

CHANGES IN THE LAW UNDER THE TRUMP ADMINISTRATION:
PUBLIC LANDS EDITION

I. Introduction

- About me
 - Wildlands Program Director, WELC
 - Emphasis on federal public lands issues
 - Litigation and forest restoration collaboration
- Federal public lands managed by either the Department of Agriculture (USFS) or Department of Interior (BLM, Park Service)
- Focus on natural resources issues, not fossil fuel development or climate change initiatives (no BLM methane rule, Clean Power Plan, etc.)
- Will not discuss attempts to “drain the swamp” or reduce the administrative state, although clearly natural resources management requires a robust bureaucracy to implement programs, so this effort may very well influence policy delivery
- A lot of activity; just discuss some highlights

II. Department of Interior

- Secretary Zinke: confirmed March 1, 2017\
- Jurisdiction: BLM, National Park Service
- Two notable initiatives:
 - National Monuments Review
 - Sage Grouse plan review

- **National Monuments review**

- May: announces public comment period on monuments designated or expanded since 2000 that are 100,000 acres or larger or where there were “concerns” about public engagement in the monument process
 - Will make recommendations to the President re: monuments
- July: comment period closes – 1.3 million comments received, 99.2% of comment were in favor of keeping monuments as is or expanding them
- August: Zinke sends report to the President but fails to release the report to the public; report is leaked, indicating recommendations to shrink a number of monuments and to change management allowed in monument to encourage “more traditional uses” such as logging, mining, and grazing
- One such monument is the **Cascade-Siskiyou National Monument** in southern Oregon, designated in 2000 and expanded in 2017
 - Timber industry, counties, and a timber company have challenged the expansion in Oregon and DC federal district courts
 - Claim a legal violation of the Oregon and California Lands Act
 - WELC represents monument supporters in intervention in those cases

- **Sage Grouse**

- Review of 98 land management plans across 10 states that incorporated an Obama-era collaborative plan to protect and restore millions of acres of sage grouse habitat across the west
 - Plans limited oil and gas development, grazing in exchange for forgoing federal protection for the grouse under the ESA
 - Parties involved included states, counties, federal regulatory agencies, conservation interests, ranchers, and others
- Unknown what changes will be made, but likely to reduce restrictions on energy development and grazing
- Litigation likely; states may join

III. Department of Agriculture

- Secretary Perdue: confirmed April 24, 2017
- Jurisdiction: United States Forest Service
- Changes at USFS: Tony Tooke appointed Chief in September 2017
- As opposed to DOI, USDA has not announced any major policy initiatives
- Still have significant policy issues to address; Congress may step in
- Some forest and public land management highlights:
 - **Fire funding fix**
 - More than half of USFS's budget goes to fire suppression, requiring the USFS to shift funding from its usual program of work (including fire risk reduction work) to putting out fires
 - Congress has a few proposals to fix this problem, which involves making spending on fire suppression "emergency" funding paid for through FEMA, as are other "disasters" – none have passed
 - Depleting the agency's budget means forest restoration does not occur at the intended level
 - **H.R. 2936, the Resilient Federal Forests Act of 2017**
 - Includes a number of "forest management fixes" designed to increase timber harvest on federal lands by reducing environmental review, public involvement, and judicial review
 - Has been marked up by House Ag and Natural Resources; will be on the House floor by the end of the year
 - Poor prospects in the Senate, but see **S. 1732, the Forest Management Improvement Act of 2017**, which includes similar provisions
 - Forest management provisions are likely to be part of **Farm Bill** negotiations in 2018

- **H.R. 3715, the Scenic Columbia Gorge Restoration Act of 2017**
 - Introduced by Rep. Greg Walden as the Eagle Creek fire was burning in the gorge
 - Requires extensive post-fire logging and replanting in the wake of a natural disturbance event such as wildfire, without detailed environmental review or judicial review
 - Reminder: the Eagle Creek fire occurred on very steep slopes in a National Scenic Area, Wilderness Area, and the Bull Run Watershed, but: only 15% of the fire area as having high burn severity, and 30% with moderate burn severity; the remaining 55% has low or very low burn severity

- **S. 605, Litigation Relief for Forest Management Projects Act**
 - Introduced by Senators Daine and Testor to address the Ninth Circuit case *Cottonwood Environmental Law Center v. U.S. Forest Service*, 789 F.3d 1075 (9th Cir. 2015)
 - Court held that the Forest Service was required to reinitiate consultation on forest plans to address the designation of critical habitat for the Canadian lynx, *but did not enjoin implementation of the forest plans* – this has been the law for decades (see, *Pac. Rivers Council v. Thomas*, 30 F.3d 1050 (9th Cir. 1994) (holding LRMPs are ongoing federal actions subject to ESA consultation and reinitiation))
 - Legislation would exempt forest plans from reinitiation in response to new information, including the listing of a new species or designation of its critical habitat

IV. Conclusion

- Like a lot of other things with this Administration, public lands policy has been a bit of a hot mess, without clear direction or intent
- Result: uncertainty, unpredictability, and resistance to change
- Continuing efforts to reduce the federal bureaucracy is also likely to backfire in federal land management agencies
- Given polarizing agenda, we're likely to see more litigation than in recent years