



2019 Washington Update



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WSLCA July Biannual Conference, Whitefish Montana

116th Congress—so far....

- Divided Government leads to gridlock, horse-trading, and consensus
- House Natural Resources Committee: Legislative Actions thus far--Tribal and Wilderness bills
- Chairman Grijalva--Committee has an aggressive agenda:
 - Climate Change (not in the Committee's jurisdiction)
 - Protecting National Monuments from Presidential reversals or adjustments
 - Keeping promises to U.S. Territories
 - Western drought
 - Strengthen and protect NEPA
 - Tribal land into trust legislation allowing Tribes recognized after 1934 to be able to have land taken into trust by the Secretary of Interior. (Carcieri fix)
 - Tribal recognitions and Tribal consultation
 - Tribal water settlement legislation
 - Combat extremism on public lands
 - Permanent funding of LWCF
 - Diversifying Public Lands
 - Protection of the Antiquities Act
 - Wildfire—end “fire borrowing”, treat wildfires like other natural disasters, wildfire prevention and promote forest health
 - Abandoned Mines—update the 1872 Mining Law, require hardrock industry to clean up abandoned mines
 - Mountaintop Removal Mining—protect Obama Administration Stream Protection Rule (Committee has no jurisdiction)
 - Offshore Drilling—legislate protections by restricting offshore and Great Lakes leasing
 - Coal Self-Bonding—implement Obama era Rules and pass Coal Cleanup Taxpayer Protection Act
 - Supporting Hunters and Anglers—LWCF and North American Wetlands Conservation Act
 - American Fisheries—reauthorize Magnuson-Stevens Fishery Conservation and Management Act
 - Endangered Species Act—strengthen Act

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Senate Energy and Natural Resources Committee

- Chairwoman Murkowski (AK) continues to chair the Committee but with new Ranking Member, Joe Manchin (WV)
 - Several legislative measures jointly supported by Murkowski and Manchin
- 116th Congress priorities so far:
 - Nominations, Nominations, Nominations...
 - Energy innovation, storage, conservation, and reliability
 - Critical minerals
 - Drought resiliency
 - Parks maintenance and backlog
 - Land and Water Conservation Fund
 - Wildfire
- So what will actually happen legislatively?

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Interior and Forest Service Leadership

- Secretary David Bernhardt—confirmation has led to continuity among DOI political staff
 - Acting Deputy Secretary—Kate McGregor
 - Chief of Staff—Todd Willens
 - Acting Solicitor—Dan Jorjani (nomination pending, Committee approved)
 - Assistant Secretary, Policy, Management and Budget—Susan Combs (June 5, 2019)
 - Assistant Secretary of Lands and Minerals Management—Joe Balash
 - Director BLM vacant—Perry Pendley, Deputy Director of Policy and Programs, exercising the authority of the Director (Casey Hammond has moved back up to Principal Deputy Assistant Secretary of Land and Minerals Management)
 - Assistant Secretary of Fish, Wildlife and Parks—Rob Wallace (June 28, 2019)
 - Aurelia Skipwith nominated to be the Director of the U.S. Fish and Wildlife Service
- Under Secretary for Natural Resources and Environment--James Hubbard
 - Forest Service Chief--Vicki Christiansen

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The seal of the State of Montana is centered in the background. It features a shield with a landscape scene: a sun rising over mountains, a river, and a mining camp with a mine shaft. Below the shield is a red ribbon with the text 'ORO Y PLATA' and the word 'MONTANA' at the bottom.

BLM Reorganization

Assistant Secretary of Lands and Minerals Management informed Congressional Appropriations Committees of plan on June 16, 2019

The Reorganization and Realignment of the Bureau of Land Management

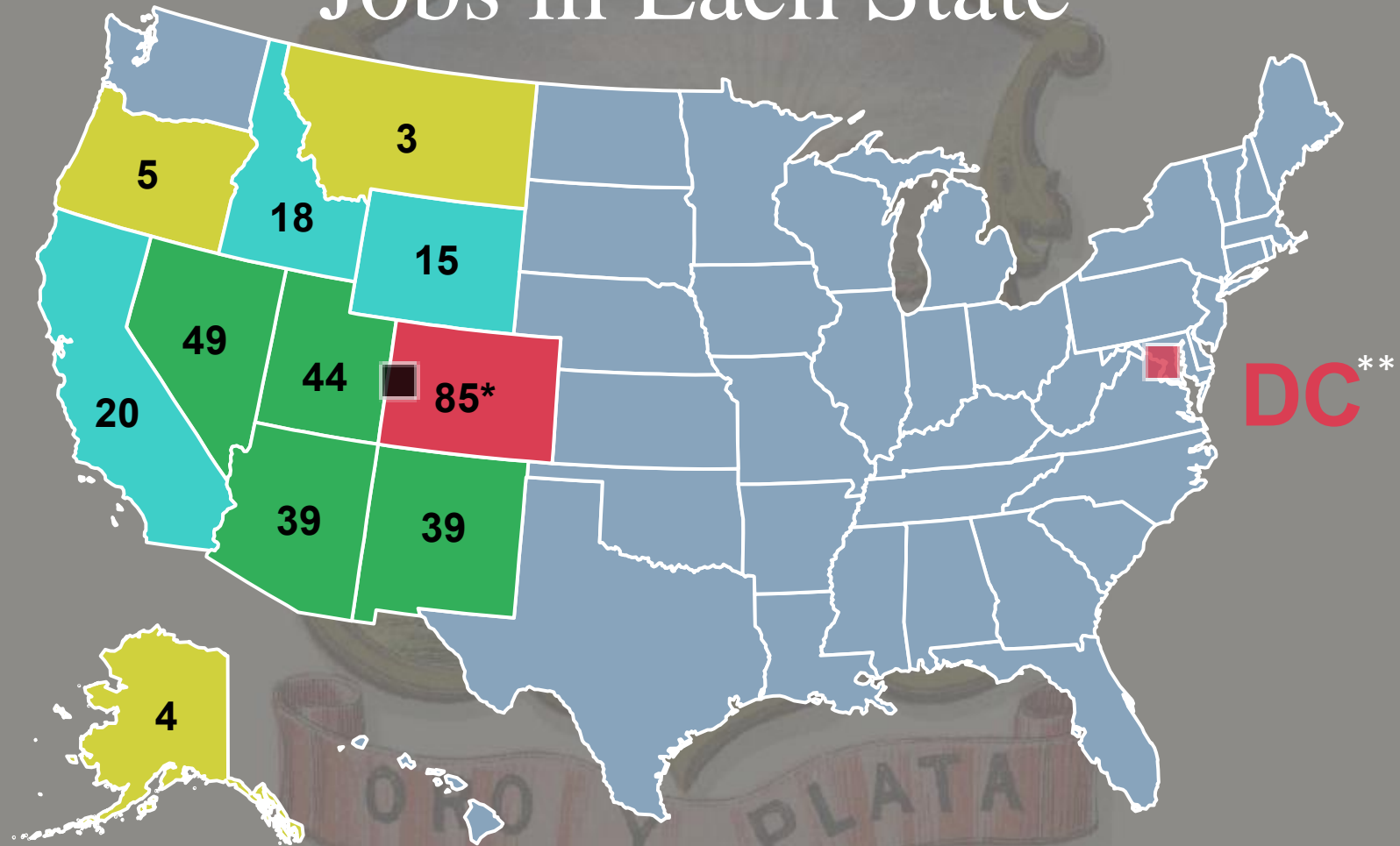
- Secretary Bernhardt wishes to achieve the following objectives with reorganization plan:
 - Delegating more responsibility down to the field
 - Maximizing services to the American people
 - Increasing the BLM's presence closest to the resources the BLM manages
- Steps to achieve these goals:
 - Maintain necessary core D.C. based functions in Washington, D.C.
 - Optimize efficiency of some headquarter positions that are currently based in Washington, to State Offices that their work supports
 - Allocate certain positions to State Offices to perform state functions
 - Establish a BLM headquarters in Grand Junction, Colorado
 - *Most importantly*, the BLM Director, Deputy Director of Operations, Assistant Directors, and members of their staff will be relocated to Grand Junction, CO

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DOI Claimed Benefits of the BLM Relocation to Grand Junction, Colorado:

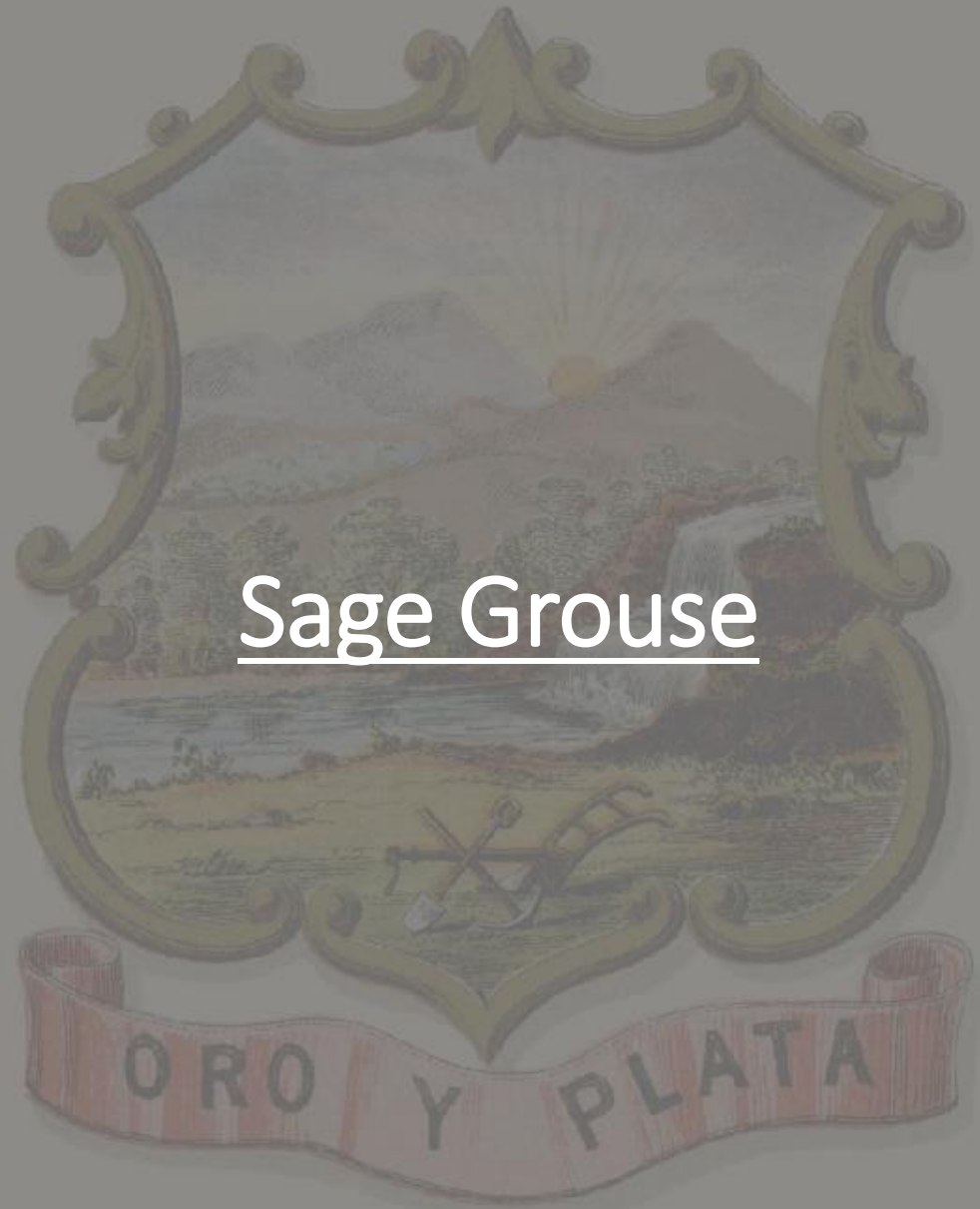
- Enhanced management, oversight, and communication
 - The geographic proximity to the lands and resources managed will allow for better accountability of their actions, more fluid communication because they are in the same time zone, and maximizes collaborative work
- Improved customer service
 - BLM executives and staff will be more accessible to stakeholders, fostering a better understanding between the two parties
- Increased functionality
 - With most of the BLM's work in the Western United States, the BLM will be able to be more productive if they are not burdened by travel to visit the areas under the BLM's jurisdiction
- Potential for reduced leasing costs and consolidation
 - Office space in Grand Junction is cheaper than in Washington, D.C. By moving some offices west, the BLM can reduce their spending
- Decreased travel expenses
 - Key BLM executives will no longer have to travel from Washington, D.C. to BLM activities in the Western United States, decreasing the amount of money and time spent on travel prior to the relocation

Jobs in Each State



*Includes 27 positions at the Grand Junction, CO headquarters

**There will be 61 positions at the D.C. location



Sage Grouse

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Sage Grouse: BLM

- BLM, in compliance with Secretarial Order 3353, published on May 4, 2018 the Draft Environmental Impact Statements (DEISs) for Oregon, Nevada, Northern California, Idaho, Utah, Colorado, and Wyoming
 - I. Rely on State mapping and data
 - II. Remove sagebrush focal areas—**no mineral withdrawal**
 - III. Clarifies habitat uses tables
 - IV. Ensures that noise thresholds only apply to Priority Habitat
 - V. Establishes a process for adaptive management actions
 - VI. Follow State mitigation frameworkCurrently, the BLM plans are being challenged in litigation.

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Sage Grouse: Forest Service

- I. Published on 6/20/2018, a supplemental notice of intent to prepare an EIS
 1. Replaces sagebrush focal areas with priority habitat management areas
 2. Improve the clarity, efficiency, and implementation of the 2015 greater sage grouse plans
 3. 983,700 acres of regulated lands would now be 838,300 acres
 4. Goal is to align with the BLM and the Western States
- II. A 90 day comment period was held for the EIS draft through January 3rd, 2019
- III. Each state held open house meetings during the comment period
- IV. The final EIS and Draft Record of Decision were expected to be completed in mid-April 2019, followed by a 60 day objection period. The final ROD was planned to be signed as early as July or as late as September 2019. However a final was not released in April, so they are behind schedule.



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Sage Grouse: Litigation

- I. Four conservation groups are asking a federal judge to block new plans that allow drilling and mining across 51 million acres
- II. Western Watersheds project, Wildearth Guardians, Center for Biological Diversity, and Prairie Hills Audubon Society sued David Bernhardt, Joseph Balash, the BLM, and the Forest Service for Trump Administration plans, asking that they halt and reverse them
- III. They claim that the 2019 plans:
 1. Weaken the 2015 plans
 2. Falsely claim they improve upon the 2015 plans
 3. Violate the Federal Land Policy and Management Act and the National Environmental Policy Act
- IV. Groups are seeking emergency injunctive relief to maintain the status quo
- V. BLM implementation has been unpredictable: Executive Order 13783, Promoting Energy Independence and Economic Growth, (March 28, 2017), rescinded a Presidential Memorandum relating to the mitigation of impacts on natural resources, and directed the Department to review all existing regulations, orders, guidance documents, policies, and any other similar actions that potentially burden the development or utilization of domestically produced energy resources. Prohibits compensatory mitigation yet enforces state plans on Federal lands that require compensatory mitigation.

Wild Horse and Burros



Wild Horse and Burros

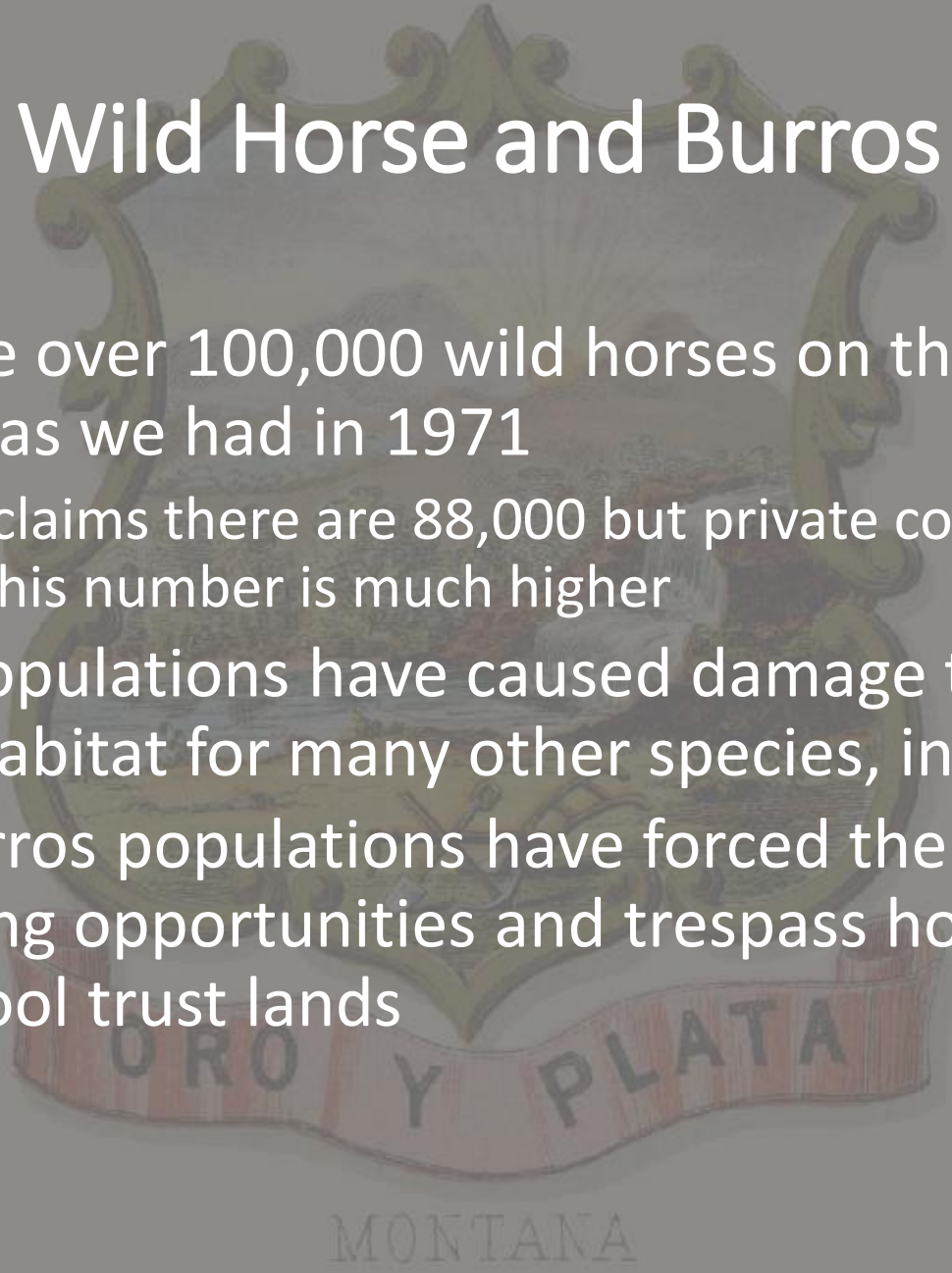
The background of the slide features a faded, light-colored version of the Montana State Seal. The seal is a shield-shaped emblem with a crown on top. Inside the shield, there is a landscape with mountains, a sun, and a river. Below the shield is a red ribbon with the words "ORO Y PLATA" written on it. At the very bottom, the word "MONTANA" is written in a serif font.

- Background Story

- The federal government started protecting horses in 1971, by passage of the Wild Free-Roaming Horses and Burros Act, then stating that the public land carrying capacity is 27,000 horses
- To deal with the problem, adoption and destruction programs were put into place until the 1990s, when stronger protections were put in place by appropriations, prohibition on euthanasia of wild horses and burros

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Wild Horse and Burros



- Today there are over 100,000 wild horses on the range, nearly four times as many as we had in 1971
 - BLM publicly claims there are 88,000 but private conversations confirm they believe this number is much higher
- The growing populations have caused damage to the range, which serves as the habitat for many other species, including sage grouse
- Horses and burros populations have forced the decrease of domestic grazing opportunities and trespass horses are impacting grazing on school trust lands

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Wild Horse and Burros Issues



- Stakeholders

- ASPCA, American Farm Bureau Federation, Society for Range Management, Humane Society Legislative Fund, Public Lands Council, Return to Freedom Wild Horse Conservation, National Horse and Burro Rangeland Management Coalition, Eureka County, NV County Commission Office, Humane Society of the United States, National Cattlemen's Beef Association, Beaver County, UT County Commission Office, American Mustang Foundation, and Utah Governor Office .

- Large Scale Removal
- Fertility Control
- Range Restoration
- Less Expensive Holding Options
- Adoptions

The Senate Energy Committee held a hearing in July wherein the BLM endorsed this strategy

Congress is being asked to appropriate funds to implement the stakeholder strategy

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Endangered Species Act



Executive Order 13777, “Enforcing the Regulatory Reform Agenda,”

The Trump administration unveiled proposal in July 2018:

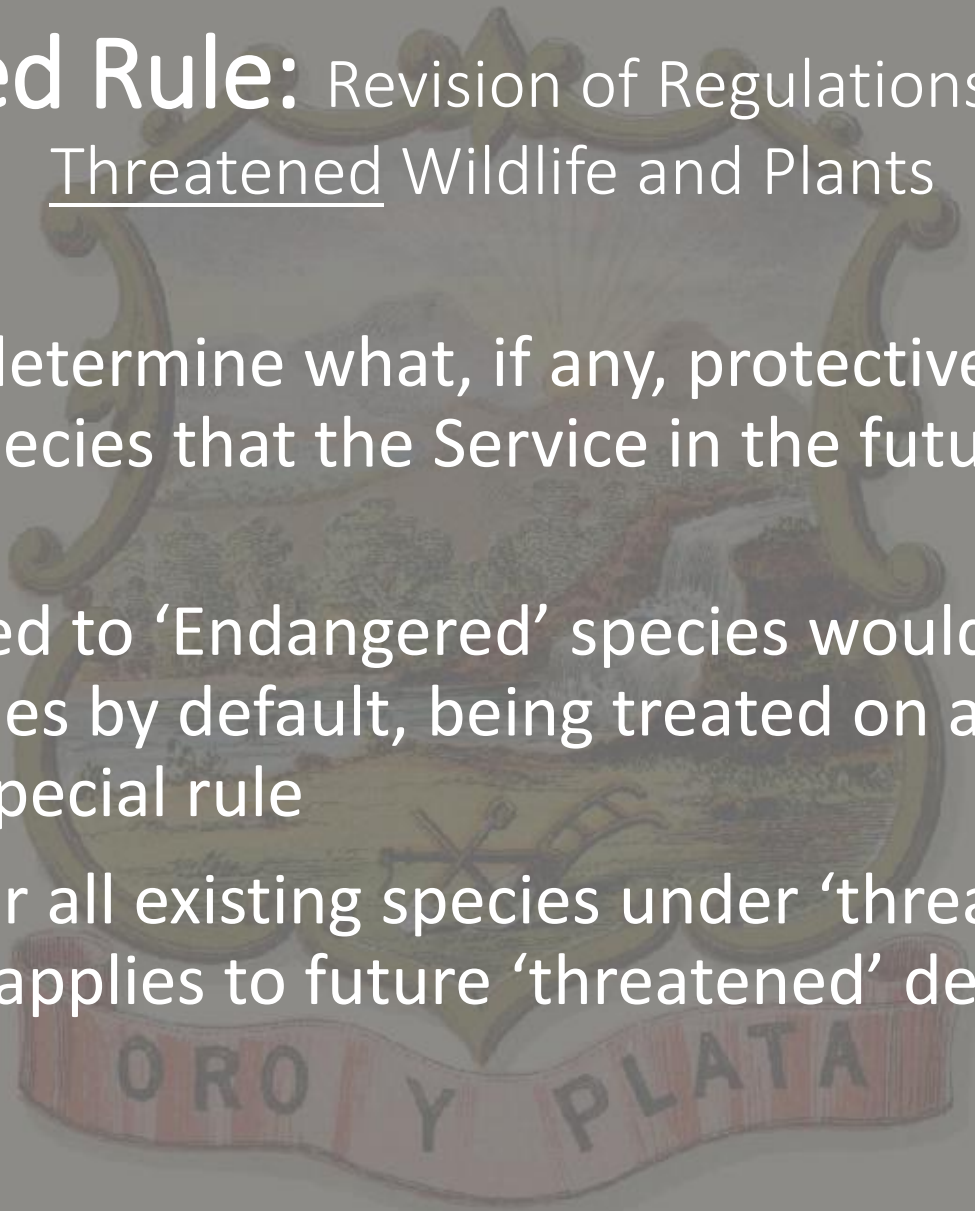
- If the proposal is approved, protections for threatened plants and animals would be made on a case-by-case basis
- Admin wants FWS AND NOAA to strike language that guides officials to ignore economic impacts when determining how wildlife should be protected
- In April 2018, the The Interior Department told law enforcement who enforce the Migratory Bird Treaty Act that killing birds “when the underlying purpose of that activity” is not intended to kill them is no longer prohibited

FWS Proposed Rule:

- Proposes to include analysis of the economic impact of the listing of species, by eliminating language that currently prohibits that analysis
- Proposes considering if a threatened species “is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.” (For “Threatened” determination)
- Changes the delisting process by clarifying that the same criteria which qualifies a species to be listed is to be used for delisting, allows “extinction” as a qualifiable delisting action.
- Changes the regulatory burden for determining critical habitat. Requires the determination of critical habitat to be that which is occupied at the time of listing, not a future hypothetical that includes unoccupied space

FWS Proposed Rule: Revision of Regulations for Prohibitions to Threatened Wildlife and Plants

- Requires FWS to determine what, if any, protective regulations are appropriate for species that the Service in the future determines to be ‘threatened’
- Protections granted to ‘Endangered’ species would not extend to ‘threatened’ species by default, being treated on a case-by-case, species-specific, special rule
- Would grandfather all existing species under ‘threatened’ designation, only applies to future ‘threatened’ designees



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FWS, NMFS Proposed Rule:

Endangered and Threatened Species:
Interagency Cooperation

- Proposes to revise the definition of “destruction or adverse modification” by adding the phrase “as a whole” to the first sentence and removing the second sentence of the current definition.
- Revises the definition of “effects of the action” in a manner that simplifies the definition. By providing a simpler definition that applies to the entire range of potential effects, Federal agencies and the Services will be able to focus on better assessing the effects of the proposed action.



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FWS Proposed Recovery Plan Amendments

42 Plans Amended

- "...Many species' recovery plans detail when they can move from "endangered" to "threatened," for instance, but don't detail when the species is in the clear, fully recovered..."
- *...ESA recovery plans are described by FWS as "non-regulatory guidance documents that identify, organize and prioritize recovery actions, set measurable recovery objectives, and include time and cost estimates." As part of an Interior Department-wide set of "priority performance goals," FWS is committed to revise all ESA recovery plans to include quantitative recovery criteria by September 2019.*
- *All told, the agency anticipates revising up to 182 recovery plans covering about 305 species listed under the ESA."*

- <https://www.federalregister.gov/documents/2019/01/31/2019-00436/endangered-and-threatened-wildlife-and-plants-26-draft-recovery-plan-amendments-for-42-species>

ESA Legislation

- FUTURE (2019-2020/ 116th Congress)

Native Species Protection Act

- Sen. Mike Lee (R-UT) (*June 13, 2019*) would allow states to manage species that exist entirely within their border. The Native Species Protection Act clarifies that noncommercial species found entirely within the borders of a single State are not subject to regulation under the Endangered Species Act of 1973 or any other provision of law enacted as an exercise of the power of Congress to regulate interstate commerce. Utah Prairie Dog case.

State, Tribal, and Local Species Transparency and Recovery Act

- This Proposed bill by Sen. Michael Enzi (R-WY) (Feb 14, 2019) would include the State in the ESA determination process. To amend the Endangered Species Act of 1973 to require disclosure to States of the basis of determinations under such Act, to ensure use of information provided by State, Tribal, and county governments.

Other bills

Other legislation proposed:

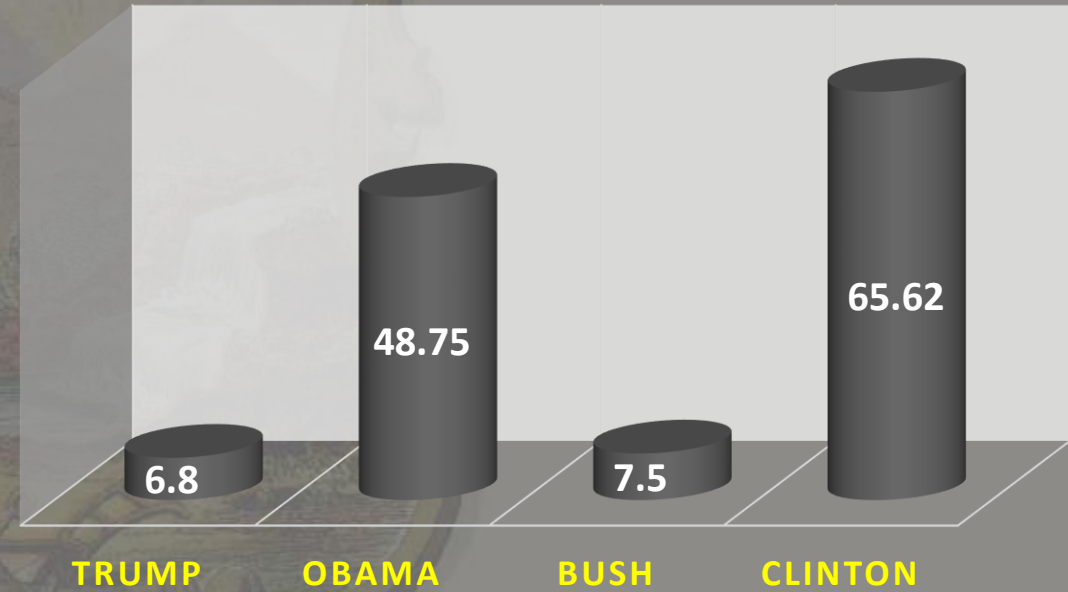
- Only allowing species native to the United States to be protected under the Endangered Species Act (HR 30)
- Prohibiting the import or export of endangered or threatened species (HR 2245)
- Requiring the basis for listing to be published online (S. 1429)
- Extension of the Platte river recovery in Colorado (HR 3237)
- Changing procedure for settlements (S.1426)
- Several bills extending protection to additional species not currently listed.

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ESA Legislation

- STATS
- Trump Listings= (17 total so far)
- Obama= 390
- Bush = 60
- Clinton= 525
- Changed from Endangered to Threatened:
4 during Trump's Administration
- Delisted during Trump: (10 so far)
- Delisted during Obama: 30

ESA LISTINGS (AVG/YR)



Waters of the United States (WOTUS)



Waters of the United States (WOTUS)

- EPA and the Army Corps of Engineers have formed a work group "to accurately map" which waters should be protected by the Clean Water Act in the rewritten Waters of the U.S. proposal
- The final withdrawal of the 2015 Waters of the US Rule (WOTUS) in August 2019, and the final WOTUS replacement rule to be issued in December 2019
- A great deal of this issue is being held up on if this rule change should be completely considered on the basis of science, for protection, or legal/policy precedent, for jurisdiction. Recently the Science Advisory Board of the EPA has accused the agency of ignoring sound science.

Waters of the United States (WOTUS)

- The number of states where the WOTUS rule has been temporarily blocked by the courts has risen to 28, leaving the 2015 WOTUS rule in place in 22 states.
- **The states where the 2015 WOTUS rule is currently in place are California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia and Washington.** Three of these (OH, MI and TN) have requested court injunctions but have not yet been granted relief. New Mexico's status is being litigated also.

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Waters of the United States (WOTUS)

- While most major bodies of water remain jurisdictional from 1972 through the current proposal, smaller water features are what is up for debate:
 - **1986-2015** Stream designation was determined by “*bed, banks, and evidence of flow*” to determine whether or not a stream was Jurisdictional. The **2015 Rule** attempted to clarify the “*...evidence of flow*” and including “*...ordinary high water mark.*” (OHWM.)
- While the 2015 Rule includes “*perennial, intermittent, and ephemeral streams*” the 2018 rule distinctly excludes ephemeral streams

Waters of the United States (WOTUS)

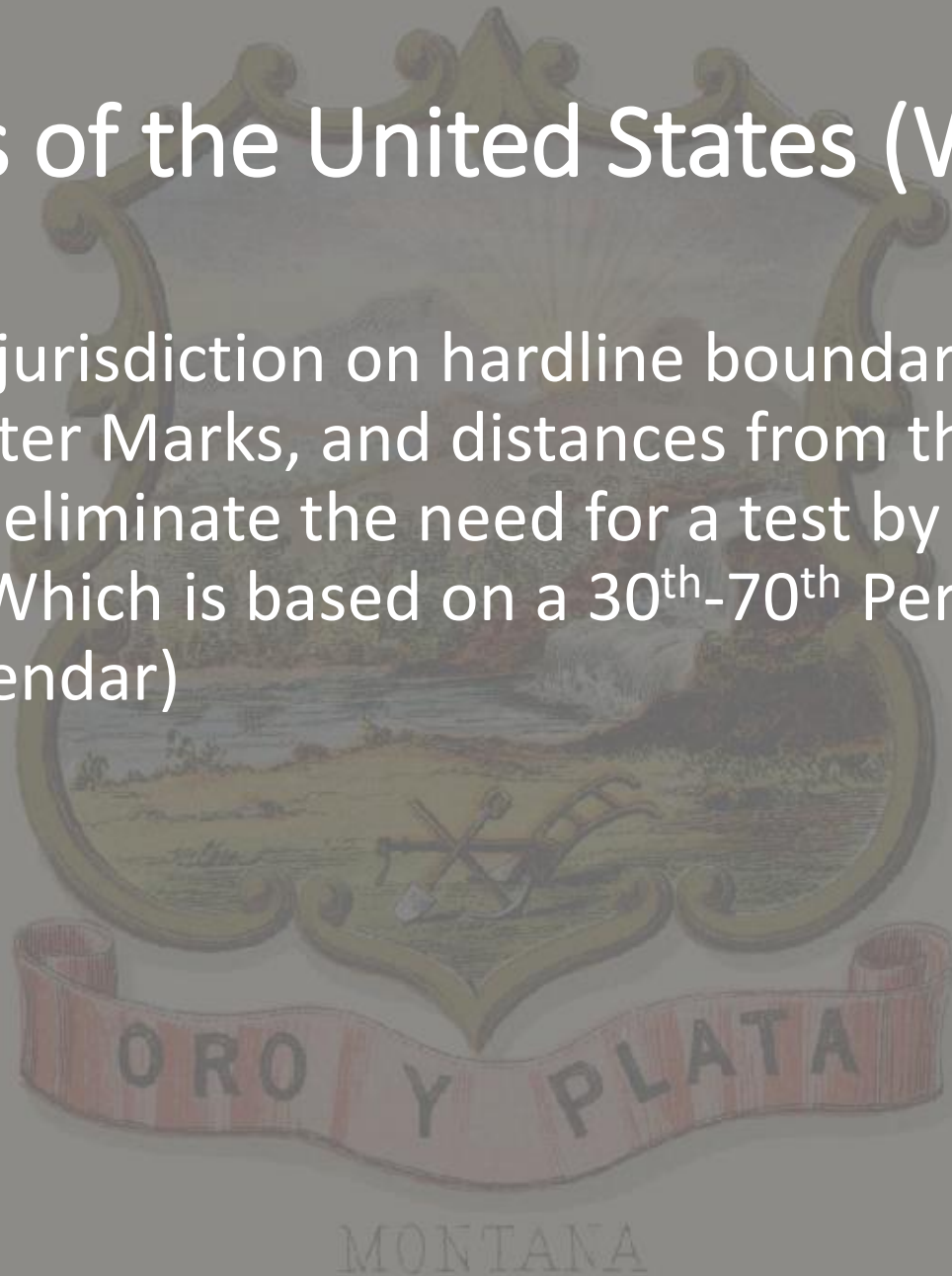
- 1986-2015 and beyond, **Wetlands** receive protection on the basis of their proximity and connectivity to navigable waters. EPA had established working norms (specific distances) in which to determine if a “Significant Nexus” Occurs. **The 2015 Rule** codifies these distances creating a “Bright Line” area wherein features are considered jurisdictional, with other specific features to be included in the “Significant Nexus” Test.
 - (These “Bright Line” Boundaries are criticized by both sides for being too inclusive, and/or arbitrarily decided (4,000 feet vs. 1,000 or 10,000 with no firm basis in science))

Waters of the United States (WOTUS)

- “**the 2018 redefinition** would establish protection only for wetlands that abut the jurisdictional stream network and which have a perennial or intermittent surface connection with jurisdictional streams. The proposed rule would eliminate jurisdictional status for non-adjacent wetlands, and eliminate the need for any significant nexus test.”
- *DATA from 2017 USGS/EPA SURVEY:*
 - 18% of Streams (ephemeral) would be returned to State control, or when viewed regionally by length, 39% of the streams (ephemeral) in the Arid West would be returned to State control
 - As much as 50% of Wetlands in 2015 jurisdiction would be returned to state control, because their determination is based on ephemeral streams, floodplains, and distance measurement from Navigable waters.

Waters of the United States (WOTUS)

- Rather than base jurisdiction on hardline boundaries based on Ordinary High Water Marks, and distances from them, the 2018 Proposal seeks to eliminate the need for a test by using water data on a “Typical Year” (Which is based on a 30th-70th Percentile average, on a 30 yr. rolling calendar)





Wildfires

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Wildfires

- **PROPOSED NEPA RULE:** USDA/FS : Allows more categorical exclusions from NEPA, including for increased timber cuts to reduce risk of wildfires on Forest Service lands, if within a given area, and deemed necessary for fire prevention

- <https://www.fs.fed.us/emc/nepa/revisions/includes/docs/36CFR220ProposedRuleFRN.pdf>

- “WGA & USDA/FS agree to manage together. In particular, the two organizations will develop a "road map" to...encourage "greater coordination" between relevant federal agencies. The agreement also calls for a collaborative effort to reduce wildfire along transmission and distribution corridors regardless of which agency or state manages the lands. The WGA and USDA also agreed to focus on their response to the "large-scale infestation of cheatgrass and other invasive annual grasses" throughout Western forests and rangelands.”

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Wildfires

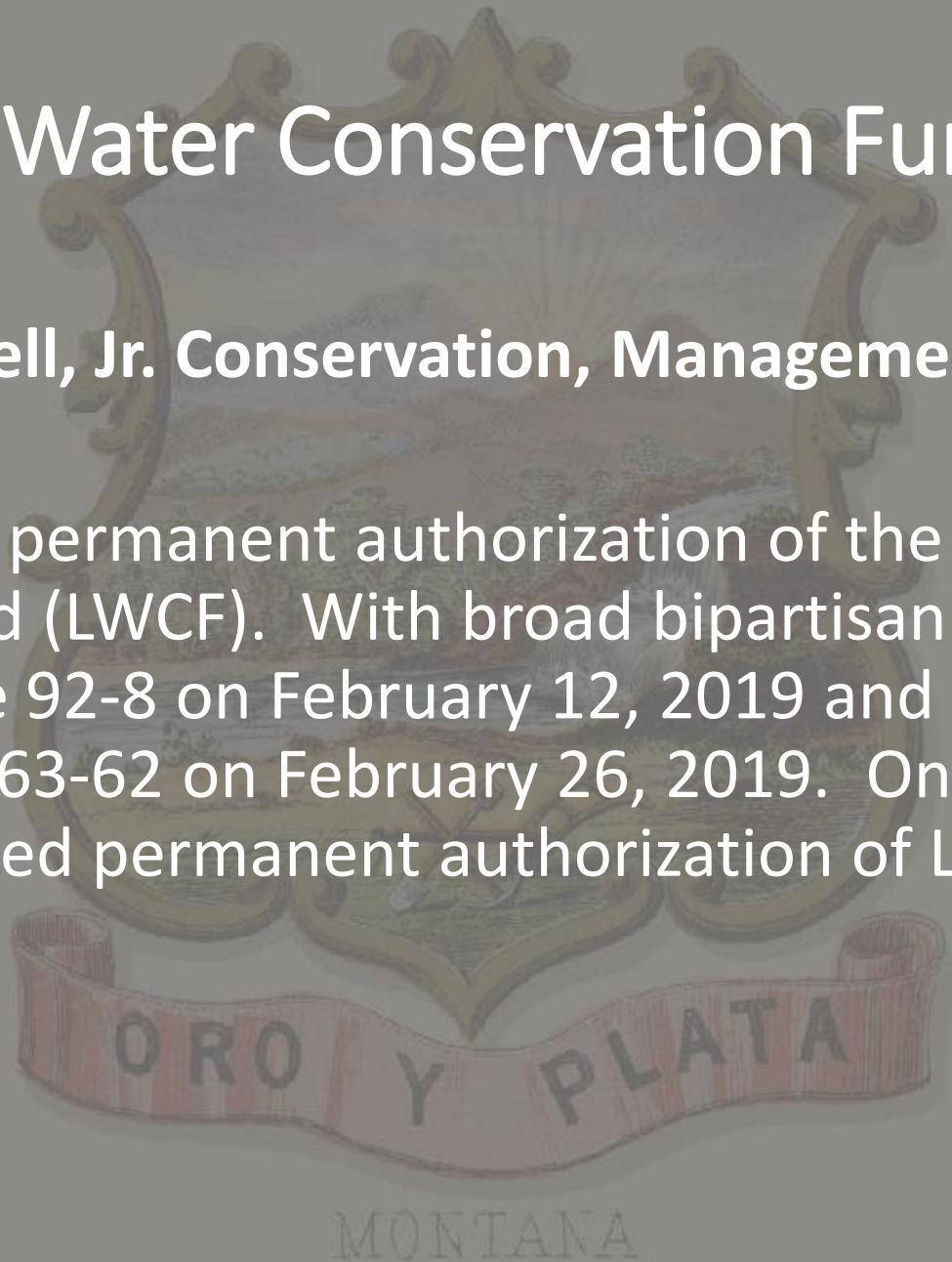
- Arizona Senator McSally introduced legislation for AZ, but being looked at for a broader model of increased log harvesting to prevent wildfires, her bill *“S1849 Accelerating Forest Restoration and Byproduct Removal Act of 2019”*
- Oregon Senators Merkley and Wyden have four bills focused on health issues from smoke, but likely to effect forest management:
 - *S. 1813* to create a grant program within the Federal Emergency Management Agency to help communities improve public buildings to filter smoky air.
 - *S. 1814* to allow for presidentially declared emergencies, opening the way to local assistance.
 - *S. 1815* to require farmworkers to be provided filtering masks and other equipment to deal with effects of wildfire smoke.
 - *S. 1812* to provide \$20 million in research funding at EPA to examine public health impacts of wildfire smoke.

Land and Water Conservation Fund (LWCF)



Land and Water Conservation Fund (LWCF)

- **S.47 John D. Dingell, Jr. Conservation, Management, and Recreation Act Passed**
- The Act approved permanent authorization of the Land and Water Conservation Fund (LWCF). With broad bipartisan support, S. 47 passed the Senate 92-8 on February 12, 2019 and the House of Representatives 363-62 on February 26, 2019. On March 12, 2019, the President signed permanent authorization of LWCF into public law.



Land and Water Conservation Fund (LWCF)

- S1081 & HR3195 “Land and Water Conservation Fund Permanent Funding Act”
- Identical pair of Bills Introduced April 9th, and June 11th respectively. The bills authorize the full \$900 million permanently, without being subject to the appropriations process.
- The Senate version has 47 cosponsors (39D/6R/2I)
- The House version has 158 Sponsors (144D/14R)
- Funds under LWCF are generated from off-shore oil and gas leasing
- While it has some bipartisan support, critics argue the bill needs certain amendments including restoring greater funding given to the states as the original 1965 bill intended

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Advancing Conservation and Education Act (ACE)



Advancing Conservation and Education Act (ACE)

- H.R. 244, Introduced by Congressman Chris Stewart (R-UT) on January 4, 2019
 - Needs Democrat co-sponsor—preferably on House Natural Resources Committee
- Senator Martin Heinrich (D-NM) continues to be willing to lead in Senate
 - Needs Republican co-sponsor—preferably on Senate Energy and Natural Resources Committee
- Do we continue to attempt to move ACE forward?
- Recraft a legislative proposal with broader WSLCA membership support?
- Need direction from the Membership

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Wilderness and Conservation Legislation

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Wilderness bills state-by-state

Arizona

- H.R.1373 - Grand Canyon Centennial Protection Act

California

- HR403 SEC.5. JOAQUIN ROCKS WILDERNESS.
- S.1110/HR2250 - Northwest California Wilderness, Recreation, and Working Forests Act
- S.1111/HR2199 - Central Coast Heritage Protection Act
- *H.R.572 - Restoring Access to Public Lands Act*
- S.1109 - San Gabriel Mountains Foothills and Rivers Protection Act
- S.67/HR376 - California Desert Protection and Recreation Act of 2019

Colorado

- S.241/HR823 - Colorado Outdoor Recreation and Economy Act
- H.R.2546 - Colorado Wilderness Act of 2019
- S.33/S.47/H.R.386 - To update the map of, and modify the maximum acreage available for inclusion in,
- the Florissant Fossil Beds National Monument.

Idaho

- S.827 - Northern Rockies Ecosystem Protection Act

Montana

- S.47 Sec. 1204. Emigrant Crevice withdrawal.
- S.1765 - Blackfoot Clearwater Stewardship Act
- S.827 - Northern Rockies Ecosystem Protection Act

New Mexico

- S.47 /HR1050 Sec. 1201. Organ Mountains-Desert Peaks conservation.
- S.47 Sec. 1202. Cerro del Yuta and Río San Antonio Wilderness Areas.
- **H.R.2181 - Chaco Cultural Heritage Area Protection Act of 2019**

Nevada

- H.R.252 - Pershing County Economic Development and Conservation Act
- H.R.253 - Nevada Lands Bill Technical Corrections Act of 2019
- H.R.1050 - ANTIQUITIES Act

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Wilderness bills state-by-state (cont.)

Oregon

- S.47 Sec. 1205. Oregon Wildlands
- H.R.999 - Devil's Staircase Wilderness Act of 2019
- S.827 - Northern Rockies Ecosystem Protection Act
- S.1262 - Oregon Recreation Enhancement Act
- S.1597 - Sutton Mountain and Painted Hills Area Preservation and Economic Enhancement Act
- H.R.994 - Chetco River Protection Act of 2019
- H.R.1160 - Molalla River Wild and Scenic Rivers Act
- H.R.992 - Southwestern Oregon Watershed and Salmon Protection Act
- S.82/H.R.1056 - Frank and Jeanne Moore Wild Steelhead Special Management Area Designation Act

Utah

- H.R.871 - Bears Ears Expansion And Respect for Sovereignty Act
- S.90 - Protect Utah's Rural Economy Act
- S.47 SEC. 1118. JOHN WESLEY POWELL NATIONAL CONSERVATION AREA.

Washington

- S.47 Sec. 1203. Methow Valley, Washington, Federal land withdrawal.
- S. 1382/HR2642 "Wild Olympics Wilderness and Wild and Scenic Rivers Act"
- S.827 - Northern Rockies Ecosystem Protection Act

Wyoming

- S.827 - Northern Rockies Ecosystem Protection Act

NO MAJORS BILLS

Alaska

Louisiana

Minnesota

Mississippi

North Dakota

Oklahoma

South Dakota

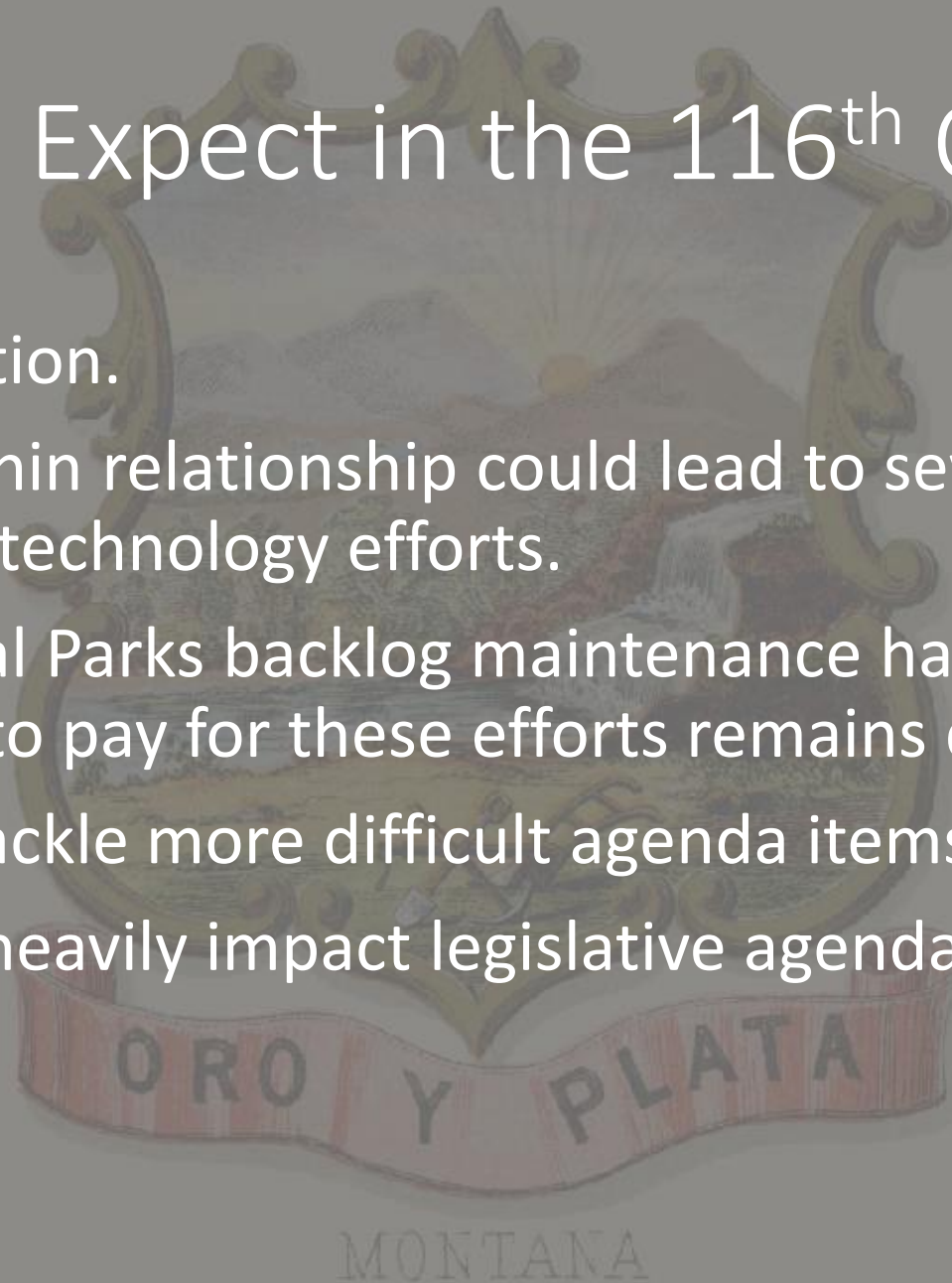
Texas

Wisconsin

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What to Expect in the 116th Congress

- Consensus legislation.
- Murkowski/Manchin relationship could lead to several energy conservation and technology efforts.
- LWCF and National Parks backlog maintenance have very broad support but how to pay for these efforts remains difficult.
- DOI will have to tackle more difficult agenda items
- Senate races will heavily impact legislative agenda in next 15 months.



Discussion and Questions



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