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## Zinke draws fire from prominent Wyoming public servants

by **Angus M. Thuermer Jr.** | JANUARY 23, 2018

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Dissatisfaction with Secretary of the Interior Ryan Zinke reached a high water mark this month as three prominent Wyoming public servants criticized some of his recent decisions.

Sharp Wyoming criticism of the secretary has until recently come mostly from environmental and conservation groups. Even the secretary's plans to upend Wyoming's painstakingly crafted greater sage grouse conservation plan drew only respectful disagreement and suggestions from Gov. Matt Mead.

But the tone and voice of discontent has shifted in recent weeks as three prominent Wyoming agency

veterans joined a growing chorus.

A former director of the U.S. Fish and Wildlife Service — John Turner of Moose — asked Zinke to suspend his “ill-conceived” weakening of the landmark Migratory Bird Treaty Act. Biologist Rollie Sparrowe of Daniel, who spent six years as the country’s chief of migratory bird management, joined Turner and called Zinke’s rollback “a pretty backhanded way of making a change to something that wasn’t a problem.”

Meanwhile a member of the National Park System Advisory Board, who resigned saying Zinke had ignored her panel for a year, vigorously contested his spokeswoman’s characterization of the fallout. “Outrageous, outrageous!” exclaimed Gretchen Long of Wilson after Heather Swift told Reuters the board had “turn[ed] a blind eye to women being sexually harassed at National Parks.”

## Migratory birds at risk

Turner and Sparrowe added their names to those of 15 other former high-ranking Interior Department officials on a two-page bipartisan broadside dated Jan. 10.

Zinke’s department, which includes the U.S. Fish and Wildlife Service, issued a 41-page legal memorandum on Dec. 22 eliminating potential charges against companies that kill birds.

Titled “The Migratory Bird Treaty Act Does Not Prohibit Incidental Take,” the memo would exculpate some of those who incidentally harm protected birds. The new protocol creates cover for energy companies responsible for bird deaths at wind farms and oil and gas drillers who create toxic bird-killing ponds while boring for resources.

The [memo](#) criticized existing practice that “hangs the sword of Damocles over a host of otherwise lawful and productive actions,” Principal Deputy Solicitor Daniel H. Jorjani wrote. The consequences of incidental take “threaten... up to six months in jail and a \$15,000 penalty for each and every bird injured or killed.”

Jorjani pinned his reinterpretation on what he said were vague passages in the law. “Interpreting the MBTA to criminalize incidental takings raises serious due process concerns and is contrary to the fundamental principle that ambiguity in criminal statutes must be resolved in favor of defendants,” Jorjani wrote in his conclusion.

But Turner, who helped draft the protest letter, said past enforcement has been logical. “It’s really been used in a very common sense way when I was director,” he told WyoFile. “I negotiated with drilling companies in the southern U.S. — Louisiana and Texas — to net their drilling waste pits. It was the Migratory Bird Act that gave us that tool.” Nets above the pits prevent birds from landing in what they think is clean water.



The threat to more than 1,000 species of protected birds persists, Turner said. "We're looking at thousands of wind turbines in Wyoming that could just be an ecological disaster to migrating birds," he said. "I don't think those wind companies should be let off the hook."

Much of the enforcement of the act has been by agreement with companies, Sparrowe said, including at well-site waste pits throughout Wyoming. "Migrating birds would drop into those ponds thinking they are regular ponds, get fouled with chemicals and eventually die," he said. "The stuff is toxic and there needs to be some control."

"In the end the industry agreed to put up various types of warning things," he told WyoFile in an interview. "Some of [the pits] are actually covered. That has seemed to work very well."

In the letter to Zinke, authors said the new legal opinion "is contrary to the long-standing interpretation by every administration (Republican and Democrat) since at least the 1970's, who held that the Migratory Bird Treaty Act strictly prohibits the unregulated killing of birds." The solicitor's opinion takes 41 pages to turn the MBTA's "straightforward language" into a conclusion that the Act only applies to those — like hunters — who are engaged in "human control" of birds, the letter states.

"This is a new, contrived legal standard that creates a huge loophole in the MBTA, allowing companies to engage in activities that routinely kill migratory birds..." the letter states. "It has never been the goal to entirely eliminate the unintentional killing of birds, but when we find techniques and technologies that can be used at reasonable cost to protect bird populations, we had a responsibility to do so."

## Enforcement in Wyoming

Enforcement of the act has benefited birds in Wyoming on at least three occasions, including the first-ever use of the law to protect birds from wind farms. In 2013 Duke Energy Renewables Inc. pleaded guilty to violating the act, paid \$1 million in fines and agreed to implement a plan to reduce harm from giant wind

turbines.

One hundred seventy-six turbines at Campbell Hill and Top of the World farms in Converse County killed 14 golden eagles and 149 other protected birds.

Duke "failed to make all reasonable efforts to build the projects in a way that would avoid the risk of avian deaths by collision with turbine blades, despite prior warnings about this issue from the U.S. Fish and Wildlife Service," the department of Justice [said at the time](#). The company had to apply for an eagle take permit to minimize and make up for eagle deaths

The penalties included \$100,000 that went to the state of Wyoming and \$340,000 to a fund aimed at preserving golden eagle habitat in the state.

In 2015, PacifiCorp Energy pleaded guilty to killing 38 golden eagles and 335 other protected birds and stashing carcasses at the Seven Mile Hill and Glenrock/Rolling Hills wind projects. "PacifiCorp Energy built two of its Wyoming wind projects in a manner it knew would likely result in the deaths of eagles and other protected birds," according to [Indian Country Today](#). PacifiCorp agreed to pay \$2.5 million in fines, restitution and community service," the news service reported.



The settlement included a \$200,000 payment to Wyoming and development of a bird-protection plan for PacifiCorp's 237 turbines at four wind farms in the state, among other actions. The company agreed to spend approximately \$600,000 a year to reduce bird killings.

In a third instance SM Energy Co. pleaded guilty in 2012 to violating federal law after the death of a dozen migratory birds at uncovered fluid pits in Wyoming. The Justice Department fined it \$22,500 for violations in Wyoming, Montana and Nebraska.

## Parks panel sought dialogue

Former Alaska Gov. Tony Knowles announced in a letter to Zinke dated Jan. 15 that nine of the [National Park System Advisory Board's](#) 12 members, including Gretchen Long, were resigning from their volunteer service. While the members understood the complexity of administration transitions, he wrote in a letter obtained by, and first reported by, [The Washington Post](#), "our requests to engage have been ignored and the matters on which we wanted to brief the new Department team are clearly not part of its agenda. [F]rom all of the events of this past year I have a profound concern that the mission of stewardship, protection, and advancement of our National Parks has been set aside."

That brought a sharp reaction from spokeswoman Swift who said, "we welcome their resignations and would expect nothing less than quitting from members who found it convenient to turn a blind eye to women being sexually harassed at National Parks." Swift asserted it was "patently false to say the Department had not engaged the board," Reuters reported.

"These kinds of charges are just ridiculous," Long said. The board is not tasked with finer points of management like protecting workers from sexual harassment, she said in an interview. According the park service website, the panel was first authorized in 1935 to give advice to the director of the National Park Service and Secretary of the Interior on all manner of park and historic issues, including the Antiquities Act and designation of national monuments.

"We would offer advice and guidance on the future of the National Park Service," Long said. "We didn't get into management issues. We were making recommendations in a broader sense. We wanted to ensure the role of science."

"When I see this," Long said of the Swift's comments, "I see what we think we're hearing every day in the news. The way this administration responds is to degrade."

That doesn't bode well for the nation's treasured natural resources, she said.

"I'm worried about the erosion of everything in the Park Service," Long said. "I think there's a morale issue. They're about to reorganize the Department of Interior and that's going to cause a lot of chaos in the Park Service. I don't think they see the future the way we do — seeing that the parks are protected."

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Long has been chairwoman of the National Parks Conservation Association, the National Outdoor Leadership School, the Cary Institute of Ecosystem Studies, the Greater Yellowstone Coalition, and the Murie Center in Grand Teton National Park. Today, she is chairwoman of the Land Trust Alliance National Council and serves on the board of NatureBridge.

In the resignation letter, Knowles referenced "remarkable individuals" like Long with whom he served on the advisory board. Among the degrees held by resigning members are undergraduate ones from Harvard and Yale, a Ph.D. from Harvard, a degree from its Business School, a Ph.D from Stanford, and a Ph.D and a master's of science from other schools.

## **Migratory Bird Treaty Act letter**

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## National Park System Advisory Board letter

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*This article has been updated to correct the name of the National Park System Advisory Board (it is not the National Park Service Advisory Board) and to acknowledge that The Washington Post first obtained and reported about the resignation letter from board members — Ed.*

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5 Responses to Zinke draws fire from prominent Wyoming public servants



**Robert Aland** JANUARY 25, 2018 AT 12:18 PM <#>

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Zinke, destroyer of national monuments and other public lands, offshore drilling advocate, terminator of environmental protections built up over decades in the public interest, rebuilder of Puerto electric grid and wannabe Joihn Wayne, gets my vote, after only a year in office, as the worst Secretary of the Interior in US history in a tie with Watt and Norton. Will probably earn his way to the #1 ranking within a few months. Follow the money.

Winnetka, Illinois



**Linda Ryan** JANUARY 23, 2018 AT 9:21 PM <#>

[REPLY](#) ↩

Really thoughtfully written. I have followed this story on NPR, but your careful articulation really brings the issues front and center. Frankly, it's heartbreaking, but I'm grateful for your insights and writing.

Casper, Wyoming



**Linda Anderson** JANUARY 23, 2018 AT 3:27 PM <#>

[REPLY](#) ↩

Zinke and Pruitt both are outdoing themselves on undercutting decades of environmental protections while wasting federal funds on luxury travel, soundproof phone rooms, and meetings with partisan groups. Both have earned deserved reputations for meeting frequently with the parties they are supposed to regulate while ignoring both the general public and longstanding public interest groups who have had input into the decisions of federal agencies for decades. Both are working hard to prevent scientific evidence from being