



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

NOV 28 2018

The Honorable Tom McClintock  
Chairman  
Committee on Natural Resources  
Subcommittee on Federal Lands  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairman McClintock:

Enclosed are responses prepared by the BLM to the questions for the record submitted following the June 21, 2018 legislative hearing before the Subcommittee on Federal Lands.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti  
Legislative Counsel  
Office of Congressional and  
Legislative Affairs

Enclosure

cc: The Honorable Colleen Hanabusa, Ranking Member  
Subcommittee on Federal Lands

**Committee on Natural Resources  
Subcommittee on Federal Lands  
Legislative Hearing  
1324 Longworth House Office Building  
June 21, 2018  
10:00 AM**

**Questions from Rep. Greg Gianforte** for Brian Steed, Deputy Director, Policy and Programs, Bureau of Land Management, U.S. Department of the Interior

**1. Deputy Director Steed, can you describe the process that the BLM took when it reached a decision on the suitability of WSAs for designation as Wilderness?**

Answer:

The BLM reached a suitability decision for 37 wilderness study areas (WSAs) in Montana through nine separate Environmental Impact Statements (EISs). The decisions were informed by public meetings, hearings, and field trips, in which Montanans could participate. These particular areas were identified as meeting the definition of wilderness provided by section 2(c) of the Wilderness Act of 1964, which included: sufficient size (5,000 or more roadless acres, or islands of any size); naturalness; and outstanding opportunities for solitude or a primitive and unconfined type of recreation.

After the BLM reached this decision, the agency took the following steps: first, the BLM reported a recommendation to the Secretary of the Interior titled *Montana Statewide Wilderness Study Report* (September 1991). This recommendation was then reported to the President, and through the report the President advised the Congress of his recommendation for wilderness designations. Second, the BLM continued management of the WSAs to sustain their suitability for preservation as wilderness, as required by section 603(c) of the Federal Land Policy and Management Act. This ongoing management structure, known as non-impairment, continues until Congress designates WSAs as wilderness or returns them to multiple use.

**2. Can you describe some of the management challenges that WSAs present to our land managers, maybe in the context of the Lodgepole Fire?**

Answer:

Section 603(c) of the Federal Land Policy Management Act (FLPMA) requires the BLM to manage WSAs as wilderness until Congress acts to release them, or designate them as

wilderness. WSAs tend to be located in mountainous, steep, or otherwise rough terrain, which presents unique challenges for the BLM. Lack of access points present significant challenges to getting firefighting equipment into sites for wildland fire suppression activities. For example, the 270,723-acre Lodgepole Complex incident of 2017 included ignitions in steep and rough terrain during hot, dry, and windy conditions. These conditions coupled with extreme wind and local weather conditions led the Bridge Coulee, South Breaks, Barker, and Square Butte Fires to grow out of control. Furthermore, the BLM notes that historical caution regarding fuels treatments in WSAs has created significant fuel loads.

**3. Would removing Wilderness study area restrictions help with fuels load management? Would removing these restrictions help with wildlife habitat as well as increased access for multiple stakeholders?**

Answer:

While the BLM has tools to conduct certain vegetation treatments in WSAs, providing certainty to the status of these parcels would increase the number of tools available to help prevent hazardous fuel build-up and provide protection of human life and/or property. The resolution of WSA designations would enable the BLM to implement a wider variety of projects to reduce hazardous fuel build up, including commercial harvest or construction of permanent mechanized fire containment lines. Removing WSA designations would also allow for construction of roads or trails for stakeholders seeking motorized vehicle access, dependent on the Resource Management Plan (RMP) management goals and objectives for recreation in the area. Where the landscape terrain is conducive to such development, this may have the potential to provide for motorized public access into previously difficult to access areas.

**Committee on Natural Resources  
Subcommittee on Federal Lands  
Legislative Hearing  
1324 Longworth House Office Building  
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10:00 AM**

**Questions from Rep. Curtis for Mr. Brian Steed, Deputy Director, Policy and Programs, Bureau of Land Management, U.S. Department of the Interior**

**1. This question is regarding HR. 5727, the Emery County Public Land Management Act. Would the bill language, in particular Section 202 and Section 301, affect the existing water rights of the Ute Indian Tribe? Additionally, would it prevent the Tribe from being able to utilize their water in the Green River? Please answer separately for Section 202 and Section 301.**

Answer

Section 202:

H.R. 5727 does not establish water rights for wilderness areas, so there would be no potential conflict between wilderness water rights and Tribal water rights. When a wilderness area is designated, the BLM does not have discretion to authorize new facilities within the wilderness boundary for purposes of diverting, conveying, or storing water. Accordingly, if the Tribe does not hold water rights within wilderness boundaries, there would be no management conflict. If the Tribe holds water rights that have already been developed within wilderness boundaries, then the Tribe could continue to operate those facilities under existing rights-of-way.

Section 301:

The designation of a Wild and Scenic River creates a Federal reserved water right in the amount, timing, and location necessary to support the outstandingly remarkable values for which the river is designated. The water right would hold a priority date equal to the date of designation. Any water rights held by the Tribe would be senior in priority to the Federal reserved water rights, so within the arena of water rights administration, there would be no conflict between Tribal rights and Wild and Scenic River water rights.

**2. In H.R. 5727, would Section 406. Exchange of School and Institutional Trust Lands Administration land allow the Utah School and Institutional Trust Lands Administration to select parcels owned by a Native American Tribe, or held in trust by the Secretary of the Interior on behalf of a Tribe? Additionally, could you please answer the above question as it applies to the Ute Indian Tribe specifically?**

Answer:

Under section 406 of H.R. 5727, SITLA would be authorized to select "unappropriated public land," which in this case aligns with "public lands" as identified in section 103 of FLPMA. Under this section of FLPMA, "public lands" means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the BLM without regard to how the United States acquired ownership, except (1) lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts, and Eskimos.

Under H.R. 5727, "unappropriated public land" would not include any lands within the BLM's National Conservation Lands, Areas of Critical Environmental Concern (ACECs), special recreation management areas, and (with some exceptions) acquired lands.

Therefore, section 406 of H.R. 5727 would not permit SITLA to select parcels owned by a Native American Tribe or lands held in trust on behalf of a Tribe, including the Ute Indian Tribe.



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**NOV 28 2018**

The Honorable Lisa Murkowski  
Chairman  
Committee on Energy and Natural Resources  
United States Senate  
Washington, D.C. 20510

Dear Chairman Murkowski:

Enclosed are responses to the follow-up question from the April 17, 2018, oversight hearing entitled "Deferred Maintenance and Operational Needs of the National Park Service" before your Committee. These responses were prepared by the National Park Service.

Thank you for the opportunity to respond to you on these matters.

Sincerely,

Christopher P. Salotti  
Legislative Counsel  
Office of Congressional and  
Legislative Affairs

Enclosure

cc: The Honorable Maria Cantwell  
Ranking Member

**U.S. Senate Committee on Energy and Natural Resources**  
**April 17, 2018 Hearing**  
***Deferred Maintenance and Operational Needs of the National Park Service***  
**Questions for the Record Submitted to Ms. Lena McDowall**

**Questions from Chairman Lisa Murkowski**

**Question 1:** Who ultimately has accountability for the deferred maintenance number in each park? Is it the superintendent, the regional director, or someone in the Washington office? How does reduction in the deferred maintenance number impact this individual's job performance rating, if at all.

**Response:** A great deal of accountability for addressing deferred maintenance rests at the superintendent or park manager level. Yearly, performance standards are established for superintendents and park managers. These standards encompass the full spectrum of their responsibilities, including management of the park's real property assets. To effectively manage these assets, the superintendent or manager needs to understand the composition of the park's asset portfolio, including the extent of deferred maintenance, and to be able to prioritize needs in order to compete in the agency's annual call for project funding requests. A superintendent or park manager's effectiveness in managing these assets will be reflected in his or her performance evaluation.

**Question 2:** According to a March 2016 GAO report, NPS officials have noted that "resources directed toward repair needs may be in direct competition with resources need for disposals or co-locations." To be clear, this report was looking at older, unutilized buildings (e.g., warehouses) that could be candidates for disposal.

- a. Are there any legal barriers that the NPS faces when considering disposing of unneeded assets?

**Response:** No. When a park determines that an asset is unneeded, the NPS identifies the asset to be a candidate for disposal. The asset then moves into a formal asset disposal process that includes reviews under the McKinney-Vento Act, the National Historic Preservation Act (Section 106), and the National Environmental Policy Act.

- b. What role does the McKinney-Vento Act play in this determination?

**Response:** Title V of the McKinney-Vento Act (McKinney Act) provides a process for making usable housing available to assist the homeless through suitable unneeded federal properties (buildings, structures or vacant land) categorized as unutilized, underutilized, excess, or surplus. The program provides no funding, and the properties are made available on an "as is" basis to states, units of local government, and non-profit organizations for shelter, services, storage, or other uses. For buildings and structures on NPS' lands, this means assets that are suitable for the homeless must be removed offsite.

The NPS review process includes internal reviews at the park, regional and Washington level. Those reviews are then passed through to the General Services Administration (GSA) and Housing and Urban Development (HUD). The entire McKinney Act process typically takes eight or more months to complete. NPS records indicate that no NPS assets have ever been utilized by others through the McKinney Act.

**Question 3:** A December 2016 GAO report found that the Park Service, at that time, did not have a plan or timeframe for evaluating whether the Capital Investment Strategy had been successful. As you are aware, programs from the Capital Investment Strategy were first funded in Fiscal Year 2015.

- a. Does the agency have a plan at this time to review the Capital Investment Strategy?
- b. Can you provide us with an update or timeline?

**Response:** The primary finding from the GAO report stated the Capital Investment Strategy (CIS) is effectively directing available NPS funding into the highest-priority assets from most major fund sources. The review also stated that certain goals of the CIS have not yet been fully realized but can be achieved through minor adjustments.

After the GAO's recommendation, the NPS reviewed the CIS and found that currently, it aligns to the missions of the NPS. The NPS will continue to evaluate the CIS to determine how effective it is at meeting the strategic objectives laid out as part of the CIS documentation. Updates will be made only if the evaluation proves it is not meeting its intended goals. At this time, a timeline for the next formal review has not been determined.

### Questions from Senator John Barrasso

**Question 1:** Last week, the agency announced a fee increase of approximately \$5 at most parks where fees are currently paid. This announcement differed significantly from the October 2017 proposal. How did the agency determine the appropriate level for the fee increase?

**Response:** The NPS received approximately 109,000 public comments to the October 2017 proposal for peak-season entrance fees at 17 highly visited national parks. The decision to raise fees by a lesser amount at all entrance fee-charging parks was based on the concerns and ideas provided by the public on how best to address fee revenue for parks.

**Question 2:** The agency estimated that once fully implemented across the fee-paying parks, the proposal would increase annual revenue by about \$60 million, of which 80 percent (approximately \$48 million) would stay in the parks where the fee was collected. Considering the scope of the \$11.6 billion backlog, how will the National Park Service prioritize deferred maintenance among the various park needs to ensure the prospective \$48 million addresses the most pressing needs first?

**Response:** The NPS relies on its fee expenditure requirements and its project scoring systems to ensure the funds are used to address high-priority needs. Since 2015, the NPS has required parks



to spend at least 55 percent of their available Recreation Fee dollars on deferred maintenance projects. Parks and regions rely on the CIS to rank and prioritize projects, which ensures that available funds are directed to the needs of high priority, mission critical assets.

**Question 3:** In its Fiscal Year 2019 Budget Request, the Department proposed to create a Public Lands Infrastructure Fund. The fund would help pay for repairs and other infrastructure needs of the national parks, Bureau of Indian Education schools, and wildlife refuges. The fund would be financed by revenues from federal energy leasing and development that exceed Fiscal Year 2018 budget projections.

There is no question infrastructure needs require creative solutions and significant funding. I am concerned that the Department's proposal is going to divert revenues away from existing priorities.

As you know, federal energy revenues are currently divided among the federal government, states, Indian tribes, the Reclamation fund, Land and Water Conservation Fund, and the Historic Preservation Fund. Many of the funds have balances on the books that are in the billions of dollars. These balances have accumulated over the years, and continue to grow as money is recorded on the books but is not appropriated. It is also important to note that the need for these funds, particularly when it comes to Reclamation fund projects, has continued to increase.

As I understand the Department's proposal, all of the energy revenues above the Fiscal Year 2018 baseline would be split between the proposed infrastructure fund and the federal treasury. None of these additional funds would go toward the state share or to reduce the growing unobligated balances in the funds which currently receive energy revenues.

The Department already has significant obligations on the books for programs they administer. How does the Department propose to ensure that these existing obligations for energy revenues are met first, before funds are redirected for the newly-proposed Public Lands Infrastructure Fund? Are you concerned the proposed fund will suffer the same fate as other funds that are designated recipients of federal mineral revenues (i.e., revenue recorded on the books but never appropriated)?

**Response:** The Administration's proposal to create a Public Lands Infrastructure Fund includes a carefully designed funding mechanism to avoid using revenues from energy development on federal lands and waters that are intended for other programs. S. 2509, the National Park Restoration Act, adopted that funding mechanism, and that feature was carried over in S. 3172, the Restore Our Parks Act. S. 3172 states that the revenue generated for the National Park Legacy Restoration Fund will not affect the disposition of mineral and energy development revenues that are due to the United States, special funds, trust funds, or States, or that have been otherwise appropriated under Federal law, including the Gulf of Mexico Energy Security Act (GOMESA), the Mineral Leasing Act, and the Land and Water Conservation Fund Act. In addition, the fund created by S. 3172 would not be subject to appropriations, providing the consistent, dedicated funding needed to address the maintenance backlog.

## Questions from Senator Joe Manchin III

**Question 1:** The Land and Water Conservation Fund (LWCF) is essential to expanding recreation access for our sportsmen and women, to maintain a vibrant outdoor economy, and to honor the deep connection Americans have with our national parks and public lands. For more than 50 years, LWCF has been a success for some of the most cherished public lands and the communities that depend on them. In fact, in West Virginia, LWCF is the reason the National Park Service has incomparable public assets such as the Harpers Ferry and the Gauley and New Rivers National Recreation Area.

In September 2017, the Department announced \$94.3 million in grants to be distributed through the stateside grant program, including just over \$1 million to West Virginia. These funds are used for all sorts of upgrades that will make West Virginia outdoors even more wild and wonderful. But I am concerned by the Administration's FY19 budget recommendation for LWCF at only \$8.1 million. Last year, the FY2018 budget proposed \$74 million for LWCF, a decrease of \$400 million. The budget in brief says "the Administration will review options for reauthorization, including consideration of a range of conservation-related investments that could be funded through the LWCF."

Can you please elaborate on what options the administration is reviewing for reauthorization.

**Response:** The President's budget supports the LWCF and calls for its reauthorization. The budget did not request funding for new Federal land acquisition projects because the Department places a high priority on taking care of the land and assets that we currently manage rather than adding to the federal estate. However, the budget does include State-side funding derived from the LWCF to ensure that States continue their implementation of LWCF programs. The Department stands ready to work with Congress to pass a reauthorization of LWCF.

**Question 2:** West Virginia communities that neighbor and surround our National Park units rely on a steady stream of visitors for income. These are rural communities, and in West Virginia, because of the downturn of the coal industry, they have been hit hard the last few years. The economic effects will be even more devastating if we see a decrease in visitors because of a failure to address deferred maintenance.

Can you please discuss how decreased visitors to National Park units will impact surrounding communities?

**Response:** The NPS is aware of how vital the national parks are to the economy of West Virginia, where tourism is a leading industry. In 2017, visitors to national park sites in West Virginia generated an estimated \$72.8 million in total visitor spending across the state. If visitation decreased, the impact would be felt throughout the state, and especially in the park gateway communities.

The Administration is strongly supporting legislation, initially proposed as part of the President's FY 2019 budget, that would help ensure that visitation to parks continues to thrive by investing

\$6.5 billion in bringing deteriorated facilities up to the standards that visitors expect. Enactment of this legislation is Secretary Zinke's highest legislative priority.

### **Questions from Senator Mazie K. Hirono**

**Question 1:** Last year the Department was undergoing a review of youth programs all across the different bureaus, including the National Park Service. Last month during the budget hearing I asked Secretary Zinke in a question for the record if that review is complete, and have not yet received his response.

Can you tell me if the review is complete and if so, what are the results?

**Response:** The Department continues to review all of the Department's youth programs to ensure use of the most cost-effective strategies for engaging children, youth, and young adults in our nation's great outdoors. We will continue working on an ongoing basis, through our budget process and as other decisions are needed, to assess the value of each of our various youth-engagement programs and to determine whether there might be other ways to accomplish the goals of these programs more efficiently and effectively.

**Question 2:** I want to follow up on my mention of the Department of Interior's review process of grants and cooperative agreements, as discussed in a December 28, 2017 Department memo. During the hearing I noted that Mr. Ring's testimony stated that partnerships are being threatened by the Department's "unnecessary and unwise layer of political screening of all grant and cooperative agreements" and that it is "a way of imposing a political litmus test on those applying for federal grants or those entering into a cooperative agreement with the federal government." Please provide the following information:

- a. Rationale for why the Department is requiring this new review process for grants and cooperative agreements,

**Response:** For the NPS, final approval of a grant and cooperative agreement is required from the NPS Director if it is under \$50,000, and by the Senior Advisor to the Assistant Secretary for Policy, Management, and Budget if it is over \$50,000. The purpose for requiring the review process is to ensure appropriate review and oversight of the Department's financial assistance programs and to ensure that discretionary grants and cooperative agreements better align with the Secretary's priorities.

- b. Who at the Department is conducting these reviews and whether or not they are a political appointee,

**Response:** Both of the final reviewers – the NPS Deputy Director exercising the authority of the Director and the Senior Advisor to the Assistant Secretary for Policy, Management, and Budget – are political appointees; however, the entire review and approval process is done in coordination with both political and career officials at each of the bureaus.

- c. A list of criteria utilized in screening grants and cooperative agreements,

**Response:** When each grant or cooperative agreement entered into the internal database, the following information is collected: the category of recipient organization such as youth or veteran employment, the catalog of federal domestic assistance (CFDA) number, the type of non-profit organization that can legally engage in advocacy, project purpose and work to be accomplished to ensure they meet NPS and Departmental priorities, and the dollar amount.

d. A timeline that the Department has established for these reviews,

**Response:** Each review is done as quickly, efficiently and thoroughly as possible. The complexity of the grant or cooperative agreement may affect the time required for review of the submission. The Department continues to refine and perfect this process to make sure taxpayer dollars are used in the most effective and appropriate manner.

e. How many grants and cooperative agreements require these reviews, and

**Response:** Based on fiscal year 2017 financial assistance submissions, the NPS estimates that there will be over 3,000 NPS financial assistance requests for approval in FY 2018.

f. The amount of funding impacted by these reviews.

**Response:** Based on fiscal year 2017 financial assistance activity, the NPS estimates that there will be over \$300 million in financial assistance funding for fiscal year 2018 that will fall within the requirements established by the review process.

**Question 3:** I also want to follow up on our discussion about how NPS has made changes to streamline the process of using fees collected by parks for cyclic and routine maintenance. You mentioned that there have been changes in recent years that allow the use of fees for operational purposes. Can you explain the changes recently made to better allow park employees to utilize those fees for maintenance within their specific parks and any other efforts underway to help streamline that process?

**Response:** Parks that collect fees are required to spend at least 55 percent of their retained Recreation Fee dollars on deferred maintenance projects. Park managers determine the best use for the other 45 percent, within certain parameters, and may opt to use that funding on additional deferred maintenance or on cyclic or routine maintenance.

### **Questions from Senator Catherine Cortez Masto**

**Question 1:** The National Park Service advised against holding a lease sale for drilling near Zion National Park last year. In a March 2017 memo to BLM, Zion superintendent Jeff Bradybaugh wrote "Development of oil and gas operations may not be the most appropriate or best use of public lands at the gateway to Zion National Park." Would your agency's outlook on the lease sale be altered if a portion of the money from that sale were potentially going to the national parks maintenance backlog?

**Response:** The NPS outlook on a lease sale would not be altered if a portion of the revenue was going to be directed to a national parks maintenance fund. The NPS would assess potential impacts of a lease without regard to the use of revenue from that lease, as it does now.

**Question 2:** Secretary Zinke's proposed budget would have slashed your overall budget by 7 percent and resulted in the elimination of up to 2,000 park rangers. What impacts do you think that kind of cut to the workforce might have on visitor services or other activities?

**Response:** The FY 2019 Budget Policy Addendum requests \$2.43 billion for the Operation of the National Park System (ONPS), an increase of \$270.9 million from the initial FY 2019 Request. The increase in requested funding is the result of the higher cap levels enacted in the Bipartisan Budget Act of 2018. The addendum includes the restoration of 1,639 Full Time Equivalents (FTE) in reductions initially proposed.

**Question 3:** The Administration's maintenance backlog proposal would direct funds to NPS, U.S. Fish and Wildlife, and to Bureau of Indian Schools, but not to BLM's National Conservation Lands System, which contains many of the nation's crown jewel National Monuments and National Conservation Areas, including Nevada's Sloan Canyon, Red Rock Canyon, and Gold Butte. Why does the Administration's proposal not include all public land management agencies?

**Response:** In its FY 2019 Budget, the Administration chose to prioritize its efforts to address the Department's deferred maintenance backlog within the two bureaus that are the most involved with serving visitors, and on Indian schools, where there is a serious need for improved facilities.

**Question 4:** I am concerned about the lack of hiring for the agency, and the Department's intentional plan to reduce the number of employees by leaving positions vacant from attrition, especially when those positions encompass maintenance and design. We can't starve the parks financially, but also starve them through necessary human capital – especially with the rising number of visitors each year. How do you intend to increase your internal quality, human capital, and required expertise to fully tackle the deferred maintenance backlog, while also preserving visitor experience and normal operations, without increasing the number of employees to handle increasing need?

**Response:** A significant portion of deferred maintenance work is handled by the Denver Service Center (DSC), the NPS's central planning, design, and construction office. DSC manages over \$1 billion in projects at any point in time. Projects are mostly accomplished through design/construction contracts. Funding to support DSC staffing needs is included within the funds allocated for each project. Similarly, for projects accomplished at the park or regional office level, limited funding to support project management services is included within the funds allocated for each project.

For employees whose costs are not covered by project dollars, the NPS maintains reasonable flexibility within the Operation of the National Park System (ONPS) appropriations to align staffing decisions with highest priority needs.

**U. S. Senate Committee on Energy and Natural Resources**  
**April 17, 2018 Hearing**  
***Deferred Maintenance and Operational Needs of the National Park Service***  
**Additional Information Provided for the Record**

Two questions were asked of Deputy Director McDowall during the hearing that required follow up information. That information is provided here.

Senator Capito asked the NPS to look into and resolve an issue between the Meadow Creek Public Service District and the New River Gorge National River's Sandstone Visitor Center and the monthly utility rate.

Answer: New River Gorge is aware of the payment error and is working with the local authorities to resolve the issue and bring the payments up to date.

Senator Hoeven asked for information on the FY18 budget related to infrastructure projects, specifically how much are we spending on roads projects.

Answer: Disbursement for the NPS FY 2018 Federal Lands Transportation Program (FLTP) is still in progress, so final funding allocations are not yet available. In FY 2017, the total program obligation was \$253.5 million. About five percent of the total program was used to support alternative transportation (transit, bicycle, and ferry dock related projects) while another five percent was dedicated to nationwide road data collection and analysis, long range transportation planning, and bridge safety inspections. The remaining 90 percent went to road, bridge and parking lot improvements across the system. The FLTP total authority for NPS was increased by \$8 million for FY 2018. This funding is expected to be obligated in similar proportions to those used in FY 2017.



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

NOV 23 2018

The Honorable Lisa Murkowski  
Chairman  
Committee on Energy and Natural Resources  
United States House Senate  
Washington, D.C. 20510

Dear Chairman Murkowski:

Enclosed are responses prepared by the BLM to the questions for the record submitted following the August 22, 2018, hearing before the Senate Committee on Energy and Natural Resources' Subcommittee on Public Lands, Forests, and Mining to consider pending legislation including S. 2809, *the Emery County Public Land Management Act*.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti  
Legislative Counsel  
Office of Congressional and  
Legislative Affairs

Enclosure

cc: The Honorable Maria Cantwell, Ranking Member  
Committee on Energy and Natural Resources  
The Honorable Mike Lee, Chairman  
Subcommittee on Public Lands, Forests, and Mining  
The Honorable Ron Wyden, Ranking Member  
Subcommittee on Public Lands, Forests, and Mining

**U.S. Senate Committee on Energy and Natural Resources**  
**Subcommittee on Public Lands, Forests and Mining**  
**August 22, 2018 Hearing: *Pending Legislation***  
**Questions for the Record Submitted to Mr. Christopher McAlear**

**Question from Chairman Lisa Murkowski**

**Question:** S. 2809, the Emery County Public Land Management Act of 2018 authorizes an exchange with the State of Utah's School and Institutional Trust Lands Administration (SITLA) in Title IV of the bill. It is expected that this land exchange may involve federal lands within the Uncompahgre Reservation. The Ute Indian Tribe expressed concerns about exchanging federal land with SITLA for federal lands within the Uncompahgre Reservation as the Tribe has asserted ownership of all federal lands within the reservation. Please provide the Committee with the legal status of the federal lands within the Uncompahgre Reservation. Does the Secretary of the Interior have authority to transfer lands within the Uncompahgre Reservation?

**Answer:** The Bureau of Land Management (BLM)'s land status records and geographic information system data currently identify the areas on the June 14, 2018, "Emery County Public Land Management Act of 2018 Overview Map" referenced in your question as public lands managed by the BLM. The Ute Indian Tribe has asserted that a portion of the lands that would be available for selection by the State are within the boundaries of the Uncompahgre Reservation. The Tribe requested that the Department of the Interior (Department) restore those lands to tribal trust ownership. Earlier this year the Department denied that request. The Tribe is challenging that decision in federal court.

Under S. 2809 as introduced, unappropriated public lands available for State selection are defined as any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the BLM, without regard to how the United States acquired ownership, except: 1) lands located on the Outer Continental Shelf; and 2) lands held for the benefit of Indians, Aleuts, and Eskimos. The bill states that unappropriated public lands available for State selection include land or minerals acquired by the United States under title III of the Bankhead-Jones Farm Tenant Act. In addition, the bill states that the unappropriated public lands available for selection do not include any other acquired land or land within a unit of the BLM's National Conservation Lands, an area of critical environmental concern, or a special recreation management area.

Under the bill, the Secretary of the Interior could approve any application for relinquishment and selection in whole or in part. The bill further stipulates that the Secretary shall not approve any application that the Secretary determines would create irreconcilable management conflicts with respect to the management of adjacent Federal land.



**U.S. Senate Committee on Energy and Natural Resources**  
**Subcommittee on Public Lands, Forests and Mining**  
**August 22, 2018 Hearing: *Pending Legislation***  
**Questions for the Record Submitted to Mr. Christopher McAlear**

**Question from Senator Ron Wyden**

**Question:** I appreciate you taking the time to discuss Senator Hatch's Emery County public lands bill, S. 2809. As I stated at the hearing, I am willing and ready to work with the Chairman of the subcommittee, with Senator Hatch, and with the stakeholders to balance conservation and other uses in the county. As any of us who work on these public lands issues knows, this is not always easy. I understand the Ute Indian Tribe currently has significant concerns with how the legislation will affect their Reservation lands and waters.

**Given the Department of the Interior's trust responsibility to the Tribe, what steps will the Department take to resolve tribal concerns?**

**Answer:** The Bureau of Land Management (BLM)'s land status records and geographic information system data currently identify the areas on the June 14, 2018, "Emery County Public Land Management Act of 2018 Overview Map" referenced in your question as public lands managed by the BLM. The Ute Indian Tribe has asserted that a portion of the lands that would be available for selection by the State are within the boundaries of the Uncompahgre Reservation. The Tribe requested that the Department of the Interior (Department) restore those lands to tribal trust ownership. Earlier this year the Department denied that request. The Tribe is challenging that decision in federal court.

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Under the bill, the Secretary of the Interior could approve any application for relinquishment and selection in whole or in part. The bill further stipulates that the Secretary shall not approve any application that the Secretary determines would create irreconcilable management conflicts with respect to the management of adjacent Federal land.

**U.S. Senate Committee on Energy and Natural Resources**  
**Subcommittee on Public Lands, Forests and Mining**  
**August 22, 2018 Hearing: *Pending Legislation***  
**Questions for the Record Submitted to Mr. Christopher McAlear**

**Question from Senator Martin Heinrich**

**Question:** As written, would S. 2809 allow the state of Utah to acquire land within the reservation of the Ute Tribe, even against the wishes of the tribe?

**Answer:** The Bureau of Land Management (BLM)'s land status records and geographic information system data currently identify the areas on the June 14, 2018, "Emery County Public Land Management Act of 2018 Overview Map" referenced in your question as public lands managed by the BLM. The Ute Indian Tribe has asserted that a portion of the lands that would be available for selection by the State are within the boundaries of the Uncompahgre Reservation. The Tribe requested that the Department of the Interior (Department) restore those lands to tribal trust ownership. Earlier this year the Department denied that request. The Tribe is challenging that decision in federal court.

Under S. 2809 as introduced, unappropriated public lands available for State selection are defined as any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the BLM, without regard to how the United States acquired ownership, except: 1) lands located on the Outer Continental Shelf; and 2) lands held for the benefit of Indians, Aleuts, and Eskimos. The bill states that unappropriated public lands available for State selection include land or minerals acquired by the United States under title III of the Bankhead-Jones Farm Tenant Act. In addition, the bill states that the unappropriated public lands available for selection do not include any other acquired land or land within a unit of the BLM's National Conservation Lands, an area of critical environmental concern, or a special recreation management area.

Under the bill, the Secretary of the Interior could approve any application for relinquishment and selection in whole or in part. The bill further stipulates that the Secretary shall not approve any application that the Secretary determines would create irreconcilable management conflicts with respect to the management of adjacent Federal land.



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

NOV - 1 2018

The Honorable Steve Daines  
Chairman  
Subcommittee on National Parks  
Committee on Energy and Natural Resources  
United States Senate  
Washington, D.C. 20510

Dear Chairman Daines:

Enclosed are responses to the follow-up questions from the July 11, 2018, legislative hearing before your Subcommittee. These responses were prepared by the National Park Service.

Thank you for the opportunity to respond to you on these matters.

Sincerely,

Christopher P. Salotti  
Legislative Counsel  
Office of Congressional and  
Legislative Affairs

Enclosure

cc: The Honorable Angus King  
Ranking Member

**U.S. Senate Committee on Energy and Natural Resources**  
**Subcommittee on National Parks**  
**July 11, 2018 Hearing: S. 3172, the Restore Our Parks Act**  
**Questions for the Record Submitted to Ms. Lena McDowall**

**Questions from Chairman Lisa Murkowski**

**Question 1:** Ms. McDowall, can you confirm that NPS Restoration Legacy Fund, if enacted as drafted, would be the first fund to utilize onshore energy funds for conservation efforts (aside from state apportionments, when said states may choose to utilize a portion of their funding for conservation purposes)? If so, do you see this as a precedent to pushing more onshore receipts for the use of conservation purposes?

**Answer:** There is at least one precedent for using the production of onshore resources for the conservation of National Park Service (NPS) assets: the Helium Stewardship Act of 2013 (Act), which provides for receipts from the sale or disposition of helium on Federal lands to be deposited into the Helium Production Fund. The Act directs that \$20 million in FY 2018 receipts and \$30 million in FY 2019 receipts to be used for NPS deferred maintenance projects.

**Question 2:** Ms. McDowall, please explain how natural disasters impact assets with deferred maintenance. For example, the Sperry Chalet in Glacier National Park had some deferred maintenance prior to burning down last summer. It is now in the process of being rebuilt. Would that asset, upon destruction, immediately be removed from the deferred maintenance category? What does this process look like, and how are funds that are estimated in FMSS removed from this category? It is my understanding that some of the funds used to rebuild the Sperry Chalet were raised from philanthropic resources, and others from insurance. Will the remainder of the funds come from cyclic or other revenues? Is this policy determined on a per-asset, per disaster basis, or is there an agency wide policy?

**Answer:** The NPS process for assessing damage, post natural disaster, requires a condition assessment and then the creation of emergency (EM) work orders for all needed repairs or reconstruction. Any repairs not completed immediately results in the EM work orders being bundled into project funding requests. If funding is not identified and corrective action taken within a year, the EM work orders become deferred maintenance (DM) work orders. If the decision is made to not rebuild, the DM will be retired.

In the case of Sperry Chalet, the FY 2018 Line Item Construction operating plan includes \$12 million from NPS appropriated funds for this project. The NPS anticipates leveraging its partnership with the Glacier National Park Conservancy, which has committed up to \$3.2 million for the reconstruction. When similar situations occur where an asset is destroyed by a natural disaster, the NPS explores all available funding streams to be able to implement the preferred alternative for the site. Factors affecting the urgency to rebuild or replace an asset include mission importance, visitor needs, resource impacts, health and safety, and stakeholder interest.

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**Question from Senator Bernard Sanders**

**Question:** The president's fiscal year 2019 budget request would slash funding for the Land and Water Conservation Fund (LWCF) by about 90 percent compared to fiscal year 2017 levels. However, during this hearing, you stated that the administration agrees with the perspective that the LWCF should be funded at a higher amount, and that the funding should be made permanent and mandatory. As you may know, I am an original cosponsor of legislation introduced by Senator Cantwell, S.569, to provide robust and permanent funding for the LWCF. Do you support this legislation?

**Answer:** The President's budget supports the LWCF and calls for its reauthorization. The Department looks forward to continuing to work with Congress on options for LWCF reauthorization.

**Question from Senator Steve Daines**

**Question:** Because the National Park Restoration Legacy Fund, if enacted, would deal with multiple revenue streams, with funds deposited into the Treasury at different times of the year from different sources, please describe how you might draft regulations that would allow for parity in each of the various types of revenue sources currently depositing funds back into the Treasury? For example, if the excess funds from offshore receipts could more than cover the Legacy Fund, would you draw from that source first, or would ensure that all other energy sources were covered first?

**Answer:** There are approximately 23 accounts that receive mandatory payments from energy development. Each account has its own disbursement rules, which are governed by the Treasury. The National Park Service will follow all policy and guidance issued by the U.S. Treasury related to the establishment of the Legacy Restoration fund, recognizing that mandatory payments would be made to other funds first. Under S. 3172, the Legacy Restoration fund will only receive payments after the 23 mandatory accounts receive their payments. There would be no need to draft regulations to implement the bill.

**Questions from Senator Mazie Hirono**

**Question 1:** Secretary Zinke said that deferred maintenance at our parks "...is not a Republican or Democrat issue, this is an American issue." Indeed, it's a national issue and in Hawaii we have over \$238 million in deferred maintenance needs.

Secretary Zinke also mentioned during his nomination hearing that he supported the Land and Water Conservation Fund, which is another issue that receives broad bipartisan support. In

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Hawaii our “Island Forests at Risk” proposal has provided millions of LWCF dollars to conserve and protect land.

Yet, the LWCF is set to expire this September and is chronically underfunded. In addition to providing mandatory funding for deferred maintenance, does the administration support permanent reauthorization and full funding of the LWCF?

**Answer:** The President’s budget supports the LWCF and calls for its reauthorization. The Department looks forward to continuing to work with Congress on options for LWCF reauthorization.

**Question 2:** If S. 3172 is signed into law, will the National Park Service have the staff necessary to conduct an estimated \$1.3 billion worth of deferred maintenance projects each fiscal year? If not, what additional resources will the National Park Service require?

**Answer:** Major construction projects would require pre-award work including compliance, planning and design. In addition to direct project support, major project needs would include construction program management, budget and financial management support, contracting officers, and solicitors.

For smaller projects accomplished by day laborers, contractors, or youth corps, contracting officers and budget support would be necessary.

For all projects, on the ground project management and construction supervision would also be required.

Should the legislation become law, the Park Service will take the necessary steps to implement it.

**Question 3:** Both Congress and the National Park Service recognize the importance of cyclic maintenance to curb the growth of deferred maintenance on our nation’s parks, although I was disappointed to see that the National Park Service proposed a \$14 million cut to Cyclic Maintenance Projects within National Park Service’s Facility Operations and Maintenance account in its fiscal year 2019 budget proposal.

The testimony of Holly Fretwell with the Property and Environment Research Center suggests that the Restore Our Parks Act could be improved by creating an endowment for cyclic maintenance projects. Has the National Park Service evaluated or taken a position on this proposal? How, if at all, would the establishment of an endowment fund for cyclic maintenance assist the National Park Service in addressing its maintenance backlog?

**Answer:** Establishing an endowment would be a completely different way of funding cyclic maintenance, which has always been funded through annual appropriations. The Department has

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not taken a position on the endowment proposal suggested by the Property and Environment Research Center at this time.

**Question from Senator Tammy Duckworth**

**Question:** On December 28, 2017, the U.S. Department of Interior (DOI) adopted a new grants and cooperative agreements review process that subjects all grants and cooperative agreements of \$50,000 or more to an unprecedented additional review by one single political appointee. This indiscriminate policy is blocking the award of grant funds to organizations, despite Congress specifically authorizing and appropriating funds for just this purpose. These unreasonable delays may represent an unlawful impoundment of appropriated funds and worse, DOI's actions are inflicting harm on local organizations that are already struggling to reduce the deferred maintenance backlog. I support the Restore Our Parks Act's goals, but fear that any legislation will be ineffective if DOI continues to allow a sole political appointee to bottleneck and hold up grant and cooperative agreement awards.

As Deputy Director of Management and Administration for the National Park Service, you are responsible for helping to develop the National Park Service's annual budget submission. Please confirm whether the National Park Service Legacy Restoration Fund, as established in this bill, would be subject to the December 28, 2017 DOI memo, and if so, whether you support delaying the award of grants and cooperative agreement funding to organizations working to reduce the deferred maintenance backlog. In addition, please clarify whether the DOI policy described above has delayed the issuance of grant and cooperative agreement awards to organizations that are helping to reduce the deferred maintenance backlog.

**Answer:** The purpose of the review process is to conduct appropriate oversight of the Department's financial assistance programs and to ensure that discretionary grants and cooperative agreements better align with the Secretary's priorities. For the NPS, final approval of a grant and cooperative agreement is required from the NPS Deputy Director exercising the authority of the Director if it is under \$50,000, and by the Senior Advisor to the Assistant Secretary for Policy, Management, and Budget if it is over \$50,000.

Only a small portion of the spending from the National Park Service Legacy Restoration Fund would be in the form of grants or cooperative agreements and therefore little, if any, of that funding would be subject to the financial assistance review process.



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Dear Chairman Daines:

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Thank you for the opportunity to respond to you on these matters.

Sincerely,

Christopher P. Salotti  
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Enclosure

cc: The Honorable Angus King  
Ranking Member



**U.S. Senate Committee on Energy and Natural Resources**  
**Subcommittee on National Parks**  
**August 15, 2018 Hearing: Pending Legislation**  
**Questions for the Record Submitted to Mr. P. Daniel Smith**

**Question from Senator Angus King, Jr.**

**Question:** All of the proposals offered in the hearing have supporters and positive attributes, and all of the bill proposals that the National Park Service has supported will add maintenance costs to the system. Can you provide the criteria the National Park Service uses to decide why some proposals for inclusion in the National Park System are accepted and why others aren't?

**Answer:** Each National Park Service-related bill on which the Department of the Interior takes a position is evaluated on its own merits, taking into consideration such factors as the proposal's potential to advance the National Park Service mission, the feasibility of implementation (which includes costs), evidence of public support or opposition, positions taken previously on similar legislation, and Departmental funding priorities. Each piece of legislation before the committee is unique and is treated as such.

Seven of the 25 bills (four subjects) on the agenda of the August 15, 2018 hearing entailed adding new areas, with associated costs and responsibilities, to the National Park System. Three of the subjects involved establishing new units: the Medgar Evers Home (S. 2889/H.R. 4895); Camp Nelson (S. 3287/H.R. 5655); and Mill Springs Battlefield (S. 3276/H.R. 5979). The fourth subject involved expanding the boundary of an existing unit: the Rim of the Valley Unit of Santa Monica Mountains National Recreation Area (S. 1993).

The three proposed new units all have characteristics that, taken together, led to the Department's decision to support their addition to the National Park System: they preserve critically important stories in our nation's history, adding to the National Park Service's overall narrative; there is strong public support for adding them to the National Park System; their principal owners are willing to donate the properties, eliminating much of the cost of acquisition; and they are already established as sites open to the public, which minimizes the developmental costs. Even though the Department's highest priority for the National Park Service is reducing the deferred maintenance backlog in existing units, that priority does not automatically preclude the Department's position to support some new units.

In contrast to the three proposed new units, the proposed expansion of the boundary of the Santa Monica Mountains National Recreation Area would not add substantially to the diversity of resources in the National Park System, nor was there any indication that land within the boundary would be donated. But the expansion would add significant new costs: according to the special resource study on this subject, including the Rim of the Valley Unit would increase the park's annual operating costs by approximately \$9.5 million to \$10.5 million, and that would be for a smaller addition than that proposed by S. 1993 (173,000 acres in the study versus 191,000 acres in the bill). For those reasons, the Department decided not to support this proposal at this time.

The Department's positions on the bills that did not involve the addition of new areas to the National Park System were determined as follows:

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- Two bills (S. 2015, S. 1644) raised the question of whether certain national trails should be identified as units of the National Park System. All national trails are already part of the National Park System; a decision to count them as units is an administrative matter that has no bearing on the trails' operating costs. The Department's position was consistent with views expressed in the past.
- Two pairs of bills (S. 2831/H.R. 571, S. 599/H.R. 1488) proposed the redesignation of areas already within the National Park System. Such redesignations have no associated costs, other than minimal expenses for new signage, etc. The Department's position on these bills was based on adherence to the National Park Service's customary naming traditions and was consistent with positions taken on similar redesignation proposals in the past.
- Two bills (S. 2870, S. 2876) would authorize new studies, and three bills (S. 2441, S. 2570, S. 2604) would extend funding authorities for national heritage areas. Neither new studies nor heritage areas are priorities for National Park Service funding; the Department's position on these bills was based on consistency with its funding priorities.
- A pair of bills (S. 1987/H.R. 2600) would eliminate a reversionary interest on land conveyed by the Federal government to the State of Iowa. The Department provided no objection to the bill, but has appreciated the Committee and Sponsor's willingness to work with us on refinements.
- Two bills (S. 3298, S. 2672) proposed specific authorities for veterans memorials (the Vietnam Veterans Memorial visitor center and the Second Division Memorial, respectively), which are located in the area established as the "Reserve" in the Commemorative Works Act. The Department's position on both bills responded to the unique circumstances of both cases related to memorials governed by the Commemorative Works Act.
- On three bills (S. 1926/H.R. 2156, H. Con. Res. 33), the Department deferred to the views of other Federal agencies that have jurisdiction over, or a closer connection to, the subject matter. Deferring to other agencies in such circumstances is a longstanding practice within the Executive Branch.