No. 15-1034

In the Supreme Court of the United States

SOARING EAGLE CASINO AND RESORT, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

RICHARD F. GRIFFIN, JR.
General Counsel
JENNIFER ABRUZZO
Deputy General Counsel
JOHN H. FERGUSON
Associate General Counsel
LINDA DREEBEN
Deputy Associate General Counsel
MEREDITH JASON
Deputy Assistant General Counsel
KIRA DELLINGER VOL
Supervisory Attorney
National Labor Relations Board
Washington, D.C. 20570

QUESTIONS PRESENTED

Under the National Labor Relations Act, the term "employer" is defined as *not* including "the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof." 29 U.S.C. 152(2). The questions presented are as follows:

1. Whether the National Labor Relations Board has jurisdiction over an Indian tribe as an employer with respect to its operation of a tribally created, owned, and controlled gambling, hospitality, and entertainment complex, which is located on tribal land but competes in interstate commerce against non-tribal enterprises.

2. Whether the court of appeals erred in determining that a general right of exclusion in a treaty with an Indian tribe does not, without more specificity, preclude application of the National Labor Relations Act to the tribe.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-58) is reported at 791 F.3d 648. The decisions and orders of the National Labor Relations Board (Pet. App. 61-66, 67-110) are reported at 361 N.L.R.B. No. 73 and 359 N.L.R.B. No. 92.

JURISDICTION

The judgment of the court of appeals was entered on July 1, 2015. A petition for rehearing was denied on September 29, 2015 (Pet. App. 59-60). On December 16, 2015, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including February 26, 2016. The petition was filed on February 12, 2016. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. The National Labor Relations Act (NLRA), 29 U.S.C. 151 *et seq.*, has "empowered" the National Labor Relations Board (Board) "to prevent any person from engaging in any unfair labor practice * * * affecting commerce." 29 U.S.C. 160(a). "[I]n passing the [NLRA], Congress intended to and did vest in the Board the fullest *jurisdictional* breadth constitutionally permissible under the Commerce Clause." *NLRB* v. *Reliance Fuel Oil Corp.*, 371 U.S. 224, 226 (1963) (per curiam). As relevant here, some unfair labor practices are committed by "employer[s]." 29 U.S.C. 158(a). The NLRA defines the term "employer" to include "any person acting as an agent of an employer, directly or indirectly," but not to include

> the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act * * *, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

29 U.S.C. 152(2).

b. In 1976, the Board first considered the application of the NLRA to an enterprise owned and operated by a federally recognized Indian tribe on its reservation. See *Fort Apache Timber Co.*, 226 N.L.R.B. 503 (1976). The Board concluded that the tribal council and its timber enterprise were "implicitly exempt as employers" within the meaning of Section 152(2), reasoning that tribes are "governmental entit[ies] recognized by the United States" and the tribe was, "*qua* government, acting to direct the utilization of tribal resources through a tribal commercial enterprise on

the tribe's own reservation." *Id.* at 504, 506 & n.22. The Board reiterated that reasoning in *Southern Indian Health Council, Inc.*, 290 N.L.R.B. 436, 437 (1988), which involved a tribal health clinic operated by a tribal consortium on reservation land. The Board declined to extend that reasoning to off-reservation tribal enterprises in *Sac & Fox Industries, Ltd.*, 307 N.L.R.B. 241, 242-245 (1992).

c. In *San Manuel Indian Bingo & Casino*, 341 N.L.R.B. 1055 (2004), enforced, 475 F.3d 1306 (D.C. Cir. 2007), the Board revisited its jurisprudence concerning Indian tribes as employers. The Board concluded that its prior cases had failed to strike "a satisfactory balance between the competing goals of Federal labor policy and the special status of Indian tribes in our society and legal culture." 341 N.L.R.B. at 1056. The Board explained that, since its initial decisions, "Indian tribes and their commercial enterprises have played an increasingly important role in the Nation's economy" and have "become significant employers of non-Indians and serious competitors with non-Indian owned businesses." *Ibid.* After reconsidering the text, purpose, and legislative history of the NLRA, the Board concluded that Indian tribes are "employers" within the meaning of Section 152(2) and do not fall within that provision's exceptions. *Id.* at 1057-1059.

The Board then addressed whether "Federal Indian policy" required the Board to decline jurisdiction over a tribally owned and operated casino, and determined that it did not. *San Manuel*, 341 N.L.R.B. at 1059-1062 (emphasis omitted). To evaluate that question, the Board adopted the approach used by several courts of appeals to address the application to Indian tribes of other federal statutes—an approach it called the

"*Tuscarora–Coeur d'Alene* standard." *Id.* at 1059-1061. That approach began with this Court's statement in *Federal Power Commission* v. *Tuscarora Indian Nation*, 362 U.S. 99 (1960), that "a general statute in terms applying to all persons includes Indians and their property interests." *Id.* at 116; see also *id.* at 120 (noting that "general Acts of Congress apply to Indians as well as to all others in the absence of a clear expression to the contrary"). In *Donovan* v. *Coeur d'Alene Tribal Farm*, 751 F.2d 1113 (1985), the Ninth Circuit, in holding that the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*, applied to a tribal enterprise, adopted that statement from *Tuscarora* as a general rule. But *Coeur d'Alene* concluded that a general federal statute would nevertheless be inapplicable to an Indian tribe if "(1) the law touches exclusive rights of self-governance in purely intramural matters; (2) the application of the law to the tribe would abrogate rights guaranteed by Indian treaties; or (3) there is proof * * * that Congress intended the law not to apply to Indians on their reservation." 751 F.2d at 1116 (citation, internal quotation marks, and brackets omitted).

Applying that approach in *San Manuel*, the Board concluded that the NLRA is "a statute of general applicability." 341 N.L.R.B. at 1059. It further concluded that the NLRA's application would not implicate "critical self-governance issues" where the tribal activities in question—the operation of a casino that "employs significant numbers of non-Indians" and "caters to a non-Indian clientele"—are "commercial in nature" rather than "governmental." *Id.* at 1061.

As "the final step" in its analysis, the Board considered "whether policy considerations militate in favor of

or against the assertion" of the Board's jurisdiction as a matter of discretion. *San Manuel*, 341 N.L.R.B. at 1062. In doing so, it "balance[d] the Board's interest in effectuating the policies of the [NLRA] with its desire to accommodate the unique status of Indians in our society and legal culture." *Ibid.* The Board declined to adopt a categorical rule either exempting or including tribes. *Ibid.* But it explained that "[r]unning a commercial business is not an expression of sovereignty in the same way that running a tribal court system is," and that tribes "affect interstate commerce in a significant way" when they "participate in the national economy in commercial enterprises, when they employ substantial numbers of non-Indians, and when their businesses cater to non-Indian clients and customers." *Ibid.* By contrast, the Board continued, its "interest in regulation" is "lessened" when a tribe is fulfilling "traditional tribal or governmental functions." *Id.* at 1063.

In *San Manuel*, the Board asserted jurisdiction over a tribal casino, 341 N.L.R.B. at 1063-1064, and its decision was upheld by the D.C. Circuit in *San Manuel Indian Bingo & Casino* v. *NLRB*, 475 F.3d 1306 (2007). In a companion case decided the same day, the Board declined to exercise jurisdiction over a tribal health clinic because it was serving a governmental function by "provid[ing] free health care to Indians." *Yukon Kuskokwim Health Corp.*, 341 N.L.R.B. 1075, 1076-1077 (2004).

2. The Soaring Eagle Casino and Resort (Casino or petitioner) is an enterprise of the Saginaw Chippewa Indian Tribe of Michigan (Tribe), a federally recognized Indian tribe with more than 3000 members. Pet. App. 2-3. The Tribe is a successor to signatories of an August 2, 1855 Treaty with the Chippewas, 11 Stat.

633 (Pet. App. 111-119), and an October 18, 1864 Treaty with the Chippewa Indians of Saginaw, Swan Creek, and Black River, 14 Stat. 657 (Pet. App. 120-130). See Pet. App. 2. The 1864 treaty set aside the present reservation for petitioner's "exclusive use, ownership, and occupancy," reserving a right to exclude non-Indians. *Id.* at 2-3.

As authorized by the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701 *et seq.*, and a compact with the State of Michigan, the Tribe owns and operates the Casino, which is located on land held in trust for the Tribe by the United States. Pet. App. 3. In addition to gaming facilities, the Casino has restaurants, bars, entertainment facilities, and a hotel. *Id.* at 81. It is open around the clock, and has about 3000 employees, 7.4% of whom are tribal members. *Ibid.* It serves about 20,000 mostly non-Indian customers each year, advertises throughout Michigan, and competes directly with non-tribal casinos near Detroit. *Id.* at 4-5, 81. Casino revenue provides about 90% of the Tribe's income. *Id.* at 4-5.

The Tribal Council has adopted a no-solicitation policy, which is contained in the Casino employees' handbook and constrains their ability to solicit and post materials on the Casino's premises. Pet. App. 5-6. In 2010, petitioner, after giving her several warnings, fired a housekeeper for violating the no-solicitation policy by discussing a union-organizing campaign with a fellow housekeeper. *Id.* at 6-7.

3. In 2011, the Board's Acting General Counsel issued an administrative complaint, alleging that petitioner had committed unfair labor practices in violation of the NLRA by maintaining an unlawful no-solicitation policy in its handbook, by barring employ-

ees from union discussions in the Casino hallway, and by suspending and then discharging a housekeeper for engaging in union activities at the Casino. Pet. App. 75. Petitioner denied the allegations and denied that the Board had jurisdiction over it. *Id.* at 75-76.

After a hearing, an administrative law judge (ALJ) ruled that it was appropriate for the Board to assert its jurisdiction over petitioner as an employer and that petitioner had committed the unfair labor practices alleged in the complaint. Pet. App. 75-110. In addressing the jurisdictional question, the ALJ relied on the Board's 2004 decision in *San Manuel* and determined that it was appropriate to assert jurisdiction over the Tribe's operation of the Casino. *Id.* at 88-96. The ALJ concluded that the Casino "is a commercial venture that generates income for the Tribe," "serves predominantly nontribal customers, competes with nontribal casinos, and employs mostly nontribal members." *Id.* at 92. The ALJ also rejected petitioner's contention that its treaties precluded jurisdiction under the NLRA, concluding that those treaties "provide[] nothing more than a general right of exclusion" and that "a general right to exclude non-Indians from tribal land, without more, is insufficient to bar the application of Federal laws to commercial entities on Indian reservations." *Id.* at 93-94.

Petitioner filed exceptions with the Board, challenging the assertion of jurisdiction but not the unfair-labor-practice findings. Pet. App. 62 n.1, 68. The Board's initial decision (*id.* at 67-74) was vacated and remanded by the court of appeals because two of the participating Board members had been recess appointees whose appointments were invalid under *NLRB* v. *Noel Canning*, 134 S. Ct. 2550 (2014). Pet. App. 61-62.

On remand, the Board—acting through three Senate-confirmed members—considered de novo the ALJ's decision and the record in light of the exceptions and briefs. Pet. App. 62. It agreed with the rationale of the vacated decision and order, which it incorporated by reference. *Ibid.* In the incorporated decision, the Board affirmed the ALJ's "rulings, findings, and conclusions." *Id.* at 68 (footnote omitted).

4. In the court of appeals, petitioner contested the Board's jurisdiction but not the finding of unfair labor practices if jurisdiction existed. Pet. App. 9. The court held that the Board has jurisdiction over the Casino's employment practices and enforced the Board's order. *Id.* at 2, 53.

a. The court of appeals first considered, de novo, the effect of petitioner's treaties on the Board's ability to exercise jurisdiction under the NLRA. Pet. App. 12-24. The court noted that this "Court demands a clear statement of intent for the abrogation of Indian treaty rights," and it concluded that the NLRA does not evince any specific intention to abrogate treaty rights. *Id.* at 15, 18. Nevertheless, the court explained that the "first" step of its analysis was a determination of "the scope of the specific treaty rights at issue" on the basis of "'the treaty language itself[,] * * * with any ambiguities resolved in favor of the Indians.'" *Id.* at 14-15 (quoting *Minnesota* v. *Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 206 (1999)).

The majority of the court of appeals concluded that the treaties here grant the Tribe "a general right of exclusion," but, unlike some other treaties, do not "give the Tribe the specific power to condition authorization and entry of government agents" and do not "detail with any level of specificity the types of activi-

ties the Tribe may control or in which it may engage." Pet. App. 23. The court held that such a "general right of exclusion, with no additional specificity, is insufficient to bar application of federal regulatory statutes of general applicability" and therefore does not "bar[] application of the NLRA to the Casino." *Id.* at 23-24.[1]

b. The court of appeals then addressed "whether the Tribe's inherent sovereignty rights preclude application of the NLRA to the on-reservation Casino." Pet. App. 24. The court held that, for purposes of that question, it was bound by the earlier decision of another panel in *NLRB* v. *Little River Band of Ottawa Indians Tribal Government*, 788 F.3d 537 (6th Cir. 2015), petition for cert. pending, No. 15-1024 (filed Feb. 12, 2016).

The *Little River Band* panel, applying de novo review, enforced an order of the Board that exercised jurisdiction over another tribally owned and operated casino as an employer under the NLRA. 788 F.3d at 544, 556. Like the Board in *San Manuel*, *supra*, the court in *Little River Band* adopted the *Coeur d'Alene* framework, which it noted had been applied by several other circuits and which it concluded "accommodates principles of federal and tribal sovereignty." *Id.* at 547, 551. Applying that framework, the court held that the NLRA is a generally applicable, comprehensive statute, which was intended by Congress to reach as broadly as constitutionally permissible and is therefore presumptively applicable to Indian tribes. *Id.* at 551.

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[1] Judge White dissented from this part of the majority's opinion and would have found that application of the NLRA to the Casino is barred by the Tribe's right under the 1864 treaty to the exclusive use, ownership, and occupancy of reservation lands. Pet. App. 54-58.

The court further concluded that application of the NLRA to the tribal casino would not undermine tribal self-governance, which does not include a "right to conduct commercial enterprises free of federal regulation," and that there is no "proof that Congress intended the NLRA not to apply to Indians on their reservations." *Id.* at 553, 555.

Although the court of appeals in this case recognized that it was bound by the prior decision, it disagreed with *Little River Band*'s analysis and holding. Pet. App. 26. The court would have "reject[ed] the *Coeur d'Alene* framework for determining the reach of federal statutes of general applicability" and instead structured its analysis on "guidance" it "glean[ed] from" *Montana* v. *United States*, 450 U.S. 544 (1981), and *Nevada* v. *Hicks*, 533 U.S. 353 (2001). Pet. App. 50. In the absence of clear congressional intent to apply a statute "to the activities of Indian tribes," it would have asked whether a "generally applicable federal regulatory statute impinges on the Tribe's control over its own members and its own activities." *Id.* at 35. In particular, it concluded that, in this case, the Casino's no-solicitation policy and termination of the housekeeper should have been permitted as an exercise of the Tribe's authority under *Montana* to enter into a commercial relationship with a nonmember and "place conditions on its contractual relationship[]." *Id.* at 37-38; see *Montana*, 450 U.S. at 565.

5. Petitioner sought rehearing en banc, which the court of appeals denied. Pet. App. 59-60.

ARGUMENT

Petitioner contends that the Board generally lacks jurisdiction over tribal governments acting as employers (Pet. 21-25) and, more specifically, that the Board

lacks jurisdiction over petitioner's employment actions in light the Tribe's treaty rights (Pet. 25-30). Those arguments lack merit. The court of appeals correctly sustained the Board's exercise of jurisdiction over petitioner as an employer under the NLRA for purposes of its operation of the Casino, which is a large commercial enterprise that employs over 90% non-Indians, has mostly non-Indian patrons, and competes against non-tribal enterprises in interstate commerce. Pet. App. 4-5, 81. Although petitioner reads the decision below as conflicting with those of other circuits, there are no conflicts with respect to the questions presented here. Moreover, the pendency in another circuit of a case challenging the Board's jurisdiction over a tribal casino and Congress's active consideration of legislation that would address the issue counsel further against this Court's review at this time. The petition for a writ of certiorari should be denied.[2]

1. a. With respect to the first question presented, petitioner contends (Pet. 17) that, in following *NLRB* v. *Little River Band of Ottawa Indians Tribal Government*, 788 F.3d 537 (6th Cir. 2015), petition for cert. pending, No. 15-1024 (filed Feb. 12, 2016), the decision below is part of "a clearly defined three-way split of authority." But, as petitioner notes, the only current conflict is a disagreement about what "approach" to use in "analyzing whether the Board has jurisdiction over tribes" (Pet. 19)—not any disagreement about the correct answer to the question presented here.

Before the decision in *Little River Band*, only one other court of appeals had addressed whether the

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[2] The first question presented in this case is also presented in *Little River Band of Ottawa Indians Tribal Government* v. *NLRB*, petition for cert. pending, No. 15-1024 (filed Feb. 12, 2016).

NLRB may exercise jurisdiction over an Indian tribe in its capacity as an employer in a commercial enterprise. In that case, the D.C. Circuit agreed with the Board's assertion of jurisdiction over a tribe's operation of a casino. See *San Manuel Indian Bingo & Casino* v. *NLRB*, 475 F.3d 1306 (2007). As discussed above (see pp. 3-5, *supra*), the Board had asserted jurisdiction over the tribal casino after considering the general presumption and specific exceptions articulated in *Donovan* v. *Coeur d'Alene Tribal Farm*, 751 F.2d 1113, 1115-1116 (9th Cir. 1985), and then evaluating "whether policy considerations militate in favor of or against the assertion of the Board's discretionary jurisdiction." *San Manuel Indian Bingo & Casino*, 341 N.L.R.B. 1055, 1062 (2004), enforced, 475 F.3d 1306 (D.C. Cir. 2007).

Although the D.C. Circuit declined to embrace the *Coeur d'Alene* framework, it explained that its analysis only "differed slightly from that of the Board." *San Manuel*, 475 F.3d at 1318. It reached the same result as the Board, concluding that "the NLRA does not impinge on the Tribe's sovereignty enough to indicate a need to construe the statute narrowly against application to employment at the [c]asino." *Id.* at 1315. The court noted that its conclusion was also "consistent" with those of several other circuits that had applied the *Coeur d'Alene* framework to evaluate "the application of federal employment law" to commercial activities of tribes. *Ibid.* Moreover, the D.C. Circuit explained that it relied on "the same factors" as the Board: the casino's status as "a purely commercial enterprise that employs significant numbers of non-Indians and caters to a non-Indian clientele who live

off the reservation." *Id.* at 1318 (citations, internal quotation marks, and alteration omitted).

The Sixth Circuit reached the same result as the D.C. Circuit, and did so by distinguishing the operation of "commercial gaming" enterprises from the activities of "tribal self-government." *Little River Band*, 788 F.3d at 553-554. There is accordingly no conflict between the Sixth and D.C. Circuits that would warrant this Court's review.

b. Petitioner asserts (Pet. 19) that "[t]he Sixth Circuit's approach unquestionably conflicts with the Tenth Circuit's holding" in *NLRB* v. *Pueblo of San Juan*, 276 F.3d 1186 (2002) (en banc). Those two decisions did take different analytical approaches, but there is no square conflict between them. In explaining its approach, the Tenth Circuit said it does "not lightly construe federal laws as working a divestment of tribal sovereignty and will do so only where Congress has made its intent clear that we do so." *Id.* at 1195. It therefore declined to read the NLRA as "stripping tribes of their retained sovereign authority to pass right-to-work laws and be governed by them," *ibid.*—even though the provision of the NLRA expressly reserving the power to adopt right-to-work laws refers only to "State or Territorial law," 29 U.S.C. 164(b).

If the Tenth Circuit were to take the same approach to the issue in this case—whether the NLRA applies to a tribe in its capacity as an employer in a commercial enterprise—the result could perhaps create a conflict with the D.C. and Sixth Circuits. But the en banc court in *Pueblo of San Juan* expressly disclaimed so broad a ruling. It emphasized that it was not addressing "the general applicability of federal labor law" and,

further, that the tribal right-to-work ordinance in that case did "not attempt to nullify the NLRA or any other provision of federal law." 276 F.3d at 1191. Moreover, when it distinguished the references to statutes of general applicability in *Federal Power Commission* v. *Tuscarora Indian Nation*, 362 U.S. 99 (1960), the Tenth Circuit distinguished between a tribe's "proprietary" interests and its "sovereign" interests. 276 F.3d at 1198-1200. Thus, it explained that its decision to sustain the tribal right-to-work ordinance (in the absence of express federal statutory authorization) was protecting the tribe's exercise of "its authority as a sovereign * * * rather than in a proprietary capacity *such as that of employer* or landowner." *Id.* at 1199 (emphasis added).

A more recent Tenth Circuit decision has characterized *Pueblo of San Juan* as holding that "Congressional silence exempted Indian tribes from the [NLRA]." *Dobbs* v. *Anthem Blue Cross & Blue Shield*, 600 F.3d 1275, 1284 (2010). But *Dobbs*, which was not about the NLRA, still recognized the distinction in the Tenth Circuit's decisions "between cases in which an Indian tribe exercises its property rights and cases in which it 'exercise[s] its authority as a sovereign.'" *Id.* at 1283 n.8 (quoting *Pueblo of San Juan*, 276 F.3d at 1199). The Tenth Circuit has not yet addressed the question at issue here: whether the NLRA applies to a tribe acting in its capacity as an employer in the commercial sphere.

c. Petitioner also contends (Pet. 30-32) that there is a conflict with respect to the second question presented: whether the Tribe's particular treaty-based right to exclude nonmembers from its reservation precludes application of the NLRA. There is, however, no con-

flict. The decision below did not reject the standard used in the allegedly conflicting decision in *Donovan* v. *Navajo Forest Products Industries*, 692 F.2d 709 (10th Cir. 1982). Instead, just like the Seventh, Ninth, and Tenth Circuits, it stated that this Court "demands a clear statement of intent for the abrogation of Indian treaty rights." Pet. App. 15 (citing *United States* v. *Dion*, 476 U.S. 734, 739-740 (1986), and *South Dakota* v. *Bourland*, 508 U.S. 679, 687 (1993)); see *U.S. Dep't of Labor* v. *Occupational Safety & Health Review Comm'n*, 935 F.2d 182, 184 (9th Cir. 1991) (requiring express congressional abrogation of treaty rights); *Smart* v. *State Farm Ins. Co.*, 868 F.2d 929, 932-933 (7th Cir. 1989) (same); *Navajo Forest Prods.*, 692 F.2d at 712 (same).

The relevant point in this case was not about the correct standard or about whether the NLRA is sufficiently clear to displace any treaty right, but about the *antecedent* question of whether there is any treaty right that triggers a clear-statement rule. See Pet. App. 14-15 ("We *first* consider the scope of the specific treaty rights at issue here. * * * Once the scope of rights reserved by a treaty is determined, we look to see whether Congress intended to abrogate those rights.") (emphasis added). At that first step of the analysis, the decision below concluded that the general reference in the Tribe's 1864 treaty to its right to "exclusive use, ownership, and occupancy" of its lands (*id.* at 121) did not provide the same rights as did the treaty in *Navajo Forest Products*, which had specially addressed which kinds of "officers, soldiers, agents and employees of the government" would "ever be permitted to pass over" Navajo land. 692 F.2d at 711 (citation omitted). In other words, the court expressly

found *Navajo Forest Products* to be "distinguishable" because the tribal treaties were materially different. Pet. App. 23; see also *Smart*, 868 F.3d at 935 (finding that the applicable treaty provisions in that case "simply convey[ed] land within the exclusive sovereignty of the [t]ribe" and therefore did "not delineate specific rights in a manner comparable to the treaty in *Navajo Forest Products*"). Indeed, neither petitioner nor the dissent below identifies any decision that, in more than three decades since *Navajo Forest Products* was decided, extends its reasoning to a tribal treaty with a general right of "exclusive use, ownership, and occupancy" akin to the one at issue here. There is accordingly no conflict on the second question presented.

d. In addition to the absence of a direct conflict in the courts of appeals, two further considerations reinforce the conclusion that review by this Court is unwarranted at this time. First, another case presenting the question of the Board's jurisdiction over a tribal casino is now pending in the Ninth Circuit. See *Casino Pauma* v. *NLRB*, No. 16-70397 (docketed Feb. 10, 2016); *NLRB* v. *Casino Pauma*, No. 16-70756 (docketed Mar. 21, 2016). That court will be able to take account of the reasoning in the Sixth Circuit's decisions in this case and *Little River Band*, as well as the D.C. Circuit's decision in *San Manuel*.[3]

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[3] The Ninth Circuit has not addressed the NLRA's applicability to tribal-casino operations. In *NLRB* v. *Chapa De Indian Health Program, Inc.*, 316 F.3d 995 (2003), it applied *Coeur d'Alene* to a health-care organization that, although a "tribal organization," was neither owned nor controlled by the tribe or by tribal members; that operated at facilities on non-Indian land; that had 40% non-Indian patients; and that had 55% non-Indian staff members. *Id.*

Second, Congress is currently considering legislation that could effectively moot the question of the Board's jurisdiction over Indian tribes. On November 17, 2015, the House of Representatives passed H.R. 511, the Tribal Labor Sovereignty Act of 2015, which would expand the list of entities excepted from the NLRA's definition of employer in 29 U.S.C. 152(2) by adding "any Indian tribe, or any enterprise or institution owned and operated by an Indian tribe and located on its Indian lands." 161 Cong. Rec. H8260, H8272 (daily ed. Nov. 17, 2015). A related bill, S. 248, is pending in the Senate and was favorably reported by the Indian Affairs Committee in September 2015. S. Rep. No. 140, 114th Cong., 1st Sess. (2015).

If that bill is enacted, it will not be the first time that Congress has acted to clarify how labor-related laws apply to Indian tribes. In 2006, it amended the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, to specify that the "governmental plan[s]" exempted from preemption claims include not just plans covering federal, state, or local government employees (which were already mentioned), but also plans for employees of "Indian tribal government[s]" when "substantially all" of their services "are in the performance of essential governmental functions but not in the performance of commercial activities." 29 U.S.C. 1002(32). Whether or not the pending bill is enacted in its current or in a modified

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at 997, 1000. The court held that the Board was not "plainly lacking" jurisdiction over the organization, but it "emphasize[d] the limited nature" of its "preliminary" decision, which did not "resolv[e] the issue of the Board's jurisdiction." *Id.* at 1002.

form, Congress's active consideration of the issue counsels against this Court's intervention at this time.[4]

2. The court of appeals correctly sustained the Board's exercise of jurisdiction over the Casino as an employer under the NLRA, thereby ensuring that petitioner's employees receive the important statutory protections the NLRA affords to workers generally in businesses affecting commerce. Applying the NLRA is consistent with the Act's broad scope and purposes, because the Casino is a large commercial enterprise that employs 92.6% non-Indians, has mostly non-Indian patrons, and competes in interstate commerce against non-tribal enterprises. Pet. App. 4-5, 81. Applying the NLRA to the Casino is also consistent with affording respect to tribal sovereignty; while the Tribe unquestionably has inherent sovereignty, recognized in IGRA, to establish and operate the Casino, it does so subject to Congress's exercise of its power to regulate the commerce in which the Tribe has chosen to participate.

In the decision that controlled the decision below, the court of appeals determined that the *Coeur d'Alene* framework, which has been employed by several courts of appeals in sustaining the application of other federal statutes to commercial enterprises operated by Indian tribes, appropriately "accommodates principles

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[4] On the day of the House vote, the Executive Office of the President issued a statement that opposed the bill "as currently drafted," because it would not make the tribal exemption from the Board's jurisdiction contingent on a tribe's adoption of "labor standards and procedures * * * reasonably equivalent to those in the [NLRA]." Executive Office of the President, *Statement of Administration Policy: H.R. 511—Tribal Labor Sovereignty Act of 2015* (Nov. 17, 2015), https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr511h_20151117.pdf.

of federal and tribal sovereignty." *Little River Band*, 788 F.3d at 548, 551. But there is no need here to determine whether that framework should be used to evaluate the applicability to Indian tribes of all federal statutes, or even of all such statutes regulating commerce and affecting tribal commercial enterprises. Here, the Board's analysis, and that of the *Little River Band* court, was certainly correct in its three fundamental points: (1) the NLRA itself does not exempt tribes from the definition of "employer" in 29 U.S.C. 152(2); (2) it was reasonable for the Board to distinguish between tribes' performance of governmental functions and their engagement in large-scale commercial operations; and (3) applying the NLRA to Indian tribes in their capacity as employers in the commercial context does not divest them of sovereign authority.

a. The NLRA confers upon the Board a broad power to prevent "any person from engaging in any unfair labor practice * * * affecting commerce," 29 U.S.C. 160(a), and it defines "'employer'" as "includ[ing] any person acting as an agent of an employer, directly or indirectly." 29 U.S.C. 152(2). As relevant here, the statute further specifies that "'employer' * * * shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof." *Ibid.* The Board's determination that tribes are not thereby exempted from the definition of "employer" is correct and, at a minimum, entitled to deference.

As this Court has "consistently declared," the NLRA "vest[s] in the Board the fullest *jurisdictional* breadth constitutionally permissible under the Commerce Clause." *NLRB* v. *Reliance Fuel Oil Corp.*, 371

U.S. 224, 226 (1963) (per curiam). It has also explained that "courts must take care to assure that exemptions from NLRA coverage are not so expansively interpreted as to deny protection to workers the Act was designed to reach." *Holly Farms Corp.* v. *NLRB*, 517 U.S. 392, 399 (1996). And it has recognized that the Board "is entitled to considerable deference" when defining terms in the NLRA. *Sure-Tan, Inc.* v. *NLRB*, 467 U.S. 883, 891 (1984).[5] Here, the Casino has mostly non-Indian employees and mostly non-Indian customers, and it competes with other casinos in interstate commerce. Pet. App. 4-5, 81. The Board correctly determined that labor practices at the Casino affect commerce within the scope of Congress's authority under the Commerce Clause and therefore fall within the Board's statutory jurisdiction. See *NLRB* v. *Fainblatt*, 306 U.S. 601, 604-607 (1939); 29 U.S.C. 152(7).

Petitioner nevertheless suggests that the exception in Section 152(2) for specified governmental entities—"the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof"—was intended to exempt all "sovereigns" from the Board's jurisdiction. Pet. 22. But the statute by its terms excludes

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[5] The Court later explained that it does not "defer[] to the Board's *remedial* preferences where such preferences potentially trench upon federal statutes and policies unrelated to the NLRA," *Hoffman Plastic Compounds, Inc.* v. *NLRB*, 535 U.S. 137, 144 (2002) (emphasis added), and it held that the Board's award of back pay to aliens not authorized to work as a remedy for an unfair labor practice was inconsistent with employment prohibitions in the Immigration and Nationality Act, *id.* at 144-152. But the Court did not question *Sure-Tan*'s holding that the Board's interpretation of statutory terms is entitled to deference and that aliens not authorized to work are included within the definition of "employee."

only certain governments, not all "sovereigns," and it fails to mention Indian tribes. Section 152(2) thus contrasts with other statutes in which Indian tribes are expressly excluded from definitions of "employer," such as Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e(b)(1), and Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. 12111(5)(B)(i). And, well before *San Manuel*, the Board had applied the NLRA to at least one other unlisted category of sovereign: foreign sovereigns when they are engaged in commercial activities in the United States. See *State Bank of India* v. *NLRB*, 808 F.2d 526, 530-534 (7th Cir. 1986), cert. denied, 483 U.S. 1005 (1987).

b. Even assuming that Congress would have intended for unlisted entities to have the benefit of a governmental exemption akin to the one in Section 152(2), the Board's exercise of jurisdiction over Indian tribes has not extended to their performance of "traditional tribal or governmental functions" of the sort in which federal, state, and local governments typically engage. *San Manuel*, 341 N.L.R.B. at 1063. Rather, jurisdiction has been exercised over operations such as large-scale casinos that are "typical commercial enterprise[s] operating in, and substantially affecting, interstate commerce," as well as "employ[ing] non-Indians" and "cater[ing] to non-Indian customers." *Ibid.*

That focus on commercial activities dovetails with the NLRA's vesting of authority in the Board to prevent unfair labor practices "affecting commerce." 29 U.S.C. 160(a); see also 29 U.S.C. 151 (declaration of federal policy in NLRA to remove "substantial obstructions to the free flow of commerce"). And, while petitioner says that "nothing in the statute authorizes the Board to draw distinctions among tribal opera-

tions," Pet. 34, the Board's exercise of discretion to decline jurisdiction is not unique to tribal employers. The Board "has never exercised its full jurisdiction" under the NLRA. *Guss* v. *Utah Labor Relations Bd.*, 353 U.S. 1, 3 (1957); see *NLRB* v. *Denver Bldg. & Const. Trades Council*, 341 U.S. 675, 684 (1951) ("[T]he Board sometimes properly declines to [assert jurisdiction], stating that the policies of the Act would not be effectuated by its assertion of jurisdiction in [a particular] case."); cf. 29 U.S.C. 164(c)(1) ("The Board, in its discretion, may, by rule of decision * * * , decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction[.]").

Specifically criticizing the Board's focus on commercial activities, petitioner asserts that this Court "has squarely rejected the notion that a tribe's 'commercial activities' are distinct from its sovereign interest in 'self-governance.'" Pet. 21 (quoting *Michigan* v. *Bay Mills Indian Community*, 134 S. Ct. 2024, 2037 (2014)). But *Bay Mills* recognized that sovereign *immunity from suit* presents a different question than whether the sovereign is subject to the substantive provisions of applicable law. 134 S. Ct. at 2034-2035 & n.6. This case involves the latter question, and Indian tribes (like States) do not enjoy sovereign immunity from suits by the United States (here, through the Board) to enforce substantive law. See *Alden* v. *Maine*, 527 U.S. 706, 755-756 (1999) (noting sovereign immunity does not bar a suit "brought by the United States itself" against a State to enforce, *inter alia*, "obligations imposed by the Constitution and by federal

statutes"—there, the Fair Labor Standards Act of 1938); *EEOC* v. *Karuk Tribe Hous. Auth.*, 260 F.3d 1071, 1075 (9th Cir. 2001). Moreover, the Board has long distinguished between commercial and noncommercial activities to limit its assertions of jurisdiction over other kinds of employers, including foreign-governmental entities and nonprofit organizations.[6] And Congress itself has distinguished between Indian tribes' governmental and commercial activities. Under ERISA, for instance, a plan for employees of an "Indian tribal government" will be considered a "governmental plan" only if "substantially all" of the employees' services as "employee[s] are in the performance of essential government functions but not in the performance of commercial activities (whether or not an essential government function)." 29 U.S.C. 1002(32).

Petitioner describes (Pet. 22) the Casino as "integral to the Tribe's sovereignty," noting that it "funds 90% of the Tribe's programs" and therefore "plays a paramount role in tribal governance." Petitioner further notes (Pet. 34) that IGRA addressed "tribal casinos at length" without indicating "that the NLRA applies to the operations sanctioned by the IGRA." It is, of course, true that tribal gaming operations "can-

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[6] In *State Bank of India*, the Board asserted jurisdiction over the commercial activities of a bank owned by a foreign government. 808 F.2d at 530-534. And in *World Evangelism, Inc.*, 248 N.L.R.B. 909 (1980), enforced, 656 F.2d 1349 (9th Cir. 1981), the Board asserted jurisdiction over a hotel and retail complex operated to fund a nonprofit religious organization. It explained that, "[a]lthough it is the Board's general *practice* to decline jurisdiction over nonprofit religious organizations, the Board does assert jurisdiction over those operations of such organizations which are, in the generally accepted sense, commercial in nature." 248 N.L.R.B. at 913-914.

not be understood as . . . wholly separate from the Tribes' core governmental functions." Pet. 34 (quoting *Bay Mills*, 134 S. Ct. at 2043 (Sotomayor, J. concurring)). But the special status of tribal gaming in this respect does not render the activities associated with operating a casino *noncommercial* in a sense that would render the NLRA inapplicable or the Board's exercise of jurisdiction improper. IGRA itself does not indicate that Congress regarded tribal gaming as exempt from non-tribal regulation. To the contrary, with respect to class III gaming, "[e]verything * * * in IGRA affords tools (for either state or federal officials) to regulate gaming on Indian lands." *Id.* at 2034 (majority opinion). And IGRA contemplates that non-gaming-related federal law will continue to apply. The Secretary of the Interior may disapprove a tribal–state compact (and thereby prevent a casino from operating) on the ground that it violates "any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands." 25 U.S.C. 2710(d)(8)(B)(ii).

c. For related reasons, petitioner's principal contention—that the Board's assertion of jurisdiction over employment practices in tribal casinos "*divest*[*s*] tribes of their inherent sovereignty," Pet. 15—is also mistaken.

There is no question that the Tribe has inherent authority to operate a casino on its lands, and to hire employees in that enterprise. Nothing in the NLRA prevents it from doing so. The NLRA simply regulates one aspect of the employment relationships that are formed in that commercial enterprise, because of their connection to commerce.

The NLRA is broadly applicable and preemptive. See *NLRB* v. *Natural Gas Util. Dist.*, 402 U.S. 600,

603-604 (1971) ("Congress had in mind no . . . patchwork plan for securing freedom of employees' organization and of collective bargaining. The [NLRA] is federal legislation, administered by a national agency, intended to solve a national problem on a national scale.") (citation omitted); see also *Chamber of Commerce of U.S.* v. *Brown*, 554 U.S. 60, 65 (2008) (describing its preemptive effects). That means it may properly be applied by the Board to regulate employment in commercial entities that tribes have chosen to establish and operate in the exercise of their inherent authority.

Contrary to petitioner's view (Pet. 15, 21-22), such federal regulations do not divest tribes of their inherent sovereign power or infringe upon that power. The Court made a directly parallel point when it held that the Railway Labor Act applied to the state-operated railroad in *California* v. *Taylor*, 353 U.S. 553 (1957). The State contended that the statute would interfere with its "'sovereign right' * * * to control its employment relationships." *Id.* at 568. The Court recognized that the State was indeed "acting in its sovereign capacity in operating [the railroad]," but explained that it "necessarily so acted in subordination to the power to regulate interstate commerce, which has been granted specifically to the national government." *Ibid.* (citation and internal quotation marks omitted). The same is true here with respect to the NLRA and tribes operating commercial enterprises.

Moreover, the Board and court of appeals in *Little River Band* correctly concluded that compliance with the NLRA in the context of commercial casino operations does not threaten tribal self-government. In *California* v. *Cabazon Band of Mission Indians*, 480

U.S. 202 (1987), the Court recognized Congress's commitment to tribal self-government and self-sufficiency, *id.* at 216-217, and held that tribal gaming operations were exempt from state jurisdiction where such gaming was regulated but not prohibited by state law. IGRA reiterates that commitment, validates gaming as a source of tribal revenues, and provides for, but specifies the degree of, *state* jurisdiction. But neither *Cabazon* nor IGRA suggests that gaming operations attracting large numbers of patrons from outside the reservation are not commercial enterprises insofar as their intrinsic operations, their role in the economy, and their relationships with patrons are concerned. Neither do they suggest that tribes' relationships with their employees must be exempt from other *federal* regulation. Federal requirements for participation in interstate commerce—including those in the NLRA—are routinely followed by viable businesses.

Cabazon held that the *State's* interest in barring the gaming operations at issue there was insufficient to outweigh "the compelling federal and tribal interests" supporting tribal gaming as a revenue source. 480 U.S. at 221-222. That holding was consistent with the general framework of federal Indian law, which protects Indian tribes from intrusion by the States. See *Oklahoma Tax Comm'n* v. *Sac & Fox Nation*, 508 U.S. 114, 123 (1993) (noting the "deeply rooted policy in our Nation's history of leaving Indians free from state jurisdiction and control") (citation and internal quotation marks omitted). Here, by contrast, petitioner claims the right not only to earn revenue through gaming, consistent with federal interests and protected from state law (except as permitted by IGRA), but also to disregard a *federal* labor law that neither regu-

lates gaming operations nor precludes gaming profits. The relationship of the United States to Indian tribes is fundamentally different from that of the States, for Congress has broad power with respect to Indian tribes as well as the regulation of commerce. See *United States* v. *Lara*, 541 U.S. 193, 200 (2004). This Court has never suggested that such tribal enterprises are categorically exempt from statutes enacted by Congress to ensure important rights and protections for employees and customers of such enterprises in the exercise of its broad power over commerce. Here, the right at issue—"the right of employees to self-organization and to select representatives of their own choosing for collective bargaining or other mutual protection without restraint or coercion by their employer"—is one this Court has described as "fundamental." *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 33 (1937).

Finally, although petitioner never endorses its reasoning, the decision below, if not bound by *Little River Band*, would have held that the Casino's actions in this case were appropriate under the Tribe's inherent power under *Montana* v. *United States*, 450 U.S. 544, 565 (1981), to "regulate * * * the activities of nonmembers who enter into consensual relations with the tribe or its members." Pet. App. 37-42. The United States, of course, agrees that Indian tribes have broad authority to regulate nonmembers' activities on tribal land. See, *e.g.*, U.S. Amicus Br. at 11-18, *Dollar Gen. Corp.* v. *Mississippi Band of Choctaw Indians*, No. 13-1496 (argued Dec. 7, 2015). And nonmembers may enter into enforceable agreements to comply with tribal law. But employees cannot, even voluntarily, prospectively waive their federal labor rights under

the NLRA. See *National Licorice Co.* v. *NLRB*, 309 U.S. 350, 364 (1940).

More fundamentally, as explained above, the NLRA does not deprive a tribe of its underlying inherent authority to enter into employment or other consensual relationships with nonmembers, or to regulate those relationships. Indeed, tribal regulation of employment and other commercial relationships can be an important area of cooperation by tribes with federal enforcement agencies in the exercise of the tribes' sovereign power, just as it can be for the States. But if an aspect of those consensual relationships or a tribe's regulation of them is inconsistent with the NLRA, federal law must prevail, just as it prevails over state law under the Supremacy Clause when the two are in conflict.

3. With respect to the second question presented, petitioner contends (Pet. 25-30) that, whether or not the Board may as a general matter exercise jurisdiction over tribes as employers in commercial enterprises, it is barred from exercising jurisdiction here by the Tribe's treaty-based right to "exclusive use, ownership, and occupancy" of its reservation. In petitioner's view, the NLRA lacks a "'clear and plain' congressional intent 'to abrogate Indian treaty rights.'" Pet. 28 (quoting *Dion*, 476 U.S. at 738). But as the court of appeals explained, the first step in determining whether a tribe's treaty right bars application of a federal law is to determine "the scope of the rights" reserved by the particular treaty. Pet. App. 14. Only then does the question arise as to whether any abrogation of those rights was sufficiently clear. *Id.* at 15. Here, the court of appeals correctly found that, because the Tribe does not have any specific treaty right that di-

rectly conflicts with the NLRA, application of the statute does not abrogate any treaty right. *Id.* at 19-24.

The 1855 treaty with the Tribe's predecessor provided that the United States would "withdraw [certain lands] from sale, for the benefit of said Indians." Pet. App. 111. The 1864 treaty set lands aside for the "exclusive use, ownership, and occupancy" of the Tribe's predecessor. *Id.* at 121. It is undisputed that, as the court of appeals determined, the language of those treaties, construed in light of canons of treaty construction, reserves to the Tribe a general right of exclusion. *Id.* at 23. But, as the court further explained, the treaties do not specify any requirements petitioner may impose upon agents of the federal government enforcing federal law, or identify specific types of activities the Tribe may control as a condition of entry onto lands reserved to the Tribe. *Ibid.*

The decision below correctly recognized that the treaties here are distinguishable from those which have been held to exempt Indian tribes from generally applicable federal laws. Thus, the treaty at issue in *Navajo Forest Products* set forth a specific right to exclude certain federal employees from Navajo lands. 692 F.2d at 711.[7] Here, by contrast, the general right

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[7] In *Winstar World Casino*, the Board declined jurisdiction over the Chickasaw Nation based on specific treaty language "forever secur[ing the tribe] from, and against, all laws * * * except such as may, and which have been enacted by Congress, to the extent that Congress under the Constitution are required to exercise a legislation over Indian Affairs." 362 N.L.R.B. No. 109, 2015 WL 3526096, at *2 (June 4, 2015) (citation omitted). The Board found that application of the NLRA would abrogate the Chickasaw Nation's treaty rights because the NLRA "is not a law enacted by Congress in legislation specific to Indian Affairs" and contains no

of exclusion in the treaty that draws from the Tribe's right of "exclusive use, ownership, and occupancy" of the reservation (Pet. App. 121) is analogous to, and essentially the same as, the *inherent* right of exclusion that all tribes have with respect to their reservation lands. The courts of appeals that have considered such a general right to exclude or set conditions on non-members' entry have concluded that it does not preclude the application of a federal statute. See *U.S. Dep't of Labor*, 935 F.2d at 185-187; *Smart*, 868 F.2d at 934-935. Petitioner operates a casino, a large commercial enterprise that is open to the general public from outside its reservation, and it has hired thousands of employees to work there. In these circumstances, the Tribe's right of "exclusive use, ownership, and occupancy" of the reservation cannot be understood to bar the application of an otherwise-applicable federal law regulating employment in such an enterprise affecting commerce, or the entry of federal officers, if necessary, to enforce that law.

Petitioner notes (Pet. 27-28) that the Tribe's predecessor "successfully removed an unscrupulous missionary and a federal agent from its reservation in the 1800s." But the federal agent was apparently removed because of his "involve[ment] in land fraud," Pet. App. 77, rather than activities to enforce federal laws on the reservation. And there is no suggestion that the agent or the missionary had been granted rights or authority under federal law that were obstructed by their exclusions. That contrasts with petitioner's discharge of a housekeeper who was exercising a "fundamental right" under the NLRA to engage in "self-organization,"

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clear congressional intent to abrogate the Nation's treaty right to be "secure" from such laws. *Id.* at *4.

Jones & Laughlin Steel, 301 U.S. at 33—a right that she could not even have waived as a condition on her entering the Tribe's reservation, *National Licorice*, 309 U.S. at 364.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General

RICHARD F. GRIFFIN, JR.
General Counsel
JENNIFER ABRUZZO
Deputy General Counsel
JOHN H. FERGUSON
Associate General Counsel
LINDA DREEBEN
Deputy Associate General Counsel
MEREDITH JASON
Deputy Assistant General Counsel
KIRA DELLINGER VOL
Supervisory Attorney
National Labor Relations Board

MAY 2016

THE SECRETARY OF THE INTERIOR
WASHINGTON

MAY 04 2015

Memorandum

To: All Department of the Interior Employees

From: Secretary Sally Jewell

Subject: Public Service Recognition Week – May 3-9, 2015

The President and Congress have set aside the first full week of May as Public Service Recognition Week. It is a time to honor the work you do, day in and day out, as Federal Government employees.

On May 7, it will be my privilege to present awards at the 70th Honors Convocation of the Department of the Interior. The Convocation honors the employees who have made outstanding contributions to the mission of the Department. These employees have given us extraordinary examples of hard work, persistence, innovation, and courage.

I want to thank all of you for the work you do every day on behalf of our Nation. Your devotion to public service is an inspiration and I am proud to serve with each of you.

TOPLINE MESSAGES

IZEMBEK

- **I visited the communities of King Cove and Cold Bay** in September 2013
- Record of Decision issued in December 2013 following **4-year analysis**
- We held **over 130 meetings with stakeholders, government-to-government consultations**, and numerous trips to King Cove by Service and Interior officials
- I don't plan on revisiting the ROD, but I **remain committed to working with other agencies and stakeholders** to explore possibilities for improved transportation

ANWR CCP

- One of the most spectacular, wild places on the planet
- **Eisenhower acted in 1960** to protect whole ecosystem
- **Proud to work for President** who is taking steps to protect for future generations
- **Right places to develop – and places too special to drill**
- Reminder – there's **no current development**
- Appreciate **only Congress can drill, designate wilderness**
- CCP maintains **'minimal management'** approach

5-YEAR DRAFT PROPOSED PLAN

- **Early step** in multi-year process, comments will shape next proposal
- Over a **half-million comments** informed draft proposal
- Look forward to **robust dialogue** with tribes, stakeholders, states, industry
- Proposal **strikes balanced, thoughtful approach**
- **90 percent of undiscovered technically recoverable** resources in Arctic
- Protects places too special to drill
- **3 proposed sales offshore Alaska**– consistent with current plan
- **Sets aside 5 discrete areas** to avoid impacts to key subsistence areas -- and critical wildlife habitat
    - **4 had been deferred** in previous plans and urged by local communities and subsistence users
    - **Hanna Shoal is well-known ecological hot spot** and important for maintaining subsistence resources

NATIONAL PETROLEUM RESERVE-ALASKA (NPR-A)

- President called for **aggressive annual lease sales**
- **72% of technically and economically recoverable** oil and gas resources
- **207 authorized leases** cover more than **1.73 million acres**

LEASE SALE 193 FSEIS

- FSEIS was released on **Thursday, February 12**
- **Moves the Department one step closer** to resolving the 2008 oil and gas leases
- Remain committed to taking a **thoughtful and balanced approach** to oil and gas leasing and exploration in this unique, sensitive and often challenging environment
- Will make final decision, consistent with **court's end of March timeframe**
- If lease sale goes forward, development will be held to high environmental/safety standards

GREATER MOOSES TOOTH RECORD OF DECISION

- Record of Decision was released on **Friday, February 13**
- **First production of oil and gas from federal lands** in the 23-million acre National Petroleum Reserve-Alaska (NPR-A)
- Robust public involvement
- ConocoPhillips agreed to **a suite of strong mitigation efforts**

LAND INTO TRUST PROGRAM FOR ALASKA

- Placing **land into trust** is **one of the Administration's top priorities**
- Helps **promote tribal sovereignty**
- To date, we have **placed over 280,000 acres into trust**
- Land into trust process includes opportunities **for state and local input before any final decision is made**
    - Tribes must own the land before it can be placed into trust
    - Placing land into trust will not impact existing rights-of-way or the rights of subsurface owners (the surface estate is subservient to the subsurface estate)
    - No decision can be made until Akiachak litigation is resolved but two blue-ribbon commissions and recommended that the Dept change the land into trust reg. to include AK tribes

MT MCKINLEY/MT DENALI

- Official name of the mountain is Mt. McKinley
- Denali is the mountain's original native Alaskan name ('the high one')
    - Denali is also the official state of AK name for the mountain
- Until Congress passes a law changing the name, it will remain Mt. McKinley
- National Park Service has not taken a position, acknowledging the decision sits with Congress

Izembek National Wildlife Refuge Land Exchange /Road Corridor
Questions and Answers

Q: Several lawsuits have been filed challenging your decision. How do you react?
A: I have no comment on litigation

Q: Senator Murkowski last July asked you to reconsider the Record of Decision. Do you plan on reopening the ROD?
A: As I responded to the Senator last August, I do not plan on reconsidering my decisions but I did commit to having my staff continuing to work with other agencies and stakeholders to explore possibilities for improved transportation between King Cove and Cold Bay. I remain committed to evaluating other transportation options.

Q: Senator Murkowski says you haven't done single thing to help the residents of King Cove since you rejected the road. Is that true?
A: Of course not. My team has been working with other agencies and stakeholders to explore possibilities for improved transportation between King Cove and Cold Bay. We'll continue to seek safe and reliable options for the community.

Q: Former Secretary Salazar's memorandum requests the Secretary of the Interior hold an official meeting in King Cove and receive written and oral testimony on the medical evaluation benefits of the proposed road. Jewell completed the visit in early September but what information did she learn from the testimony on the medical evaluation benefits of the proposed road and where can I find that?

I'd refer you to the transcript of the government to government consultation hosted by the Assistant Secretary for Indian Affairs Kevin Washburn for additional information on the medical evaluation concerns and identified alternatives.

Q: Senator Murkowski says that if the environmental review process doesn't allow for valuing the health and safety of a community, it is then irrevocably broken. How do you respond?

The Department has followed the provisions of the law and I'd refer you to the Record of Decision for further explanation of the environmental review process.

Q: The King Cove City Manager has said that he believes a road would be navigable at least 90% of the time - enough to save lives and improve the quality of life for King Cove residents. He says it's one of the few places in rural Alaska where a transportation issue can be solved. Did you consult with any transportation professionals about this decision to rule out the statement of the King Cove City Manager?

I'd refer you to the analysis performed in the Final Environmental Impact Statement and further in the Record of Decision for further explanation.

Q: You state that the areas within a proposed land exchange wouldn't meet the habitat values of the area within the proposed road corridors – further saying that they do not compensate for the effects that locating a road within Izembek would have on wildlife, habitat and wilderness values. What have you considered to make such a values judgment on these lands?

I'd refer you to the Final Environmental Impact Statement and further, the Record of Decision for further explanation on the identified values of wilderness lands, like Izembek.

Q: Senator Murkowski stated during the nomination hearing of Rhea Suh to be the Assistant Secretary for Wildlife, Fish, Parks that it would be a contradiction of terms to issue a decision rejecting a road through Izembek while also permitting the killing of golden and bald eagles at wind farms across the country. How do you respond?

This is an entirely separate issue from the U.S. Fish and Wildlife Service 30-year take rule and has been given due consideration and analysis for decision, just as the rule for eagle take was given its own, independent review and consideration.

In this case, additional medical evacuation alternatives have been discussed for the sake of the King Cove community and the Department is committed to assisting in identify and evaluating those options to improve access to affordable transportation and health care for this remote Alaskan community.

Q: What are the wildlife values at Izembek National Wildlife Refuge?
A: Izembek National Wildlife Refuge is the smallest and one of the most ecologically unique of Alaska's refuges. Most of the refuge is designated wilderness and home to a diverse array of wildlife species including five species of salmon; furbearers such as wolf, fox and wolverine; and large mammals such as caribou and brown bear. The refuge provides important habitat for Pacific black brant, tundra swans, emperor geese, Steller's eiders, and a myriad of ducks. The refuge also provides a stop-over area during migration for thousands of shorebirds. Seabirds also use the refuge.

Q: Why did the Service choose Alternative 1, the no action alternative, as the preferred alternative?
A: This alternative was selected because it is believed to best meet refuge purposes and the Service mission. While the proposed land exchange would provide many more acres of land as part of the Refuge System, the habitat values of these lands do not compare with the habitat values of the areas within the proposed road corridors and do not compensate for the effects that locating a road within the Izembek Wilderness would have on wildlife, habitat, and wilderness values of the refuge.

The Izembek Refuge and Alaska Peninsula Refuge would receive over 55,000 acres offered by the State and King Cove Corporation in exchange for de-designating approximately 200 acres of Izembek Refuge Wilderness and transferring it to the State of Alaska for road construction. While the more than 55,000 acres offered contain important wildlife habitat, they do not provide the wildlife diversity of the internationally recognized wetland habitat within the refuge acreage of the Izembek isthmus. Simply exchanging lands will not compensate for the ripple effects on habitat and wildlife due to uses on and beyond the road, nor would new lands provide habitat for all the same species. State lands and private lands adjacent to the refuge to be traded to the Service are under no foreseeable threat. While adding them to the National Wildlife Refuge System should insure long-term protection; this would not compensate for the adverse effects of removing a corridor of land and constructing a road within the narrow Izembek isthmus.

The road is proposed to connect the communities of King Cove and Cold Bay to provide King Cove residents access to emergency medical and other services via the all-weather airport at Cold Bay. To address this same concern, the 1997 King Cove Health and Safety Act authorized funding for a marine link between the communities and improvements to King Cove's air strip and medical clinic. Congress recognized that these funds were to provide emergency health and safety needs in the community as an alternative to a road through the Izembek Refuge and Izembek Wilderness. In 1998 Congress appropriated $37.5 million for these improvements to: 1) upgrade the medical clinic, 2) improve the King Cove airstrip, and 3) create a transportation link between King Cove and Cold Bay via a single lane, unpaved road from King Cove to a $10 million hovercraft and terminal. Facilities were constructed and a hovercraft operated between the communities from 2007 to 2010. During that time, the hovercraft successfully completed every medical evacuation asked of it.

Hovercraft service provided by the Aleutians East Borough was suspended in November 2010. In November 2011 the Aleutians East Borough announced that hovercraft service would not resume. Since operations began in 2007, the Aleutians East Borough stated that there were issues with operability and reliable service from Lenard Harbor. Revenue generated by operations did not meet initial projections. The Aleutian East Borough reported the hovercraft lost $1 million annually when operating three days a week and that they did not plan to operate it again. The Aleutians East Borough determined that it could not sustain these costs. With no further hovercraft service planned for the community of King Cove, the hovercraft was modified and transferred to Akutan in the Aleutian Islands in 2012 where it is providing a transportation link between the City of Akutan and the Akutan Airport on Akun Island.

In a February 24, 2012 letter to the U.S. Army Corps of Engineers, the Aleutians East Borough stated it is exploring an aluminum landing craft/passenger ferry to provide a marine-road link between the communities of King Cove and Cold Bay if a land exchange and road corridor is not approved. This letter stated that "It is the fervent hope" of the Aleutians East Borough, the City of King Cove, the King Cove Corporation and the Agdaagux and Belkofski Tribes that the Secretary of the Interior will approve the land exchange. If the Secretary does not approve the land exchange, the Aleutians East Borough "will develop an alternative transportation link between King Cove and Cold Bay. Any alternative we develop will include the utilization of the road to Northeast Corner and associated facilities, now being constructed under the King Cove Health and Safety Act.

A transportation link the Borough is exploring (and we believe holds promise) is an aluminum landing craft/passenger ferry." The Borough hopes that this type of a transportation link could be more technically and financially viable than a hovercraft.

Thus, a landing craft or other ferry or the hovercraft are potential means of providing emergency access; the economic choices relative to use of these vessels for providing access are the purview of the Aleutians East Borough.

Revised Comprehensive Conservation Plan and Wilderness Review
for Arctic National Wildlife Refuge
Questions and Answers

Q: What action was announced?
The President announced that his Administration is moving to protect the Arctic National Wildlife Refuge in Alaska. The Department of the Interior is releasing a conservation plan for the Refuge that for the first time recommends additional protections, and President Obama announced he will make an official recommendation to Congress to designate core areas of the refuge – including its Coastal Plain – as wilderness, the highest level of protection available to public lands. If Congress chooses to act, it would be the largest ever wilderness designation since Congress passed the visionary Wilderness Act over 50 years ago.

The 12.28 million acres include the Coastal Plain, and the four rivers are: the Atigun, Hulahula, Kongakut, and Marsh Fork Canning.

Q: What are the next steps?
The U.S. Fish and Wildlife Service is releasing the revised comprehensive conservation plan and final environmental impact statement (EIS) for the Arctic National Wildlife Refuge. While the Service is not soliciting further public comment on the revised plan/EIS, it will be available to the public for review for 30 days. The record of decision will be signed and published after the final EIS review period. At that point, the Secretary intends to recommend, and President intends to make, a formal Wilderness recommendation to Congress.

Q: Why can't the President make the refuge Wilderness on his own?
Only Congress has the authority to designate Wilderness areas and Wild and Scenic Rivers. Recommendations for Wilderness or Wild and Scenic River designations are made by the Service Director to the Secretary of the Interior, who makes her recommendation to the President.

Q: Why would the President make this recommendation?
Wilderness offers the highest level of protection available to public lands. The purposes of congressionally designated Wilderness are to: a) protect and preserve the wilderness character of areas within the National Wilderness Preservation System; and b) administer the system for the use and enjoyment of the American people in a way that will leave these areas unimpaired for future use and enjoyment as Wilderness.

Currently over 7 million acres of the refuge are managed as Wilderness, consistent with the Alaska National Interest Lands Conservation Act of 1980. However, over 60 percent of the refuge – including the Coastal Plain – does not carry that designation.

Q: What is the significance of this action?
The Department of the Interior has not taken a formal position on the management of the Arctic National Wildlife Refuge since 1987. At that time, the Reagan Administration issued a report to Congress recommending that the Refuge be open to fossil fuel exploration. Should the Record of Decision adopt the Service's preferred alternative, the administrative position will be reversed for the first time in nearly three decades, recognizing that oil and gas development is inconsistent with the wilderness characteristics of the Refuge.

Q: How will today's action impact oil and gas development in the Refuge?
President Obama is confirming a position he's consistently held: that the Arctic National Wildlife Refuge should remain off limits to oil and gas development.
Management on the refuge will not change as the Arctic Refuge is currently closed to fossil fuel production. Consistent with Section 1003 of the Alaska National Interest Lands Conservation Act of 1980, oil and gas development is prohibited on the Refuge. Only Congress can decide to open up oil development on the Arctic Refuge.

Designation as Wilderness would provide another level of protection for the refuge.

Q. How much oil and gas is available in the Refuge?
The USGS mean estimate of technically recoverable oil from the Arctic Refuge Coastal Plain region – though still unproven – is approximately 10.4 billion barrels. According to the latest EIA data, the U.S. consumes about 6.9 billion barrels of oil in a year.

Q: What is the Arctic National Wildlife Refuge?
The Arctic National Wildlife Range was established in 1960 as a promise to the American people to preserve unique wildlife, wilderness and recreational values. In 1980, the Alaska National Interest Lands Conservation Act (ANILCA) re-designated the Range as part of the Arctic National Wildlife Refuge, and provided four purposes that guide management of the entire Refuge: to conserve animals and plants in their natural diversity, ensure a place for hunting and gathering activities, protect water quality and quantity, and fulfill international wildlife treaty obligations.

North to south, the Refuge extends 200 miles–from the Arctic coast, across the tundra plain, over the glacier-capped peaks of the Brooks Range, and into the spruce and birch boreal forests of the Yukon River basin. More than 160 rivers and streams flow through the refuge.

The 19.8 million-acre Arctic National Wildlife Refuge is home to the most diverse wildlife in the arctic, including caribou; grizzly, polar and black bears; gray wolves and muskoxen. More than 200 species of birds, 37 land mammal species, eight marine mammal species and 42 species of fish call the vast refuge home. Lagoons, beaches, saltmarshes, tundra and forests make up the remote and undisturbed wild area that spans five distinct ecological regions.

The refuge holds special meaning to Alaska Natives, having sustained their lives and culture for thousands of years. The Gwich'in people refer to the Coastal Plain of the refuge as "The Sacred Place Where Life Begins," reflecting the area's importance to their community, maintaining healthy herds of caribou and an abundance of other wildlife.

Q: Will this make the entire Refuge Wilderness?
Currently, over 7 million acres are designated as Wilderness, consistent with ANILCA. If Congress implements the President's recommendation, an additional 12.28 million acres will be designated as Wilderness, or nearly 98 percent.

About 49,000 acres of refuge-managed land is not proposed for Wilderness due to proximity to the Alaska native villages of Kaktovik (10,000 acres) and Arctic Village (39,000 acres).

Q: What is the purpose of a comprehensive conservation plan?
A comprehensive conservation plan (CCP) is a required planning document that provides long-range guidance and management direction for a national wildlife refuge. Development and revision of CCPs for national wildlife refuges in Alaska are governed by the Alaska National Interest Lands Conservation Act (ANILCA) and the National Wildlife Refuge System Administration Act. The U.S. Fish and Wildlife Service policy states, "We will revise the CCP every 15 years thereafter…." The existing CCP for Arctic National Wildlife Refuge was signed on September 12, 1988.

Q: What was the process to revise the CCP?
The planning process began in spring of 2010 when refuge staff initiated public discussions about issues and future goals for stewardship of the Arctic Refuge. The Service received comments from the public via email, the web and mail, and from meetings in Washington D.C., and several communities in Alaska, including Anchorage, Arctic Village, Barrow, Fairbanks, Fort Yukon, Kaktovik and Venetie.

The Service released the draft of the Revised CCP and Environmental Impact Statement (EIS) for public review and comment on August 15, 2011. During the 90-day public review period, the Service received over 612,000 public comments and held public meetings and hearings in Anchorage, Arctic Village, Fairbanks, Fort Yukon, Kaktovik, and Venetie. The Service analyzed the comments received; prepared responses to substantive comments; made changes to the draft of the document based on the comments, and issued this Revised CCP and Final EIS.

Q: Why did it take so long to issue the Revised CCP and Final EIS?
The Service and the Department of the Interior wanted to ensure that the final EIS fully analyzed and reflected the unprecedented amount of public comment. We have considered all public comments and have incorporated them in various ways, such as in the different alternatives addressed in the Revised CCP/Final EIS. Volume 3 of the Revised CCP/Final EIS contains the Service's responses to substantive comments, and Volume 4 contains full text samples of some of the communications we received.

Q: Which alternative was selected as the preferred alternative?
The Service believes that management under Alternative E will best meet the purposes of the Refuge and of the National Wildlife Refuge System. Alternative E recommends nearly 12.28 million acres for inclusion in the National Wilderness Preservation System, recommends four rivers for inclusion in the National Wild and Scenic Rivers System, and establishes a variety of interim management measures for visitor use on the Kongakut River until a refuge-wide Visitor Use Management Plan is completed and implemented. Alternative E addresses key issues and concerns identified during the planning process and will best achieve the purposes of the Refuge as well as the mission of the National Wildlife Refuge System. Alternative E adopts the management goals and objectives and revised management policies and guidelines (Chapter 2). Service implementation of Alternative E will occur over the next 15 to 20 years.

The Revised CCP/Final EIS addresses a variety of needs, including protection of fish and wildlife populations and their habitats, and providing opportunities for fish-and wildlife-dependent recreation, subsistence, and other public uses. Alternative E contributes significantly to achieving Refuge purposes and goals. Alternative E also strengthens the monitoring of fish, wildlife, habitat, and public uses on the Refuge to provide means to better respond to changing conditions in the surrounding landscape.

Q: How does this relate to the pending litigation with the State of Alaska?
The State of Alaska has submitted a new plan for oil and gas exploration on the coastal plain and filed a lawsuit challenging the FWS position that ANILCA Section 1002 and its 1983 implementing regulations do not authorize new seismic exploration of the coastal plain. In motions argued on January 20, 2015, the FWS maintains its position since the Reagan Administration that ANILCA only authorized a limited exploration program that ended with a 1987 Report to Congress.

Q: Do the wilderness and wild river reviews violate the "no more" clause of ANILCA?
ANILCA Section 1326(b) states "No further studies of federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation areas or for related or similar purposes shall be conducted unless authorized by this Act or further Act of Congress." ANILCA Section 102(4) defines conservation system units (CSU) to include Wilderness areas.

The CCP revision process is a broad-based planning effort; not studies for the "single purpose of establishment of a conservation system unit." A wilderness review and a wild and scenic river review conducted in conjunction with a CCP revision is consistent with ANILCA planning provisions (specifically, ANILCA Sections 304(g) (1) and 304(g) (2) (B)) and NEPA, and does not require Congressional authorization.

Q: What impact will Wilderness designation have on predator management on the Refuge?
The Arctic Refuge's purposes recognize that all native species are integral parts of the refuge. Management will allow native fish and wildlife populations to continue without control or manipulation, a policy that would only be changed in the face of management emergencies. Wilderness designation would not change these management guidelines.

Q: Will the CCP change hunting and fishing or subsistence rules?
No. The CCP will not change state sport or federal subsistence hunting, trapping, and fishing regulations.

Q: How would Wilderness designation affect subsistence access to the refuge? Could local residents still use snow machines and other motorized access for subsistence uses?
Wilderness designation would not change federal subsistence harvest regulations. Use of snow machines, motorboats and other surface means of access traditionally used for subsistence would not be affected by Wilderness designation.

Q: What is the extent of public use, subsistence and recreation on the Arctic Refuge?
Specific use of the refuge varies from year to year based upon many factors. Approximately 1,000 visitors a year participate in recreational pursuits such as river floating, hiking, backpacking, and hunting.

Residents of six communities (Arctic Village, Chalkyitsik, Fort Yukon, Kaktovik, Venetie and Wiseman) use the refuge for subsistence purposes. The total amount of subsistence use of the refuge is not well documented, but residents of these communities are known to harvest migratory birds, land mammals, fish, marine mammals, fur bearers and other resources on or near the refuge.

Q: Are all areas of Arctic Refuge not currently designated as Wilderness considered in the wilderness review?
Yes. The refuge conducted wilderness reviews for all three Wilderness Study Areas, which encompass all non-Wilderness refuge lands. As noted above, lands around communities were determined to be not qualified or suitable for Wilderness designation. A review of any Wilderness Study Area can only result in a recommendation to designate or not designate. Should there be a recommendation to designate, the area can only be designated Wilderness through an act of Congress.

Q: If Congress doesn't Act, how will it affect Refuge management?
The Service manages recommended Wilderness in a way that protects the Wilderness character of the area. In the case of the Arctic Refuge, areas recommended for Wilderness designation will continue to be managed under minimal management, as defined in the Revised CCP and Final EIS. Refuge uses and on-the-ground management would not incur substantial changes. The legal requirements of the Wilderness Act do not apply until Congress makes a formal designation.

Q: Is a wild and scenic river review part of the CCP revision process?
Yes. The process of analyzing a wild and scenic river designation is a part of our planning procedure. The Service inventoried, studied, and determined that four of the refuge's rivers are suitable for inclusion in the National Wild and Scenic Rivers System. The Preferred Alternative recommends that four rivers be designated as wild and scenic rivers. Designation of a wild and scenic river requires an act of Congress.

Q: What other management issues are examined or proposed in the Revised CCP and Final EIS?
Among the other issues addressed in the Revised CCP/Final EIS are: visitor use patterns for the Kongakut River, the impacts of climate change, fire management regimes, water issues, and the removal of administrative buildings. The plan also contains a vision statement, goals, and objectives for Refuge management. The goals are broad statements of desired future conditions, and the objectives identify specific management activities the Refuge plans to undertake to implement the Revised CCP/Final EIS.

Proposed 5-Year Program for Offshore Oil and Gas Leasing
Questions and Answers

Q: How do you respond to accusations that this new Draft Proposed Plan takes too much off the table for offshore Alaska?
A: The reality is this Draft Proposed Plan is rather consistent with the current Five-Year Program. More than 118 million acres in the Beaufort and Chukchi Seas would be open to oil and gas drilling. These areas are estimated to contain 21.54 billion barrels of undiscovered technically recoverable oil. The Administration has proposed permanently withdrawing 9.8 million acres of sensitive areas from consideration for future drilling – less than 8% of the Arctic OCS.

The DPP continues our careful approach using targeted leasing, recognizing the unique environmental and social concerns of development in the Arctic. The DPP proposes 3 lease sales -- in the Chukchi, Beaufort and Cook Inlet. It sets aside 5 discrete areas to avoid impacts to key subsistence areas and critical wildlife habitat. Four of these areas had been deferred in previous plans and urged by local communities and subsistence users. A fifth, Hanna Shoal, is a well-known ecological hot spot and important for subsistence resources.

Q: What is the Draft Proposed Program?
A: The Draft Proposed Program (DPP) is the second stage of a five-stage process to develop the 2017-2022 Oil and Gas Leasing Program. The Outer Continental Shelf Lands Act (OCSLA) requires BOEM to propose a schedule of lease sales every five years. This is referred to as the "Oil and Gas Leasing Program" or the "Five Year Program." Preparation and approval of an Oil and Gas Leasing Program is based on the Secretary of the Interior's balancing of factors specified by Section 18 of the OCSLA to determine the size, timing, and location of lease sales. The DPP decision document lays out a proposed schedule of potential lease sales and is the first of three proposals to be issued for public review before a new Oil and Gas Leasing Program may be approved.

Q: What does the Draft Proposed Program authorize?
A: The Draft Proposed Program (DPP) itself does not authorize anything. It is the first of three proposals required by Section 18 of the Outer Continental Shelf Lands Act (OCSLA) to create the Oil and Gas Leasing Program. The DPP is followed by a further refined Proposed Program, which in turn is followed by the Proposed Final Program and, not earlier than 60 days thereafter, an approved program. Each of these steps is mandated by the OCSLA.

The DPP decision document examines all 26 of the planning areas pursuant to the eight factors set forth in Section 18 of OCSLA. Only those areas and options that the Secretary decides are appropriate to include in the DPP decision will be further analyzed in preparing the Proposed Program.

Q: What areas and proposed lease sales are included in the 2017-2022 Draft Proposed Program?
A: The Draft Proposed Program includes eight planning areas—three in the Gulf of Mexico, two in the Atlantic, and three in Alaska—and nearly 80% of estimated undiscovered technically available oil and gas resources on the U.S. Outer Continental Shelf. The DPP schedules 14 potential lease sales in those areas for the 2017–2022 period in eight program areas – 10 sales in the Gulf of Mexico, one in the Atlantic (which would cover portions of two planning areas) and three off the coast of Alaska.

Q: Are some areas off-limits for potential oil and gas?
A: Through the enactment of the Gulf of Mexico Energy Security Act of 2006 (GOMESA), Congress, through June 30, 2022, placed off-limits to Outer Continental Shelf (OCS) oil and gas leasing, activities in the Eastern Gulf of Mexico within 125 miles of Florida; all of the Eastern Gulf of Mexico east of 86 degrees, 41 minutes West longitude; and a portion of the Central Gulf of Mexico within 100 miles of Florida.

Pursuant to Section 12 of the OCS Lands Act, on December 16, 2014, President Obama withdrew the North Aleutian Basin (including Bristol Bay) in Alaska, for a time period without a specific expiration, from consideration of leasing for the purposes of exploration, development, or production. On January 27, 2015, President Obama also withdrew portions of the Beaufort and Chukchi Seas in the Alaskan Arctic from oil and gas leasing, for a period without specific expiration, to protect areas of importance to subsistence use by Alaska Natives, as well as for their sensitive environmental resources. In particular, those areas include three areas of the Chukchi Sea (a 25-mile buffer area along the coast, an additional subsistence use area near Barrow, and Hanna Shoal) and two areas of the Beaufort Sea (the subsistence whaling areas near Barrow and Kaktovik).

Similarly, all National Marine Sanctuaries were withdrawn, for a time period without a specific expiration, by President Clinton, on June 12, 1998. There are also 17 additional planning areas that the Secretary chose not to include in the DPP.

Q: How much energy does the Outer Continental Shelf provide our nation?
A: The Outer Continental Shelf currently provides about 18% of domestic oil production and about 5% of domestic natural gas production. In 2013, production on the U.S. Federal OCS provided 480 million barrels of oil and 1.4 trillion cubic feet of natural gas, the equivalent of the energy needed to power about 114 million U.S. households for one year.

ARCTIC DRILLING

Q: What is being proposed in the Arctic?
A: There are 3 lease sales proposed in the 2017–2022 Program off the coast of Alaska. In Alaska, the Draft Proposed Program continues the targeted leasing strategy set forth in the current Program by identifying 1 sale each in portions of the Beaufort Sea (Sale 255), Cook Inlet (Sale 258), and Chukchi Sea (Sale 262) Planning Areas.

Q: What is different for the Arctic in this Program?
A: The proposed lease sales for the 2017–2022 Program in the Arctic are similar to those included in the 2012–2017 Program.

Q: Will any lease sales proposed for the Arctic region be late in the program as they were last time?
A: Potential sales in the 3 Alaska program areas are scheduled late in the five-year period to provide additional opportunity to evaluate and obtain information regarding environmental issues, subsistence use needs, infrastructure capabilities, and results from any exploration activity associated with existing leases. A Beaufort Sea Sale 255 is proposed for 2020, a Cook Inlet Sale 258 is proposed for 2021, and a Chukchi Sea Sale 262 is proposed for 2022.

Q: What areas are withdrawn from leasing in the Alaska OCS?
A: On January 27, 2015, pursuant to Section 12 of the OCS Lands Act, President Obama withdrew portions of the Beaufort and Chukchi Seas in the Alaskan Arctic from oil and gas leasing, for a period without specific expiration, to protect areas of importance to subsistence use by Alaska Natives, as well as for their sensitive environmental resources.

In particular, those areas include three areas of the Chukchi Sea (a 25-mile buffer area along the coast, an additional subsistence use area near Barrow, and Hanna Shoal) and two areas of the Beaufort Sea (the subsistence whaling areas near Barrow and Kaktovik).

Q: How will the Arctic standards affect this Draft Proposed Program?
A: BOEM and BSEE are cooperatively developing new Arctic regulations to codify and enhance existing protective measures for exploratory drilling and related operations in the unique environment of the Arctic region. Among other things, the rule will cover overall exploratory drilling operations in ice and adverse weather conditions. The rule is expected to be released in the near future.

Q: BOEM just released the FSEIS for Lease Sale 193. Will Shell and other companies be allowed to do seismic surveys and other ancillary activities on these leases, despite the suspension?

A: Yes -- the terms of the court order specifically allow for ancillary activities (e.g., geological, geophysical, geotechnical, archaeological, biological and oceanographic surveys).

Q: What is the timeline for resolving the court concerns with Lease Sale 193?

A: BOEM issued the Final SEIS last week and we expect to complete a Record of Decision in March 2015.

Withdrawal of Certain Areas of the Chukchi and Beaufort Seas

Q: What action is the President taking?
President Obama is withdrawing certain areas in the Alaskan Arctic from consideration for oil and gas leasing in federal waters. In particular, those areas include three areas of the Chukchi Sea (a 25-mile buffer area along the coast, an additional subsistence use area near Barrow, and Hanna Shoal) and two areas of the Beaufort Sea (the subsistence whaling areas near Barrow and Kaktovik).
With the exception of Hanna Shoal, each of these areas are excluded from leasing in the current five year OCS leasing plan. This withdrawal would require Presidential or Congressional action to change it. The action is rooted in section 12(a) of the Outer Continental Shelf Land Act of 1953, which gives the President broad authority to withdraw federal offshore areas from potential oil and gas leasing. 43 U.S.C. § 1341(a).

Q: Why is it important to protect these areas from oil and gas development?
Four of the five areas being withdrawn were previously excluded from leasing in the 2012-2017 5-Year Program due to their critical importance to subsistence use by Alaskan Natives and high ecological value. These areas include the 25-mile buffer along the coast of the Chukchi Sea, an additional subsistence use area in the Chukchi Sea near Barrow, and two subsistence whaling areas in the Beaufort Sea near Barrow and Kaktovik. The last of the five areas being withdrawn is Hanna Shoal, which is a shallow, 30-mile wide area of the Chukchi Sea off the northwestern coast of Alaska. The Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) have identified Hanna Shoal as an area of biological significance for several marine mammal species, including walruses and bearded seals. In terms of the specific significance of each of the five areas being withdrawn:

- Chukchi Sea Coastal Buffer Withdrawal: The withdrawal area provides protection for subsistence hunting areas for the communities of Point Hope, Point Lay, Wainwright, and Barrow. The Chukchi Sea coastline serves as an essential corridor for marine mammals including bowhead whales, gray whales, Pacific walrus and seals. It is also known as a global hotspot for several bird species including yellow-billed and red-throated loons, Steller's and king eiders, and others.
- Chukchi Sea Subsistence Withdrawal: The withdrawal area is an important area for bowhead whale migration and related subsistence activities. As an extension of the coast buffer, it allows for subsistence use of areas essential to native communities along the Chukchi coast without the potential use conflicts from new leases.

- Hanna Shoal Withdrawal in the Chukchi Sea: The withdrawal area is a shallow area defined by a 40-meter depth contour that is one of the most biologically productive regions in the Chukchi Sea. Due to its shallow waters, sea ice lasts longer into the summer months, making it one of the most reliable places for ice on the Chukchi shelf and in turn, a critical resting spot between foraging and hunting for many species. It is known as an important feeding area for walrus, bowhead whales, bearded seals, and sea and marine birds, and a northern migration corridor for species such as the bowhead whale and Steller's eiders. Barrow Whaling Withdrawal in the Beaufort Sea: The withdrawal area is important for subsistence activities for local Alaska Natives. Together with the Chukchi Sea Subsistence Withdrawal, it allows for subsistence activities directly offshore Point Barrow without the potential use conflicts from new leases.
- Kaktovik Whaling Withdrawal in the Beaufort Sea: The withdrawal area has great significance to subsistence activities, and has long been excluded from 5-Year programs and lease sales for that reason. Historically, the exclusion was requested by the Native Village of Kaktovik and the Alaska Eskimo Whaling Commission for its importance as a traditional subsistence whaling area.

Q: What impact does this have on current oil and gas activity?
All existing leases will be unaffected by this withdrawal action.

Q: Why does the withdrawal area at Hanna Shoal include parcels that have already been leased?
All rights under existing leases are expressly preserved and unaffected by the withdrawal. The withdrawal areas in Hanna Shoal are identified by leasing blocks which contain both leased and unleased areas. This is consistent with DOI's historical practice for delineating withdrawn areas.

Q: How much oil and gas is in these areas?
The five areas being withdrawn include approximately 13 percent of the undiscovered technically recoverable resources of the Chukchi Sea Planning Area and approximately 2 percent of these resources of the Beaufort Sea Planning Area. Overall, the Chukchi Sea Planning Area is estimated to hold 15.4 billion barrels of technically recoverable oil and 76.8 trillion cubic feet of natural gas, while the Beaufort Sea Planning Area is estimated to hold 8.2 billion barrels of technically recoverable oil and 27.6 trillion cubic feet of natural gas.

Q: Have previous Administration's used this authority?
Yes. President Eisenhower first used section 12(a) withdrawal authority in 1960, withdrawing an area now included in the Florida Keys National Marine Sanctuary. Since then, Presidents on both sides of the aisle have acted to withdraw areas of the Outer Continental Shelf from oil and gas leasing. For example, Presidents Bill Clinton and George W. Bush withdrew from oil and gas leasing areas designated as marine sanctuaries.

Q: Could this withdrawal be reversed by a future president?
A future President likely would have the authority to modify or terminate the withdrawal.

Q: Is there drilling in nearby state waters? And does this action impact those activities?
There is drilling and production in the state waters of the Beaufort Sea, but the President's withdrawal does not affect those activities. There is no drilling in the state waters of the Chukchi Sea.

Q: How big is this withdrawal?
The withdrawal totals approximately 9,800,000 acres. In comparison, the President's withdrawal last month of the North Aleutian Basin with Bristol Bay encompassed approximately 32,500,000 acres.

Q: Does this action expand the scope of previous deferral areas in the Chukchi and Beaufort Seas?

With the exception of Hanna Shoal, which was not one of the previous deferral areas, the other four areas being withdrawn have the same scope as the areas in the Chukchi and Beaufort Seas that were deferral areas in the 2012-2017 5-Year Program.

Q: Where are the areas that are being withdrawn?
The five areas are located in the Chukchi and Beaufort Seas. The Chukchi Sea extends from the Bering Strait, north and east along the coast of Alaska to approximately Point Barrow, Alaska. The Beaufort Sea extends from approximately Point Barrow eastward along the north coast of Alaska to Canada.
In terms of the specific locations of each of the five areas being withdrawn:

- Chukchi Sea Coastal Buffer Withdrawal: The withdrawal area extends from the Federal-State boundary to 25 miles from shore running from the southwest corner of the Chukchi Planning Area heading northwest to the Planning Area's eastern border, stretching from Point Hope to Wainwright and offshore Barrow.
- Chukchi Sea Subsistence Withdrawal: The withdrawal area is contiguous with the northern boundary of the Chukchi Sea Coastal Buffer on the eastern edge of the Chukchi Planning Area. North of Barrow, Alaska, it begins 25 miles offshore and extends 60 miles offshore Point Barrow, the northernmost point of the United States.
- Hanna Shoal Withdrawal in the Chukchi Sea: Located near the center of the Chukchi Sea Planning Area, the withdrawal area encompasses an elliptical-shaped area that is approximately 85 miles long and 30 miles wide and extends approximately 65 to 150 miles northwest of Barrow, Alaska.
- Barrow Whaling Withdrawal in the Beaufort Sea: Located on the western edge of the Beaufort Planning Area, the withdrawal area extends from Point Barrow 30 miles east and 21 miles northeast.
- Kaktovik Whaling Withdrawal in the Beaufort Sea: The withdrawal area is located just north of Kaktovik, Alaska, along the southeastern edge of the Beaufort Planning Area, and it extends north approximately 12 miles from Kaktovik and Barter Island and 21 miles eastward toward Canadian waters.

Q: How does the withdrawal affect the 5-year planning process?
The five areas being withdrawn will not be included for leasing consideration in the 2017-2022 5-Year Program.

Q: Why are these areas treated as deferred in the Draft Proposed Program (DPP) and are there additional deferred areas?
The DPP was developed before the President issued his withdrawal, so the DPP does not incorporate today's Presidential action. As reflected in the DPP, the Department had independently decided to propose deferring four of the five areas withdrawn by the President (consistent with the current 5-year program), and the DPP highlights Hanna Shoal as an area of special sensitivity that will be considered for additional protection. In the next step of this process, the Proposed Program, all five areas will be withdrawn from consideration in accordance with the President's decision. In the DPP, the southern portion of the Cook Inlet planning areas is deferred in the DPP, and the DPP asks for additional comments and information about potential additional areas for deferral.

Shell 2015 Chukchi Sea Exploration Plan

Description: On Aug. 28, 2014, BOEM's Alaska region received from Shell a revised Chukchi Sea EP that proposes two drill ships operating in the Chukchi Sea during the 2015 open water season. BOEM has begun an informal review, but will not formally process this plan until after the deficiencies identified in the Chukchi Lease Sale 193 are addressed.

Q: Having received the submission from Shell, how long will it take BOEM to formally deem the EP submitted?

A: Due to the court order to conduct additional environmental analysis before finalizing decisions on Lease Sale 193, BOEM will not take formal action to "deem submitted" the EP until the after the ROD is issued for Lease Sale 193. This decision is expected to take place in March 2015. Between receipt of Shell's EP and the March 2015 decision, BOEM will informally review the EP and hold meetings with Shell.

Q: Will the public have the opportunity to comment on the revised EP?

A: Yes. When BOEM determines the EP is "deemed submitted," BOEM will provide public notification and opportunity to review the EP.

Q: Under the timeline provided, does this mean Shell will be able to begin drilling in 2015?

A: BOEM is working to prepare a Record of Decision to be signed in March 2015. Should the Record of Decision affirm the sale of the parcels which Shell proposes to explore, BOEM will officially review Shell's exploration plan for the 2015 drilling season. In addition to steps taken by DOI, Shell will need to decide whether and when it will proceed with exploration in the Chukchi. BSE will also need to review an Application for Permit to Drill.

National Petroleum Reserve-Alaska

Q: How do you respond to claims that this Administration continues to lock up lands in the NPR-A?
A: The BLM's 2013 Area-Wide Integrated Activity Plan identified 11 million acres in the NPR-A for protection of natural values, while making close to 12 million acres and 72 percent of the technically and economically recoverable oil available for development.

Currently, 207 authorized leases cover more than 1.73 million acres in the NPR-A. Since 1999, 10 lease sales in the NPR-A have garnered more than $261 million. In 2011, the President directed our Department to conduct aggressive annual oil and gas lease sales in the NPR-A. Lease sales had previously been held every two years.

Greater Mooses Tooth Unit Development Project
Questions and Answers

Q: Late last month, ConocoPhillips Alaska announced that it was slowing the pace of investment on the project. Why issue the ROD and why is it important?
A: Like any project, many business decisions are based on market forces. Our job is to complete the permitting process to make sure development on public lands is done safely and responsibly. The company now has what it needs for when its ready to move forward with the project, but many of these decisions will depend on the price of oil and gas and other market forces. Our important work is complete.

Q: Senator Murkowski and others have said the mitigation efforts included in this package or so stringent that ConocoPhillips will never be able to develop this project. How do you respond?
A: The BLM's decision incorporates a robust package of mitigation requirements, including an $8 million contribution from ConocoPhillips, Alaska, Inc., into a compensatory mitigation fund. A Regional Mitigation Strategy will be developed, which will involve input from local Native communities, to determine the best uses of the compensatory mitigation funds. The ROD also requires implementation of a suite of best management practices to avoid or minimize project impacts.

The company agreed to these terms and, as a former oil and gas engineer and a commercial banker that did business in this industry, I can tell you that the company would not have agreed to the mitigation efforts if they felt it didn't provide an appropriate return on investment. This Record of Decision not only opens the way for the first production of oil and gas in the NPR-A on federal lands, but it also provides a new energy source for the Trans Alaska Pipeline System.

Q: **What outreach did the BLM conduct with the Alaskan Natives during the planning process for GMT1?**
A: The BLM initiated government-to-government consultation and Alaska Native Corporation consultation processes, with letters sent on August 29, 2013, to the tribes and ANCSA corporations whose members could be substantially affected by the proposed development of GMT1.

The BLM engaged in Alaska Native Corporation consultation with Kuukpik Corporation and Arctic Slope Regional Corporation, primarily through meetings with Corporation and BLM/DOI leadership. BLM Alaska was responsive to requests for information from the corporations as well as engaged them throughout the NEPA process.

Q: **What consultation on GMT1 was held with Tribal people of the Village of Nuiqsut?**
A: BLM held government-to-government consultation meetings on a weekly basis with the Native Village of Nuiqsut (NVN) tribal council throughout the NEPA process. Consultation with the tribal council will continue throughout the life of the GMT1 project, or until the council no longer wishes to hold formal consultation meetings.

Q: **What are the major differences between Alternative A and Alternative B?**
A: Alternatives A and B are similar. Alternative B would require full compliance with BLM's BMP/Lease Stipulation K-1(e) for oil and gas development in the NPR-A, which prohibits permanent oil and gas facilities, including gravel pads, roads, and pipelines, within a three-mile setback in the streambed and adjacent to Fish Creek. Also, the Alternative B route eliminates the bridge and pipeline crossing over Crea Creek and the crossing of Barely Creek, which are components of the Alternative A route. The Alternative A route is a smaller gravel footprint and is less technically challenging.

The main aspects of Alternative B which differ from Alternative A are as follows:

- Alternative B GMT1 pad is the same size and configuration as Alternative A, but the pad is flipped, and is located approximately 700 feet to the southwest in comparison to the Alternative A location.
- Alternative B routes the access road and pipeline from GMT1 to CD5 south of the Fish Creek setback.
- The GMT1 pipeline would tie in to the CD5 road and pipeline east of the CD5 drill site at a new tie-in pad, as depicted in Map 2.6-1, and described below.
- Alternative B would eliminate the need for a bridge over Crea Creek and a culvert at Barely Creek.
- Alternative B will have a slightly larger footprint and greater fill requirement than the Alternative A route, as summarized in Table 2.6-1.
- The Alternative B route may be more technically challenging for road construction and maintenance (e.g., poor soils, thaw stability) due to the extent of thaw basins along the route.

Q: Why did BLM select Alternative A when Alternative B was the Preferred Alternative in the Final SEIS?
A: The BLM released the Final SEIS for GMT 1 on October 29, 2014, which analyzed CPAI's proposal to develop oil accumulations from the proposed GMT1 drill pad on BLM-managed lands. The Final SEIS identified Alternative B as the BLM Preferred Alternative, prior to the U.S. Army Corp's determination of the Least Environmentally Damaging Practicable Alternative (LEDPA) for its Clean Water Act §404 permit decision.

The BLM based its preference primarily on the fact that Alternative B would require strict compliance with Best Management Practice (BMP)/Lease Stipulation K-1(e), which provides a 3-mile setback along Fish Creek within which facilities cannot be located without a BLM-approved deviation from the restriction.

Given the similarities between Alternatives A and B with respect to certain resource impacts, the fact that the Corps has determined that Alternative A is the LEDPA, and the fact that a robust package of mitigation measures have been developed to reduce the additional impacts associated with Alternative A to acceptable levels, the BLM is adopting Alternative A in this ROD in order to coordinate the BLM's and the Corps' decisions.

Q: How many permanent roads are now in the NPR-A?
A: There are no roads on federally managed lands within the NPR-A. There are a few roads on native lands surrounded by BLM-managed lands within the NPR-A, but they do not connect outside.

Q: With the cost of oil less than $50 a barrel, will companies continue to invest in the NPR-A?
A: Oil values fluctuate much like other commodities. The BLM will continue to work with industry in responsible energy development while maintaining the health and diversity of public lands as well as analyzing opportunities for supporting America's energy needs.

Q: When is the next scheduled oil and gas lease sale in the NPR-A?
A: November 2015. Lease sales are held annually at the Anchorage State Office and announced through a Federal Register notice. The BLM has offered tracts for lease since the 1980s, however, no production of oil or gas has occurred on any federally-managed tracts within the NPR-A.

Q: What steps is the BLM taking to ensure environmental protections:
A: The GMT1 project is subject to the BMPs adopted in the 2004 ASDP EIS ROD, as well as those adopted in the 2008 NE NPR-A ROD and the 2013 NPR-A IAP/EIS ROD. The ROD also adopts a robust package of mitigation measures and compensatory mitigation to add to these pre-existing protective measures. To reduce impacts to the project area as a whole, and in recognition of the importance of the land use authorizations, stipulations, and BMPs established by the 2013 NPR-A IAP, the mitigation package will serve to compensate for additional adverse impacts to subsistence use of routing the road and pipeline through the Fish Creek setback.

As compensatory mitigation the permittee will provide $8 million to establish a compensatory mitigation fund that will facilitate the development and implementation of a regional mitigation strategy (RMS) and finance mitigation projects identified through the RMS process to offset unavoidable impacts of the project – particularly impacts to subsistence use and resources as a result of encroachment on the Fish Creek and Ublutuoch River Setbacks.

Mt. Mckinley Propose Name Change to Mt. Denali
Questions and Answers

Q: What is the official name of the mountain, Denali or Mt. McKinley?

It's both. The official federal name is Mt. McKinley. Gold prospector William Dickey named the peak in 1896 for presidential nominee William McKinley. However, 'Denali' is the mountain's original native Alaskan name, translated as "the high one", and is the Official State of Alaska name for the peak. Most Alaskans and locals refer to the mountain by its native name.

In 1980, Mount McKinley National Park was officially re-named Denali National Park and Preserve as part of the Lands Act. However, until the US Congress passes a law changing the mountain's name, the Board of Geographic Names will not act to do so and National Park staff and public documents will continue to use the names Denali and Mt. McKinley interchangeably. The National Park Service has not taken a position, acknowledging that the decision sits with Congress.

Alaska Land Into Trust Rule
Questions and Answers

Q: How would subsurface mineral estates be affected by land being taken into trust?
A: The Department's practice has been to process land-into-trust applications from Indian tribes involving split estates under the regulations at 25 C.F.R. Part 151. The mineral estate is generally dominant and subsurface owners would have a right of reasonable access to minerals below any surface estate acquired into trust.

Q: How would new trust land in Alaska treat existing easements?
A: The Department's practice has been to acquire land into trust for Indian tribes subject to existing easements and rights-of-way. The Department would continue this practice for trust lands acquired in Alaska.

Q: Can Alaska Native Corporations (ANC) have land placed into trust?
No. Under the law, we can only place land into trust for tribes or individuals. All Alaska tribes may apply to have land placed into trust. The vast majority of land placed into trust is for tribes, not individuals.

Q: What land can an Alaska tribe have taken into trust?
A tribe may only apply to have land that it already owns taken into trust. If the tribe owns land in fee, it may apply to take that land into trust. If another entity, such as an ANC, owns the land, then the tribe must first obtain the land through a voluntary transaction before seeking to have the land taken into trust by the United States.

Q: Is there a mechanism to ensure that an ANC approves the acquisition of lands from within its land base or selection area?
In the spirit of the Department's consultation policy with Alaska Native Corporations and the extensive notice provisions in 25 C.F.R. Part 151, BIA will be interested in hearing the views of the corporations as to any application for land into trust.

Q: How will subsurface estates belonging to ANCs be protected if the surface is taken into trust?
The Department's existing practice has been to process land-into-trust applications from Indian tribes involving split estates under the Part 151 regulations. If the regional corporation or another party owns the subsurface estate, the rights to that subsurface estate are not affected by the acquisition of the surface estate into trust. The mineral estate remains dominant, and a subsurface owner has a right of reasonable access to the minerals below, even after the surface estate is taken into trust. We encourage any surface owners and subsurface owners to enter into surface use agreements regarding such access.

Q: Does taking land into trust affect ANCSA's provisions requiring revenue-sharing among regional corporations, village corporations, and at-large shareholders?
Taking land into trust does not necessarily change the revenue-sharing arrangements, but this is one of many factors that BIA will consider in its review of applications under Part 151.

Q: Will off-reservation standards apply to all Alaska lands (except for Metlakatla's reservation)?
Yes, off-reservation standards will apply to all Alaska lands that are not on or adjacent to a "reservation," as defined in the land-into-trust regulations.

Q: Will the new rule allow DOI to create new Indian reservations in Alaska for Tribes other than the Metlakatla?
This is a process for bringing land into trust. There is a separate process for proclaiming reservations. The Part 151 regulations do not proclaim new Indian reservations.

Q: Once we take land into trust, will we need permission to use our land for development?
Once land is taken into trust and held by the United States for the benefit of the tribe, the United States Government acts as trustee for the land. This means that BIA must review any agreements (such as leases, rights-of-way, grazing permits) that grant an interest in the land to a third party. To the extent your development involves granting third parties leases or entering into other agreements granting third parties an interest in the land, you will need BIA approval.

Q; Will the State of Alaska still be financially responsible for subsidies, road building, state allocation of funds, health and public safety, etc., once land is taken into trust?
We would expect the State of Alaska to continue funding important State programs, such as transportation, public health, and public safety, on Indian trust lands to the extent that this is accomplished in the lower 48 States.

Q: Will fish & wildlife and water resources presently under State management be subject to Federal management when land is taken into trust?
In evaluating any request to have land taken into trust in Alaska, the Department will consider, among other factors, any jurisdictional problems and potential conflicts of land use that may arise.

If a tribal government obtains trust land, it may elect to establish its own resource management regulations over that trust land. Tribes and states in the lower 48 have identified ways to cooperate and collaborate in support of shared resource management goals.

Q: Will land acquired into trust be considered "Indian Country" for civil and criminal jurisdictional purposes?
The Department's position has been that any land obtained in trust by the United States on behalf of a federally recognized Indian tribe is considered "Indian country" as defined in 18 U.S.C. § 1151. Accordingly, any Alaska tribe with trust land would be able to exercise its authority over such land consistent with the manner in which Indian tribes exercise authority over trust lands in the lower 48 states. We note that pursuant to Public Law 280, Alaska State courts would generally have jurisdiction over most crimes and some civil matters occurring in Indian country there.

Q: Would the Bureau of Indian Education provide K-12 education for residents of land taken into trust?
BIE does not currently provide direct education to Native Alaska students. Taking land into trust would not change this given that BIE is not building any new schools at locations that are not currently served by BIE.

Q: Will taking land into trust affect existing easements and rights-of-way across the land, or the ability to obtain future easements and rights-of-way?
Land is regularly taken into trust by the Department subject to existing easements and rights-of-way. Once the land is in trust, anyone seeking a new easement or right-of-way across trust land would have to comply with 25 CFR part 169.

Q: Will BIA start processing acquisitions immediately?
The Department is currently enjoined from taking final agency action to place any land into trust in Alaska.

EVENT MEMORANDUM FOR THE SECRETARY

CEREMONIAL SWEARING-IN OF SUZETTE KIMBALL

Date: Friday, January 8, 2016
Location: USGS Auditorium, Reston, VA
TIME: 3:00 – 4:00 PM
FROM: BJ Donovan, White House Liaison, 202-208-7351

PURPOSE

You will be hosting a ceremonial swearing-in event for USGS Director Suzette Kimball, who was officially confirmed on December 18th, 2015. This event is an opportunity for you to highlight the accomplishments of the USGS and congratulate and thank Suzette, her immediate family and the larger USGS family for their patience and resilience throughout this process. Suzette will also give brief remarks. Jennifer Gimbel indicated she does not wish to give formal remarks, so the speaking program itself may be relatively short. The event itself will be live streamed to USGS personnel in the field who wish to watch, and a small contingent of DOI appointees will also be bussing out to the event from the MIB.

PARTICIPANTS

- You
- Suzette Kimball
- Curt Mason (husband)
- Victoria Kimball (mom) – cannot travel, but will be watching via live stream
- Craig Mason (son)
- Caitlyn Mason (granddaughter)
- Lisa Herman and her son Aaron Krucoff (family friends)
- Michelle Muir (daughter)
- Steve Muir (son-in-law)
- Lauren Muir (granddaughter)
- Morgan Muir (granddaughter)
- Erin Muir (granddaughter)
- Cameron Muir (grandson)
- Katie Long (family friend)
- Lauren Stapleton (family friend)

<u>USGS Executive Leadership Team:</u>

- Suzette Kimball, Director
- Judy Nowakowski, Chief of Staff
- William (Bill) Werkheiser, Deputy Director
- David (Dave) Applegate, Associate Director for Hazards
- Kevin Gallagher, Associate Director for Core Science Systems

- Pierre Glynn, Acting Associate Director for Energy and Minerals and Environmental Health
- Cynthia (Cindy) Lodge, Associate Director for Budget and Planning Integration
- Barbara Wainman, Associate Director for Communications and Publishing
- Jose Aragon, Associate Director for Administration
- Tim Quinn, Chief, Office of Enterprise Information

AGENDA

- Deputy Director, Bill Werkheiser, will begin the ceremony as MC by introducing you
- You will introduce Suzette and make brief remarks
- You will administer the oath to Suzette
- Suzette will have an opportunity to offer brief remarks
- Break for reception with cake

SUGGESTED TALKING POINTS

(Examples of USGS accomplishments mostly provided by USGS Communications)

- Thank Bill, Suzette, and those in the room and participating on the video stream.
- Suzette began her journey in public service more than 30 years ago, and now becomes the 16th director of the USGS.
- Suzette became Acting Director in February 2013 after the departure of Marcia McNutt.
- She was nominated by President Obama in January 2014, sent back from the Senate, and renominated in January 2015 before finally being confirmed this past December 2015.
- In total, Suzette served as Acting for nearly 3 years, and patiently awaited confirmation by the U.S. Senate for nearly 2 years.
- Some recent events with Suzette:
  - MOU signed at GEO Summit in Mexico City highlighting open data-sharing and cooperation on climate change and other global challenges (Nov. 2015)
  - Presentation of public service "Sammy" award to Dr. Lucy Jones (Oct. 2015)
- Other notable USGS accomplishments during Suzette's tenure:
  - Delivered ShakeAlert, a prototype for an earthquake early warning system on the West Coast that would allow citizens, government officials, and emergency responders precious seconds to make lifesaving decisions.
  - Completed the first-ever digital geologic map of Alaska, and began the first digital elevation mapping of the State through the 3DEP program, bringing unprecedented insight on ways our largest state is facing changes that affect its incredible natural resources and environments.
  - Seen unprecedented increases in funding support for its streamgage network to provide an even greater level of detailed and valuable insight on America's freshwater resources.
  - Developed new eDNA assessments for early detection and monitoring of problematic invasive species like Asian carp and Burmese python.

- Found new ways to track and assess hazardous environmental and human health threats such as harmful algal blooms and mercury.
- Completed the first-ever global assessments for valuable mineral resources such as copper, platinum, and potash.
- Established the Innovation Center for Earth Sciences, to work with public and private technology partners in Silicon Valley and elsewhere to design, test, and bring into operation a new generation of technical and engineering tools to solve pressing national problems, just one part of Suzette's push for greater engagement and focus on innovation across the USGS.

- It is my pleasure to finally administer the oath of office to you as you officially begin your tenure as the 16th director of the USGS.

BIO

Director, U.S. Geological Survey, Suzette, Kimball

Suzette Kimball, who has been acting director of the U.S. Geological Survey (USGS) since February 2013, was nominated by President Barack Obama on January 9, 2014, to fill the job permanently. The USGS director is responsible for providing scientific information to understand the Earth, minimizing loss of life and property from natural disasters and managing water, biological, energy, and mineral resources.

Kimball graduated from the College of William and Mary in 1973 with a degree in English while also completing the requirements for a geology degree. She went on to earn a master's in geology and geophysics from Ball State University in 1981 and a Ph.D. in environmental sciences from the University of Virginia in 1983. During this period, she was also a research coordinator and a research assistant at the Department of Environmental Sciences at the University of Virginia.

From 1983 to 1986 Kimball worked for the U.S. Army Corps of Engineers as a coastal engineering research center chief and a program manager for barrier islands sedimentation studies. Subsequently, she served as co-founder and co-director of the center for coastal management and policy and as associate marine scientist at the Virginia Institute of Marine Science at the College of William and Mary.

Kimball joined the National Park Service (NPS) in 1991, again focusing on barrier islands. She was a research coordinator in the NPS global climate change program until 1993, when she was named southeast associate regional director of natural resource stewardship and science, holding this position until 1998, when she joined USGS.

Kimball's first job there was as eastern regional executive for biology. She moved up the ranks, becoming director of the USGS Eastern Region in 2004 and being named associate director for Geology in 2008.

In 2010, Kimball was named deputy director of the USGS. In that post, she led USGS's international activities and represented all North American geological surveys on international mapping endeavors.

In summer 2012, Kimball was also named Interior's top official for scientific integrity.
She has written more than 75 publications on coastal ecosystem science and coastal zone policy. Kimball is married to Curt Mason, a retired coastal oceanographer. Ironically, they live nowhere near the ocean. Instead, their home is one of the oldest houses in West Virginia, having been built about 1740. Kimball has three children and eight grandchildren.

EVENT MEMORANDUM FOR THE SECRETARY

MEETING WITH ASSISTANT SECRETARIES

DATE: Friday, January 8, 2016
LOCATION: Room 6623
TIME: 9:00AM – 10:00AM
FROM: Tommy Beaudreau, Chief of Staff, OS
Benjamin Milakofsky, Deputy Chief of Staff, OS, (202) 256-8304

I. PURPOSE

You are hosting a leadership meeting with your Assistant Secretaries on Friday, January 8. You might start the meeting by welcoming Larry. This is his first meeting as the Acting Assistant Secretary although he attended Kevin's final meeting.

We are holding time at the top of the meeting should you want to discuss current events out west. Although there is limited information to provide, we thought you might want to address the ongoing situation with the group.

Bob Dreher and Lori Faeth are going to provide a preview of your upcoming trip to Africa. They will discuss the goals for the trip, highlight the meetings and engagement opportunities, and walk the group through the current plans.

Jennifer Gimbel and Mike Connor are going to talk about two significant issues involving the Bureau of Reclamation. First, they will update the group on next steps involving the Klamath Basin Restoration. Now that Congress let the agreement expire, they are going to inform the group of the strategy for 2016. Additionally, Mike and Jennifer will provide an update on 2016 operations as it relates to California water. Specifically they will talk about outflow requirements, what we can anticipate with El Nino, and Mike's plan to travel out to California at the end of the month.

We have reserved time for an open discussion portion of the meeting.

II. PARTICIPANTS

- Hilary Tompkins, Solicitor
- Janice Schneider, Assistant Secretary for Lands and Minerals Management
- Jennifer Gimbel, Principal Deputy Assistant Secretary for Water and Science
- Larry Roberts, Principal Deputy Assistant Secretary for Indian Affairs
- Kris Sarri, Principal Deputy Assistant Secretary for PMB
- Mike Connor, Deputy Secretary
- Tommy Beaudreau, Chief of Staff
- Ben Milakofsky, Deputy COS
- Liz Klein, Associate Deputy Secretary
- Kate Kelly, Senior Advisor

- Sarah Neimeyer, Director of OCL

* Michael Bean and Esther Kia'aina will be out of the office and will not be in attendance.

III. AGENDA

9:00 – 9:15: You will start the meeting by welcoming the group and congratulating Larry. We have reserved time for you to talk about current events out west.

9:15 – 9:30: Bob Dreher and Lori Faeth are going to provide an overview of your upcoming trip to Africa.

9:30 – 9:40: Mike Connor and Jennifer Gimbel are going to talk about Klamath Basin Restoration going forward and 2016 operations for California water.

9:40 – 9:45: Kris Sarri is going to talk about the current status of the FY 17 budget and the Administration's plan for announcing it.

9:45 – 10:00: Open discussion.

Agenda
Meeting with Assistant Secretaries
January 8, 2015

1. Welcome and current events (Jewell)
2. Africa (Dreher and Faeth)
3. Klamath Basin Restoration (Connor and Gimbel)
4. California (Connor and Gimbel)
5. FY 17 Budget (Sarri)
6. Open Discussion

BRIEFING MEMORANDUM FOR THE SECRETARY

INTERNAL BRIEFING ON BURNS PAIUTE TRIBE, MALHEUR NATIONAL WILDLIFE REFUGE

DATE: Friday, January 8, 2016
LOCATION: Secretary's Office (+ dial-in)
TIME: 10:30-10:50 AM
FROM: Robyn Thorson, Regional Director, Pacific Region, U.S Fish and Wildlife Service

BACKGROUND

- The Malheur National Wildlife Refuge (Refuge) has a long and rich cultural history. Archeological research shows people were using the area managed by the Refuge as long as 9,800 years ago. The Refuge contains over 300 recorded prehistoric sites and 21 historic sites in a wide variety of habitats. Five sites are on the National Historic Register of Places and several more have been determined to be eligible, although not yet formally nominated.

- Prehistoric sites range from 9,800 old to just 120 years old and range from villages, rock art sites, burial sites to food processing locales, indicating the area has been used for thousands of years by Native Americans.

- The Burns Paiute Tribe descended from the Wadatika band, named from the wada seeds collected near Malheur Lake. Their territory included approximately 52,500 square miles in central Oregon and southern Idaho.

- The Refuge has a long, positive and collaborative relationship with the Burns Paiute tribe stretching over decades. Refuge archaeologist Carla Burnside has worked with the tribe for 25 years.

- The Refuge has taken steps to ensure that the cultural practice of plant gathering is compatible with Refuge management and has actively identified tribally important plants for inclusion in habitat restoration efforts. This ensures the Refuge continues to support important cultural values. Each summer the Refuge hosts tribal schoolchildren to experience hands-on learning about their cultural and natural heritage.

- The Refuge also has a signed 2012 MOU with the Burns Paiute allows all Refuge and FWS programs to coordinate with their tribal counterpart programs to provide mutual support for shared projects, i.e., fisheries sampling, etc. This allows a collaborative approach to resource management and in fact has hired tribal youth to give them hands on, job experience and job exposure.

KEY MESSAGES

- The Tribal Council held a meeting on Tuesday, Jan 5, attended by Refuge staff to express their concerns regarding the vulnerability and potential damage to sensitive cultural and

archeological sites at the Refuge by occupying protesters. Many of the key sites are close to the Refuge Headquarters where the protesters are located. The Tribe is concerned about damage to these cultural resources, as well as access protesters may have to sensitive archeological records kept at the Refuge Headquarters.

- The Tribe also held a press conference Wednesday, Jan 6, to express their frustration and dissatisfaction at the occupation and the make a public statement to the protesters to go home.

John Bel
EDWARDS
GOVERNOR-ELECT

December 8, 2015

The Honorable Sally Jewell
Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Dear Secretary Jewell:

As Governor-elect of the State of Louisiana, I wish to express my concerns with the proposed Well Control Rule announced by the Bureau of Safety and Environmental Enforcement earlier this year. I strongly agree that ensuring the safety of offshore operations is paramount; however, I have grave concerns that this proposal may actually have an adverse effect - increasing risk and decreasing safety in the Gulf of Mexico.

As you know, offshore wells vary drastically. A one-sized-fits-all model that does not take into consideration the various differences in well characteristics could actually increase risks in certain cases. This proposal would also hamper innovation, therefore delaying implementation of new technologies that could further improve safety.

Since the devastating 2010 Macondo tragedy, numerous new regulations and industry standards have been updated, improved upon, and implemented in the Gulf. Louisiana was hit hardest by this disaster, and we are committed to preventing a similar disaster from happening in the future. We have taken great strides to improve safety of offshore operations, but I fear this proposal, if adopted in its current form, could effectively renew the moratorium on offshore drilling. In the Louisiana House of Representatives, I fought to end the moratorium imposed by the administration. As the incoming governor, I am committed to preventing another moratorium in the future.

A de facto drilling moratorium in the Gulf could weaken an economy that continues to rebuild and devastate Louisiana families and communities that depend on a robust offshore energy industry. Furthermore, this will hinder collective coastal restoration and hurricane protection efforts that are funded through offshore oil and gas revenues.

I strongly urge you to reassess this proposal and engage in further dialogue with industry experts to consider potential changes. Thank you for your consideration. I look forward to your response.

Sincerely,

John Bel Edwards

John Bel Edwards

Governor-Elect John Bel Edwards • P.O Box 566 • Baton Rouge, Louisiana 70821
www.onwardlouisiana.com

INFORMATION/ BRIEFING MEMORANDUM FOR THE SECRETARY

DATE: December 14, 2015
FROM: Allyson Anderson Book, Associate Director, BSEE
SUBJECT: Well Control Rule Talking Points for Call with LA Governor-Elect

You will be speaking with Mr. John Bel Edwards, Governor-Elect for Louisiana about the proposed Blowout Preventer and Well Control Rule (WCR).

BACKGROUND

A letter was received today from the Governor-Elect outlining his concerns with the proposed WCR. In particular, he maintains that the proposed regulation will result in a de facto drilling moratorium in the Gulf of Mexico and hamper innovation. Outlined below are several of the related concerns that we have heard from the LA Congressional delegation and our responses to those concerns.

DISCUSSION

Major Concern #1: There are many safety provisions in place since Macondo, so the rule isn't necessary. Industry has developed many standards and BSEE has put rules in place. Thus, it is safe.

Response: The necessity of the Well Control Rule is demonstrated by the fact that loss of well control incidents are still occurring at the same rate as prior to the Macondo blowout. From 2007 to 2014, an average of six loss of well control (LWC) incidents were reported on the OCS per year – a rate on par with pre-Macondo losses of well control. Six of the last seven investigations completed by BSEE for loss of well control incidents found that the root cause of each incident was tied to difficulties at the interface between humans and technology, in particular the design specifications of wells. The WCR targets that interface through a number of measures that are proposed in the rule (see Fact Sheet Attachment).

The following are examples of losses of well control that have happened since Macondo:

- Apache/Pisces Energy. On February 14, 2013 Apache (operator in a joint venture with Pisces Energy) reported an underground flow of natural gas (also known as a subsea broaching or subsea blowout event) at an exploratory well being drilled in the Gulf of Mexico. rig was drilling in 218 feet water depth with a blowout preventer located on the rig. When the initial well control event occurred, Apache successfully activated the blowout preventer (BOP) to prevent gas from flowing to the surface. The underground flow was detected through additional testing. All non-essential personnel were evacuated from the drilling rig when the BOP was activated.

- Energy Resource Technology (ERT). An uncontrolled gas blowout occurred on July 7, 2013. No one was hurt or injured from the blowout and the well was brought under control within a week.

- Walter/Hercules. On July 23, 2013 while Hercules rig doing completion work on the sidetrack well to prepare the well for production, the well blew out. All 44 personnel on board were evacuated. Gas flowing from the well ignited and resulted in a fire that burned for 72 hours.

- EnVen/Rowan. On January 30, 2014, a crew on a Rowan drilling jack-up rig lost control of the well during drilling operations. All 42 rig personnel were safety evacuated.

Nutshell: Losses of well control are still occurring on the Gulf OCS as often as they did in the years prior to Macondo. The Well Control Rule is needed as much now, as in 2010, despite the standards and other rules that were put in place after 2010. There is no mandatory requirement that offshore operators and contractors follow API standards or best practices – they are entirely voluntary until they are required in a rulemaking.

Major Concern #2: This rule will put people out of business and kill jobs, as it is too expensive to comply with.

Response: Costs of compliance would be dwarfed by the costs of another Macondo-like tragedy. BP has spent many billions of dollars in legal settlements, spill cleanup efforts, etc. They also were charged with manslaughter. BP and Transocean have suffered financial and reputational harm that is far greater than the cost of compliance with the rule for the entire industry.

BSEE estimates that the rule will cost ~$883 million over ten years. API provided BSEE, as well as Congressional members, with a rather extensive, 216 page report that examined the economic costs of the rule. They estimated that the rule would cost $32 billion. That analysis did not provide information on how the costs of each provision were calculated, nor did it take into account the benefits of implementing the rule. Most notably, it did not include the impacts to human safety and reducing the number of fatalities offshore, as well as the costs of avoiding another Macondo-like spill.

Major Concern #3: A moratorium will occur as people will have to shut down operations until they come into compliance.

Response: The proposed WCR has numerous phase-in dates to ensure that operators have ample time to make any investments to come into compliance. BSEE subject matter experts have met with equipment manufacturers to ensure that equipment is or will be available within the specified compliance dates.

Major Concern #4: More time is needed to engage with BSEE to ensure that the new rules are appropriate without being burdensome or restrictive to industry. BSEE has not engaged enough on this rulemaking.

Response: The proposed rule is an outgrowth of five years of work, including extensive outreach, analysis of volumes of information and data, and evaluation of existing industry standards and recommended practices. Prior to the formal rulemaking process BSEE staff engaged in extensive efforts with industry and other stakeholders to determine how best to craft the rule. BSEE either sponsored or participated in more than 50 meetings, conferences, and workshops from April 2011 through April 2015. BSEE staff also serve on the API standards development committees.

BSEE received public comments on the rule from more than 170 commenters, including over 4000 pages of technical comments. Teams of BSEE subject matter experts are reviewing and considering all of the relevant comments. BSEE met with over 55 industry representatives earlier this week on December 7 in Houston, TX on the rule.

ATTACHMENTS
Proposed WCR fact sheet

CALL SHEET FOR THE SECRETARY

CALL WITH KENTUCY GOVERNOR MATT BEVIN

DATE: Friday, January 8, 2016
TIME: 11:30 – 11:45 AM
CALL TO: Kentucky Governor Matt Bevin: Call the main office line (502-564-2611) and ask for the Governor.
FROM: John Blair, Director, OIEA (202-412-3486), Liz Pardue, Deputy Director, OIEA (202-322-5391), Steven Avila, Special Assistant, OIEA (202-215-2502)

PURPOSE

Both Kentucky and Louisiana had gubernatorial elections last year, and both states' incumbent governors were ineligible to run for re-election due to term limits.

In Kentucky, Republican Matt Bevin won the election to replace Democratic Governor Steve Beshear by a nine-point margin. He was inaugurated December 8.

You are making brief courtesy calls to congratulate and introduce yourself to Governor Bevin. Although this call is not intended to be substantive, additional materials are attached regarding hot topics of concern to the Governor Bevin.

PARTICIPANTS

- You
- Governor Matt Bevin, Kentucky

KEY FACTS

Governor Matt Bevin (R) – Kentucky

This is Governor Bevin's first time holding office; a successful businessman and investment manager, he ran as a political outsider promising change. In 2014 he unsuccessfully challenged Senate Majority Leader Mitch McConnell in the primary, with support from the Tea Party.

Bevin and his wife, Glenna, have nine children, including four adopted from Ethiopia. He was raised in rural New Hampshire and attended Washington and Lee University on a partial ROTC scholarship before serving as a captain in the Army.

Issues of Interest

- During the campaign, Gov. Bevin tied his opponent, State Attorney General Jack Conway (D), to President Obama's policies, in particular locally unpopular coal regulations Bevin blamed for the decline of the industry – including OSMRE's proposed stream protection rule (Talking Points attached).

- In response to pro-coal lawmakers' complaints that OSMRE didn't share rulemaking documents on the stream protection rule prior to this year's release, the appropriations omnibus released Wednesday contains non-binding report language directing OSMRE to work with states on the rule.
    - The explanatory statement directs OSMRE to "provide the States with all technical reports, data, analyses, comments received, and drafts relative to the environmental reviews, draft and final environmental impact statements, and meet with any State with primacy during such process at the request of the State."
- After the election, Bevin said he will take EPA to court if they try and force him to enforce "federal regulations that are in opposition to our own state interests," such as coal regulations.
- Gov. Bevin has appointed Charles Snavely, most recently president of eastern U.S. operations for Arch Coal, as his Secretary of the Energy and Environment Cabinet.
- Gov. Bevin's biggest agenda item is to dismantle Kentucky's health insurance exchange and scale back the expansion of Medicaid.

ATTACHMENTS

- Attachment 1: Stream Protection Rule talking points (provided by OSMRE)
- Attachment 2: Letter from Governor-elect Edwards on proposed Well Control Rule
- Attachment 3: BSSE memo regarding the Well Control Rule letter
- Attachment 4: BSSE Fact Sheet on the proposed Well Control Rule

Replacement School Construction Priority List as of FY 2004

A Notice by the Indian Affairs Bureau on 03/24/2004

SUMMARY

As required by statute, the Bureau of Indian Affairs is publishing the "Replacement School Construction Priority List" in the **Federal Register**. The current priority list, last published in the **Federal Register** on July 9 and July 18, 2003, is revised by the addition of newly prioritized schools. The Bureau will use this list to determine the order in which Congressional appropriations are requested to fund education replacement construction of core academic and/or dormitory facilities.

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- FOR FURTHER INFORMATION CONTACT:
- SUPPLEMENTARY INFORMATION:
  - Replacement School Construction Priority List

FOR FURTHER INFORMATION CONTACT:

Questions regarding the Education Facilities Replacement Construction Priority List should be referred to Andrew Acoya, AIA, Office of Facilities Management and Construction, P.O. Box 1248, Albuquerque, New Mexico 87103, (505) 346-6508, Fax (505) 346-6542.

SUPPLEMENTARY INFORMATION:

Publication of the Replacement School Construction Priority List (Priority List) in the **Federal Register** is required by 25 U.S.C. 2005(d). In addition, the Conference Report (Report 108-330) which accompanied the Fiscal Year 2004 appropriations for the Department of the Interior directed the Secretary of the Interior to submit a new Priority List to Congress: "The managers direct that the Secretary submit a new priority list by February 15, 2004, containing a sufficient number of schools to continue the replacement school program through fiscal year 2007. The priority list should address the most critical needs based on the Bureau's facility management information system."

The process used to develop the Priority List involved identification by the BIA of schools with critical health and safety concerns. This identification was conducted by the BIA's Office of Facilities Management and Construction (using the facilities

management information system), the BIA's regional facilities program, and the Office of Indian Education Programs' facilities program. The BIA then selected, through a competitive bid process, an independent contractor experienced in facilities construction to conduct a site review of each of the identified schools' core academic and/or dormitory facility. The independent contractor then rated each school based on the following criteria, in order of priority: (1) Health and safety deficiencies, (2) environmental deficiencies, (3) accessibility for persons with disabilities, and (4) condition of existing utilities and site improvements. The Priority List includes 14 schools considered in most need of replacement of their core academic and/or dormitory facilities. Complete replacement of the entire school facility may not be necessary.

The BIA will begin the advance planning and design process for these schools to determine the scope and cost of each replacement project. This list will be more than sufficient to continue the replacement school construction program through FY 2007. Funding and scheduling for these projects is contingent on the budget process. In addition, any school placed on the Priority List is eligible for the Tribal School Construction Demonstration Program. Participation in this program would expedite the funding and scheduling for school replacement projects.

Under Section 1125(a)(5) of the No Child Left Behind Act (Pub. L. 107-110), the Secretary is required to conduct negotiated rulemaking regarding Indian school construction. This negotiated rulemaking may impact future replacement school construction priorities.

Schools placed on the previously published "Education Facilities Construction Priority List as of FY 2003," published in the **Federal Register** on July 9, 2003 (68 FR 40996) and July 18, 2003 (68 FR 42815) that were not yet fully funded for construction are retained. In accordance with Congressional directives, the projects listed do not provide for the funding of new schools, grade level expansions, and charter schools.

This notice is published under authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs in the Departmental Manual at 209 DM 8.

Replacement School Construction Priority List

1. Dilcon Community School
2. Porcupine Day School
3. Crown Point/T'iists'oozi'bi'olta Community School
4. Muckleshoot Tribal School
5. Dennehotso Boarding School
6. Circle of Life Survival School
7. Keams Canyon Elementary School
8. Rough Rock Community School
9. Crow Creek Elementary/Middle/High School

10. Kaibeto Boarding School
11. Blackfeet Dormitory
12. Beatrice Rafferty School
13. Little Singer Community School
14. Cove Day School

Dated: March 9, 2004.

Dave Anderson,
Assistant Secretary—Indian Affairs.

Malheur Refuge Occupation Media Coverage Summary

Saturday, January 16, 2016 – AM

Occupiers want U.S. to surrender all federal lands

Oregonian (1/15 4 pm)

Protesters holding the bird sanctuary southeast of here want every county in the U.S. to start a process giving back federal land to the previous owners.

They expect that process to start in Harney County with a citizens group processing deeds, according to Ryan Payne, a self-styled militiaman and a key leader of the refuge occupation that started two weeks ago.

In an interview, Payne provided the most clear statement yet about what the occupiers want to achieve. They now call themselves Citizens for Constitutional Freedom.

Besides stripping land from federal control, Ryan said the group wants ranchers Dwight Hammond Jr. and his son, Steven, released from federal prison immediately. He said the group wants to see a citizen inquest investigate the Hammonds' prosecution and report to the public on allegations of abuses by the government.

Oregon militia supporter calls for locals and outsiders to surround the FBI compound on Saturday

Daily Kos (1/15)

LaVoy Finicum (also known as blue tarp man) hosted the Oregon militia's daily press conference at the Malheur Wildlife Refuge. Ammon Bundy was noticeably absent, perhaps off meeting with "constitutional" sheriffs trying to rally them to his cause. Finicum was asked by a man in attendance (not sure if he was a reporter or a supporter, they mingle together at these daily gatherings and lob their own militia-friendly questions) what his feelings were about Harney County residents reportedly feeling intimidated by the FBI, being pressured to not show support for the occupiers because of the FBI presence. Finicum responded by exclaiming it was "time for the FBI to go home!" That's rich, right? The man from Arizona occupying a federal wildlife preserve in Oregon telling the FBI to go home……..

Medenbach Arrest

First arrest in Harney County standoff leads to stolen federal vehicles

Portland Tribune (1/15, 3:30 pm)

First arrest in Harney County standoff leads to stolen federal vehicles

Oregon State Police arrested a 62-year-old man who was driving a stolen Malheur National Wildlife Refuge vehicle in Burns Friday afternoon.

Protester arrested in Burns, driving stolen refuge vehicle

Oregonian (1/15)

Bail is $10,000. Medenbach is on federal probation from another militia style episode in southern Oregon last year.

Crescent man held in theft of 2 refuge vehicles

KTVZ (1/15)

(First arrest; Occupiers take down 'FBI' camera; Friday meeting off, militia working to reschedule)

Oregon Militaman Arrested For Stealing Government Vehicles

TIME (1/15)

Oregon State Police say they arrested Kenneth Medenbach, 62, after recovering two U.S. Fish and Wildlife vehicles “previously” reported stolen to the local sheriff’s office in Burns.

Oregon Police Arrest Man Over Federal Vehicles Stolen From Refuge

NBC News (1/16 7 pm)

It wasn't immediately clear why there were two vehicles recovered and only one arrest.

Community meeting with Ammon Bundy called off for lack of venue

Oregonian (1/15 12pm)

A meeting where armed protesters occupying the Malheur National Wildlife Refuge planned to announce their exit strategy has been called off for want of a venue.

"Our county judge has blocked our path," said Travis Williams, a Drewsey rancher on the Harney County Committee of Safety. "We're working on that right now. We will be having one soon, but we do not know when or where."

The meeting, at which occupation leader Ammon Bundy was expected discuss his plans to eventually leave town, was planned Friday night at the Harney County fairgrounds, but officials denied their request to use the spot. County commissioner Steven Grasty said Wednesday that the county won't let any group affiliated with the occupiers use its property.

‘Who knows what they’re stomping on?’: Tribe worried about Ore. refuge artifacts

Washington Post (1/16 6 am)

The Burns Paiute Tribe is seeking criminal charges against the armed occupiers of Oregon’s Malheur National Wildlife Refuge, accusing the men of damaging important cultural resources on the tribe’s native land.

The tribe is urging the U.S. Fish and Wildlife Service to protect those resources, in part by prosecuting “violators of the Archaeological Resources Protection Act” on the remote bird refuge.

4,000 artifacts stored at Oregon refuge held by armed group

AP (1/15 8 pm ET)

Thousands of archaeological artifacts — and maps detailing where more can be found — are kept inside the national wildlife refuge buildings currently being held by an armed group of protestors angry over federal land policy.

Ryan Bundy, one of the leaders of the group occupying the Malheur National Wildlife Refuge in southeastern Oregon, says they have no real interest in the antiquities. Still, their access to the artifacts and maps has some worried that looters could take advantage of the situation.

Bundy Opposition Group Activity

Bend Protesters Rally Against Refuge Occupation

OPB (1/15 7 pm)

More than 100 protesters gathered in Bend, Oregon, Friday to rally against the occupation of the Malheur National Wildlife Refuge. The protesters spoke in support of federal public lands.

rotesters carried signs that read “Go home bullies” and showcased over-sized photos of ducks.

Anti-refuge takeover protesters stage Bend rally, march
KTVZ (1/16 6:30 pm)
A group called Great Old Broads for Wilderness organized the event, with several speakers at the Crow's Feet Commons to send a message to the leaders of the nearly two-week-old occupation.
Rally organizers said they believe public lands are part of America's heritage, and called on the government to enforce the laws that protect those lands.

Protesters call for end to Malheur occupation
Bend Bulletin (1/16 12 am)
“Birds are coming soon and (the refuge near Burns) needs to welcome them,” said the Bend woman and birder.

Birders protest in Bend against refuge takeover
Oregonian (1/15 3:45 pm)
(Includes 13 pictures)
While refuge supporters have become increasingly vocal, the Bend gathering was the first held to send a clear message to occupiers at the refuge 30 miles outside of Burns. Several other protests are planned across the state on Tuesday, Jan. 19.

The Un-Bundys: Environmental Groups Plan Takeover of Federal Lands on South Spit
Lost Cost Output (1/15 3 pm)
While the Bundy militia continues its divinely inspired defense of pocket-sized copies of the Constitution at the Malheur National Wildlife Refuge outside of Burns (no relation), Ore., a tricorne alliance of local environmental groups is preparing its own takeover of federal land.

New Militants, Supplies Arrive With Ease at Malheur Refuge
OPB (1/15 6 pm)
New militants continue to join the occupation at the Malheur National Wildlife Refuge. The armed occupiers still won’t tell exactly how many people are occupying the refuge headquarters, but it’s clear some newcomers have shown up. OPB reporters estimate that the number of occupiers has grown to about 30, even with the apparent departure of some of the first occupiers.

Bundy bodyguard, former refuge occupant, arrested in Ariz.
(The whole article appears below because it is subscription only)
Greenwire: E&E News (1/15/16, Phil Taylor)
A man who served as a bodyguard to Ammon Bundy during the occupation of the Malheur National Wildlife Refuge and to Cliven Bundy during his earlier standoff with the federal government was arrested this week by police near Phoenix.
Brian Cavalier, 44, who was known on the Oregon refuge as "Booda Bear," was arrested Monday by municipal police after they discovered he had an outstanding warrant, the Buckeye Police Department said.
Cavalier was a passenger in a "suspicious vehicle" that police pulled over, said Sgt. Jason Weeks, a spokesman for the department. The driver of the vehicle also had a warrant and was arrested, Weeks said. His name was not disclosed.

Brian Cavalier, left, walking alongside Ammon Bundy, was a prominent figure in the early days of the refuge occupation. Photo by Rick Bowmer, courtesy of AP Images.

Cavalier was booked into the Maricopa County jail, where he was later released by a judge. Details on the warrant were not immediately available, but one source said it did not involve federal violations.

An early participant in the Malheur occupation, the heavily tattooed and big-bellied Cavalier was often seen next to Ammon Bundy wearing earbuds, a Middle Eastern-style scarf and a pistol on his hip.

The *Daily Mail*, a British newspaper, **reported** last week that Cavalier falsely claimed to be a retired Marine who served in Iraq and Afghanistan. The U.S. Marine Corps has no record of him serving.

Cavalier left the Malheur refuge on Jan. 5, just a few days into the occupation, according to a **report** by Reuters reporters who were given access inside one of the buildings and described Cavalier as "head of security."

One refuge occupier yesterday confirmed that Cavalier has not returned.

This is not his first run-in with the law.

Records show he's been arrested multiple times for driving under the influence, including one case in 2005 of "extreme DUI." He pleaded guilty to misdemeanor theft in 2013 in a Prescott Valley, Ariz., court. He also appears to have lived and made several court appearances in Santa Clara County, Calif.

His nickname comes from the large picture of Buddha tattooed on his belly, which he proudly displays in one photo posted on Twitter.

Cavalier has also been described as a bodyguard for Cliven Bundy, Ammon's father, during the armed uprising in April 2014 against the Bureau of Land Management, when the agency was trying to confiscate the elder Bundy's unauthorized cattle.

"Our goals are safety and security of innocent civilians trying to practice their constitutional right," Cavalier told Fox News at the time of the standoff.

At Malheur, Cavalier identified himself to journalists as "Fluffy Unicorn," according to the *Daily Mail*.

At one point, he became irritated by a reporter's questioning, and said: "Yesterday it was Fluffy Unicorn. ... Today it's Raging Unicorn."

Backgrounders

For Now, Law Enforcement And Militants Won't Cross Tracks

Oregonian (1/15 12:29 pm)

(Critical angle about perceived law enforcement inaction.)

Almost two weeks into the armed occupation at the Malheur National Wildlife Refuge, there doesn't appear to be a concrete plan for resolution.
To find out what the armed militants and law enforcement are doing to end the occupation, OPB sent Amanda Peacher to the occupied refuge, and John Sepulvado to talk with federal, state and local law enforcement. They set out during the same three-hour span Thursday.

Possible Federal Crimes Numerous at Oregon Refuge Take-over

Southern Poverty Law Center (1/15)

There appears to be a growing list of potential federal laws that could be used to charge antigovernment extremists and militia members who are illegally occupying a wildlife and bird refuge in Oregon. The standoff is now two weeks old, and a resolution doesn't appear in sight.

The Good, Bad and Ugly in Oregon Standoff Coverage

FAIR- Fairness and Accuracy in Reporting (1/15)

Unraveling the Gordian knot of media issues in the Oregon standoff between federal authorities and a Patriot/Militia alliance of building occupiers is a daunting task. Some journalists have written excellent, thoughtful articles, and some have wasted wood pulp and bandwidth. Most early reporting sat between those extremes.
This article outlines some basic ideologies of "militia" and outlines articles, in a timeline, regarding both sides of the Bundy occupation.

"Buffer zone" in Oregon standoff: Ex-cop Brandon Curtiss says he's a peacemaker

The Oregonian (1/15 5:30pm)

(Profile of Brand Curtiss—his upbringing and his view of himself. Includes 14 photos.)

On the Ground at Malheur Refuge

Field & Stream (1/15)

(Rich description of refuge social climate)
It's just after daylight, 12 degrees or so, in an ice fog that turns the big sagebrush around the parking lot into silver-white frost sculptures. The old wooden sign in the lot that said Malheur National Wildlife Refuge has been hauled away, and replaced by an official-looking blue plastic slab of a sign that reads "Harney County Resource Center."
Duane Ehmer is already on post, riding Hellboy, his beautiful cowhorse, the big American flag flying behind him. Duane is a welder by trade, a veteran who once had a long and disheartening fight with the Veteran's Administration, a man who has made his living catch-as catch-can in the arid inland West as cowboy and sawyer. With the photogenic Hellboy and the big flag, Ehmer has become the face of the takeover of the Malheur National Wildlife Refuge headquarters, though he's quick to tell you he's no leader. "You'll have to talk to people who know more than I do. I've just got a small part of this life."
Ehmer wears a leather jacket emblazoned with the American flag, rides a classic McClellan cavalry saddle, and packs a Colt 1860 cap-and-ball revolver in a holster on his left side, the grip turned for a right-handed cross draw. "I don't think the feds are too worried about this gun, do you?" he asks. "But I wouldn't want to get shot with it, myself."
Ehmer rides toward a group of media cars that are arriving. "An old cap and ball pistol, and they call me a terrorist!"

Will Bundy and Co. go to jail?

(The whole article appears below because it is subscription only)
Greenwire: E&E News (1/15/16, Phil Taylor)

Phil Taylor, E&E reporter

Published: Friday, January 15, 2016

As the armed occupation of the Malheur National Wildlife Refuge rolls into its third week, many are asking whether justice will be served when the siege ends.

No one knows whether the group led by anti-federal crusader Ammon Bundy will leave the southeast Oregon refuge peacefully. The militants had planned to deliver a presentation this evening to Harney County residents about what they want to accomplish before heading home, but elected officials have barred them from using county facilities.

LaVoy Finicum, who is among the dozen or so who have occupied Malheur since Jan. 2, said yesterday he doubts the public meeting will take place.

Assuming the militants do eventually go home, will they face prosecution? And if so, what laws will they be accused of breaking?

The occupiers protesting the federal government's ownership of lands have possibly trespassed, stolen government property, torn down fences and carried firearms where they're not supposed to -- relatively small-time offenses that could add up to significant time in jail.

But any repercussions could be slow in coming.

Bundy's father, Cliven Bundy, has been illegally grazing his cattle for decades on public lands northeast of Las Vegas. In April 2014, as the Bureau of Land Management sought to impound his cows, protesters brought guns, and some appeared to point them at federal officials, a major federal offense that forced BLM to retreat.

With the so-called Battle of Bunkerville approaching its two-year anniversary, the elder Bundy remains a free man, as do the members of his armed posse. The Department of Justice has yet to press charges.

Advocates for public lands -- and the rule of law -- are growing increasingly frustrated by what they see as lax enforcement of laws designed to protect the environment and federal employees. Bundy's standoff is viewed as a victory by right-wing extremists who may see little risk in challenging the government's domain over 640 million acres of public lands.

After Malheur, critics wonder what's to stop them from seizing another refuge.

"You can expect a lot more of these," said Jeff Ruch, executive director of Public Employees for Environmental Responsibility. "They can call it 'Militia McDonald's.' They could just franchise it."

Neither the FBI, which is leading the law enforcement response, nor the Justice Department have said anything substantive about the occupation or whether charges will be filed. Harney County Sheriff Dave Ward has told Oregon Public Broadcasting that the FBI has assured him the militants will "at some point face charges."

So far, no law enforcement officers have come to the refuge -- at least not in uniform -- and authorities have yet to disconnect the power or heat.

That's a "wise course of action" that will keep tensions down and avoid a potentially violent confrontation, said Laurie Levenson, professor of law at Loyola Law School in Los Angeles and a former assistant U.S. attorney in California.

The goal is to avoid a bloody confrontation similar to what happened in Waco, Texas, in 1993, where a gun battle between federal agents and the Branch Davidians left 10 dead, and at Ruby Ridge, the northern Idaho site of a deadly confrontation in 1992 between federal agents and suspected white supremacist Randy Weaver and his family.

At Malheur, deciding what charges to file will be a balancing act, Levenson said.

Prosecutors will likely consider the cost of a trial as well as the political risks of giving the militants more time in the limelight.

"Sometimes these people just want to be heard. They want a platform," Levenson said. "You start making them into martyrs or a cause célèbre."

But the militants seem to have given prosecutors a smorgasbord of legal options.

Long list of possible offenses

It could be argued that they've stolen federal property. Federal **law** says anyone who steals or "knowingly converts to his use" federal property worth more than $1,000 can be sentenced to up to 10 years in jail.

Militants appear to have crossed that threshold by, according to various news outlets, operating government vehicles, a Wildcat excavator and computers.

DOJ could also charge them with smaller misdemeanor counts such as trespassing, Levenson and other experts said.

Guns are generally permitted on wildlife refuges, but not at visitor centers or administrative buildings. Photo by Phil Taylor.

Another offense could be the possession of firearms inside federal buildings.

Guns are allowed at all national wildlife refuges -- and hunting is widely permitted -- as long as users comply with local firearm laws. But guns are not allowed at visitor centers, refuge administrative office buildings, refuge maintenance offices and workshops, according to a 2010 **press release** from FWS.

A sign taped to the door of the refuge visitors center makes that abundantly clear. Violators could face a year in jail or five years if the firearm was used "in the commission of a crime," it says.

The militants have been packing pistols on their hips, but they don't appear to be checking them at the doors of refuge buildings.

On Monday, the militants reportedly cut down a fence on public lands to allow a local ranching family to graze their cattle on the public lands, even though the rancher never asked them to do so.

There appears to be a **law** banning that, too. The penalty is up to a year in jail for "whoever knowingly and unlawfully breaks, opens, or destroys any gate, fence, hedge, or wall inclosing any lands of the United States."

Conspiracy, which is **defined** as two or more people conspiring "to commit any offense against the United States," may also be in prosecutors' tool box.

An *Oregonian* **investigation** found that Ammon Bundy and Montana militia leader Ryan Payne "privately strategized" the occupation for months.

Trouble making charges stick

But some charges, trespassing in particular, might be tough for the government to prove in court, said Andy Stahl, executive director of Forest Service Employees for Environmental Ethics.

"One doesn't need prior permission or authorization to visit the Malheur refuge or to walk into its administrative headquarters," he said. "When it comes to trespass law, that fact distinguishes public from private land, which is ironic because what the Bundys seek -- privatizing these lands -- would bar them from entry."

On public land, political speech is typically given a high degree of protection from government interference, he said.

In addition, FWS has made no apparent attempt to reopen its office and send employees back to work, Stahl said. The refuge buildings were unoccupied on Jan. 2 when the occupation began.

"With a sympathetic jury, one could imagine the Bundys saying the government abandoned the buildings before a shot was fired, so to speak, and, thus, there's nothing disruptive to the government about using them for this political protest," he said.
He added, "FWS's continued silence doesn't help matters. It does not appear that FWS has even asked the militants to leave. Its silence could be interpreted by a jury as acquiescence."
The United States is not the only government that has been potentially harmed by the occupation, said Harney Judge Steve Grasty.
The occupation has disrupted life in the quiet county of 7,000. The local school district cancelled classes for a week, and county employees spent a day off work. The county has lost at least $250,000 over the past two weeks, Grasty said.
"I'm trying to figure out how to send [the militants] an invoice," he said. "Do we have recourse to collect it? I don't know. But I think the world needs to know what this costs in tax dollars."

Action in the works?

Critics of the occupation say they're hopeful the wheels of justice are beginning to move.
Ruch of PEER pointed to the federal government's response to a Utah county commissioner's decision in May 2014 to lead an illegal all-terrain vehicle ride through Recapture Canyon, which BLM had closed to motorized use.
Like Malheur, the federal government took a soft approach. BLM did not cite any of the participants that day but sent plainclothes officers to document the protest.
Four months later, the Justice Department charged San Juan County Commissioner Phil Lyman and four others with counts of conspiracy and operation of ATVs where they are barred, misdemeanors it said were each punishable by a year in jail and a fine of $100,000. Lyman and one other defendant were convicted by a federal jury, and Lyman last month was sentenced to 10 days in jail and forced to pay $96,000 in restitution.
DOJ is facing intense pressure to hold the Malheur occupants accountable, too.
"No Wacos doesn't mean no action," Ruch said.
Former employees of BLM and the Forest Service last week concurred.
In a **letter** to Attorney General Loretta Lynch, the Public Lands Foundation and the National Association of Forest Service Retirees argued the standoffs at Bunkerville and Malheur amount to "domestic terrorism" because they endangered human lives, appeared aimed at coercing or intimidating the civilian population, and occurred in the United States.
"Doing nothing has allowed these domestic terrorists to act with impunity," they wrote. "The rule of law has been completely undermined by the lack of prosecution in these cases."
Rep. Peter DeFazio (D-Ore.) said DOJ's failure, as of yet, to prosecute Cliven Bundy set the stage for the Malheur occupation.
"He stood down the government at the point of a gun, and he's still illegally grazing, and nobody, nobody at the Justice Department has seen fit to lift a finger against him," DeFazio said in a **floor speech**. "It's time for the Justice Department to take some action. Wake up down there."

A harsh toll: How tough mandatory sentences inspired Harney County occupation

The Oregonian (1/16)

The seeds of this month's insurrection at a Harney County wildlife refuge were planted in an unusual midnight deal struck in 2012 between prosecutors and Harney County ranchers Dwight and Steven Hammond.
The long blood feud between the Hammonds and the government reached a surprise moment of consensus that night. After eight days of trial in a Pendleton courthouse on charges they had set illegal fires near their remote Eastern Oregon ranch, the parties agreed to abide by the jury's partial verdict.
The jury informed the judge it had concluded that the Hammonds were guilty of two counts of arson. On seven other counts, the jury had voted to acquit or was deadlocked.

The Hammonds agreed to accept the partial verdict, accept Hogan's sentence and to waive their rights to appeal. The two ranchers and their lawyers believed the U.S. Attorney's office had done the same.

The deal blew up four months later after U.S. District Court Judge Michael Hogan refused to issue the five-year mandatory minimum sentence. Prosecutors immediately appealed, calling Hogan's lighter prison sentences "illegal."

Malheur Refuge Occupation Media Coverage Summary
Sunday, January 17, 2016 – AM

Talk show host to hold 'workshop' on constitution in Burns
Oregonian (1/16 6:30pm)
(Includes 11 photos) KrisAnne Hall, a prominent national face of the so-called patriot movement, will visit Burns on Monday to conduct public workshops supporting the point-of-view of those occupying the Malheur National Wildlife Refuge.
Hall, a Florida attorney and radio talk show host, is scheduled to lecture from 5-7 p.m. Monday and Tuesday at the Harney County Fairgrounds. Her assistant said she will cover two topics: sovereignty of the state and the constitutional limits of the federal government's control.
Hall is an outspoken critic of the federal government who supports privatization of federal lands.

Sheriff: Harney County held hostage; innocence lost
Pamplin Media Group (1/16)
Harney County Sheriff David M. Ward said Saturday that he was still working toward a peaceful resolution of the two-week standoff at the Malheur National Wildlife Refuge, but he worries the community's patience was running out.
Ward said his offer of safe passage out of the county was still valid if about two dozen armed militants holed up at the refuge complex 30 miles southeast of Burns decided to leave.
That offer, however, has a limited shelf life, Ward said, partly because law enforcement patience could also wear thin.
…Ward told the Portland Tribune in one of his first media interviews since the standoff began Jan. 2, that Harney County residents were being "held hostage" by armed militants at the refuge complex and their "national agenda." Dozens of Harney County residents have said during community meetings that they want the militants to leave.
The issue has divided the small towns of Burns and Hines, Ward said, and it could take a long time for the communities to heal.
"What's going on here is unfair to our community," Ward said. "It's damaging our way of life. Our community is being held hostage for a list of demands that is really about nationwide issues.
"I fear that we may never be able to get our community back to the place it was just six weeks ago. That innocence is lost. We may never look at a strange face in town again without being suspicious."

More on Cameras
Oregon militia's behavior increasingly brazen as public property destroyed
Guardian (1/16)
Now entering their third week of occupying the Malheur national wildlife refuge in rural Harney County, leaders of the militia appear to be testing the patience of the local sheriff's department and the FBI by brazenly commandeering and in some cases destroying public property while escalating their anti-government rhetoric.
Militiamen have also removed cameras at the refuge they claim the FBI was using for "surveillance". LaVoy Finicum, an Arizona rancher and one of the main spokesmen for the militia, showed up to a Saturday morning press conference carrying a basket filled with black cameras.

Occupiers remove cameras, clash with conservationists
Oregonian (1/16 7:30 pm)
Tensions mounted Saturday at the Malheur National Wildlife Refuge, where men involved in an armed standoff clashed with conservationists and accused government workers of harassing their families.
As the standoff led by Arizona businessman Ammon Bundy entered its third week at the refuge headquarters, accusations swirled that Child Protective Services workers had begun visiting some of the occupiers' families.
Meanwhile, a visit to the refuge from land conservationists devolved into a shouting match, complete with a bullhorn and name-calling, after the group tried to address news reporters.

Armed group occupying refuge clash with environmentalists

AP January 16th, 2016
A shouting match erupted as members of the Center for Biological Diversity, a national nonprofit conservation group, tried to speak at a news briefing, The Oregonian reported (http://goo.gl/yHnphm). As the center's executive director Kieran Suckling began speaking, the armed activists screamed and booed him.
"We're here to speak up for public land, which belongs to the public," Suckling said over the yelling. "These people are trying to take the land away."
The shouting match happened just after occupiers arrived for the briefing carrying a basket of security cameras they said they had removed at the request of residents, the newspaper reported.

Black Oregon militiaman: Black Lives Matter can learn from occupiers

Guardian (1/17 5:30 am)
Brandon Dowd wants Black Lives Matter activists to travel to rural Harney County in Oregon, to learn about the US constitution.
One of several dozen protesters holding their ground at the armed occupation of the Malheur national wildlife refuge, Dowd, from Pine Bluff, Arkansas, stands out in the armed militia of white men who say they are fighting the government over federal regulations of public lands.
The 31-year-old is the only African American and only person of color the Guardian has seen at the refuge since the occupation began two weeks ago – though he and others insist a small handful of non-white militia members are present.

Standoff in Oregon Attracts Supporters Bearing Disparate Grievances

NY Times (1/16)
One of the people who have joined the Bundy family on a federal wildlife sanctuary in an arid patch of Oregon is an avowed anti-Semite from Ohio. One is an anti-Islamic ideologue from Phoenix.
Another is an online radio host—also from Ohio—who uses terms like “Obamislamistan.”
Some are militant gun-rights activitsts, and one is a man who has declared himself to be a judge and plans to convene a “citizens’ grand jury” in order to put the government on trial.
…as the protest has dragged on, it has become a magnet of sorts, attracting strands of diverse conservative movements from across the country.

Two weeks in, the Oregon refuge standoff is stuck 'in limbo'

LA Times (1/16 3 am)

Bundy explained the problem: The media were portraying them as "gun-toting mean guys who are only here for ourselves." His solution: They want to go into the nearby town of Burns so they can talk directly to the people they say they are trying to protect from the federal government — the residents of Harney County.

…Local and federal officials haven't tried to force out the protesters, though they've asked them to vacate more than once. The occupiers have bivouacked here since Jan. 2 in a compound that includes offices, a bunkhouse and support buildings.

'These buildings will never, ever return to the federal government'

Washington Post (1/16 6:29 PM) – front page of Sunday issue, below fold

The shout startles everyone: "Provocateur at the gate!"

A young man runs through the communal kitchen at the Malheur National Wildlife Refuge, two others fast behind. They are dressed in camouflage and pulling on military-style vests. All three wear black balaclavas as they rush outside and run to the front entrance of the headquarters that has been occupied by anti-government occupiers for the past two weeks.

(More narrative on climate at refuge)

Militant Says Foster Children Were Pulled From His Home

OPB (1/16 5 pm)

A militant leader on the Malheur National Wildlife Refuge told OPB his involvement in the occupation has resulted in the loss of his four foster children.

Robert "LaVoy" Finicum and his wife Jeanette were foster care parents for troubled boys. Finicum estimates that over the past decade, more than 50 boys came through their ranch near Chino Valley, Arizona. The boys often landed there from mental hospitals, drug rehabs and group homes for emotionally distressed youth.

"My ranch has been a great tool for these boys," Finicum said. "It has done a lot of good."

Backgrounders

Oregon standoff Day 16: What you need to know Sunday

Oregonian (1/17 6 am)

The morning news briefing that has become routine over the occupation of the Malheur National Wildlife Refuge descended into a shouting match Saturday, complete with a bullhorn and name-calling, after a trio of conservationists tried to speak. The spectacle erupted just after occupiers arrived for the briefing with a wicker basket full of security cameras they said they'd removed at the behest of residents and accused the government of harassing their families.

Militia head warns feds: Don't 'Waco' the Oregon occupiers unless you want a 'bloody, brutal civil war'

Five things to know about ongoing Oregon standoff

CNN (1/16 11:40 am)

Residents here enjoy their anonymity in the wide open spaces of the Northern Great Basin.

But they've had their fill of the standoff, led by Ammon Bundy, the son of anti-government Nevada rancher Cliven Bundy, who made his own headlines in 2014 in another faceoff with the federal government. A second son, Ryan, is beside his brother in the siege.

Residents want the confrontation to end and for the protesters in control of the refuge to go home.

Anatomy of a Standoff: The Occupiers of the Malheur National Wildlife Refuge Headquarters

Anti Defamation League- Unknown date

(Profiles of occupiers)

Pro-Bundy Messaging

Oathkeepers Website (1/16 4:30 pm)

Despite his earlier criticism of Ammon Bundy taking over the Malheur National Wildlife Refuge in Oregon in support of imprisoned Dwight and Steven Hammond, the founder of the anti-government militia group Oath Keepers warned federal authorities to tread lightly unless they want a "civil war" on their hands.

Writing on the Oath Keepers' website, Stewart Rhodes warned ominously that "there will never again be a free Waco," and that the Obama Administration risks "starting a conflagration so great, it cannot be stopped, leading to a bloody, brutal civil war."

https://www.youtube.com/watch?v=RrzamFEktI0&app=desktop

Tour inside refuge

Malheur Refuge Occupation Media Coverage Summary
Monday, January 18, 2016 – AM

Rural Oregon's Lost Prosperity Gives Standoff a Distressed Backdrop
New York Times 1/18
Kirk Johnson
Areas that were once economically important languish as jobs are clustered in urban centers creating a feeling of powerlessness as their populations grow older, poorer and less educated. This article explores the socioeconomics of the Harney County area where many people struggle to make ends meet and discusses residents' feelings regarding the standoff.

Bundynomics
New Yorker January 25 Issue
James Surowiecki
This article explores some of the ideology driving the situation at the refuge, as well as the Bundys efforts to demonize the federal government and recreate the Old West. It also touches on the appeal their rhetoric has for some people. According to the author, Bundy may be easy to dismiss due to his tactics but his beliefs seem to be in keeping with mainstream western conservatism.

(Entire article is pasted in because this is a subscription service)
Former Interior deputy urges crackdown on Bundy and co.
Greenwire/E&E 1/18
OREGON STANDOFF:
Former Interior Deputy Secretary David Hayes called today for the prosecution of Ammon Bundy and other occupiers of the Malheur National Wildlife Refuge in southeastern Oregon.
"In order to preserve the rule of law, we must not hesitate to enforce it against those who refuse to abide by it -- particularly when they incite others to do the same," Hayes wrote in a *National Law Journal* **op-ed**.
Bundy and his heavily armed supporters' siege of the refuge is now stretching into its fourth week, with no end in sight. They are protesting federal land management.
Hayes, who served as Interior's deputy secretary in the Clinton and Obama administrations, argues that the government is firmly backed by the law and Supreme Court precedents.
"Unfortunately, for Bundy and company, the law is not on their side," wrote Hayes, who is now a lecturer at Stanford Law School.
The op-ed comes in a fierce debate about whether the occupiers will be prosecuted and, if so, under what law.
Ammon's father, Cliven -- the leader of an earlier revolt -- continues to flout a 2013 court order to cease grazing his cattle on public land in Nevada without legal repercussions (***Greenwire***, Jan. 15).

Hayes pointed to two Supreme Court rulings, one from 1917 and another from 1976, that established that Congress has "complete power" to oversee the country's millions of acres of federal lands.
"The law here is clear," Hayes wrote. "Americans are on notice that trespassing and engaging in unauthorized activities on national refuges can trigger civil and criminal penalties."
He added, "Our laws also prohibit the destruction of public property and the type of over-the-top stalking and harassment of public officials that is happening in southeastern Oregon."

New group aims to turn Malheur occupation against itself; G.O.H.O.M.E. raising money in protest of the Malheur occupiers
KOIN 1/17 (11:14 am)
Jennifer Dowling
According to Jennifer Dowling, a new voice is emerging in protest of the protesters. The group Getting Occupiers of the Historic Oregon Malheur Evicted (G.O.H.O.M.E.) is working to "turn the refuge occupation against itself". Brothers Zach and Jake Klonoski launched the group's fundraising efforts on Sunday morning. G.O.H.O.M.E. plans to continue raising money in protest of the protesters every day the armed group remains at the Malheur Wildlife Refuge.

Oregon standoff: Harney County group felt betrayed by occupation, but working to take up cause
Oregonian 1/17 (10:03 pm)
Eliot Njus
This article looks at Burns community members who support the situation at the refuge and are actively working to sway others in the community toward similar support.
https://www.rt.com/usa/329261-oregon-standoff-exclusive-interviews/

Oregon standoff as seen by Bundy militia, local authorities, and tribal head
Russia Today 1/17 (11:14 pm)
In a series of exclusive interviews, RT has spoken to the various sides of the conflict that has been unfolding in rural Oregon since an armed militia group headed by Ammon Bundy "fighting for Constitution" occupied a wildlife refuge at the start of the year. The article links to several interviews, including ones with Ammon Bundy, the mayor of Burns and a local tribal leader.

Oregon Militiamen Continue to Dig in, Sparking Fears of Permanent Damage at Seized Wildlife Refuge
New York Magazine 1/17 (4:03 pm)
Chas Danner
Article is a recap from other pieces included in Oregonian or OPB. Re-states the taking down of cameras; the arrest of one man for unauthorized

use of a refuge vehicle that had been reported stolen; the removal of LaVoy Finnicum's foster children from his Arizona home; and the group's intention to hold Friday's canceled community meeting today (Mon., 1/18)

The 'hostages' of Oregon standoff: 4,000 Paiute artifacts? (+video)
Christian Science Monitor 1/17
Molly Jackson
The Burns Paiute tribe, whose ancestral lands are occupied by protesters at the Malheur National Wildlife Refuge, have asked officials to prosecute the armed activists for potential damage to sacred sites and historical artifacts.

Armed Oregon Occupiers Unashamedly Steal, Destroy Federal Property
Slate.com 1/17 (11:43 am)
Daniel Politi
This short article discusses actions taken by individuals involved in the situation occurring at the refuge, as well as perceived, growing sentiment in the community that law enforcement is not taking necessary or appropriate action. According to the article, these individuals' actions are becoming increasingly bold due to a lack of consequences.

Feds face harassment from extremists related to Oregon takeover
Washington Post 1/17 (12:50 pm)
Joe Davidson
Article regarding email sent to Forest Service employees about potential "paper terrorism." According to Mr. Davidson, an email sent to agency leaders Friday warned that self-appointed judges associated with the right wing sovereign citizen movement might "try to try to issue indictments, serve papers, or arrest local officials and/or federal employees." Those papers would have no legal authority, but would serve to bully workers.

Burns Paiute Tribe: Oregon Occupiers Might Sell Native Malheur Artifacts On eBay
Inquisitor 1/17
Tribal council member Jarvis Kennedy highlighted one particular fear — that the artifacts could end up for sale.
"They could be on eBay right now — we don't know. With militia members coming and going freely from the refuge, who knows what's leaving there?"
The wildlife refuge buildings hold thousands of artifacts that were being researched, along with maps detailing where more relics can be found, according to the *Canada Journal*. Videos of the Malheur occupiers show them using government computers containing the maps and other sensitive materials. According to Carla Burnside, U.S. Fish and Wildlife Service's refuge archeologist, those maps make the artifacts even more valuable for potential sellers.

“There’s a huge market for artifacts, especially artifacts that have provenance, where you can identify where they came from.”

Older stories, not previously captured in summaries…

Why Scott Tipton is being likened to the Bundy militia
Colorado Independent 1/13
Kyle Harris
U.S. Rep. Scott Tipton lambasted the federal government last week in Congress for interfering with private property rights in his district — a move some environmentalists say puts him in the ideological company of the armed right-wing activists occupying the Malheur National Wildlife Refuge in Oregon.
Tipton’s charge against the feds: That the Bureau of Land Management succumbed to political pressure from “environmental extremists” when the agency agreed to review the environmental impact of 65 oil and gas leases in the Thompson Divide. He said the review could lead to the government revoking the leases or forcing the owners to install expensive safety equipment.

Stream Protection Rule
Talking Points

The Department of the Interior's Office of Surface Mining Reclamation Enforcement (OSMRE) is revising its regulations by proposing the Stream Protection Rule (SPR).

- The proposed rule, the draft environmental impact statement (DEIS), and the draft regulatory impact analysis (RIA) were available for review on July 16, 2015.

- The proposed rule was published in the Federal Register at 80 FR 44436, on July 27, 2015, with a 60 day comment period that was extended 30 days to October 26, 2015.

    - Six public hearings were held around the country, including one in Lexington, KY in September 2015.

    - The overarching goals of the proposed SPR are to:
        - update and modernize 30 year old regulations to reflect the best available science,
        - better protect communities from the adverse effects of coal mining,
        - ensure mined areas are returned to a condition capable of supporting the uses they were capable of supporting prior to any mining, and
        - provide regulatory certainty to the mining industry.

- The proposed rule will address recent court decisions and more completely implement the requirements of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

- The SPR will allow coal mining to continue with minimal employment impacts - an average annual reduction in production-related employment of 260 fulltime equivalents, which would be mostly offset by an average annual increase in compliance-related employment of 250 fulltime equivalents

- there would be less than a 0.2% reduction in coal production, an increase in coal prices of 0.2 to 1.2% (depending upon the region and type of coal), and a 0.1% increase in national electricity production costs for utilities.

- Total compliance costs would be approximately $52 million per year for mine operators and $100,000 per year for state regulatory authorities.

The SPR will address issues related to:
- defining material damage to the hydrologic balance in a manner that protects streams and ground water resources from long term adverse impacts,
- the adequacy of baseline data and monitoring,
- the impacts of mining through streams overlying the coal,
- the impacts associated with the loss of streams filled with spoil and coal mine wastes,

- promoting the protection or restoration of streams, especially the headwater streams that are critical to maintaining the ecological health and productivity of downstream water and related environmental resources,
- maintaining, restoring, or establishing, riparian buffers, comprised of native species, for streams as a critical element of stream protection,
- the dewatering of aquifers and streams due to underground mining subsidence,
- establishing standards for mountaintop mining operations to ensure that no damage will occur to natural watercourses,
- addressing the loss of native hardwood forests and the associated ecosystem losses impacting aquatic and terrestrial life,
- ensuring permittees and regulatory authorities make use of advances in information, technology, science, and methodologies related to surface and groundwater hydrology; and
- protecting threatened and endangered species and designated critical habitat under the Endangered Species Act; and better explaining fish and wildlife protection and enhancement provisions under SMCRA.

OSMRE developed the proposed stream protection rule with the interests of all residents of the coal fields in mind, from those directly and indirectly employed by the industry, to those living with the impacts of mining on a daily basis.

McDowell, Kurtis <kurtis_mcdowell@ios.doi.gov>

Incident 2464417 - iPhone FFNRM4FUG5MC / 046222 - Released

1 message

McDowell, Kurtis <kurtis_mcdowell@ios.doi.gov> Fri, Apr 14, 2017 at 11:28 AM
To: Kurtis McDowell <kmcdowell@ios.doi.gov>

Released iPhone FFNRM4FUG5MC / 046222
iPhone belonged to Tommy Beaudreau
Case 2464417-VIP-20170414-IOSIPHTBEAUDREAU
Could not access phone
No Itunes backup was created
No Smartphone report was created
No Location data was exported

--
Kurtis McDowell, CISSP
"Safely Ensuring Business and Mission Success"
Information Assurance Engineer (Contractor)
Information Assurance Division
Office of Chief Information Officer
US Department of the Interior
Desk 202-208-4926
Cell 202-412-1729
Kurtis_McDowell@ios.doi.gov
Telework: Monday and Wednesday
WWW.DOI.GOV/OCIO

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