



## **Lead NEPA Story: Public comments on Bears Ears plan renew debate over revisions**

**(Greenwire, 11/15/2018) Scott Streater, E&E Reporter**

Conservation groups say they have submitted tens of thousands of comments to the Bureau of Land Management (BLM) expressing concerns about a draft management plan for the revised Bears Ears National Monument in Utah as the public comment period closes today.

The draft monument management plan and draft environmental impact statement (EIS) for the revised Bears Ears, designated by President Obama in late 2016, have generated almost as much controversy as President Trump's decision last year to undo protections for 85 percent of

the original 1.35-million-acre national monument.

The Bears Ears monument was shrunk and divided by Trump into the Indian Creek Unit, with 72,000 acres, and the Shash Jaa Unit, with about 130,000 acres.

Critics have roundly criticized BLM and the Forest Service for pushing forward with the management plans, in large part because Trump's proclamation shrinking Bears Ears is being challenged in federal court.

*Continued on page 5*

## **Clean Air Act: EPA restores Bush-era permit interpretation**

**(Greenwire, 11/7/2018) Sean Reilly, E&E Reporter**

Taking another step to ease application of New Source Review permitting requirements, EPA has revived a 2009 interpretation of a technical facet known as "project aggregation."

Issued just before President George W. Bush left office, that interpretation dealt with the standards for deciding when physical or operational change to a power plant, factory or some other industrial facility are "substantially related" and thus amount to a single project significant enough to trigger the need for a New Source Review pre-construction permit.

The final action signed today by acting EPA chief Andrew Wheeler reaffirms the view that such changes don't have to be aggregated just because they support the plant's basic purpose and that timing alone doesn't require that they be grouped together, according to an agency fact sheet. More specifically, the policy presumes

that plant changes three or more years apart are not substantially related, unless specific evidence indicates otherwise.

"Our updates will remove undue regulatory barriers, provide greater certainty to America's job creators and energy providers, and incentivize upgrades that will improve air quality," Wheeler said in a statement. Praising the agency's decision was American Forest & Paper Association President and CEO Donna Harman.

"Currently, companies working in good faith to comply with this component of NSR must rely on interpretations of project aggregation that are contrary to historical approaches," Harman said in a news release. As a result, she said, manufacturers can be forced to group projects when they are economically and technically different enough that they should be considered separately.

Wheeler's decision came in response to a 2009 reconsideration petition brought by the Natural Resources Defense Council soon after the Obama administration took office. After EPA stayed the Bush-era interpretation from taking effect and then proposed revoking it, the reconsideration process appears to have languished until the Trump administration restarted it, apparently earlier this year.

NRDC officials could not immediately be reached for comment on EPA's decision.

Wheeler's signoff on the final action comes more than a month after the White House budget office completed a standard review. An EPA spokesman did not reply to an emailed inquiry this morning asking the reason for the delay.

For industries that may be required to add new pollution controls after a plant upgrade or expansion, the New Source Review program's permitting requirements are a source of intense interest.

Under the Trump administration, EPA has already stopped challenging companies' projections of emissions increases expected from specific projects and has also condensed the forecasting process, according to guidelines issued since last December.

Environmental groups contend that the practical effect will be to allow more air pollution. NRDC and two other organizations are challenging the latter change in court.

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## Endangered Species Act and NEPA: Judge blocks killing of red wolves

*(Greenwire, 11/6/2018) Michael Doyle, E&E News reporter*

The Fish and Wildlife Service violated several environmental laws in allowing North Carolina private property owners to kill endangered red wolves, a federal judge has ruled.

In a marked victory for wildlife advocates, U.S. District Judge Terrence Boyle yesterday declared that the federal agency's red wolf actions several years ago flunked both Endangered Species Act and National Environmental Policy Act requirements.

"There is no doubt that defendants' decisions to cease wolf introductions while simultaneously increasing the likelihood of authorized lethal takes by landowners may adversely affect an endangered or threatened species," Boyle wrote.

With the decision, Boyle made permanent a preliminary injunction he previously imposed in September 2016. This means, Boyle explained, that the Fish and Wildlife Service can't kill or authorize the killing or other form of "taking" of red wolves "without first demonstrating that such red wolves are a threat to human safety or the safety of livestock or pets."

The next steps will be up to the Fish and Wildlife Service, which earlier this year proposed formal revisions to red wolf protections.

### Inside This Issue...

<i>Endangered Species Act and NEPA: Judge blocks killing of red wolves</i> .....	2
<i>NEPA: BLM to study large-scale New Mexico wind project</i> .....	3
<i>NEPA: Trump administration launches review of Beaufort leasing plan</i> .....	4

The agency today referred questions to the Justice Department, which typically does not comment on ongoing litigation. A Justice Department spokesman said "we are currently reviewing the decision."

"The law doesn't allow the agency to just walk away from species conservation, like it did here," Sierra Weaver, senior attorney for the Southern Environmental Law Center, said in a statement, adding that FWS "stopped listening to its scientists and started listening to bureaucrats instead."

Johanna Hamburger, wildlife attorney for the Animal Welfare Institute, added that Boyle's ruling "makes it clear that ... recent management decisions have failed to protect the red wolf population."

The Southern Environmental Law Center joined the Animal Welfare Institute, Red Wolf Coalition and Defenders of Wildlife in suing the Fish and Wildlife Service in 2015.

The new 19-page opinion is all the more notable because of its author's markedly conservative reputation.

The 72-year-old Boyle was appointed to the bench in 1984 by President Reagan and is now chief judge for the Eastern District of North Carolina. Citing his ostensibly right-wing views, Senate Democrats twice blocked his promotion to an appeals court. He once worked for the late Sen. Jesse Helms (R-N.C.), who cast red wolves as threats.

"They have increasingly encroached on private property to the point that they have become

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hazardous and a menace to private property owners, their families, their animals, their livestock and so on," Helms declared in an August 1995 floor debate.

The red wolf is designated as a "non-essential experimental population" under the Endangered Species Act. This gives FWS some discretion in devising an active management plan.

The current red wolf recovery area spans about 1.7 million acres and includes four national wildlife refuges, an Air Force bombing range, and state-owned and private lands. The Fish and Wildlife Service has proposed shrinking this area, prompting a mobilized opposition.

"Support for red wolf protection has been overwhelming," said Jason Rylander, senior staff attorney for Defenders of Wildlife.

In January 2015, though, the North Carolina Wildlife Resources Commission passed resolutions requesting that the red wolf be declared extinct in the wild and calling for an end to the program of reintroducing the red wolf. FWS subsequently authorized two landowners to take a wolf.

Boyle concluded that FWS had not exhausted efforts to capture the wolves and that the agency "has not even confirmed the presence of a red wolf" on the private property.

The decision may be viewed at [https://awionline.org/sites/default/files/press\\_release/files/AWI-WL-Red-wolf-summary-judgment-1118.pdf](https://awionline.org/sites/default/files/press_release/files/AWI-WL-Red-wolf-summary-judgment-1118.pdf).

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## **NEPA: BLM to study large-scale New Mexico wind project**

**(Greenwire, 11/12/2018) Scott Streater, E&E reporter**

The Bureau of Land Management will conduct a detailed study evaluating a large-scale wind project in western New Mexico covering nearly 30,000 acres of federal lands.

The Borderlands Wind Project in Catron County, New Mexico, near the Arizona border, would cover 28,917 acres of federal lands —

along with nearly 12,000 acres of additional private and state lands — and have the capacity to generate 100 megawatts of electricity, or enough to power about 30,000 homes.

BLM plans to conduct an environmental impact statement (EIS) of the project, and amend the Socorro Field Office resource management plan

to account for impacts to visual resources in the region. Each of the 36 wind turbines could stand as tall as 499 feet, or roughly the size of a 50-story building.

BLM is accepting public scoping comments through December 10 that will help guide how it conducts the EIS. In addition to visual resources, BLM has identified several other areas that will need to be analyzed, including potential impacts to cultural resources; threatened, endangered and sensitive species; tribal interests; and military training flight paths, according to a *Federal Register* notice.

The agency plans to hold at least one public meeting in New Mexico during the 30-day public scoping period.

In addition, BLM proposes to withdraw the 28,900 acres of federal lands in the proposed project area from new mining claims for up to two years while it conducts the EIS.

The wind-power project — proposed by Borderlands Wind LLC, a subsidiary of Juno Beach, Fla.-based NextEra Energy Inc. — could begin construction by next year and start generating "electricity to the grid by the end of 2020," according to BLM.

NextEra Energy is the world's biggest solar- and wind-farm operator.

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President Trump and the wind-power industry have had an uneasy relationship, with Trump last summer slamming wind power as a subsidy-dependent "killing field" for birds.

And at a private fundraiser, he said, "What happens when the wind doesn't blow?"

Still, the American Wind Energy Association reported that last year wind generated a record 6.3 percent of U.S. electricity and employed a record 105,000 people across all 50 states.

The Trump administration in the past six months has made some major moves to promote commercial-scale renewable energy projects on public lands, though many have been made to promote solar power projects in California and Nevada.

Among those projects is final approval by the Interior Department this month of the 500-MW Palen Solar Power Project covering roughly 3,100 acres of federal land in Riverside County, California.

The \$1 billion photovoltaic solar Palen project, proposed by San Diego-based EDF Renewable Energy Inc., would have a capacity to produce enough electricity to power roughly 130,000 homes and businesses.

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## **NEPA: Trump administration launches review of Beaufort leasing plan**

**(Greenwire, 11/15/2018) Margaret Kriz Hobson, E&E reporter**

The Trump administration is beginning an environmental review on its proposal to allow leasing in Alaska's Beaufort Sea in 2019.

The lease sale would be the first offered under the government's 2019-2024 offshore leasing plan for the U.S. outer continental shelf, which has not yet been finalized.

The Bureau of Ocean Energy Management's announcement that it will start an environmental impact assessment and open a scoping session on the Beaufort Sea planning area will be

published in tomorrow's *Federal Register*, with comments due within 30 days.

According to BOEM's announcement, the government is considering offering leases in 65 million acres of the Beaufort Sea.

Regulators are asking for additional information on how oil and gas development can be balanced with protections for offshore whaling areas, environmentally important areas and deepwater exclusion areas in the region.

The government also released a schedule for December scoping meetings in the Alaska Native villages of Utqiagvik (formerly Barrow), Nuiqsut and Kaktovik, as well as in Anchorage.

BOEM's proposal to allow leasing in the entire Beaufort Sea block could be complicated by a pending lawsuit over President Trump's decision to overturn former President Obama's ban on drilling in much of the Arctic Ocean.

Obama's ban, filed under the Outer Continental Shelf Lands Act, covered nearly all of the Beaufort Sea except for a sliver of waters near Alaska's northern shores where oil and gas development is already underway.

Environmentalists have filed suit in U.S. District Court for the District of Alaska charging that Trump exceeded his power when he signed an executive order reversing Obama's ban on drilling in the Arctic and parts of the Atlantic Ocean.

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Government attorneys argue the law was not intended to bind one president with decisions made by a previous one. The lawsuit is pending before U.S. District Judge Sharon Gleason in Anchorage, who hasn't indicated when she might rule.

The Trump administration's announcement on leasing in the Arctic was criticized by environmentalists, with Kristen Monsell, oceans legal director at the Center for Biological Diversity, charging that "[a]n oil spill in the treacherous Beaufort Sea could devastate the Arctic's amazing wildlife and would be impossible to clean up."

"Tapping offshore Arctic oil would lock in climate chaos around the world and further threaten polar bears, ice seals and other animals whose habitat is already melting away," she said.

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## Lead NEPA Story (continued from page 1)

Environmental groups, Native American tribes and various companies have sued over the reduction of the Bears Ears monument, as well as Trump's decision to significantly cut the 1.9-million-acre Grand Staircase-Escalante National Monument, also in Utah. They argue in legal complaints that the Antiquities Act of 1906 doesn't give the president authority to reduce the size of monuments created under prior administrations.

They want the Trump administration to wait until the legal challenge has been resolved.

"The new management plan, reflecting the Trump administration's unlawful action to shrink the monument, would open much of these public lands to destructive uses, including new rights of way for development, increased off-road vehicle use and degrading vegetation management, to the detriment of cultural and natural values they preserve," said Peter Nelson, director of federal lands for Defenders of Wildlife.

Defenders of Wildlife is among the conservation groups suing to overturn Trump's monument reductions.

BLM, despite repeated requests over the past three days, could not provide an estimate on the number of comments it has received to date.

Derrick Henry, a BLM spokesman, did say in an emailed statement that "many" of the comments "were post cards or form letters regarding the change in boundaries, and outside the scope of the planning effort, which is focused on creating a management framework facilitating access and traditional uses of the area, while protecting the objects and values identified in the Presidential proclamations."

Henry added that BLM and the Forest Service "greatly appreciate people who have taken the time to read the draft plans and provide thoughtful feedback. The most helpful comments have highlighted parts of alternatives or management actions that people would like to see changed or carried forward to the final plan."

He said the monument management plan for Bears Ears is "expected to be completed and released in early 2019."

Defenders said it submitted at least 14,000 comments, and an official with another group opposing the revisions said that in discussions with other groups, it expects that more than 200,000 comments in total will be delivered to BLM.

"We expect that, once again, the BLM will be receiving a landslide of comments demanding protection of all 1.3 million acres of the Bears Ears National Monument as it was legally designated and calling for the agency to defend these precious resources from the irresponsible proposals in this draft management plan that would risk the sacred sites and wilderness-quality lands," Dan Hartinger, director of the Wilderness Society's National Monuments Campaign, said in an emailed statement.

Not everyone is upset that BLM — the lead agency on the planning document — and the Forest Service are moving forward on the management plans.

Ethan Lane, executive director of the Public Lands Council and of federal lands for the National Cattlemen's Beef Association, said they are at least pleased that the draft management plan incorporates livestock grazing on the federal lands.

"While we are disappointed that the plan reduces grazing inside the monument boundaries, we applaud the BLM and USFS for working with stakeholders and local communities to find a balance at Bears Ears that will protect these resources with an eye toward rural economies in the region," Lane said in a statement.

### **Controversial issue**

Similar to the changes to Bears Ears, Trump's order broke up the Grand Staircase-Escalante National Monument, designated by President Clinton in 1996, into three parts: the Grand Staircase Unit of about 210,000 acres, the Kaiparowits Unit of 551,000 acres and the Escalante Canyons Unit of 243,000 acres.

The draft EIS and resource management plan (RMP) for Grand Staircase-Escalante remain open for public comment through Nov. 30.

The draft EIS and draft management plan for Bears Ears list a preferred alternative that "would allow for the continuation of multiple uses of public lands and would maintain similar recreation management levels while protecting Monument objects and values," the draft says.

"In general, this alternative provides more flexibility in the management of the BENM but would require additional review of proposals during implementation to ensure consistency and compliance with overall management requirements," it says.

The proposed management plan for Bears Ears comes not only as conservation groups and Native American tribes are suing to stop Trump's monument-size revisions, but also as elected leaders, companies and conservation groups have ramped up concerns about cutting up national monuments.

The group Western Values Project sent out an "action alert" to supporters reminding them to submit comments about the "rushed management planning process," and to encourage BLM "to put conservation first in the management of Bears Ears."

President Trump's revisions to the Bears Ears and Grand Staircase-Escalante monuments appeared to play a major role in several key congressional races in the West.

An example is the race for Nevada's Senate seat, where Rep. Jacky Rosen (D) defeated incumbent Sen. Dean Heller (R) by a comfortable margin, in part by actively supporting national monuments in the Silver State and elsewhere.

Meanwhile, Interior Secretary Ryan Zinke in August announced that he was forming a 15-member Bears Ears National Monument Advisory Committee to "provide information and advice regarding the development" of the monument management plan.

Henry said in his emailed statement that BLM, the Forest Service and Utah Gov. Gary Herbert's (R) office are reviewing applications for the panel and will make recommendations to Zinke.

"The BLM and US Forest Service appreciate everyone who took the time to submit an application and is willing to serve on the Bears

Ears National Monument Advisory Committee," he said.



A view from Bears Ears National Monument just southwest of the namesake twin buttes. Ellen M. Gilmer/E&E News  
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