THE MINIMUM WAGE

**HON. LEE H. HAMILTON**

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 18, 1996

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, April 17, 1996, into the CONGRESSIONAL RECORD.

RAISING THE MINIMUM WAGE

Rewarding work is a fundamental American value. There are many ways to achieve that goal, including deficit reduction to boost the economy, opening markets abroad to our products, improving education and skills training, and investing in technology and infrastructure. Increasing wages must be a central objective of government policies.

The economy is improving. It has in recent years reduced the unemployment rate of 5.6%, cut the budget deficit nearly in half, and spurred the creation of 8.4 million additional jobs. Real hourly earning has now begun to rise modestly, and the tax cut in 1993 for 15 million working families helped spur economic growth.

But much work needs to be done. We must build on the successes of the last few years, and address the key challenges facing our economy, including the problem of stagnant wages. This problem will not be solved overnight, but one action we can take immediately, and which I support, is to raise the minimum wage.

RAISING THE MINIMUM WAGE

The minimum wage was established in 1938 in an attempt to assist the working poor, usually non-union workers with few skills and little bargaining power. The wage has been increased 17 times, from 25 cents per hour in 1938 to \$4.25 per hour in 1991. Currently some 5 million people work for wages at or below \$4.25 per hour, and most of them are adults rather than teenagers.

percent since 1960. In 1982, the tax share stood at 19.8 percent of GDP. By 1989, the tax share had declined slightly to 19.2 percent of GDP—much the same as it had been back in 1960.

In short, whether we have raised or lowered tax rates, the percentage of GDP in taxes has hovered at 19 percent. The issue, of course, is 19 percent of what? Is it 19 percent of a large and growing GDP, or of an anemic, stagnant one?

Here again, the real numbers destroy the myths and tell the true story. According to the federal Office of Management and Budget (OMB), in 1982, the year the tax cuts were implemented, tax receipts stood at \$617.8 billion. By 1989, tax receipts had increased to \$990.7 billion.

How did this come about? By lowering taxes, the government freed up capital and entrepreneurial spirit, creating jobs and wealth and expanding the size of the economic pie. From 1982 to 1989, GDP increased from \$3.1 to \$5.4 trillion. Therefore, while tax revenues as a share of GDP remained relatively constant at just over 19 percent, the dollar amount of tax revenues collected by the federal government rose dramatically, because the economy grew dramatically.

Tax cuts will increase economic growth and thereby reduce the deficit. The question is, by how much? Economist Bruce Bartlett, a former assistant secretary of the Treasury, notes that the OMB figures show that increases in real GDP significantly reduce the deficit. By the year 2000, the deficit would be diminished by more than \$150 billion if the economy grew just 1 percent faster than currently projected over the next five years.

Of course, Bartlett says, there is no guarantee that the Republican tax cuts will achieve a 1 percent faster growth rate. But there is no doubt they will increase growth above what would otherwise have occurred. If growth is just 0.4 percent faster per year it would be enough to make the tax cut deficit-neutral, based on the OMB data.

Thus, a dispassionate review of the figures shatters the myth that the Reagan tax cuts increased the deficit. The problem was not our revenue stream, either in terms of the percentage of GDP paid in taxes, or in real tax dollars received. The problem was too much spending. From 1982 to 1989, government spending rose from \$745 billion to \$1.14 trillion, a 53 percent jump.

Tax cuts in the 1990s can help produce the same type of economic growth they generated in the 1980s. This growth in turn will help us reduce the deficit. All we must do is reduce the rate at which government spending grows. CBO figures show that, if we simply hold the rate at which federal spending grows to a little over 2 percent per year, we can cut taxes by \$189 billion and balance the budget by the year 2002.

MYTH NO. 3

But this reference to tax cuts brings us face to face with another myth, namely, that tax cuts disproportionately benefit the rich at the expense of the poor.

The myth explodes, however, on contact with IRS data conclusively show that lower income-tax rates actually increase the percentage of the total tax bill paid by the rich while decreasing the tax burden on the poor.

There is an amazing historical correlation between decreases in the marginal tax rate and increases in the share of revenue paid by the top 1 percent of income earners. And, of course, along with this increase in taxes paid by the most wealthy went a decrease in the taxes paid by the lower 50 percent of income earners.

For example, by 1988, the share of income taxes paid by the bottom 50 percent of taxpayers assumed just 5.7 percent of the in-

come tax burden. Also in 1988, the average tax payment of the top 1 percent of taxpayers amounted to 27.5 percent of the total.

On the other hand, after the budget summit deal of 1990, the top marginal tax rate was increased from 28 to 31 percent. This produced a 3.5 percent decrease in the revenue share paid by the top 1 percent—down to 24.6 percent of the total. That is, as marginal rates decreased, the rich paid more, and as marginal rates increased the rich paid less, leaving more for the middle class and poor to pay.

Clearly, then, if we want to help the middle class, the last thing we should do is increase marginal tax rates. Such an increase will lead to lower productivity, lower tax revenues from the rich, and an increased tax burden for those who are not rich.

The answer to our dilemma, then, is not to keep our current high taxes but to cut taxes while bringing spending under control.

By bringing together disparate kinds of tax cuts, from a \$500-per-child tax credit to a reduction in the capital-gains tax rate that will strengthen small businesses and entrepreneurs, we can increase the well-being and productivity of America's middle-class families. These tax cuts would allow middle-class families to build a better future for their children.

The proposed \$500-per-child tax credit directly benefits the middle class. The Joint Committee on Taxation has reported that three-quarters of the benefits from this tax cut will go to people with incomes less than \$75,000.

A capital-gains tax cut will accrue to the middle class as well. IRS data show that 55 percent of taxpayers who report long-term capital gains earn \$50,000 or less. And 75 percent of them earn \$75,000 or less.

These tax cuts will bring real relief to America's middle class. They will help the economy and thereby help lower the deficit.

The 1980s teach us—if only we will examine their lessons properly—that a vibrant economy, spurred by low taxes and fewer regulations, will produce balanced budgets and economic well-being for the middle class. We need only trust Americans to spend and invest their own money as they see fit. We need only trust the people, rather than government, to make their own decisions about how to take care of their families and improve their lot in life. ●

CONGRESSIONAL REVIEW TITLE  
OF H.R. 3136

● Mr. NICKLES. Mr. President, I will submit for the RECORD a statement which serves to provide a detailed explanation and a legislative history for the congressional review title of H.R. 3136, the Small Business Regulatory Enforcement Fairness Act of 1996. H.R. 3136 was passed by the Senate on March 28, 1996, and was signed by the President the next day. Ironically, the President signed the legislation on the first anniversary of the passage of S. 219, the forerunner to the congressional review title. Last year, S. 219, passed the Senate by a vote of 100 to 0 on March 29, 1995. Because title III of H.R. 3136 was the product of negotiation with the Senate and did not go through the committee process, no other expression of its legislative history exists other than the joint statement made by Senator REID and myself immediately before passage of H.R. 3136 on March 28. I am submitting a joint

statement to be printed in the RECORD on behalf of myself, as the sponsor of the S. 219, Senator REID, the prime cosponsor of S. 219, and Senator STEVENS, the chairman of the Committee on Governmental Affairs. This joint statement is intended to provide guidance to the agencies, the courts, and other interested parties when interpreting the act's terms. The same statement has been submitted today in the House by the chairmen of the committees of jurisdiction over the congressional review legislation.

The joint statement follows:

STATEMENT FOR THE RECORD BY SENATORS  
NICKLES, REID, AND STEVENS

SUBTITLE E—CONGRESSIONAL REVIEW SUBTITLE

Subtitle E adds a new chapter to the Administrative Procedure Act (APA), "Congressional Review of Agency Rulemaking," which is codified in the United States Code as chapter 8 of title 5. The congressional review chapter creates a special mechanism for Congress to review new rules issued by federal agencies (including modification, repeal, or reissuance of existing rules). During the review period, Congress may use expedited procedures to enact joint resolutions of disapproval to overrule the federal rulemaking actions. In the 104th Congress, four slightly different versions of this legislation passed the Senate and two different versions passed the House. Yet, no formal legislative history document was prepared to explain the legislation or the reasons for changes in the final language negotiated between the House and Senate. This joint statement of the authors on the congressional review subtitle is intended to cure this deficiency.

Background

As the number and complexity of federal statutory programs has increased over the last fifty years, Congress has come to depend more and more upon Executive Branch agencies to fill out the details of the programs it enacts. As complex as some statutory schemes passed by Congress are, the implementing regulations are often more complex by several orders of magnitude. As more and more of Congress' legislative functions have been delegated to federal regulatory agencies, many have complained that Congress has effectively abdicated its constitutional role as the national legislature in allowing federal agencies so much latitude in implementing and interpreting congressional enactments.

In many cases, this criticism is well founded. Our constitutional scheme creates a delicate balance between the appropriate roles of the Congress in enacting laws, and the Executive Branch in implementing those laws. This legislation will help to redress the balance, reclaiming for Congress some of its policymaking authority, without at the same time requiring Congress to become a super regulatory agency.

This legislation establishes a government-wide congressional review mechanism for most new rules. This allows Congress the opportunity to review a rule before it takes effect and to disapprove any rule to which Congress objects. Congress may find a rule to be too burdensome, excessive, inappropriate or duplicative. Subtitle E uses the mechanism of a joint resolution of disapproval which requires passage by both houses of Congress and the President (or veto by the President and a two-thirds' override by Congress) to be effective. In other words, enactment of a joint resolution of disapproval is the same as enactment of a law.

Congress has considered various proposals for reviewing rules before they take effect

for almost twenty years. Use of a simple (one-house), concurrent (two-house), or joint (two houses plus the President) resolution are among the options that have been debated and in some cases previously implemented on a limited basis. In *INS v. Chadha*, 462 U.S. 919 (1983), the Supreme Court struck down as unconstitutional any procedure where executive action could be overturned by less than the full process required under the Constitution to make laws—that is, approval by both houses of Congress and presentment to the President. That narrowed Congress' options to use a joint resolution of disapproval. The one-house or two-house legislative veto (as procedures involving simple and concurrent resolutions were previously called), was thus voided.

Because Congress often is unable to anticipate the numerous situations to which the laws it passes must apply, Executive Branch agencies sometimes develop regulatory schemes at odds with congressional expectations. Moreover, during the time lapse between passage of legislation and its implementation, the nature of the problem addressed, and its proper solution, can change. Rules can be surprisingly different from the expectations of Congress or the public. Congressional review gives the public the opportunity to call the attention of politically accountable, elected officials to concerns about new agency rules. If these concerns are sufficiently serious, Congress can stop the rule.

Brief procedural history of congressional review chapter

In the 104th Congress, the congressional review legislation originated as S. 348, the "Regulatory Oversight Act," which was introduced on February 2, 1995. The text of S. 348 was offered by its sponsors, Senators Don Nickles and Harry Reid, as a substitute amendment to S. 219, the "Regulatory Transition Act of 1995." As amended, S. 219 provided for a 45-day delay on the effectiveness of a major rule, and provided expedited procedures that Congress could use to pass resolutions disapproving of the rule. On March 29, 1995, the Senate passed the amended version of S. 219 by a vote of 100-0. The Senate later substituted the text of S. 219 for the text of H.R. 450, the House passed "Regulatory Transition Act of 1995." Although the House did not agree to a conference on H.R. 450 and S. 219, both Houses continued to incorporate the congressional review provisions in other legislative packages. On May 25, the Senate Governmental Affairs Committee reported out S. 343, the "Comprehensive Regulatory Reform Act of 1995," and S. 291, the "Regulatory Reform Act of 1995," both with congressional review provisions. On May 26, 1995, the Senate Judiciary Committee reported out a different version of S. 343, the "Comprehensive Regulatory Reform Act of 1995," which also included a congressional review provision. The congressional review provision in S. 343 that was debated by the Senate was quite similar to S. 219, except that the delay period in the effectiveness of a major rule was extended to 60 days and the legislation did not apply to rules issued prior to enactment. A filibuster of S. 343, unrelated to the congressional review provisions, led to the withdrawal of that bill.

The House next took up the congressional review legislation by attaching a version of it (as section 3006) to H.R. 2586, the first debt limit extension bill. The House made several changes in the legislation that was attached to H.R. 2586, including a provision that would allow the expedited procedures also to apply to resolutions disapproving of proposed rules, and provisions that would have extended the 60-day delay on the effectiveness of a major rule for any period when the House or Senate was in recess for more than

three days. On November 9, 1995 both the House and Senate passed this version of the congressional review legislation as part of the first debt limit extension bill. President Clinton vetoed the bill a few days later, for reasons unrelated to the congressional review provision.

On February 29, 1996, a House version of the congressional review legislation was published in the Congressional Record as title III of H.R. 994, which was scheduled to be brought to the House floor in the coming weeks. The congressional review title was almost identical to the legislation approved by both Houses in H.R. 2586. On March 19, 1996, the Senate adopted a congressional review amendment by voice vote to S. 942, which bill passed the Senate 100-0. The congressional review legislation in S. 942 was similar to the original version of S. 219 that passed the Senate on March 29, 1995.

Soon after passage of S. 942, representatives of the relevant House and Senate committees and principal sponsors of the congressional review legislation met to craft a congressional review subtitle that was acceptable to both Houses and would be added to the debt limit bill that was scheduled to be taken up in Congress the week of March 24. The final compromise language was the result of these joint discussions and negotiations.

On March 28, 1996, the House and Senate passed title III, the "Small Business Regulatory Enforcement Fairness Act of 1996," as part of the second debt limit bill, H.R. 3136. There was no separate vote in either body on the congressional review subtitle or on title III of H.R. 3136. However, title III received broad support in the House and the entire bill passed in the Senate by unanimous consent. The President signed H.R. 3136 into law on March 29, 1996, exactly one year after the first congressional review bill passed the Senate.

#### Submission of rules to Congress and to GAO

Pursuant to subsection 801(a)(1)(A), a federal agency promulgating a rule must submit a copy of the rule and a brief report about it to each House of Congress and to the Comptroller General before the rule can take effect. In addition to a copy of the rule, the report shall contain a concise general statement relating to the rule, including whether it is a major rule under the chapter, and the proposed effective date of the rule. Because most rules covered by the chapter must be published in the Federal Register before they can take effect, it is not expected that the submission of the rule and the report to Congress and the Comptroller General will lead to any additional delay.

Section 808 provides the only exception to the requirement that rules must be submitted to each House of Congress and the Comptroller General before they can take effect. Subsection 808(1) excepts specified rules relating to commercial, recreational, or subsistence hunting, fishing, and camping. Subsection 808(2) excepts certain rules that are not subject to notice-and-comment procedures. It provides that if the relevant agency finds "for good cause . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, [such rules] shall take effect at such time as the Federal agency promulgating the rule determines." Although rules described in section 808 shall take effect when the relevant Federal agency determines pursuant to other provisions of law, the federal agency still must submit such rules and the accompanying report to each House of Congress and to the Comptroller General as soon as practicable after promulgation. Thus, rules described in section 808 are subject to congressional review and the expedited proce-

dures governing joint resolutions of disapproval. Moreover, the congressional review period will not begin to run until such rules and the accompanying reports are submitted to each House of Congress and the Comptroller General.

In accordance with current House and Senate rules, covered agency rules and the accompanying report must be separately addressed and transmitted to the Speaker of the House (the Capitol, Room H-209), the President of the Senate (the Capitol, Room S-212), and the Comptroller General (GAO Building, 441 G Street, N.W., Room 1139). Except for rules described in section 808, any covered rule not submitted to Congress and the Comptroller General will remain ineffective until it is submitted pursuant to subsection 801(a)(1)(A). In almost all cases, there will be sufficient time for an agency to submit notice-and-comment rules or other rules, that must be published to these legislative officers during normal office hours. There may be rare instance, however, when a federal agency must issue an emergency rule that is effective upon actual notice and does not meet one of the section 808 exceptions. In such a rare case, the federal agency may provide contemporaneous notice to the Speaker of the House, the President of the Senate, and the Comptroller General. These legislative officers have accommodated the receipt of similar, emergency communications in the past and will utilize the same means to receive emergency rules and reports during nonbusiness hours. If no other means of delivery is possible, delivery of the rule and related report by telefax to the Speaker of the House, the President of the Senate, and the Comptroller General shall satisfy the requirements of subsection 801(a)(1)(A).

Additional delay in the effectiveness of major rules

Subsection 553(d) of the APA requires publication or service of most substantive rules at least 30 days prior to their effective date. Pursuant to subsection 801(a)(3)(A), a major rule (as defined in subsection 804(2)) shall not take effect until at least 60 calendar days after the later of the date on which the rule and accompanying information is submitted to Congress or the date on which the rule is published in the Federal Register, if it is so published. If the Congress passes a joint resolution of disapproval and the President vetoes such resolution, the delay in the effectiveness of a major rule is extended by subsection 801(a)(3)(B) until the earlier date on which either House of Congress votes and fails to override the veto or 30 session days<sup>1</sup> after the date on which the Congress receives the veto and objections from the President. By necessary implication, if the Congress passes a joint resolution of disapproval within the 60 calendar days provided in subsection 801(a)(3)(A), the delay period in the effectiveness of a major rule must be extended at least until the President acts on the joint resolution or until the time expires for the President to act. Any other result would be inconsistent with subsection 801(a)(3)(B), which extends the delay in the effectiveness of a major rule for a period of time after the President vetoes a resolution.

Of course, if Congress fails to pass a joint resolution of disapproval within the 60-day period provided by subsection 801(a)(3)(A), subsection 801(a)(3)(B) would not apply and

<sup>1</sup>In the Senate, a "session day" is a calendar day in which the Senate is in session. In the House of Representatives, the same term is normally expressed as a "legislative day." In the congressional review chapter, however, the term "session day" means both a "session day" of the Senate and a "legislative day" of the House of Representatives unless the context of the sentence or paragraph indicates otherwise.

would not further delay the effective date of the rule. Moreover, pursuant to subsection 801(a)(5), the effective date of a rule shall not be delayed by this chapter beyond the date on which either house of Congress votes to reject a joint resolution of disapproval.

Although it is not expressly provided in the congressional review chapter, it is the authors' intent that a rule may take effect if an adjournment of Congress prevents the President from returning his veto and objections within the meaning of the Constitution. Such will be the case if the President does not act on a joint resolution within 10 days (Sundays excepted) after it is presented to him, and "the Congress by their Adjournment prevent its Return" within the meaning of Article I, § 7, cl. 2, or when the President affirmatively vetoes a resolution during such an adjournment. This is the logical result because Congress cannot act to override these vetoes. Congress would have to begin anew, pass a second resolution, and present it to the President in order for it to become law. It is also the authors' intent that a rule may take effect immediately if the President returns a veto and his objections to Congress but Congress adjourns its last session sine die before the expiration of time provided in subsection 801(a)(3)(B). Like the situations described immediately above, no subsequent Congress can act further on the veto, and the next Congress would have to begin anew, pass a second resolution of disapproval, and present it to the President in order for it to become law.

#### Purpose of and exceptions to the delay of major rules

The reason for the delay in the effectiveness of a major rule beyond that provided in APA subsection 553(d) is to try to provide Congress with an opportunity to act on resolutions of disapproval before regulated parties must invest the significant resources necessary to comply with a major rule. Congress may continue to use the expedited procedures to pass resolutions of disapproval for a period of time after a major rule takes effect, but it would be preferable for Congress to act during the delay period so that fewer resources would be wasted. To increase the likelihood that Congress would act before a major rule took effect, the authors agreed on an approximately 60-day delay period in the effective date of a major rule, rather than an approximately 45-day delay period in some earlier versions of the legislation.

There are four exceptions to the required delay in the effectiveness of a major rule in the congressional review chapter. The first is in subsection 801(c), which provides that a major rule is not subject to the delay period of subsection 801(a)(3) if the President determines in an executive order that one of four specified situations exist and notifies Congress of his determination. The second is in subsection 808(1), which excepts specified rules relating to commercial, recreational, or subsistence hunting, fishing, and camping from the initial delay specified in subsection 801(a)(1)(A) and from the delay in the effective date of a major rule provided in subsection 801(a)(3). The third is in subsection 808(2), which excepts certain rules from the initial delay specified in subsection 801(a)(1)(A) and from the delay in the effective date of a major rule provided in subsection 801(a)(3) if the relevant agency finds "for good cause . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." This "good cause" exception in subsection 808(2) is taken from the APA and applies only to rules which are exempt from notice and comment under subsection 553(b)(B) or an analogous statute. The fourth exception is in subsection 804(2). Any rule promulgated

under the Telecommunications Act of 1996 or any amendments made by that Act that otherwise could be classified as a "major rule" is exempt from that definition and from the 60-day delay in section 801(a)(3). However, such an issuance still would fall within the definition of "rule" and would be subject to the requirements of the legislation for non-major rules. A determination under subsection 801(c), subsection 804(2), or section 808 shall have no effect on the procedures to enact joint resolutions of disapproval.

A court may not stay or suspend the effectiveness of a rule beyond the period specified in section 801 simply because a resolution of disapproval is pending in Congress.

The authors discussed the relationship between the period of time that a major rule is delayed and the period of time during which Congress could use the expedited procedures in section 802 to pass a resolution of disapproval. Although it would be best for Congress to act pursuant to this chapter before a major rule goes into effect, it was recognized that Congress could not often act immediately after a rule was issued because it may be issued during a recesses of Congress, shortly before such recesses, or during other periods when Congress cannot devote the time to complete prompt legislative action. Accordingly, the authors determined that the proper public policy was to give Congress an adequate opportunity to deliberate and act on joint resolutions of disapproval, while ensuring that major rules could go into effect without unreasonable delay. In short, the authors decided that major rules could take effect after an approximate 60-day delay, but the period governing the expedited procedures in section 802 for review of joint resolution of disapproval would extend for a period of time beyond that.

Accordingly, courts may not stay or suspend the effectiveness of any rule beyond the periods specified in section 801 simply because a joint resolution is pending before Congress. Such action would be contrary to the many express provisions governing when different types of rules may take effect. Such court action also would be contrary to the authors' intent because it would upset an important compromise on how long a delay there should be on the effectiveness of a major rule. The final delay period was selected as a compromise between the period specified in the version that passed the Senate on March 19, 1995, and the version that passed both Houses on November 9, 1995. It is also the authors' belief that such court action would be inconsistent with the principles of (and potentially violate) the Constitution, art. I, § 7, cl. 2, in that courts may not give legal effect to legislative action unless it results in the enactment of law pursuant to Clause. See *INS v. Chadha*, 462 U.S. 919 (1983). Finally, the authors intend that a court may not predicate a stay on the basis of possible future congressional action because it would be improper for a court to rule that the movant had demonstrated a "likelihood of success on the merits," unless and until a joint resolution is enacted into law. A judicial stay prior to that time would raise serious separation of powers concerns because it would be tantamount to the court making a prediction of what Congress is likely to do and then exercising its own power in furtherance of that prediction. Indeed, the authors intend that Congress may have been reluctant to pass congressional review legislation at all if its action or inaction pursuant to this chapter would be treated differently than its action or inaction regarding any other bill or resolution.

#### Time periods governing passage of joint resolutions of disapproval

Subsection 802(a) provides that a joint resolution disapproving of a particular rule may

be introduced in either House beginning on the date of the rule and accompanying report are received by Congress until 60 calendar days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress). But if Congress did not have sufficient time in a previous session to introduce or consider a resolution of disapproval, as set forth in subsection 801(d), the rule and accompanying report will be treated as if it were first received by Congress on the 15th session day in the Senate, or 15th legislative day in the House, after the start of its next session. When a rule was submitted near the end of a Congress or prior to the start of the next Congress, a joint resolution of disapproval regarding that rule may be introduced in the next Congress beginning on the 15th session day in the Senate or the 15th legislative day in the House until 60 calendar days thereafter (excluding days either House of Congress is adjourned for more than 3 days during the session) regardless of whether such a resolution was introduced in the prior Congress. Of course, any joint resolution pending from the first session of a Congress, may be considered further in the next session of the same Congress.

Subsections 802(c)-(d) specify special procedures that apply to the consideration of a joint resolution of disapproval in the Senate. Subsection 803(c) allows 30 Senators to petition for the discharge of resolution from a Senate committee after a specified period of time (the later of 20 calendar days after the rule is submitted to Congress or published in the Federal Register, if it is so published). Subsection 802(d) specifies procedures for the consideration of a resolution on the Senate floor. Such a resolution is highly privileged, points or order are waived, a motion to postpone consideration is not in order, the resolution is unamendable, and debate on the joint resolution and "on all debatable motions and appeals in connection therewith" (including a motion to proceed) is limited to no more than 10 hours.

Subsection 802(e) provides that the special Senate procedures specified in subsections 802(c)-(d) shall not apply to the consideration of any joint resolution of disapproval of a rule after 60 session days of the Senate beginning with the later date that rule is submitted to Congress or published, if it is so published. However, if a rule and accompanying report are submitted to Congress shortly before the end of a session or during an intercession recess as described in subsection 801(d)(1), the special Senate procedures specified in subsections 802(c)-(d) shall expire 60 session days after the 15th session day of the succeeding session of Congress—or on the 75th session day after the succeeding session of Congress first convenes. For purposes of subsection 802(e), the term "session day" refers only to a day the Senate is in session, rather than a day both Houses are in session. However, in computing the time specified in subsection 801(d)(1), that subsection specifies that there shall be an additional period of review in the next session if either House did not have an adequate opportunity to complete action on a joint resolution. Thus, if either House of Congress did not have adequate time to consider a joint resolution in a given session (60 session days in the Senate and 60 legislative days in the House), resolutions of disapproval may be introduced or re-introduced in both Houses in the next session, and the special Senate procedures specified in subsection 802(c)-(d) shall apply in the next session of the Senate.

If a joint resolution of disapproval is pending when the expedited Senate procedures specified in subsections 802(c)-(d) expire, the resolution shall not die in either House but shall simply be considered pursuant to the

normal rules of either House—with one exception. Subsection 802(f) sets forth one unique provision that does not expire in either House. Subsection 802(f) provides procedures for passage of a joint resolution of disapproval when one House passes a joint resolution and transmits it to the other House that has not yet completed action. In both Houses, the joint resolution of the first House to act shall not be referred to a committee but shall be held at the desk. In the Senate, a House-passed resolution may be considered directly only under normal Senate procedures, regardless of when it is received by the Senate. A resolution of disapproval that originated in the Senate may be considered under the expedited procedures only during the period specified in subsection 802(e). Regardless of the procedures used to consider a joint resolution in either House, the final vote of the second House shall be on the joint resolution of the first House (no matter when that vote takes place). If the second House passes the resolution, no conference is necessary and the joint resolution will be presented to the President for his signature. Subsection 802(f) is justified because subsection 802(a) sets forth the required language of a joint resolution in each House, and thus, permits little variance in the joint resolutions that could be introduced in each House.

#### Effect of enactment of a joint resolution of disapproval

Subsection 801(b)(1) provides that: "A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule." Subsection 801(b)(2) provides that such a disapproved rule "may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule." Subsection 801(b)(2) is necessary to prevent circumvention of a resolution disapproval. Nevertheless, it may have a different impact on the issuing agencies depending on the nature of the underlying law that authorized the rule.

If the law that authorized the disapproved rule provides broad discretion to the issuing agency regarding the substance of such rule, the agency may exercise its broad discretion to issue a substantially different rule. If the law that authorized the disapproved rule did not mandate the promulgation of any rule, the issuing agency may exercise its discretion not to issue any new rule. Depending on the law that authorized the rule, an issuing agency may have both options. But if an agency is mandated to promulgate a particular rule and its discretion in issuing the rule is narrowly circumscribed, the enactment of a resolution of disapproval for that rule may work to prohibit the reissuance of any rule. The authors intend the debate on any resolution of disapproval to focus on the law that authorized the rule and make the congressional intent clear regarding the agency's options or lack thereof after enactment of a joint resolution of disapproval. It will be the agency's responsibility in the first instance when promulgating the rule to determine the range of discretion afforded under the original law and whether the law authorizes the agency to issue a substantially different rule. Then, the agency must give effect to the resolution of disapproval.

#### Limitation on judicial review of congressional or administrative actions

Section 805 provides that a court may not review any congressional or administrative "determination, finding, action, or omission under this chapter." Thus, the major rule determinations made by the Administrator of

the Office of Information and Regulatory Affairs of the Office of Management and Budget are not subject to judicial review. Nor may a court review whether Congress complied with the congressional review procedures in this chapter. This latter limitation on the scope of judicial review was drafted in recognition of the constitutional right of each House of Congress to "determine the Rules of its Proceedings," U.S. Const., art. I, §5, cl. 2, which includes being the final arbiter of compliance with such Rules.

The limitation on a court's review of subsidiary determination or compliance with congressional procedures, however, does not bar a court from giving effect to a resolution of disapproval that was enacted into law. A court with proper jurisdiction may treat the congressional enactment of a joint resolution of disapproval as it would treat the enactment of any other federal law. Thus, a court with proper jurisdiction may review the resolution of disapproval and the law that authorized the disapproved rule to determine whether the issuing agency has the legal authority to issue a substantially different rule. The language of subsection 801(g) is also instructive. Subsection 801(g) prohibits a court or agency from inferring any intent of the Congress only when "Congress does not enact a joint resolution of disapproval," or by implication, when it has not yet done so. In deciding cases or controversies properly before it, a court or agency must give effect to the intent of the Congress when such a resolution is enacted and becomes the law of the land. The limitation on judicial review in no way prohibits a court from determining whether a rule is in effect. For example, the authors expect that a court might recognize that a rule has no legal effect due to the operation of subsections 801(a)(1)(A) or 801(a)(3).

#### Enactment of a joint resolution of disapproval for a rule that was already in effect

Subsection 801(f) provides that: "Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect." Application of this subsection should be consistent with existing judicial precedents on rules that are deemed never to have taken effect.

#### Agency information required to be submitted to GAO

Pursuant to subsection 801(a)(1)(B), the federal agency promulgating the rule shall submit to the Comptroller General (and make available to each House) (i) a complete copy of the cost-benefit analysis of the rule, if any, (ii) the agency's actions related to the Regulatory Flexibility Act, (iii) the agency's actions related to the Unfunded Mandates Reform Act, and (iv) "any other relevant information or requirements under any other Act and any relevant Executive Orders." Pursuant to subsection 801(a)(1)(B), this information must be submitted to the Comptroller General on the day the agency submits the rule to Congress and to GAO.

The authors intend information supplied in conformity with subsection 801(a)(1)(B)(iv) to encompass both agency-specific statutes and government-wide statutes and executive orders that impose requirements relevant to each rule. Examples of agency-specific statutes include information regarding compliance with the law that authorized the rule and any agency-specific procedural requirements, such as section 9 of the Consumer Product Safety Act, as amended, 15 U.S.C. §2054 (procedures for consumer product safety rules); section 6 of the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §655 (promulgation of standards); section 307(d) of the Clean Air Act, as amended,

42 U.S.C. §7607(d) (promulgation of rules); and section 501 of the Department of Energy Organization Act, 42 U.S.C. §7191 (procedure for issuance of rules, regulations, and orders). Examples of government-wide statutes include other chapters of the Administrative Procedure Act, 5 U.S.C. §§551-559 and 701-706; and the Paperwork Reduction Act, as amended, 44 U.S.C. §§3501-3520.

Examples of relevant executive orders include E.O. No. 12866 (Sept. 30, 1993) (Regulatory Planning and Review); E.O. No. 12606 (Sept. 2, 1987) (Family Considerations in Policy Formulation and Implementation); E.O. No. 12612 (Oct. 26, 1987) (Federalism Considerations in Policy Formulation and Implementation); E.O. No. 12630 (Mar. 15, 1988) (Government Actions and Interference with Constitutionally Protected Property Rights); E.O. No. 23875 (Oct. 26, 1993) (Enhancing the Intergovernmental Partnership); E.O. No. 12778 (Oct. 23, 1991) (Civil Justice Reform); E.O. No. 12988 (Feb. 5, 1996) (Civil Justice Reform) (effective May 5, 1996).

#### GAO reports on major rules

Fifteen days after the federal agency submits a copy of a major rule and report to each House of Congress and the Comptroller General, the Comptroller General shall prepare and provide a report on the major rule to the committee of jurisdiction in each House. Subsection 801(a)(2)(B) requires agencies to cooperate with the Comptroller General in providing information relevant to the Comptroller General's reports on major rules. Given the 15-day deadline for these reports, it is essential that the agencies' initial submission to the General Accounting Office (GAO) contain all of the information necessary for GAO to conduct its analysis. At a minimum, the agency's submission must include the information required of all rules pursuant to 801(a)(1)(B). Whenever possible, OMB should work with GAO to alert GAO when a major rule is likely to be issued and to provide as much advance information to GAO as possible on such proposed major rule. In particular, OMB should attempt to provide the complete cost-benefit analysis on a major rule, if any, well in advance of the final rule's promulgation.

It also is essential for the agencies to present this information in a format that will facilitate the GAO's analysis. The authors expect that GAO and OMB will work together to develop, to the greatest extent practicable, standard formats for agency submissions. OMB also should ensure that agencies follow such formats. The authors also expect that agencies will provide expeditiously any additional information that GAO may require for a thorough report. The authors do not intend the Comptroller General's reports to be delayed beyond the 15-day deadline due to lack of information or resources unless the committees of jurisdiction indicate a different preference. Of course, the Comptroller General may supplement his initial report at any time with any additional information, on its own, or at the request of the relevant committees or jurisdiction.

#### Covered agencies and entities in the executive branch

The authors intend this chapter to be comprehensive in the agencies and entities that are subject to it. The term "Federal agency" in subsection 804(1) was taken from 5 U.S.C. §551(1). That definition includes "each authority of the Government" that is not expressly excluded by subsection 551(1)(A)-(H). With those few exceptions, the objective was to cover each and every government entity, whether it is a department, independent agency, independent establishment, or government corporation. This is because Congress is enacting the congressional review

chapter, in large part, as an exercise of its oversight and legislative responsibility. Regardless of the justification for excluding or granting independence to some entities from the coverage of other laws, that justification does not apply to this chapter, where Congress has an interest in exercising its constitutional oversight and legislative responsibility as broadly as possible over all agencies and entities within its legislative jurisdiction.

In some instances, federal entities and agencies issue rules that are not subject to the traditional 5 U.S.C. §553(c) rulemaking process. However, the authors intend the congressional review chapter to cover every agency, authority, or entity covered by subsection 551(1) that establishes policies affecting any segment of the general public. Where it was necessary, a few special exceptions were provided, such as the exclusion for the monetary policy activities of the Board of Governors of the Federal Reserve System, rules of particular applicability, and rules of agency management and personnel. Where it was not necessary, no exemption was provided and no exemption should be inferred from other law. This is made clear by the provision of section 806 which states that the Act applies notwithstanding any other provision of law.

#### Definition of a "major rule"

The definition of a "major rule" in subsection 804(2) is taken from President Reagan's Executive Order 12291. Although President Clinton's Executive Order 12866 contains a definition of a "significant regulatory action" that is seemingly as broad, several of the Administration's significant rule determinations under Executive Order 12866 have been called into question. The authors intend the term "major rule" in this chapter to be broadly construed, including the non-numerical factors contained in the subsections 804(2)(B) and (C).

Pursuant to subsection 804(2), the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget (the Administrator) must make the major rule determination. The authors intend that centralizing this function in the Administrator will lead to consistency across agency lines. Moreover, from 1981-93 OIRA staff interpreted and applied the same major rule definition under E.O. 12291. Thus, the Administrator should rely on guidance documents prepared by OIRA during that time and previous major rule determinations from that Office as a guide in applying the statutory definition to new rules.

Certain covered agencies, including many "independent agencies," include their proposed rules in the Unified Regulatory Agenda published by OMB but do not normally submit their final rules to OMB for review. Moreover, interpretative rules and general statements of policy are not normally submitted to OMB for review. Nevertheless, it is the Administrator that must make the major rule determination under this chapter whenever a new rule is issued. The Administrator may request the recommendation of any agency covered by this chapter on whether a proposed rule is a major rule within the meaning of subsection 804(2), but the Administrator is responsible for the ultimate determination. Thus, all agencies or entities covered by this chapter will have to coordinate their rulemaking activity with OIRA so that the Administrator may make the final, major rule determination.

#### Scope of rules covered

The authors intend this chapter to be interpreted broadly with regard to the type and scope of rules that are subject to congressional review. The term "rule" in subsection 804(3) begins with the definition of a

"rule" in subsection 551(4) and excludes three subsets of rules that are modeled on APA sections 551 and 553. This definition of a rule does not turn on whether a given agency must normally comply with the notice-and-comment provisions of the APA, or whether the rule at issue is subject to any other notice-and-comment procedures. The definition of "rule" in subsection 551(4) covers a wide spectrum of activities. First, there is formal rulemaking under section 553 that must adhere to procedures of sections 556 and 557 of title 5. Second, there is informal rulemaking, which must comply with the notice-and-comment requirements of subsection 553(c). Third, there are rules subject to the requirements of subsection 552(a)(1) and (2). This third category of rules normally either must be published in the Federal Register before they can adversely affect a person, or must be indexed and made available for inspection and copying or purchase before they can be used as precedent by an agency against a non-agency party. Documents covered by subsection 552(a) include statements of general policy, interpretations of general applicability, and administrative staff manuals and instructions to staff that affect a member of the public. Fourth, there is a body of materials that fall within the APA definition of "rule" and are the product of agency process, but that meet none of the procedural specifications of the first three classes. These include guidance documents and the like. For purposes of this section, the term rule also includes any rule, rule change, or rule interpretation by a self regulatory organization that is approved by a Federal agency. Accordingly, all "rules" are covered under this chapter, whether issued at the agency's initiative or in response to a petition, unless they are expressly excluded by subsections 804(3)(A)-(C). The authors are concerned that some agencies have attempted to circumvent notice-and-comment requirements by trying to give legal effect to general statements of policy, "guidelines," and agency policy and procedure manuals. The authors admonish the agencies that the APA's broad definition of "rule" was adopted by the authors of this legislation to discourage circumvention of the requirements of chapter 8.

The definition of a rule in subsection 551(4) covers most agency statements of general applicability and future effect. Subsection 804(3)(A) excludes "any rule of particular applicability, including a rule that approves or prescribes rates, wages, prices, services, or allowances therefore, corporate and financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing" from the definition of a rule. Many agencies, including the Treasury, Justice, and Commerce Departments, issue letter rulings or other opinion letters to individuals who request a specific ruling on the facts of their situation. These letter rulings are sometimes published and relied upon by other people in similar situations, but the agency is not bound by the earlier rulings even on facts that are analogous. Thus, such letter rulings or opinion letters do not fall within the definition of a rule within the meaning of subsection 804(3).

The different types of rules issued pursuant to the internal revenue laws of the United States are good examples of the distinction between rules of general and particular applicability. IRS private letter rulings and Customs Service letter rulings are classic examples of rules of particular applicability, notwithstanding that they may be cited as authority in transactions involving the same circumstances. Examples of substantive and interpretative rules of general applicability will include most temporary and final Treas-

ury regulations issued pursuant to notice-and-comment rulemaking procedures, and most revenue rulings, revenue procedures, IRS notices, and IRS announcements. It does not matter that these later types of rules are issued without notice-and-comments rulemaking procedures or that they are accorded less deference by the courts than notice-and-comment rules. In fact, revenue rulings have been described by the courts as the "classic example of an interpretative rul[e]" within the meaning of the APA. See *Wing v. Commissioner*, 81 T.C. 17, 26 (1983). The test is whether such rules announce a general statement of policy or an interpretation of law of general applicability.

Most rules or other agency actions that grant an approval, license, registration, or similar authority to a particular person or particular entities, or grant or recognize an exemption or relieve a restriction for a particular person or particular entities, or permit new or improved applications of technology for a particular person or particular entities, or allow the manufacture, distribution, sale, or use of a substance or product are exempted under subsection 804(3)(A) from the definition of a rule. This is probably the largest category of agency actions excluded from the definition of a rule. Examples include import and export licenses, individual rate and tariff approvals, wetlands permits, grazing permits, plant licenses or permits, drug and medical device approvals, new source review permits, hunting and fishing take limits, incidental take permits and habitat conservation plans, broadcast licenses, and product approvals, including approvals that set forth the conditions under which a product may be distributed.

Subsection 804(3)(B) excludes "any rule relating to agency management or personnel" from the definition of a rule. Pursuant to subsection 804(3)(C), however, a "rule of agency organization, procedure, or practice," is only excluded if it "does not substantially affect the rights or obligations of non-agency parties." The authors' intent in these subsections is to exclude matters of purely internal agency management and organization, but to include matters that substantially affect the rights or obligations of outside parties. The essential focus of this inquiry is not on the type of rule but on its effect on the rights or obligations of non-agency parties. •

#### 10TH ANNIVERSARY OF CHERNOBYL

• Mr. LEVIN. Mr. President, on April 26, 1986, reactor number 4 at the V.I. Lenin Atomic Power Plant in Chernobyl near Kiev, Ukraine exploded. The explosion released a cloud of radioactive steam into the atmosphere reported to contain about 200 times more radio activity than was released at Hiroshima and Nagasaki.

The explosion took an enormous toll on the people directly exposed to the radiation emitted from the plant. Shortly after the explosion, Soviet officials admitted to 31 deaths among reactor operators and the team attempting to contain the damage. Thousands of workers were eventually exposed at the site.

However, children have been the first among the general population to suffer from the effects of the explosion at Chernobyl. Children are most susceptible to the radioactive iodine emitted from Chernobyl because of their active

**Montanans for Multiple Use v. Barbouletos**, 568 F.3d 225, 229 (D.C. Cir. 2009): when confronted with a claim that an agency action should be invalidated based on the agency's failure to comply with the submission requirements of the CRA, found that "the language in § 805 is unequivocal and precludes review of this claim...."

**Via Christi Reg'l Med. Ctr. V. Leavitt**, 509 F.3d 1259, 1271 n. 11 (10<sup>th</sup> Cir. 2007): "[t]he Congressional Review Act specifically precludes judicial review of an agency's compliance with its terms."

The 5th Circuit affirmed, without discussion of the CRA, a district court opinion that concluded "the language could not be plainer" and that the alleged failure to comply with the CRA "is not subject to review by this [c]ourt." **Tex. Savings and Cmty Bankers Assoc. v. Fed. Hous. Fin. Bd.**, 1998 U.S. Dist. LEXIS 13470, 27 (W.D. Tex. 1998), *aff'd* **Tex. Savings & Cmty Bankers Assoc. v. Fed. Hous. Fin. Bd.**, 201 F.3d 551 (5th Cir. 2000); *see also* **United States v. Calson**, 2013 U.S. Dist. LEXIS 130893 (D. Minn. 2013); **United States v. Ameren Mo.**, 2012 U.S. Dist. LEXIS 95065 (E.D. Mo. 2012); **Forsyth Mem'l Hosp. v. Sebelius**, 667 F.Supp. 2d 143, 150 (D.D.C. 2009); **New York v. Am. Elec. Power Serv. Corp.**, 2006 U.S. Dist. LEXIS 32829 (S.D. Ohio 2006).

*But see* **United States v. S. Ind. Gas & Elec. Comp.**, 2002 U.S. Dist. LEXIS 20936 (S.D. Ind. 2002).

**From:** Shannon Stewart  
**To:** [katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov); [Richard\\_Cardinale@ios.doi.gov](mailto:Richard_Cardinale@ios.doi.gov)  
**Cc:** [mnedd@blm.gov](mailto:mnedd@blm.gov); [Kathleen Benedetto](mailto:Kathleen_Benedetto); [Jerome Perez](mailto:Jerome_Perez); [Jeff Brune](mailto:Jeff_Brune)  
**Subject:** Follow-up on Surface Management Agencies  
**Date:** Thursday, March 23, 2017 12:35:21 PM

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As a follow up to the Fluid Minerals 101 briefing, we are providing additional information regarding Surface Management Agency (SMA) concurrence, which is a major challenge for the BLM in regards to both Expressions of Interest (EOIs) and Applications for Permit to Drill (APDs).

An EOI is an informal request for certain lands to be included in a competitive oil and gas lease sale. Prior to lands being offered for sale, the BLM is required to obtain consent and recommendations from other Federal SMAs before placing the lands on a competitive sale notice. Securing SMA consent to lease and a lack of responsiveness to concurrence requests is an ongoing issue that adds considerable time to the leasing process. For example, the BLM Eastern States Office is largely dependent on other SMAs, such as the U.S. Forest Service and the U.S. Army Corps of Engineers (USACE) and has been making a concerted effort to improve coordination. In areas like the Bakken where drainage is occurring, the USACE and U.S. Fish and Wildlife Service often cite that oil and gas leasing is not part of their mission.

Regarding APDs, as cited in our March 16, 2017 memo, the total number pending as of January 31, 2017 is 2,802. The five BLM field offices with the highest number of pending APDs account for 2,060 or approximately 74 percent of the total pending APDs. About 595 of the pending APDs (approximately 29 percent) in these five field offices are experiencing processing delays due to the need for concurrence from other SMAs, primarily the Bureau of Indian Affairs and the U.S. Forest Service.

Shannon Stewart  
Acting Chief of Staff  
Bureau of Land Management  
202-570-0149 (cell)  
202-208-4586 (office)  
[scstewar@blm.gov](mailto:scstewar@blm.gov)

**From:** Kaster, Amanda  
**To:** [James Cason](#); [Gareth Rees](#)  
**Subject:** For Tomorrow: SCIA Member Profiles  
**Date:** Sunday, March 05, 2017 9:01:25 PM  
**Attachments:** [SCIA Member Pages Revised 3-5-17.docx](#)

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I will have a revised version of the attached document for you during the 10am session.

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Amanda Kaster-Averill  
Special Assistant  
Office of Congressional and Legislative Affairs  
U.S. Department of the Interior

(202) 208-3337  
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# SENATE COMMITTEE ON INDIAN AFFAIRS MEMBER PAGES FOR THE 115<sup>TH</sup> CONGRESS

## MAJORITY MEMBERS:



*John Hoeven* (ND), Chairman

**4** tribes (Spirit Lake Tribe; Three Affiliated Tribes of the Fort Berthold Reservation; Standing Rock Sioux Tribe of North & South Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota)

**12** Bureau of Indian Education schools

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- Support for completion of the DAPL project—specifically for increased assistance from BIA law enforcement support. (\*Note: BIA held several calls with the Senator and his staff and subsequently sent additional BIA law enforcement to help with on-reservation issues).

Likely Key Issues for Indian Country:

- Continued support of BIA Law Enforcement re: DAPL;
- Infrastructure issues in Indian Country (energy, water, broadband, etc.);
- 2017 G.A.O. High Risk Report and BIE schools.

Recent Press Releases regarding Indian Country:

- 2/15/2017 - Corps to send cleanup crew to DAPL site this week:  
<https://www.hoeven.senate.gov/news/news-releases/hoeven-corps-to-send-cleanup-crew-to-dapl-site-this-week>
- 2/08/2017 – Statement on the Corps issuing final easement for Dakota Access Pipeline: <https://www.hoeven.senate.gov/news/news-releases/hoeven-statement-on-the-corps-issuing-the-final-easement-for-dakota-access-pipeline>
- 1/27/2017 – Hoeven announces additional BIA federal law enforcement officers are headed to ND to help state and local offices (DAPL):  
<https://www.hoeven.senate.gov/news/news-releases/hoeven-announces-additional-bia-federal-law-enforcement-officers-headed-to-nd-to-help-state-and-local-officers>

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 245 Indian Tribal Energy Development and Self-Determination Act Amendments of 2017.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*John Barrasso* (WY)

2 tribes (Shoshone & Arapaho Tribes)

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- Didn't directly mention Crow Nation but did talk about ending the moratorium on coal;
- BIA—a general mention that the Dept. will need to give BIA significant attention.

Likely Key Issues for Indian Country:

- Energy development;
- Dam and Irrigation repairs, maintenance and projects (DRIFT and IRRIGATE acts were passed in the WIIN Act) as part of overall infrastructure conversation;
- BIE Reform;
- Self-determination and sovereignty.

Recent Press Releases regarding Indian Country:

- 02/18/2017 – Senate Committee Passes John P. Smith Act to Improve Safety on Tribal Roads: <https://www.barrasso.senate.gov/public/index.cfm/news-releases?ID=78EB34F7-9319-409E-841F-8BC645D3CE6F>
- 01/24/2017 – Barrasso Statement on Keystone and Dakota Access Pipeline Executive Orders: <https://www.barrasso.senate.gov/public/index.cfm/news-releases?ID=9C97EB1B-A140-492D-8C72-B365F4625852>

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 302 John P. Smith Act – to Improve Safety on Tribal Roads;
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*John McCain (AZ)*

**21** tribes

**54** BIE schools

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- N/A, not on SENR.

Likely Key Issues for Indian Country:

- Indian Gaming Regulatory Act (IGRA) and off-reservation gaming (Tohono Oodham tribal gaming issue);
- Indian water settlements, specifically the Navajo and Hopi Little Colorado River settlement;
- The future of the Navajo Generating Station (NGS);
- BIE reform—in favor of a voucher like system for AZ Indian students.

Recent Press Releases regarding Indian Country:

- 02/15/2017 – Statement by SASC Chairman John McCain on GAO’s High Risk List: <http://www.mccain.senate.gov/public/index.cfm/press-releases?ID=BE5CF750-4CD2-40AA-A296-3A1F1E9996FD>

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 140 (Co-Sponsored (Flake’s Bill)) A bill to amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to clarify the use of amounts in the WMAT Settlement Fund.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.

Recent Letter to Navajo and Hopi Tribes:

- 02/14/2017--Letter from Senator McCain asking Navajo and Hopi to work on a Little Colorado River settlement this year. This settlement has been stalled since the two tribes rejected a settlement bill introduced by Senator Kyl. This may end up being linked somehow to NGS closure issues. Meetings attended by Pam Williams, Director of SIWRO, Navajo has requested that it be awarded the water currently used by NGS. SIWRO will work on a briefing paper on this issue.
- <file:///C:/Users/tgoodluck/Downloads/170214%20JSM%20letter%20to%20Navajo%20and%20Hopi%20water%20settlement.pdf>



*Lisa Murkowski (AK)*

**229** Alaska Native Tribes/Villages

Indian Affairs related issues/questions asked at confirmation hearing:

- Asked for support of the King Cove access road.

Likely Key Issues for Indian Country:

- King Cove access road;
- Native Veteran's issues;
- Health care;
- Resource development and ways for BIA to be more helpful in the process.

Recent Press Releases regarding Indian Country:

- 02/08/2017 - Two Murkowski Bills Pass Senate Indian Affairs Committee:  
<https://www.murkowski.senate.gov/press/release/two-murkowski-bills-pass-senate-indian-affairs-committee>
- 01/31/2017- Committee Approves Nominees for Energy, Interior Secretary:  
<https://www.murkowski.senate.gov/press/release/committee-approves-nominees-for-energy-interior-secretary->

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 91 Indian Employment, Training and Related Services Act of 2017;
  - 02/08/2017 Marked-up and reported out of SCIA favorably.
- S. 269 A bill to provide for the conveyance of certain property to the Tanana Tribal Council located in Tanana, Alaska, and to the Bristol Bay Area Health Corporation located in Dillingham, Alaska, and for other purposes. (NOTE: IHS related bill);
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*James Lankford (OK)*

**38** tribes

**5** BIE schools

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- N/A, not on SENR.

Likely Key Issues for Indian Country:

- Energy development for Indian Country;
- Sovereignty and tribal consultation;
- General BIE Issues:
  - Johnson-O'Malley (JOM) program funds which are used for programs ranging from language and culture to dropout prevention;
  - 2017 G.A.O. High Risk report and BIE schools with a likely emphasis on school infrastructure.

Recent Press Releases regarding Indian Country:

- 02/08/2017 Senator Lankford Cosponsors Bill to Repeal Antiquated Laws Directed Toward Native Americans: <https://www.lankford.senate.gov/news/press-releases/senator-lankford-cosponsors-bill-to-repeal-antiquated-laws-directed-toward-native-americans>
- 01/24/2017 – Senator Lankford Statement on Keystone XL and Dakota Access Executive Actions: <https://www.lankford.senate.gov/news/press-releases/senator-lankford-statement-on-keystone-xl-and-dakota-access-executive-actions>

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 343- Respect Act- Repealing Existing Substandard Provisions Encouraging Conciliation with Tribes Act.



*Steve Daines (MT)*

**8** tribes (Blackfeet Tribe, Chippewa Cree Tribe of the Rocky Boy's Reservation, Confederated Salish & Kootenai Tribes, Crow Tribe, Fort Belknap Tribes of the Fort Belknap Reservation, Fort Peck Tribes, Northern Cheyenne Tribe, Little Shell Chippewa Tribe)

**3** BIE schools

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- Economic Development in Indian Country;
- Blackfeet Water Rights Settlement/Indian Water Settlements.

Likely Key Issues for Indian Country:

- Energy development in Indian Country, with an emphasis on the BIA's struggle to assist Tribes in the development process
- Respect for sovereignty and self-determination;
- Indian Water Settlements (emphasis on Blackfeet Water Rights Settlement), specifically requesting how to fund them;
- Healthcare needs in Indian Country.

Recent Press Releases regarding Indian Country:

- 02/08/2017 – Daines: Little Shell Recognition Moves Forward:  
<https://www.daines.senate.gov/news/press-releases/daines-little-shell-recognition-moves-forward>

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 39 Little Shell Tribe of Chippewa Indians Restoration Act of 2017 (Co-sponsored with Senator Tester).
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*Mike Crapo (ID)*

**4** tribes (Coeur D'Alene Tribe; Idaho Kootenai Tribe; Nez Perce Tribe; Shoshone-Bannock Tribes of the Fort Hall Reservation)

**2** BIE schools

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- N/A, not on SENR

Likely Key Issues for Indian Country: (hasn't been very active on the Committee)

- Energy development as a source of economic opportunity;
- General support of tribal sovereignty;
- Tribal consultation and border security measures;
- Healthcare needs in Indian Country.

Recent Press Releases regarding Indian Country:

- N/A

Introduced Legislation in the 115<sup>th</sup> Congress:

- N/A.



*Jerry Moran (KS)*

**4** tribes (Kickapoo Tribe of Indians of the Kickapoo Reservation; Prairie Band of Potawatomi Nation; Iowa Tribe of Kansas and Nebraska; Sac & Fox Nation of Missouri in Kansas and Nebraska)

**1** BIE school

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- N/A, not on SENR

Likely Key Issues for Indian Country:

- Energy development opportunities;
- General support for tribal sovereignty;
  - Has moved legislation that would exempt Indian Tribes from the National Labor Relations Act;
  - You cosponsored this legislation while in the House.
- Native Veteran's issues.

Recent Press Releases regarding Indian Country:

- N/A.

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 63 Tribal Labor Sovereignty Act of 2017.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.

## MINORITY MEMBERS



*Tom Udall* (NM), Vice Chairman

**23** tribes

**44** BIE schools

Indian Affairs related issues/questions asked at confirmation hearing:

- N/A, not on SENR

Likely Key Issues for Indian Country:

- Indian self-determination;
- Sovereignty and consultation, with an emphasis on DAPL;
  - Supports Standing Rock Sioux Tribe on the issue.
- BIE and education issues broadly, with a focus on the impact of the hiring freeze on BIE schools;
- Indian water settlements;
- Use of BIA officers from New Mexico in ND for DAPL;
- Bears Ears—supports monument and the Tribes’ ability to co-manage the area;
- Native American cultural preservation issues;
- Stopping cultural patrimony from being taken from the tribal communities.

Recent Press Releases regarding Indian Country:

- 02/17/2017 – Senate Indian Affairs Committee Democrats Secure Exemption from Federal Hiring Freeze for Indian Health Services Staff:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2576](https://www.tomudall.senate.gov/?p=press_release&id=2576)
- 02/09/2017 – Udall: Trump Should Make Good on Federal Government’s Promise to Tribes Protesting Dakota Access Pipeline:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2556](https://www.tomudall.senate.gov/?p=press_release&id=2556)
- 02/01/2017 – Senate Indian Affairs Committee Democrats Urge President Trump to Exempt Indian Services Agencies from Federal Hiring Freeze:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2537](https://www.tomudall.senate.gov/?p=press_release&id=2537)
- 01/31/2017 – Udall Outlines Priorities for Senate Committee on Indian Affairs for the New Congress: [https://www.tomudall.senate.gov/?p=press\\_release&id=2534](https://www.tomudall.senate.gov/?p=press_release&id=2534)
- 01/24/2017 – Udall Statement on Trump Executive Orders Advancing Dakota Access, Keystone XL Pipelines:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2521](https://www.tomudall.senate.gov/?p=press_release&id=2521)
- 01/19/2017 – Udall Statement after Meeting with Rep. Ryan Zinke, Trump’s Nominee for Interior Secretary:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2516](https://www.tomudall.senate.gov/?p=press_release&id=2516)

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 254 Esther Martinez Native American Languages Preservation Act.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.
- S. 249 A bill to allow for the Santa Clara Pueblo to lease for 99 years.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*Maria Cantwell (WA)*

**29** tribes

**7** BIE schools

Indian Affairs related issues/questions asked at confirmation hearing:

- Lummi Nation's right to object to Gateway Pacific Terminal in Washington state based on their fishing rights;
- Tribal sovereignty and tribes' abilities to exercise their right to object based on treaty and sovereignty rights;
- Spokane Equitable Settlement Compensation Act---passed House and Senate in the 114<sup>th</sup>. Wants support of DOI in this Administration on this settlement, which provides for equitable relief from the flooding that occurred as a result of dams being constructed.)

Likely Key Issues for Indian Country:

- Indian gaming;
- Timber;
- Impact of forest fires on Indian land;
- Tribal sovereignty and self-determination;
- Economic development outside of fossil fuels;
- VAWA issues—protection of Native women who are victims of domestic abuse
- Tribal jurisdictional issues (i.e. Tribes authority on reservation land over non-Indians).

Recent Press Releases regarding Indian Country:

- 02/07/2017 – Senate, House Natural Resource Leaders Blast Dakota Access Pipeline Decision, Stand up for Tribal Sovereignty and Treaty Rights:  
<https://www.cantwell.senate.gov/news/press-releases/senate-house-natural-resource-leaders-blast-dakota-access-pipeline-decision-stand-up-for-tribal-sovereignty-and-treaty-rights>
- 02/01/2017 – Dakota Access: Cantwell, Tester, Udall, Call on Feds to Consult with Tribes, Follow the Rule of Law before Moving Forward on Oil Pipeline:  
<https://www.cantwell.senate.gov/news/press-releases/dakota-access-cantwell-tester-udall-call-on-feds-to-consult-with-tribes-follow-the-rule-of-law-before-moving-forward-on-oil-pipeline>

Introduced Legislation in the 115th Congress:

- N/A.



*Jon Tester* (MT)

**8** tribes (Blackfoot Tribe, Chippewa Cree Tribe of the Rocky Boy's Reservation, Confederated Salish & Kootenai Tribes, Crow Tribe, Fort Belknap Tribes of the Fort Belknap Reservation, Fort Peck Tribes, Northern Cheyenne Tribe, Little Shell Chippewa Tribe)

**3** BIE schools

Indian Affairs related issues/questions asked at confirmation hearing:

- N/A, not on SENR

Likely Key Issues for Indian Country:

- Indian water settlements, both in terms of funding (Blackfeet) and pending compacts in Montana (CSKT, Fort Belknap);
- Federal recognition for Little Shell;
- General questions about potential BIE reforms, next steps;
- Self-determination and tribal sovereignty;
- Trust obligation of the federal government to Indian tribes;
- Tribal consultation;
- Access to quality health care;
- Improving transportation in Indian Country, with a direct tie to potential infrastructure opportunities;
- Honoring American Indian Veterans;
- VAWA—Save Native Women Act (VAWA is up for reauthorization soon);
- Tribal Law and Order to address on reservation issues (drug trade, domestic violence, etc).

Recent Press Releases regarding Indian Country:

- 02/20/2017 – Tester Announces Legislation to Strengthen Education for Rural Students, Montana Veterans, Native Americans:  
[http://www.testersenate.gov/?p=press\\_release&id=5019](http://www.testersenate.gov/?p=press_release&id=5019)
- 02/15/2017 – Tester, Udall Fight Veteran Homelessness in Indian Country:  
[http://www.testersenate.gov/?p=press\\_release&id=5008](http://www.testersenate.gov/?p=press_release&id=5008)
- 02/07/2017- Tester, Daines Lead Effort to Dedicate Feb 5-11 National Tribal Colleges and Universities Week:  
[http://www.testersenate.gov/?p=press\\_release&id=4994](http://www.testersenate.gov/?p=press_release&id=4994)
- 01/31/2017 – Tester Statement on Congressman Zinke’s Nomination Vote:  
[http://www.testersenate.gov/?p=press\\_release&id=4979](http://www.testersenate.gov/?p=press_release&id=4979)

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 39 Little Shell Tribe of Chippewa Indians Restoration Act of 2017
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*Al Franken* (MN)

**12** tribes

**4** BIE schools

Indian Affairs related issues/questions asked at confirmation hearing:

- Didn't ask specific Q re: Indian Affairs at the hearing.

Likely Key Issues for Indian Country:

- Education:
  - BIE reforms in light of the 2017 GAO High Risk Report;
  - New school construction (Bug School);
  - BIE's place in the Administration's infrastructure investments;
  - Impact of the hiring freeze on BIE;
  - Pending budget and the impact on BIE schools.
- DAPL and other pending energy specific projects and tribal consultation;
  - 03/01/2017: Sent letter to FBI Director Comey about reports that FBI's Joint Terrorism Task Force attempted to question at least three DAPL protestors – he wants justifications for those actions and assurance constitutional rights were not infringed upon.
- Indian Health;
- Human Trafficking;
- The fate of climate change programs in Indian Affairs and the Administration's budget;
- Crime on Indian reservations.

Recent Press Releases regarding Indian Country:

- N/A.

Introduced Legislation in the 115<sup>th</sup> Congress:

- N/A.



*Brian Schatz (HI)*

Indian Affairs related issues/questions asked at confirmation hearing:

- N/A, not on SENR.

Likely Key Issues for Indian Country:

- Continued support for Native Hawaiian recognition;
  - 09/23/2016: DOI issued a final rule to establish procedures to engage in a government-to-government relationship with the Native Hawaiian community.
- Native Hawaiian's lack of self-determination compared to American Indians and Alaska Natives;
- Native language preservation and funding support for Hawaiian language programs;
- Continued support for Native Hawaiians (over 100 specific laws that impact Native Hawaiians that place them in similar situation as Native Americans);
- Native Tourism---recent bill signed into law by former President Obama;
- Climate change and Indian Affairs programs.

Recent Press Releases regarding Indian Country:

- 01/24/2017 – Schatz Statement on Keystone XL, Dakota Access Pipeline:  
<http://www.schatz.senate.gov/press-releases/schatz-statement-on-keystone-xl-dakota-access-pipelines>

Introduced Legislation in the 115th Congress:

- N/A.



*Heidi Heitkamp* (ND)

**4** tribes (Spirit Lake Tribe; Three Affiliated Tribes of the Fort Berthold Reservation; Standing Rock Sioux Tribe of North & South Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota)

**12** BIE schools

Indian Affairs related issues/questions asked at confirmation hearing:

- N/A, not on SENR.

Likely Key Issues for Indian Country:

- Tribal energy development opportunities (emphasis on all-of-the-above approach);
- Public safety in Indian Country;
- BIE systemic issues and potential reforms;
  - Support for Johnson-O'Malley (JOM) program funds which are used for programs ranging from language and culture to dropout prevention;
- Native Veterans issues;
- Sovereignty and self-determination/tribal consultation;
- Reauthorization of VAWA;
- Bringing fairness of the tax code for federal governments
- Tribal housing, infrastructure, and investment.

Recent Press Releases regarding Indian Country:

- 02/16/2017 – Heitkamp Announces Support for Nominees to Lead Energy, Interior, EPA: <http://www.heitkamp.senate.gov/public/index.cfm/press-releases?ID=C398AF52-943C-449F-973B-0AD0DAAC7A5B>
- 02/07/2017 – Heitkamp Statement on Army Corps of Engineers Intent to Issue Dakota Access Pipeline Easement: <http://www.heitkamp.senate.gov/public/index.cfm/press-releases?ID=02B22609-0098-45AA-B76C-4916B62EB546>
- 02/03/2017 – Heitkamp Announces Federal Law Enforcement Assistance for Standing Rock Protest Site: <http://www.heitkamp.senate.gov/public/index.cfm/press-releases?ID=CEA75937-171F-47B1-BFF8-7B7BDCBB1E89>

Introduced Legislation in the 115<sup>th</sup> Congress:

- Co-sponsor to several of the 8 pending SCIA bills.



*Catherine Cortez Masto (NV)*

**32** tribes

**2** BIE schools

Indian Affairs related issues/questions asked at confirmation hearing:

- Tribal sovereignty in general; consultation—tribes having a seat at the table when it comes to decisions, activities and land management near their communities.

Likely Key Issues for Indian Country:

- Tribal sovereignty;
- DAPL, tribal consultation, and the US's trust responsibilities,
- Indian water rights;
- Impact of energy development on tribal lands;
- Impact of the federal hiring freeze on American Indian, Alaska Natives, and Indian Affairs programs.

Recent Press Releases regarding Indian Country:

- 02/08/2017 – Cortez Masto Joins Letter Blasting Dakota Access Pipeline Decision, Calling on Trump Administration to Stand up for Tribal Sovereignty and Treaty Rights: <https://www.cortezmasto.senate.gov/content/cortez-masto-joins-letter-blasting-dakota-access-pipeline-decision-calling-trump>
- 02/01/2017 – Cortez Masto and Senate Indian Affairs Committee Democrats Urge President Trump to Exempt Indian Services Agencies from Federal Hiring Freeze: <https://www.cortezmasto.senate.gov/content/cortez-masto-and-senate-indian-affairs-committee-democrats-urge-president-trump-exempt>
- 01/31/2017 – Cortez Masto Statement on Department of Interior Nominee Rep. Ryan Zinke: <https://www.cortezmasto.senate.gov/content/cortez-masto-statement-department-interior-nominee-rep-ryan-zinke>

Introduced Legislation in the 115<sup>th</sup> Congress:

- N/A.

**From:** Williams, Timothy  
**To:** [Valerie Smith](#)  
**Subject:** Fwd: Formal Request for Participation, West Slope Colorado Oil & Gas Association  
**Date:** Friday, March 10, 2017 11:46:25 AM  
**Attachments:** [Letter to Secretary Zinke.pdf](#)

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Please print

----- Forwarded message -----

From: David Ludlam <d.ludlam@wscoga.org>  
Date: Fri, Mar 10, 2017 at 10:58 AM  
Subject: Formal Request for Participation, West Slope Colorado Oil & Gas Association  
To: "Williams, Timothy" <timothy\_williams@ios.doi.gov>

Timothy

Per our conversation I wonder if you might advance this letter to Secretary Zinke? A number of folks from our association plan to be in D.C. later this spring and would be eager to discuss in more detail should Secretary Zinke have a few moments on his calendar.

Thanks and best

David

Department Of The Interior  
External and Intergovernmental Affairs  
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[www.WSCOGA.org](http://www.WSCOGA.org)

March 10, 2017

Honorable Secretary Ryan Zinke  
Department of the Interior  
C/O Timothy Williams  
External and Intergovernmental Affairs

RE: Presidential Executive Order on *Enforcing the Regulatory Reform Agenda*

Dear Secretary Zinke,

In 2016 the U.S. Geological Survey made one of the most significant announcements in the agency's history, revealing that Western Colorado harbors one of North America's largest natural gas resources. The Mancos Shale contains up to 100 trillion cubic feet of untapped natural gas. This is in addition to over 100 trillion cubic feet of natural gas in the Mesa Verde formation that is currently being developed.

The USGS announcement resulted in numerous inquiries and visits from around the globe inquiring how Western Colorado's energy might be made available internationally and here in the United States. In early 2017 President Trump met with and presumably discussed natural gas and other trade potential with Japan's Prime Minister - an encouraging development.

Much of Western Colorado's natural gas resource, however, remains under a federal regulatory regime that curtails development. With upwards of 70% of all lands in Western Colorado managed by federal agencies, much of the area's natural gas potential will not be manifested under the current regulatory processes. For Americans to realize the economic and societal benefits of producing the Mancos Shale, *significant* leasing and permitting reforms are critical.

Energy development on public lands will not attract investment capital without these reforms. The fact that an authorization for significant development on public lands typically requires upwards of ten years (whereas in many states permits can be acquired in weeks) is simply prohibitive to investment. This model forecloses on public lands participating in North America's Energy Revolution. If the Bureau of Land Management and United States Forest Service process are not reformed, the President's goal of funding national infrastructure by increasing energy production on federal lands will not be realized.



Given our deep experience and insight into the challenges of public lands development in Western Colorado, and given our unwavering support for the President's Energy plan, we formally request our association be considered for a role in the Department of Interior's regulatory task force created by the February Presidential Executive Order regarding the *enforcement of regulatory reform*.

From leasing and NEPA reform, to wholesale restructuring and revision of how federal minerals are developed, our association members have hundreds of years of collective experience in producing natural gas from federal lands in the Rocky Mountain Region. We can offer this knowledge to your reform task force. Our companies can work by your side creating a new regulatory structure that will allow for emergence of western Rockies' shale gas for our country, our allies overseas and our domestic manufacturers for a century to come.

Our association also respectfully requests that the regulatory reform officers (as described by the Executive Order) be comprised of individuals familiar with the litany of challenges and opportunities facing current lessees and energy operators seeking to produce minerals owned by the American taxpayer.

The West Slope Colorado Oil & Gas Association stands at your service to help drive the President's goal. We commit to specific and substantive input for your consideration in the months ahead.

With eagerness,



David Ludlam  
Executive Director  
West Slope Colorado Oil & Gas Association  
Piceance Basin, Western Colorado



**From:** Macgregor, Katharine  
**To:** [Kent Burton](#)  
**Cc:** [kate\\_macgregor@ios.doi.gov](mailto:kate_macgregor@ios.doi.gov)  
**Subject:** Re: fracking rule  
**Date:** Friday, March 10, 2017 7:25:11 PM

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Hey Kent - Thanks for sharing.  
-Kate

On Fri, Mar 10, 2017 at 11:39 AM, Kent Burton <[kent\\_burton@nes-dc.com](mailto:kent_burton@nes-dc.com)> wrote:

And this was in E&E today:

## **LAW**

### **Court to Trump team: Commit to position on fracking rule**

[Ellen M. Gilmer](#), E&E News reporter

Published: Friday, March 10, 2017

The Trump administration must decide quickly whether to defend an Obama-era hydraulic fracturing regulation.

In a surprise move, the 10th U.S. Circuit Court of Appeals last night asked government lawyers to tell the court by Wednesday whether they plan to continue fighting for the Interior Department's fracking rule.

Oral arguments on the regulation — which was struck down by a district court last summer — are set for March 22. While it's common for courts to pause or delay proceedings after a change in administration if one side indicates its legal position could change, no party had done so in this case.

The directive came in a short order from the 10th Circuit clerk last night.

"Given the recent change of Administration and the related personnel changes in the Department of Justice and the Department of Interior, the Court is concerned that the briefing filed by the Federal Appellants in these cases may no longer reflect the position of the Federal Appellants," the court said.

The order requires DOJ lawyers to file a statement with the court by Wednesday to confirm "whether their position on the issues presented remain the same, or have now changed."

Interior and DOJ did not respond to requests for comment.

BakerHostetler attorney Mark Barron, who is representing industry groups against the rule, said he appreciated the court's attempt to clarify whether any legal positions have changed.

"We appreciate the court taking this action sua sponte to make sure the resources of the court and the parties are preserved," he told E&E News. "We look forward to working with the other parties including the Department of Justice, yet we remain prepared to defend the district court's decision on March 22."

Fredericks Peebles & Morgan LLP attorney Jeffrey Rasmussen, representing the Ute Tribe against the rule, noted that any action from DOJ to modify its argument would delay the case by months.

"If the United States does file something, that almost assuredly puts off oral argument until one of the next two argument sessions," he said.

Earthjustice attorney Mike Freeman declined to comment on the court's action but has previously promised that environmental groups will seek to continue their appeal even if the Trump administration backs out.

### **What's on the line?**

At stake is whether Interior's Bureau of Land Management has authority to regulate fracking at all. After the Obama administration finalized the years-in-the-making rule in March 2015, opponents from several Western states argued that the Energy Policy Act of 2005 removed fracking from federal oversight.

The U.S. District Court for the District of Wyoming accepted the argument last June and struck down the rule as beyond BLM's authority. The agency and a coalition of environmental groups quickly appealed to the 10th Circuit, arguing that the lower court's interpretation of the Energy Policy Act was "manifestly incorrect."

It's unclear whether the Trump administration plans to continue that line of argument. Newly installed Interior Secretary Ryan Zinke is a fan of fracking but has not expressed a position on the rule, which would set new standards for well construction, wastewater management and chemical disclosure for fracked wells on public and tribal lands.

Sen. Al Franken (D-Minn.) asked the secretary about Interior's authority over fracking earlier this year, but Zinke deflected, noting that he had not yet been briefed on the issue ([Energywire](#), Jan. 31).

Supporters of the fracking rule have suggested that even if the new administration does not want to regulate fracking, the district court's decision is so sweeping that appealing it would still be in the government's interest.

Former Interior officials from both Republican and Democratic administrations told the 10th Circuit last year that the lower court's "deeply flawed decision threatens the federal government's ability to protect its lands from injury and must be reversed" ([Energywire](#), Aug. 22, 2016).

The Trump administration has already backed away from several Obama regulations in court, including U.S. EPA's rule addressing Clean Water Act jurisdiction. Environmental groups have been on the lookout for position switches from DOJ in a host of other lawsuits involving public lands and

energy development ([Energywire](#), March 2).

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**From:** Kent Burton  
**Sent:** Friday, March 10, 2017 10:29 AM  
**To:** '[kate\\_macgregor@ios.doi.gov](mailto:kate_macgregor@ios.doi.gov)' <[kate\\_macgregor@ios.doi.gov](mailto:kate_macgregor@ios.doi.gov)>  
**Subject:** fracking rule

Kate,

Do you know who's working on fracking?

The headline below is from Politico:

As you know, the fracking rule has a hearing scheduled in the 10th Circuit in two weeks. Might be a good time to bring up settlement discussions. Needless to say, DOI/BLM needs to have their attorneys reach out to the industry and state attorney working on the case. One school of thought of course is that the Administration recognizes state primacy of their hydraulic fracturing rule and drop the rest. But before anything can move forward they need to direct their DOJ attorneys to enter into settlement negotiations.

Thanks.

Kent

(b) (6)

**COURT WONDERERS IF TRUMP ADMINISTRATION WILL DEFEND FRACKING RULE:** Oral arguments before the 10th Circuit Court of Appeals over Interior's fracking rule are scheduled for March 22, but the court is wondering if maybe government support for that rule has changed since Trump took office. In a brief notice Thursday, the court noted the change in administration and said it is "concerned that the briefing filed by the [Interior Department] in these cases may no longer reflect the position of the" government. Interior has until March 15 to say if its position has changed; if so, the court says it "would entertain

motions for supplemental briefing by the parties" — and presumably push back those oral arguments. A lower court judge struck down the rule as unconstitutional.  
Sent from my iPhone

--

Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202-208-3671 (Direct)

**From:** Simpson, Melissa  
**To:** [Parrish, Jean](#); [Benedetto, Kathleen](#)  
**Subject:** Fwd:  
**Date:** Thursday, February 09, 2017 3:45:33 PM  
**Attachments:** [DOI Issues - Copy.pdf](#)

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Please see the attached briefing paper in preparation of the meeting tomorrow with the National Mining Association.

----- Forwarded message -----

From: Melissa Simpson <[melissasimpsonjd@gmail.com](mailto:melissasimpsonjd@gmail.com)>  
Date: Thu, Feb 9, 2017 at 3:42 PM  
Subject:  
To: Melissa Simpson <[melissa\\_simpson@ios.doi.gov](mailto:melissa_simpson@ios.doi.gov)>

Melissa

Sent from my iPhone

--

Melissa Simpson  
Intergovernmental and External Affairs, Room 6211  
Department of the Interior  
1849 C Street, NW  
Washington, DC 20240  
(202) 706 4983 cell  
[melissa\\_simpson@ios.doi.gov](mailto:melissa_simpson@ios.doi.gov)

## Department of the Interior

### Immediate Priorities

#### 1. Department of the Interior Federal Coal Leasing Moratorium

On Jan. 15, 2016, the Secretary of Interior issued Sec. Order 3338 imposing a moratorium on holding new federal coal lease sales pending the preparation of a programmatic EIS and adoption of new policies to make federal coal reserves less accessible and coal mining more expensive. The explanation for the moratorium is comprised of politically contrived reasoning fully embracing the “Keep-it-in-the-Ground” movement’s core objective to deny the Nation a reliable and affordable source of energy.

**Action:** Issue a new Secretarial Order rescinding Order 3338 and terminate the preparation of the programmatic EIS. Resume processing pending coal lease applications and holding lease sales for new lease applications.

#### 2. Department of the Interior 10 Million Acre Withdrawal

In September 2015, the Department of the Interior’s (DOI) Bureau of Land Management’s (BLM) proposed to withdraw approximately 10 million acres of sage grouse habitat from new mining operations. The withdrawal would be the largest ever in the history of the Federal Land Policy and Management Act (FLPMA) and comes at a time when new mining operations are already either restricted or banned on more than half of all federally owned public lands. DOI’s alleges the withdrawal is necessary to conserve the sage grouse and its habitat. It also maintains the withdrawal will have minimal impact on the mining industry as the land involved is of low mineral potential and not prospective for mining. Both these allegations are unfounded and contrary to the evidence.

**Action:** Given that the withdrawal cannot be finalized by the current administration and that pursuing the withdrawal process is essentially at the discretion of the Secretary, a new administration could simply announce it not move forward with that process. A more durable and defensible approach may be to continue the NEPA EIS and use the data and evidence submitted during the comment period as the basis for determining the withdrawal is not necessary to conserve the sage grouse or its habitat.

#### 3. Federal Coal Royalty Valuation Rule

The Department of the Interior’s Office of Natural Resources Revenue (ONRR) published a final rule on July 1, 2016 (81 FR 4338), altering the valuation methods for coal produced on federal lands for purposes of calculating the ad valorem royalty. For coal sales to affiliates, the rule moves the point of valuation from the initial sales price to a later point it deems the first “arms-length” transaction and then sets net-back provisions, proxies and default provisions designed to impute a higher value for royalty purposes. The rule changes carry significant implications for coal exports, sales to marketing and logistics affiliates and transactions with affiliated generation and transmission affiliates.

**Action:** Issue an administrative stay of the rule under the Administrative Procedure Act due to pending litigation. DOI should seek a voluntary remand while it reconsiders and reforms the rules to reflect the longstanding principle that the value of coal is determined by the initial sales price (with appropriate washing and transportation allowances) and use readily available benchmarks (e.g., comparable sales) for “non-arm’s length transactions.

## **Quick Actions for Pending Rules and Existing Policy Documents**

### **1. OSM Proposed Rule for Self-Bonding and revisions to other Bonding Forms**

OSM granted a petition from an environmental group (WildEarth Guardians) requesting rule revisions to make self-bonding less accessible to qualified companies with a successful record of reclamation of mined lands. OSM went one step further and plans to make other forms of bonding more expensive and less accessible as well. The rules for self-bonding do not require any revisions—no company that has used self-bonds have defaulted on their reclamation obligations. The financial criteria to qualify remain sound and any concerns about whether a company remains eligible once it qualifies can be addressed under existing rules that provide timely information on a company’s financial strength.

**Action:** Withdraw any pending proposal to revise the bonding regulations. Inform the WildEarth Guardians that OSM has reconsidered its prior decision to grant the petition and after further consideration maintains that concerns about eligibility can be adequately addressed under existing rules with proper monitoring of information submitted under the rules.

### **2. OSM Temporary Cessation of Operations**

OSM has placed on its current regulatory agenda revisions to rules governing coal mines that choose to temporarily cease coal production. Current rules require the mine operator to file a notice with the state regulatory authority setting forth its plans including how the company will maintain the mine site to comply with existing standards including any reclamation that will continue during the period of temporary cessation. The rule revisions would change the process to essentially require operators to submit a “permit” to temporarily idle their operations due to adverse market or other conditions. No evidence exists to support a new requirement to obtain another “permit” to temporarily idle operations. Existing rules provide for notification with information on maintaining the operations in compliance with the law while production is temporarily idled. Those operations remain subject to regular inspections to ensure compliance and a performance bond remains posted to guarantee proper reclamation.

**Action:** Terminate the further preparation of this unnecessary regulation that will only burden state agencies with additional “permitting” requirements.

### **3. OSM Blasting Standards**

OSM granted a petition from WildEarth Guardians (WEG) to revise current rules for the use of explosives at coal mining operations. However, OSM decided not to proceed with the revisions requested by WEG, but rather propose its own changes to clarify the applicability and duties under OSM rules for emissions from blasting. Most states already address the issue. OSM

maintains that new federal rules are needed for the states that OSM perceives as not adequately addressing this rare situation.

**Action:** Terminate preparation of a rule. Notify WEG that upon reconsideration the issue raised in its petition is not national in scope necessitating a national rule.

4. OSM Policy Memorandum on SMCRA Enforcement of the Clean Water Act and Clean Air Act

The OSM Director issued a policy memorandum on July 27, 2016 (“A More Complete Enforcement of SMCRA”) which unlawfully conflates requirements under the Clean Water Act (CWA) and Clean Air Act (CAA) with SMCRA standards. The memorandum purports to deputize OSM to separately enforce laws that are not within the agency’s jurisdiction and will result in duplicative enforcement. SMCRA§ 702 expressly prohibits this result; and case law repudiates OSM’s attempt to commandeer those environmental programs that have distinct permitting and enforcement schemes administered by different federal and state agencies. Moreover, the recently passed H.J. Res. 38 voiding the Stream Protection Rule under the Congressional Review Act confirms repudiation of policies calling for the enforcement of the CWA through SMCRA.

**Action:** Rescind the July 27, 2016 memorandum. A new memorandum should clearly delineate the limits SMCRA places on OSM on adopting policies that duplicate or conflict with the CWA.

5. Clean Water Act Appalachian Coal Mining Review Guidance Document

The Obama Administration issued a memorandum on July 21, 2011 (“Improving EPA Review of Appalachian Surface Coal Mining Operations Under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order”) that impermissibly expands EPA’s role in CWA permitting, usurps state statutory authority to develop water quality standards and implement the National Pollutant Discharge Elimination System (NPDES) program, and advocates for the application of questionable science regarding the impacts of conductivity on aquatic life. While a Federal district court judge held EPA’s actions to be unlawful in *NMA v. Jackson*, that ruling was overturned at the appellate level based solely on the fact that the guidance document was not “final agency action” and was therefore not ripe for judicial review. At the same time however, the appeals court held that policies associated with the guidance document were not enforceable. Nevertheless, it has been cited by federal agencies to support new policies including OSM’s Stream Protection Rule and by NGOs in litigation challenging issuance and compliance with coal mining permits.

**Action:** DOI and EPA should rescind the July 21, 2011, memorandum to avoid its use to compel or inform future policies and regulations. The MOU was the genesis of the ill-fated Stream Protection rule recently voided with the passage of H.J. Res. 38 under the Congressional Review Act.

## **Intermediate Actions Existing Policy Documents**

## 1. The Department of the Interior Mitigation Requirements

The President issued a memorandum on “Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment.” Pursuant to this memo, the Department of Interior has issued a related order and several DOI agencies has finalized mitigation policies. The memorandum’s and subsequent orders and policies call for a “net benefit” mitigation goal, that is likely to conflict with the agencies’ organic statutes particularly the BLM’s multiple use mandate. BLM does not have the discretion to ignore that mandate to focus solely on avoidance of impacts to environmental resources.

**Action:** Rescind the Secretarial Order as well as the BLM and Fish and Wildlife mitigation policies.

## 2. The Department of the Interior Secretarial Oder on Wildlands

In 2010, DOI issued Secretarial Oder 3310 on Wildlands. Pursuant to the order, BLM began managing “wild lands” as “de facto” wilderness in violation of the BLM’s rulemaking procedures, federal laws, and WSAs designation process. As a result, the order is a land management plan revision or amendment that circumvents mandatory statutory and regulatory procedures and disregards the deadline for WSA designations.

**Action:** Rescind the Secretarial Order.

## 3. The Department of the Interior National Landscape Conservation System Directorate

The system was created administratively by the Clinton administration and made permanent by Congress in 2009. The system includes roughly 27 million acres of national monuments and conservation areas, wilderness and wilderness study areas, wild and scenic rivers, trails and deserts. The 2010 Secretarial Order that elevated it to a directorate specifies that biodiversity and “ecological connectivity” are supposed to be given a higher priority than other uses. As such, this order violates the Department’s multiple use mandate as established by the Federal Land Policy and Management Act.

**Action:** Rescind the Secretarial Order that elevates the system to a directorate.

## 4. OSM Ten-Day Notice (TDN) Policy

The former OSM Director issued a memorandum (Nov. 15, 2010) and a Policy Directive (INE-35, Jan. 31, 2011) unlawfully expanding the agency’s oversight authority in primacy states vested with exclusive permitting and regulatory jurisdiction under the Surface Mining Control and Reclamation Act. These directives are in direct contravention of the statute, implementing regulations and longstanding case law. The directives allow OSM to take enforcement action against mine operators conforming to their state permits when OSM disagrees with the state decision. The directives allow OSM to substitute its subjective judgment for the states on whether conditions constitute an on-the-ground violation of the state permit or program. The directives encourage third-parties to bypass the states and pursue their concerns with the

federal agency. These policies place mine operators unfairly in the middle of federal-state disputes and obliterate the clear boundaries between federal and state authority under the law.

**Action:** Rescind the Nov. 15, 2010 memorandum (“Application of TDN Process and Federal Enforcement to State Permitting Issues under Approved Regulatory Programs”) and Directive INE-35 (“Ten-Day Notices”). Replace INE-25 with a new directive that conforms to the limitations on OSM’s authority under SMCRA. Issue a new directive requiring all citizen requests for inspections to be filed with the state regulatory authority under the applicable state regulatory program and pursued under the available state administrative review process.

## **Right-Sizing Agencies**

### 1. Office of Surface Mining Reclamation and Enforcement (OSM)

Since the enactment of the Surface Mining Control and Reclamation Act (SMCRA) in 1977, two fundamental shifts have occurred: (1) the number of operating coal mines have declined by 85 percent (1976: 6,161; 2015: 853); and (2) States have assumed exclusive jurisdiction to regulate 97 percent of all coal mines. OSM’s budget and resources are well above current and foreseeable needs with the substantial reduction in the number of operating coal mines and the secondary role OSM serves under the law. While the number of mines and coal miners has declined by more than 40 percent since 2011, OSM’s FY 2017 Budget Request would add 72 more (+ 20%) Title V inspectors and support staff than were on board in 2015. Apart from a handful of mines inspected directly by OSM in federal program states (Tennessee, Navajo Nation) the law requires OSM to make only *occasional* inspections in other states to assess the administration of state programs.

**Action:** Work with new administration and Congress on an agency restructuring plan to align the resources with the reduced federal role and lower number of coal mines. The plan should include the reduction of state field offices and allocation of resources to core non-duplicative functions OSM performs in the context of mine plan review under the Mineral Leasing Act for operation on federal coal leases. New policies should be developed to minimize federal intrusion on state primacy including those related to permitting decisions and administration of state programs. Such policies would include clarifying that OSM should not issue Ten-Day Notices related to matters that represent disputes over permitting procedures or content. In primacy states, policy should clarify that any request for an inspection of a mine site (i.e., “citizen complaints) must be directed to the state agency and disputes resolved under the state administrative process.

**From:** Lacko, Kathleen  
**To:** [Richard Cardinale](#); [Katharine Macgregor](#)  
**Subject:** Fwd: FYI - House Passage of BLM Planning Disapproval Resolution  
**Date:** Tuesday, February 07, 2017 6:56:55 PM  
**Attachments:** [Final SAP H.J. Res 42, 44, 57, 58.pdf](#)

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For awareness.

Kathleen,

Kathleen T. Lacko,

Acting Energy Program Analyst - BLM Liaison

Office of the Assistant Secretary - Land and Minerals Management

Department of Interior (MIB) Rm# 6620  
1849 C Street, NW  
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[ktlacko@blm.gov](mailto:ktlacko@blm.gov)

Until 3/11/2017

----- Forwarded message -----

From: Ralston, Jill <[jralston@blm.gov](mailto:jralston@blm.gov)>  
Date: Tue, Feb 7, 2017 at 6:11 PM  
Subject: FYI - House Passage of BLM Planning Disapproval Resolution  
To: BLM\_WO\_100 <[blm\\_wo\\_100@blm.gov](mailto:blm_wo_100@blm.gov)>  
Cc: Patrick Wilkinson <[p2wilkin@blm.gov](mailto:p2wilkin@blm.gov)>

Hello All,

Today the House passed H.J. Res. 44 - Disapproving the Rule Submitted by the Department of the Interior Relating to Bureau of Land Management Regulation that Establish the Procedures Udes to Prepare, Revise, or Amend Land Use Plans Pursuant to the Federal Land Policy and Management Act of 1976. I've attached the Statement of Administration Policy on the resolution.

Thanks,

Jill Ralston

Legislative Affairs

Bureau of Land Management

Phone: (202) 912-7173

Cell: (202) 577-4299



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

February 7, 2017  
(House)

## STATEMENT OF ADMINISTRATION POLICY

**H.J. Res. 42 – Disapproving the Rule Submitted by the Department of Labor Relating to Drug Testing of Unemployment Compensation Applicants**

(Rep. Brady, R-TX, and 25 cosponsors)

**H.J. Res. 44 – Disapproving the Rule Submitted by the Department of the Interior Relating to Bureau of Land Management Regulations that Establish the Procedures Used to Prepare, Revise, or Amend Land Use Plans Pursuant to the Federal Land Policy and Management Act of 1976**

(Rep. Cheney, R-WY, and 16 cosponsors)

**H.J. Res. 57 – Disapproving the Rule Submitted by the Department of Education Relating to Accountability and State Plans Under the Elementary and Secondary Education Act of 1965**

(Rep. Rokita, R-IN, and 12 cosponsors)

**H.J. Res. 58 – Disapproving the Rule Submitted by the Department of Education Relating to Teacher Preparation Issues**

(Rep. Guthrie, R-KY, and 12 cosponsors)

The Administration strongly supports the actions taken by the House to begin to nullify unnecessary regulations. The regulations that the House is voting to overturn under the Congressional Review Act establish onerous reporting requirements and other constraints on States, local communities, and institutions of higher education.

H.J. Res. 42 would nullify the Employment and Training Administration's Federal-State Unemployment Compensation Program; Middle Class Tax Relief and Job Creation Act of 2012 Provision on Establishing Appropriate Occupations for Drug Testing of Unemployment Compensation Applicants 81 Fed. Reg. 50298 (August 1, 2016), promulgated by the Department of Labor. The rule determines the occupations that regularly conduct drug testing for use by States when determining which unemployment insurance applicants may be tested. The rule

imposes an arbitrarily narrow definition of occupations and constrains a State's ability to conduct a drug testing program in its unemployment insurance system, as authorized in Public Law 112-96, the Middle Class Tax Relief and Job Creation Act of 2012.

H.J. Res. 44 would nullify the final rule relating to Resource Management Planning, 81 Fed. Reg. 89580 (Dec. 12, 2016), promulgated by the Department of the Interior, Bureau of Land Management (BLM). This rule, also known as the BLM Planning Rule 2.0, would prioritize regional and national considerations over state and local interests in land use planning for activities on public lands. The BLM manages over 245 million acres of Federal lands, located mostly in the western States, for multiple uses, including grazing, timber, recreation, and energy and mineral development. Given its regional approach to planning, the Administration believes the rule does not adequately serve the State and local communities' interests and could potentially dilute their input in planning decisions.

H.J. Res. 57 would nullify the final rule Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act – Accountability and State Plans, 81 Fed. Reg. 86076 (Nov. 29, 2016), promulgated by the Department of Education. This rule establishes requirements for how States must implement the statutory provisions that require States to have an accountability system based on multiple measures, including school quality or student success, to ensure that States and districts focus on improving outcomes and measuring student progress. While school accountability is important, the Administration is committed to local control of education and this rule places additional burden on States and constrains them in areas where the ESSA intended broad flexibility. The Administration looks forward to working with the Congress on how the Department of Education can support States and school districts as they implement the new reauthorization of the Elementary and Secondary Education Act.

H.J. Res. 58 would nullify the final rule related to the Teacher Preparation Program Accountability System, 81 Fed. Reg. 75494 (Oct. 31, 2016), promulgated by the Department of Education. This rule establishes annual State reporting to measure the performance and quality of teacher preparation programs and tie them to program eligibility for participation in the Teacher Education Assistance for College and Higher Education grant program. The rule imposes new burdensome and costly data reporting requirements on States and institutions of higher education.

If these bills were presented to the President in their current form, his advisors would recommend that he sign them into law.

**From:** Ralston, Jill  
**To:** [Matthew Quinn](#)  
**Cc:** [Patrick Wilkinson](#); [Christopher Salotti](#); [Amanda Kaster](#)  
**Subject:** Re: FYI: BLM NV Presentation to State Legislature: March 21, 2017  
**Date:** Wednesday, March 15, 2017 6:32:56 PM  
**Attachments:** [BLM Nevada 101 Our Public Lands John Ruhs NV Leg Joint Mtg Assembly NATRAM Sen Nat Res 21 March 2017 - BLM Cleared.pptx](#)

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Hi Matt,

Attached is the draft PowerPoint for Nevada State Director, John Ruhs' informal presentation at the March 21st meeting of the Nevada State Legislature's Committee on Natural Resources and the Assembly Committee on Natural Resources, Agriculture and Mining.

The PowerPoint is substantially similar to presentations BLM NV has done in the past. The primary changes are updates to the numbers on some of the slides. Please let us know if you have any issues or concerns.

Thanks,

Jill Ralston

Legislative Affairs

Bureau of Land Management

Phone: (202) 912-7173

Cell: (202) 577-4299

On Wed, Mar 15, 2017 at 8:46 AM, Ralston, Jill <[jralston@blm.gov](mailto:jralston@blm.gov)> wrote:

Hi Matt,

BLM Nevada received an invitation to make an informal presentation to the Nevada State Legislature's Committee on Natural Resources and the Assembly Committee on Natural Resources, Agriculture and Mining on March 21. BLM NV State Director, John Ruhs, plans to give a high level overview of BLM's mission and programs. The briefing was requested to educate the new members on each committee.

BLM NV plans to use a BLM NV "101" powerpoint (an updated version of the presentation they have provided and we have cleared in the past). Per our normal process, WO Leg Affairs is alerting you of the meeting and will share the draft presentation with 100 and DOI when we receive it.

Please let me know if you have any questions,  
Thanks!

Jill Ralston

Legislative Affairs

Bureau of Land Management

Phone: (202) 912-7173

Cell: (202) 577-4299



# Bureau of Land Management Overview





# Our Public Lands

**John Ruhs**

**BLM Nevada State Director**

**Joint Meeting of Nevada  
Assembly NATRAM Committee and  
Senate Natural Resources Committee**

**March 21, 2017**



# BLM History

- 1785- Land Ordinance initiated the 1<sup>st</sup> Cadastral survey
- 1812- General Land Office (GLO) created
- 1849- Department of the Interior created
- 1934- Taylor Grazing Act passed
- 1936- U.S. Grazing Service created
- 1946- BLM formed from combination of GLO and Grazing Service





# The General Land Office (GLO)

- Created in 1812
- Originally part of the U.S. Treasury
- Promoted settlement through multiple land laws until the early 1900s when it began to issue leases for grazing and collect royalties from minerals taken on public lands.

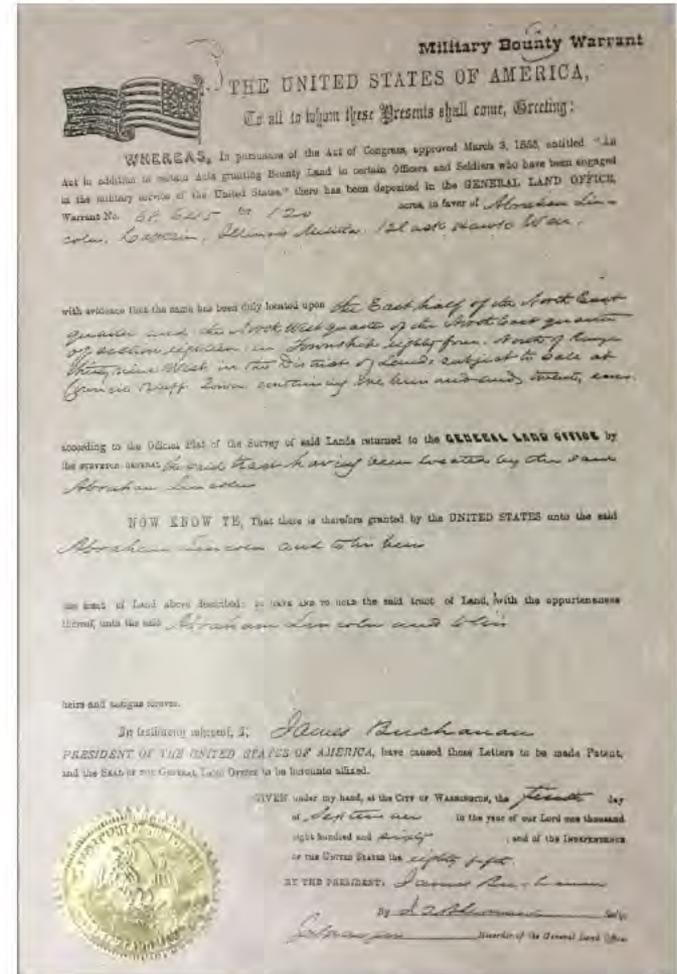




# Land for Veterans

The federal government provided “bounty land” for those who served in the Revolutionary War, War of 1812, the Mexican War and Indian Wars between 1775 and 1855. Offered first as an incentive to serve and later as a reward for service.

The GLO issued this for Abraham Lincoln for his service in the Black Hawk War of 1832.





# Department of the Interior

- Created in 1849
- General Land Office and Cadastral Survey became part of the department
  - U.S. Grazing Service was added in 1936 and established grazing districts on public lands





# Significant Laws

- Homestead Act- 1862
  - Promoted settlement
- General Mining Law- 1872
  - Opened Mineral Exploration on Federal Land
- Mineral Leasing Act- 1920
  - Established leasing for Coal/Oil&Gas/Non-energy Leasable Minerals
- Taylor Grazing Act- 1934
  - Passed in part to assist with the impacts of the Dust Bowl
- Federal Land Policy Management Act - 1976
  - Gave BLM its multiple-use mission
  - Signed Oct 21, 1976 by President Ford
  - Often called our “Organic Act”



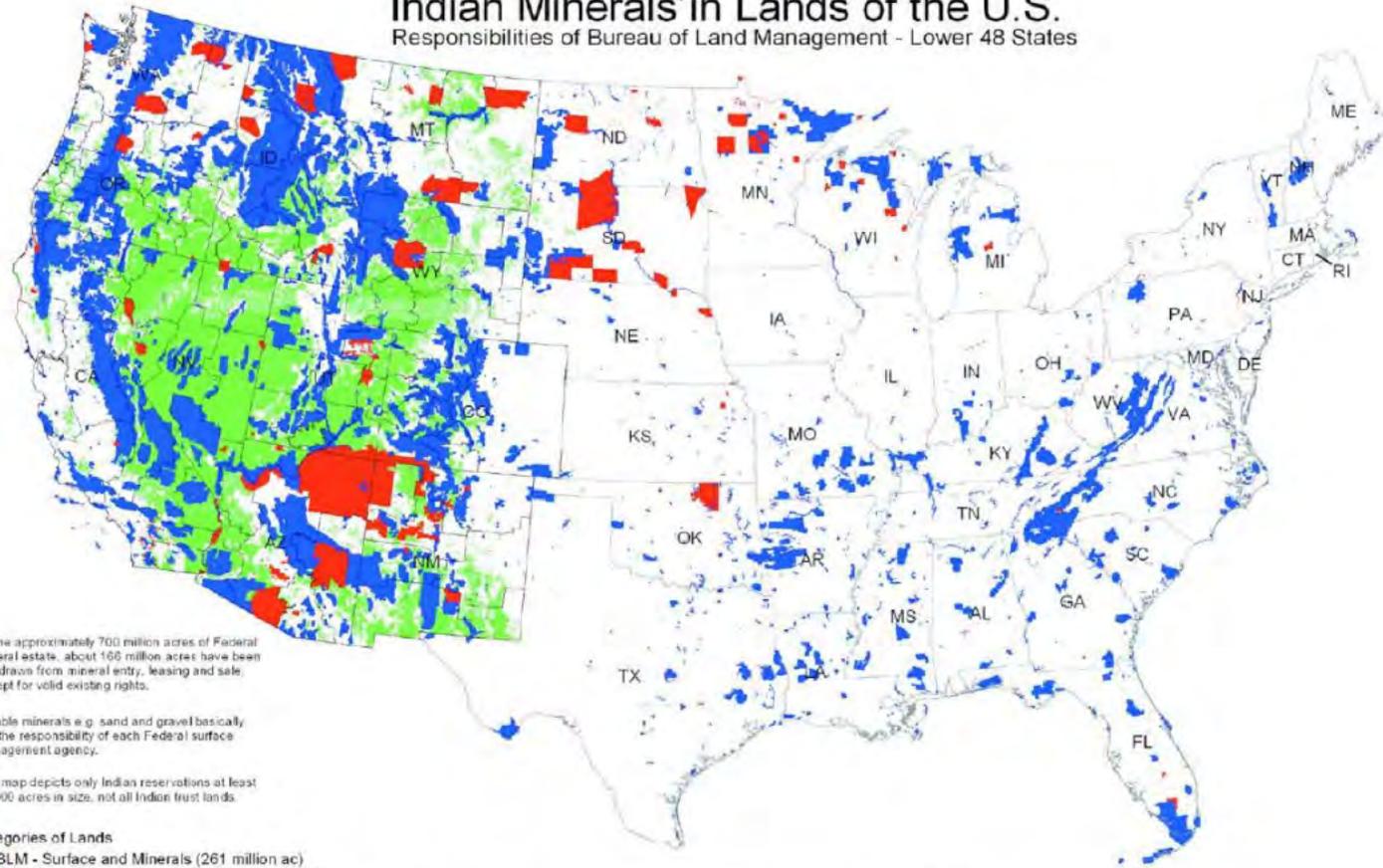
# BLM National Overview

- Manage 245 million surface acres, mostly in 12 Western states and Alaska
- Manage 700 million subsurface acres throughout the country
- Multiple-use mission set forth in FLPMA
- 27 million acre National Conservation Lands system



# BLM National Overview

## Public Lands, On-Shore Federal and Indian Minerals\* in Lands of the U.S. Responsibilities of Bureau of Land Management - Lower 48 States



- \* Of the approximately 700 million acres of Federal mineral estate, about 100 million acres have been withdrawn from mineral entry, leasing and sale, except for valid existing rights.
- \* Salable minerals e.g. sand and gravel basically are the responsibility of each Federal surface management agency.
- \* The map depicts only Indian reservations at least 25,000 acres in size, not all Indian trust lands.

### Categories of Lands

- BLM - Surface and Minerals (261 million ac)
- Other Federal Lands - Minerals (380 million ac)
- Non-Federal Surface (includes 58 million ac of Split - Estate Federal Minerals)
- Indian Trust Lands (56 million ac) except Mineral Operations for Osage Minerals
- ▬ BLM Administration Boundaries

Responsibility is made as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data. Spatial information on this map is based on the Accuracy Standards. This information has been collected without verification.

Produced By:  
WO-210, Leonard Gore, Jr. (Graphics)  
WO-300, Sue Ling Chang (Data)  
Documentation available in file  
September 2003



# BLM Vision

To enhance the quality of life for all citizens through the balanced stewardship of America's public lands and resources.





# BLM Mission

The mission of the BLM is to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations.

BLM manages public lands for “multiple uses!”





# BLM Values

To serve with honesty, integrity, accountability, respect, courage, and commitment to make a difference.





# BLM Priorities

- To improve the health and productivity of the land to support the BLM multiple-use mission.
- To cultivate community-based conservation, citizen-centered stewardship, and partnership through consultation, cooperation, and communication.
- To respect, value, and support our employees, giving them resources and opportunities to succeed.
- To pursue excellence in business practices, improve accountability to our stakeholders, and deliver better services to our customers.



# What Services Does BLM Provide?

- Wild Horse and Burro Program
- Wildland Fire Management
- National Conservation Lands and Areas of Special Designation
- Recreation





# BLM Nevada Overview

- Manage 48 million surface acres of public land (approximately 67 percent of Nevada)
- Manage 59 million subsurface acres
- Have several of the largest programs in the BLM including:
  - Mining
  - Fire
  - Wild Horses and Burros
- Special Legislation





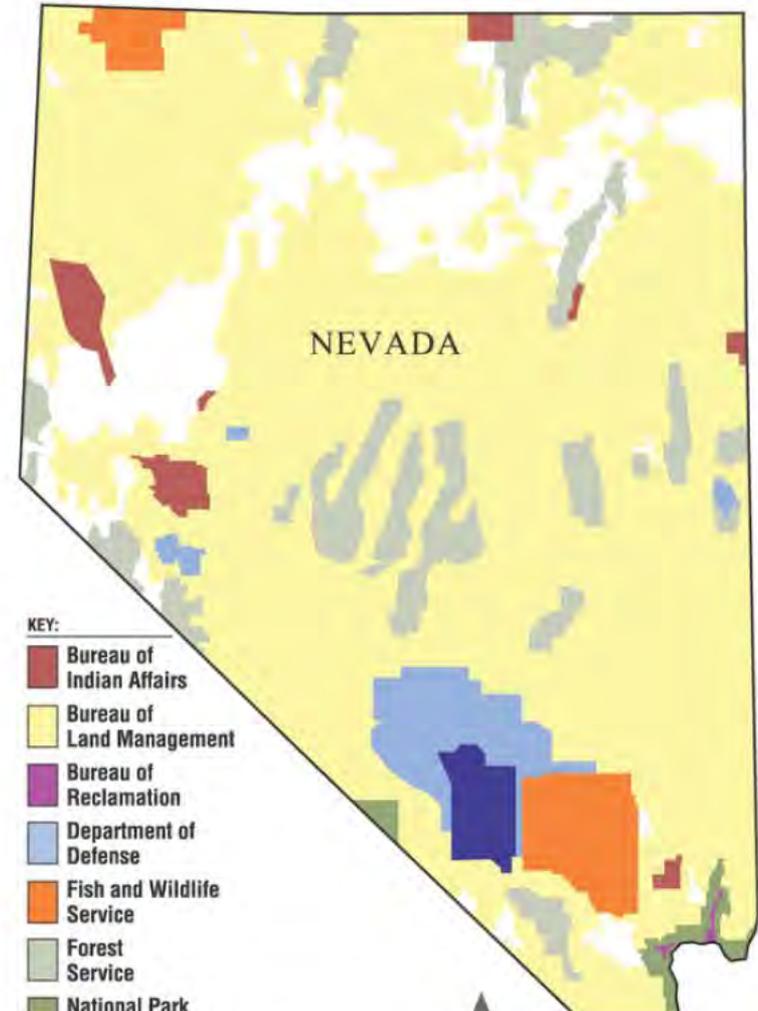
# Public Lands in Nevada

Most of Nevada is Federally  
Managed

- 82.9 Percent total  
(Includes DoD)

Most is BLM-Managed

the Sagebrush Rebellion.





# BLM Nevada Organization

- Headquartered in Reno
- 6 Districts (14 Field Offices)
  - Battle Mountain
  - Carson City
  - Elko
  - Ely
  - Southern Nevada
  - Winnemucca





# What Does BLM Manage?

- Mining
- Grazing
- Non-Renewable Energy (Oil and Gas)
- National Conservation Lands
- Renewable Energy (Solar, Wind, Geothermal)
- Special Legislation





- Largest program in the BLM
- One of the largest mineral materials (sand and gravel) programs in the BLM
- More than 193,000 active mining claims (49% of BLM total)
- 257 approved active mining Plans of Operation
- Holds over \$2 billion in reclamation bonds





# Abandoned Mine Lands

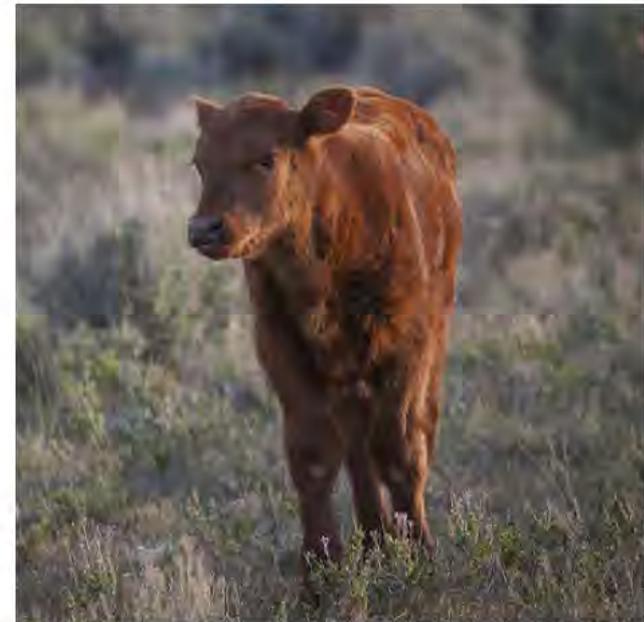
- Largest program in the BLM
- Working with NV Division of Minerals, have inventoried over 20,000 features
- Cooperative agreements with state and federal agencies for surveys and closures
- Permanently closed 189 features in 2015





# Range Program

- 45 million acres of public rangelands
- 745 grazing allotments, 550 operators and 635 permits
- Approximately 1.2 million AUMs permitted annually





# Wild Horses and Burros

- 83 Herd Management Areas, 74 at or over AML
- 9 WH&B Specialists
- Approximately 35-37,000 horses and burros on range
- Statewide AML = 12,688





# Fire and Aviation

- Largest program outside Alaska
- Work with state and federal and local partners to provide training, education, opportunities for hazardous fuels reduction
- DOI and BLM have identified Greater Sage Grouse habitat as the highest natural resource protection priority for suppression efforts





# Basin and Range National Monument

- Designated July 10, 2015
- Approximately 704,000 acres



- Values include geological, ecological, and cultural resources; historic lifestyle and modern art



# Gold Butte National Monument

- Designated December 28, 2016
- Nearly 300,000 acres with 250 miles of designated routes
- Popular for outdoor recreation: hiking, camping, OHV, viewing petroglyphs, etc.





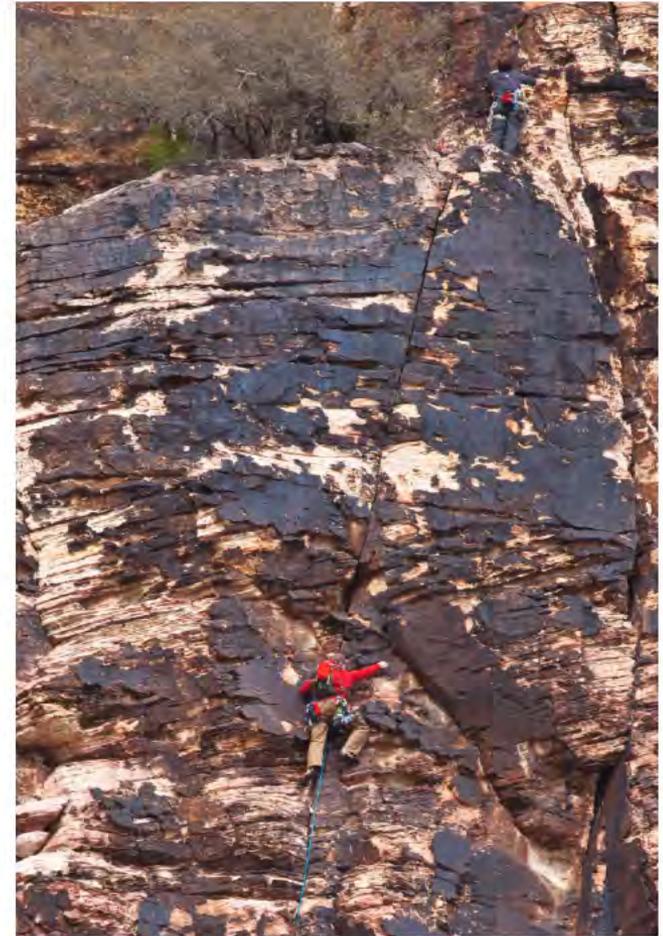
# Red Rock and Sloan Canyons

## Red Rock Canyon NCA

- First NCA in Nevada – 1990
- 2.5 million+ visitors in 2016
- 13-mile scenic drive, miles of hiking trails, rock climbing, etc.

## Sloan Canyon NCA

- Designated in 2002
- 300+ petroglyph panels
- 48,438 acres





# Renewable Energy

- Nevada has the greatest number of federal geothermal leases and is second in geothermal energy production
- 5 Solar Energy Zones with the potential for 6,711 megawatts





# Solar Power

Solar Power production is a growing industry in Nevada

The 110-megawatt Crescent Dunes Solar Energy Facility on BLM-managed land near Tonopah is the first utility-scale concentrating solar plant that can provide electricity whenever it's needed most, even after dark.





# Southern Nevada Public Land Management Act (SNPLMA)

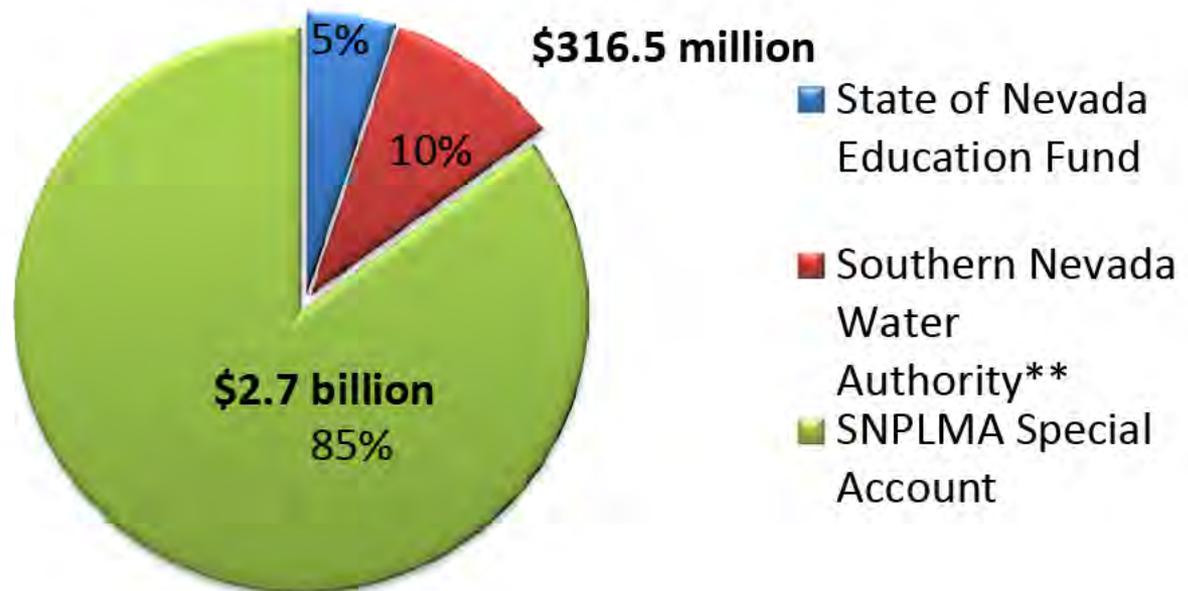
## Land Disposal

- 67,920 acres within the disposal boundary
- Parcels “jointly selected” by local governments and the Bureau of Land Management (BLM)
- 30,064 acres disposed by sale (includes R&PP and affordable housing sales); 6,476 R&PP leases and reservations; and 31,380 acres remain for disposal

## 18 Years of Successful Implementation

- Generation of over \$3.5 billion including interest earned

## Allocation of Land Sales Revenue\* \$161.5 million



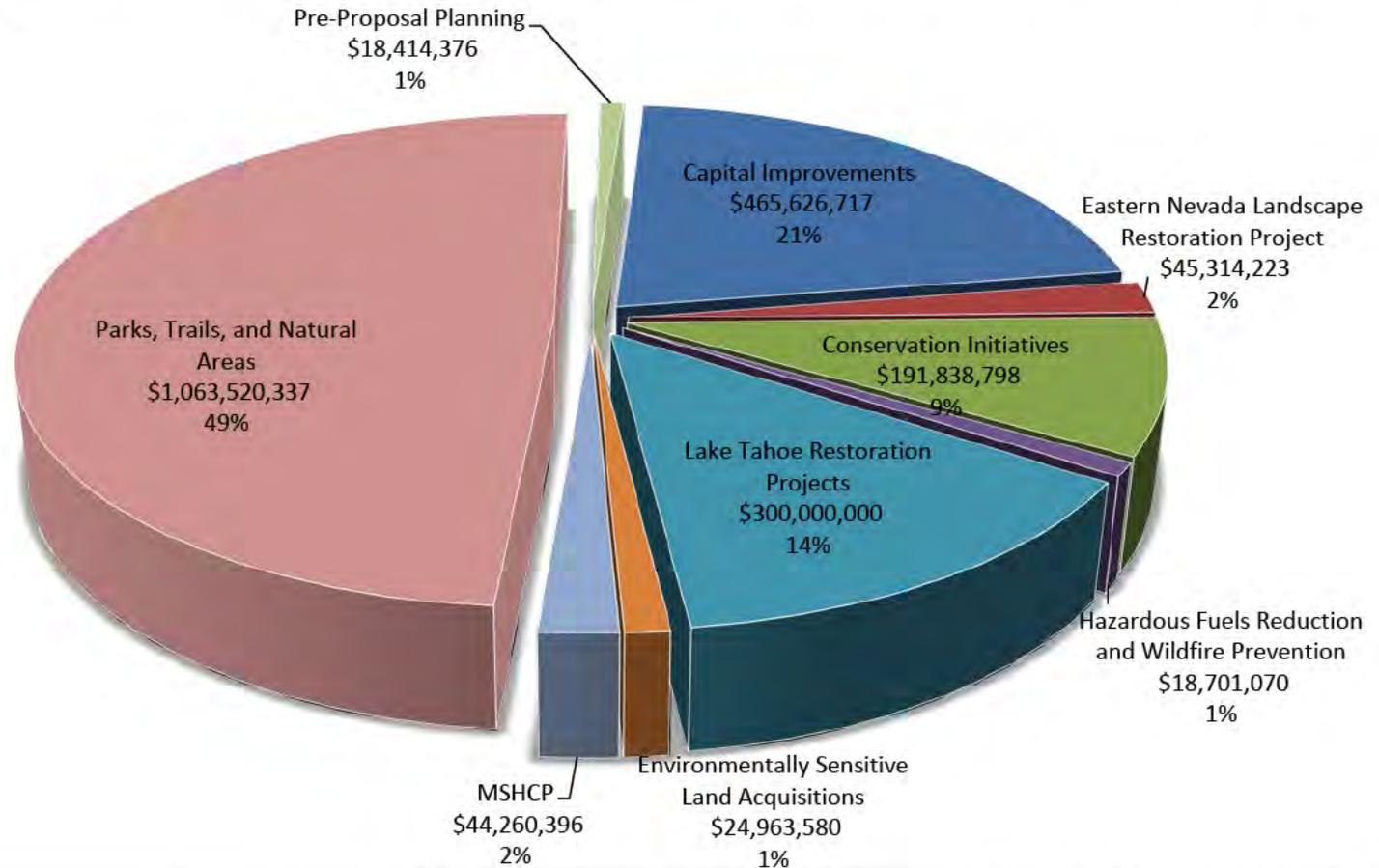
\*As of March 31, 2016

\*\*Sale of certain parcels require payment of the 10% to the Clark County Department of Aviation (DoA) rather than to the Southern Nevada Water Authority. Of the total \$316.5 million in 10% payments, \$14.3 million has been made to the DoA.



# Southern Nevada Public Land Management Act (SNPLMA)

## SNPLMA Special Account Funding by Category through Round 15





# Resource Advisory Councils

- Nevada has 3 RACs that provide advice and recommendations on the management of public lands
- The members represent a wide variety of interests





# BLM's #1 Resource: Our people!

- Nationally, the BLM has about 10,000 employees, based primarily in the Western states
- BLM Nevada has about 1,000 permanent employees
- Additionally, we bring on about 150 seasonal employees in Nevada, primarily wildland firefighters





Bureau of  
Land Management

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# QUESTIONS?

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*February 21, 2017*

**From:** Bloomgren, Megan  
**To:** [Quimby, Frank](#)  
**Cc:** [Swift, Heather](#)  
**Subject:** Re: had to revise a few numbers in PNOS Sale 249 release  
**Date:** Monday, March 06, 2017 10:05:48 AM

---

is time critical? or may we issue tomorrow?

On Mon, Mar 6, 2017 at 9:24 AM, Quimby, Frank <[frank\\_quimby@ios.doi.gov](mailto:frank_quimby@ios.doi.gov)> wrote:

As of March 1, 2017, about 16.9 million acres on the U.S. OCS are under lease for oil and gas development (3,194 active leases) and 4.6 million of those acres (929 leases) are producing oil and natural gas.

these underlines new numbers were just posted to BOEM website they are the most recent and are inserted in the attached release

BOEM needs to see our final release to double check other numbers.

Are we still issuing this release today?

anything I can do to help?

**From:** Benedetto, Kathleen  
**To:** [Stewart, Shannon](#)  
**Cc:** [mike nedd](#); [Jeff Brune](#)  
**Subject:** Re: Hi Shannon - I am reviewing the Unified Agenda in DTS? Are we adding the Fracking Rule to the Document? Please Advise. Thank You  
**Date:** Thursday, March 16, 2017 12:31:33 PM

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Thanks

On Thu, Mar 16, 2017 at 11:34 AM, Stewart, Shannon <[scstewar@blm.gov](mailto:scstewar@blm.gov)> wrote:

As expected, this question is being asked by ALSM. I have informed the ASLM advisors and Rich that we are discussing this now and will loop them in. Please let me know what Jeff and I can do to assist.

Shannon

----- Forwarded message -----

**From:** Seidlitz, Joseph (Gene) <[gseidlit@blm.gov](mailto:gseidlit@blm.gov)>  
**Date:** Thu, Mar 16, 2017 at 11:08 AM  
**Subject:** Hi Shannon - I am reviewing the Unified Agenda in DTS? Are we adding the Fracking Rule to the Document? Please Advise. Thank You  
**To:** Shannon Stewart <[scstewar@blm.gov](mailto:scstewar@blm.gov)>, Jill Moran <[jcmoran@blm.gov](mailto:jcmoran@blm.gov)>

Gene Seidlitz  
Analyst-Liaison  
Office of the Assistant Secretary  
Land and Minerals Management  
1849 C St, NW  
Room 6629  
Washington, DC 20240  
202-208-4555 (O)  
775-304-1008 (C)

--

Shannon Stewart  
Acting Chief of Staff  
Bureau of Land Management  
202-570-0149 (cell)  
202-208-4586 (office)  
[scstewar@blm.gov](mailto:scstewar@blm.gov)

--

Kathleen Benedetto  
Special Assistant to the Secretary  
Department of the Interior  
Bureau of Land Management  
(202) 208-5934

**From:** Stewart, Shannon  
**To:** [mike nedd](#); [Kathleen Benedetto](#)  
**Cc:** [Jeff Brune](#)  
**Subject:** Fwd: Hi Shannon - I am reviewing the Unified Agenda in DTS? Are we adding the Fracking Rule to the Document? Please Advise. Thank You  
**Date:** Thursday, March 16, 2017 11:34:32 AM

---

As expected, this question is being asked by ALSM. I have informed the ASLM advisors and Rich that we are discussing this now and will loop them in. Please let me know what Jeff and I can do to assist.

Shannon

----- Forwarded message -----

**From:** Seidlitz, Joseph (Gene) <[gseidlit@blm.gov](mailto:gseidlit@blm.gov)>  
**Date:** Thu, Mar 16, 2017 at 11:08 AM  
**Subject:** Hi Shannon - I am reviewing the Unified Agenda in DTS? Are we adding the Fracking Rule to the Document? Please Advise. Thank You  
**To:** Shannon Stewart <[sstewart@blm.gov](mailto:sstewart@blm.gov)>, Jill Moran <[jcmoran@blm.gov](mailto:jcmoran@blm.gov)>

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202-570-0149 (cell)  
202-208-4586 (office)  
[sstewart@blm.gov](mailto:sstewart@blm.gov)

**From:** Macgregor, Katharine  
**To:** [Emily Lindow](#); [Cardinale, Richard](#)  
**Subject:** Fwd: IAGC Annual Meeting & Atlantic Seismic Permit Denials  
**Date:** Tuesday, February 14, 2017 7:39:21 PM  
**Attachments:** [30 CFR part 590.pdf](#)  
[Airgun Seismic Survey G&G.PDF](#)

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Can we briefly discuss this at our BOEM weekly directors meeting?

----- Forwarded message -----

**From:** **Dustin Van Liew** <[Dustin.vanliew@iagc.org](mailto:Dustin.vanliew@iagc.org)>  
**Date:** Tue, Feb 14, 2017 at 6:20 PM  
**Subject:** IAGC Annual Meeting & Atlantic Seismic Permit Denials  
**To:** "Kate MacGregor ([katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov))"  
<[katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov)>  
**Cc:** Nikki Martin <[nikki.martin@iagc.org](mailto:nikki.martin@iagc.org)>

Hi Kate,

Thank you, for sending your new contact information. First, IAGC's Annual Conference is next Tuesday, February 21<sup>st</sup> in Houston, and while we understand everything is still in transition we wanted to extend an invitation to you to speak. Understanding time is short, we would be requesting an update on the DOI transition and any insights/information you could provide on regulatory decisions effecting geophysical activity and what the new Administration is planning in this area.

Second, as you know, BOEM denied the 6 pending geophysical permits for Atlantic seismic operations at the end of the last Administration. While our members and IAGC intend to appeal those decisions, by March 7<sup>th</sup>, to the Interior Board of Land Appeals, the regulations (30 C.F.R. § 590.6 – attached for reference) also allow for informal resolution. As such, IAGC would like to informally resolve the denial of all 6 Atlantic permits and request that the administration direct the Acting BOEM Director to withdraw the denials so that BOEM may continue to process the permit applications. Please let me know how best to proceed with our request for informal resolution – something that is ideally achieved prior to the formal appeal deadline of March 7<sup>th</sup>.

I know you are aware of this unprecedented action from the prior Administration, but I have copied the decision announcement below and also attached the decision memo issued by BOEM for your reference.

Please let me know if you have any questions or if you wish to have a call this week for

further explanation.

Thank you

Dustin

## **BOEM Denies Atlantic Seismic G&G Permits**

WASHINGTON, DC – The Bureau of Ocean Energy Management (BOEM) today announced the denial of six pending geophysical and geological (G&G) permit applications to conduct airgun seismic surveys in the Mid- and South Atlantic Planning Areas of the Atlantic Ocean. The decision is based on a number of factors, including a diminished need for additional seismic survey information because the Atlantic Program Area has been removed from the 2017-2022 Outer Continental Shelf Oil and Gas Leasing Program.

“In the present circumstances and guided by an abundance of caution, we believe that the value of obtaining the geophysical and geological information from new airgun seismic surveys in the Atlantic does not outweigh the potential risks of those surveys’ acoustic pulse impacts on marine life,” said BOEM Director Abigail Ross Hopper. “Since federal waters in the Mid and South Atlantic have been removed from leasing consideration for the next five years, there is no immediate need for these surveys.”

Additional factors leading to the bureau’s decision to deny the six permits include the possibility that the information would not be used, if the Atlantic is not offered for future oil and gas leasing; the acquired data may become outdated if leasing is far in the future; and the probable development of lower impact survey technology before future geophysical and geological information would be needed.

This decision only impacts the six permit applications for the use of airgun seismic surveys that were proposed for oil and gas exploration deep beneath the ocean floor. The goal of geological and geophysical surveys is to produce maps or models that indicate the earth’s geography, stratigraphy, rock distribution and geological structure delineation. Deep penetration seismic surveys are conducted by vessels towing an array of airguns that emit acoustic energy pulses into the seafloor over long durations and large areas. Seismic airguns can penetrate several thousand meters beneath the seafloor. Surveys for other, shallow depth purposes typically do not use airguns. While surveys may have some impacts to marine life, airgun seismic surveys have the potential for greater impacts.

*The Bureau of Ocean Energy Management (BOEM) promotes energy independence, environmental protection and economic development through responsible, science-based management of offshore conventional and renewable energy resources.*

## Dustin Van Liew

Director – Regulatory & Governmental Affairs

Office: +1 713-957-8080 Mobile: +1 202-527-2574

Email: [dustin.vanliew@iagc.org](mailto:dustin.vanliew@iagc.org) Website: [www.iagc.org](http://www.iagc.org)



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Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202-208-3671 (Direct)

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Title 30. Mineral Resources

Chapter V. Bureau of Ocean Energy Management, Department of the Interior (Refs & Annos)

Subchapter C. Appeals (Refs & Annos)

Part 590. Appeal Procedures (Refs & Annos)

Subpart A. Offshore Minerals Management Appeal Procedures

30 C.F.R. § 590.1

§ 590.1 What is the purpose of this subpart?

Effective: October 1, 2011

[Currentness](#)

The purpose of this subpart is to explain the procedures for appeals of Bureau of Ocean Energy Management (BOEM) Offshore Minerals Management (OMM) decisions and orders issued under subchapter C.

SOURCE: [76 FR 64623, 64780](#), Oct. 18, 2011; [76 FR 64623](#), Oct. 18, 2011; [79 FR 21626](#), April 17, 2014, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301 et seq.](#); [31 U.S.C. 9701](#); [43 U.S.C. 1334](#).

Current through December 29, 2016; 81 FR 96301.

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Part 590. Appeal Procedures (Refs & Annos)

Subpart A. Offshore Minerals Management Appeal Procedures

30 C.F.R. § 590.2

§ 590.2 Who may appeal?

Effective: October 1, 2011

[Currentness](#)

If you are adversely affected by an OMM official's final decision or order issued under 30 CFR chapter V, subchapter C, you may appeal that decision or order to the Interior Board of Land Appeals (IBLA). Your appeal must conform with the procedures found in this subpart and 43 CFR part 4, subpart E. A request for reconsideration of a BOEM decision concerning a lease bid, authorized in [30 CFR parts 556.47\(e\)\(3\)](#), [581.21\(a\)\(1\)](#), or [585.118\(c\)](#), is not subject to the procedures found in this part.

SOURCE: [76 FR 64623, 64780](#), Oct. 18, 2011; [76 FR 64623](#), Oct. 18, 2011; [79 FR 21626](#), April 17, 2014, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301 et seq.](#); [31 U.S.C. 9701](#); [43 U.S.C. 1334](#).

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Subchapter C. Appeals (Refs & Annos)

Part 590. Appeal Procedures (Refs & Annos)

Subpart A. Offshore Minerals Management Appeal Procedures

30 C.F.R. § 590.3

§ 590.3 What is the time limit for filing an appeal?

Effective: October 1, 2011

[Currentness](#)

You must file your appeal within 60 days after you receive OMM's final decision or order. The 60 day time period applies rather than the time period provided in [43 CFR 4.411\(a\)](#). A decision or order is received on the date you sign a receipt confirming delivery or, if there is no receipt, the date otherwise documented.

SOURCE: [76 FR 64623, 64780](#), Oct. 18, 2011; [76 FR 64623](#), Oct. 18, 2011; [79 FR 21626](#), April 17, 2014, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301 et seq.](#); [31 U.S.C. 9701](#); [43 U.S.C. 1334](#).

Current through December 29, 2016; 81 FR 96301.

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Chapter V. Bureau of Ocean Energy Management, Department of the Interior (Refs & Annos)

Subchapter C. Appeals (Refs & Annos)

Part 590. Appeal Procedures (Refs & Annos)

Subpart A. Offshore Minerals Management Appeal Procedures

30 C.F.R. § 590.4

§ 590.4 How do I file an appeal?

Effective: May 19, 2014

[Currentness](#)

For your appeal to be filed, BOEM must receive all of the following within 60 days after you receive the decision or order:

(a) A written Notice of Appeal together with a copy of the decision or order you are appealing in the office of the OEMM officer that issued the decision or order. You cannot extend the 60 day period for that office to receive your Notice of Appeal; and

(b) A nonrefundable processing fee of \$150 paid with the Notice of Appeal.

(1) You must pay electronically through the Fees for Services page on the BOEM Web site at <http://www.boem.gov>, and you must include a copy of the Pay.gov confirmation receipt page with your Notice of Appeal.

(2) You cannot extend the 60 day period for payment of the processing fee.

**Credits**

[[79 FR 21626](#), April 17, 2014]

SOURCE: [76 FR 64623, 64780](#), Oct. 18, 2011; [76 FR 64623](#), Oct. 18, 2011; [79 FR 21626](#), April 17, 2014, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301 et seq.](#); [31 U.S.C. 9701](#); [43 U.S.C. 1334](#).

Current through December 29, 2016; [81 FR 96301](#).

Code of Federal Regulations

Title 30. Mineral Resources

Chapter V. Bureau of Ocean Energy Management, Department of the Interior (Refs & Annos)

Subchapter C. Appeals (Refs & Annos)

Part 590. Appeal Procedures (Refs & Annos)

Subpart A. Offshore Minerals Management Appeal Procedures

30 C.F.R. § 590.5

§ 590.5 Can I obtain an extension for filing my Notice of Appeal?

Effective: October 1, 2011

[Currentness](#)

You cannot obtain an extension of time to file the Notice of Appeal. See [43 CFR 4.411\(c\)](#).

SOURCE: [76 FR 64623, 64780](#), Oct. 18, 2011; [76 FR 64623](#), Oct. 18, 2011; [79 FR 21626](#), April 17, 2014, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301 et seq.](#); [31 U.S.C. 9701](#); [43 U.S.C. 1334](#).

Current through December 29, 2016; [81 FR 96301](#).

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Subchapter C. Appeals (Refs & Annos)

Part 590. Appeal Procedures (Refs & Annos)

Subpart A. Offshore Minerals Management Appeal Procedures

30 C.F.R. § 590.6

§ 590.6 Are informal resolutions permitted?

Effective: October 1, 2011

[Currentness](#)

(a) You may seek informal resolution with the issuing officer's next level supervisor during the 60 day period established in [§ 590.3](#).

(b) Nothing in this subpart precludes resolution by settlement of any appeal or matter pending in the administrative process after the 60 day period established in [§ 590.3](#).

SOURCE: [76 FR 64623, 64780](#), Oct. 18, 2011; [76 FR 64623](#), Oct. 18, 2011; [79 FR 21626](#), April 17, 2014, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301 et seq.](#); [31 U.S.C. 9701](#); [43 U.S.C. 1334](#).

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Subchapter C. Appeals (Refs & Annos)

Part 590. Appeal Procedures (Refs & Annos)

Subpart A. Offshore Minerals Management Appeal Procedures

30 C.F.R. § 590.7

§ 590.7 Do I have to comply with the decision or order while my appeal is pending?

Effective: October 1, 2011

Currentness

(a) The decision or order is effective during the 60 day period for filing an appeal under § 590.3 unless:

(1) OMM notifies you that the decision or order, or some portion of it, is suspended during this period because there is no likelihood of immediate and irreparable harm to human life, the environment, any mineral deposit, or property; or

(2) You post a surety bond under 30 CFR 550.1409 pending the appeal challenging an order to pay a civil penalty.

(b) This section applies rather than 43 CFR 4.21(a) for appeals of OMM orders.

(c) After you file your appeal, IBLA may grant a stay of a decision or order under 43 CFR 4.21(b); however, a decision or order remains in effect until IBLA grants your request for a stay of the decision or order under appeal.

SOURCE: 76 FR 64623, 64780, Oct. 18, 2011; 76 FR 64623, Oct. 18, 2011; 79 FR 21626, April 17, 2014, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1334.

Current through December 29, 2016; 81 FR 96301.

Code of Federal Regulations

Title 30. Mineral Resources

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Subchapter C. Appeals (Refs & Annos)

Part 590. Appeal Procedures (Refs & Annos)

Subpart A. Offshore Minerals Management Appeal Procedures

30 C.F.R. § 590.8

§ 590.8 How do I exhaust my administrative remedies?

Effective: October 1, 2011

[Currentness](#)

(a) If you receive a decision or order issued under chapter V, subchapter C, you must appeal that decision or order to IBLA under 43 CFR part 4, subpart E, to exhaust administrative remedies.

(b) This section does not apply if the Assistant Secretary for Land and Minerals Management or the IBLA makes a decision or order immediately effective notwithstanding an appeal.

SOURCE: [76 FR 64623, 64780](#), Oct. 18, 2011; [76 FR 64623](#), Oct. 18, 2011; [79 FR 21626](#), April 17, 2014, unless otherwise noted.

AUTHORITY: [5 U.S.C. 301 et seq.](#); [31 U.S.C. 9701](#); [43 U.S.C. 1334](#).

Current through December 29, 2016; 81 FR 96301.



# United States Department of the Interior

BUREAU OF OCEAN ENERGY MANAGEMENT  
WASHINGTON, DC 20240-0001

**JAN - 5 2017**

## Memorandum

To: Michael Celata  
Regional Director, Gulf of Mexico Region

From: Abigail Ross Hopper  
Director

Subject: Airgun Seismic Survey Permit Applications

### I. Summary

This memorandum directs you to deny the pending applications to conduct airgun seismic surveys in the Mid- and South Atlantic Planning Areas using the authority granted under section 11 of the Outer Continental Shelf Lands Act (OCSLA). My decision, derived after thoughtful consideration of multiple factors outlined below, is based on the diminished immediate need for seismic survey information in light of the Secretary's decision to remove the Atlantic Program Area from the 2017-2022 Five Year Oil and Gas Program and the promise of emerging noise-quieting technologies. Additionally, given the risks identified in BOEM's Atlantic Outer Continental Shelf (OCS) Proposed Geological and Geophysical (G&G) Activities Mid-Atlantic and South Atlantic Planning Areas Final Programmatic Environmental Impact Statement ("PEIS"), issued in February 2014, and the accompanying Record of Decision (ROD), signed in July 2014, the value of obtaining the information from the surveys does not outweigh the risks of obtaining said information, in light of the removal of the Atlantic from consideration for leasing during the next five years.

### A. Authority

Section 11(a) of the OCSLA provides that "any person *authorized by the Secretary* may conduct geological and geophysical explorations in the OCS, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this subchapter, and which are not unduly harmful to aquatic life in such area." 43 U.S.C. §1340(a). Consistent with the foregoing, Section 11(g) of OCSLA specifies what determinations must be made by the Secretary before authorizing G&G permits under OCSLA.

Any permit for geological explorations authorized by this section shall be issued *only if the Secretary determines*, in accordance with regulations issued by the Secretary, that

- (1) the applicant for such permit is qualified;
- (2) the exploration will not interfere with or endanger operations under any lease issued or maintained pursuant to this subchapter; and

(3) such exploration will not be unduly harmful to aquatic life in the area, result in pollution, create hazardous or unsafe conditions, unreasonably interfere with other uses of the area, or disturb any site, structure, or object of historical or archeological significance.

43 U.S.C. § 1340(g)(emphasis added). Sections 11(a) and 11(g) of OCSLA do not provide an unrestricted right to the exploration of the OCS and leave to the Secretary the discretion to approve or deny G&G activities governed by Section 11.<sup>1</sup> The Secretary may not authorize G&G activities that are not consistent with the criteria listed in Section 11(g), but otherwise has discretion regarding the G&G permits issued. *Id.*

BOEM G&G regulations implementing Section 11, and which govern permitting OCS G&G activities on unleased lands or on lands under lease to a third party, are found at 30 C.F.R. Part 551. The regulatory provisions for the issuance of G&G permits provide for approval or disapproval of a permit application. 30 C.F.R. 551.5(b). The regulations are not extensive, but provide, "BOEM authorizes you to conduct exploration or scientific research activities under this part in accordance with the Act, the regulations in this part, orders of the Director/Regional Director, and other applicable statutes, regulations, and amendments." 30 C.F.R. 551.3. Concerning the denial of G&G permit applications, the regulations provide that "[i]f BOEM disapproves your application for a permit, the Regional Director will state the reasons for the denial and will advise you of the changes needed to obtain approval." 30 C.F.R. 551.5(b).

The regulations in Part 551 further provide that approved G&G activities must not

- (1) Interfere with or endanger operations under any lease, right-of-way, easement, right-of-use, Notice, or permit issued or maintained under the Act;
- (2) Cause harm or damage to life (including fish and other aquatic life), property, or to the marine, coastal, or human environment;
- (3) Cause harm or damage to any mineral resource (in areas leased or not leased);

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<sup>1</sup> The language in Sections 11(a) and 11(g) of OCSLA contrasts sharply with that in Section 11(c) of OCSLA, which provides, in part, that exploration plans "*shall be approved* by the Secretary if [s]he finds that such plan is consistent with the provisions of this subchapter, regulations prescribed under this subchapter, including regulations prescribed by the Secretary pursuant to paragraph (8) of section 1334(a) of this title, and the provisions of such lease." 43 U.S.C. §1340(c)(emphasis added). Section 11(c) contains a high standard for the disapproval of exploration plans:

The Secretary shall approve such plan, as submitted or modified, within thirty days of its submission, except that the Secretary shall disapprove such plan if he determines that (A) any proposed activity under such plan would result in any condition described in section 1334(a)(2)(A)(i) of this title [where the activity "would probably cause serious harm or damage"], and (B) such proposed activity cannot be modified to avoid such condition.

43 U.S.C. §1340(c). In contrast, the relevant subsections of section 11 do not set forth any circumstances under which applications for seismic permits "shall be approved" nor spell out any findings that must be made in order to decline to issue such permits. Thus the Secretary has greater discretion to deny G&G permit applications than she does to deny exploration plans as those plans must be approved absent unavoidable, probable, serious harm or damage.

- (4) Cause pollution;
- (5) Disturb archaeological resources;
- (6) Create hazardous or unsafe conditions; or
- (7) Unreasonably interfere with or cause harm to other uses of the area.

30 C.F.R. 551.6(a).<sup>2</sup>

#### B. Seismic Surveys

G&G activities survey the marine environment to acquire information that could be used to determine the resource potential of oil and gas, aid in siting renewable energy structures, and locate potential non-energy minerals such as sand and gravel. They can also assist in developing energy and other resources safely, efficiently, and without harm to natural or cultural heritage.

G&G activities for oil and gas exploration generally include deep penetration seismic airgun surveys, electromagnetic surveys, deep stratigraphic and shallow test drilling, and various remote-sensing methods. Deep penetration seismic surveys are conducted by vessels towing an array of airguns that emit acoustic energy pulses into the seafloor over long durations and over large areas. Many whale species hear and vocalize at low frequencies which overlap with the low frequencies produced by deep penetration seismic surveys. Seismic airguns penetrate several thousand meters beneath the seafloor. These surveys are controversial because of public concerns over potential impacts of the sound produced by these surveys to marine life.

G&G activities for all three program areas (oil and gas, renewable energy, and marine minerals) include high-resolution geophysical surveys (HRG) and other non-airgun surveys to detect geohazards, archaeological resources, and certain types of benthic communities. Techniques also include bottom sampling and analysis (often referred to as geotechnical surveying) to assess seafloor suitability for supporting structures such as platforms, pipelines, cables, and wind turbines, or to evaluate the quantity and quality of sand for beach nourishment and coastal restoration projects. HRG surveys have far less potential to impact marine life than deep penetration seismic using airguns because HRG surveys use less energy, are at a higher frequency that is less in the range of many marine mammals, and are predominately used over a smaller geographic area for a shorter duration.

The existing seismic survey information for the Atlantic Outer Continental Shelf (OCS) was collected more than 30 years ago, and no additional seismic surveys for oil and gas activity have taken place since then. While the older seismic data can be reprocessed, advances in 2D and 3D seismic survey technology now enable collection of much better information.

In 1990, as part of the U.S. Department of the Interior's annual appropriations act, Congress began a moratorium prohibiting Federal spending on oil and gas development on the Atlantic OCS. On June 12, 1998, President Clinton issued a memorandum to the Secretary of the

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<sup>2</sup> Similar requirements are found in the G&G permit application form (Form BOEM-0327).

Interior, which continued leasing restrictions in the Atlantic. Both Congressional and Presidential moratoria were allowed to expire or were lifted, respectively, in 2008. In 2010, Congress mandated that a programmatic environmental impact statement (PEIS) be prepared to comprehensively review potential environmental impacts of G&G activities off the Atlantic coast. BOEM completed the PEIS in February 2014, and a record of decision (ROD) for the PEIS was signed in July 2014.

BOEM has received a number of applications for G&G surveys in the Atlantic. Since issuance of the ROD, two permits that did not propose the use of airguns have been issued. However, six airgun seismic survey permit applications remain pending BOEM's decision. In making its determination, BOEM must consider the impact of the proposed activities on marine life and other factors. Additionally, each of the pending permits is also required to obtain an Incidental Harassment Authorization (IHA), under the Marine Mammal Protection Act, from the National Marine Fisheries Service (NMFS). No IHAs have yet been issued.

### C. Five Year Program and Need for Seismic Data

Section 18 of OCSLA requires the Secretary of the Interior to prepare a nationwide offshore oil and gas leasing program, setting forth a five-year schedule of lease sales designed to best meet the Nation's energy needs. On January 29, 2015, BOEM published the 2017–2022 Draft Proposed Program (DPP), which included lease sales in the Gulf of Mexico, Alaska and the Mid- and South Atlantic Program Area. In March 2016, the Secretary released the 2017-2022 Proposed Program, the second of three proposals required to develop the 2017–2022 Five Year Program. After an extensive public input process, the sale that was proposed in the DPP for leases in the Mid- and South Atlantic area was removed from the program. Many factors were considered in the decision to remove this sale, including potential conflicts with other ocean uses by the Department of Defense and commercial interests; potential harm to competing interests; current market dynamics; limited infrastructure; and opposition from many coastal communities. The range, number, and nature of conflicts in the Atlantic are unique to the region and require extensive work to address these conflicts prior to including a lease sale in the program.

In light of the Secretary's decision to remove the Atlantic planning areas from any leasing in the 2017-2022 Five Year Program, the immediate need for new G&G information in that area is greatly reduced. While BOEM has acknowledged that updated seismic information could be helpful for future decisions concerning oil and gas activities in the Atlantic, there are currently no pending decisions which would depend upon the updated information. Further, if the Atlantic is included in a future 5 Year Program, industry would likely apply to conduct additional G&G surveys closer in time to an actual lease sale if significant time has elapsed since prior surveys were conducted. Therefore, in light of other considerations discussed below and the fact that the immediate need for updated seismic information has greatly decreased since the ROD was issued in June 2014, I have determined that it is not appropriate to issue these permits at this time.

#### D. Emerging Technologies

An effort to develop “quieting” technology has paralleled improvements in seismic survey capability. BOEM has worked with industry to examine technologies with the potential to reduce noise generated during seismic surveys using airguns. In 2014, BOEM organized a workshop with more than 100 representatives from government, industry, non-governmental environmental organizations, and academia to work together and gain a better understanding of these emerging technologies. The most promising alternative to airguns appears to be marine vibroseis technology. While a number of different types of marine vibroseis technologies are under development, some are being evaluated for commercial use, typically for surveys near sensitive habitat or other biological resources. The economic feasibility of this technology remains to be proven and the potential environmental impacts tested. Industry has hesitated at using marine vibroseis or other quieting technologies until they are better understood. There is no silver bullet. However, by engaging industry and the regulators, I expect technologies will be developed that can produce data that is commensurate to that being produced by currently available airgun seismic survey techniques but with much less environmental impact. In fact, an Industry-led study on vibroseis technologies is underway; and industry is regularly updating BOEM on its progress. I believe that BOEM should do what it can to encourage development of these technologies.

#### D. Marine Mammals

As human presence in the offshore environment has grown, so too has anthropogenic sound. BOEM, and its predecessor MMS, has been a pioneer in sponsoring research on ocean sound, beginning in the 1980s with research on how industrial sounds affect large whales species. The bureau has moved forward since then with studies on an array of topics, including methods to detect, classify and locate marine life near sound sources; improvements in mitigation; quieting technologies; and effects of sound on prey species. BOEM has also begun to examine the even more complex issue of cumulative effects from chronic exposure to anthropogenic sounds.

Deep penetration seismic airgun surveys come with an environmental burden. The high energy sound they produce may damage the hearing or disrupt the behavior of sea animals, particularly marine mammals, if they are too close to the source. For HRG surveys, while injury is possible, it is unlikely given that an animal would need to be within feet of an HRG source for a period of time at enough intensity for the potential to lead to hearing injury. This concern has prompted a wealth of research, guidance, and measures to mitigate potential harm. The PEIS and the accompanying ROD identified various mitigation measures whose application would reduce the potential for hearing damage or disrupted behavior, including, for example, placement of observers on survey vessels, ramp up requirements, exclusion zones around survey vessels, shut down requirements, and closure of areas to surveys at certain places and times when exposure of marine mammals to survey sounds are a particular concern.

I believe the mitigation measures in the ROD contribute substantially to preventing hearing damage and biologically significant disruption of sea animal behavior. However, there is no certainty that in all cases those mitigation measures will avoid all potential impacts.<sup>3</sup> I am particularly persuaded by the continually emerging science regarding the North Atlantic right whale (NARW). BOEM's PEIS estimates that between zero and two individual NARWs would potentially experience Level A take (hearing damage) annually and that between zero and 224 individual NARWs would potentially experience Level B take (behavioral disruption) annually if seismic surveys proceed within the parameters established by the PEIS. The assumptions made in these estimates are "conservative," tending to err in overestimating takes. Furthermore, mitigation measures outlined in BOEM's PEIS and included in its ROD should contribute substantially to preventing hearing damage and biologically significant disruption of NARW behavior. However, some NARWs would doubtless be disturbed by seismic activity in the Atlantic. Given that next Five Year Program excludes the Atlantic from leasing from 2017-2022, and the potential for less intrusive seismic technologies in the near future, the potential disadvantage to this small, critically endangered, and declining population is not worth the risk.

## II. Directive

As outlined above, new seismic data has benefits to both industry and the federal government in considering any oil and gas activity in the region. However, I have determined that even allowing the *possibility* of impacts to the environment and existing uses in the Atlantic from airgun seismic surveys – even with the most stringent mitigations being implemented – is unnecessary at this time because:

- i.* The Secretary decided to remove the Atlantic planning areas from any leasing in the 2017-2022 Five Year Program and there is no immediate need for new G&G data from seismic airgun surveys to inform pending decisions;
- ii.* The G&G data to be acquired could become outdated if the Atlantic is offered for oil and gas leasing activities too far into the future, as is the case now with the G&G data currently available;
- iii.* Developments in technology might allow for the use of lower impact airguns or other seismic instruments that do not have the potential for the level of impacts on the environment from currently proposed airgun surveys; and

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<sup>3</sup> The PEIS notes that "the effects of mitigation measures, and other caveats described below, cannot be quantified with precision, and mitigation measures may not be fully implemented. For example, visual and PAM are not 100 percent effective due to factors such as physical conditions (e.g., inclement weather), presence of animals at the surface, difficulty in species identification, lack of vocalizing animals, and limitations in equipment used for monitoring. Further, larger acoustic exclusion zones are more difficult to monitor than smaller zones." PEIS xi-xii

- iv. Although the mitigation measures included in the Atlantic G&G PEIS may be adequate for purposes of minimizing the level of impacts that airguns could cause on the environment (e.g., NARW and other species), there is no certainty that in all cases those mitigation measures will avoid all potential impacts. Allowing the *possibility* of high intensity impacts from airguns, even if only possible in a nominal number of instances, is unnecessary given the lack of immediate need for acquiring O&G G&G data at this time.

Therefore, please deny forthwith all pending applications to conduct airgun seismic surveys in the Mid- and South Atlantic Planning Areas.

**From:** Kaster, Amanda  
**To:** [Brown-Kobil, Nancy](#)  
**Cc:** [Hammond, Casey](#); [Jill Ralston](#); [Ann Navaro](#); [Jesup, Benjamin](#); [Gary Frazer](#); [Laura Damm](#); [Benedetto, Kathleen](#)  
**Subject:** Re: Incidental Take Statement regulation  
**Date:** Friday, March 17, 2017 4:10:29 PM  
**Attachments:** [BILLS-115hr1483ih.pdf](#)

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Attached is the House version of the Litigation Relief for Forest Management Projects Act. I will send the Senate version shortly.

On Fri, Mar 17, 2017 at 4:00 PM, Brown-Kobil, Nancy <[nancy.brown-kobil@sol.doi.gov](mailto:nancy.brown-kobil@sol.doi.gov)> wrote:

Attached is the ESA amended regulation from May 2015 that discusses the difference between purely programmatic actions that do not require an ITS and mixed programmatic actions that do require an ITS for those actions that do not have any further ESA review before implemented.

Please let me know if you have any questions.

Nancy Brown-Kobil  
Attorney-Advisor, Office of the Solicitor  
U.S. Department of the Interior  
1849 C Street, NW, MS-6327  
Washington, D.C. 20240  
202.208.6479  
202.208-3877 (fax)  
[Nancy.Brown-Kobil@sol.doi.gov](mailto:Nancy.Brown-Kobil@sol.doi.gov)

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Amanda Kaster-Averill  
Special Assistant  
Office of Congressional and Legislative Affairs  
U.S. Department of the Interior

(202) 208-3337  
[amanda\\_kaster@ios.doi.gov](mailto:amanda_kaster@ios.doi.gov)

115TH CONGRESS  
1ST SESSION

# H. R. 1483

To amend the Forest and Rangeland Renewable Resources Planning Act of 1974 and the Federal Land Policy and Management Act of 1976 to discourage litigation against the Forest Service and the Bureau of Land Management relating to land management projects.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2017

Mr. SIMPSON (for himself and Mr. PETERSON) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Forest and Rangeland Renewable Resources Planning Act of 1974 and the Federal Land Policy and Management Act of 1976 to discourage litigation against the Forest Service and the Bureau of Land Management relating to land management projects.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Litigation Relief for  
5 Forest Management Projects Act”.

1 **SEC. 2. FOREST AND RANGELAND RENEWABLE RESOURCES**  
2 **PLANNING ACT OF 1974.**

3 (a) CONSULTATION REGARDING LAND MANAGEMENT  
4 PLANS.—Section 6(d) of the Forest and Rangeland Re-  
5 newable Resources Planning Act of 1974 (16 U.S.C.  
6 1604(d)) is amended—

7 (1) by striking “(d) The Secretary” and insert-  
8 ing the following:

9 “(d) PUBLIC PARTICIPATION AND CONSULTATION.—

10 “(1) IN GENERAL.—The Secretary”; and

11 (2) by adding at the end the following:

12 “(2) NO ADDITIONAL CONSULTATION RE-  
13 QUIRED AFTER APPROVAL OF LAND MANAGEMENT  
14 PLANS.—

15 “(A) IN GENERAL.—Notwithstanding any  
16 other provision of law, the Secretary shall not  
17 be required to engage in consultation under this  
18 subsection or any other provision of law (includ-  
19 ing section 7 of Public Law 93–205 (16 U.S.C.  
20 1536) and section 402.16 of title 50, Code of  
21 Federal Regulations (or a successor regulation))  
22 with respect to—

23 “(i) the listing of a species as threat-  
24 ened or endangered, or a designation of  
25 critical habitat pursuant to Public Law  
26 93–205 (16 U.S.C. 1531 et seq.), if a land

1 management plan has been adopted by the  
2 Secretary as of the date of listing or des-  
3 ignation; or

4 “(ii) any provision of a land manage-  
5 ment plan adopted as described in clause  
6 (i).

7 “(B) EFFECT OF PARAGRAPH.—Nothing  
8 in this paragraph affects any applicable require-  
9 ment of the Secretary to consult with the head  
10 of any other Federal department or agency—

11 “(i) regarding any project to imple-  
12 ment a land management plan, including a  
13 project carried out, or proposed to be car-  
14 ried out, in an area designated as critical  
15 habitat pursuant to Public Law 93–205  
16 (16 U.S.C. 1531 et seq.); or

17 “(ii) with respect to the development  
18 of a modification to a land management  
19 plan that would result in a significant  
20 change (within the meaning of subsection  
21 (f)(4)) in the land management plan.”.

22 (b) DEFINITION OF SECRETARY; CONFORMING  
23 AMENDMENTS.—

24 (1) DEFINITION OF SECRETARY.—Section 3(a)  
25 of the Forest and Rangeland Renewable Resources

1 Planning Act of 1974 (16 U.S.C. 1601(a)) is  
 2 amended, in the first sentence of the matter pre-  
 3 ceding paragraph (1), by inserting “(referred to in  
 4 this Act as the ‘Secretary’)” after “Secretary of Ag-  
 5 riculture”.

6 (2) CONFORMING AMENDMENTS.—The Forest  
 7 and Rangeland Renewable Resources Planning Act  
 8 of 1974 (16 U.S.C. 1600 et seq.) is amended, in sec-  
 9 tions 4 through 9, 12, 13, and 15, by striking “Sec-  
 10 retary of Agriculture” each place it appears and in-  
 11 serting “Secretary”.

12 **SEC. 3. FEDERAL LAND POLICY AND MANAGEMENT ACT OF**  
 13 **1976.**

14 Section 202(f) of the Federal Land Policy and Man-  
 15 agement Act of 1976 (43 U.S.C. 1712(f)) is amended—

16 (1) by striking “(f) The Secretary” and insert-  
 17 ing the following:

18 “(f) PUBLIC INVOLVEMENT.—

19 “(1) IN GENERAL.—The Secretary”; and

20 (2) by adding at the end the following:

21 “(2) NO ADDITIONAL CONSULTATION RE-  
 22 QUIRED AFTER APPROVAL OF LAND USE PLANS.—

23 “(A) IN GENERAL.—Notwithstanding any  
 24 other provision of law, the Secretary shall not  
 25 be required to engage in consultation under this

1 subsection or any other provision of law (includ-  
2 ing section 7 of Public Law 93–205 (16 U.S.C.  
3 1536) and section 402.16 of title 50, Code of  
4 Federal Regulations (or a successor regula-  
5 tion)), with respect to—

6 “(i) the listing of a species as threat-  
7 ened or endangered, or a designation of  
8 critical habitat, pursuant to Public Law  
9 93–205 (16 U.S.C. 1531 et seq.), if a land  
10 use plan has been adopted by the Sec-  
11 retary as of the date of listing or designa-  
12 tion; or

13 “(ii) any provision of a land use plan  
14 adopted as described in clause (i).

15 “(B) EFFECT OF PARAGRAPH.—

16 “(i) DEFINITION OF SIGNIFICANT  
17 CHANGE.—In this subparagraph, the term  
18 ‘significant change’ means a significant  
19 change within the meaning of section  
20 219.13(b)(3) of title 36, Code of Federal  
21 Regulations (as in effect on the date of en-  
22 actment of this subparagraph), except  
23 that—

24 “(I) any reference contained in  
25 that section to a land management

1 plan shall be deemed to be a reference  
2 to a land use plan;

3 “(II) any reference contained in  
4 that section to the Forest Service  
5 shall be deemed to be a reference to  
6 the Bureau of Land Management; and

7 “(III) any reference contained in  
8 that section to the National Forest  
9 Management Act of 1976 (Public Law  
10 94–588; 90 Stat. 2949) shall be  
11 deemed to be a reference to this Act.

12 “(ii) EFFECT.—Nothing in this para-  
13 graph affects any applicable requirement of  
14 the Secretary to consult with the head of  
15 any other Federal department or agency—

16 “(I) regarding a project carried  
17 out, or proposed to be carried out,  
18 with respect to a species listed as  
19 threatened or endangered, or in an  
20 area designated as critical habitat,  
21 pursuant to Public Law 93–205 (16  
22 U.S.C. 1531 et seq.); or

23 “(II) with respect to the develop-  
24 ment of a new land use plan or the re-

1 vision of or other significant change to  
2 an existing land use plan.”.

○

**From:** Melissa Simpson  
**To:** [Linda Thurn](#); [Thompso Yolando](#)  
**Cc:** [Benedetto Kathleen](#)  
**Subject:** Fwd: Interior meetings request  
**Date:** Monday, March 27, 2017 7:55:39 AM  
**Attachments:** [ATT00001.htm](#)  
[Artesia-Roswell Fly-in 2017 Attendees.pdf](#)

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Hello Ladies,

Please see the request below from Congressman Pearce's office for a meeting with Kathy and Casey Hammond at FWS. Can you please organize a time for this meeting? See dates below.

Todd Willens, below, is the Chief of Staff for the Congressman.

Many thanks, Melissa

Melissa Simpson

Intergovernmental and External Affairs

Department of the Interior

1849 C Street, NW Room 6211

Washington, DC 20240

(202) 706 4983 cell

[melissa\\_simpson@ios.doi.gov](mailto:melissa_simpson@ios.doi.gov)

Sent from my iPhone

Begin forwarded message:

From: "Willens, Todd" <[Todd.Willens@mail.house.gov](mailto:Todd.Willens@mail.house.gov)>  
Date: March 13, 2017 at 8:41:49 AM EDT  
To: "'[melissa\\_simpson@ios.doi.gov](mailto:melissa_simpson@ios.doi.gov)'" <[melissa\\_simpson@ios.doi.gov](mailto:melissa_simpson@ios.doi.gov)>  
Subject: FW: Interior meetings request

From: Hayley Snow Klein [<mailto:hklein@artesiachamber.com>]  
Sent: Monday, March 13, 2017 3:07 AM  
To: Willens, Todd  
Subject: Interior meetings request

Good morning, Todd,

As you know, Artesia and Roswell are planning our annual Washington Fly-in. Usually, we meet with FWS and BLM in separate meetings, but have had some difficulties in the last two years with BLM. This year, I am asking for assistance in setting up meetings that would be appropriate for the following issues, which are primarily focused on BLM and FWS, but may include others:

- APD processing and permitting for oil & gas production – the new computerized system was not ready for roll-out, which is causing confusion and delays; moreover, we would like to discuss the unpredictable timelines for APDs which cause delays in production and tie up significant funding.
- State BLM sale – we would like to see the BLM return to quarterly sales in New Mexico.
- The Resource Management Plan, which is delayed
- Venting & Flaring rule – the rule is not ready for implementation; we hope for reconsideration of the rule altogether
- The anticipated decision on the Texas Horned Shell Mussel and the associated CCAs
- Other ESA listings that may be in the works

We will be in Washington May 1-3. We respectfully request a meeting or meetings at Interior on Monday, May 1. I have attached a list of our attendees. Please let me know if you have questions or need additional information.

Thank you for your assistance and direction,

Hayley

Hayley Klein

Executive Director

Artesia Chamber of Commerce

107 North First Street

Artesia, NM 88210

O: 575.746.2744

[www.artesiachamber.com](http://www.artesiachamber.com)

# ARTESIA - ROSWELL WASHINGTON FLY-IN

## MAY 1-3, 2017

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### ARTESIA

Phillip Burch  
Mayor, City of Artesia

Jon Henry  
Commissioner, Eddy County

Hayley Klein  
Artesia Chamber of Commerce

Michael Bunt  
Economic Development

Chuck Pinson  
Central Valley Electric Co-op

Katie Parker  
EOG Resources

John Bain  
First American Bank

Bob O'Brien  
HollyFrontier Corp

Claire Chase  
Mack Energy Corp

Cooper Henderson  
Artesia Public Schools

Kirk Irby  
Lowell's Pharmacy

Scott Verhines  
EC Consulting Engineers

### ROSWELL

Dennis Kintigh  
Mayor, City of Roswell

Robert Corn  
Commissioner, Chaves County

James Duffey  
Commissioner, Chaves County

Candace Lewis  
Roswell Chamber of Commerce

Cristina Arnold  
New Mexico Business Coalition

Mark Murphy  
Strata Oil

Mitch Krakauskas  
Strata Oil

Kaye Whitefoot  
New Mexico Dairy Producers

Bernarr Treat  
Xcel Energy

Gary Clark  
Lovelace Hospital

Jessica Duncan  
Coca-Cola

**From:** Allen, Matthew  
**To:** [Megan Bloomgren](#); [Swift, Heather](#); [Paul Ross](#)  
**Subject:** Fwd: Introduction  
**Date:** Monday, April 10, 2017 5:07:23 PM  
**Attachments:** [strategy doc.pdf](#)  
[document gw 13.pdf](#)

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Just FYI, Politico will be running a story as well. Megan Crandall provided our statement. Anticipate this will increase bounce.

Thanks for working this through today.  
-Matthew

----- Forwarded message -----

From: Esther Whieldon <[ewhieldon@politico.com](mailto:ewhieldon@politico.com)>  
Date: Mon, Apr 10, 2017 at 4:18 PM  
Subject: Introduction  
To: "mrallen@blm.gov" <[mrallen@blm.gov](mailto:mrallen@blm.gov)>

Hey Matt, I cover BLM/Interior and I'm sorry that I'm just now getting around to reaching out to you. Can we grab coffee sometime this week or next?

Also, I see E&E is reporting a BLM priority list drafted by staff and talking points doc. Can you verify that these are legit documents (see attached)? Do you have any statement on it?

Thanks, Esther

Esther Whieldon  
Reporter  
POLITICO  
301-213-4370 (mobile)  
703-672-2788 (office)  
[ewhieldon@politico.com](mailto:ewhieldon@politico.com)  
Twitter: [@esthernow](https://twitter.com/Esthernow) <<https://twitter.com/Esthernow>>

Esther Whieldon  
Reporter  
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301-213-4370 (mobile)  
703-672-2788 (office)  
[ewhieldon@politico.com](mailto:ewhieldon@politico.com)  
Twitter: [@esthernow](https://twitter.com/Esthernow) <<https://twitter.com/Esthernow>>

--

Matthew R. Allen  
Assistant Director for Communications  
Bureau of Land Management  
Washington, D.C.  
o: 202-208-5207  
m: 202-875-3744  
mrallen@blm.gov

## **DRAFT BLM KEY MESSAGES – 2017 ADMINISTRATION PRIORITIES**

*Internal Working Document – April 3, 2017*

When communicating decisions, announcements, or emerging issues, BLM leaders and communications professional should emphasize to the full extent possible the BLM's multiple-use mission that ensures opportunities for commercial, recreational, and conservation activities on public lands. While each BLM office has its own resource issues, the thematic messages below highlight how the BLM mission addresses the administration's priorities.

These messages should be used broadly as you and your staff prepare internal and external communications products, including press releases, talking points, printed materials such as pamphlets. They should also be used as appropriate when conducting Hill visits or meeting with other stakeholders.

### ***Making America Safe Through Energy Independence***

- The America First Energy Plan is an all-of-the-above plan that includes oil and gas, coal, and renewable sources such as wind and solar – all of which can be developed on public lands.
- America's free markets will help determine if energy development on public lands is feasible.
- The BLM is reviewing and streamlining its business processes to serve its customers and the public better and faster.
- The BLM is committed to supporting improved transmission and pipeline development that stabilizes the grid and otherwise strengthens America's energy infrastructure.

### ***Making America Great Through Shared Conservation***

- As stewards, the BLM manages public lands for the benefit of current and future generations, supporting conservation as we pursue our multiple-use mission.
- We believe partnerships and inclusion are vital to managing sustainable, working public lands.
- The BLM respects the ties that native and traditional communities have to public lands.
- The BLM welcomes and values your diverse views.

### ***Getting America Back to Work***

- The BLM supports working landscapes across the West through its many programs.
- The BLM facilitates opportunities for development of energy infrastructure and commercial recreation on our public lands that create jobs that help local communities grow.
- The BLM is committed to keeping public landscapes healthy and productive.
- Public lands keep America not only beautiful, but also strong.

### ***Serving the American Family***

- The BLM strives to be a good neighbor in the communities we serve, where we provide opportunities for economic growth with space for traditional uses such as ranching, mining, logging, and energy development as well as hunting and fishing.
- Public lands provide valuable, tangible goods, and materials we rely on and use every day to heat our homes, build our roads, and feed our families.
- Connecting kids to public lands connects them to America's natural and cultural heritage.
- The BLM respects the ties many Native American tribes maintain with the land as a shared community value.

### ***Making America Safe – Restoring Our Sovereignty***

- The BLM works to promote safety, security, and environmental protection of the almost 200 miles directly along the international boundary in New Mexico, Arizona, and California.
- Innovative initiatives and partnerships across Federal and state agencies are producing tangible operational results on the front line in the areas of illegal smuggling, conservation, and identifying transnational threats.
- Among our goals are to provide safe and secure environment for the public, employees, and public land users and to protect public land resources from the effects of smuggling.
- We also recognize the objectives of securing our borders and conserving our Federal lands are not mutually exclusive. We must do both.

# *Making America Safe through Energy Independence*

## BLM Priority Work

- ◆ Make additional lands available for “all of the above” energy development
- ◆ Address backlog of Applications for Permit to Drill (APDs) and Expressions of Interest (EOIs)
- ◆ Streamline Federal coal leasing and permitting, and address backlog
- ◆ Streamline oil and gas leasing and permitting
- ◆ Streamline rights-of-way processing for pipelines, transmission lines, and solar/wind projects
- ◆ Streamline leasing and permitting for hardrock mining



# *Making America Great Through Shared Conservation Stewardship*

## BLM Priority Work

- ◆ Achieve appropriate management levels (AMLs) for the Wild Horse and Burro Program
- ◆ Work with partners to develop and implement priority habitat improvement projects
- ◆ Enhance opportunities for volunteer service on public lands
- ◆ Emphasize BLM's multiple-use mandate through strategic communication efforts and educational outreach



# ***Making America Safe - Restoring Our Sovereignty***

## **BLM Priority Work**

- ◆ Coordinate with law enforcement and local communities to enhance public safety
- ◆ Fully deploy communications systems to enhance employee safety, emergency notification, and accountability
- ◆ Enhance partnership projects such as Operation Reclaim Our Arizona Monuments (ROAM)
- ◆ Coordinate with the Department of Defense to ensure that public lands and resources are available to support the mission of our military
- ◆ Prioritize clearance and approval process to support Southern Border actions



# *Getting America Back to Work*

## BLM Priority Work

- ◆ Improve and streamline land use planning to support energy and minerals development and other priority initiatives
- ◆ Streamline NEPA processes to achieve efficiencies and decrease time to completion
- ◆ Modernize critical information systems
- ◆ Pursue maintenance and capital improvement projects that address infrastructure needs
- ◆ Provide employment opportunities for veterans and youth to work on public lands
- ◆ Increase efficiency of compliance activities (ESA, NHPA, CWA)



# *Serving the American Family*

## BLM Priority Work

- ◆ Maintain a capable, ethical, and diverse professional workforce and an inclusive and motivating work culture that drives high productivity
- ◆ Enhance our relationships with States and local communities
- ◆ Protect life, critical infrastructure, and natural/cultural resources through BLM's Fire and Aviation Program
- ◆ Expand recreational, hunting, and wildlife conservation opportunities
- ◆ Fulfill our trust responsibilities to tribal communities
- ◆ Enhance State and local law enforcement partnerships to increase safety and improve the visitor experience on public lands
- ◆ Streamline the grazing permit process and provide more flexibility to the American rancher



**From:** Swift, Heather  
**To:** [Ross, Paul](#)  
**Cc:** [Interior Press](#)  
**Subject:** Re: Kitty Hawk Wind Lease/Greens Hollow Coal Lease  
**Date:** Friday, March 17, 2017 3:25:37 PM

---

Slight edits in pink. Thank you! Good stuff here.

-

Heather Swift  
Department of the Interior

@DOIPressSec  
Heather\_Swift@ios.doi.gov | Interior\_Press@ios.doi.gov

On Fri, Mar 17, 2017 at 3:12 PM, Ross, Paul <paul\_ross@ios.doi.gov> wrote:

Heather-

Below is the drafted response to the EnviroNews reporter:

Emerson-

In response to your query:

Kitty Hawk is the first large-scale renewable energy lease that has occurred so far under this Administration. In regards to the coal moratorium portion of your questions: There are 14 leases, including Greens Hollow, that are not subject to the moratorium and allowed to move forward. They can be found here: <https://www.blm.gov/sites/blm.gov/files/Currently%20Pending%20Federal%20Coal%20Leases.pdf> <<https://www.blm.gov/sites/blm.gov/files/Currently%20Pending%20Federal%20Coal%20Leases.pdf>> . The Trump Administration has prioritized strengthening America's energy security and both of the mentioned lease sales do that. The Department of Interior looks forward to continuing its work identifying comprehensive solutions that balance conservation while allowing for responsible development of oil, natural gas, coal and renewable energy on public lands and offshore waters where appropriate.

Paul R. Ross

Senior Public Affairs Specialist

Office of Communications

U.S. Department of the Interior

Office: (202) 501-4633 | Cell: (202) 507-1689

On Fri, Mar 17, 2017 at 2:15 PM, Swift, Heather <heather\_swift@ios.doi.gov> wrote:

Thanks! In your statement about wind, please indicate that the admin is dedicated to American energy and that we will look for a comprehensive solution

-  
Heather Swift  
Department of the Interior

@DOIPressSec  
Heather\_Swift@ios.doi.gov | Interior\_Press@ios.doi.gov

On Fri, Mar 17, 2017 at 2:10 PM, Ross, Paul <paul\_ross@ios.doi.gov> wrote:

Heather-

Update here: BLM is pulling together a list for me of other leases that are exempt from the moratorium. There haven't been any other large-scale energy leases besides Kitty Hawk so far under the Trump Admin. I'll have a full response ready for you once I get the list back from BLM.

Paul R. Ross

Senior Public Affairs Specialist

Office of Communications

U.S. Department of the Interior

Office: (202) 501-4633 | Cell: (202) 507-1689

On Fri, Mar 17, 2017 at 11:50 AM, Swift, Heather <heather\_swift@ios.doi.gov> wrote:

Paul, would you mind tracking these down for us?

-  
Heather Swift  
Department of the Interior

@DOIPressSec  
Heather\_Swift@ios.doi.gov | Interior\_Press@ios.doi.gov

On Fri, Mar 17, 2017 at 11:29 AM, <emersonurrry@environews.tv> wrote:

Good day.

My name is Emerson Urry. I am the Editor-in-Chief of EnviroNews USA and a member of the Interior press pool. I write you today with questions regarding yesterday's announcement on the Kitty Hawk offshore wind lease and the Greens Hollow coal lease.

Greens Hollow:

Because this lease was approved before DOI's coal-lease moratorium and was also approved by USFWS, this lease appears to be exempt from the moratorium. Are there any other leases on DOI's radar that are also exempt? We have heard this is the only one. Secondly, considering the Trump Administration's strong pro-coal rhetoric, does DOI have any plans to attack or roll-back the moratorium itself?

Kitty Hawk:

Are there any other large-scale renewable energy leases issued under Interior so far during the Trump Administration we can point to? Or, is this is the only one so far?

Thank you.

Emerson Urry  
EnviroNews USA -- Editor-in-Chief  
EmersonUrry@EnviroNews.TV  
(202)899-0911  
www.EnviroNews.TV  
Twitter: @EnviroNews

**From:** Chambers, Micah  
**To:** [Howarth, Robert](#); [Juliette Lillie](#); [Salotti, Christopher](#)  
**Subject:** Fwd: Letter to Secretary Zinke  
**Date:** Thursday, March 16, 2017 11:46:10 AM  
**Attachments:** [FHWRB\\_SecretaryZinkeLetter\\_3-1-17 \(1\) \(1\).pdf](#)

---

Note that the line from Congressman saying it doesn't necessarily reflect his view. In addition the Congressman didn't send a letter of support.

----- Forwarded message -----

From: Shelton, Ashley <Ashley.Shelton2@mail.house.gov>  
Date: Thu, Mar 16, 2017 at 10:54 AM  
Subject: Letter to Secretary Zinke  
To: "micah\_chambers@ios.doi.gov" <micah\_chambers@ios.doi.gov>

Hi, Micah –

Attached is a letter addressed to Secretary Zinke from some constituents and state officials regarding a bridge in our district under the authority of Fish and Wildlife. They have asked us to pass it along. Their views do not necessarily reflect those of Rep. Crawford.

Are you who I should be sending this to? If not, can you point me to the right person?

Please let me know if you have questions.

Thank you,

Ashley

--

Ashley Shelton

Senior Legislative Assistant

Office of U.S. Rep. Rick Crawford (AR-01)

NEW OFFICE LOCATION

Rayburn 2422 | Washington, D.C. 20515

[a.shelton@mail.house.gov](mailto:a.shelton@mail.house.gov)|(202) 225-4076

--

Micah Chambers  
Special Assistant / Acting Director  
Office of Congressional & Legislative Affairs  
Office of the Secretary of the Interior

# FRIENDS OF THE HISTORIC WHITE RIVER BRIDGE AT CLARENDON

PO Box 141 ~ Clarendon, AR 72029 ~ [info@whiteriverbridge.org](mailto:info@whiteriverbridge.org) ~ [www.whiteriverbridge.org](http://www.whiteriverbridge.org)

February 22, 2017

The Honorable Ryan Zinke  
1419 Longworth House Office Building  
Washington, DC 20515

Dear Mr. Zinke:

The Friends of the White River Bridge at Clarendon is a local 501(c)3 non-profit working to preserve and adapt the historic White River Bridge at Clarendon (Arkansas) – all of which is listed on the National Register of Historic Places – into the longest elevated bicycling, pedestrian, and nature-watching platform in the world. Once adapted, the bridge will serve as the centerpiece of an effort to revitalize eastern Arkansas – which includes some of the poorest counties in the United States – through the development of outdoors-related tourism. Our efforts fit squarely into the statewide initiative being led by Governor Asa Hutchinson and supported by the Walton Family Foundation to establish Arkansas as the “Cycling Hub of the South” and will leverage substantial investments in cycling infrastructure in eastern Arkansas, including the recent development of the Harahan Bridge between Memphis and West Memphis (see enclosed articles).

Our efforts enjoy the support of a wide variety of public officials and advocacy organizations. Governor Hutchinson in particular has been an avid supporter of this project, having met last spring with the director of the U.S. Fish & Wildlife Service (USFWS), Dan Ashe, in his office in Washington for the sole purpose of advocating for the preservation of the bridge. Likewise, the commitment of one of Little Rock’s major law firms, Gill Ragon Owen, PA, to provide all legal services associated with our ongoing litigation to save the bridge on a *pro bono* basis is a testament to the support this project enjoys.

In addition, a growing groundswell of public support for preserving the bridge has emerged in the past few months. On September 24, a rally was held at the foot of the historic White River Bridge in Clarendon that had robust attendance. An online petition launched a week prior has gathered signatures representing 40 states and 28 countries, and an online fundraising campaign launched in early October has raised almost \$20,000 in small donations from local citizens invested in seeing the project to completion. We have also already secured pledges totaling \$200,000 for a bridge maintenance endowment to provide funds in perpetuity to ensure responsible ongoing maintenance at no cost to the public.

Finally, our efforts to save the bridge have garnered substantial media coverage in the past few months alone, including being featured once on television, twice on the radio, and more than a half-dozen times in print, including an endorsement by the editorial board of the statewide paper of record (the Arkansas Democrat-Gazette) on September 30 and a multi-page feature on the cover of the “Perspectives” section on November 6. Samples of relevant media coverage are enclosed for your consideration.

## FRIENDS OF THE HISTORIC WHITE RIVER BRIDGE AT CLARENDON

PO Box 141 ~ Clarendon, AR 72029 ~ [info@whiteriverbridge.org](mailto:info@whiteriverbridge.org) ~ [www.whiteriverbridge.org](http://www.whiteriverbridge.org)

We are pleased to report that the Arkansas Highway and Transportation Department (AHTD) and the Federal Highway Administration (FHWA) have recently initiated a series of productive conversations with us to explore a win-win resolution, including a due diligence process to ensure that we can fulfill all requirements of the Arkansas Historic Bridge program.

**The primary obstacle** preventing AHTD and FHWA from working with us to save the bridge **is an agreement made with USFWS** to demolish the historic bridge in order to secure the right-of-way through the adjoining national wildlife refuges for the replacement bridge (which opened this summer). If AHTD was relieved of this obligation to USFWS, we believe the matter would be settled in a manner satisfactory to all parties. Unfortunately, despite several efforts at outreach – including the high-profile effort by Governor Hutchinson – **USFWS has thus far been unwilling to explore any compromise** that might resolve the matter in a mutually beneficial manner.

We are writing to ask for your help on this matter. Specifically, we ask that once confirmed as Secretary of the Interior that you **urge USFWS to explore any and all means within the bounds of the law and their own regulations to release AHTD of their obligation to demolish the White River Bridge at Clarendon**, so that AHTD and FHWA may transfer responsibility for the bridge to us under the terms of the Arkansas Historic Bridge program. As the Compatibility Determination on the basis of which the historic bridge was obligated to be demolished is up for *mandatory* review in 2017 and FHWA has already undertaken an update of the NEPA review surrounding the bridge, **USFWS has a golden opportunity to revisit this issue at little to no additional cost to the agency or taxpayers**. In fact, as an amicable resolution **will save as much as \$10 million-\$15 million**, the estimated cost for demolition and remediation of the bridge. This is in addition to the savings that will come from resolving the matter outside of federal court.

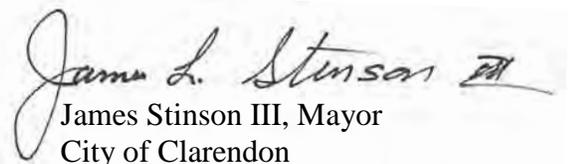
If USFWS cannot find a way to preserve the bridge within the bounds of their regulations (which in actuality give substantial latitude and discretion to local refuge managers), **we ask for your assistance in getting USFWS to sit down in earnest with all involved parties to seek a reasonable compromise** through which the interests of all parties may be served. There are many options – including ones that USFWS proposed several years ago – that we have explicitly expressed a willingness to explore with them.

Thank you for your consideration of our request for assistance. If there is any further information we can provide, please contact us at 870.816.8421 or [doug@whiteriverbridge.org](mailto:doug@whiteriverbridge.org).

Sincerely yours,



Doug Friedlander, Executive Director  
Friends of the Historic White River Bridge at Clarendon



James L. Stinson III, Mayor  
City of Clarendon

# FRIENDS OF THE HISTORIC WHITE RIVER BRIDGE AT CLARENDON

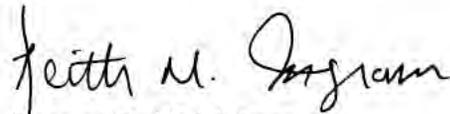
PO Box 141 ~ Clarendon, AR 72029 ~ [info@whiteriverbridge.org](mailto:info@whiteriverbridge.org) ~ [www.whiteriverbridge.org](http://www.whiteriverbridge.org)

## ADDENDUM

As an indication of the widespread support this project has garnered within the state of Arkansas, we have included the signatures of the following leaders that co-signed a related letter sent to members of our congressional delegation in December 2016.

*(See attached letter)*

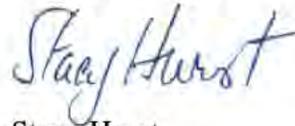
Senator Jonathan Dismang  
President Pro Tempore  
Arkansas Senate



Senator Keith M. Ingram  
Minority Leader  
Arkansas Senate

*(See attached letter)*

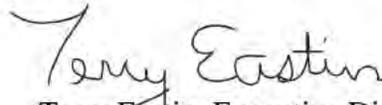
Senator Ronald Caldwell  
District 23  
Arkansas Senate



Stacy Hurst  
Director and State Preservation Officer  
Department of Arkansas Heritage



Joe St. Columbia, Chairman  
Mississippi River Parkway Commission of Ark.



Terry Eastin, Executive Director  
Big River Strategic Initiative



Toby Von Rembow, Chair  
Arkansas Trails Council Executive Committee



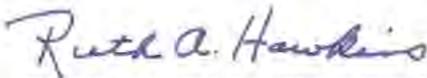
Rachel Silva Patton, Executive Director  
Preserve Arkansas



Mason Ellis, President  
Bicycle Advocacy of Central Arkansas



Bill Smith, Board Member  
Northeast Arkansas Bicycle Coalition



Dr. Ruth Hawkins, Executive Director  
Arkansas Delta Byways



Mark O'Mell, Executive Director  
East Arkansas Crossroads Coalition



Lori Hunt, President  
Brinkley Chamber of Commerce



Susan Caplener, President  
Clarendon Chamber of Commerce

# FRIENDS OF THE HISTORIC WHITE RIVER BRIDGE AT CLARENDON

PO Box 141 ~ Clarendon, AR 72029 ~ [info@whiteriverbridge.org](mailto:info@whiteriverbridge.org) ~ [www.whiteriverbridge.org](http://www.whiteriverbridge.org)



Pat Audirsch, Chair  
Marianna Economic Development Commission



Tracy Brick  
Marion Chamber of Commerce



Chris Richey, Executive Director  
Phillips County Chamber of Commerce



Holmes Hammett, Executive Director  
West Memphis Chamber of Commerce

## ATTACHMENTS

### **A. Letters of Support**

- A.1: Senator Jonathan Dismang, President Pro Tempore, Arkansas Senate
- A.2: Senator Ronald Caldwell, District 23, Arkansas Senate

### **B. Recent articles highlighting and/or endorsing this project**

- B.1: "Save this bridge." Editorial. *Arkansas Democrat-Gazette*, Sept. 30, 2016.
- B.2-3: "After the Harahan Bridge: Arkansas' next big opportunity comes riding on in." *Arkansas Democrat-Gazette*, Nov. 6, 2016.
- B.4: "Bridging the White River." Editorial. *Arkansas Democrat-Gazette*, Nov. 16, 2016.

### **C. Recent articles highlighting the broader initiative of which our work is a part**

- C.1: "The cycling hub." Editorial. *Arkansas Democrat-Gazette*, Nov. 30, 2016.
- C.2-3: "Traveling the levee." *Arkansas Democrat-Gazette*, Dec. 12, 2016.

JONATHAN DISMANG  
PRESIDENT PRO TEMPORE

SENATOR  
28TH DISTRICT  
OFFICE: 501-766-8220  
dismang28@gmail.com

POST OFFICE BOX 475  
BEEBE, ARKANSAS 72012



THE SENATE  
STATE OF ARKANSAS

VICE-CHAIR:  
EFFICIENCY  
  
MEMBER:  
LEGISLATIVE COUNCIL  
JOINT AUDIT  
JOINT BUDGET  
REVENUE & TAXATION  
INSURANCE & COMMERCE  
CHILDREN & YOUTH  
LEGISLATIVE FACILITIES

December 15, 2016

The Honorable John Boozman  
United States Senator

The Honorable Tom Cotton  
United States Senator

Dear Senators:

Please accept this letter in support of the Friends of the Historic White River Bridge at Clarendon, which is working to preserve the White River Bridge and adapt it into a bicycling, pedestrian and nature-watching platform that would attract tourism to the region. I understand the Friends of the White River Bridge has contacted you to request assistance in working with the U.S. Fish and Wildlife Service regarding this goal.

Respectfully, I would ask you to give this organization's proposal every possible consideration. The White River Bridge project is a wonderful opportunity to create an outdoors attraction for cyclists, hikers and wildlife enthusiasts. Thank you for your time and attention in this matter. If I can be of further assistance in any way, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "JD", written over a circular stamp.

Jonathan Dismang  
President Pro Tempore  
District 28

JD:lag

RONALD CALDWELL

SENATOR  
23RD DISTRICT  
OFFICE: 870-238-5421  
ronald.caldwell@senate.ar.gov

120 CR 393  
WYNNE, ARKANSAS 72396



THE SENATE  
STATE OF ARKANSAS

CHAIR:  
AGRICULTURE, FORESTRY & ECONOMIC DEVELOPMENT

VICE-CHAIR:  
RULES, RESOLUTIONS & MEMORIALS

MEMBER:  
LEGISLATIVE COUNCIL  
JOINT ENERGY  
JOINT BUDGET  
TRANSPORTATION, TECHNOLOGY & LEGISLATIVE AFFAIRS

December 15, 2016

The Honorable John Boozman  
United States Senator

The Honorable Tom Cotton  
United States Senator

Dear Senators:

I am writing to express my support for the Friends of the Historic White River Bridge at Clarendon, as it endeavors to preserve the White River Bridge and adapt it into a bicycling, pedestrian and nature-watching platform. Once modified, the bridge will serve as the centerpiece of an effort to revitalize the region through the development of outdoors-related tourism in eastern Arkansas. I understand the organization has contacted you to request assistance in working with the United States Fish and Wildlife Service regarding this goal, and I hope you can offer your support.

Respectfully, I would ask you to give the Friends of the Historic White River Bridge's proposal every possible consideration. The success of this project could present a unique opportunity to facilitate economic development through tourism that is much needed in the eastern region of the state. Thank you for your time and attention in this matter. Please do not hesitate to contact me if I can be of further assistance in any way.

Sincerely,

A handwritten signature in blue ink that reads "Ronald Caldwell".

Ronald Caldwell  
State Senator  
District 23

RC:em

## EDITORIALS



## Jeez it, the cops!

Word police have us surrounded

THE OTHER DAY a headline in your friendly statewide paper used the word “gypped” and the Internet fainted. Or at least one overly pure word cop called out the Paddy wagon. Such things happen when Internet critics spaz out.

Great Scott. So some honest-Injun headline writer Jerry-rigged a headline to fit a story about drillers and royalty money, and now all the natives are restless?

It reminds us of all the fuss when a certain coach for a certain football team in another state (the state rhymes with Salabama) used the word coonass—and it was caught on tape. After all, he was telling a coonass joke. Which are the best kind. This coach, whom we won't name but whose initials are Nick Saban, found himself in a real controversy when ESPN ran the tape, but bleeped the “coonass” part. As if it were a cuss word! We know nobody in South Louisiana who feels that way.

Now there's a Mexican standoff between those of us who'd like to use language to paint a certain picture, or many certain pictures, and those who'd rather reduce language to a series of colorless and unexciting phrases, like the ones you'd find in a modern boardroom. Complete with Language Coaches who'd like to integrate the company into the new normal and streamline survival strategy to sustain synergy by actioning a paradigm shift. And, at the end of the day, empower proactive associates to leverage key learnings with a holistic approach. (Trigger warning: Next sentence isn't

meant to be literal.) Somebody shoot us. So now gypped is supposedly forbidden. What next, Irish coffee? Indian giver?

The forces of political correctness will try to nibble away at the language, eliminating verve at every opportunity, however small. Until the language has been cleansed—of all meaning, and life. But then what will we have left? How long before all color is drained from the American language (close relative: English) and how long before that wild tapestry and ever-changing poem, that natural masterpiece, becomes reduced to Newspeak used by the kinds of politicians who live in mortal fear of offending anybody who might accidentally be listening?

Like the poor, we'll always have those with us who are just dying to be offended. And highly offended at that. (What, not just medium-offended?)

We'll not have it. Not as long as aging fingers can type. Long live our language! Long live the conasses who tell their kids to raise dat window down, New Joisey Tough Guy-ese, Tex-Mex, California Laid Back-ery, and Boston Brahmin. And all the ways they use their words—and experiences—to convey their thoughts. We promise not to be offended the next time we hear the word redneck. In fact, it would be a promotion for some of us all too genteel types.

Let's make a deal: The word police allow us to use gyp on occasion, and we won't get upset when somebody mentions fish wrapper.

Deal? We promise we won't Welsh on it.

## Save this bridge

AS THE week came to a close, all was set to go for the rally last Saturday at the base of the historic White River Bridge in Clarendon, and just about every dignitary in the state had signed on to support the fast-growing movement. And why not? What's not to like? For this ambitious project combines the attractions of history, nature and state and local pride.

To quote Mayor Jim Stimson III of Clarendon, “There is tremendous enthusiasm among our citizens to save this bridge.” It had been scheduled for demolition, but even the state's highway department had the good sense to change its mind.

The 85-year-old bridge may get a whole new lease on life—and the prospect has drawn cheers from people around the state and the world, including Governor Asa Hutchinson and the state's Department of Arkansas Heritage. The result should be the longest pedestrian and bicycle bridge in the world over some of the most interesting bottomlands in the world.

“The world is watching,” to quote Connie DePriest of the Friends of the Historic White River Bridge.

The western approaches to the bridge extend over the Cache River National Wildlife Refuge. The refuge includes some 56,000 acres spread over Jackson, Woodruff, Monroe and Prairie Counties, and is one of the few places in the Mississippi Flyway unchanged by canalization and drainage projects. Ducks galore!

This small, wonderful state has benefited by following through on visions before. This time they won't be dreams of industrialization but its opposite: a return to primeval times when the Indian tribes celebrated Arkansas' happy hunting grounds. And white explorers looked with wonder at the future state that awaited them in history. Lewis and Clark—and the president who dispatched them, Thomas Jefferson—would surely be pleased.

What a blessing it is once again to not just watch history being made but to make it. And without besmirching the natural environment. As with the economy, there's nothing like a good leaving-alone to benefit all, and not just in this generation but for generations to come. Or what used to be called posterity. As in the Preamble to the U.S. Constitution:

“We the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”

Just as today, by working with nature instead of exploiting it, Arkansas can proceed to save not just a bridge but an old vision of the state restored and refreshed. This used to be called conserving nature—as in conservation—and once again it can be practiced with a good conscience instead of a bad one.

## OTHERS SAY

## Put 'em up

PITTSBURGH POST-GAZETTE

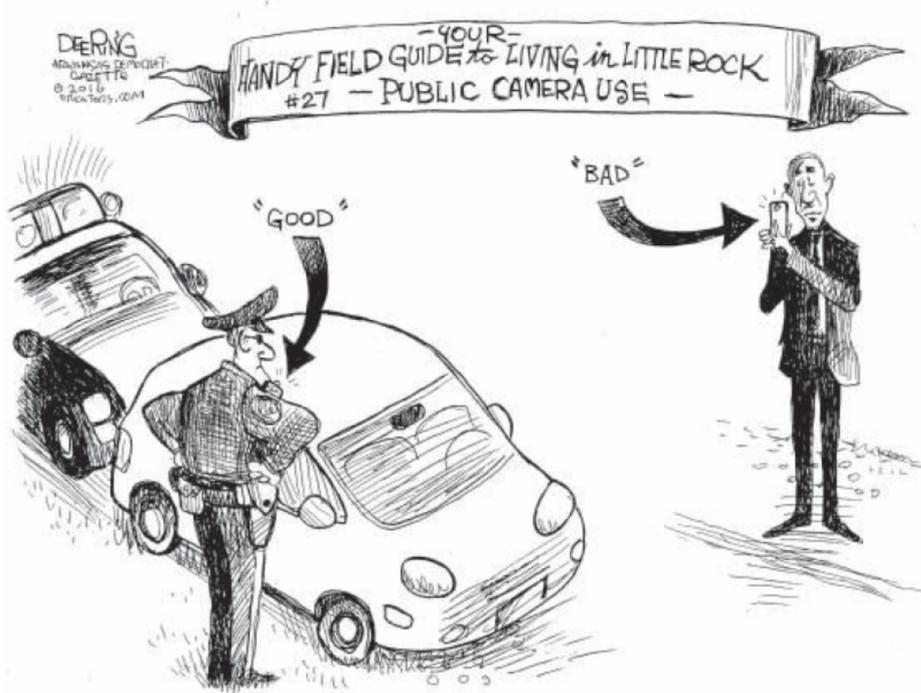
For years, the U.S. Military Academy at West Point has required its male cadets to box in their first year. But women weren't allowed to join them. Now West Point has changed its rule: Plebe women, too, must box.

As long as boxing is a requirement for cadet men, that is what equality requires.

Some may argue that the risk of concussion outweighs the benefits. According to a *New York Times* story last year, nearly 1 in 5 West Point concussions

came from boxing. But West Point's students, women as well as men, have chosen to enter a dangerous profession. Exempting women cadets was coddling, not a word anyone would expect in the same sentence as “West Point.”

The U.S. Armed Forces have opened all combat roles to women, and five women from this year's West Point graduating class chose to pursue the responsibilities of infantry officers. In the U.S. Military Academy, too, women deserve to be treated equally. This boxing requirement is part of that equality.



## COLUMNISTS

## The Clinton calendar



David Brooks

Hillary Clinton made a very pertinent comment last week: “Why aren't I 50 points ahead?” you might ask. Indeed we might!

Clinton is running against a man whose approval ratings are under 40 percent and his disapproval rating is the highest of any candidate in American history. Only 38 percent of Americans think Donald Trump is even qualified to be president, according to a Quinnipiac survey.

Trump has practically no campaign to speak of while Clinton has a very professional one. Clinton is swamping Trump on the airwaves. Estimates vary by source, but according to *Advertising Age*, \$145 million has been spent on pro-Clinton TV and radio ads while only \$4 million has been spent on pro-Trump ads.

Meanwhile, the Trump scandals blow through like hurricanes in the tropics. Thanks to reporting by the *Washington Post*, we've learned that the Trump Foundation makes Trump University look like a model of moral rectitude. Donations Trump raised through that foundation went to pay his company's legal bills and to buy two portraits of himself.

Every week he manages to stain his character a deeper shade of black.

And still he is within 2 or 3 points of Clinton nationally and leading in a bunch of the key swing states. When you look at the secondary questions in the polls, Trump is doing miserably, but in the top-line “Who are you going to vote for?” question, he's doing decently.

What is going on here?

Tyler Cowen recently gathered some of the more interesting theories on his blog *Marginal Revolution*: America is not ready for a female president. The Democrats have a lot of policy proposals, but the Republicans are running on big ideas. A more diverse country is a more fractious and polarized country, and over the past few weeks white Republicans have been coming home to their candidate.

I see some truth in those theories, especially the last one. But my single explanation would be this: Clintonworld is a semi-closed system that operates according to its own calendar. Donald Trump is egregious, but at least he's living in the 21st century, as was Bernie Sanders. Clintonworld operates according to its own time-space continuum that is slightly akilter from our own.

In the 21st century, politics operates around a

different axis. It's not left/right, big government/small government. It's openness and dynamism versus closedness and security. It's between those who see opportunity and excitement in the emerging globalized, multi-ethnic meritocracy against those who see their lives and communities threatened by it.

Clintonworld is a decades-old interlocking network of donors and friends that hasn't quite caught up to these fundamental shifts. That's because Clintonworld, in the Hillary iteration, is often defensive, distrusting and oriented around avoiding errors. In each of her national campaigns, Clinton has run against in-touch-with-the-times men who were more charismatic and generated more passion than she did. She's always been the duller, unfashionable foil.

Her donor base and fundraising style is out of another era. Obama and Sanders tapped into the energized populist base, but Clinton has Barbra Streisand, Cher and a cast of Wall Street plutocrats.

Her out-of-time style costs her big with millennials. If she loses this election it will be because younger voters just don't relate to her and flock to Gary Johnson instead.

We have an emerging global system, with relatively open trade, immigration, multilateral institutions and ethnic diversity. The critics of that system are screaming at full roar. The champions of that system—and Hillary Clinton is naturally one—are off in another world.

There is a strong case to be made for an open world order, and a huge majority coalition to be built in support of it. But she is disengaged.

Don't get me wrong, I still think she'll eke out a win. I just hope her administration is less foggy than her campaign.

David Brooks is a columnist for the *New York Times*.

## Two against one

JAY AMBROSE  
TRIBUNE NEWS SERVICE

It was two against one in the Monday night presidential debate. We had moderator Lester Holt, who apparently assumed he was a candidate, too, and Hillary Clinton, well-equipped with policy malformations, against Donald Trump. Trump wasn't nearly as bad as I anticipated—much closer to reality on the economy, police, guns and Iran, for instance, if issues still count in this contest.

Again and again, the ill-informed, biased Holt asked Trump tough, personal questions and, when he didn't like the answers, interrupted him in a way that should have been left up to Clinton, who was spared an equivalent assault. They call it fact-checking, but this was a debate, not a reporter's interview, and he had some facts utterly confused.

The economy was issue number one, and Clinton espoused the usual, worsening federal interventions, the most absurd being President Barack Obama's global warming plan. Now before the Supreme Court, the clearly unconstitutional plan could cost all kinds of fossil fuel jobs, as Trump pointed out.

Trump had it right when he talked about a hefty reduction of the highest corporate tax rate in the developed world and otherwise arranging a means to bring home billions earned abroad. Clinton said he had no plan to do either, which is either a lie or ignorance. Holt, ever alert on Trumpian mishaps, said nary a word.

Trump went overboard as usual on his trade attacks, although reviewing some provisions in some treaties could make sense. Both are wrong on the Trans-Pacific Partnership deal that could be important economically as well as diplomatically. The difference is that Trump comes at it sincerely, while Clinton, who helped formulate it and praised it to the skies, is now against it as a matter of political convenience. In other words, deviousness remains her middle name.

Clinton was also wrong on thinking back-

ground checks are the answer to too many guns in criminal hands. Go ahead and expand them, but there is no evidence that they work, whereas there is plenty of evidence about the effectiveness of stop-and-frisk as recommended by Trump to save thousands of lives in Chicago. Both Clinton and Holt made it sound as if stop-and-frisk was now illegal, at least in New York City, when what we have had instead is an officially condemned ruling by a federal judge that it had been unconstitutional applied in the city.

There was lots more to the debate, of course, and Trump repeated old stupidities along with too much self-defensive focus on himself. But that was caused in no small part by Holt hitting him with questions on such things as not turning over his tax returns, his long-term refusal to give his birther theory a funeral and his saying Clinton did not look like a president. If Holt thought that was a service to the American people, why didn't he think it a service to bring up the Clinton Foundation, the FBI's condemnation of how she handled classified material as secretary of state or her own ways of being hurtful to women?

Clinton, at the end, smashed Trump with things he should never have said about individual women, and—showing signs of needed self-control—he was gentlemanly enough not to bring up the way her husband ruined the lives of multiple women and she colluded in their defamation.

Just as Trump decided not to invite Jennifer Flowers to the debate, it's now his job to correct himself sufficiently to keep Clinton out of the White House. Impossible? We will see.

## Guide to the Editorial Page

Only the editorials express the opinion of the *Arkansas Democrat-Gazette*. They almost always appear on the left side of the editorial page. The columnists—local and syndicated—express only their own opinions, as do the cartoonists whose work appears on this page.

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Established 1878

Arkansas Gazette  
Established 1819

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COLUMN ONE



PAUL GREENBERG

## At the end of the day

The light shines bright on my old Arkansas home. It's been another brilliant October, something else we in Arkansas tend to take for granted about this small, wonderfully interwoven state. Let Texans brag about how big their state once was in comparison to all the others—before Alaska became an empire of its own based on the same claims Texans once made about their state: oil and sheer size. Size may make indeed make an empire but never a home.

It's all enough to give this old-timer a severe case of nostalgia, which someone once defined as homesickness for the past. Oh, for the glory that was Greece, the grandeur that was ... Grady. Yes, Texans might once have gloried in the oil derricks that sprouted from Midland in the west to Kilgore in the eastern part of their vast domain, but Arkies can take pride in simpler, better things, like our close ties. For if nobody you know may have gone to the same college or law school you did, then it's a safe bet he—or she—went to the same barber or beautician. ("Remember old Speed at the Town & Country shopping center? He could always squeeze you in at the last minute and throw in a good story on top of it as an extra added bonus. And that old .38 caliber Smith & Wesson he kept handy testified to his firm belief in the Second Amendment and all rights and privileges pertaining thereto.")

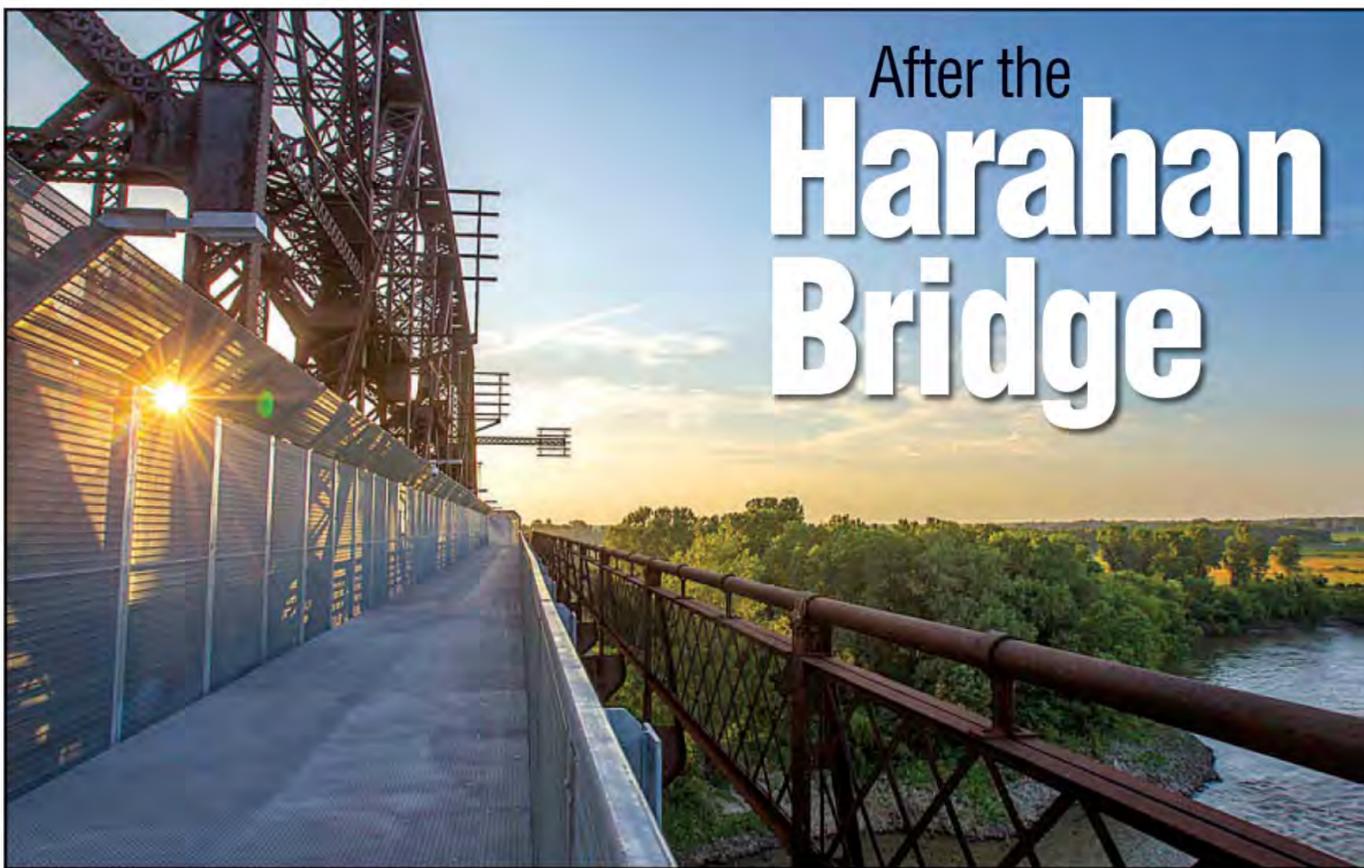
Me, the best I can do is carry my concealed weapon permit with me and prepare to wave it menacingly at anybody who dares confront me. Fat lot of good that should do. It's been better than half a century since I qualified with a .45 at Fort Sill and walked away with relief, my poncho draped over my fatigues. Serving in the U.S. Army may have been the second most educational experience of my life, the first being helping to rear teenagers, which doubtless hasn't become any easier since.

Even back then, helping to rear a teenager was enough to send me for a consultation with my friend, neighbor and spiritual counselor, the Venerable Reverend Richard Milwee. He just smiled understandingly. For he doubtless had heard the same sad story about the travails of what was then considered modern-day parenting from many of his congregants. They had no way of anticipating what concerns awaited today's post-modern, post-manners moms and dads. For each generation seems to operate under the delusion that theirs is the first to encounter such an experience.

I can still remember the only time my own father laid a hand on me, just as I remember the only time I gave my own son a firm kick to the backside for taunting his sister one too many times. The more things change, as the French say, the more they remain the same. From generation unto generation.

So hold on for still another trip on this carousel. The faster it goes, reducing time itself to just another blur, the sooner it will be before we all leap off into eternity. Even now I can see the assemblage of ghosts there awaiting for a happy reunion. As I'm sure you can, too, as you grow older. Everybody has his own favorite vision of the bucolic, beatific last day. And what a happy day that will be! See you there. You can count on me, if for nothing but memories and everlasting hopes.

Paul Greenberg is the Pulitzer Prize-winning editorial writer and columnist for the Arkansas Democrat-Gazette.



# After the Harahan Bridge

© 2016, Big River Strategic Initiative LLC

The pedestrian-friendly and bicyclist-accommodating Big River Crossing, also known as the Harahan Bridge, stretches across the Mississippi River from West Memphis to Memphis.

## Arkansas' next big opportunity comes riding on in

DOUG FRIEDLANDER AND TERRY EASTIN  
SPECIAL TO THE DEMOCRAT-GAZETTE



Photo courtesy of Jonesboro Police D.A.R.E.

Bicyclists join together in a ride across the White River Bridge.

WEST MEMPHIS—It was a dramatic moment as delegations from Arkansas and Tennessee set out at high noon on Oct. 22 from the West Memphis and Memphis ends of the newly christened Big River Crossing—otherwise known as the Harahan Bridge—to meet in the middle, shake hands, and dedicate one of the longest bike-pedestrian bridges in the world.

Thanks to visionary leadership, this project has put Memphis and east Arkansas squarely on the map of a rapidly growing national passion for bicycling, walking, and other forms of outdoor recreation, eco-tourism, and physical fitness.

The development of this attraction was the impetus for the St. Francis Levee Board, which manages the levee from Mississippi County to Lee County, to approve the development of a bike trail atop the Mississippi River levee from the bridge's western terminus in West Memphis all the way to Marianna.

With the possibility of paving a road from Marianna to Helena through Mississippi River State Park being explored and the ongoing development of Delta Heritage Trail State Park—a rails-to-trails conversion that when completed will provide an 84.5-mile bicycle path from Helena to Arkansas City—Arkansas will be able to boast an extraordinary route that would allow avid bicyclists to traverse nearly the entire length of the Natural State on dedicated bicycle paths, an astonishing jewel of an attraction.

But what about a route connecting Memphis to Little Rock, which thanks to an array of developments of its own over the past decade has emerged as a favorite destination for bicyclists? The Arkansas Department of Parks and Tourism website lists as one of its Grand Tours a Little Rock-to-Memphis Tour which

See **BRIDGE** on Page 6H

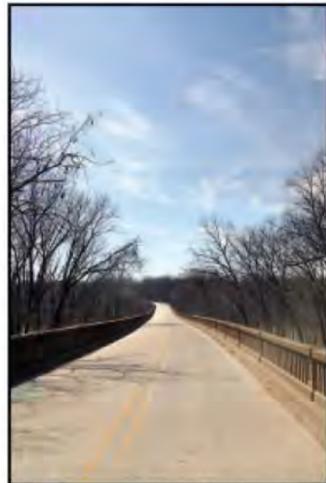
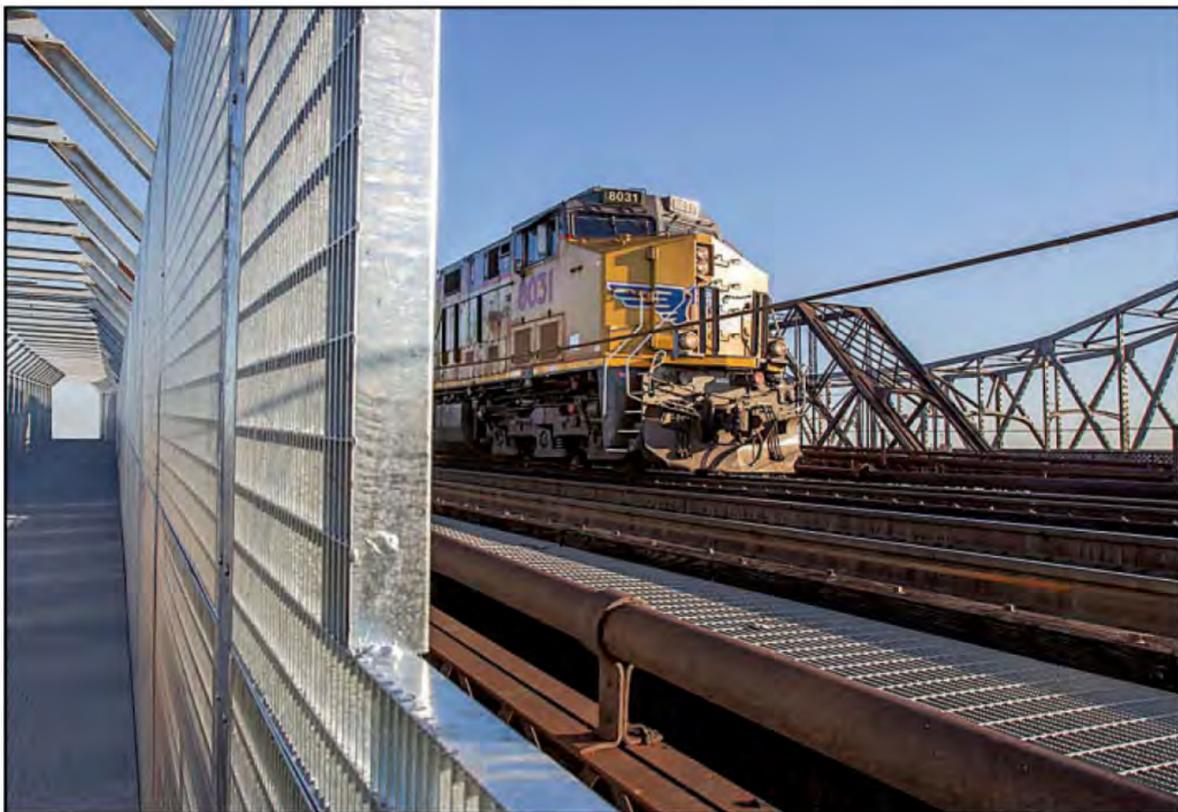


Photo by Brandon Rush

The historic White River Bridge near Clarendon, constructed with traditional concrete barriers, could be part of an epic bicycling route that traverses nearly the entire length of Arkansas.



A train crosses the rail line of the Harahan Bridge between West Memphis and Memphis where a bike-pedestrian bridge was dedicated Oct. 22.

# Rectify: reeling through the wilderness



PHILIP MARTIN

I've got the sense I'm doing this wrong. What I want to do is say something about a television series that is coming to an end, one that most of you haven't seen and that some of you probably haven't heard about. One that might not appeal to some of you. It is called *Rectify* and I believe that it deserves to be considered among the very finest shows that have ever played on television, mostly because it is not the sort of thing that we have been conditioned to expect of television.

Instead, *Rectify* has about it the feel of timeless fiction, an investigative interest in the way human beings court affection and seek to protect themselves in the clinches. It has a kind of moral integrity, an insistence on the primacy of private life; on first and final relationships. It is about a man released from prison and his struggle to re-integrate into the everydayness of grocery stores and coffee bars. It is about a man who, having been

trained to consider every breath, is suddenly thrust into an inconsiderate universe. It's about the ways we look for meaning in a violently random world. It's about figuring out how to live.

All that is vague on purpose. I don't want to review the show, to critique the actors' performances or encapsulate the arc. Either you know the show or you don't, and I don't imagine that my writing about it is likely to make anyone want to hunt down its previous seasons on DVD or tune into the Sundance Channel to watch the show's final few episodes. I hear from people all the time who tell me that they use movies and books and TV as entertainment, as a means to escape from the imperatives they feel pressing in on them from all sides. They contend they use stories as a kind of narcotic, a way of forgetting themselves.

And I don't guess there's anything wrong with that. I'm going to read the new Jack Reacher book. I kind of like James Bond.

Still, it's rare to find good art, and when you do it's worth spending a little time thinking about it. It's worth asking yourself why you think it affects you the way it does, why the words spoken by two actors pretending to be two characters sitting in a room

surrounded by dozens of technicians working outside the frame can still somehow move you to the very brink of tears. It's worth thinking about what that means. Why do we buy the illusion? Why do these other-manufactured dreams have the same power—maybe more—than the ones that come to us unbidden?

I know how the trick is done. But I can't explain the magic.

Courtesy and convention require that I disclose that *Rectify* is the product of a friend of mine named Ray McKinnon, who is credited as the creator of the show. (It was maybe seven Christmas Days ago that we ran into Ray



on the corner of Kavanaugh Boulevard and Ozark Street in Hillcrest and he spent the better part of an hour describing the series—he even had the title. I told him my story about the man who had trouble walking after he was released from prison; he listened but didn't incorporate it into the series. He had his own ideas.)

But the truth is television shows and movies are collaborations between people who may have competing interests and certainly have different ideas about what they feel is important to communicate. To say it is Ray's show is a shorthand way of

suggesting its sensibilities—when I hear the characters speak I sometimes hear Ray's voice. But in this sort of art-making, everybody's talents and obsessions are comingled; with different actors, different folks in the writers' room, it would be a different show.

And maybe not as vital to our time as the present version, which has acquired a kind of soft-footed grace. *Rectify* seems like an antidote to some of the more toxic currents of our culture, to the thoughtless and nihilistic streak that consumes our politics and provides us with fit targets for snark.

It is the duty of the artist to be empathetic, to somehow make what is peculiar and personal resonate and universal. Our default is to tribalism, to taking up with others with whom we share certain attributes, less a skin color or a faith than a story about how we have arrived in the moment. We take comfort in a common history, we are reassured by our agreement with the consensus.

It is the artist's job to make us understand that we are all prisoners of our own experience, and that it's sometimes necessary to feel bereft and confused, staggering across unfamiliar terrain. For that is what it is like to be set free.

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Read more at

[www.blooddirtangels.com](http://www.blooddirtangels.com)

## Bridge

• Continued from Page 1H

consists of a series of byways that roughly parallel Interstate 40 and passes through Des Arc and Forrest City on its way to West Memphis, where it crosses the Harahan Bridge.

But with all these developments, an excellent alternative with some of the state's best natural and cultural attractions suggests itself: a route that crosses the bridge from Memphis to West Memphis, then heads immediately south through Marianna, continuing through Mississippi River State Park to Helena, a path nestled between the mighty Mississippi on one side and Crowley's Ridge on the other.

From there, the route takes a turn toward agri-tourism as it heads west through some of the most fertile and productive land on the planet. With all manner of row crops (cotton, soy, corn, and—uniquely Arkansas—rice) on display, riders will get a veritable chef's tour of an industry that is central to the identity of the eastern half of the state.

If the dreams of an ever-growing number of grass-roots and statewide leaders are realized, the trail would then cross the historic White River Bridge at Clarendon, which at almost 2.5 miles in length will have been converted into the longest elevated bicycling, pedestrian, and nature-watching platform in the world.

After crossing the handsome steel span over the White River, the route is surrounded on both sides by a magnificent canopy of the Big Woods as the remaining elevated segments (adorned in classic 1930s-era stylized concrete barriers) follow the dividing line between the White River and Cache River National Wildlife Refuges.

From there it's on to Little Rock via the byways that snake through the classic hamlets and small towns of the Grand Prairie. Just imagine it: A river, ridge, row crops and refuges route—a snappy brand for marketing which does not even account for the historical and cultural heritage attractions it includes—connecting Memphis and Little Rock that would call out to visitors with a wide variety of interests, including eco-tourism (birding, wildlife watching, and those passionate about the state's diverse geography including hills, rivers, bayous, sloughs, and oxbow lakes), agri-tourism, music (blues, gospel, rockabilly, and rock 'n' roll), Civil War, and civil rights (especially a route that connects Memphis, Helena/Elaine/Lake View, and Little Rock). This would be an epic Great American Route that would attract visitors from all over the world.

Most of the elements of the aforementioned Great American River, Ridge, Row Crop, and Refuges Route (if you fancy the title) are already in the works. There's just one part that's in the wind: The historic White River Bridge at Clarendon has been on the demolishing block for some time. Only a lawsuit by the nonprofit Friends of the Historic White River Bridge at Clarendon and the cooperation of the Arkansas Highway and Transportation Department in temporarily delaying the letting of bids to demolish it stand in the way of a mistake that will long be rued if the demolition is allowed to proceed.

Aside from the loss of what could be the centerpiece of a world-class bicycle route between Memphis and Little Rock, there are ecological and fiscal arguments in favor of preserving rather than demolishing the historic bridge. Among these is the estimated \$10 million-\$15 million price tag for demolition and remediation, which will come out of state and federal highway coffers. At a time of substantial federal deficits and with

our state exploring ways to increase highway revenues, it is hard to countenance an expenditure that would remove something that has a recipient willing to take ownership and which stands to provide significant tourism and quality-of-life benefits to the state.

Fortunately, the Friends of the Historic White River Bridge at Clarendon are not the only ones compelled by these arguments. Both Arkansas Governor Asa Hutchinson and Department of Arkansas Heritage Director Stacy Hurst have been avid supporters of the project, going so far as to advocate aggressively for the preservation of the bridge as far away as the halls of Washington, D.C.

In addition, numerous bicycle and outdoors advocacy organizations have added their voices in support of the project. On top of that, a growing groundswell of public support for preserving the bridge has emerged in the past few months. On Sept. 24, a rally was held at the foot of the historic White River Bridge in Clarendon that had robust attendance including bicycling enthusiasts from Little Rock and Helena. An online petition launched a week before that has already gathered more than 1,350 signatures representing 39 states and 28 countries (94.5 percent of all signatures were from the United States and 77 percent of all signatures were from Arkansas), while an online fundraising campaign

launched in early October has raised over \$15,000 to help cover legal and other costs associated with saving the bridge.

Finally, since the lawsuit to save the bridge was first filed in federal court in June, the effort to save the bridge has garnered substantial media coverage, including being featured once on television, twice on the radio, and more than a half-dozen times in print, including a Sept. 30 editorial in the *Arkansas Democrat-Gazette* titled "Save this bridge."

This brings us back to the recent grand dedication held in West Memphis and Memphis. The similarities between the celebrated efforts to preserve and adapt the Harahan Bridge for bicycle/pedestrian use and those to do the same for the historic White River Bridge at Clarendon are hard to miss.

Just like the Harahan Bridge development caused a cavalcade of dominoes (new developments like the bicycle path connecting West Memphis to Marianna) to fall, imagine the future developments that will make sense once the historic White River Bridge is established as the crowning jewel of the River, Ridge, Row Crop and Refuges trail.

We're not just talking about other tourism attractions that could be developed later because they're on the route, but also the cascade of economic development for the struggling communities of rural eastern Arkan-

sas in the form of restaurants, convenience stores, bicycle repair services, and places for overnight accommodation both formal (like hotels and bed & breakfasts) and informal (like Airbnbs).

As we all start coming back down to earth after the thrill of dedicating the Harahan Bridge, some part of us naturally says, "That was amazing. When do we get to do something like this again?" The answer is right in front of us if we have the eyes to see it. If the White River Bridge is saved from demolition and successfully adapted for bicycling, pedestrian, and wildlife watching, it will surpass the Harahan Bridge and take its place among the longest dedicated bicycling-pedestrian bridges in the world. This, in many ways, will be the realization of a larger dream to make our region a national and international leader in outdoors and adventure tourism, of which the Harahan Bridge was simply the first part.

On that day, the celebration will surely rival the one that took place in 1931 when the bridge was first opened for vehicles.

A decade or so ago when conversations about the Harahan Bridge began, there were a few brave souls who had the foresight to see past the reasons why it wasn't a good idea or the safe thing in which to invest private funds. In boldly going forward, these people created something extraordi-

nary in which many delight and of which everyone is proud.

It makes me think of the saying about how a success has many fathers, while a failure always seems to be an orphan. A success like the Harahan Bridge did indeed have many fathers by the time the ribbon was cut, but in its early days and in the many difficult days in between it probably had far fewer courageous supporters that claimed it, to whom we all owe a great debt of gratitude.

Likewise, as a small but determined group of people attempt to follow up the Harahan Bridge with a "Miracle on the White River," every one of us has the opportunity to decide whether we'll be one of those that step forward with vision and courage to be a father to the dream long before success is evident, or whether we'll remain on the sidelines and leave it an orphan. The choice is ours.

To learn more about how you can support the efforts to preserve and adapt the historic White River Bridge at Clarendon, visit [whiteriverbridge.org](http://whiteriverbridge.org).

*Doug Friedlander is with Friends of the Historic White River Bridge at Clarendon. Terry Eastin is Executive Director of the Big River Strategic Initiative, a collection of projects including the Big River Crossing, the Delta Regional River Park and the Big River Trail designed to activate and celebrate the Mississippi River and its surrounding landscape.*

## Sunday Crossword Puzzle Edited by Rich Norris and Joyce Nichols Lewis

**"FOLLOWING UP" By KEVIN DONOVAN**

**ACROSS**

- 1 Manchester United rival
- 8 \_\_ En-lai
- 12 Tool used in a box
- 15 Film add-on
- 19 Perform again
- 20 Next in line
- 21 U.N. workers' agcy.
- 22 The snakes in Indiana Jones' "Why do they have to be snakes?"
- 23 Profession for the principled?
- 25 Exit quietly, in a Dylan Thomas poem
- 27 Run ashore
- 28 Bill collector
- 29 Dr. Seuss, e.g.?
- 31 Sask. neighbor
- 32 Can't abide
- 34 Small cells
- 35 Jockey competitor
- 36 \_\_ code
- 37 Get together on a ranch
- 39 Catlike
- 40 Promising market indicators?
- 47 Weather map depiction
- 48 It's not always easy to get into
- 49 Not a soul
- 50 Tries earnestly (for)
- 51 Piling on, say 5 3The Librarians' channel
- 54 More than just cooks
- 56 Challenge for Homer
- 60 Put down
- 63 ORD posting
- 64 Equipped
- 65 Toy trains for tycoons?
- 71 Phobias
- 72 \_\_ de mer
- 73 Resonator for a jug band bass
- 74 No more than

- 75 Nissan Stadium player
- 77 \_\_ 'tis not to me \_\_ speaks": Romeo
- 78 Big name in Bible distribution
- 83 Delicate
- 84 Totally lost
- 86 Aquarium fish
- 87 Only NATO member with no standing army
- 91 What pillows may do, in a kids' room?
- 94 Newcomer
- 95 Nursery resident
- 96 Sun Tzu subject
- 97 Where to see stars
- 98 Pursue relentlessly
- 99 "The Piano" extras
- 103 Buck
- 107 Periods of distress?
- 110 Blew the whistle
- 111 What oaks may provide
- 112 Put back in
- 113 Outperform crew members in the ship play?
- 116 Love god
- 117 In the past
- 118 Biblical captain
- 119 Crown coatings
- 120 Holiday song closer

- 121 "Man on the Moon" group
- 122 Ring jinglers
- 123 Boxing's "Manassa Mauler"

**DOWN**

- 1 First word in the Beach Boys' "Kokomo"
- 2 Drive off
- 3 Lean-eater Jack
- 4 "Fear of Flying" author Jong
- 5 Close at hand
- 6 Smoke remains
- 7 Mail
- 8 Easter Island's country
- 9 Pair for date night
- 10 It may be checked at the station
- 11 Pakistani language
- 12 Like a storied wolf
- 13 Medicinal plants
- 14 Senate garment
- 15 Tree that typically has paddle-shaped leaves
- 16 Baltic republic
- 17 Organs sometimes vented?
- 18 African menaces
- 24 Tailor's concern
- 26 Old anesthetics

- 30 Numbers to shoot for
- 32 "Forrest Gump" lieutenant
- 33 Compared to
- 36 Pop/country singer Lee and others
- 38 Juice for PCs
- 39 Features of many '50s-'60s cars
- 40 Ryder Cup team
- 41 Advanced deg.
- 42 Bit
- 43 Reuters competitor
- 44 Personal
- 45 Grand Canal traveler
- 46 Celebrated
- 47 Knowledgeable, in Nantes

- 50 Move up the corporate ladder
- 52 Come together
- 55 "The Walking Dead" veterinarian
- 56 Dude
- 57 Org. for physicians
- 58 Wine choice
- 59 QB stats
- 61 Leave a note for, maybe
- 62 Morning phenomenon
- 64 Settler?
- 65 Project Blue Book subj.
- 66 Presidential souvenir
- 67 Mineo of "Exodus"
- 68 Shout
- 69 It may be coiled

- on a saddle horn
- 70 Car nut
- 75 Pitchfork part
- 76 What a ponytail partly covers
- 79 OED info
- 80 Ike's WWII command
- 81 Friend of Yossarian in "Catch-22"
- 82 \_\_ Geo: nature channel
- 83 Diamond surfaces
- 85 The bad guys
- 87 Gets coverage for
- 88 Penny-colored
- 89 Vague answer, say
- 90 Driving need
- 91 Drive
- 92 Suddenly caught on

- 93 Possesses
- 95 Hand-played drum
- 98 Sorrowful song
- 100 Test for purity, as gold
- 101 They're often taken orally
- 102 Cellular messenger
- 103 Titleholder
- 104 Guides for drivers
- 105 Confuse
- 106 Not at all in order
- 108 Fabric flaw
- 109 Finished
- 111 Piece of fiction
- 114 "The Tell-Tale Heart" author
- 115 Peoria-to-Gary dir.

### Answers to last week's puzzle

H O O K T A P A S C H A R G E P A R  
P O N E I V O R Y A E R I A L E R E  
S H E E T B E L T S B R O O M M A T E S  
L A I R S T O A D S N E N E  
T H O M A S S O I R E E M C G R A W  
S H O V E L I L L E R S E R E  
E R R E D E L D E S T H I D A L G O  
T E R R A R I L O A S I S H U M  
I W O S T A K E S A N D W I C H O N O  
R E P O S E C L O U D S D U C T  
M I S T Y P E B R A T S J U B I L E E  
U N C A P R I M O S E R I E S  
I L O S C R E A M O F W H E A T C R U  
R E P T H O R N E A R L W O E S  
T E A R O O M M O S E Y S C A U S E  
B U S T H E W E D H O T T E R  
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I R E A V A T A R E V O K E A C R E  
M A R R E M I S S S A S S Y Y A R N

10/30/2016

## The election's over!

## Reality check

BRENDA LOOPER  
ARKANSAS DEMOCRAT-GAZETTE

I apologize in advance: I won't be funny today, at least not intentionally. Instead, very seriously, I make this plea: Cut it out, and get a grip.

It's now a week later, and it seems the campaign is still going on. Some of us would really like to move on, thank you very much.

For everyone: Stop taking offense at everything that doesn't fall in line with your beliefs, and recognize the differences between emotion-backed opinion and facts. Differences of opinion are inevitable, and unless you live in a cave, you are among people with different beliefs than you every day. Respect those differences, don't paint all your opponents with the same brush, and try—just try—to get along without expecting everyone to give you a safe space from things that might possibly offend you.

For those who voted for Hillary Clinton, sorry. Spit out any sour grapes and don't let yourself get too down or be baited by those who can't let rationality or civility get in the way of some deserved gloating. When you respond in kind, it just perpetuates the cycle.

For those who voted for Donald Trump, congratulations, your guy won. However, realize that not everyone is happy with the results of the election, nor have they been happy with the entire campaign season that spent most of its time in the mud. People will protest what they don't like, and as long as they stay peaceful, they're well within their rights. If you don't like it, you don't have to pay attention to it; there is no right not to be offended. And don't forget history: There were indeed protests when Barack Obama was elected and re-elected, and the Tea Party movement is just one enduring example.

Accept that a large portion of the population is rightfully frightened of what the future has to hold, considering all the documented incidences of verbal and sometimes physical assaults on opponents, and the expressed views that place women, minorities, the LGBT community, immigrants and others in the cross-hairs of hateful rhetoric. This is what your candidate has advocated, and it has emboldened far too many people to continue the abuse past Election Day.

Reports of immigrant children being bullied, Muslim women's hijabs ripped from their heads and the like are not what we should be hearing in a civilized society. If someone is attacked primarily because of ethnicity, religious beliefs, or gender, it's discrimination. Pointing that out is not.

The media reports; that's what it's supposed to do. Reporting something

you perceive as negative about your guy, or something positive about the opposition, isn't proof of bias. If you look for bias, that's all you will find. Objectively, most reputable news sources have little to no slant in overall content, and are not there to enable your confirmation bias.

For pollsters: Fix your antiquated polling techniques immediately or do as Gallup did and cease predictions on the presidential race.

For President-elect Trump: Please, please, please control yourself, and lay off Twitter. Seek the advice of wise counsel, especially in regards to the costs and constitutionality of much of what you have proposed. Understand that when you wind people up with the sort of rhetoric you've used, there will be ramifications that can be felt for years.

Take responsibility for your actions. Most of all, surprise us by not being who you were on the campaign trail. Oh, and hire a fact-checker, please, for all our sanity; too many people believe everything you say, even when it's not the least bit true.

For Secretary Clinton: Sorry you lost, but keep fighting for women and children, because they need the help. Understand that even though you lost, some people can't let it go and will continue to attack you. Rise above.

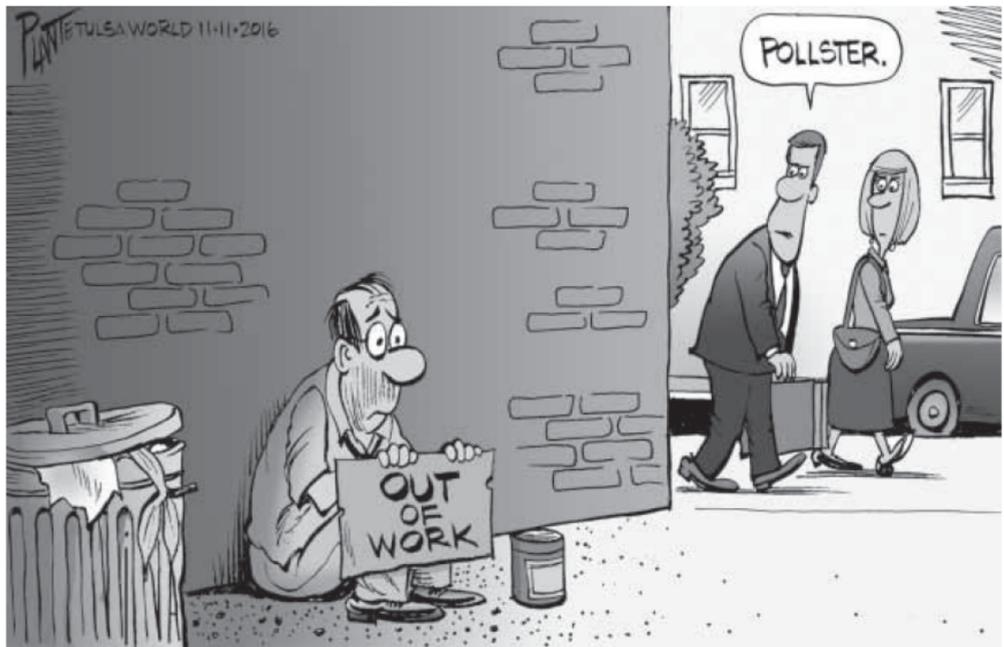
For all of us: Breathe. Keep calm. Be civil. Laugh. Pet a cat or a dog. Enjoy life, because it goes on.

I'm proud to work for a newspaper that takes its role seriously and keeps news and opinion separated. If only most of the cable news outlets were more interested in news than what accusations are being flung, especially when there's little to no evidence. (No, stories from hyperpartisan networks and websites with single sources and/or satire taken as truth don't count.) Having spent the bulk of my career on the news side of this newspaper, I know how hard it can be to create what you hold in your hands right now.

I'm also grateful, in the more than five years I've been on the opinion side, that we manage most of the time to keep an overall balance of opinions between the two pages. Yes, I'm tough on fact-checking, but wise readers have figured out that the way to get a letter in is to be factual and/or make opinion clear. It also helps to keep it clean, give proper attribution, refrain from convicting people in print, and not harass staff or other letter-writers.

I really shouldn't have to say that.

Assistant Editor Brenda Looper is editor of the *Voices* page. Read her blog at [bloop0223.wordpress.com](http://bloop0223.wordpress.com). Email her at [bloop0223@arkansasonline.com](mailto:bloop0223@arkansasonline.com).



## Bridging the White River

Rex Nelson



French hunters and trappers constructed cabins on the White River at the mouth of Cache River in the late 1700s. By the 1820s, what was known as the Military Road between Memphis and Little Rock crossed the White River at Clarendon.

"By 1828, a ferry crossing and post office were established, likely attracting more settlers," W.R. Mayo writes for the Encyclopedia of Arkansas History & Culture. "Monroe County was created on Nov. 2, 1829, by the Territorial Legislature from portions of Arkansas and Phillips counties with Clarendon becoming its county seat. It remains so to this day. ... The White River served as an important byway for Union forces during the Civil War and was heavy with gunboat traffic, with Clarendon serving as a skirmish point. After the war, the town resumed its role as a port for cotton and other commodities."

The St. Louis Southwestern Railway (commonly known as the Cotton Belt) built a bridge at Clarendon in 1883. Meanwhile, highway traffic continued to use a ferry until 1931, when a bridge was constructed. That bridge has been the subject of a battle dating back several years. A nonprofit organization known as the Friends of the Historic White River Bridge at Clarendon was formed in 2014 to advocate saving the span (a new one recently opened for traffic on U.S. 79) for use by cyclists, hikers and wildlife watchers.

"Only a lawsuit by the Friends of the Historic White River Bridge at Clarendon and the cooperation of the Arkansas State Highway and Transportation Department in temporarily delaying the letting of bids to demolish it stand in the way of a mistake that will long be rued if the demolition is allowed to proceed," says Doug Friedlander of Helena, who's leading an Arkansas Delta tourism initiative. "Aside from the loss of what could be the centerpiece of a world-class bicycle route between Memphis and Little



Rock, there are numerous ecological and fiscal arguments in favor of preserving rather than demolishing the historic bridge. Among these is the estimated \$10 million to \$15 million price tag for demolition and remediation, which will come out of both state and federal highway coffers. At a time of substantial federal deficits and with our state now exploring ways to increase highway revenues, it's hard to countenance this type of expenditure just to remove something that has a recipient willing to take ownership."

Friedlander left his job at a software company in the Research Triangle of North Carolina to come to the Arkansas Delta in 2004 to teach high school science as part of the Teach for America program. He says he wanted to make more of a difference in the world. A *New York Times* story from Helena in July 2013 began this way: "If you are from around here, you know Doug Friedlander is not. Born in New York City and reared on Long Island, Mr. Friedlander is Jewish and vegetarian and has a physics degree from Duke. But here he is, at 37, living in a roomy white house in this hard-luck Delta town of 12,000. Mr. Friedlander and his wife, Anna Skorupa, are part of a gradual flow of young, university-trained

outsiders into the Delta's shrinking communities, many of whom arrived through Teach for America and stayed beyond their two-year commitment. Mr. Friedlander is now the ambitious director of the county's chamber of commerce. He frets over the kudzu that is devouring abandoned buildings. He attends Rotary Club meetings, where he sidesteps the lunch offerings for carnivores. He organizes

workshops to modernize small businesses and pushes tourism and the development of a decimated downtown along the banks of the Mississippi. The mechanization of agriculture, lost manufacturing and a legacy of poverty and racism have taken their toll on the Delta, but Mr. Friedlander is thrilled to be here."

Across the Arkansas Delta, it sometimes takes those raised in other states to force natives to recognize assets such as the old bridge at Clarendon; assets that could be the building blocks for the region's future. A group of Delta natives has now joined forces with Friedlander to develop a regional plan centered on things such as bicycling, paddling, hiking, birdwatching, agricultural-based tourism and cultural heritage initiatives.

In a 2014 interview, Friedlander was asked to give advice to Delta newcomers. He said the first rule is to "have an attitude of respect and humility, not coming in like a superstar." He said the second rule is to "volunteer constantly and show up religiously. In any community, there's only a small subset of people who show up and do things, and when they see you showing up, they'll start to see you as a brother or sister." The third rule is to "share credit. Make other people look good." Though the young, talented newcomers are quick to share credit with the natives, they're the ones who have forced Delta residents to look at things in a new way. The fight to save the Clarendon bridge is an example of that. A decade ago, people would never have given the destruction of the bridge a second thought.

"The Arkansas Delta has fantastic assets for tourism that are largely unknown and underutilized," Friedlander says. "Like a keen investor, the trick is to identify an undervalued resource and invest in it before its value is obvious to everyone else."

Freelance columnist Rex Nelson is the director of corporate community relations for Simmons First National Corp. He's also the author of the *Southern Fried* blog at [rexnelson-southernfried.com](http://rexnelson-southernfried.com).

## LETTERS

## Something has to give

I have been struck by the call of unity, to come together and give Donald Trump a chance. I am more than willing to give him a chance, just as I gave Reagan and Bush a chance. However, I find this request disingenuous as I think back to when Barack Obama was elected and the Republicans' mission statement was to make Obama fail, not come together for the good of the country.

Where was the request to come together when the extreme right of the Republican Party refused to consider compromising with anyone from the other side of the aisle or even members of their own party?

Where was the protest and call to come together when John McCain stated that the Republicans were willing to filibuster any Supreme Court nomination that Hillary Clinton would put forth if she was elected?

For the good of the country, please tell Trump supporters to stop accusing women merely because they aren't white or are wearing a hijab. Tell the man who drove up to a black woman not to yell the n-word and declare that, "We just took back the country!"

Please give us a reason to come together when the predicted acts of hate, as a result of a Trump win, are running rampant and so many Americans are living in genuine fear of their lives—not of their guns being taken away. Show your unity against these home-borne acts of terror and then, maybe, we will think about giving Trump a chance.

PHILIP ZWEIG  
Fayetteville

## Conversing with kids

Recently, *Good Morning America* had a segment with a child psychologist concerning how to talk to your children now that Donald Trump is

president-elect.

After trying to set a good example for my grandchildren, teaching them right from wrong—cheating, not acceptable; lying, not acceptable, and so on—if Mrs. Clinton had won, I believe I would have to have the "talk" with them. Go ahead, lie, cheat, and rules won't apply to you. You are entitled.

Thank God we won't need to have that conversation.

SHARON DERDEN  
Stuttgart

## The world didn't end

Life goes on. The morning after the election, the leaves were still falling.

GEORGE W. McCLAIN  
Little Rock

## System needs update

Once again we have been shown that our system, which made sense at our country's beginnings, needs some tweaking to catch up with 2016.

The Electoral College is archaic. Hillary Clinton won the popular vote. The Electoral College says Trump won.



When you wonder why people don't vote and others who know their vote doesn't matter, all you have to do is look at the system that was set up when people used horseback for transportation. It made sense then to have representatives who could take the citizens' voices and make them heard through their vote. It no longer makes any sense at all.

If the governor can be given powers to run the state while he is out of state, which he should be able to do, then the citizens of our country should be able to vote directly for the presidency. And the person who gets the most votes should be the person who leads us. That is democracy. If Arkansas can catch up to current day, then surely our country can.

PAULA K. KOCH  
Holiday Island

## LETTERS

## Test for Republicans

I am a life-long Republican, traitor to a family tradition of voting Democrat. My first campaign work was done while in college for Winthrop Rockefeller. Years later I was proud to help put George W. Bush in the White House.

But in recent years I have become increasingly unhappy with the Republicans I helped elect. Probably the beginning of my disillusionment began with Bush for his slap-happy way of throwing money at any problem. Then, many more Republicans seemed unable to ever say "no" to spending, while we went deeper into debt.

What has galled me the most has been the Republican leadership in both houses of Congress, which could not stand up to the first black president. I have been furious that they would campaign as great defenders of conservative ideals, but then cave time after time.

Now we have a new president who is Republican, but not in the sense I have always been. But he understands the concerns of people like me, such

as terrorism coming to the U.S., God-knows-what coming across our practically undefended southern border, our catastrophic debt, the lack of justice from the Justice Department, and the unbelievable Supreme Court justices who believe the Constitution should be interpreted by the laws of the United Nations or current conditions.

We now have the power to control Washington. At least with Donald Trump, we have a little hope that what we hold dear about America has found a new champion.

I don't know what's going to happen to the Republican Party and that makes me sad. But I am one of the ones who wants elected Republicans to go out and fight. If the Republican establishment does not stand with Trump in this new era, then I am one who will be standing with Republicans no longer.

GERI ALLEN  
Mountain Home

## It was the candidate

I believe anyone claiming that Hillary Clinton lost because Americans

would not vote for woman are wrong. I think the vast majority of Americans would vote for a woman ... just not that woman.

If the sex of the candidate is the only reason you support that candidate, then you should not be voting.

FRANK LATIMER  
Sherwood

## Fit for the deserving

Ah! America, where each of us may choose the most deserving candidate, assuring that all of us will choose the candidate we most deserve.

EDWARD HOWINGTON  
Little Rock

## Read John Brummett online



Repeal? Yeah.  
But replace?

<http://www.arkansasonline.com/brummett>

## Where to send your letters

The *Democrat-Gazette* welcomes your opinions. Unfortunately, not all letters received can be published or acknowledged. Clarity, brevity and originality are particularly valued in letters to the editor. All statements of fact are checked for accuracy; letters will be edited and may be republished in all media. Letters and guest columns become the property of the *Democrat-Gazette* and cannot be returned. No letters from nonresidents, copyrighted material, poetry, form letters, anonymous letters or pseudonyms can be used.

Submit letters of fewer than 250 words to *Voices*, *Arkansas Democrat-Gazette*, P.O. Box 2221, Little Rock, Ark., 72203; by fax at (501) 372-4765; or via our website, [www.arkansasonline.com/contact/voicesform](http://www.arkansasonline.com/contact/voicesform). Please sign your letter and include your home address and daytime telephone number for verification.

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## True meanings lost

## Ill-defined words

BRENDA LOOPER  
ARKANSAS DEMOCRAT-GAZETTE

Like me, former U.S. Rep. Vic Snyder is concerned that some words have been shunted from their primary meanings. Regarding “elite” or “elites,” Snyder said in an email, “I fear we’ve taken a word that used to mean top-notch, like an elite military unit, and turned it into a term of denigration.”

He’s not wrong; considering his Marine Corps past, I think he knows just what the word *should* mean.

It hasn’t been just on one side, either. As Snyder told me, “It was a word clearly abused in a bipartisan manner.”

“Elite” since the 18th century meant “the best,” or as Oxford defines it, “a select part of a group that is superior to the rest in terms of ability or qualities.” Now, however, a mid-20th century secondary meaning has crowded out the first definition in favor of one that more accurately describes “elitist” (one who believes he is superior to others and thus entitled, or who believes in government by the few), not the “elite.” “Elite” is a status, “elitism” is an attitude, and someone can be a member of the elite without being an elitist.

“Elite” is far from the only word that, in the political realm, has become a dirty word. “Fact,” especially as it relates to fact-checking, has come to mean whatever you believe to be true ... whether it actually is or not. “Mainstream,” once thought of as being the prevailing current of thought, has now come to mean liberal and biased. “Liberal,” of course, now means just about anything bad rather than “tending in favor of freedom and democracy,” per the Online Etymology Dictionary. “Patriot” no longer means “fellow countryman,” but someone who single-mindedly wants to defend his rights, especially against a government that he believes abandoned him.

And yep, even “moderate”—which describes most people, considering the growth of those identifying as independent—has devolved to mean “wishy-washy.” Most moderates I know would say no, a moderate considers both sides and deliberates carefully before choosing the path to follow. Being cautious and open-minded about serious matters isn’t a bad thing. Well, unless ideologues say it is.

Roger Baker wrote in *Salt Lake City’s Deseret News* in 1994: “It may be that every word really has two meanings. One meaning is the denotation and carries no emotion. The other meaning is the connotation and carries the feeling. It is the connotation that charges a perfectly good word with invective, or spite, or envy, or affection and romance. This is why

GM, Ford, and Chrysler don’t just sell ‘cars.’ They use names that carry emotion and sell Cougars, Cadillacs and Stealths. These words are labels designed to make us feel.”

That’s sort of the point. We’ve taken to ignoring the denotation and placing all faith in the connotation; emotion thus carries the most weight. “Politician,” for example, primarily means “one actively engaged in conducting the business of a government,” according to Webster—a non-emotional definition. It’s more often used now to mean a scheming someone more interested in his own well-being over others, and who delights in the machinations of modern politics. Not exactly unemotional there ... and also quite broad if you think about it.

One of the saddest examples I see far too often is “compromise.” Back in 1850, Sen. Henry Clay said that life itself is a compromise, noting: “All legislation, all government, all society is formed upon the principle of mutual concession, politeness, comity, courtesy; upon these, everything is based. I bow to you today because you bow to me. You are respectful to me because I am respectful to you.”

But now, giving any ground is seen as sacrilege by the hyper-partisan; it must be all or nothing. Except that’s not how life works—at least not when you want society to work—and there’s that whole “tyranny of the majority” thing to consider.

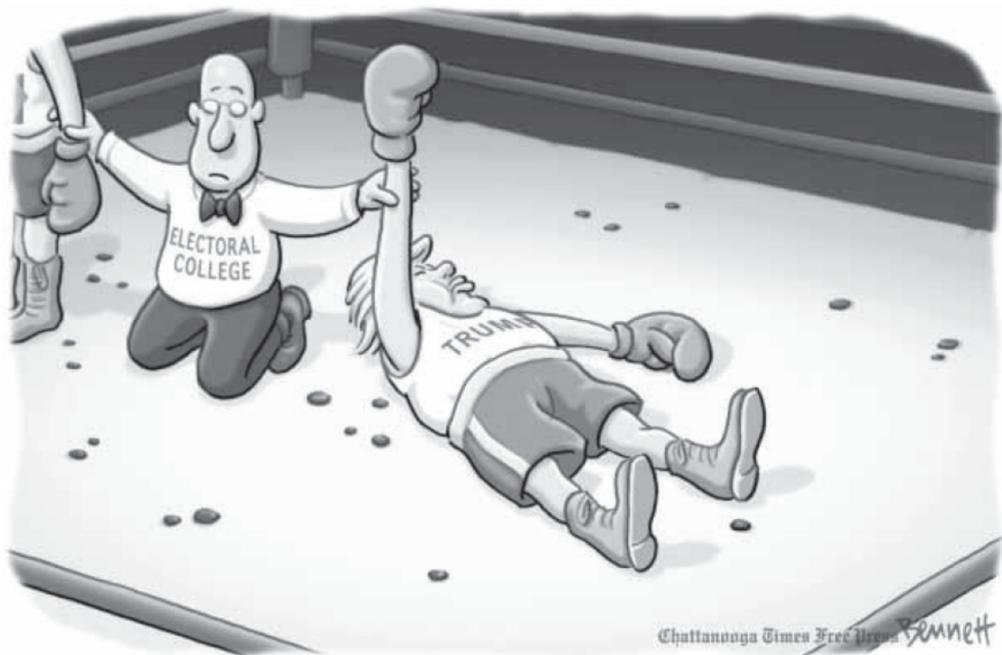
And mutual respect? Overrated. It’s far more fun to treat everyone like dirt, then expect them to respect you for it. So I guess my mama was wrong in saying I should treat people as I want to be treated. Dang it.

Compromise is not a dirty word, nor is elite or many of the other words that have become so ingrained in our hurled political epithets (and “epithet” is another word that has morphed into a pejorative). So what can we do?

Stop being so prone to taking offense at every little thing. Read only what’s in front of you rather than what your biases (we all have them) tell you is there. Be inquisitive and seek voices outside your bubble. Be skeptical and seek actual truth (not just what your favorite source tells you is true ... it might not be).

And please, calm down. I’m pretty sure the sun will come up tomorrow if you take words like “elite” at face value.

Assistant Editor Brenda Looper is editor of the *Voices* page. Read her blog at [bloop0223.wordpress.com](http://bloop0223.wordpress.com). Email her at [bloop0223@arkansasonline.com](mailto:bloop0223@arkansasonline.com).



Chattanooga Times Free Press Rex Nelson

## The cycling hub



Rex Nelson

On a Saturday in late October, dignitaries from Arkansas and Tennessee gathered on the Harahan Bridge over the Mississippi River at Memphis to celebrate the opening of the Big River Crossing. The pedestrian boardwalk allows cyclists and walkers to cross the river. The \$18 million boardwalk, the longest of its kind in the country, was funded by federal, state and local government grants along with private contributions. Cyclists and walkers will share the bridge with Union Pacific freight trains.

“Unless you’ve been a train conductor, it’s a view that you’ve not seen of downtown Memphis since 1949,” Memphis Mayor Jim Strickland said. “It’s such a civic and cultural amenity for our current residents. I think it will draw tourists from all over the world.”

“Thanks to visionary leadership, this project has put Memphis and east Arkansas squarely on the map of a rapidly growing national passion for bicycling, walking and other forms of outdoor recreation, ecotourism and physical fitness,” says Doug Friedlander of Helena, who’s leading a regional tourism initiative. “This unprecedented attraction was the impetus for the St. Francis Levee Board, which manages the levee from Mississippi County to Lee County, to approve the development of a bike trail atop the Mississippi River levee from the bridge’s western terminus in West Memphis all the way to Marianna.”

Three weeks after the event at Memphis, some of the world’s best mountain bikers gathered on the other side of the state for the International Mountain Bicycling Association (IMBA) World Summit at Bentonville. The four-day summit, held every other year, began in 2004 and previous host cities include Whistler, British Columbia; and Steamboat Springs, Colo. With five mountain bike trails designated as “epic rides” by the IMBA, Arkansas and Colorado are tied behind only California in the number of trails. IMBA has listed Bentonville, Fayetteville and Hot Springs as “ride centers” and Northwest Arkansas has become the IMBA’s first “regional ride center.”

As one Arkansas cycling enthusi-

ast put it, mountain biking and road cycling are “the new golf.” Consider what Alabama did in creating the Robert Trent Jones Golf Trail, a collection of world-class courses, many of which have adjacent resort hotels. That effort put Alabama on the tourism map for thousands of wealthy Americans who never would have considered visiting the state otherwise. Arkansas wants to do that in the area of cycling. Gov. Asa Hutchinson and the Arkansas Department of Parks and Tourism are promoting the state as the “Cycling Hub of the South.” Hutchinson created a Governor’s Advisory Council on Cycling, and the Walton Family Foundation provided a \$309,000 grant to IMBA to maintain the state’s five “epic rides,” which contain almost 200 miles of mountain biking trails.

Arkansas is the only state to have full-time professional crews maintain such trails.

While the mountain biking focus is on areas in the Ozark and Ouachita Mountains, the Delta provides some of the greatest potential. There are ongoing efforts to pave a route through the St. Francis National Forest from where the levee route ends at Marianna all the way to Helena. Several years ago, the state entered into an agreement with the U.S. Forest Service to develop Mississippi River State Park in the St. Francis National Forest. The St. Francis is the only national forest that touches the Mississippi River.

There’s also the ongoing development of Delta Heritage Trail State Park, which is being built in phases along 73 miles of right-of-way donated by Union Pacific to the state in 1992. This once was the route of the Missouri Pacific’s Delta Eagle and passes through the most

scenic areas of the Big Woods. This part of the state has the largest remaining segments of the Big Woods, a bottomland hardwood forest that once extended down both sides of the Mississippi River from Cairo, Ill., to New Orleans.

The Delta Heritage Trail starts one mile south of Lexa in Phillips County and extends to Cypress Bend in Desha County. The first hiking and biking segment opened in 2002 from Helena Junction near Lexa to Barton. Just more than 20 miles of the trail have been developed. Hutchinson and Kane Webb, the new director of the Department of Parks and Tourism, have ridden bikes on the trail and made its completion a priority. The southern terminus of the railroad right-of-way will connect with the

Mississippi River levee, and the trail then will extend another 11 miles to historic Arkansas City.

Cyclists eventually should be able to cross the Mississippi River at Memphis and go all the way to Arkansas City. “Arkansas will be able to boast an extraordinary route that would allow the avid bicyclist to traverse

nearly the entire length of Arkansas entirely on dedicated bicycle paths,” says Friedlander. “It would be an astonishing jewel of an attraction truly worthy of the Natural State.” Friedlander, who’s also spearheading efforts to save the old U.S. 79 bridge over the White River at Clarendon for use by cyclists and hikers, envisions a “cascade of economic development for the struggling communities of rural eastern Arkansas in the form of restaurants, convenience stores, bicycle repair services and places for overnight accommodation.”

With a popular governor and the Walton family on board, the effort to make Arkansas the “Cycling Hub of the South” just might succeed.

Freelance columnist Rex Nelson is the director of corporate community relations for Simmons First National Corp. He’s also the author of the *Southern Fried* blog at [rexnelsonssouthernfried.com](http://rexnelsonssouthernfried.com).



## LETTERS

## The wisdom of Trump

I believe the event at Ohio State proves the wisdom of Donald Trump. There is no racism, hate or bigotry in protecting one’s life, property, and liberty.

Electing wise leaders is a Christian duty. Let those hypocrites who say “work together” stop whining and unite to work with Donald Trump, the president-elect.

DON CROWSON  
Benton

## Milk’s words relevant

Harvey Milk, civil rights leader and the first openly gay man elected to public office in the U.S., was assassinated 38 years ago this past Sunday.

I wasn’t alive when the Briggs Initiative was proposed—a California law that would have facilitated the widespread banning of gay teachers (or anyone who supported LGBTQ rights). I know that the residents of California came together and firmly rejected it.

I am alive in 2016, a time where there are over 100 active anti-LGBTQ bills in 22 state legislatures. And soon, there will likely be a nationwide anti-LGBTQ law proposed with the words “religious freedom” slapped on the front to try to conceal the reality of its violent nature.

Harvey Milk always spoke of the importance of hope. It is my hope that Arkansans will recognize that these “religious freedom” bills contain the opposite of the promise of freedom. I believe they provide another avenue for discrimination against our neighbors. I suggest rereading Milk’s words because they are just as relevant today as they were 40 years ago.

CAMILLE RICHOUX  
Little Rock

## An attempt to divide

After eight years of divisive and segregated policies, I believe the presidential recounts are not intended to flip the election; it’s to undermine the

Donald Trump administration and his attempt to unite it.

I think the people who call themselves Democrats today are not real Democrats. The old real Democrats loved this country and elections were battles on how to make it greater. It seems those who call themselves Democrats are out to destroy the Constitution of the United States and the rights within.

The Republican Party should monitor very close any recount because I believe these Democrats have earned no trust. I believe President-elect Trump is demonstrating the ability to select good people with hope of uniting our country and to truly make it great again.

FLOYD HOPSON  
Hazen

## Cost-effective at UA

The highest-paid state employee in Arkansas is our football coach, Bret Bielema, at \$4 million-plus per year. We just struggled through another mediocre season, including a 56-3 thumping by Auburn and an embarrassing loss to Missouri, the worst team in the SEC this year.

In his four-year tenure, we have an overall record of 25 wins, 25 losses; conference record of 10 wins, 22 losses. These include losing the first 13 conference games we played under his leadership.

Recently they closed the printing office at the U of A, costing people their jobs and paychecks. The reason given was that it was not “cost-effective.” Perhaps they should apply the same standard to our football program.

RON RICE  
Hot Springs Village

## LETTERS

## Agreed on that point

Congratulations, Arkansas. You have voted to elect a narcissistic windbag.

Donald Trump said one thing during the campaign that I agree with: The election was rigged. Over and over on the campaign trail, he said it was rigged. So I must conclude that his election is not legitimate.

The combination of the words “Trump” and “president” will never cross my lips.

K.E. POLLOCK  
Little Rock

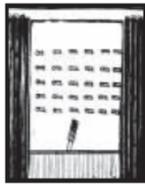
## System secures votes

Following the recent election there has been some criticism of the electoral college system of electing our president. Many of the complaints center around the fact that one candidate won the popular vote but lost the electoral college.

I would first point out that *neither* candidate got a majority of the votes, so a win based upon a plurality of the

votes would also be subject to criticism, possibly requiring a costly runoff (the instant-runoff procedure advocated by some could solve that problem)

Second, I agree with those who say that the electoral college system preserves a say in the process for the states with lesser populations. Just by way of example, there was some speculation on election day that New



Hampshire’s four electoral votes might be the key to winning the election. Without the electoral college, candidates would campaign only in the most populous states, and probably only in the most populous metropolitan areas.

Third, consider the following admittedly extreme but not so far-fetched scenario: Candidate for president A is from the state of Wyoming, and candidate B is from California. Both candidates are popular nationwide, but because she is more popular, candidate A carries the other 48 states by an average of 50,000

votes per state. She carries her home state of Wyoming by an 80-20 percentage, giving her around 120,000 of that state’s votes. At that point, not counting California, candidate A leads candidate B by 2,520,000 votes. Candidate B gets two-thirds of California’s nine million votes, beating A in that state by three million votes. Candidate B therefore wins the popular vote by 480,000 votes, even though he carried only one state. I love my fellow citizens from California, but I would not want the wishes of 49 states to be subordinate to the wishes of any one state.

GRISHAM PHILLIPS  
Benton

## Read John Brummett online



What Asa wants on Obamacare.

<http://www.arkansasonline.com/brummett>

## What’s on your mind?

The *Democrat-Gazette* welcomes your opinions. Unfortunately, not all letters received can be published or acknowledged. Clarity, brevity and originality are particularly valued in letters to the editor. All statements of fact are checked for accuracy; letters will be edited and may be republished in all media. Letters and guest columns become the property of the *Democrat-Gazette* and cannot be returned. No letters from nonresidents, copyrighted material, poetry, form letters, anonymous letters or pseudonyms can be used.

Submit letters of fewer than 250 words to *Voices*, *Arkansas Democrat-Gazette*, P.O. Box 2221, Little Rock, Ark., 72203; by fax at (501) 372-4765; or via our website, [www.arkansasonline.com/contact/voicesform](http://www.arkansasonline.com/contact/voicesform). Please sign your letter and include your home address and daytime telephone number for verification.

The contents of the *Voices* page, including columns and cartoons, do not reflect the opinions of the *Democrat-Gazette*, which are found only in the editorial column of the Editorial page. The views expressed by columnists are their own.

**Master Class**  
The weakness we ought to worry about doesn't show up in the mirror.  
**PAGE 6E**

ARKANSAS ONLINE [www.arkansasonline.com](http://www.arkansasonline.com)

MONDAY, DECEMBER 12, 2016

**OLD NEWS**

## Paper led dictatorial campaign to aid kids

**CELIA STOREY**  
ARKANSAS DEMOCRAT-GAZETTE

A hundred years ago, the *Arkansas Gazette* counted down the days of December by badgering readers to buy gifts for poor children and deliver those gifts in person.

The newspaper exhorted readers to call its Goodfellows editor at phone number Main 4001 to sponsor one of the children listed in something called the Goodfellows Club of Little Rock's "kiddie book."

These weren't tiny stories tucked tidily into a bottom corner of Page 9 or 10. December 1916's *Gazettes* also made a daily march through the titles of 300 "Christmas books" to buy for boys ... uhhh ... and girls, as recommended by the public library, and that was slipped in wherever it fit, but the Goodfellows campaign appeared up front and center above the fold of the front page, every day.

And it didn't suggest. It grabbed heartstrings and yanked. Imagine that Pet of the Week were intended to make the reader feel guilty for not adopting the weekly cat.

Although no names were printed, the paper described pitiful children and their miserable families in privacy-threatening detail. Witness the kiddies of Dec. 12, 1916:

"The family is desperately poor, so poor that the little five-year-old girl is now wearing boy's clothing because her brother had more than he needed and she had none."

After the "club investigator" inspected their poverty and informed their mother the newspaper intended to publish their story in hope of inspiring a Samaritan to bring them gifts, the children followed him down the street for five blocks.

"The little girl went, too, unashamed of her boyish garb, and her mother's worn-out shoes that covered her feet. She was not ashamed because she did not know that little girls in her station of life may hope for anything better. Ragged shoes and makeshift clothes are a matter of course for her."

1916 was the newspaper's fifth year of Goodfellows appeals, and marketing lessons had been learned during the earlier efforts. Pity the blind man's family:

"Goodfellows, have you seen the little red-headed, cheery, bright-faced boy who leads the

See **OLD NEWS** on Page 3E



Special to the Democrat-Gazette/NANCY RANEY  
**Michelle Jackson** of Lavaca greets a horse Nov. 26 along the Big River Trail about 12 miles from West Memphis. Planned to extend to the Gulf Coast, the trail includes 73 miles of gravel-topped levee.

# Traveling the levee

**BOB ROBINSON**  
SPECIAL TO THE DEMOCRAT-GAZETTE

**WEST MEMPHIS** — The Natural State has a spiffy new bicycle-tourist attraction, and I'm not talking about the refurbished Harahan Bridge, although that's attractive, new and part of it.

I'm talking about a 73-mile walking-and-biking trail on river-side levees from West Memphis to Marianna.

The Big River Trail was "five years in the making," as the press was reporting when a group of friends and I decided it was high time to check it out. So we loaded up the bicycles to set out on our "Big River Adventure."

The origin of the trail can be traced back even further, to 2009 in Memphis, when Charles McVean began manufacturing hybrid bicycles. McVean is chairman and chief executive officer of McVean Trading & Investment LLC and owner of Aerobic Cruisers Hybrid Cycles LLC. Realizing that the Memphis area offered very little infrastructure to ride the bikes he was building, he came up with the idea of converting the Harahan Bridge, a 100-year-old railroad bridge over the Mississippi River, into a bicycle/pedestrian crossing.

## Hike or bike scenic Big River Trail stretching from West Memphis to Marianna

The bridge conversion developed scope-creep when McVean began to consider where people would ride once they crossed the river and reached the Arkansas shore.

Not wanting it to be known as "the bridge to nowhere," he gave this issue much consideration before arriving at the obvious solution. Create the Big River Trail, a bicycle or walking path on top of the Mississippi River levee, which stands just a short distance from the west access for the bridge (off



SOURCE: bigrivertrail.com  
Arkansas Democrat-Gazette

Interstate 55) and extends all the way to Marianna.

Obtaining permission to allow bicycles and pedestrians on top of the levee was no easy task. Sections of the levee in the St. Francis District had not been open to public use since 1893.

After five years of working with various associations in charge of the levee, he still lacked approval for a trail. Then McVean hired Terry Eastin of Fayetteville and formed the Big River Strategic Initiative to execute his vision.

Eastin, Arkansas Delta Byways' Delta Tourism Person of the Year for 2015, has been chief fundraiser and coordinator of the National Geographic Geotourism Initiative, executive director of the Mississippi River Trail Inc. and a core team member for the Walton Family Foundation-backed advocacy group Mississippi River Cities and Towns Initiative.

See **LEVEE** on Page 6E

# Bollywood sitcom telecast in TriBeCa

**WATCH YOUR LANGUAGE!**



**BERNADETTE KINLAW**



Arkansas Democrat-Gazette/NIKKI DAWES

A portmanteau is the smashing together of two words. The word "portmanteau" started as the name for a suitcase that opens into halves. George Bailey probably would have used a portmanteau on his trip around the world, had he ever made it out of Bedford Falls.

English writer Lewis Carroll seized it in *Through the Looking Glass*. His ovoid oracle, Humpty Dumpty, educated Alice on the meaning:

"Well, 'slithy' means 'lithe and slimy'... You see it's like a portmanteau — there are two meanings packed up into one word."

Some portmanteaus have been in the language for so long that you might not think of them as smashed. The words "smog" and "brunch" have been in use since the late 1800s. "Motel" has been used since the 1920s.

**smoke + fog** = smog  
**motor + hotel** = motel  
**telephone + marathon** = telethon  
**breakfast + lunch** = brunch  
**parachute + troops** = paratrooper  
**squeeze + crunch** = scrunch  
**dumb + confound** = dumbfound  
**television + broadcast** = telecast  
**quirism + wriggle** = squiggle  
**snort + chuckle** = chortle (Another Lewis Carroll creation, from "Jabberwocky.")

I never knew this was where "internet" was from:

**international + network** = internet  
Manhattan is big on portmanteaus:  
**North of + Little Italy** = NoLiTa  
**South of + Houston** = SoHo  
**Triangle + Below + Canal** = TriBeCa

The entertainment world has some examples:

**situation + comedy** = sitcom  
**Bombay + Hollywood** = Bollywood  
**Brad Pitt + Angelina Jolie** = Brangelina

I was relieved this week to see that "Brangelina" had not invaded the Merriam-Webster online dictionary. It may be even less likely to make it now. But "Bollywood" is in there.

Other smashed words are used casually:

**channel + tunnel** = chunnel. That train tube that runs from England to France.  
**bro + romance** = bromance. A close

friendship between men. Wow, this is in Merriam-Webster.

**work + (a variation on) alcoholic** = workaholic. A person who works compulsively.  
**gigantic + enormous** = ginormous  
**email + invitation** = evite. I need to see what Miss Manners thinks of evites. I use the word "evite" in Scrabble all the time, and I thought it was an emailed invitation. Silly me. It's an archaic word for "avoid."

I wish I could fast forward a century or so to see whether these words have survived.

**DESSERTS VS. DESERTS**

If I were ever to open a restaurant, I would call it Just Desserts and serve only sweets. In other uses of the phrase, though, the proper spelling is "just deserts."

He had played Smashing Pumpkins, Nine Inch Nails and Nirvana CDs for 12 hours straight. He got his just deserts when she played just one song for 12 hours: "Call Me Maybe."

The phrase means one gets what one deserves. That's how you can remember the spelling. "Deserve" has one s, and, in this context, "deserts" also has one s.

And I am repeating myself from an earlier column, but to remember the spelling of "desserts," the way you end a proper dinner, think, "Desserts are super sweet." The "s" is in there twice.

Sources: wisegeek.com/what-are-portmanteau-words.htm, *The Careful Writer* by Theodore M. Bernstein, m-w.com, Washington State University's Common Errors in English Usage

Reach Bernadette at [bkwordmonger@gmail.com](mailto:bkwordmonger@gmail.com)



Orange County Register  
**Birders will pack** along their field guides for the 117th Christmas Bird Count, which begins Wednesday across the nation.

## Annual tweet made for bird count help

**CELIA STOREY**  
ARKANSAS DEMOCRAT-GAZETTE

Bird lovers have their 117th annual opportunity to help scientists track the rise and fall of species across the Western Hemisphere as the Christmas Bird Count begins this week.

From Wednesday through Jan. 5, anyone can take part in this mass bird-watching event, for free. The count is a chance to learn about birds from experts while enjoying a (quite likely chilly) outdoor adventure.

But for its results to "count" — to be comparable to the data collected in earlier years — they must be gathered in a certain area on a certain day and reported a certain way.

And so, unlike the Great

See **COUNT** on Page 3E

MASTER CLASS

# Correcting 'anterior imbalance' easily achieved

**MATT PARROTT**  
SPECIAL TO THE DEMOCRAT-GAZETTE

In the 1980s and '90s, many fitness programs were developed with the specific purpose of improving the "mirror muscles" — that is, the muscles an individual is able to see when looking at a mirror. The biceps, chest, quadriceps and abdominals are among them.

As millions of exercisers spent hour after hour working solely on these muscle groups, they developed imbalances and as a result, musculoskeletal pain and dysfunction.

If you work mostly on what you see in the mirror and pain and dysfunction sound familiar, this week's column is for you. I'll present a few tips for addressing what I refer to as "anterior imbalance" and will also introduce an exercise that's designed to correct it.

"Anterior" refers to the front, as opposed to "posterior," the back. In general, a smoothly functioning human frame has balanced tension, strength and endurance between muscle sets on its anterior and posterior sides. If



Arkansas Democrat-Gazette/CELIA STOREY

**Beverly Lindberg** makes the rather challenging Archer Row look easy at Little Rock Racquet Club.

the mirror muscles become stronger and tighter than they need to be to cooperate well with posterior muscles, that's anterior imbalance.

For example, overemphasizing the biceps and chest in one's workout program will, over time, result in shoulders that roll forward slightly. This creates a very unstable environment for the rotator cuff muscle group and, eventually, can result in chronic pain or outright injury.

What to do? Begin working the muscles you can't see

in the mirror.

Rotator cuff exercises should be an element of every strength program.

These small but supportive muscles provide the foundation from which the shoulder is able to function normally. I do rotator cuff exercises in nearly every workout, even if it's just as a short warmup.

Frequent, faithful efforts will help the rotator cuff develop better balance and better function.

The other key part of the body affected by anterior

imbalance is the lower back. Too many leg presses and leg extensions can result in very strong quadriceps and hip flexors, but that lack of attention to the gluteals and hamstrings leaves them weak and tight, which will lead to lower back problems.

There are hundreds of exercises designed to address each of these muscle groups, so I won't spend time going through the list. However, stretching these muscle groups is as important as strengthening them (and po-

tentially more important). Because so many of us sit most of the day, the hamstrings in particular are prone to becoming tight and short over time.

This week's exercise is fantastic because it addresses the posterior shoulder as well as the lower back and core. The Archer Row is a simple way to challenge these muscle groups in almost any setting and requires minimal equipment. Simple but not easy.

1. Select a light/medi-

um-weight dumbbell and get into the "up" position of a pushup. Grasp the dumbbell with your right hand.

2. Perform a normal one-arm row while maintaining balance in the plank position. This will require balance, core strength and extreme focus.

3. Perform two sets of 12 with each arm while keeping the abdominals and lower back very firm.

For beginners, it makes sense to master the normal plank exercise before attempting this one. The core muscles need to be strong enough to provide a foundation from which you're able to balance on three points of contact.

When you lift the dumbbell off the floor, it will become evident whether more plank work is needed.

This is a great exercise for creating better balance and a stronger foundation.

*Matt Parrott has a doctorate in education (sport studies) and a master's in kinesiology and is certified by the American College of Sports Medicine.*

vballtop@aol.com

## Levee

• Continued from Page 1E

We decided that our adventure should begin with bicycling across the Harahan railroad/bicycle/pedestrian bridge, which is now called Big River Crossing. The bridge serves as the connection point in a 10-mile, multi-modal Main Street to Main Street project linking Memphis to West Memphis.

At almost a mile, Big River Crossing is the longest pedestrian bridge across the great river. The bikeway piggybacks off the 1916 Harahan Bridge. This century-old bridge was constructed with two rail lines in the center and roadways cantilevered off each side to accommodate vehicles, which at that time consisted mainly of horse-drawn wagons. (The roadway was used until 1949.)

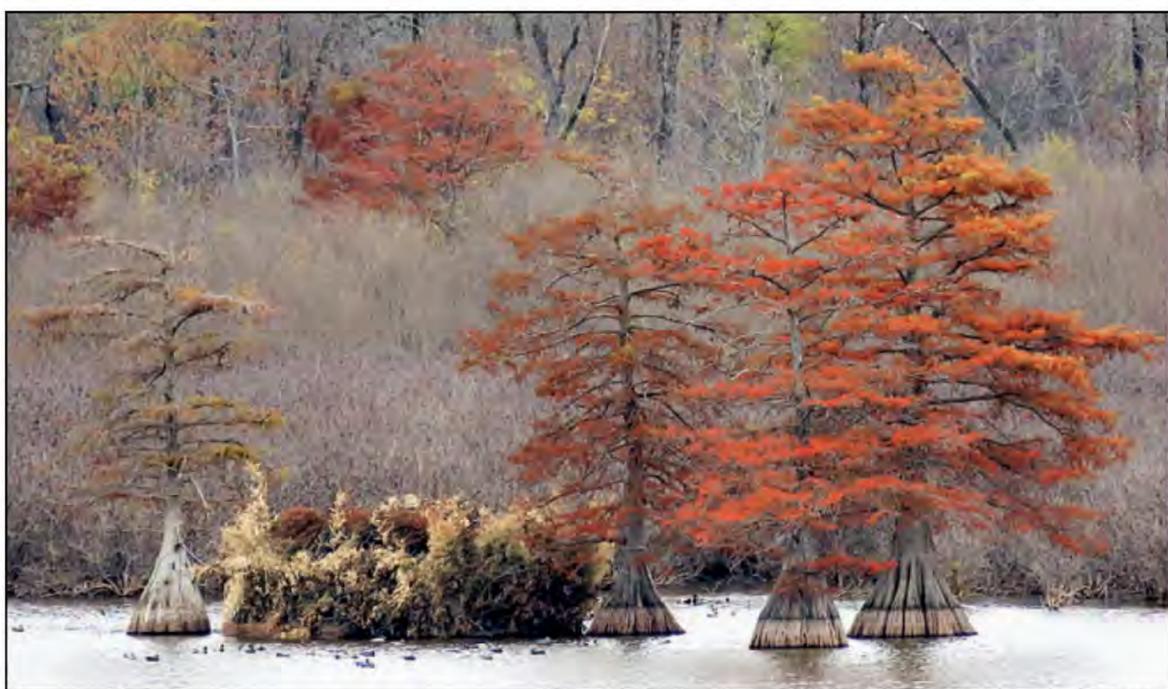
Big River Crossing gives pedestrians use of the former vehicle lane on the north side of the still active railway, for the great upriver views it offers. At the opening ceremony Oct. 22, a steady stream of pedestrians and bicyclists flooded the walkway all day and into the night, marveling at the Memphis skyline and the mighty river.

### SPEAKING OF TOURIST DOLLARS

Arriving in West Memphis the afternoon before our long ride, we decided to go ahead and bike the Big River Crossing. We were staying at Tom Sawyer Campground beside the levee and so had just a five-mile ride — on the trail — to reach the bridge.

Even weeks after the grand opening, when our group bicycled across, the bridge was still drawing a crowd. It appeared to be the most popular attraction along the riverfront.

At the Memphis entrance and before riding under the archway and onto the bridge, we hopped onto the adjoining Riverwalk Bike Path. A picturesque two miles beside the



Special to the Democrat-Gazette/NANCY RANEY

**The Big River Trail** passes scenic oxbows including Horseshoe and Midway lakes as it travels the Mississippi River levee from West Memphis to Marianna.

river later, we veered off the path onto Beale Street to sample some of Blues City Cafe's "world famous" juicy ribs and crispy catfish.

We then topped off the meal with a stroll along the street where music legends including Elvis and B.B. King once walked. A distinctive mix of blues and rock 'n' roll drifted from music venues' open doorways.

### BIG VIEW

It is difficult to appreciate just how long the bridge is until you're on it.

When we reached the Arkansas shore, we looked down from our elevated position on the bridge at a grand prospect — the site of the planned Delta Regional River Park. Construction of the park is scheduled to begin in the spring or early summer. When finished, it will feature a serene natural setting for visitors to bicycle on a sev-



Special to the Democrat-Gazette/NANCY RANEY

**Bob Robinson** (from left), Michelle Jackson and Randy Jackson take a snack break along the Big River Trail.

en-mile paved path or just relax and enjoy closeup views of the Mississippi topped by the Memphis skyline.

We exited via Big River Crossing's western access, and after coasting down a fun, corkscrew-banked turn that quickly descends from the bridge's elevation, our group pedaled along the paved path about a mile. Then we took a sharp left to reach the top of the levee.

As I mentioned, McVean had worked five years, to no avail, to open the levee. Just six weeks after Eastin's hiring, after meeting with the U.S. Army Corps of Engineers and receiving their endorsement, the Big River Strategic Initiative signed and presented to the St. Francis Levee District board a memorandum of understanding detailing the responsibilities of all the parties involved in the trail. The board then unanimously approved and signed it, thus opening the levee top to bicycles and pedestrians.

McVean calls her "Bulldog." But Eastin says that once she explained his vision of the economic development opportunities a Big River Trail would offer and how it could foster new enterprises compatible with the Delta's agriculture industry, opening the levee was an easy sell.

### FAT TIRES

The levee is topped with fairly large gravel. Although we found it very rideable, I recommend using 2-inch or wider tires, such as those on a mountain bike.

According to Eastin, the Corps of Engineers has agreed to limit the size of gravel used in future mainte-

nance projects to half an inch or smaller, which will make the surface suitable for bicycles sporting thinner tires.

One of the first things I noticed while biking atop the levee was how much higher we were than the vehicles on the highway that at times parallels the trail. I had picturesque views of either the Mississippi or the densely wooded ecosystem of its floodplains, whereas a motorist gets a fine view of a grass-covered hillside.

My vantage of more than 20 feet above the surrounding flat river bottoms afforded unobstructed infinite views, and I felt as though I had been granted a super power.

### MEANDERING

During the first miles we encountered 36-inch-wide metal cattle guards through which cyclists and pedestrians can pass but cows can't. Here was the physical realization of a simple solution to one of the final obstacles that had blocked public access to the levee: ranchers' concerns that their livestock would escape if someone left a gate open. These cattle guards were funded by a grant from the Arkansas Economic Development Commission.

If you follow the trail on a map, you notice that the Mississippi River doesn't pay attention to human borders. Without crossing the river, you pass from Arkansas into Tennessee and back to Arkansas, then into and out of Mississippi.

Nowhere is the river's meander more evident than about 33 miles into the ride, where the water at one time made a 90-degree right turn

and traveled approximately five miles northwest only to circle around and return to the main channel less than two miles down from where it exited. Over time, the river cut a direct route across these two points, thus sidelining the landlocked, U-shaped body of water now known as Horseshoe Lake. We passed several such oxbows.

During the first half of our tour from Memphis to Marianna, we were flanked by rich, dark soil to the right and thick, dense forest on our left. Isolated by the levee, these wooded environments offer great opportunities while bicycling for spotting deer, bobcats, armadillos and other wildlife, along with the waterfowl that follow the river on their annual migrations.

Through the middle section of the 73-mile ride, as we worked our way around Midway Lake, on the river-side of the levee we enjoyed enchanting views of ancient cypress trees protruding from the dark, motionless waters of the bordering wetlands.

With the later section of

the levee trail open to motor vehicles, we saw camouflaged duck blinds and trotline jugs afloat on the water's surface — evidence of hunters and fishermen taking advantage of the easy access.

Having divided our Big River Adventure over two days, after a cumulative six hours in the saddle — and an equal amount of time off the saddle, checking out scenery and munching tasty snacks — we arrived at our destination, Marianna.

### LONG-RANGE PLAN

Eastin describes the Big River Trail as a work in progress. The grand plan is a trail along the 2,500 miles from the Mississippi headwaters at Lake Itasca in Minnesota to the Gulf Coast, including 1,607 miles atop levees along the lower Mississippi.

Big River Strategic Initiative partners are already at work to extend the route to Arkansas' southern border.

Twenty miles south of Marianna, in the town of Lexa, is the trailhead for the Delta Heritage Trail. When completed, this former Union Pacific Railroad rail bed will contribute another 84 miles to the vision. En route to Arkansas City, the Delta Heritage Trail will cross long trestles through vast wetlands as well as the expansive White River.

This historic rail-to-trail conversion is being developed in phases by Arkansas Department of Parks and Tourism, with work progressing inward from each end. Currently, at the northernmost extremity, they have completed 21 miles of compacted, crushed rock trail offering a smooth ride through Delta farm regions.

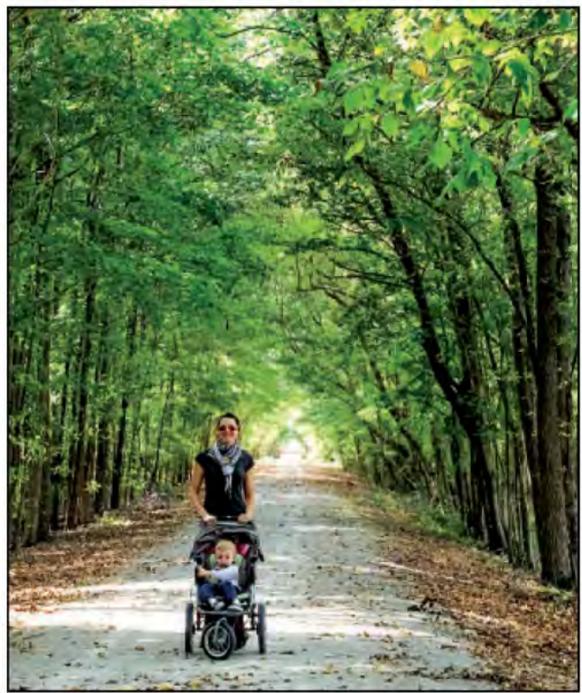
From the southernmost point in Arkansas City, 14 miles of paved surface paths head north.

Eastin's enthusiasm for these projects is monumental. The Mississippi River does not stop at Arkansas' southern border, and neither does she. Already she is working on plans to open the levee all the way to New Orleans.



Special to the Democrat-Gazette/BOB ROBINSON

**Nancy Raney** (left), Michelle Jackson and Randy Jackson take a leisurely tour of open countryside Nov. 26 between West Memphis and Marianna via the Big River Trail.



Special to the Democrat-Gazette/BOB ROBINSON

**Maci Edwards** strolls with son William on the Delta Heritage Trail on Oct. 23.

**From:** Micah Chambers  
**To:** [Robert Howarth](mailto:Robert.Howarth); [juliette\\_lillie@ios.doi.gov](mailto:juliette_lillie@ios.doi.gov); [Christopher Salotti](mailto:Christopher.Salotti)  
**Subject:** Fwd: Letter to Secretary Zinke DOI re 114th Document Requests  
**Date:** Wednesday, March 01, 2017 5:38:16 PM  
**Attachments:** [ATT00001.htm](#)  
[2017-03-01\\_JEC to Zinke-DOI - 114th Document Requests.pdf](#)

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Here it is

Sent from my iPhone

Begin forwarded message:

From: "Casey, Sharon" <[Sharon.Casey@mail.house.gov](mailto:Sharon.Casey@mail.house.gov)>  
To: "micah\_chambers@ios.doi.gov" <[micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov)>, "Amanda\_kaster@ios.doi.gov" <[Amanda\\_kaster@ios.doi.gov](mailto:Amanda_kaster@ios.doi.gov)>  
Cc: "Beaumont, Melissa" <[melissa.beaumont@mail.house.gov](mailto:melissa.beaumont@mail.house.gov)>, "McGrath, William" <[William.McGrath@mail.house.gov](mailto:William.McGrath@mail.house.gov)>, "McKenna, Liam" <[Liam.McKenna@mail.house.gov](mailto:Liam.McKenna@mail.house.gov)>  
Subject: Letter to Secretary Zinke DOI re 114th Document Requests

Attached please find a letter from Chairman Chaffetz of the U.S. House of Representatives Committee on Oversight and Government Reform.

Please acknowledge receipt of this letter.

Thank you,

Sharon Casey

Sharon Ryan Casey

Deputy Chief Clerk

Committee on Oversight and Government Reform

2157 Rayburn Building, Washington, DC 20515

202-593-8219 [sharon.casey@mail.house.gov](mailto:sharon.casey@mail.house.gov) <<mailto:sharon.casey@mail.house.gov>>

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
MINORITY (202) 225-5061

<http://oversight.house.gov>

March 1, 2017

The Honorable Ryan Zinke  
Secretary  
U.S. Department of the Interior  
1849 C Street NW  
Washington, D.C. 20240

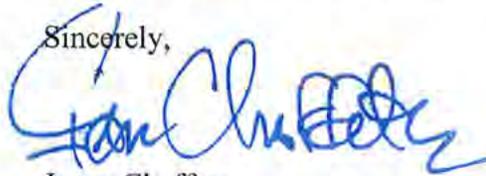
Dear Mr. Secretary:

The Committee currently has certain pending requests for documents and information with the Department of the Interior. As the Department transitions to new leadership, I reiterate these requests here. For your ready reference, I have attached them hereto.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

Please have your staff contact Melissa Beaumont of the Committee staff at (202) 225-5074 with any questions about this request. Thank you for your cooperation in this matter.

Sincerely,



Jason Chaffetz  
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

Enclosures

# Attachments

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
MINORITY (202) 225-5051

<http://oversight.house.gov>

October 16, 2015

The Honorable Neil Kornze  
Director  
U.S. Bureau of Land Management  
1849 C Street NW, Room 5665  
Washington, DC 20240

Dear Director Kornze:

The hydraulic fracturing rule finalized by the Bureau of Land Management in March 2015 will impinge on thousands of wells, impose significant costs, and expand federal oversight of hydraulic fracturing operations in the West.<sup>1</sup> As a result, several states, including Utah and Wyoming, Indian tribes and other affected parties, have litigated to prevent the rule from being implemented.<sup>2</sup> On September 30, 2015, a federal judge in Wyoming granted an injunction that blocked the rule on the grounds that BLM exceeded its authority to regulate hydraulic fracturing.<sup>3</sup>

Given the controversy surrounding this rule, and the impact that it will have on the West, the Committee is reviewing the process by which the rule was made. To assist the Committee, please provide the following documents and information:

1. All documents and communications that comprise the full administrative record relating to the hydraulic fracturing rule issued by BLM on or about March 20, 2015.
2. All documents and communications, including, but not limited to, maps, charts, diagrams, photos, logs, illustrations, memoranda, guidelines, orders, instructions, regulations, journals, notes, periodicals, studies, proposals, meeting minutes/agendas, agreements, reports, contracts, matrices, comments, correspondence, lists, and presentations, referring or relating to the hydraulic fracturing rule.

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<sup>1</sup> Michelle Ye Hee Lee, *You can't trust the numbers on the new fracking regs*, WASH. POST, Mar. 30, 2015, available at <http://www.washingtonpost.com/blogs/fact-checker/wp/2015/03/30/you-cant-trust-the-numbers-on-the-new-fracking-regs/> (last visited Sep. 30, 2015).

<sup>2</sup> Ann Butler, *BLM fracking rule stayed*, DURANGO HERALD, June 24, 2015.

<sup>3</sup> Tom Morton, *Judge Grants Injunction Blocking Fracking in Favor of Energy Groups, States, Tribe*, K2 RADIO WYOMING, Sep. 30, 2015, available at <http://k2radio.com/judge-grants-injunction-blocking-fracking-in-favor-of-energy-groups-states-tribe/> (last visited Sep. 30, 2015).

The Honorable Neil Kornze

October 16, 2015

Page 2

It is our understanding that much of this information has already been gathered as part of the litigation process and we expect that BLM will produce those records promptly. Records that BLM has withheld from plaintiffs as privileged should also be produced pursuant to this request.

Please provide the requested information as soon as possible, but no later than 5:00 p.m. on October 30, 2015. An attachment to this letter provides additional information about responding to the Committee's request. When producing documents to the Committee, please deliver production sets to the OGR Majority staff in room 2157 of the Rayburn House Office Building and the OGR Minority staff in room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

Please contact Bill McGrath of the Committee staff at (202) 225-5074 with any questions about this request. Thank you for your prompt attention to this matter.

Sincerely,



Jason Chaffetz  
Chairman



Cynthia Lummis  
Chairman  
Subcommittee on the Interior

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Brenda L. Lawrence, Ranking Member  
Subcommittee on the Interior

Enclosure

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

Minority - (202) 225-6074  
Majority - (202) 525-5081

<http://oversight.house.gov>

February 4, 2016

The Honorable Neil Kornze  
Director  
U.S. Bureau of Land Management  
1849 C Street NW, Room 5665  
Washington, D.C. 20240

Dear Director Kornze:

The Committee has become aware of increasing complaints about Bureau of Land Management activities in Nevada and Utah. State officials have asserted that BLM law enforcement agents use tactics that amount to “bullying, intimidation and . . . lack of integrity.”<sup>1</sup> Those tactics have undermined safety in rural communities and strained local law enforcement budgets. In particular, BLM’s officers allegedly harass citizens and tourists, interfere with the work of local law enforcement, operate outside of their jurisdictions, and refuse to cooperate with local officials.<sup>2</sup> The situation has led some local counties to declare the presence of BLM law enforcement in Utah and Nevada “a threat to the health, safety and welfare of their citizens.”<sup>3</sup>

Last year, BLM law enforcement terminated long-standing contracts with county sheriffs in Utah. Under those agreements, BLM compensated local law enforcement officers for patrolling public lands, handling emergency and rescue operations, and providing crucial police oversight during busy periods.<sup>4</sup> This decision created a law enforcement vacuum in the area and caused serious financial problems for local governments. As one county official from Utah stated, “BLM’s Chief of Law Enforcement cancelled the agreement leaving Garfield County with a significant budget shortfall and staff operating in an area without an agreement.”<sup>5</sup>

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<sup>1</sup> *Threats, Intimidation and Bullying by Federal Land Managing Agencies, Part II. before the Subcomm. on Public Lands and Env’tl Regulation*, 113th Cong. (2014) (Testimony of Leland F. Pollock, Commissioner, Garfield Cty, UT), available at <http://naturalresources.house.gov/uploadedfiles/pollocktestimony7-24-14.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> Brian Maffley, *BLM, Utah Counties Wrangle Over Law Enforcement*, THE SALT LAKE TRIB., June 19, 2014.

<sup>4</sup> *Id.*

<sup>5</sup> *Supra*, note 1.

The press reported on allegations that the contracts were cancelled as retribution for state legislation passed in 2013 to limit federal police powers on public lands.<sup>6</sup>

Moreover, during the summer of 2015, BLM law enforcement demanded a more than \$1 million increase to the permit price for the annual *Burning Man* event in Nevada's Black Rock Desert to fund amenities for BLM agents.<sup>7</sup> The demands were unrelated to providing safety and security, and instead included having laundry facilities, 24-hour access to ice cream, air conditioning, and vanity mirrors.<sup>8</sup> BLM eventually withdrew its demands and granted the permit,<sup>9</sup> but only after a significant public outcry, including intervention by Senator Harry Reid (D-NV), who criticized these "outlandishly unnecessary facilities."<sup>10</sup>

In order to help the Committee better understand BLM's changing role, please provide the following documents and information:

1. All documents and communications referring or relating to BLM's decision to terminate or not renew contracts with Utah sheriffs;
2. All documents and communications referring or relating to the BLM permit for *Burning Man* in 2015, and demands made by BLM law enforcement relating to the event;
3. All communications between BLM law enforcement personnel and state and local officials in Utah and Nevada, including elected officials, county commissioners and state/local law enforcement, from January 2009 to the present; and
4. All communications between BLM law enforcement personnel referring or relating to state and local officials in Utah and Nevada, including elected officials, county commissioners and state/local law enforcement from January 2009 to the present.

Please provide the requested information as soon as possible, but no later than by 5:00 p.m. on February 18, 2016. An attachment to this letter provides additional information about responding to the Committee's request. When producing documents to the Committee, please deliver production sets to the OGR Majority staff in room 2157 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

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<sup>6</sup> *Supra*, note 3.

<sup>7</sup> Jenny Kane, *RGJ Exclusive: BLM Wants \$1 Million VIP Compound From Burning Man*, RENO GAZETTE JOURNAL, June 26, 2015.

<sup>8</sup> *Id.*

<sup>9</sup> Assoc. Press, *Burning Man Gets Black Rock Site Permit, BLM Scraps 'Lavish' Request*, BILLBOARD, Aug. 10, 2015.

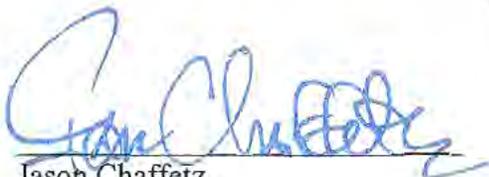
<sup>10</sup> Jenny Kane, *Reid to BLM: You want flush toilets at Burning Man? Go to Gerlach*, RENO GAZETTE-JOURNAL, June 29, 2015.

The Honorable Neil Kornze  
January 29, 2016  
Page 3

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

Please contact Bill McGrath of the Committee staff at (202) 225-5074 with any questions about this request. Thank you for your prompt attention to this matter.

Sincerely,



Jason Chaffetz  
Chairman



Cynthia M. Lummis  
Chairman  
Subcommittee on the Interior

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Brenda L. Lawrence, Ranking Member  
Subcommittee on the Interior

# Congress of the United States

Washington, DC 20515

March 29, 2016

The Honorable Sally Jewell  
Secretary  
U.S. Department of the Interior  
1849 C Street NW  
Washington, D.C. 20240

Dear Madam Secretary:

On February 12, 2016, the White House designated 1.8 million acres of land in California for conservation under the Antiquities Act of 1906.<sup>1</sup> The designation, which created three new national monuments in the California desert, nearly doubled the total amount of land set aside as national monuments by the President during his time in office.<sup>2</sup> In fact, the President has used the Antiquities Act to unilaterally designate approximately 265 million acres of land and water as national monuments—far more than any previous President.<sup>3</sup>

The broad and frequent application of the Antiquities Act raises questions about the lack of transparency and consultation with local stakeholders leading up to the President's designation of national monuments. To help the Committees understand how and why certain areas are designated for conservation, please provide the following documents:

1. All documents and communications referring or relating to the selection or designation of national monuments under the Antiquities Act of 1906 by the President from January 1, 2015, to the present.

Please provide the requested information as soon as possible, but no later than 5:00 p.m. on April 12, 2016. When producing documents to the Committees, please deliver production sets to the Committee on Oversight and Government Reform Majority staff in Room 2157 of the Rayburn House Office Building and Minority staff in Room 2471 of the Rayburn House Office Building; the Committee on Natural Resources Majority staff in Room 1324 of the Longworth House Office Building and Minority staff in Room 1329 of the Longworth House Office Building; and to the Committee on Appropriations Majority staff in H-305 of the Capitol Building and Minority staff in 1016 Longworth House Office Building. The Committees strongly prefer to receive all documents in electronic format.

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<sup>1</sup> White House Fact Sheet: President Obama to Designate New National Monuments in the California Desert (Feb. 12, 2016), available at <https://www.whitehouse.gov/the-press-office/2016/02/12/fact-sheet-president-obama-designate-new-national-monuments-california>.

<sup>2</sup> Jenny Rowland, *Obama Designates Three New National Monuments In The California Desert*, CLIMATE PROGRESS, Feb. 12, 2016.

<sup>3</sup> Timothy Cama, *Obama sets aside 1.8M California desert acres as monument*, THE HILL, Feb. 12, 2016.

The Honorable Sally Jewell

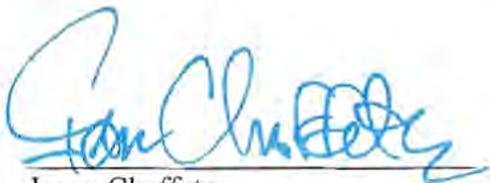
March 29, 2016

Page 2

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. The Committee on Natural Resources has broad jurisdiction with regard to the Department of the Interior and regarding relations of the United States with Native Americans and Native American tribes, public lands generally, fisheries and wildlife, mining interests generally and irrigation and reclamation as well. The Committee on Appropriation's jurisdiction includes the organization and operation of executive departments and agencies.

Please contact William McGrath of the Committee on Oversight and Government Reform staff at (202) 225-5074, or Spencer Kimball of the Committee on Natural Resources staff at (202) 226-7736, or Dave LesStrang of the Committee on Appropriations at (202) 225-2771 with any questions about this request. Thank you for your prompt attention to this important matter.

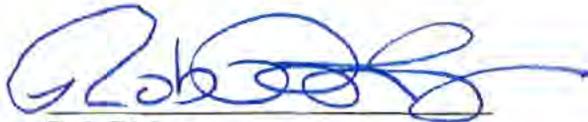
Sincerely,



Jason Chaffetz

Chairman

Committee on Oversight and Government Reform



Rob Bishop

Chairman

Committee on Natural Resources



Harold Rogers

Chairman

Committee on Appropriations

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member  
Committee on Oversight and Government Reform

The Honorable Raul M. Grijalva, Ranking Member  
Committee on Natural Resources

The Honorable Nita M. Lowey, Ranking Member  
Committee on Appropriations

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-3074

MINORITY (202) 225-5051

<http://oversight.house.gov>

May 11, 2016

The Honorable Sally Jewell  
Secretary  
U.S. Department of the Interior  
1849 C Street NW  
Washington, D.C. 20240

Dear Madam Secretary:

In a letter dated March 29, 2016, this Committee, along with the House Committees on Natural Resources and on Appropriations, requested information related to use of the Antiquities Act of 1906.<sup>1</sup> As outlined in that letter, the Committees are interested in the Administration's process for using the Act. Specifically, the Committees requested documents and communications from the Council on Environmental Quality (CEQ) and the Department of the Interior referring or relating to the selection or designation of national monuments under the Antiquities Act of 1906 by the President from January 1, 2015, to the present. The letter requested these materials by April 12, 2016. A similar request was sent to CEQ.

Since the Department received that letter, it has not provided a single responsive document to the Committees, or even an official response stating when the Department intends to do so. In fact, the Committees have only received an official response from CEQ, which vaguely indicated that the Committees should expect the Department to respond on its behalf at some point in the future. If the Department does not produce these documents voluntarily by 5:00 p.m. on May 25, 2016, the Committee will be required to issue a subpoena to obtain them.

Additionally, in order to better understand the Administration's use of the Antiquities Act, the Committee requests a transcribed interview with DOI employee Nikki Buffa not later than May 25, 2016.

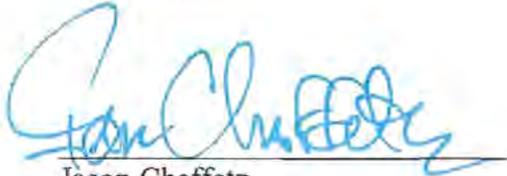
The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

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<sup>1</sup> Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, Hon. Rob Bishop Chairman, H. Comm. on Nat. Resources, and Hon. Harold Rogers, Chairman, H. Comm. on Appropriations, to Ms. Christy Goldfuss, Man. Dir., Council on Environmental Quality, (Mar. 29, 2016).

The Honorable Sally Jewell  
May 11, 2016  
Page 2

Please contact Bill McGrath of the Committee staff at (202) 225-5074 to schedule Ms. Buffa's interview, or with any questions about this request. Thank you for your prompt attention to this matter.



Jason Chaffetz  
Chairman

Sincerely,



Cynthia M. Lummis  
Chairman  
Subcommittee on the Interior

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member  
  
The Honorable Brenda L. Lawrence, Ranking Member  
Subcommittee on the Interior  
  
The Honorable Rob Bishop, Chairman  
Committee on Natural Resources  
  
The Honorable Harold Rogers, Chairman  
Committee on Appropriations

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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<http://oversight.house.gov>

August 4, 2016

The Honorable Neil Kornze  
Director  
U.S. Bureau of Land Management  
1849 C Street NW, Room 5665  
Washington, D.C. 20240

Dear Director Kornze:

On October 2, 2015, the Bureau of Land Management (BLM) California State Office issued a decision regarding the Cadiz Valley Water Conservation Recovery and Storage Project's use of a right-of-way on BLM land pursuant to the General Railroad Right-of-Way Act of 1875. For years, the Act has been interpreted to allow railroads to extend rights-of-way to third parties on BLM land without prior authorization from the agency,<sup>1</sup> until a November 4, 2011, memorandum from the Department of the Interior Office of the Solicitor changed this interpretation.<sup>2</sup> After the memorandum, in order for a third party to obtain a railroad right-of-way, the proposed use must advance a railroad purpose.<sup>3</sup> In its recent decision concerning the Cadiz project, BLM decided that the project did not "originate from a railroad purpose" despite the fact that the project brought recognizable benefits to the railroad.<sup>4</sup>

The Committee is concerned that the November 4, 2011, memorandum may have been specifically drafted for the purpose of denying a permit to the Cadiz project. Documents obtained by the Committee also raise concerns about the level of coordination between BLM and private interests with respect to the Cadiz decision.

Emails obtained by the Committee show a Realty Specialist in BLM's California State office regularly communicated with an employee at Whetstone Capital Advisors, LLC about the Cadiz Project and the right-of-way authorization process it was unfolding.<sup>5</sup> Cadiz Inc. is a publicly traded company, and the permit decision would affect the company's financial outlook.

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<sup>1</sup>The General Railroad Right of Way Act of 1875 (Mar 3, 1875), ch. 152, 18 Stat. 482.

<sup>2</sup>Memorandum from the Dep't of the Interior Office of the Solicitor to BLM, "Partial Withdrawal of M-36964-Proposed Installation of MCI Fiber Optic Communications Line Within Southern Pacific Transportation Co.'s Railroad Right-of-Way" (Nov. 4, 2011).

<sup>3</sup>*Id.*

<sup>4</sup>Letter from James Kenna, CA State Dir., BLM, to Jason Perry, Genesee & Wyoming Inc. and Scott Slater, Cadiz, Inc. (Oct. 2, 2015).

<sup>5</sup>Email from Mr. Erik Pignata, Realty Specialist, BLM, to Thomas McGannon, Whetstone Capital (Sept. 23, 2014).

The Honorable Neil Kornze

August 4, 2016

Page 2

Whetstone is a “Kansas City-based value oriented investment manager,” according to the fund’s website.<sup>6</sup> Specifically, the emails show the BLM Realty Specialist shared information related to the potential approval of the Cadiz project with Whetstone.<sup>7</sup> He also shared information from a meeting of senior BLM officials regarding the Department’s evaluation of the project,<sup>8</sup> and his opinions on how the project was progressing.<sup>9</sup>

The emails obtained by the Committee raise questions about BLM’s decision-making process with respect to the Cadiz project. The emails also implicate executive branch ethics guidelines, including Executive Order 12731 which states, “Employees shall act impartially and not give preferential treatment to any private organization or individual.”<sup>10</sup> E.O. 12731 also states, “Employees shall not engage in financial transactions using nonpublic government information or allow the improper use of such information to further any private interest.”<sup>11</sup>

To help the Committee understand the Department’s decision on the Cadiz project, please provide the following documents and information:

1. All documents and communications between any Bureau of Land Management employee and any employee of Whetstone Capital, since June 1, 2014.
2. All documents and communications to or from any employee of the Bureau of Land Management, since June 1, 2014, referring or relating to:
  - a. Whetstone Capital;
  - b. the partial withdrawal of M-36964 by the Department of the Interior Office of the Solicitor;
  - c. The Cadiz Valley Water Conservation Recovery and Storage Project; and
  - d. The railroad purpose of the Cadiz Valley Water Conservation Recovery and Storage Project.

Please provide the requested information as soon as possible, but no later than by 5:00 p.m. on August 18, 2016.

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<sup>6</sup> Whetstone Capital Advisors, LLC website, *available at* <http://whetstone-capital.com/home>.

<sup>7</sup> Email from Erik Pignata, Realty Specialist, BLM, to Thomas McGannon, Whetstone Capital (June 18, 2015).

<sup>8</sup> Email from Erik Pignata, Realty Specialist, BLM, to Thomas McGannon, Whetstone Capital (Sept. 23, 2015).

<sup>9</sup> Email from Erik Pignata, Realty Specialist, BLM, to Thomas McGannon, Whetstone Capital (Oct. 1, 2015).

<sup>10</sup> U.S. Office of Govt. Ethics, “Executive Order 12731 of October 17, 1990 Principles of Ethical Conduct for Government Officers and Employees,” *available at* [https://www2.oge.gov/Web/OGEnsf/All%20Documents/25792F3D2FF647AF85257E96006A90F1/\\$FILE/f69da5359a134002808b96ca703cc4692.pdf?open](https://www2.oge.gov/Web/OGEnsf/All%20Documents/25792F3D2FF647AF85257E96006A90F1/$FILE/f69da5359a134002808b96ca703cc4692.pdf?open).

<sup>11</sup> *Id.*

The Honorable Neil Kornze

August 4, 2016

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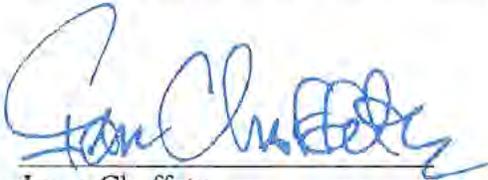
Additionally, please make Mr. Erik Pignata, BLM Realty Specialist, available for a transcribed interview as soon as possible, but no later than August 18, 2016.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

When producing documents to the Committee, please deliver production sets to the Majority staff in room 2157 of the Rayburn House Office Building and the Minority staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committee's request.

Please contact Melissa Beaumont of the Committee staff at (202) 225-5074 with any questions about this request. Thank you for your prompt attention to this matter.

Sincerely,



Jason Chaffetz  
Chairman



Cynthia M. Lummis  
Chairman  
Subcommittee on the Interior

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Brenda L. Lawrence, Ranking Member  
Subcommittee on the Interior

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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Minority (202) 225-5074

Minority (202) 225-6051

<http://oversight.house.gov>

September 9, 2016

The Honorable Sally Jewell  
Secretary  
U.S. Department of the Interior  
1849 C Street NW  
Washington, D.C. 20240

Dear Madam Secretary:

The Department of the Interior has failed to respond to a series of requests for documents and information related to the Committee's oversight and investigative initiatives. The same challenges that have thus far prevented the Department from complying with the Committee's requests may also be affecting the Department's ability to fulfill its responsibilities under the Freedom of Information Act (FOIA).

To help the Committee understand how and why the Department is unable to comply with document requests in a timely and complete manner, please provide a briefing for Committee staff and a tour of the Department's resources for responding to document requests from Members of Congress and FOIA requests. The briefing and tour will assist the Committee's effort to identify ways by which the Department can improve the timeliness and completeness of its responses to such document requests.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

Please have your staff contact Melissa Beaumont of Chairman Chaffetz' staff at (202) 225-5074 to schedule the briefing and tour, or with any questions about this request. Thank you for your cooperation in this matter.



Jason Chaffetz  
Chairman

Sincerely,



Mark Meadows  
Chairman  
Subcommittee on Government Operations



Cynthia M. Lummis  
Chairman  
Subcommittee on the Interior

The Honorable Sally Jewell

September 9, 2016

Page 2

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Gerald E. Connolly, Ranking Member  
Subcommittee on Government Operations

The Honorable Brenda L. Lawrence, Ranking Member  
Subcommittee on the Interior

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
MINORITY (202) 225-5051  
<http://oversight.house.gov>

December 29, 2016

The Honorable Sally Jewell  
Secretary  
U.S. Department of the Interior  
1849 C Street NW  
Washington, D.C. 20240

Dear Madame Secretary:

On December 28, 2016, President Obama designated the Bears Ears National Monument in Utah and the Gold Butte National Monument in Nevada pursuant to his authority under the Antiquities Act.<sup>1</sup> Advocates for this action touted it as a means to establish a co-management agreement for Bears Ears between the federal government and a group of Native American tribes.<sup>2</sup> In fact, in the press release announcing these new national monuments, the White House recognizes the importance of tribal participation in the management of the land and asserts this action serves as a tool to achieve co-management.<sup>3</sup> Co-management of public lands, however, requires the approval of Congress.<sup>4</sup> Advocacy organizations, federal agencies, and the White House have all put out differing opinions on co-management, and it is important to clarify the bounds of the President's authority. I am writing to obtain more information about how and why the President exercised his authority in this case.

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<sup>1</sup> *Rumors point toward possible December 23 designation. Anxiety builds over possible national monument*, SAN JUAN RECORD, Dec. 13, 2016, available at [http://www.sjrnews.com/view/full\\_story/27329673/article-Rumors-point-toward-possible-December-23-designation--Anxiety-builds-over-possible-national-monument-?instance=home\\_news\\_left](http://www.sjrnews.com/view/full_story/27329673/article-Rumors-point-toward-possible-December-23-designation--Anxiety-builds-over-possible-national-monument-?instance=home_news_left).

<sup>2</sup> Amy Jol O'Donoghue, *Native American chairman says Jewell order lacks equality for tribes*, DESERET NEWS, Oct. 21, 2016, available at <http://www.deseretnews.com/article/865665388/Bears-Ears-coalition-leader-says-Jewell-order-lacks-equality-for-tribes.html?pg=all>.

<sup>3</sup> FACT SHEET: President Obama to Designate New National Monuments Protecting Significant Natural and Cultural Resources in Utah and Nevada, , <https://www.whitehouse.gov/the-press-office/2016/12/28/fact-sheet-president-obama-designate-new-national-monuments-protecting>.

<sup>4</sup> See *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 565-66 (D.C. Cir. 2004) (“[S]ubdelegations to outside parties are assumed to be improper absent an affirmative showing of congressional authorization . . . . When an agency delegates authority to its subordinate, responsibility—and thus accountability—clearly remain with the federal agency. But when an agency delegates power to outside parties, lines of accountability may blur, undermining an important democratic check on government decision-making. Also, delegation to outside entities increases the risk that these parties will not share the agency’s “national vision and perspective . . . .”). See also *High Country Citizens' Alliance v. Norton*, 448 F. Supp. 2d 1235, 1246-1247 (D. Colo. 2006) (similar, citing *U.S. Telecom*).

The President has exercised his authority under the Antiquities Act to create or expand at least 25 national monuments—more than any other president in history.<sup>5</sup> His sweeping application of the Antiquities Act raises questions about the Administration’s commitment to transparency and consultation with local stakeholders with respect to designating national monuments. It also raises serious questions about whether these designations are limited to the, “smallest area compatible with proper care and management of the objects to be protected.”<sup>6</sup> The Antiquities Act “was designed to protect federal lands and resources quickly” in response to concerns about “theft from and destruction of archaeological sites.”<sup>7</sup> In most cases, however, the processes outlined by the National Environmental Policy Act (NEPA) and the Federal Land Policy Management Act (FLPMA) are most appropriate because they require environmental studies, a review of the public purpose, and an opportunity for public participation before any federal agency action.<sup>8</sup> The NEPA and the FLPMA processes provide for a more thoughtful determination, whereas the Antiquities Act was meant to be reserved for emergency scenarios.

Until yesterday, the Administration’s actions with respect to Bears Ears more closely resembled the NEPA and FLPMA process. In anticipation of the Bears Ears designation, the Department of the Interior took on a large role in gathering input and coordinating planning.<sup>9</sup> You, Secretary Jewell, visited the potential site for a listening session.<sup>10</sup> In fact, during a hearing before the Subcommittee on the Interior, Bureau of Land Management (BLM) Director Neil Kornze testified that BLM and the White House have been coordinating.<sup>11</sup> It is therefore unclear why the President opted to designate a massive national monument in Utah via the Antiquities Act in the waning days of his presidency, and to ignore federal environmental and procedural laws enacted to ensure stakeholders and other affected parties have a meaningful role in determining the outcome.

Similarly, the President’s actions with regard to the Gold Butte National Monument designation bypassed Congress and the public. Located in Clark County, Nevada, the Gold Butte National Monument spans nearly 300,000 acres.<sup>12</sup> Such a large designation, made unilaterally, deprives the American people and their elected representatives a collaborative discussion on how best to protect the land for all to enjoy. Large designations such as Gold Butte Monument are the type of major federal agency action envisioned by our federal environmental and procedural laws.

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<sup>5</sup> H. Sterling Burnett, *Obama’s Dangerous Use of The National Monument law*, FORBES, Oct. 12 2016.

<sup>6</sup> Antiquities Act of 1906, 54 U.S.C. §§20301-320303

<sup>7</sup> Carol Hardy Vincent, “National Monuments and the Antiquities Act,” Cong. Research Serv. (2016) (R41330).

<sup>8</sup> *Id.*

<sup>9</sup> Amy Jol O’Donoghue, *Bears Ears Controversy Ramps Up With Jewell’s Visit; Bishop’s Planned Legislation*, KSL NEWS, July 13, 2016, available at <https://www.ksl.com/?sid=40632616&nid=148&title=bears-ears-controversy-ramps-up-with-jewells-visit-bishops-planned-legislation>.

<sup>10</sup> *Id.*

<sup>11</sup> *Examining BLM Public Lands Leasing Hearing Before the Subcomm. on the Interior of the H. Comm. on Oversight and Gov’t Reform*, 114th Cong. 14 (2016) (statement of Neil Kornze, Director, Bureau of Land Management) (Mr. Kornze: “I am talking about looking at the country and figuring out where would this be appropriate, where would it not?” Mr. Gosar: “So there is some conversation going on between the White House and BLM and agencies in regards to antiquities withdrawal?” Mr. Kornze: “Yes.”).

<sup>12</sup> See *supra* note 3.

Furthermore, in a letter dated March 29, 2016, this Committee, along with the House Committees on Natural Resources and on Appropriations, requested information related to use of the Antiquities Act of 1906.<sup>13</sup> After receiving an inadequate response, a follow up letter was sent on May 11, 2016.<sup>14</sup> As outlined in both letters, the Committees are interested in the Administration's process for using the Antiquities Act. Specifically, the Committees requested documents and communications from the Council on Environmental Quality and the Department of the Interior (DOI) referring or relating to the selection or designation of national monuments under the Antiquities Act of 1906 by the President from January 1, 2015, to the present.

To date, DOI has only provided a very limited response to the Committee that largely consisted of public statements and news clippings. If the Department does not produce these documents voluntarily, the Committee will be required to obtain them through compulsory measures.

Please immediately provide the documents requested in the Committee's March 29<sup>th</sup> and May 11<sup>th</sup> letters. In addition, please produce the following documents as soon as possible, but not later than January 13, 2016:

1. All calendars, including all meetings and attendees, for all DOI employees involved or referenced in any discussions related to any national monument selection or designation.
2. The daily schedules and call logs for Secretary Jewell, Tommy Beaudreau, Nikki Buffa and Neil Kornze from April 21, 2013 to present.
3. All communications between any DOI employee and White House staff, including but not limited to Senior Advisor Brian Deese, between January 2015 and present.
4. All documents and communications referring or related to the selection or designation of national monuments under the Antiquities Act of 1906 by the President from April 21, 2013 to present.
5. All documents and communications related to the reduction in size, limitation, or repeal of a national monument from January 20, 2008 to present.

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<sup>13</sup> Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, Hon. Rob Bishop Chairman, H. Comm. on Nat. Resources, and Hon. Harold Rogers, Chairman, H. Comm. on Appropriations, to Hon. Sally Jewell, Secretary, U.S. Department of the Interior (Mar. 29, 2016).

<sup>14</sup> Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, and Hon. Cynthia Lummis, Chairman, H. Comm. on Oversight and Gov't Reform Subcommittee on the Interior, to Hon. Sally Jewell, Secretary, U.S. Department of the Interior (May 11, 2016).

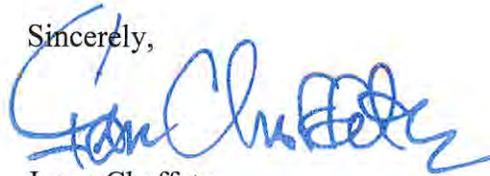
The Honorable Sally Jewell  
December 29, 2016  
Page 4

Additionally, please make available for transcribed interview the following three DOI officials as soon as possible, but not later than January 20, 2016: Bureau of Land Management Director Neil Kornze; your Chief of Staff Tommy Beaudreau; and DOI employee Nikki Buffa.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X.

Please contact Chris Esparza of the Committee staff at (202) 225-5074 to schedule the interviews, or with any questions about this request. Thank you for your prompt attention to this matter.

Sincerely,



Jason Chaffetz  
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

**From:** Kaster, Amanda  
**To:** [Robert Howarth](#); [Christopher Salotti](#); [Pamela Barkin](#)  
**Cc:** [Micah Chambers](#)  
**Subject:** Fwd: Letter to Secretary Zinke DOI re 114th Document Requests  
**Date:** Wednesday, March 01, 2017 5:38:06 PM  
**Attachments:** [image003.png](#)  
[2017-03-01\\_JEC to Zinke-DOI - 114th Document Requests.pdf](#)

---

FYI

----- Forwarded message -----

From: Casey, Sharon <[Sharon.Casey@mail.house.gov](mailto:Sharon.Casey@mail.house.gov)>  
Date: Wed, Mar 1, 2017 at 5:34 PM  
Subject: Letter to Secretary Zinke DOI re 114th Document Requests  
To: "[micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov)" <[micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov)>, "[Amanda\\_kaster@ios.doi.gov](mailto:Amanda_kaster@ios.doi.gov)" <[Amanda\\_kaster@ios.doi.gov](mailto:Amanda_kaster@ios.doi.gov)>  
Cc: "Beaumont, Melissa" <[melissa.beaumont@mail.house.gov](mailto:melissa.beaumont@mail.house.gov)>, "McGrath, William" <[William.McGrath@mail.house.gov](mailto:William.McGrath@mail.house.gov)>, "McKenna, Liam" <[Liam.McKenna@mail.house.gov](mailto:Liam.McKenna@mail.house.gov)>

Attached please find a letter from Chairman Chaffetz of the U.S. House of Representatives Committee on Oversight and Government Reform.

Please acknowledge receipt of this letter.

Thank you,

Sharon Casey

Sharon Ryan Casey

Deputy Chief Clerk

Committee on Oversight and Government Reform

2157 Rayburn Building, Washington, DC 20515

202-593-8219 [sharon.casey@mail.house.gov](mailto:sharon.casey@mail.house.gov) <<mailto:sharon.casey@mail.house.gov>>

--

Amanda Kaster-Averill  
Special Assistant  
Office of Congressional and Legislative Affairs  
U.S. Department of the Interior

(202) 208-3337  
[amanda\\_kaster@ios.doi.gov](mailto:amanda_kaster@ios.doi.gov)



**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
MINORITY (202) 225-5061

<http://oversight.house.gov>

March 1, 2017

The Honorable Ryan Zinke  
Secretary  
U.S. Department of the Interior  
1849 C Street NW  
Washington, D.C. 20240

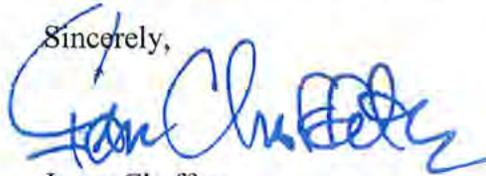
Dear Mr. Secretary:

The Committee currently has certain pending requests for documents and information with the Department of the Interior. As the Department transitions to new leadership, I reiterate these requests here. For your ready reference, I have attached them hereto.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

Please have your staff contact Melissa Beaumont of the Committee staff at (202) 225-5074 with any questions about this request. Thank you for your cooperation in this matter.

Sincerely,



Jason Chaffetz  
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

Enclosures

# Attachments

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
MINORITY (202) 225-5051

<http://oversight.house.gov>

October 16, 2015

The Honorable Neil Kornze  
Director  
U.S. Bureau of Land Management  
1849 C Street NW, Room 5665  
Washington, DC 20240

Dear Director Kornze:

The hydraulic fracturing rule finalized by the Bureau of Land Management in March 2015 will impinge on thousands of wells, impose significant costs, and expand federal oversight of hydraulic fracturing operations in the West.<sup>1</sup> As a result, several states, including Utah and Wyoming, Indian tribes and other affected parties, have litigated to prevent the rule from being implemented.<sup>2</sup> On September 30, 2015, a federal judge in Wyoming granted an injunction that blocked the rule on the grounds that BLM exceeded its authority to regulate hydraulic fracturing.<sup>3</sup>

Given the controversy surrounding this rule, and the impact that it will have on the West, the Committee is reviewing the process by which the rule was made. To assist the Committee, please provide the following documents and information:

1. All documents and communications that comprise the full administrative record relating to the hydraulic fracturing rule issued by BLM on or about March 20, 2015.
2. All documents and communications, including, but not limited to, maps, charts, diagrams, photos, logs, illustrations, memoranda, guidelines, orders, instructions, regulations, journals, notes, periodicals, studies, proposals, meeting minutes/agendas, agreements, reports, contracts, matrices, comments, correspondence, lists, and presentations, referring or relating to the hydraulic fracturing rule.

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<sup>1</sup> Michelle Ye Hee Lee, *You can't trust the numbers on the new fracking regs*, WASH. POST, Mar. 30, 2015, available at <http://www.washingtonpost.com/blogs/fact-checker/wp/2015/03/30/you-cant-trust-the-numbers-on-the-new-fracking-regs/> (last visited Sep. 30, 2015).

<sup>2</sup> Ann Butler, *BLM fracking rule stayed*, DURANGO HERALD, June 24, 2015.

<sup>3</sup> Tom Morton, *Judge Grants Injunction Blocking Fracking in Favor of Energy Groups, States, Tribe*, K2 RADIO WYOMING, Sep. 30, 2015, available at <http://k2radio.com/judge-grants-injunction-blocking-fracking-in-favor-of-energy-groups-states-tribe/> (last visited Sep. 30, 2015).

The Honorable Neil Kornze

October 16, 2015

Page 2

It is our understanding that much of this information has already been gathered as part of the litigation process and we expect that BLM will produce those records promptly. Records that BLM has withheld from plaintiffs as privileged should also be produced pursuant to this request.

Please provide the requested information as soon as possible, but no later than 5:00 p.m. on October 30, 2015. An attachment to this letter provides additional information about responding to the Committee's request. When producing documents to the Committee, please deliver production sets to the OGR Majority staff in room 2157 of the Rayburn House Office Building and the OGR Minority staff in room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

Please contact Bill McGrath of the Committee staff at (202) 225-5074 with any questions about this request. Thank you for your prompt attention to this matter.

Sincerely,



Jason Chaffetz  
Chairman



Cynthia Lummis  
Chairman  
Subcommittee on the Interior

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Brenda L. Lawrence, Ranking Member  
Subcommittee on the Interior

Enclosure

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

Majority - (202) 225-6074  
Minority - (202) 525-5081

<http://oversight.house.gov>

February 4, 2016

The Honorable Neil Kornze  
Director  
U.S. Bureau of Land Management  
1849 C Street NW, Room 5665  
Washington, D.C. 20240

Dear Director Kornze:

The Committee has become aware of increasing complaints about Bureau of Land Management activities in Nevada and Utah. State officials have asserted that BLM law enforcement agents use tactics that amount to “bullying, intimidation and . . . lack of integrity.”<sup>1</sup> Those tactics have undermined safety in rural communities and strained local law enforcement budgets. In particular, BLM’s officers allegedly harass citizens and tourists, interfere with the work of local law enforcement, operate outside of their jurisdictions, and refuse to cooperate with local officials.<sup>2</sup> The situation has led some local counties to declare the presence of BLM law enforcement in Utah and Nevada “a threat to the health, safety and welfare of their citizens.”<sup>3</sup>

Last year, BLM law enforcement terminated long-standing contracts with county sheriffs in Utah. Under those agreements, BLM compensated local law enforcement officers for patrolling public lands, handling emergency and rescue operations, and providing crucial police oversight during busy periods.<sup>4</sup> This decision created a law enforcement vacuum in the area and caused serious financial problems for local governments. As one county official from Utah stated, “BLM’s Chief of Law Enforcement cancelled the agreement leaving Garfield County with a significant budget shortfall and staff operating in an area without an agreement.”<sup>5</sup>

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<sup>1</sup> *Threats, Intimidation and Bullying by Federal Land Managing Agencies, Part II. before the Subcomm. on Public Lands and Env’tl Regulation*, 113th Cong. (2014) (Testimony of Leland F. Pollock, Commissioner, Garfield Cty, UT), available at <http://naturalresources.house.gov/uploadedfiles/pollocktestimony7-24-14.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> Brian Maffley, *BLM, Utah Counties Wrangle Over Law Enforcement*, THE SALT LAKE TRIB., June 19, 2014.

<sup>4</sup> *Id.*

<sup>5</sup> *Supra*, note 1.

The press reported on allegations that the contracts were cancelled as retribution for state legislation passed in 2013 to limit federal police powers on public lands.<sup>6</sup>

Moreover, during the summer of 2015, BLM law enforcement demanded a more than \$1 million increase to the permit price for the annual *Burning Man* event in Nevada's Black Rock Desert to fund amenities for BLM agents.<sup>7</sup> The demands were unrelated to providing safety and security, and instead included having laundry facilities, 24-hour access to ice cream, air conditioning, and vanity mirrors.<sup>8</sup> BLM eventually withdrew its demands and granted the permit,<sup>9</sup> but only after a significant public outcry, including intervention by Senator Harry Reid (D-NV), who criticized these "outlandishly unnecessary facilities."<sup>10</sup>

In order to help the Committee better understand BLM's changing role, please provide the following documents and information:

1. All documents and communications referring or relating to BLM's decision to terminate or not renew contracts with Utah sheriffs;
2. All documents and communications referring or relating to the BLM permit for *Burning Man* in 2015, and demands made by BLM law enforcement relating to the event;
3. All communications between BLM law enforcement personnel and state and local officials in Utah and Nevada, including elected officials, county commissioners and state/local law enforcement, from January 2009 to the present; and
4. All communications between BLM law enforcement personnel referring or relating to state and local officials in Utah and Nevada, including elected officials, county commissioners and state/local law enforcement from January 2009 to the present.

Please provide the requested information as soon as possible, but no later than by 5:00 p.m. on February 18, 2016. An attachment to this letter provides additional information about responding to the Committee's request. When producing documents to the Committee, please deliver production sets to the OGR Majority staff in room 2157 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

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<sup>6</sup> *Supra*, note 3.

<sup>7</sup> Jenny Kane, *RGJ Exclusive: BLM Wants \$1 Million VIP Compound From Burning Man*, RENO GAZETTE JOURNAL, June 26, 2015.

<sup>8</sup> *Id.*

<sup>9</sup> Assoc. Press, *Burning Man Gets Black Rock Site Permit, BLM Scraps 'Lavish' Request*, BILLBOARD, Aug. 10, 2015.

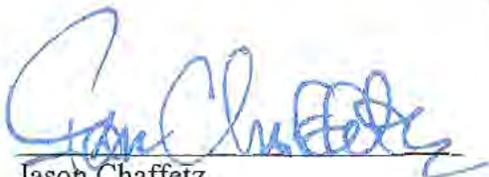
<sup>10</sup> Jenny Kane, *Reid to BLM: You want flush toilets at Burning Man? Go to Gerlach*, RENO GAZETTE-JOURNAL, June 29, 2015.

The Honorable Neil Kornze  
January 29, 2016  
Page 3

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

Please contact Bill McGrath of the Committee staff at (202) 225-5074 with any questions about this request. Thank you for your prompt attention to this matter.

Sincerely,



Jason Chaffetz  
Chairman



Cynthia M. Lummis  
Chairman  
Subcommittee on the Interior

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Brenda L. Lawrence, Ranking Member  
Subcommittee on the Interior

# Congress of the United States

Washington, DC 20515

March 29, 2016

The Honorable Sally Jewell  
Secretary  
U.S. Department of the Interior  
1849 C Street NW  
Washington, D.C. 20240

Dear Madam Secretary:

On February 12, 2016, the White House designated 1.8 million acres of land in California for conservation under the Antiquities Act of 1906.<sup>1</sup> The designation, which created three new national monuments in the California desert, nearly doubled the total amount of land set aside as national monuments by the President during his time in office.<sup>2</sup> In fact, the President has used the Antiquities Act to unilaterally designate approximately 265 million acres of land and water as national monuments—far more than any previous President.<sup>3</sup>

The broad and frequent application of the Antiquities Act raises questions about the lack of transparency and consultation with local stakeholders leading up to the President's designation of national monuments. To help the Committees understand how and why certain areas are designated for conservation, please provide the following documents:

1. All documents and communications referring or relating to the selection or designation of national monuments under the Antiquities Act of 1906 by the President from January 1, 2015, to the present.

Please provide the requested information as soon as possible, but no later than 5:00 p.m. on April 12, 2016. When producing documents to the Committees, please deliver production sets to the Committee on Oversight and Government Reform Majority staff in Room 2157 of the Rayburn House Office Building and Minority staff in Room 2471 of the Rayburn House Office Building; the Committee on Natural Resources Majority staff in Room 1324 of the Longworth House Office Building and Minority staff in Room 1329 of the Longworth House Office Building; and to the Committee on Appropriations Majority staff in H-305 of the Capitol Building and Minority staff in 1016 Longworth House Office Building. The Committees strongly prefer to receive all documents in electronic format.

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<sup>1</sup> White House Fact Sheet: President Obama to Designate New National Monuments in the California Desert (Feb. 12, 2016), available at <https://www.whitehouse.gov/the-press-office/2016/02/12/fact-sheet-president-obama-designate-new-national-monuments-california>.

<sup>2</sup> Jenny Rowland, *Obama Designates Three New National Monuments In The California Desert*, CLIMATE PROGRESS, Feb. 12, 2016.

<sup>3</sup> Timothy Cama, *Obama sets aside 1.8M California desert acres as monument*, THE HILL, Feb. 12, 2016.

The Honorable Sally Jewell

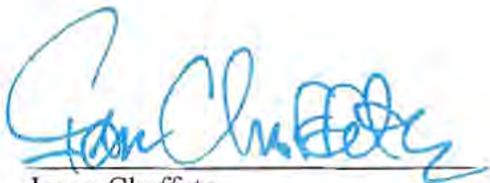
March 29, 2016

Page 2

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. The Committee on Natural Resources has broad jurisdiction with regard to the Department of the Interior and regarding relations of the United States with Native Americans and Native American tribes, public lands generally, fisheries and wildlife, mining interests generally and irrigation and reclamation as well. The Committee on Appropriation's jurisdiction includes the organization and operation of executive departments and agencies.

Please contact William McGrath of the Committee on Oversight and Government Reform staff at (202) 225-5074, or Spencer Kimball of the Committee on Natural Resources staff at (202) 226-7736, or Dave LesStrang of the Committee on Appropriations at (202) 225-2771 with any questions about this request. Thank you for your prompt attention to this important matter.

Sincerely,



Jason Chaffetz

Chairman

Committee on Oversight and Government Reform



Rob Bishop

Chairman

Committee on Natural Resources



Harold Rogers

Chairman

Committee on Appropriations

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member  
Committee on Oversight and Government Reform

The Honorable Raul M. Grijalva, Ranking Member  
Committee on Natural Resources

The Honorable Nita M. Lowey, Ranking Member  
Committee on Appropriations

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

MINORITY (202) 225-5051

<http://oversight.house.gov>

May 11, 2016

The Honorable Sally Jewell  
Secretary  
U.S. Department of the Interior  
1849 C Street NW  
Washington, D.C. 20240

Dear Madam Secretary:

In a letter dated March 29, 2016, this Committee, along with the House Committees on Natural Resources and on Appropriations, requested information related to use of the Antiquities Act of 1906.<sup>1</sup> As outlined in that letter, the Committees are interested in the Administration's process for using the Act. Specifically, the Committees requested documents and communications from the Council on Environmental Quality (CEQ) and the Department of the Interior referring or relating to the selection or designation of national monuments under the Antiquities Act of 1906 by the President from January 1, 2015, to the present. The letter requested these materials by April 12, 2016. A similar request was sent to CEQ.

Since the Department received that letter, it has not provided a single responsive document to the Committees, or even an official response stating when the Department intends to do so. In fact, the Committees have only received an official response from CEQ, which vaguely indicated that the Committees should expect the Department to respond on its behalf at some point in the future. If the Department does not produce these documents voluntarily by 5:00 p.m. on May 25, 2016, the Committee will be required to issue a subpoena to obtain them.

Additionally, in order to better understand the Administration's use of the Antiquities Act, the Committee requests a transcribed interview with DOI employee Nikki Buffa not later than May 25, 2016.

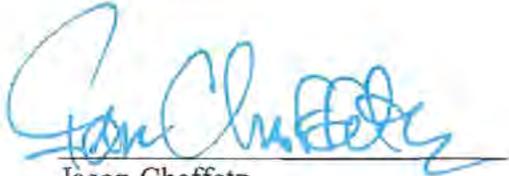
The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

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<sup>1</sup> Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, Hon. Rob Bishop Chairman, H. Comm. on Nat. Resources, and Hon. Harold Rogers, Chairman, H. Comm. on Appropriations, to Ms. Christy Goldfuss, Man. Dir., Council on Environmental Quality, (Mar. 29, 2016).

The Honorable Sally Jewell  
May 11, 2016  
Page 2

Please contact Bill McGrath of the Committee staff at (202) 225-5074 to schedule Ms. Buffa's interview, or with any questions about this request. Thank you for your prompt attention to this matter.



Jason Chaffetz  
Chairman

Sincerely,



Cynthia M. Lummis  
Chairman  
Subcommittee on the Interior

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member  
The Honorable Brenda L. Lawrence, Ranking Member  
Subcommittee on the Interior  
The Honorable Rob Bishop, Chairman  
Committee on Natural Resources  
The Honorable Harold Rogers, Chairman  
Committee on Appropriations

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

MINORITY (202) 225-5051

<http://oversight.house.gov>

August 4, 2016

The Honorable Neil Kornze  
Director  
U.S. Bureau of Land Management  
1849 C Street NW, Room 5665  
Washington, D.C. 20240

Dear Director Kornze:

On October 2, 2015, the Bureau of Land Management (BLM) California State Office issued a decision regarding the Cadiz Valley Water Conservation Recovery and Storage Project's use of a right-of-way on BLM land pursuant to the General Railroad Right-of-Way Act of 1875. For years, the Act has been interpreted to allow railroads to extend rights-of-way to third parties on BLM land without prior authorization from the agency,<sup>1</sup> until a November 4, 2011, memorandum from the Department of the Interior Office of the Solicitor changed this interpretation.<sup>2</sup> After the memorandum, in order for a third party to obtain a railroad right-of-way, the proposed use must advance a railroad purpose.<sup>3</sup> In its recent decision concerning the Cadiz project, BLM decided that the project did not "originate from a railroad purpose" despite the fact that the project brought recognizable benefits to the railroad.<sup>4</sup>

The Committee is concerned that the November 4, 2011, memorandum may have been specifically drafted for the purpose of denying a permit to the Cadiz project. Documents obtained by the Committee also raise concerns about the level of coordination between BLM and private interests with respect to the Cadiz decision.

Emails obtained by the Committee show a Realty Specialist in BLM's California State office regularly communicated with an employee at Whetstone Capital Advisors, LLC about the Cadiz Project and the right-of-way authorization process it was unfolding.<sup>5</sup> Cadiz Inc. is a publicly traded company, and the permit decision would affect the company's financial outlook.

---

<sup>1</sup>The General Railroad Right of Way Act of 1875 (Mar 3, 1875), ch. 152, 18 Stat. 482.

<sup>2</sup>Memorandum from the Dep't of the Interior Office of the Solicitor to BLM, "Partial Withdrawal of M-36964-Proposed Installation of MCI Fiber Optic Communications Line Within Southern Pacific Transportation Co.'s Railroad Right-of-Way" (Nov. 4, 2011).

<sup>3</sup>*Id.*

<sup>4</sup>Letter from James Kenna, CA State Dir., BLM, to Jason Perry, Genesee & Wyoming Inc. and Scott Slater, Cadiz, Inc. (Oct. 2, 2015).

<sup>5</sup>Email from Mr. Erik Pignata, Realty Specialist, BLM, to Thomas McGannon, Whetstone Capital (Sept. 23, 2014).

The Honorable Neil Kornze

August 4, 2016

Page 2

Whetstone is a “Kansas City-based value oriented investment manager,” according to the fund’s website.<sup>6</sup> Specifically, the emails show the BLM Realty Specialist shared information related to the potential approval of the Cadiz project with Whetstone.<sup>7</sup> He also shared information from a meeting of senior BLM officials regarding the Department’s evaluation of the project,<sup>8</sup> and his opinions on how the project was progressing.<sup>9</sup>

The emails obtained by the Committee raise questions about BLM’s decision-making process with respect to the Cadiz project. The emails also implicate executive branch ethics guidelines, including Executive Order 12731 which states, “Employees shall act impartially and not give preferential treatment to any private organization or individual.”<sup>10</sup> E.O. 12731 also states, “Employees shall not engage in financial transactions using nonpublic government information or allow the improper use of such information to further any private interest.”<sup>11</sup>

To help the Committee understand the Department’s decision on the Cadiz project, please provide the following documents and information:

1. All documents and communications between any Bureau of Land Management employee and any employee of Whetstone Capital, since June 1, 2014.
2. All documents and communications to or from any employee of the Bureau of Land Management, since June 1, 2014, referring or relating to:
  - a. Whetstone Capital;
  - b. the partial withdrawal of M-36964 by the Department of the Interior Office of the Solicitor;
  - c. The Cadiz Valley Water Conservation Recovery and Storage Project; and
  - d. The railroad purpose of the Cadiz Valley Water Conservation Recovery and Storage Project.

Please provide the requested information as soon as possible, but no later than by 5:00 p.m. on August 18, 2016.

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<sup>6</sup> Whetstone Capital Advisors, LLC website, *available at* <http://whetstone-capital.com/home>.

<sup>7</sup> Email from Erik Pignata, Realty Specialist, BLM, to Thomas McGannon, Whetstone Capital (June 18, 2015).

<sup>8</sup> Email from Erik Pignata, Realty Specialist, BLM, to Thomas McGannon, Whetstone Capital (Sept. 23, 2015).

<sup>9</sup> Email from Erik Pignata, Realty Specialist, BLM, to Thomas McGannon, Whetstone Capital (Oct. 1, 2015).

<sup>10</sup> U.S. Office of Govt. Ethics, “Executive Order 12731 of October 17, 1990 Principles of Ethical Conduct for Government Officers and Employees,” *available at* [https://www2.oge.gov/Web/OGE.nsf/All%20Documents/25792F3D2FF647AF85257E96006A90F1/\\$FILE/f69da5359a134002808b96ca703cc4692.pdf?open](https://www2.oge.gov/Web/OGE.nsf/All%20Documents/25792F3D2FF647AF85257E96006A90F1/$FILE/f69da5359a134002808b96ca703cc4692.pdf?open).

<sup>11</sup> *Id.*

The Honorable Neil Kornze

August 4, 2016

Page 3

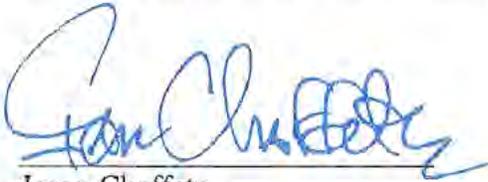
Additionally, please make Mr. Erik Pignata, BLM Realty Specialist, available for a transcribed interview as soon as possible, but no later than August 18, 2016.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

When producing documents to the Committee, please deliver production sets to the Majority staff in room 2157 of the Rayburn House Office Building and the Minority staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committee's request.

Please contact Melissa Beaumont of the Committee staff at (202) 225-5074 with any questions about this request. Thank you for your prompt attention to this matter.

Sincerely,



Jason Chaffetz  
Chairman



Cynthia M. Lummis  
Chairman  
Subcommittee on the Interior

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Brenda L. Lawrence, Ranking Member  
Subcommittee on the Interior

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

Minority (202) 225-5074

Minority (202) 225-6051

<http://oversight.house.gov>

September 9, 2016

The Honorable Sally Jewell  
Secretary  
U.S. Department of the Interior  
1849 C Street NW  
Washington, D.C. 20240

Dear Madam Secretary:

The Department of the Interior has failed to respond to a series of requests for documents and information related to the Committee's oversight and investigative initiatives. The same challenges that have thus far prevented the Department from complying with the Committee's requests may also be affecting the Department's ability to fulfill its responsibilities under the Freedom of Information Act (FOIA).

To help the Committee understand how and why the Department is unable to comply with document requests in a timely and complete manner, please provide a briefing for Committee staff and a tour of the Department's resources for responding to document requests from Members of Congress and FOIA requests. The briefing and tour will assist the Committee's effort to identify ways by which the Department can improve the timeliness and completeness of its responses to such document requests.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

Please have your staff contact Melissa Beaumont of Chairman Chaffetz' staff at (202) 225-5074 to schedule the briefing and tour, or with any questions about this request. Thank you for your cooperation in this matter.



Jason Chaffetz  
Chairman

Sincerely,



Mark Meadows  
Chairman  
Subcommittee on Government Operations



Cynthia M. Lummis  
Chairman  
Subcommittee on the Interior

The Honorable Sally Jewell

September 9, 2016

Page 2

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Gerald E. Connolly, Ranking Member  
Subcommittee on Government Operations

The Honorable Brenda L. Lawrence, Ranking Member  
Subcommittee on the Interior

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
MINORITY (202) 225-5051  
<http://oversight.house.gov>

December 29, 2016

The Honorable Sally Jewell  
Secretary  
U.S. Department of the Interior  
1849 C Street NW  
Washington, D.C. 20240

Dear Madame Secretary:

On December 28, 2016, President Obama designated the Bears Ears National Monument in Utah and the Gold Butte National Monument in Nevada pursuant to his authority under the Antiquities Act.<sup>1</sup> Advocates for this action touted it as a means to establish a co-management agreement for Bears Ears between the federal government and a group of Native American tribes.<sup>2</sup> In fact, in the press release announcing these new national monuments, the White House recognizes the importance of tribal participation in the management of the land and asserts this action serves as a tool to achieve co-management.<sup>3</sup> Co-management of public lands, however, requires the approval of Congress.<sup>4</sup> Advocacy organizations, federal agencies, and the White House have all put out differing opinions on co-management, and it is important to clarify the bounds of the President's authority. I am writing to obtain more information about how and why the President exercised his authority in this case.

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<sup>1</sup> *Rumors point toward possible December 23 designation. Anxiety builds over possible national monument*, SAN JUAN RECORD, Dec. 13, 2016, available at [http://www.sjrnews.com/view/full\\_story/27329673/article-Rumors-point-toward-possible-December-23-designation--Anxiety-builds-over-possible-national-monument-?instance=home\\_news\\_left](http://www.sjrnews.com/view/full_story/27329673/article-Rumors-point-toward-possible-December-23-designation--Anxiety-builds-over-possible-national-monument-?instance=home_news_left).

<sup>2</sup> Amy Jol O'Donoghue, *Native American chairman says Jewell order lacks equality for tribes*, DESERET NEWS, Oct. 21, 2016, available at <http://www.deseretnews.com/article/865665388/Bears-Ears-coalition-leader-says-Jewell-order-lacks-equality-for-tribes.html?pg=all>.

<sup>3</sup> FACT SHEET: President Obama to Designate New National Monuments Protecting Significant Natural and Cultural Resources in Utah and Nevada, , <https://www.whitehouse.gov/the-press-office/2016/12/28/fact-sheet-president-obama-designate-new-national-monuments-protecting>.

<sup>4</sup> See *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 565-66 (D.C. Cir. 2004) (“[S]ubdelegations to outside parties are assumed to be improper absent an affirmative showing of congressional authorization . . . . When an agency delegates authority to its subordinate, responsibility—and thus accountability—clearly remain with the federal agency. But when an agency delegates power to outside parties, lines of accountability may blur, undermining an important democratic check on government decision-making. Also, delegation to outside entities increases the risk that these parties will not share the agency’s “national vision and perspective . . . .”). See also *High Country Citizens' Alliance v. Norton*, 448 F. Supp. 2d 1235, 1246-1247 (D. Colo. 2006) (similar, citing *U.S. Telecom*).

The President has exercised his authority under the Antiquities Act to create or expand at least 25 national monuments—more than any other president in history.<sup>5</sup> His sweeping application of the Antiquities Act raises questions about the Administration’s commitment to transparency and consultation with local stakeholders with respect to designating national monuments. It also raises serious questions about whether these designations are limited to the, “smallest area compatible with proper care and management of the objects to be protected.”<sup>6</sup> The Antiquities Act “was designed to protect federal lands and resources quickly” in response to concerns about “theft from and destruction of archaeological sites.”<sup>7</sup> In most cases, however, the processes outlined by the National Environmental Policy Act (NEPA) and the Federal Land Policy Management Act (FLPMA) are most appropriate because they require environmental studies, a review of the public purpose, and an opportunity for public participation before any federal agency action.<sup>8</sup> The NEPA and the FLPMA processes provide for a more thoughtful determination, whereas the Antiquities Act was meant to be reserved for emergency scenarios.

Until yesterday, the Administration’s actions with respect to Bears Ears more closely resembled the NEPA and FLPMA process. In anticipation of the Bears Ears designation, the Department of the Interior took on a large role in gathering input and coordinating planning.<sup>9</sup> You, Secretary Jewell, visited the potential site for a listening session.<sup>10</sup> In fact, during a hearing before the Subcommittee on the Interior, Bureau of Land Management (BLM) Director Neil Kornze testified that BLM and the White House have been coordinating.<sup>11</sup> It is therefore unclear why the President opted to designate a massive national monument in Utah via the Antiquities Act in the waning days of his presidency, and to ignore federal environmental and procedural laws enacted to ensure stakeholders and other affected parties have a meaningful role in determining the outcome.

Similarly, the President’s actions with regard to the Gold Butte National Monument designation bypassed Congress and the public. Located in Clark County, Nevada, the Gold Butte National Monument spans nearly 300,000 acres.<sup>12</sup> Such a large designation, made unilaterally, deprives the American people and their elected representatives a collaborative discussion on how best to protect the land for all to enjoy. Large designations such as Gold Butte Monument are the type of major federal agency action envisioned by our federal environmental and procedural laws.

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<sup>5</sup> H. Sterling Burnett, *Obama’s Dangerous Use of The National Monument law*, FORBES, Oct. 12 2016.

<sup>6</sup> Antiquities Act of 1906, 54 U.S.C. §§20301-320303

<sup>7</sup> Carol Hardy Vincent, “National Monuments and the Antiquities Act,” Cong. Research Serv. (2016) (R41330).

<sup>8</sup> *Id.*

<sup>9</sup> Amy Jol O’Donoghue, *Bears Ears Controversy Ramps Up With Jewell’s Visit; Bishop’s Planned Legislation*, KSL NEWS, July 13, 2016, available at <https://www.ksl.com/?sid=40632616&nid=148&title=bears-ears-controversy-ramps-up-with-jewells-visit-bishops-planned-legislation>.

<sup>10</sup> *Id.*

<sup>11</sup> *Examining BLM Public Lands Leasing Hearing Before the Subcomm. on the Interior of the H. Comm. on Oversight and Gov’t Reform*, 114th Cong. 14 (2016) (statement of Neil Kornze, Director, Bureau of Land Management) (Mr. Kornze: “I am talking about looking at the country and figuring out where would this be appropriate, where would it not?” Mr. Gosar: “So there is some conversation going on between the White House and BLM and agencies in regards to antiquities withdrawal?” Mr. Kornze: “Yes.”).

<sup>12</sup> *See supra* note 3.

Furthermore, in a letter dated March 29, 2016, this Committee, along with the House Committees on Natural Resources and on Appropriations, requested information related to use of the Antiquities Act of 1906.<sup>13</sup> After receiving an inadequate response, a follow up letter was sent on May 11, 2016.<sup>14</sup> As outlined in both letters, the Committees are interested in the Administration's process for using the Antiquities Act. Specifically, the Committees requested documents and communications from the Council on Environmental Quality and the Department of the Interior (DOI) referring or relating to the selection or designation of national monuments under the Antiquities Act of 1906 by the President from January 1, 2015, to the present.

To date, DOI has only provided a very limited response to the Committee that largely consisted of public statements and news clippings. If the Department does not produce these documents voluntarily, the Committee will be required to obtain them through compulsory measures.

Please immediately provide the documents requested in the Committee's March 29<sup>th</sup> and May 11<sup>th</sup> letters. In addition, please produce the following documents as soon as possible, but not later than January 13, 2016:

1. All calendars, including all meetings and attendees, for all DOI employees involved or referenced in any discussions related to any national monument selection or designation.
2. The daily schedules and call logs for Secretary Jewell, Tommy Beaudreau, Nikki Buffa and Neil Kornze from April 21, 2013 to present.
3. All communications between any DOI employee and White House staff, including but not limited to Senior Advisor Brian Deese, between January 2015 and present.
4. All documents and communications referring or related to the selection or designation of national monuments under the Antiquities Act of 1906 by the President from April 21, 2013 to present.
5. All documents and communications related to the reduction in size, limitation, or repeal of a national monument from January 20, 2008 to present.

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<sup>13</sup> Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, Hon. Rob Bishop Chairman, H. Comm. on Nat. Resources, and Hon. Harold Rogers, Chairman, H. Comm. on Appropriations, to Hon. Sally Jewell, Secretary, U.S. Department of the Interior (Mar. 29, 2016).

<sup>14</sup> Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, and Hon. Cynthia Lummis, Chairman, H. Comm. on Oversight and Gov't Reform Subcommittee on the Interior, to Hon. Sally Jewell, Secretary, U.S. Department of the Interior (May 11, 2016).

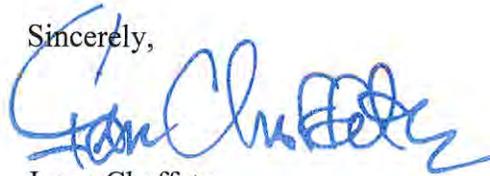
The Honorable Sally Jewell  
December 29, 2016  
Page 4

Additionally, please make available for transcribed interview the following three DOI officials as soon as possible, but not later than January 20, 2016: Bureau of Land Management Director Neil Kornze; your Chief of Staff Tommy Beaudreau; and DOI employee Nikki Buffa.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X.

Please contact Chris Esparza of the Committee staff at (202) 225-5074 to schedule the interviews, or with any questions about this request. Thank you for your prompt attention to this matter.

Sincerely,



Jason Chaffetz  
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

**From:** Swift, Heather  
**To:** [Megan Bloomgren](#); [Nathan Adams](#)  
**Subject:** load er up, Nate. :)  
**Date:** Monday, March 06, 2017 12:13:11 PM

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Here's the release, Nate.

Date: March 6, 2017

Contact: [Interior\\_Press@ios.doi.gov](mailto:Interior_Press@ios.doi.gov)

[Caryl Fagot BOEM \(504\) 736-2590](tel:5047362590)

## **Secretary Zinke Announces Proposed 73-Million Acre Oil and Natural Gas Lease Sale for Gulf of Mexico**

*All available areas in federal waters will be offered  
in first region-wide sale under new Five Year Program*

WASHINGTON -- U.S. Secretary of the Interior Ryan Zinke today announced that the Department will offer 73 million acres offshore Texas, Louisiana, Mississippi, Alabama and Florida for oil and gas exploration and development. The proposed region-wide lease sale scheduled for August 16, 2017 would include all available unleased areas in federal waters of the Gulf of Mexico.

“Opening more federal lands and waters to oil and gas drilling is a pillar of President Trump’s plan to make the United States energy independent,” Secretary Zinke said. “The Gulf is a vital part of that strategy to spur economic opportunities for industry, states and local communities, to create jobs and home-grown energy and to reduce our dependence on foreign oil.”

Proposed Lease Sale 249, scheduled to be livestreamed from New Orleans, will be the first offshore sale under the new Outer Continental Shelf Oil and Gas Leasing Program for 2017-2022 (Five Year Program). Under this new program, ten region-wide lease sales are scheduled for the Gulf, where the resource potential and industry interest are high, and oil and gas infrastructure is well established. Two Gulf lease sales will be held each year and include all available blocks in the combined Western, Central, and Eastern Gulf of Mexico Planning Areas.

The estimated amount of resources projected to be developed as a result of the proposed region-wide lease sale ranges from 0.211 to 1.118 billion barrels of oil and from 0.547 to 4.424 trillion cubic feet of gas. The sale could potentially result in 1.2 to 4.2 percent of the forecasted cumulative OCS oil and gas activity in the Gulf of Mexico. Most of the activity (up to 83% of future production) of the proposed lease sale is expected to occur in the Central Planning Area.

Lease Sale 249 will include about 13,725 unleased blocks, located from three to 230 miles offshore, in the Gulf’s Western, Central and Eastern planning areas in water depths ranging from nine to more than 11,115 feet (three to 3,400 meters). Excluded from the lease sale are blocks subject to the Congressional moratorium established by the [Gulf of Mexico Energy Security Act of 2006](#); blocks that are adjacent to or beyond the U.S. Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap; and whole blocks and partial blocks within the current boundary of the Flower Garden

Banks National Marine Sanctuary.

“To promote responsible domestic energy production, the proposed terms of this sale have been carefully developed through extensive environmental analysis, public comment and consideration of the best scientific information available,” said Walter Cruickshank, the acting director of Interior’s Bureau of Ocean Energy Management (BOEM). “This will ensure both orderly resource development and protection of the environment.”

The lease sale terms include stipulations to protect biologically sensitive resources, mitigate potential adverse effects on protected species and avoid potential conflicts associated with oil and gas development in the region. BOEM’s proposed economic terms include a range of incentives to encourage diligent development and ensure a fair return to taxpayers. The terms and conditions for Sale 249 in the Proposed Notice of Sale are not final. Different terms and conditions may be employed in the Final Notice of Sale, which will be published at least 30 days before the sale.

BOEM estimates that the U.S. Outer Continental Shelf (OCS) contains about 90 billion barrels of undiscovered technically recoverable oil and 327 trillion cubic feet of undiscovered technically recoverable gas. The Gulf of Mexico OCS, covering about 160 million acres, has technically recoverable resources of 48.46 billion barrels of oil and 141.76 trillion cubic feet of gas.

Production from all OCS leases provided 550 million barrels of oil and 1.25 trillion cubic feet of natural gas in FY2016, accounting for 72 percent of the oil and 27 percent of the natural gas produced on federal lands. Energy production and development of new projects on the U.S. OCS supported an estimated 492,000 direct, indirect, and induced jobs in FY2015 and generated \$5.1 billion in total revenue that was distributed to the Federal Treasury, state governments, Land and Water Conservation Fund, and Historic Preservation Fund.

As of March 1, 2017, about 16.9 million acres on the U.S. OCS are under lease for oil and gas development (3,194 active leases) and 4.6 million of those acres (929 leases) are producing oil and natural gas. More than 97 percent of these leases are in the Gulf of Mexico; about 3 percent are on the OCS off California and Alaska.

The current Five Year Program [2012-2017] has one final Gulf lease sale scheduled on March 22, 2017 for Central Planning Area Sale 247. The 2012-2017 Five Year Program has offered about 73 million acres, netted more than \$3 billion in high bids for American taxpayers and awarded more than 2,000 leases.)

All terms and conditions for Gulf of Mexico Region-wide Sale 249 are detailed in the Proposed Notice of Sale (PNOS) information package, which is available at: <http://www.boem.gov/Sale-249/>. Copies of the PNOS maps can be requested from the Gulf of Mexico Region’s Public Information Unit at 1201 Elmwood Park Boulevard, New Orleans, LA 70123, or at 800-200-GULF (4853).

The Notice of Availability of the PNOS will be available today for inspection in the Federal Register at: <http://www.archives.gov/federal-register/public-inspection/index.html> and will be published in the March 7, 2017 *Federal Register*.

###

**From:** lthurn@blm.gov  
**To:** [Michael Nedd](#); [Larry Claypool](#); [Karen Kelleher](#); [Marshall Critchfield](#); [Kathleen Benedetto](#)  
**Cc:** [Ruthie Jefferson](#); [Angela Falwell](#)  
**Subject:** Materials for Monday - National Defense Authorization Act of 2017  
**Date:** Thursday, February 09, 2017 2:24:16 PM  
**Attachments:** [BP\\_NDAA2017\\_02FEB2017.docx](#)  
[Subtitle A Sections 3001 through 3014 \(1\).docx](#)  
[UTTR\\_Exchange\\_072116.pdf](#)

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Please see attachments for Monday's 4:00 pm meeting.

----- Forwarded message -----

From: Torres, Gary <[gtorres@blm.gov](mailto:gtorres@blm.gov)>  
Subject: WO100 BP & WO100 Scheduling Request - NDAA 2017

## INFORMATION/ BRIEFING MEMORANDUM FOR THE DIRECTOR

DATE: February 3, 2017  
FROM: Ed Roberson, State Director, Utah  
SUBJECT: 2017 National Defense Authorization Act (NDAA)  
BLM Requirements – UTSO Next Steps

### BACKGROUND

On December 23, 2016, the NDAA for Fiscal Year 2017 was signed into law. Sections 3001-3014 impose a number of significant requirements upon BLM Utah, generally intended to enhance the mission security and safety of the Utah Test and Training Range (UTTR). Key requirements include formation of a community advisory group, development of a memorandum of agreement, temporary closures of 703,621 acres of BLM lands, a land exchange and mineral withdrawal.

Formation of the community advisory group is to be completed by March 23, 2017; a draft memorandum of agreement is to be completed by June 21, 2017

### DISCUSSION

Overall intent of the law is to enhance the safety and mission security of the supersonic cruise missile and smart weapon tests that occur regularly on UTTR (and over BLM lands). By enacting temporary closures and restricting BLM authorizations on the enhancement area the UTTR will have improved safety and mission security necessary to provide for military readiness.

Key Requirements:

1) Establish a Community Resource Advisory Group

“to provide regular and continuing input to the Secretary and the Secretary of the Air Force on matters involving public access to, use of, and overall management of the BLM land.”

- Applies to the 703,621 acre “enhancement” of UTTR
- No Later than March 22, 2017
- FACA Exempt
- Conduct vote among Indian Tribes “in the vicinity” for a single representative
- 7 year sunset or early termination

2) Memorandum of Agreement (MOA) for limited closure & management consultation on 703,621 acres of BLM land on the edges of the existing DOD lands. MOA must be drafted within 180 days and signed within 1 year. Provisions for public comment and tribal consultation.

- Signed at the State Director level, executed at the District level.
- Requires BLM consultation with UTTR prior to Right of Way issuance within the enhancement area
- Sec 3002 (4) (B) Resolution Framework to reside at State Director Level.

3) Temporary Closures – Subjects 703,621 acres of BLM land to temporary closures to meet military needs (UTTR Expansion).

- 4) Land Exchange – Requires BLM to accept the offer to exchange approximately 84,249 acres of State Institutional Trust Lands Administration (SITLA) land for 95,747 acres of BLM land.
- 5) Mineral Withdrawal(s) – Both the “enhancement area (703, 621 acres) and the BLM lands to be conveyed in the land exchange (95,747 acres) are withdrawn from all forms of entry including mining laws, mineral leasing laws and geothermal leasing laws.

## **NEXT STEPS**

- 1) UTSO and the West Desert District will begin process of forming the Community Resource Advisory Group; development of a draft MOA; tribal consultation.
- 2) UTSO and districts will coordinate with SITLA on the land exchange
- 3) UTSO will assess Realty Staff requirements to accomplish land exchange
- 4) District will engage with UTTR and community advisory group to implement the temporary closures and other requirements.

One Hundred Fourteenth Congress  
of the  
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday,  
the fourth day of January, two thousand and sixteen*

An Act

To authorize appropriations for fiscal year 2017 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “National Defense Authorization Act for Fiscal Year 2017”.

...

**Subtitle A—Authorization For Temporary Closure Of  
Certain Public Land Adjacent To The Utah Test And  
Training Range**

**SEC. 3001. DEFINITIONS.**

In this subtitle:

(1) **BLM LAND.**—The term “BLM land” means certain public land administered by the Bureau of Land Management in the State comprising approximately 703,621 acres, as generally depicted on the map entitled “Utah Test and Training Range Enhancement/West Desert Land Exchange” and dated July 21, 2016.

(2) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

(3) **STATE.**—The term “State” means the State of Utah.

(4) UTAH TEST AND TRAINING RANGE.—The term “Utah Test and Training Range” means the portions of the military land and airspace operating area of the Utah Test and Training Area that are located in the State, including the Dugway Proving Ground.

## SEC. 3002. MEMORANDUM OF AGREEMENT.

(a) MEMORANDUM OF AGREEMENT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of the Air Force shall enter into a memorandum of agreement to authorize the Secretary of the Air Force, in consultation with the Secretary, to impose limited closures of the BLM land for military operations and national security and public safety purposes, as provided in this subtitle.

(2) DRAFT.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary and the Secretary of the Air Force shall complete a draft of the memorandum of agreement required under paragraph (1).

(B) PUBLIC COMMENT PERIOD.—During the 30-day period beginning on the date on which the draft memorandum of agreement is completed under subparagraph (A), there shall be an opportunity for public comment on the draft memorandum of agreement, including an opportunity for the Utah Test and Training Range Community Resource Advisory Group established under section 3005 to provide comments on the draft memorandum of agreement.

(3) MANAGEMENT BY SECRETARY.—The memorandum of agreement entered into under paragraph (1) shall provide that the Secretary shall continue to manage the BLM land in accordance with the Federal Land Policy and Management Act of 1976 ([43 U.S.C. 1701 et seq.](#)) and applicable land use plans, while allowing for the temporary closure of the BLM land in accordance with this subtitle.

(4) PERMITS AND RIGHTS-OF-WAY.—

(A) IN GENERAL.—The Secretary shall consult with the Secretary of the Air Force regarding Utah Test and Training Range mission requirements before issuing new use permits or rights-of-way on the BLM land.

(B) FRAMEWORK.—The Secretary and the Secretary of the Air Force shall establish within the memorandum of agreement entered into under paragraph (1) a framework agreed to by the Secretary and the Secretary of the Air Force for resolving any disagreement on the issuance of permits or rights-of-way on the BLM land.

(5) TERMINATION.—

(A) IN GENERAL.—The memorandum of agreement entered into under paragraph (1) shall be for a term to be determined by the Secretary and the Secretary of the Air Force, not to exceed 25 years.

(B) EARLY TERMINATION.—The memorandum of agreement may be terminated before the date determined under subparagraph (A) if the Secretary of the Air Force determines that the temporary closure of the BLM land is no longer necessary to fulfill Utah Test and Training Range mission requirements.

(b) MAP.—The Secretary may correct any minor errors in the map described in section 3001(1).

(c) LAND SAFETY.—If decontamination of the BLM land is necessary due to an action of the Air Force, the Secretary of the Air Force shall—

(1) render the BLM land safe for public use; and

(2) appropriately communicate the safety of the land to the Secretary on the date on which the BLM land is rendered safe for public use under paragraph (1).

(d) CONSULTATION.—The Secretary shall consult with any federally recognized Indian tribe in the vicinity of the BLM land before entering into any agreement under this subtitle.

(e) GRAZING.—

(1) EFFECT.—Nothing in this subtitle affects the management of grazing on the BLM land.

(2) CONTINUATION OF GRAZING MANAGEMENT.—The Secretary shall continue grazing management on the BLM land pursuant to the Federal Land Policy and Management Act of 1976 ([43 U.S.C. 1701 et seq.](#)) and applicable resource management plans.

(f) MEMORANDUM OF UNDERSTANDING ON EMERGENCY ACCESS AND RESPONSE.—Nothing in this section precludes the continuation of the memorandum of understanding between the Department of the Interior and the Department of the Air Force with respect to emergency access and response, as in existence on the date of enactment of this Act.

(g) WITHDRAWAL.—Subject to valid existing rights, the BLM land is withdrawn from all forms of appropriation under the public land laws, including the mining laws, the mineral leasing laws, and the geothermal leasing laws.

### **SEC. 3003. TEMPORARY CLOSURES.**

(a) IN GENERAL.—If the Secretary of the Air Force determines that military operations (including operations relating to the fulfillment of the mission of the Utah Test and Training Range), public safety, or national security require the temporary closure to public use of any road, trail, or other portion of the BLM land, the Secretary of the Air Force may take such action as the Secretary of the Air Force, in consultation with the Secretary, determines necessary to carry out the temporary closure.

(b) LIMITATIONS.—Any temporary closure under subsection (a)—

(1) shall be limited to the minimum areas and periods that the Secretary of the Air Force determines are required to carry out a closure under this section;

(2) shall not occur on a State or Federal holiday, unless notice is provided in accordance with subsection (c)(1)(B);

(3) shall not occur on a Friday, Saturday, or Sunday, unless notice is provided in accordance with subsection (c)(1)(B); and

(4) (A) if practicable, shall be for not longer than a 3-hour period per day;

(B) shall only be for longer than a 3-hour period per day—

(i) for mission essential reasons; and

(ii) as infrequently as practicable and in no case for more than 10 days per year;  
and

(C) shall in no case be for longer than a 6-hour period per day.

(c) NOTICE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary of the Air Force shall—

(A) keep appropriate warning notices posted before and during any temporary closure; and

(B) provide notice to the Secretary, public, and relevant stakeholders concerning the temporary closure—

(i) at least 30 days before the date on which the temporary closure goes into effect;

(ii) in the case of a closure during the period beginning on March 1 and ending on May 31, at least 60 days before the date on which the closure goes into effect; or

(iii) in the case of a closure described in paragraph (3) or (4) of subsection (b), at least 90 days before the date on which the closure goes into effect.

(2) SPECIAL NOTIFICATION PROCEDURES.—In each case for which a mission-unique security requirement does not allow for the notifications described in paragraph (1)(B), the Secretary of the Air Force shall work with the Secretary to achieve a mutually agreeable timeline for notification.

(d) MAXIMUM ANNUAL CLOSURES.—The total cumulative hours of temporary closures authorized under this section with respect to the BLM land shall not exceed 100 hours annually.

(e) PROHIBITION ON CERTAIN TEMPORARY CLOSURES.—The northernmost area identified as “Newfoundland’s” on the map described in section 3001(1) shall not be subject to any temporary closure between August 21 and February 28, in accordance with the lawful hunting seasons of the State of Utah.

(f) EMERGENCY GROUND RESPONSE.—A temporary closure of a portion of the BLM land shall not affect the conduct of emergency response activities on the BLM land during the temporary closure.

(g) LIVESTOCK.—Livestock authorized by a Federal grazing permit shall be allowed to remain on the BLM land during a temporary closure of the BLM land under this section.

(h) LAW ENFORCEMENT AND SECURITY.—The Secretary and the Secretary of the Air Force may enter into cooperative agreements with State and local law enforcement officials with respect to lawful procedures and protocols to be used in promoting public safety and operation security on or near the BLM land during noticed test and training periods.

#### **SEC. 3004. LIABILITY.**

The United States (including all departments, agencies, officers, and employees of the United States) shall be held harmless and shall not be liable for any injury or damage to any

individual or property suffered in the course of any mining, mineral, or geothermal activity, or any other authorized nondefense-related activity, conducted on the BLM land.

### **SEC. 3005. COMMUNITY RESOURCE ADVISORY GROUP.**

(a) **ESTABLISHMENT.**—Not later than 90 days after the date of enactment of this Act, there shall be established the Utah Test and Training Range Community Resource Advisory Group (referred to in this section as the “Community Group”) to provide regular and continuing input to the Secretary and the Secretary of the Air Force on matters involving public access to, use of, and overall management of the BLM land.

(b) **MEMBERSHIP.**—

(1) **IN GENERAL.**—The Secretary shall appoint members to the Community Group, including—

(A) 1 representative of Indian tribes in the vicinity of the BLM land, to be nominated by a majority vote conducted among the Indian tribes in the vicinity of the BLM land;

(B) not more than 1 county commissioner from each of Box Elder, Tooele, and Juab Counties, Utah;

(C) 2 representatives of off-road and highway use, hunting, or other recreational users of the BLM land;

(D) 2 representatives of livestock permittees on public land located within the BLM land;

(E) 1 representative of the Utah Department of Agriculture and Food; and

(F) not more than 3 representatives of State or Federal offices or agencies, or private groups or individuals, if the Secretary determines that such representatives would further the goals and objectives of the Community Group.

(2) **CHAIRPERSON.**—The members described in paragraph (1) shall elect from among the members of the Community Group—

(A) 1 member to serve as Chairperson of the Community Group; and

(B) 1 member to serve as Vice-Chairperson of the Community Group.

(3) AIR FORCE PERSONNEL.—The Secretary of the Air Force shall appoint appropriate operational and land management personnel of the Air Force to serve as a liaison to the Community Group.

(c) CONDITIONS AND TERMS OF APPOINTMENT.—

(1) IN GENERAL.—Each member of the Community Group shall serve voluntarily and without compensation.

(2) TERM OF APPOINTMENT.—

(A) IN GENERAL.—Each member of the Community Group shall be appointed for a term of 4 years.

(B) ORIGINAL MEMBERS.—Notwithstanding subparagraph (A), the Secretary shall select  $\frac{1}{2}$  of the original members of the Community Group to serve for a term of 4 years and the other  $\frac{1}{2}$  of the original members of the Community Group to serve for a term of 2 years, to ensure the replacement of members shall be staggered from year to year.

(C) REAPPOINTMENT AND REPLACEMENT.—The Secretary may reappoint or replace a member of the Community Group appointed under subsection (b)(1), if—

(i) the term of the member has expired;

(ii) the member has resigned; or

(iii) the position held by the member described in subparagraph (A) through (F) of paragraph (1) has changed to the extent that the ability of the member to represent the group or entity that the member represents has been significantly affected.

(d) MEETINGS.—

(1) IN GENERAL.—The Community Group shall meet not less than once per year, and at such other frequencies as determined by 5 or more of the members of the Community Group.

(2) RESPONSIBILITIES OF COMMUNITY GROUP.—The Community Group shall be responsible for determining appropriate schedules for, details of, and actions for meetings of the Community Group.

(3) NOTICE.—The Chairperson shall provide notice to each member of the Community Group not less than 10 business days before the date of a scheduled meeting.

(4) EXEMPT FROM FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to meetings of the Community Group.

(e) RECOMMENDATIONS OF COMMUNITY GROUP.—The Secretary and Secretary of the Air Force, consistent with existing laws (including regulations), shall take under consideration recommendations from the Community Group.

(f) TERMINATION OF AUTHORITY.—

(1) IN GENERAL.—The Community Group shall terminate on the date that is seven years after the date of enactment of this Act.

(2) EARLY TERMINATION.—The Secretary and the Community Group, acting jointly, may elect to terminate the Community Group before the date provided in subsection (a).

## **SEC. 3006. SAVINGS CLAUSES.**

(a) EFFECT ON WEAPON IMPACT AREA.—Nothing in this subtitle expands the boundaries of the weapon impact area of the Utah Test and Training Range.

(b) EFFECT ON SPECIAL USE AIRSPACE AND TRAINING ROUTES.—Nothing in this subtitle precludes—

(1) the designation of new units of special use airspace; or

(2) the expansion of existing units of special use airspace.

(c) EFFECT ON EXISTING MILITARY SPECIAL USE AIRSPACE AGREEMENT.—Nothing in this subtitle limits or alters the Military Operating Areas of Airspace Use Agreement between the Federal Aviation Administration and the Air Force in effect on the date of enactment of this Act.

(d) EFFECT ON EXISTING RIGHTS AND AGREEMENTS.—Except as otherwise provided in section 3003, nothing in this subtitle limits or alters any existing right or right of access to—

(1) the Knolls Special Recreation Management Area; or

(2) (A) the Bureau of Land Management Community Pits Central Grayback and South Grayback; and

(B) any other county or community pit located within close proximity to the BLM land.

(e) INTERSTATE 80.—Nothing in this subtitle authorizes any additional authority or right to the Secretary or the Secretary of the Air Force to temporarily close Interstate 80.

(f) EFFECT ON LIMITATION ON AMENDMENTS TO CERTAIN INDIVIDUAL RESOURCE MANAGEMENT PLANS.—Nothing in this subtitle affects the limitation established under section 2815(d) of the National Defense Authorization Act for Fiscal Year 2000 ([Public Law 106–65](#); 113 Stat. 852).

(g) EFFECT ON PREVIOUS MEMORANDUM OF UNDERSTANDING.—Nothing in this subtitle affects the memorandum of understanding entered into by the Air Force, the Bureau of Land Management, the Utah Department of Natural Resources, and the Utah Division of Wildlife Resources relating to the reestablishment of bighorn sheep in the Newfoundland Mountains and signed by the parties to the memorandum of understanding during the period beginning on January 24, 2000, and ending on February 4, 2000.

(h) EFFECT ON FEDERALLY RECOGNIZED INDIAN TRIBES.—Nothing in this subtitle alters any right reserved by treaty or Federal law for a Federally recognized Indian tribe for tribal use.

(i) PAYMENTS IN LIEU OF TAXES.—Nothing in this subtitle diminishes, enhances, or otherwise affects any other right or entitlement of the counties in which the BLM land is situated to payments in lieu of taxes based on the BLM land, under section 6901 of title 31, United States Code.

(j) WILDLIFE IMPROVEMENTS.—The Secretary and the Utah Division of Wildlife Resources shall continue the management of wildlife improvements, including guzzlers, in existence as of the date of enactment of this Act on the BLM land.

## **Subtitle B—Bureau Of Land Management Land Exchange With State Of Utah**

### **SEC. 3011. DEFINITIONS.**

In this subtitle:

(1) EXCHANGE MAP.—The term “Exchange Map” means the map prepared by the Bureau of Land Management entitled “Utah Test and Training Range Enhancement/West Desert Land Exchange” and dated July 21, 2016.

(2) FEDERAL LAND.—The term “Federal land” means the Bureau of Land Management land located in Box Elder, Millard, Juab, Tooele, and Beaver Counties, Utah, that is identified on the Exchange Map as “BLM Lands Proposed for Transfer to State Trust Lands”.

(3) NON-FEDERAL LAND.—The term “non-Federal land” means the land owned by the State in Box Elder, Tooele, and Juab Counties, Utah, that is identified on the Exchange Map as—

(A) “State Trust Land Proposed for Transfer to BLM”; and

(B) “State Trust Minerals Proposed for Transfer to BLM”.

(4) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(5) STATE.—The term “State” means the State of Utah, acting through the School and Institutional Trust Lands Administration.

## **SEC. 3012. EXCHANGE OF FEDERAL LAND AND NON-FEDERAL LAND.**

(a) IN GENERAL.—If the State offers to convey to the United States title to the non-Federal land, the Secretary shall—

(1) accept the offer; and

(2) on receipt of all right, title, and interest in and to the non-Federal land, convey to the State (or a designee) all right, title, and interest of the United States in and to the Federal land.

(b) APPLICABLE LAW.—

(1) IN GENERAL.—The land exchange shall be subject to section 206 of the Federal Land Policy and Management Act of 1976 ([43 U.S.C. 1716](#)) and other applicable law.

(2) EFFECT OF STUDY.—The Secretary shall carry out the land exchange under this subtitle notwithstanding section 2815(d) of the National Defense Authorization Act for Fiscal Year 2000 ([Public Law 106–65](#); 113 Stat. 852).

(3) LAND USE PLANNING.—The Secretary shall not be required to undertake any additional land use planning under section 202 of the Federal Land Policy and Management Act of 1976 ([43 U.S.C. 1712](#)) before the conveyance of the Federal land under this subtitle.

(c) VALID EXISTING RIGHTS.—The exchange authorized under subsection (a) shall be subject to valid existing rights.

(d) TITLE APPROVAL.—Title to the Federal land and non-Federal land to be exchanged under this subtitle shall be in a format acceptable to the Secretary and the State.

(e) APPRAISALS.—

(1) IN GENERAL.—The value of the Federal land and the non-Federal land to be exchanged under this subtitle shall be determined by appraisals conducted by 1 or more independent and qualified appraisers.

(2) STATE APPRAISER.—The Secretary and the State may agree to use an independent and qualified appraiser retained by the State, with the consent of the Secretary.

(3) APPLICABLE LAW.—The appraisals under paragraph (1) shall be conducted in accordance with nationally recognized appraisal standards, including, as appropriate, the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.

(4) MINERALS.—

(A) MINERAL REPORTS.—The appraisals under paragraph (1) may take into account mineral and technical reports provided by the Secretary and the State in the evaluation of minerals in the Federal land and non-Federal land.

(B) MINING CLAIMS.—Federal land that is encumbered by a mining or millsite claim located under sections 2318 through 2352 of the Revised Statutes (commonly known as the “Mining Law of 1872”) ([30 U.S.C. 21 et seq.](#)) shall be appraised in accordance with standard appraisal practices, including, as appropriate, the Uniform Appraisal Standards for Federal Land Acquisition.

(C) VALIDITY EXAMINATION.—Nothing in this subtitle requires the Secretary to conduct a mineral examination for any mining claim on the Federal land.

(5) APPROVAL.—An appraisal conducted under paragraph (1) shall be submitted to the Secretary and the State for approval.

(6) DURATION.—An appraisal conducted under paragraph (1) shall remain valid for 3 years after the date on which the appraisal is approved by the Secretary and the State.

(7) COST OF APPRAISAL.—

(A) IN GENERAL.—The cost of an appraisal conducted under paragraph (1) shall be paid equally by the Secretary and the State.

(B) REIMBURSEMENT BY SECRETARY.—If the State retains an appraiser in accordance with paragraph (2), the Secretary shall reimburse the State in an amount equal to 50 percent of the costs incurred by the State.

(f) CONVEYANCE OF TITLE.—It is the intent of Congress that the land exchange authorized under this subtitle shall be completed not later than 1 year after the date of final approval by the Secretary and the State of the appraisals conducted under subsection (e).

(g) PUBLIC INSPECTION AND NOTICE.—

(1) PUBLIC INSPECTION.—At least 30 days before the date of conveyance of the Federal land and non-Federal land, all final appraisals and appraisal reviews for the Federal land and non-Federal land to be exchanged under this subtitle shall be available for public review at the office of the State Director of the Bureau of Land Management in the State.

(2) NOTICE.—The Secretary or the State, as applicable, shall publish in a newspaper of general circulation in Salt Lake County, Utah, a notice that the appraisals conducted under subsection (e) are available for public inspection.

(h) CONSULTATION WITH INDIAN TRIBES.—The Secretary shall consult with any federally recognized Indian tribe in the vicinity of the Federal land and non-Federal land to be exchanged under this subtitle before the completion of the land exchange.

(i) EQUAL VALUE EXCHANGE.—

(1) IN GENERAL.—The value of the Federal land and non-Federal land to be exchanged under this subtitle—

(A) shall be equal; or

(B) shall be made equal in accordance with paragraph (2).

(2) EQUALIZATION.—

(A) SURPLUS OF FEDERAL LAND.—

(i) IN GENERAL.—If the value of the Federal land exceeds the value of the non-Federal land, the value of the Federal land and non-Federal land shall be

equalized by the State conveying to the Secretary, as necessary to equalize the value of the Federal land and non-Federal land—

(I) State trust land parcel 1, as described in the assessment entitled “Bureau of Land Management Environmental Assessment UT–100–06–EA”, numbered UTU–82090, and dated March 2008; or

(II) State trust land located within any of the wilderness areas or national conservation areas in Washington County, Utah, established under subtitle O of title I of the Omnibus Public Land Management Act of 2009 ([Public Law 111–11](#); 123 Stat. 1075).

(ii) ORDER OF CONVEYANCES.—Any non-Federal land required to be conveyed to the Secretary under clause (i) shall be conveyed until the value of the Federal land and non-Federal land is equalized.

(B) SURPLUS OF NON-FEDERAL LAND.—If the value of the non-Federal land exceeds the value of the Federal land, the value of the Federal land and the non-Federal land shall be equalized—

(i) by the Secretary making a cash equalization payment to the State, in accordance with section 206(b) of the Federal Land Policy and Management Act of 1976 ([43 U.S.C. 1716\(b\)](#)); or

(ii) by removing non-Federal land from the exchange.

(j) GRAZING PERMITS.—

(1) IN GENERAL.—If the Federal land or non-Federal land exchanged under this subtitle is subject to a lease, permit, or contract for the grazing of domestic livestock in effect on the date of acquisition, the Secretary and the State shall allow the grazing to continue for the remainder of the term of the lease, permit, or contract, subject to the related terms and conditions of user agreements, including permitted stocking rates, grazing fee levels, access rights, and ownership and use of range improvements.

(2) RENEWAL.—To the extent allowed by Federal or State law, on expiration of any grazing lease, permit, or contract described in paragraph (1), the holder of the lease, permit, or contract shall be entitled to a preference right to renew the lease, permit, or contract.

(3) CANCELLATION.—

(A) IN GENERAL.—Nothing in this subtitle prevents the Secretary or the State from canceling or modifying a grazing permit, lease, or contract if the Federal land or

non-Federal land subject to the permit, lease, or contract is sold, conveyed, transferred, or leased for non-grazing purposes by the Secretary or the State.

(B) LIMITATION.—Except to the extent reasonably necessary to accommodate surface operations in support of mineral development, the Secretary or the State shall not cancel or modify a grazing permit, lease, or contract because the land subject to the permit, lease, or contract has been leased for mineral development.

(4) BASE PROPERTIES.—If non-Federal land conveyed by the State under this subtitle is used by a grazing permittee or lessee to meet the base property requirements for a Federal grazing permit or lease, the land shall continue to qualify as a base property for—

(A) the remaining term of the lease or permit; and

(B) the term of any renewal or extension of the lease or permit.

(k) WITHDRAWAL OF FEDERAL LAND FROM MINERAL ENTRY PRIOR TO EXCHANGE.—Subject to valid existing rights, the Federal land to be conveyed to the State under this subtitle is withdrawn from mineral location, entry, and patent under the mining laws pending conveyance of the Federal land to the State.

### **SEC. 3013. STATUS AND MANAGEMENT OF NON-FEDERAL LAND ACQUIRED BY THE UNITED STATES.**

(a) IN GENERAL.—On conveyance to the United States under this subtitle, the non-Federal land shall be managed by the Secretary in accordance with the Federal Land Policy and Management Act of 1976 ([43 U.S.C. 1701 et seq.](#)) and applicable land use plans.

(b) NON-FEDERAL LAND WITHIN CEDAR MOUNTAINS WILDERNESS.—On conveyance to the Secretary under this subtitle, the non-Federal land located within the Cedar Mountains Wilderness shall, in accordance with section 206(c) of the Federal Land Policy Act of 1976 ([43 U.S.C. 1716\(c\)](#)), be added to, and administered as part of, the Cedar Mountains Wilderness.

(c) NON-FEDERAL LAND WITHIN WILDERNESS AREAS OR NATIONAL CONSERVATION AREAS.—On conveyance to the Secretary under this subtitle, non-Federal land located in a national wilderness area or national conservation area shall be managed in accordance with the applicable provisions of subtitle O of title I of the Omnibus Public Land Management Act of 2009 ([Public Law 111–11](#)).

### **SEC. 3014. HAZARDOUS SUBSTANCES**

(a) COSTS.—Except as provided in subsection (b), the costs of remedial actions relating to hazardous substances on land acquired under this subtitle shall be paid by those entities responsible for the costs under applicable law.

(b) REMEDIATION OF PRIOR TESTING AND TRAINING ACTIVITY.—The Secretary of the Air Force shall bear all costs of remediation required as a result of the previous testing of military weapons systems and the training of military forces on non-Federal land to be conveyed to the United States under this subtitle.



**From:** Moran, Jill  
**To:** [Stewart, Shannon](#)  
**Cc:** [Seidlitz, Joseph \(Gene\)](#); [Winston, Beverly](#); [mike nedd](#); [Jerome Perez](#); [Kathleen Benedetto](#)  
**Subject:** Re: Materials for Onshore Order briefng  
**Date:** Tuesday, March 28, 2017 4:37:53 PM

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Great. Thanks!

On Tue, Mar 28, 2017 at 4:32 PM, Stewart, Shannon <[scstewar@blm.gov](mailto:scstewar@blm.gov)> wrote:

Jill

Attached is the revised paper in track changes which addresses your questions. Please send us the final when it is complete. This briefing is scheduled for Friday 3/31.

Thanks  
Shannon

On Tue, Mar 21, 2017 at 4:43 PM, Moran, Jill <[jcmoran@blm.gov](mailto:jcmoran@blm.gov)> wrote:

Hi Shannon,

I made some edits, but just related to acronyms, etc. - nothing substantive.

I did, however, ask three questions that I think Rich and Kate will want to see in the briefing paper. They are in track changes in the document.

Let me know if you have any questions. This briefing isn't until March 31 so we have some time.

Thanks!  
Jill

On Fri, Mar 17, 2017 at 11:13 AM, Stewart, Shannon <[scstewar@blm.gov](mailto:scstewar@blm.gov)> wrote:

Hi Gene and Jill

Attached are the briefing materials for Monday's meeting on Onshore Orders 3, 4 and 5. We are also submitting a briefing paper on the venting and flaring rule and hydraulic fracturing rule. These will not be the focus of the meeting on Monday but may come up then or in other conversations.

Thanks  
Shannon

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**From:** Cason, James  
**To:** [Rees, Gareth](#)  
**Subject:** Fwd: Meeting Request  
**Date:** Sunday, February 19, 2017 1:26:24 PM  
**Attachments:** [Energy Regulatory Priorities.pdf](#)

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Have you worked out a meeting time for API? Didn't want it to fall through the cracks.

----- Forwarded message -----

From: Holly Hopkins <hopkinsh@api.org>  
Date: Fri, Feb 3, 2017 at 11:44 AM  
Subject: Meeting Request  
To: Jim Cason <James\_Cason@ios.doi.gov>

Jim,

In December, API made a request to meet with the DOI Transition/Landing team to talk about issues and opportunities for the Trump Administration. This request was never fulfilled. We would like to again make the request to meet with you and other appropriate DOI political staff to discuss these issues. Attached outlines our top priorities. Please let me know what works for you and do not hesitate to call if you have questions. Have a great weekend.

Thanks,

Holly A. Hopkins

Sr. Policy Advisor, Upstream

American Petroleum Institute

1220 L Street, NW

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hopkinsh@api.org <<mailto:hopkinsh@api.org>>

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This transmission contains information that is privileged and confidential and is intended solely for use of the individual(s) listed above. If you received the communication in error, please notify me immediately. Any

dissemination or copying of this communication by anyone other than the individual(s) listed above is prohibited.

## **ENERGY POLICY PRIORITIES**

Executive agencies should implement policies that:

1. Promote access to domestic oil and gas resources;
2. Ensure the development of energy infrastructure;
3. Ensure streamlined, timely planning, permitting and project review;

Executive agencies should ensure that regulations:

1. Actually serve the regulatory purpose ;
2. Are cost-effective (costs do not outweigh the benefits);
3. Feasible;
4. Are well-defined and predictable;
5. Are scientifically supported;
6. Are consistent with statute;
7. Are not arbitrary;
8. Promote streamlined permitting;
9. Promote, rather than stifle, innovation;
10. Defer to industry standards and best practices where applicable;
11. Encourage investment in U.S. projects.

Executive agencies should defer to state agencies to oversee the regulation of drilling, completion and production of oil and natural gas. State agencies have a long history of regulating these activities, and they are best able to tailor the regulations to the unique geology, topography, hydrology and general social conditions that exist within the state.

Executive agencies should review the abuse of the Endangered Species Act (ESA) to ensure that it is not arbitrarily used to restrict economic opportunities. State governments have successfully worked with private industry to preserve species and habitat. Executive agencies should work with and defer to state governments as it relates to the ESA.

ISSUE NUMBER	RULE OR POLICY OF CONCERN	DEPARTMENT OR AGENCY	ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES)	OPTIONS FOR REDRESS
<b>Priorities for Immediate Action</b>				
1.	BLM Waste Prevention, Production Subject to Royalties, and Resource Conservation (Nov. 18, 2016, 81 Fed. Reg. 83008)	BLM	Rulemaking goes above and beyond BLM regulatory authority to propose air quality-related requirements unrelated to that authority, and impermissibly redefines long-standing principles of resource conservation that threaten to undermine existing lease rights and orderly development of oil and gas on BLM-managed lands. Efforts will be undertaken to repeal the rule.	Priority target for repeal.
2.	Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources (NSPS OOOOa rule) (June 3, 81 Fed. Reg. 35824)	EPA	Final rulemaking directly regulates “methane” as a pollutant. Under the Clean Air Act, this triggers the development of a regulation to address <i>existing</i> sources across the segments. Regulation of existing sources should be avoided.	Judicial review ongoing. Potential revisiting of process EPA undertook that failed to demonstrate that the source category represents a “significant contribution” to endangering public health and welfare. Continue to work technical issues through administrative reconsideration process.
3.	BOEM Air Quality Control, Reporting and Compliance Rule  <u>Final Rule has not been published yet.</u>	BOEM	Proposed rule was issued prematurely in advance of the completion of ongoing BOEM air quality studies. BOEM has not demonstrated to date that OCS sources significantly affect onshore air quality as required by OCSLA. BOEM needs to finish its ongoing air quality studies to	If final rule published before Obama Administration leaves office it should be repealed or withdrawn prior to implementation.

ISSUE NUMBER	RULE OR POLICY OF CONCERN	DEPARTMENT OR AGENCY	ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES)	OPTIONS FOR REDRESS
			<p>determine appropriate level of regulation.</p> <p>The costs of the rule have been significantly underestimated.</p> <p>The proposed rule established an evaluation process that would increase the need for operators to perform costly stack testing and air quality modelling and could require retrofit of existing infrastructure or installation of new equipment which may not always be technically or economically. The proposed definition of “facility” was unworkable in that it lumped proximate sources together and treated them as one source. The rule also attempted to regulate emissions of mobile support craft (service boats) which is outside BOEM jurisdiction.</p>	<p>If final rule not published, the new administration should complete air quality studies prior to any further action.</p>
4.	<p><b>ONRR Amendments to Civil Penalty Regulations</b> (August 1, 81 Fed. Reg. 50306)</p>	<p><b>Office of Natural Resources Revenue (ONRR)</b></p>	<p>In a variety of ways, this rule improperly and significantly increases liability on federal oil and gas lessees for minor and inadvertent reporting and recordkeeping errors. These changes not only are highly problematic for industry but also conflict with the will of Congress as expressed through the text and structure of the federal oil and gas royalty law. The desired outcome for this rule would be repeal and return to the status quo prior to its issuance.</p>	<p>The new administration can conduct a rulemaking that would repeal the rule.</p>
5.	<p><b>ONRR Consolidated Federal Oil &amp; Gas and Federal &amp; Indian Coal Valuation Reform</b> (July 1, 2016 81 Fed. Reg.</p>	<p><b>ONRR</b></p>	<p>This rule creates uncertainty and imposes unsupported limits regarding the valuation of oil and gas production</p>	<p>The new administration can conduct a rulemaking</p>

ISSUE NUMBER	RULE OR POLICY OF CONCERN	DEPARTMENT OR AGENCY	ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES)	OPTIONS FOR REDRESS
	43338)		for royalty purposes. Most significantly, it allows ONRR to second-guess payors' calculation of value and deductions. It also establishes inappropriate limits on deductions, including the elimination of a significant deduction for subsea transportation of production. The rule is positive in that it allows lessors to elect a simplified "index price" valuation in certain cases, but the implementation of that option is highly flawed. The desired outcome for this rule would be an improved "index price" option and elimination of other aspects of the rule.	that would repeal or amend the rule.
6.	<b>BOEM/BSEE Oil and Gas and Sulfur Operations on the Outer Continental Shelf-Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf</b> (July 15, 2016 81 Fed. Reg. 46477)	<b>BSEE-BOEM</b>	Overall these rules favor prescriptive requirement when performance-based requirements would better serve. Chief among these, the rule requires a standby relief rig for exploration drilling projects and does not consider other barrier technologies. The rules impose a requirement for a redundant planning document – the Integrated Operations Plan or IOP.	New Administration can repropose rule, or can pursue through new rulemaking the removal of the standby rig, IOP, cuttings discharge, and other problematic sections.
7.	<b>Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category</b> , 81 Fed. Reg. 124, 41845 (June 28, 2016) – published December 7, 2016.	<b>EPA</b>	The rule was problematic in several ways: 1) It offered no environmental benefits and possible environmental and consequences (POTWs are already prohibited from accepting waters outside their permitted discharge limitations but this would it would cause environmental harm by permanently removing one of the few discharge options by which industry can return	Candidate for repeal.

ISSUE NUMBER	RULE OR POLICY OF CONCERN	DEPARTMENT OR AGENCY	ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES)	OPTIONS FOR REDRESS
			<p>water to the hydrologic cycle and deprive POTWs of the economic benefits of accepting discharge related flows within their permit limits merely because of the origin of the water); 2) relies on a definition of unconventional previously used at the federal level only for statistical purposes which conflicts with state definitions (causing unintended consequences); 3) was based on a limited and largely regional data set (ironically from one of the regions where the rule conflicts with the applicable state definitions); 4) relied upon insufficient analysis and procedure (with EPA failing to conduct the statutorily required analysis to support their circular logic); and 5) lacked internal coordination within EPA (EPA handled the issue separately from the larger ongoing study on the use of centralized waste treatment facilities, contrary to the holistic approach recommended in the hydraulic fracturing drinking water study).</p>	
8.	<p><b>BLM Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; <u>Site Security</u></b></p>	BLM	<p>Even with a new provision in the final rule to allow grandfathering of some very low production wells, this rule imposes significant costs on existing production, with the likelihood of expanding many site footprints, and with negligible federal revenue benefits. Retroactive application of the Proposed Rule will have profound effects both</p>	<p>Candidate for repeal. Alternatively, New Administration could repropose rule, providing for grandfathering existing facilities, or by setting higher production threshold</p>

ISSUE NUMBER	RULE OR POLICY OF CONCERN	DEPARTMENT OR AGENCY	ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES)	OPTIONS FOR REDRESS
			legally and practically for thousands of existing well sites currently in operation. Retroactive application of the Proposed Rule may result in termination of many existing approvals potentially leading to premature cessation of existing production and raising breach of contract, due process, and takings issues.	for compliance.
9.	<b>BLM Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of <u>Oil</u></b>	<b>BLM</b>	The prescriptive nature of the proposal's requirements, which repeats the error of the original Onshore Order No. 4 and will preclude implementation of newly developed measurement practices and technologies as they become available; the removal of critical standard-setting and adjudicatory functions from the notice-and comment rulemaking process, placing them instead in the hands of a BLM-appointed "Production Measurement Team" ("PMT") or leaving standard-setting to future BLM discretion. Timelines that ignore the practical difficulties – both for industry and the agency – associated with compliance. Removal of the enforcement regime from the regulations and placing it in as-yet unseen "guidance documents".	Candidate for repeal. Alternatively, New Administration could repropose rule, providing for grandfathering existing wells, extending compliance timeline, shifting to a performance-standard rather than prescriptive approach, or by setting higher production threshold for compliance.
10.	<b>BLM Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of <u>Gas</u></b>	<b>BLM</b>	BLM's misapprehension of current industry standards, resulting in a proposal that requires adherence to a set of prescriptive standards that does	Candidate for repeal. Alternatively, New Administration could repropose rule,

ISSUE NUMBER	RULE OR POLICY OF CONCERN	DEPARTMENT OR AGENCY	ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES)	OPTIONS FOR REDRESS
			not accommodate current or future practices and technologies. BLM’s gross underestimation of the costs associated with implementation of the Proposed Rule, and imposition of compliance timelines that will be impossible to meet. Removal of critical standard-setting and adjudicatory functions from the notice-and-comment rulemaking process, placing them instead in the hands of a BLM–appointed “Production Measurement Team” (“PMT”) or leaving standard-setting to future BLM discretion.	providing for grandfathering existing wells, extending compliance timeline, shifting to a performance-standard rather than prescriptive approach, or by setting higher production threshold for compliance.
11.	<b>Information Collection Effort for Oil and Gas Facilities</b> (Methane and VOCs for existing sources) (September 29, 81 Fed. Reg. 66962)	<b>EPA</b>	EPA sent extensive information collection request to be conducted in two parts. Significant burden associated with ICR to complete within deadlines (60 days for Part 1 and 180 days for Part 2).	Continue to work with EPA to secure additional time for members to respond, secure clarifications as needed, and work with agency on data analysis and use.
12.	<b>BLM Resource Management Planning</b> (February 25, 2016, 81 Fed. Reg. 9674)	<b>BLM</b>	Planning 2.0—as a whole—changes the BLM’s resource management planning process, and introduces significant uncertainty into the process by numerous provisions that create ambiguous standards or otherwise expand agency discretion. A piecemeal approach to Planning 2.0 that precludes the public from being able to review, analyze, and comment on all the various components of the agency’s new	Candidate for repeal.

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			planning approach that will modify or replace BLM’s current land use planning practices. A process redesigned by the Proposed Planning Rule would likely disfavor multiple use interests, including the development of oil and natural gas resources on public lands, by potentially subjecting each step in the process to a new round of objections by parties committed to opposition of resource development.	
13.	<b>Final guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews</b> , White House, Council on Environmental Quality, signed August 1, 2016.	<b>CEQ</b>	Greatly expands NEPA expanding GHG consideration for reviews of new and modified operations, and review could include very detached upstream and downstream GHG impacts. This goes well beyond the intended scope of NEPA, could be used as a tool to deny oil and gas development opportunities, and has been used as such a tool by industry opponents.	Rescission
14.	<b>BOEM Financial Assurance NTL No. 2016-N01</b> , 81 Fed. Reg. 46599 (July 18, 2016).	<b>BOEM</b>	BOEM’s financial assurance NTL introduced a new methodology to evaluate the financial strength of a company that is flawed. The new policy also severely limits the ability of companies to self-insure to cover decommissioning liabilities and the agency has essentially placed the overwhelming burden of fixing a perceived problem on the industry. These problems are exacerbated by potentially flawed decommissioning	Publish a revised NTL with a new implementation plan. Consider need for rulemaking as appropriate.

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			<p>cost data being used to calculate liabilities.</p> <p>BOEM has recognized that there are problems with the NTL and is working to correct them. However, the implementation schedule currently in place will not allow sufficient time to adequately address all the issues.</p> <p>BOEM must establish a reasonable timeline for implementation that will allow the flaws to be corrected.</p>	
15.	<p><b>Presidential Memorandum “Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment”</b>, the Presidential proclamation that set “no net loss” as a shorthand objective, and states that environmental goals (not simply positive environmental effects) are to be a criterion of future economic and national security actions. November 3, 2015 (80 FR 68743).</p>	<p><b>White House</b></p>	<p>Introduces criterion for federal permitting and project approval decisions that will be subject to widely varying interpretations, and that in many cases will countermand the direction of statute.</p>	<p>Seek revocation.</p>
16.	<p><b>FWS Revisions to the U.S. Fish and Wildlife Service Mitigation Policy (broad policy)</b>, originally published 81 Fed. Reg. 12,380 (Mar. 8, 2016). Final Policy published November 21, 2016 at 81 Fed. Reg. 83440. FWS-HQ-ES-2015-0126.</p>	<p><b>FWS-NMFS</b></p>	<p>The Policy applies to both listed and unlisted species, even though states are charged with the management of unlisted species.</p> <p>The Policy establishes a uniform mitigation goal that applies to all actions without distinguishing statutory limits and therefore may be applied inconsistently with statutory authority.</p> <p>The Policy’s preference for advance mitigation may delay project</p>	<p>Seek revocation.</p>

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			<p>authorizations if mitigation is unavailable at the time of impacts. The Policy does not clearly address how to reconcile its mitigation goal and elements with mitigation requirements of other agencies, such as those associated with permits under section 404 of the Clean Water Act. The Policy’s direction to avoid all “high-value” habitats may cause the FWS or other federal agencies to “veto” projects. Moreover, because the Policy does not clearly define what habitats are considered high value, the Policy may cause agencies to conservatively avoid more habitat than necessary.</p>	
17.	<p><b>FWS Draft Endangered Species Act Compensatory Mitigation Policy (specific to ESA impacts)</b>, originally published at 81 Fed. Reg. 61.032 (September 2, 2016). FWS-HQ-ES-2015-0165.</p>	FWS	<p>The Draft Compensatory Mitigation Policy violates the ESA. The Service’s decision to significantly expand the list of threatened and endangered species does not justify this expansive rewriting of the Service’s mitigation framework. The Draft Policy’s “no net loss/net gain” requirements, additionality requirements and mitigation ratios, advance mitigation requirements, and definition of “at-risk species” are inconsistent with and violate a number of federal environmental and wildlife statutes and policies. The Draft Policy is impermissible because it cannot be credibly construed as a mere policy statement or simply guidance to Service personnel. It is a proposed rule that, if</p>	Seek revocation.

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			finalized, would fundamentally change the Service’s compensatory mitigation requirements, create substantive new obligations, and expand the jurisdiction of FWS through interpretations of numerous statutes.	
18.	<b>NOAA/NMFS Acoustic Criteria Technical Guidance</b> , 81 Fed. Reg. 51694 (August 4, 2016).	<b>NMFS</b>	Guidance is difficult and costly to implement and unable to produce realistic metrics of impact and mitigation threshold ranges or exclusion zones. Significant changes to the thresholds applicable to low frequency (LF) cetaceans that is not consistent with the best available science. Many other technical problems that need to be addressed.	Retract and revise Guidance.
19.	<b>2010 Congressionally-directed Study on the Relationship Between Hydraulic Fracturing and Drinking Water.</b>	<b>EPA</b>	A draft Assessment report was released on June 4, 2015 with the key finding, <i>“the Assessment shows hydraulic fracturing activities have not led to widespread, systemic impacts to drinking water resources.”</i> The SAB Panel provided its recommendation report to the Administrator on August 10, 2016 and a Final assessment was released on December 13 with a revised final conclusion that hydraulic fracturing activities <u>can</u> impact drinking water resources and EPA identifies factors that influence these impacts.	Recognition that extensive scientific data <u>does</u> exist to support EPA’s original topline conclusion and that no additional scientific work was undertaken by the Agency, following the SAB peer review, leading to the final revised conclusion.
20.	<b>BSEE Oil and Gas and Sulfur Operations in the Outer Continental Shelf—</b>	<b>BSEE</b>	There are still provisions of the final WCR that are problematic for industry.	New Administration can revise rule or issue

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	<b>Blowout Preventer Systems and Well Control</b> ; Final Rule 81 Fed. Reg. 25888 (April 29, 2016)		We look forward to working with the new Administration to address those provisions of the rule that are still unworkable. Whether through interpretations, clarifications or revisions to the rule.	guidance to ensure consistent and workable compliance.
21.	<b>Clean Water Rule: Definition of "Waters of the United States,"</b> 80 Fed. Reg. 37,054, (June 29, 2015).	<b>EPA and the U.S. Army Corps of Engineers</b>	Problems with the final Waters of the U.S. Rule include: 1) the Rule is vague in describing features that are purportedly waters of the U.S. (e.g., "tributary," "adjacent waters," and "significant nexus"), leaving uncertainty which makes informed decisions impossible without case-by-case determinations; 2) the Rule is overly broad, including many land and water features not within the scope of reasonable interpretation under the Clean Water Act (CWA) and exceeding the Agencies' Authority under the Commerce Clause; 3) the Rule relied upon EPA's Connectivity Report, which was still under review by EPA's Science Advisory period during the entire comment period for the Rule and after the comment period closed, EPA made meaningful changes to the Connectivity Report , depriving the public of an opportunity to comment on or view the final scientific conclusions in the Connectivity Report during the comment period for the Rule and refusing to extend the comment period to allow for public comment period on this critical aspect of the Rule; 5) EPA	Seek revocation.

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			<p>used federal funds to engage in a substantial advocacy campaign for the Proposed Rule to influence Members of Congress, state government officials, and the general public through aggressive social media tactics that generated superficial support for the Rule through Twitter and Thunderclap, soliciting non-specific statements on clean water and treating these “comments” as support for the Proposed Rule; 6) EPA made substantial changes to the Rule between publication of the Proposed Rule and promulgation of the Final Rule without inviting additional comments from the public; and 7) EPA conducted a flawed cost-benefit analysis that dramatically underestimated and omitted certain key costs from the Rule and overestimated certain benefits of the Rule.</p>	
22.	<p><b>DOI/BOEM 2017-2022 Proposed Final 5-Year OCS Leasing Program</b>, 81 Fed. Reg. 84612 (November 23, 2016).</p> <p><b>Presidential Withdrawal of Areas in Alaska and Atlantic pursuant to section 12(a) of the OCSLA.</b> Announced on December 20, 2016.</p>	<b>BOEM and White House</b>	<p>No lease sales scheduled in Alaska or Atlantic OCS.</p> <p>Very questionable rationale for not including; record actually supports inclusion.</p> <p>Need to preserve 2017-2022 Program while we work to establish a new program that would include additional areas for leasing.</p> <p>New Administration should confirm that 600,000 plus comments supportive of an expansive program were submitted versus a great deal less in opposition.</p>	<p><u>Administration</u> – Begin development of new 5-year Program. Need to determine how far back in process we would need to go to add Atlantic and/or Alaska. Any other areas would likely need to begin at Step 1 of process (Call for Information).</p> <p><u>Congress</u> – Pass</p>

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			Section 12(a) decision removes prospective oil and gas region from consideration for future leasing programs.	<p>legislation that directs additional sales to be held under the 2017-2022 Program.</p> <p>President should issue a Memorandum on Modification of the Withdrawal of Areas of the United States Outer Continental Shelf From Leasing Disposition, reversing the decision to withdraw the Alaska and Atlantic areas.</p>
23.	<b>NMFS, Proposed Incidental Harassment Authorization (IHA) Regulations for GOM Geological and Geophysical Activities</b>	<b>NMFS BOEM</b>	Litigation settlement agreement allowing ongoing G&G activities in GOM expires on September 30, 2017. Regulations must be finalized by this date, and industry fully supports finalization of a reasonable final rule. However, recent BOEM document's (Draft PEIS and Rulemaking Petition) make the probability of a favorable regulatory outcome less likely. In addition, NMFS lack of progress on drafting the proposed rule makes it unlikely that the September 230, 2017 deadline will be met.	Need to assess legal options before an appropriate strategy recommendation can be made.
24.	<b>Hydraulic Fracturing on Federal and Indian Lands</b> , 78 Fed. Reg. 31,635 (March 26, 2015)	<b>BLM</b>	Duplicative with state regulatory requirements. Adds requirements that are not reflective of actual operations, geology or the science. Among other	Rule has been struck down in litigation; case is on appeal by the government. Rule

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			things, problematic issues include definition of usable water, integrity testing requirements, limitations on obtaining a variance for state regulations.	should be rescinded, or rule should be revised greatly to address technical issues and allow for variances for state regulations.
	<b>Priorities for Action in Near and Long Term</b>			
25.	<b>OSHA Revisions to Process Safety Management Regulations</b>	<b>OSHA</b>	OSHA is considering the expansion of its Process Safety Management regulations to drilling and completion activities, and it is also considering the removal of enforcement discretion over upstream production activities. OSHA's PSM regulations are not fully transferable and fit for purpose with upstream activities. Furthermore, various standards and regulations are in place to prevent safety incidents in the upstream area. Efforts are ongoing to review the safety data, determine if there are gaps, and work with OSHA to find the best, fit for purpose solution to fill any gaps.	New Administration should focus on the best safety approach for upstream activities.
26.	<b>BSEE Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Oil and Gas Production Safety Systems; Final Rule 81 Fed. Reg. 61834 (September 7, 2016)</b>	<b>BSEE</b>	There are still provisions of the final Production Safety System rule that are problematic for industry. We look forward to working with the new Administration to address those provisions of the rule that are still unworkable. Whether through interpretations, clarifications or revisions to the rule.	New Administration can revise rule or issue guidance to ensure consistent and workable compliance.

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27.	<b>Joint U.S. Fish and Wildlife Service and National Marine Fisheries Service Habitat Conservation Planning Handbook</b>	<b>FWS-NMFS</b>	FWS and NOAA jointly published a proposed revision to the agencies' 'Conservation Planning Handbook' in June of 2016. API, joined by several other industry trades, submitted comments in July 2016. These comments requested that the Services withdraw the proposed Handbook because it prescribes an overly rigid framework that will stymie voluntary conservation efforts and stifle responsible development. The services should create an appropriate guide for streamlining the developing and processing of HCPs that incentivizes voluntary conservation, including efficient collaboration and participation in the HCP process, and that provides regulated entities with reasonable and rational means to achieving approval for incidental take programs within the Services' statutory and regulatory authority.	Seek withdrawal and reproposal
28.	<b>FWS Draft Policy on Interpretation of the Phrase "Significant Portion of its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species,"</b> originally published at 76 Fed. Reg. 76987 (Dec. 9, 2011). Final Policy published July 1, 2014. FWS-R9-ES-2011-0031.	<b>FWS</b>	Additional clarification is required in some instances. These include rigorous administration of the "high threshold" standard, if the standard is not to result in overprotection of species in areas where they are not under threat. The Services should modify the Draft Policy to create a strong presumption that critical habitat will be designated <i>only</i> within the SPR, if conditions within the SPR represent the basis for listing; and	Seek reproposal to address problematic issues.

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			to allow under certain conditions for the listing, as threatened, of a species that qualifies as threatened based on its status in all of its range, but is endangered in an SPR.	
29.	<b>Arctic National Wildlife Refuge, Alaska; Revised Comprehensive Conservation Plan and Final Environmental Impact Statement</b> , published 80 Fed. Reg. 4303 (January 27, 2015). FWS–R7–R–2012–N207.	<b>FWS</b>	ANILCA restricts executive authority to consider additional conservation units (including new wilderness areas) in Alaska except as authorized by ANILCA itself or further acts of Congress. With specific reference to the coastal plain of the Arctic NWR, where Congress has not at this time authorized oil and natural gas development to take place, experience in other areas demonstrates that the missions of the USFWS for wildlife conservation and ecosystem management, and oversight of recreational and subsistence uses can be achieved without designation of the coastal plain as wilderness.	Seek revocation
30.	<b>NOAA Arctic Vision and Strategy</b> (February 2011), now integrated into NOAA Arctic Research Program and Arctic Action Plan. RIN 0648-XT64.	<b>NOAA</b>	Arctic policy decisions should avoid subjecting management of the region to new layers of government bureaucracy, or additional laws, regulations, or the creation of new advisory groups with unclear mandates that could lead to inter-agency disputes over interpretation and jurisdiction. Arctic policy should recognize that in addition to the obvious living resources, the region also contains significant mineral resources that support many industries that are crucial to maintaining a healthy	Support modification or revocation as called for by State of Alaska and Alaska delegation.

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			economy for the nation and the world. Properly regulated and managed, development of this strategically important energy resource can take place, and the vast majority of the U.S. Arctic region can remain available to the American people for multiple uses – subsistence, recreational and commercial.	
31.	<b>FWS Proposed Policy to Incentivize Voluntary Pre-listing Conservation Actions</b> , originally published at 79 Fed. Reg. 42,525 (July 22, 2014). FWS–R9–ES–2011–0099.	<b>FWS</b>	FWS needs to decrease the administrative burdens inherent in implementing conservation programs and credit marketplaces by allowing these programs to be developed and implemented by the States and other qualified entities in a robust, transparent, and collaborative process. The Service’s role should be limited to overseeing the States to ensure consistency, transparency, and efficiency. FWS can, and should, do so through funding, technical assistance, clear criteria for approval of plans, program models and templates, effective lines of communication, an easily accessible database of approved plans, and adherence to mandatory deadlines for approvals. The FWS should also take steps to make its proposed policy flexible, by providing landowners the ability to choose whether their conservation actions will be used to generate credits per the proposed policy or count as enrollment in a CCAA.	Support modification of policy consistent with comments submitted.

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32.	<p><b>Secretarial Order 3330 “Improving Mitigation Policies and Practices of the Department of the Interior,” called for the development of a DOI-wide mitigation strategy, which would use a landscape-scale approach to identify and facilitate investments in key conservation priorities in a region.</b> October 31, 2013.</p>	DOI	<p>This order called for the development of a DOI-wide mitigation strategy, which would use a landscape-scale approach to identify and facilitate investments in key conservation priorities in a region. This order should be withdrawn, and its call for “landscape scale” carefully evaluated with respect to possible conflicts with other laws that direct the actions of DOI agencies. It should only be republished if any such conflicts are addressed in favor of the existing statutory mandates.</p>	Seek revocation
33.	<p><b>“The Department of the Interior Climate Change Adaptation Plan for 2014” (Climate Change Adaptation Plan),</b> provides guidance for implementing 523 DM 1 and “Executive Order No. 13653 – Preparing the United States for the Impacts of Climate Change”, (78 FR 66819). January 2014 (not published in the Federal Register).</p>	DOI	<p>This plan provides provides guidance for implementing 523 DM 1 and “Executive Order No. 13653 – Preparing the United States for the Impacts of Climate Change”. It should be withdrawn and any subsequent climate change plan should be carefully examined so as not to conflict with existing statutory and regulatory mandates.</p>	Seek revocation
34.	<p><b>“Interior Policy Document: Implementing Mitigation at the Landscape Scale”</b>, directs agency officials (all bureaus and agencies) to use compensatory mitigation to offset impacts to public lands and to tailor mitigation actions to anticipate and address the impacts of climate change. October 23, 2015, 600 DM 6.</p>	DOI	<p>This document should be withdrawn and any successor document should only be put forward if it is determined that such a document does not conflict with any existing statutory and regulatory mandates.</p>	Seek revocation
35.	<p><b>Memorandum for Executive Departments and Agencies</b></p>	DOI	<p>This memorandum directs agencies to develop and to institutionalize policies</p>	Seek revocation, review and

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	<p><b>“Incorporating Ecosystem Services into Federal Decision Making”</b>, October 7, 2015, M-16-01.</p>		<p>to promote ecosystem services (defined as benefits flowing from nature to people) where appropriate and practicable, in planning, investment, and regulatory contexts. What is not made clear is the priority to be given this directive in the context of the statutory direction given those same DOI agencies by their governing statutes.</p>	<p>republication</p>
36.	<p><b>Proposed Special Rule for the Polar Bear Pursuant to Section 4(d) of the Endangered Species Act</b>, originally published at 77 Fed. Reg. 23432 (April 19, 2012). Final Rule published 78 Fed. Reg. 11766 (February 20, 2013 FWS-R7-ES-2012-0009.</p>	FWS	<p>The polar bear has been managed for years under the synchronized ESA, MMPA and CITES regime. The protections afforded by the MMPA, CITES, and the ESA are more than sufficient to conserve, recover, and manage the polar bear. A revised final Rule should restate the FWS’s well-founded position that the Rule does not require consultation simply on the basis of facilities’ GHG emissions. And, based upon this same reasoning, any final Rule should likewise make clear that Section 9 take cannot be triggered by GHG emissions. The critical habitat for the species should be limited to those identifiable areas that “contain features essential to the conservation of the polar bear and that may require special management and protection” – <i>NOT</i> the species entire marine range.</p>	<p>Seek reproposal with critical habitat toed to discrete areas actually frequented by polar bears.</p>
37.	<p><b>Resource Management Plans and Final Environmental Impact Statements for various BLM Planning Areas (Greater</b></p>	BLM	<p>The land use plan amendments (LUPAs) do not balance conservation of the GSG and elevate conservation of the GSG</p>	<p>Evaluate for revocation or revision through new</p>

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	<p><b>Sage Grouse land Use Plan Amendments</b>), originally published at 80 Fed. Reg. 30,709 (May 29, 2015) (BLM Notice of Availability); 80 Fed. Reg. 30,676 (May 29, 2015) (EPA Notice of Availability).</p>		<p>above all other land uses in a manner wholly inconsistent with multiple use management. The LUPAs will severely restrict oil and natural gas development on many existing federal leases across GSG habitat. The LUPAs violate FLPMA and (where applicable) the National Forest Management Act because the Agencies have not afforded the public a meaningful opportunity to comment on the new components of the Proposed LUPAs. Also, in certain plans, the requirement that mitigation achieve a “net conservation gain” is inconsistent with FLPMA. The LUPAs inappropriately attempt to modify existing oil and gas leases, to unilaterally modify existing contract rights, to impose restrictions on existing leases that deny development or render development uneconomic, and to impose uniform conditions on existing leases that are not based on site-specific development. The LUPAs are inconsistent with the Energy Policy Act of 2005 and, in certain plans, improperly cede authority over oil and gas operations on federal leases to the FWS.</p>	<p>rulemaking action in the context of the importance the LUPAs have to the FWS no-list decision.</p>
38.	<p><b>Release of Final Control Technique Guidelines for the Oil and Natural Gas Industry</b> (October 27, 81 Fed. Reg. 74798)</p>	EPA	<p>Initiates states to incorporate control requirements for existing oil and gas sources within ozone implementation plans where non-attainment is moderate or above (or in OTR).</p>	<p>Work with EPA to determine whether final CTGs were prematurely finalized before adequate information on</p>

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				existing sources was collected.
39.	<b>Environmental Integrity Project Petition to add Upstream Oil and Gas Operations to Toxic Release Inventory (TRI) under EPCRA.</b>	<b>EPA</b>	Petition filed by industry on October 24, 2012. EPA did not formally respond but did separately included TRI review of upstream sector in its 2013 regulatory agenda. On January 3, 2014 EPA published a notice of receipt of this petition and established a formal docket number to be used to view the petition and related documents. On January 7, 2015, EIP filed suit to compel EPA to make a decision on the petition. After almost a year of legal activity, on October 22, 2015 EPA denied all aspects of the original petition except with respect to natural gas processing facilities. EPA plans to move forward with a rulemaking process to add natural gas processing plants to the TRI program in 2017.	Support modification of rulemaking based on comments submitted
40.	<b>Hydraulic Fracturing Chemicals and Mixtures</b> ANPRM originally published at 79 Fed. Reg. 28664 on May 19, 2014 with a comment period extension published at 79 Fed. Reg. 40703 on July 14, 2014.	<b>EPA</b>	Agency requested information that should be reported or disclosed for hydraulic fracturing chemical substances and mixtures and the mechanism for obtaining this information under TSCA 8(a) or 8(d) or both. The information that would be collected under a TSCA section 8(a) and/or 8(d) rule for chemicals and mixtures used in hydraulic fracturing is already available to EPA. The Agency has more toxicity and exposure information on the additives used in	Support modification of rulemaking based on comments submitted.

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			hydraulic fracturing than it has on many other existing chemicals, and available information is more detailed and extensive than information typically collected under TSCA.	
41.	<b>Proposed Data Collection Submitted for Public Comment and Recommendations of a Proposed Information Collection Plan on “Health Risks for Using Private Water Wells for Drinking Water</b> , originally published at 81 Federal Register 12902 on and released as an ICR on March 11, 2016 and Submitted an Information Collection Request to OMB on the same topic on June 22, 2016 (81 Federal Register 40703).	<b>CDC</b>	In the notice, the plan includes a serious lack of detail regarding a tremendous number of variables which are sure to affect the outcome of the investigation – including the unintended consequence of attributing water contamination to operations simply due to a very poor survey tool.	Support modification of Plan based on extensive comments submitted.
42.	<b>Greenhouse Gas Reporting Rule (GHGRP): Leak Detection Methodology Revisions for Petroleum and Natural Gas Systems (Subpart W)</b>	<b>EPA</b>	Finalized three new reporting requirements and added two new monitoring methods for detecting leaks from oil and gas equipment for facilities conducting equipment leak surveys in all of the segments subject to reporting under Subpart W. EPA needs to preserve consistency of measurements and emission estimation methodology among sites, basins and nationwide as well as with NSPS Subpart OOOOa.	Petition to Reconsider being considered.
43.	<b>Updates to Floodplain Management and Protection of Wetlands Regulations to Implement Executive Order 13690 and the Federal Flood Risk Management Standard FEMA Policy 078-3 81 Fed. Reg. 57,402 (Aug.</b>	<b>FEMA</b>	With discretion left to individual governmental agencies, there is a potential for an assortment of floodplain definitions as each of these jurisdictional entities attempt to apply the new risk-based approaches. Also,	Consider placing on hold or revoking the guidance (if finalized prior to the new administration).

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	22, 2016); FEMA Policy: Guidance for Implementing the Federal Flood Risk Management Standard, 81 Fed. Reg. 56,558 (Aug. 22, 2016).		the Regulatory Evaluation associated with the Proposed Rule uses data that is limited to coastal residential communities, greatly underestimates costs associated with this Proposed Rule and Supplementary Policy, and does not quantify benefits. The Guidance is needless - current FEMA rules, policy and maps already consider varying meteorological, land development, erosion and other causes; and maps are constantly being updated to reflect current conditions and technological advances. Limiting language in EO 13690 which states "to the extent permitted by law," FEMA's seeming obligation to amend existing regulations under the order is not absolute.	Also possibly consider revoking the underlying Executive Order 13690.
44.	<b>NOAA/ONMS Flower Garden Banks National Marine Sanctuary Expansion</b> DEIS, 81 Fed. Reg. 37576 (June 10, 2016).	<b>ONMS</b>	Proposed expansion well beyond recommendation of Sanctuary Advisory Committee. Agency needs to reengage with SAC/stakeholders to establish common ground, explain why additional areas are warranted.	Halt work on expansion.
45.	<b>NOAA Ocean Noise Strategy Roadmap</b> , <a href="http://cetsound.noaa.gov/road-map">http://cetsound.noaa.gov/road-map</a> , (June 1, 2016).	<b>NOAA</b>	There is a need for more baseline data and scientific study of potential acoustic effects and impacts, and a need to better coordinate, collaborate and share information within agencies and among all stakeholders. However, much of the ONS Roadmap is premised upon unwarranted policy assumptions that the desired goal is a return to pre-	Retract and revise Framework.

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			<p>human conditions instead of balanced use of ocean resources; existing statutory mandates; regulatory measures are inadequate despite ongoing successes, and that an un-mandated comprehensive ocean noise regulatory regime may somehow be cobbled together and scaled up through unilateral actions of NOAA to address assumed chronic and cumulative potential acoustic impacts for which there is little to no scientific evidence. Need to have a Framework to promote an approach that has a better balance between precautionary environmental policy and multiple ocean users.</p>	
46.	<p><b>National Policy for the Stewardship of the Ocean, Our Coasts, and the Great Lakes</b> (July 19, 2010). Executive Order 13547.</p>	CEQ	<p>Established the National Ocean Policy, including creation of Regional Planning Bodies (so far only present in Northeast and Mid-Atlantic. West Coast beginning to form.</p> <p>Framework for development of ocean policy already exists under current statues and regulations.</p> <p>No understanding of how federal actions will be influenced by regional ocean plans.</p> <p>Lack of Congressional oversight.</p>	Revoke Executive Order
47.	<p><b>NOAA Marine Sanctuary Nomination Process</b>, 79 Fed. Reg. 33851 (June 13, 2014). RIN 0648-BD20.</p>	ONMS	<p>Controlled Sanctuary Evaluation List (SEL) process and selection criteria discontinued and replaced with a "...more grassroots, 'bottom-up' approach..."</p> <p>Purpose of NMSA is to establish high</p>	Eliminate current program. Reinstate SEL process.

ISSUE NUMBER	RULE OR POLICY OF CONCERN	DEPARTMENT OR AGENCY	ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES)	OPTIONS FOR REDRESS
			quality sites of national significance, not to generate multiple nominations that fail to meet NMSA standards and consume valuable and limited agency resources.	
48.	<b>NOAA Framework for the National System of Marine Protected Areas</b> , 80 Fed. Reg. 16626 (March 30, 2015).	<b>ONMS</b>	There appears to be greater weight toward promoting the creation of new MPAs over enhancing the effectiveness of existing MPAs. There is more of an emphasis on ecological networks (i.e., on species rather than enhancing efficiencies). There is limited guidance on how to address the lack of monitoring and evaluation of the current program.	Retract and Revise Framework.
49.	<b>Critical Habitat Designation for Loggerhead Sea Turtle</b> , originally published at 79 Fed. Reg. 39755 (FWS - coastal areas) and 79 Fed. Reg. 39855 (NMFS – marine areas) on July 10, 2014. RIN 0648-BD27 and RIN 1018-AY71.	<b>NMFS FWS</b>	Loggerheads in the DPS are meaningfully protected through a wide variety of overlapping multi-jurisdictional, multi-industry restrictions, prohibitions, and conservation measures that have led to historic levels of loggerhead nesting and abundance. Designation of the sargassum habitat cause the proposed critical habitat designation to be the largest in the history of the ESA, it would be based on physical and biological features that are poorly understood, ephemeral, and largely disconnected from the post-hatchling populations it is intended to protect.	Need legal analysis to determine full range of possibilities.
50.	<b>Notice to List the Gulf of Mexico Bryde’s Whale as Endangered</b> , 81 Fed.	<b>NMFS</b>	Comments under development.	Need legal analysis to determine full range

ISSUE NUMBER	RULE OR POLICY OF CONCERN	DEPARTMENT OR AGENCY	ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES)	OPTIONS FOR REDRESS
	Reg. 88639 (December 8, 2016). RIN 0648-XD669.			of possibilities.
51.	<b>FWS Revised Candidate Conservation Agreements with Assurances Policy</b> , originally published, 81 Fed. Reg. 26,817 (May 4, 2016). Policy has not been finalized to date. FWS-HQ-ES-2015-0177	<b>FWS, NMFS</b>	Any changes to the Policy must further the overarching goal of CCAAs: to encourage early and voluntary conservation. The Services should not incorporate a “net conservation benefit” standard into the CCAA policy, which is ambiguous and which undermines assurances provided in CCAAs and their associated permits. The draft revised policy makes so many significant changes to existing policy that it fails to comply with the requirements of the Administrative Procedure Act.	Seek revocation.
52.	<b>FWS Eagle Permits; Revisions to Regulations for Eagle Incidental Take and Take of Eagle Nests</b> , originally published at 81 Fed. Reg. 27933 (May 6, 2016). Final rule published December 16, 2016. FWS–R9–MB–2011–0094.	<b>FWS</b>	Where possible, FWS should encourage and expand the use of BMPs appropriate to protection of eagles under Avian Protection Plans. FWS should devote its resources to develop flexible but effective APP guidelines for the oil and gas industry operations located in the vicinity of eagle roosts or nests similar to the guidelines developed for the electric utility industry.	Seek modification of the rule to address major issues.
53.	<b>Various Other ESA Species of Concern</b>	<b>FWS</b>	Including, but not limited to: Greater Sage Grouse Lesser Prairie Chicken Dunes Sagebrush Lizard Northern Long Eared Bat, and candidate species among pollinators,	Species specific, but will include engagement with the agencies, litigation, and science based advocacy. Consider

ISSUE NUMBER	RULE OR POLICY OF CONCERN	DEPARTMENT OR AGENCY	ISSUES/PROBLEMS WITH RULE OR POLICY (INCLUDING DESIRED OUTCOMES)	OPTIONS FOR REDRESS
			fresh water mollusks, and marine mammals.	research and gathering data on threats to species and habitats commonly alleged in important O&G areas, and on threats commonly attributed to O&G operations to be in a position to refute common and inaccurate assumptions in order to best assure license to operate.

**From:** Kathleen Benedetto  
**To:** [katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov)  
**Subject:** Fwd: National Plan for Civil Earth Observations  
**Date:** Friday, February 03, 2017 7:34:10 PM  
**Attachments:** [ATT00001.htm](#)  
[National Plan for Civil Earth Obs 2014.pdf](#)

---

Sent from my iPhone

Begin forwarded message:

From: "Ryker, Sarah" <[sryker@usgs.gov](mailto:sryker@usgs.gov)>  
To: Kathy Benedetto <[kathleen\\_benedetto@ios.doi.gov](mailto:kathleen_benedetto@ios.doi.gov)>  
Subject: National Plan for Civil Earth Observations

Kathy,

You asked about the interagency National Plan for Civil Earth Observations. I'm attaching a PDF of the first National Plan, released in 2014.

You'll see that the famous USGS data workhorses are all highlighted. In Appendix A, Table 1 lists the "infrastructural" datasets that are the most widely used (e.g. Landsat, LiDAR, & streamgages). Table 2 is the datasets that are critical to particular fields (e.g. the seismic network and geophysical & hyperspectral measurements used by USGS Energy & Minerals).

The 2014 Plan is based on a 2012 Earth Observations Assessment that looked at ~400 data collection programs. There's a triennial update to the Assessment finalized and posted on OMB MAX for federal-only access; I've asked for that URL since it's huge. It'll likely take at least a few months to develop the latest Assessment into a 2017 Plan that can be released publicly. From the brief I got yesterday, the new Assessment looks at ~1300 programs. The USGS data collection programs score even higher this time around, and some of the other bureaus' data collection programs are also part of the Assessment.

I'll get the new URL and finish looking at the materials.

Sarah

Sarah J Ryker, PhD  
Office of the Assistant Secretary for Water & Science  
U.S. Department of the Interior  
202-513-0314 office, 571-533-7000 mobile, [sryker@usgs.gov](mailto:sryker@usgs.gov)



# NATIONAL PLAN FOR CIVIL EARTH OBSERVATIONS

PRODUCT OF THE

Office of Science and Technology Policy  
Executive Office of the President



July 2014

EXECUTIVE OFFICE OF THE PRESIDENT  
NATIONAL SCIENCE AND TECHNOLOGY COUNCIL

WASHINGTON, D.C. 20502

July 18, 2014

Dear Members of Congress:

The United States Government collects and distributes a wide range of environmental and Earth-system data. These data, collected and maintained through billions of dollars of investments in civil Earth observation systems, provide decision makers with information vital to improving our lives and well-being, protecting property, promoting national security and economic growth, and advancing scientific inquiry. The observations that provide these data are critical to our understanding of all Earth-system phenomena, including weather and climate, natural hazards, land-use change, ecosystem health, and natural-resource availability.

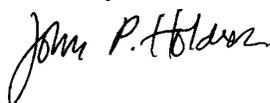
Legislation instructs the Director of the Office of Science and Technology Policy (OSTP) to establish a mechanism to ensure greater coordination of civilian Earth observations, including the development of a strategic implementation plan that is updated at least every three years. In April 2013, the National Earth Observations Task Force completed the National Strategy for Civil Earth Observations, which established a policy framework for routine assessment of Earth observations and guidelines to facilitate enhanced data management and information delivery to users. It also called for the development of a National Plan for Civil Earth Observations.

This first-ever National Plan is a key outcome of interagency coordination in support of the National Strategy. Based in large part on the results of a government-wide assessment of the Nation's Earth observations portfolio, the Plan establishes priorities and supporting actions for advancing our civil Earth observations capabilities. Its publication marks an important step in our ability to understand, prioritize, and coordinate Federal Earth observations and to better inform our investments in civil Earth-observation systems.

The Plan was developed by OSTP through an interagency effort led by the U.S. Group on Earth Observations, a subcommittee of the National Science and Technology Council's Committee on Environment, Natural Resources, and Sustainability. It will be revised every three years in conjunction with the regular Earth observations assessment process.

I and my office look forward to working with the Congress to support the Plan's implementation and to advance our civil Earth-observation capabilities for the benefit of society.

Sincerely,



John P. Holdren

Assistant to the President for Science and Technology  
Director, Office of Science and Technology Policy

## About the National Science and Technology Council

The National Science and Technology Council (NSTC) is the principal means by which the Executive Branch coordinates science and technology policy across the diverse entities that make up the Federal research and development enterprise. A primary objective of the NSTC is establishing clear national goals for Federal science and technology investments. The NSTC prepares research and development strategies that are coordinated across Federal agencies to form investment packages aimed at accomplishing multiple national goals. The work of the NSTC is organized under five committees: Environment, Natural Resources, and Sustainability; Homeland and National Security; Science, Technology, Engineering, and Math (STEM) Education; Science; and Technology. Each of these committees oversees subcommittees and working groups focused on different aspects of science and technology. More information is available at <http://www.whitehouse.gov/ostp/nstc>.

## About the Office of Science and Technology Policy

The Office of Science and Technology Policy (OSTP) was established by the National Science and Technology Policy, Organization, and Priorities Act of 1976. OSTP's responsibilities include: advising the President in policy formulation and budget development on questions in which science and technology are important elements; articulating the President's science and technology policy and programs; and fostering strong partnerships among Federal, state, and local governments, and the scientific communities in industry and academia. The Director of OSTP also serves as Assistant to the President for Science and Technology and manages the NSTC. More information is available at <http://www.whitehouse.gov/ostp>.

## About the United States Group on Earth Observations

The United States Group on Earth Observations (USGEO) is chartered as a subcommittee of the NSTC Committee on Environment, Natural Resources, and Sustainability (CENRS). The Subcommittee's purpose is threefold: to coordinate, plan, and assess Federal Earth observation activities in cooperation with domestic stakeholders; to foster improved Earth system data management and interoperability throughout the Federal Government; and to engage international stakeholders by formulating the U.S. position for, and coordinating U.S. participation in the intergovernmental Group on Earth Observations. More information is available at <http://www.usgeo.gov>.

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Printed in the United States of America, 2014.

## About this Document

This Plan was developed by OSTP with the support of a writing team led by USGEO Subcommittee Chair, Peter Colohan, and Director of the USGEO Program, Timothy Stryker. It was reviewed by the USGEO Subcommittee and CENRS and was finalized and published by OSTP.

OSTP and the USGEO Subcommittee and Program wish to acknowledge the significant analytical contributions of staff from the Institute for Defense Analyses (IDA) Science and Technology Policy Institute throughout the development of the Plan, including Jason Gallo, Brian Sergi, Eoin McCarron, and Elaine Sedenberg.

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**Timothy Stryker**

USGEO Program Director

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**Wade Price**

Executive Secretary

Smithsonian Institution

\*Stepped down in 2014

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## Executive Summary

The U.S. Government is the largest provider of environmental and Earth-system data in the world. These data are derived from observations of the Earth, which are used by Federal agencies and their partners to carry out their missions. These data form the foundation of services that protect human life, property, the economy, and national security, and they support research to foster scientific advances. Provided through public funding, they are made open to the greatest extent possible to advance human knowledge, to enable private industry to provide value-added services, and for general public use.

As the Nation's Earth-observation capacity and related data holdings have grown, so has the complexity of the challenge of managing Earth observation systems effectively and taking full advantage of the data they collect. While Earth observations and data are often collected to support the delivery of well-defined products and public services or meet specific research needs, improved coordination and access would ensure that the data are used more broadly. By expanding the use of observations and data beyond the purposes for which they are originally collected, the United States can maximize the impact of the resources invested in Earth-observation systems.

In October 2010, Congress charged the Director of the Office of Science and Technology Policy (OSTP) with establishing a mechanism for addressing this challenge through the production and routine update of a strategic plan for Earth observations. In response, OSTP convened a National Earth Observations Task Force (NEOTF) in February 2011, which produced the National Strategy for Civil Earth Observations in April 2013. The NEOTF also conducted the first assessment of the Federal Earth observations enterprise. The resulting Earth-Observation Assessment (EOA) considered the impact of observing systems on distinct societal benefit areas.

This document, the *National Plan for Civil Earth Observations* (hereafter referred to as the National Plan), incorporates the priorities identified in the EOA to provide strategic guidance for a balanced portfolio approach to managing civil Earth observations to fulfill agency mandates and achieve national objectives. As required by law, this National Plan will be updated every three years to provide greater coordination of Federal civil Earth-observation systems.

The National Plan defines a new framework for constructing a balanced portfolio of Earth observations and observing systems. This framework classifies Earth-observation activities according to two broad categories, "sustained" and "experimental" based on the duration of the anticipated Federal commitment:

- Sustained observations are defined as measurements taken routinely that Federal agencies are committed to monitoring on an ongoing basis, generally for seven years or more. These measurements can be for public services or for Earth-system research in the public interest.
- Experimental observations are defined as measurements taken for a limited observing period, generally seven years or less, that Federal agencies are committed to monitoring for research and development purposes. These measurements serve to advance human knowledge, explore technical innovation, and improve services, and in many cases may be first-of-their-kind Earth observations.

Within the subcategory of sustained observations for public services, the National Plan defines two tiers of measurement groups. Tier 1 measurement groups are those derived from systems identified in the EOA as having high impact on a majority of the societal benefit areas; Tier 2 measurement groups include those derived from the remaining high-impact systems. While the EOA provided higher overall scores to Tier 1 systems, many Tier 2 systems contribute critically, or are essential, to key objectives in one or more societal benefit areas. Some Tier 2 systems are the only observing systems available for accomplishing a particular objective.

These new categories advance the Nation's approach to Earth observations by describing a new framework based on the duration of Federal commitment to the period of observation, which is an essential step for prioritizing the Nation's Earth observations portfolio. This framework is also a step toward addressing a key policy challenge in Earth observations: determining when experimental observations should be transitioned to sustained observations for research or for delivery of public services.

Based on this framework and the results of the EOA, the National Plan establishes the following rank-ordered priorities:

1. Continuity of sustained observations for public services
2. Continuity of sustained observations for Earth-system research
3. Continued investment in experimental observations
4. Planned improvements to sustained observation networks and surveys for all observation categories
5. Continuity of, and improvements to, a rigorous assessment and prioritization process

The overall set of observations resulting from these priorities should yield a balanced Earth-observations portfolio.

While the National Plan provides guidance in setting priorities for the construction of the portfolio, agencies have discretion, in consultation with the Executive Office of the President and Congress, to deviate from the National Plan's rankings of priorities when necessary for managing specific systems in the categories and tiers outlined in this document. The National Plan provides this flexibility while still meeting the Nation's overall civil Earth-observation priorities and objectives.

The National Plan also identifies the following rank-ordered supporting actions that will maximize the benefits derived from the Nation's Earth observations:

1. Coordinate and integrate observations
2. Improve data access, management, and interoperability
3. Increase efficiency and cost savings
4. Improve observation density and sampling
5. Maintain and support infrastructure

6. Explore commercial solutions
7. Maintain and strengthen international collaboration
8. Engage in stakeholder-driven innovation

The National Plan also describes specific agency roles and responsibilities for sustaining observation systems and platforms.

Implementation and coordination of the activities outlined in the National Plan will be conducted through the budget and program-planning activities of the relevant Federal agencies and through interagency processes. Federal agencies will determine implementation schedules, progress reviews, and funding profiles in consultation with the Executive Office of the President.

The primary forum for interagency discussion and coordination of Earth observation, related data management, and related international issues is the United States Group on Earth Observations (USGEO) Subcommittee of the National Science and Technology Council (NSTC) Committee on Environment, Natural Resources, and Sustainability (CENRS). OSTP, in consultation with the USGEO Subcommittee, the NSTC CENRS, and their member agencies, will review and update this National Plan on a three-year cycle. As part of the update process, OSTP will solicit and consider the input of external stakeholders and the general public. For this first National Plan, OSTP sought input from external stakeholders through a publicly released Request for Information.

## 1. Introduction

The U.S. Government the largest provider of environmental and Earth system data in the world. These data are derived from Earth observations<sup>1</sup> collected by numerous Federal agencies and partners to carry out their missions in support of life, property, and economic and national security, and they are the foundation for scientific advances. In accordance with the *National Strategy for Civil Earth Observations* and Executive Order No. 13642, these publicly funded data are made open<sup>2</sup> to the greatest extent possible to advance human knowledge, to enable private industry to provide value-added services, and for general public use.<sup>3</sup>

Conservative estimates indicate that Federal Earth-observation activities add \$30 billion to the U.S. economy each year.<sup>4</sup> These investments ensure that decision makers, businesses, first responders, farmers, and an array of other stakeholders have the information they need about natural resources, climate and weather, natural hazards, land-use change, ecosystem health, water, and other characteristics of the planet. Taken together, Earth observations provide the indispensable foundation for meeting the Federal Government's long-term sustainability objectives and advancing U.S. social, environmental, and economic well-being.

As the Nation's Earth-observation capacity has grown, however, so has the complexity and challenge of its most effective use for public benefit. Today, civil Earth observations are funded in the budgets of 11 departments and agencies of the Federal Government, including more than an estimated \$2.5 billion in satellite systems and more than \$1 billion for airborne, terrestrial (including freshwater), and marine networks and surveys (e.g., buoys, stream gages, and fishery surveys). U.S. Earth observation efforts are

---

<sup>1</sup> The term "Earth observations" refers to data and products derived from Earth-observing systems and surveys. The term "observing systems" refers to one or more sensing elements that directly or indirectly collect observations of the Earth, measure environmental parameters, or survey biological or other Earth resources (land surface, biosphere, solid Earth, atmosphere, and oceans). A more detailed definition is provided in Section 2: Definitions and Context.

<sup>2</sup> National Earth Observations Task Force, *National Strategy for Civil Earth Observations*, Washington, DC: Office of Science and Technology Policy, April 2013, p. 24, [http://www.whitehouse.gov/sites/default/files/microsites/ostp/nstc\\_2013\\_earthobsstrategy.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ostp/nstc_2013_earthobsstrategy.pdf); Executive Order No. 13642 "Making Open and Machine Readable the New Default for Government Information," May 9, 2013, <http://www.whitehouse.gov/the-press-office/2013/05/09/executive-order-making-open-and-machine-readable-new-default-government->.

<sup>3</sup> Defense and national-security requirements and considerations are not covered by this National Plan, though the use of defense and national-security assets for civil purposes is included. The Department of Defense is responsible for developing solutions for defense Earth observation requirements to support military operations and makes data available for civil agency use as appropriate. Coordination and oversight of civil agency use of national-security classified collections is performed by the interagency Civil Applications Committee. See the National Earth Observations Task Force, *National Strategy for Civil Earth Observations*, Washington, DC: Office of Science and Technology Policy, April 2013, p. 13.

<sup>4</sup> *Earth Observations and Global Change*, Center for Strategic and International Studies (CSIS), 2008, p. 10. [http://csis.org/files/media/csispubs/080725\\_wigbels\\_earthobservation\\_web.pdf](http://csis.org/files/media/csispubs/080725_wigbels_earthobservation_web.pdf).

distributed among more than 100 programs under the purview of Federal agencies and non-Federal entities that produce and use these data.<sup>5</sup>

While Earth-system data collected through these observations are currently used to meet critical needs of distinct organizations and stakeholders, improved coordination will ensure that information derived from Earth observations will be used more broadly for both traditional and innovative purposes.

In October 2010, Congress charged the Director of the Office of Science and Technology Policy (OSTP) with establishing a mechanism for addressing this challenge.<sup>6</sup> OSTP convened a National Earth Observations Task Force (NEOTF) in February 2011 under the National Science and Technology Council (NSTC) Committee on Environment, Natural Resources, and Sustainability (CENRS) to inform the OSTP response to Congress. The NEOTF took three actions:

1. The development of a *National Strategy for Civil Earth Observations* (hereafter referred to as the National Strategy) to provide an enduring framework for routine assessment and planning for the Nation's Earth observation infrastructure. The National Strategy was released in April 2013.<sup>7</sup>
2. The development of a data-management framework, including principles and guidelines to improve discovery, access, and use of Earth observations. This framework is contained within the National Strategy.
3. The first assessment of the Federal Earth-observation enterprise, reviewing the impact of 362 observing systems on 13 societal themes. Summary results of the 2012 Earth Observation Assessment (EOA) are presented in this National Plan for Civil Earth Observations (hereafter referred to as the National Plan).

These three actions provided OSTP and CENRS with the foundation for this National Plan, which includes the following elements:

1. Definitions and context (Section 2)
2. Categories for civil Earth observations (Section 3)
3. Priorities and supporting actions for civil Earth observations (Section 4)

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<sup>5</sup> Non-Federal entities encompass State, regional, local, and tribal governments; nongovernmental organizations; academia; citizen scientists; commercial firms; international organizations; and foreign governments.

<sup>6</sup> National Aeronautics and Space Administration Authorization Act of 2010 (Public Law 111–267):  
*SEC. 702. INTERAGENCY COLLABORATION IMPLEMENTATION APPROACH. -The Director of OSTP shall establish a mechanism to ensure greater coordination of the research, operations, and activities relating to civilian Earth observation of those Agencies, including NASA, that have active programs that either contribute directly or indirectly to these areas. This mechanism should include the development of a strategic implementation plan that is updated at least every 3 years, and includes a process for external independent advisory input. This plan should include a description of the responsibilities of the various Agency roles in Earth observations, recommended cost-sharing and procurement arrangements between Agencies and other entities, including international arrangements, and a plan for ensuring the provision of sustained, long-term space-based climate observations. The Director shall provide a report to Congress within 90 days after the date of enactment of this Act on the implementation plan for this mechanism.*

<sup>7</sup> National Earth Observations Task Force, *National Strategy for Civil Earth Observations*, Washington, DC: Office of Science and Technology Policy, April 2013.

4. Agency roles and responsibilities for sustained observations from airborne, terrestrial, and marine platforms (Section 5)
5. Agency roles and responsibilities for civil Earth observations from space (Section 6)
6. Summary guidelines on implementation and coordination of the National Plan (Section 7)
7. Summary results from the 2012 EOA supporting the identified priorities, EOA caveats, and a list of abbreviations used in this document (Annexes I-III).

As required by law, this National Plan will be updated every three years to ensure greater coordination of Federal civil Earth observation systems.

This National Plan serves as strategic guidance and sets out to fulfill agency mandates and national objectives via a balanced portfolio approach to civil Earth observations. The National Plan provides a framework that allows for the establishment, evaluation, and evolution of a balanced portfolio of observations and observing systems. This new framework builds on recent progress Federal agencies have made in taking fuller advantage of Earth observations across traditional boundaries to address their mission objectives and policy goals.

## 2. Definitions and Context

The National Strategy defined key terms and concepts for routine assessment and planning for Earth observations. These and other definitions are used throughout the National Plan.<sup>8</sup>

### 2.1. Definition of Earth Observations and Earth Observing Systems

“Observation” refers to the act of making and recording the measurement of a phenomenon. “Earth observations” are described in the National Strategy as follows:

The term “Earth observations” refers to data and products derived from Earth-observing systems and surveys. The term “observing systems” refers to one or more sensing elements that directly or indirectly collect observations of the Earth, measure environmental parameters, or survey biological or other Earth resources (land surface, biosphere, solid Earth, atmosphere, and oceans).<sup>9</sup> Sensing elements may be deployed as individual sensors or in constellations or networks and may include instrumentation or human elements. Observing-system platforms may be mobile or fixed and are space-based, airborne, terrestrial, freshwater, or marine-based.

Earth observations are increasingly provided by integrated systems that support remotely sensed, in situ, and human observations. The benefit of these observations comes from the analysis of Earth-system parameters from different geographic or temporal perspectives, providing more complete monitoring of the target phenomenon and its interaction with other phenomena.

### 2.2. Societal Benefit Areas (SBAs)

The National Strategy laid out a process to evaluate Earth-observing systems based on the information products and data streams they support in defined SBAs. This approach was adopted by the NSTC CENRS in February 2012, is consistent with the Federal Government’s sustainability objectives, and aligns with international agreements and prior interagency work in this area.<sup>10</sup> The first assessment of Earth observations was organized around 13 societal themes, which consisted of 12 SBAs (listed alphabetically below) and the reference measurements that underpin them:

- **Agriculture and Forestry:** Supporting sustainable agriculture and forestry
- **Biodiversity:** Understanding and conserving biodiversity

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<sup>8</sup>This National Plan contains both bulleted and numbered lists. Numbered lists indicate the order of priority, whereas bulleted lists indicate equal priority.

<sup>9</sup> Model outputs are generally excluded from this definition; however, some observing systems produce and record measures and observations that may require sensor models to process raw observations to a form in which they are exploitable.

<sup>10</sup> Group on Earth Observations, *Global Earth Observation System of Systems (GEOSS): 10-Year Implementation Plan Reference Document*, 2005, <http://www.earthobservations.org/documents/10-Year%20Plan%20Reference%20Document.pdf>; Interagency Working Group on Earth Observations, *Strategic Plan for the U.S. Integrated Earth Observation System*, NSTC Committee on Environment and Natural Resources, 2005, [http://www.whitehouse.gov/sites/default/files/microsites/ostp/eocstrategic\\_plan.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ostp/eocstrategic_plan.pdf).

- **Climate:** Understanding, assessing, predicting, mitigating, and adapting to climate variability and change
- **Disasters:** Reducing loss of life, property, and ecosystem damage from natural and human-induced disasters
- **Ecosystems (Terrestrial and Freshwater):** Improving the management and protection of terrestrial and freshwater ecosystems
- **Energy and Mineral Resources:** Improving the identification and management of energy and mineral resources
- **Human Health:** Understanding environmental factors affecting human health and well-being
- **Ocean and Coastal Resources and Ecosystems:** Understanding and protecting ocean, coastal, and Great Lakes populations and resources, including fisheries, aquaculture, and marine ecosystems
- **Space Weather:** Understanding, assessing, predicting, and mitigating the effects of space weather on technological systems, including satellites, power grids, communications, and navigation
- **Transportation:** Improving the safety and efficiency of all modes of transportation, including air, highway, railway, and marine
- **Water Resources:** Improving water-resource management through better understanding and monitoring of the water cycle
- **Weather:** Improving weather information, forecasting, and warning
- **Reference Measurements:** Improving reference measurements—the underpinnings of all SBAs—such as geodesy, bathymetry, topography, geolocation, timing, and the fundamental measurement systems and standards supporting them

These SBAs are interconnected at local, regional, national, and international scales and include scientific research, economic activities, and environmental and social domains. Many involve critical government functions, such as the continuity of national government and the protection of life and property.

### 2.3. Earth Observation Assessment (EOA)

The first EOA was conducted between February and August 2012 under the auspices of the NEOTF. The NEOTF principals designated a working group to collaborate with appropriate subject matter experts (SMEs). OSTP reached out to the subcommittees of CENRS to identify the 13 subject matter leads, who in turn recruited over 300 Federal experts to participate in 26 analytical workshops.

This EOA quantified the impacts of existing observing systems on a set of key objectives defined for each SBA listed in Subsection 2.2. This resulted in the identification of 362 observing systems and surveys, of which 145 were designated as “high impact.” Results for the high-impact systems were grouped in tiers

and ordered based on a numeric impact score derived through the assessment process. These results are presented in Annex I.<sup>11</sup>

The EOA provided two new perspectives to complement the work of previous studies in this area, namely (a) the inclusion of non-satellite systems and (b) a robust analysis of the impact of each system with respect to its delivery of services to society.<sup>12</sup>

The next EOA, which is planned to begin in 2014, will seek additional insight with regard to research priorities and future needs in addition to existing systems.

## **2.4. Data-Management Framework, Big-Earth-Data Initiative, and Climate Data Initiative**

While Earth observations are typically produced for a specific purpose, they are often useful for purposes not foreseen during their development. Earth observation data can be reused, managed, and preserved such that both anticipated and unanticipated users can find, evaluate, understand, and use the data in new ways to achieve added benefit. The National Strategy, therefore, set out a comprehensive data-management framework to promote improved discoverability, accessibility, and usability of Earth observation data.

The National Plan includes improving data access, management, and interoperability as a supporting action. The Big Earth Data Initiative (BEDI) is designed to support this objective (see Section 4.2.2). In addition, the President's Climate Action Plan<sup>13</sup>, announced in June 2013, launched a Climate Data Initiative to leverage extensive Federal climate-relevant data to stimulate innovation and private-sector entrepreneurship in support of climate resilience.

## **2.5. Relationship between the National Plan and Existing Studies**

The National Plan can be understood as the first in a series of interagency efforts to analyze Federal-Earth observation priorities. It can also be understood in connection with other internal and external assessments. Of these assessments, an important example is the 2007 National Academies report, *Earth Science and Applications from Space*, known as the Earth Science decadal survey. This and other reports of the National Academies provide substantial material for understanding Earth-observation priorities of

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<sup>11</sup> See the National Strategy for a complete description of the assessment process.

<sup>12</sup> The EOA provided an innovative approach to understanding the impacts of Federal Earth-observation systems. The results of the EOA, however, must be considered in the context of the limitations of this assessment, which is the first of its kind. For example, fundamental research about the Earth system underpins each of the 12 SBAs, and each team was invited to consider research priorities critical for its area. The EOA process, however, was fundamentally service-oriented, and the constraints of time and the breadth of the analysis prevented a full accounting of research needs in every area. Therefore the EOA's results for research observation systems may not reflect the full impact of those systems on climate and other research needs. See Annex II for a full list of caveats.

<sup>13</sup> Executive Office of the President, *The President's Climate Action Plan*, 2013, <http://www.whitehouse.gov/share/climate-action-plan>.

the research community. This National Plan was informed by the results of the EOA, by these reports, and by related interagency deliberation.

## 2.6 External Input and the Request for Information

In developing this first National Plan, OSTP sought input from external stakeholders through a Request for Information (RFI).<sup>14</sup> Issued in November of 2013, the RFI solicited input on the major themes, categories, and priorities for the National Plan. OSTP received responses from a range of stakeholders, including individuals, academic institutions, private-sector companies, and industry organizations. Using both qualitative and quantitative approaches, OSTP analyzed the RFI responses and incorporated input into the National Plan where appropriate. OSTP will seek and incorporate external input in future editions of the National Plan.

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<sup>14</sup> Office of Science and Technology Policy, *National Plan for Civil Earth Observations; Request for Information*, Office of the Federal Register, 2013, <https://www.federalregister.gov/articles/2013/11/12/2013-26890/national-plan-for-civil-earth-observations-request-for-information>; see the USGEO web page for a list of public responses to the RFI for the development of the National Plan for Civil Earth Observations, <http://www.whitehouse.gov/administration/eop/ostp/library/shareyourinput/earthobsrfi>.

## 3. Categories for Civil Earth Observations

### 3.1. Overview of Categories

The National Plan defines two categories of observations that reflect the intention to distinguish systems and programs based on the duration of Federal commitment to the period of observation: either sustained over time or experimental and therefore time-limited. Sustained observations may be used to support public services and research for the public interest. Experimental observations may be used to support a variety of purposes, including: advancing human knowledge through basic and applied research, exploring technical innovation, or improving public services.

A fundamental goal of this National Plan is to achieve a balanced portfolio across and within both sustained and experimental categories of observations. Any Federal agency may engage in sustained and experimental observations to meet its mandate, achieve specific missions, or to support national objectives. These new categories of observation are designed to provide clarity in the Nation’s approach to Earth observations. This categorization, based on the duration of commitment, is necessary for prioritizing the Nation’s Earth-observing portfolio.<sup>15</sup>

This National Plan recognizes, however, that all civil Earth observations collected by the public sector are considered public goods, and that data from systems in any one category may be reused for purposes other than those for which the observation was originally taken. Such reuse is enabled by the rapid exchange and integration of data made possible by modern information technology (see Subsection 2.4 on data management).

For example:

- Sustained observation systems supporting the delivery of public services contribute significant data and information to both short- and long-term research programs.
- Sustained observation systems for research, as well as experimental observation systems, provide data and information that are routinely exploited in support of the ongoing, regular delivery of public services.
- Experimental observation systems supported by research and development funds can yield new systems or observation capabilities that can then be applied to service-driven observation programs.

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<sup>15</sup> By focusing on duration, this new framework overcomes the conceptual limitations of the traditional categories of “research” and “operational” observations, which conflate three elements of Earth observation planning: purpose, duration, and state. The purpose of the system reflects the rationale for the agency’s deployment of the system—to deliver public services or to conduct research in the public interest (including basic research). Duration reflects the time period over which the agency intends to perform the observation. State refers to the status of an observing system as it evolves—from testing, through development, to operations—no matter the intended purpose or duration of the agency commitment to the observation system. Whereas research clearly refers to purpose, the term “operational” has come to mean purpose, duration, and state, particularly in the defense and aerospace communities, in the sense of “supporting ongoing operations.” Under the National Plan’s new framework, civil Earth observation systems previously characterized as “operational” are included under “sustained observations for public services.”

While recognizing the value of data across all categories, this approach to categorizing observing systems as either sustained or experimental is a step toward addressing a key policy challenge: determining when experimental Earth observations should be transitioned to sustained observations for research or to help deliver public services. This transition may occur within or between agencies. The policy challenge is greatest in the case of multi-agency collaboration. By recognizing that multiple agencies engage in both experimental and sustained observations, the new terminology for sustained observations allows for long-term measurement responsibilities and plans to be more easily and accurately characterized within individual agency budgets.

This National Plan acknowledges the outstanding need to address cross-agency, experimental, and sustained observation challenges, and it initiates an interagency process for establishing government-wide priorities for sustained observations, either for service or research purposes.

## **3.2. Sustained Observations**

For the purposes of this National Plan, sustained observations are defined as measurements that Federal agencies are committed to taking on an ongoing basis, generally for seven years or more, at a level of quality sufficient for the primary purpose for which the measurement is taken.<sup>16</sup> Such long-term commitments include pre-planned improvements and service-life extension programs. Sustained observations are divided into two purpose-driven subcategories: those for public services and those for Earth system research for the public interest. These subcategories are further described in the following two subsections.

### **3.2.1. Sustained Observations for Public Services**

Sustained Observations for Public Services are those systematic measurements necessary to support products routinely generated for, and widely disseminated to, the general public. These include vital measurements supporting continuous data streams and data products for preservation of life and property (e.g., for severe weather, seasonal and inter-annual climate forecasts, earthquakes, volcanoes, tsunamis, floods, fire detection and suppression, and air quality alerts); routinely generated current conditions data (e.g., for transportation, agriculture, energy, and weather forecasting); and data relating to ongoing resource and environmental management (e.g., for trends analysis, stock assessments, water quality, and forestry).

The Earth-observation systems that produce these sustained observations constitute vital national infrastructure, providing well-established, direct benefits to society and the economy (e.g., protecting life and property and securing food and water during disasters). These systems are in place to provide the Nation with essential information to promote and sustain economic vitality (e.g., transportation, agriculture, energy, water, and natural resource management) and public safety (e.g., hazard warnings). These data streams form the foundation for critical scientific research to improve fundamental understanding of the Earth system and its changing climate. They provide accurate forecasts, surveys, and

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<sup>16</sup> For the purposes of this National Plan, a commitment to maintain observations for seven years or more is considered to be the minimum threshold necessary for provision of long-term services and research in the public interest. Most experimental observation programs are not planned to exceed seven years.

records that support U.S. scientific, economic, and commercial interests and, as such, are essential to the maintenance of national and economic security.

Sustained observations for public services are subdivided into two tiers, described below.

### *3.2.1.1. Tier 1*

Based on results of the EOA, the following measurement groups support a majority of the societal themes.<sup>17</sup> These measurement groups represent the highest priority measurements in the category of sustained observations for public services. They are listed below in priority order.

1. Weather and seasonal climate monitoring and prediction: Observations in this measurement group characterize phenomena such as precipitation, storms, wind, floods, sea state, drought, wildfires, ice, air quality (including ozone), and weather risks to human health and transportation. They also contribute to short-term climate forecasts. These observations derive from next-generation radar on fixed and mobile platforms; atmospheric sounding from space and airborne platforms, oceanic measurements, and spectral and radiometric imaging of the Earth surface.
2. Dynamic land-surface monitoring and characterization: Observations in this measurement group support food and water security, water availability and quality, fire detection and suppression, human health, forestry, soil characterization (including soil moisture), hazards mapping and response, and natural-resource management. They particularly derive from multispectral and hyperspectral imaging from space and airborne platforms, forest inventory, and soil data collection.
3. Elevation and geo-location: Observations in this measurement group support food and water security, hazard and risk mapping, and natural-resource management. These observations particularly include topography and bathymetry, surface modeling, hydrologic data, and ecosystems-related data as derived from radar and laser sensors on satellite-based, airborne, and terrestrial platforms, as well as positioning, navigation, and timing satellites, such as those used for the Global Positioning System (GPS).
4. Water level and flow: Observations in this measurement group support coastal inundation and inland flooding, water availability, hydropower management, transportation, human health, water equivalent of snow, and tsunami hazard preparedness. They particularly derive from coastal and inland water level and flow measurements, seafloor topography, and ocean topography from satellite altimetry.

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<sup>17</sup> These measurement categories were derived by reviewing the primary purpose of the 15 highest impact systems identified by the EOA across all SBAs. They are designated as Tier 1 systems in this National Plan. The examples of questions and phenomena supported by each measurement group are meant to be illustrative and do not represent the fullest range of possible uses for these measurements. A list of systems supporting Tier 1 measurements can be found in Table 1 in Annex I.

### 3.2.1.2. Tier 2

The following measurement groups are identified based on the remaining high-impact observing systems identified in the EOA.<sup>18</sup> These measurement classes are of next-highest priority and importance in the category of sustained observations for public services.<sup>19</sup> They are listed here in alphabetical order.

- Ecosystem and biodiversity resource surveys for terrestrial, freshwater, and marine ecosystems, including fisheries and wildlife management
- Environmental-quality monitoring, specifically disease-vector surveillance, water quality, and air quality associated with changes in atmospheric composition, including particulate matter and short-lived climate pollutants
- Geo-hazard monitoring for earthquakes, volcanoes, landslides, regional and local subsidence (e.g., sinkholes), inundation, and tsunamis
- Space-weather monitoring of geomagnetic storms, sunspots, solar flares, associated x-ray and ultraviolet emissions, solar wind (including coronal mass ejection), solar energetic particles, traveling ionosphere disturbances, and associated changes of the Earth's geomagnetic field and ionosphere for their impact on human activities

While the EOA provided higher overall scores to those systems that were identified as impacting more than one SBA, some of these systems contribute critically or are essential to key objectives in one or more SBAs. Some Tier 2 systems are critical in that they are the only observing systems available for a particular objective, so that objective could not be achieved without them.

### 3.2.2. Sustained Observations for Earth-System Research in the Public Interest

The public interest also requires sustained observations for understanding how and why the Earth system, including the Earth's climate, is changing. These observations are those measurements supporting continuous data streams or routinely generated data products that are needed for basic and applied research to advance human knowledge (climate-change research, solid-Earth research, meteorological research, ocean and water-cycle research, and space-weather research), to improve public services, and to support public and general education. These observations often require multi-year data collection and maintenance within a specific sampling frame (e.g., measurements taken at a specific location at a given interval). The purpose of such sustained observations is often long-term research, but the data collected often have immediate benefit for society and are frequently integrated into sustained services.

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<sup>18</sup> The measurement categories in Tier 2 were derived by analyzing the primary purpose of the observing systems not covered in Tier 1. Tier 2 includes the remaining high-impact systems identified in the EOA across all SBAs, and also includes additional special-purpose systems designated as high impact to specific individual SBAs. A list of systems supporting Tier 2 measurements can be found in Table 2 in Annex I.

<sup>19</sup> The tiers prioritize measurements, not the SBAs that the measurements support (e.g., understanding geo-hazards is not ranked below understanding weather hazards, but weather hazard measurements support a wider range of uses than geo-hazard measurements).

The following measurement categories, presented in alphabetical order, were identified for sustained research observations.<sup>20</sup>

- Atmospheric state, including measurements of temperature, pressure, humidity, wind, and ozone at the accuracy required for long-term climate research, and, as appropriate, to improve short- and medium-range weather forecasting;
- Cryosphere, including measurements of ice sheets, glaciers, permafrost, snow, and sea ice extent and thickness;
- Earth's energy budget, including total solar irradiance and Earth's radiation budget, and the reflectance and scattering properties of clouds, aerosols, and greenhouse gases, specifically for understanding Earth's sensitivity to climate change;
- Extremes, including specific and routine observations for the study of extreme temperatures, drought, precipitation, and wind;
- Geo-hazard research, including monitoring land-surface deformation to better understand regional and local disaster potential and effects, and the monitoring of phenomena that precede natural disasters, such as seismic, stress, strain, and geochemical and temperature changes;
- Greenhouse gas emissions and concentrations, including understanding sources and sinks of greenhouse gases, as well as changes in long-lived greenhouse gas and short-lived climate-pollutant concentrations over time;
- Integrated geophysical and biosphere characterization (terrestrial, freshwater, and marine), including long-term dynamics to understand ecosystem change and biogeochemical processes, particularly the carbon cycle;
- Ocean state, including observations of sea levels, temperature, salinity, pH, alkalinity, currents and characteristics of marine ecosystems;
- Space weather, including long-term understanding of the Earth-Sun relationship, solar dynamics, and the drivers of space-weather impacts at the Earth's surface, such as coupling between space weather and geomagnetic storms; and,
- Water cycle, including the analysis of droughts, floods, and water availability (precipitation, soil moisture, snow-water equivalent, evapotranspiration, groundwater, surface water, and runoff).

### 3.3. Experimental Observations

Experimental observations are defined as measurements planned for limited durations, generally seven years or less, that Federal agencies are committed to making for limited research and development purposes. These observations may be taken for a variety of purposes: to advance human knowledge

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<sup>20</sup> The 2012 EOA included climate and related global change research needs as an SBA, but did not systematically prioritize research observations (see Footnote 13). Therefore, for the purposes of the National Plan, these measurement categories have been identified but not prioritized. Future assessments will address the question of priorities for sustained research in consultation with external stakeholders, including the National Academies, as appropriate.

through basic and applied research, to explore technical innovation, or to improve public services. These include first-of-their-kind observations, technology innovation and infusion (e.g., new methods, proofs of concept, and evolving observation platforms such as small satellites, microbuses, unmanned aerial vehicles, automated mobile and distributed sensor networks, and handheld devices), targeted activities (e.g., field campaigns, process studies, model validations, and design studies), and experiments for system improvements (e.g., risk reduction and upgrades).

The advancement of experimental scientific research on the Earth's fundamental processes is central to human progress, applicable to improvements in current and future service capabilities, and essential for achievement of other national Earth science objectives. Therefore, the Federal Government will pursue experimental and first-of-their-kind Earth observations to advance human knowledge, explore technical innovation, and improve services.

Innovation is an essential component in developing a robust portfolio of experimental observation systems. Evolving observation platforms offer the potential to make Earth observations more efficient, accurate, or economical over the National Plan's three-year timeframe. The infusion of new technologies requires investments in new sensors, materials, techniques, satellite architectures, and so forth, supported by research and development funding and combined with new scientific research with the objective of developing more efficient or higher quality observations. Experimental measurements drive innovation for research, form the basis of planned improvements in service-driven observations, and advance human knowledge and understanding.

Within this measurement category, the large-scale Earth science research programs of the National Aeronautics and Space Administration (NASA), the National Science Foundation (NSF), the National Oceanic and Atmospheric Administration (NOAA), the United States Geological Survey (USGS), the Department of Energy (DOE), the United States Department of Agriculture (USDA), the Department of Transportation (DOT), and other agencies will continue setting priorities and advancing innovation in Earth observation by selecting and funding experimental observations.<sup>21</sup>

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<sup>21</sup> Agency processes will include consultation with external stakeholders, such as the National Academies, as appropriate.

## 4. Priorities and Supporting Actions for Civil Earth Observations

Federal agencies will work with the Executive Office of the President and Congress to consider the following priorities and supporting actions. All priorities and activities outlined are to be conducted when feasible and within approved agency budgets.

### 4.1. Priorities

The most important principle governing the Nation's civil Earth observing systems is that the overall set of observations must yield a balanced portfolio across both sustained and experimental observation. This National Plan provides guidance in setting priorities for the construction of this balanced portfolio. In the balanced framework, no one category, tier, or observation automatically supersedes or supplants all others. Agencies, in consultation with the Executive Office of the President and Congress on these priorities, have discretion to deviate from this National Plan's rankings when necessary. In recognition of this, the National Plan accommodates this flexibility while meeting the Nation's overall civil Earth observation priorities and objectives.

The framework allows for, and recognizes the importance of, planned improvements to observing systems to maintain data of sufficient quality, while the Nation also seeks to improve observation techniques and the effectiveness and efficiency of Earth observations collection, dissemination, and use.

The priorities are listed in ranked order and are elaborated on in the subsections that follow.

1. Continuity of sustained observations for public services. Prioritize system investments to ensure continuity of public services.
2. Continuity of sustained observations for Earth system research. Establish and maintain programs to ensure data continuity for high-impact sustained research observations.
3. Continued investment in experimental observations. Continue to invest in research and development, incorporating technological advances to improve observations.
4. Planned improvements to sustained observation networks and surveys for all observation categories. Proceed with planned improvements to sustained observation systems.
5. Continuity of, and improvements to, a rigorous assessment and prioritization process. Initiate a national-level process for prioritizing sustained observations for both research and public services and for experimental observations, including a process for external advisory input and strategic balance.

#### 4.1.1. Priority 1: Continuity of Sustained Observations for Public Services

Federal agencies engaged in Earth observations should work both individually and collectively to ensure the continuity of sustained observation systems essential in the maintenance of public safety, national and economic security interests, and programs supporting services critical to agency missions and scientific research. In particular, the President's FY 2015 budget provides support for Federal agencies to:

- Maintain the continuity of observations of current atmospheric conditions from satellites, terrestrial networks, and airborne and marine platforms to provide sufficient weather, hazard,

and air-quality forecasting and prediction; the efficient movement of commerce and goods; and the reanalysis of data sets for climate research and infrastructure planning.

- Maintain a sustained, space-based, land-imaging program while ensuring the continuity of 42 years of multispectral information and 36 years of thermal-infrared land-surface information from space, which are unique sources of terrestrial data for understanding land cover change.
- Maintain sufficient continuity of airborne remote-sensing capabilities for agricultural resource monitoring, as well as sustained observations from multiple platforms for forest inventories and soil surveys. Together these observations are a critical source of information on the management of Earth resources needed to sustain human life, agriculture, forestry, and economic activity.
- Ensure the continuity of the GPS satellite network and maintain related terrestrial reference-frame measurements. GPS is singularly important as the principal and irreplaceable reference for universal time and geo-reference measurements that underpin nearly all Earth observations.
- Establish and maintain a national program to standardize the regular collection of nationwide, high-resolution, three-dimensional data for surface modeling and volumetric analysis for multiple requirements (e.g., airborne light detection and ranging or LIDAR).
- Ensure continuity of terrestrial, marine, coastal, and inland water-level and flow measurements and maintain the continuity of ocean and seafloor topography measurements from satellite altimetry.
- Maintain continuity of space-weather observations, including sustained space-weather research measurements and ground observations, to provide definitive space weather forecasts, warnings, and alerts to the general public, industry, and government agencies.
- Maintain sufficient continuity of data from oceanic platforms (e.g., gliders and moored and drifting buoys).
- Maintain sufficient continuity of observations for ecosystem-resource surveys, environmental-quality measurements, and monitoring of solid-Earth hazards.

Current observing systems supporting this priority are shown in Annex I. To maintain continuity of these observations, follow-on and experimental observation systems will be developed within the timeframe of this National Plan.

#### **4.1.2. Priority 2: Continuity of Sustained Observations for Earth System Research**

Federal agencies will continue to collaborate with each other and with international partners to establish and maintain systems and networks specifically for sustained observations for Earth-system research.

Multiple agencies maintain extensive Earth-science programs that will continue to identify priorities for sustained observations for use in Earth-system research. The agency processes that direct these research programs will include consultation with external stakeholders, such as the National Academies, as appropriate. The President's FY 2015 budget provides specific support for agencies and their research programs to continue and strengthen their activities in support of this priority.

For example:

- NASA is extending measurements of groundwater, greenhouse gases, and aerosols from space-based platforms, in collaboration with international partners (see Section 6).
- NOAA is supporting a nationwide Federal network specifically designed and operated for the purpose of long-term climate monitoring. It primarily takes highly accurate measurements of air temperature, precipitation, soil temperature, moisture, and relative humidity for the purpose of detecting long-term climate change on a national scale. It also takes secondary or ancillary measurements of solar radiation, infrared temperature, and wind to assist in the calibration of the primary variables.
- NSF is supporting a federally funded, multi-site, national network designed to gather and synthesize data on the impacts of climate change, land-use change, and invasive species on natural resources and biodiversity. The network will combine site-based data with remotely sensed data and existing continental-scale data sets (e.g., satellite data) to provide a range of scaled data products that can be used to describe changes in the Nation's ecosystem over time.
- NSF has begun construction on a federally funded sensor network to measure the physical, chemical, geological, and biological variables in the ocean and on the seafloor. Knowledge of these variables improves detection and forecasting of environmental changes and their effects on biodiversity, coastal ecosystems, and climate.

Finally, multiple agencies are supporting the development of multi-site and multi-platform observing systems and networks that integrate observations on local to global scales to improve climate-change, biodiversity, and ecosystems research, among other areas.

#### **4.1.3. Priority 3: Continued Investment in Experimental Observations**

Experimental observations strengthen the Nation's Earth observation activities through the development and validation of new science, technologies, systems, techniques, and measurements to support both services and scientific research. The continual integration of experimental observations into the portfolio of Federal Earth-observing systems ensures that cutting-edge capabilities are maintained and measurements of increasing quality, accuracy, resolution, and density are provided. The President's FY 2015 budget provides funding for Federal agencies to act individually and in collaboration to support this priority.

#### **4.1.4. Priority 4: Planned Improvements to Sustained Observation Networks and Surveys for All Observation Categories**

Federal agencies will proceed with planned improvements to sustain observation systems, with special attention and priority given to include agencies' pre-planned improvements and service-life extension programs.

#### **4.1.5. Priority 5: Continuity of, and Improvements to, a Rigorous Assessment and Prioritization Process**

Federal agencies will collaborate with external stakeholders to continue and improve the assessment process initiated by the National Strategy. To this end, the newly re-chartered United States Group on Earth Observations (USGEO) Subcommittee of the NSTC's CENRS will oversee the EOA process on three-

year cycles, with the next EOA beginning in 2014. The next EOA will also seek additional insight with regard to research priorities and future needs.

## 4.2. Supporting Actions

The supporting actions required to meet the foregoing priorities are listed below in priority order and elaborated on in the subsections that follow.

1. Coordinate and integrate observations. Coordinate observing and integrate separate observations from multiple platforms, as appropriate, to include federated data sharing standards, ontologies, and user-adopted conventions.
2. Improve data access, management, and interoperability. Improve data discovery, access, and use of Earth observations by making them interoperable, providing open access to them, and presenting them in a machine-readable form for end user applications and services.
3. Increase efficiency and cost savings. Increase efficiency and cost savings of observation systems, by exploring tradeoffs among cost, capabilities, and risk and, as appropriate, reevaluating program overhead and management structures.
4. Improve observation density and sampling. Where appropriate and cost-effective, upgrade observing systems and widen their data dissemination to improve Earth-observation capabilities and reduce gaps in coverage.
5. Maintain and support infrastructure. Maintain necessary infrastructure to operate, manage, house, transport, deploy, modify, and support needed observing systems.
6. Explore commercial solutions. Improve entry points for exploiting cost-effective commercial solutions for the provision of Earth observations to encourage private-sector innovation and services while preserving the public-good nature of Earth observations.
7. Maintain and strengthen international collaboration. Maintain and strengthen international collaboration and data sharing.
8. Engage in stakeholder-driven data innovation. Engage with the private sector and the general public to encourage innovations for collection, exploitation, and wider use of Earth observations based on improved availability of open data, including new applications, new services, citizen science, and crowdsourcing.

### 4.2.1. Action 1: Coordinate and Integrate Observations

Sustained and experimental observations serve both services and research needs. Many near-term service benefits flow from research observations. Similarly, research is advanced through the data collected by service-driven observations that are archived, disseminated, and reused beyond the immediate user community. Agencies will examine improved methods for integrating sustained and experimental observations, and will explore collaboration to:

- Develop integrated Earth-observation requirements, recognizing unique requirements as appropriate.

- Advance algorithm development for integrating Earth observations from multiple sources, including improved capacity to integrate data from multiple spatial scales and reference models.
- Develop specific, coordinated observing systems and programs to meet integrated requirements; in particular, explore increased airborne, terrestrial, and marine data-collection coverage, coordinated with planned new satellite-observation systems.
- Enhance systematic strategies that can be used for calibration and quality assurance of all observation systems, whether airborne, terrestrial, or marine and satellite based, and develop standardized methods for collection of automated sensor-derived and human-acquired measurements.
- Consolidate, as appropriate, existing networks and mapping through interagency agreements that ensure interoperability, common measurement standards, and meaningful leveraging of resources. Examples of this approach include:
  - Bringing current coastal in situ systems together into a single, federated, coastal observing system under an optimized plan for the U.S. Integrated Ocean Observing System (IOOS®) and
  - Consolidating various land, coastal, and ocean ecosystem mapping projects into a national ecosystem map.
- Consolidate GPS surface-monitoring stations by reducing the number of stations where feasible without reducing coverage. Examples of GPS station networks include those used:
  - Through NSF for crustal motion detection,
  - By USGS for earthquake and volcano-hazard monitoring and early warning, and
  - By NOAA for tropospheric sounding activities.
- Continue development and operation of multi-platform observing systems that combine space, air, land, or ocean measurements to provide cost-effective, integrated analysis of Earth science phenomena.
- Coordinate efficient spectrum allocation and use for observing systems to enable the transmission of large amounts of data, particularly from Earth observing satellites.

#### **4.2.2. Action 2: Improve Data Access, Management, and Interoperability**

Realizing the full benefit of the nation’s Earth observation investments requires more than the effective deployment of sensors and surveys. Observation data streams and their metadata generally feed machine-to-machine data processors that analyze, automate, integrate, display, and provide decision support tools to make use of large volumes of base data. By improving the management and preservation of Earth-observation data, Federal agencies help to ensure that both anticipated and unanticipated users can find, obtain, evaluate, understand, compare, and use legacy data in new ways.

Under this supporting action, Federal agencies will strengthen their individual efforts and collaborations to improve data discovery, access, archives, and use of Earth observations by making them interoperable, open, subject to shared generic message exchange patterns (e.g., publication/subscription), and machine-

readable.<sup>22</sup> To this end, Federal agencies will support development of a comprehensive data-management framework as an integral element of Earth-observation activities to improve access to, and use of, Earth observations by new and potential users. To accelerate the implementation of this framework, the President's FY 2014 and FY 2015 budgets invest in the Big Earth Data Initiative (BEDI) for standardizing and optimizing the collection, management, and delivery of Federal civil Earth-observation data.<sup>23</sup> BEDI also builds upon data-management work already occurring at the agencies.

Federal agencies will collaborate to do the following:

- Promote implementation of end-to-end life-cycle data management, including data-management principles, guidance, and data policy; life-cycle data-management approaches; architectural considerations; standardization; data evaluation; and data-telecommunication efficiency and innovation.
- Encourage the development and use of uniform methodologies and practices across Federal agencies for common services in the handling of Earth-observation data to increase interoperability through improved metadata standardization, filter, and subset services based on user needs, federated user management efforts, and robust standards for multi-use observation systems like LIDAR that are used across various Federal and State agencies.
- Maximize the likelihood that Earth observations are made known, made available, and disseminated to users in a timely and useable manner.
- Continue support for data-clearinghouse mechanisms that emphasize metadata cataloging (such as Data.gov) and advocate support for developing "big data" initiatives and common support services that aim to improve the discoverability, accessibility, usability for intended purpose, and re-purposing of the vast amounts of data already available.
- Support the further development of forecast models, sensor integration, display applications, signal-processing algorithms, and other data-collection and management techniques.
- Work within current, or support the development of new, communities of practice focused on data integration and cross-program coordination to address:
  - Community-based data standards;
  - Web services;
  - Application development;
  - Design of interoperable data systems based on technical standards;
  - Reduction of uncoordinated and duplicative web portals;

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<sup>22</sup> These efforts are in accordance with existing policy guidance on open data, including Executive Order No. 13642, "Making Open and Machine Readable the New Default for Government Information," and Office of Management and Budget (OMB) Memorandum M-13-13, "Open Data Policy—Managing Information as an Asset," both dated May 9, 2013.

<sup>23</sup> BEDI follows the life-cycle data-management principles articulated in the National Strategy and is designed to help Earth-science agencies comply more fully Executive Order No. 13642.

- Development of standardized data products; and
- Use of cloud-based infrastructure, platforms, and services for efficient data storage and virtual resource sharing.
- Create frameworks, platforms, and systems to integrate data obtained from multiple observations that measure common phenomena.
- Consider improving interoperability between Earth observation data and relevant data sets that are not based on Earth observations (e.g. census data) to support agency objectives.

#### 4.2.3. Action 3: Increase Efficiency and Cost Savings

Federal agencies shall increase efficiency and cost savings in observation systems by exploring tradeoffs among cost, capabilities, and risk and, as appropriate, evaluating program-management structures and overhead. Specifically, agencies will take steps as follows:

- Increase efficiency.
  - Develop specific processes for regular evaluation of in situ airborne, terrestrial, marine, and satellite-based observation systems, both mobile and fixed. These evaluations should be used to guide the consolidation, relocation, expansion, or reduction of sites, instruments, or measurements when such actions offer improved efficiencies or cost-savings while maintaining data quality.
  - Evaluate commercial and foreign satellites and observation networks for their potential value in augmenting the U.S. Government's Earth-observing capacity.
  - Explore possibilities for common ground systems and dissemination mechanisms for satellite-derived information.
  - Consider refining satellite risk profiles for nonhuman spaceflight and streamlining review cycles to achieve cost savings and efficiencies, as appropriate.
  - Explore coordinated acquisition of sonar, radar, and LIDAR technology, as appropriate, to achieve efficiencies.
  - Conduct a study of radiosonde observations in proximity of aircraft soundings to achieve savings for the purpose of weather forecasting.
  - Increase coordination and cooperation in the use of vessels for oceanographic research and surveys of living marine resource.
  - Explore opportunities to leverage land- and ocean-observing platforms across programs and agencies.
  - Use modeling tools to supplement monitoring networks to fill in spatial and temporal gaps and potentially reduce monitoring requirements.

- Explore greater use of National Technical Means resources that could fulfill societal and research requirements through civilian tasking, unclassified product development, and public distribution.
- Improve coordination of sensor development and acquisition of imagery and data.
  - Improve interagency and external coordination in the organization of space-based sensor development and launch.
  - Develop a collaborative strategy among agencies and their primary users on climatology and continuity for ocean-color calibration, data processing, and product development through satellite platforms.
  - Coordinate airborne research efforts among interagency and international partners.
- Increase agencies' automation, remote configuration, and standby mechanisms.
  - Explore automation of surface-air-quality networks and connection with networks for other purposes to increase data utility across observation systems and programs.
  - Explore and, where cost-effective and appropriate, expand the use of airborne, terrestrial, or marine autonomously or remotely operated vehicles with sensor packages to provide more agility and to reduce costs in data acquisition.
  - Adopt automated measurement and data-collection techniques as legacy networks are modernized.
  - Adopt common software environments to allow for remote configuration updates of surface-observing platforms that will increase efficiency and reduce the cost of retrofitting individual sites.
  - Increase coordination of systems making compatible observations to enhance continuity of services and increase cost-savings. This might include optimizing the frequency and density of observations from systems in proximity to maximize coverage of specific phenomena (e.g., severe storms).
- Improve technical refresh for cost reduction.
  - Pursue improvements through value engineering and technical refresh activity to reduce life-cycle maintenance costs, eliminate proprietary restrictions, maintain replenishment sources when the original equipment manufacturer ceases support, and prevent information-technology obsolescence.

#### **4.2.4. Action 4: Improve Observation Density and Sampling**

Federal agencies will explore and pursue upgrading systems and techniques through improvements to spatial resolution, temporal cycle, sample density, and geographic coverage of observation networks to close coverage and performance gaps and improve calibration and validation of measurements. When feasible and within approved agency budgets, Federal agencies will, individually or collaboratively:

- Sustain and improve spatial, spectral, and temporal resolution.

- Collect and employ Earth-observation data, imagery, and reference measurements with higher temporal, spatial, and spectral resolution through more sustained observations and better reuse of related data, particularly for land imaging, boundary layer observations, air-quality measurements, natural hazards, hydrology, and severe-weather forecasting.
- Improve observation density and sampling through technical upgrades.
  - Upgrade receivers to take advantage of improved positioning, navigating, timing, and geodetic-observation capabilities as they are launched to provide better results and increased coverage.
  - Pursue the systematic integration and improvement of observing-system density and sampling with hydrodynamic and inundation models through use of uncertainty analyses to identify areas requiring new observations and better model performance.
  - Invest in advanced data calibration to improve real-time quality control, including field equipment, test kits, self-calibrating sensors, and other novel technologies.
  - Explore technologies that facilitate new measurements or greatly enhance current measurements, such as biotechnology for genetic user identification, portable laboratories and chips, and observer-centric mechanisms.
  - Equip and modify existing or planned platforms for sustained, multipurpose observations as appropriate.
- Create new data sets from forthcoming systems (e.g., air quality from geostationary environmental satellites and flight trajectory-oriented weather data from air transportation systems).

#### 4.2.5. Action 5: Maintain and Support Infrastructure

Sustained Earth observations require the operation and maintenance of extensive physical, cyber, communications, and human infrastructure. Such infrastructure supports the maintenance, deployment, retrieval, replacement, and repair of Earth observation systems.<sup>24</sup> Agencies will identify, prioritize, and implement activities and document appropriate funding requirements for life-cycle operation, maintenance, and evolution of infrastructure required for them to sustain Earth-observation systems. As part of this process, agencies shall also consider cost-sharing for complementary and common infrastructure in support of their Earth-observation objectives.

Furthermore, agencies often conduct observations in remote areas and at great distances. The necessary supply-chain infrastructure to support these observations includes the Federal oceanographic and airborne research fleets and other systems. These fleets support sustained observations for both services

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<sup>24</sup> Additionally, certain infrastructure can serve multiple purposes. For example, ships are able to place both researcher and technology at the site of the science and remain deployed “on effort” for extended periods of time.

and research across a broad spectrum of national needs.<sup>25</sup> Agencies should continue to maintain their relevant supply-chain infrastructure and document their related funding requirements.

#### **4.2.6. Action 6: Explore Commercial Solutions**

Federal agencies will identify and pursue cost-effective commercial solutions to encourage private-sector innovation while preserving the public-good nature of Earth observations. U.S. agencies will consider a variety of options for ownership, management, and utilization of Earth observation systems and data, including managed services (Government-Owned/Government-Operated, Government-Owned/Contractor-Operated, or Contractor-Owned/Contractor-Operated), commercially hosted payloads, commercial launch, commercial data buys, and commercial data management. In developing such options, agencies will preserve the principles of full and open data sharing, competitive sourcing, and best value in return for public investments within legal and financial constraints.

#### **4.2.7. Action 7: Maintain and Strengthen International Collaboration**

The global nature of many Earth observations and the value of these observations to U.S. Government decision makers require U.S. agencies to carry out their missions through collaboration with foreign agencies, international organizations, and standards/coordination groups. Through international collaboration, U.S. agencies leverage foreign data and scientific expertise to improve their understanding of remote areas, such as the open ocean and polar regions, and to characterize global atmospheric, oceanic, and terrestrial phenomena. In addition, collaboration with international partners helps to minimize unnecessary redundancy in the collection of Earth observations, and ensures the effective use of limited resources. U.S. agencies also work closely with the Department of State and other agencies to provide associated scientific and technical support for U.S. foreign policy, security, economic, and environmental interests.

The concept of integrated Earth observations and open data management achieved international prominence in 2005 with the establishment of the intergovernmental Group on Earth Observations (GEO) and its agreement to support the development of a Global Earth Observation System of Systems (GEOSS).<sup>26</sup> This concept has been endorsed and is being implemented by over 90 governments, the European Commission, and more than 60 international organizations. The United States co-leads this international activity with China, the European Commission, and South Africa. GEOSS offers a comprehensive approach to observe all aspects of the Earth system and integrate the data gathered from these observations into timely and useful information for all sectors of society.

U.S. agencies engage in bilateral and multilateral collaboration with foreign partners and international organizations to obtain Earth-observation measurements necessary to improve U.S. scientific research, environmental monitoring, and related public- and private-sector decision making. Through their

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<sup>25</sup> The *Federal Oceanographic Fleet Status Report* is an example of an effort to advance the efficient and effective operation of a Federal fleet, in part for the purpose of observations at the lowest possible life-cycle costs ([http://www.whitehouse.gov/sites/default/files/federal\\_oceanographic\\_fleet\\_status\\_report.pdf](http://www.whitehouse.gov/sites/default/files/federal_oceanographic_fleet_status_report.pdf)).

<sup>26</sup> To further the objectives of GEOSS, U.S. agencies participate in various international organizations and coordination groups, including: the Intergovernmental Oceanographic Commission, United Nations Framework Convention on Climate Change, United Nations International Strategy for Disaster Reduction, World Meteorological Organization, and Committee on Earth Observation Satellites, among others.

international activities, U.S. agencies support full and open data exchange and collaborative research on matters of national and global importance.

In support of this action, Federal agencies will individually or collaboratively take the following actions:

- Maintain and expand bilateral and multilateral relationships as appropriate in support of national and international objectives.
- Improve access to non-U.S. satellite data, especially for domestic users.
- Explore the development of mechanisms for optimizing the collection, processing, and archiving of satellite data with the European Space Agency, the Japan Aerospace Exploration Agency, and other agencies to address specific SBAs (e.g., water).
- Continue U.S. involvement in global observation efforts and national activities that serve to further integrate national observing programs with internationally networked systems.
- Assess the potential for joint collection and processing of data from land-imaging systems to achieve savings through consolidation of image processing and to create a global source of timely, routinely available, ready-to-use measurements.
- Increase the level of international satellite collaboration to obtain specific measurements, following examples set by current collaboration in areas such as sea level, soil moisture, greenhouse gases, and ozone.

#### **4.2.8. Action 8: Engage in Stakeholder-Driven Data Innovation**

To improve the collection, exploitation, and use of Earth observations, Federal agencies will pursue private-sector innovations, public data crowdsourcing, and citizen science.<sup>27</sup> These three observation sources are all key components of a portfolio approach to Earth observations. Expected future technical developments throughout the National Plan’s lifetime mean crowdsourcing, citizen science, and collection from individual mobile platforms will become increasingly important as they mature. Federal agencies will explore, support, and pursue efforts to enable stakeholder-driven data innovation from Earth observations.

Several initiatives have been launched to foster innovation in the exploitation and use of Earth observation data in the Climate SBA. Consistent with Executive Order No. 13642, “Making Open and Machine Readable the New Default for Government Information,” and part of *The President’s Climate Action Plan*, the Obama Administration launched a Climate Data Initiative in March 2014. This initiative

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<sup>27</sup> Successful examples of these types of initiatives include USGS’s “Did You Feel It?” program, which collects crowd-sourced data to better understand and measure earthquakes, and its Biodiversity Information Serving Our Nation (BISON) program, which aggregates species biodiversity data from a variety of sources, including museums, research studies, and citizen science programs. The President’s Council of Advisors on Science and Technology has proposed the creation of an Ecoinformatics-based Open Resources and Machine Accessibility database called EcoINFORMA with the intention of making Federal data on environmental health widely accessible. Approximately 1,300 certified non-Federal, automated weather observing systems feed observation data into the Federal Aviation Administration’s national automation systems. The non-Federal systems are owned and operated by various airport operating authorities including State, city, county, and local governments; municipalities; homeowners associations; and individual citizens.

leverages extensive Federal climate-relevant data to stimulate innovation and private-sector entrepreneurship in support of national climate-change preparedness. In conjunction with this initiative, Federal agencies will create a virtual toolkit that provides access to data-driven climate resilience tools, services, and best practices, including those developed through the Climate Data Initiative. Federal agencies should continue support for these and other initiatives encouraging innovative use of Earth observation data.

## 5. Civil Earth Observations from Airborne, Terrestrial, and Marine Platforms

Multiple Federal agencies manage the U.S. Government’s airborne, terrestrial (including freshwater), and marine civil Earth-observation platforms and surveys, which gather remotely sensed, in situ, and human observations. The agencies that conduct or fund these observations include the Departments of Agriculture, Commerce, Defense, Energy, Interior, and Transportation; the Environmental Protection Agency (EPA); NASA; NSF; the Smithsonian Institution; and the U.S. Agency for International Development. In general these agencies, in accordance with their existing legal authorities, will continue to pursue the development of these platforms to observe and study the Earth system, with a focus on measurements described in this National Plan.

Airborne, terrestrial, and marine observations are vital to fulfilling Federal public-service obligations and research objectives across multiple SBAs. They provide critical information at high degrees of resolution, density, and efficiency. In addition to serving as primary sources of critical measurements and observations for public services and research across SBAs, these observations are essential to validate satellite-derived data products. Sustained airborne, terrestrial, and marine observations support the provision of public services and scientific research, while experimental observations in each of these categories both advance the state of science and improve the ability to monitor and measure the Earth system.

Continuous high-quality observations are critical for defining the current state of the Earth system; in particular, the constantly changing conditions of the atmosphere, hydrosphere, and biosphere. Observations from airborne, terrestrial, and marine platforms are required to accurately measure a number of Earth-system processes, including those related to biodiversity, groundwater, carbon sequestration, and the subsurface ocean. Long-time-series data derived from these observations contribute to more effective detection and diagnosis of climate change. Agencies should sustain the operations of established airborne, terrestrial, and marine observation platforms with ongoing attention to sufficient coverage and data quality.<sup>28</sup>

Recommendations from teams of SMEs for each SBA, as contained in the 2012 EOA, emphasized the need for sustained observations across SBAs to mitigate the significant risk of observation and data gaps, and, where possible and within agency approved budgets, the need for maintaining and improving the coverage and density of airborne, terrestrial, and marine observations, systems, and programs to preserve and enhance the long-term record.

The following categories highlight examples of high-impact airborne, terrestrial, and marine platforms and programs identified in the EOA. They provide sustained observations for public services, research, and experimental observations. Many of these observing systems are operated in partnership between Federal and non-Federal entities and many Federal agencies rely on these data for their operations. These

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<sup>28</sup> For climate monitoring and research, agencies may refer to guidance provided by the Global Climate Observing System (GCOS). GCOS has identified 50 Essential Climate Variables (ECVs), which are required for systematic monitoring of, and research on, the Earth’s changing climate. Fundamental Climate Data Records derived from airborne, terrestrial (including freshwater), marine and satellite-based observing systems are needed to address ECV information needs.

observations are grouped by platform and are presented in alphabetical order within each category (sustained and experimental).

## 5.1. Sustained Airborne, Terrestrial, and Marine Observations for Public Services and Research

### 5.1.1. Airborne Observations for Public Services and Research

The following examples of high-impact airborne platforms and programs identified in the EOA are presented alphabetically.

- *Airborne light detection and ranging (LIDAR)*: Airborne observations used to create very high-resolution maps and elevation data sets, among other applications, are a high-impact category of observations conducted by multiple Federal and State agencies, commercial providers, and international partners. The 2012 EOA contained multiple recommendations from SME teams for sustained, expanded airborne three-dimensional measurements, which would benefit multiple SBAs. These measurements would significantly enhance high-resolution digital elevation models and shoreline mapping to improve services in the Disasters and Ocean and Coastal Resources and Ecosystems SBAs.
- *Airborne meteorological data collection and reporting*: Aircraft-based meteorological observations support improved weather forecasting, particularly for upper-air winds and severe weather. Real-time automated position and weather reports are used in predictive weather models on a daily basis. These measurements have an impact on eight SBAs, with “highest” impact on the Weather SBA.
- *Digital orthophotography*: Aircraft-based digital orthophotography provides imagery of the continental United States during agricultural growing and non-growing seasons. These measurements have an impact on nine SBAs, with “very high” or “highest” impact in the Agriculture and Forestry, Biodiversity, and Ecosystems SBAs. Agriculture SMEs recommended increasing the consistency of this imagery collection and integrating it with other relevant observations.
- *Radiosonde observations*: Radiosondes collect information on atmospheric temperature, pressure, and humidity using an instrument suspended from a balloon. The Federal Government has conducted upper air observations with radiosondes since the 1930s and currently uses radiosonde data in weather-prediction models; local severe storm, aviation, and marine forecasts; air-pollution models; satellite-data verification; and analysis of climate variability and change. Radiosonde observations impact nine SBAs, with “very high” impact in the Transportation SBA and “high” in Weather SBA.

### 5.1.2. Terrestrial (Including Freshwater) Observations for Public Services and Research

The following examples of high-impact terrestrial platforms and programs identified in the EOA are presented alphabetically.

- *Ground-based Weather Radars*: A national ground-based network of weather radars supports weather forecasting and warning services. These systems detect precipitation and wind and

contribute to severe-weather and flash-flood warnings, air-traffic safety, flow control for air traffic, resource protection at military bases, and management of water, agriculture, forests, and snow removal. The network impacts nine SBAs, with “highest” impact in the Transportation SBA and “very high” impact in the Weather and Energy and Mineral Resources SBAs.

- *Soil Observations*: A nationwide partnership of Federal, regional, State, and local agencies, along with private entities and institutions, cooperatively investigates, inventories, documents, classifies, interprets, disseminates, and publishes information about soils of the United States and its territories. These activities are carried out at national, regional, and State levels. This information has a “high” impact in the Agriculture and Forestry, Biodiversity, Ecosystems, Human Health, and Water Resources SBAs.
- *Stream Gage Network*: A nationwide network of stream gages operated by Federal, State, and local agencies provides stream flow monitoring and measurement and hydrological observations. These observations provide critical support to stream-flow forecasts, river-basin outflow forecasts, drought forecasts, water-quality measurements, and sentinel watershed monitoring. The network impacts ten SBAs, with “very high” impact in the Water Resources and Transportation SBAs.

### 5.1.3. Marine Observations for Public Services and Research

The following examples of high-impact marine platforms and programs identified in the EOA are presented alphabetically.

- *High-Frequency Coastal Radar Network*: An integrated network of high-frequency coastal radars, that is operated by Federal and institutional partners and provides measurements of surface currents over wide geographical areas, supporting the Transportation SBA.
- *Oceanic Buoys and Coastal Networks*: Networks of marine-based data buoys (moored, profiling, and drifting) and coastal stations that measure atmospheric and oceanographic variables such as wind speed, direction, and gust; barometric pressure; air temperature; sea surface temperature; wave height and periodicity; and ocean acidification, nutrients, and dissolved oxygen. The observations from moored buoys and coastal stations are transmitted in near real-time via satellites or communication pathways to a ground receiving facility. Buoy and coastal-station observation data are used to support marine warnings and advisories and the movement of ships in and out of port and to calibrate hurricane wind speed aircraft measurements and satellite sea surface temperature, wind, and wave observations; for directional wave measurement to study coastal erosion; and for detection of algal blooms and pathogens. These buoys impact multiple SBAs, with “high” impact in the Weather, Ocean and Coastal Resources and Ecosystems, and Transportation SBAs.
- *Survey vessels*: Survey vessels are important observation platforms for the Ocean and Coastal Resources SBA. Large-ship assets and a fleet of smaller and charter vessels form the foundation for sampling and sensing the marine ecosystems along the coast, on the continental shelves, and in the open ocean. They support the collection of living marine resources for fishery assessment and the observation and tagging of protected resources to more fully characterize the ocean system. The data, information, and results from these surveys are used widely.

#### 5.1.4. Multi-platform Observations for Public Services and Research

The following examples of high-impact multi-platform systems and programs identified in the EOA are presented alphabetically.

- *Aquatic Resource Surveys*: The Federal Government conducts aquatic-resource surveys in partnership with State and tribal governments. These projects monitor and catalog the Nation's aquatic resources through probability-based surveys that provide nationally consistent scientific assessments of lakes, rivers, streams, coastal waters, and wetlands. These surveys track the status and vitality of aquatic resources and can be used to monitor changes in condition over time. They measure biological quality, chemical stressors, habitat stressors, and human-health indicators. These surveys have a "very high" impact in the Ecosystems SBA.
- *Forest Observations*: The Federal Government has collected and analyzed forest data for decades. Today's activities include an annual forest inventory that consists of forest-health indicators, timber-product output studies, woodland owner surveys, and a National Assessment produced every five years. These activities rely on aerial photographs, digital orthoimagery, satellite imagery, field samples, surveys, and utilization studies to project forest status, health, and coverage and assess forest-management policies and practices. They impact four SBAs, with "highest" impact in the Agriculture and Forestry and Ecosystems SBAs.
- *Water-Level Observations*: These observations monitor, measure, and assess the impact of changing water levels for government and commercial navigation, recreation, and coastal-ecosystem management. Sensors are deployed across the Nation's lakes (roughly 25% in the Great Lakes), estuaries, and ocean coastal zones. They provide the national standards for tide-and water-level reference datums used for nautical charting, coastal engineering, international treaty regulation, and boundary determination. This network of sensors impacts five SBAs, with "highest" impact in the Reference Measurements SBA and "very high" impact in the Transportation SBA. In the 2012 EOA, multiple SME teams recommended additional support to improve services and research in the Disasters, Human Health, and Transportation SBAs, and the Reference Measurements societal theme.

#### 5.2. Experimental Airborne, Terrestrial, and Marine Observations

Federal agencies routinely conduct experimental airborne, terrestrial, and marine observations to advance human knowledge through basic and applied research, to explore technical innovation, and to improve public services. Multiple SME teams involved in the 2012 EOA recommended, when feasible and within approved agency budgets, pursuing experimental research and testing to develop additional airborne capabilities for technologies such as LIDAR. Specific recommendations included developing three-dimensional imaging for ecosystem structure, improving instruments to enable photon counting, and improving near-coastal topographic/bathymetric measurements. Multiple SME teams recommended the use of unmanned vehicles to expand coverage and efficiency of observations in areas such as land-surface, coastal, and ocean monitoring and research; species surveys; and hurricane forecasting. Several SME teams recommended additional research to improve radar system scanning rates and coverage. Finally, multiple SME teams recommended continued support for ecological observations to support fundamental research and to test emerging observation technologies and experimental techniques.

## 6. Agency Roles and Responsibilities for Civil Earth Observations from Space

The NASA Administrator, the Secretary of Commerce through the NOAA Administrator, and the Secretary of the Interior through the USGS Director, have responsibility for managing the U.S. Government's space-based civil Earth-observation systems. Following guidance provided by the 2010 National Space Policy<sup>29</sup> and in accordance with existing legal authorities, these agencies will continue the development of satellites to observe and study the Earth system, with a focus on measurements and observation programs necessary for weather forecasting, environmental monitoring, disaster-risk reduction, water-resources assessment, and climate-change research.

Observations from space are also vital to fulfilling Federal objectives across multiple SBAs. They provide critical information on atmospheric, oceanic, and terrestrial phenomena at local, regional, continental, and global scales. These observations often cover broad areas, over long periods, and with frequent revisit rates. Space provides a unique vantage point for observations, and many global data sets collected from space cannot be easily replaced by other means. Continuous high-quality observations from space are also essential for an adequate understanding of the state of the Earth system, especially on a global basis. Space-based observations support the provision of sustained public services and scientific research, and they provide a vehicle for experimental studies that advance the state of science and improve the ability to monitor and measure the Earth system.<sup>30</sup>

Specifically, Federal agencies will conduct sustained satellite civil Earth observations as described below. All launch dates are contingent on congressional funding of the President's annual budget requests.

### 6.1. Sustained Satellite Observations for Public Services

The following observations from space-based systems are important to the provision of public services. While some agencies conduct these observations to support public-service products, other agencies may also conduct research efforts in these same areas. These observations are presented alphabetically.

#### 6.1.1. Air Quality and Ozone

The Secretary of Commerce, through the NOAA Administrator, will provide air-quality data from the suite of instruments on the Joint Polar Satellite System (JPSS) satellites, the Suomi National Polar-orbiting Partnership (S-NPP) satellite, and the Geostationary Operational Environmental Satellite (GOES) series of satellites, which measure aerosols, trace gases, and meteorological data. The Secretary of Commerce, through the NOAA Administrator, will also provide statutorily mandated sustained observations of total column ozone through the Ozone Mapping and Profiler Suite (OMPS) Nadir sensor currently on the S-NPP satellite and the JPSS-1 and -2 satellites. The NASA Administrator will study options and explore working with the Secretary of Commerce, through the NOAA Administrator, to continue ozone-profile measurements currently being made by the OMPS Limb sensor on the S-NPP satellite.

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<sup>29</sup> *National Space Policy of the United States of America*, June 28, 2010, pp. 12–13, <http://www.whitehouse.gov/the-press-office/fact-sheet-national-space-policy>.

<sup>30</sup> Data from NASA programs are used to improve public services for air quality, ocean color, and space weather, for example.

### 6.1.2. Land-Imaging

The NASA Administrator, together with the Secretary of the Interior through the Director of USGS, will implement a 25-year program of sustained land-imaging for routine monitoring of land-cover characteristics, naturally occurring and human-induced land-cover change, and water resources, among other uses.<sup>31</sup>

They will also ensure that future land-imaging data will be fully compatible with the 42-year record of Landsat observations. The NASA Administrator will be responsible for satellite development, launch, and commissioning, and the Secretary of the Interior, through the USGS Director, will be responsible for representing users' requirements; development and operation of the ground system; operational control of satellites once on orbit; and processing, archiving, and distributing land-imaging data and routine information products. The NASA Administrator and the Secretary of the Interior, through the USGS Director, will continue to collaborate to address common needs for data continuity and new technology deployment.

### 6.1.3. Ocean-Color Observations

The Secretary of Commerce, through the NOAA Administrator and in collaboration with the NASA Administrator, will conduct sustained ocean-color observations for marine ecosystem monitoring. The Visible Infrared Imaging Radiometer Suite (VIIRS) instrument on the S-NPP satellite accomplishes this monitoring, which will be continued with the launches of the JPSS satellite series.<sup>32</sup>

### 6.1.4. Ocean Surface and Water-Level Monitoring

The Secretary of Commerce, through the NOAA Administrator and in collaboration with the NASA Administrator and international partners, will conduct sustained observations for ocean surface and inland water-level monitoring for sea level, navigation, ocean and coastal products, and geophysical reference. The altimeter on the Jason series of satellites accomplishes this monitoring, a task that will be continued with the launch of Jason-3 scheduled in 2015.

The Secretary of Commerce, through the NOAA Administrator, will cooperate with interagency and international partners to provide active (e.g., C-band Synthetic Aperture Radar or SAR) and passive (e.g., high-resolution microwave) data for ocean-surface monitoring. The primary objectives of this monitoring will be to support safety of navigation through routine generation of ice charts and analyses, to support environmental assessment through detection and analysis of pollution (e.g., oil spills) and detection and analysis of coastal change and ocean fronts. For these applications, the Secretary of Commerce, through the NOAA Administrator, will seek to use data from the U.S. Defense Meteorological Satellite Program Special Sensor Microwave Imager instrument series, the Canadian Space Agency Radarsat-2 and Radarsat Constellation satellites, and the European Space Agency Sentinel-1 series of C-band SAR instruments.

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<sup>31</sup> A robust land-imaging program requires data to supplement optical imagery. Non-optical sensing capabilities such as radar, LIDAR, and gravity measurements are needed to assess natural and anthropogenic hazards and to measure changes to topography, biomass, ecosystem flux, soil moisture, coastal and inland land subsidence, surface water, groundwater, and glaciers.

<sup>32</sup> NOAA will also seek to use data from the European Space Agency Sentinel-3 series of SAR instruments, launching in 2015.

#### **6.1.5. Ocean-Surface Vector Winds**

The Secretary of Commerce, through the NOAA Administrator and in collaboration with the NASA Administrator, will continue to cooperate with foreign partners to obtain scatterometry data for the measurement of near-ocean-surface wind speed and direction. These data sets can enhance modeling of the atmosphere, surface waves, and ocean circulation, with the potential to support a wide range of marine operations and enhance climate research and marine weather forecasting. The United States will obtain these data through continued U.S. access to data from the Advanced Scatterometer instrument on the European MetOp series of satellites and from the Oceansat-2 Scatterometer instrument on the Indian Space Research Organization satellites.

#### **6.1.6. Space Weather Monitoring**

The Secretary of Commerce, through the NOAA Administrator and in consultation with the NASA Administrator and interagency and international partners, will conduct sustained observations for space weather monitoring and prediction, which require constant operations. Specifically, the Secretary of Commerce, through the NOAA Administrator, will provide observations of solar wind (including coronal mass ejection), solar flares, and energetic particles, and will provide radio occultation and related measurements to forecast space weather events. The Secretary of Commerce, through the NOAA Administrator, will provide these measurements through the GOES series and the Deep Space Climate Observatory (DSCOVR) satellite (to be launched in 2015) and will study options and explore working with international and interagency partners to provide these measurements beyond the design life of the DSCOVR mission.

#### **6.1.7. Weather, Hazards, and Seasonal/Inter-annual Climate Variability**

The Secretary of Commerce, through the NOAA Administrator and in collaboration with the NASA Administrator and international partners, will provide sustained satellite observations for monitoring and predicting weather and related hazards, which require constant operations. These observations comprise atmospheric sounding and imaging of the Earth; space-based environmental data relay for weather; and other products critical to the protection of lives, property, air quality, and public health. The Secretary of Commerce, through the NOAA Administrator, will also process long time-series data from these observations for reanalysis and modeling to better understand seasonal to decadal climate trends.

The Secretary of Commerce, through the NOAA Administrator, will conduct these observations through the GOES series, the JPSS program (including S-NPP and future JPSS satellites), and the Polar-orbiting Operational Environmental Satellite (POES) series. Federal agencies will collaborate to launch the next satellite in the GOES series in 2016 and the first of the future JPSS satellites in 2017.

Both NOAA's GOES and JPSS programs will experience overlapping technology infusion and the use of next-generation launch systems during the next 10-year period. Therefore, the Secretary of Commerce, through the NOAA Administrator, will take steps to re-phase future development and operational life cycles of these two programs to reduce pressure from simultaneous budget peaks in both. The Secretary of Commerce, through the NOAA Administrator, will also seek to employ related program adjustments, as appropriate, to improve flexibility and efficiency as part of a portfolio-managed approach, maintain sustained observations in the most cost-effective manner, and achieve a robust architecture for observations.

The Secretary of Commerce, through the NOAA Administrator and in collaboration with interagency and international partners, will also continue to develop and acquire GPS radio-occultation measurements to enhance weather observation and prediction through the Constellation Observing System for Meteorology, Ionosphere, and Climate (COSMIC) and COSMIC-2 missions.

## **6.2. Sustained Satellite Observations for Earth System Research**

The NASA Administrator will conduct sustained satellite observations for research to advance the understanding of changes to the Earth system and related climate change. The Secretary of Commerce, through the NOAA Administrator and in collaboration with the NASA Administrator and other agencies, will also provide sustained observations for research on seasonal and inter-annual climate trends. Specific satellites will provide observations of the environmental phenomena described in the following subsections. These observations are presented alphabetically.

### **6.2.1. Aerosols and Trace Gases**

In addition to the aerosols and trace gas data provided by NOAA, the NASA Administrator will provide long-term measurements of the vertical structure of aerosols, ozone, water vapor, and other important trace gases in the upper troposphere and stratosphere through the latest Stratospheric Aerosol and Gas Experiment (SAGE III) on the International Space Station (ISS). The NASA Administrator will launch SAGE-III on ISS in 2015, advancing the measurements provided by the previous Stratospheric Aerosol Measurement (SAM I and II), the SAGE I and II instruments, and the SAGE III Meteor-3M. Furthermore, the NASA Administrator will study options for continuing ozone-profile measurements planned for JPSS and explore collaboration with the Secretary of Commerce, through the NOAA Administrator, on OMPS measurements.

### **6.2.2. Atmospheric Carbon Dioxide**

The NASA Administrator will provide global measurements of atmospheric carbon dioxide (CO<sub>2</sub>) through the Orbital Carbon Observatory (OCO), launched in July 2014. OCO measurements will be combined with data from a ground-based network to provide information needed to better understand the processes that regulate atmospheric CO<sub>2</sub> and its role in the Earth's carbon cycle. Additionally, the NASA Administrator will explore using data from carbon dioxide monitoring missions planned by international partners.

### **6.2.3. Groundwater**

The NASA Administrator will conduct precision measurements of the Earth's gravitational field that support groundwater measurements. Measurements taken through the Gravity Recovery and Climate Experiment (GRACE) help characterize the movement of underground water reservoirs and their seasonal variability.

The NASA Administrator will launch the GRACE follow-on in 2017, which will continue the measurement record established by the first GRACE launched in 2002. In addition, NASA and the Indian Space Research Organisation (ISRO) are cooperating to develop the NASA-ISRO Synthetic Aperture Radar (NISAR) mission, an L- and S-band radar satellite that will be able to measure land subsidence in relation to groundwater resources.

#### 6.2.4. Net Energy Balance

To understand incoming and outgoing radiant energy of the Earth system, Federal agencies have collaborated to create a 30-year-plus record of total solar irradiance and a 10-year-plus record of clouds and the Earth's radiation balance. The Secretary of Commerce, through the NOAA Administrator, and the NASA Administrator will continue these measurements as follows:

- **Radiation Budget:** The Secretary of Commerce, through the NOAA Administrator, will launch a new Clouds and the Earth's Radiant Energy System (CERES) sensor on JPSS-1 in 2017, and the NASA Administrator will process the sensor's data. These observations will provide continuity for the series of measurements currently produced by S-NPP and NASA's Aqua and Terra satellites. Both the Secretary of Commerce, through the NOAA Administrator, and the NASA Administrator will explore options for a future Radiation Budget Instrument.
- **Total Solar Irradiance:** The Secretary of Commerce, through the NOAA Administrator, will complete and launch the Total Solar Irradiance Sensor (TSIS-1). The NASA Administrator will develop plans for continuing solar irradiance observations beyond the life cycle of TSIS-1. These programs will continue the data record currently produced by NASA's Solar Radiation and Climate Experiment (SORCE) and Active Cavity Radiometer Irradiance Monitor (ACRIMSAT) satellites, as well as the Total solar irradiance Calibration Transfer Experiment (TCTE), a joint program in which NOAA and NASA collaborated to include a Total Irradiance Measurement (TIM) sensor as a hosted payload on an Air Force STPSat-3 satellite launched in 2013.

#### 6.3. Experimental Satellite Observations

In addition to the roles listed above, the NASA Administrator, in collaboration with other agencies, will conduct experimental observations of the Earth from space to advance human knowledge of the Earth as an integrated system. The NASA Administrator will accomplish these observations through the NASA Earth Systematic Missions and Pathfinder programs. The NASA Administrator will also continue its Venture Class program for innovative new research satellites. Through these programs, the NASA Administrator plans to launch experimental observations for the following measurements relevant to the understanding of climate and related global change (listed chronologically by actual or projected launch date):

- Global precipitation through the Global Precipitation Measurement (GPM) satellite, launched in February of 2014.
- Soil moisture through the Soil Moisture Active Passive (SMAP) satellite, to be launched in 2014.
- Cyclone generation through the Cyclone Global Navigation Satellite System (CYGNSS), to be launched in 2016.
- Ice-sheet mass balance, clouds and aerosols, and land elevation through the second Ice, Cloud, and land Elevation Satellite (ICESat-II), to be launched in 2017.
- Tropospheric pollution through the Tropospheric Emissions: Monitoring of Pollution (TEMPO) satellite, to be launched in 2019.
- Surface-water and ocean topography through the Surface Water Ocean Topography (SWOT) satellite, to be launched in 2020.

- Solid-Earth deformation, ice masses, and ecosystems through the NI-SAR satellite, to be jointly developed by NASA and ISRO.

In addition, the NASA Administrator will continue studying the feasibility of new satellite systems for observations of clouds and aerosols, land-surface characterization and deformation, hurricane formation, ecosystems classification, vegetation analysis, space-weather monitoring, and disaster-risk reduction, among others.

## 7. Summary Guidelines in Implementation and Coordination of the National Plan

Implementation and coordination of activities outlined in this National Plan will be conducted through Federal agencies' existing budgets, program planning, and NSTC-sponsored interagency processes. Implementation schedules, progress reviews, and funding profiles will be determined by Federal agencies in consultation with the Executive Office of the President.

The primary forum for interagency discussion and coordination of Earth observation, related data management, and related international issues is the USGEO Subcommittee of the NSTC. Within this forum, specialized working groups will facilitate triennial Earth observation assessments, enhanced data discoverability, accessibility, and usability initiatives, and U.S. participation in the intergovernmental GEO. Federal Earth observation agencies will designate appropriate representatives to the USGEO Subcommittee, and corresponding SMEs to its working groups as appropriate.

To maximize the utility of Earth observations to the widest range of internal and external stakeholders and inform Federal Earth-observation activities with valuable stakeholder perspectives, USGEO Subcommittee and Working Group representatives will consult as appropriate and exchange information and expertise with CENRS subcommittees and working groups.<sup>33</sup> Other NSTC entities that will benefit from coordination with USGEO include the NSTC Committee on Technology's Subcommittee on Network and Information Technology Research and Development and the NSTC Committee on Homeland and National Security's Topics of International Science and Technology Innovation Subcommittee.

OSTP, in consultation with the USGEO Subcommittee and CENRS member agencies, will review and update this National Plan on a three-year cycle. As part of this process, OSTP will solicit and consider the input of external stakeholders and the general public.

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<sup>33</sup> These groups might include, but are not limited to, the Subcommittee on Global Change Research, the Subcommittee on Disaster Reduction, the Subcommittee on Ecological Services, the Interagency Arctic Research Policy Subcommittee, the Subcommittee on Water Availability and Quality, the Subcommittee on Air Quality Research, and the Subcommittee on Ocean Science and Technology.

## Annex I: 2012 EOA Results

This annex provides results for the 145 high-impact observation systems identified from the 362 observation systems assessed by the 13 SBA teams of approximately 300 Federal subject-matter experts. These 145 observation systems are listed in two tiers in the tables below. Impact is indicated with respect to each of the 13 societal themes (12 SBAs and reference measurements), as described in Section 2.2.

*Table 1: Tier 1 High-Impact Observation Systems (Ranked Order)*

Observation System (Ranked Order)	Agency	Ag&Frst	BioDiv	Climate	Disasters	Ecosys	Energy	HumanHlth	Ocn&Cstl	Space Wx	Trans	WaterRes	Wx	RefMeas
1. Global Positioning System (GPS) satellites	DOD/USAF	High	High	None	High	High	High	High	None	None	High	High	None	High
2. Next Generation Weather Radar (NEXRAD)	DOC/NOAA	High	High	None	High	None	High	High	Low	None	High	High	High	None
3. Landsat satellite	DOI/USGS, NASA	High	High	High	High	High	High	High	None	None	Low	High	None	High
4. Geostationary Operational Environmental Satellite System (GOES-NOP)	DOC/NOAA	High	High	Low	High	Low	High	High	High	High	High	High	High	None
5. National Agriculture Imagery Program (NAIP)	USDA/FSA	High	High	None	High	High	High	High	None	None	High	High	None	High
6. Airborne LIDAR	DOC/NOAA, DOD/USACE, DOI/USGS, NSF	High	High	High	High	High	High	High	None	None	High	High	None	High
7. Forest Inventory and Analysis (FIA)	USDA/USFS	High	High	None	None	High	None	Low	None	None	None	None	None	None



Observation System (Ranked Order)	Agency	Ag&Frst	BioDiv	Climate	Disasters	Ecosys	Energy	HumanHlth	Ocn&Cstl	Space Wx	Trans	WaterRes	Wx	RefMeas
8. Aircraft Meteorological Observations (e.g., MDCRS, AMDAR)	DOC/NOAA, Non-USG													
9. National Water Level Observation Network (NWLON)	DOC/NOAA											*		
10. Terra satellite	NASA										*			*
11. MetOp - Polar Orbiting Operational Meteorology (satellite, EUMETSAT) <sup>a</sup>	Non-USG					*				*				
12. Radiosonde Observations by National Weather Service (RAOBS)	DOC/NOAA					*			*					
13. USGS Stream Gage Network	DOI/USGS						*							
14. Suomi National Polar-orbiting Partnership (S-NPP) satellite <sup>b</sup>	NASA, NOAA													
15. Jason satellite	DOC/NOAA, NASA	*	*											



**Note:** The EOA value chain began by identifying high-impact data sets and information products, and then observing systems that generate or contribute to those data sets and information products. As a result, the EOA captured the impact of certain non-USG sources of data, including from international, non-governmental, and commercial partners. Furthermore, the EOA results are derived from the findings of the SBA subject matter experts, and may not reflect all uses of well-known observing systems. In the table above, an asterisk indicates that the EOA scored this system as contributing to the SBA but not at a moderate or high level.

<sup>a</sup> Both the MetOp satellites and POES system are part of the constellation required to meet the key objectives in relevant SBAs.

<sup>b</sup> At the time of the EOA, S-NPP had only recently been launched and its impact on key objectives in relevant SBAs had yet to be fully realized.

Table 2: Tier 2 High-Impact Observation Systems (Alphabetical Order)

Observation System (Alphabetical Order)	Agency	Ag&Frst	BioDiv	Climate	Disasters	Ecosys	Energy	HumanHlth	Ocn&Cstl	Space Wx	Trans	WaterRes	Wx	RefMeas
Advanced Composition Explorer (ACE) satellite	NASA									Very High				
Advanced National Seismic System (ANSS)	DOI/USGS	Moderate			High						Moderate			
Aerial Observers - Aerial Detection Surveys (ADS)	DOC/NOAA, USDA/USFS	Moderate			Moderate				High		Moderate			
Agricultural Attaché Reports	USDA/FAS	High												
Agricultural Economic Data	USDA	High												
Airborne Geophysical Measurements	DOI/USGS, EPA						High							
Airborne High-Resolution Optical Imagery	DOC/NOAA, DOD, NASA, USDA	High	High		High	High		Moderate			Moderate	High		High
Airborne Hyperspectral Imagery	NASA		Moderate		*	Moderate	High							



Observation System (Alphabetical Order)	Agency	Ag&Frst	BioDiv	Climate	Disasters	Ecosys	Energy	HumanHlth	Ocn&Cstl	Space Wx	Trans	WaterRes	Wx	RefMeas
Airborne Interferometric Synthetic Aperture Radar (InSAR)	Non-USG						*							
Airborne Radar - U.S. Coast Guard	DHS/USCG													
Airport Surveillance Radar (ASR)	DOT/FAA													
American Academy of Allergy Asthma & Immunology National Allergy Bureau (AAAAI-NAB) pollen counts	Non-USG													
AmeriFlux Network	DOE													
Aqua satellite	NASA										*			
Argo Oceanographic Profilers	DOC/NOAA		*		*							*		
Atmospheric Integrated Research Monitoring Network (AIRMoN)	DOC/NOAA													



Observation System (Alphabetical Order)	Agency	Ag&Frst	BioDiv	Climate	Disasters	Ecosys	Energy	HumanHlth	Ocn&Cstl	Space Wx	Trans	WaterRes	Wx	RefMeas
Aura satellite	NASA						*							
Automated Surface Observing System (ASOS)	DOC/NOAA, DOT/FAA		*	*		*								
Automated Weather Observing System (AWOS)	DOT/FAA		*	*		*								
Autonomous Underwater Vehicles (AUVs) - temperature, salinity, and currents measurements	DOC/NOAA						*							
Breeding Bird Surveys (BBS)	DOI/FWS													
BLM Rapid Eco-regional Assessments (REA) & other federal/state agency/NGO Landscape Assessments (RA)	DOI/BLM													
Centers for Disease Control and Prevention (CDC) Surveillance	HHS/CDC				*									
Chartered Survey Vessels for Benthic Habitat observations	DOC/NOAA						*	*						



Observation System (Alphabetical Order)	Agency	Ag&Frst	BioDiv	Climate	Disasters	Ecosys	Energy	HumanHlth	Ocn&Cstl	Space Wx	Trans	WaterRes	Wx	RefMeas
Chartered Vessels for Fish Surveys	DOC/NOAA													
Clean Air Status and Trends Network (CASTNET)	EPA													
Coastal Buoys (National Data Buoy Center Buoys, IOOS)	DOC/NOAA						*					*		
Commercial Fishery Catch Monitoring	DOC/NOAA													
Commercial High-Resolution Satellite Imagery	Non-USG													
Commercial Radar Satellites (e.g., RadarSat, TerraSAR-X)	Non-USG													
Deep-ocean Assessment and Reporting of Tsunamis (DART) Buoys	DOC/NOAA													
Defense Meteorological Satellite Program (DMSP)	DOD/USAF								*		*			



Observation System (Alphabetical Order)	Agency	Ag&Frst	BioDiv	Climate	Disasters	Ecosys	Energy	HumanHlth	Ocn&Cstl	Space Wx	Trans	WaterRes	Wx	RefMeas
Direct Reports from Farmers (Crop Reports, FSA Form 578)	USDA/FSA	Very High	Moderate			Moderate					Moderate			
Disaster Incident Reports	EPA, DHS/FEMA				Very High									
Disaster Monitoring Constellation (DMC) satellites (foreign)	Non-USG	Moderate				*		Moderate				Moderate		
DOE Atmospheric Radiation Measurement (ARM) Climate Research Facility	DOE			High			Moderate	*						
Drifting Buoy Network	DOC/NOAA		*	Moderate	Moderate		*	*	Moderate		Moderate	*	Moderate	
Earth Observing Satellite - 1 (EO-1)	NASA		Moderate		Moderate	Moderate	Very High					Moderate		
EPA Emissions Source Testing/ Measurement Programs (EST/M)	EPA							Very High						
EPA Water Quality Samples	EPA	Moderate	Moderate		*	Moderate		Very High			Moderate	Moderate		



Observation System (Alphabetical Order)	Agency	Ag&Frst	BioDiv	Climate	Disasters	Ecosys	Energy	HumanHlth	Ocn&Cstl	Space Wx	Trans	WaterRes	Wx	RefMeas
Farm Operator Surveys	USDA/NASS					*								
Farm Service Agency Reporting	USDA					*								
Fish and Wildlife Service Inventory and Monitoring (I&M) Program	DOI/FWS													
Fisheries Observers on Commercial Vessels	DOC/NOAA													
Global Avian Influenza Surveillance	HHS/CDC													
Global Biodiversity Information Facility Network (GBIF)	DOI/USGS	*												
Global Change Observation Mission - Water (GCOM-W) Advanced Microwave Scanning Radiometer 2 (AMSR2)	Non-USG													
Global Climate Observing System (GCOS) Upper Air Network (GUAN)	Non-USG					*					*			



Observation System (Alphabetical Order)	Agency	Ag&Frst	BioDiv	Climate	Disasters	Ecosys	Energy	HumanHlth	Ocn&Cstl	Space Wx	Trans	WaterRes	Wx	RefMeas
Global Lake Ecological Observatory Network (GLEON)	NSF													
Global Navigation Satellite System Meteorology (GNSS-Met)	DOC/NOAA			*				*			*	*		
Global Ocean Observing System (GOOS) Tropical Moorings (TAO/RAMA/PIRATA)	DOC/NOAA		*		*									
Global Sea Level Observing System (GLOSS) (international)	Non-USG										*			
Global Seismographic Network (GSN)	DOI/USGS, NSF													*
Gravity Field and Steady-State Ocean Circulation Explorer (GOCE)	Non-USG										*	*		
Gravity for the Redefinition of the American Vertical Datum (GRAV-D)	DOC/NOAA											*		
Gravity Recovery and Climate Experiment (GRACE) satellite	NASA												*	



Observation System (Alphabetical Order)	Agency	Ag&Frst	BioDiv	Climate	Disasters	Ecosys	Energy	HumanHlth	Ocn&Cstl	Space Wx	Trans	WaterRes	Wx	RefMeas
High Frequency (HF) Coastal Radars	DOC/NOAA						*						*	
International Doppler Radar	Non-USG													
International Global Navigation Satellite Systems (GNSS)	Non-USG				*						*			
International Magnetometers	Non-USG													
Jet Propulsion Lab MODIS/ASTER airborne simulator (JPL MASTER)	NASA													
Lightning Data Buy	DOC/NOAA											*		
Long-Term Ecological & Agroecosystem Research Networks & International LTER (LTER/LTAR/ILTER)	NSF, USDA						*							
Low Level Windshear Alert System (LLWAS)	DOT/FAA													



Observation System (Alphabetical Order)	Agency	Ag&Frst	BioDiv	Climate	Disasters	Ecosys	Energy	HumanHlth	Ocn&Cstl	Space Wx	Trans	WaterRes	Wx	RefMeas
Meteosat satellite (EUMETSAT)	Non-USG		*	*				*	*					
Micro-Pulse LIDAR Network (MPLNET)	NASA						*							
Multifunctional Transport Satellite (MTSAT) Imager for Weather and Aviation Control (Japan)	Non-USG			*			*	*			*			
National Air Toxics and Trends Stations (NATTS)	EPA													
National Animal Health Surveillance System (NAHSS)	USDA/APHIS													
National Aquatic Resource Surveys (NARS)	EPA													
National Ballast Information Network	DHS/USCG													
National Cooperative Soil Survey	USDA/NRCS													



Observation System (Alphabetical Order)	Agency	Ag&Frst	BioDiv	Climate	Disasters	Ecosys	Energy	HumanHlth	Ocn&Cstl	Space Wx	Trans	WaterRes	Wx	RefMeas
National Park Service Inventory and Monitoring (I&M)	DOI/NPS													
National Phenology Network (NPN)	DOI/NPS, DOI/USGS, NSF													
National Weather Service (NWS) Cooperative Observer Program (COOP)	DOC/NOAA													
National Weather Service Skywarn Spotters	DOC/NOAA										*		*	
NOAA and Chartered Aircraft for Protected Species Surveys	DOC/NOAA													
NOAA Global Monitoring Division Observatories	DOC/NOAA													
NOAA Profiler Network	DOC/NOAA		*	*								*		
NOAA Recreational Fish Surveys	DOC/NOAA													



Observation System (Alphabetical Order)	Agency	Ag&Frst	BioDiv	Climate	Disasters	Ecosys	Energy	HumanHlth	Ocn&Cstl	Space Wx	Trans	WaterRes	Wx	RefMeas
NOAA Ship and Chartered Ship for Coral Reef Field Surveys	DOC/NOAA													
NOAA Ships - Fish Surveys	DOC/NOAA													
NOAA Ships - Hydrographic Surveys	DOC/NOAA				*						*			
NOAA Ships - Protected Species Observations	DOC/NOAA													
Non-Federal Biological Surveys	Non-USG	*												
Ocean Reference Station Buoys	DOC/NOAA							*						
Physical Oceanographic Real-Time System (PORTS)	DOC/NOAA				*		*							
Pilot Reports (PIREPS)/Aircraft Reports (AIREPS)	DOT/FAA		*									*		



Observation System (Alphabetical Order)	Agency	Ag&Frst	BioDiv	Climate	Disasters	Ecosys	Energy	HumanHlth	Ocn&Cstl	Space Wx	Trans	WaterRes	Wx	RefMeas
Polar-orbiting Operational Environmental Satellite System (POES) <sup>a</sup>	DOC/NOAA		*											
Port Radars	DHS/USCG													
Portable Water Gages	DOC/NOAA, DOI/USGS										*			
Rain Gage Networks (state, local)	Non-USG				*						*			
Regional and State Mesonetworks	DOC/NOAA		*			*					*			
Road Weather Information Systems (RWIS)	DOT/FHWA													
Satellite Pour l'Observation de la Terre (SPOT) (France)	Non-USG				*			*						
Sentinel Animals (state and local)	Non-USG						*							



<sup>a</sup> Both MetOp satellites and POES system are part of the constellation required to meet the key objectives in relevant SBAs.

Observation System (Alphabetical Order)	Agency	Ag&Frst	BioDiv	Climate	Disasters	Ecosys	Energy	HumanHlth	Ocn&Cstl	Space Wx	Trans	WaterRes	Wx	RefMeas
Shipboard Radars	DHS/USCG, DOC/NOAA, DOD/USN													
Ships of Opportunity Program (SOOP)	DOC/NOAA						*							
Small Boat Charters - Harmful Algal Bloom Water Sampling	DOC/NOAA													
Smithsonian Institution Global Earth Observatory (SIGEO)	SI													
SNOwpack TELelemetry (SNOTEL)	USDA/NRCS						*							
Soil Climate Analysis Network (SCAN)	USDA/NRCS						*							
Soil Moisture and Ocean Salinity Mission (SMOS) satellite (ESA)	Non-USG													
Solar and Heliospheric Observatory (SOHO) satellite	NASA													



Observation System (Alphabetical Order)	Agency	Ag&Frst	BioDiv	Climate	Disasters	Ecosys	Energy	HumanHlth	Ocn&Cstl	Space Wx	Trans	WaterRes	Wx	RefMeas
Solar Dynamics Observatory (SDO) satellite	NASA													
Solar Electro-Optical Network (SEON)	DOD/USAF													
Solar Terrestrial Relations Observatory (STEREO) satellites	NASA													
Sound Velocimeter for hydrographic surveys	DOC/NOAA													
Spatially Enhanced Broadband Array Spectrograph System (SEBASS)	NASA													
State and Local Stream Gage Networks	DOI/USGS	*			*		*	*			*			*
State and Local Water Level Networks	DOI/USGS													
Terminal Doppler Weather Radar (TDWR)	DOT/FAA							*					*	



Observation System (Alphabetical Order)	Agency	Ag&Frst	BioDiv	Climate	Disasters	Ecosys	Energy	HumanHlth	Ocn&Cstl	Space Wx	Trans	WaterRes	Wx	RefMeas
Toxics Release Inventory (TRI)	EPA					High								
Tropical Rainfall Measuring Mission (TRMM) satellite	NASA	High	*	Moderate	*		Moderate	High	*		Moderate	Highest	Moderate	
U.S. Army Corps of Engineers Hydrographic Surveys	DOD/USACE										High			
U.S. Census Data on Population and Roads	DOC/ Census	High	High		High			Moderate	Moderate					
Unmanned Aircraft Systems (UAS) - Surveys and Surveillance	DOC/NOAA, DOD, DOI/USGS				*				*		High			
US Gap Analysis Program (GAP) - assessing biodiversity conservation	DOI/USGS		Highest			Highest		Moderate						
USGS Geomagnetic Observatories	DOI/USGS									High				*
USGS In Situ Water Quality Sensors	DOI/USGS	*	*		*	Moderate		High			*	High		



Observation System (Alphabetical Order)	Agency	Ag&Frst	BioDiv	Climate	Disasters	Ecosys	Energy	HumanHlth	Ocn&Cstl	Space Wx	Trans	WaterRes	Wx	RefMeas
USGS Inner Shelf Vessels for Benthic Habitat Observation	DOI/USGS													
USGS National Groundwater Stations	DOI/USGS				*		*	*						
USGS Water Quality Samples	DOI/USGS				*									
Very Long Baseline Interferometry (VLBI)	NSF													
Voluntary Observing Ships (VOS)	DOC/NOAA		*					*				*		
Water Resources Field Experiments	DOI/USGS													
WC-130 - U.S. Air Force - Hurricane Hunter aircraft	DOD/USAF		*						*		*	*		
WMO Global Observing System (GOS) - Surface	Non-USG				*	*					*			



Observation System (Alphabetical Order)	Agency	Ag&Frst	BioDiv	Climate	Disasters	Ecosys	Energy	HumanHlth	Ocn&Cstl	Space Wx	Trans	WaterRes	Wx	RefMeas
WMO Global Observing System (GOS) - Upper Air	Non-USG			*		*								
World Aviation Forecast System Internet File Services (WIFS)	DOT/FAA													



**Note:** The EOA value chain began by identifying high-impact data sets and information products, and then observing systems that generate or contribute to those data sets and information products. As a result, the EOA captured the impact of certain non-USG sources of data, including from international, non-governmental, and commercial partners. Furthermore, the EOA results are derived from the findings of the SBA subject matter experts, and may not reflect all uses of well-known observing systems. In the table above, an asterisk indicates that the EOA scored this system as contributing to the SBA but not at a moderate or high level.

## Annex II: Caveats for Understanding and Interpreting the 2012 Earth Observation Assessment

1. Comprehensiveness. The list of systems assessed in the EOA and identified in Annex I of this National Plan is not a comprehensive inventory of all systems, but rather an analysis of systems with significant impact as identified by a broad range of subject-matter experts. In addition, the EOA results include only the current portfolio of deployed systems. Planned and future systems (JPSS, NEON, etc.) were not analyzed. Finally, the EOA does not encompass the full range of possible objectives within each SBA. Therefore, certain agency mission objectives and systems important to those objectives may not be adequately reflected.
2. Significance of All Systems. All systems identified in the EOA have significant impact on key objectives identified by expert teams under each SBA.
3. Assessment Results and the Budget Process: Impact vs. Value. The EOA did not include cost data. Therefore, the EOA results convey **the impact, not the value**, of the observing systems identified by expert teams. The Assessment and this National Plan are meant to provide useful input to the budget-review process and to complement (but not substitute for) information and methods traditionally used in these reviews.
4. Considering the Enterprise as a Whole. The list of high-impact observing systems in Annex I is best used as a device for understanding the relative impact of each system on the broader, national Earth observation enterprise. Decisions about observing systems in one agency can have a dramatic effect (positive or negative) on the ability of other agencies to perform their Earth-science missions. Earth-observation investment decisions and adjustments must therefore be made through a coordinated process to avoid unintended consequences on the entire enterprise. For example, the EOA results alone should not be used as the basis for eliminating individual systems. Such a rough-cut use of this system would have devastating effects on specific areas of Earth science and services delivered to taxpayers.
5. Even Weighting of the SBAs. The work of the EOA is organized around evenly weighted “Societal Benefit Areas,” because an economic analysis of the value of the information to society is well beyond the scope of the EOA. Therefore, the list shows relative, rather than absolute priority, across all areas. It is appropriate to review the EOA results not just in the larger list, but by SBA to see how the relative impact of a given system rises or falls, depending on the area of emphasis.
6. Multiple- and Special-Purpose Systems. Reviewers of these results should understand that systems with a high impact across multiple SBAs score highest in the EOA. Nevertheless, many significant systems that did not meet the criteria established for Tier 1 (i.e., impact across *many* SBAs) are considered essential to the *specific* SBA they uniquely serve. Many of these High-Impact Special Purpose Systems are included in as Tier 2 systems, listed in Table 2 in Annex I.
7. A Companion to Other Analyses of Research-Observing-System Priorities. The analysis presented here is best understood as a companion to other analyses of Earth-observation priorities that are provided

to the Federal Government, most importantly the National Academies report *Earth Science and Applications from Space* (2007), known as the decadal survey. The EOA provides two new perspectives to complement the work of the decadal survey: (a) the inclusion of non-satellite systems and (b) a robust analysis of the impact of all systems on the delivery of services to society. Fundamental research about the Earth system underpins each of the 12 SBAs, and each team was invited to consider research priorities critical for their area. The EOA process, however, was fundamentally applications-oriented, and the constraints of time and the breadth of the analysis prevented a full accounting of research needs in every area. Therefore the Assessment's results for research observation systems may not reflect the full impact of those systems on climate and other research needs. Aside from this dimension, the EOA does capture the impact of current research systems on specific societal-benefit applications.

8. International Interests. The Nation's Earth-observing systems have important impacts on U.S. foreign-security-policy interests that were not included in this analysis. Agency commitments and agreements with international partners on collaborative systems were also not factored into the impact analysis.

## Annex III: Abbreviations

ACRIMSAT	Active Cavity Radiometer Irradiance Monitor
AMDAR	Aircraft Meteorological Data Relay
APHIS	Animal and Plant Health Inspection Service, Department of Agriculture
BEDI	Big Earth Data Initiative
BISON	Biodiversity Information Serving Our Nation
BLM	Bureau of Land Management, Department of the Interior
CDC	Centers for Disease Control and Prevention, Department of Health and Human Services
CENRS	Committee on Environment, Natural Resources, and Sustainability
CERES	Clouds and the Earth's Radiant Energy System
CO2	carbon dioxide
COSMIC	Constellation Observing System for Meteorology, Ionosphere, and Climate
CYGNSS	Cyclone Global Navigation Satellite System
DHS	Department of Homeland Security
DOC	Department of Commerce
DOD	Department of Defense
DOE	Department of Energy
DOI	Department of the Interior
DOT	Department of Transportation
DSCOVR	Deep Space Climate Observatory
ECV	Essential Climate Variable
EOA	Earth Observation Assessment
EPA	Environmental Protection Agency
ESA	European Space Agency
FAA	Federal Aviation Administration, Department of Transportation
FAS	Foreign Agricultural Service, Department of Agriculture
FHWA	Federal Highway Administration, Department of Transportation
FIA	Forest Inventory and Analysis, United States Forest Service, Department of Agriculture
FEMA	Federal Emergency Management Agency, Department of Homeland Security
FSA	Farm Service Agency, Department of Agriculture
FWS	Fish and Wildlife Service, Department of the Interior
FY	fiscal year
GCOS	Global Climate Observing System
GEO	Group on Earth Observations
GEOSS	Global Earth Observation System of Systems
GOES	Geostationary Operational Environmental Satellite
GPM	Global Precipitation Measurement
GPS	Global Positioning System
GRACE	Gravity Recovery and Climate Experiment
HHS	Department of Health and Human Services
ICESat	Ice, Cloud, and land Elevation Satellite

IOOS®	Integrated Ocean Observing System
ISRO	Indian Space Research Organisation
ISS	International Space Station
JPSS	Joint Polar Satellite System
LIDAR	Light Detection and Ranging
MDCRS	Meteorological Data Collection and Reporting System
NASA	National Aeronautics and Space Administration
NASS	National Agricultural Statistics Service, Department of Agriculture
NEOTF	National Earth Observation Task Force
NOAA	National Oceanic and Atmospheric Administration, Department of Commerce
NPS	National Park Service, Department of the Interior
NRCS	Natural Resources Conservation Service, Department of Agriculture
NSF	National Science Foundation
NSTC	National Science and Technology Council
OCO	Orbital Carbon Observatory
OMB	Office of Management and Budget
OMPS	Ozone Mapping and Profiler Suite
OSTP	Office of Science and Technology Policy
PACE	Preliminary Advanced Colloids Experiment
POES	Polar-orbiting Operational Environmental Satellite
RFI	Request for Information
S-NPP	Suomi National Polar-orbiting Partnership
SAGE	Stratospheric Aerosol and Gas Experiment
SAM	Stratospheric Aerosol Measurement
SAR	Synthetic Aperture Radar
SBA	societal benefit area
SI	Smithsonian Institution
SMAP	Soil Moisture Active Passive
SME	subject matter expert
SORCE	Solar Radiation and Climate Experiment
SWOT	Surface Water Ocean Topography
TCTE	Total solar irradiance Calibration Transfer Experiment
TEMPO	Tropospheric Emissions: Monitoring of Pollution
TIM	Total Irradiance Measurement sensor
TSIS	Total Solar Irradiance Sensor
USACE	United States Army Corps of Engineers
USAF	United States Air Force
USCG	United States Coast Guard
USDA	United States Department of Agriculture
USFS	United States Forest Service, Department of Agriculture
USG	United States Government
USGEO	United States Group on Earth Observations
USGS	United States Geological Survey, Department of the Interior
USN	United States Navy
VIIRS	Visible Infrared Imaging Radiometer Suite

**From:** Downey Magallanes  
**To:** [Daniel Jorjani](mailto:Daniel.Jorjani)  
**Cc:** [Wood, Jeffrey \(ENRD\)](mailto:Wood.Jeffrey)  
**Subject:** Re: Phone call  
**Date:** Saturday, March 11, 2017 3:37:25 PM

---

Thanks Jeff

Sent from my iPhone

> On Mar 11, 2017, at 3:31 PM, Daniel Jorjani <daniel\_jorjani@ios.doi.gov> wrote:

>

> Thanks

>

> Sent from my iPhone

>

>> On Mar 11, 2017, at 3:29 PM, Wood, Jeffrey (ENRD) <Jeffrey.Wood@usdoj.gov> wrote:

>>

>> FYI

>>

>>

>> Begin forwarded message:

>>

>> From: Douglas Domenech <douglas\_domenech@ios.doi.gov<[mailto:douglas\\_domenech@ios.doi.gov](mailto:douglas_domenech@ios.doi.gov)>>

>> Date: March 11, 2017 at 3:20:51 PM EST

>> To: "Wood, Jeffrey (ENRD)" <Jeffrey.Wood@usdoj.gov<<mailto:Jeffrey.Wood@usdoj.gov>>>

>> Subject: Re: Phone call

>>

>> Yes. Thanks.

>>

>> Sent from my iPhone

>>

>> On Mar 11, 2017, at 3:15 PM, Wood, Jeffrey (ENRD)

<Jeffrey.Wood@usdoj.gov<<mailto:Jeffrey.Wood@usdoj.gov>>> wrote:

>>

>> Doug,

>> Just tried calling you. We expect an EO on the BLM fracking rule (among others), hopefully on Monday. We have a 1pm call on Monday with the Interior team including Dan Jorjani et al., with the 10th Cir BLM rule case on the agenda. Do you want to join that call?

>> Thanks,

>> Jeff

>>

>> Jeff Wood

>> Acting Assistant Attorney General

>> DOJ-ENRD

>>

>>

**From:** Daniel Jorjani  
**To:** [Wood, Jeffrey \(ENRD\)](mailto:Wood.Jeffrey@ENRD)  
**Cc:** [downey\\_magallanes@ios.doi.gov](mailto:downey_magallanes@ios.doi.gov)  
**Subject:** Re: Phone call  
**Date:** Saturday, March 11, 2017 3:31:55 PM

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Thanks

Sent from my iPhone

> On Mar 11, 2017, at 3:29 PM, Wood, Jeffrey (ENRD) <[Jeffrey.Wood@usdoj.gov](mailto:Jeffrey.Wood@usdoj.gov)> wrote:

>

> FYI

>

>

> Begin forwarded message:

>

> From: Douglas Domenech <[douglas\\_domenech@ios.doi.gov](mailto:douglas_domenech@ios.doi.gov)<[mailto:douglas\\_domenech@ios.doi.gov](mailto:douglas_domenech@ios.doi.gov)>>

> Date: March 11, 2017 at 3:20:51 PM EST

> To: "Wood, Jeffrey (ENRD)" <[Jeffrey.Wood@usdoj.gov](mailto:Jeffrey.Wood@usdoj.gov)<<mailto:Jeffrey.Wood@usdoj.gov>>>

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> Jeff

>

> Jeff Wood

> Acting Assistant Attorney General

> DOJ-ENRD

>

>

**From:** Bail, Kristin  
**To:** [Michael Nedd](#); [Kathleen Benedetto](#)  
**Subject:** Fwd: PLC and ASI Meeting Materials  
**Date:** Monday, March 27, 2017 6:24:18 PM  
**Attachments:** [Targeted Grazing TP for PLC Meeting 2017.docx](#)  
[Talking Points - Grazing Preference.docx](#)  
[PLC Talking Points on GRSG Implementation 20170322.docx](#)  
[Sheep-Bighorn talking points.docx](#)  
[Sheep-Bighorn briefing.docx](#)  
[Talking Points for PLC AUM Session - March 27.docx](#)  
[Talking Points - ASI March 28.docx](#)  
[PLC Legislative Conference Prep v2.docx](#)

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Mike -- Here are the info papers we provided folks in preparation for your session tomorrow. Not sure if they got passed along to you. As I mentioned in the AD meeting, there was discussion this morning about grazing preference. One of the attached papers addresses the basics of that topic. --K

----- Forwarded message -----

From: Kelleher, Karen <[kkelleh@blm.gov](mailto:kkelleh@blm.gov)>  
Date: Thu, Mar 23, 2017 at 5:23 PM  
Subject: Fwd: PLC and ASI Meeting Materials  
To: "Bail, Kristin" <[kbail@blm.gov](mailto:kbail@blm.gov)>, Kristen Lenhardt <[klenhard@blm.gov](mailto:klenhard@blm.gov)>, Cynthia Moses-Nedd <[cnedd@blm.gov](mailto:cnedd@blm.gov)>  
Cc: Gordon Toevs <[gtoevs@blm.gov](mailto:gtoevs@blm.gov)>, "Melvin (Joe) Tague" <[jtague@blm.gov](mailto:jtague@blm.gov)>

Hi Kristin,  
attached are the more detailed agenda & talking points for each of the sessions related to PLC for next week. Note that some of the state groups have indicated they plan to visit DOI, however, none have scheduled a date/time yet. The materials attached here cover all major topics we are aware of so are probably adequate for those meetings, however, it is certainly possible that other topics will be raised by each group.

Kristen & Cynthia,  
These additional materials may be helpful to you in developing Mike Nedd's talking points. let us know if you need anything else.

thanks  
karen

----- Forwarded message -----

From: Tague, Melvin (Joe) <[jtague@blm.gov](mailto:jtague@blm.gov)>  
Date: Thu, Mar 23, 2017 at 1:13 PM  
Subject: PLC and ASI Meeting Materials  
To: Karen Kelleher <[kkelleh@blm.gov](mailto:kkelleh@blm.gov)>  
Cc: Gordon Toevs <[gtoevs@blm.gov](mailto:gtoevs@blm.gov)>, Richard Mayberry <[rmayberr@blm.gov](mailto:rmayberr@blm.gov)>, Kimberly Hackett <[khackett@blm.gov](mailto:khackett@blm.gov)>

Here are the materials for the PLC and ASI meetings next week. Let me know if I missed something. Gordon will be providing the sage-grouse talking points.

Oregon Cattle Association is scheduled to meet on Thursday March 23 at 10:00 AM at M St. They have not provided any topics but expect monitoring to be one.

Wyoming has also indicated they want to meet but nothing has been arranged at this time.

Joe

--

Joe Tague  
Division Chief  
Forest, Rangeland, Riparian, and Plant Conservation  
Washington, DC

202-912-7222

--

Karen Kelleher

Deputy Assistant Director - Resources and Planning

Main Interior room 5644

[kkelleh@blm.gov](mailto:kkelleh@blm.gov)

202-208-4896

## Targeted Grazing Talking Points for Public Lands Council Meeting

January 26, 2017

1. The Integrated Rangeland Fire Management Strategy (IRFMS) for Secretarial Order 3336 includes action items providing support and incentives to implement targeted and strategic fuels management activities to protect, conserve, and restore sagebrush–steppe habitats. An emphasis is also placed on reducing invasive annual grass fine fuels through targeted livestock grazing to diminish fire risk in priority sage-grouse areas.
2. An Interagency team of state and federal agencies is implementing a project plan that includes, stakeholder involvement, consolidated targeted grazing literature available on the web (Great Basin Fire Science Exchange), and the initiation of targeted grazing demonstration areas in the BLM Elko District, Nevada to evaluate the effectiveness of strategic targeted grazing to reduce fine fuels and wildfires.
3. Upcoming team activities includes developing a web-based “guidebook”, holding a series of workshops, continuing outreach to stakeholders, and identifying and implementing additional collaborative, demonstration areas in the Great Basin that are supported by robust monitoring programs.
4. Several different strategies have evolved to reduce fine fuels with targeted livestock grazing. Dormant season grazing to increase perennial vegetation and reduce residual fuels is being spearheaded by the University of Nevada Reno. The IRFMS strategy is specifically designed to reduce fine fuels in linear bands (fuel breaks) at the beginning of the fire season.
5. Given the increasing loss of sagebrush steppe habitat to wildfires, especially mega-fires over 250,000 acres, all the fuels management tools, including targeted livestock grazing, will be required to stem these losses.
6. Scientifically sound monitoring is required on each demonstration project to show the effectiveness of this tool overtime.

## Grazing Preference Talking Points

~~February 3, 2016~~ March 23, 2017

- The grazing regulations define grazing preference as: “a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee.”
- Section 3 of the Taylor Grazing Act gave leasing preference to landowners and homesteaders in or adjacent to the grazing district lands.
- The priority for receipt of a grazing permit (i.e., preference) and the public land forage allocated on that permit/lease (i.e., permitted use) are attached to the base property owned/controlled by a permittee/lessee (or an applicant for a permit/lease).
- From 1934 to 1978 the amount of grazing use allocated to a permittee/lessee on federal lands within grazing districts was linked to the productivity of the offered base property. Applicants for public land grazing privileges (now called “permitted use”) within grazing districts had to provide information on their application pertaining to their base property’s ability to grow crops or forage that could sustain livestock.
- Since 1978, BLM grazing regulations have not required that offered land base property produce commensurate forage in order to qualify as base property within grazing districts. It only needs to be capable of serving as a base of operation.
- A permittee/lessee that owns or controls base property also has a priority position or “preference” for receipt of a grazing permit/lease for the permitted use that has been attached to that base property.
- A transfer of grazing preference can occur when an applicant acquires ownership/control of base property that has preference and permitted use attached to it or an applicant wishes to transfer grazing preference from one base property to another. An applicant can acquire ownership/control through a sale or lease of the base property. Grazing preference may be transferred for all or a portion of the permitted AUMs.
- The transfer of grazing preference is a two-part process that: 1) results in the transfer of preference to use allotment(s) for grazing from one party to another, and 2) the BLM issues a new grazing permit/lease to authorize the recipient to make grazing use on the particular allotment.
- When a permittee/lessee loses ownership or control of all or a portion of the base property, the permit/lease terminates immediately. The grazing preference remains attached to the base property and the party who gained ownership/control may apply for transfer of the preference and a grazing permit/lease.

- BLM may cancel a grazing permit/lease and grazing preference for violating prohibited acts (43 CFR 4140) on public land by a permittee/lessee. BLM shall also suspend or cancel a grazing permit/lease and grazing preference, in whole or in part, for repeated willful violations of prohibited acts (43 CFR 4140) by a permittee/lessee.
- BLM may cancel a grazing permit/lease and grazing preference when public lands are disposed of or devoted to a public purpose that precludes livestock grazing. However, permittees and lessees shall be given 2 years' prior notification before the grazing permit may be canceled unless they waive the 2-year notification.

## PLC Talking Points on GRSG Implementation

- Fire and invasive species continue to be a major focus of implementing the GRSG plans in the Great Basin while invasive species and fragmentation are the major concerns in the Rocky Mountain Region
- BLM resource programs have developed an Integrated Program of Work (IPOW) that integrates wildlife, fire, riparian, range, and forestry treatment dollars and focuses on the threats identified above. In 2017, approximately \$65M to the field for on-the-ground work. This is a significant increase from previous years and is the result of increased BLM funding to implement the GRSG plans
- The collective accomplishments from the IPOW include major increases over previous years due to increased funding for plan implementation. Another 207,000 acres of conifer removal are planned for 2017, which not only offers immediate uplift to habitat but quickly translates to increased forage production.
- Around \$35M for the IPOW came from fire and aviation funding confirming their commitment to helping BLM protect sage brush communities from continued impacts from fire and invasive species
- The BLM and the Intermountain Joint Venture (IMJV) are implementing actions on adjacent federal and private lands that will improve forage production and bottom line returns to working ranches while improving the quality of habitat in the sagebrush community. Continued funding for plan implementation will be critical for the BLM and the IMJV to expand this partnership. The phrase “what is good for the bird is good for the herd” coined by Oregon ranchers appropriately describes this ongoing work.
- Rural Fire Protection Agencies are another keystone of GRSG plan implementation as they often provide the most rapid response to rangeland fire and when combined with
  - strategic placement of equipment
  - fuels reduction, including fuels breaks, and
  - fire operationswill hopefully continue to reduce fire impact to sage brush communities
- Continuing to support states working on market based credit exchanges that can be used to offset impacts to federal resources from surface disturbing activities with credits offered on private lands
- Implementation of the GRSG plans focuses on meeting watershed health and desired future condition across the habitat, not an allotment by allotment approach to health assessments. This will also accommodate including options for

- Objective-Outcome based grazing
  - Targeted based grazing, and
  - Multi-scale habitat assessments
- Implementation will continue to focus on conserving and improving sage brush communities for all communities and for improved forage opportunities, not just sage-grouse habitat

BLM Manual Section 1730  
Management of Domestic Sheep and Goats to Sustain Wild Sheep  
Talking Points for Implementation

**Summary of Policy**

- The BLM's policy is to (1) achieve effective separation of BLM authorized domestic sheep or goats from wild sheep on BLM lands, and (2) to minimize the risk of contact between the species.
- Effective separation is defined as the spatial or temporal separation between wild sheep and domestic sheep or goats, resulting in minimal risk of contact and subsequent transmission of respiratory disease between animal groups.
- The BLM will use the best available science and information and carefully assess the stressors on wild sheep and habitat, including but not limited to the potential for disease transmission from domestic sheep or goats.
- BLM will communicate, coordinate, and collaborate with stakeholders of BLM lands to achieve wild sheep and domestic sheep and goat management objectives.
- The policy lists management practices to achieve effective separation and minimize risk of contact between species.

**Need for Policy**

- Respiratory disease is one of the most crucial factors influencing bighorn sheep populations, and domestic sheep and goats are carriers of bacteria that may cause substantial wild sheep mortality a result of respiratory disease.
- Manual provides guidance to manage for temporal or spatial separation of wild sheep and domestic sheep or goats to reduce risk of bacterial transmission.
- 1998 policy had expired and consistent direction was needed for field office implementation.
- New tools to analyze appropriate separation had been developed to replace the single standard that was being applied bureau-wide without regard to local situations.
- Manual provides for greater use of local information and experience than the expired policy and incorporated recommendations from state wildlife agency working group.

**Purpose of Policy**

- Support multiple use and sustained yield management of BLM lands by promoting sound management of domestic sheep and goats to sustain wild sheep.
- Provide bureau-wide consistency to reduce the potential for contact between wild sheep and domestic sheep or goats that could result in disease transmission between the species.
- Ensure that effective separation results in a high degree of confidence that there will be a low to no risk of contact between wild sheep and domestic sheep or goats.

**Implementing Policy**

- BLM is working with partners to support both domestic sheep use on BLM-managed lands and sustainable bighorn sheep populations and habitat.
- The BLM will coordinate and collaborate with state agencies, stakeholders, and permittees when making decisions involving domestic sheep and goat use on public lands.
- BLM will use the best available science to analyze the potential risk of wild sheep contact or interaction with domestic sheep or goats.

- Policy applies to both grazing authorizations, including trailing, and to other non-permitted (or unregulated) activities that may result in the presence of domestic sheep or goats in wild sheep habitat on the BLM lands.
- BLM will continue to monitor the status of a vaccine being developed at Washington State University.

## BRIEFING MEMORANDUM FOR THE DIRECTOR

DATE: March 23, 2017

THROUGH: Kristen Bail, Assistant Director, Resources and Planning

FROM: Joe Tague, Division Chief, Division of Forest, Range, Riparian and Plant Conservation

SUBJECT: Meeting with the American Sheep Industry and Public Lands Council on March 28, 2017

The BLM established policy in 1998 in Instruction Memorandum (IM) 1998-140 on the Management of Domestic Sheep and Goats in Native Wild Sheep Habitats. The IM expired on September 30, 1999, but has been used over the years by some of the BLM field staff to help inform management decisions. In the intervening years, the Forest Service (FS) and the BLM have been party to numerous lawsuits on this issue; most notable were the challenges to FS on the Payette National Forest Plan. As an outgrowth of the efforts on the Payette Plan, the FS and the BLM produced maps that show the potential overlap between domestic sheep and goat authorizations and occupied wild sheep habitat on public lands. Data obtained from state fish and wildlife agencies in 2011 were used to map wild sheep habitat. These maps were updated again in 2014. Also, the FS and the BLM developed a risk of contact modeling tool to evaluate the risk of contact between domestic and wild sheep to help inform management decisions. Both the maps and model were released to BLM personnel within the past few years. A Manual section was issued in March 2016, directing the field to use the maps or risk of contact model.

The Manual identifies four steps to analyze sustainability of wild sheep. They are (1) gather applicable data and sources; (2) assess spatial and temporal overlap of bighorn sheep habitat and domestic sheep allotments; (3) assess likelihood of contact between allotments and bighorn sheep herds; and (4) identify management practices with the goal of separation between domestic and bighorn sheep where necessary. The Manual provides a list of discretionary management practices for line officers to consider implementing to achieve effective separation.

Effective separation is defined in the Manual as the “Spatial or temporal separation between wild sheep and domestic sheep or goats, resulting in minimal risk of contact and subsequent transmission of respiratory disease between animal groups.” This is the same definition used in the guidelines developed by the Wild Sheep Working Group under the Western Association of Fish and Wildlife Agencies (WAFWA) *Recommendations for Domestic Sheep and Goat Management in Wild Sheep Habitat* (2012). The BLM participated in the development of the recommendations and is identified as a contributor in the publication. The Manual also contains management practices and guidance for making informed decisions, using the best available information, and conducting a risk of contact analysis.

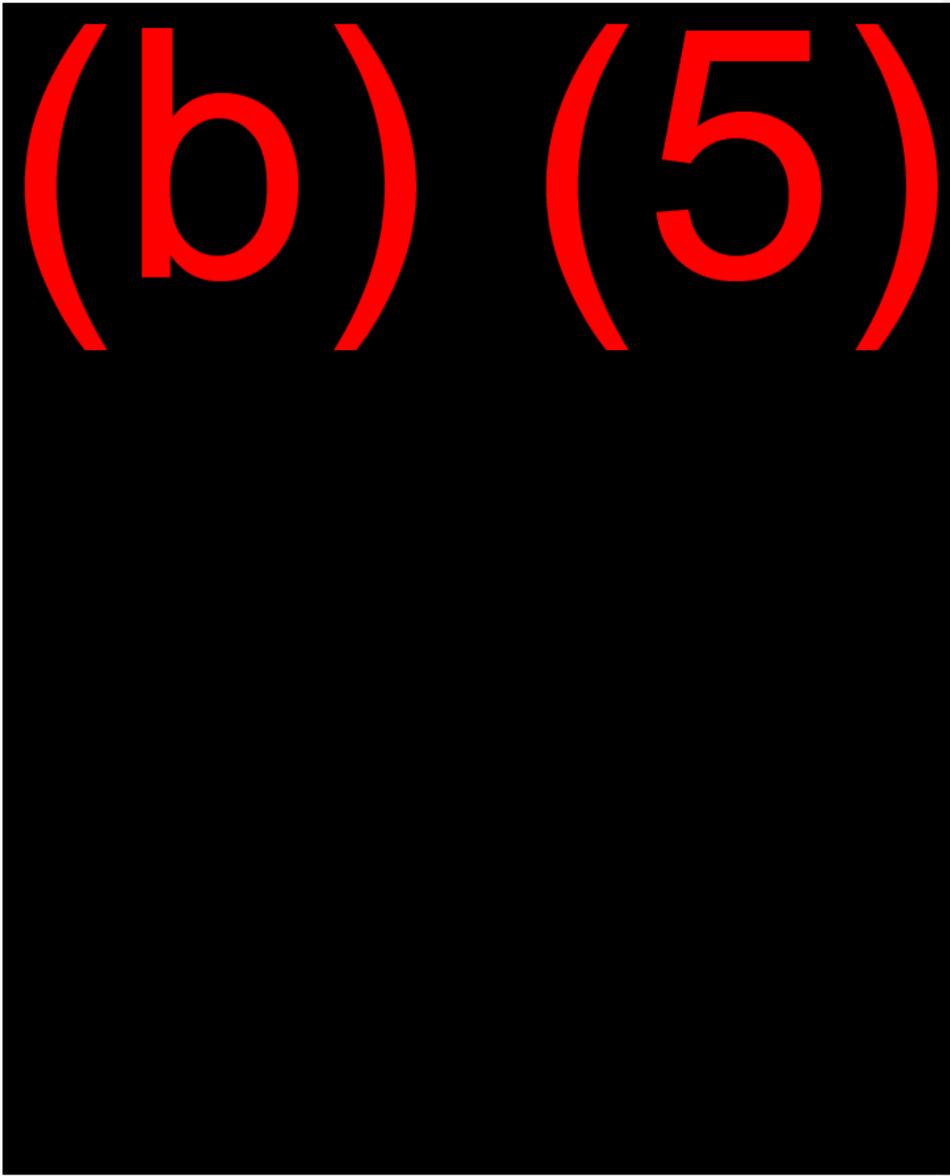
BLM staff are to coordinate with partners including federal, state, and local agencies, grazing permittees/lessees, tribes, tribal organizations, academic institutions, and non-governmental organizations that have an interest in domestic sheep and goats and wild sheep on public lands. The

BLM also is committed to fulfilling its trust responsibilities to tribes including consultation pursuant to Secretarial Order 3317, when applicable. The BLM will seek partnerships that provide services, technical expertise, and support so that the BLM and partner organizations can accomplish mutually-compatible goals and objectives for the management of domestic sheep and goats to sustain wild sheep on public lands. The BLM also acknowledges and honors the Memoranda of Understanding between the BLM and other organizations regarding wild sheep and habitat management.

The primary benefits of the Manual are that the 1998 policy had expired and consistent direction was needed for field office implementation, that new tools to analyze appropriate separation had been developed to replace the single standard that was being applied bureau-wide without regard to local situations and that the manual provides for greater use of local information and experience than the expired policy and incorporated recommendations from state wildlife agency working group.

DRAFT Talking Points for PLC – ~~ASI Sessions~~

March 27 topics – Public Lands Council [AUM Committee](#)



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*Joe briefs the group and then leaves the meeting to allow them to deliberate.*

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## BLM Participation in Public Lands Council Legislative Conference and Related Activities

### Public Lands Council (PLC) Meeting - Liaison Capitol Hill Hotel

#### Monday, March 27

##### 10 am: PLC Concurrent Grazing and Sage-grouse Meetings (2 separate meetings)

- **Grazing Meeting:** Joe Tague delivers a 10 to 15 minute presentation outlining what BLM desires Industry to provide input. Joe briefs the group and then leaves the meeting to allow them to deliberate.
  - Subjects:
    - Use of Reserve Common Allotments
    - Outcome Based Grazing Authorizations
    - Grazing Preference – Do not plan to mention but topic may come up
- **Sage-grouse Meeting:** Gordon Toevs delivers a 10 to 15 minutes regarding status on implementation of the sage-grouse plans. Gordon briefs the group and then leaves the meeting to allow them to deliberate.
  - Subjects:
    - Actions to Address the Wildfire and Invasive Annual Grass Threats
    - Local and State Level Cooperation
    - Focus on Outcome Based Actions and Desired Sagebrush Community Condition
    - Habitat Assessment Framework

##### 1 pm: PLC Wild Horse Committee Meeting

- Committee desires to know the Administration's position on wild horse management. There will be no BLM participation as the interest is on the position of the Administration and this has not been shared with the BLM.

#### Tuesday, March 28

##### American Sheep Industry Association - This is a separate meeting located at Courtyard Washington Capitol Hill/Navy Yard

- **11:20-11:40** - Joe Tague delivers a 20 minute presentation and discussion on the following subjects:
  - Current management practices where we have domestic/wild sheep conflicts. There is expected to be a group from Colorado interested in the Weminuche Wilderness issue. However, this is a Forest Service issue and they will be there to give an update.
  - The current NEPA approval process for new and renewal allotments. Provide overview of the current process and anything you can comment on as to how it could be improved or hastened, or in the alternative, the current impediments your facing.
    - This is best reflected in the Sage-grouse Grazing Priorities Instruction Memorandum and the process overview materials.
    - The need for good monitoring data.
  - Targeted and Outcome Based Grazing.

## **PLC General Session**

**11:00-11:30 - BLM Update** – Michael Nedd delivers a 30 minute presentation with questions and answers at the general meeting of the group.

- Possible emphasis:
  - Process has not changed regarding grazing permits.
  - These are local decisions.
  - These are site-specific decisions.

**Noon – Secretary Zinke Addresses the Group** – The Secretary has confirmed. He will have 15 minutes to address the group starting at noon. This will be during the lunch with everyone seated five minutes before he speaks. No BLM participation has been requested.

## **Wednesday, March 29**

**11:30 AM – 12:00 PM: Idaho Cattle Association Meeting** – The topics requested are:

- Benefits of Livestock Grazing and ways to improve its management.
  - Increasing flexibility and more localized, site specific management. This could be covered with the discussion of Outcome Based Grazing.
  - Streamlining the permit renewal process.
  - Legislative and regulatory reforms to limit frivolous litigation.
  - Concerns with Planning 2.0.
- Sage-grouse - DOI should reconsider their sage grouse plan for Idaho and allow time for the collaboratively-developed state plan to work.
- Wildfires - Idaho's RFPAs can be a pattern for not only wildfire fighting efforts across the arid west, but also for creating solutions to other land management issues. Not sure what they mean other land management issues.
  - Use of livestock grazing to reduce the threat of wildfires by reducing fuel loads. This would be the Targeted grazing discussion.
- Endangered Species Act Reform discussion on specific regulatory changes. This should be passed on to FWS.

## **Unscheduled Meetings**

### **Oregon Cattlemen's Association (OCA)**

- Oregon Group led by John O'Keefe with Robbie LeValley want to meet sometime March 29 or 30 but have not indicated a time or subject matter.

**From:** Swift, Heather  
**To:** [Amanda Kaster](#)  
**Subject:** Fwd: President's Budget Blueprint  
**Date:** Thursday, March 16, 2017 10:45:21 AM  
**Attachments:** [2018\\_blueprint\(1\).pdf](#)

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Heather Swift  
Department of the Interior

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----- Forwarded message -----

**From:** Ferriter, Olivia <olivia\_ferriter@ios.doi.gov>  
**Date:** Thu, Mar 16, 2017 at 10:42 AM  
**Subject:** President's Budget Blueprint  
**To:** James Cason <james\_cason@ios.doi.gov>, Megan Bloomgren <megan\_bloomgren@ios.doi.gov>, Heather Swift <heather\_swift@ios.doi.gov>, Micah Chambers <micah\_chambers@ios.doi.gov>, Scott Hommel <scott\_hommel@ios.doi.gov>, Daniel Jorjani <daniel\_jorjani@ios.doi.gov>, Scott Cameron <scott\_cameron@ios.doi.gov>, "Pula, Nikolao" <nikolao\_pula@ios.doi.gov>, Katharine Macgregor <katharine\_macgregor@ios.doi.gov>, Virginia Johnson <virginia\_johnson@ios.doi.gov>, Michael Black <mike.black@bia.gov>, Douglas Domenech <douglas\_domenech@ios.doi.gov>

All, attached is the President's Budget Blueprint which provides topline numbers for federal Departments. While it calls out three DOI programs to be eliminated: AML grants, Heritage Areas, and the National Wildlife Refuge Fund, there are no specific details yet on bureau and office funding. These details will be provided when the full President's budget is released in mid-May. We have been asked to refer any media calls to the DOI Communications Office. Please let me know if you have any questions. Thanks! Olivia

Olivia Barton Ferriter  
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# **America First**

## **A Budget Blueprint to Make America Great Again**



Office of Management and Budget



# **America First**

## **A Budget Blueprint to Make America Great Again**



**Office of Management and Budget**



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#### **GENERAL NOTES**

1. All years referenced for economic data are calendar years unless otherwise noted. All years referenced for budget data are fiscal years unless otherwise noted.
2. At the time of this writing, only one of the annual appropriations bills for 2017 had been enacted (the Military Construction and Veterans Affairs Appropriations Act), as well as the Further Continuing and Security Assistance Appropriations Act, which provided 2017 discretionary funding for certain Department of Defense accounts; therefore, the programs provided for in the remaining 2017 annual appropriations bills were operating under a continuing resolution (Public Law 114-223, division C, as amended). For these programs, references to 2017 spending in the text and tables reflect the levels provided by the continuing resolution.
3. Details in the tables may not add to the totals due to rounding.
4. Web address: <http://www.budget.gov>

# AMERICA FIRST

## Beginning a New Chapter of American Greatness

### A MESSAGE TO THE CONGRESS OF THE UNITED STATES:

The American people elected me to fight for their priorities in Washington, D.C. and deliver on my promise to protect our Nation. I fully intend to keep that promise.

One of the most important ways the Federal Government sets priorities is through the Budget of the United States.

Accordingly, I submit to the Congress this Budget Blueprint to reprioritize Federal spending so that it advances the safety and security of the American people.

Our aim is to meet the simple, but crucial demand of our citizens—a Government that puts the needs of its own people first. When we do that, we will set free the dreams of every American, and we will begin a new chapter of American greatness.

A budget that puts America first must make the safety of our people its number one priority—because without safety, there can be no prosperity.

That is why I have instructed my Budget Director, Mick Mulvaney, to craft a budget that emphasizes national security and public safety. That work is reflected in this Budget Blueprint. To keep Americans safe, we have made tough choices that have been put off for too long. But we have also made necessary investments that are long overdue.

My Budget Blueprint for 2018:

- provides for one of the largest increases in defense spending without increasing the debt;
- significantly increases the budget for immigration enforcement at the Department of Justice and the Department of Homeland Security;
- includes additional resources for a wall on the southern border with Mexico, immigration judges, expanded detention capacity, U.S. Attorneys, U.S. Immigration and Customs Enforcement, and Border Patrol;
- increases funding to address violent crime and reduces opioid abuse; and
- puts America first by keeping more of America's hard-earned tax dollars here at home.

The core of my first Budget Blueprint is the rebuilding of our Nation's military without adding to our Federal deficit. There is a \$54 billion increase in defense spending in 2018 that is offset by targeted reductions elsewhere. This defense funding is vital to rebuilding and preparing our Armed Forces for the future.

We must ensure that our courageous servicemen and women have the tools they need to deter war, and when called upon to fight, do only one thing: Win.

In these dangerous times, this public safety and national security Budget Blueprint is a message to the world—a message of American strength, security, and resolve.

This Budget Blueprint follows through on my promise to focus on keeping Americans safe, keeping terrorists out of our country, and putting violent offenders behind bars.

The defense and public safety spending increases in this Budget Blueprint are offset and paid for by finding greater savings and efficiencies across the Federal Government. Our Budget Blueprint insists on \$54 billion in reductions to non-Defense programs. We are going to do more with less, and make the Government lean and accountable to the people.

This includes deep cuts to foreign aid. It is time to prioritize the security and well-being of Americans, and to ask the rest of the world to step up and pay its fair share.

Many other Government agencies and departments will also experience cuts. These cuts are sensible and rational. Every agency and department will be driven to achieve greater efficiency and to eliminate wasteful spending in carrying out their honorable service to the American people.

I look forward to engaging the Congress and enacting this *America First Budget*.

Donald J. Trump

## **A Message from the Director, Office of Management and Budget**

I am proud to introduce the “America First” Budget.

While recognizing this Blueprint is not the full Federal budget, it does provide lawmakers and the public with a view of the priorities of the President and his Administration.

The Federal budget is a complex document. However, working for a President committed to keeping his promises means my job is as simple as translating his words into numbers.

That is why you will find here a familiar focus on rebuilding and restoring our Nation’s security. Under the Obama Administration, our shrinking military has been stretched far too thin. The military has been forced to make aging ships, planes, and other vehicles last well beyond their intended life spans. The President will reverse this dangerous trend. From rebuilding our Armed Forces to beefing up our border security and safeguarding our Nation’s sovereignty, this Budget makes security priority one.

It does so while meeting another of the President’s core commitments: addressing our Nation’s priorities without sending future generations an even bigger credit card bill.

This 2018 Budget Blueprint will not add to the deficit. It has been crafted much the same way any American family creates its own budget while paying bills around their kitchen table; it makes hard choices.

The President’s commitment to fiscal responsibility is historic. Not since early in President Reagan’s first term have more tax dollars been saved and more Government inefficiency and waste been targeted. Every corner of the Federal budget is scrutinized, every program tested, every penny of taxpayer money watched over.

Our \$20 trillion national debt is a crisis, not just for the Nation, but for every citizen. Each American’s share of this debt is more than \$60,000 and growing. It is a challenge of great stakes, but one the American people can solve. American families make tough decisions every day about their own budgets; it is time Washington does the same.

Mick Mulvaney



## MAJOR AGENCY BUDGET HIGHLIGHTS

The 2018 Budget is being unveiled sequentially in that this Blueprint provides details only on our discretionary funding proposals. The full Budget that will be released later this spring will include our specific mandatory and tax proposals, as well as a full fiscal path.

For instance, the President has emphasized that one of his top priorities is modernizing the outdated infrastructure that the American public depends upon. To spearhead his infrastructure initiative, the President has tapped a group of infrastructure experts to evaluate investment options along with commonsense regulatory, administrative, organizational, and policy changes to encourage investment and speed project delivery. Through this initiative, the President is committed to making sure that taxpayer dollars are expended for the highest return projects and that all levels of government maximize leverage to get the best deals and exercise vigorous oversight. The Administration will provide more budgetary, tax, and legislative details in the coming months.

In the chapters that follow, Budget highlights are presented for major agencies. Consistent

with the President's approach to move the Nation toward fiscal responsibility, the Budget eliminates and reduces hundreds of programs and focuses funding to redefine the proper role of the Federal Government.

The Budget also proposes to eliminate funding for other independent agencies, including: the African Development Foundation; the Appalachian Regional Commission; the Chemical Safety Board; the Corporation for National and Community Service; the Corporation for Public Broadcasting; the Delta Regional Authority; the Denali Commission; the Institute of Museum and Library Services; the Inter-American Foundation; the U.S. Trade and Development Agency; the Legal Services Corporation; the National Endowment for the Arts; the National Endowment for the Humanities; the Neighborhood Reinvestment Corporation; the Northern Border Regional Commission; the Overseas Private Investment Corporation; the United States Institute of Peace; the United States Interagency Council on Homelessness; and the Woodrow Wilson International Center for Scholars.



# MANAGEMENT

## Making Government Work Again

The Federal Government can—and should—operate more effectively, efficiently, and securely. For decades, leaders on both sides of the aisle have talked about the need to make Government work better. The President is taking bold action now to make Government work again for the American people.

As one of his first acts as President, on January 23, 2017, the President issued a memorandum imposing a Federal “Hiring Freeze” and requiring a long-term plan to reduce the size of the Federal Government’s workforce. In addition, on March 13, 2017, the President signed Executive Order 13781 establishing a “Comprehensive Plan for Reorganizing the Executive Branch,” which set in motion the important work of reorganizing executive departments and agencies. These two actions are complementary and plans should reflect both Presidential actions. Legislation will be required before major reorganization of the Executive Branch can take place, but the White House is best situated to review and recommend changes to the Congress. In roughly a year, the Congress will receive from the President and the Director of the Office of Management and Budget (OMB) a comprehensive plan for reorganization proposals. The White House will work closely with congressional committees with jurisdiction over Government organization to ensure the needed reforms actually happen.

Simultaneously, the Administration will develop the President’s Management Agenda focused on achieving significant improvements in the effectiveness of its core management

functions. The President’s Management Agenda will set goals in areas that are critical to improving the Federal Government’s effectiveness, efficiency, cybersecurity, and accountability. The Administration will take action to ensure that by 2020 we will be able to say the following:

- 1. Federal agencies are managing programs and delivering critical services more effectively.** The Administration will take an evidence-based approach to improving programs and services—using real, hard data to identify poorly performing organizations and programs. We will hold program managers accountable for improving performance and delivering high-quality and timely services to the American people and businesses. We will use all tools available and create new ones as needed to ensure the workforce is appropriately prepared.
- 2. Federal agencies are devoting a greater percentage of taxpayer dollars to mission achievement rather than costly, unproductive compliance activities.** Past management improvement initiatives resulted in the creation of hundreds of guidance documents aimed at improving Government management by adding more requirements to information technology (IT), human capital, acquisition, financial management, and real property. Furthermore, these Government-wide policies often tie agencies’ hands and keep managers from making commonsense decisions.

As a result, costs often increase without corresponding benefits. The Administration will roll back low-value activities and let managers manage, while holding them accountable for finding ways to reduce the cost of agency operations. As part of this effort, OMB will review requirements placed on agencies and identify areas to reduce obsolete, low-value requirements.

- 3. Federal agencies are more effective and efficient in supporting program outcomes.** Delivering high-performing program results and services to citizens and businesses depends on effective and efficient mission support services. However, despite years of efforts to improve these critical management processes, managers remain frustrated with hiring methodologies that do not consistently bring in top talent, acquisition approaches that are too cumbersome, and IT that is outdated by the time it is

deployed. The Administration will use available data to develop targeted solutions to problems Federal managers face, and begin fixing them directly by sharing and adopting leading practices from the private and public sectors. Among the areas that will be addressed are how agencies buy goods and services, hire talent, use their real property, pay their bills, and utilize technology.

- 4. Agencies have been held accountable for improving performance.** All Federal agencies will be responsible for reporting critical performance metrics and showing demonstrable improvement. OMB will also regularly review agency progress in implementing these reforms to ensure there is consistent improvement.

Through this bold agenda, we will improve the effectiveness, efficiency, cybersecurity, and accountability of the Federal Government and make government work again.

# REGULATION

## Cutting Burdensome Regulations

The American people deserve a regulatory system that works for them, not against them—a system that is both effective and efficient.

Each year, however, Federal agencies issue thousands of new regulations that, taken together, impose substantial burdens on American consumers and businesses big and small. These burdens function much like taxes that unnecessarily inhibit growth and employment. Many regulations, though well intentioned, do not achieve their intended outcomes, are not structured in the most cost-effective manner, and often have adverse, unanticipated consequences. Many more regulations that have been on the books for years—even if they made sense at the time—have gone unexamined and may no longer be effective or necessary.

The President is committed to fixing these problems by eliminating unnecessary and wasteful regulations. To that end, the President has already taken three significant steps:

- 1. Regulatory freeze.** On January 20, 2017, the President's Chief of Staff issued a memorandum to all agencies, directing them to pull back any regulations that had been sent to, but not yet published by, the Office of the Federal Register; to not publish any new regulations unless approved by an Administration political appointee; and to delay the effective date of any pending regulations for 60 days to provide the Administration time to review and reconsider those regulations. Federal agencies responded by pulling

back, delaying, and not publishing all possible regulations.

- 2. Controlling costs and eliminating unnecessary regulations.** On January 30, 2017, the President signed Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs." This Executive Order represents a fundamental change in the regulatory state. It requires Federal agencies to eliminate at least two existing regulations for each new regulation they issue. It also requires agencies to ensure that for 2017, the total incremental cost of all new regulations be no greater than \$0. For 2018 and beyond, the Order establishes and institutionalizes a disciplined process for imposing regulatory cost caps for each Federal agency.

The significant structural reforms instituted by this Executive Order provide the necessary framework for Federal agencies to carry out the President's bold regulatory reform agenda.

- 3. Enforcing the regulatory reform agenda.** As a successful businessman, the President knows that achievement requires accountability. That basic principle is the reason the President signed Executive Order 13777, "Enforcing the Regulatory Reform Agenda," on February 24, 2017. This Order establishes within each agency a Regulatory Reform Officer and a Regulatory Reform Task Force to carry out the President's regulatory reform priorities. These new teams will

work hard to identify regulations that eliminate jobs or inhibit job creation; are outdated, unnecessary, or ineffective; or impose costs that exceed benefits.

They will also be responsible for ensuring that agencies comply with the President's instruction to eliminate two regulations for each new regulation; impose no new incremental costs through regulation; and undertake efforts to repeal, replace, or modify existing regulations.

This Order builds upon a widely recognized and bi-partisan consensus that many existing regulations are likely to be ineffective and no longer necessary, and explicitly builds upon the retrospective review efforts initiated through Executive Order 13563. The difference, however, is accountability, and these teams will be a critical means by which Federal agencies will identify and cut regulations in a smart and efficient manner.

The President recently told Americans, "The era of empty talk is over." When it comes to regulatory reform, it is abundantly clear that the President means business. The President has put into place truly significant new structural mechanisms that will help to ensure that major regulatory reforms are finally achieved on behalf of the hardworking and forgotten men and women of America.

The Office of Information and Regulatory Affairs within OMB is already working hard to support the implementation of these critical new reforms, and it looks forward to making sure that they are fully and successfully implemented over the coming months and years.



## DEPARTMENT OF AGRICULTURE

The Department of Agriculture (USDA) provides leadership to promote sustainable agricultural production, protect the long-term availability of food through innovative research, and safeguard the health and productivity of the Nation's forests, grasslands, and private working lands based on sound public policy and efficient management. USDA also works to ensure food safety, provide nutrition assistance, and support rural communities. The Budget request supports core Departmental and mission critical activities while streamlining, reducing, or eliminating duplicative, redundant, or lower priority programs where the Federal role competes with the private sector or other levels of government.

The President's 2018 Budget requests \$17.9 billion for USDA, a \$4.7 billion or 21 percent decrease from the 2017 annualized continuing resolution (CR) level (excluding funding for P.L. 480 Title II food aid which is reflected in the Department of State and USAID budget).

### **The President's 2018 Budget:**

- Safeguards the Nation's supply of meat, poultry, and egg products by fully funding the Food Safety and Inspection Service, which employs more than 8,000 in-plant and other frontline personnel who protect public health in approximately 6,400 federally inspected slaughter and processing establishments nationwide.
- Provides \$6.2 billion to serve all projected participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). WIC provides grants to States for supplemental foods, health care referrals, and nutrition education for low-income pregnant and postpartum women, infants, and children who are at nutritional risk.
- Fully funds wildland fire preparedness and suppression activities at \$2.4 billion, 100 percent of the 10-year average for suppression operations, to ensure the resources necessary to protect life and property.
- Reduces funding for lower priority activities in the National Forest System, such as major new Federal land acquisition; instead, the Budget focuses on maintaining existing forests and grasslands.
- Continues to support farmer-focused research and extension partnerships at land-grant universities and provides about \$350 million for USDA's flagship competitive research program. In addition, the Budget focuses in-house research funding within the Agricultural Research Service to the highest

priority agriculture and food issues such as increasing farming productivity, sustaining natural resources, including those within rural communities, and addressing food safety and nutrition priorities.

- Reduces funding for USDA's statistical capabilities, while maintaining core Departmental analytical functions, such as the funding necessary to complete the Census of Agriculture.
- Eliminates the duplicative Water and Wastewater loan and grant program, a savings of \$498 million from the 2017 annualized CR level. Rural communities can be served by private sector financing or other Federal investments in rural water infrastructure, such as the Environmental Protection Agency's State Revolving Funds.
- Reduces staffing in USDA's Service Center Agencies to streamline county office operations, reflect reduced Rural Development workload, and encourage private sector conservation planning.
- Reduces duplicative and underperforming programs by eliminating discretionary activities of the Rural Business and Cooperative Service, a savings of \$95 million from the 2017 annualized CR level.
- Eliminates the McGovern-Dole International Food for Education program, which lacks evidence that it is being effectively implemented to reduce food insecurity.



## DEPARTMENT OF COMMERCE

The Department of Commerce promotes job creation and economic growth by ensuring fair and secure trade, providing the data necessary to support commerce, and fostering innovation by setting standards and conducting foundational research and development. The Budget prioritizes and protects investments in core Government functions such as preparing for the 2020 Decennial Census, providing the observational infrastructure and staff necessary to produce timely and accurate weather forecasts, supporting the Government's role in managing marine resources and ocean and coastal navigation, and enforcing laws that promote fair and secure trade. The Budget also reduces or eliminates grant programs that have limited impact and reflect an expansion beyond core missions of the bureaus.

The President's 2018 Budget requests \$7.8 billion for the Department of Commerce, a \$1.5 billion or 16 percent decrease from the 2017 annualized CR level.

### **The President's 2018 Budget:**

- Strengthens the International Trade Administration's trade enforcement and compliance functions, including the anti-dumping and countervailing duty investigations, while rescaling the agency's export promotion and trade analysis activities.
- Provides \$1.5 billion, an increase of more than \$100 million, for the U.S. Census Bureau to continue preparations for the 2020 Decennial Census. This additional funding prioritizes fundamental investments in information technology and field infrastructure, which would allow the bureau to more effectively administer the 2020 Decennial Census.
- Consolidates the mission, policy support, and administrative functions of the Economics and Statistics Administration within the Bureau of Economic Analysis, the U.S. Census Bureau, and the Department of Commerce's Office of the Secretary.
- Eliminates the Economic Development Administration, which provides small grants with limited measurable impacts and duplicates other Federal programs, such as Rural Utilities Service grants at the U.S. Department of Agriculture and formula grants to States from the Department of Transportation. By terminating this agency, the Budget saves \$221 million from the 2017 annualized CR level.

- Eliminates the Minority Business Development Agency, which is duplicative of other Federal, State, local, and private sector efforts that promote minority business entrepreneurship including Small Business Administration District Offices and Small Business Development Centers.
- Saves \$124 million by discontinuing Federal funding for the Manufacturing Extension Partnership (MEP) program, which subsidizes up to half the cost of State centers, which provide consulting services to small- and medium-size manufacturers. By eliminating Federal funding, MEP centers would transition solely to non-Federal revenue sources, as was originally intended when the program was established.
- Zeroes out over \$250 million in targeted National Oceanic and Atmospheric Administration (NOAA) grants and programs supporting coastal and marine management, research, and education including Sea Grant, which primarily benefit industry and State and local stakeholders. These programs are a lower priority than core functions maintained in the Budget such as surveys, charting, and fisheries management.
- Maintains the development of NOAA's current generation of polar orbiting and geostationary weather satellites, allowing the Joint Polar Satellite System and Geostationary Operational Environmental Satellite programs to remain on schedule in order to provide forecasters with critical weather data to help protect life and property.
- Achieves annual savings from NOAA's Polar Follow On satellite program from the current program of record by better reflecting the actual risk of a gap in polar satellite coverage, and provides additional opportunities to improve robustness of the low earth orbit satellite architecture by expanding the utilization of commercially provided data to improve weather models.
- Maintains National Weather Service forecasting capabilities by investing more than \$1 billion while continuing to promote efficient and effective operations.
- Continues to support the National Telecommunications and Information Administration (NTIA) in representing the United States interest at multi-stakeholder forums on internet governance and digital commerce. The Budget supports the commercial sector's development of next generation wireless services by funding NTIA's mission of evaluating and ensuring the efficient use of spectrum by Government users.



## DEPARTMENT OF DEFENSE

The Department of Defense (DOD) provides the military forces needed to deter war and to protect the security of the United States. The budget for DOD ends the depletion of our military and pursues peace through strength, honoring the Federal Government's first responsibility: to protect the Nation. It fully repeals the defense sequestration, while providing the needed resources for accelerating the defeat of the Islamic State of Iraq and Syria (ISIS) and for beginning to rebuild the U.S. Armed Forces.

The President's 2018 Budget requests \$639 billion for DOD, a \$52 billion increase from the 2017 annualized CR level. The total includes \$574 billion for the base budget, a 10 percent increase from the 2017 annualized CR level, and \$65 billion for Overseas Contingency Operations.

### **The President's 2018 Budget:**

- Repeals the defense sequestration by restoring \$52 billion to DOD, as well as \$2 billion to other national defense programs outside DOD, for a \$54 billion total increase for national defense discretionary budget authority above the sequestration level budget cap. When the Budget Control Act (BCA) of 2011 was enacted, the defense sequestration was not meant to occur, yet it has never been fully repealed. This has resulted in nearly \$200 billion of national defense cuts since 2013 and over \$200 billion of further projected cuts through 2021, relative to the original BCA caps alone. Reversing this indiscriminate neglect of the last administration is not only a fulfillment of the President's promise, but it is also a requirement if this Nation's security is to be maintained. The military's depletion under President Obama is our foremost challenge. The President's 2018 Budget ends the arbitrary depletion of our strength and security, and begins to rebuild the U.S. Armed Forces.
- Increases DOD's budget authority by \$52 billion above the current 2017 level of \$587 billion. This increase alone exceeds the entire defense budget of most countries, and would be one of the largest one-year DOD increases in American history. It is exceeded only by the peak increases of the Reagan Administration and a few of the largest defense increases during the World Wars and the conflicts in Korea, Vietnam, Iraq, and Afghanistan (in constant dollars, based on GDP chained price index). Unlike spending increases for war, which mostly consume resources in combat, the increases in the President's Budget primarily invest in a stronger military.

- Provides the resources needed to accelerate the defeat of ISIS. The Budget ensures that DOD has the tools to stop ISIS from posing a threat to the United States by funding the Department's critical efforts to strike ISIS targets, support our partners fighting on the ground, disrupt ISIS' external operations, and cut off its financing.
- Addresses urgent warfighting readiness needs. Fifteen years of conflict, accompanied in recent years by budget cuts, have stressed the Armed Forces. The President's Budget would ensure we remain the best led, best equipped, and most ready force in the world.
- Begins to rebuild the U.S. Armed Forces by addressing pressing shortfalls, such as insufficient stocks of critical munitions, personnel gaps, deferred maintenance and modernization, cyber vulnerabilities, and degraded facilities. The military must reset war losses, address recapitalization and maintenance requirements, and recover from years of deferred investment forced by budget cuts. The President's Budget would ensure the Armed Forces have the training, equipment, and infrastructure they need.
- Lays the groundwork for a larger, more capable, and more lethal joint force, driven by a new National Defense Strategy that recognizes the need for American superiority not only on land, at sea, in the air, and in space, but also in cyberspace. As the world has become more dangerous—through the rise of advanced potential adversaries, the spread of destructive technology, and the expansion of terrorism—our military has gotten smaller and its technological edge has eroded. The President's Budget begins to put an end to this trend, reversing force reductions and restoring critical investments.
- Initiates an ambitious reform agenda to build a military that is as effective and efficient as possible, and underscores the President's commitment to reduce the costs of military programs wherever feasible.
- Strengthens the U.S. Army by rebuilding readiness, reversing end strength reductions, and preparing for future challenges. This Budget is an initial step toward restoring an Army that has been stressed by high operational demand and constrained funding levels in recent years.
- Rebuilds the U.S. Navy to better address current and future threats by increasing the total number of ships. This Budget reflects a down payment on the President's commitment to expanding the fleet.
- Ensures a ready and fully equipped Marine Corps. The Budget lays the foundation for a force that meets the challenges of the 21<sup>st</sup> Century.
- Accelerates Air Force efforts to improve tactical air fleet readiness, ensure technical superiority, and repair aging infrastructure. Key investments in maintenance capacity, training systems, and additional F-35 Joint Strike Fighters would enable the Air Force, which is now the smallest it has been in history, to counter the growing number of complex threats from sophisticated state actors and transnational terrorist groups.



## DEPARTMENT OF EDUCATION

The Department of Education promotes improving student achievement and access to opportunity in elementary, secondary, and postsecondary education. The Department would refocus its mission on supporting States and school districts in their efforts to provide high quality education to all our students. Also, it would focus on streamlining and simplifying funding for college, while continuing to help make college education more affordable. The 2018 Budget places power in the hands of parents and families to choose schools that are best for their children by investing an additional \$1.4 billion in school choice programs. It continues support for the Nation's most vulnerable populations, such as students with disabilities. Overall, the Department would support these investments and carry out its core mission while lowering costs to the taxpayer by reducing or eliminating funding for programs that are not effective, that duplicate other efforts, or that do not serve national needs.

The President's 2018 Budget provides \$59 billion in discretionary funding for the Department of Education, a \$9 billion or 13 percent reduction below the 2017 annualized CR level.

### **The President's 2018 Budget:**

- Increases investments in public and private school choice by \$1.4 billion compared to the 2017 annualized CR level, ramping up to an annual total of \$20 billion, and an estimated \$100 billion including matching State and local funds. This additional investment in 2018 includes a \$168 million increase for charter schools, \$250 million for a new private school choice program, and a \$1 billion increase for Title I, dedicated to encouraging districts to adopt a system of student-based budgeting and open enrollment that enables Federal, State, and local funding to follow the student to the public school of his or her choice.
- Maintains approximately \$13 billion in funding for IDEA programs to support students with special education needs. This funding provides States, school districts, and other grantees with the resources needed to provide high quality special education and related services to students and young adults with disabilities.
- Eliminates the \$2.4 billion Supporting Effective Instruction State Grants program, which is poorly targeted and spread thinly across thousands of districts with scant evidence of impact.
- Eliminates the 21st Century Community Learning Centers program, which supports before- and after-school programs as well as summer programs, resulting in savings of \$1.2 billion from the 2017 annualized CR level. The programs lacks strong evidence of meeting its objectives, such as improving student achievement.

- Eliminates the Federal Supplemental Educational Opportunity Grant program, a less well-targeted way to deliver need-based aid than the Pell Grant program, to reduce complexity in financial student aid and save \$732 million from the 2017 annualized CR level.
- Safeguards the Pell Grant program by level funding the discretionary appropriation while proposing a cancellation of \$3.9 billion from unobligated carryover funding, leaving the Pell program on sound footing for the next decade.
- Protects support for Historically Black Colleges and Universities and Minority-Serving Institutions, which provide opportunities for communities that are often underserved, maintaining \$492 million in funding for programs that serve high percentages of minority students.
- Reduces Federal Work-Study significantly and reforms the poorly-targeted allocation to ensure funds go to undergraduate students who would benefit most.
- Provides \$808 million for the Federal TRIO Programs and \$219 million for GEAR UP, resulting in savings of \$193 million from the 2017 annualized CR level. Funding to TRIO programs is reduced in areas that have limited evidence on the overall effectiveness in improving student outcomes. The Budget funds GEAR UP continuation awards only, pending the completion of an upcoming rigorous evaluation of a portion of the program.
- Eliminates or reduces over 20 categorical programs that do not address national needs, duplicate other programs, or are more appropriately supported with State, local, or private funds, including Striving Readers, Teacher Quality Partnership, Impact Aid Support Payments for Federal Property, and International Education programs.



## DEPARTMENT OF ENERGY

The Department of Energy (DOE) is charged with ensuring the Nation's security and prosperity by addressing its energy, environmental, and nuclear challenges through transformative science and technology solutions. The Budget for DOE demonstrates the Administration's commitment to reasserting the proper role of what has become a sprawling Federal Government and reducing deficit spending. It reflects an increased reliance on the private sector to fund later-stage research, development, and commercialization of energy technologies and focuses resources toward early-stage research and development. It emphasizes energy technologies best positioned to enable American energy independence and domestic job-growth in the near to mid-term. It also ensures continued progress on cleaning up sites contaminated from nuclear weapons production and energy research and includes a path forward to accelerate progress on the disposition of nuclear waste. At the same time, the Budget demonstrates the Administration's strong support for the United States' nuclear security enterprise and ensures that we have a nuclear force that is second to none.

The President's 2018 Budget requests \$28.0 billion for DOE, a \$1.7 billion or 5.6 percent decrease from the 2017 annualized CR level. The Budget would strengthen the Nation's nuclear capability by providing a \$1.4 billion increase above the 2017 annualized CR level for the National Nuclear Security Administration, an 11 percent increase.

### **The President's 2018 Budget:**

- Provides \$120 million to restart licensing activities for the Yucca Mountain nuclear waste repository and initiate a robust interim storage program. These investments would accelerate progress on fulfilling the Federal Government's obligations to address nuclear waste, enhance national security, and reduce future taxpayer burden.
- Supports the goals of moving toward a responsive nuclear infrastructure and advancing the existing program of record for warhead life extension programs through elimination of defense sequestration for the National Nuclear Security Administration (NNSA).
- Enables NNSA to begin to address its critical infrastructure maintenance backlog.
- Protects human health and the environment by providing \$6.5 billion to advance the Environmental Management program mission of cleaning up the legacy of waste and contamination from energy research and nuclear weapons production, including addressing excess facilities to support modernization of the nuclear security enterprise.
- Eliminates the Advanced Research Projects Agency-Energy, the Title 17 Innovative Technology Loan Guarantee Program, and the Advanced Technology Vehicle Manufacturing Program because

the private sector is better positioned to finance disruptive energy research and development and to commercialize innovative technologies.

- Ensures the Office of Science continues to invest in the highest priority basic science and energy research and development as well as operation and maintenance of existing scientific facilities for the community. This includes a savings of approximately \$900 million compared to the 2017 annualized CR level.
- Focuses funding for the Office of Energy Efficiency and Renewable Energy, the Office of Nuclear Energy, the Office of Electricity Delivery and Energy Reliability, and the Fossil Energy Research and Development program on limited, early-stage applied energy research and development activities where the Federal role is stronger. In addition, the Budget eliminates the Weatherization Assistance Program and the State Energy Program to reduce Federal intervention in State-level energy policy and implementation. Collectively, these changes achieve a savings of approximately \$2 billion from the 2017 annualized CR level.
- Supports the Office of Electricity Delivery and Energy Reliability's capacity to carry out cybersecurity and grid resiliency activities that would help harden and evolve critical grid infrastructure that the American people and the economy rely upon.
- Continues the necessary research, development, and construction to support the Navy's current nuclear fleet and enhance the capabilities of the future fleet.



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

The Department of Health and Human Services (HHS) works to enhance the health and well-being of Americans by providing effective health and human services and by fostering sound, sustained advances in the sciences underlying medicine, public health, and social services. The Budget supports the core mission of HHS through the most efficient and effective health and human service programs. In 2018, HHS funds the highest priorities, such as: health services through community health centers, Ryan White HIV/AIDS providers, and the Indian Health Service; early care and education; and medical products review and innovation. In addition, it funds urgent public health issues, such as prescription drug overdose, and program integrity for Medicare and Medicaid. The Budget eliminates programs that are duplicative or have limited impact on public health and well-being. The Budget allows HHS to continue to support priority activities that reflect a new and sustainable approach to long-term fiscal stability across the Federal Government.

The President's 2018 Budget requests \$69.0 billion for HHS, a \$15.1 billion or 17.9 percent decrease from the 2017 annualized CR level. This funding level excludes certain mandatory spending changes but includes additional funds for program integrity and implementing the 21st Century CURES Act.

### **The President's 2018 Budget:**

- Supports direct health care services, such as those delivered by community health centers, Ryan White HIV/AIDS providers, and the Indian Health Service. These safety net providers deliver critical health care services to low-income and vulnerable populations.
- Strengthens the integrity and sustainability of Medicare and Medicaid by investing in activities to prevent fraud, waste, and abuse and promote high quality and efficient health care. Additional funding for the Health Care Fraud and Abuse Control (HCFAC) program has allowed the Centers for Medicare & Medicaid Services in recent years to shift away from a “pay-and-chase” model toward identifying and preventing fraudulent or improper payments from being paid in the first place. The return on investment for the HCFAC account was \$5 returned for every \$1 expended from 2014-2016. The Budget proposes HCFAC discretionary funding of \$751 million in 2018, which is \$70 million higher than the 2017 annualized CR level.
- Supports efficient operations for Medicare, Medicaid, and the Children's Health Insurance Program and focuses spending on the highest priority activities necessary to effectively operate these programs.

- Supports substance abuse treatment services for the millions of Americans struggling with substance abuse disorders. The opioid epidemic, which took more than 33,000 lives in calendar year 2015, has a devastating effect on America's families and communities. In addition to funding Substance Abuse and Mental Health Services Administration substance abuse treatment activities, the Budget also includes a \$500 million increase above 2016 enacted levels to expand opioid misuse prevention efforts and to increase access to treatment and recovery services to help Americans who are misusing opioids get the help they need.
- Recalibrates Food and Drug Administration (FDA) medical product user fees to over \$2 billion in 2018, approximately \$1 billion over the 2017 annualized CR level, and replaces the need for new budget authority to cover pre-market review costs. To complement the increase in medical product user fees, the Budget includes a package of administrative actions designed to achieve regulatory efficiency and speed the development of safe and effective medical products. In a constrained budget environment, industries that benefit from FDA's approval can and should pay for their share.
- Reduces the National Institutes of Health's (NIH) spending relative to the 2017 annualized CR level by \$5.8 billion to \$25.9 billion. The Budget includes a major reorganization of NIH's Institutes and Centers to help focus resources on the highest priority research and training activities, including: eliminating the Fogarty International Center; consolidating the Agency for Healthcare Research and Quality within NIH; and other consolidations and structural changes across NIH organizations and activities. The Budget also reduces administrative costs and rebalance Federal contributions to research funding.
- Reforms key public health, emergency preparedness, and prevention programs. For example, the Budget restructures similar HHS preparedness grants to reduce overlap and administrative costs and directs resources to States with the greatest need. The Budget also creates a new Federal Emergency Response Fund to rapidly respond to public health outbreaks, such as Zika Virus Disease. The Budget also reforms the Centers for Disease Control and Prevention through a new \$500 million block grant to increase State flexibility and focus on the leading public health challenges specific to each State.
- Invests in mental health activities that are awarded to high-performing entities and focus on high priority areas, such as suicide prevention, serious mental illness, and children's mental health.
- Eliminates \$403 million in health professions and nursing training programs, which lack evidence that they significantly improve the Nation's health workforce. The Budget continues to fund health workforce activities that provide scholarships and loan repayments in exchange for service in areas of the United States where there is a shortage of health professionals.
- Eliminates the discretionary programs within the Office of Community Services, including the Low Income Home Energy Assistance Program (LIHEAP) and the Community Services Block Grant (CSBG), a savings of \$4.2 billion from the 2017 annualized CR level. Compared to other income support programs that serve similar populations, LIHEAP is a lower-impact program and is unable to demonstrate strong performance outcomes. CSBG funds services that are duplicative of other Federal programs, such as emergency food assistance and employment services, and is also a limited-impact program.



## DEPARTMENT OF HOMELAND SECURITY

The Department of Homeland Security (DHS) has a vital mission: to secure the Nation from the many threats it faces. This requires the dedication of more than 240,000 employees in jobs that ensure the security of the U.S. borders, support the integrity of its immigration system, protect air travelers and national leaders, reduce the threat of cyber attacks, and stand prepared for emergency response and disaster recovery. The Budget prioritizes DHS law enforcement operations, proposes critical investments in frontline border security, and funds continued development of strong cybersecurity defenses. The Budget would aggressively implement the President's commitment to construct a physical wall along the southern border as directed by his January 25, 2017 Executive Order, and ensures robust funding for other important DHS missions.

The President's 2018 Budget requests \$44.1 billion in net discretionary budget authority for DHS, a \$2.8 billion or 6.8 percent increase from the 2017 annualized CR level. The Budget would allocate \$4.5 billion in additional funding for programs to strengthen the security of the Nation's borders and enhance the integrity of its immigration system. This increased investment in the Nation's border security and immigration enforcement efforts now would ultimately save Federal resources in the future.

### **The President's 2018 Budget:**

- Secures the borders of the United States by investing \$2.6 billion in high-priority tactical infrastructure and border security technology, including funding to plan, design, and construct a physical wall along the southern border as directed by the President's January 25, 2017 Executive Order. This investment would strengthen border security, helping stem the flow of people and drugs illegally crossing the U.S. borders.
- Advances the President's plan to strengthen border security and immigration enforcement with \$314 million to recruit, hire, and train 500 new Border Patrol Agents and 1,000 new Immigration and Customs Enforcement law enforcement personnel in 2018, plus associated support staff. These new personnel would improve the integrity of the immigration system by adding capacity to interdict those aliens attempting to cross the border illegally, as well as to identify and remove those already in the United States who entered illegally.
- Enhances enforcement of immigration laws by proposing an additional \$1.5 billion above the 2017 annualized CR level for expanded detention, transportation, and removal of illegal immigrants.

These funds would ensure that DHS has sufficient detention capacity to hold prioritized aliens, including violent criminals and other dangerous individuals, as they are processed for removal.

- Invests \$15 million to begin implementation of mandatory nationwide use of the E-Verify Program, an internet-based system that allows businesses to determine the eligibility of their new employees to work in the United States. This investment would strengthen the employment verification process and reduce unauthorized employment across the U.S.
- Safeguards cyberspace with \$1.5 billion for DHS activities that protect Federal networks and critical infrastructure from an attack. Through a suite of advanced cyber security tools and more assertive defense of Government networks, DHS would share more cybersecurity incident information with other Federal agencies and the private sector, leading to faster responses to cybersecurity attacks directed at Federal networks and critical infrastructure.
- Restructures selected user fees for the Transportation Security Administration (TSA) and the National Flood Insurance Program (NFIP) to ensure that the cost of Government services is not subsidized by taxpayers who do not directly benefit from those programs. The Budget proposes to raise the Passenger Security Fee to recover 75 percent of the cost of TSA aviation security operations. The Budget proposes eliminating the discretionary appropriation for the NFIP's Flood Hazard Mapping Program, a savings of \$190 million, to instead explore other more effective and fair means of funding flood mapping efforts.
- Eliminates or reduces State and local grant funding by \$667 million for programs administered by the Federal Emergency Management Agency (FEMA) that are either unauthorized by the Congress, such as FEMA's Pre-Disaster Mitigation Grant Program, or that must provide more measurable results and ensure the Federal Government is not supplanting other stakeholders' responsibilities, such as the Homeland Security Grant Program. For that reason, the Budget also proposes establishing a 25 percent non-Federal cost match for FEMA preparedness grant awards that currently require no cost match. This is the same cost-sharing approach as FEMA's disaster recovery grants. The activities and acquisitions funded through these grant programs are primarily State and local functions.
- Eliminates and reduces unauthorized and underperforming programs administered by TSA in order to strengthen screening at airport security checkpoints, a savings of \$80 million from the 2017 annualized CR level. These savings include reductions to the Visible Intermodal Prevention and Response program, which achieves few Federal law enforcement priorities, and elimination of TSA grants to State and local jurisdictions, a program intended to incentivize local law enforcement patrols that should already be a high priority for State and local partners. In addition, the Budget reflects TSA's decision in the summer of 2016 to eliminate the Behavior Detection Officer program, reassigning all of those personnel to front line airport security operations. Such efforts refocus TSA on its core mission of protecting travelers and ensuring Federal security standards are enforced throughout the transportation system.



## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The Department of Housing and Urban Development (HUD) promotes decent, safe, and affordable housing for Americans and provides access to homeownership opportunities. This Budget reflects the President's commitment to fiscal responsibility while supporting critical functions that provide rental assistance to low-income and vulnerable households and help work-eligible families achieve self-sufficiency. The Budget also recognizes a greater role for State and local governments and the private sector to address community and economic development needs.

The President's 2018 Budget requests \$40.7 billion in gross discretionary funding for HUD, a \$6.2 billion or 13.2 percent decrease from the 2017 annualized CR level.

### **The President's 2018 Budget:**

- Provides over \$35 billion for HUD's rental assistance programs and proposes reforms that reduce costs while continuing to assist 4.5 million low-income households.
- Eliminates funding for the Community Development Block Grant program, a savings of \$3 billion from the 2017 annualized CR level. The Federal Government has spent over \$150 billion on this block grant since its inception in 1974, but the program is not well-targeted to the poorest populations and has not demonstrated results. The Budget devolves community and economic development activities to the State and local level, and redirects Federal resources to other activities.
- Promotes fiscal responsibility by eliminating funding for a number of lower priority programs, including the HOME Investment Partnerships Program, Choice Neighborhoods, and the Self-help Homeownership Opportunity Program, a savings of over \$1.1 billion from the 2017 annualized CR level. State and local governments are better positioned to serve their communities based on local needs and priorities.
- Promotes healthy and lead-safe homes by providing \$130 million, an increase of \$20 million over the 2017 annualized CR level, for the mitigation of lead-based paint and other hazards in low-income homes, especially those in which children reside. This also funds enforcement, education, and research activities to further support this goal, all of which contributes to lower healthcare costs and increased productivity.

- Eliminates funding for Section 4 Capacity Building for Community Development and Affordable Housing, a savings of \$35 million from the 2017 annualized CR level. This program is duplicative of efforts funded by philanthropy and other more flexible private sector investments.
- Supports homeownership through provision of Federal Housing Administration mortgage insurance programs.



## DEPARTMENT OF THE INTERIOR

The Department of the Interior (DOI) is responsible for protecting and managing vast areas of U.S. lands and waters, providing scientific and other information about its natural resources, and meeting the Nation's trust responsibilities and other commitments to American Indians, Alaska Natives, and U.S.-affiliated island communities. The Budget requests an increase in funding for core energy development programs while supporting DOI's priority agency mission and trust responsibilities, including public safety, land conservation and revenue management. It eliminates funding for unnecessary or duplicative programs while reducing funds for lower priority activities, such as acquiring new lands.

The President's 2018 Budget requests \$11.6 billion for DOI, a \$1.5 billion or 12 percent decrease from the 2017 annualized CR level.

### **The President's 2018 Budget:**

- Strengthens the Nation's energy security by increasing funding for DOI programs that support environmentally responsible development of energy on public lands and offshore waters. Combined with administrative reforms already in progress, this would allow DOI to streamline permitting processes and provide industry with access to the energy resources America needs, while ensuring taxpayers receive a fair return from the development of these public resources.
- Sustains funding for DOI's Office of Natural Resources Revenue, which manages the collection and disbursement of roughly \$10 billion annually from mineral development, an important source of revenue to the Federal Treasury, States, and Indian mineral owners.
- Eliminates unnecessary, lower priority, or duplicative programs, including discretionary Abandoned Mine Land grants that overlap with existing mandatory grants, National Heritage Areas that are more appropriately funded locally, and National Wildlife Refuge fund payments to local governments that are duplicative of other payment programs.
- Supports stewardship capacity for land management operations of the National Park Service, Fish and Wildlife Service and Bureau of Land Management. The Budget streamlines operations while providing the necessary resources for DOI to continue to protect and conserve America's public lands and beautiful natural resources, provide access to public lands for the next generation of outdoor enthusiasts, and ensure visitor safety.

- Supports tribal sovereignty and self-determination across Indian Country by focusing on core funding and services to support ongoing tribal government operations. The Budget reduces funding for more recent demonstration projects and initiatives that only serve a few Tribes.
- Reduces funding for lower priority activities, such as new major acquisitions of Federal land. The Budget reduces land acquisition funding by more than \$120 million from the 2017 annualized CR level and would instead focus available discretionary funds on investing in, and maintaining, existing national parks, refuges and public lands.
- Ensures that the National Park Service assets are preserved for future generations by increasing investment in deferred maintenance projects. Reduces funds for other DOI construction and major maintenance programs, which can rely on existing resources for 2018.
- Provides more than \$900 million for DOI's U.S. Geological Survey to focus investments in essential science programs. This includes funding for the Landsat 9 ground system, as well as research and data collection that informs sustainable energy development, responsible resource management, and natural hazard risk reduction.
- Leverages taxpayer investment with public and private resources through wildlife conservation, historic preservation, and recreation grants. These voluntary programs encourage partnerships by providing matching funds that produce greater benefits to taxpayers for the Federal dollars invested.
- Budgets responsibly for wildland fire suppression expenses. The Budget would directly provide the full 10-year rolling average of suppression expenditures.
- Invests over \$1 billion in safe, reliable, and efficient management of water resources throughout the western United States.
- Supports counties through discretionary funding for the Payments in Lieu of Taxes (PILT) program at a reduced level, but in line with average funding for PILT over the past decade.



## DEPARTMENT OF JUSTICE

The Department of Justice is charged with enforcing the laws and defending the interests of the United States, ensuring public safety against foreign and domestic threats, providing Federal leadership in preventing and controlling crime, seeking just punishment for those guilty of unlawful behavior, and ensuring the fair and impartial administration of justice for all Americans. The budget for the Department of Justice saves taxpayer dollars by consolidating, reducing, streamlining, and making its programs and operations more efficient. The Budget also makes critical investments to confront terrorism, reduce violent crime, tackle the Nation's opioid epidemic, and combat illegal immigration.

The President's 2018 Budget requests \$27.7 billion for the Department of Justice, a \$1.1 billion or 3.8 percent decrease from the 2017 annualized CR level. This program level excludes mandatory spending changes involving the Crime Victims Fund and the Assets Forfeiture Fund. However, significant targeted increases would enhance the ability to address key issues, including public safety, law enforcement, and national security. Further, the Administration is concerned about so-called sanctuary jurisdictions and will be taking steps to mitigate the risk their actions pose to public safety.

### **The President's 2018 Budget:**

- Strengthens counterterrorism, counterintelligence, and Federal law enforcement activities by providing an increase of \$249 million, or 3 percent, above the 2017 annualized CR level for the Federal Bureau of Investigation (FBI). The FBI would devote resources toward its world-class cadre of special agents and intelligence analysts, as well as invest \$61 million more to fight terrorism and combat foreign intelligence and cyber threats and address public safety and national security risks that result from malicious actors' use of encrypted products and services. In addition, the FBI would dedicate \$35 million to gather and share intelligence data with partners and together with the Department of Defense (DOD) lead Federal efforts in biometric identity resolution, research, and development. The FBI would also spend an additional \$9 million to provide accurate and timely response for firearms purchase background checks, and develop and refine evidence and data to target violent crime in some cities and communities.
- Supports efforts at the Department's law enforcement components by providing a combined increase of \$175 million above the 2017 annualized CR level to target the worst of the worst criminal organizations and drug traffickers in order to address violent crime, gun-related deaths, and the opioid epidemic.

- Enhances national security and counterterrorism efforts by linking skilled prosecutors and intelligence attorneys with law enforcement investigations and the intelligence community to stay ahead of threats.
- Combats illegal entry and unlawful presence in the United States by providing an increase of nearly \$80 million, or 19 percent, above the 2017 annualized CR level to hire 75 additional immigration judge teams to bolster and more efficiently adjudicate removal proceedings—bringing the total number of funded immigration judge teams to 449.
- Enhances border security and immigration enforcement by providing 60 additional border enforcement prosecutors and 40 deputy U.S. Marshals for the apprehension, transportation, and prosecution of criminal aliens.
- Supports the addition of 20 attorneys to pursue Federal efforts to obtain the land and holdings necessary to secure the Southwest border and another 20 attorneys and support staff for immigration litigation assistance.
- Assures the safety of the public and law enforcement officers by providing \$171 million above the 2017 annualized CR level for additional short-term detention space to hold Federal detainees, including criminal aliens, parole violators, and other offenders awaiting trial or sentencing.
- Safeguards Federal grants to State, local, and tribal law enforcement and victims of crime to ensure greater safety for law enforcement personnel and the people they serve. Critical programs aimed at protecting the life and safety of State and local law enforcement personnel, including Preventing Violence Against Law Enforcement Officer Resilience and Survivability and the Bulletproof Vest Partnership, are protected.
- Eliminates approximately \$700 million in unnecessary spending on outdated programs that either have met their goal or have exceeded their usefulness, including \$210 million for the poorly targeted State Criminal Alien Assistance Program, in which two-thirds of the funding primarily reimburses four States for the cost of incarcerating certain illegal criminal aliens.
- Achieves savings of almost a billion dollars from the 2017 annualized CR level in Federal prison construction spending due to excess capacity resulting from an approximate 14 percent decrease in the prison population since 2013. However, the Budget provides \$80 million above the 2017 annualized CR level for the activation of an existing facility to reduce high security Federal inmate overcrowding and a total of \$113 million to repair and modernize outdated prisons.
- Increases bankruptcy-filing fees to produce an additional \$150 million over the 2017 annualized CR level to ensure that those that use the bankruptcy court system pay for its oversight. By increasing quarterly filing fees, the total estimated United States Trustee Program offsetting receipts would reach \$289 million in 2018.



## DEPARTMENT OF LABOR

The Department of Labor fosters the welfare of wage earners, job seekers, and retirees by safeguarding their working conditions, benefits, and wages. With the need to rebuild the Nation's military without increasing the deficit, this Budget focuses the Department of Labor on its highest priority functions and disinvests in activities that are duplicative, unnecessary, unproven, or ineffective.

The President's 2018 Budget requests \$9.6 billion for the Department of Labor, a \$2.5 billion or 21 percent decrease from the 2017 annualized CR level.

### **The President's 2018 Budget:**

- Expands Reemployment and Eligibility Assessments, an evidence-based activity that saves an average of \$536 per claimant in unemployment insurance benefit costs by reducing improper payments and getting claimants back to work more quickly and at higher wages.
- Reduces funding for ineffective, duplicative, and peripheral job training grants. As part of this, eliminates the Senior Community Service Employment Program (SCSEP), for a savings of \$434 million from the 2017 annualized CR level. SCSEP is ineffective in meeting its purpose of transitioning low-income unemployed seniors into unsubsidized jobs. As many as one-third of participants fail to complete the program and of those who do, only half successfully transition to unsubsidized employment.
- Focuses the Bureau of International Labor Affairs on ensuring that U.S. trade agreements are fair for American workers. The Budget eliminates the Bureau's largely noncompetitive and unproven grant funding, which would save at least \$60 million from the 2017 annualized CR level.
- Improves Job Corps for the disadvantaged youth it serves by closing centers that do a poor job educating and preparing students for jobs.
- Decreases Federal support for job training and employment service formula grants, shifting more responsibility for funding these services to States, localities, and employers.
- Helps States expand apprenticeship, an evidence-based approach to preparing workers for jobs.

- Refocuses the Office of Disability Employment Policy, eliminating less critical technical assistance grants and launching an early intervention demonstration project to allow States to test and evaluate methods that help individuals with disabilities remain attached to or reconnect to the labor market.
- Eliminates the Occupational Safety and Health Administration's unproven training grants, yielding savings of almost \$11 million from the 2017 annualized CR level and focusing the agency on its central work of keeping workers safe on the job.



## DEPARTMENT OF STATE, USAID, AND TREASURY INTERNATIONAL PROGRAMS

The Department of State, the U.S. Agency for International Development (USAID), and the Department of the Treasury's International Programs help to advance the national security interests of the United States by building a more democratic, secure, and prosperous world. The Budget for the Department of State and USAID diplomatic and development activities is being refocused on priority strategic objectives and renewed attention is being placed on the appropriate U.S. share of international spending. In addition, the Budget seeks to reduce or end direct funding for international organizations whose missions do not substantially advance U.S. foreign policy interests, are duplicative, or are not well-managed. Additional steps will be taken to make the Department and USAID leaner, more efficient, and more effective. These steps to reduce foreign assistance free up funding for critical priorities here at home and put America first.

The President's 2018 Budget requests \$25.6 billion in base funding for the Department of State and USAID, a \$10.1 billion or 28 percent reduction from the 2017 annualized CR level. The Budget also requests \$12.0 billion as Overseas Contingency Operations funding for extraordinary costs, primarily in war areas like Syria, Iraq, and Afghanistan, for an agency total of \$37.6 billion. The 2018 Budget also requests \$1.5 billion for Treasury International Programs, an \$803 million or 35 percent reduction from the 2017 annualized CR level.

### **The President's 2018 Budget:**

- Maintains robust funding levels for embassy security and other core diplomatic activities while implementing efficiencies. Consistent with the Benghazi Accountability Review Board recommendation, the Budget applies \$2.2 billion toward new embassy construction and maintenance in 2018. Maintaining adequate embassy security levels requires the efficient and effective use of available resources to keep embassy employees safe.
- Provides \$3.1 billion to meet the security assistance commitment to Israel, currently at an all-time high; ensuring that Israel has the ability to defend itself from threats and maintain its Qualitative Military Edge.
- Eliminates the Global Climate Change Initiative and fulfills the President's pledge to cease payments to the United Nations' (UN) climate change programs by eliminating U.S. funding related to the Green Climate Fund and its two precursor Climate Investment Funds.
- Provides sufficient resources on a path to fulfill the \$1 billion U.S. pledge to Gavi, the Vaccine Alliance. This commitment helps support Gavi to vaccinate hundreds of millions of children in low-resource countries and save millions of lives.

- Provides sufficient resources to maintain current commitments and all current patient levels on HIV/AIDS treatment under the President's Emergency Plan for AIDS Relief (PEPFAR) and maintains funding for malaria programs. The Budget also meets U.S. commitments to the Global Fund for AIDS, Tuberculosis, and Malaria by providing 33 percent of projected contributions from all donors, consistent with the limit currently in law.
- Shifts some foreign military assistance from grants to loans in order to reduce costs for the U.S. taxpayer, while potentially allowing recipients to purchase more American-made weaponry with U.S. assistance, but on a repayable basis.
- Reduces funding to the UN and affiliated agencies, including UN peacekeeping and other international organizations, by setting the expectation that these organizations rein in costs and that the funding burden be shared more fairly among members. The amount the U.S. would contribute to the UN budget would be reduced and the U.S. would not contribute more than 25 percent for UN peacekeeping costs.
- Refocuses economic and development assistance to countries of greatest strategic importance to the U.S. and ensures the effectiveness of U.S. taxpayer investments by rightsizing funding across countries and sectors.
- Allows for significant funding of humanitarian assistance, including food aid, disaster, and refugee program funding. This would focus funding on the highest priority areas while asking the rest of the world to pay their fair share. The Budget eliminates the Emergency Refugee and Migration Assistance account, a duplicative and stovepiped account, and challenges international and non-governmental relief organizations to become more efficient and effective.
- Reduces funding for the Department of State's Educational and Cultural Exchange (ECE) Programs. ECE resources would focus on sustaining the flagship Fulbright Program, which forges lasting connections between Americans and emerging leaders around the globe.
- Improves efficiency by eliminating overlapping peacekeeping and security capacity building efforts and duplicative contingency programs, such as the Complex Crises Fund. The Budget also eliminates direct appropriations to small organizations that receive funding from other sources and can continue to operate without direct Federal funds, such as the East-West Center.
- Recognizes the need for State and USAID to pursue greater efficiencies through reorganization and consolidation in order to enable effective diplomacy and development.
- Reduces funding for multilateral development banks, including the World Bank, by approximately \$650 million over three years compared to commitments made by the previous administration. Even with the proposed decreases, the U.S. would retain its current status as a top donor while saving taxpayer dollars.



## DEPARTMENT OF TRANSPORTATION

The Department of Transportation (DOT) is responsible for ensuring a fast, safe, efficient, accessible, and convenient transportation system that meets our vital national interests and enhances the quality of life of the American people today, and into the future. The Budget request reflects a streamlined DOT that is focused on performing vital Federal safety oversight functions and investing in nationally and regionally significant transportation infrastructure projects. The Budget reduces or eliminates programs that are either inefficient, duplicative of other Federal efforts, or that involve activities that are better delivered by States, localities, or the private sector.

The President's 2018 Budget requests \$16.2 billion for DOT's discretionary budget, a \$2.4 billion or 13 percent decrease from the 2017 annualized CR level.

### **The President's 2018 Budget:**

- Initiates a multi-year reauthorization proposal to shift the air traffic control function of the Federal Aviation Administration to an independent, non-governmental organization, making the system more efficient and innovative while maintaining safety. This would benefit the flying public and taxpayers overall.
- Restructures and reduces Federal subsidies to Amtrak to focus resources on the parts of the passenger rail system that provide meaningful transportation options within regions. The Budget terminates Federal support for Amtrak's long distance train services, which have long been inefficient and incur the vast majority of Amtrak's operating losses. This would allow Amtrak to focus on better managing its State-supported and Northeast Corridor train services.
- Limits funding for the Federal Transit Administration's Capital Investment Program (New Starts) to projects with existing full funding grant agreements only. Future investments in new transit projects would be funded by the localities that use and benefit from these localized projects.
- Eliminates funding for the Essential Air Service (EAS) program, which was originally conceived of as a temporary program nearly 40 years ago to provide subsidized commercial air service to rural airports. EAS flights are not full and have high subsidy costs per passenger. Several EAS-eligible communities are relatively close to major airports, and communities that have EAS could be served by other existing modes of transportation. This proposal would result in a discretionary savings of \$175 million from the 2017 annualized CR level.

- Eliminates funding for the unauthorized TIGER discretionary grant program, which awards grants to projects that are generally eligible for funding under existing surface transportation formula programs, saving \$499 million from the 2017 annualized CR level. Further, DOT's Nationally Significant Freight and Highway Projects grant program, authorized by the FAST Act of 2015, supports larger highway and multimodal freight projects with demonstrable national or regional benefits. This grant program is authorized at an annual average of \$900 million through 2020.



## DEPARTMENT OF THE TREASURY

The Department of the Treasury is charged with maintaining a strong economy, promoting conditions that enable economic growth and stability, protecting the integrity of the financial system, and managing the U.S. Government's finances and resources effectively. The Budget will bring renewed discipline to the Department by focusing resources on collecting revenue, managing the Nation's debt, protecting the financial system from threats, and combating financial crime and terrorism financing.

The President's 2018 Budget requests \$12.1 billion in discretionary resources for the Department of the Treasury's domestic programs, a \$519 million or 4.1 percent decrease from the 2017 annualized CR level. This program level excludes mandatory spending changes involving the Treasury Forfeiture Fund.

### **The President's 2018 Budget:**

- Preserves key operations of the Internal Revenue Service (IRS) to ensure that the IRS could continue to combat identity theft, prevent fraud, and reduce the deficit through the effective enforcement and administration of tax laws. Diverting resources from antiquated operations that are still reliant on paper-based review in the era of electronic tax filing would achieve significant savings, a funding reduction of \$239 million from the 2017 annualized CR level.
- Strengthens cybersecurity by investing in a Department-wide plan to strategically enhance existing security systems and preempt fragmentation of information technology management across the bureaus, positioning Treasury to anticipate and nimbly respond in the event of a cyberattack.
- Prioritizes funding for Treasury's array of economic enforcement tools. Key Treasury programs that freeze the accounts of terrorists and proliferators, implement sanctions on rogue nations, and link law enforcement agencies with financial institutions are critical to the continued safety and financial stability of the Nation.
- Eliminates funding for Community Development Financial Institutions (CDFI) Fund grants, a savings of \$210 million from the 2017 annualized CR level. The CDFI Fund was created more than 20 years ago to jump-start a now mature industry where private institutions have ready access to the capital needed to extend credit and provide financial services to underserved communities.

- Empowers the Treasury Secretary, as Chairperson of the Financial Stability Oversight Council, to end taxpayer bailouts and foster economic growth by advancing financial regulatory reforms that promote market discipline and ensure the accountability of financial regulators.
- Shrinks the Federal workforce and increases its efficiency by redirecting resources away from duplicative policy offices to staff that manage the Nation's finances.



## DEPARTMENT OF VETERANS AFFAIRS

The Department of Veterans Affairs (VA) provides health care and a wide variety of benefits to military veterans and their survivors. The 2018 Budget fulfills the President's commitment to the Nation's veterans by requesting the resources necessary to provide the support our veterans have earned through sacrifice and service to our Nation. The Budget significantly increases funding for VA Medical Care so that VA can continue to meet the ever-growing demand for health care services while building an integrated system of care that strengthens services within VA and makes effective use of community services. The Budget request includes increased funding for and extension of the Veterans Choice Program, making it easier for eligible veterans to access the medical care they need, close to home.

The President's 2018 Budget requests \$78.9 billion in discretionary funding for VA, a \$4.4 billion or 6 percent increase from the 2017 enacted level. The Budget also requests legislative authority and \$3.5 billion in mandatory budget authority in 2018 to continue the Veterans Choice Program.

### **The President's 2018 Budget:**

- Ensures the Nation's veterans receive high-quality health care and timely access to benefits and services. An estimated 11 million veterans participate in VA programs. This Budget provides the resources necessary to ensure veterans receive the care and support earned through their service to the Nation.
- Provides a \$4.6 billion increase in discretionary funding for VA health care to improve patient access and timeliness of medical care services for over nine million enrolled veterans. This funding would enable the Department to provide a broad range of primary care, specialized care, and related medical and social support services to enrolled veterans, including services that are uniquely related to veterans' health and special needs.
- Extends and funds the Veterans Choice Program to ensure that every eligible veteran continues to have the choice to seek care at VA or through a private provider. Without action, this critical program will expire in August 2017, which would result in veterans having fewer choices of where to receive care.
- Supports VA programs that provide services to homeless and at-risk veterans and their families to help keep them safe and sheltered.
- Provides access to education benefits, enhanced services, and other programs to assist veterans' transition to civilian life. VA partners with other agencies to provide critical training, support services, and counseling throughout a veteran's transition and their post-military career.

- Continues critical investments aimed at optimizing productivity and transforming VA's claims processes. Provides resources to reduce the time required to process and adjudicate veterans' disability compensation claims.
- Invests in information technology to improve the efficiency and efficacy of VA services. Provides sufficient funding for sustainment, development, and modernization initiatives that would improve the quality of services provided to veterans and avoid the costs of maintaining outdated, inefficient systems.



## ENVIRONMENTAL PROTECTION AGENCY

The Environmental Protection Agency (EPA) is responsible for protecting human health and the environment. The budget for EPA reflects the success of environmental protection efforts, a focus on core legal requirements, the important role of the States in implementing the Nation's environmental laws, and the President's priority to ease the burden of unnecessary Federal regulations that impose significant costs for workers and consumers without justifiable environmental benefits. This would result in approximately 3,200 fewer positions at the agency. EPA would primarily support States and Tribes in their important role protecting air, land, and water in the 21<sup>st</sup> Century.

The President's 2018 Budget requests \$5.7 billion for the Environmental Protection Agency, a savings of \$2.6 billion, or 31 percent, from the 2017 annualized CR level.

### **The President's 2018 Budget:**

- Provides robust funding for critical drinking and wastewater infrastructure. These funding levels further the President's ongoing commitment to infrastructure repair and replacement and would allow States, municipalities, and private entities to continue to finance high priority infrastructure investments that protect human health. The Budget includes \$2.3 billion for the State Revolving Funds, a \$4 million increase over the 2017 annualized CR level. The Budget also provides \$20 million for the Water Infrastructure Finance and Innovation Act program, equal to the funding provided in the 2017 annualized CR. This credit subsidy could potentially support \$1 billion in direct Federal loans.
- Discontinues funding for the Clean Power Plan, international climate change programs, climate change research and partnership programs, and related efforts—saving over \$100 million for the American taxpayer compared to 2017 annualized CR levels. Consistent with the President's America First Energy Plan, the Budget reorients EPA's air program to protect the air we breathe without unduly burdening the American economy.
- Reins in Superfund administrative costs and emphasizes efficiency efforts by funding the Hazardous Substance Superfund Account at \$762 million, \$330 million below the 2017 annualized CR level. The agency would prioritize the use of existing settlement funds to clean up hazardous waste sites and look for ways to remove some of the barriers that have delayed the program's ability to return sites to the community.
- Avoids duplication by concentrating EPA's enforcement of environmental protection violations on programs that are not delegated to States, while providing oversight to maintain consistency and assistance across State, local, and tribal programs. This reduces EPA's Office of Enforcement

and Compliance Assurance budget to \$419 million, which is \$129 million below the 2017 annualized CR level.

- Better targets EPA's Office of Research and Development (ORD) at a level of approximately \$250 million, which would result in a savings of \$233 million from the 2017 annualized CR level. ORD would prioritize activities that support decision-making related to core environmental statutory requirements, as opposed to extramural activities, such as providing STAR grants.
- Supports Categorical Grants with \$597 million, a \$482 million reduction below 2017 annualized CR levels. These lower levels are in line with the broader strategy of streamlining environmental protection. This funding level eliminates or substantially reduces Federal investment in State environmental activities that go beyond EPA's statutory requirements.
- Eliminates funding for specific regional efforts such as the Great Lakes Restoration Initiative, the Chesapeake Bay, and other geographic programs. These geographic program eliminations are \$427 million lower than the 2017 annualized CR levels. The Budget returns the responsibility for funding local environmental efforts and programs to State and local entities, allowing EPA to focus on its highest national priorities.
- Eliminates more than 50 EPA programs, saving an additional \$347 million compared to the 2017 annualized CR level. Lower priority and poorly performing programs and grants are not funded, nor are duplicative functions that can be absorbed into other programs or that are State and local responsibilities. Examples of eliminations in addition to those previously mentioned include: Energy Star; Targeted Airshed Grants; the Endocrine Disruptor Screening Program; and infrastructure assistance to Alaska Native Villages and the Mexico Border.



## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

The National Aeronautics and Space Administration (NASA) is responsible for increasing understanding of the universe and our place in it, advancing America's world-leading aerospace technology, inspiring the Nation, and opening the space frontier. The Budget increases cooperation with industry through the use of public-private partnerships, focuses the Nation's efforts on deep space exploration rather than Earth-centric research, and develops technologies that would help achieve U.S. space goals and benefit the economy.

The President's 2018 Budget requests \$19.1 billion for NASA, a 0.8 percent decrease from the 2017 annualized CR level, with targeted increases consistent with the President's priorities.

### **The President's 2018 Budget:**

- Supports and expands public-private partnerships as the foundation of future U.S. civilian space efforts. The Budget creates new opportunities for collaboration with industry on space station operations, supports public-private partnerships for deep-space habitation and exploration systems, funds data buys from companies operating small satellite constellations, and supports work with industry to develop and commercialize new space technologies.
- Paves the way for eventual over-land commercial supersonic flights and safer, more efficient air travel with a strong program of aeronautics research. The Budget provides \$624 million for aeronautics research and development.
- Reinvigorates robotic exploration of the Solar System by providing \$1.9 billion for the Planetary Science program, including funding for a mission to repeatedly fly by Jupiter's icy ocean moon Europa and a Mars rover that would launch in 2020. To preserve the balance of NASA's science portfolio and maintain flexibility to conduct missions that were determined to be more important by the science community, the Budget provides no funding for a multi-billion-dollar mission to land on Europa. The Budget also supports initiatives that use smaller, less expensive satellites to advance science in a cost-effective manner.
- Provides \$3.7 billion for continued development of the Orion crew vehicle, Space Launch System, and associated ground system, to send American astronauts on deep-space missions. To accommodate increasing development costs, the Budget cancels the multi-billion-dollar Asteroid Redirect Mission. NASA will investigate approaches for reducing the costs of exploration missions to enable a more expansive exploration program.
- Provides \$1.8 billion for a focused, balanced Earth science portfolio that supports the priorities of the science and applications communities, a savings of \$102 million from the 2017 annualized CR level. The Budget terminates four Earth science missions (PACE, OCO-3, DSCOVR

Earth-viewing instruments, and CLARREO Pathfinder) and reduces funding for Earth science research grants.

- Eliminates the \$115 million Office of Education, resulting in a more focused education effort through NASA's Science Mission Directorate. The Office of Education has experienced significant challenges in implementing a NASA-wide education strategy and is performing functions that are duplicative of other parts of the agency.
- Restructures a duplicative robotic satellite refueling demonstration mission to reduce its cost and better position it to support a nascent commercial satellite servicing industry, resulting in a savings of \$88 million from the 2017 annualized CR level.
- Strengthens NASA's cybersecurity capabilities, safeguarding critical systems and data.



## SMALL BUSINESS ADMINISTRATION

The Small Business Administration (SBA) ensures that small businesses have the tools and resources needed to start and develop their operations, drive U.S. competitiveness, and help grow the economy. The President is committed to assisting small businesses succeed through reducing the regulatory and tax burdens that can impede the development of small firms. The Budget increases efficiency through responsible reductions to redundant programs and by eliminating programs that deliver services better provided by the private sector.

The President's 2018 Budget requests \$826.5 million for SBA, a \$43.2 million or 5.0 percent decrease from the 2017 annualized CR level.

### **The President's 2018 Budget:**

- Supports more than \$45 billion in loan guarantees to assist America's small business owners with access to affordable capital to start or expand their businesses.
- Strengthens SBA's outreach center programs by reducing duplicative services, coordinating best practices, and investing in communities that would benefit from SBA's business center support. As a result, SBA would be better positioned to strengthen local partnerships and more efficiently serve program participants while achieving savings over the 2017 annualized CR level.
- Supports over \$1 billion in disaster relief lending to businesses, homeowners, renters, and property owners to help American communities recover quickly in the wake of declared disasters. Through the disaster loan program, SBA is able to provide affordable, accessible, and immediate direct assistance to those hardest hit when disaster strikes.
- Achieves \$12 million in cost savings from the 2017 annualized CR level through identifying and eliminating those SBA grant programs where the private sector provides effective mechanisms to foster local business development and investment. Eliminations include PRIME technical assistance grants, Regional Innovation Clusters, and Growth Accelerators.
- Provides training and support services for transitioning service members and veterans to promote entrepreneurship and business ownership. These programs help to fulfill the President's commitment to support the Nation's veterans by providing business counseling, lending, and contracting assistance.
- Maintains \$28 million in microloan financing and technical assistance to help serve, strengthen, and sustain the smallest of small businesses and startups.
- Allows SBA to advocate and assist small businesses in accessing Federal contracts and small business research opportunities Government-wide.



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## Summary Tables

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**Table 1. Proposed Discretionary Caps for 2018 Budget**

(Budget authority in billions of dollars)

	Caps	
	2017	2018
<b>Current Law Base Caps: <sup>1</sup></b>		
Defense .....	551	549
Non-Defense .....	519	516
<b>Total, Current Law Base Caps .....</b>	<b>1,070</b>	<b>1,065</b>
<b>Proposed Base Cap Changes: <sup>2</sup></b>		
Defense .....	+25	+54
Non-Defense .....	-15	-54
<b>Total, Proposed Changes .....</b>	<b>+10</b>	<b>.....</b>
<b>Proposed Base Caps:</b>		
Defense .....	576	603
Non-Defense .....	504	462
<b>Total, Proposed Base Caps .....</b>	<b>1,080</b>	<b>1,065</b>
<b>Enacted and Proposed Cap Adjustments:</b>		
Overseas Contingency Operations (OCO) <sup>2</sup> .....	89	77
Emergency Funding .....	3	.....
Program Integrity .....	2	2
Disaster Relief .....	8	7
<b>Total, Cap Adjustments .....</b>	<b>102</b>	<b>86</b>
<b>Total, Discretionary Budget Authority .....</b>	<b>1,181</b>	<b>1,151</b>
<i>21st Century CURES appropriations</i> <sup>3</sup> .....	<i>1</i>	<i>1</i>

<sup>1</sup> The caps presented here are equal to the levels specified for 2017 and 2018 in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (BBED-CA). The 2017 caps were revised in the Bipartisan Budget Act of 2015 and the 2018 caps include OMB estimates of Joint Committee enforcement (also known as “sequestration”).

<sup>2</sup> The Administration proposes an increase in the existing defense caps for 2017 and 2018 that is offset with decreases to the non-defense caps. About 60 percent of the 2017 defense increase is offset by non-defense decreases in 2017 while the entire defense increase in 2018 is offset by non-defense decreases. An additional \$5 billion in defense funding is proposed as OCO in 2017.

<sup>3</sup> The 21st Century CURES Act permitted funds to be appropriated each year for certain activities outside of the discretionary caps so long as the appropriations were specifically provided for the authorized purposes. These amounts are displayed outside of the discretionary totals for this reason.

**Table 2. 2018 Discretionary Overview by Major Agency**

(Net discretionary BA in billions of dollars)

	2017 CR/Enacted <sup>1,2</sup>	2018 Request <sup>2</sup>	2018 Request Less 2017 CR/Enacted	
			Dollar	Percent
<b>Base Discretionary Funding:</b>				
<b>Cabinet Departments:</b>				
Agriculture <sup>3</sup> .....	22.6	17.9	-4.7	-20.7%
Commerce .....	9.2	7.8	-1.5	-15.7%
Defense .....	521.7	574.0	+52.3	+10.0%
Education .....	68.2	59.0	-9.2	-13.5%
Energy .....	29.7	28.0	-1.7	-5.6%
<i>National Nuclear Security Administration</i> .....	12.5	13.9	+1.4	+11.3%
<i>Other Energy</i> .....	17.2	14.1	-3.1	-17.9%
Health and Human Services <sup>4</sup> .....	77.7	65.1	-12.6	-16.2%
Homeland Security .....	41.3	44.1	+2.8	+6.8%
Housing and Urban Development (HUD):				
<i>HUD gross total (excluding receipts)</i> .....	46.9	40.7	-6.2	-13.2%
<i>HUD receipts</i> <sup>5</sup> .....	-10.9	-9.0	+1.9	N/A
Interior .....	13.2	11.6	-1.5	-11.7%
Justice (DOJ):				
<i>DOJ program level (excluding offsets)</i> .....	28.8	27.7	-1.1	-3.8%
<i>DOJ mandatory spending changes (CHIMPs)</i> .....	-8.5	-11.5	-2.9	N/A
Labor .....	12.2	9.6	-2.5	-20.7%
State, U.S. Agency for International Development (USAID), and Treasury International Programs <sup>3</sup> .....	38.0	27.1	-10.9	-28.7%
Transportation .....	18.6	16.2	-2.4	-12.7%
Treasury .....	11.7	11.2	-0.5	-4.4%
Veterans Affairs .....	74.5	78.9	+4.4	+5.9%
<b>Major Agencies:</b>				
Corps of Engineers .....	6.0	5.0	-1.0	-16.3%
Environmental Protection Agency .....	8.2	5.7	-2.6	-31.4%
General Services Administration .....	0.3	0.5	+0.3	N/A
National Aeronautics and Space Administration .....	19.2	19.1	-0.2	-0.8%
Small Business Administration .....	0.9	0.8	-.*	-5.0%
Social Security Administration <sup>4</sup> .....	9.3	9.3	+*	+0.2%
Other Agencies .....	29.4	26.5	-2.9	-9.8%
<b>Subtotal, Discretionary Base Budget Authority .....</b>	<b>1,068.1</b>	<b>1,065.4</b>	<b>-2.7</b>	<b>-0.3%</b>
<b>Cap Adjustment Funding:</b>				
Overseas Contingency Operations:				
Defense .....	65.0	64.6	-0.4	-0.6%
State and USAID .....	19.2	12.0	-7.2	-37.4%
Other Agencies .....	0.2	.....	-0.2	-100.0%
Subtotal, Overseas Contingency Operations .....	84.3	76.6	-7.8	-9.2%
Emergency Requirements:				
Transportation .....	1.0	.....	-1.0	-100.0%
Corps of Engineers .....	1.0	.....	-1.0	-100.0%
Other Agencies .....	0.7	.....	-0.7	-100.0%
Subtotal, Emergency Requirements .....	2.7	.....	-2.7	-100.0%
Program Integrity:				
Health and Human Services .....	0.4	0.4	+0.1	+17.3%
Social Security Administration .....	1.2	1.5	+0.3	+26.8%
Subtotal, Program Integrity .....	1.5	1.9	+0.4	+24.5%

**Table 2. 2018 Discretionary Overview by Major Agency—Continued**

(Net discretionary BA in billions of dollars)

	2017 CR/Enacted <sup>1,2</sup>	2018 Request <sup>2</sup>	2018 Request Less 2017 CR/Enacted	
			Dollar	Percent
Disaster Relief: <sup>6</sup>				
Homeland Security and Other Agencies .....	6.7	7.4	+0.7	+9.7%
Housing and Urban Development .....	1.4	.....	-1.4	-100.0%
Subtotal, Disaster Relief .....	8.1	7.4	-0.8	-9.4%
<b>Subtotal, Cap Adjustment Funding .....</b>	<b>96.7</b>	<b>85.9</b>	<b>-10.8</b>	<b>-11.2%</b>
<b>Total, Discretionary Budget Authority .....</b>	<b>1,164.8</b>	<b>1,151.2</b>	<b>-13.6</b>	<b>-1.2%</b>
<i>Memorandum: 21st Century CURES appropriations <sup>7</sup></i>				
<i>Health and Human Services .....</i>	<i>0.9</i>	<i>1.1</i>	<i>+0.2</i>	<i>+21.1%</i>

\* \$50 million or less.

<sup>1</sup> The 2017 CR/Enacted column reflects enacted appropriations and levels of continuing appropriations provided under the Continuing Appropriations Act, 2017 (Division C of Public Law 114–223, as amended by Division A of Public Law 114–254) that are due to expire on April 28. The levels presented here are the amounts OMB scores under the caps; therefore, the levels for 2017 may differ in total from those on Table 1.

<sup>2</sup> Enacted, continuing, and proposed changes in mandatory programs (CHIMPs) are included in both 2017 and 2018. Some agency presentations in this volume where noted reflect a program level that excludes these amounts.

<sup>3</sup> Funding for Food for Peace Title II Grants is included in the State, USAID, and Treasury International programs total. Although the funds are appropriated to the Department of Agriculture, the funds are administered by USAID.

<sup>4</sup> Funding from the Hospital Insurance and Supplementary Medical Insurance trust funds for administrative expenses incurred by the Social Security Administration that support the Medicare program are included in the Health and Human Services total and not in the Social Security Administration total.

<sup>5</sup> HUD receipt levels for 2018 are a placeholder and subject to change as detailed estimates under the Administration’s economic and technical assumptions for the full Budget are finalized.

<sup>6</sup> The Balanced Budget and Emergency Deficit Control Act of 1985 authorizes an adjustment to the discretionary spending caps for appropriations that are designated by the Congress as being for "disaster relief" provided those appropriations are for activities carried out pursuant to a determination under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Currently, based on enacted and continuing appropriations, OMB estimates the total adjustment available for disaster funding for 2018 at \$7,366 million. Further details, including any revisions necessary to account for final 2017 appropriations and the specific amounts of disaster relief funding requested for individual agencies in 2018 authorized to administer disaster relief programs, will be provided in subsequent Administration proposals.

<sup>7</sup> The 21st Century CURES Act permitted funds to be appropriated each year for certain activities outside of the discretionary caps so long as the appropriations were specifically provided for the authorized purposes. These amounts are displayed outside of the discretionary totals for this reason.

**Table 3. Major 2018 Budget Changes from Current Law**

(Budget authority in billions of dollars)

	2018 Caps <sup>1</sup>		Change:	
	Current Law <sup>2</sup>	Proposed	Dollars	Percent
<b>Discretionary Categories:</b>				
Defense .....	549	603	+54	+10%
Non-Defense .....	516	462	-54	-10%
<b>Total, 2018 Base Caps .....</b>	<b>1,065</b>	<b>1,065</b>	<b>.....</b>	<b>.....</b>

\* \$500 million or less.

<sup>1</sup> Only base funding caps are represented on this table and cap adjustments permitted by the Balanced Budget and Emergency Deficit Control Act of 1985 for overseas contingency operations, disaster relief, program integrity, and emergency requirements are excluded.<sup>2</sup> The current law caps are equal to the levels specified for 2018 in the Balanced Budget and Emergency Deficit Control Act of 1985, including OMB estimates for Joint Committee enforcement (also known as "sequestration").

**Table 4. Major 2017 Changes from Security Supplemental Request**

(Budget authority in billions of dollars)

	2017 Caps		Change:	
	Current Law	Proposed <sup>1</sup>	Dollars	Percent
<b>Discretionary Categories:</b>				
Defense .....	551	576	+25	+5%
Non-Defense .....	519	504	-15	-3%
<i>Major Changes:</i>				
<i>Border Wall and implementation of Executive Orders ..</i>	.....	3	+3	N/A
<i>Other Non-Defense programs .....</i>	519	501	-18	-3%
Total, 2018 Base Caps .....	1,070	1,080	+10	+1%
<b>Cap Adjustments:</b>				
Defense Overseas Contingency Operations (OCO) .....	65	70	+5	+8%

<sup>1</sup> The Administration proposes an increase in the existing defense cap for 2017 that is partially offset with a decrease to the non-defense cap while an additional \$5 billion defense request in 2017 is requested as OCO.



Executive Office of the President

**From:** Moran, Jill  
**To:** [Macgregor, Katharine](mailto:Macgregor_Katharine)  
**Subject:** Re: Question  
**Date:** Monday, March 13, 2017 12:56:45 PM  
**Attachments:** [2015-24208.pdf](#)

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Sorry about that - here you go!

On Mon, Mar 13, 2017 at 12:44 PM, Macgregor, Katharine <[katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov)> wrote:

The only thing that is not here is the BLM ROD for Rocky Mtn set of RMPs.

On Mon, Mar 13, 2017 at 11:23 AM, Moran, Jill <[jcmoran@blm.gov](mailto:jcmoran@blm.gov)> wrote:

Here you go. Let me know if you need anything else.

Thanks,  
Jill

On Mon, Mar 13, 2017 at 10:57 AM, Macgregor, Katharine <[katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov)> <[mailto:katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov)> wrote:

Can you send me the two FR notices associated with the two RODs on this page:  
[https://www.blm.gov/wo/st/en/prog/more/sagegrouse/documents\\_and\\_resources.html](https://www.blm.gov/wo/st/en/prog/more/sagegrouse/documents_and_resources.html)  
<[https://www.blm.gov/wo/st/en/prog/more/sagegrouse/documents\\_and\\_resources.html](https://www.blm.gov/wo/st/en/prog/more/sagegrouse/documents_and_resources.html)>

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[LLWO2100000  
 L11100000.DR0000.LXSISGST0000]

**Notice of Availability of the Record of Decision; and Approved Resource Management Plan Amendments for the Rocky Mountain Region Greater Sage-Grouse Sub-Regions of Lewistown, North Dakota, Northwest Colorado, and Wyoming; and Approved Resource Management Plans for Billings, Buffalo, Cody, HiLine, Miles City, Pompeys Pillar National Monument, South Dakota, and Worland**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD); and Approved Resource Management Plan Amendments (ARMPAs) for the Rocky Mountain Region Greater Sage-Grouse (GRSG) sub-regions of Lewistown, North Dakota, Northwest Colorado, and Wyoming; and Approved Resource Management Plans (ARMPs) for Billings, Buffalo, Cody, HiLine, Miles City, Pompeys Pillar National Monument, South Dakota, and Worland. The Assistant Secretary for Land and Minerals Management of the U.S. Department of the Interior signed the ROD.

**ADDRESSES:** Copies of the ROD, ARMPAs and ARMPs are available upon request and are also available for public inspection at the addresses listed in the **SUPPLEMENTARY INFORMATION** section. Interested persons may also review the ROD, ARMPAs and ARMPs on the internet at: <http://www.blm.gov/wo/st/en/prog/more/sagegrouse.html>.

**FOR FURTHER INFORMATION CONTACT:** Contacts for each subregion for the GRSG ARMPAs and ARMPs are listed in the **SUPPLEMENTARY INFORMATION** section.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the listed individuals during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** This ROD; the ARMPAs for the Rocky Mountain Region GRSG sub-regions of Lewistown, North Dakota, Northwest Colorado, and Wyoming; and the ARMPs for Billings, Buffalo, Cody, HiLine, Miles City,

Pompeys Pillar National Monument, South Dakota, and Worland were developed through a collaborative planning process in order to incorporate land use plan level measures into existing BLM land use plans to protect, enhance, and restore GRSG and their habitat by reducing, eliminating, or minimizing threats to GRSG habitat in the context of the BLM's multiple-use and sustained yield mission under FLPMA.

The ARMPAs and ARMPs approved by the ROD include land use allocations that limit or eliminate new surface disturbance in GRSG Priority Habitat Management Areas (PHMA), while minimizing disturbance in GRSG General Habitat Management Areas (GHMA). The Billings and Miles City ARMPs also include Restoration Habitat Management Areas (RHMA), where certain management actions in these areas provide for a balance between ongoing and future resource uses, so that habitat is maintained, while also allowing for residual populations in impacted areas to persist. The Northwest Colorado ARMPA also includes Linkage and Connectivity Habitat Management Areas (LCHMA), which have protections to facilitate the movement of GRSG and maintain ecological processes. In addition to establishing protective land use allocations, the ARMPAs and ARMPs implement a suite of management decisions, such as the establishment of disturbance limits, GRSG habitat objectives, mitigation requirements, monitoring protocols, and adaptive management triggers and responses, as well as other conservation measures throughout the range.

The cumulative effect of these measures is to protect, improve, and restore GRSG habitat across the remaining range of the species in the Rocky Mountain Region and provide greater certainty that BLM land and resource management activities in GRSG habitat will lead to conservation of the GRSG and other species associated with the sagebrush ecosystem in the region.

The ARMPs (plan revisions) approved by the ROD also provide updated land use plan management direction for all BLM program areas, including but not limited to, air quality, fish and wildlife, cultural, lands and realty, livestock grazing, minerals and energy, recreation and visitor services, soil and water, special management area designations (including Areas of Critical Environmental Concern), travel and transportation, vegetation, visual resources, wild horse and burros, land with wilderness characteristics, and wildland fire management.

The ARMPAs approved by the ROD amend the following BLM Resource Management Plans (RMPs), completed in the year indicated:

*Lewistown GRSG ARMPA*

- Judith RMP (1994)
- Headwaters RMP (1984)

*North Dakota GRSG ARMPA*

- North Dakota RMP (1988)

*Northwest Colorado GRSG ARMPA*

- Colorado River Valley RMP (2015)
- Grand Junction RMP (2015)
- Kremmling RMP (2015)
- Little Snake RMP (2011)
- White River RMP (1997)

*Wyoming GRSG ARMPA*

- Casper RMP (2007)
- Kemmerer RMP (2010)
- Newcastle RMP (2000)
- Pinedale RMP (2008)
- Rawlins RMP (2008)
- Green River RMP (1997) (being revised under the Rock Springs RMP)

The ARMPs (plan revisions) approved by the ROD will replace the following Resource Management Plans (RMPs): *Billings and Pompeys Pillar National Monument ARMPs*

- Billings RMP (1984)

*Buffalo ARMP*

- Buffalo RMP (1985)

*Cody ARMP (portion of the Bighorn Basin planning effort)*

- Cody RMP (1990)

*HiLine ARMP*

- West HiLine RMP (1988)
- Judith-Valley-Phillips RMP (1994)

*Miles City ARMP*

- Big Dry RMP (1996)
- Powder River RMP (1985)

*South Dakota ARMP*

- South Dakota RMP (1986)

*Worland ARMP (portion of the Bighorn Basin planning effort)*

- Washakie RMP (1988)
- Grass Creek RMP (1998)

The Northwest Colorado and Wyoming Draft Land Use Plan Amendments (LUPAs)/Draft Environmental Impact Statements (EISs) and Proposed LUPAs/Final EISs included proposed GRSG management direction for National Forest System lands. However, the U.S. Forest Service (USFS) has completed a separate ROD and Land and Resource Management Plans under USFS planning authorities. Management decisions within the ROD and ARMPAs apply only to BLM-administered lands.

Across all sub-regions in the Rocky Mountain Region, the ROD, ARMPA and ARMPs amend and revise existing land use plan decisions on approximately 23 million BLM-administered surface acres.

Notices of Availability (NOA) for the Rocky Mountain Region GRSG Proposed

LUPAs and RMPs/Final EISs were published in the **Federal Register** on May 29, 2015, which initiated a 30-day protest period and a 60-day Governor's consistency review period. The BLM received 149 timely and valid protest submissions across all Rocky Mountain proposed RMPs and LUPAs/Final EISs. All protests have been resolved and/or dismissed. For a full description of the issues raised during the protest period and how they were addressed, please refer to the Director's Protest Resolution Reports, which are available at the following Web site: [http://www.blm.gov/wo/st/en/prog/planning/planning\\_overview/protest\\_resolution/protestreports.html](http://www.blm.gov/wo/st/en/prog/planning/planning_overview/protest_resolution/protestreports.html).

The BLM received notifications of inconsistencies and recommendations as to how to resolve them during the Governor's consistency review period from the States of Colorado, Montana, North Dakota, South Dakota, and Wyoming. On August 6, 2015, the BLM State Directors for Colorado, Montana/Dakotas, and Wyoming sent notification letters to their respective States as to whether they accepted or rejected their recommendations for consistency. The States were then given 30 days to appeal the State Directors' decisions. The States of North Dakota and South Dakota appealed the BLM State Director's decisions. The BLM Director affirmed the State Director's decisions on these recommendations as the recommendations did not provide the balance required by 43 CFR 1610.3-2(e). The Director communicated his decisions on the appeals in writing to the Governors concurrently with the release of the RODs. The Proposed RMPs and LUPAs/Final EISs were selected in the ROD as the ARMPAs and ARMPs, with some minor modifications and clarifications based on protests received, the Governors' consistency reviews, and internal agency deliberations.

*Copies of the Lewistown GRSG ROD and ARMPA are available upon request and are available for public inspection at:*

- BLM Montana/Dakotas State Office, 5001 Southgate Drive, Billings, Montana 59101; and
- BLM Lewistown Field Office, 920 Northeast Main, Lewistown, Montana 59457.

*Copies of the North Dakota GRSG ROD and ARMPA are available upon request and are available for public inspection at:*

- BLM Montana/Dakotas State Office, 5001 Southgate Drive, Billings, Montana 59101; and

- BLM North Dakota Field Office, 99 23rd Avenue East, Suite A, Dickinson, North Dakota 58601.

*Copies of the Northwest Colorado GRSG ROD and ARMPA are available upon request and are available for public inspection at:*

- BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215; and
- BLM Northwest District Office, 2815 H Road, Grand Junction, Colorado 81506.

*Copies of the Wyoming GRSG ROD and ARMPA are available upon request and are available for public inspection at:*

- BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009;
- BLM Casper Field Office, 2987 Prospector Drive, Casper, Wyoming 82604;
- BLM Kemmerer Field Office, 312 Highway 189 North, Kemmerer, Wyoming 83101;
- BLM Newcastle Field Office, 1101 Washington Boulevard, Newcastle, Wyoming 82701;
- BLM Pinedale Field Office, 1625 West Pine Street, Pinedale, Wyoming 82941;
- BLM Rawlins Field Office, 1300 North Third, Rawlins, Wyoming 82301; and
- BLM Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901.

*Copies of the Billings and Pompeys Pillar National Monument ROD and ARMPs are available upon request and are available for public inspection at:*

- BLM Montana/Dakotas State Office and Billings Field Office, 5001 Southgate Drive, Billings, Montana 59101.

*Copies of the Buffalo ROD and ARMP are available upon request and are available for public inspection at:*

- BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, WY 82003;
- BLM High Plains District Office, 2987 Prospector Drive, Casper, WY 82604; and
- BLM Buffalo Field Office, 1425 Fort Street, Buffalo, WY 82834.

*Copies of the Cody ROD and ARMP are available upon request and are available for public inspection at:*

- BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, WY 82003; and
- BLM Cody Field Office, 1002 Blackburn Avenue, Cody, Wyoming 82414.

*Copies of the HiLine ROD and ARMP are available upon request and are available for public inspection at:*

- BLM Montana/Dakotas State Office, 5001 Southgate Drive, Billings, Montana 59101;

- BLM Havre Field Office, 3990 Highway 2 West, Havre, Montana 59501;

- BLM Malta Field Office, 501 South 2nd Street, Malta, Montana 59538; and
- BLM Glasgow Field Office, 5 Lasar Drive, Glasgow, Montana 59230.

*Copies of the Miles City ROD and ARMP are available upon request and are available for public inspection at:*

- BLM Montana/Dakotas State Office, 5001 Southgate Drive, Billings, Montana 59101; and

- BLM Miles City Field Office, 111 Garryowen Road, Miles City, MT 59301.

*Copies of the South Dakota ROD and ARMP are available upon request and are available for public inspection at:*

- BLM Montana/Dakotas State Office, 5001 Southgate Drive, Billings, Montana 59101; and

- BLM South Dakota Field Office, 310 Roundup Street, Belle Fourche, SD 57717.

*Copies of the Worland ROD and ARMP are available upon request and are available for public inspection at:*

- BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, WY 82003; and
- BLM Worland Field Office, 101 South 23rd Street, Worland, Wyoming 82401.

For further information contact: For the Lewistown GRSG ARMPA: Adam Carr, BLM Project Lead, telephone 406-538-1913; address Lewistown Field Office, 920 Northeast Main, Lewistown, MT 59457; email [acarr@blm.gov](mailto:acarr@blm.gov).

For the North Dakota GRSG ARMPA: Ruth Miller, BLM Team Lead, telephone 406-896-5023; address Montana/Dakotas State Office, 5001 Southgate Drive, Billings, MT 59101; email [blm\\_mt\\_nd\\_sage\\_grouse@blm.gov](mailto:blm_mt_nd_sage_grouse@blm.gov).

For the Northwest Colorado GRSG ARMPA: Erin Jones, BLM Northwest District NEPA Coordinator, telephone 970-244-3008; address Northwest District Office, 2815 H Road, Grand Junction, CO 81506; email [erjones@blm.gov](mailto:erjones@blm.gov).

For the Wyoming GRSG ARMPA: William West, BLM Planning and Environmental Coordinator, telephone 307-352-0259; address Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901; email [wwest@blm.gov](mailto:wwest@blm.gov).

For the Billings ARMP: Carolyn Sherve-Bybee, Billings and Pompeys Pillar National Monument RMP Team Leader, telephone: 406-896-5234; address: 5001 Southgate Drive, Billings, MT 59101; email: [billings\\_pompeyspillar\\_rmp@blm.gov](mailto:billings_pompeyspillar_rmp@blm.gov).

For the Buffalo ARMP: Thomas Bills, Buffalo RMP Team Leader; The BLM Buffalo Field Office, 1425 Fort Street, Buffalo, WY 82834, by telephone 307-684-1133, or by email [tbills@blm.gov](mailto:tbills@blm.gov).

For the Cody ARMP: Holly Elliott, RMP Project Manager, telephone: 307-347-5193; address: 101 South 23rd Street, Worland, Wyoming 82401; email: [helliott@blm.gov](mailto:helliott@blm.gov).

For the HiLine ARMP: Brian Hockett, Planning and Environmental Coordinator, telephone: 406-262-2837; address: 3990 Highway 2 West, Havre, MT 59501; email: [MT\\_HiLine\\_RMP@blm.gov](mailto:MT_HiLine_RMP@blm.gov).

For the Miles City ARMP: Mary Bloom, Miles City RMP Team Leader, telephone: 406-233-2800; address: 111 Garryowen Road, Miles City, MT 59301; email: [mbloom@blm.gov](mailto:mbloom@blm.gov).

For the Pompeys Pillar National Monument ARMP: Carolyn Sherve-Bybee, Billings and Pompeys Pillar National Monument RMP Team Leader, telephone: 406-896-5234; address: 5001 Southgate Drive, Billings, MT 59101; email: [billings\\_pompeyspillar\\_rmp@blm.gov](mailto:billings_pompeyspillar_rmp@blm.gov).

For the South Dakota ARMP: Mitch Iverson, RMP Project Manager, telephone: 605-892-7008; or Lori (Chip) Kimball, BLM South Dakota Field Manager, telephone: 605-892-7000; address: 310 Roundup Street, Belle Fourche, SD 57717; email: [BLM\\_MT\\_South\\_Dakota\\_RMP@blm.gov](mailto:BLM_MT_South_Dakota_RMP@blm.gov).

For the Worland ARMP: Holly Elliott, RMP Project Manager, telephone: 307-347-5193; address: 101 South 23rd Street, Worland, Wyoming 82401; email: [helliott@blm.gov](mailto:helliott@blm.gov).

**Authority:** 36 CFR 219.59, 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2; 43 CFR 1610.5.

**Amy Lueders,**

*Acting Assistant Director, Renewable Resources & Planning.*

[FR Doc. 2015-24208 Filed 9-22-15; 4:15 pm]

**BILLING CODE 4310-22-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-966]

### Certain Silicon-on-Insulator Wafers; Notice of Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 19, 2015, under section 337 of the Tariff Act of 1930, as amended, 19

U.S.C. 1337, on behalf of Silicon Genesis Corp. (“Complainant” or “SiGen”). An amended complaint was filed on September 8, 2015. The complaint, as amended, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and/or the sale within the United States after importation of certain silicon-on-insulator wafers by reason of infringement of certain claims of U.S. Patent Nos. 5,985,742 (“the ‘742 patent”); 6,013,563 (“the ‘563 patent”); 6,103,599 (“the ‘599 patent”); 6,162,705 (“the ‘705 patent”); 6,180,496 (“the ‘496 patent”); 6,294,814 (“the ‘814 patent”); 6,790,747 (“the ‘747 patent”); and 7,811,901 (“the ‘901 patent”). The amended complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

**ADDRESSES:** The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.usitc.gov>.

**FOR FURTHER INFORMATION CONTACT:** The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10 (2015).

**Scope of Investigation:** Having considered the complaint, the U.S. International Trade Commission, on September 17, 2015, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain silicon-on-insulator wafers by reason of infringement of one or more of claims 1-12, 14, and 18-20 of the ‘742 patent; claims 1-10, 12, 13, 17, 18, 21, 22, 24, 28-30, 34, 37, 38, 40, 41, and 44-46 of the ‘563 patent; claims 1-8, 10-22, and 24-28 of the ‘599 patent; claims 1-12, 20-22, 25-28, 32, 33, 36-39, 43-48, 51, and 52 of the ‘705 patent; claims 1-3, 5, and 6 of the ‘496 patent; claims 1-3 and 5 of the ‘814 patent; claims 1, 2, 9, 15, and 21 of the ‘717 patent; and claims 1, 2, 4, 6, 7, 9, 13, 18, 19, and 21 of the ‘901 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Silicon Genesis Corp., 1980 Senter Road, San Jose, California 95112.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Soitec S.A., Parc Technologique des Fontaines, Chemin des Franques, 38190 Bernin, France.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such

**From:** Kathleen Benedetto  
**To:** [Michael Nedd](#)  
**Cc:** [Karen Kelleher](#); [Jerome Perez](#); [Kristin Bail](#); [Shannon Stewart](#); [Timothy Shannon](#)  
**Subject:** Re: response to SO 3349  
**Date:** Sunday, April 09, 2017 8:13:56 PM

---

I think we need to discuss before we send it anywhere. KB

Sent from my iPhone

On Apr 9, 2017, at 3:05 PM, Michael Nedd <mnedd@blm.gov> wrote:

Thx Karen

Take care and have a wonderful day! :)

Michael D. Nedd

202-208-3801 Office

202-208-5242 Fax

mnedd@blm.gov

A thought to consider "Do all the good you can, in all the ways you can, for all the people you can, while you can!"

From: Kelleher, Karen [<mailto:kkelleh@blm.gov>]  
Sent: Sunday, April 09, 2017 10:41 AM  
To: Michael Nedd; Jerome Perez; Kathleen Benedetto  
Cc: Bail, Kristin; Shannon Stewart; Timothy Shannon  
Subject: response to SO 3349

reviewed by 200, 300, 400, solicitor staff level. SOL would like to send to their leadership concurrent with ASLM.

--

Karen Kelleher

Deputy Assistant Director - Resources and Planning

Main Interior room 5644

[kkelleh@blm.gov](mailto:kkelleh@blm.gov)

202-208-4896

**From:** Michael Nedd  
**To:** [Karen Kelleher](#); [Jerome Perez](#); [Kathleen Benedetto](#)  
**Cc:** [Kristin Bail](#); [Shannon Stewart](#); [Timothy Shannon](#)  
**Subject:** RE: response to SO 3349  
**Date:** Sunday, April 09, 2017 3:05:46 PM

---

Thx Karen

Take care and have a wonderful day! : )

Michael D. Nedd

202-208-3801 Office

202-208-5242 Fax

[mnedd@blm.gov](mailto:mnedd@blm.gov)

A thought to consider "Do all the good you can, in all the ways you can, for all the people you can, while you can!"

From: Kelleher, Karen [<mailto:kkelleh@blm.gov>]  
Sent: Sunday, April 09, 2017 10:41 AM  
To: Michael Nedd; Jerome Perez; Kathleen Benedetto  
Cc: Bail, Kristin; Shannon Stewart; Timothy Shannon  
Subject: response to SO 3349

reviewed by 200, 300, 400, solicitor staff level. SOL would like to send to their leadership concurrent with ASLM.

--

Karen Kelleher

Deputy Assistant Director - Resources and Planning

Main Interior room 5644

[kkelleh@blm.gov](mailto:kkelleh@blm.gov)

202-208-4896

**From:** Swift, Heather  
**To:** [Adams, Nathan](#)  
**Subject:** Re: Ryan Zinke Sworn In as 52nd Secretary of the Interior: TEST  
**Date:** Wednesday, March 01, 2017 4:38:05 PM  
**Attachments:** [Stakeholders.xlsx](#)

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need to add MT, ID, WY, ND, SD please!

Only need the sportsmen and recreation groups

Attached is my list of stakeholders

-

Heather Swift  
Department of the Interior  
@DOIPressSec  
[Heather\\_Swift@ios.doi.gov](mailto:Heather_Swift@ios.doi.gov) | [Interior\\_Press@ios.doi.gov](mailto:Interior_Press@ios.doi.gov)

On Wed, Mar 1, 2017 at 2:53 PM, Adams, Nathan <[nathan\\_adams@ios.doi.gov](mailto:nathan_adams@ios.doi.gov)> wrote:  
I targeted these groups for a wide distribution:

Press:  
Updated Print and Media - Reporters that cover Interior  
Native American List  
African American Media  
Hispanic List  
Press in AK,AZ,CA,CO,ID,MO,NV,ND,OR,SD,UT,WA  
Outdoors Press  
Oil and Gas  
Federal and Tech Reporters  
Military

Group Lists:  
Sportsmen and Women and recreation stakeholders  
Rangeland fire  
Enviro

Public Lists: (people who have come to the website and signed up for updates on categories)  
General Updates (60k)  
Press Releases (90k)

If you want me to create a topic list for your contacts, that's easy for me.

Thanks,  
Nate

On Wed, Mar 1, 2017 at 2:02 PM, Swift, Heather <[heather\\_swift@ios.doi.gov](mailto:heather_swift@ios.doi.gov)> wrote:  
Can you please send me the list of stakeholders?

-  
Heather Swift  
Department of the Interior  
@DOIPressSec  
[Heather\\_Swift@ios.doi.gov](mailto:Heather_Swift@ios.doi.gov) | [Interior\\_Press@ios.doi.gov](mailto:Interior_Press@ios.doi.gov)

On Wed, Mar 1, 2017 at 1:43 PM, Adams, Nathan <[nathan\\_adams@ios.doi.gov](mailto:nathan_adams@ios.doi.gov)> wrote:  
This is the TEST for the release. I selected 27 targeted audiences totaling 136k reporters, stakeholders and public groups.

I can schedule this for 6:15 once you approve. Please let me know if you have any questions.

Thanks,  
Nate

On Wed, Mar 1, 2017 at 1:38 PM, U.S. Department of the Interior  
<[interior\\_news@updates.interior.gov](mailto:interior_news@updates.interior.gov)> wrote:

news release



Date: March 2, 2017  
Contact: [Interior\\_Press@ios.doi.gov](mailto:Interior_Press@ios.doi.gov)

## **Ryan Zinke Sworn In as 52<sup>nd</sup> Secretary of the Interior**

*5th-generation Montanan pledges to uphold President Theodore Roosevelt's legacy*

**WASHINGTON** – Today, Ryan Zinke (pronounced Zink-EE) was confirmed and sworn in as the 52<sup>nd</sup> Secretary of the Interior. The Senate voted 68-31 to confirm Zinke the morning of March 1, 2017, and he was sworn in by Vice President Mike Pence at a ceremony in the Eisenhower Executive Office Building later that evening. Zinke is the first Montanan to serve as a cabinet secretary and also the first U.S. Navy SEAL in the cabinet.

“I am honored and humbled to serve Montana and America as Secretary of the Interior,” Zinke said. “I shall faithfully uphold Teddy Roosevelt’s belief that our treasured public lands are ‘for the benefit and enjoyment of the people’ and will work tirelessly to ensure our public lands are managed and preserved in a way that benefits all Americans for generations to come. This means responsible natural resource

development, increased access for recreation and sportsmen, and conservation that makes the land more valuable for our children's children. Importantly, our sovereign Indian Nations and territories must have the respect and freedom they deserve.”

In nominating Congressman Zinke, President Donald Trump said, “Ryan has built one of the strongest track records on championing regulatory relief, forest management, responsible energy development and public land issues in Congress. As a former Navy SEAL, he has incredible leadership skills and an attitude of doing whatever it takes to win. America is the most beautiful country in the world and he is going to help keep it that way with smart management of our federal lands. At the same time, my administration’s goal is to repeal bad regulations and use our natural resources to create jobs and wealth for the American people, and Ryan will explore every possibility for how we can safely and responsibly do that.”

“Our public lands can once again be economic engines for our nation by creating jobs in energy, recreation, and conservation,” continued Zinke. “By working with President Trump and Congress to reevaluate and fix flawed regulations that are barriers to job creation, we will unleash the economic opportunity within our borders. Creating jobs on public lands can and will be done in an environmentally responsible way during my tenure.”

### **About Ryan Zinke**

As a fifth-generation Montanan who grew up in a logging and rail town near Glacier National Park, Zinke has had a lifelong appreciation for conserving America’s natural beauty while upholding Teddy Roosevelt’s vision of multiple-use on our public lands. He has consistently led the efforts to renew the Land and Water Conservation Fund in Congress, and has also been a firm advocate for our nation’s sportsmen and women to gain access to our public lands. Zinke also co-authored the 2015 Resilient Federal Forest Act, which initiated new reforms for revitalizing America’s timber areas and preventing wildfires by emphasizing local collaboration on responsible timber harvest projects.

As Secretary of the Interior, Zinke leads an agency with more than 70,000 employees who serve as steward for 20 percent of the nation’s lands, including national parks, monuments and wildlife refuges, as well as other public lands. The department oversees the responsible development of conventional and renewable energy supplies on public lands and waters; is the largest supplier and manager of water in the 17 Western states; and upholds trust responsibilities to the 567 federally recognized American Indian tribes and Alaska Natives.

Ryan Zinke represented the state of Montana in the U.S. House of Representatives since 2014, building an impressive portfolio on Interior issues ranging from federal mineral leases to tribal affairs to public lands conservation. Zinke is widely praised for his voting record that supports the Teddy Roosevelt philosophy of managing public lands, which calls for multiple-use to include economic, recreation and conservation aspects.

Before being elected to the U.S. House of Representatives, Zinke served in the Montana State Senate from 2009 to 2011, but the bulk of Zinke’s public service was his 23 years as a U.S. Navy SEAL officer.

Zinke enlisted in the Navy in 1985 and was soon selected to join the elite force where he would build an honorable career until his retirement in 2008. He retired with the rank of Commander after leading SEAL operations around the globe, including as the Deputy and Acting Commander of Joint Special Forces in Iraq and two tours at SEAL Team Six. Zinke was the first Navy SEAL elected to the U.S. House and is the first SEAL to serve as a cabinet secretary

Zinke holds a Geology degree from the University of Oregon, where he was an All-PAC 10 football player; a Master's degree in Business Finance from National University; and a Master's degree in Global Leadership from the University of San Diego. Ryan and his wife Lolita (Lola) have three children and two granddaughters. Zinke is proud to be an adopted member of the Assiniboine Sioux Tribe at the Fort Peck Reservation in Northeast Montana.

###



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Washington DC 20240 · 202-208-3100



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Nate Adams  
Office of Communications  
U.S. Department of the Interior  
202-208-2060

--  
Nate Adams  
Office of Communications  
U.S. Department of the Interior  
202-208-2060

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jmore@alpinegroup.com
Kim.harb@alyeska-pipeline.com
lskaer@miningamerica.org
ryany@fb.org
dalem@fb.org
mkt@fb.org
juliet@fb.org
jlanson@farmland.org
dausten@fisheries.org
ben@affta.com
tmartin@forestfoundation.org
emy_lesofski@appro.senate.gov
gerardj@api.org
<a href="mailto:hopkins@api.org">hopkins@api.org</a>
<a href="mailto:cauthen@apilorg">cauthen@apilorg</a>
bnasta@funoutdoors.com
dcrandall@funoutdoors.com
cahern@funoutdoors.com
alavigne@amseed.org
kanderson@sciencesocieties.org
sgudes@asafishing.org

<a href="mailto:mnussman@asafishing.org">mnussman@asafishing.org</a>
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**From:** Micah Chambers  
**To:** [Amanda Kaster](#)  
**Subject:** Fwd: SCIA Hearing Doc  
**Date:** Monday, March 06, 2017 8:48:17 AM  
**Attachments:** [ATT00001.htm](#)  
[SCIA Member Pages Revised 3-5-17.docx](#)

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Edited. Need a top line issue paper to discuss first. Will explain as soon as I get in

Sent from my iPhone

Begin forwarded message:

From: Micah Chambers <(b) (6)>  
Date: March 5, 2017 at 10:36:15 PM EST  
To: <micah\_chambers@ios.doi.gov>  
Subject: SCIA Hearing Doc

# SENATE COMMITTEE ON INDIAN AFFAIRS MEMBER PAGES FOR THE 115<sup>TH</sup> CONGRESS

## MAJORITY MEMBERS:



*John Hoeven* (ND), Chairman

**4** tribes (Spirit Lake Tribe; Three Affiliated Tribes of the Fort Berthold Reservation; Standing Rock Sioux Tribe of North & South Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota)

**12** Bureau of Indian Education schools

### Likely Key Issues for Indian Country:

- Continued support of BIA Law Enforcement re: DAPL;
- Infrastructure issues in Indian Country (energy, water, broadband, etc.);
- 2017 G.A.O. High Risk Report and BIE schools.

### Indian Affairs related issues/questions asked at ENR confirmation hearing:

- Support for completion of the DAPL project—specifically for increased assistance from BIA law enforcement support. (\*Note: BIA held several calls with the Senator and his staff and subsequently sent additional BIA law enforcement to help with on-reservation issues).

### Recent Press Releases regarding Indian Country:

- 2/15/2017 - Corps to send cleanup crew to DAPL site this week:  
<https://www.hoeven.senate.gov/news/news-releases/hoeven-corps-to-send-cleanup-crew-to-dapl-site-this-week>
- 2/08/2017 – Statement on the Corps issuing final easement for Dakota Access Pipeline: <https://www.hoeven.senate.gov/news/news-releases/hoeven-statement-on-the-corps-issuing-the-final-easement-for-dakota-access-pipeline>
- 1/27/2017 – Hoeven announces additional BIA federal law enforcement officers are headed to ND to help state and local offices (DAPL):  
<https://www.hoeven.senate.gov/news/news-releases/hoeven-announces-additional-bia-federal-law-enforcement-officers-headed-to-nd-to-help-state-and-local-officers>

### Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 245 Indian Tribal Energy Development and Self-Determination Act Amendments of 2017.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*John Barrasso* (WY) – Previous Indian Affairs Chairman

2 tribes (Shoshone & Arapaho Tribes)

Likely Key Issues for Indian Country:

- Energy development;
- Dam and Irrigation repairs, maintenance and projects (DRIFT and IRRIGATE acts were passed in the WIIN Act) as part of overall infrastructure conversation;
- BIE Reform;
- Self-determination and sovereignty.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- Didn't directly mention Crow Nation but did talk about ending the moratorium on coal;
- BIA—a general mention that the Dept. will need to give BIA significant attention.

Recent Press Releases regarding Indian Country:

- 02/18/2017 – Senate Committee Passes John P. Smith Act to Improve Safety on Tribal Roads: <https://www.barrasso.senate.gov/public/index.cfm/news-releases?ID=78EB34F7-9319-409E-841F-8BC645D3CE6F>
- 01/24/2017 – Barrasso Statement on Keystone and Dakota Access Pipeline Executive Orders: <https://www.barrasso.senate.gov/public/index.cfm/news-releases?ID=9C97EB1B-A140-492D-8C72-B365F4625852>

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 302 John P. Smith Act – to Improve Safety on Tribal Roads;
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*John McCain (AZ) – Former Chairman*

**21** tribes

**54** BIE schools

Likely Key Issues for Indian Country:

- Indian Gaming Regulatory Act (IGRA) and off-reservation gaming (Tohono Oodham tribal gaming issue);
- **Indian water settlements, specifically the Navajo and Hopi Little Colorado River settlement;**
- The future of the Navajo Generating Station (NGS);
- BIE reform—in favor of a voucher like system for AZ Indian students.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- N/A, not on SENR.

Recent Press Releases regarding Indian Country:

- 02/15/2017 – Statement by SASC Chairman John McCain on GAO’s High Risk List: <http://www.mccain.senate.gov/public/index.cfm/press-releases?ID=BE5CF750-4CD2-40AA-A296-3A1F1E9996FD>

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 140 (Co-Sponsored (Flake’s Bill)) A bill to amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to clarify the use of amounts in the WMAT Settlement Fund.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.

Recent Letter to Navajo and Hopi Tribes:

- 02/14/2017--Letter from Senator McCain asking Navajo and Hopi to work on a Little Colorado River settlement this year. This settlement has been stalled since the two tribes rejected a settlement bill introduced by Senator Kyl. This may end up being linked somehow to NGS closure issues. Meetings attended by Pam Williams, Director of SIWRO, Navajo has requested that it be awarded the water currently used by NGS. SIWRO will work on a briefing paper on this issue.
- <file:///C:/Users/tgoodluck/Downloads/170214%20JSM%20letter%20to%20Navajo%20and%20Hopi%20water%20settlement.pdf>



*Lisa Murkowski (AK)*

**229** Alaska Native Tribes/Villages

Likely Key Issues for Indian Country:

- King Cove access road;
- Native Veteran's issues, particularly Vietnam veterans;
- Health care;
- Resource development and ways for BIA to be more helpful in the process.

Indian Affairs related issues/questions asked at confirmation hearing:

- Asked for support of the King Cove access road.

Recent Press Releases regarding Indian Country:

- 02/08/2017 - Two Murkowski Bills Pass Senate Indian Affairs Committee:  
<https://www.murkowski.senate.gov/press/release/two-murkowski-bills-pass-senate-indian-affairs-committee>
- 01/31/2017- Committee Approves Nominees for Energy, Interior Secretary:  
<https://www.murkowski.senate.gov/press/release/committee-approves-nominees-for-energy-interior-secretary->

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 91 Indian Employment, Training and Related Services Act of 2017;
  - 02/08/2017 Marked-up and reported out of SCIA favorably.
- S. 269 A bill to provide for the conveyance of certain property to the Tanana Tribal Council located in Tanana, Alaska, and to the Bristol Bay Area Health Corporation located in Dillingham, Alaska, and for other purposes. (NOTE: IHS related bill);
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*James Lankford (OK)*

**38** tribes

**5** BIE schools

Likely Key Issues for Indian Country:

- Note: DO NOT mention T.W. Shannon. He was Lankford's primary opponent in 2014;
- Land into Trust, off reservation gaming. Did not like the recent decision to approve off reservation gaming facility;
- Energy development for Indian Country;
- Sovereignty and tribal consultation;
- General BIE Issues:
  - Johnson-O'Malley (JOM) program funds which are used for programs ranging from language and culture to dropout prevention;
  - 2017 G.A.O. High Risk report and BIE schools with a likely emphasis on school infrastructure.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- N/A, not on SENR.

Recent Press Releases regarding Indian Country:

- 02/08/2017 Senator Lankford Cosponsors Bill to Repeal Antiquated Laws Directed Toward Native Americans: <https://www.lankford.senate.gov/news/press-releases/senator-lankford-cosponsors-bill-to-repeal-antiquated-laws-directed-toward-native-americans>
- 01/24/2017 – Senator Lankford Statement on Keystone XL and Dakota Access Executive Actions: <https://www.lankford.senate.gov/news/press-releases/senator-lankford-statement-on-keystone-xl-and-dakota-access-executive-actions>

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 343- Respect Act- Repealing Existing Substandard Provisions Encouraging Conciliation with Tribes Act.



*Steve Daines (MT)*

**8** tribes (Blackfeet Tribe, Chippewa Cree Tribe of the Rocky Boy's Reservation, Confederated Salish & Kootenai Tribes, Crow Tribe, Fort Belknap Tribes of the Fort Belknap Reservation, Fort Peck Tribes, Northern Cheyenne Tribe, Little Shell Chippewa Tribe)

**3** BIE schools

Likely Key Issues for Indian Country:

- Energy development in Indian Country, with an emphasis on the BIA's struggle to assist Tribes in the development process
- Respect for sovereignty and self-determination;
- Indian Water Settlements (emphasis on Blackfeet Water Rights Settlement), specifically requesting how to fund them;
- Healthcare needs in Indian Country.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- Economic Development in Indian Country;
- Blackfeet Water Rights Settlement/Indian Water Settlements.

Recent Press Releases regarding Indian Country:

- 02/08/2017 – Daines: Little Shell Recognition Moves Forward:  
<https://www.daines.senate.gov/news/press-releases/daines-little-shell-recognition-moves-forward>

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 39 Little Shell Tribe of Chippewa Indians Restoration Act of 2017 (Co-sponsored with Senator Tester).
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*Mike Crapo (ID)*

**4** tribes (Coeur D'Alene Tribe; Idaho Kootenai Tribe; Nez Perce Tribe; Shoshone-Bannock Tribes of the Fort Hall Reservation)

**2** BIE schools

Likely Key Issues for Indian Country: (hasn't been very active on the Committee)

- Energy development as a source of economic opportunity;
- General support of tribal sovereignty;
- Tribal consultation and border security measures;
- Healthcare needs in Indian Country.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- N/A, not on SENR

Recent Press Releases regarding Indian Country:

- N/A

Introduced Legislation in the 115<sup>th</sup> Congress:

- N/A.



*Jerry Moran (KS)*

**4** tribes (Kickapoo Tribe of Indians of the Kickapoo Reservation; Prairie Band of Potawatomi Nation; Iowa Tribe of Kansas and Nebraska; Sac & Fox Nation of Missouri in Kansas and Nebraska)

**1** BIE school

Likely Key Issues for Indian Country:

- Energy development opportunities;
- General support for tribal sovereignty;
  - Has moved legislation that would exempt Indian Tribes from the National Labor Relations Act;
  - You cosponsored this legislation while in the House.
- Native Veteran's issues.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- N/A, not on SENR

Recent Press Releases regarding Indian Country:

- N/A.

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 63 Tribal Labor Sovereignty Act of 2017.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.

## MINORITY MEMBERS



*Tom Udall* (NM), Vice Chairman

**23** tribes

**44** BIE schools

Likely Key Issues for Indian Country:

- Indian self-determination;
- Sovereignty and consultation, with an emphasis on DAPL;
  - Supports Standing Rock Sioux Tribe on the issue.
- BIE and education issues broadly, with a focus on the impact of the hiring freeze on BIE schools;
- Indian water settlements;
- Use of BIA officers from New Mexico in ND for DAPL;
- Bears Ears—supports monument and the Tribes’ ability to co-manage the area;
- Native American cultural preservation issues;
- Stopping cultural patrimony from being taken from the tribal communities.

Indian Affairs related issues/questions asked at confirmation hearing:

- N/A, not on SENR

Recent Press Releases regarding Indian Country:

- 02/17/2017 – Senate Indian Affairs Committee Democrats Secure Exemption from Federal Hiring Freeze for Indian Health Services Staff:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2576](https://www.tomudall.senate.gov/?p=press_release&id=2576)
- 02/09/2017 – Udall: Trump Should Make Good on Federal Government’s Promise to Tribes Protesting Dakota Access Pipeline:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2556](https://www.tomudall.senate.gov/?p=press_release&id=2556)
- 02/01/2017 – Senate Indian Affairs Committee Democrats Urge President Trump to Exempt Indian Services Agencies from Federal Hiring Freeze:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2537](https://www.tomudall.senate.gov/?p=press_release&id=2537)
- 01/31/2017 – Udall Outlines Priorities for Senate Committee on Indian Affairs for the New Congress: [https://www.tomudall.senate.gov/?p=press\\_release&id=2534](https://www.tomudall.senate.gov/?p=press_release&id=2534)
- 01/24/2017 – Udall Statement on Trump Executive Orders Advancing Dakota Access, Keystone XL Pipelines:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2521](https://www.tomudall.senate.gov/?p=press_release&id=2521)
- 01/19/2017 – Udall Statement after Meeting with Rep. Ryan Zinke, Trump’s Nominee for Interior Secretary:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2516](https://www.tomudall.senate.gov/?p=press_release&id=2516)

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 254 Esther Martinez Native American Languages Preservation Act.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.
- S. 249 A bill to allow for the Santa Clara Pueblo to lease for 99 years.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



## *Maria Cantwell (WA)*

**29** tribes

**7** BIE schools

### Likely Key Issues for Indian Country:

- Indian gaming;
- Timber;
- Impact of forest fires on Indian land;
- Tribal sovereignty and self-determination;
- Economic development outside of fossil fuels;
- VAWA issues—protection of Native women who are victims of domestic abuse
  - You introduced resolution w/ Montana delegation to designate May 5, 2017, as a National Day of Awareness for Missing and Murdered Native Women and Girls.
- Tribal jurisdictional issues (i.e. Tribes authority on reservation land over non-Indians).

### Indian Affairs related issues/questions asked at confirmation hearing:

- Lummi Nation’s right to object to Gateway Pacific Terminal in Washington state based on their fishing rights;
- Tribal sovereignty and tribes’ abilities to exercise their right to object based on treaty and sovereignty rights;
- Spokane Equitable Settlement Compensation Act---passed House and Senate in the 114<sup>th</sup>. Wants support of DOI in this Administration on this settlement, which provides for equitable relief from the flooding that occurred as a result of dams being constructed.)

### Recent Press Releases regarding Indian Country:

- 02/07/2017 – Senate, House Natural Resource Leaders Blast Dakota Access Pipeline Decision, Stand up for Tribal Sovereignty and Treaty Rights: <https://www.cantwell.senate.gov/news/press-releases/senate-house-natural-resource-leaders-blast-dakota-access-pipeline-decision-stand-up-for-tribal-sovereignty-and-treaty-rights>
- 02/01/2017 – Dakota Access: Cantwell, Tester, Udall, Call on Feds to Consult with Tribes, Follow the Rule of Law before Moving Forward on Oil Pipeline: <https://www.cantwell.senate.gov/news/press-releases/dakota-access-cantwell-tester-udall-call-on-feds-to-consult-with-tribes-follow-the-rule-of-law-before-moving-forward-on-oil-pipeline>

### Introduced Legislation in the 115th Congress:

- N/A.



*Jon Tester* (MT) – Former Chairman

**8** tribes (Blackfoot Tribe, Chippewa Cree Tribe of the Rocky Boy's Reservation, Confederated Salish & Kootenai Tribes, Crow Tribe, Fort Belknap Tribes of the Fort Belknap Reservation, Fort Peck Tribes, Northern Cheyenne Tribe, Little Shell Chippewa Tribe)

**3** BIE schools

Likely Key Issues for Indian Country:

- Indian water settlements, both in terms of funding (Blackfeet) and pending compacts in Montana (CSKT, Fort Belknap);
- Federal recognition for Little Shell;
- General questions about potential BIE reforms, next steps;
- Self-determination and tribal sovereignty;
- Trust obligation of the federal government to Indian tribes;
- Tribal consultation;
- Access to quality health care;
- Improving transportation in Indian Country, with a direct tie to potential infrastructure opportunities;
- Honoring American Indian Veterans;
- VAWA—Save Native Women Act (VAWA is up for reauthorization soon);
- Tribal Law and Order to address on reservation issues (drug trade, domestic violence, etc).

Indian Affairs related issues/questions asked at confirmation hearing:

- N/A, not on SENR

Recent Press Releases regarding Indian Country:

- 02/20/2017 – Tester Announces Legislation to Strengthen Education for Rural Students, Montana Veterans, Native Americans:  
[http://www.testersenate.gov/?p=press\\_release&id=5019](http://www.testersenate.gov/?p=press_release&id=5019)
- 02/15/2017 – Tester, Udall Fight Veteran Homelessness in Indian Country:  
[http://www.testersenate.gov/?p=press\\_release&id=5008](http://www.testersenate.gov/?p=press_release&id=5008)
- 02/07/2017- Tester, Daines Lead Effort to Dedicate Feb 5-11 National Tribal Colleges and Universities Week:  
[http://www.testersenate.gov/?p=press\\_release&id=4994](http://www.testersenate.gov/?p=press_release&id=4994)
- 01/31/2017 – Tester Statement on Congressman Zinke's Nomination Vote:  
[http://www.testersenate.gov/?p=press\\_release&id=4979](http://www.testersenate.gov/?p=press_release&id=4979)

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 39 Little Shell Tribe of Chippewa Indians Restoration Act of 2017
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*Al Franken* (MN)

**12** tribes

**4** BIE schools

Likely Key Issues for Indian Country:

- Education:
  - BIE reforms in light of the 2017 GAO High Risk Report;
  - New school construction (Bug School);
  - BIE's place in the Administration's infrastructure investments;
  - Impact of the hiring freeze on BIE;
  - Pending budget and the impact on BIE schools.
- DAPL and other pending energy specific projects and tribal consultation;
  - 03/01/2017: Sent letter to FBI Director Comey about reports that FBI's Joint Terrorism Task Force attempted to question at least three DAPL protestors – he wants justifications for those actions and assurance constitutional rights were not infringed upon.
- Indian Health;
- Human Trafficking;
- The fate of climate change programs in Indian Affairs and the Administration's budget;
- Crime on Indian reservations.

Indian Affairs related issues/questions asked at confirmation hearing:

- Didn't ask specific Q re: Indian Affairs at the hearing.

Recent Press Releases regarding Indian Country:

- N/A.

Introduced Legislation in the 115<sup>th</sup> Congress:

- N/A.



*Brian Schatz (HI)*

Likely Key Issues for Indian Country:

- Continued support for Native Hawaiian recognition;
  - 09/23/2016: DOI issued a final rule to establish procedures to engage in a government-to-government relationship with the Native Hawaiian community.
- Native Hawaiian's lack of self-determination compared to American Indians and Alaska Natives;
- Native language preservation and funding support for Hawaiian language programs;
- Continued support for Native Hawaiians (over 100 specific laws that impact Native Hawaiians that place them in similar situation as Native Americans);
- Native Tourism---recent bill signed into law by former President Obama;
- Climate change and Indian Affairs programs.

Indian Affairs related issues/questions asked at confirmation hearing:

- N/A, not on SENR.

Recent Press Releases regarding Indian Country:

- 01/24/2017 – Schatz Statement on Keystone XL, Dakota Access Pipeline:  
<http://www.schatz.senate.gov/press-releases/schatz-statement-on-keystone-xl-dakota-access-pipelines>

Introduced Legislation in the 115th Congress:

- N/A.



*Heidi Heitkamp* (ND)

**4** tribes (Spirit Lake Tribe; Three Affiliated Tribes of the Fort Berthold Reservation; Standing Rock Sioux Tribe of North & South Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota)

**12** BIE schools

Likely Key Issues for Indian Country:

- Tribal energy development opportunities (emphasis on all-of-the-above approach);
- Public safety in Indian Country;
- BIE systemic issues and potential reforms;
  - Support for Johnson-O'Malley (JOM) program funds which are used for programs ranging from language and culture to dropout prevention;
- Native Veterans issues;
- Sovereignty and self-determination/tribal consultation;
- Reauthorization of VAWA;
- Bringing fairness of the tax code for federal governments
- Tribal housing, infrastructure, and investment.

Indian Affairs related issues/questions asked at confirmation hearing:

N/A, not on SENR.

Recent Press Releases regarding Indian Country:

- 02/16/2017 – Heitkamp Announces Support for Nominees to Lead Energy, Interior, EPA: <http://www.heitkamp.senate.gov/public/index.cfm/press-releases?ID=C398AF52-943C-449F-973B-0AD0DAAC7A5B>
- 02/07/2017 – Heitkamp Statement on Army Corps of Engineers Intent to Issue Dakota Access Pipeline Easement: <http://www.heitkamp.senate.gov/public/index.cfm/press-releases?ID=02B22609-0098-45AA-B76C-4916B62EB546>
- 02/03/2017 – Heitkamp Announces Federal Law Enforcement Assistance for Standing Rock Protest Site: <http://www.heitkamp.senate.gov/public/index.cfm/press-releases?ID=CEA75937-171F-47B1-BFF8-7B7BDCBB1E89>

Introduced Legislation in the 115<sup>th</sup> Congress:

- Co-sponsor to several of the 8 pending SCIA bills.



*Catherine Cortez Masto (NV)*

**32** tribes

**2** BIE schools

Likely Key Issues for Indian Country:

- Tribal sovereignty;
- DAPL, tribal consultation, and the US's trust responsibilities,
- Indian water rights;
- Impact of energy development on tribal lands;
- Impact of the federal hiring freeze on American Indian, Alaska Natives, and Indian Affairs programs.

Indian Affairs related issues/questions asked at confirmation hearing:

- Tribal sovereignty in general; consultation—tribes having a seat at the table when it comes to decisions, activities and land management near their communities.

Recent Press Releases regarding Indian Country:

- 02/08/2017 – Cortez Masto Joins Letter Blasting Dakota Access Pipeline Decision, Calling on Trump Administration to Stand up for Tribal Sovereignty and Treaty Rights: <https://www.cortezmasto.senate.gov/content/cortez-masto-joins-letter-blasting-dakota-access-pipeline-decision-calling-trump>
- 02/01/2017 – Cortez Masto and Senate Indian Affairs Committee Democrats Urge President Trump to Exempt Indian Services Agencies from Federal Hiring Freeze: <https://www.cortezmasto.senate.gov/content/cortez-masto-and-senate-indian-affairs-committee-democrats-urge-president-trump-exempt>
- 01/31/2017 – Cortez Masto Statement on Department of Interior Nominee Rep. Ryan Zinke: <https://www.cortezmasto.senate.gov/content/cortez-masto-statement-department-interior-nominee-rep-ryan-zinke>

Introduced Legislation in the 115<sup>th</sup> Congress:

- N/A.

**From:** Kaster, Amanda  
**To:** [Christopher Salotti](#); [Tracy Goodluck](#)  
**Subject:** SCIA Member Pages - Revised  
**Date:** Monday, March 06, 2017 10:22:23 AM  
**Attachments:** [SCIA Member Pages Revised 3-6-17.docx](#)

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[amanda\\_kaster@ios.doi.gov](mailto:amanda_kaster@ios.doi.gov)

# SENATE COMMITTEE ON INDIAN AFFAIRS MEMBER PAGES FOR THE 115<sup>TH</sup> CONGRESS

## MAJORITY MEMBERS:



*John Hoeven* (ND), Chairman

\*\*\*voted for you

**4** tribes (Spirit Lake Tribe; Three Affiliated Tribes of the Fort Berthold Reservation; Standing Rock Sioux Tribe of North & South Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota)

**12** Bureau of Indian Education schools

### Likely Key Issues for Indian Country:

- Continued support of BIA Law Enforcement re: DAPL;
- Infrastructure issues in Indian Country (energy, water, broadband, etc.);
- 2017 G.A.O. High Risk Report and BIE schools.

### Indian Affairs related issues/questions asked at ENR confirmation hearing:

- Support for completion of the DAPL project—specifically for increased assistance from BIA law enforcement support. (\*Note: BIA held several calls with the Senator and his staff and subsequently sent additional BIA law enforcement to help with on-reservation issues).

### Recent Press Releases regarding Indian Country:

- 2/15/2017 - Corps to send cleanup crew to DAPL site this week:  
<https://www.hoeven.senate.gov/news/news-releases/hoeven-corps-to-send-cleanup-crew-to-dapl-site-this-week>
- 2/08/2017 – Statement on the Corps issuing final easement for Dakota Access Pipeline: <https://www.hoeven.senate.gov/news/news-releases/hoeven-statement-on-the-corps-issuing-the-final-easement-for-dakota-access-pipeline>
- 1/27/2017 – Hoeven announces additional BIA federal law enforcement officers are headed to ND to help state and local offices (DAPL):  
<https://www.hoeven.senate.gov/news/news-releases/hoeven-announces-additional-bia-federal-law-enforcement-officers-headed-to-nd-to-help-state-and-local-officers>

### Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 245 Indian Tribal Energy Development and Self-Determination Act Amendments of 2017.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*John Barrasso* (WY) – Previous Indian Affairs Chairman

\*\*\*voted for you

2 tribes (Shoshone & Arapaho Tribes)

Likely Key Issues for Indian Country:

- Energy development;
- Dam and Irrigation repairs, maintenance and projects (DRIFT and IRRIGATE acts were passed in the WIIN Act) as part of overall infrastructure conversation;
- BIE Reform;
- Self-determination and sovereignty.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- Didn't directly mention Crow Nation but did talk about ending the moratorium on coal;
- BIA—a general mention that the Dept. will need to give BIA significant attention.

Recent Press Releases regarding Indian Country:

- 02/18/2017 – Senate Committee Passes John P. Smith Act to Improve Safety on Tribal Roads: <https://www.barrasso.senate.gov/public/index.cfm/news-releases?ID=78EB34F7-9319-409E-841F-8BC645D3CE6F>
- 01/24/2017 – Barrasso Statement on Keystone and Dakota Access Pipeline Executive Orders: <https://www.barrasso.senate.gov/public/index.cfm/news-releases?ID=9C97EB1B-A140-492D-8C72-B365F4625852>

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 302 John P. Smith Act – to Improve Safety on Tribal Roads;
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*John McCain (AZ)* – Former Chairman

\*\*\*voted for you

**21** tribes

**54** BIE schools

Likely Key Issues for Indian Country:

- Indian Gaming Regulatory Act (IGRA) and off-reservation gaming (Tohono Oodham tribal gaming issue);
- Indian water settlements, specifically the Navajo and Hopi Little Colorado River settlement;
- The future of the Navajo Generating Station (NGS);
- BIE reform—in favor of a voucher like system for AZ Indian students.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- N/A, not on SENR.

Recent Press Releases regarding Indian Country:

- 02/15/2017 – Statement by SASC Chairman John McCain on GAO’s High Risk List: <http://www.mccain.senate.gov/public/index.cfm/press-releases?ID=BE5CF750-4CD2-40AA-A296-3A1F1E9996FD>

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 140 (Co-Sponsored (Flake’s Bill)) A bill to amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to clarify the use of amounts in the WMAT Settlement Fund.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.

Recent Letter to Navajo and Hopi Tribes:

- 02/14/2017--Letter from Senator McCain asking Navajo and Hopi to work on a Little Colorado River settlement this year. This settlement has been stalled since the two tribes rejected a settlement bill introduced by Senator Kyl. This may end up being linked somehow to NGS closure issues. Meetings attended by Pam Williams, Director of SIWRO, Navajo has requested that it be awarded the water currently used by NGS. SIWRO will work on a briefing paper on this issue.
- <file:///C:/Users/tgoodluck/Downloads/170214%20JSM%20letter%20to%20Navajo%20and%20Hopi%20water%20settlement.pdf>



*Lisa Murkowski (AK)*

\*\*\*voted for you

**229** Alaska Native Tribes/Villages

Likely Key Issues for Indian Country:

- King Cove access road;
- Native Veteran's issues, particularly Vietnam veterans;
- Health care;
- Resource development and ways for BIA to be more helpful in the process.

Indian Affairs related issues/questions asked at confirmation hearing:

- Asked for support of the King Cove access road.

Recent Press Releases regarding Indian Country:

- 02/08/2017 - Two Murkowski Bills Pass Senate Indian Affairs Committee:  
<https://www.murkowski.senate.gov/press/release/two-murkowski-bills-pass-senate-indian-affairs-committee>
- 01/31/2017- Committee Approves Nominees for Energy, Interior Secretary:  
<https://www.murkowski.senate.gov/press/release/committee-approves-nominees-for-energy-interior-secretary->

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 91 Indian Employment, Training and Related Services Act of 2017;
  - 02/08/2017 Marked-up and reported out of SCIA favorably.
- S. 269 A bill to provide for the conveyance of certain property to the Tanana Tribal Council located in Tanana, Alaska, and to the Bristol Bay Area Health Corporation located in Dillingham, Alaska, and for other purposes. (NOTE: IHS related bill);
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*James Lankford* (OK)

\*\*\*voted for you

**38** tribes

**5** BIE schools

Likely Key Issues for Indian Country:

- Note: DO NOT mention T.W. Shannon. He was Lankford's primary opponent in 2014;
- Land into Trust, off reservation gaming. Did not like the recent decision to approve off reservation gaming facility;
- Energy development for Indian Country;
- Sovereignty and tribal consultation;
- General BIE Issues:
  - Johnson-O'Malley (JOM) program funds which are used for programs ranging from language and culture to dropout prevention;
  - 2017 G.A.O. High Risk report and BIE schools with a likely emphasis on school infrastructure.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- N/A, not on SENR.

Recent Press Releases regarding Indian Country:

- 02/08/2017 Senator Lankford Cosponsors Bill to Repeal Antiquated Laws Directed Toward Native Americans: <https://www.lankford.senate.gov/news/press-releases/senator-lankford-cosponsors-bill-to-repeal-antiquated-laws-directed-toward-native-americans>
- 01/24/2017 – Senator Lankford Statement on Keystone XL and Dakota Access Executive Actions: <https://www.lankford.senate.gov/news/press-releases/senator-lankford-statement-on-keystone-xl-and-dakota-access-executive-actions>

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 343- Respect Act- Repealing Existing Substandard Provisions Encouraging Conciliation with Tribes Act.



*Steve Daines* (MT)

\*\*\*voted for you

**8** tribes (Blackfeet Tribe, Chippewa Cree Tribe of the Rocky Boy's Reservation, Confederated Salish & Kootenai Tribes, Crow Tribe, Fort Belknap Tribes of the Fort Belknap Reservation, Fort Peck Tribes, Northern Cheyenne Tribe, Little Shell Chippewa Tribe)

**3** BIE schools

Likely Key Issues for Indian Country:

- Energy development in Indian Country, with an emphasis on the BIA's struggle to assist Tribes in the development process
- Respect for sovereignty and self-determination;
- Indian Water Settlements (emphasis on Blackfeet Water Rights Settlement), specifically requesting how to fund them;
- Healthcare needs in Indian Country.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- Economic Development in Indian Country;
- Blackfeet Water Rights Settlement/Indian Water Settlements.

Recent Press Releases regarding Indian Country:

- 02/08/2017 – Daines: Little Shell Recognition Moves Forward:  
<https://www.daines.senate.gov/news/press-releases/daines-little-shell-recognition-moves-forward>

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 39 Little Shell Tribe of Chippewa Indians Restoration Act of 2017 (Co-sponsored with Senator Tester).
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*Mike Crapo* (ID)

\*\*\*voted for you

**4** tribes (Coeur D'Alene Tribe; Idaho Kootenai Tribe; Nez Perce Tribe; Shoshone-Bannock Tribes of the Fort Hall Reservation)

**2** BIE schools

Likely Key Issues for Indian Country: (hasn't been very active on the Committee)

- Energy development as a source of economic opportunity;
- General support of tribal sovereignty;
- Tribal consultation and border security measures;
- Healthcare needs in Indian Country.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- N/A, not on SENR

Recent Press Releases regarding Indian Country:

- N/A

Introduced Legislation in the 115<sup>th</sup> Congress:

- N/A.



*Jerry Moran (KS)*

\*\*\*voted for you

**4** tribes (Kickapoo Tribe of Indians of the Kickapoo Reservation; Prairie Band of Potawatomi Nation; Iowa Tribe of Kansas and Nebraska; Sac & Fox Nation of Missouri in Kansas and Nebraska)

**1** BIE school

Likely Key Issues for Indian Country:

- Energy development opportunities;
- General support for tribal sovereignty;
  - Has moved legislation that would exempt Indian Tribes from the National Labor Relations Act;
  - You cosponsored this legislation while in the House.
- Native Veteran's issues.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- N/A, not on SENR

Recent Press Releases regarding Indian Country:

- N/A.

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 63 Tribal Labor Sovereignty Act of 2017.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.

## MINORITY MEMBERS



*Tom Udall* (NM), Vice Chairman  
\*\*\*voted for you

**23** tribes

**44** BIE schools

### Likely Key Issues for Indian Country:

- Indian self-determination;
- Sovereignty and consultation, with an emphasis on DAPL;
  - Supports Standing Rock Sioux Tribe on the issue.
- BIE and education issues broadly, with a focus on the impact of the hiring freeze on BIE schools;
- Indian water settlements;
- Use of BIA officers from New Mexico in ND for DAPL;
- Bears Ears—supports monument and the Tribes’ ability to co-manage the area;
- Native American cultural preservation issues;
- Stopping cultural patrimony from being taken from the tribal communities.

### Indian Affairs related issues/questions asked at confirmation hearing:

- N/A, not on SENR

### Recent Press Releases regarding Indian Country:

- 02/17/2017 – Senate Indian Affairs Committee Democrats Secure Exemption from Federal Hiring Freeze for Indian Health Services Staff:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2576](https://www.tomudall.senate.gov/?p=press_release&id=2576)
- 02/09/2017 – Udall: Trump Should Make Good on Federal Government’s Promise to Tribes Protesting Dakota Access Pipeline:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2556](https://www.tomudall.senate.gov/?p=press_release&id=2556)
- 02/01/2017 – Senate Indian Affairs Committee Democrats Urge President Trump to Exempt Indian Services Agencies from Federal Hiring Freeze:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2537](https://www.tomudall.senate.gov/?p=press_release&id=2537)
- 01/31/2017 – Udall Outlines Priorities for Senate Committee on Indian Affairs for the New Congress: [https://www.tomudall.senate.gov/?p=press\\_release&id=2534](https://www.tomudall.senate.gov/?p=press_release&id=2534)
- 01/24/2017 – Udall Statement on Trump Executive Orders Advancing Dakota Access, Keystone XL Pipelines:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2521](https://www.tomudall.senate.gov/?p=press_release&id=2521)
- 01/19/2017 – Udall Statement after Meeting with Rep. Ryan Zinke, Trump’s Nominee for Interior Secretary:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2516](https://www.tomudall.senate.gov/?p=press_release&id=2516)

### Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 254 Esther Martinez Native American Languages Preservation Act.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.
- S. 249 A bill to allow for the Santa Clara Pueblo to lease for 99 years.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*Maria Cantwell (WA)*

\*\*\*did not vote for you

**29** tribes

**7** BIE schools

Likely Key Issues for Indian Country:

- Indian gaming;
- Timber;
- Impact of forest fires on Indian land;
- Tribal sovereignty and self-determination;
- Economic development outside of fossil fuels;
- VAWA issues—protection of Native women who are victims of domestic abuse
  - You introduced resolution w/ Montana delegation to designate May 5, 2017, as a National Day of Awareness for Missing and Murdered Native Women and Girls.
- Tribal jurisdictional issues (i.e. Tribes authority on reservation land over non-Indians).

Indian Affairs related issues/questions asked at confirmation hearing:

- Lummi Nation’s right to object to Gateway Pacific Terminal in Washington state based on their fishing rights;
- Tribal sovereignty and tribes’ abilities to exercise their right to object based on treaty and sovereignty rights;
- Spokane Equitable Settlement Compensation Act---passed House and Senate in the 114<sup>th</sup>. Wants support of DOI in this Administration on this settlement, which provides for equitable relief from the flooding that occurred as a result of dams being constructed.)

Recent Press Releases regarding Indian Country:

- 02/07/2017 – Senate, House Natural Resource Leaders Blast Dakota Access Pipeline Decision, Stand up for Tribal Sovereignty and Treaty Rights: <https://www.cantwell.senate.gov/news/press-releases/senate-house-natural-resource-leaders-blast-dakota-access-pipeline-decision-stand-up-for-tribal-sovereignty-and-treaty-rights>
- 02/01/2017 – Dakota Access: Cantwell, Tester, Udall, Call on Feds to Consult with Tribes, Follow the Rule of Law before Moving Forward on Oil Pipeline: <https://www.cantwell.senate.gov/news/press-releases/dakota-access-cantwell-tester-udall-call-on-feds-to-consult-with-tribes-follow-the-rule-of-law-before-moving-forward-on-oil-pipeline>

Introduced Legislation in the 115th Congress:

- N/A.



*Jon Tester* (MT) – Former Chairman

\*\*\*voted for you

**8** tribes (Blackfoot Tribe, Chippewa Cree Tribe of the Rocky Boy's Reservation, Confederated Salish & Kootenai Tribes, Crow Tribe, Fort Belknap Tribes of the Fort Belknap Reservation, Fort Peck Tribes, Northern Cheyenne Tribe, Little Shell Chippewa Tribe)

**3** BIE schools

Likely Key Issues for Indian Country:

- Indian water settlements, both in terms of funding (Blackfeet) and pending compacts in Montana (CSKT, Fort Belknap);
- Federal recognition for Little Shell;
- General questions about potential BIE reforms, next steps;
- Self-determination and tribal sovereignty;
- Trust obligation of the federal government to Indian tribes;
- Tribal consultation;
- Access to quality health care;
- Improving transportation in Indian Country, with a direct tie to potential infrastructure opportunities;
- Honoring American Indian Veterans;
- VAWA—Save Native Women Act (VAWA is up for reauthorization soon);
- Tribal Law and Order to address on reservation issues (drug trade, domestic violence, etc).

Indian Affairs related issues/questions asked at confirmation hearing:

- N/A, not on SENR

Recent Press Releases regarding Indian Country:

- 02/20/2017 – Tester Announces Legislation to Strengthen Education for Rural Students, Montana Veterans, Native Americans:  
[http://www.testersenate.gov/?p=press\\_release&id=5019](http://www.testersenate.gov/?p=press_release&id=5019)
- 02/15/2017 – Tester, Udall Fight Veteran Homelessness in Indian Country:  
[http://www.testersenate.gov/?p=press\\_release&id=5008](http://www.testersenate.gov/?p=press_release&id=5008)
- 02/07/2017- Tester, Daines Lead Effort to Dedicate Feb 5-11 National Tribal Colleges and Universities Week:  
[http://www.testersenate.gov/?p=press\\_release&id=4994](http://www.testersenate.gov/?p=press_release&id=4994)
- 01/31/2017 – Tester Statement on Congressman Zinke's Nomination Vote:  
[http://www.testersenate.gov/?p=press\\_release&id=4979](http://www.testersenate.gov/?p=press_release&id=4979)

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 39 Little Shell Tribe of Chippewa Indians Restoration Act of 2017
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*Al Franken (MN)*

\*\*\*did not vote for you

**12** tribes

**4** BIE schools

Likely Key Issues for Indian Country:

- Education:
  - BIE reforms in light of the 2017 GAO High Risk Report;
  - New school construction (Bug School);
  - BIE's place in the Administration's infrastructure investments;
  - Impact of the hiring freeze on BIE;
  - Pending budget and the impact on BIE schools.
- DAPL and other pending energy specific projects and tribal consultation;
  - 03/01/2017: Sent letter to FBI Director Comey about reports that FBI's Joint Terrorism Task Force attempted to question at least three DAPL protestors – he wants justifications for those actions and assurance constitutional rights were not infringed upon.
- Indian Health;
- Human Trafficking;
- The fate of climate change programs in Indian Affairs and the Administration's budget;
- Crime on Indian reservations.

Indian Affairs related issues/questions asked at confirmation hearing:

- Didn't ask specific Q re: Indian Affairs at the hearing.

Recent Press Releases regarding Indian Country:

- N/A.

Introduced Legislation in the 115<sup>th</sup> Congress:

- N/A.



*Brian Schatz (HI)*  
\*\*\*did not vote for you

Likely Key Issues for Indian Country:

- Continued support for Native Hawaiian recognition;
  - 09/23/2016: DOI issued a final rule to establish procedures to engage in a government-to-government relationship with the Native Hawaiian community.
- Native Hawaiian's lack of self-determination compared to American Indians and Alaska Natives;
- Native language preservation and funding support for Hawaiian language programs;
- Continued support for Native Hawaiians (over 100 specific laws that impact Native Hawaiians that place them in similar situation as Native Americans);
- Native Tourism---recent bill signed into law by former President Obama;
- Climate change and Indian Affairs programs.

Indian Affairs related issues/questions asked at confirmation hearing:

- N/A, not on SENR.

Recent Press Releases regarding Indian Country:

- 01/24/2017 – Schatz Statement on Keystone XL, Dakota Access Pipeline:  
<http://www.schatz.senate.gov/press-releases/schatz-statement-on-keystone-xl-dakota-access-pipelines>

Introduced Legislation in the 115th Congress:

- N/A.



*Heidi Heitkamp* (ND)

\*\*\*voted for you

**4** tribes (Spirit Lake Tribe; Three Affiliated Tribes of the Fort Berthold Reservation; Standing Rock Sioux Tribe of North & South Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota)

**12** BIE schools

Likely Key Issues for Indian Country:

- Tribal energy development opportunities (emphasis on all-of-the-above approach);
- Public safety in Indian Country;
- BIE systemic issues and potential reforms;
  - Support for Johnson-O'Malley (JOM) program funds which are used for programs ranging from language and culture to dropout prevention;
- Native Veterans issues;
- Sovereignty and self-determination/tribal consultation;
- Reauthorization of VAWA;
- Bringing fairness of the tax code for federal governments
- Tribal housing, infrastructure, and investment.

Indian Affairs related issues/questions asked at confirmation hearing:

N/A, not on SENR.

Recent Press Releases regarding Indian Country:

- 02/16/2017 – Heitkamp Announces Support for Nominees to Lead Energy, Interior, EPA: <http://www.heitkamp.senate.gov/public/index.cfm/press-releases?ID=C398AF52-943C-449F-973B-0AD0DAAC7A5B>
- 02/07/2017 – Heitkamp Statement on Army Corps of Engineers Intent to Issue Dakota Access Pipeline Easement: <http://www.heitkamp.senate.gov/public/index.cfm/press-releases?ID=02B22609-0098-45AA-B76C-4916B62EB546>
- 02/03/2017 – Heitkamp Announces Federal Law Enforcement Assistance for Standing Rock Protest Site: <http://www.heitkamp.senate.gov/public/index.cfm/press-releases?ID=CEA75937-171F-47B1-BFF8-7B7BDCBB1E89>

Introduced Legislation in the 115<sup>th</sup> Congress:

- Co-sponsor to several of the 8 pending SCIA bills.



*Catherine Cortez Masto (NV)*

\*\*\*voted for you

**32** tribes

**2** BIE schools

Likely Key Issues for Indian Country:

- Tribal sovereignty;
- DAPL, tribal consultation, and the US's trust responsibilities,
- Indian water rights;
- Impact of energy development on tribal lands;
- Impact of the federal hiring freeze on American Indian, Alaska Natives, and Indian Affairs programs.

Indian Affairs related issues/questions asked at confirmation hearing:

- Tribal sovereignty in general; consultation—tribes having a seat at the table when it comes to decisions, activities and land management near their communities.

Recent Press Releases regarding Indian Country:

- 02/08/2017 – Cortez Masto Joins Letter Blasting Dakota Access Pipeline Decision, Calling on Trump Administration to Stand up for Tribal Sovereignty and Treaty Rights: <https://www.cortezmasto.senate.gov/content/cortez-masto-joins-letter-blasting-dakota-access-pipeline-decision-calling-trump>
- 02/01/2017 – Cortez Masto and Senate Indian Affairs Committee Democrats Urge President Trump to Exempt Indian Services Agencies from Federal Hiring Freeze: <https://www.cortezmasto.senate.gov/content/cortez-masto-and-senate-indian-affairs-committee-democrats-urge-president-trump-exempt>
- 01/31/2017 – Cortez Masto Statement on Department of Interior Nominee Rep. Ryan Zinke: <https://www.cortezmasto.senate.gov/content/cortez-masto-statement-department-interior-nominee-rep-ryan-zinke>

Introduced Legislation in the 115<sup>th</sup> Congress:

- N/A.

**From:** Bloomgren, Megan  
**To:** [Adams, Nathan](#)  
**Cc:** [Swift, Heather](#)  
**Subject:** Re: Secretary Zinke Announces Proposed 73-Million Acre Oil and Natural Gas Lease Sale for Gulf of Mexico: TEST  
**Date:** Monday, March 06, 2017 2:10:42 PM

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sorry good to go - was getting lunch

On Mon, Mar 6, 2017 at 2:00 PM, Adams, Nathan <[nathan\\_adams@ios.doi.gov](mailto:nathan_adams@ios.doi.gov)> wrote:  
Ok. Hitting send now. Thank you.

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news release



Date: March 6, 2017

Contact: [Interior\\_Press@ios.doi.gov](mailto:Interior_Press@ios.doi.gov)

Caryl Fagot BOEM (504) 736-2590

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The estimated amount of resources projected to be developed as a result of the proposed region-wide lease sale ranges from 0.211 to 1.118 billion barrels of oil and from 0.547 to 4,424 trillion cubic feet of gas. The sale could potentially result in 1.2 to 4.2 percent of the forecasted cumulative OCS oil and gas activity in the Gulf of Mexico. Most of the activity (up to 83% of future production) of the proposed lease sale is expected to occur in the Central Planning Area.

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Excluded from the lease sale are blocks subject to the Congressional moratorium established by the [Gulf of Mexico Energy Security Act of 2006](#); blocks that are adjacent to or beyond the U.S. Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap; and whole blocks and partial blocks within the current boundary of the Flower Garden Banks National Marine Sanctuary.

“To promote responsible domestic energy production, the proposed terms of this sale have been carefully developed through extensive environmental analysis, public comment, and consideration of the best scientific information available,” said Walter Cruickshank, the acting director of Interior’s Bureau of Ocean Energy Management (BOEM). “This will ensure both orderly resource development and protection of the environment.”

The lease sale terms include stipulations to protect biologically sensitive resources, mitigate potential adverse effects on protected species, and avoid potential conflicts associated with oil and gas development in the region. BOEM’s proposed economic terms include a range of incentives to encourage diligent development and ensure a fair return to taxpayers. The terms and conditions for Sale 249 in the Proposed Notice of Sale are not final. Different terms and conditions may be employed in the Final Notice of Sale, which will be published at least 30 days before the sale.

BOEM estimates that the U.S. Outer Continental Shelf (OCS) contains about 90 billion barrels of undiscovered technically recoverable oil and 327 trillion cubic feet of undiscovered technically recoverable gas. The Gulf of Mexico OCS, covering about 160 million acres, has technically recoverable resources of 48.46 billion barrels of oil and 141.76 trillion cubic feet of gas.

Production from all OCS leases provided 550 million barrels of oil and 1.25 trillion cubic feet of natural gas in FY2016, accounting for 72 percent of the oil and 27 percent of the natural gas produced on federal lands. Energy production and development of new projects on the U.S. OCS supported an estimated 492,000 direct, indirect, and induced jobs in FY2015 and generated \$5.1 billion in total revenue that was distributed to the Federal Treasury, state governments, Land and Water Conservation Fund, and Historic Preservation Fund.

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The current Five Year Program [2012-2017] has one final Gulf lease sale scheduled on March 22, 2017 for Central Planning Area Sale 247. The 2012-2017 Five Year Program has offered about 73 million acres, netted more than \$3 billion in high bids for American taxpayers and awarded more than 2,000 leases.

All terms and conditions for Gulf of Mexico Region-wide Sale 249 are detailed in the Proposed Notice of Sale (PNOS) information package, which is available at: <http://www.boem.gov/Sale-249/>. Copies of the PNOS maps can be requested from the Gulf of Mexico Region’s Public Information Unit at 1201 Elmwood Park Boulevard, New Orleans, LA 70123, or at 800-200-GULF (4853).

The Notice of Availability of the PNOS will be available today for inspection in the Federal Register at: <http://www.archives.gov/federal-register/public-inspection/index.html> and will be published in the March 7, 2017 Federal Register.

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**From:** Swift, Heather  
**To:** [Adams, Nathan](mailto:Adams.Nathan)  
**Cc:** [Bloomgren, Megan](mailto:Bloomgren.Megan)  
**Subject:** Re: Secretary Zinke Announces Proposed 73-Million Acre Oil and Natural Gas Lease Sale for Gulf of Mexico: TEST  
**Date:** Monday, March 06, 2017 2:00:19 PM

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I think it's good to go. Can't find Meg

-

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Department of the Interior  
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Caryl Fagot BOEM (504) 736-2590

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Office of Communications  
U.S. Department of the Interior  
202-208-2060

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**Subject:** Re: Secretary Zinke Announces Proposed 73-Million Acre Oil and Natural Gas Lease Sale for Gulf of Mexico: TEST  
**Date:** Monday, March 06, 2017 1:49:03 PM

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-  
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Department of the Interior  
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Nate Adams

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U.S. Department of the Interior  
202-208-2060

**From:** Ralston, Jill  
**To:** [Chambers, Micah](mailto:Chambers.Micah)  
**Cc:** [Christopher Salotti](mailto:Christopher.Salotti); [Amanda Kaster](mailto:Amanda.Kaster); [Matthew Quinn](mailto:Matthew.Quinn)  
**Subject:** Re: Secretary Zinke Statement in Support of President Trump's American Energy Executive Order  
**Date:** Tuesday, March 28, 2017 3:57:12 PM

---

Thanks Micah!

Jill Ralston  
Legislative Affairs  
Bureau of Land Management  
Phone: (202) 912-7173  
Cell: (202) 577-4299

On Tue, Mar 28, 2017 at 3:50 PM, Chambers, Micah <[micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov)> wrote:  
I've sent it to staff leads on HNR and SENR a few key staff.

On Tue, Mar 28, 2017 at 3:02 PM, Ralston, Jill <[jralston@blm.gov](mailto:jralston@blm.gov)> wrote:  
Hi All,

Just confirming that OCL is handling the Hill outreach for this press release. Let me know if you need us to do anything.

Thanks!!  
Jill Ralston  
Legislative Affairs  
Bureau of Land Management  
Phone: (202) 912-7173  
Cell: (202) 577-4299

----- Forwarded message -----

**From:** **U.S. Department of the Interior** <[interior\\_news@updates.interior.gov](mailto:interior_news@updates.interior.gov)>  
**Date:** Tue, Mar 28, 2017 at 2:15 PM  
**Subject:** Secretary Zinke Statement in Support of President Trump's American Energy Executive Order  
**To:** [mrallen@blm.gov](mailto:mrallen@blm.gov)

news release



Date: March 28, 2017

## **Secretary Zinke Statement in Support of President Trump's American Energy Executive Order**

**WASHINGTON** - Today, President Donald J. Trump, Secretary of the Interior Ryan Zinke, Administrator of the Environmental Protection Agency (EPA) Scott Pruitt, and Secretary of Energy Rick Perry announced a bold American energy Executive Order that will put our nation on track to full and dominant American energy independence. The Executive Order calls on the Secretary of the Interior to review the Bureau of Land Management's 2016 moratorium on new coal leases on federal land and also review three final rules from the Department regarding oil and gas production on both federal and private land and the outer continental shelf.

"We can't power the country on pixie dust and hope. Today, President Trump took bold and decisive action to end the War on Coal and put us on track for American energy independence," said Secretary of the Interior Ryan Zinke. "American energy independence has three major benefits to the environment, economy, and national security.

"First, it's better for the environment that the U.S. produces energy. Thanks to advancements in drilling and mining technology, we can responsibly develop our energy resources and return the land to equal or better quality than it was before. I've spent a lot of time in the Middle East, and I can tell you with 100 percent certainty it is better to develop our energy here under reasonable regulations and export it to our allies, rather than have it produced overseas under little or no regulations.

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--

Matthew R. Allen  
Assistant Director for Communications  
Bureau of Land Management  
Washington, D.C.  
o: 202-208-5207  
m: 202-875-3744  
[mrallen@blm.gov](mailto:mrallen@blm.gov)

--

Patrick Wilkinson  
U.S. Department of the Interior  
Bureau of Land Management  
Legislative Affairs Division (WO 620)  
Phone: (202) 912-7429  
Fax: (202) 245-0050

--

Micah Chambers  
Special Assistant / Acting Director  
Office of Congressional & Legislative Affairs  
Office of the Secretary of the Interior

**From:** Chambers, Micah  
**To:** [Ralston, Jill](mailto:Ralston_Jill)  
**Cc:** [Christopher Salotti](mailto:Christopher_Salotti); [Amanda Kaster](mailto:Amanda_Kaster); [Matthew Quinn](mailto:Matthew_Quinn)  
**Subject:** Re: Secretary Zinke Statement in Support of President Trump's American Energy Executive Order  
**Date:** Tuesday, March 28, 2017 3:51:39 PM

---

I've sent it to staff leads on HNR and SENR a few key staff.

On Tue, Mar 28, 2017 at 3:02 PM, Ralston, Jill <[jralston@blm.gov](mailto:jralston@blm.gov)> wrote:

Hi All,

Just confirming that OCL is handling the Hill outreach for this press release. Let me know if you need us to do anything.

Thanks!!

Jill Ralston  
Legislative Affairs  
Bureau of Land Management  
Phone: (202) 912-7173  
Cell: (202) 577-4299

----- Forwarded message -----

**From:** U.S. Department of the Interior <[interior\\_news@updates.interior.gov](mailto:interior_news@updates.interior.gov)>  
**Date:** Tue, Mar 28, 2017 at 2:15 PM  
**Subject:** Secretary Zinke Statement in Support of President Trump's American Energy Executive Order  
**To:** [mrallen@blm.gov](mailto:mrallen@blm.gov)

news release



Date: March 28, 2017  
Contact: [Interior\\_Press@ios.doi.gov](mailto:Interior_Press@ios.doi.gov)

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--

Matthew R. Allen  
Assistant Director for Communications  
Bureau of Land Management  
Washington, D.C.  
o: 202-208-5207  
m: 202-875-3744  
[mrallen@blm.gov](mailto:mrallen@blm.gov)

--

Patrick Wilkinson  
U.S. Department of the Interior  
Bureau of Land Management  
Legislative Affairs Division (WO 620)  
Phone: (202) 912-7429  
Fax: (202) 245-0050

--

Micah Chambers  
Special Assistant / Acting Director  
Office of Congressional & Legislative Affairs  
Office of the Secretary of the Interior

**From:** Ralston, Jill  
**To:** [Christopher Salotti](#); [Micah Chambers](#); [Amanda Kaster](#); [Matthew Quinn](#)  
**Subject:** Fwd: Secretary Zinke Statement in Support of President Trump's American Energy Executive Order  
**Date:** Tuesday, March 28, 2017 3:03:06 PM

---

Hi All,

Just confirming that OCL is handling the Hill outreach for this press release. Let me know if you need us to do anything.

Thanks!!  
Jill Ralston  
Legislative Affairs  
Bureau of Land Management  
Phone: (202) 912-7173  
Cell: (202) 577-4299

----- Forwarded message -----

**From:** U.S. Department of the Interior <[interior\\_news@updates.interior.gov](mailto:interior_news@updates.interior.gov)>  
**Date:** Tue, Mar 28, 2017 at 2:15 PM  
**Subject:** Secretary Zinke Statement in Support of President Trump's American Energy Executive Order  
**To:** [mrallen@blm.gov](mailto:mrallen@blm.gov)

news release



Date: March 28, 2017  
Contact: [Interior\\_Press@ios.doi.gov](mailto:Interior_Press@ios.doi.gov)

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#



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Matthew R. Allen  
Assistant Director for Communications  
Bureau of Land Management  
Washington, D.C.  
o: 202-208-5207  
m: 202-875-3744  
[mrallen@blm.gov](mailto:mrallen@blm.gov)

--

Patrick Wilkinson  
U.S. Department of the Interior  
Bureau of Land Management  
Legislative Affairs Division (WO 620)  
Phone: (202) 912-7429  
Fax: (202) 245-0050

**From:** Williams, Timothy  
**To:** [Cynthia Moses-Nedd](mailto:Cynthia.Moses-Nedd)  
**Subject:** Fwd: Secretary Zinke Statement in Support of President Trump's American Energy Executive Order: TEST  
**Date:** Tuesday, March 28, 2017 1:01:14 PM

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news release

<[https://content.govdelivery.com/attachments/fancy\\_images/USDOJ/2015/11/667494/press-release-header3-original\\_original.jpg](https://content.govdelivery.com/attachments/fancy_images/USDOJ/2015/11/667494/press-release-header3-original_original.jpg)>

Date: March 28, 2017

Contact: Interior\_Press@ios.doi.gov

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###

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Department Of The Interior  
External and Intergovernmental Affairs  
Timothy Williams  
timothy\_williams@ios.doi.gov  
Office: (202) 208-6015  
Cell: (202) 706-4982

--

Department Of The Interior  
External and Intergovernmental Affairs  
Timothy Williams  
timothy\_williams@ios.doi.gov  
Office: (202) 208-6015  
Cell: (202) 706-4982

**From:** Swift, Heather  
**To:** [Micah Chambers](#); [Amanda Kaster](#); [Megan Bloomgren](#); [Timothy Williams](#); [Cynthia Moses-Nedd](#)  
**Subject:** Fwd: Secretary Zinke Statement in Support of President Trump's American Energy Executive Order: TEST  
**Date:** Tuesday, March 28, 2017 10:19:29 AM

---

This is the final statement that will go out at 2:15 PM - Please share with relevant stakeholders around 1PM EMBARGOED for 2:15.

-  
Heather Swift  
Department of the Interior  
[@DOIPressSec](#)  
[Heather\\_Swift@ios.doi.gov](mailto:Heather_Swift@ios.doi.gov) | [Interior\\_Press@ios.doi.gov](mailto:Interior_Press@ios.doi.gov)

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**From:** U.S. Department of the Interior <[interior\\_news@updates.interior.gov](mailto:interior_news@updates.interior.gov)>  
**Date:** Tue, Mar 28, 2017 at 9:54 AM  
**Subject:** Secretary Zinke Statement in Support of President Trump's American Energy Executive Order: TEST  
**To:** [nathan\\_adams@ios.doi.gov](mailto:nathan_adams@ios.doi.gov), [heather\\_swift@ios.doi.gov](mailto:heather_swift@ios.doi.gov)

news release



Date: March 28, 2017  
Contact: [Interior\\_Press@ios.doi.gov](mailto:Interior_Press@ios.doi.gov)

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**From:** Magallanes, Downey  
**To:** [Katharine Macgregor](mailto:Katharine.Macgregor)  
**Subject:** Fwd: Site Security Rule - Congressional Review Act  
**Date:** Wednesday, February 08, 2017 5:39:06 PM  
**Attachments:** [ATT00001.htm](#)  
[BILLS-115hjres56ih.pdf](#)

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----- Forwarded message -----

From: Karen Hawbecker <karen.hawbecker@sol.doi.gov>  
Date: Tue, Feb 7, 2017 at 5:01 PM  
Subject: Fwd: Site Security Rule - Congressional Review Act  
To: Jack Haugrud <jack.haugrud@sol.doi.gov>, Edward T Keable <edward.keable@sol.doi.gov>, james\_schindler@ios.doi.gov, downey\_magallanes@ios.doi.gov

FYI--a CRA bill has been offered in the House that would repeal BLM's "Onshore Order 3" rule related to site security.

Sent from my iPad

Begin forwarded message:

From: "Rhymes, Christopher" <christopher.rhymes@sol.doi.gov <<mailto:christopher.rhymes@sol.doi.gov>> >  
Date: February 7, 2017 at 4:56:00 PM EST  
To: Michael Wade <mwade@blm.gov>, Richard Estabrook <restabro@blm.gov>  
Cc: Michael McLaren <mmclaren@blm.gov>, "McNeer, Richard" <richard.mcneer@sol.doi.gov>, Karen Hawbecker <karen.hawbecker@sol.doi.gov>  
Subject: Site Security Rule - Congressional Review Act

Mike and Rich,

I just saw today that a Congressional Review Act bill has been filed in the House seeking to repeal of the site security rule. See attached. If this bill passes the House and the Senate, and is signed by the President, then it would repeal the site security rule in its entirety (subpart 3173, subpart 3170, and the amendments to the part 3160 regulations).

The bill has been referred to the House Natural Resources Committee. I do not know how likely this legislation is to pass.

Please let me know if you have any questions.

Chris

--

Christopher M. Rhymes | Attorney-Advisor, Division of Mineral Resources  
Office of the Solicitor | United States Department of the Interior  
1849 C Street NW, #5354 | Washington, DC 20240  
Phone: (202) 208-4307 | Email: christopher.rhymes@sol.doi.gov

--

Downey Magallanes  
Office of the Secretary

[downey\\_magallanes@ios.doi.gov](mailto:downey_magallanes@ios.doi.gov)  
202-501-0654 (desk)  
202-706-9199 (cell)

115TH CONGRESS  
1ST SESSION

# H. J. RES. 56

Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the final rule of the Bureau of Land Management relating to “Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Site Security”.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 2017

Mr. PEARCE (for himself, Mr. GOSAR, Mr. STEWART, Mrs. RADEWAGEN, Mr. CRAMER, Mr. GOHMERT, Mr. NEWHOUSE, Mr. BIGGS, Mr. WESTERMAN, and Mr. LAMBORN) submitted the following joint resolution; which was referred to the Committee on Natural Resources

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## JOINT RESOLUTION

Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the final rule of the Bureau of Land Management relating to “Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Site Security”.

- 1 *Resolved by the Senate and House of Representatives*
- 2 *of the United States of America in Congress assembled,*
- 3 That Congress disapproves the rule submitted by the Bu-
- 4 reau of Land Management relating to “Onshore Oil and
- 5 Gas Operations; Federal and Indian Oil and Gas Leases;

1 Site Security’ (81 Fed. Reg. 81356 (November 17,  
2 2016)), and such rule shall have no force or effect.

○

**From:** Kaster, Amanda  
**To:** [Rees, Gareth](#)  
**Subject:** Re: Today's Prep Session with the Secretary  
**Date:** Monday, March 06, 2017 10:22:00 AM  
**Attachments:** [SCIA Member Pages Revised 3-6-17.docx](#)

---

Great, thank you.

Also, here's the final revised version.

On Mon, Mar 6, 2017 at 9:45 AM, Rees, Gareth <[gareth\\_rees@ios.doi.gov](mailto:gareth_rees@ios.doi.gov)> wrote:

Thanks Amanda. I expect he will join for the first 30

On Mon, Mar 6, 2017 at 9:10 AM, Kaster, Amanda <[amanda\\_kaster@ios.doi.gov](mailto:amanda_kaster@ios.doi.gov)> wrote:

This has been bumped to 11am due to a last minute change in the Secretary's schedule. I'm not certain whether or not Jim can still attend, but I wanted to send along the revised Member Profiles I sent last night.

--

Amanda Kaster-Averill  
Special Assistant  
Office of Congressional and Legislative Affairs  
U.S. Department of the Interior

(202) 208-3337  
[amanda\\_kaster@ios.doi.gov](mailto:amanda_kaster@ios.doi.gov) <[mailto:amanda\\_kaster@ios.doi.gov](mailto:amanda_kaster@ios.doi.gov)>

--

Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

Cell: 202-957-8299

--

Amanda Kaster-Averill  
Special Assistant  
Office of Congressional and Legislative Affairs  
U.S. Department of the Interior

(202) 208-3337  
[amanda\\_kaster@ios.doi.gov](mailto:amanda_kaster@ios.doi.gov)

# SENATE COMMITTEE ON INDIAN AFFAIRS MEMBER PAGES FOR THE 115<sup>TH</sup> CONGRESS

## MAJORITY MEMBERS:



*John Hoeven* (ND), Chairman

\*\*\*voted for you

**4** tribes (Spirit Lake Tribe; Three Affiliated Tribes of the Fort Berthold Reservation; Standing Rock Sioux Tribe of North & South Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota)

**12** Bureau of Indian Education schools

### Likely Key Issues for Indian Country:

- Continued support of BIA Law Enforcement re: DAPL;
- Infrastructure issues in Indian Country (energy, water, broadband, etc.);
- 2017 G.A.O. High Risk Report and BIE schools.

### Indian Affairs related issues/questions asked at ENR confirmation hearing:

- Support for completion of the DAPL project—specifically for increased assistance from BIA law enforcement support. (\*Note: BIA held several calls with the Senator and his staff and subsequently sent additional BIA law enforcement to help with on-reservation issues).

### Recent Press Releases regarding Indian Country:

- 2/15/2017 - Corps to send cleanup crew to DAPL site this week:  
<https://www.hoeven.senate.gov/news/news-releases/hoeven-corps-to-send-cleanup-crew-to-dapl-site-this-week>
- 2/08/2017 – Statement on the Corps issuing final easement for Dakota Access Pipeline: <https://www.hoeven.senate.gov/news/news-releases/hoeven-statement-on-the-corps-issuing-the-final-easement-for-dakota-access-pipeline>
- 1/27/2017 – Hoeven announces additional BIA federal law enforcement officers are headed to ND to help state and local offices (DAPL):  
<https://www.hoeven.senate.gov/news/news-releases/hoeven-announces-additional-bia-federal-law-enforcement-officers-headed-to-nd-to-help-state-and-local-officers>

### Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 245 Indian Tribal Energy Development and Self-Determination Act Amendments of 2017.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*John Barrasso* (WY) – Previous Indian Affairs Chairman

\*\*\*voted for you

2 tribes (Shoshone & Arapaho Tribes)

Likely Key Issues for Indian Country:

- Energy development;
- Dam and Irrigation repairs, maintenance and projects (DRIFT and IRRIGATE acts were passed in the WIIN Act) as part of overall infrastructure conversation;
- BIE Reform;
- Self-determination and sovereignty.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- Didn't directly mention Crow Nation but did talk about ending the moratorium on coal;
- BIA—a general mention that the Dept. will need to give BIA significant attention.

Recent Press Releases regarding Indian Country:

- 02/18/2017 – Senate Committee Passes John P. Smith Act to Improve Safety on Tribal Roads: <https://www.barrasso.senate.gov/public/index.cfm/news-releases?ID=78EB34F7-9319-409E-841F-8BC645D3CE6F>
- 01/24/2017 – Barrasso Statement on Keystone and Dakota Access Pipeline Executive Orders: <https://www.barrasso.senate.gov/public/index.cfm/news-releases?ID=9C97EB1B-A140-492D-8C72-B365F4625852>

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 302 John P. Smith Act – to Improve Safety on Tribal Roads;
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*John McCain (AZ)* – Former Chairman

\*\*\*voted for you

**21** tribes

**54** BIE schools

Likely Key Issues for Indian Country:

- Indian Gaming Regulatory Act (IGRA) and off-reservation gaming (Tohono Oodham tribal gaming issue);
- Indian water settlements, specifically the Navajo and Hopi Little Colorado River settlement;
- The future of the Navajo Generating Station (NGS);
- BIE reform—in favor of a voucher like system for AZ Indian students.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- N/A, not on SENR.

Recent Press Releases regarding Indian Country:

- 02/15/2017 – Statement by SASC Chairman John McCain on GAO’s High Risk List: <http://www.mccain.senate.gov/public/index.cfm/press-releases?ID=BE5CF750-4CD2-40AA-A296-3A1F1E9996FD>

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 140 (Co-Sponsored (Flake’s Bill)) A bill to amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to clarify the use of amounts in the WMAT Settlement Fund.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.

Recent Letter to Navajo and Hopi Tribes:

- 02/14/2017--Letter from Senator McCain asking Navajo and Hopi to work on a Little Colorado River settlement this year. This settlement has been stalled since the two tribes rejected a settlement bill introduced by Senator Kyl. This may end up being linked somehow to NGS closure issues. Meetings attended by Pam Williams, Director of SIWRO, Navajo has requested that it be awarded the water currently used by NGS. SIWRO will work on a briefing paper on this issue.
- <file:///C:/Users/tgoodluck/Downloads/170214%20JSM%20letter%20to%20Navajo%20and%20Hopi%20water%20settlement.pdf>



*Lisa Murkowski (AK)*

\*\*\*voted for you

## **229** Alaska Native Tribes/Villages

### Likely Key Issues for Indian Country:

- King Cove access road;
- Native Veteran's issues, particularly Vietnam veterans;
- Health care;
- Resource development and ways for BIA to be more helpful in the process.

### Indian Affairs related issues/questions asked at confirmation hearing:

- Asked for support of the King Cove access road.

### Recent Press Releases regarding Indian Country:

- 02/08/2017 - Two Murkowski Bills Pass Senate Indian Affairs Committee:  
<https://www.murkowski.senate.gov/press/release/two-murkowski-bills-pass-senate-indian-affairs-committee>
- 01/31/2017- Committee Approves Nominees for Energy, Interior Secretary:  
<https://www.murkowski.senate.gov/press/release/committee-approves-nominees-for-energy-interior-secretary->

### Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 91 Indian Employment, Training and Related Services Act of 2017;
  - 02/08/2017 Marked-up and reported out of SCIA favorably.
- S. 269 A bill to provide for the conveyance of certain property to the Tanana Tribal Council located in Tanana, Alaska, and to the Bristol Bay Area Health Corporation located in Dillingham, Alaska, and for other purposes. (NOTE: IHS related bill);
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*James Lankford (OK)*

\*\*\*voted for you

**38** tribes

**5** BIE schools

Likely Key Issues for Indian Country:

- Note: DO NOT mention T.W. Shannon. He was Lankford's primary opponent in 2014;
- Land into Trust, off reservation gaming. Did not like the recent decision to approve off reservation gaming facility;
- Energy development for Indian Country;
- Sovereignty and tribal consultation;
- General BIE Issues:
  - Johnson-O'Malley (JOM) program funds which are used for programs ranging from language and culture to dropout prevention;
  - 2017 G.A.O. High Risk report and BIE schools with a likely emphasis on school infrastructure.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- N/A, not on SENR.

Recent Press Releases regarding Indian Country:

- 02/08/2017 Senator Lankford Cosponsors Bill to Repeal Antiquated Laws Directed Toward Native Americans: <https://www.lankford.senate.gov/news/press-releases/senator-lankford-cosponsors-bill-to-repeal-antiquated-laws-directed-toward-native-americans>
- 01/24/2017 – Senator Lankford Statement on Keystone XL and Dakota Access Executive Actions: <https://www.lankford.senate.gov/news/press-releases/senator-lankford-statement-on-keystone-xl-and-dakota-access-executive-actions>

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 343- Respect Act- Repealing Existing Substandard Provisions Encouraging Conciliation with Tribes Act.



*Steve Daines (MT)*

\*\*\*voted for you

**8** tribes (Blackfeet Tribe, Chippewa Cree Tribe of the Rocky Boy's Reservation, Confederated Salish & Kootenai Tribes, Crow Tribe, Fort Belknap Tribes of the Fort Belknap Reservation, Fort Peck Tribes, Northern Cheyenne Tribe, Little Shell Chippewa Tribe)

**3** BIE schools

Likely Key Issues for Indian Country:

- Energy development in Indian Country, with an emphasis on the BIA's struggle to assist Tribes in the development process
- Respect for sovereignty and self-determination;
- Indian Water Settlements (emphasis on Blackfeet Water Rights Settlement), specifically requesting how to fund them;
- Healthcare needs in Indian Country.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- Economic Development in Indian Country;
- Blackfeet Water Rights Settlement/Indian Water Settlements.

Recent Press Releases regarding Indian Country:

- 02/08/2017 – Daines: Little Shell Recognition Moves Forward:  
<https://www.daines.senate.gov/news/press-releases/daines-little-shell-recognition-moves-forward>

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 39 Little Shell Tribe of Chippewa Indians Restoration Act of 2017 (Co-sponsored with Senator Tester).
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*Mike Crapo* (ID)

\*\*\*voted for you

**4** tribes (Coeur D'Alene Tribe; Idaho Kootenai Tribe; Nez Perce Tribe; Shoshone-Bannock Tribes of the Fort Hall Reservation)

**2** BIE schools

Likely Key Issues for Indian Country: (hasn't been very active on the Committee)

- Energy development as a source of economic opportunity;
- General support of tribal sovereignty;
- Tribal consultation and border security measures;
- Healthcare needs in Indian Country.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- N/A, not on SENR

Recent Press Releases regarding Indian Country:

- N/A

Introduced Legislation in the 115<sup>th</sup> Congress:

- N/A.



*Jerry Moran (KS)*

\*\*\*voted for you

**4** tribes (Kickapoo Tribe of Indians of the Kickapoo Reservation; Prairie Band of Potawatomi Nation; Iowa Tribe of Kansas and Nebraska; Sac & Fox Nation of Missouri in Kansas and Nebraska)

**1** BIE school

Likely Key Issues for Indian Country:

- Energy development opportunities;
- General support for tribal sovereignty;
  - Has moved legislation that would exempt Indian Tribes from the National Labor Relations Act;
  - You cosponsored this legislation while in the House.
- Native Veteran's issues.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- N/A, not on SENR

Recent Press Releases regarding Indian Country:

- N/A.

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 63 Tribal Labor Sovereignty Act of 2017.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.

## MINORITY MEMBERS



*Tom Udall* (NM), Vice Chairman  
\*\*\*voted for you

**23** tribes

**44** BIE schools

### Likely Key Issues for Indian Country:

- Indian self-determination;
- Sovereignty and consultation, with an emphasis on DAPL;
  - Supports Standing Rock Sioux Tribe on the issue.
- BIE and education issues broadly, with a focus on the impact of the hiring freeze on BIE schools;
- Indian water settlements;
- Use of BIA officers from New Mexico in ND for DAPL;
- Bears Ears—supports monument and the Tribes’ ability to co-manage the area;
- Native American cultural preservation issues;
- Stopping cultural patrimony from being taken from the tribal communities.

### Indian Affairs related issues/questions asked at confirmation hearing:

- N/A, not on SENR

### Recent Press Releases regarding Indian Country:

- 02/17/2017 – Senate Indian Affairs Committee Democrats Secure Exemption from Federal Hiring Freeze for Indian Health Services Staff:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2576](https://www.tomudall.senate.gov/?p=press_release&id=2576)
- 02/09/2017 – Udall: Trump Should Make Good on Federal Government’s Promise to Tribes Protesting Dakota Access Pipeline:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2556](https://www.tomudall.senate.gov/?p=press_release&id=2556)
- 02/01/2017 – Senate Indian Affairs Committee Democrats Urge President Trump to Exempt Indian Services Agencies from Federal Hiring Freeze:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2537](https://www.tomudall.senate.gov/?p=press_release&id=2537)
- 01/31/2017 – Udall Outlines Priorities for Senate Committee on Indian Affairs for the New Congress: [https://www.tomudall.senate.gov/?p=press\\_release&id=2534](https://www.tomudall.senate.gov/?p=press_release&id=2534)
- 01/24/2017 – Udall Statement on Trump Executive Orders Advancing Dakota Access, Keystone XL Pipelines:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2521](https://www.tomudall.senate.gov/?p=press_release&id=2521)
- 01/19/2017 – Udall Statement after Meeting with Rep. Ryan Zinke, Trump’s Nominee for Interior Secretary:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2516](https://www.tomudall.senate.gov/?p=press_release&id=2516)

### Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 254 Esther Martinez Native American Languages Preservation Act.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.
- S. 249 A bill to allow for the Santa Clara Pueblo to lease for 99 years.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*Maria Cantwell (WA)*

\*\*\*did not vote for you

**29** tribes

**7** BIE schools

Likely Key Issues for Indian Country:

- Indian gaming;
- Timber;
- Impact of forest fires on Indian land;
- Tribal sovereignty and self-determination;
- Economic development outside of fossil fuels;
- VAWA issues—protection of Native women who are victims of domestic abuse
  - You introduced resolution w/ Montana delegation to designate May 5, 2017, as a National Day of Awareness for Missing and Murdered Native Women and Girls.
- Tribal jurisdictional issues (i.e. Tribes authority on reservation land over non-Indians).

Indian Affairs related issues/questions asked at confirmation hearing:

- Lummi Nation’s right to object to Gateway Pacific Terminal in Washington state based on their fishing rights;
- Tribal sovereignty and tribes’ abilities to exercise their right to object based on treaty and sovereignty rights;
- Spokane Equitable Settlement Compensation Act---passed House and Senate in the 114<sup>th</sup>. Wants support of DOI in this Administration on this settlement, which provides for equitable relief from the flooding that occurred as a result of dams being constructed.)

Recent Press Releases regarding Indian Country:

- 02/07/2017 – Senate, House Natural Resource Leaders Blast Dakota Access Pipeline Decision, Stand up for Tribal Sovereignty and Treaty Rights: <https://www.cantwell.senate.gov/news/press-releases/senate-house-natural-resource-leaders-blast-dakota-access-pipeline-decision-stand-up-for-tribal-sovereignty-and-treaty-rights>
- 02/01/2017 – Dakota Access: Cantwell, Tester, Udall, Call on Feds to Consult with Tribes, Follow the Rule of Law before Moving Forward on Oil Pipeline: <https://www.cantwell.senate.gov/news/press-releases/dakota-access-cantwell-tester-udall-call-on-feds-to-consult-with-tribes-follow-the-rule-of-law-before-moving-forward-on-oil-pipeline>

Introduced Legislation in the 115th Congress:

- N/A.



*Jon Tester* (MT) – Former Chairman

\*\*\*voted for you

**8** tribes (Blackfeet Tribe, Chippewa Cree Tribe of the Rocky Boy's Reservation, Confederated Salish & Kootenai Tribes, Crow Tribe, Fort Belknap Tribes of the Fort Belknap Reservation, Fort Peck Tribes, Northern Cheyenne Tribe, Little Shell Chippewa Tribe)

**3** BIE schools

Likely Key Issues for Indian Country:

- Indian water settlements, both in terms of funding (Blackfeet) and pending compacts in Montana (CSKT, Fort Belknap);
- Federal recognition for Little Shell;
- General questions about potential BIE reforms, next steps;
- Self-determination and tribal sovereignty;
- Trust obligation of the federal government to Indian tribes;
- Tribal consultation;
- Access to quality health care;
- Improving transportation in Indian Country, with a direct tie to potential infrastructure opportunities;
- Honoring American Indian Veterans;
- VAWA—Save Native Women Act (VAWA is up for reauthorization soon);
- Tribal Law and Order to address on reservation issues (drug trade, domestic violence, etc).

Indian Affairs related issues/questions asked at confirmation hearing:

- N/A, not on SENR

Recent Press Releases regarding Indian Country:

- 02/20/2017 – Tester Announces Legislation to Strengthen Education for Rural Students, Montana Veterans, Native Americans:  
[http://www.testersenate.gov/?p=press\\_release&id=5019](http://www.testersenate.gov/?p=press_release&id=5019)
- 02/15/2017 – Tester, Udall Fight Veteran Homelessness in Indian Country:  
[http://www.testersenate.gov/?p=press\\_release&id=5008](http://www.testersenate.gov/?p=press_release&id=5008)
- 02/07/2017- Tester, Daines Lead Effort to Dedicate Feb 5-11 National Tribal Colleges and Universities Week:  
[http://www.testersenate.gov/?p=press\\_release&id=4994](http://www.testersenate.gov/?p=press_release&id=4994)
- 01/31/2017 – Tester Statement on Congressman Zinke's Nomination Vote:  
[http://www.testersenate.gov/?p=press\\_release&id=4979](http://www.testersenate.gov/?p=press_release&id=4979)

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 39 Little Shell Tribe of Chippewa Indians Restoration Act of 2017
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*Al Franken (MN)*

\*\*\*did not vote for you

**12** tribes

**4** BIE schools

Likely Key Issues for Indian Country:

- Education:
  - BIE reforms in light of the 2017 GAO High Risk Report;
  - New school construction (Bug School);
  - BIE's place in the Administration's infrastructure investments;
  - Impact of the hiring freeze on BIE;
  - Pending budget and the impact on BIE schools.
- DAPL and other pending energy specific projects and tribal consultation;
  - 03/01/2017: Sent letter to FBI Director Comey about reports that FBI's Joint Terrorism Task Force attempted to question at least three DAPL protestors – he wants justifications for those actions and assurance constitutional rights were not infringed upon.
- Indian Health;
- Human Trafficking;
- The fate of climate change programs in Indian Affairs and the Administration's budget;
- Crime on Indian reservations.

Indian Affairs related issues/questions asked at confirmation hearing:

- Didn't ask specific Q re: Indian Affairs at the hearing.

Recent Press Releases regarding Indian Country:

- N/A.

Introduced Legislation in the 115<sup>th</sup> Congress:

- N/A.



*Brian Schatz (HI)*  
\*\*\*did not vote for you

Likely Key Issues for Indian Country:

- Continued support for Native Hawaiian recognition;
  - 09/23/2016: DOI issued a final rule to establish procedures to engage in a government-to-government relationship with the Native Hawaiian community.
- Native Hawaiian's lack of self-determination compared to American Indians and Alaska Natives;
- Native language preservation and funding support for Hawaiian language programs;
- Continued support for Native Hawaiians (over 100 specific laws that impact Native Hawaiians that place them in similar situation as Native Americans);
- Native Tourism---recent bill signed into law by former President Obama;
- Climate change and Indian Affairs programs.

Indian Affairs related issues/questions asked at confirmation hearing:

- N/A, not on SENR.

Recent Press Releases regarding Indian Country:

- 01/24/2017 – Schatz Statement on Keystone XL, Dakota Access Pipeline:  
<http://www.schatz.senate.gov/press-releases/schatz-statement-on-keystone-xl-dakota-access-pipelines>

Introduced Legislation in the 115th Congress:

- N/A.



*Heidi Heitkamp* (ND)

\*\*\*voted for you

**4** tribes (Spirit Lake Tribe; Three Affiliated Tribes of the Fort Berthold Reservation; Standing Rock Sioux Tribe of North & South Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota)

**12** BIE schools

Likely Key Issues for Indian Country:

- Tribal energy development opportunities (emphasis on all-of-the-above approach);
- Public safety in Indian Country;
- BIE systemic issues and potential reforms;
  - Support for Johnson-O'Malley (JOM) program funds which are used for programs ranging from language and culture to dropout prevention;
- Native Veterans issues;
- Sovereignty and self-determination/tribal consultation;
- Reauthorization of VAWA;
- Bringing fairness of the tax code for federal governments
- Tribal housing, infrastructure, and investment.

Indian Affairs related issues/questions asked at confirmation hearing:

N/A, not on SENR.

Recent Press Releases regarding Indian Country:

- 02/16/2017 – Heitkamp Announces Support for Nominees to Lead Energy, Interior, EPA: <http://www.heitkamp.senate.gov/public/index.cfm/press-releases?ID=C398AF52-943C-449F-973B-0AD0DAAC7A5B>
- 02/07/2017 – Heitkamp Statement on Army Corps of Engineers Intent to Issue Dakota Access Pipeline Easement: <http://www.heitkamp.senate.gov/public/index.cfm/press-releases?ID=02B22609-0098-45AA-B76C-4916B62EB546>
- 02/03/2017 – Heitkamp Announces Federal Law Enforcement Assistance for Standing Rock Protest Site: <http://www.heitkamp.senate.gov/public/index.cfm/press-releases?ID=CEA75937-171F-47B1-BFF8-7B7BDCBB1E89>

Introduced Legislation in the 115<sup>th</sup> Congress:

- Co-sponsor to several of the 8 pending SCIA bills.



*Catherine Cortez Masto (NV)*

\*\*\*voted for you

**32** tribes

**2** BIE schools

Likely Key Issues for Indian Country:

- Tribal sovereignty;
- DAPL, tribal consultation, and the US's trust responsibilities,
- Indian water rights;
- Impact of energy development on tribal lands;
- Impact of the federal hiring freeze on American Indian, Alaska Natives, and Indian Affairs programs.

Indian Affairs related issues/questions asked at confirmation hearing:

- Tribal sovereignty in general; consultation—tribes having a seat at the table when it comes to decisions, activities and land management near their communities.

Recent Press Releases regarding Indian Country:

- 02/08/2017 – Cortez Masto Joins Letter Blasting Dakota Access Pipeline Decision, Calling on Trump Administration to Stand up for Tribal Sovereignty and Treaty Rights: <https://www.cortezmasto.senate.gov/content/cortez-masto-joins-letter-blasting-dakota-access-pipeline-decision-calling-trump>
- 02/01/2017 – Cortez Masto and Senate Indian Affairs Committee Democrats Urge President Trump to Exempt Indian Services Agencies from Federal Hiring Freeze: <https://www.cortezmasto.senate.gov/content/cortez-masto-and-senate-indian-affairs-committee-democrats-urge-president-trump-exempt>
- 01/31/2017 – Cortez Masto Statement on Department of Interior Nominee Rep. Ryan Zinke: <https://www.cortezmasto.senate.gov/content/cortez-masto-statement-department-interior-nominee-rep-ryan-zinke>

Introduced Legislation in the 115<sup>th</sup> Congress:

- N/A.

**From:** Kaster, Amanda  
**To:** [Gareth Rees](#)  
**Subject:** Today's Prep Session with the Secretary  
**Date:** Monday, March 06, 2017 9:11:16 AM  
**Attachments:** [SCIA Member Pages Revised 3-6-17.docx](#)

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This has been bumped to 11 am due to a last minute change in the Secretary's schedule. I'm not certain whether or not Jim can still attend, but I wanted to send along the revised Member Profiles I sent last night.

--

Amanda Kaster-Averill  
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Office of Congressional and Legislative Affairs  
U.S. Department of the Interior

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# SENATE COMMITTEE ON INDIAN AFFAIRS MEMBER PAGES FOR THE 115<sup>TH</sup> CONGRESS

## MAJORITY MEMBERS:



*John Hoeven* (ND), Chairman

**4** tribes (Spirit Lake Tribe; Three Affiliated Tribes of the Fort Berthold Reservation; Standing Rock Sioux Tribe of North & South Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota)

**12** Bureau of Indian Education schools

### Likely Key Issues for Indian Country:

- Continued support of BIA Law Enforcement re: DAPL;
- Infrastructure issues in Indian Country (energy, water, broadband, etc.);
- 2017 G.A.O. High Risk Report and BIE schools.

### Indian Affairs related issues/questions asked at ENR confirmation hearing:

- Support for completion of the DAPL project—specifically for increased assistance from BIA law enforcement support. (\*Note: BIA held several calls with the Senator and his staff and subsequently sent additional BIA law enforcement to help with on-reservation issues).

### Recent Press Releases regarding Indian Country:

- 2/15/2017 - Corps to send cleanup crew to DAPL site this week: <https://www.hoeven.senate.gov/news/news-releases/hoeven-corps-to-send-cleanup-crew-to-dapl-site-this-week>
- 2/08/2017 – Statement on the Corps issuing final easement for Dakota Access Pipeline: <https://www.hoeven.senate.gov/news/news-releases/hoeven-statement-on-the-corps-issuing-the-final-easement-for-dakota-access-pipeline>
- 1/27/2017 – Hoeven announces additional BIA federal law enforcement officers are headed to ND to help state and local offices (DAPL): <https://www.hoeven.senate.gov/news/news-releases/hoeven-announces-additional-bia-federal-law-enforcement-officers-headed-to-nd-to-help-state-and-local-officers>

### Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 245 Indian Tribal Energy Development and Self-Determination Act Amendments of 2017.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*John Barrasso* (WY) – Previous Indian Affairs Chairman

2 tribes (Shoshone & Arapaho Tribes)

Likely Key Issues for Indian Country:

- Energy development;
- Dam and Irrigation repairs, maintenance and projects (DRIFT and IRRIGATE acts were passed in the WIIN Act) as part of overall infrastructure conversation;
- BIE Reform;
- Self-determination and sovereignty.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- Didn't directly mention Crow Nation but did talk about ending the moratorium on coal;
- BIA—a general mention that the Dept. will need to give BIA significant attention.

Recent Press Releases regarding Indian Country:

- 02/18/2017 – Senate Committee Passes John P. Smith Act to Improve Safety on Tribal Roads: <https://www.barrasso.senate.gov/public/index.cfm/news-releases?ID=78EB34F7-9319-409E-841F-8BC645D3CE6F>
- 01/24/2017 – Barrasso Statement on Keystone and Dakota Access Pipeline Executive Orders: <https://www.barrasso.senate.gov/public/index.cfm/news-releases?ID=9C97EB1B-A140-492D-8C72-B365F4625852>

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 302 John P. Smith Act – to Improve Safety on Tribal Roads;
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*John McCain (AZ) – Former Chairman*

**21** tribes

**54** BIE schools

Likely Key Issues for Indian Country:

- Indian Gaming Regulatory Act (IGRA) and off-reservation gaming (Tohono Oodham tribal gaming issue);
- Indian water settlements, specifically the Navajo and Hopi Little Colorado River settlement;
- The future of the Navajo Generating Station (NGS);
- BIE reform—in favor of a voucher like system for AZ Indian students.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- N/A, not on SENR.

Recent Press Releases regarding Indian Country:

- 02/15/2017 – Statement by SASC Chairman John McCain on GAO’s High Risk List: <http://www.mccain.senate.gov/public/index.cfm/press-releases?ID=BE5CF750-4CD2-40AA-A296-3A1F1E9996FD>

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 140 (Co-Sponsored (Flake’s Bill)) A bill to amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to clarify the use of amounts in the WMAT Settlement Fund.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.

Recent Letter to Navajo and Hopi Tribes:

- 02/14/2017--Letter from Senator McCain asking Navajo and Hopi to work on a Little Colorado River settlement this year. This settlement has been stalled since the two tribes rejected a settlement bill introduced by Senator Kyl. This may end up being linked somehow to NGS closure issues. Meetings attended by Pam Williams, Director of SIWRO, Navajo has requested that it be awarded the water currently used by NGS. SIWRO will work on a briefing paper on this issue.
- <file:///C:/Users/tgoodluck/Downloads/170214%20JSM%20letter%20to%20Navajo%20and%20Hopi%20water%20settlement.pdf>



*Lisa Murkowski (AK)*

**229** Alaska Native Tribes/Villages

Likely Key Issues for Indian Country:

- King Cove access road;
- Native Veteran's issues, particularly Vietnam veterans;
- Health care;
- Resource development and ways for BIA to be more helpful in the process.

Indian Affairs related issues/questions asked at confirmation hearing:

- Asked for support of the King Cove access road.

Recent Press Releases regarding Indian Country:

- 02/08/2017 - Two Murkowski Bills Pass Senate Indian Affairs Committee:  
<https://www.murkowski.senate.gov/press/release/two-murkowski-bills-pass-senate-indian-affairs-committee>
- 01/31/2017- Committee Approves Nominees for Energy, Interior Secretary:  
<https://www.murkowski.senate.gov/press/release/committee-approves-nominees-for-energy-interior-secretary->

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 91 Indian Employment, Training and Related Services Act of 2017;
  - 02/08/2017 Marked-up and reported out of SCIA favorably.
- S. 269 A bill to provide for the conveyance of certain property to the Tanana Tribal Council located in Tanana, Alaska, and to the Bristol Bay Area Health Corporation located in Dillingham, Alaska, and for other purposes. (NOTE: IHS related bill);
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*James Lankford (OK)*

**38** tribes

**5** BIE schools

Likely Key Issues for Indian Country:

- Note: DO NOT mention T.W. Shannon. He was Lankford's primary opponent in 2014;
- Land into Trust, off reservation gaming. Did not like the recent decision to approve off reservation gaming facility;
- Energy development for Indian Country;
- Sovereignty and tribal consultation;
- General BIE Issues:
  - Johnson-O'Malley (JOM) program funds which are used for programs ranging from language and culture to dropout prevention;
  - 2017 G.A.O. High Risk report and BIE schools with a likely emphasis on school infrastructure.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- N/A, not on SENR.

Recent Press Releases regarding Indian Country:

- 02/08/2017 Senator Lankford Cosponsors Bill to Repeal Antiquated Laws Directed Toward Native Americans: <https://www.lankford.senate.gov/news/press-releases/senator-lankford-cosponsors-bill-to-repeal-antiquated-laws-directed-toward-native-americans>
- 01/24/2017 – Senator Lankford Statement on Keystone XL and Dakota Access Executive Actions: <https://www.lankford.senate.gov/news/press-releases/senator-lankford-statement-on-keystone-xl-and-dakota-access-executive-actions>

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 343- Respect Act- Repealing Existing Substandard Provisions Encouraging Conciliation with Tribes Act.



*Steve Daines (MT)*

**8** tribes (Blackfeet Tribe, Chippewa Cree Tribe of the Rocky Boy's Reservation, Confederated Salish & Kootenai Tribes, Crow Tribe, Fort Belknap Tribes of the Fort Belknap Reservation, Fort Peck Tribes, Northern Cheyenne Tribe, Little Shell Chippewa Tribe)

**3** BIE schools

Likely Key Issues for Indian Country:

- Energy development in Indian Country, with an emphasis on the BIA's struggle to assist Tribes in the development process
- Respect for sovereignty and self-determination;
- Indian Water Settlements (emphasis on Blackfeet Water Rights Settlement), specifically requesting how to fund them;
- Healthcare needs in Indian Country.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- Economic Development in Indian Country;
- Blackfeet Water Rights Settlement/Indian Water Settlements.

Recent Press Releases regarding Indian Country:

- 02/08/2017 – Daines: Little Shell Recognition Moves Forward:  
<https://www.daines.senate.gov/news/press-releases/daines-little-shell-recognition-moves-forward>

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 39 Little Shell Tribe of Chippewa Indians Restoration Act of 2017 (Co-sponsored with Senator Tester).
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*Mike Crapo (ID)*

**4** tribes (Coeur D'Alene Tribe; Idaho Kootenai Tribe; Nez Perce Tribe; Shoshone-Bannock Tribes of the Fort Hall Reservation)

**2** BIE schools

Likely Key Issues for Indian Country: (hasn't been very active on the Committee)

- Energy development as a source of economic opportunity;
- General support of tribal sovereignty;
- Tribal consultation and border security measures;
- Healthcare needs in Indian Country.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- N/A, not on SENR

Recent Press Releases regarding Indian Country:

- N/A

Introduced Legislation in the 115<sup>th</sup> Congress:

- N/A.



*Jerry Moran (KS)*

**4** tribes (Kickapoo Tribe of Indians of the Kickapoo Reservation; Prairie Band of Potawatomi Nation; Iowa Tribe of Kansas and Nebraska; Sac & Fox Nation of Missouri in Kansas and Nebraska)

**1** BIE school

Likely Key Issues for Indian Country:

- Energy development opportunities;
- General support for tribal sovereignty;
  - Has moved legislation that would exempt Indian Tribes from the National Labor Relations Act;
  - You cosponsored this legislation while in the House.
- Native Veteran's issues.

Indian Affairs related issues/questions asked at ENR confirmation hearing:

- N/A, not on SENR

Recent Press Releases regarding Indian Country:

- N/A.

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 63 Tribal Labor Sovereignty Act of 2017.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.

## MINORITY MEMBERS



*Tom Udall* (NM), Vice Chairman

**23** tribes

**44** BIE schools

Likely Key Issues for Indian Country:

- Indian self-determination;
- Sovereignty and consultation, with an emphasis on DAPL;
  - Supports Standing Rock Sioux Tribe on the issue.
- BIE and education issues broadly, with a focus on the impact of the hiring freeze on BIE schools;
- Indian water settlements;
- Use of BIA officers from New Mexico in ND for DAPL;
- Bears Ears—supports monument and the Tribes’ ability to co-manage the area;
- Native American cultural preservation issues;
- Stopping cultural patrimony from being taken from the tribal communities.

Indian Affairs related issues/questions asked at confirmation hearing:

- N/A, not on SENR

Recent Press Releases regarding Indian Country:

- 02/17/2017 – Senate Indian Affairs Committee Democrats Secure Exemption from Federal Hiring Freeze for Indian Health Services Staff:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2576](https://www.tomudall.senate.gov/?p=press_release&id=2576)
- 02/09/2017 – Udall: Trump Should Make Good on Federal Government’s Promise to Tribes Protesting Dakota Access Pipeline:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2556](https://www.tomudall.senate.gov/?p=press_release&id=2556)
- 02/01/2017 – Senate Indian Affairs Committee Democrats Urge President Trump to Exempt Indian Services Agencies from Federal Hiring Freeze:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2537](https://www.tomudall.senate.gov/?p=press_release&id=2537)
- 01/31/2017 – Udall Outlines Priorities for Senate Committee on Indian Affairs for the New Congress: [https://www.tomudall.senate.gov/?p=press\\_release&id=2534](https://www.tomudall.senate.gov/?p=press_release&id=2534)
- 01/24/2017 – Udall Statement on Trump Executive Orders Advancing Dakota Access, Keystone XL Pipelines:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2521](https://www.tomudall.senate.gov/?p=press_release&id=2521)
- 01/19/2017 – Udall Statement after Meeting with Rep. Ryan Zinke, Trump’s Nominee for Interior Secretary:  
[https://www.tomudall.senate.gov/?p=press\\_release&id=2516](https://www.tomudall.senate.gov/?p=press_release&id=2516)

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 254 Esther Martinez Native American Languages Preservation Act.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.
- S. 249 A bill to allow for the Santa Clara Pueblo to lease for 99 years.
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



## *Maria Cantwell (WA)*

**29** tribes

**7** BIE schools

### Likely Key Issues for Indian Country:

- Indian gaming;
- Timber;
- Impact of forest fires on Indian land;
- Tribal sovereignty and self-determination;
- Economic development outside of fossil fuels;
- VAWA issues—protection of Native women who are victims of domestic abuse
  - You introduced resolution w/ Montana delegation to designate May 5, 2017, as a National Day of Awareness for Missing and Murdered Native Women and Girls.
- Tribal jurisdictional issues (i.e. Tribes authority on reservation land over non-Indians).

### Indian Affairs related issues/questions asked at confirmation hearing:

- Lummi Nation’s right to object to Gateway Pacific Terminal in Washington state based on their fishing rights;
- Tribal sovereignty and tribes’ abilities to exercise their right to object based on treaty and sovereignty rights;
- Spokane Equitable Settlement Compensation Act---passed House and Senate in the 114<sup>th</sup>. Wants support of DOI in this Administration on this settlement, which provides for equitable relief from the flooding that occurred as a result of dams being constructed.)

### Recent Press Releases regarding Indian Country:

- 02/07/2017 – Senate, House Natural Resource Leaders Blast Dakota Access Pipeline Decision, Stand up for Tribal Sovereignty and Treaty Rights: <https://www.cantwell.senate.gov/news/press-releases/senate-house-natural-resource-leaders-blast-dakota-access-pipeline-decision-stand-up-for-tribal-sovereignty-and-treaty-rights>
- 02/01/2017 – Dakota Access: Cantwell, Tester, Udall, Call on Feds to Consult with Tribes, Follow the Rule of Law before Moving Forward on Oil Pipeline: <https://www.cantwell.senate.gov/news/press-releases/dakota-access-cantwell-tester-udall-call-on-feds-to-consult-with-tribes-follow-the-rule-of-law-before-moving-forward-on-oil-pipeline>

### Introduced Legislation in the 115th Congress:

- N/A.



*Jon Tester* (MT) – Former Chairman

**8** tribes (Blackfoot Tribe, Chippewa Cree Tribe of the Rocky Boy's Reservation, Confederated Salish & Kootenai Tribes, Crow Tribe, Fort Belknap Tribes of the Fort Belknap Reservation, Fort Peck Tribes, Northern Cheyenne Tribe, Little Shell Chippewa Tribe)

**3** BIE schools

Likely Key Issues for Indian Country:

- Indian water settlements, both in terms of funding (Blackfoot) and pending compacts in Montana (CSKT, Fort Belknap);
- Federal recognition for Little Shell;
- General questions about potential BIE reforms, next steps;
- Self-determination and tribal sovereignty;
- Trust obligation of the federal government to Indian tribes;
- Tribal consultation;
- Access to quality health care;
- Improving transportation in Indian Country, with a direct tie to potential infrastructure opportunities;
- Honoring American Indian Veterans;
- VAWA—Save Native Women Act (VAWA is up for reauthorization soon);
- Tribal Law and Order to address on reservation issues (drug trade, domestic violence, etc).

Indian Affairs related issues/questions asked at confirmation hearing:

- N/A, not on SENR

Recent Press Releases regarding Indian Country:

- 02/20/2017 – Tester Announces Legislation to Strengthen Education for Rural Students, Montana Veterans, Native Americans:  
[http://www.testersenate.gov/?p=press\\_release&id=5019](http://www.testersenate.gov/?p=press_release&id=5019)
- 02/15/2017 – Tester, Udall Fight Veteran Homelessness in Indian Country:  
[http://www.testersenate.gov/?p=press\\_release&id=5008](http://www.testersenate.gov/?p=press_release&id=5008)
- 02/07/2017- Tester, Daines Lead Effort to Dedicate Feb 5-11 National Tribal Colleges and Universities Week:  
[http://www.testersenate.gov/?p=press\\_release&id=4994](http://www.testersenate.gov/?p=press_release&id=4994)
- 01/31/2017 – Tester Statement on Congressman Zinke's Nomination Vote:  
[http://www.testersenate.gov/?p=press\\_release&id=4979](http://www.testersenate.gov/?p=press_release&id=4979)

Introduced Legislation in the 115<sup>th</sup> Congress:

- S. 39 Little Shell Tribe of Chippewa Indians Restoration Act of 2017
  - 02/08/2017 Marked-up and reported out of SCIA favorably.



*Al Franken* (MN)

**12** tribes

**4** BIE schools

Likely Key Issues for Indian Country:

- Education:
  - BIE reforms in light of the 2017 GAO High Risk Report;
  - New school construction (Bug School);
  - BIE's place in the Administration's infrastructure investments;
  - Impact of the hiring freeze on BIE;
  - Pending budget and the impact on BIE schools.
- DAPL and other pending energy specific projects and tribal consultation;
  - 03/01/2017: Sent letter to FBI Director Comey about reports that FBI's Joint Terrorism Task Force attempted to question at least three DAPL protestors – he wants justifications for those actions and assurance constitutional rights were not infringed upon.
- Indian Health;
- Human Trafficking;
- The fate of climate change programs in Indian Affairs and the Administration's budget;
- Crime on Indian reservations.

Indian Affairs related issues/questions asked at confirmation hearing:

- Didn't ask specific Q re: Indian Affairs at the hearing.

Recent Press Releases regarding Indian Country:

- N/A.

Introduced Legislation in the 115<sup>th</sup> Congress:

- N/A.



*Brian Schatz (HI)*

Likely Key Issues for Indian Country:

- Continued support for Native Hawaiian recognition;
  - 09/23/2016: DOI issued a final rule to establish procedures to engage in a government-to-government relationship with the Native Hawaiian community.
- Native Hawaiian's lack of self-determination compared to American Indians and Alaska Natives;
- Native language preservation and funding support for Hawaiian language programs;
- Continued support for Native Hawaiians (over 100 specific laws that impact Native Hawaiians that place them in similar situation as Native Americans);
- Native Tourism---recent bill signed into law by former President Obama;
- Climate change and Indian Affairs programs.

Indian Affairs related issues/questions asked at confirmation hearing:

- N/A, not on SENR.

Recent Press Releases regarding Indian Country:

- 01/24/2017 – Schatz Statement on Keystone XL, Dakota Access Pipeline:  
<http://www.schatz.senate.gov/press-releases/schatz-statement-on-keystone-xl-dakota-access-pipelines>

Introduced Legislation in the 115th Congress:

- N/A.



*Heidi Heitkamp* (ND)

**4** tribes (Spirit Lake Tribe; Three Affiliated Tribes of the Fort Berthold Reservation; Standing Rock Sioux Tribe of North & South Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota)

**12** BIE schools

Likely Key Issues for Indian Country:

- Tribal energy development opportunities (emphasis on all-of-the-above approach);
- Public safety in Indian Country;
- BIE systemic issues and potential reforms;
  - Support for Johnson-O'Malley (JOM) program funds which are used for programs ranging from language and culture to dropout prevention;
- Native Veterans issues;
- Sovereignty and self-determination/tribal consultation;
- Reauthorization of VAWA;
- Bringing fairness of the tax code for federal governments
- Tribal housing, infrastructure, and investment.

Indian Affairs related issues/questions asked at confirmation hearing:

N/A, not on SENR.

Recent Press Releases regarding Indian Country:

- 02/16/2017 – Heitkamp Announces Support for Nominees to Lead Energy, Interior, EPA: <http://www.heitkamp.senate.gov/public/index.cfm/press-releases?ID=C398AF52-943C-449F-973B-0AD0DAAC7A5B>
- 02/07/2017 – Heitkamp Statement on Army Corps of Engineers Intent to Issue Dakota Access Pipeline Easement: <http://www.heitkamp.senate.gov/public/index.cfm/press-releases?ID=02B22609-0098-45AA-B76C-4916B62EB546>
- 02/03/2017 – Heitkamp Announces Federal Law Enforcement Assistance for Standing Rock Protest Site: <http://www.heitkamp.senate.gov/public/index.cfm/press-releases?ID=CEA75937-171F-47B1-BFF8-7B7BDCBB1E89>

Introduced Legislation in the 115<sup>th</sup> Congress:

- Co-sponsor to several of the 8 pending SCIA bills.



*Catherine Cortez Masto (NV)*

**32** tribes

**2** BIE schools

Likely Key Issues for Indian Country:

- Tribal sovereignty;
- DAPL, tribal consultation, and the US's trust responsibilities,
- Indian water rights;
- Impact of energy development on tribal lands;
- Impact of the federal hiring freeze on American Indian, Alaska Natives, and Indian Affairs programs.

Indian Affairs related issues/questions asked at confirmation hearing:

- Tribal sovereignty in general; consultation—tribes having a seat at the table when it comes to decisions, activities and land management near their communities.

Recent Press Releases regarding Indian Country:

- 02/08/2017 – Cortez Masto Joins Letter Blasting Dakota Access Pipeline Decision, Calling on Trump Administration to Stand up for Tribal Sovereignty and Treaty Rights: <https://www.cortezmasto.senate.gov/content/cortez-masto-joins-letter-blasting-dakota-access-pipeline-decision-calling-trump>
- 02/01/2017 – Cortez Masto and Senate Indian Affairs Committee Democrats Urge President Trump to Exempt Indian Services Agencies from Federal Hiring Freeze: <https://www.cortezmasto.senate.gov/content/cortez-masto-and-senate-indian-affairs-committee-democrats-urge-president-trump-exempt>
- 01/31/2017 – Cortez Masto Statement on Department of Interior Nominee Rep. Ryan Zinke: <https://www.cortezmasto.senate.gov/content/cortez-masto-statement-department-interior-nominee-rep-ryan-zinke>

Introduced Legislation in the 115<sup>th</sup> Congress:

- N/A.

**From:** Macgregor, Katharine  
**To:** [Cardinale, Richard](#)  
**Subject:** Re: Updated Meeting Request  
**Date:** Thursday, February 16, 2017 7:35:00 PM

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Let's definitely set this up.

On Thu, Feb 16, 2017 at 11:05 AM, Cardinale, Richard <[richard\\_cardinale@ios.doi.gov](mailto:richard_cardinale@ios.doi.gov)> wrote:

Kate,

I think this would be a worthwhile meeting. I suggest setting it up and inviting the BLM (i.e. Kathy, Mike Nedd, etc.) to attend as well. I would ask BLM for a briefing paper about the issues Mr. Bower's list below.

Rich

----- Forwarded message -----  
From: Lassiter, Tracie <[tracie\\_lassiter@ios.doi.gov](mailto:tracie_lassiter@ios.doi.gov)>  
Date: Thu, Feb 16, 2017 at 10:51 AM  
Subject: Fwd: Updated Meeting Request  
To: Richard Cardinale <[richard\\_cardinale@ios.doi.gov](mailto:richard_cardinale@ios.doi.gov)>

R- My apologies! I called to get a response from you on this but after scrolling through my emails realized I had not sent. Group would like to come in at the end of February on the 28th or 29th. They provide a detailed outline in their email below. Thanks, T.

----- Forwarded message -----  
From: Dru Bower <[druconsulting@rtconnect.net](mailto:druconsulting@rtconnect.net)>  
Date: Thu, Feb 9, 2017 at 12:15 PM  
Subject: RE: Updated Meeting Request  
To: [tracie\\_lassiter@ios.doi.gov](mailto:tracie_lassiter@ios.doi.gov)

Good Morning Ms. Lassiter:

I apologize for my confusing emails yesterday as I was having computer issues. I wanted to update you on our schedule. We have confirmed meetings with the Fish and Wildlife Service at 1:00 and BLM at 2:15 pm on Friday, February 24 at the DOI building. If there is a chance we can meet with Assistant Secretary Cardinale that morning or late that afternoon, it would be appreciated as I assume he is in the same building. Please let me know what would work best and thank you for your assistance.

Dru

From: Dru Bower [<mailto:druconsulting@rtconnect.net> <<mailto:druconsulting@rtconnect.net>> ]

Sent: Wednesday, February 8, 2017 6:00 PM  
To: 'tracie\_lassiter@ios.doi.gov' <tracie\_lassiter@ios.doi.gov>  
Subject: Updated Meeting Request

Ms. Lassiter:

As per my phone message, I am a natural resource consultant representing the Campbell County Commissioners in Gillette, Wyoming. The Commissioners will be traveling to Washington, D.C. the last week of February and would like to schedule meetings to discuss several issues of concern. At your request, following please find the details of our trip:

\* Participants from Campbell County – Commissioner Mark Christensen, Commissioner Matt Avery, Dru Bower (there may be others as the time draws closer)

\* Please find the attached biography's

\* DOI Meeting Participants --

\* Rich Cardinale -- Acting Assistant Secretary for Lands and Minerals

\* Others that are appropriate based on the agenda

\* Issues for Discussions –

\* Coal Leasing Moratorium

\* Conflicts between coal and oil/gas leasing and development

\* Wildlife Issues that impact year round development

\* Campbell County Raptor Symposium

\* Date and Time –

\* February 23-24

\* Currently our scheduling time is open

We realize that there is a tremendous amount of transition taking place right now but any time Assistant Secretary Cardinale could give us would be greatly appreciated. Thank you and do not hesitate to contact me should you have questions or require additional information.

Dru Bower

President

DRU Consulting, LLC

P.O. Box 166

Worland, Wyoming 82401

(307) 347-4477 – work

(307) 388-2709 – cell

druconsulting@rtconnect.net

--

Thanks,

Tracie L. Lassiter

U.S. Department of the Interior

Office of the Secretary

Land & Minerals Management

1849 C. Street, NW, Room 6615

Washington, DC 20240

(o) 202-208-6734

(f) 202- 208-3619

Tracie\_Lassiter@ios.doi.gov

--

Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202-208-3671 (Direct)

**From:** Chambers, Micah  
**To:** [Hawbecker, Karen](mailto:karen.hawbecker@sol.doi.gov)  
**Cc:** [Rhymes, Christopher](mailto:rhymes.christopher@sol.doi.gov); [Timothy Spisak](mailto:timothy.spisak@sol.doi.gov); [Jill Moran](mailto:jill.moran@sol.doi.gov); [Joseph \(Gene\) Seidlitz](mailto:joseph.seidlitz@sol.doi.gov); [Richard Cardinale](mailto:richard.cardinale@sol.doi.gov); [Shannon Stewart](mailto:shannon.stewart@sol.doi.gov); [Matthew Allen](mailto:matthew.allen@sol.doi.gov); [Michael Nedd](mailto:michael.nedd@sol.doi.gov); [Katharine Macgregor](mailto:katharine.macgregor@sol.doi.gov); [James Cason](mailto:james.cason@sol.doi.gov); [Kathleen Benedetto](mailto:kathleen.benedetto@sol.doi.gov); [Jack Haugrud](mailto:jack.haugrud@sol.doi.gov)  
**Subject:** Re: Venting and Flaring Updated BP  
**Date:** Thursday, April 06, 2017 4:32:17 PM

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Thank you

On Thu, Apr 6, 2017 at 4:12 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:  
Looks good to me. I have no edits (b) (5).

On Thu, Apr 6, 2017 at 4:02 PM, Chambers, Micah <[micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov)> wrote:  
Thank you again. Really appreciate it.

On Thu, Apr 6, 2017 at 3:48 PM, Rhymes, Christopher <[christopher.rhymes@sol.doi.gov](mailto:christopher.rhymes@sol.doi.gov)> wrote:

Micah,

Here is the (b) (5). Tim reviewed and provided edits. Please let us know if you need us to clarify anything.

Chris

On Thu, Apr 6, 2017 at 2:30 PM, Chambers, Micah <[micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov)> wrote:

Again...THANK YOU! I really appreciate it

On Thu, Apr 6, 2017 at 2:29 PM, Rhymes, Christopher <[christopher.rhymes@sol.doi.gov](mailto:christopher.rhymes@sol.doi.gov)> wrote:

Micah,

(b) (5)

On Thu, Apr 6, 2017 at 2:25 PM, Chambers, Micah <[micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov)> wrote:

thank you. Next task if we can get this done asap. (b) (5)

(b) (5)

(b) (5)

(b) (5) [Redacted]

[Redacted]

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[Redacted]

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[Redacted]

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[Redacted]

•

[Redacted]

On Thu, Apr 6, 2017 at 2:09 PM, Rhymes, Christopher  
<[christopher.rhymes@sol.doi.gov](mailto:christopher.rhymes@sol.doi.gov)> wrote:

(b) (5) [Redacted]

On Thu, Apr 6, 2017 at 2:05 PM, Micah Chambers  
<[micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov)> wrote:

Can someone clarify this line: (b) (5) [Redacted]

[Redacted]

Sent from my iPhone

On Apr 6, 2017, at 1:56 PM, Hawbecker, Karen  
<[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

I've noted my suggested edits in the attachment. Thank you. --Karen

On Thu, Apr 6, 2017 at 12:38 PM, Timothy Spisak  
<[tspisak@blm.gov](mailto:tspisak@blm.gov)> wrote:

Per discussion...for your consideration (thanks Chris!) <<...>>

Thanks

Tim

'Serenity Now!' – Frank Costanza, *Seinfeld*, 1997

'Serenity now, insanity later' – Lloyd Braun, *Seinfeld*, 1997

\*\*\*\*\*

Timothy 'Tim' R. Spisak

Acting Assistant Director,

Energy, Minerals & Realty Management, WO-300

DOI-Bureau of Land Management

[tspisak@blm.gov](mailto:tspisak@blm.gov)

(202) 208-4201 office

(202) 251-3079 cell

\*\*\*\*\*

-----Original Appointment-----

**From:** [gareth\\_rees@ios.doi.gov](mailto:gareth_rees@ios.doi.gov) [[mailto:gareth\\_rees@ios.doi.gov](mailto:gareth_rees@ios.doi.gov)] **On Behalf Of** [gareth\\_rees@ios.doi.gov](mailto:gareth_rees@ios.doi.gov)

**Sent:** Wednesday, April 05, 2017 9:25 AM

**To:** [gareth\\_rees@ios.doi.gov](mailto:gareth_rees@ios.doi.gov); [tspisak@blm.gov](mailto:tspisak@blm.gov); [jcmoran@blm.gov](mailto:jcmoran@blm.gov); [gseidlit@blm.gov](mailto:gseidlit@blm.gov); [richard\\_cardinale@ios.doi.gov](mailto:richard_cardinale@ios.doi.gov); [scstewar@blm.gov](mailto:scstewar@blm.gov); [mrallen@blm.gov](mailto:mrallen@blm.gov); [mnedd@blm.gov](mailto:mnedd@blm.gov); [katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov); [james\\_cason@ios.doi.gov](mailto:james_cason@ios.doi.gov); [micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov); [kathleen\\_benedetto@ios.doi.gov](mailto:kathleen_benedetto@ios.doi.gov); [karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)

**Subject:** Follow-up Meeting on Venting and Flaring

**When:** Thursday, April 06, 2017 11:00 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).

**Where:** 6120

<2017.04.06 VF CRA Briefing Memo v2 ksh.docx>

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Christopher M. Rhymes | Attorney-Advisor, Division of Mineral Resources

Office of the Solicitor | United States Department of the Interior  
1849 C Street NW, #5354 | Washington, DC 20240  
Phone: (202) 208-4307 | Email: [christopher.rhymes@sol.doi.gov](mailto:christopher.rhymes@sol.doi.gov)

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Micah Chambers  
Special Assistant / Acting Director  
Office of Congressional & Legislative Affairs  
Office of the Secretary of the Interior

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**Christopher M. Rhymes** | Attorney-Advisor, Division of Mineral Resources  
Office of the Solicitor | United States Department of the Interior  
1849 C Street NW, #5354 | Washington, DC 20240  
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Micah Chambers  
Special Assistant / Acting Director  
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1849 C Street NW, #5354 | Washington, DC 20240  
Phone: (202) 208-4307 | Email: [christopher.rhymes@sol.doi.gov](mailto:christopher.rhymes@sol.doi.gov)

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Micah Chambers  
Special Assistant / Acting Director  
Office of Congressional & Legislative Affairs  
Office of the Secretary of the Interior

|

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Micah Chambers  
Special Assistant / Acting Director  
Office of Congressional & Legislative Affairs  
Office of the Secretary of the Interior

**From:** Chambers, Micah  
**To:** [Rhymes, Christopher](mailto:Christopher.Rhymes@sol.doi.gov)  
**Cc:** [Hawbecker, Karen](#); [Timothy Spisak](#); [Jill Moran](#); [Joseph \(Gene\) Seidlitz](#); [Richard Cardinale](#); [Shannon Stewart](#); [Matthew Allen](#); [Michael Nedd](#); [Katharine Macgregor](#); [James Cason](#); [Kathleen Benedetto](#); [Jack Haugrud](#)  
**Subject:** Re: Venting and Flaring Updated BP  
**Date:** Thursday, April 06, 2017 4:03:17 PM

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Thank you again. Really appreciate it.

On Thu, Apr 6, 2017 at 3:48 PM, Rhymes, Christopher <[christopher.rhymes@sol.doi.gov](mailto:christopher.rhymes@sol.doi.gov)> wrote:

Micah,

Here is the (b) (5) . Tim reviewed and provided edits. Please let us know if you need us to clarify anything.

Chris

On Thu, Apr 6, 2017 at 2:30 PM, Chambers, Micah <[micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov)> wrote:  
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On Thu, Apr 6, 2017 at 2:29 PM, Rhymes, Christopher <[christopher.rhymes@sol.doi.gov](mailto:christopher.rhymes@sol.doi.gov)> wrote:

Micah,

(b) (5)

On Thu, Apr 6, 2017 at 2:25 PM, Chambers, Micah <[micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov)> wrote:

thank you. Next task if we can get this done asap. (b) (5)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

.

- (b) (5) [redacted]

- [redacted]

- [redacted]

- [redacted]

On Thu, Apr 6, 2017 at 2:09 PM, Rhymes, Christopher  
<[christopher.rhymes@sol.doi.gov](mailto:christopher.rhymes@sol.doi.gov)> wrote:

(b) (5) [redacted]

On Thu, Apr 6, 2017 at 2:05 PM, Micah Chambers  
<[micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov)> wrote:

Can someone clarify this line: (b) (5) [redacted]

Sent from my iPhone

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Per discussion...for your consideration (thanks Chris!) <<...>>

Thanks

Tim

'Serenity Now!' – Frank Costanza, *Seinfeld*, 1997

'Serenity now, insanity later' – Lloyd Braun, *Seinfeld*, 1997

\*\*\*\*\*

Timothy 'Tim' R. Spisak

Acting Assistant Director,

Energy, Minerals & Realty Management, WO-300

DOI-Bureau of Land Management

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(202) 208-4201 office

(202) 251-3079 cell

\*\*\*\*\*

-----Original Appointment-----

**From:** [gareth\\_rees@ios.doi.gov](mailto:gareth_rees@ios.doi.gov) [[mailto:gareth\\_rees@ios.doi.gov](mailto:gareth_rees@ios.doi.gov)] **On**

**Behalf Of** [gareth\\_rees@ios.doi.gov](mailto:gareth_rees@ios.doi.gov)

**Sent:** Wednesday, April 05, 2017 9:25 AM

**To:** [gareth\\_rees@ios.doi.gov](mailto:gareth_rees@ios.doi.gov); [tspisak@blm.gov](mailto:tspisak@blm.gov); [jcmoran@blm.gov](mailto:jcmoran@blm.gov);  
[gseidlit@blm.gov](mailto:gseidlit@blm.gov); [richard\\_cardinale@ios.doi.gov](mailto:richard_cardinale@ios.doi.gov); [scstewar@blm.gov](mailto:scstewar@blm.gov);  
[mrallen@blm.gov](mailto:mrallen@blm.gov); [mnedd@blm.gov](mailto:mnedd@blm.gov); [katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov);  
[james\\_cason@ios.doi.gov](mailto:james_cason@ios.doi.gov); [micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov);  
[kathleen\\_benedetto@ios.doi.gov](mailto:kathleen_benedetto@ios.doi.gov); [karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)

**Subject:** Follow-up Meeting on Venting and Flaring

**When:** Thursday, April 06, 2017 11:00 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).

**Where:** 6120

<2017.04.06 VF CRA Briefing Memo v2 ksh.docx>

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**Christopher M. Rhymes** | Attorney-Advisor, Division of Mineral Resources  
Office of the Solicitor | United States Department of the Interior  
1849 C Street NW, #5354 | Washington, DC 20240  
Phone: (202) 208-4307 | Email: [christopher.rhymes@sol.doi.gov](mailto:christopher.rhymes@sol.doi.gov)

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Special Assistant / Acting Director  
Office of Congressional & Legislative Affairs  
Office of the Secretary of the Interior

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Micah Chambers  
Special Assistant / Acting Director  
Office of Congressional & Legislative Affairs  
Office of the Secretary of the Interior

**From:** Chambers, Micah  
**To:** [Rhymes, Christopher](mailto:Rhymes, Christopher)  
**Cc:** [Hawbecker, Karen](#); [Timothy Spisak](#); [Jill Moran](#); [Joseph \(Gene\) Seidlitz](#); [Richard Cardinale](#); [Shannon Stewart](#); [Matthew Allen](#); [Michael Nedd](#); [Katharine Macgregor](#); [James Cason](#); [Kathleen Benedetto](#); [Jack Haugrud](#)  
**Subject:** Re: Venting and Flaring Updated BP  
**Date:** Thursday, April 06, 2017 2:31:12 PM

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Again...THANK YOU! I really appreciate it

On Thu, Apr 6, 2017 at 2:29 PM, Rhymes, Christopher <[christopher.rhymes@sol.doi.gov](mailto:christopher.rhymes@sol.doi.gov)> wrote:

Micah,

(b) (5) [REDACTED]

On Thu, Apr 6, 2017 at 2:25 PM, Chambers, Micah <[micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov)> wrote:  
thank you. Next task if we can get this done asap. (b) (5) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

(b) (5)

On Thu, Apr 6, 2017 at 2:09 PM, Rhymes, Christopher <[christopher.rhymes@sol.doi.gov](mailto:christopher.rhymes@sol.doi.gov)> wrote:

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[gseidlit@blm.gov](mailto:gseidlit@blm.gov); [richard\\_cardinale@ios.doi.gov](mailto:richard_cardinale@ios.doi.gov); [scstewar@blm.gov](mailto:scstewar@blm.gov);  
[mrallen@blm.gov](mailto:mrallen@blm.gov); [mnedd@blm.gov](mailto:mnedd@blm.gov); [katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov);  
[james\\_cason@ios.doi.gov](mailto:james_cason@ios.doi.gov); [micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov);  
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**From:** Chambers, Micah  
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**Cc:** [Hawbecker, Karen](#); [Timothy Spisak](#); [Jill Moran](#); [Joseph \(Gene\) Seidlitz](#); [Richard Cardinale](#); [Shannon Stewart](#); [Matthew Allen](#); [Michael Nedd](#); [Katharine Macgregor](#); [James Cason](#); [Kathleen Benedetto](#); [Jack Haugrud](#)  
**Subject:** Re: Venting and Flaring Updated BP  
**Date:** Thursday, April 06, 2017 2:25:49 PM

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[mrallen@blm.gov](mailto:mrallen@blm.gov); [mnedd@blm.gov](mailto:mnedd@blm.gov); [katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov);  
[james\\_cason@ios.doi.gov](mailto:james_cason@ios.doi.gov); [micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov);  
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**Christopher M. Rhymes** | Attorney-Advisor, Division of Mineral Resources  
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--

Micah Chambers  
Special Assistant / Acting Director  
Office of Congressional & Legislative Affairs  
Office of the Secretary of the Interior

**From:** Thurn, Linda  
**To:** [Kathleen Benedetto](#); [Marshall Critchfield](#)  
**Subject:** Fwd: Will there be any advance materials for the Tribal Relations / Cultural Resources Meeting?  
**Date:** Friday, February 17, 2017 6:01:19 PM  
**Attachments:** [BRIEFING MEMO WO-240 Overview 17Feb2017.docx](#)  
[Tribal-Cultural Slides 17Feb2017.pptx](#)

---

Linda Thurn

Executive Assistant

Bureau of Land Management  
WO-100

202-208-3801

----- Forwarded message -----

From: Bartholomew, Thomas <tbarthol@blm.gov>  
Date: Fri, Feb 17, 2017 at 5:53 PM  
Subject: Re: Will there be any advance materials for the Tribal Relations / Cultural Resources Meeting?  
To: "Thurn, Linda" <lthurn@blm.gov>  
Cc: Emily Palus <epalus@blm.gov>, Byron Loosle <bloosle@blm.gov>, Steve Tryon <stryon@blm.gov>, Dean Bolstad <dbolstad@blm.gov>, Karen Kelleher <kkelleh@blm.gov>

Hi Linda,

Here are the briefing materials for the Tribal Relations / Cultural Resources Management meeting on Tuesday.

Hope you have a nice long weekend!

T

On Fri, Feb 17, 2017 at 1:00 PM, <lthurn@blm.gov> wrote:

Tribal Relations / Cultural Resources Management

When

Tue Feb 21, 2017 10am – 11am Eastern Time

Where

BLM-WO MIB RM5653 Conference Room (map <<https://maps.google.com/maps?q=BLM-WO+MIB+RM5653+Conference+Room&hl=en>> )

Video call

[https://plus.google.com/hangouts/\\_/doi.gov/lthurn](https://plus.google.com/hangouts/_/doi.gov/lthurn)

<[https://plus.google.com/hangouts/\\_/doi.gov/lthurn?hceid=bHRodXJuQGJsbS5nb3Y.1i2e7aeis2ko48ikdsq3pr0j90](https://plus.google.com/hangouts/_/doi.gov/lthurn?hceid=bHRodXJuQGJsbS5nb3Y.1i2e7aeis2ko48ikdsq3pr0j90)>

Who

- [lthurn@blm.gov](mailto:lthurn@blm.gov) - organizer, optional
- [marshall\\_critchfield@ios.doi.gov](mailto:marshall_critchfield@ios.doi.gov) <[mailto:marshall\\_critchfield@ios.doi.gov](mailto:marshall_critchfield@ios.doi.gov)>
- [bloosle@blm.gov](mailto:bloosle@blm.gov)
- [kathleen\\_benedetto@ios.doi.gov](mailto:kathleen_benedetto@ios.doi.gov)
- [kbail@blm.gov](mailto:kbail@blm.gov)
- [stryon@blm.gov](mailto:stryon@blm.gov)
- [kkelleh@blm.gov](mailto:kkelleh@blm.gov) - optional
- [ymackthompson@blm.gov](mailto:ymackthompson@blm.gov) - optional
- [jperez@blm.gov](mailto:jperez@blm.gov) - optional

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Thomas Bartholomew  
Resource Advisor - WO200  
Bureau of Land Management  
Resources and Planning Directorate  
Washington, DC  
202-208-5922

**INFORMATION/BRIEFING MEMORANDUM  
FOR THE ASSISTANT SECRETARY – LAND AND MINERALS MANAGEMENT**

**DATE:** February 17, 2017

**FROM:** Kristin Bail, Acting Director – Bureau of Land Management

**SUBJECT:** Cultural Resources, Paleontological Resources, and Tribal Consultation Programs

The purpose of this memorandum is to provide an overview of the Bureau of Land Management's (BLM) Cultural Resources, Paleontological Resources and Tribal Consultation

**BACKGROUND**

There are 566 federally recognized Indian tribes within the United States. The United States has a unique legal relationship with federally recognized Indian tribes established through and confirmed by the Constitution of the United States, treaties, statutes, Executive orders, and judicial decisions, and tribal governments are recognized as sovereign government entities under the law. The BLM consults with tribal governments at all levels and across all program areas. The attached briefing materials describe BLM's relationship with tribes in greater detail.

BLM is responsible for the largest, most diverse and scientifically important aggregation of cultural, historical, and paleontological resources on the public lands, as well as the museum collections and data associated with these heritage resources. Over 370,000 cultural resources have been recorded across the BLM administered lands and over 10 million documented artifacts and specimens are housed in over 150 museums and universities. Over the last 10 years, more than 20 new dinosaur species have been described that were discovered on public lands administered by the BLM. This amounts to about 2% of all dinosaurs known in the world. BLM manages these resources under a variety of legal authorities, including Sec. 106 of the Historic Preservation Act, which requires Federal agencies to account for the effects of their actions and use authorizations on properties included in or eligible for the National Register of Historic Places. In 2016, the BLM authorized 699 permittees (holders of permits for archeological investigations), and 465 paleontological resource use permits to scientific researchers (compared to fewer than 50 that are issued annually by the National Park Service, Bureau of Reclamation, and the U.S. Fish and Wildlife Service) and reviewed over 6,800 proposed land-use actions. The attached briefing materials describe BLM's cultural and paleontological resources in greater detail.

**ATTACHMENTS**

- Tribal Consultation Briefing Paper
- Cultural Resources Program Briefing Paper
- Paleontological Resources Program Briefing Paper
- Accompanying Powerpoint Slides

## **Tribal Consultation at the Bureau of Land Management**

### **KEY FACTS**

*Jobs:* Effective tribal consultation can lead to jobs on many levels. The BLM field offices have entered into assistance agreements related to the fire program and oil and gas compliance work with tribes, creating jobs for tribal members. Effective tribal consultation has resulted in BLM field offices training tribal members and students in specialized tasks that they can use in the workforce. Tribal jobs are also created when BLM requires tribal ethnographies, inventory or construction monitoring work related to the cultural resources program and federal approvals. Finally, BLM regularly works with tribes on a variety of economic development activities, including energy development projects, which promote jobs in tribal communities and elsewhere.

*Stakeholder Positions:* Tribal stakeholders have numerous differing interests in public lands that can be based on treaty rights, laws or Executive Orders. In many cases, BLM has forged solid working relationships with tribal representatives and has productive two-way communication with tribal leaders. In other cases BLM managers may have infrequent communication with tribal representatives, which frustrates tribes. In many cases tribal representatives and/or leadership do not have adequate funding or staff to communicate with BLM in an effective and timely manner, which leads to additional frustration as BLM may often request tribal input across numerous projects, offices, and states. It should be noted that BLM is not the only federal agency that tribes must consult with. A tribal government's workload is often much higher than a single agency.

*Public Lands Affected:* Based in either treaty rights, laws or Executive Orders BLM must consult with tribes related to actions and activities on all BLM surface. The BLM also has a legal responsibility to consult with tribes if federal subsurface mineral authorizations can result in impacts to private surface overlying those minerals.

### **BACKGROUND**

The United States has a unique legal relationship with federally recognized Indian tribes established through and confirmed by the Constitution of the United States, treaties, statutes, Executive orders, and judicial decisions. In accordance with that relationship, the BLM is charged with engaging in regular and meaningful consultation and collaboration with federally recognized tribes in the development of Federal policies and decisions that have tribal implications. The BLM's legal and political government-to-government consultation process is an expression of such fundamental legal principles as trust relationship, reserved rights, plenary powers, and tribal sovereignty. These legal principles are further delineated in accordance with existing treaties and laws.

The BLM consults with tribal governments at all levels and across all program areas, although the tribal liaison officer is currently positioned within the BLM Washington Office 240 Division.

The BLM's current tribal consultation policy was formalized in the recently issued Manual Section (MS) 1780, Tribal Relations, and Handbook – H-1780-1, Improving and Sustaining BLM-Tribal Relations, which was informed by years of BLM's experience consulting with tribes. BLM's stated policy regarding government-to-government consultation with Indian tribes relating to BLM decisions directs that it begin early in project consideration and development and directly involve the official with delegated decision making authority. The responsibility for government-to-government consultation lies with the line officer with the authority over the applicable decision. There are currently seven dedicated BLM tribal liaison staff; other specialists support managers on tribal coordination as a collateral duty, and any BLM official can be involved in or have the responsibility to engage in tribal consultation activities.

The laws that serve as authorities for tribal consultation are—

1. The Act of April 8, 1864, Survey of Reservations (25 U.S.C. 176);
2. The Anti-Deficiency Act of 1870 (31 U.S.C. 1341);
3. Indian General Allotment Act of 1887 (25 U.S.C. 334);
4. Leases of Allotted Lands for Mining Purposes of 1909 (25 U.S.C. 396);
5. Mineral Leasing Act of 1920, as amended through Public Law 113-67 (30 U.S.C. 181);
6. Indian Reorganization Act (IRA) of 1934 (25 U.S.C. 5101, et seq.);
7. Leases of Unallotted Lands for Mining Purposes of 1938 (25 U.S.C. 396a);
8. National Historic Preservation Act of 1966 (NHPA) (54 U.S.C. 300101);
9. National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321);
10. Alaska Native Claims Settlement Act of 1971 (43 U.S.C. 1601, et seq.);
11. Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 450);
12. Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701);
13. American Indian Religious Freedom Act of 1978 (AIRFA) (42 U.S.C. 1996);
14. Archaeological Resources Protection Act of 1979 (ARPA) (16 U.S.C. 470aa);
15. Alaska National Interest Lands Conservation Act of 1980 (ANILCA) (16 U.S.C. 1602–1784);
16. Indian Mineral Development Act of 1982 (25 U.S.C. 1601);
17. Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) (25 U.S.C. 3001);
18. Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb);
19. Tribal Forest Protection Act of 2004 (25 U.S.C. 3101, et seq.).

Regulations governing tribal consultation include—

1. 25 CFR Part 211, Leasing of Tribal Lands for Mineral Development;
2. 25 CFR Part 212, Leasing of Allotted Lands for Mineral Development;
3. 25 CFR Part 216, Surface Exploration, Mining, and Reclamation;
4. 25 CFR Part 224, Tribal Energy Resource Agreements Under the Indian Tribal Energy Development and Self Determination Act;
5. 25 CFR Part 225, Oil and Gas, Geothermal, and Solid Mineral Agreements;
6. 25 CFR Part 900, Contracts Under the Indian Self-Determination and Education Assistance Act;
7. 25 CFR Part 1000, Annual Funding Agreements Under the Tribal Self-Governance Act Amendments to the Indian Self-Determination and Education Act;

8. 36 CFR Part 60, National Register of Historic Places;
9. 36 CFR Part 800, Protection of Historic Properties;
10. 40 CFR Part 1500, Purpose, Policy, and Mandate (of NEPA);
11. 43 CFR Part 7, Protection of Archaeological Resources;
12. 43 CFR Part 10, Native American Graves Protection and Repatriation Regulations;
13. 43 CFR Part 46, Implementation of the National Environmental Policy Act of 1969;
14. 43 CFR Part 1600, Planning, Programming, Budgeting;
15. 43 CFR 2650, Alaska Native Selections under the Alaska Native Claims Settlement Act;
16. 43 CFR Part 3000, Minerals Management: General;
17. 43 CFR Part 3160, Onshore Oil and Gas Operations (i.e., Oil and Gas Order No.1);
18. 43 CFR Part 3260, Geothermal Resources Operations;
19. 43 CFR Part 3400, Coal Management: General;
20. 43 CFR Part 3590, Solid Mineral (Other Than Coal) Exploration and Mining Operations;
21. 43 CFR Part 8365, Rules of Conduct; and
22. 43 CFR Part 9180, Cadastral Surveys.

Executive Orders/Presidential Memoranda addressing tribal relations include—

1. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 CFR Part 7629; February 16, 1994);
2. Presidential Memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments;
3. Executive Order 13007, Indian Sacred Sites (61 CFR Part 104; May 24, 1996);
4. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 CFR Part 67249; November 6, 2000);
5. Presidential Memorandum of September 23, 2004, Memorandum on Government-to-Government Relationship with Tribal Governments;
6. Presidential Memorandum of November 5, 2009, Tribal Consultation;
7. Presidential Memorandum of April 16, 2010, A 21st Century Strategy for America's Great Outdoors; and
8. Executive Order 13592, Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities (3 CFR Part 13592; December 2, 2011).

## **DISCUSSION**

- There are 566 federally recognized Indian tribes within the United States and each takes a unique approach to a myriad of issues and concerns. For instance on the issue of oil and gas development, tribes take positions ranging from keeping the resource in the ground to aggressively developing opportunities to produce revenue for tribal members.
- Building effective working relationships with tribes takes time, and the BLM and tribes are both challenged by changes in BLM staff and/or tribal leaders and their staff. Tribes

are often inundated with requests to consult, from BLM and a multitude of other Federal agencies, making it difficult for them to effectively respond to all requests.

- Tribes are usually underfunded and understaffed and often need financial assistance to have effective communication with BLM. BLM often approaches decision making based on specific actions, projects or programs, while tribal views are often more holistic and their concerns can often be more overarching than BLM initially considers.
- Tribal relations usually depend on individual relationships with local field and district managers. The condition of these relationships varies widely with some managers maintaining excellent rapport, while others have more difficulty. Even within a single office a manager may have good relationships with some tribes, but challenges with others because of competing interests or centuries old conflict beyond the manager's control.

## **NEXT STEPS**



## Attachment 2

### **BLM's Cultural Resource Program**

#### **KEY FACTS**

*Jobs:* The American Cultural Resource Association, a trade organization of over 130 cultural resource management firms who employ thousands of cultural resources professionals, indicates their industry provides \$1 Billion worth of work each year. These firms work in Congressional districts across the country, providing services to the agency and industry that facilitate compliance with a variety of laws and regulations that are general, as well as specific to cultural resources and historic preservation. The Bureau of Land Management (BLM) employs approximately 190 cultural specialists, contracts with up to 100 private cultural resources management firms, and annually authorizes 700-850 permits, representing private sector industry and academic jobs.

*Stakeholder Positions:* The BLM coordinates with a variety of stakeholders in the cultural resources program, including local communities and certified local governments, organizations who promote archaeological and historical resources such as the Oregon-California Trails Association, Indian tribes and the States. Our primary partners in historic preservation are the State Historic Preservation Offices in all states containing BLM administered lands. The State Historic Preservation Offices represent the citizens within their state and actively support the work of the BLM to incorporate state and local input on the significance of cultural resources, and to address the impacts to resources from development through appropriate methods. These state organizations also collaborate with BLM in management of data associated with inventory, monitoring, stabilization, study and interpretation. The BLM also coordinates closely with Indian tribes concerning traditional tribal activities and places of special meaning on the public lands, such as sites of traditional cultural and religious significance. Such coordination may result in both positive and negative outcomes. In small rural communities found across the West, the cultural resources found on the public lands often provide an important economic boost through heritage tourism and public viewing of museum collections.

*Public Lands Affected:* The BLM is responsible for the largest, most diverse and scientifically important aggregation of cultural resources – archaeological sites, historic buildings and structures – on the public lands, as well as the museum collections and data associated with these resources. These cultural resources represent all major time periods, events, and local communities in the broad sweep of human habitation in the West over the last 12,000 years.

*Other concise facts:* Over 370,000 cultural resources have been recorded across the BLM administered lands and over 10 million documented artifacts and specimens are housed in over 150 museums and universities. Over 130 significant resources have been listed on the National Register of Historic Places and almost 55,000 sites are eligible for listing. In 2016, the BLM authorized 699 permittees (holders of permits for archeological investigations) and reviewed over 6,800 proposed land-use actions.



Caption: Prehistoric Ancestral Puebloan Ruins, southern Utah

## **BACKGROUND**

Cultural resources are managed to ensure the cultural, educational, aesthetic, inspirational, and scientific values are preserved, and the recreational and economic benefits realized for today's communities as well as future generations in compliance with Federal laws and regulations, including the Federal Land Policy Management Act (FLPMA), National Historic Preservation Act (NHPA), Archaeological Resources Protection Act (ARPA), and the Native American Graves Protection and Repatriation Act (NAGPRA).

The program operates within two budget frameworks. The Cultural Resources appropriation supports core cultural resource management activities on the public lands. The FY 2017 President's Budget Request is \$17,328,000. Funding to support compliance work and review of potential impacts to cultural resources, per Section 106 of the National Historic Preservation Act, for proposed land-use is funded by the BLM programs or proponents driving the need for the review.

Core program activities include inventory of the public lands to locate, describe, and assess cultural resources, monitor resources for impacts, stabilize and protect resources, as needed, and facilitate public access through recreation, education and community programs, as well as sponsor academic research.

The BLM Cultural Program also provides expertise and capabilities to Section 106 of the NHPA, which requires Federal agencies to account for the effects of their actions and use authorizations on properties included in or eligible for the National Register of Historic Places. Such proposed land-uses include energy development, recreation, grazing, and other planned activities. The Section 106 process includes a series of sequential steps that include inventory, evaluation, consultation, and mitigation. The Cultural Resources Program reviews an average of 8,600 land use proposals annually for potential effects to historic properties. BLM conducts compliance review through a streamlined process negotiated in a national programmatic agreement with the Advisory Council on Historic Preservation (Council) and the National Conference of State Historic Preservation Officers (NCSHPO). The tools and processes developed by the Cultural

Resource Program streamline the compliance process, providing significant cost-savings and efficiencies for industry.

In addition, the Cultural Program curates more than 10 million artifacts, specimens, and associated records in the BLM's three museums and in coordination with over 150 State, tribal, local and non-profit partner museums and universities. BLM inventories and repatriates Native American human remains and cultural items held in collections and responds to new discoveries on the public lands, in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA).

The Cultural Program also develops and implements educational and interpretive opportunities for the public to engage with cultural resources and works with teachers through the Project Archaeology educational curriculum. Finally, the Cultural Program facilitates academic and scientific research on cultural resources to enhance scientific understanding and to support decision-making.



Caption: 2,000 Year Old Ancient duck decoys from Lovelock Cave, Nevada, now housed at a partner museum

Management of cultural resources is prescribed by several key statutes, including:

- 54 U.S.C. 320301-320303. Formerly known as “An Act for the Preservation of American Antiquities,” also known as the Antiquities Act of 1906
- 54 U.S.C. 300101 et seq. Formerly known as the National Historic Preservation Act of 1966, as amended; herein referred to as “NHPA”
- National Environmental Policy Act of 1969 (42 U.S.C. 4321; “NEPA”)
- Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701; “FLPMA”)
- American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996; “AIRFA”)
- Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. 470aa et seq.; “ARPA”)
- Native American Graves Protection and Repatriation Act of 1990, as amended (25 U.S.C. 3001; “NAGPRA”)
- National Trails System Act of 1968 (December 4, 2002)

## **DISCUSSION**

The Cultural Program, as a whole, continues to face several challenges including:

- Theft, destruction, and vandalism of heritage resources because of increased accessibility of once-remote public lands, and urban and suburban encroachment.
- Locating and inventorying Native American cultural items held in museum collections and consulting with Indian Tribes to determine disposition leading toward repatriation as highlighted by a 2010 audit of NAGPRA compliance by the Government Accountability Office.
- Identifying and curating artifacts and specimens recovered from the public lands, upgrading preservation and documentation for accountability, ensuring access and use for research and public benefit, and enhancing partnerships with repositories that curate BLM collections.
- Managing the effects of increased development of energy resources and transmission facilities coupled with an experienced workforce that is retiring or eligible to retire; training for new employees and compilation and synthesizing of information at a broad scale will continue to provide efficient and effective Section 106 compliance opportunities.

## **NEXT STEPS**

Program opportunities for the future include:

- Revision of 13-year-old manuals to increase the focus on management of the sites, artifacts, and buildings tied to our heritage and national identity.
- Employing the existing streamlined processes negotiated with States for Section 106 compliance. Maintain active working relations with SHPOs as part of the BLM's Cultural Resources Data Partnership in order to share costs to automate and digitize site records, and to analyze this information for use in planning and expediting review of land use undertakings as part of NHPA Section 106 compliance at a significant cost savings for the bureau and industry.
- Enhance tribal participation in decision-making processes regarding cultural resources through Government-to-Government consultation with Indian Tribes and Native Alaska villages and corporations. Collaborate with Indian tribes on plans for addressing Native American human remains and cultural items when discovered on the public lands, as well as seek out and repatriate ancestors from public lands curated in museum collections.
- Analyze data to inform land-use opportunities. Ten percent of the public lands have been

surveyed for cultural resources, largely conducted for land-use compliance, resulting in biased samples. To better understand the nature and extent of resources and inform predictive modeling, BLM is conducting baseline inventory in priority areas vulnerable to fire, looting, and other risks, and enhancing geospatial modeling efforts to support planning and resource management. BLM will synthesize and analyze available information at a broad scale to produce high-level, comprehensive, overviews and sensitivity maps critical for evaluating resources and planning at different scales.

- Support Law Enforcement efforts to curb criminal acts prohibited by ARPA, NAGPRA, and other Federal statutes protecting cultural resources, including looting of archaeological sites and trafficking in Native American artifacts. Cooperate with the Government Accountability Office (GAO) initiated engagement on “Trafficking of Native American Cultural Artifacts” begun January 19, 2017, at the request of the Chairman of the House Judiciary Committee; the Chairman of the House Subcommittee on Crime, Terrorism, Homeland Security, and Investigations; and Congressman Pearce.
- Leverage the interest and enthusiasm that the public, local communities and institutions have in America’s past to create partnerships, volunteer, and youth opportunities for community-based conservation and educational activities. Work with state and local museums and universities that research cultural sites on the public lands and curate the recovered museum collections to expand public programs as well as research and educational opportunities for students and community members.

## **BLM's Paleontology Program**

### **KEY FACTS**

*Jobs:* Paleontology is a scarce skill that requires specialized knowledge. In addition to eight full-time paleontologists, the Bureau of Land Management (BLM) relies on the expertise of academic, museum, and avocational paleontologists that partner with the bureau in order to manage paleontological resources to inventory and monitor paleontology on the public lands, and to preserve fossils in museum collections. Approximately 20% of the 465 paleontology permits are issued to consulting paleontologists who work with proponents to ensure that paleontological resource values are considered when proposing land use actions, such as oil and gas development, mining, renewable energy projects, and energy corridor rights-of-way.

*Stakeholder Positions:* In addition to a program of permitting that allows professional paleontologists to excavate paleontological resources, amateur paleontologists discover fossils and contribute to the science of paleontology. Communities are very interested in paleontological resources and often make a point to request that discoveries go to museums and be displayed in areas close to where they were discovered.

*Public Lands Affected:* Paleontological resources are found across the public lands. However, the BLM paleontology program attempts to identify areas that are more likely to have important paleontological resources in order to focus management efforts appropriately.

### **BACKGROUND**

Scientific and paleontological research on the public lands have led to the discovery of new types of organisms and have also brought us important revelations about the history of life on Earth. The BLM paleontology program works to preserve paleontological resources for science and public outreach; provides tools to assess the presence and importance of paleontological resources prior to making land use decisions; facilitates insightful research into the geology that preserves extinct organisms; and produces programs that increase the public's awareness and appreciation of paleontological resources.

The primary authority for managing paleontology is the Paleontological Resources Preservation Act of 2008 (PPRA, 16 U.S.C. 470aaa). Other authorities that guide the management of paleontology include the Federal Land Policy and Management Act (FLPMA) and the National Environmental Protection Act (NEPA). In the BLM, paleontology guidance is found in the 8270 manual and handbook.



Caption: Discovered near Moab, Utah, *Falcarious* is a one-of-a-kind dinosaur. Communities often insist that local discoveries be displayed in local museums.

The BLM paleontology program is small, but has a large public presence by working with partners to actively promote research and support public education about fossil resources. For example:

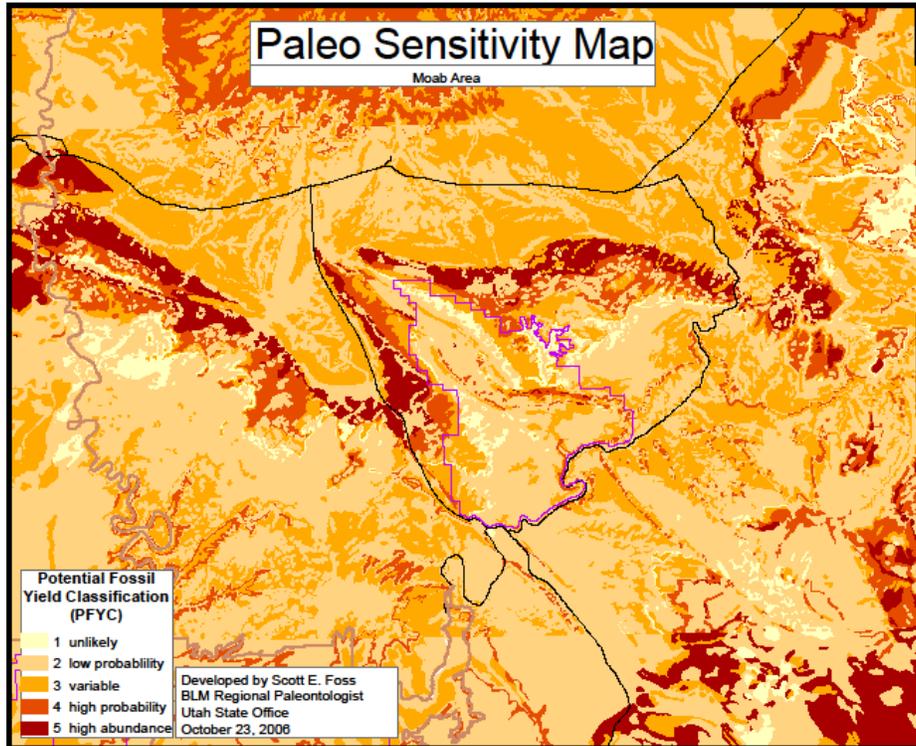
- In 2016 BLM issued 465 paleontological resource use permits to scientific researchers (compared to fewer than 50 that are issued annually by the National Park Service, Bureau of Reclamation, and the U.S. Fish and Wildlife Service).
- Over the last 10 years, more than 20 new dinosaur species have been described that were discovered on public lands administered by the BLM. This amounts to about 2% of all dinosaurs known in the world.
- The emergence of modern life on planet Earth occurred about 500 million-years-ago during an event known as the “Cambrian explosion”. This is best documented in places like the Chengjiang Province of China, the Burgess Shale of Canada, and on public lands in the west desert of Utah. During the past 10 years more than 30 new species of trilobites have been described from Cambrian-aged BLM lands in Utah alone, and new discoveries are continuing to be made.

## DISCUSSION

The BLM is one of four bureaus in the Department of the Interior that are required to participate in rulemaking for implementation of the Paleontological Resources Preservation Act (PRPA). The 60 day comment period for the proposed rule closed on February 6, 2017. The bureaus will develop a response to these comments, the majority of which address how a new rule would affect the casual collection of nonvertebrate fossils by the public. There is an overwhelming desire on the part of both professional and avocational paleontologists to keep casual collecting

as open as possible in order to allow amateur paleontologists to collect fossils, make new discoveries, and contribute to the science of paleontology.

The Potential Fossil Yield Classification (PFYC) is a system of geological maps that rank lands according to their potential to contain important paleontological resources. This allows non-specialists to identify where paleontological resource assessment will be necessary prior to making land use decisions and allows the bureau to assign paleontological surveys only where they are needed.



Caption: The Potential Fossil Yield Classification (PFYC) allows non-specialists to assign paleontological surveys only where they are needed based on the likelihood of paleontological resources based on geologic units.

A permit is required in order to collect paleontological resources and all important fossils must be preserved in an approved museum repository where they will be available for scientific research and public viewing. The paleontology program will be the first BLM program to implement a georeferenced science permit application and tracking system (SPATS) that will track permits, research, scientific results, and museum repositories.

## NEXT STEPS

The BLM paleontology program is working on the following projects:

- Finishing the departmental rulemaking in order to implement the Paleontological Resources Preservation Act. This is mostly an administrative rule that has been found by the Office of Management and Budget (OMB) to have no economic effect on the U.S. economy.
- Fully implementing the Potential Fossil Yield Classification (PFYC) in order to allow non-specialists to make a first assessment on whether a proposed land action would affect important paleontological resources. The potential fossil yield classification (PFYC) is a system of geological maps that rank lands according to their potential to contain important paleontological resources.
- Develop and implement bureau-specific guidance for the management of paleontological resources. Topics include permitting, museum collections, planning for resource uses, assessment and mitigation, and public outreach and education.

The paleontology program is a small but highly visible program that engages the public enthusiasm for fossils, including dinosaurs.



Caption: Paleontological excavation at Natural Trap Cave in Wyoming by Researchers from the Des Moines University, Iowa



# The BLM's Tribal Consultation and Cultural Resource Management Program





# The BLM has Obligations to American Indian Tribes

- Tribes have treaty rights and are sovereign governments.
- The BLM provides services such as cadastral survey and permitting for oil and gas.
- Tribes have concerns about many resources and issues such as economics, sovereignty, plant gathering, air, water, cultural and biological resources.
- New approaches like tribal ethnographies and tribal inventories are not without consequences.
- Tribes have traditional ecological knowledge gathered over generations that BLM can benefit from for planning projects.
- New enthusiasm and activism in Indian country.
- Significant litigation risk.



# Consultation is Required Under Many Authorities

- **Each Tribe is unique, but will have varying authorities and rights under Constitution and Treaties**
- **National Environmental Policy Act**
- **Federal Land Policy and Management Act**
- **Executive Order 13175**
- **American Indian Religious Freedom Act**
- **Executive Order 13007**
- **Native American Graves Protection and Repatriation Act**
- **National Historic Preservation Act**
- **Archaeological Resources Protection Act**



# **New Policy Guidance**

## **December 2016**

### **Manual (MS 1780), Tribal Relations and handbook (H-1780-1) improving and sustaining BLM-tribal relations**

- **Builds off of lessons learned from years of BLM tribal consultation practice**
- **Steps down from 2009 Presidential Memo and 2011 SO 3317**
  
- **Revises old narrowly focused cultural manuals based on tribal perspective**
- **Provides for tribal consultation efforts within all program areas**



# Some Manual Highlights

- **A commitment to open and ongoing dialogue at the initiation of a project.**
- **Line officer with decision making authority is responsible for consultation.**
- **Allows for compensation (e.g. travel costs) on a case-by-case basis.**
  
- **Process for reburial of Native American human remains and cultural items.**
- **A commitment to adequate staffing to carry out tribal consultation.**



# Programs In BLM Handbook Sections

- **National Conservation Lands**
- **Fire Management Program**
- **Forest and Woodlands Program**
- **Rangeland Management**
- **Fish and Wildlife Program**
- **Cultural Resources Program**
- **Renewable Energy Program**
- **Minerals Program**
- **Cadastral Survey Program**
- **Fluid Minerals**
- **Realty Program**
- **Acquisition and Contracting**





U.S. Department of the Interior  
Bureau of Land Management

# BLM Cultural Program





# Incredible Diversity of Resources Managed

- **The BLM's Cultural Resources Include:**
- **374,434 recorded cultural properties**
- **4,851 cultural properties protected**
- **133 historic properties listed on the National Register of Historic Places (NRHP)**
- **2,187 contributing properties to the NRHP**
- **54,629 properties eligible for listing on the NRHP**
- **5,569 monitored archaeological sites**
- **429 maintained historic structures**
- **10 million documented artifacts and specimens in 158 museums and universities.**



# Variety Of Laws

- **National Historic Preservation Act (NHPA)**
  - Section 110**
  - Section 106**
- **Archaeological Resource Protection Act (ARPA)**
- **Native American Grave Protection and Repatriation Act (NAGPRA)**
- **National Environmental Policy Act (NEPA) – Parallel Track**



# National Historic Preservation Act Section 106

**Requires federal agencies to account for the effects of their actions and use authorizations on properties included in or eligible for the National Register of Historic Places.**

- **The BLM Cultural Program reviews an average of 8,600 land use proposals annually.**
- **BLM uses a streamlined national programmatic agreement with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers.**
- **Other tools, primarily agreements, facilitate compliance.**
- **State Historic Preservation Offices maintain site and survey data.**
- **Cost of compliance and mitigation usually born by proponent.**



# Museum Collections and Heritage Education

- **Curate more than 10 million artifacts, specimens, and associated records in the BLM's three museums and 158 partner institutions.**
- **Inventory and repatriate Native American human remains and cultural items in collections and new discoveries, in accordance with NAGPRA.**
- **Develop and implement public involvement through educational, interpretative and volunteer opportunities.**
- **Facilitate academic and scientific research on cultural resources.**

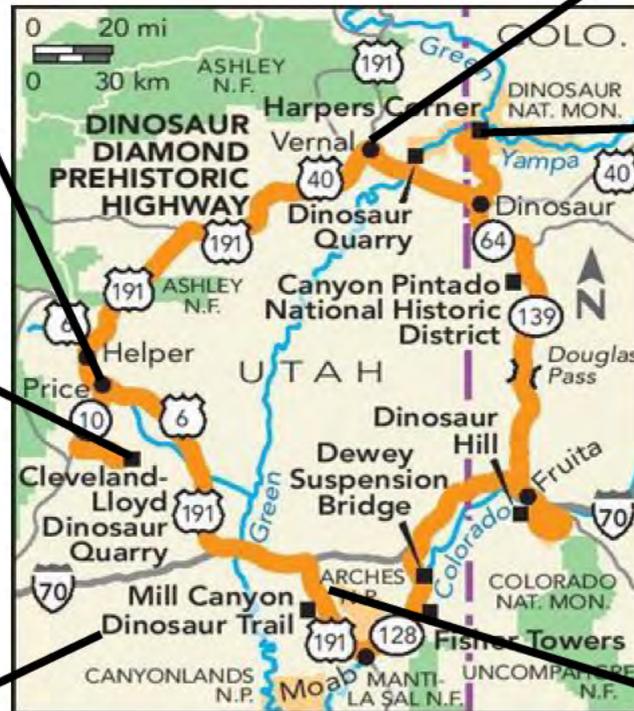
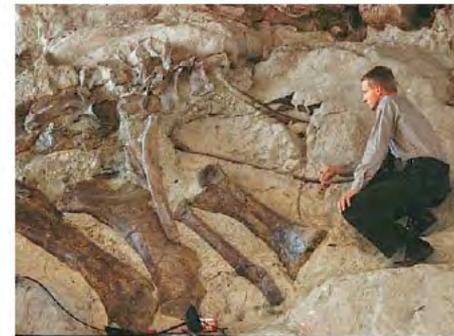


# BLM Paleontology

Museums

Interpreted Dinosaur Trails

Public Dinosaur Quarries



Dinosaur Diamond in Utah/Colorado





# **Paleontological Resources Preservation Act (PRPA)**

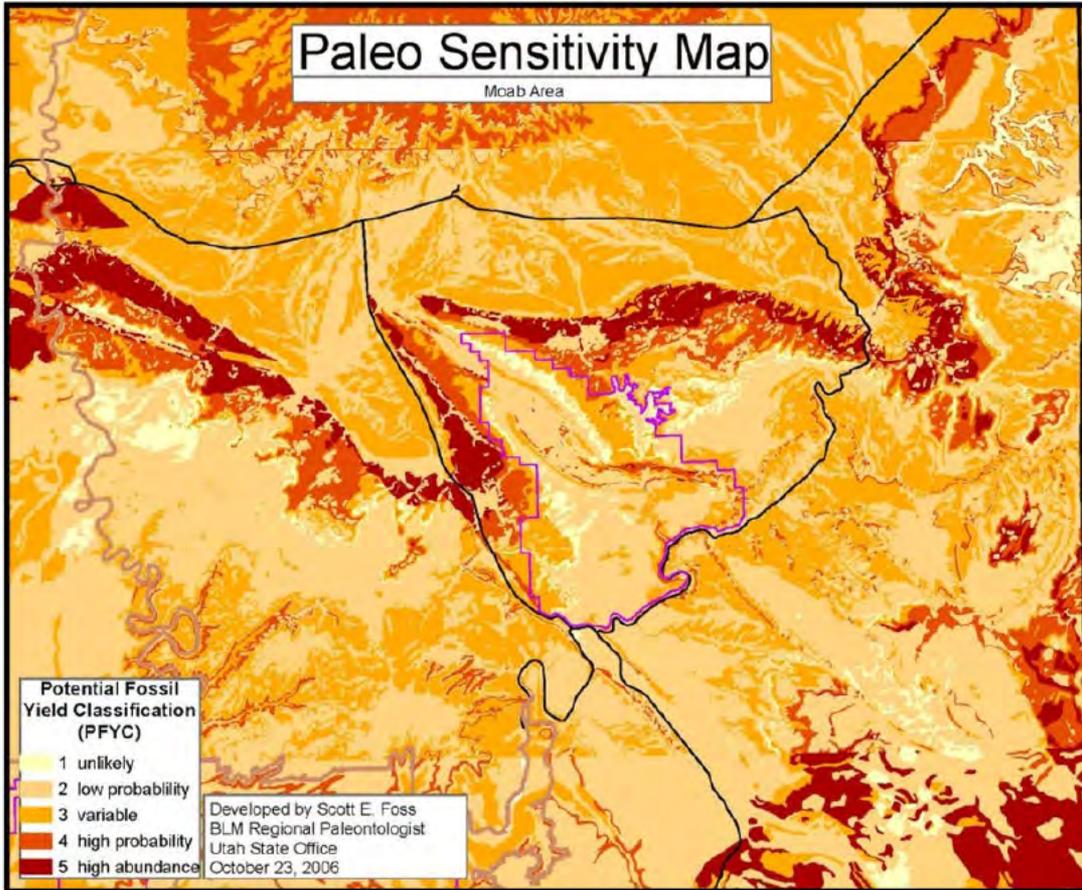
- **The proposed rule closed to public inspection and comment on Monday, February 6, 2017**
- **423 comments were received**
- **The majority of the comments address how the new regulation would affect the casual collection of nonvertebrate fossils.**
- **Overwhelming desire on the part of both professional and avocational paleontologists to keep casual collecting as open as possible.**



# Potential Fossil Yield Classification

## Paleo Sensitivity Map

Moab Area



**The potential fossil yield classification (PFYC) is a system of geological maps that rank lands according to their potential to expose important paleontological resources.**

**From:** Benedetto, Kathleen  
**To:** [Brune, Jeff](mailto:jbrune@blm.gov)  
**Cc:** [Varner, Matthew](mailto:varner@blm.gov); [Jill Ralston](mailto:jralston@blm.gov); [BLM WO 100](mailto:patrick.wilkinson@blm.gov); [Patrick Wilkinson](mailto:patrick.wilkinson@blm.gov); [Gins, Meagan](mailto:gins.meagan@blm.gov); [Matthew Allen](mailto:matt.allen@blm.gov); [Kristin Bail](mailto:kristin.bail@blm.gov); [Timothy Spisak](mailto:timothy.spisak@blm.gov); [Lonny Bagley](mailto:lonny.bagley@blm.gov); [Kelleher, Karen](mailto:kelleher.karen@blm.gov); [Steve Tryon](mailto:steve.tryon@blm.gov); [Perez, Jerome](mailto:perez.jerome@blm.gov)  
**Subject:** Re: WO-100 Review - Draft Testimony for Review - Santa Ana River Wash Plan Land Exchange Act (DD: 3/24 @ Noon)  
**Date:** Monday, March 27, 2017 12:45:48 PM

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Looks fine to me. KB

On Mon, Mar 27, 2017 at 12:37 PM, Brune, Jeff <[jbrune@blm.gov](mailto:jbrune@blm.gov)> wrote:  
Mike is good with the testimony. Kathy is reviewing it now. --Jeff

On Mon, Mar 27, 2017 at 9:32 AM, Perez, Jerome <[jperez@blm.gov](mailto:jperez@blm.gov)> wrote:  
Matthew et al. I am good with the testimony. JP

On Fri, Mar 24, 2017 at 1:37 PM, Varner, Matthew <[mvarner@blm.gov](mailto:mvarner@blm.gov)> wrote:  
Mike *et al.* -

As you may know, the House Natural Resources Subcommittee on Federal Lands will be holding a legislative hearing on a draft bill entitled the "Santa Ana River Wash Plan Land Exchange Act" on April 5, 2017. This bill directs the transfer of BLM lands, which are currently surrounded by private mineral development, to the San Bernardino Valley Water Conservation District in exchange for lands that have high resource values for threatened and endangered species. The bill would also revoke a Secretarial Order from 1924 and law from 1909 that prohibited mining activities on the BLM lands being exchanged. H.R. 497 implements key recommendations from a 20+ year cooperative effort involving the BLM, local officials, industry, and stakeholders in the region.

This draft testimony has been reviewed, edited and surnamed by :

- California (Joe Stout)
- WO-320 (Mitch Leverette)
- WO-350 (Robert Jolley)
- WO-620 (Jill Ralston)
- AD-300 (Lonny Bagley)
- AD-200 (Karen Kelleher)
- AD-600 (Patrick Wilkinson)

Pasted below and attached is the BLM draft testimony. Also attached is the bill text and map.

Please let me know if you have any questions.

Thanks,  
Matt

Matthew S. Varner  
Legislative Affairs  
Bureau of Land Management, WO-620  
202-912-7430 (desk) 907-315-2745 (cell)

**Statement of**

**U.S. Department of the Interior, Bureau of Land Management**

**House Committee on Natural Resources**

**Subcommittee on Federal Lands**

**H.R. 497, Santa Ana River Wash Plan Land Exchange Act**

**April 5, 2017**

Thank you for the opportunity to present the views of the Department of the Interior on H.R. 497, the Santa Ana River Wash Plan Land Exchange Act. H.R. 497 would direct the exchange of approximately 327 acres of public lands managed by the Bureau of Land Management (BLM) for approximately 310 acres of land managed by the San Bernardino Valley Water Conservation District (WCD) in San Bernardino County, California.

The Department supports the bill, but we would like to work with the sponsor and the Subcommittee on a few modifications. We appreciate Congressman Cook's support of this land exchange, which will help consolidate ownership of lands, allow for infrastructure improvements, further mineral development, and contribute to habitat protection and conservation efforts in the Upper Santa Ana River Wash.

**Background**

For over twenty years, the BLM has been an active participant in coordinated land use planning and conservation efforts in the Upper Santa Ana River Wash (Wash Planning Area). This area is approximately one mile below the Seven Oaks Dam, near the City of Redlands, California, and involves a mix of both public and private land ownership.

The Wash Planning Area is regionally important for flood control, groundwater recharge, recreation, and habitat for threatened and endangered species. The area is also an important source for aggregate for concrete products and roadway construction materials. Under a Public Law from 1909 ("Act of February 20, 1909"), Congress set aside certain lands within this area for water recharge and excluded mining on BLM-managed lands. The diverse resource values within the region served as an impetus for the formation of a task force in 1993 to help coordinate land uses irrespective of land ownership boundaries. City and county officials, industry representatives, WCD officials, and the BLM were key members of the task force.

After 15 years of collaboration and engagement with stakeholders representing water, mining, flood control, wildlife, and municipal interests, the task force finalized a Regional Plan to coordinate the uses of the Wash Planning Area. Based on this Regional Plan, the users of the Wash Planning Area are developing a Habitat Conservation Plan (HCP) with the U.S. Fish and Wildlife Service. Taken together, these management strategies serve to guide land uses and activities while also improving the wildlife habitat in the Upper Santa Ana River Wash.

***Public Land Exchanges***

Under the Federal Land Policy Management Act of 1976 (FLPMA), the BLM's mission is to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future

generations. FLPMA provides the BLM with a clear multiple-use and sustained yield mandate that the agency implements through its land use planning process.

Among other purposes, land exchanges allow the BLM to acquire environmentally-sensitive lands while transferring public lands into non-Federal ownership for local needs and the consolidation of scattered tracts. The BLM conducts land exchanges pursuant to Section 206 of FLPMA, which provides the agency with the authority to undertake such exchanges, or when given specific direction by Congress. To be eligible for exchange under Section 206 of FLPMA, BLM-managed lands must have been identified as potentially available for disposal through the land use planning process. Extensive public involvement is critically important for such exchanges to be successful. The Department notes that the process of identifying lands as potentially available for exchange does not include the clearance of impediments to disposal or exchange, such as the presence of threatened and endangered species, cultural or historic resources, mining claims, oil and gas leases, rights-of-way, and grazing permits. Under FLPMA, this clearance must occur before the exchange can be completed.

#### **H. R. 497**

H. R. 497 would require within two years of the bill's enactment the exchange of approximately 327 acres of BLM-managed public lands for approximately 310 acres of WCD-administered private lands in San Bernardino County, California. The purpose of the exchange would be to transfer public lands to the WCD for economic development and to acquire environmentally sensitive private lands for consolidated management of public lands.

The land exchange would be subject to valid existing rights, appraisals would be conducted and it would be completed pursuant to FLPMA Section 206. The WCD would be responsible for all costs associated with the exchange. If the value of the public lands proposed for exchange exceeds the value of the private lands, up to 59 additional acres of private lands may be added to the proposed exchange to equalize values. If the additional private lands are insufficient to equalize values, the WCD must make a cash equalization payment in accordance with the land exchange provisions of FLPMA or terminate the exchange. If the value of the private lands proposed for exchange exceeds the value of the public lands, up to an additional 90 acres of public lands may be added to the proposed exchange to equalize values. In the event that the additional public lands are insufficient to equalize values, the Secretary is not required to make a cash equalization payment to the WCD.

The bill would also exempt any public lands proposed for exchange to the WCD from the "Act of February 20, 1909". The private lands proposed for exchange to the BLM, however, would continue to be subject to the continued use, maintenance, operation, construction, relocation, or expansion of groundwater recharge facilities to the extent that such activities are not in conflict with the HCP. Finally, the bill revokes Secretarial Order 241 from November 11, 1929, which withdrew a portion of the public land for a transmission line that ultimately was not constructed.

#### **Analysis**

The Department supports the completion of land exchanges that consolidate ownership of scattered tracts of lands, thereby streamlining land management tasks and enhancing resources protection and providing opportunities for resource development. In this particular exchange, the BLM would acquire quality habitat for the Federally-listed Santa Ana River woolly-star, slender-horned spineflower, coastal California gnatcatcher, and the San Bernardino kangaroo rat, while facilitating mineral and infrastructure development for local communities across the region.

We have a few concerns with the bill's provisions, however, and we would like the opportunity to work with the sponsor and Subcommittee to incorporate in the bill standard appraisal and equalization of values language, which has been used in many other successful legislated land exchanges. The Department is committed to continuing its adherence to the Uniform Appraisal Standards for Federal Land Acquisition and Uniform Standards of Professional Appraisal Practice and recommends the appraisal process be managed by DOI's Office of Valuation Services.

**Conclusion**

Thank you for the opportunity to provide testimony on H.R. 497, the Santa Ana River Wash Plan Land Exchange Act. The Department supports the bill but would like to work with the sponsor and the Subcommittee on a few modifications. I would be happy to answer any questions.

--

\*\*\*\*\*

Jerome E. Perez  
Acting BLM Deputy Director  
for Operations  
Phone: 202-208-3801  
email: [jperez@blm.gov](mailto:jperez@blm.gov)

\*\*\*\*\*

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**Kathleen Benedetto**  
Special Assistant to the Secretary  
Department of the Interior  
Bureau of Land Management  
(202) 208-5934

**From:** McGinnis, Shelley  
**To:** [Benedetto, Kathleen](#)  
**Cc:** [Timothy Spisak](#); [Lonny Bagley](#); [Shannon Stewart](#)  
**Subject:** Memos for Onshore Orders Briefing  
**Date:** Wednesday, March 29, 2017 12:01:26 PM  
**Attachments:** [Onshore Orders Memo 2017\\_0329 final.docx](#)  
[Onshore Orders Memeo Attachment 1 - API Letter.pdf](#)  
[HF Memo 2017\\_0316 final.docx](#)  
[V&F Memo 2017\\_0317 final.docx](#)

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Kathy,

Tim asked me to send you the attached materials that you had requested for the Onshore Orders briefing that is scheduled on Friday, March 31, from 11am – 12pm.

The materials are currently under final review by ASLM. It is my understanding from Shannon that the final versions will be put into your briefing book on Thursday afternoon.

Thanks,

--

Shelley McGinnis, Ph.D.

Resource Advisor

Bureau of Land Management

Energy, Minerals, and Realty Management

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**INFORMATION/BRIEFING MEMORANDUM  
FOR THE ASSISTANT SECRETARY – LAND AND MINERALS MANAGEMENT**

**DATE:** March 28, 2017

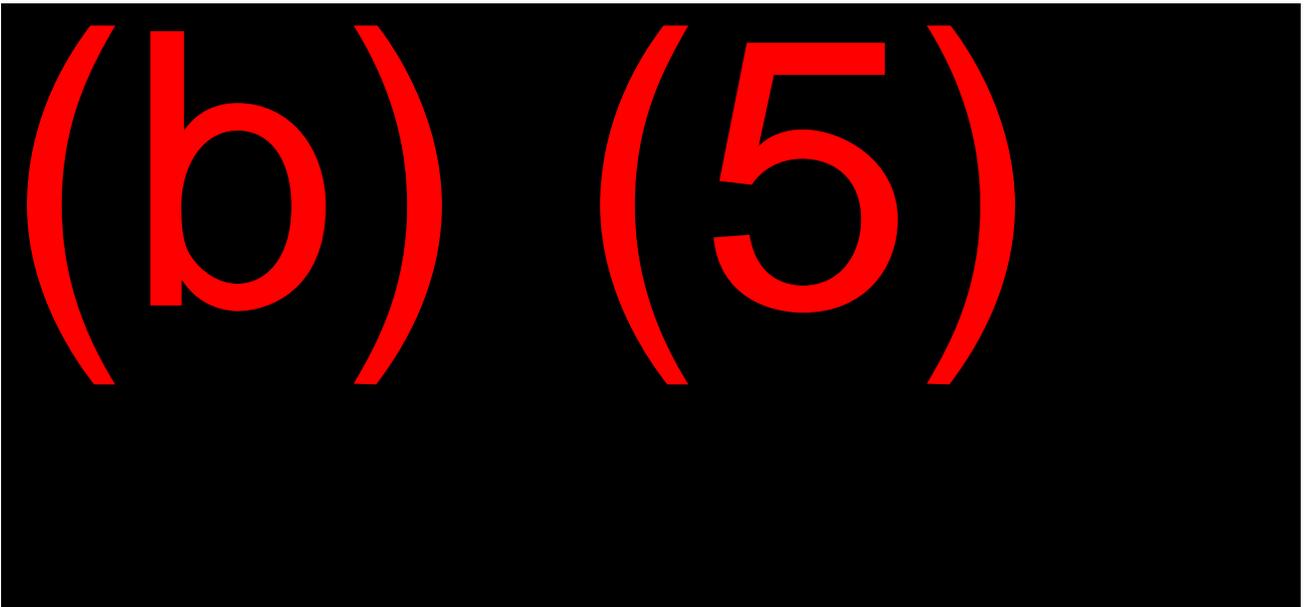
**FROM:** Tim Spisak, Acting Assistant Director, Energy, Minerals and Realty Management

**SUBJECT:** Onshore Orders Nos. 3, 4, and 5

**BACKGROUND**

“Onshore Orders” is shorthand for the three concurrent rulemakings that replaced the Bureau of Land Management’s (BLM) site security, oil measurement, and gas measurement regulations contained in Onshore Oil and Gas Orders Nos. 3, 4, and 5, which had been in place since 1989. The recent rulemakings resulted in new site security, oil measurement, and gas measurement regulations for Onshore Federal and Indian oil and gas production and are codified in the Code of Federal Regulations at 43 C.F.R. part 3170. These rulemakings were prompted by external and internal oversight reviews finding many of the BLM’s production measurement and accountability policies to be outdated and inconsistently applied.<sup>1</sup> The new rules also address some of the Government Accountability Office (GAO) concerns for High Risk in production accountability for the Department of the Interior. The rules have not been challenged in court, and the new measurement requirements potentially provide additional revenues to States and the Federal Treasury, including the Indian Trust.

**DISCUSSION**



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<sup>1</sup> E.g., Report to Congressional Requesters, Oil and Gas Management, Interior’s Oil and Gas Production Verification Efforts Do Not Provide Reasonable Assurance of Accurate Measurement of Production Volumes GAO-10-313 (2010).

(b) (5)

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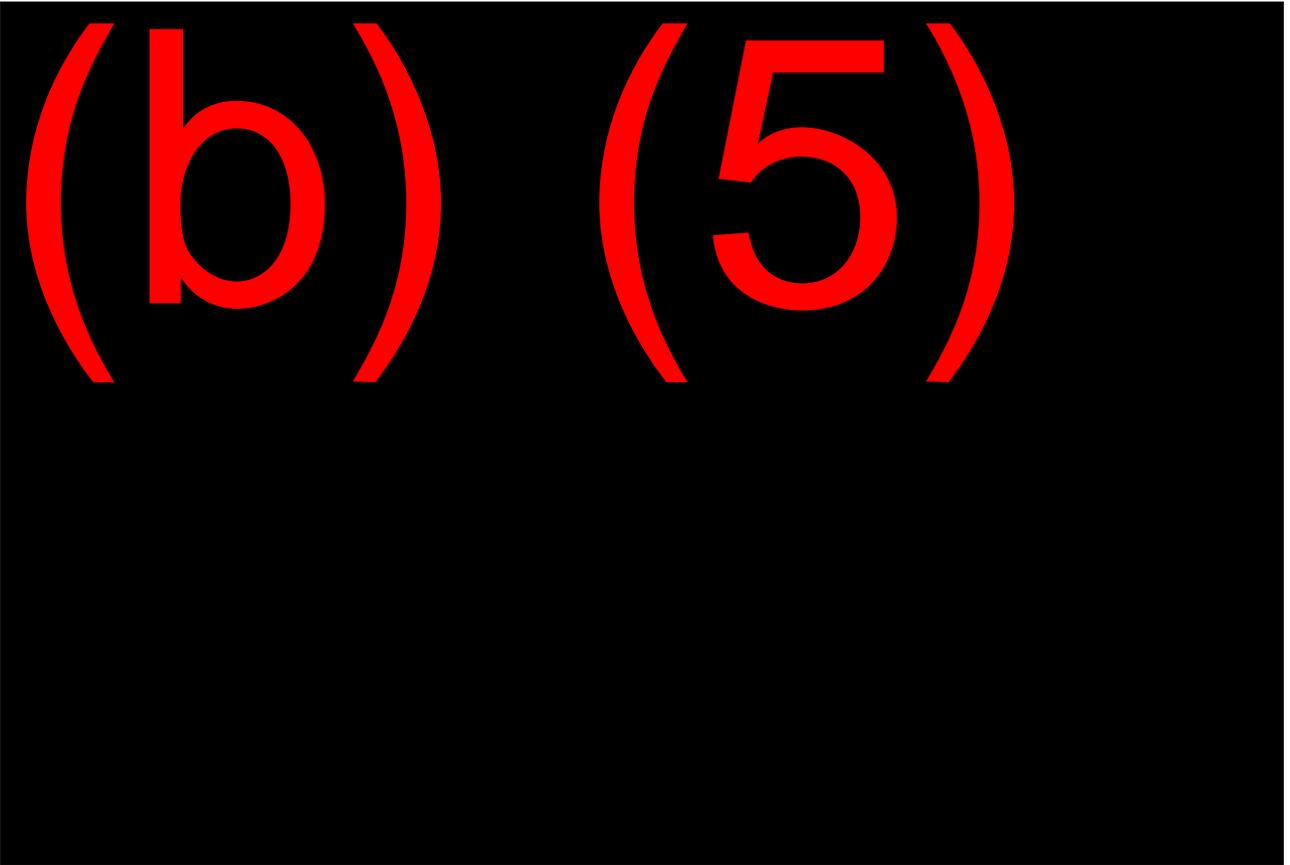
<sup>2</sup> H.R.J. Res. 56, 115<sup>th</sup> Cong. (2017).

<sup>3</sup> H.R.J. Res. 82, 115<sup>th</sup> Cong. (2017).

<sup>4</sup> H.R.J. Res. 68, 115<sup>th</sup> Cong. (2017).

(b) (5)

**NEXT STEPS**



**ATTACHMENT**

1. API Letter dated February 21, 2017



**Richard Ranger**  
Senior Policy Advisor  
**Upstream**  
1120 L Street, NW  
Washington, DC 20005-4070  
USA  
Telephone 202-462-8057  
Fax 202-462-8036  
Email [ranger@api.org](mailto:ranger@api.org)  
[www.api.org](http://www.api.org)

February 21, 2017

Ms Kristin Bail, Acting Director  
Bureau of Land Management  
U.S. Department of the Interior  
1849 C St., NW, Room 2134 LM  
Washington, DC 20240

Attention: Request for Postponed Effective Date for Requirements in 43 CFR 3175

Dear Acting Director:

API is a national trade association representing over 625 member companies involved in all aspects of the oil and natural gas industry. API's members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry. API member companies are leaders of a technology-driven industry that supplies most of America's energy, supports more than 9.8 million jobs and 8% of the U.S. economy, and since 2000 has invested nearly \$2 trillion in U.S. capital projects to advance all forms of energy, including alternatives.

On January 17, 2017, the rules replacing the Bureau of Land Management (BLM) Onshore Orders 3, 4, & 5 (43 CFR 3173, 3174, & 3175) became effective. On January 19, a letter (attached to this letter as an addendum) was distributed through the BLM state offices informing operators that, "Due to unanticipated delays and complexities with developing the updated version of the Automated Fluid Minerals Support System (AFMSS), the BLM will not be able to accept applications for FMPs by January 17, 2017." The BLM therefore postponed the requirement to submit applications for Facility Measurement Points (FMPs) for both existing measurement facilities (pre-January 17, 2017; see 43 CFR 3173.12(e)) and new measurement facilities (January 17, 2017 and beyond; see 43 CFR 3173.12(d)), by the extent of the final delay period. This directly delays the date when operators will receive approved FMPs for both affected oil and gas measurement facilities.

In the January 19 postponement letter, BLM also delayed the implementation of portions of 43 CFR 3174 for existing oil measurement facilities, explaining that a delay was necessary because 43 CFR 3174.2(f) states, "measuring procedures and equipment used to measure oil for royalty purposes, that is in use on January 17, 2017, must comply with the requirements of this subpart on or before the date the operator is required to apply for an FMP number under 3173.12(e) of this part."

The BLM has not postponed the requirements of 43 CFR 3175. In justifying the decision not to delay these requirements, the postponement letter states, "The delay does not affect the implementation of the measurement requirements in 43 CFR 3175. Unlike 43 CFR 3174, where implementation timeframes are

based on the FMP application deadline, the implementation timeframes in 3175 are based on the flow category of the meter (very low, low, high, or very high).”

The postponement should be extended to the entirety of all three rules (43 CFR, 3173, 3174, and 3175) because the requirements within each rule are predicated on the now-postponed FMP requirements. Although cited within the January 19 postponement letter, 43 CFR 3175 is specifically excluded based on an interpretation of the definition for the very low, low, high, and very high flow categories within 43 CFR 3175 (§ 3175.10). However, these flow categories are also based around FMPs. For example, the definition for the high-volume category is as follows: “High-volume facility measurement point or high-volume FMP means any FMP that measures more than 200 Mcf/day, but less than or equal to 1,000 Mcf/day over the averaging period.” This category applies to a high-volume *FMP*, not a high-volume meter. The definition for an FMP from 43 CFR 3173 (§ 3170.3) further states, “Facility measurement point (FMP) means a BLM-approved point where oil or gas produced from a Federal or Indian lease, unit PA, or CA is measured and the measurement affects the calculation of the volume or quality of production on which royalty is owed.” Because an FMP is a “BLM-approved point” and the flow categories within 43 CFR 3175 are based on FMPs, it is impractical to move forward with the requirements with 43 CFR 3175 during the present period when BLM is unable to process applications for FMPs.

Another factor that should be considered in the implementation of these rules is that the liquid and gas measurement equipment and accounting software used at FMPs must be approved by the BLM Production Measurement Team. This team has not been formed and as of the date of this letter there is no approved equipment list for operators to rely upon to ensure compliance. While the rules postpone the requirement to obtain approval for FMP equipment and software for two years, this situation still imposes a compliance obligation on operators before they can obtain the approvals from BLM that are described in the rules.

In conclusion, we respectfully request that the entirety of 43 CFR 3173, 3174, and 3175 be postponed until the BLM has systems in place to implement all portions of the rules.

Should you have any questions, please contact Richard Ranger at 202.682.8057, or via e-mail at [ranger@api.org](mailto:ranger@api.org).

Very truly yours,



Richard Ranger  
Senior Policy Advisor  
Upstream and Industry Operations  
American Petroleum Institute

Cc: Larry Claypool, Acting Associate Director for Minerals and Realty Management



United States Department of the Interior  
BUREAU OF LAND MANAGEMENT  
|Field Office and address|  
<http://www.blm.gov>



[DATE]

In Reply, Refer To:  
3160 (310) P

Company Name  
Address 1  
Address 2  
City, State, Zip

Attn: Name of company contact

Dear Name of company contact.

On November 17, 2016, the Federal Register published final rules relating to requirements for site security and production handling (43 CFR 3173), measurement of oil (43 CFR 3174), and measurement of gas (43 CFR 3175), all with an effective date of January 17, 2017. The 43 CFR 3173 requirements require operators to submit electronic applications to the BLM for approval of Facility Measurement Points (FMPs) and site facility diagrams within specific timeframes.

For permanent measurement facilities installed before January 17, 2017, these timeframes, which range from one to three years from the effective date of the rule, are based on the average production rate of oil and gas on that lease, Communitization Agreement (CA), or Participating Area (PA) unit over the previous 12 months (see 43 CFR 3173.12(e)). For permanent measurement facilities installed after January 17, 2017, the operator must submit an electronic application for an FMP number before any production can leave the permanent measurement facility (see 43 CFR 3173.12(d)).

Due to unanticipated delays and complexities with developing the updated version of the Automated Fluid Minerals Support System (AFMSS), the BLM will not be able to accept electronic applications for FMPs by January 17, 2017. In addition, this affects the filing of new and amended site facility diagrams in instances requiring FMP numbers. The BLM is working to complete the new system and anticipates that this functionality will be available to operators by May 2017.

As a result, the BLM is taking the following interim steps to help operators:

1. For permanent measurement facilities in place before January 17, 2017, the BLM will extend the timeframes in 43 CFR 3173.12(e) by the number of days between January 17, 2017, and the date the BLM fully implements the electronic FMP functionality. The date that the electronic

FMP functionality is available to operators is called the “*new effective date*.” For example, if the *new effective date* is May 17, 2017 (a delay of 120 days), the BLM will extend the time frames listed in 43 CFR 3173.12(e) by 120 days.

2. For permanent measurement facilities installed between January 17, 2017, and the *new effective date*, the operator has 60 days from the *new effective date* to apply for an FMP. During this period, the operator may use the measurement facility for Oil and Gas Operation Reports (OGOR) just as they would for an existing FMP during the phase-in period. For example, if an operator installs a new permanent measurement facility on February 1, 2017, and the *new effective date* is May 17, 2017, the operator would have until July 16, 2017, to apply for an FMP. During the period of February 1, 2017, and until the BLM assigns an FMP number, the operator would use the lease, unit PA or CA number for OGOR reporting. Operators must submit the site facility diagrams 30 days after assignment of the FMP.
3. For permanent measurement facilities covered under 3173.11(d)(2), *i.e.*, those that are in service on or before January 17, 2017, and are modified or experience a change in operator after January 17, 2017, the operator has 60 days from the *new effective date* to apply for an FMP. For example, if an operator modifies an existing permanent measurement facility on February 1, 2017, and the *new effective date* is May 17, 2017, the operator would have until July 16, 2017, to apply for an FMP. Operators must submit the site facility diagrams 30 days after assignment of the FMP.
4. For permanent measurement facilities installed after the *new effective date*, the operator must apply for an FMP before any production leaves the permanent measurement facility.
5. The BLM will provide operators with a 30-day notice of the *new effective date* and post to the web.
6. In addition, this delay affects the implementation of the requirements in 43 CFR 3174 for permanent oil measurement facilities in place before January 17, 2017. Under 3174.2(f), “measuring procedures and equipment used to measure oil for royalty purposes, that is in use on January 17, 2017, must comply with the requirements of this subpart on or before the date the operator is required to apply for an FMP number under 3173.12(e) of this part.” Therefore, the BLM will apply the extension referenced in paragraph 1 above to the implementation timeframes for oil measurement procedures and equipment in 43 CFR 3174.2(f). The delay does not affect the implementation of the measurement requirements in 43 CFR 3174 for permanent oil measurement facilities installed on or after January 17, 2017.
7. The delay does not affect the implementation of the measurement requirements in 43 CFR 3175. Unlike 43 CFR 3174, where implementation timeframes are based on the FMP application deadline, the implementation timeframes in 3175 are based on the flow category of the meter (very low, low, high, or very high).

Please contact **[Name]** at **[Phone]** or **[email@blm.gov]** if you have any questions or need to make corrections.

Sincerely,

**INFORMATION/BRIEFING MEMORANDUM  
FOR THE ASSISTANT SECRETARY – LAND AND MINERALS MANAGEMENT**

**DATE:** March 16, 2017

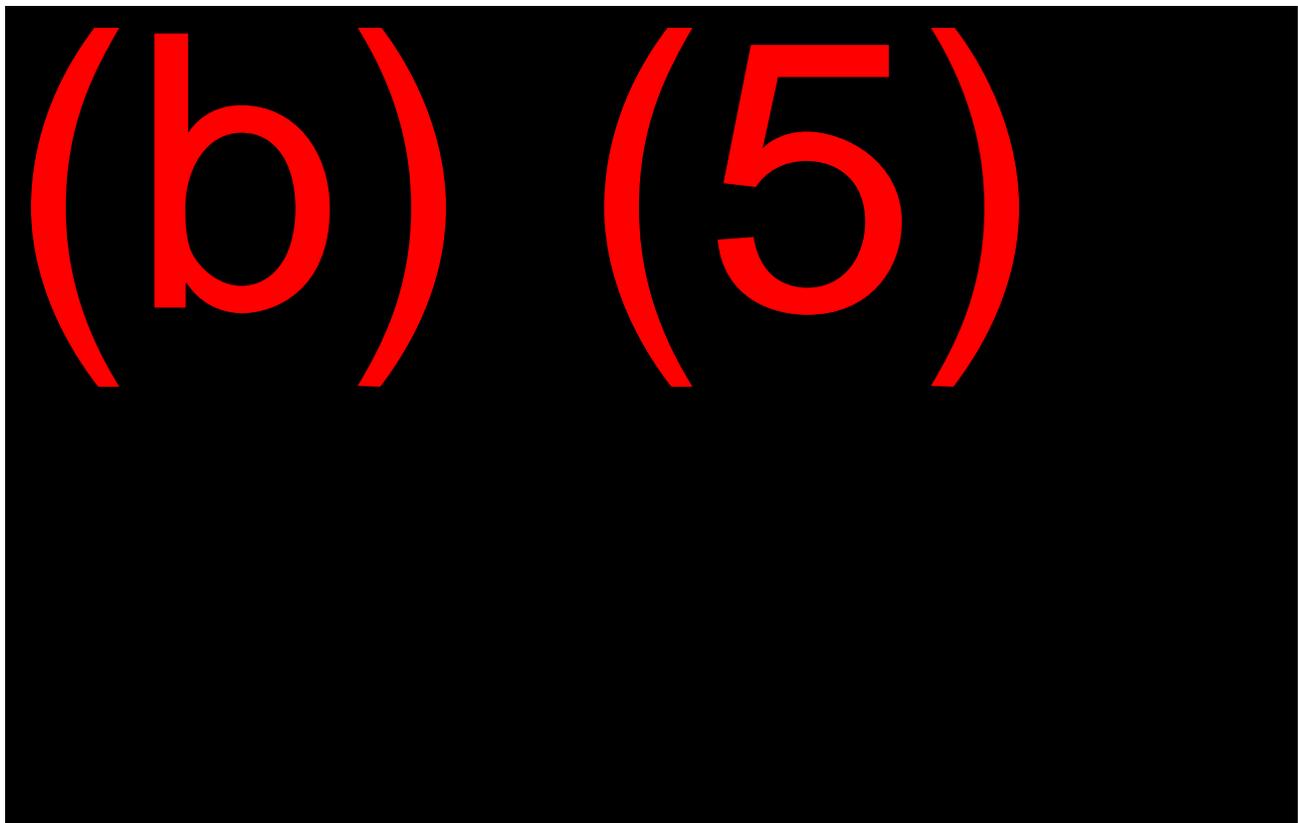
**FROM:** Tim Spisak, Acting Assistant Director, Energy, Minerals and Realty Management

**SUBJECT:** Hydraulic Fracturing Rule

**BACKGROUND**

The BLM final rule on hydraulic fracturing serves as a complement to update existing regulations designed to ensure the environmentally responsible development of oil and gas resources and protection of other downhole zones on federal and Indian lands. The BLM initiated the rule in response to the increasing use and complexity of hydraulic fracturing coupled with advanced horizontal drilling technology. This technology has opened large portions of federal and Indian lands to oil and gas development. The hydraulic fracturing rule addresses various safety concerns which should improve the confidence level of the public as industry explores and opens larger and newer areas of federal and Indian lands to oil and gas development. The rule has garnered tremendous public interest and was immediately challenged in court.

**DISCUSSION**



(b) (5)

**NEXT STEPS**

**(b) (5)**

**INFORMATION/BRIEFING MEMORANDUM  
FOR THE ASSISTANT SECRETARY – LAND AND MINERALS MANAGEMENT**

**DATE:** March 16, 2017

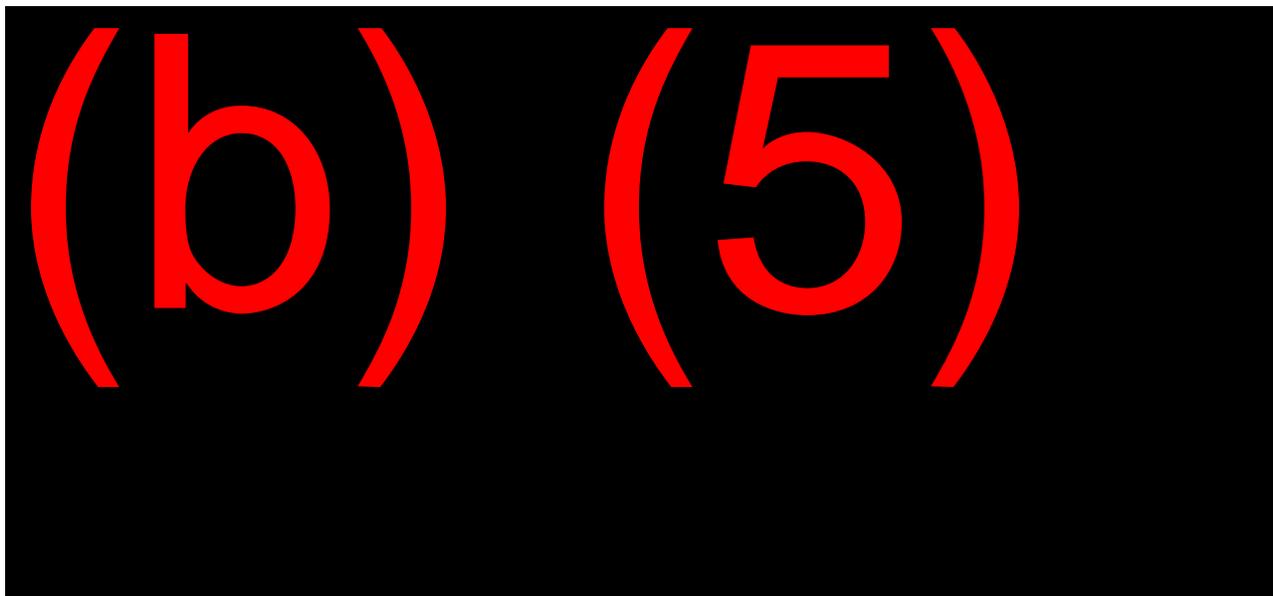
**FROM:** Tim Spisak, Acting Assistant Director, Energy, Minerals and Realty Management

**SUBJECT:** Venting & Flaring Rule

**BACKGROUND**

“Venting & Flaring Rule” is shorthand for the *Waste Prevention, Production Subject to Royalties, and Resource Conservation* rulemaking that replaced the requirements related to venting, flaring, and royalty-free use of gas contained in the 1979 Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL-4A). These regulations are codified at new 43 CFR subparts 3178 and 3179. The recent rulemaking also includes provisions to make regulatory and statutory authority consistent with respect to royalty rates that may be levied on competitively offered oil and gas leases on Federal lands. This rule implements recommendations from several oversight reviews, including reviews by the Office of the Inspector General of the Department of the Interior (OIG) and the Government Accountability Office (GAO).<sup>1</sup> The OIG and GAO reports recommended that the BLM update its regulations to require operators to augment their waste prevention efforts, afford the BLM greater flexibility in setting royalty rates, and clarify BLM policies regarding royalty-free, on-site use of oil and gas.

**DISCUSSION**



<sup>1</sup> GAO, Oil and Gas Royalties: The Federal System for Collecting Oil and Gas Revenues Needs Comprehensive Reassessment, GAO-08-691, September 2008, 6; GAO, Federal Oil and Gas Leases: Opportunities Exist to Capture Vented and Flared Natural Gas, Which Would Increase Royalty Payments and Reduce Greenhouse Gases, GAO-11-34, (Oct. 2010), 2.

(b) (5)

**NEXT STEPS**

(b) (5)

(b) (5)

**From:** Stewart, Shannon  
**To:** [Seidlitz, Joseph \(Gene\)](#); [Jill Moran](#)  
**Cc:** [mike nedd](#); [Jerome Perez](#); [Kathleen Benedetto](#); [Beverly Winston](#)  
**Subject:** Materials for Onshore Order briefing  
**Date:** Friday, March 17, 2017 11:14:14 AM  
**Attachments:** [Onshore Orders Memo 2017\\_0317\\_final.docx](#)  
[Attachment 1 - API Letter.pdf](#)  
[V&F Memo 2017\\_0317\\_final.docx](#)  
[HF Memo 2017\\_0316\\_final.docx](#)

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Hi Gene and Jill

Attached are the briefing materials for Monday's meeting on Onshore Orders 3, 4 and 5. We are also submitting a briefing paper on the venting and flaring rule and hydraulic fracturing rule. These will not be the focus of the meeting on Monday but may come up then or in other conversations.

Thanks  
Shannon

--

Shannon Stewart  
Acting Chief of Staff  
Bureau of Land Management  
202-570-0149 (cell)  
202-208-4586 (office)  
[scstewar@blm.gov](mailto:scstewar@blm.gov)

**INFORMATION/BRIEFING MEMORANDUM  
FOR THE ASSISTANT SECRETARY – LAND AND MINERALS MANAGEMENT**

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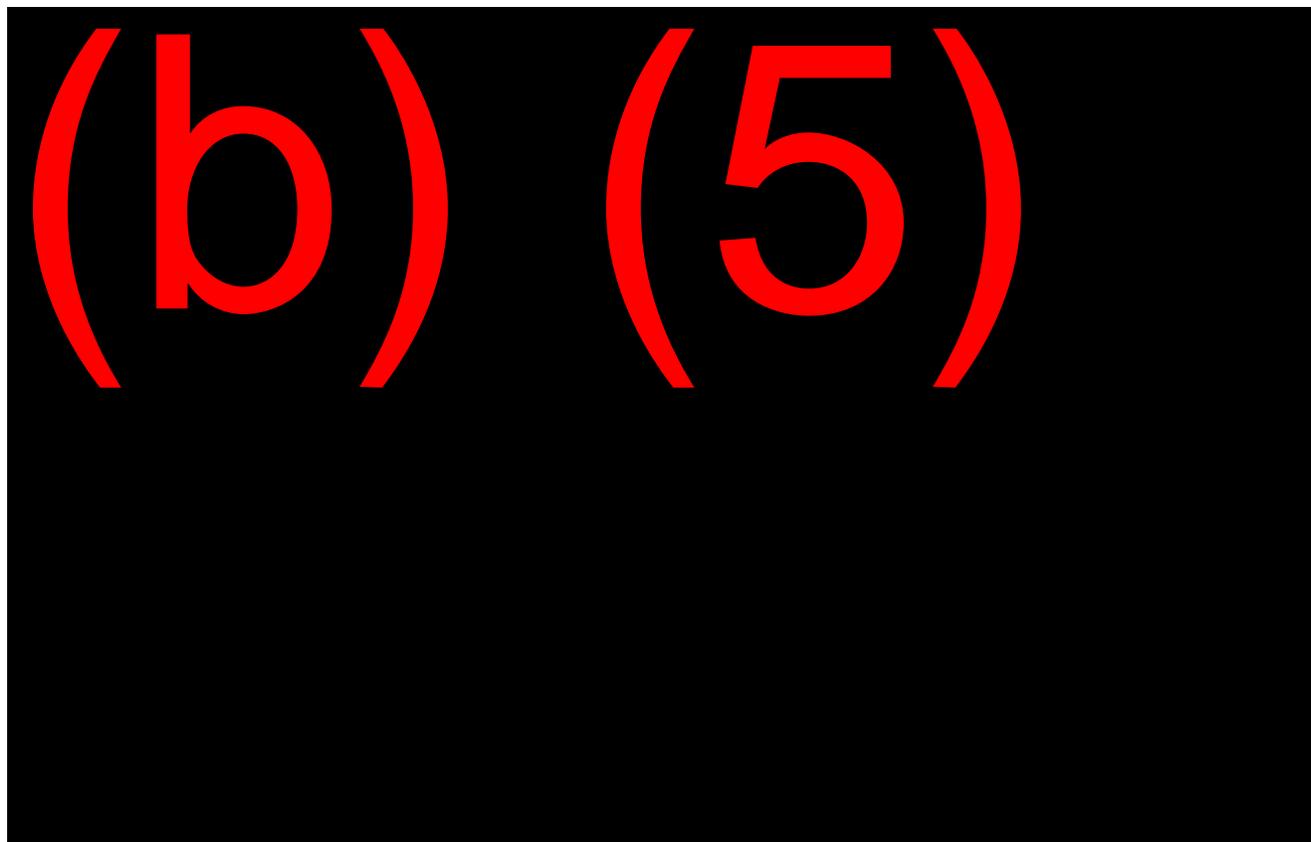
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**DISCUSSION**



(b) (5)

(b) (5)

**NEXT STEPS**

(b) (5)

**ATTACHMENT**

1. API Letter dated February 21, 2017



**Richard Ranger**  
Senior Policy Advisor  
Upstream  
1120 L Street, NW  
Washington, DC 20005-4070  
USA  
Telephone 202-462-8057  
Fax 202-462-8036  
Email [ranger@api.org](mailto:ranger@api.org)  
[www.api.org](http://www.api.org)

February 21, 2017

Ms Kristin Bail, Acting Director  
Bureau of Land Management  
U.S. Department of the Interior  
1849 C St., NW, Room 2134 LM  
Washington, DC 20240

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Should you have any questions, please contact Richard Ranger at 202.682.8057, or via e-mail at [ranger@api.org](mailto:ranger@api.org).

Very truly yours,



Richard Ranger  
Senior Policy Advisor  
Upstream and Industry Operations  
American Petroleum Institute

Cc: Larry Claypool, Acting Associate Director for Minerals and Realty Management



United States Department of the Interior  
BUREAU OF LAND MANAGEMENT  
|Field Office and address|  
<http://www.blm.gov>



[DATE]

In Reply, Refer To:  
3160 (310) P

Company Name  
Address 1  
Address 2  
City, State, Zip

Attn: Name of company contact

Dear Name of company contact.

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FMP functionality is available to operators is called the “*new effective date*.” For example, if the *new effective date* is May 17, 2017 (a delay of 120 days), the BLM will extend the time frames listed in 43 CFR 3173.12(e) by 120 days.

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7. The delay does not affect the implementation of the measurement requirements in 43 CFR 3175. Unlike 43 CFR 3174, where implementation timeframes are based on the FMP application deadline, the implementation timeframes in 3175 are based on the flow category of the meter (very low, low, high, or very high).

Please contact **[Name]** at **[Phone]** or **[email@blm.gov]** if you have any questions or need to make corrections.

Sincerely,

**INFORMATION/BRIEFING MEMORANDUM  
FOR THE ASSISTANT SECRETARY – LAND AND MINERALS MANAGEMENT**

**DATE:** March 16, 2017

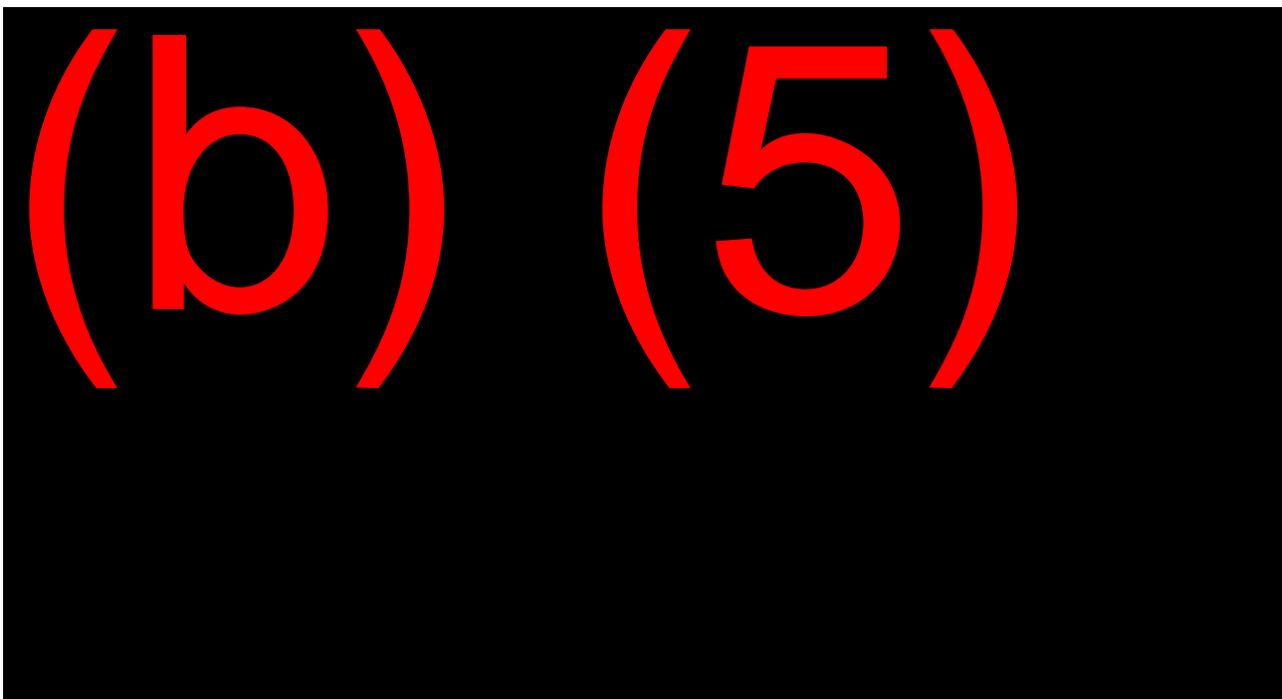
**FROM:** Tim Spisak, Acting Assistant Director, Energy, Minerals and Realty Management

**SUBJECT:** Venting & Flaring Rule

**BACKGROUND**

“Venting & Flaring Rule” is shorthand for the *Waste Prevention, Production Subject to Royalties, and Resource Conservation* rulemaking that replaced the requirements related to venting, flaring, and royalty-free use of gas contained in the 1979 Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL-4A). These regulations are codified at new 43 CFR subparts 3178 and 3179. The recent rulemaking also includes provisions to make regulatory and statutory authority consistent with respect to royalty rates that may be levied on competitively offered oil and gas leases on Federal lands. This rule implements recommendations from several oversight reviews, including reviews by the Office of the Inspector General of the Department of the Interior (OIG) and the Government Accountability Office (GAO).<sup>1</sup> The OIG and GAO reports recommended that the BLM update its regulations to require operators to augment their waste prevention efforts, afford the BLM greater flexibility in setting royalty rates, and clarify BLM policies regarding royalty-free, on-site use of oil and gas.

**DISCUSSION**



(b) (5)

**NEXT STEPS**

(b) (5)

(b) (5)

**INFORMATION/BRIEFING MEMORANDUM  
FOR THE ASSISTANT SECRETARY – LAND AND MINERALS MANAGEMENT**

**DATE:** March 16, 2017

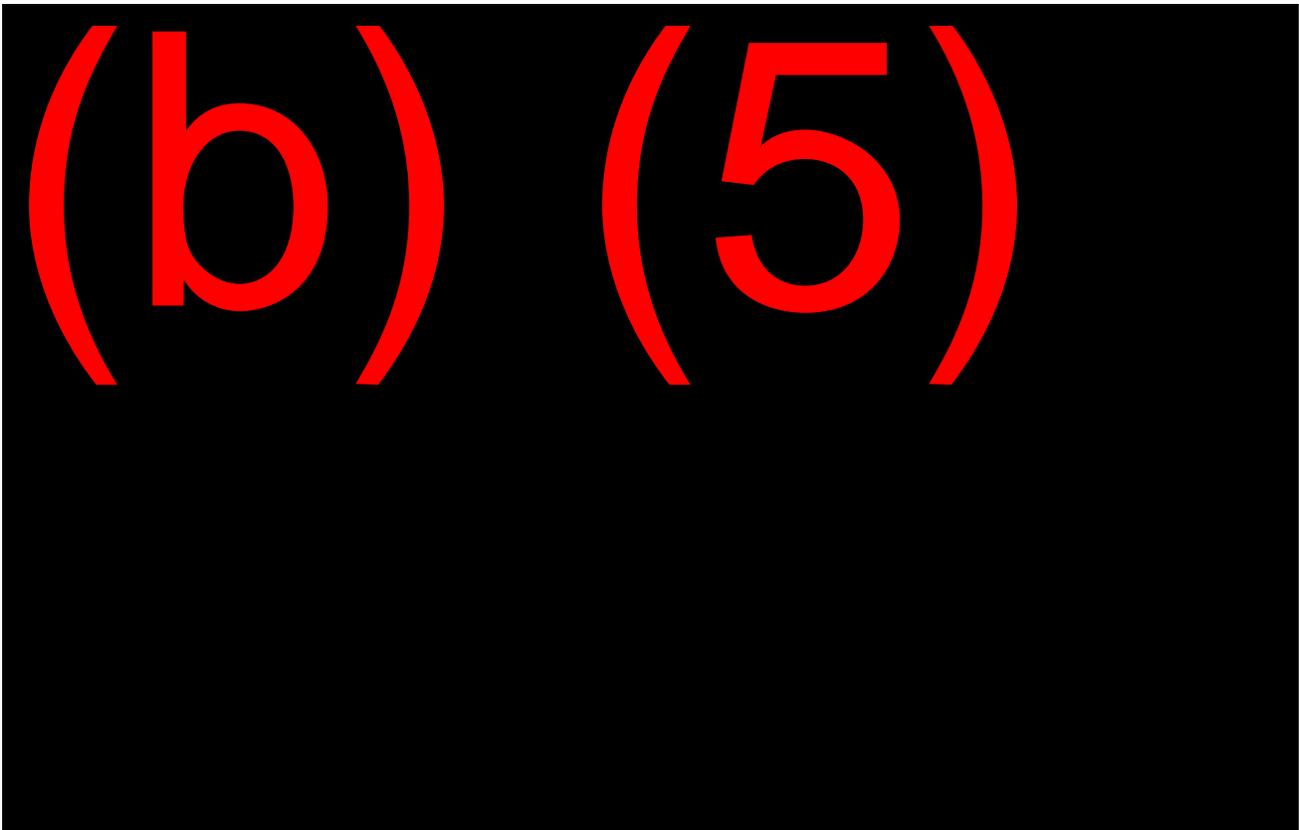
**FROM:** Tim Spisak, Acting Assistant Director, Energy, Minerals and Realty Management

**SUBJECT:** Hydraulic Fracturing Rule

**BACKGROUND**

The BLM final rule on hydraulic fracturing serves as a complement to update existing regulations designed to ensure the environmentally responsible development of oil and gas resources and protection of other downhole zones on federal and Indian lands. The BLM initiated the rule in response to the increasing use and complexity of hydraulic fracturing coupled with advanced horizontal drilling technology. This technology has opened large portions of federal and Indian lands to oil and gas development. The hydraulic fracturing rule addresses various safety concerns which should improve the confidence level of the public as industry explores and opens larger and newer areas of federal and Indian lands to oil and gas development. The rule has garnered tremendous public interest and was immediately challenged in court.

**DISCUSSION**



(b) (5)

**NEXT STEPS**

**(b) (5)**

**From:** Stewart, Shannon  
**To:** [mike nedd](#); [Kathleen Benedetto](#)  
**Subject:** Fwd: Memos for Onshore Orders, HF and V&F  
**Date:** Thursday, March 16, 2017 5:31:01 PM  
**Attachments:** [Onshore Orders Memo 2017 0316 final.docx](#)  
[Attachment 1 - API Letter.pdf](#)  
[HF Memo 2017 0316 final.docx](#)  
[V&F Memo 2017 0316 final \(1\).docx](#)

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Hi Mike and Kathy

Attached are the three memos that 300 developed on Onshore Orders 3, 4 and 5; Hydraulic Fracturing; and Venting and Flaring. Shelley said these have been reviewed by SOL Richard McNeer. We will need to send these up to ASLM first thing Friday to hit our 48 hour in advance deadline. Let me know if you want any changes made.

Shannon

--

Shannon Stewart  
Acting Chief of Staff  
Bureau of Land Management  
202-570-0149 (cell)  
202-208-4586 (office)  
[scstewar@blm.gov](mailto:scstewar@blm.gov)

**INFORMATION/BRIEFING MEMORANDUM  
FOR THE ASSISTANT SECRETARY – LAND AND MINERALS MANAGEMENT**

**DATE:** March 16, 2017

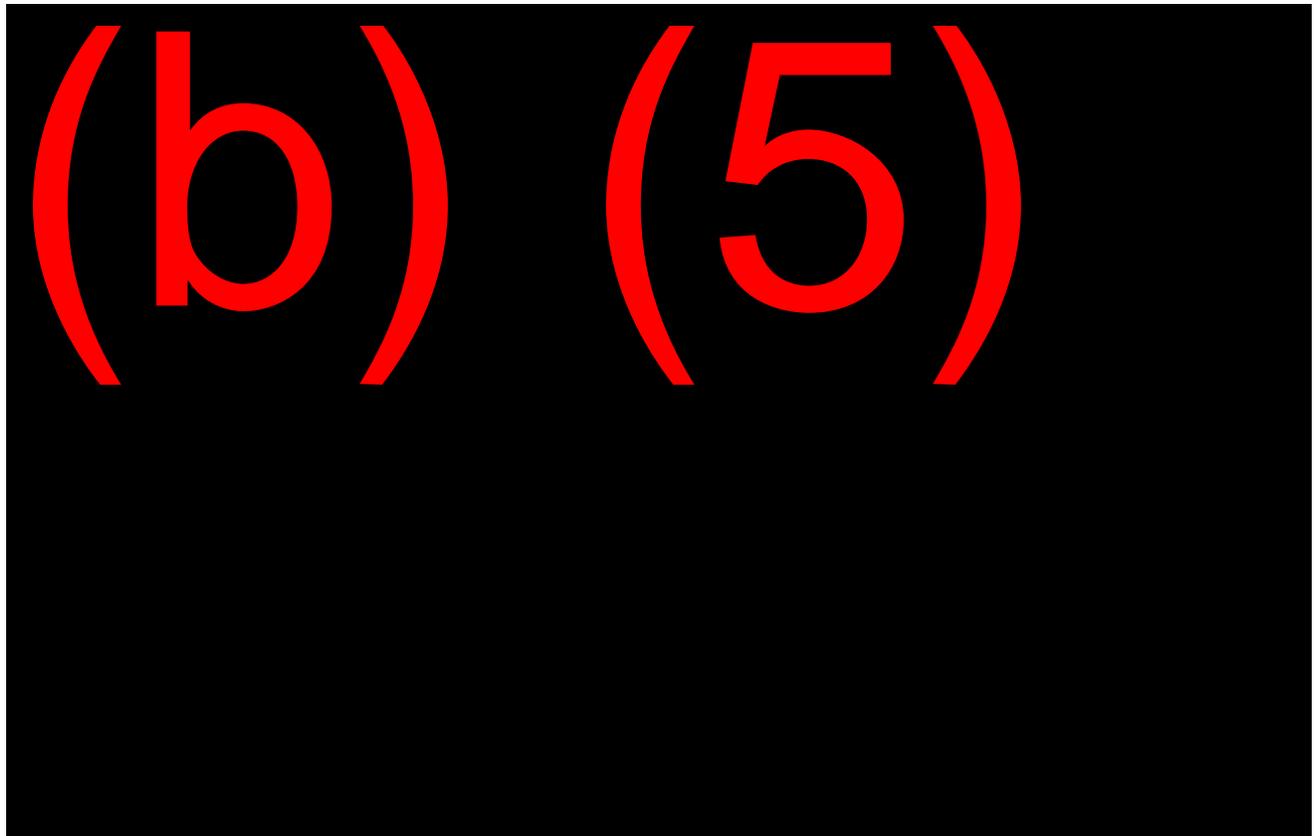
**FROM:** Tim Spisak, Acting Assistant Director, Energy, Minerals and Realty Management

**SUBJECT:** Onshore Orders

**BACKGROUND**

“Onshore Orders” is shorthand for the three concurrent rulemakings that replaced the BLM’s site security, oil measurement, and gas measurement regulations contained in Onshore Oil and Gas Orders Nos. 3, 4, and 5, which had been in place since 1989. The recent rulemakings resulted in new site security, oil measurement, and gas measurement regulations for Onshore Federal and Indian oil and gas production and are codified in the Code of Federal Regulations at 43 C.F.R. part 3170. These rulemakings were prompted by external and internal oversight reviews finding many of the BLM’s production measurement and accountability policies to be outdated and inconsistently applied.<sup>1</sup>

**DISCUSSION**



(b) (5)

(b) (5)

**NEXT STEPS**

(b) (5)

**ATTACHMENT**

1. API Letter dated February 21, 2017



**Richard Ranger**  
Senior Policy Advisor  
**Upstream**  
1120 L Street, NW  
Washington, DC 20005-4070  
USA  
Telephone 202-462-8057  
Fax 202-462-8036  
Email [ranger@api.org](mailto:ranger@api.org)  
[www.api.org](http://www.api.org)

February 21, 2017

Ms Kristin Bail, Acting Director  
Bureau of Land Management  
U.S. Department of the Interior  
1849 C St., NW, Room 2134 LM  
Washington, DC 20240

Attention: Request for Postponed Effective Date for Requirements in 43 CFR 3175

Dear Acting Director:

API is a national trade association representing over 625 member companies involved in all aspects of the oil and natural gas industry. API's members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry. API member companies are leaders of a technology-driven industry that supplies most of America's energy, supports more than 9.8 million jobs and 8% of the U.S. economy, and since 2000 has invested nearly \$2 trillion in U.S. capital projects to advance all forms of energy, including alternatives.

On January 17, 2017, the rules replacing the Bureau of Land Management (BLM) Onshore Orders 3, 4, & 5 (43 CFR 3173, 3174, & 3175) became effective. On January 19, a letter (attached to this letter as an addendum) was distributed through the BLM state offices informing operators that, "Due to unanticipated delays and complexities with developing the updated version of the Automated Fluid Minerals Support System (AFMSS), the BLM will not be able to accept applications for FMPs by January 17, 2017." The BLM therefore postponed the requirement to submit applications for Facility Measurement Points (FMPs) for both existing measurement facilities (pre-January 17, 2017; see 43 CFR 3173.12(e)) and new measurement facilities (January 17, 2017 and beyond; see 43 CFR 3173.12(d)), by the extent of the final delay period. This directly delays the date when operators will receive approved FMPs for both affected oil and gas measurement facilities.

In the January 19 postponement letter, BLM also delayed the implementation of portions of 43 CFR 3174 for existing oil measurement facilities, explaining that a delay was necessary because 43 CFR 3174.2(f) states, "measuring procedures and equipment used to measure oil for royalty purposes, that is in use on January 17, 2017, must comply with the requirements of this subpart on or before the date the operator is required to apply for an FMP number under 3173.12(e) of this part."

The BLM has not postponed the requirements of 43 CFR 3175. In justifying the decision not to delay these requirements, the postponement letter states, "The delay does not affect the implementation of the measurement requirements in 43 CFR 3175. Unlike 43 CFR 3174, where implementation timeframes are

based on the FMP application deadline, the implementation timeframes in 3175 are based on the flow category of the meter (very low, low, high, or very high).”

The postponement should be extended to the entirety of all three rules (43 CFR, 3173, 3174, and 3175) because the requirements within each rule are predicated on the now-postponed FMP requirements. Although cited within the January 19 postponement letter, 43 CFR 3175 is specifically excluded based on an interpretation of the definition for the very low, low, high, and very high flow categories within 43 CFR 3175 (§ 3175.10). However, these flow categories are also based around FMPs. For example, the definition for the high-volume category is as follows: “High-volume facility measurement point or high-volume FMP means any FMP that measures more than 200 Mcf/day, but less than or equal to 1,000 Mcf/day over the averaging period.” This category applies to a high-volume *FMP*, not a high-volume meter. The definition for an FMP from 43 CFR 3173 (§ 3170.3) further states, “Facility measurement point (FMP) means a BLM-approved point where oil or gas produced from a Federal or Indian lease, unit PA, or CA is measured and the measurement affects the calculation of the volume or quality of production on which royalty is owed.” Because an FMP is a “BLM-approved point” and the flow categories within 43 CFR 3175 are based on FMPs, it is impractical to move forward with the requirements with 43 CFR 3175 during the present period when BLM is unable to process applications for FMPs.

Another factor that should be considered in the implementation of these rules is that the liquid and gas measurement equipment and accounting software used at FMPs must be approved by the BLM Production Measurement Team. This team has not been formed and as of the date of this letter there is no approved equipment list for operators to rely upon to ensure compliance. While the rules postpone the requirement to obtain approval for FMP equipment and software for two years, this situation still imposes a compliance obligation on operators before they can obtain the approvals from BLM that are described in the rules.

In conclusion, we respectfully request that the entirety of 43 CFR 3173, 3174, and 3175 be postponed until the BLM has systems in place to implement all portions of the rules.

Should you have any questions, please contact Richard Ranger at 202.682.8057, or via e-mail at [ranger@api.org](mailto:ranger@api.org).

Very truly yours,



Richard Ranger  
Senior Policy Advisor  
Upstream and Industry Operations  
American Petroleum Institute

Cc: Larry Claypool, Acting Associate Director for Minerals and Realty Management



United States Department of the Interior  
BUREAU OF LAND MANAGEMENT  
|Field Office and address|  
<http://www.blm.gov>



[DATE]

In Reply, Refer To:  
3160 (310) P

Company Name  
Address 1  
Address 2  
City, State, Zip

Attn: Name of company contact

Dear Name of company contact.

On November 17, 2016, the Federal Register published final rules relating to requirements for site security and production handling (43 CFR 3173), measurement of oil (43 CFR 3174), and measurement of gas (43 CFR 3175), all with an effective date of January 17, 2017. The 43 CFR 3173 requirements require operators to submit electronic applications to the BLM for approval of Facility Measurement Points (FMPs) and site facility diagrams within specific timeframes.

For permanent measurement facilities installed before January 17, 2017, these timeframes, which range from one to three years from the effective date of the rule, are based on the average production rate of oil and gas on that lease, Communitization Agreement (CA), or Participating Area (PA) unit over the previous 12 months (see 43 CFR 3173.12(e)). For permanent measurement facilities installed after January 17, 2017, the operator must submit an electronic application for an FMP number before any production can leave the permanent measurement facility (see 43 CFR 3173.12(d)).

Due to unanticipated delays and complexities with developing the updated version of the Automated Fluid Minerals Support System (AFMSS), the BLM will not be able to accept electronic applications for FMPs by January 17, 2017. In addition, this affects the filing of new and amended site facility diagrams in instances requiring FMP numbers. The BLM is working to complete the new system and anticipates that this functionality will be available to operators by May 2017.

As a result, the BLM is taking the following interim steps to help operators:

1. For permanent measurement facilities in place before January 17, 2017, the BLM will extend the timeframes in 43 CFR 3173.12(e) by the number of days between January 17, 2017, and the date the BLM fully implements the electronic FMP functionality. The date that the electronic

FMP functionality is available to operators is called the “*new effective date*.” For example, if the *new effective date* is May 17, 2017 (a delay of 120 days), the BLM will extend the time frames listed in 43 CFR 3173.12(e) by 120 days.

2. For permanent measurement facilities installed between January 17, 2017, and the *new effective date*, the operator has 60 days from the *new effective date* to apply for an FMP. During this period, the operator may use the measurement facility for Oil and Gas Operation Reports (OGOR) just as they would for an existing FMP during the phase-in period. For example, if an operator installs a new permanent measurement facility on February 1, 2017, and the *new effective date* is May 17, 2017, the operator would have until July 16, 2017, to apply for an FMP. During the period of February 1, 2017, and until the BLM assigns an FMP number, the operator would use the lease, unit PA or CA number for OGOR reporting. Operators must submit the site facility diagrams 30 days after assignment of the FMP.
3. For permanent measurement facilities covered under 3173.11(d)(2), *i.e.*, those that are in service on or before January 17, 2017, and are modified or experience a change in operator after January 17, 2017, the operator has 60 days from the *new effective date* to apply for an FMP. For example, if an operator modifies an existing permanent measurement facility on February 1, 2017, and the *new effective date* is May 17, 2017, the operator would have until July 16, 2017, to apply for an FMP. Operators must submit the site facility diagrams 30 days after assignment of the FMP.
4. For permanent measurement facilities installed after the *new effective date*, the operator must apply for an FMP before any production leaves the permanent measurement facility.
5. The BLM will provide operators with a 30-day notice of the *new effective date* and post to the web.
6. In addition, this delay affects the implementation of the requirements in 43 CFR 3174 for permanent oil measurement facilities in place before January 17, 2017. Under 3174.2(f), “measuring procedures and equipment used to measure oil for royalty purposes, that is in use on January 17, 2017, must comply with the requirements of this subpart on or before the date the operator is required to apply for an FMP number under 3173.12(e) of this part.” Therefore, the BLM will apply the extension referenced in paragraph 1 above to the implementation timeframes for oil measurement procedures and equipment in 43 CFR 3174.2(f). The delay does not affect the implementation of the measurement requirements in 43 CFR 3174 for permanent oil measurement facilities installed on or after January 17, 2017.
7. The delay does not affect the implementation of the measurement requirements in 43 CFR 3175. Unlike 43 CFR 3174, where implementation timeframes are based on the FMP application deadline, the implementation timeframes in 3175 are based on the flow category of the meter (very low, low, high, or very high).

Please contact **[Name]** at **[Phone]** or **[email@blm.gov]** if you have any questions or need to make corrections.

Sincerely,

**INFORMATION/BRIEFING MEMORANDUM  
FOR THE ASSISTANT SECRETARY – LAND AND MINERALS MANAGEMENT**

**DATE:** March 16, 2017

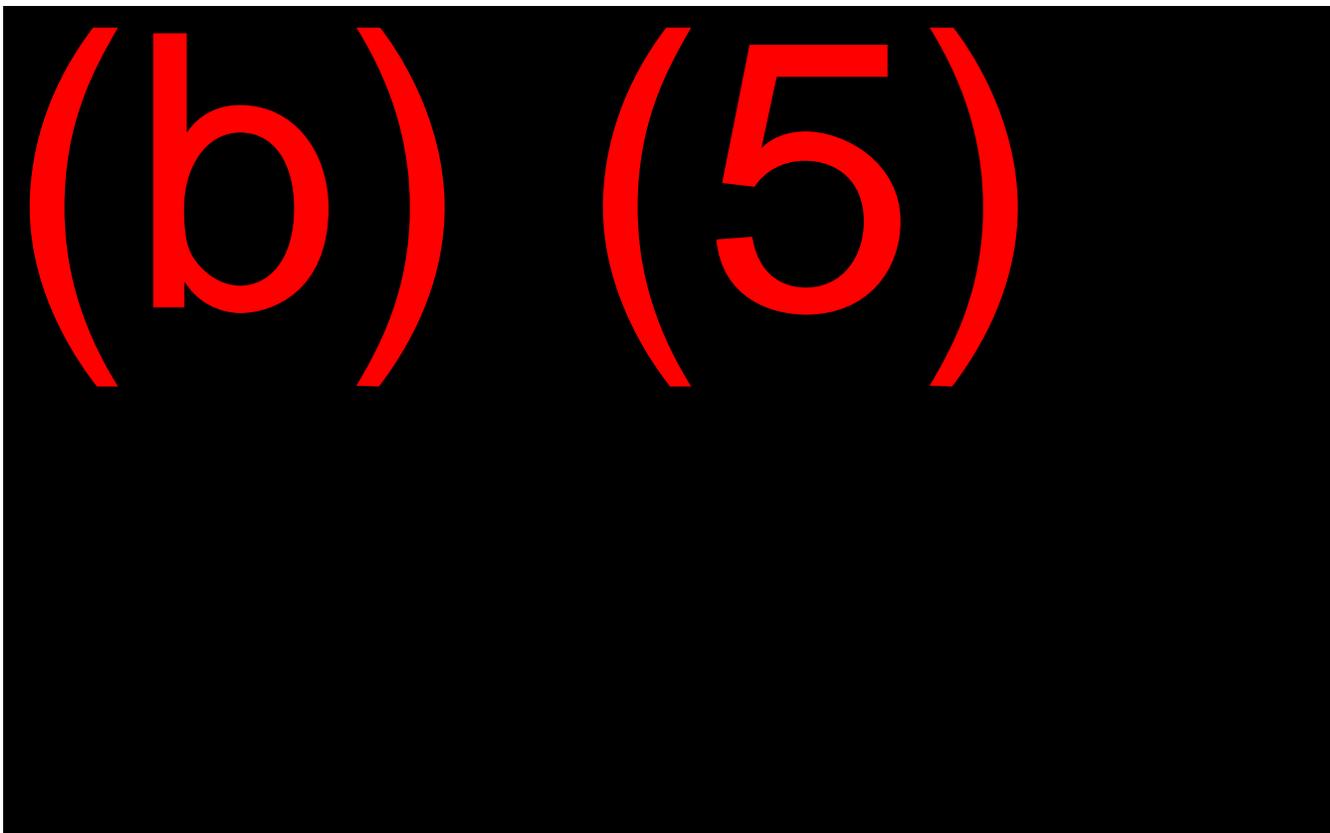
**FROM:** Tim Spisak, Acting Assistant Director, Energy, Minerals and Realty Management

**SUBJECT:** Hydraulic Fracturing Rule

**BACKGROUND**

The BLM final rule on hydraulic fracturing serves as a complement to update existing regulations designed to ensure the environmentally responsible development of oil and gas resources and protection of other downhole zones on federal and Indian lands. The BLM initiated the rule in response to the increasing use and complexity of hydraulic fracturing coupled with advanced horizontal drilling technology. This technology has opened large portions of federal and Indian lands to oil and gas development. The hydraulic fracturing rule addresses various safety concerns which should improve the confidence level of the public as industry explores and opens larger and newer areas of federal and Indian lands to oil and gas development. The rule has garnered tremendous public interest and was immediately challenged in court.

**DISCUSSION**



(b) (5)

**NEXT STEPS**

**(b) (5)**

**INFORMATION/BRIEFING MEMORANDUM  
FOR THE ASSISTANT SECRETARY – LAND AND MINERALS MANAGEMENT**

**DATE:** March 16, 2017

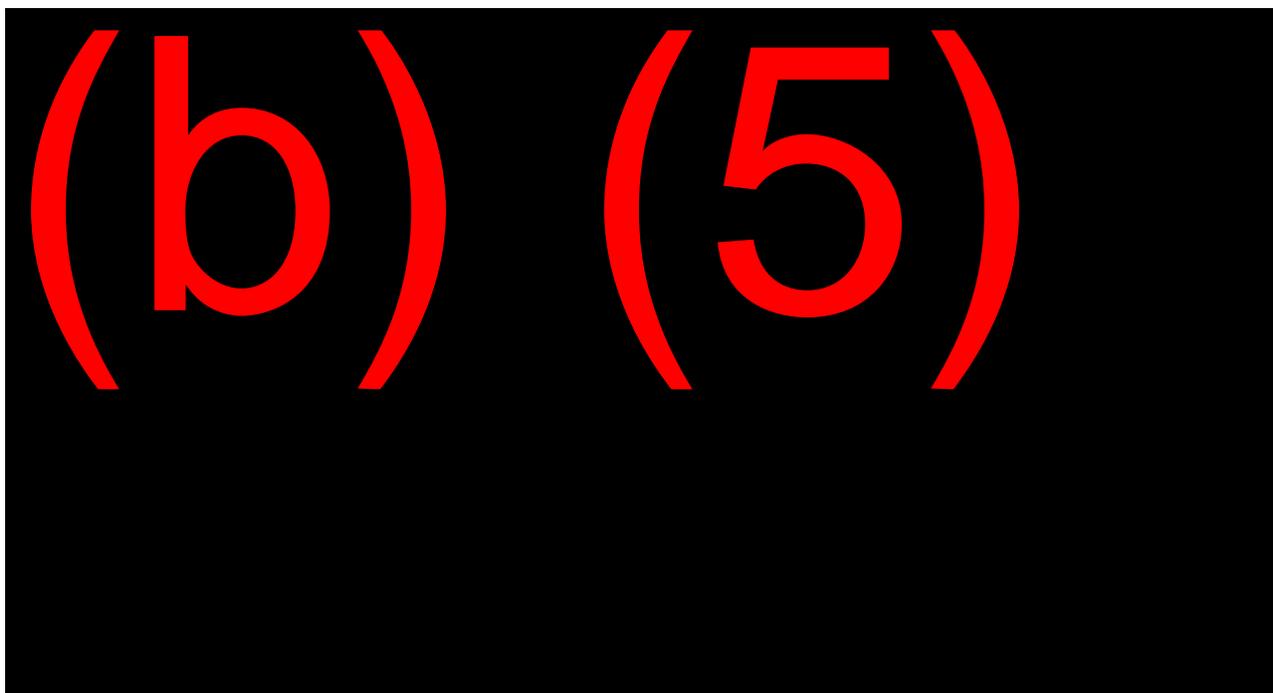
**FROM:** Tim Spisak, Acting Assistant Director, Energy, Minerals and Realty Management

**SUBJECT:** Venting & Flaring Rule

**BACKGROUND**

“Venting & Flaring Rule” is shorthand for the *Waste Prevention, Production Subject to Royalties, and Resource Conservation* rulemaking that replaced the requirements related to venting, flaring, and royalty-free use of gas contained in the 1979 Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL-4A). These regulations are codified at new 43 CFR subparts 3178 and 3179. The recent rulemaking also includes provisions to make regulatory and statutory authority consistent with respect to royalty rates that may be levied on competitively offered oil and gas leases on Federal lands. This rule implements recommendations from several oversight reviews, including reviews by the Office of the Inspector General of the Department of the Interior (OIG) and the Government Accountability Office (GAO).<sup>1</sup> The OIG and GAO reports recommended that the BLM update its regulations to require operators to augment their waste prevention efforts, afford the BLM greater flexibility in setting royalty rates, and clarify BLM policies regarding royalty-free, on-site use of oil and gas.

**DISCUSSION**



(b) (5)

**NEXT STEPS**

(b) (5)

(b) (5)

**From:** Michael Nedd  
**To:** [Richard Cardinale](#); [Katharine Macgregor](#)  
**Cc:** [Kathleen Benedetto](#); [Michael Anderson](#)  
**Subject:** HF Papers  
**Date:** Wednesday, March 15, 2017 2:37:22 PM  
**Attachments:** [2017.03.09 Draft responses to K.MacGregor re. HF Rule - 310.docx](#)  
[State-by-State Summary-SD-4-14-2015.docx](#)  
[HF Rule External Fact Sheet .docx](#)  
[Section2.5-HFRule\\_2017\\_0105.docx](#)

---

Kate and Rich,

Please see attached and you'll notice that the March 15 BP is still draft and that is because I wanted out team to add some language on the group we're bringing together to work on rescinding the rule... I also included a fact sheet and state-by-state breakdown...

Take care and have a wonderful day! : )

Michael Nedd

202-208-4201 Office

202-208-4800 Fax

[mnedd@blm.gov](mailto:mnedd@blm.gov)

A thought to consider "Do all the good you can, in all the ways you can, for all the people you can, while you can!"

From: Bagley, Lonny [<mailto:lbagley@blm.gov>]  
Sent: Wednesday, March 15, 2017 2:05 PM  
To: Michael Nedd  
Subject: HF Paper

--

Lonny R Bagley

Deputy Assistant Director (Acting),

Energy, Minerals and Realty Management

Washington Office

1849 C Street, NW Room 5625

Washington, DC 20204

O 202-208-4201

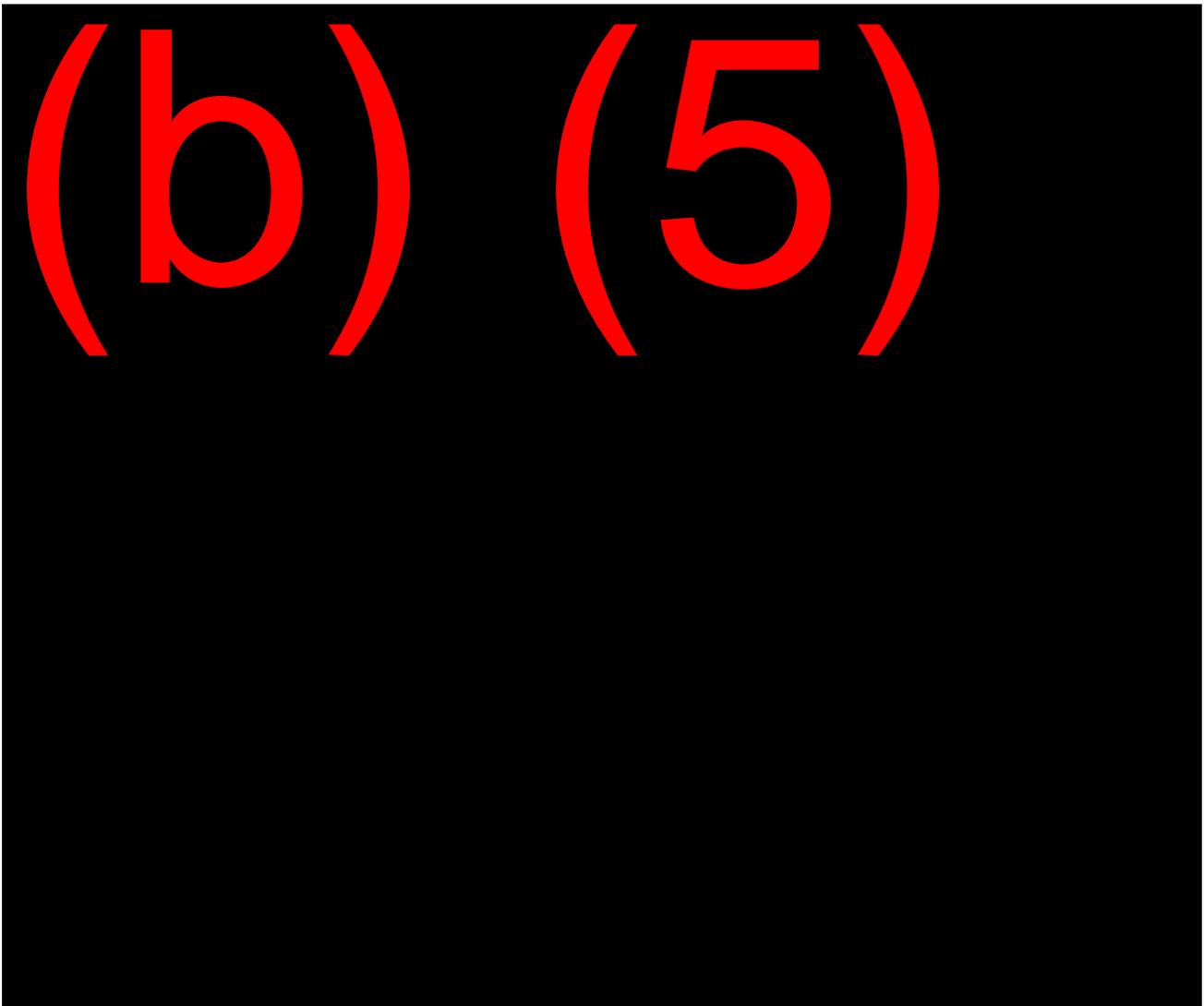
lbagely@blm.gov <<mailto:lbagely@blm.gov>>

Follow BLM Colorado on Social Media! <<http://www.blm.gov/co>>

Subject: **Hydraulic Fracturing Rule**

Date: March 15, 2017

**Background:** The BLM final rule on hydraulic fracturing serves as a complement to update existing regulations designed to ensure the environmentally responsible development of oil and gas resources and protection of other downhole zones on Federal and Indian lands. The BLM initiated the rule in response to the increasing use and complexity of hydraulic fracturing coupled with advanced horizontal drilling technology; garnering tremendous public interest and litigation. This technology has opened large portions of the country to oil and gas development. The hydraulic fracturing rule addresses various safety concerns of the hydraulic fracturing operations which should improve the confidence level of the public as industry explores and opens larger and newer areas of the country to oil and gas development.



(b) (5)

**STATE-BY-STATE COMPARISON**

The rule provides that a state or tribe may request a variance from any aspect of the BLM rule if the state or tribal rule is equal to or more protective than BLM’s rule. If BLM finds that to be the case, both BLM and the State or tribe will enforce the more protective rule. This determination process will occur over the coming months and will be based on a series of conversations between the BLM and each State. Nothing in this document is meant to prejudge that determination. This generalized summary is intended for internal analytical purposes only. The BLM is working with states and tribes to enter into MOUs to share the enforcement and inspection efforts so as to make implementation of both rules as efficient as possible.

BLM currently has oil and gas leases in 32 states: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Montana, Nebraska, Nevada, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming.

Sixteen of the 32 states have regulations in place addressing hydraulic fracturing operations: Alaska, Arkansas, Colorado, Illinois, Kansas, Michigan, Montana, New Mexico, Nevada, North Dakota, Ohio, Oklahoma, Pennsylvania, Texas, Utah, and Wyoming. We understand that other states may be considering similar rules.

Another 6 of the 32 states have some form of measures in place for either isolating and protecting usable water, chemical disclosure and/or maintaining well integrity: California, Kentucky, Louisiana, Mississippi, North Dakota, and West Virginia.

The map below shows States with current hydraulic fracturing regulations.



**State Requirements on Key Issues Compared to the BLM Final HF Rule**

- 1. CELs on surface casings** Colorado, Montana, New Mexico, North Dakota, and Utah. California and Wyoming (Authority to request) has the same requirement similar to BLM's HF rule.
- 2. Chemical Disclosure** California (Draft rule), Colorado, Montana, North Dakota, Texas, Utah, and Wyoming require chemical disclosures similar to the BLM's HF rule.
- 3. CELs for Inadequate cement job in the Surface casings** BLM's HF rule requires CEL and so does California (Draft rule). North Dakota, Texas, and Wyoming have the authority to request pressure test (ATRP) to verify good cement bonding.
- 4. CELs for Inadequate cement job in the Intermediate/ Production casings** BLM's HF rule requires CEL and so does California (Draft rule), Colorado, New Mexico, Texas, and Wyoming. BLM's existing regulation does not require CEL and any prior documentation or logs for approval.
- 5. Baseline Water Testing** BLM could require baseline testing and monitoring as a site-specific mitigation measure based on an environmental analysis prepared under NEPA as addressed in the preamble. Except California, Colorado and Wyoming, all other major states where BLM has operations do not require baseline water testing and monitoring at this time
- 6. Requirement for Storage Tanks vs. Pits** The BLM's HF rule requires all recovered fluids to be stored in rigid enclosed, covered, or netted and screened above-ground tanks until the permanent disposal plan is approved for produced water. BLM Field Office may approve an application to use lined pits only if the applicant demonstrates that use of a tank is infeasible for environmental, public health or safety reasons and only if, the double-lined pit with a leak detection system meets a number of restrictive conditions for its siting. California, New Mexico and Utah have the similar storage tank requirements for the recovered hydraulic fracturing fluids.
- 7. Records Retention** BLM's HF rule requires that the operator must maintain records of the withheld information until the later of the BLM's approval of a

final abandonment notice, or 6 years after completion of hydraulic fracturing operations on Indian lands, or 7 years after completion of hydraulic fracturing operations on Federal lands. Any subsequent operator will be responsible for maintaining access to records required by this paragraph during its operation of the well. North Dakota and Utah requires record retention for 6 years as well.

**8. Flow Back/Produced Water**

BLM's HF rule does not distinguish between the produced water and flow back after the hydraulic fracturing operation. The fluids coming back out of the hole is considered as recovered water and proper management of recovered fluids have been specified in 3162.3-3 (h) of the HF rule. Colorado, Montana, New Mexico, North Dakota, Texas, Utah, and Wyoming have the same requirement.

**9. Preventing Frack Hits**

The BLM is requiring that any part of an existing well that comes within one-half mile horizontally of the trajectory of the well to be hydraulically fractured (regardless of any difference in depths) must be shown on the map submitted with the operator's application. The information will allow the authorized officer to work with the operator to prevent "frack hits." Similar policy is in place for Colorado, Wyoming, and Alaska.

State Requirements on Key Issues – Major States Compared to the BLM Final HF Rule Chart 3-19-2015

Key Issues	BLM March 2015 (Final rule)	BLM (Previous Requirement)	(1) California (considering/proposed)	(2) Colorado	(3) Montana	(4) New Mexico	(5) North Dakota	(6) Texas	(7) Utah	(8) Wyoming	(9) Alaska	(10) Ohio	TOTAL Σ
(Major States <sup>1</sup> ) - Federal Wellbores 2014 (%)	NA	NA	8.07%	6.88%	2.79%	35.23%	1.89%	0.55%	8.86%	32.23%	0.13 %	0.58 %	97.22 %
CEL on Surface Casing	No	No	Authority to request	No	No	No	No	No <sup>2</sup>	No	Authority to request	Yes	No	
Chemical Disclosure*	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	
CEL - Inadequate Cement Job Surface Casing	Yes	No	Yes	No	No	No	No. (ATRP) <sup>3</sup>	No. ATRP	No	No. ATRP	Yes	Yes	
Prod./Intermediate Casing	Yes	No	Yes- may require	Yes	No	Yes	No.	Yes	No	Yes	Yes	Yes	
Baseline Water Testing	No <sup>4</sup>	No	Yes	Yes	No	No	No	No	No	Yes	Yes	Yes	

<sup>1</sup> Major States include the BLM activities largely in the Rocky Mountain states; plus the large oil producers of California and Texas ;

<sup>2</sup> Generally not required, but may require CEL as an alternative to hydrostatic testing of the casing when needed.

<sup>3</sup> ATRP – Authority To Require Pressure-testing for surface casing;

<sup>4</sup> BLM could require baseline testing and monitoring as a site-specific mitigation measure based on an environmental analysis prepared under NEPA as addressed in the preamble.

Key Issues	BLM March 2015 (Final rule)	BLM (Previous Requirement)	(1) California (considering/proposed)	(2) Colorado	(3) Montana	(4) New Mexico	(5) North Dakota	(6) Texas	(7) Utah	(8) Wyoming	(9) Alaska	(10) Ohio	TOTAL Σ
Minimum Requirement for Storage Tanks	Yes, unless infeasible for environmental and safety	No	Yes	No	No	Yes***	No	No	Yes** *	No	Yes	Yes	
Records Retention	Later of 7 yrs Federal/6 yrs Indian or Life of the Well	6 years (3162.4-1)	5 years, with monitoring	5 years	No Limit	5 years	6 years	3 years	6 years	No Limit	5 years, w/monitoring	5 years	
Flowback/Produced Water Distinction	No	No	Yes. (Before Production)	No	No (lacks definition for water injected)	No	No (neither defined, but both used)	No (uses either/or)	No	No	Yes, before production	No	
Measures to prevent Frack Hits**	Yes	No		Yes						Yes*-*	Yes	No	

\* - AK, MT, and WY requires pre-disclosure; \*\* - Alaska and Alberta Canada have a number of measures to prevent Frack Hits. \*\*\* - NM, UT has similar variance for pits. \*\*\* - Major States (96.51%), Other States(1.16%), and All Other States (2.34%) makes the 100% of all Federal Wellbores.; Σ- Total of major and minor states (next page) makes it 100% of all Federal wellbores; - Yellow denotes general consistency of the Major States with BLM HF rule; \*-\* - WY - Wellbore trajectory required under Section 8 (f) ii;

State Requirements on Key Issues - **Minor States** Compared to the BLM Final HF Rule Chart **3-18-2015**

Key Issues	BLM March 2015 (Final rule)	BLM (Previous Requirements)	(11) Arkansas	(12) Illinois	(13) Pennsylvania	(14) Louisiana	(15) Oklahoma	(16) Kansas	(17) West Virginia	(18) Mississippi	(19) Kentucky	All Other States <sup>5</sup>	TOTAL
(Major States <sup>5</sup> ) - Federal Wellbores 2014 (%)	NA	NA	0.22 %	0.02%	0.21%	0.48%	0.47%	0.41 %	0.30 %	0.13 %	0.16 %	0.40 %	2.78%
CEL on Surface Casing	No	No	No	No	No		No	No+	No				
Chemical Disclosure*	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes++	Yes	No	No		
CEL - Inadequate Cement Job Surface Casing	Yes	No	No	No	No. (ATRP) <sup>6</sup>		Yes	Yes	No				
Prod./Intermediate Casing	Yes	No	Yes	No	No.		Yes+	Yes+	No				
Baseline Water Testing	No <sup>7</sup>	No	Yes	No	No		No	No	Yes				
Minimum Requirement for Storage Tanks	Yes, unless infeasible for environmental and safety	No	No	No	No		No	No	No				

<sup>5</sup> Major States include the BLM activities largely in the Rocky Mountain states; plus the large oil producers of California and Texas ;

<sup>6</sup> ATRP – Authority To Require Pressure-testing for surface casing;

<sup>7</sup> BLM could require baseline testing and monitoring as a site-specific mitigation measure based on an environmental analysis prepared under NEPA as addressed in the preamble.

Key Issues	BLM March 2015 (Final rule)	BLM (Previous Requirements)	(11) Arkansas	(12) Illinois	(13) Pennsylvania	(14) Louisiana	(15) Oklahoma	(16) Kansas	(17) West Virginia	(18) Mississippi	(19) Kentucky	All Other States <sup>Ⓢ</sup>	TOTAL
Records Retention	Later of 7 yrs Federal/6 yrs Indian or Life of the Well	6 years (3162.4-1)	5 years	No Limit	6 years		3 years	5 years					
Flowback/Produced Water Distinction	No	No	No	No (lacks definition)	No (both used)		Yes	No	No				
Measure to prevent Frack Hits**	Yes	No	Yes				No	No	No				

\* - AK, MT, WV, and WY requires pre-disclosure; \*\* - Alaska and Alberta Canada have a number of measures to prevent Frack Hits. \*\*\* - NM, UT has similar variance for pits; + - OK requires Production casing to be cemented a minimum of 200 feet above producing zones (Similar to the BLM); +- KS - CEL may be required for surface casings in certain areas; Chemical disclosure requirement applies to HF operations that uses more than 350,000 gallons of base fluids; <sup>Ⓢ</sup> All Other States include NV, MI, SD, NE, AL, VA, TN, MD, NY, AZ. And IN, - 0.40%. - Yellow denotes general consistency of the Major States with BLM HF rule; \*-\* - WY - Wellbore trajectory required under Section 8 (f) ii;



# BLM FACT SHEET

U.S. Department of the Interior • Bureau of Land Management • Washington, D.C., Office • 1849 C Street N.W. • Washington, D.C.

## Final Hydraulic Fracturing Rule

### Timeline

- November 2010 -- First Department of the Interior forum on hydraulic fracturing
- April 2011 -- The BLM held three regional forums in Arkansas, Colorado and North Dakota attended by more than 600 members of the public
- November 2011 -- National Gas Subcommittee of the Secretary of Energy's Advisory Board recommends that the BLM undertake a rulemaking to ensure well integrity, water protection, and adequate public disclosure
- May 11, 2012 -- The BLM publishes a draft rule drawing 177,000 public comments
- May 24, 2013 -- The BLM publishes a supplemental draft rule drawing 1.35 million comments
- March 20, 2015 -- The BLM publishes a final rule

### Key Issues

Like the draft and supplemental draft rules, the final regulations seek to:

- Ensure that wells are properly constructed to protect groundwater;
- Make certain that fluids that flow back to the surface as a result of hydraulic fracturing operations are managed in an environmentally responsible way;
- Provide public disclosure of the chemicals and additives used in hydraulic fracturing fluids as well as information such as the geology, depth, location and water use of the operation; and
- Improve measures to prevent cross-well contamination, commonly called "frack hits."

### How the Final Rule Addresses These Issues

#### **Protects groundwater by requiring:**

- Strong cement barriers between the wellbore carrying fracturing fluids/hydrocarbons and the groundwater zones through which the wellbore passes.
- Operators to monitor cementing and submit a report verifying monitoring 48 hours prior to beginning hydraulic fracturing operations for all wells. The report should contain specific parameters of the cement job. For intermediate or production casing strings, the operator must either circulate cement to the surface or run a Cement Evaluation Log ("CEL") demonstrating that there is at least 200 feet of adequately bonded cement isolation between the zone to be fracked and the deepest water zone.
- Operators to follow specific best practices, including demonstrating that the wellbore casing is adequate on each and every well, not just a sample (or "type") well.
- Protective standards, including cement returns and pressure testing on each well.
- An approved remediation plan for wells where cementing does not meet the standards and a CEL on all remediated wells.

**Manages fluids by:**

- Treating all recovered fluids from hydraulic fracturing operations in the same way, and requiring a standard of care for interim storage adequate to prevent damage to surface or groundwater and wildlife from any toxicity.
- Requiring interim storage of all produced water in rigid enclosed, covered or netted above-ground tanks, subject to very rare and limited exceptions in which lined pits could be used (with a leak detection system). Replaces current practice that allows for the use of pits or tanks in all cases for interim storage.

**Provides for public disclosure of chemicals by:**

- Requiring chemical disclosure to the BLM through the website FracFocus, or other designated online database, within 30 days of completion of hydraulic fracturing operations.
- Requiring the filing with the BLM of affidavits signed by a corporate officer or the equivalent responsible official of the operator to provide justification for any claim of a trade secret. The BLM retains the right to obtain any information withheld as a trade secret and to review that claim. The affidavit must also identify and provide contact information for the owner of the withheld information, if it is not the operator.
- Requiring operators to retain information that is withheld for the life of the well, or 7 years on Federal lands or 6 years on Indian lands, whichever is longer.

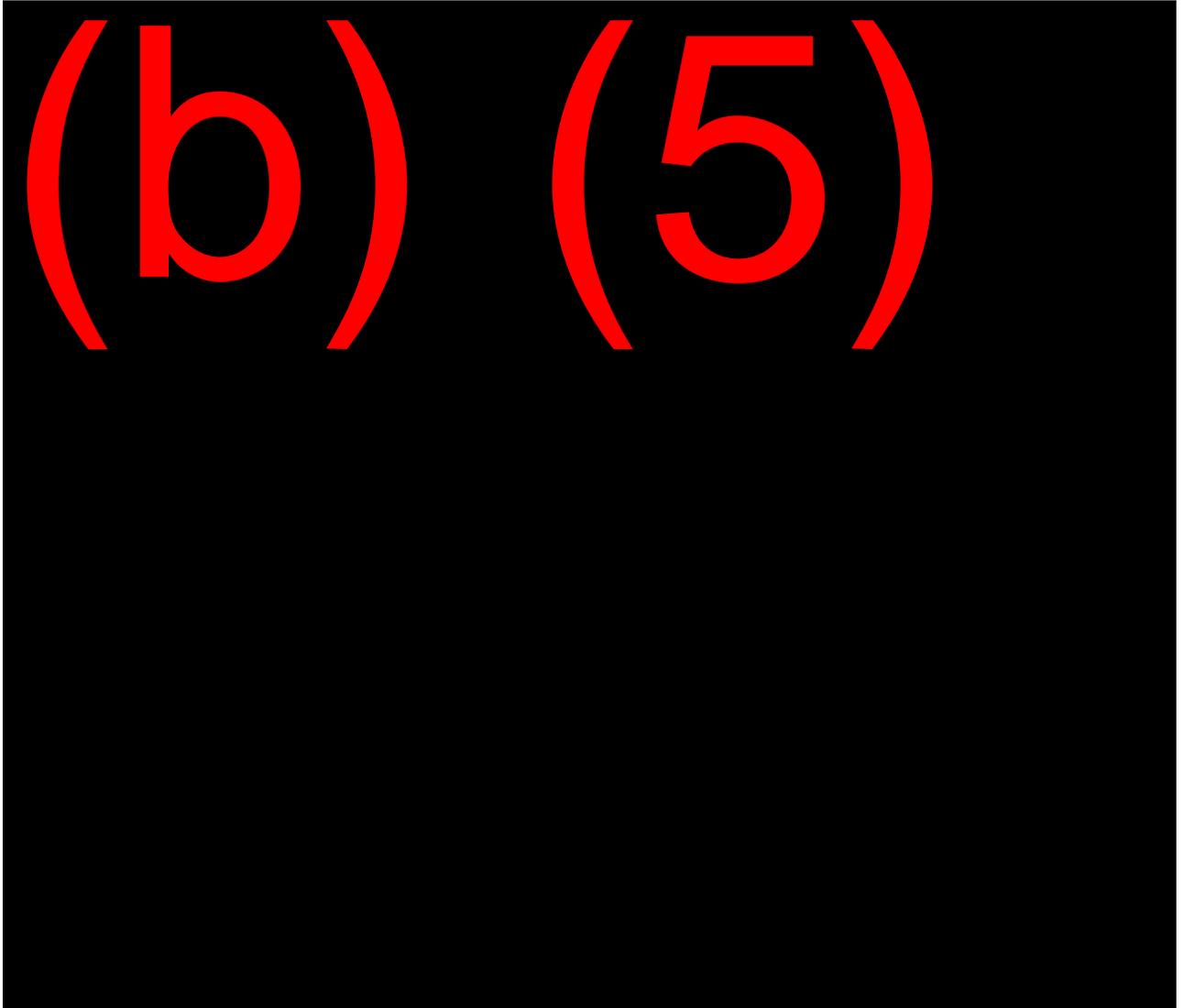
**Prevents frack hits by:**

- Requiring operators to submit information to the BLM so that the agency can determine the potential for cross-well contamination, commonly called “frack hits,” where the force of one fracking operation affects other nearby wells.
  - Operators must submit a map showing the trajectory of the proposed wellbore into which hydraulic fracturing fluids are to be injected and all existing wellbore trajectories within one-half mile of any portion of the proposed wellbore trajectory including the horizontal drilling. The true vertical depth of each wellbore identified on the map must also be indicated.
  - Operators will also provide information to the BLM on the location of the operations, geology, water resources, location of other wells or natural fractures or fissures in the area, and fracturing plans (including the estimated length, height, and total vertical depths of the fractures) for the operation in their application for permit to drill (APD).

**Cost to Operators**

The BLM estimates that the cost of the rule could reach about \$11,400 per operation or about \$32 million a year based on projected activity of 2,800 wells per year on Federal and Indian lands. On average, this expense equates to less than one-fourth of 1 percent of the cost of drilling a well, based on an estimated cost of \$5.4 million per well from the Energy Information Agency.

**ISSUE: BLM's HYDRAULIC FRACTURING RULE**



**IV. PREPARED BY:** Richard McNeer, Attorney, Office of the Solicitor, Division of Mineral Resources, 202-208-5793  
**DATE:** January 5, 2017

**From:** Kaster, Amanda  
**To:** [Lori Mashburn](#)  
**Subject:** Fwd: Letter to Secretary Zinke, dated today (February 2, 2017) and attachments  
**Date:** Thursday, February 02, 2017 12:55:01 PM  
**Attachments:** [Letter to Sec. Zinke, 2-2-17.pages](#)  
[Abbreviated Biography \(final\).pages](#)  
[Letter to Sec. Zinke-2.pdf](#)

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Passing along the message below - Clay has been in touch with the Congressman's personal office and staff from the House Committee on Natural Resources with this same request. We haven't personally worked with him before.

----- Forwarded message -----

From: Clay Peters, (b) (6)  
Date: Thu, Feb 2, 2017 at 12:46 PM  
Subject: Letter to Secretary Zinke, dated today (February 2, 2017) and attachments  
To: amanda\_kaster@ios.doi.gov

Dear Ms. Kaster:

I am sending to and through you, a letter dated today to Secretary Zinke (whom I realize is not yet confirmed by the Senate), expressing my interest in being considered by him to be a candidate for the position of Director of the National Park Service. There are also several attachments to this email message.

I would greatly appreciate your making sure that he sees this letter of February 2, 2017 to him (enclosed herein), along with other attachments as well. It would be highly appreciated if you would be kind enough to respond to this email message so that I know that you have received it. If you would be willing to share a telephone number contact for you, I would also be much appreciative to have it.

Congratulations on your move to the Department with Secretary Zinke!  
Sincerely,

Clay E. Peters

(b) (6)

--

Amanda Kaster-Averill  
Special Assistant  
Office of Congressional and Legislative Affairs  
U.S. Department of the Interior

(202) 208-3337  
amanda\_kaster@ios.doi.gov <[mailto:amanda\\_kaster@ios.doi.gov](mailto:amanda_kaster@ios.doi.gov)>

February 2, 2017

Secretary of the Interior Ryan Zinke  
1849 C Street, N.W.  
Washington, D.C.20240

Dear Mr. Secretary:

Congratulations to you on achieving the position of Secretary of the Interior! This cabinet office is an outstanding position from which to exert great impact and leadership related to the natural resources of the nation and also upon the Quality of Life of all Americans--and potentially the world!

I would like to assist you in that achievement. I would specifically like to do that through the position of Director of the National Park Service (NPS), and hereby ask for your consideration of my candidacy for that position.

I have spent my entire life associated with our national parks, beginning at age four, when my family used to take us every summer for camping in Yosemite Valley. I have spent an entire career working with the National Park Service, and associated with the national park system in a great number of ways. That included a dozen years working on the Republican staff of the House Interior (now Natural Resources) Committee, hired there by Ranking Member John Saylor, the House father of the National Wilderness Preservation Act. I have worked in two national conservation organizations as their Director of National Parks programs, worked as Senior staff on the President's (Reagan) Commission on Americans Outdoors (with Chairman Lamar Alexander), and served as Executive Director of a coalition of all national environmental organizations which assembled a compendium of national environmental policy recommendations for President George H. W. Bush. There is much more to my career resume (copy enclosed).

I have a deep and broad familiarity of decades of association with the National Park Service and system and helped to create a significant amount of its contemporary history. I would like to share that wealth of experience with you, and employ it to assist you in becoming one of the greatest leaders of the Department of the Interior in its history! Don't act ordinary! Like President Trump, endeavor to leave a huge lasting and distinguished (conservation and increased quality of life) legacy from YOUR leadership!

A highly significant path to that accomplishment is through the National Park Service, one of the most admired agencies of the Federal government--and a very major component of the Department. **THE NATIONAL PARK SERVICE IS WELL POSITIONED TO EXERT A SUPER MAJOR POSITIVE IMPACT UPON ALL AMERICANS AND ALSO TO HIGHLY INFLUENCE THE QUALITY OF LIFE OF ALL HUMANS AND OTHER LIFE ON THE ENTIRE PLANET!** Let me talk to you about this--and also show you HOW!

There is a lengthy list of items needing attention--and more importantly, items of unenvisioned opportunities to be developed and activated. To name several: Reinvention

and activation of the existing Land and Water Conservation Fund (LWCF); development of a new, augmenting Great American Heritage Trust Fund (GAHTF) funded by corporate America; development of a comprehensive Plan for the next ten-year period to guide all operations of the National Park Service (modeled after the earlier Mission 66 Plan); recapturing all NPS employees into the development and implementation of that ten-year plan; creating a NPS Office of Vision and Objectives; reorienting the science operation of the NPS; and reactivating the role of the NPS being the leader of the entire parks/open space movement over the whole planet. There is more...much more.

All of this can and should be launched as the thrust for the NPS' and the Department's leadership for the Second Century of Parks--to exhibit great vigor and excitement ahead for National and WORLD conservation. This will far outdistance the embarrassingly scant impact mounted by the previous administration in celebrating the 100th anniversary of the NPS. They never even offered an outlook of "where do we go from here"--to provide leadership ahead. Let's finally do what they didn't!

There are two huge leadership pillars around which this entire scheme can be built:  
-- One to advance/save/complete the saving of the NATION (physically) through the LWCF and the GAHTF.

-- One to advance/save/complete the saving of the PLANET through a visionary effort provided by statement of TWM (an idea I don't want to elaborate here). This concept is totally revolutionary--and could change the course of future world history!

Because of my intensive knowledge base related the national parks, I retain much information as to who and what organizations and sources to tap for information and political muscle to move programs and initiatives. This is not something that someone acquires instantly or easily from scratch. Experience matters!

Mr. Secretary, I desperately hope that you will offer me the opportunity to engage in some brief conversation with you about what is contained therein. I think that you will be intrigued by the revelation of some of these ideas and concepts. If not, you and I will at least know that you had the opportunity to be exposed to some highly advanced, hopefully intensely visionary ideas!

I have sent various similar letters and attachments to you and your staff over the past month or so, and have never received any acknowledgments or response, so I do not know if you received them or are even aware of those. I am sending this letter as a consequence of that earlier lack of knowledge or response. I plan to be in Washington, D.C. sometime this month of February, and can easily arrange my schedule to be flexible to be able to meet and talk briefly with you, should you so desire. I deeply hope that can happen!

Enclosed below are several references who know me, should you care to contact any of them.

Sincerely,

Clay E. Peters

(b) (6)

## Key References

Senator Lamar Alexander: Was Chairman of the President's Commission on Americans Outdoors, to which I served as an Associate Director for Federal Lands and Waters

Gil Grosvenor: Chairman Emeritus of The National Geographic Society, who served as Vice Chairman of the President's Commission of Americans Outdoors

Senator Pat Roberts: Served with as staffers to Congressman Keith Sebelius of Kansas, he on personal staff, me as his staff on the National Parks Subcommittee

Maureen Finnerty, Chair, The Coalition to Protect America's National Parks

(b) (6)

Barry Tindall, retired official of the National Recreation and Parks Association

(b) (6)

George Siehl, retired staffer from the Congressional Research Service

(b) (6)

## ABBREVIATED BIOGRAPHY OF CLAY E. PETERS

College Education: B. S. degree in Forest Management from Oregon State University. Served as Assistant Editor of the Hi-Lead, the Forestry School newspaper and also elected as Forestry Club President my Senior year.

Started career with the National Park Service (NPS) as a back country (wilderness) ranger in the high Sierra of Sequoia and Kings Canyon National Parks, working with horses and mules. Helped prepare the first Backcountry Management Plan here for the entire National Park System and also prepared a comprehensive document/file for a Permanent Meadow Photo Plot Study. Later prepared a Wilderness Management Plan for Lassen Volcanic National Park. Worked in several other western parks including Yosemite and Mt. Rainier.

Transferred to the Washington headquarters office of the NPS to work on implementation of the Wilderness Act of 1964. Soon thereafter, initiated and directed the first-ever nationwide management system for national park system wilderness.

Selected by the Secretary of the Interior to be a Congressional Fellow (one annual selectee per cabinet department) on Capitol Hill; worked a half year in the Senate and a half year in the House.

Hired by Congressman John Saylor (R-PA) and Father of THE WILDERNESS ACT to be his professional staff on the Committee on Interior and Insular Affairs to handle national park and outdoor recreations matters. Highlights here included:

Writing great amounts of bills, amendments, committee reports and all other matters related to the legislative process.

Probably wrote more NPS policy into law than anyone else--ever. Included mandate for carrying capacity to guide all management of the national park system, national wild and scenic rivers system and national trails system.

Wrote the recommended comprehensive management policies for guiding the future of the National Park System as part of the report of the 1972 National Parks Centennial Commission (for Yellowstone National Park--America's and the world's first).

Conceived and wrote directive to require the NPS to prepare a (first and only ever) STATE OF THE PARKS report, of 1980, which documented damage and threats to the integrity of the entire National Park System, park by park.

Conceived and developed a new nomenclature category for the National Park System, the title of PRESERVE, of which there are now 17 throughout the National Park System.

Helped develop and enact the largest omnibus national parks bill in congressional history, valued in excess of \$1 billion.

Wrote legislation to require the Interior Secretary to submit new park area candidate proposals on an annual basis; developed legislation to better protect national natural and historic landmarks; and a requirement for a study report to be prepared and submitted by the Secretary of the Interior regarding potential national urban park areas.

Through my period here, worked with and directly for several of the greatest conservation icons of congressional history: Congressmen Saylor, Burton, Udall and Seiberling.

Conceived and wrote the first (billion dollar) trust fund bill for Committee Chairman Mo Udall--the American Heritage Trust Act,

sponsored by well over half of the members of the House and a third of the Senate (very bipartisan).

Separate from the congressional arena:

Served as Executive Director of Blueprint For The Environment, a coalition of all the major national conservation organizations of America, to prepare for the President, an assembly of recommendations for protecting the nation's environment-- subsequently delivered to President-Elect G. H. W. Bush. Delegation of four of us invited by the President-Elect to join him for breakfast at the White House to deliver the product and brief him; spent the entire time discussing only one subject: Global Warming.

Co-conceived and served on The President's Commission on Americans Outdoors (Chaired by now-Senator Lamar Alexander and Vice-Chaired by Gil Grosvenor, then- Chairman of the National Geographic Society) and authored the core recommendation of the final report to the President.

Served as Executive Director of the National Celebration of the Outdoors (a national environmental coalition).

Served as Parks program Director for both the National Parks Conservation Association and The Wilderness Society.

Worked for the Washington-based Committee for the National Institute for the Environment as their California representative, based at the University of California/ Santa Cruz, CA.

Served on the staff of the (Bill) Clinton for President national campaign, from the beginning to the end, directing and participating in the development of his environment

positions. Then served on his post-election Transition Team, solely performing all work related to the National Park Service.

For a short period, served as (national) Vice President of ZPG (Zero Population Growth).

As a private citizen, have also served on and chaired numerous Boards, Committees, Task Forces, non-profit organizations and groups (private and local government sponsored) related to soil and water conservation, tree and forest preservation, environmental conservation, golf course management, and so forth. Initiated the Reston Environmental Movement organization in Virginia around Earth Day 1970.

As seasonal government work, in California, spent three summers on fire crews with the California Division of Forestry (now Cal-Fire) and the NPS for two summers as a fire patrolman and a fire crew foreman.

Clay E. Peters



February 2016

---

December 22, 2016

Congressman Ryan Zinke and  
Secretary of the Interior Nominee  
113 Cannon House Office Building  
Washington, D.C. 20515

Dear Congressman/Interior Secretary Nominee Zinke:

Highest congratulations on your recent nomination by President-Elect Trump to serve as the Secretary of the Interior in his new cabinet! This is a very high honor, and provides you the ability to have a magnificently high impact upon the future disposition of natural resources and public experiences on our Federal lands. In this letter to you, I would like to focus particularly on the National Park Service in that regard.

I have spent my entire life and career working within and for our National Parks, both within the National Park Service (NPS) and also for 12 years serving as a top professional Republican staffer with the U. S. House of Representatives, Committee on Natural Resources (formerly Interior), doing all work related to National Parks and Outdoor Recreation. I was the first hire for a Republican Subcommittee staff position by Ranking Member John P. Saylor, the House Father of the 1964 National Wilderness Preservation Act.

My career has also extended well outside of and beyond these institutions in the private, non-profit sector, on a Republican (Reagan) President's Commission on Americans Outdoors, and I also served on a Presidential Transition Team earlier wherein I single-handedly performed all of the work for the National Park Service. My Abbreviated Biography is enclosed detailing much more extensive experience than mentioned here. I have written an entirely new, comprehensive bill for the Land and Water Conservation Fund (LWCF) to convert it to a billion dollar trust fund, which was the major recommendation of the President's Commission mentioned above--which I conceived and wrote. This idea was earlier advanced by me as introduced by a House bill sponsored jointly by Republican Ranking Member Manuel Lujan (later Secretary of the Interior) and then-Interior Committee Chairman Morris Udall).

I am currently working with several other knowledgeable leaders of conservation interests to augment the LWCF with a parallel measure to embrace 100% funding of an equal, or hopefully higher level, entirely by CORPORATE money! We have a target corporate leader in mind, and one who coincidentally met with President-Elect Trump and other high-tech CEOs around the day that you had a meeting also in the Trump Tower! I think this idea is distinctly possible to achieve under high-level, highly motivated corporate leadership. I envision this effort as constituting one of the highest national conservation achievements since the leadership of Teddy Roosevelt! I think it could also highly revitalize and stimulate our nation with high excitement and participation--for the benefit and enjoyment of every person of our 300+ million citizens and can serve as a huge, stimulative portion of our desperately needed infrastructure/urban renewal efforts! I think private industry can be easily excited to participate in this venture. Besides, even more than infrastructure investments, the end result with positively change and preserve the natural attributes of the nation--FOREVER, with

I would not expect you to know, or recall, that I have spent my entire career--and much of my broader span of life, working for the National Park Service and associated with the national parks. I have enclosed an Abbreviated Biography outlining my career, which briefly outlines all of this.

I feel that my association with the national parks is exceptionally long, broad and deep, and that I am as qualified as anyone in America to be a candidate for that position. I contributed a great deal to the actual history of that agency for over a half century of its existence. More importantly, I exhibited strong leadership and visionary thinking and actions during my time of contributions. I feel that I yet have exceptional abilities to lead that agency into its second century following its recent achievement of its Centennial year, and am excited about what many of those prospects could be.

Recently, I have been leading an initiative (The Great American Heritage Trust) to develop the idea of paralleling that LWCF funding source with an effort by Corporate America to totally fund an augmenting funding source to hopefully more than double the funds available for preserving much additional open space and high quality outdoor urban parks facilities across America. We are developing this jointly as a small team of outdoor parks professionals and we have targeted one of the wealthiest corporations in America and of the world as the prospective catalytic leader of this corporate effort. We feel confident and hopeful that we can cause this idea to blossom and grow rapidly in its impact on the nation, and to contribute much more preserved open space at the same time efforts progress to provide greatly improved infrastructure across our nation by other leadership efforts of the Trump administration and the Congress. I envision this corporate effort to reach the scale and impact of constituting one of the grandest national conservation efforts since the century-ago leadership created by President Theodore Roosevelt!

There are a multitude of additional, large scale/high impact initiatives I have in mind hoping to institute should I have the pleasure of serving in a position such as provided by the National Park Service directorship. All of my thinking and desire is to assure that the end result constitutes a very large legacy developed by the Secretary and the Trump administration in the contribution of parks and open space for America's future pleasure and enjoyment. Some of these ideas are briefly outlined in other brief documents accompanying this note to you.

I am sharing a letter quite similar to this one with Senator Pat Roberts, whom I worked with a number of years back. You may want to contact him about me if you think that could be helpful.

Knowing that you are very busy, I have tried to keep this letter brief. I end it by again asking if you feel you would be willing to lend me your support in recommending me as a candidate for the position of Director of the National Park Service--by forwarding my candidacy to cabinet Secretarial Nominee/Congressman Ryan Zinke. To ascertain your orientation towards doing this, I would be delighted if you could find time to share a few words of exchange with me by telephone--hopefully by next week. Possibly you could

greatly increased QUALITY OF LIFE enhancements for all Americans--IN PERPETUITY!

I would LOVE to be able to serve on your Interior Transition Team to develop and present this and other ideas (see my more detailed array of ideas in the enclosure dated December 12, 2016). I have all of my career been an "idea guy"; please see if you don't detect that from scanning my Abbreviated Biography enclosed.

I would be remiss if I did not also mention that I have an intense interest in being a candidate for the position of Director of the National Park Service. Being able to serve on your Interior Transition Team would allow me to show my abilities, excitement and enthusiasm for the position through my performance on and development of the Transition Team product.

I am pleading with you for an opportunity to so serve, starting with the Transition exercise. From what little I so far know about your interests, I think you would find my experience and interests to be highly congruent with yours, and I feel that I am a very pleasant personality to work with. I honestly think I have the capabilities of helping YOU to be an outstanding Secretary, and thereby for you to serve as a great asset to the President in Making American Great Again--in ways that will make BOTH of you grandly historic figures which can leave an unmatched, innovative and grand LEGACY for America.

I would highly welcome a prompt opportunity to meet and talk with you about such a GRAND PLAN! I have personally known most of the Directors of the National Park Service over the past 50 years. In my opinion, only ONE really made a mark in performance that provides any historic marker of his/her service. A similar observation exists for Secretaries. You have to come into the job with a GRAND PLAN, high dedication, a capable Team and a purposeful strategy of objectives and time lines--to leave your mark. In my opinion, most predecessors were mainly successful in "processing the IN BOX", which never afforded the leaving of a distinctive, grand, notable legacy!

I would LOVE to hear some response to this letter and attachments--from YOU or your staff! PLEASE GIVE ME A CHANCE TO HELP YOU DO GREAT, DISTINCTIVE STUFF!

*Clay E. Peters*  
Clay E. Peters

(b) (6)

**From:** Benedetto, Kathleen  
**To:** [Bail, Kristin](mailto:kbail@blm.gov)  
**Subject:** Re: Initial Writeup for Consideration  
**Date:** Friday, March 24, 2017 11:09:43 AM  
**Attachments:** [image001.png](#)

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Okay, thank you. KB

On Fri, Mar 24, 2017 at 8:59 AM, Bail, Kristin <[kbail@blm.gov](mailto:kbail@blm.gov)> wrote:

I didn't have a sense of when you wanted to loop Mike into this process. I'll let you share this with him as you choose. -K

On Fri, Mar 24, 2017 at 8:54 AM, Kathleen Benedetto <[kathleen\\_benedetto@ios.doi.gov](mailto:kathleen_benedetto@ios.doi.gov)> wrote:

Thanks

Sent from my iPhone

On Mar 24, 2017, at 8:19 AM, Bail, Kristin <[kbail@blm.gov](mailto:kbail@blm.gov)> wrote:

Good morning, Kate -- I don't know if you all sent Jim the document last night, didn't get any notes after you sent this one. In case you need it, here is a clean copy that incorporates your edits and removes the highlighting. --Kristin

Kristin Bail, Assistant Director  
Resources and Planning (WO-200)  
1849 C. Street NW, Room 5646  
Washington, D.C. 20240  
(202) 208-6731 Cell (202) 823-1086  
[kbail@blm.gov](mailto:kbail@blm.gov)

USDI Bureau of Land Management



On Thu, Mar 23, 2017 at 5:54 PM, Macgregor, Katharine <[katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov)> wrote:

I made a few small edits. If Rich is good, I think we can send this up to Jim.  
-K

On Thu, Mar 23, 2017 at 9:35 AM, Bail, Kristin <[kbail@blm.gov](mailto:kbail@blm.gov)> wrote:

Here is a revised, writeup, addressing most of the comments. I still haven't found a way to bring in Kate's comment (b) (5) [REDACTED]. --K

Kristin Bail, Assistant Director  
Resources and Planning (WO-200)  
1849 C. Street NW, Room 5646  
Washington, D.C. 20240  
(202) 208-6731 Cell (202) 823-1086

[kbail@blm.gov](mailto:kbail@blm.gov)

USDI Bureau of Land Management



On Wed, Mar 22, 2017 at 7:41 PM, Cardinale, Richard  
<[richard\\_cardinale@ios.doi.gov](mailto:richard_cardinale@ios.doi.gov)> wrote:

Thanks for the opportunity to review. Some initial thoughts:

(b) (5)  
[Redacted]

On Wed, Mar 22, 2017 at 5:57 PM, Macgregor, Katharine  
<[katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov)> wrote:

Hey looping in Rich. I think this looks really good - can we put it into a word or google doc to track changes? (b) (5)

[Redacted]

Just to recap our meeting for Rich, the question/discussions we are focusing in on when it comes to future planning efforts are first and foremost (b) (5)

(b) (5)  
[Redacted]

[Redacted]

I think you covered nearly all of them. My only addition is that I would like (b) (5)

[Redacted]

(b) (5) [Redacted]

-K

On Wed, Mar 22, 2017 at 4:34 PM, Bail, Kristin <[kbail@blm.gov](mailto:kbail@blm.gov)> wrote:

Here are some initial thoughts --

---

Yesterday, President Trump signed H.J. Resolution 44 which immediately nullified the regulations known as Planning 2.0. (b) (5)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5)

--

Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202-208-3671 (Direct)

--

Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202-208-3671 (Direct)

<NextStepsPlanning\_km edits.docx>

--

**Kathleen Benedetto**  
Special Assistant to the Secretary  
Department of the Interior  
Bureau of Land Management  
(202) 208-5934



**From:** Bail, Kristin  
**To:** [Kathleen Benedetto](mailto:Kathleen.Benedetto)  
**Subject:** Re: Initial Writeup for Consideration  
**Date:** Friday, March 24, 2017 9:01:07 AM  
**Attachments:** [image001.png](#)

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Kristin Bail, Assistant Director  
Resources and Planning (WO-200)  
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(b) (5)  
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[Redacted]

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Here are some initial thoughts --

---



(b) (5)

--  
Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202-208-3671 (Direct)

--  
Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202-208-3671 (Direct)

<NextStepsPlanning\_km edits.docx>

**From:** Kathleen Benedetto  
**To:** [Bail, Kristin](#)  
**Cc:** [Macgregor, Katharine](#); [Cardinale, Richard](#)  
**Subject:** Re: Initial Writeup for Consideration  
**Date:** Friday, March 24, 2017 8:55:05 AM  
**Attachments:** [image001.png](#)

---

Thanks

Sent from my iPhone

On Mar 24, 2017, at 8:19 AM, Bail, Kristin <[kbail@blm.gov](mailto:kbail@blm.gov)> wrote:

Good morning, Kate -- I don't know if you all sent Jim the document last night, didn't get any notes after you sent this one. In case you need it, here is a clean copy that incorporates your edits and removes the highlighting. --Kristin

Kristin Bail, Assistant Director  
Resources and Planning (WO-200)  
1849 C. Street NW, Room 5646  
Washington, D.C. 20240  
(202) 208-6731 Cell (202) 823-1086  
[kbail@blm.gov](mailto:kbail@blm.gov)

USDI Bureau of Land Management



On Thu, Mar 23, 2017 at 5:54 PM, Macgregor, Katharine <[katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov)> wrote:

I made a few small edits. If Rich is good, I think we can send this up to Jim.  
-K

On Thu, Mar 23, 2017 at 9:35 AM, Bail, Kristin <[kbail@blm.gov](mailto:kbail@blm.gov)> wrote:

Here is a revised, writeup, addressing most of the comments. I still haven't found a way to bring in Kate's comment **(b) (5)**  
K

Kristin Bail, Assistant Director  
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(202) 208-6731 Cell (202) 823-1086  
[kbail@blm.gov](mailto:kbail@blm.gov)

USDI Bureau of Land Management



On Wed, Mar 22, 2017 at 7:41 PM, Cardinale, Richard

<[richard\\_cardinale@ios.doi.gov](mailto:richard_cardinale@ios.doi.gov)> wrote:

Thanks for the opportunity to review. Some initial thoughts:

(b) (5)

On Wed, Mar 22, 2017 at 5:57 PM, Macgregor, Katharine

<[katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov)> wrote:

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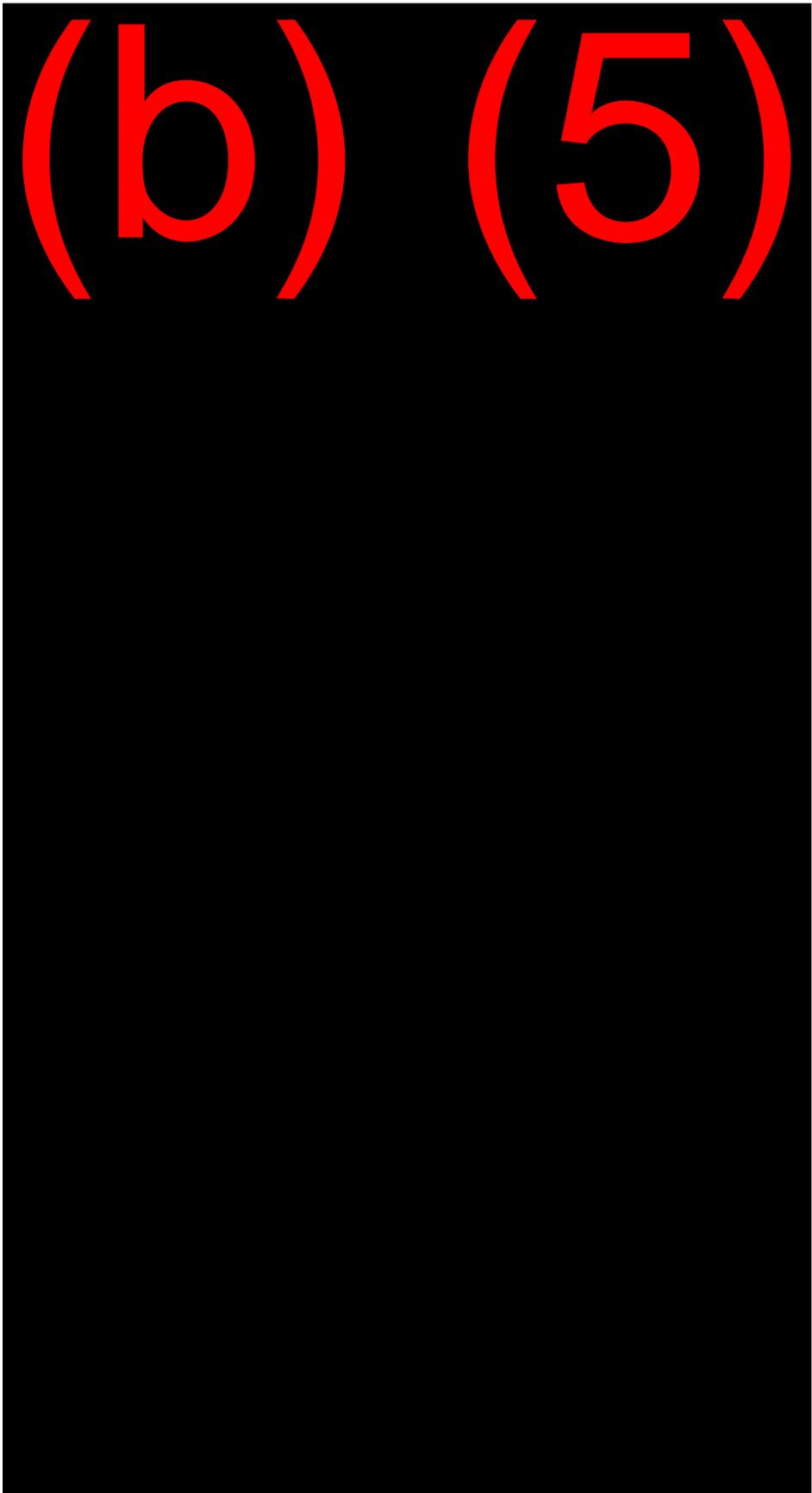
-K

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---

**(b) (5)**



(b) (5)

--

Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202-208-3671 (Direct)

--

Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202-208-3671 (Direct)

<NextStepsPlanning\_km edits.docx>

**From:** Katharine Macgregor  
**To:** [Bail, Kristin](mailto:Kristin.Bail@blm.gov)  
**Subject:** Re: Initial Writeup for Consideration  
**Date:** Friday, March 24, 2017 8:37:29 AM  
**Attachments:** [image001.png](#)

---

Hey thanks- does it incorporate Rich's edits?

Sent from my iPhone

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Here are some initial thoughts --

(b) (5)

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--

Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202-208-3671 (Direct)

--

Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202-208-3671 (Direct)

<NextStepsPlanning\_km edits.docx>

**From:** Stewart, Shannon  
**To:** [Michael Nedd](#)  
**Cc:** [Timothy Spisak](#); [Shelley McGinnis](#); [Lonny Bagley](#); [Kathleen Benedetto](#); [Jerome Perez](#)  
**Subject:** Re: Report on SO 3349, Sections 5(c)(i), (ii), and (v)  
**Date:** Tuesday, April 11, 2017 5:14:49 PM

---

I can make those changes Mike. I will wait for any other input and finish this up in the morning.

Shannon

On Tue, Apr 11, 2017 at 5:08 PM, Michael Nedd <mnedd@blm.gov> wrote:

Shannon,

I believe all the information is there and I'm wondering if we should not put this in a similar memo format as we did with the Mitigation and Climate Change report (from me through the ASLM to the Secretary).

For the next steps, maybe we can modify the last sentence to include language to the effect (b) (5)



Take care and have a wonderful day! :)

Michael Nedd

202-208-3801 Office

202-208-5242 Fax

mnedd@blm.gov

A thought to consider "Do all the good you can, in all the ways you can, for all the people you can, while you can!"

From: Stewart, Shannon [<mailto:scstewar@blm.gov>]  
Sent: Tuesday, April 11, 2017 4:11 PM  
To: mike nedd; Kathleen Benedetto; Jerome Perez  
Cc: Timothy Spisak; Shelley McGinnis; Lonny Bagley  
Subject: Report on SO 3349, Sections 5(c)(i), (ii), and (v)

Attached is the second report on SO 3349 prepared by WO-300 which is due to ASLM on Wednesday 4/12. The SOLs are reviewing concurrent with WO-100.

Shannon

--

Shannon Stewart

Acting Chief of Staff

Bureau of Land Management

202-570-0149 (cell)

202-208-4586 (office)

scstewar@blm.gov

--

Shannon Stewart

Acting Chief of Staff

Bureau of Land Management

202-570-0149 (cell)

202-208-4586 (office)

scstewar@blm.gov

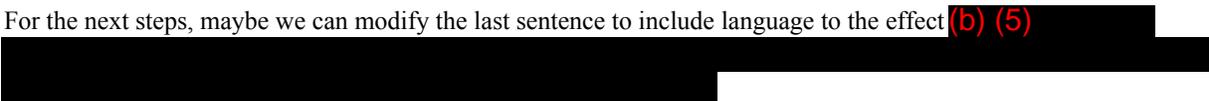
**From:** Michael Nedd  
**To:** [Shannon Stewart](mailto:Shannon.Stewart)  
**Cc:** [Timothy Spisak](mailto:Timothy.Spisak); [Shelley McGinnis](mailto:Shelley.McGinnis); [Lonny Bagley](mailto:Lonny.Bagley); [Kathleen Benedetto](mailto:Kathleen.Benedetto); [Jerome Perez](mailto:Jerome.Perez)  
**Subject:** RE: Report on SO 3349, Sections 5(c)(i), (ii), and (v)  
**Date:** Tuesday, April 11, 2017 5:08:37 PM

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Take care and have a wonderful day! : )

Michael Nedd

202-208-3801 Office

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Shannon Stewart

Acting Chief of Staff

Bureau of Land Management

202-570-0149 (cell)

202-208-4586 (office)

[sstewar@blm.gov](mailto:sstewar@blm.gov)

**From:** Michael Nedd  
**To:** [Katharine Macgregor](#); [Richard Cardinale](#)  
**Subject:** RE: FWS Director Meet and Greet - No Action Required Before Monday  
**Date:** Sunday, April 09, 2017 2:46:37 PM

---

FYI

Take care and have a wonderful day! : )

Michael D. Nedd

202-208-3801 Office

202-208-5242 Fax

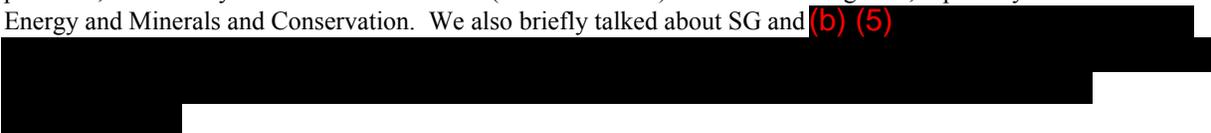
[mnedd@blm.gov](mailto:mnedd@blm.gov)

A thought to consider "Do all the good you can, in all the ways you can, for all the people you can, while you can!"

From: Michael Nedd [<mailto:mnedd@blm.gov>]  
Sent: Sunday, April 09, 2017 2:30 PM  
To: Kristin Bail; Timothy Spisak  
Cc: Jerome Perez; John Ruhs; Marshall Critchfield; Kathleen Benedetto  
Subject: FWS Director Meet and Greet - No Action Required Before Monday

Kristin and Tim,

Thursday I met with FWS Acting Director Jim Kurth and Acting Deputy Steve Guertin. We talked about DOI priorities, the recently issued SOs and how we (BLM and FWS) can best work together, especially as it relates to Energy and Minerals and Conservation. We also briefly talked about SG and (b) (5)



Jim identified Cynthia Martinez, Chief of their Wildlife Refuge System as contact for SO 3347 - conservation stewardship and outdoor recreation and Steve Guertin as the primary contact for FWS matters and also SO 3349 – American Energy Independence.

Take care and have a wonderful day! : )

Michael D. Nedd

202-208-3801 Office

202-208-5242 Fax

[mnedd@blm.gov](mailto:mnedd@blm.gov)

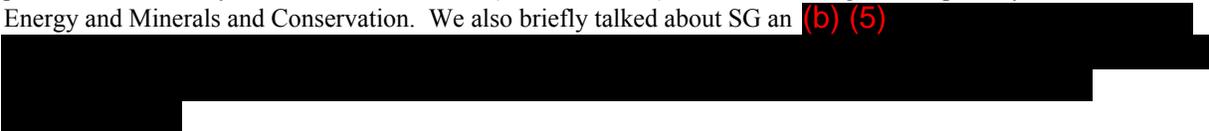
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**From:** Michael Nedd  
**To:** [Kristin Bail](#); [Timothy Spisak](#)  
**Cc:** [Jerome Perez](#); [John Ruhs](#); [Marshall Critchfield](#); [Kathleen Benedetto](#)  
**Subject:** FWS Director Meet and Greet - No Action Required Before Monday  
**Date:** Sunday, April 09, 2017 2:29:52 PM

---

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Thursday I met with FWS Acting Director Jim Kurth and Acting Deputy Steve Guertin. We talked about DOI priorities, the recently issued SOs and how we (BLM and FWS) can best work together, especially as it relates to Energy and Minerals and Conservation. We also briefly talked about SG an (b) (5)



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Take care and have a wonderful day! : )

Michael D. Nedd

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[mnedd@blm.gov](mailto:mnedd@blm.gov)

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**From:** Kelleher, Karen  
**To:** [Jerome Perez](#); [Bail, Kristin](#); [Timothy Spisak](#); [Kathleen Benedetto](#)  
**Cc:** [Steve Tryon](#)  
**Subject:** response to 3349  
**Date:** Wednesday, April 05, 2017 11:51:00 AM

---

Hi all,

A couple of questions came up yesterday on what to include on the list of policies for mitigation & climate. After discussions with Kristin & further checking with the OEPC and Office of Policy Analysis, this is what I have learned and recommend:

1. BLM will include step-down state level BLM policies. We have queried/are querying the states and hope/expect to be able to have a response from all states in time.
2. BLM does not need to include Department level policies in its response (e.g., the Department's mitigation manual/handbook; any mitigation or climate policies issued by OEPC). Each office in the Department is compiling their list of policies and will submit it, we do not need to duplicate that effort.

Please let me know if you concur and/or have concerns with this approach so we can provide clarifying direction to the staff working on compiling the requested information.

Thanks  
Karen

--

Karen Kelleher

Deputy Assistant Director - Resources and Planning

Main Interior room 5644

[kkelleh@blm.gov](mailto:kkelleh@blm.gov)

202-208-4896

**From:** Benedetto, Kathleen  
**To:** [Macgregor, Katharine](#)  
**Cc:** [Bail, Kristin](#); [Cardinale, Richard](#)  
**Subject:** Re: Initial Writeup for Consideration  
**Date:** Wednesday, March 22, 2017 6:03:24 PM

---

Thanks Kate. I'm heading out I have a meeting in Crystal City. KB

On Wed, Mar 22, 2017 at 5:57 PM, Macgregor, Katharine  
<[katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov)> wrote:

Hey looping in Rich. I think this looks really good - can we put it into a word or google doc to track changes? (b) (5)

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I think you covered nearly all of them. My only addition is that I would like to (b) (5)

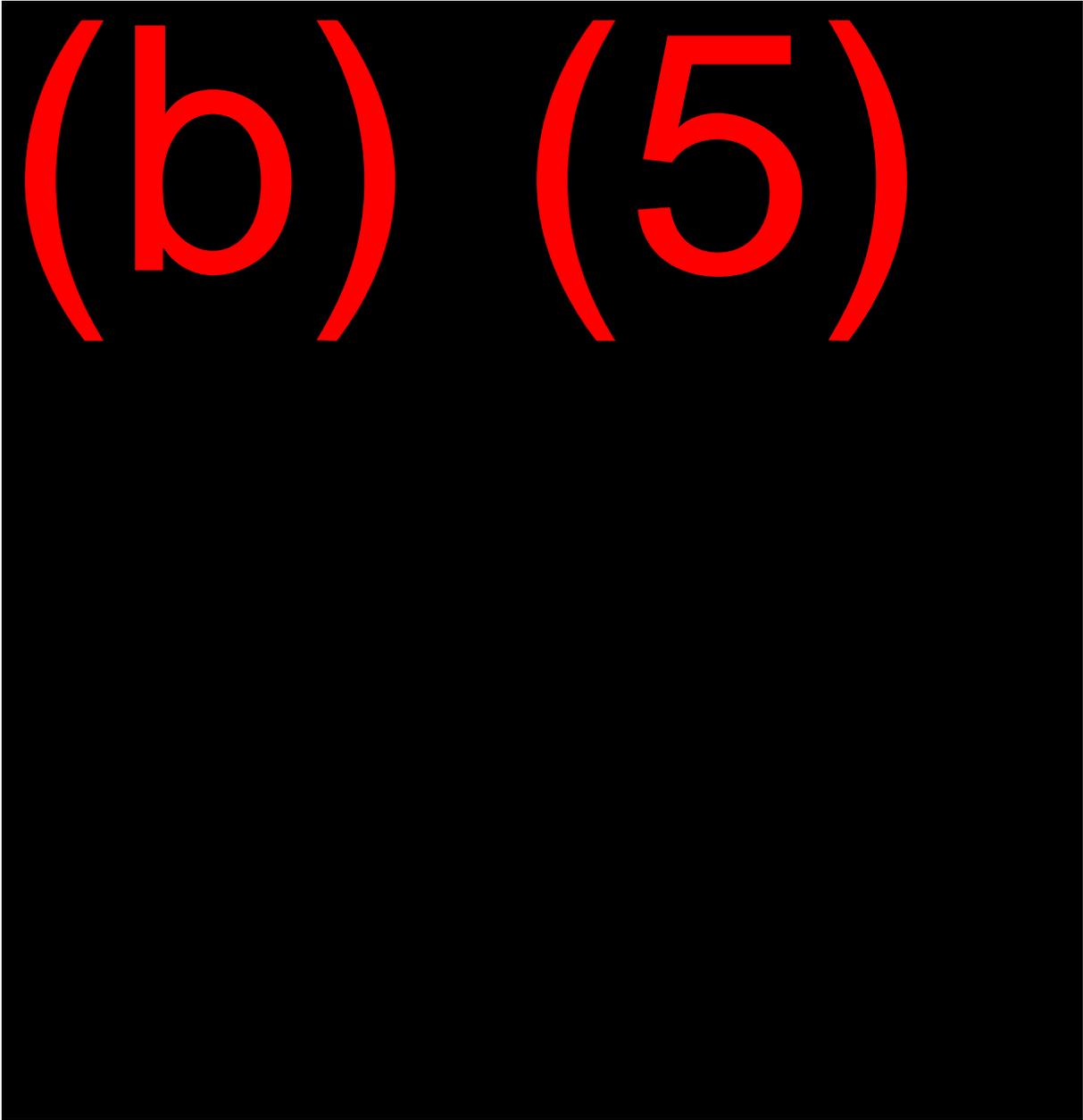
-K

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Here are some initial thoughts --

\_\_\_\_\_

(b) (5)



--  
Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202-208-3671 (Direct)

--

**Kathleen Benedetto**  
Special Assistant to the Secretary  
Department of the Interior  
Bureau of Land Management  
(202) 208-5934

**From:** Macgregor, Katharine  
**To:** [Bail, Kristin](#)  
**Cc:** [Kathleen Benedetto](#); [Cardinale, Richard](#)  
**Subject:** Re: Initial Writeup for Consideration  
**Date:** Wednesday, March 22, 2017 5:57:31 PM

---

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(b) (5)

(b) (5)

--

Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202-208-3671 (Direct)

**From:** Brubeck, Kimberly  
**To:** [Critchfield, Marshall](mailto:marshall_critchfield@ios.doi.gov)  
**Subject:** Re: BLM Daily Media Inquiry Wrap-up – March 20, 2017  
**Date:** Monday, March 20, 2017 9:09:26 PM

---

Matthew came up with it last week while I was out. I passed it by Heather Swift before I sent it. (b) (5)

On Mon, Mar 20, 2017 at 5:16 PM, Critchfield, Marshall <[marshall\\_critchfield@ios.doi.gov](mailto:marshall_critchfield@ios.doi.gov)> wrote:

Are we sure about that quote to the Great Falls Tribune?

On Mon, Mar 20, 2017 at 5:00 PM, Brubeck, Kimberly <[kbrubeck@blm.gov](mailto:kbrubeck@blm.gov)> wrote:

BLM Daily Media Inquiry Wrap-up – March 20, 2017

Great Falls Tribune- Presidential Budget and Montana (MT/WO): Reporter Karl Puckett requested information on the potential impacts on the BLM in Montana regarding the President's proposed 2018 budget. BLM-WO PA provided the following comment: "The President's budget blueprint supports the Bureau of Land Management's multiple use mandate and prioritize energy and minerals development. Details of the budget are expected in the coming weeks, but the blueprint demonstrates the Administration's strong fiscal responsibility and support for America's public lands."

Science Magazine- Fracking (WO): Reporter Meredith Wadman requested comment on the 10th Circuit Court of Appeals ruling that the administration will no longer defend an Obama-era rule on fracking. Referred to DOI.

San Juan Record- Bears Ears NM Meetings (UT): Editor Bill Boyle requested confirmation of rumors of a public meeting for Bears Ears NM in March. BLM-UT PA Lance Porter explained that no public meetings were scheduled at this time, that possible venues for outreach were being looked into, that the BLM is awaiting guidance from the Secretary's office and that notice will be provided via local media when a date/location for a public meeting is decided.

Owyhee Avalanche- BLM Archaeologist Appointment (ID): Reporter Sean Cheney requested an interview with Owyhee FO Archaeologist Marissa King on her recent appointment to the Owyhee County Historic Preservation Commission. BLM-ID PA Mike Williamson facilitated the interview which focused on her work with the BLM, why she wanted to be on the commission, what she will bring to the role and her connection to the commission.

WyoFile- Coal Leasing in Wyoming (WY): Reporter Andrew Graham contacted BLM-WY PA with questions about coal leasing and the coal pause in effect from S.O. 3338. BLM-WY PA Brad Purdy talked about the six projects in WY that may be subject to the lease pause. Those projects are Rawhide (WYW83395), Black Butte (WYW6266), Belle Ayr (WYW180238), Antelope (WYW184599), Haystack (WYW159423), and Black Thunder

(WYW172388), using the "Distilled Project Tables AP response" list released to the AP in February.

Freelance- Canyon Country Annual Budget ((UT): Reporter Steve Hogat is working on a story regarding this year's presidential budget for federal lands and requested information on the Annual Appropriated Operating Budget for the Canyon Country District. BLM-UT PA Mike Richardson pointed him to publicly available budget information on the internet and referred him to DOI for any questions related to the proposed 2018 budget for the DOI.

--

Kimberly A. Brubeck  
Press Secretary/Spokesperson  
Bureau of Land Management  
202-208-5832 (office)  
202-494-3647 (cell)  
kbrubeck@blm.gov

--

Marshall Critchfield

US Department of the Interior

Special Assistant to the Secretary  
Bureau of Land Management - Office 5649  
Desk: (202) 208-5996

--

Kimberly A. Brubeck  
Press Secretary/Spokesperson  
Bureau of Land Management  
202-208-5832 (office)  
202-494-3647 (cell)  
kbrubeck@blm.gov

**From:** Ralston, Jill  
**To:** [Macgregor, Katharine](#)  
**Cc:** [Jill Moran](#); [Richard Cardinale](#); [Patrick Wilkinson](#); [Matthew Quinn](#)  
**Subject:** Re: FOR ASLM REVIEW -- BLM Comments on Draft Bill, Federal Land Freedom Act (O/G Authority)  
**Date:** Wednesday, March 15, 2017 8:09:43 PM

---

Hi Kate,

The comments were drafted by our energy and minerals program staff (AD300) and legislative affairs program staff (AD600) at the request of the Department's Office of Congressional and Legislative Affairs (Matt Quinn).

They have been coordinated through our usual review process - in this case they have been reviewed and surnamed by the following:

- WO 100 (Jerry Perez, Kathy Benedetto)
- AD 300 (Mike Nedd, Lonny Bagley, Steve Wells)
- AD 600 (Matthew Allen, Patrick Wilkinson, Jill Ralston)

I am not familiar with the Friday meeting, and will leave it to Jill and Rich to weigh in on that question.

Thanks!

Jill Ralston  
Legislative Affairs  
Bureau of Land Management  
Phone: (202) 912-7173  
Cell: (202) 577-4299

On Wed, Mar 15, 2017 at 7:26 PM, Macgregor, Katharine  
<[katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov)> wrote:

Should we add this item to our BLM Director's meeting on Friday? Who at BLM offered technical assistance? Also - has Kathy Benedetto seen this?

On Wed, Mar 15, 2017 at 1:22 PM, Ralston, Jill <[jralston@blm.gov](mailto:jralston@blm.gov)> wrote:

For ASLM Review:

The Department received a request for technical assistance/comments on the attached draft legislation sponsored by Rep. Diane Black (R-TN-6). Among its measures, the draft bill would allow for any state with an oil and gas program to submit a "State Regulatory Program" to the Secretaries of the Interior and Agriculture, to transfer responsibility for oil and gas development on available Federal land from the Federal government to the state.

Please note that the draft bill is similar to H.R. 866, Federal Lands Freedom Act, on which the BLM submitted a Statement for the Record in November 2016. However, this version includes several changes from H.R. 866, including:

- Applies only to oil and gas;
- Defines "Available Federal Land" as land identified (by BLM or USFS) as

- available for lease for O&G (See, Sec. 3(1)(F));
- Creates a "State Regulatory Program" (somewhat analogous to OSM's "Certified State" program under SMCRA);
  - Creates a mechanism for a state to voluntarily surrender program authority back to the Secretary; and
  - Establishes authority for the Secretary to initiate involuntary surrender by a state for failure to achieve royalty benchmarks.

DOI requested that BLM provide to OCL initial draft comments. OCL has not yet determined whether comments will be relayed back to Congressional staff in writing or in a conference call. BLM's draft comments are pasted and attached below.

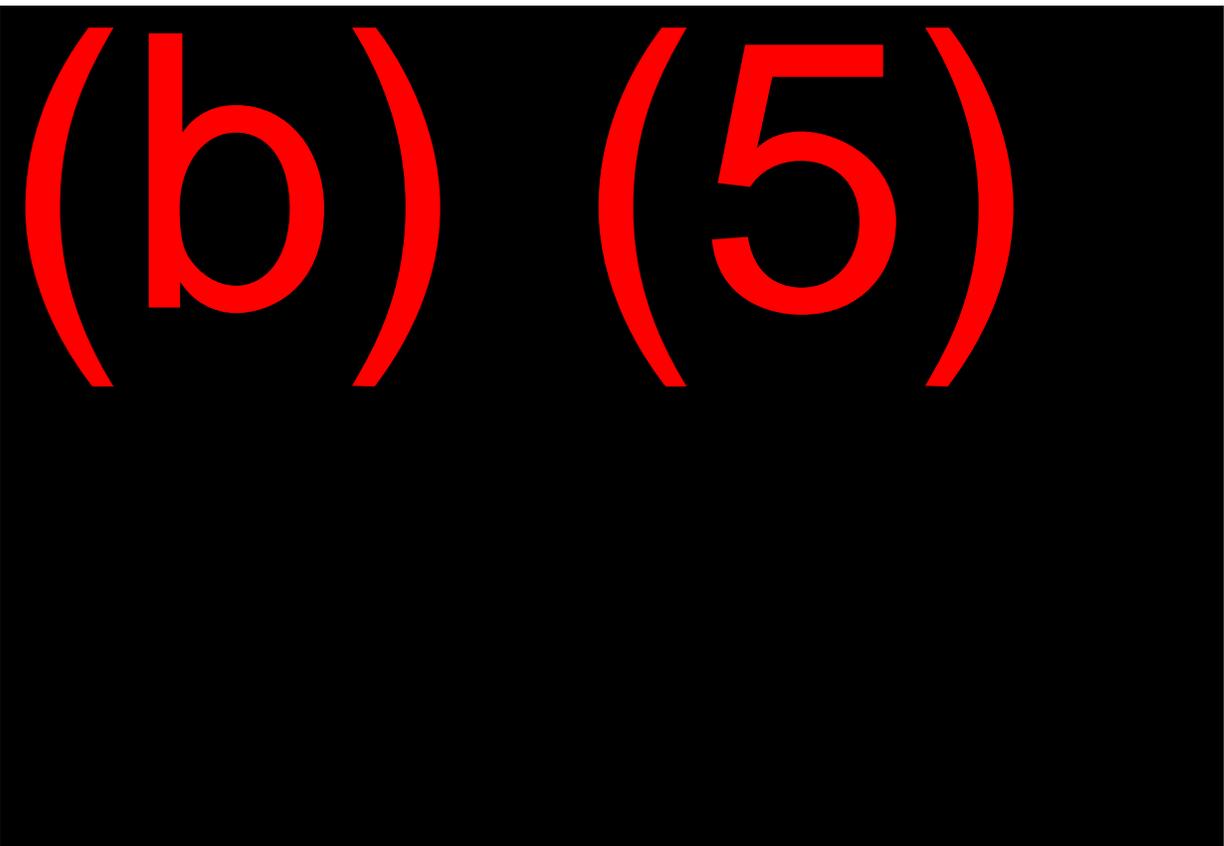
They have been reviewed and approved by BLM Leadership.

Also attached below is the draft legislation, as well as BLM's 2016 Statement for the Record on H.R. 866 from last congress.

Please review and let us know if you have any questions or recommended edits. I have cc'ed Matt Quinn with OCL for awareness.

Thanks!  
Jill

**BLM Comments on Draft Legislation  
H.R. \_\_Federal Land Freedom Act**



(b) (5)

(b) (5)

(b) (5)

Jill Ralston  
Legislative Affairs  
Bureau of Land Management  
Phone: (202) 912-7173  
Cell: (202) 577-4299

--

Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202-208-3671 (Direct)

**From:** Katharine Macgregor  
**To:** [michael\\_anderson@ios.doi.gov](mailto:michael_anderson@ios.doi.gov)  
**Subject:** Fwd: Wyo. v. Zinke (10th Cir.) BLM's Hydraulic Fracturing Rule  
**Date:** Wednesday, March 15, 2017 2:02:26 PM

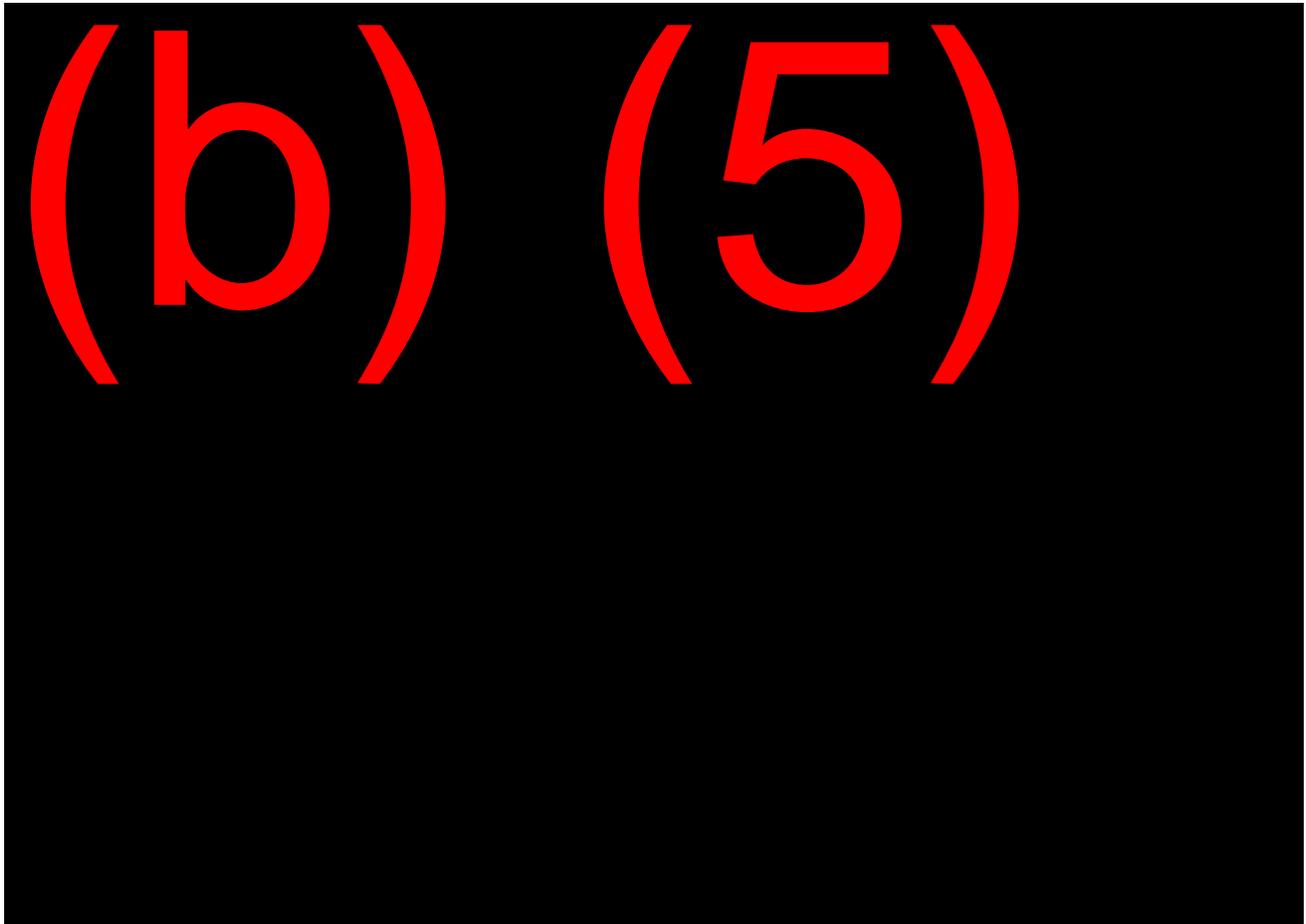
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Sent from my iPhone

Begin forwarded message:

From: "McNeer, Richard" <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>  
Date: March 13, 2017 at 9:51:06 AM EDT  
To: Katharine Macgregor <[katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov)>  
Cc: "Hawbecker, Karen" <[KAREN.HAWBECKER@sol.doi.gov](mailto:KAREN.HAWBECKER@sol.doi.gov)>  
Subject: Wyo. v. Zinke (10th Cir.) BLM's Hydraulic Fracturing Rule

Kate:



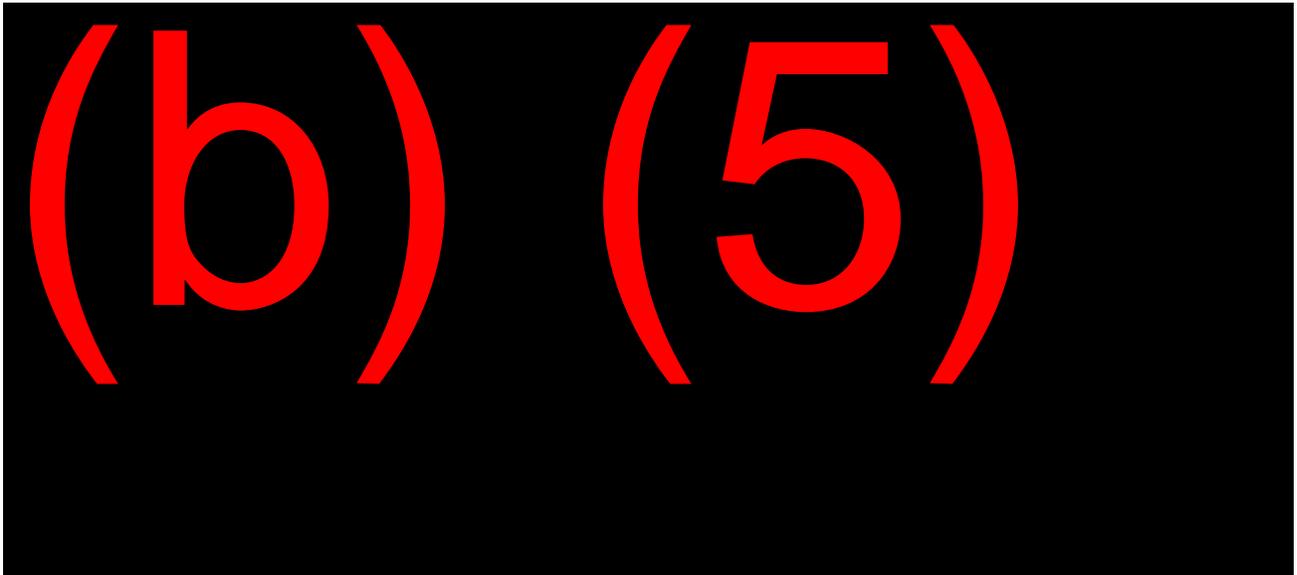
**From:** Magallanes, Downey  
**To:** [Moody, Aaron](#)  
**Cc:** [James Schindler](#); [Kevin Haugrud](#); [Keable, Edward](#); [Brown, Laura](#); [John Steiger](#); [Veronica Larvie](#)  
**Subject:** Re: SUWA litigation  
**Date:** Wednesday, March 15, 2017 1:37:37 PM

---

Is it time to loop in BLM again or did you want to have a SOL discussion first?

On Tue, Mar 14, 2017 at 12:07 PM, Moody, Aaron <aaron.moody@sol.doi.gov> wrote:

Downey & James:



Since this is a lot of material, what if we set up a discussion for late this week?

-Aaron

Aaron G. Moody

Assistant Solicitor, Branch of Public Lands

Division of Land Resources

Office of the Solicitor

U.S. Department of the Interior

202-208-3495

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immediately and destroy all copies.

--

Downey Magallanes  
Office of the Secretary

[downey\\_magallanes@ios.doi.gov](mailto:downey_magallanes@ios.doi.gov)  
202-501-0654 (desk)  
202-706-9199 (cell)

**From:** Magallanes, Downey  
**To:** [Hawbecker, Karen](#)  
**Cc:** [Jack Haugrud](#); [James Schindler](#); [Edward T Keable](#); [Danielle Dimauro](#); [Wendy Dorman](#); [Richard McNeer](#); [Mariagrazia Caminiti](#)  
**Subject:** Re: WEA v. Zinke (10th Cir.) (Quarterly Lease Sale Case)--DOJ feedback re: environmental group intervention  
**Date:** Tuesday, March 14, 2017 5:50:51 PM

---

(b) (5)

On Mon, Mar 13, 2017 at 6:04 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

(b) (5)

(b) (5)

Please let us know if we should work with Mari Grace to schedule a time for a meeting this week.  
Thanks. --Karen

--

Downey Magallanes  
Office of the Secretary  
[downey\\_magallanes@ios.doi.gov](mailto:downey_magallanes@ios.doi.gov)  
202-501-0654 (desk)  
202-706-9199 (cell)

**From:** Macgregor, Katharine  
**To:** [Cardinale, Richard](#)  
**Subject:** Re: HF Rule  
**Date:** Tuesday, March 14, 2017 3:54:39 PM

---

This looks fine to me.

On Tue, Mar 14, 2017 at 3:37 PM, Cardinale, Richard <[richard\\_cardinale@ios.doi.gov](mailto:richard_cardinale@ios.doi.gov)> wrote:

Kate,

Attached are my proposed edits.

Rich

----- Forwarded message -----

From: McNeer, Richard <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>  
Date: Tue, Mar 14, 2017 at 12:03 PM  
Subject: Re: HF Rule  
To: "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
Cc: Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, "Macgregor, Katharine" <[katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov)> <[mailto:katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov)>, Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)>, Downey Magallanes <[downey\\_magallanes@ios.doi.gov](mailto:downey_magallanes@ios.doi.gov)>, Richard Cardinale <[richard\\_cardinale@ios.doi.gov](mailto:richard_cardinale@ios.doi.gov)>

Rich:

Please review, fill in blanks, and edit for accuracy.

Jack and legal and policy reviewers:

Is this what you had in mind?

Richard

On Tue, Mar 14, 2017 at 11:05 AM, Haugrud, Kevin <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)> wrote:

Attorney Client Communication  
Attorney Work Product  
DO NOT DISCLOSE OR FORWARD

Team HF Rule: (b) (5)



--

Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202-208-3671 (Direct)

**From:** Michael Nedd  
**To:** [Karen Hawbecker](#)  
**Cc:** [McNeer, Richard](#); [Haugrud, Kevin](#); [Stephen Simpson](#); [Magallanes, Downey](#); [Steven Wells](#); [Richard Cardinale](#)  
**Subject:** Re: Wyo. v. Zinke (10th Cir.) BLM's HF rule  
**Date:** Tuesday, March 14, 2017 2:11:48 PM

---

(b) (5)

Take care and have wonderful day! :-)))

MDN 202-208-4201

A thought to consider "Do all the good you can, in all the ways you can, for all the people you can, while you can!"

Sent from my mobile device, please excuse any typos.

On Mar 14, 2017, at 2:06 PM, Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

(b) (5)

Sent from my iPad

On Mar 14, 2017, at 1:18 PM, Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)> wrote:

Including Rich C also.

Take care and have wonderful day! :-)))

MDN 202-208-4201

A thought to consider "Do all the good you can, in all the ways you can, for all the people you can, while you can!"

Sent from my mobile device, please excuse any typos.

On Mar 14, 2017, at 1:16 PM, Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)> wrote:

Richard,

(b) (5)  
I believe (b) (5)  
but we need to loop in Kate and  
Kathy.

Take care and have wonderful day! :-)))

MDN 202-208-4201

A thought to consider "Do all the good you can, in all the ways you can, for all the people you can, while you can!"

Sent from my mobile device, please excuse any typos.

On Mar 14, 2017, at 1:04 PM, McNeer, Richard  
<[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)> wrote:

Nick:

Looks good. (b) (5)

[Redacted]

[Redacted]

[Redacted]

Thanks for your efforts and patience.

Richard

On Tue, Mar 14, 2017 at 12:34 PM,  
DiMascio, Nicholas (ENRD)  
<[Nicholas.DiMascio@usdoj.gov](mailto:Nicholas.DiMascio@usdoj.gov)> wrote:

Jack and Richard –

(b) (5)  
[Redacted]

Thanks,

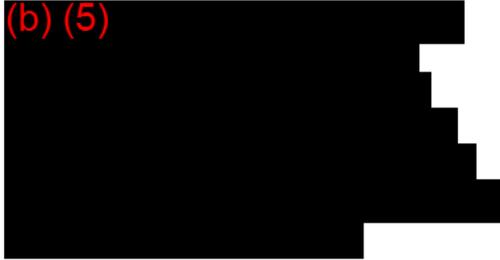
Nick

**From:** Haugrud, Kevin  
[mailto:[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)]  
**Sent:** Tuesday, March 14, 2017 8:43 AM  
**To:** DiMascio, Nicholas (ENRD)  
<[NDiMascio@ENRD.USDOJ.GOV](mailto:NDiMascio@ENRD.USDOJ.GOV)>; Mergen,  
Andy (ENRD) <[AMergen@ENRD.USDOJ.GOV](mailto:AMergen@ENRD.USDOJ.GOV)>  
**Cc:** Hawbecker, Karen  
<[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>; Stephen  
Simpson <[stephen.simpson@sol.doi.gov](mailto:stephen.simpson@sol.doi.gov)>;  
Magallanes, Downey  
<[downey\\_magallanes@ios.doi.gov](mailto:downey_magallanes@ios.doi.gov)>; Michael  
Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)>; Steven Wells  
<[s1wells@blm.gov](mailto:s1wells@blm.gov)>; James Schindler  
<[james\\_schindler@ios.doi.gov](mailto:james_schindler@ios.doi.gov)>; McNeer,  
Richard <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>  
**Subject:** Re: Wyo. v. Zinke (10th Cir.) BLM's  
HF rule

Nick, Andy - (b) (5)  
[Redacted]

On Sat, Mar 11, 2017 at 1:40 PM, Kevin Haugrud <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)> wrote:

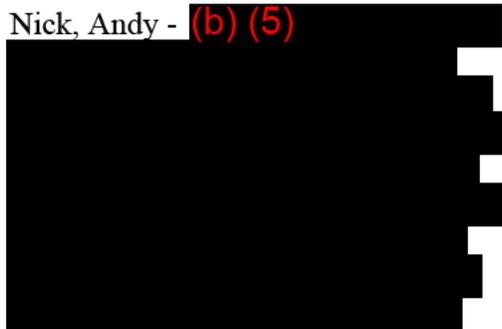
(b) (5)



----- Original Message -----

From: "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
Date: Fri, March 10, 2017 10:01 PM -0600  
To: "DiMascio, Nicholas (ENRD)" <[Nicholas.DiMascio@usdoj.gov](mailto:Nicholas.DiMascio@usdoj.gov)>, Andy Mergen <[Andy.Mergen@usdoj.gov](mailto:Andy.Mergen@usdoj.gov)>  
CC: "Hawbecker, Karen" <[KAREN.HAWBECKER@sol.doi.gov](mailto:KAREN.HAWBECKER@sol.doi.gov)>, Stephen Simpson <[stephen.simpson@sol.doi.gov](mailto:stephen.simpson@sol.doi.gov)>, "Magallanes, Downey" <[downey\\_magallanes@ios.doi.gov](mailto:downey_magallanes@ios.doi.gov)>, Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)>, Steven Wells <[slwells@blm.gov](mailto:slwells@blm.gov)>, James Schindler <[james\\_schindler@ios.doi.gov](mailto:james_schindler@ios.doi.gov)>, "McNeer, Richard" <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>  
Subject: Re: Wyo. v. Zinke (10th Cir.) BLM's HF rule

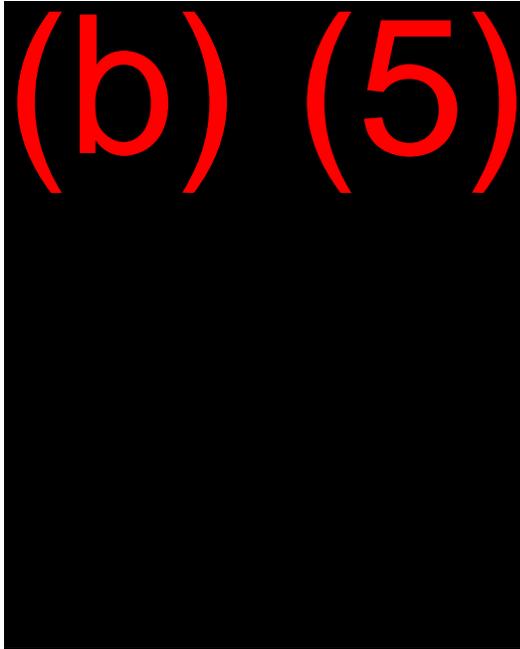
Nick, Andy - (b) (5)



On Fri, Mar 10, 2017 at 7:58 PM,

McNeer, Richard  
<[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)> wrote:

Nick:



I left a voice mail on your office phone with the same information.

Have a good weekend.

Thanks for all your work on this appeal,

Richard McNeer  
Assistant Solicitor  
DOI/SOL/DMR  
202-2085793

<APPELLATE-351391-v1-  
Fracking\_redraft\_notice\_to\_court\_3\_14\_17  
rh.m.DOCX>

**From:** Michael Nedd  
**To:** [McNeer, Richard](#)  
**Cc:** [Haugrud, Kevin](#); [Hawbecker, Karen](#); [Stephen Simpson](#); [Magallanes, Downey](#); [Steven Wells](#); [Richard Cardinale](#)  
**Subject:** Re: Wyo. v. Zinke (10th Cir.) BLM's HF rule  
**Date:** Tuesday, March 14, 2017 1:18:34 PM

---

Including Rich C also.

Take care and have wonderful day! :-)))

MDN 202-208-4201

A thought to consider "Do all the good you can, in all the ways you can, for all the people you can, while you can!"

Sent from my mobile device, please excuse any typos.

On Mar 14, 2017, at 1:16 PM, Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)> wrote:

Richard,

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Nick:

(b) (5)

(b) (5)

Thanks for your efforts and patience.

Richard

On Tue, Mar 14, 2017 at 12:34 PM, DiMascio, Nicholas (ENRD)  
<[Nicholas.DiMascio@usdoj.gov](mailto:Nicholas.DiMascio@usdoj.gov)> wrote:

Jack and Richard –

(b) (5)

Thanks,

Nick

**From:** Haugrud, Kevin [mailto:[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)]  
**Sent:** Tuesday, March 14, 2017 8:43 AM  
**To:** DiMascio, Nicholas (ENRD) <[NDiMascio@ENRD.USDOJ.GOV](mailto:NDiMascio@ENRD.USDOJ.GOV)>;  
Mergen, Andy (ENRD) <[AMergen@ENRD.USDOJ.GOV](mailto:AMergen@ENRD.USDOJ.GOV)>  
**Cc:** Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>; Stephen  
Simpson <[stephen.simpson@sol.doi.gov](mailto:stephen.simpson@sol.doi.gov)>; Magallanes, Downey  
<[downey\\_magallanes@ios.doi.gov](mailto:downey_magallanes@ios.doi.gov)>; Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)>;  
Steven Wells <[s1wells@blm.gov](mailto:s1wells@blm.gov)>; James Schindler  
<[james\\_schindler@ios.doi.gov](mailto:james_schindler@ios.doi.gov)>; McNeer, Richard  
<[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>  
**Subject:** Re: Wyo. v. Zinke (10th Cir.) BLM's HF rule

Nick, Andy - (b) (5)

(b) (5)

On Sat, Mar 11, 2017 at 1:40 PM, Kevin Haugrud  
<[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)> wrote:

(b) (5)

----- Original Message -----

From: "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>

Date: Fri, March 10, 2017 10:01 PM -0600

To: "DiMascio, Nicholas (ENRD)"

<[Nicholas.DiMascio@usdoj.gov](mailto:Nicholas.DiMascio@usdoj.gov)>, Andy Mergen

<[Andy.Mergen@usdoj.gov](mailto:Andy.Mergen@usdoj.gov)>

CC: "Hawbecker, Karen"

<[KAREN.HAWBECKER@sol.doi.gov](mailto:KAREN.HAWBECKER@sol.doi.gov)>, Stephen Simpson

<[stephen.simpson@sol.doi.gov](mailto:stephen.simpson@sol.doi.gov)>, "Magallanes, Downey"

<[downey\\_magallanes@ios.doi.gov](mailto:downey_magallanes@ios.doi.gov)>, Michael Nedd

<[mnedd@blm.gov](mailto:mnedd@blm.gov)>, Steven Wells <[s1wells@blm.gov](mailto:s1wells@blm.gov)>, James

Schindler <[james\\_schindler@ios.doi.gov](mailto:james_schindler@ios.doi.gov)>, "McNeer, Richard"

<[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>

Subject: Re: Wyo. v. Zinke (10th Cir.) BLM's HF rule

Nick, Andy - (b) (5)

On Fri, Mar 10, 2017 at 7:58 PM, McNeer, Richard

<[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)> wrote:

Nick:

(b) (5)

(b) (5)

I left a voice mail on your office phone with the same information.

Have a good weekend.

Thanks for all your work on this appeal,

Richard McNeer

Assistant Solicitor

DOI/SOL/DMR

202-2085793

<APPELLATE-\_351391-v1-  
Fracking\_redraft\_notice\_to\_court\_3\_14\_17\_rhm.DOCX>

**From:** Michael Nedd  
**To:** [McNeer, Richard](#)  
**Cc:** [Haugrud, Kevin](#); [Hawbecker, Karen](#); [Stephen Simpson](#); [Magallanes, Downey](#); [Steven Wells](#)  
**Subject:** Re: Wyo. v. Zinke (10th Cir.) BLM's HF rule  
**Date:** Tuesday, March 14, 2017 1:16:40 PM

---

Richard,

(b) (5) I believe (b) (5)  
but we need to loop in Kate and Kathy.

Take care and have wonderful day! :-)))

MDN 202-208-4201

A thought to consider "Do all the good you can, in all the ways you can, for all the people you can, while you can!"

Sent from my mobile device, please excuse any typos.

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Nick:

(b) (5)  
[Redacted text block]

Thanks for your efforts and patience.

Richard

On Tue, Mar 14, 2017 at 12:34 PM, DiMascio, Nicholas (ENRD)  
<[Nicholas.DiMascio@usdoj.gov](mailto:Nicholas.DiMascio@usdoj.gov)> wrote:

Jack and Richard –

(b) (5)  
[Redacted text block]

(b) (5)

Thanks,

Nick

**From:** Haugrud, Kevin [mailto:[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)]

**Sent:** Tuesday, March 14, 2017 8:43 AM

**To:** DiMascio, Nicholas (ENRD) <[NDiMascio@ENRD.USDOJ.GOV](mailto:NDiMascio@ENRD.USDOJ.GOV)>; Mergen, Andy (ENRD) <[AMergen@ENRD.USDOJ.GOV](mailto:AMergen@ENRD.USDOJ.GOV)>

**Cc:** Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>; Stephen Simpson <[stephen.simpson@sol.doi.gov](mailto:stephen.simpson@sol.doi.gov)>; Magallanes, Downey <[downey\\_magallanes@ios.doi.gov](mailto:downey_magallanes@ios.doi.gov)>; Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)>; Steven Wells <[s1wells@blm.gov](mailto:s1wells@blm.gov)>; James Schindler <[james\\_schindler@ios.doi.gov](mailto:james_schindler@ios.doi.gov)>; McNeer, Richard <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>

**Subject:** Re: Wyo. v. Zinke (10th Cir.) BLM's HF rule

Nick, Andy - (b) (5)

On Sat, Mar 11, 2017 at 1:40 PM, Kevin Haugrud <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)> wrote:

(b) (5)

----- Original Message -----

From: "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>

Date: Fri, March 10, 2017 10:01 PM -0600

To: "DiMascio, Nicholas (ENRD)" <[Nicholas.DiMascio@usdoj.gov](mailto:Nicholas.DiMascio@usdoj.gov)>, Andy Mergen <[Andy.Mergen@usdoj.gov](mailto:Andy.Mergen@usdoj.gov)>

CC: "Hawbecker, Karen" <[KAREN.HAWBECKER@sol.doi.gov](mailto:KAREN.HAWBECKER@sol.doi.gov)>, Stephen Simpson <[stephen.simpson@sol.doi.gov](mailto:stephen.simpson@sol.doi.gov)>, "Magallanes, Downey" <[downey\\_magallanes@ios.doi.gov](mailto:downey_magallanes@ios.doi.gov)>, Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)>, Steven Wells <[s1wells@blm.gov](mailto:s1wells@blm.gov)>, James Schindler <[james\\_schindler@ios.doi.gov](mailto:james_schindler@ios.doi.gov)>, "McNeer, Richard"

<[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>

Subject: Re: Wyo. v. Zinke (10th Cir.) BLM's HF rule

Nick, Andy - (b) (5)

[REDACTED]

On Fri, Mar 10, 2017 at 7:58 PM, McNeer, Richard

<[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)> wrote:

Nick:

(b) (5)

[REDACTED]

[REDACTED]

I left a voice mail on your office phone with the same information.

Have a good weekend.

Thanks for all your work on this appeal,

Richard McNeer

Assistant Solicitor

DOI/SOL/DMR

202-2085793

|

<APPELLATE-\_351391-v1-Fracking\_redraft\_notice\_to\_court\_3\_14\_17  
rhm.DOCX>

**From:** Michael Nedd  
**To:** [Kathleen Benedetto](#); [Katharine Macgregor](#); [Richard Cardinale](#)  
**Subject:** Re: Wyo. v. Zinke (10th Cir.) BLM's HF rule  
**Date:** Tuesday, March 14, 2017 1:07:19 PM

---

FYI since you're not on the mailing list.

Take care and have wonderful day! :-)))

MDN 202-208-4201

A thought to consider "Do all the good you can, in all the ways you can, for all the people you can, while you can!"

Sent from my mobile device, please excuse any typos.

On Mar 14, 2017, at 12:56 PM, DiMascio, Nicholas (ENRD)  
<[Nicholas.DiMascio@usdoj.gov](mailto:Nicholas.DiMascio@usdoj.gov)> wrote:

(b) (5)



---

**From:** DiMascio, Nicholas (ENRD)  
**Sent:** Tuesday, March 14, 2017 10:35 AM  
**To:** 'Haugrud, Kevin' <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>; McNeer, Richard <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>  
**Cc:** Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>; Stephen Simpson <[stephen.simpson@sol.doi.gov](mailto:stephen.simpson@sol.doi.gov)>; Magallanes, Downey <[downey\\_magallanes@ios.doi.gov](mailto:downey_magallanes@ios.doi.gov)>; Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)>; Steven Wells <[s1wells@blm.gov](mailto:s1wells@blm.gov)>; James Schindler <[james\\_schindler@ios.doi.gov](mailto:james_schindler@ios.doi.gov)>; Mergen, Andy (ENRD) <[AMergen@ENRD.USDOJ.GOV](mailto:AMergen@ENRD.USDOJ.GOV)>  
**Subject:** RE: Wyo. v. Zinke (10th Cir.) BLM's HF rule

Jack and Richard –

(b) (5)



Thanks,  
Nick

**From:** Haugrud, Kevin [<mailto:jack.haugrud@sol.doi.gov>]  
**Sent:** Tuesday, March 14, 2017 8:43 AM  
**To:** DiMascio, Nicholas (ENRD) <[NDiMascio@ENRD.USDOJ.GOV](mailto:NDiMascio@ENRD.USDOJ.GOV)>; Mergen, Andy (ENRD) <[AMergen@ENRD.USDOJ.GOV](mailto:AMergen@ENRD.USDOJ.GOV)>

**Cc:** Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>; Stephen Simpson <[stephen.simpson@sol.doi.gov](mailto:stephen.simpson@sol.doi.gov)>; Magallanes, Downey <[downey\\_magallanes@ios.doi.gov](mailto:downey_magallanes@ios.doi.gov)>; Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)>; Steven Wells <[s1wells@blm.gov](mailto:s1wells@blm.gov)>; James Schindler <[james\\_schindler@ios.doi.gov](mailto:james_schindler@ios.doi.gov)>; McNeer, Richard <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>

**Subject:** Re: Wyo. v. Zinke (10th Cir.) BLM's HF rule

Nick, Andy - (b) (5)

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(b) (5)

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From: "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>

Date: Fri, March 10, 2017 10:01 PM -0600

To: "DiMascio, Nicholas (ENRD)" <[Nicholas.DiMascio@usdoj.gov](mailto:Nicholas.DiMascio@usdoj.gov)>, Andy Mergen <[Andy.Mergen@usdoj.gov](mailto:Andy.Mergen@usdoj.gov)>

CC: "Hawbecker, Karen" <[KAREN.HAWBECKER@sol.doi.gov](mailto:KAREN.HAWBECKER@sol.doi.gov)>, Stephen Simpson <[stephen.simpson@sol.doi.gov](mailto:stephen.simpson@sol.doi.gov)>, "Magallanes, Downey" <[downey\\_magallanes@ios.doi.gov](mailto:downey_magallanes@ios.doi.gov)>, Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)>, Steven Wells <[s1wells@blm.gov](mailto:s1wells@blm.gov)>, James Schindler <[james\\_schindler@ios.doi.gov](mailto:james_schindler@ios.doi.gov)>, "McNeer, Richard" <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>

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Nick:

(b) (5)

(b) (5)

I left a voice mail on your office phone with the same information.

Have a good weekend.

Thanks for all your work on this appeal,

Richard McNeer  
Assistant Solicitor  
DOI/SOL/DMR  
202-2085793

**From:** Daniel Jorjani  
**To:** [Scott Hommel](#)  
**Cc:** [Kevin Haugrud](#); [Cason James](#); [douglas\\_domenech@ios.doi.gov](mailto:douglas_domenech@ios.doi.gov); [kate\\_macgregor@ios.doi.gov](mailto:kate_macgregor@ios.doi.gov)  
**Subject:** Re: 10th Circuit - Fracking  
**Date:** Saturday, March 11, 2017 1:49:59 PM

---

Jack - Much appreciated. Won't bother you again this weekend. Dan

Sent from my iPhone

> On Mar 11, 2017, at 1:30 PM, Scott Hommel <[scott\\_hommel@ios.doi.gov](mailto:scott_hommel@ios.doi.gov)> wrote:

>

> Thanks Jack. Sorry to bother you **(b) (6)**. I think this gives

> appropriate options and we can convene Monday morning to determine

> course of action.

>

> Scott C. Hommel

> Chief of Staff (acting)

> Department of the Interior

>

>

>> On Mar 11, 2017, at 1:09 PM, Kevin Haugrud <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)> wrote:

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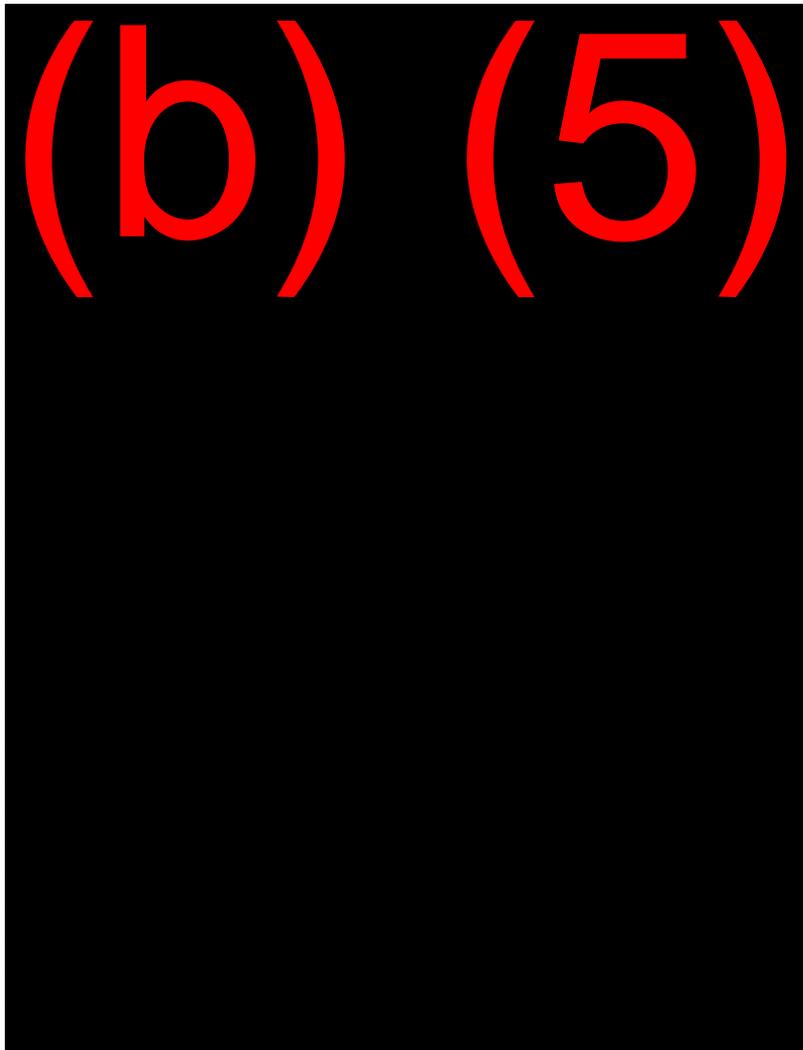
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> (b) (5)

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> Hope that helps. I am in Minnesota (b) (6) so I am not  
> available this afternoon but can be available this evening or tomorrow  
> morning. My cell phone is (b) (6)

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> ----- Original Message -----  
> From: Daniel Jorjani <daniel\_jorjani@ios.doi.gov>  
> Date: Sat, March 11, 2017 10:48 AM -0600  
> To: jack.haugrud@sol.doi.gov, scott\_hommel@ios.doi.gov  
> CC: Cason James <james\_cason@ios.doi.gov>,  
> douglas\_domenech@ios.doi.gov, kate\_macgregor@ios.doi.gov  
> Subject: 10th Circuit - Fracking

>  
>  
>

> Jack - Please concisely summarize what we discussed last night re the  
> 10th and what you discussed earlier with Jim and Kate, both. CC'd. If  
> a call os advisable, please send Scott your work cell. Dan

>  
> Sent from my iPhone

**From:** Magallanes, Downey  
**To:** [Hawbecker, Karen](mailto:karen.hawbecker@sol.doi.gov)  
**Cc:** [Jack Haugrud](mailto:Jack.Haugrud@blm.gov); [James Schindler](mailto:James.Schindler@blm.gov); [Edward T Keable](mailto:Edward.T.Keable@blm.gov); [Richard McNeer](mailto:Richard.McNeer@sol.doi.gov)  
**Subject:** Re: Onshore Orders/BLM Regs  
**Date:** Wednesday, March 08, 2017 8:09:09 PM

---

Great keep us informed thanks

On Wed, Mar 8, 2017 at 5:14 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

FYI--(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The meeting with Kate has not yet been scheduled. I'll let you know when we learned about the scheduled time. We'll also share draft responses with you when they're ready. --Karen

----- Forwarded message -----

**From:** **Moody, Aaron** <[aaron.moody@sol.doi.gov](mailto:aaron.moody@sol.doi.gov)>  
**Date:** Wed, Mar 8, 2017 at 8:40 AM  
**Subject:** Re: Onshore Orders/BLM Regs  
**To:** "Sklar, Ryan" <[ryan.sklar@sol.doi.gov](mailto:ryan.sklar@sol.doi.gov)>, "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Richard McNeer <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>  
**Cc:** Lara Douglas <[ledouglas@blm.gov](mailto:ledouglas@blm.gov)>, Shannon Stewart <[scstewart@blm.gov](mailto:scstewart@blm.gov)>

I hadn't but agreed....doing so now!

Aaron G. Moody  
Assistant Solicitor, Branch of Public Lands  
Division of Land Resources  
Office of the Solicitor  
U.S. Department of the Interior  
202-208-3495

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On Wed, Mar 8, 2017 at 8:38 AM, Sklar, Ryan <[ryan.sklar@sol.doi.gov](mailto:ryan.sklar@sol.doi.gov)> wrote:

Aaron,

Have you already forwarded this on to Karen Hawbecker and Richard McNeer? (b) (5)

[REDACTED]

Thanks,  
Ryan

----- Forwarded message -----

From: **Kristin Bail** <[kbail@blm.gov](mailto:kbail@blm.gov)>

Date: Wed, Mar 8, 2017 at 5:23 AM

Subject: Fwd: Onshore Orders/BLM Regs

To: [aaron.moody@sol.doi.gov](mailto:aaron.moody@sol.doi.gov), Karen Kelleher <[kkelleh@blm.gov](mailto:kkelleh@blm.gov)>, Steve Tryon <[stryon@blm.gov](mailto:stryon@blm.gov)>, [jperez@blm.gov](mailto:jperez@blm.gov), [ledouglas@blm.gov](mailto:ledouglas@blm.gov), [scstewart@blm.gov](mailto:scstewart@blm.gov), [ryan.sklar@sol.doi.gov](mailto:ryan.sklar@sol.doi.gov)

Aaron - these requests may involve SOL. Could you, Mike and Karen let me know when we may be able to provide this info to Kate? Thanks - K

Sent from my iPhone

Begin forwarded message:

**From:** "Macgregor, Katharine" <[katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov)>

**Date:** March 7, 2017 at 7:47:31 PM EST

**To:** Kristin Bail <[kbail@blm.gov](mailto:kbail@blm.gov)>, Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)>, Kathleen Benedetto <[kathleen\\_benedetto@ios.doi.gov](mailto:kathleen_benedetto@ios.doi.gov)>

**Cc:** "Cardinale, Richard" <[richard\\_cardinale@ios.doi.gov](mailto:richard_cardinale@ios.doi.gov)>

**Subject:** Onshore Orders/BLM Regs

Hey Folks - I'd like to be briefed on our outlying federal regulatory actions that are still pending and what the full suite of options are for addressing these regulations - can we set this up for this Friday or Monday? The first four that come to mind are the onshore orders, venting and flaring, HF, and Planning 2.0. We have touched on each of these at least once already - so in the interest of time, I'd like to know at the very least:

- (b) (5)

(b) (5)

-Kate

--

Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202-208-3671 (Direct)

--

**Ryan Sklar**

Acting Senior Litigation Specialist  
Bureau of Land Management  
U.S. Department of the Interior  
202-208-4695

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--

Downey Magallanes  
Office of the Secretary  
[downey\\_magallanes@ios.doi.gov](mailto:downey_magallanes@ios.doi.gov)  
202-501-0654 (desk)  
202-706-9199 (cell)

**From:** Swift, Heather  
**To:** [Quimby, Frank](#)  
**Subject:** Re: I will have BOEM respond to the media question re NC offshore wind area sale  
**Date:** Monday, March 06, 2017 2:24:25 PM

---

Oh interesting. Do we know if it will be very successful? (b) (5)

-  
Heather Swift  
Department of the Interior

@DOIPressSec  
Heather\_Swift@ios.doi.gov | Interior\_Press@ios.doi.gov

On Mon, Mar 6, 2017 at 2:22 PM, Quimby, Frank <frank\_quimby@ios.doi.gov> wrote:

the actual sale is scheduled for next Friday (3-16) and we have draft material coming your way this week that would announce the results on that day. As part of that announcement, BOEM will be holding a news media teleconference on 3-16 to announce the preliminary auction results.

(b) (5)

**From:** Downey Magallanes  
**To:** [kathleen\\_benedetto@ios.doi.gov](mailto:kathleen_benedetto@ios.doi.gov)  
**Subject:** Fwd: Wyoming v. Jewell (10th Cir.) BLM's Hydraulic Fracturing Rule Appeal  
**Date:** Friday, March 03, 2017 8:28:21 AM

---

Sent from my iPhone

Begin forwarded message:

From: Karen Hawbecker <[karen\\_hawbecker@sol.doi.gov](mailto:karen_hawbecker@sol.doi.gov)>  
Date: March 3, 2017 at 7:58:55 AM EST  
To: "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
Cc: Downey Magallanes <[downey\\_magallanes@ios.doi.gov](mailto:downey_magallanes@ios.doi.gov)>, "McNeer, Richard" <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>, Mariagrazia Caminiti <[Marigrace.Caminiti@sol.doi.gov](mailto:Marigrace.Caminiti@sol.doi.gov)>  
Subject: Re: Wyoming v. Jewell (10th Cir.) BLM's Hydraulic Fracturing Rule Appeal

Either would work for me, but I suspect 3:30 would be better for Richard because he will need to leave another meeting. By 3:30 though, the other meeting will have been going on for an hour so I think he might be able to bow out of it.

Sent from my iPad

On Mar 3, 2017, at 7:55 AM, Haugrud, Kevin <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)> wrote:

I'm adding Marigrace so she can check. Either time works for me, although 3:30 would be a bit better.

On Thu, Mar 2, 2017 at 11:06 PM, Downey Magallanes <[downey\\_magallanes@ios.doi.gov](mailto:downey_magallanes@ios.doi.gov)> wrote:

Could we move to 3 or 330

Sent from my iPhone

On Mar 2, 2017, at 12:56 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

4 pm on Friday is okay with me as well.

On Thu, Mar 2, 2017 at 12:52 PM, McNeer, Richard <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)> wrote:

Jack:

I could leave a roundtable discussion of the Pit River appeal to participate at 4:00.

Richard

On Thu, Mar 2, 2017 at 12:48 PM, Haugrud, Kevin <jack.haugrud@sol.doi.gov> wrote:

Assuming that works for Richard and Karen, let's plan on then.

On Thu, Mar 2, 2017 at 12:45 PM, Magallanes, Downey <downey\_magallanes@ios.doi.gov> wrote:

Sure- I only have time at 4

On Thu, Mar 2, 2017 at 12:11 PM, Haugrud, Kevin <jack.haugrud@sol.doi.gov> wrote:

Downey: Let's wait until tomorrow so we can hear back (b) (5)

On Thu, Mar 2, 2017 at 11:26 AM, Downey Magallanes <downey\_magallanes@ios.doi.gov> wrote:

Sure 430 today?

Sent from my iPhone

On Mar 2, 2017, at 11:15 AM, McNeer, Richard <richard.mcneer@sol.doi.gov> wrote:

Downey:

We understand that our formal briefing of the ASLM, et al., is postponed until next Friday.

Karen and I would like to brief you on the appeal much sooner. (b) (5)

Please let me know when you would be available.

Thanks,

Richard McNeer  
202-208-5793

--

Downey Magallanes  
Office of the Secretary

downey\_magallanes@ios.doi.gov

202-501-0654 (desk)  
202-706-9199 (cell)

**From:** Downey Magallanes  
**To:** [Hawbecker, Karen](#)  
**Cc:** [Jack Haugrud](#); [James Schindler](#); [Edward T Keable](#); [Richard McNeer](#)  
**Subject:** Re: Activity in Case 1:16-cv-00912-WJ-KBM Western Energy Alliance v. Jewell et al Memorandum Opinion and Order  
**Date:** Wednesday, March 01, 2017 6:30:08 PM

---

Our position is unchanged by this development

Sent from my iPhone

On Mar 1, 2017, at 6:17 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

Downey, (b) (5)  
[Redacted]

[Redacted]  
Thank you. --Karen

----- Forwarded message -----  
**From:** **Roberts, Rachel (ENRD)** <[Rachel.Roberts@usdoj.gov](mailto:Rachel.Roberts@usdoj.gov)>  
**Date:** Wed, Mar 1, 2017 at 5:35 PM  
**Subject:** FW: Activity in Case 1:16-cv-00912-WJ-KBM Western Energy Alliance v. Jewell et al Memorandum Opinion and Order  
**To:** Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, "Dimauro, Danielle" <[danielle.dimauro@sol.doi.gov](mailto:danielle.dimauro@sol.doi.gov)>, "Dorman, Wendy" <[wendy.dorman@sol.doi.gov](mailto:wendy.dorman@sol.doi.gov)>, Richard McNeer <[Richard.McNeer@sol.doi.gov](mailto:Richard.McNeer@sol.doi.gov)>  
**Cc:** "Lucero, Manny (USANM)" <[Manny.Lucero@usdoj.gov](mailto:Manny.Lucero@usdoj.gov)>, "Most, John (ENRD)" <[John.Most@usdoj.gov](mailto:John.Most@usdoj.gov)>, "Littleton, Matthew (ENRD)" <[Matthew.Littleton@usdoj.gov](mailto:Matthew.Littleton@usdoj.gov)>, "Mergen, Andy (ENRD)" <[Andy.Mergen@usdoj.gov](mailto:Andy.Mergen@usdoj.gov)>

(b) (5)  
[Redacted]

[Redacted]



Rachel Roberts

Trial Attorney

Natural Resources Section

Environment and Natural Resources Division

U.S. Department of Justice

(206) 526-6881

[rachel.roberts@usdoj.gov](mailto:rachel.roberts@usdoj.gov)

**From:** [cmecfbb@nmcourt.fed.us](mailto:cmecfbb@nmcourt.fed.us) [mailto:[cmecfbb@nmcourt.fed.us](mailto:cmecfbb@nmcourt.fed.us)]

**Sent:** Wednesday, March 01, 2017 2:21 PM

**To:** [cmecfto@nmcourt.fed.us](mailto:cmecfto@nmcourt.fed.us)

**Subject:** Activity in Case 1:16-cv-00912-WJ-KBM Western Energy Alliance v. Jewell et al  
Memorandum Opinion and Order

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**U.S. District Court**

**District of New Mexico - Version 6.1**

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The following transaction was entered on 3/1/2017 at 3:21 PM MST and filed on 3/1/2017

**Case Name:** Western Energy Alliance v. Jewell et al

**Case Number:** [1:16-cv-00912-WJ-KBM](#)

**Filer:**

**Document Number:** [55](#)

**Docket Text:**

**MEMORANDUM OPINION AND ORDER** by District Judge William P. Johnson **GRANTING [44] Motion to Stay Proceedings on Claims 2 and 3 Pending Appeal of Order Denying Motion to Intervene and in addition, staying Count 1 of the Complaint. (mag)**

**1:16-cv-00912-WJ-KBM Notice has been electronically mailed to:**

Robin Cooley [rcooley@earthjustice.org](mailto:rcooley@earthjustice.org), [afarouche@earthjustice.org](mailto:afarouche@earthjustice.org), [eajusco@earthjustice.org](mailto:eajusco@earthjustice.org), [egreer@earthjustice.org](mailto:egreer@earthjustice.org)

Manuel Lucero [manny.lucero@usdoj.gov](mailto:manny.lucero@usdoj.gov), [USANM.ECFCivil@usdoj.gov](mailto:USANM.ECFCivil@usdoj.gov), [caseview.ecf@usdoj.gov](mailto:caseview.ecf@usdoj.gov), [diane.tapia@usdoj.gov](mailto:diane.tapia@usdoj.gov), [lois.golden@usdoj.gov](mailto:lois.golden@usdoj.gov)

Michael Adam Saul [msaul@biologicaldiversity.org](mailto:msaul@biologicaldiversity.org)

Samantha Ruscavage-Barz [sruscavagebarz@wildearthguardians.org](mailto:sruscavagebarz@wildearthguardians.org)

Mark S. Barron [mbarron@bakerlaw.com](mailto:mbarron@bakerlaw.com), [squinn@bakerlaw.com](mailto:squinn@bakerlaw.com)

Rachel Kathleen Roberts [rachel.roberts@usdoj.gov](mailto:rachel.roberts@usdoj.gov), [danielle.dimauro@sol.doi.gov](mailto:danielle.dimauro@sol.doi.gov), [efile\\_nrs.enrd@usdoj.gov](mailto:efile_nrs.enrd@usdoj.gov), [megan.moore2@usdoj.gov](mailto:megan.moore2@usdoj.gov), [wendy.dorman@sol.doi.gov](mailto:wendy.dorman@sol.doi.gov)

John S. Most [john.most@usdoj.gov](mailto:john.most@usdoj.gov)

Kyle Tisdell [tisdell@westernlaw.org](mailto:tisdell@westernlaw.org)

Alexander K. Obrecht [aobrecht@bakerlaw.com](mailto:aobrecht@bakerlaw.com)

Michael S. Freeman [mfreeman@earthjustice.org](mailto:mfreeman@earthjustice.org)

Yuting Chi [ychi@earthjustice.org](mailto:ychi@earthjustice.org)

**1:16-cv-00912-WJ-KBM Notice has been delivered by fax to:**

**1:16-cv-00912-WJ-KBM Notice has been delivered by USPS to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1167529506 [Date=3/1/2017] [FileNumber=8205787-0]

[8c8fddbe46007e6c7bb656444225adb3cf5b9102040049aa7513e9b460d9bfc13281

f7f0a73a9f180141dc1b26f92a2750493e7ee2f3f2c007f58a74543411ce]]

<WEA\_order granting stay.pdf>

**From:** Benedetto, Kathleen  
**To:** [Michael Nedd](mailto:Michael.Nedd@blm.gov)  
**Cc:** [Karen Hawbecker](mailto:Karen.Hawbecker@sol.doi.gov); [Steven Wells](mailto:Steven.Wells@blm.gov); [Marshall Critchfield](mailto:Marshall.Critchfield@blm.gov); [Danielle Dimauro](mailto:Danielle.Dimauro@blm.gov); [Downey Magallanes](mailto:Downey.Magallanes@blm.gov); [James Schindler](mailto:James.Schindler@blm.gov); [Wendy Dorman](mailto:Wendy.Dorman@blm.gov); [Richard McNeer](mailto:Richard.McNeer@blm.gov); [Ryan Sklar](mailto:Ryan.Sklar@blm.gov)  
**Subject:** Re: Western Energy Alliance (1:16-cv-00912 (D.N.M.)) - quarterly oil & gas leasing case  
**Date:** Wednesday, March 01, 2017 5:31:59 PM

---

Well I'm a bit behind. Even so, thanks. KB

On Wed, Mar 1, 2017 at 4:05 PM, Michael Nedd <mnedd@blm.gov> wrote:

Thx Karen...

Take care and have a wonderful day! :) )

Michael Nedd

202-208-4201 Office

202-208-4800 Fax

mnedd@blm.gov

A thought to consider "Do all the good you can, in all the ways you can, for all the people you can, while you can!"

From: Karen Hawbecker [<mailto:karen.hawbecker@sol.doi.gov> <<mailto:karen.hawbecker@sol.doi.gov>> ]  
Sent: Wednesday, March 01, 2017 4:02 PM  
To: Michael Nedd; Steven Wells; Kathleen Benedetto; Marshall Critchfield  
Cc: Dimauro, Danielle; Downey Magallanes; James Schindler; Dorman, Wendy; Richard McNeer; Sklar, Ryan  
Subject: Re: Western Energy Alliance (1:16-cv-00912 (D.N.M.)) - quarterly oil & gas leasing case

FYI-- (b) (5)

Sent from my iPad

On Mar 1, 2017, at 3:51 PM, Karen Hawbecker <karen.hawbecker@sol.doi.gov> wrote:

Mike, Steve, Kathy, and Marshall, I'm just following up to note that we won't have the 4 pm meeting unless you'd like to meet to discuss this. I'm in another meeting right now, but will leave it if you want to meet at 4 pm. Thanks. --Karen

Sent from my iPad

On Mar 1, 2017, at 3:15 PM, Dimauro, Danielle <danielle.dimauro@sol.doi.gov> wrote:

Mike, Steve, Kathy, and Marshall:

Karen asked me to update you about this case (b) (5)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Please let us know if you would like to discuss these items. If so, we have the SOL conference room available at 4p today.

Danielle DiMauro

Office of the Regional Solicitor, Rocky Mountain Region

303.445.0608

danielle.dimauro@sol.doi.gov

**From:** Michael Nedd  
**To:** [Karen Hawbecker](#); [Steven Wells](#); [Kathleen Benedetto](#); [Marshall Critchfield](#)  
**Cc:** [Danielle Dimauro](#); [Downey Magallanes](#); [James Schindler](#); [Wendy Dorman](#); [Richard McNeer](#); [Ryan Sklar](#)  
**Subject:** RE: Western Energy Alliance (1:16-cv-00912 (D.N.M.)) - quarterly oil & gas leasing case  
**Date:** Wednesday, March 01, 2017 4:05:59 PM

---

Thx Karen...

Take care and have a wonderful day! : )

Michael Nedd

202-208-4201 Office

202-208-4800 Fax

[mnedd@blm.gov](mailto:mnedd@blm.gov)

A thought to consider "Do all the good you can, in all the ways you can, for all the people you can, while you can!"

From: Karen Hawbecker [[mailto:karen\\_hawbecker@sol.doi.gov](mailto:karen_hawbecker@sol.doi.gov)]  
Sent: Wednesday, March 01, 2017 4:02 PM  
To: Michael Nedd; Steven Wells; Kathleen Benedetto; Marshall Critchfield  
Cc: Dimauro, Danielle; Downey Magallanes; James Schindler; Dorman, Wendy; Richard McNeer; Sklar, Ryan  
Subject: Re: Western Energy Alliance (1:16-cv-00912 (D.N.M.)) - quarterly oil & gas leasing case

FYI--(b) (5)

Sent from my iPad

On Mar 1, 2017, at 3:51 PM, Karen Hawbecker <[karen\\_hawbecker@sol.doi.gov](mailto:karen_hawbecker@sol.doi.gov)> wrote:

Mike, Steve, Kathy, and Marshall, I'm just following up to note that we won't have the 4 pm meeting unless you'd like to meet to discuss this. I'm in another meeting right now, but will leave it if you want to meet at 4 pm. Thanks. --Karen

Sent from my iPad

On Mar 1, 2017, at 3:15 PM, Dimauro, Danielle <[danielle.dimauro@sol.doi.gov](mailto:danielle.dimauro@sol.doi.gov)> wrote:

Mike, Steve, Kathy, and Marshall:

Karen asked me to update you about this case (b) (5)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Please let us know if you would like to discuss these items. If so, we have the SOL conference room available at 4p today.

Danielle DiMauro

Office of the Regional Solicitor, Rocky Mountain Region

303.445.0608

[danielle.dimauro@sol.doi.gov](mailto:danielle.dimauro@sol.doi.gov)



(b) (5)

Please let us know if you would like to discuss these items. If so, we have the SOL conference room available at 4p today.

Danielle DiMauro

Office of the Regional Solicitor, Rocky Mountain Region

303.445.0608

[danielle.dimauro@sol.doi.gov](mailto:danielle.dimauro@sol.doi.gov)

**From:** Downey Magallanes  
**To:** [Hawbecker, Karen](#)  
**Cc:** [James Schindler](#); [Jack Haugrud](#); [Edward T Keable](#); [Mariagrazia Caminiti](#); [Danielle Dimauro](#); [Wendy Dorman](#); [Richard McNeer](#)  
**Subject:** Re: WEA v. BLM (10th Cir. intervention appeal) -- (b) (5)  
**Date:** Wednesday, March 01, 2017 12:58:16 PM

---

I have time at 4

Sent from my iPhone

On Mar 1, 2017, at 12:55 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

Downey and James, We'd like to get on your schedule today, (b) (5)

[REDACTED]

Thank you. --Karen

----- Forwarded message -----

**From:** Most, John (ENRD) <[John.Most@usdoj.gov](mailto:John.Most@usdoj.gov)>

**Date:** Wed, Mar 1, 2017 at 9:05 AM

**Subject:** Re: WEA v. BLM (10th Cir. intervention appeal) -- (b) (5)

[REDACTED]

**To:** "Littleton, Matthew (ENRD)" <[Matthew.Littleton@usdoj.gov](mailto:Matthew.Littleton@usdoj.gov)>

**Cc:** "[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Danielle

Dimauro <[danielle.dimauro@sol.doi.gov](mailto:danielle.dimauro@sol.doi.gov)>, Wendy Dorman

<[Wendy.Dorman@sol.doi.gov](mailto:Wendy.Dorman@sol.doi.gov)>, Richard McNeer

<[Richard.McNeer@sol.doi.gov](mailto:Richard.McNeer@sol.doi.gov)>, "Roberts, Rachel (ENRD)"

<[Rachel.Roberts@usdoj.gov](mailto:Rachel.Roberts@usdoj.gov)>, "Mergen, Andy (ENRD)"

<[Andy.Mergen@usdoj.gov](mailto:Andy.Mergen@usdoj.gov)>

(b) (5)

[REDACTED]

- John

On Mar 1, 2017, at 8:29 AM, Littleton, Matthew (ENRD)

<[MLittleton@ENRD.USDOJ.GOV](mailto:MLittleton@ENRD.USDOJ.GOV)<<mailto:MLittleton@ENRD.USDOJ.GOV>>>

wrote:

All,

(b) (5)

[REDACTED]

(b) (5)

Given the timing, it would be useful to hear reactions from BLM by COB today.  
And Rachel and John, please feel free to weigh in as well.

Thanks,  
Matt

Matthew Littleton  
Attorney, Appellate Section  
Environment & Natural Resources Division  
United States Department of Justice  
Tel: (202) 514-4010  
Fax: (202) 353-1873  
[matthew.littleton@usdoj.gov](mailto:matthew.littleton@usdoj.gov)<mailto:[matthew.littleton@usdoj.gov](mailto:matthew.littleton@usdoj.gov)>

Regular mail:  
P.O. Box 7415  
Washington, DC 20044

Express mail:  
USDOJ, ENRD, Appellate  
PHB Mail Room 2121  
601 D Street NW  
Washington, DC 20004

**From:** James Schindler  
**To:** [Hawbecker, Karen](mailto:Hawbecker.Karen)  
**Cc:** [downey\\_magallanes@ios.doi.gov](mailto:downey_magallanes@ios.doi.gov)  
**Subject:** Re: WEA v. BLM (10th Cir. intervention appeal) -- (b) (5)  
**Date:** Wednesday, March 01, 2017 12:57:06 PM

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Anytime after 3:45 works for me but I'll defer to Downey

Sent from my iPhone

On Mar 1, 2017, at 12:55 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

Downey and James, We'd like to get on your schedule today (b) (5)

Thank you. --Karen

----- Forwarded message -----

**From:** Most, John (ENRD) <[John.Most@usdoj.gov](mailto:John.Most@usdoj.gov)>

**Date:** Wed, Mar 1, 2017 at 9:05 AM

**Subject:** Re: WEA v. BLM (10th Cir. intervention appeal) -- (b) (5)

**To:** "Littleton, Matthew (ENRD)" <[Matthew.Littleton@usdoj.gov](mailto:Matthew.Littleton@usdoj.gov)>

**Cc:** "[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Danielle

Dimauro <[danielle.dimauro@sol.doi.gov](mailto:danielle.dimauro@sol.doi.gov)>, Wendy Dorman

<[Wendy.Dorman@sol.doi.gov](mailto:Wendy.Dorman@sol.doi.gov)>, Richard McNeer

<[Richard.McNeer@sol.doi.gov](mailto:Richard.McNeer@sol.doi.gov)>, "Roberts, Rachel (ENRD)"

<[Rachel.Roberts@usdoj.gov](mailto:Rachel.Roberts@usdoj.gov)>, "Mergen, Andy (ENRD)"

<[Andy.Mergen@usdoj.gov](mailto:Andy.Mergen@usdoj.gov)>

(b) (5)

- John

On Mar 1, 2017, at 8:29 AM, Littleton, Matthew (ENRD)  
<[MLittleton@ENRD.USDOJ.GOV](mailto:MLittleton@ENRD.USDOJ.GOV)<mailto:[MLittleton@ENRD.USDOJ.GOV](mailto:MLittleton@ENRD.USDOJ.GOV)>>>  
wrote:

All,

(b) (5)

(b) (5)

Given the timing, it would be useful to hear reactions from BLM by COB today.  
And Rachel and John, please feel free to weigh in as well.

Thanks,  
Matt

Matthew Littleton  
Attorney, Appellate Section  
Environment & Natural Resources Division  
United States Department of Justice  
Tel: (202) 514-4010  
Fax: (202) 353-1873  
[matthew.littleton@usdoj.gov](mailto:matthew.littleton@usdoj.gov)<mailto:[matthew.littleton@usdoj.gov](mailto:matthew.littleton@usdoj.gov)>

Regular mail:  
P.O. Box 7415  
Washington, DC 20044

Express mail:  
USDOJ, ENRD, Appellate  
PHB Mail Room 2121  
601 D Street NW  
Washington, DC 20004

**From:** Magallanes, Downey  
**To:** [Hawbecker, Karen](#)  
**Cc:** [James Schindler](#); [Jack Haugrud](#); [Edward T Keable](#); [Richard McNeer](#)  
**Subject:** Re: Wyoming v. DOI (D. Wyo.) BLM Venting and Flaring Rule Litigation  
**Date:** Friday, February 24, 2017 1:14:03 PM

---

Yes i agree please agree to a stay.

On Fri, Feb 24, 2017 at 1:01 PM, Hawbecker, Karen <karen.hawbecker@sol.doi.gov> wrote:

Downey and James, (b) (5)

[REDACTED]

[REDACTED]

you. --Karen

Thank

--

Downey Magallanes  
Office of the Secretary

downey\_magallanes@ios.doi.gov  
202-501-0654 (desk)  
202-706-9199 (cell)

**From:** Macgregor, Katharine  
**To:** [Rees, Gareth](#)  
**Cc:** [Richard Cardinale](#)  
**Subject:** Re: Western Energy Alliance (b) (5)  
**Date:** Friday, February 17, 2017 6:27:13 PM

---

Sure this looks good. And we are looking for a potential hour on Jim's calendar for next week with our Bureau Directors, right Rich?

On Fri, Feb 17, 2017 at 5:13 PM, Rees, Gareth <gareth\_rees@ios.doi.gov> wrote:

Hi  
Just wanted to make sure you are ok with me scheduling this for next week?  
Thanks

----- Forwarded message -----  
From: Magallanes, Downey <downey\_magallanes@ios.doi.gov>  
Date: Tue, Feb 14, 2017 at 2:23 PM  
Subject: Fwd: Western Energy Alliance (b) (5)  
To: Gareth Rees <gareth\_rees@ios.doi.gov>

----- Forwarded message -----  
From: Benedetto, Kathleen <kathleen\_benedetto@ios.doi.gov <[mailto:kathleen\\_benedetto@ios.doi.gov](mailto:kathleen_benedetto@ios.doi.gov)> >  
Date: Tue, Feb 14, 2017 at 8:31 AM  
Subject: Western Energy Alliance (b) (5)  
To: James Cason <james\_cason@ios.doi.gov>  
Cc: "Cardinale, Richard" <richard\_cardinale@ios.doi.gov>, "Macgregor, Katharine" <katharine\_macgregor@ios.doi.gov <[mailto:katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov)> >, Downey Magallanes <downey\_magallanes@ios.doi.gov>, "Jorjani, Daniel" <daniel\_jorjani@ios.doi.gov>

Jim,

(b) (5)

let us know what works for you.

Thanks,

KB

(202) 208-5934

--

Downey Magallanes  
Office of the Secretary

downey\_magallanes@ios.doi.gov  
202-501-0654 (desk)  
202-706-9199 (cell)

--

Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

Cell: 202-957-8299

--

Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202-208-3671 (Direct)

**From:** Macgregor, Katharine  
**To:** [Hawbecker, Karen](#)  
**Cc:** [James Schindler](#); [Downey Magallanes](#); [Kathleen Benedetto](#); [Marshall Critchfield](#); [Cardinale, Richard](#)  
**Subject:** Re: Scheduling Western Energy Alliance Meeting  
**Date:** Tuesday, February 14, 2017 7:29:12 PM

---

Hey Karen - (b) (5)

-Kate

On Tue, Feb 14, 2017 at 6:56 PM, Hawbecker, Karen <karen.hawbecker@sol.doi.gov> wrote:

As we discussed at our meeting yesterday about the case in which the Western Energy Alliance (WEA) is challenging BLM's oil and gas leasing program, (b) (5)

Mike Nedd has the following times available on the two days that WEA suggested for a meeting:

Tuesday, February 28 1:00 - 3:00 p.m.

Wednesday, March 1 10:00 a.m. - 11:00 a.m. and 1:00-2:00 pm

I need to give the DOJ attorney our available times tomorrow to firm up with WEA. Are these times open for this group? Is there one or more of you who intend to participate in this meeting with WEA? Please let me know so that I can confirm with DOJ tomorrow.

We also discussed scheduling a meeting about this case with Jim Cason before the meeting with WEA takes place at the end of the month. Thank you. --Karen

--

Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202-208-3671 (Direct)

**From:** Macgregor, Katharine  
**To:** [Cardinale, Richard](mailto:Cardinale.Richard)  
**Subject:** Fwd: Scheduling Western Energy Alliance Meeting  
**Date:** Tuesday, February 14, 2017 7:21:21 PM

---

----- Forwarded message -----

From: Hawbecker, Karen <karen.hawbecker@sol.doi.gov>  
Date: Tue, Feb 14, 2017 at 6:56 PM  
Subject: Scheduling Western Energy Alliance Meeting  
To: James Schindler <james\_schindler@ios.doi.gov>, Downey Magallanes <downey\_magallanes@ios.doi.gov>, Katharine Macgregor <katharine\_macgregor@ios.doi.gov>, Kathleen Benedetto <kathleen\_benedetto@ios.doi.gov>, Marshall Critchfield <marshall\_critchfield@ios.doi.gov>

As we discussed at our meeting yesterday about the case in which the Western Energy Alliance (WEA) is challenging BLM's oil and gas leasing program, (b) (5)

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We also discussed scheduling a meeting about this case with Jim Cason before the meeting with WEA takes place at the end of the month. Thank you. --Karen

--

Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202-208-3671 (Direct)

**From:** Magallanes, Downey  
**To:** [Gareth Rees](#)  
**Subject:** Fwd: Western Energy Alliance settlement discussion  
**Date:** Tuesday, February 14, 2017 2:23:44 PM

---

----- Forwarded message -----

From: Benedetto, Kathleen <kathleen\_benedetto@ios.doi.gov>  
Date: Tue, Feb 14, 2017 at 8:31 AM  
Subject: Western Energy Alliance settlement discussion  
To: James Cason <james\_cason@ios.doi.gov>  
Cc: "Cardinale, Richard" <richard\_cardinale@ios.doi.gov>, "Macgregor, Katharine" <katharine\_macgregor@ios.doi.gov>, Downey Magallanes <downey\_magallanes@ios.doi.gov>, "Jorjani, Daniel" <daniel\_jorjani@ios.doi.gov>

Jim,

Yesterday afternoon we, BLM & Solicitor's Office, had a preliminary discussion on possible settlement conditions with the Western Energy Alliance (WEA) who is suing the BLM for not following (in their mind) the Mineral Leasing Act requirements for the oil and gas leasing program.

WEA would like to meet on February 28th or March 1st to discuss settlement options. We would like to brief you on the issue prior to that meeting sometime next week if possible.

let us know what works for you.

Thanks,

KB

(202) 208-5934

--

Downey Magallanes  
Office of the Secretary

downey\_magallanes@ios.doi.gov  
202-501-0654 (desk)  
202-706-9199 (cell)

**From:** Magallanes, Downey  
**To:** [Karen Hawbecker](#)  
**Cc:** [James Schindler](#)  
**Subject:** Re: WEA v. Jewell (quarterly leasing) briefing paper  
**Date:** Friday, February 10, 2017 3:22:06 PM

---

Thank you we will plan to be there.

On Fri, Feb 10, 2017 at 11:45 AM, Karen Hawbecker <karen.hawbecker@sol.doi.gov> wrote:

Downey and James, You are not yet on the meeting invitation for this briefing on Monday, but I will make sure you receive an invitation. --Karen

Sent from my iPad

Begin forwarded message:

From: Karen Hawbecker <karen.hawbecker@sol.doi.gov>  
Date: February 10, 2017 at 11:37:29 AM EST  
To: Kristin Bail <kbail@blm.gov>, Jerome Perez <jperez@blm.gov>, kathleen\_benedetto@ios.doi.gov, marshall\_critchfield@ios.doi.gov <[mailto:marshall\\_critchfield@ios.doi.gov](mailto:marshall_critchfield@ios.doi.gov)>, Michael Nedd <mnedd@blm.gov>, Steven Wells <swells@blm.gov>, lclaypoo@blm.gov, afalwell@blm.gov, rjefferson@blm.gov, lthurn@blm.gov  
Cc: downey\_magallanes@ios.doi.gov, james\_schindler@ios.doi.gov, Richard McNeer <Richard.McNeer@sol.doi.gov>, Daniel DiMauro <danielle.dimauro@sol.doi.gov>, Wendy Dorman <Wendy.Dorman@sol.doi.gov>  
Subject: WEA v. Jewell (quarterly leasing) briefing paper

This is a briefing paper for the Monday 12:45 pm briefing regarding Western Energy Alliance's litigation over BLM's oil and gas lease sale program. (b) (5)

  
--Karen

Sent from my iPad

--

Downey Magallanes  
Office of the Secretary

downey\_magallanes@ios.doi.gov  
202-501-0654 (desk)  
202-706-9199 (cell)

**From:** Downey Magallanes  
**To:** [Schindler, James](mailto:Schindler, James)  
**Cc:** [karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)  
**Subject:** Re: WEA Quarterly Lease Sale Case--Need for Feedback Today  
**Date:** Monday, February 06, 2017 3:11:56 PM

---

Hi Karen I am helping out with DMR cases (onshore). (b) (5)  
[REDACTED]. Thanks

Sent from my iPhone

On Feb 6, 2017, at 2:09 PM, Schindler, James <james\_schindler@ios.doi.gov> wrote:

----- Forwarded message -----

**From:** Hawbecker, Karen <karen.hawbecker@sol.doi.gov>  
**Date:** Mon, Feb 6, 2017 at 1:53 PM  
**Subject:** WEA Quarterly Lease Sale Case--Need for Feedback Today  
**To:** James Schindler <james\_schindler@ios.doi.gov>  
**Cc:** Danielle Dimauro <danielle.dimauro@sol.doi.gov>, Wendy Dorman <Wendy.Dorman@sol.doi.gov>

Hi James, (b) (5)  
[REDACTED]

Please let us know if you have any questions. Thank you. --Karen

Western Energy Alliance v. Jewell (D.N.M.) (BLM Quarterly Lease Sales) (b) (5)  
[REDACTED]

(b) (5)



**From:** Jorjani, Daniel  
**To:** [Haugrud, Kevin](mailto:Kevin.Haugrud@sol.doi.gov)  
**Cc:** [Edward Keable](mailto:Edward.Keable@sol.doi.gov); [James Schindler](mailto:James.Schindler@sol.doi.gov)  
**Subject:** Re: Western Energy Alliance v. Jewell, 1:16-cv-00912-WJ-KBM (D.N.M.)  
**Date:** Tuesday, January 24, 2017 3:13:16 PM

---

Jack: Much appreciated. Best, dan

On Tue, Jan 24, 2017 at 2:54 PM, Haugrud, Kevin <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)> wrote:  
Here's the item we briefly discussed, Dan, for which we need to develop a position (please see email string below).

----- Forwarded message -----

**From:** **Hawbecker, Karen** <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Date:** Tue, Jan 24, 2017 at 12:58 PM  
**Subject:** Re: Western Energy Alliance v. Jewell, 1:16-cv-00912-WJ-KBM (D.N.M.)  
**To:** "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**Cc:** Edward T Keable <[edward.keable@sol.doi.gov](mailto:edward.keable@sol.doi.gov)>, Matthew McKeown <[Matthew.McKeown@sol.doi.gov](mailto:Matthew.McKeown@sol.doi.gov)>, Marc Smith <[marc.smith@sol.doi.gov](mailto:marc.smith@sol.doi.gov)>

Jack, (b) (5)

[Redacted]

[Redacted]

[Redacted] Thanks. --Karen

On Tue, Jan 24, 2017 at 11:34 AM, Haugrud, Kevin <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)> wrote:

Ed (b) (5)

On Tue, Jan 24, 2017 at 11:23 AM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

(b) (5)

(b) (5)

(b) (5)

--

Karen Hawbecker  
Associate Solicitor  
Division of Mineral Resources  
Office of the Solicitor  
U.S. Department of the Interior  
1849 C Street N.W. MS 5358  
Washington, D.C. 20240

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--

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