ARTICLES FOR ROUNDUP 11-12-15

Excerpts from CWAG Profile in Courage Award 2010

"Recently, he (Idaho Attorney General Lawrence Wasden) again placed his political future in peril when he determined that it was legally necessary, in order to ensure the sanctity of the State's school endowment lands, to sue the State Board of Land Commissioners. The Land Board, the membership of which includes the Governor, the Secretary of State, Superintendent of Public Instruction, Controller, and our Attorney General (all of whom are members of the same political party), manages the state endowment lands with the constitutional requirement of securing the maximum long-term return for the beneficiaries. He undertook this duty with the utmost sincerity, and determined it was necessary to file suit after Land Board members took action to lease endowment lands at a rental rate which they openly admitted was a fraction of the fair market rate, therefore denying the guaranteed income to the beneficiaries, as required by the State Constitution."

Sparks fly in Colorado over the EPA's Clean Power Plan

State attorney general may challenge the emissions limit, though a top state environment official supports it.

Elizabeth Shogren | DC Dispatch | Aug. 4, 2015 | Web Exclusive

Colorado's top environment official blasted the state's attorney general for suggesting that she may challenge President Obama's first-ever federal limits on greenhouse gas emissions from power plants.

"In no way shape or form would I want her legal challenge to be a reflection of the state's position on reducing carbon emissions," Larry Wolk, executive director of the Colorado Department of Public Health and Environment, told High Country News.

Wolk was responding to reports that that Colorado Attorney General Cynthia Coffman, a Republican, is considering joining other states in opposing the rule, which Obama released Monday as the centerpiece of his climate change agenda. The coal industry and states that rely heavily on coal mining and electricity generation from coal are expected to launch a major effort to overturn the rule in the courts.

"I will carefully review the EPA's plan and evaluate its long term consequences for our state," Coffman said in an email to HCN. "But as I put the best interests of Colorado first, it may become necessary to join other states in challenging President Obama's authority under the Clean Air Act."

Coffman charged that the new rule has the potential to put Colorado's nearly $9 billion mining energy industry in jeopardy and threaten more than 74,000 Colorado jobs.

The president's clean power plan would forge major changes in the nation's electricity sector, promoting wind and solar over fossil fuels. But Wolk said the state is on board: "I think it's a challenging plan but an obtainable plan."

Changes made to the rule since the proposal, such as allowing states until 2022, two additional years, to meet their first greenhouse gas reduction targets, will enable Colorado to make a quicker transition to renewable fuels, Wolk said. It was a mixed blessing for Colorado that the rule is not as encouraging of natural gas as the proposal. The state has abundant natural gas, but it also has air quality problems that would be alleviated by less fossil fuel generation.

Colorado has already taken strides to reduce greenhouse gas emissions, as emphasized in this White House release. The state led the nation in addressing greenhouse gases emissions from natural gas production because of methane leaks. The state's 2010 Clean Air-Clean Jobs Act facilitated the retirement of coal-fired power plants and its renewable electricity standard requires large utilities to provide 30 percent of electricity from renewable power by 2020.

Since he's not a lawyer, Wolk said he'll give Coffman the "benefit of the doubt" that her concerns are legal in nature: "I would hope there's no reason from a philosophical standpoint, especially since she used to work for the Department of Public Health and the Environment."

Most Western states were not ready to comment on their reaction to the new rule. Some are sure to challenge it in court. Fourteen states tried that even before the rule was released.

Wolk hopes Coffman will not join in: "Hopefully, in the interest of preserving the intent of reducing carbon, we could fix the legal issue without impacting something so important to the public health and the environment."

Elizabeth Shogren is HCN's DC correspondent.

Hickenlooper seeks high court rule on attorney general lawsuits

The governor has asked the court to rule that Colorado's attorney general cannot sue the feds without the governor's approval

By Bruce Finley
The Denver Post

Gov. John Hickenlooper on Wednesday petitioned the state Supreme Court to rule that Colorado's attorney general cannot sue the federal government without his approval.

The Democrat's push to demarcate power with another independently elected top official cites three lawsuits by Attorney General Cynthia Coffman, a Republican.

In April, she joined a Wyoming lawsuit fighting federal rules for oil and gas fracking on public lands. In June, she joined a North Dakota lawsuit challenging federal clean air rules. In October, she joined a lawsuit challenging President Obama's plan to cut air pollution from power plants. These

actions raise "serious questions about the use of state dollars and the attorney-client relationship between the governor, state agencies and the attorney general," said Jacki Cooper Melmed, chief legal counsel to the governor.

How Can Colorado Be Both For And Against The Clean Power Plan?

By Dan Boyce & Inside Energy

More than two dozen states, including Wyoming and North Dakota have sued to stop the Obama administration's Clean Power Plan. Eighteen states, the District of Columbia and six communities have jumped into the case on the opposite side, in defense of the plan.

Right in the middle, you have Colorado, where this regulatory tug-of-war over the Clean Power Plan is pulling on two of the state's top elected officials, Democratic Gov. John Hickenlooper and Republican Attorney General Cynthia Coffman.

Through joining three lawsuits in her first year in office against federal environmental regulations, Coffman is showing her allegiance to establishment conservative values. The first lawsuit she joined came from Wyoming, a challenge to proposed federal hydraulic fracturing laws while the second was a North Dakota suit against a new rule of the federal Clean Water Act.

"The state has the right to determine its own destiny," Coffman said in an interview shortly after joining the third lawsuit, a multistate suit against the Clean Power Plan.

She's not against the core mission of the plan, but Coffman believes the Environmental Protection Agency is overstepping its authority with the rule.

Gov. John Hickenlooper does not support any of the lawsuits. The former oil and gas geologist has made a name for himself by leading efforts for strong regulations on the energy industry, often in coordination with the federal government. On the Clean Power Plan, Hickenlooper wrote a letter in May to U.S. Senate Majority Leader Mitch McConnell saying Colorado intends to comply with the rule.

Frustrated with Coffman's lawsuits, Hickenlooper has petitioned the Colorado Supreme Court, asking it to weigh in on who's actually in charge of suing the federal government -- the governor or the attorney general.

"Generally, a lawyer can't file a suit without the client saying we want the suit to be filed," Hickenlooper said.

"Neither may want a decision that either the governor has all the power or the attorney general has all of the power."

The attorney general represents the people of Colorado, but Hickenlooper argues the governor is legally the voice of the people. In other words, he's her client and she needs his permission to sue.

Coffman said she has independent authority to sue, and it's not that unusual for a governor and attorney general to fall on opposite sides of an issue like this.

"That's just how governing works sometimes," she said.

Indeed, attorneys general and governors are split on the Clean Power Plan in at least three other states: Maryland, Michigan, and Iowa.

So, who's right?

University of Denver associate law professor Justin Pidot said "the truth probably lies somewhere in between and is also probably uncertain."

On one hand, there is a 2003 case where the Colorado Supreme Court specifically gave the attorney general authority to file independent legal action in a dispute with the Colorado Secretary of State. That is a precedent for Coffman's side, Pidot said, as far as the attorney general challenging the state government. But this involves federal suits. On that matter, Pidot said the Colorado constitution gives some weight to the governor's argument. Yet, Hickenlooper asking for clarification from the state Supreme Court is surprising to Pidot. In the past, Colorado governors and attorneys general haven't gone there.

"Because neither may want a ruling," he said. "Neither may want a decision that either the governor has all the power or the attorney general has all of the power."

There is an upside to the current murkiness in the law, with things unclear, the two sides would often negotiate around such legal decisions. Pidot believes citizens would see much less coming together and consultation between the two offices if the state Supreme Court rules on this.

Meanwhile, all of this legal back and forth on the Clean Power Plan is leading progressive Boulder, Colorado to strike out on its own. The city has officially joined the 24 other states and communities fighting in favor of the plan.

Boulder's regional sustainability coordinator, Jonathan Koehn, said the city didn't want to wait on the sidelines until the state made up its mind.

"It is municipalities, cities and local jurisdictions that are going to be harmed the most," he said. "We are the ones that are on the front lines of climate change, we will suffer the impacts most greatly."

All of this means Colorado is making a pretty confusing statement on the national stage about the Clean Power Plan. As of publication of this story, the Colorado Supreme Court has not decided whether or not to take up the governor's petition against the attorney general.

Sandoval alone on sage grouse lawsuit, but Laxalt isn't

By Glenn Cook
Las Vegas Review-Journal

The nasty Republican divisions in Washington appear to have nothing on the party's infighting in Nevada.

The split between fiscally moderate and fiscally conservative Nevada Republicans, exacerbated by this year's GOP-supported tax increases and an incompetent state party organization that's incapable of raising money or registering voters, is as wide as ever. But the big story now is the chill between Republican Gov. Brian Sandoval and GOP Attorney General Adam Laxalt — and that amid last week's exceptionally public rift over Laxalt joining a lawsuit that challenges new federal land-use restrictions across Nevada, the state's four Republican members of Congress leapt to Laxalt's side, not Sandoval's.

Sandoval, long the unquestioned leader of Nevada Republicans, hasn't been happy with Laxalt since shortly after the attorney general took office in January. In one of his first acts as the state's top law enforcement officer, Laxalt joined 25 other states in suing to block President Barack Obama's "executive amnesty" for undocumented immigrants. Sandoval didn't support the move, and he let Laxalt know as much, saying immigration policy was a federal matter.

But land-use policy is another issue entirely. Unlike immigration, the governor has an important role in state land management decisions that affect the sage grouse. The habitat of the ground-dwelling bird covers much of Nevada and the West, and environmentalists and their allies in Washington have long seen the sage grouse as their best chance to seal off millions of acres from energy development, ranching and recreation. The sage grouse narrowly avoided being listed as an endangered or threatened species this year, thanks to what passes for a collaborative process in Washington, in exchange for new limits on land use that would have been much worse under a species listing.

"This was a huge, huge victory for us," Sandoval said Friday from China, where he was on a trade mission that included a meeting with Faraday Future, the electric car maker that might build a plant in North Las Vegas. "If this was a football game, we've got it 1st and goal at the 5." He says the state is close to having its way on the issue. He pointed out all the land restrictions in place in Southern Nevada because the desert tortoise is listed as a threatened species. A sage grouse listing would have affected more of the state, only worse.

Sandoval wanted a chance to continue talks with the Interior Department to work out land policies in the state's favor. "Let's sue if we don't get relief," he said. "But I have to be able to have a dialogue with federal decision makers. I have to engage them. Suing them will inhibit my ability to do that."

He expected his authority and five years of work on the issue to be respected. But Laxalt felt the state couldn't wait to join the lawsuit. And Laxalt said that although his staff communicated with the governor's staff, a direct conversation or meeting with Sandoval "was never put together but ... it was requested on this issue many times."

"I personally have not spoken to the governor on this issue," Laxalt said Friday. "We've repeatedly asked that this is the type of issue that I need to speak to the governor directly on and that hasn't happened." Brrr.

Sandoval's response: "When I was attorney general under Gov. Kenny Guinn, I think we met twice. All of these issues are handled staff to staff. It's nothing personal." Brrr.

When Laxalt filed the amended complaint in federal court in Reno on Thursday, his office and Sandoval's office began sending dueling statements, with Sandoval saying Laxalt "is acting in his personal capacity and does not represent the State of Nevada, the Governor, or any state agencies," and that the governor is "disappointed that the Attorney General has again chosen to ignore a direct request from his client."

But Sandoval's implication that Laxalt acted alone simply isn't true. In fact, the person who appears alone is Sandoval himself. Not only did the leadership of nine Nevada counties (including populous Washoe) and two mining companies feel they would suffer irreparable harm without immediate legal action, but U.S. Sen. Dean Heller and Nevada Reps. Joe Heck, Cresent Hardy and Mark Amodei all applauded Laxalt's move as absolutely necessary.

"The sage hen resource management plans are based on political maneuvers where the last consideration seems to be multiple use in the West," Rep. Amodei said in a statement. "The result is a nearly 3 million acre exclusion zone because the Interior officials in D.C. do not have to live with their rulings the way Northern Nevadans do. When the Department of the Interior completely ignores input from Nevada's Environmental Impact Statement, I believe no tool should be left in the shed, and one of those tools is litigation."

That none of the four Republicans would defer to Sandoval was shocking.

"The reality is I am alone, in terms of the Republican delegation," Sandoval said.

Even more shocking, however, was Laxalt's Friday visit with the Review-Journal's editorial board, during which he and his staff produced a stack of Sandoval's correspondence with the U.S. Bureau of Land Management — all public records — that highlighted Sandoval's unhappiness with sage grouse negotiations. In one letter, dated July 29, 2015, Sandoval lamented "many new elements that disregard best science, Nevada's state and local plans, and federal law," adding that BLM was disregarding state and local input in favor of a "heavy-handed, federal approach."

Laxalt's point was clear: The arguments made in his amended complaint are arguments the governor has made himself.

Keep in mind that Laxalt and Sandoval are in the same party.

"I personally spent hours working on those letters," Sandoval said. "I think it's great that we're together on the legal theories behind this case. But I won't support litigation at this time."

Laxalt said suing strengthens, not weakens the state's position in dealing with the Interior Department. He said the Obama administration is working toward its goals, not acting in states' interests.

"It's important that we use that litigation tool to make sure the federal government takes the states seriously," he said.

Sandoval has the opposite perspective. "We have a plan that involves restrictions on a fraction of the property that's covered in the current federal proposal, that has the support of the people who are suing. We need time to get there."

"We presented a plan," Laxalt said. "It was rejected."

A lot of Nevada Republicans are unhappy with the once hugely popular Sandoval because of the tax increases he helped muscle through the 2015 Legislature. And Laxalt clearly is in tune with the fact that, according to a Gallup poll conducted last month, 60 percent of Americans and 80 percent of Republicans believe the federal government has too much power. Sandoval has faith in the federal government's ability to ultimately decide sage grouse protections fairly, a position that runs counter to the sentiments of "generations of rural Nevadans," he said.

Laxalt's moves will worsen the cold war with the governor. Sandoval says their differences aren't a product of the larger ongoing battle for the identity of the Republican Party. But it's easy to see how the Sandoval-Laxalt spat could be seen as such. This time, the more conservative position wasn't marginalized.

Sandoval didn't get his way with his own party.

— Glenn Cook (gcook@reviewjournal.com) is the Las Vegas Review-Journal's senior editorial writer. Follow him on Twitter: @Glenn_CookNV. Listen to him Mondays at 10 a.m. on "Live and Local — Now!" with Kevin Wall on KBET 790 AM.

Lawyer: South Dakota tribe destroying marijuana crop

Associated Press

SIOUX FALLS, S.D. (AP) — An American Indian tribe slated to open the nation's first marijuana resort is destroying its crop and temporarily suspending the project in South Dakota while leaders seek clarification from the federal government, according to the tribe's attorney.

The Flandreau Santee Sioux Tribe, which planned to open a lounge selling marijuana on New Year's Eve, was the first tribe in South Dakota to legalize the drug following the U.S. Department of Justice's decision last year to allow tribes to do so on tribal land.

Seth Pearman, the tribe's lawyer, said in a statement Saturday to the Argus Leader newspaper (http://argusne.ws/1HzRdIH) that the tribe was destroying its existing crop and temporarily suspending its marijuana cultivation and disturbing facilities. He said tribal leaders were confident that the venture would succeed after seeking clarification on regulations from the Justice Department.

"The tribe will continue to consult with the federal and state government and hopes to be granted parity with states that have legalized marijuana," Pearman said.

Attorney General Marty Jackley told The Associated Press that the tribe's attorney and local law enforcement informed him Saturday about the decision, which he said was "in the best interest of both tribal and non-tribal members." Jackley acknowledged that he and tribal officials haven't always agreed, but said their discussions about the issue have been good and promised to help the tribe as it moved forward. He said he planned to meet with tribal officials Monday or Tuesday.

Tribal President Anthony Reider didn't immediately return voicemail and text messages from the AP seeking comment Saturday evening. Jonathan Hunt, vice present of Monarch America, a Denver-based marijuana consulting firm hired by the tribe, said a reported fire Saturday was caused by wood and not marijuana, but he declined further comment.

The tribe has said the project could generate up to $2 million a month in profit. But some state officials have questioned the plan, including Jackley, who has said any changes in tribal laws wouldn't affect nontribal land or anyone who wasn't a tribal member.

The tribe's executive committee voted in June to make the sale and use of marijuana legal on its reservation in Moody County, about 45 miles north of Sioux Falls.

Failed negotiations intensifies spotlight on troubled INL plant

With the public spotlight on a troubled Idaho National Laboratory waste treatment plant, U.S. Department of Energy officials met with a citizens’ advisory board in Sun Valley last week to explain what happened.

The failure of the Integrated Waste Treatment Unit to process 900,000 gallons of liquid nuclear waste into solid form by deadline was a key snag in negotiations between state officials and the Department of Energy, according to correspondence between the two parties published by Idaho Attorney General Lawrence Wasden.

The two sides were discussing a possible waiver to a 1995 agreement that would have allowed two shipments of spent commercial nuclear fuel roads to INL for research. It was announced last month that the first of those shipments to the site east of Arco would be canceled, but the second could still occur.

Each shipment would have consisted of 25 fuel rods weighing about 100 pounds. The canceled shipment would have come from the North Anna Nuclear Generating Station in Virginia. The second, still-possible shipment would be from the Byron Nuclear Generating Station in Illinois.

Negotiation breakdown

Wasden published a series of communications online he exchanged with federal officials throughout this year, culminating in September and October. They shed light on the breakdown over the waiver.

Under the terms of the 1995 agreement, the Department of Energy and its contractor had to process the liquid waste by the end of 2012, but missed that deadline due to problems with the Integrated Waste Treatment Unit. Another deadline lapsed at the end of 2014, leading the state Department of Environmental Quality to issue fines earlier this year.

To resolve the fines, the department and DOE reached an agreement in March that requires DOE to remove the three, 300,000-gallon tanks bearing the waste from service by the end of 2018. DOE-commissioned analysis from 2002 says the tanks have a service life that would last until 2050, according to the department.

The tanks are buried underground at INL. While no tank has leaked, they sit above the Eastern Snake River Plain Aquifer, a source of irrigation water for farmers, as well as drinking water.

In a phone call with Wasden, DOE offered to remove heavy metal from Idaho in exchange for the shipments, and proposed taking twice as much heavy metal compared to the amounts of the shipments.

U.S. Secretary of Energy Ernest Moniz was ready to appear in Idaho for a news conference to extoll the virtues of the shipments for INL, according to an Oct. 13 letter from Wasden.

In that letter, addressed to Steven Croley, DOE general counsel, and John Kotek, acting assistant secretary, Wasden wrote that he supports INL’s research mission, but was steadfast in insisting the agency needed to show progress in coming into compliance with the 1995 agreement.

He also highlighted concern from DOE staff about whether the Integrated Waste Treatment Unit will work as it’s supposed to.

Wasden offered a counter proposal that would have had DOE look at alternatives to using the treatment plant to process the 900,000 gallons. He offered DOE the option of putting a limit on how long it would continue to try to make the waste treatment unit operational.

If the plant couldn’t work by deadline, DOE would look at other technologies.

“I realize I cannot ask DOE to do the impossible as a condition of reaching an agreement on a waiver,” Wasden wrote. “At the same time, I cannot, consistent with my duty as Attorney General, agree to grant a waiver to allow DOE to bring fuel to Idaho … without addressing how DOE intends to cure its breach of the 1995 agreement.”

Croley responded that DOE viewed the counteroffer as agreeing to new conditions in exchange for the fuel shipment.

“It is not realistic for us to establish the additional conditions you propose in exchange for allowing a small amount of spent fuel for research work at INL,” Croley wrote. “According, the department will begin to make preparations to ship the research fuel … to another Department of Energy laboratory.”

Plant troubles

Jack Zimmerman, a deputy manager at Idaho National Laboratory, explained the difficulties plaguing the waste treatment unit at a meeting of an INL citizens’ advisory board last Thursday at the Sun Valley Inn.

The facility cost almost $600 million to build, and started operations in April 2012 but had to temporarily shut down, according to DOE. It was a first-of-its-kind facility.

Zimmerman said the waste-treatment unit has done two operations to treat waste this year, called simulant runs. The first involved about 60,000 gallons, while the second entailed processing 8,500 gallons.

The second run started on Aug. 4, but ceased after operators saw a filtration system wasn’t working properly.

After some inspection and cleaning, the system was fired up again on Sept. 10, but its operators again saw abnormal conditions, Zimmerman said.

Crews took apart the unit, focusing on the filters. They pulled out 18 filter bundles, whose appearance resembles candlesticks, and found a number of them to have failed.

Ten of the 18 contained damage such as cracks or breaks. Zimmerman said they’ve been replaced with a back-up set of filters. But, the next simulant run will be critical to the facility’s long-term prospect, he said.

“The next simulant runs are really going to define the path forward to meeting that agreement,” Zimmerman said.

Board Chairman Herb Bohrer asked Zimmerman what DOE was planning to get assurances that the facility would operate.

“How do you have confidence when you turn the switch on?” Bohrer asked.

Zimmerman faulted design issues, which he said engineers are working to rectify. The next simulant runs will determine if the modifications are working, he said.

“We need more simulant run-time to hammer that out,” Zimmerman said.

But, he acknowledged the work was piling up costs to the tune of $3.5 million to $4 million each month. DOE is willing to look at alternative technology while still trying to get the plant running, he said.

“It is prudent for us to look at alternatives,” Zimmerman said. “What can we do to make this plant work? What new technologies should we look at?”

Judge invalidates law; says Utah’s trout rivers and streams must remain accessible

By BRIAN MAFFLY | The Salt Lake Tribune connect

Utah's trout rivers and streams just became a lot more accessible.

A state judge on Wednesday invalidated core provisions of a 2010 law that largely blocked anglers and other members of the recreating public from streams flowing over private ground.

HB141, confusingly titled Public Waters Access Act, violates Article XX of the Utah Constitution, which requires public lands — including the public's easement to use rivers and streams — to be "held in trust for the people of the state," 4th District Judge Derek Pullan ruled.

"Every parcel of public land, every reach of public water is unique. If Wasatch, Kodachrome Basin, and Snow Canyon State Parks were disposed of ... the public's right to recreate in other places would be of little consolation," the judge wrote in his 61-page ruling, which concludes five years of litigation in his Heber City and Provo courtrooms.

The law closed 2,700 miles of fishable streams, even though many of those miles benefited from habitat and stream bank restoration, flood abatement and other publicly funded projects, according to the Utah Stream Access Coalition, whose members pushed the legal challenge.

"This is a case where policy triumphed over profits; where law prevailed over lobbying," said the group's president, Kris Olson, in a statement. "The rivers and streams of our state are gifts of providence, and the lifeblood of this arid land. Since before statehood, these rivers have been used by all, and we're grateful that the Court prevented that use from becoming exclusive to a privileged few."

The state is expected to appeal, but in the meantime, Wednesday's ruling enjoins the state from enforcing the law.

The Legislature passed HB141 in response to a Utah Supreme Court ruling that affirmed the public's right to touch beds of rivers that flow across private land. Intended to quell tensions between property owners and anglers, the law allowed only incidental contact with private river beds for purposes of safety and getting around obstructions.

Anglers and recreational boaters quickly mounted legal attacks targeting Utah's two most cherished cold-water fisheries. Teaming with trout, the Weber and the Provo rivers wind through scenic valleys near Utah's population center.

But much of their mileage flows over private land, and HB141 wound up concentrating fishing pressure on the remaining reaches with public access, according to testimony Pullan fielded during six days of trial last summer.

"Boaters should be able to go down that river irrespective of bed ownership, and not have to worry about whether the river has sufficient width, depth and flow, not worry about [whether] getting out of the boat and touching the bed is required for safety," attorney Craig Coburn said in the coalition's closing argument.

Lawyers for the state said HB141 does not "dispose" of the public's easement to use rivers and streams, but merely regulates it.

Brian Maffly covers public lands for Salt Lake Tribune. He can be reached at brianmaffly@gmail.com.

Attorney General Concerned about "Subpar and Declining Service" on United Route

Written by Timothy Mchenry

Guam - The Attorneys General of Guam and the CNMI sent a letter to United Airlines concerning their "subpar and declining service" on the Guam to Honolulu flight. Guam Attorney General Elizabeth Barrett-Anderson and CNMI Attorney General Edward Manibusan are asking Interim United Airlines CEO Brett J. Hart to start up talks to help improve the declining service on United's Guam to Honolulu flight. Some of their concerns include the loss of free inflight meals, increased costs for baggage, loss of free entertainment, older planes causing frequent breakdowns and insufficient flight crews. Attorney General Barrett-Anderson said in a statement, "the level of service provided by United on this route has never met the level of Continental." Both Attorneys General point out that the Guam to Honolulu flight is an international flight yet it acts as a domestic North American flight in terms of customer amenities. They also point out that the price of the Guam to Honolulu flight is more than twice the price of the Narita to Honolulu route.

Hotel rates should include mandatory resort fees, survey says

If you hate finding an unexpected resort fee added to your hotel bill at checkout, you are not alone.

A national survey found that 80% of Americans believe that mandatory resort fees should be included in the daily room rate that is advertised to potential guests.

The survey findings should be no surprise. Resort fees have become one of the biggest frustration for hotel guests, after expensive or unreliable Wi-Fi.

Undisclosed resort fees have become so prevalent that the Federal Trade Commission sent a letter to 22 hotel companies in 2012, warning that their online reservation sites “may violate the law by providing a deceptively low estimate of what consumers can expect to pay for their hotel rooms.”

But the agency has yet to take any action on the fees.

The American Hotel and Lodging Assn. defended the industry, saying hotels and resorts are “transparent” about mandatory fees. Besides, such fees are charged by only about 7% of hotels in the country, spokeswoman Rosanna Maietta said.

Class action lawsuit goes after hotels that fail to disclose resort fees

“Making sure guests have all the necessary information prior to booking their room is paramount,” she said.

Ranging from about $20 to more than $100 a night, resort fees are meant to cover hotel extras such as swimming pools, saunas or fitness centers. But guests are often charged the fees even if they don’t use those facilities.

“If the fee is required, it must be included in the nightly rate,” said Charlie Leocha, co-founder and chairman of Travelers United, the nonprofit group that commissioned the survey of 1,100 registered voters.

U.S. hotels are expected to collect a record $2.47 billion in resort fees and other surcharges this year, a 5% increase over the record $2.35 billion collected last year, according to an estimate by New York University’s Tisch Center for Hospitality and Tourism.

To read more about travel, tourism and the airline industry, follow me on Twitter at @hugomartin.

New poll: Travelers want hotels to disclose resort fees

Nancy Trejos, USA TODAY

Many travelers believe that hotels and resorts should be required to include mandatory resort fees in advertised nightly rates, according to a new national poll.

The poll, commissioned by Travelers United, a non-profit group with 23,000 members, found that 80% of consumers want resort fees included in advertised pricing so that they can comparison shop.

And 87% said they would be less willing to stay at a hotel or resort that charged a fee for activities or amenities they did not use.

A total of 1,100 registered voters nationwide were interviewed by telephone from Aug. 17 to 27 by Mason-Dixon Polling & Research of Jacksonville, Fla. on behalf of Travelers United, which has been fighting against the practice of so-called drip pricing for years.

Many U.S. hotels and resorts charge mandatory fees for amenities such as use of fitness facilities, pools and WiFi. This year, U.S. hotels are projected to make a record $2.47 billion from fees and surcharges, according to a study by New York University's Tisch Center for Hospitality and Tourism.

The Federal Trade Commission in 2012 acknowledged that many hotels and resorts were not mentioning the fees at all or if they did, they used fine print or vague language such as "additional fees may apply."

That year, the FTC sent warning letters to 22 hotel operators that were possibly violating the law by misrepresenting the price consumers would actually be paying for hotel rooms. But the FTC has stopped short of taking legal action.

"When they advertise the room, if it's mandatory, if there's no way you can wiggle out of it, you have no choice, it's not an option, it must be included in the room rate, otherwise it's misleading and deceptive," says Charlie Leocha, co-founder and chairman of Travelers United.

Rosanna Maietta, senior vice president for communications and public relations at the American Hotel and Lodging Association, called Travelers United's comments misleading.

"Hotels and resorts are transparent with guests about mandatory resort fees," she says. "The lodging industry provides guests full disclosure for resort fees charged up front and clear to the consumer."

She also says that mandatory resort fees have been on the decline over the past decade and have been historically low since 2004. According to an AHLA survey, only 7% of 53,000 hotels charged resort fees in 2014.

Still, some members of Congress have called on the FTC to better police the practice.

In July, Senators Claire McCaskill.(D-MO) and Bob Casey (D-Pa.) sent letters asking the FTC to take a more aggressive stance on the practice.

"As a result of this pricing scheme, American consumers are at risk of paying substantial resort fees hidden to the public eye in securing their travel accommodations," he wrote. "This practice is misleading and unfair to the many Americans who book hotel rooms online."

In an August letter to Casey, FTC Chairwoman Edith Ramirez wrote that since 2012, the FTC has sent letters to other hotel operators who failed to disclose the fees or did not include them in the final pricing.

Ramirez wrote that it has resulted in travel companies improving their website displays, prominently disclosing resort fees in the booking process and right next to the advertised price. She wrote that the companies were including the fees in the total price prior to booking.

"I can assure you that we will continue to monitor the online travel marketplace as part of our ongoing consumer protection mission," she wrote.

The FTC did not make further comment on the issue on Friday.

Leocha says Travelers United will keep pressing until hotels are required to disclose the fees at the beginning of the booking process when advertising prices, not just at the end when it's time to pay.

"Disclosure is not enough," he says.