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Published: Monday, July 24, 2017

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<http://bit.ly/2tv4Qcb>

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<http://bit.ly/2tU0QkO>

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Jennifer Yachnin, E&E News reporter

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<http://bit.ly/2v0Np7O>

### **4. Marathon markup to tackle 21 land, renewable energy bills**

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<http://bit.ly/2eIfMk5>

### **5. Industry lawyers track Trump admin's evolving policy changes**

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Published: Monday, July 24, 2017

SANTA FE, N.M. — As the Trump administration works to bolster domestic energy production, legal and regulatory certainty for the oil and gas industry remains out of reach for now.

<http://bit.ly/2tEgqFS>

## **6. Coal, carbon and Minn. mining bills get hearing**

Dylan Brown, E&E News reporter

Published: Monday, July 24, 2017

House lawmakers will take up bills this week to block coal leasing moratoria, the social cost of carbon metric and attempts to ban mining in Minnesota.

<http://bit.ly/2uthqd7>

## **7. Deputy secretary nominee has history battling department**

Michael Doyle, E&E News reporter

Published: Monday, July 24, 2017

The nominee for the No. 2 slot at the Interior Department has a history of suing the agency he's now poised to join.

<http://bit.ly/2uQ6tFg>

## **8. Senate to approve Interior No. 2 today**

Manuel Quiñones, E&E News reporter

Published: Monday, July 24, 2017

The Senate will vote this evening to confirm David Bernhardt for Interior Department deputy secretary, after senators voted to move forward with his nomination on a 56-39 vote last week.

<http://bit.ly/2tv2JF6>

## **9. Yellowstone mining ban, water rights bills on panel's agenda**

Dylan Brown, E&E News reporter

Published: Monday, July 24, 2017

The Senate Energy and Natural Resources Committee will review a slew of natural resources bills this week, including a permanent ban on mining near Yellowstone National Park.

<http://bit.ly/2eICDfg>

## **10. Hundreds of amendments likely for first House 'minibus'**

George Cahlink, E&E News reporter

Published: Monday, July 24, 2017

House Republican leaders are anticipating hundreds of amendments to a package of four security-related spending bills due on the floor this week that will include funding for the Energy Department and Army Corps of Engineers water projects.

<http://bit.ly/2eICZ5A>

#### **11. Panel takes up conservation bill amid gray wolf conflict**

Michael Doyle, E&E News reporter

Published: Monday, July 24, 2017

A bipartisan conservation and wildlife bill that's nonetheless raised some Democratic hackles is set for approval by the Senate Environment and Public Works Committee on Wednesday.

<http://bit.ly/2tvaafR>

#### **12. Committee to consider workforce, regulations bills**

Nick Bowlin, E&E News reporter

Published: Monday, July 24, 2017

The Senate Homeland Security and Governmental Affairs Committee will hold a markup Wednesday of several agency and federal workforce measures.

<http://bit.ly/2vCqJrI>

#### **13. GOP lawmakers gear up for repeat attack on 'sue and settle'**

Amanda Reilly, E&E News reporter

Published: Monday, July 24, 2017

A House panel this week will hold its second hearing of the year on the so-called sue-and-settle phenomenon that Republican lawmakers say has occurred in environmental law over the last several years.

<http://bit.ly/2uQSJtY>

#### **14. State mandates have 'diminished' in importance — report**

Christa Marshall, E&E News reporter

Published: Monday, July 24, 2017

State mandates have driven half of U.S. growth in renewables since 2000, although declining costs have made such standards less important than they used to be, said a new report from Lawrence Berkeley National Laboratory.

<http://bit.ly/2uS5IuZ>

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## 1. Trump admin unveils fracking rule rollback plan

Ellen M. Gilmer, E&E News reporter

Published: Monday, July 24, 2017

A federal hydraulic fracturing rule is overly burdensome and should be scrapped, Trump administration officials said today in a long-awaited proposal to rescind an Obama-era regulation for fracking on public and tribal lands.

The Interior Department unveiled its plan in a *Federal Register* notice scheduled for publication tomorrow. The proposal concludes that the 2015 Bureau of Land Management rule triggered "unjustified" compliance

costs — \$32 million to \$45 million a year for oil and gas operators — that are not in line with the Trump administration's goals to boost domestic energy production.

"Upon further review of the 2015 final rule ... the BLM believes that the 2015 final rule unnecessarily burdens industry with compliance costs and information requirements that are duplicative of regulatory programs of many states and some tribes," agency officials wrote. "As a result, we are proposing to rescind, in its entirety, the 2015 final rule."

The fracking rule has been the subject of nonstop legal friction since it was finalized more than two years ago. Environmentalists say the standards — new requirements for well construction, wastewater management and chemical disclosure — are commonsense safety measures to keep pace with the rapid expansion of the oil and gas production practice in recent years. Industry groups, several Western states and American Indian tribes, meanwhile, say state and tribal officials are already adequately regulating fracking.

A district court struck down the regulation last year, ruling that BLM has no authority over fracking. In an ongoing appeal, the Trump administration has maintained that it has authority over the process but is urging the 10th U.S. Circuit Court of Appeals to freeze the case while the rulemaking process plays out.

Oral arguments in the case are scheduled for Thursday in Denver. Government lawyers are expected to refer to the formal proposal as they make their case for pausing the legal proceedings. Interior missed a previous target date of June 13 for publishing the proposed rollback rule.

Interior's proposal to kill the rule pushes back on environmentalists' argument that federal fracking oversight is needed to ensure safe oil and gas production on public lands.

"However, considering state regulatory programs, the sovereignty of tribes to regulate operations on their lands, and the preexisting authorities in other Federal regulations, the proposed rescission of the 2015 final rule would not leave hydraulic fracturing operations entirely unregulated," the document says.

Agency officials say state oversight of fracking has expanded since the federal rule was finalized two years ago, reducing the need for a nationwide rule. Environmentalists and other critics have long questioned whether many state regulations and enforcement are sufficient.

Earthjustice attorney Mike Freeman, who is representing environmental groups working to revive the fracking rule, slammed the proposed rollback as a giveaway to the oil and gas industry.

"This is another cynical move by the Trump administration that sacrifices clean water and public safety as a favor to their friends in the oil and gas industry," he told E&E News. "The timing is obviously linked to the upcoming oral argument. This appears to be part of BLM's effort to circumvent the law by asking the court to stay the appeal. We oppose that request, and we'll see them in court on Thursday morning."

BakerHostetler attorney Mark Barron, who is representing industry groups against the fracking rule, said the proposal tracks with industry's longstanding argument that the regulation imposed steep costs with no real benefits.

"The step they're implementing today is consistent with what the industry petitioners have been saying all along: that the 2015 version of the rule did not provide any incremental environmental protection and was just a meaningless imposition of costs on industry," he said.

BLM will now accept public comments on the proposal and said it is specifically seeking comments on how the agency can use existing federal authorities to ensure safe hydraulic fracturing operations, "particularly in states or on tribal lands where the corresponding regulations or enforcement mechanisms may be less comprehensive." The agency will also consult with tribal governments on how the rollback would affect them.

<http://bit.ly/2tv4Qcb>

## 2. Interior review could turn lands into 'oil patch' report

Scott Streater, E&E News reporter

Published: Monday, July 24, 2017

A former senior Obama administration official argues in a report released today that Interior Secretary Ryan Zinke's review of federal greater sage grouse conservation plans appears aimed at placing oil and gas development above other uses of public lands, and could have significant negative impacts on the bird.

The **report** from the liberal-leaning Center for American Progress comes on the heels of Zinke's secretarial order establishing a panel that is reviewing the conservation plans and will likely recommend changes (*Greenwire*, June 7).

Written by CAP senior fellow Jim Lyons — who helped write the grouse plans as Interior deputy assistant secretary for land and minerals management during the Obama administration — the report suggests the Zinke review is little more than an effort "to wring out more oil and gas from public lands."



Jim Lyons. Special to E&E News.

Lyons takes particular aim at a section in Zinke's order that calls on the sage grouse review team to identify provisions in the plans "that may require modification or rescission ... in order to give appropriate weight to the value of energy and other development of public lands."

Lyons wrote, "Secretary Zinke is looking to remove any impediments to oil and gas development on public lands and offshore waters to fulfill President Donald Trump's 'energy dominance' commitment."

The president and Zinke, he added, "seem undeterred in making [federal lands], first and foremost, the nation's oil patch. As a result, other uses of public lands — including producing water, recreation opportunities, fish and wildlife habitat, and healthy rangelands — are likely to take a back seat to Trump's energy mandate."

An Interior spokeswoman could not be reached for comment by press time.

But Kathleen Sgamma, president of the Denver-based Western Energy Alliance, offered a pointed rebuke of the CAP report, including noting the think tank's hostility to the new administration.



Sgamma pointed out that Lyons, while at Interior, not only helped develop and write the federal plans but defended them vigorously, including last year at a Senate Energy and Natural Resources Subcommittee on Public Lands, Forestry and Mining oversight hearing (*E&E Daily*, June 29, 2016).

"Jim Lyons arguing that the sage grouse plans shouldn't be overturned is like Obama saying the Senate shouldn't overturn Obamacare," Sgamma wrote in an email to E&E News.

"As the main architect behind the plans, his ridiculous charge that changing them amounts to turning public lands into the 'nation's oil patch' displays the same willful disregard for what's actually happening on the ground to protect sage grouse that went into the plans in the first place," she wrote.

"Companies have reduced surface disturbance in sage grouse states by 70 percent, and states have sage grouse protections in place to further conserve habitat," she added. "Secretary Zinke should ignore a report that reflects CAP's agenda to kill jobs and economic opportunities in the West through regulation."

### **'Epic collaboration'**

The CAP report is the latest development in the ongoing, more-than-year-old debate over the federal plans finalized in September 2015.

They amended 98 Bureau of Land Management and Forest Service land-use strategy documents to include grouse conservation measures covering nearly 70 million acres in 10 Western states.

The plans were strong enough to convince the Fish and Wildlife Service that the bird did not need federal protection under the Endangered Species Act.

But oil and gas and mining interests have challenged them in court. So have states like Utah, which say the plans ignore their input and unnecessarily restrict the use of federal lands in grouse habitat.

In the CAP report, Lyons defended the science and the process in developing the plans, noting the "epic collaboration" among federal regulators, state agencies and private landowners "that led to the landscape-level, science-based, collaborative strategy to conserve the sage-grouse and the sagebrush habitat upon which it depends."

And he offered a list of "lessons learned" during development of the plans that he hopes will be considered by those currently reviewing them.

Among those lessons is that "habitat conservation," not population numbers alone, is the real "measure of success in protecting species of concern."

Zinke, in contrast, has hinted that population number targets for grouse should be the determining factor in managing the species.

The bottom line, Lyons wrote, is that "without healthy sagebrush habitat, the grouse and other species associated with the sagebrush ecosystem are not likely to survive."

He also wrote that pitting conservation versus development "is a false choice," noting that 79 percent of the areas designated as priority habitat management areas in the federal grouse plans "have zero-to-low assumed potential for oil and gas development based on existing data sources."

"Finally," he wrote, "despite rhetoric from some in the oil and gas and mining industries, the sage-grouse conservation effort demonstrated that it is possible to craft conservation solutions that allow for responsible mineral and energy development."

He added, "The conservation strategy is consistent with the BLM's multiple-use mission to manage lands and resources sustainably for present and future generations."

<http://bit.ly/2tU0QkO>

### 3. Zinke views himself more as a Pinchot than a Muir

Jennifer Yachnin, E&E News reporter

Published: Monday, July 24, 2017

DENVER — Interior Secretary Ryan Zinke told E&E News that he discussed public lands policy during his private remarks to the American Legislative Exchange Council last week, asserting he remains at opposition with the group's support of wholesale disposal of the federal estate.

Zinke served as a keynote speaker at ALEC's 44th annual conference here — as well as making appearances over the weekend at both the Western Conservative Summit and Rocky Mountain National Park. But unlike the other events, the remarks before ALEC were closed to the press and public.

"I said I'm not an advocate for sale or transfer of public land. I'm an admirer of [Theodore] Roosevelt," Zinke said Saturday at RMNP, where he held a news conference to announce \$50 million in grants for park maintenance (*E&E Daily*, July 24).

But he went on to compare himself to the first head of the Forest Service, Gifford Pinchot, and to distance himself from environmentalist John Muir, who founded the Sierra Club.



Interior Secretary Ryan Zinke spoke last week at the American Legislative Exchange Council's annual meeting. @ALEC\_states

"I tend to move to the Pinchot side rather than Muir," Zinke said. "And people forget that while Roosevelt visited Muir, he hired Pinchot."

While Muir advocated to maintain wilderness in an unspoiled state, Pinchot was known for his pursuit of sustainable use.

"The first great fact about conservation is that it stands for development," Pinchot wrote in "The Fight for Conservation," published in 1910. "Conservation does mean provision for the future, but it means also and first of all the recognition of the right of the present generation to the fullest necessary use of all the resources with which this country is so abundantly blessed."

Zinke did not offer details about his speech to ALEC's annual conference but added that he remains in opposition to the group's efforts to significantly reduce the federal estate.

"We kindly agree to disagree on this point, but I think America is behind me with a love of our public lands, and the president is as well," Zinke added.

ALEC, which drafts model conservative bills and resolutions for state legislators to introduce, has routinely backed measures that call for the transfer of federal lands to control of their respective states, dating to a draft bill in 1995 known as the "Sagebrush Rebellion Act."

More recently, in 2015, ALEC's board of directors adopted a policy statement supporting "the restoration to the western states their most basic right" to control public lands, with the exception of national parks, wilderness areas, American Indian reservations and military installations.

A spokeswoman for ALEC did not respond to a request for comment on Zinke's remarks.

### **'We won'**

During his weekend visit to the Centennial State, Zinke also addressed the Western Conservative Summit, an annual event sponsored by the Centennial Institute at Colorado Christian University.

In brief remarks on the summit's opening night, Zinke reiterated themes he has focused on in other public appearances, including rebuilding "trust" between the public and his agency, as well as easing the path for energy extraction on public lands.

"We should be the nice department," Zinke said, speaking to a crowd that interrupted him often with applause. "We should be the department that says yes."

He later added: "Where did America turn where we don't trust our government, and how do we get it back? And a lot of it is working with local communities, working with our states, looking at the relationship between our people and our government and understanding that the American experience is worth fighting for."

But as Zinke touted his desire to increase fossil fuel extraction in the United States, he was briefly interrupted by a single protester. Although her initial remarks could not be heard, the unidentified woman urged Zinke to protect public lands as she was escorted from the room.

As attendees chanted, "Trump! Trump! Trump!" to overpower the protester's remarks, Zinke interrupted his own speech on stage to comment: "I'll tell you something, we won. We won."

### **More monuments to skip review**

In remarks at Rocky Mountain National Park on Saturday, Zinke also revealed that he intends to withdraw additional monuments from his agency's ongoing review of dozens of sites nationwide, although he did not reveal any specifics.

President Trump in late April ordered a review of all monuments created since 1996 that encompass more than 100,000 acres, with an eye toward reducing or even eliminating some sites.

In recent weeks, Zinke has formally announced that at least three of the 27 monuments under review will not be subject to any potential alternations: the Canyons of the Ancients National Monument in Colorado, Hanford Reach National Monument in Washington state and Craters of the Moon National Monument and Preserve in Idaho (*E&E News PM*, July 21).

In addition, Zinke has previously indicated he does not expect to make changes at the Upper Missouri River Breaks National Monument in Montana.

Last month, Zinke did recommend significant reductions to the Bears Ears National Monument in southeastern Utah, although he has yet to provide details for those cuts. A final report on the monuments review is due Aug. 24.

"I think it's appropriate to look at the extent of executive power. I commend President Trump for asking the question on it," Zinke said Saturday at Rocky Mountain National Park. "But the monuments are only a small piece of our public lands. Monuments were public lands before, they'll be public lands afterwards."

<http://bit.ly/2v0Np7O>

#### **4. Marathon markup to tackle 21 land, renewable energy bills**

Kellie Lunney, E&E News reporter

Published: Monday, July 24, 2017

The House Natural Resources Committee will begin consideration of 21 bills tomorrow, including bipartisan legislation to promote renewable energy development on public lands and a measure that would develop a central database for federal land properties.

Members will gather to give opening statements tomorrow before reconvening to consider amendments and vote on the measures Wednesday.

The "Public Land Renewable Energy Development Act of 2017" (**H.R. 825**) requires the Interior Department to identify "priority areas" for wind and geothermal power development on federal lands.

The goal of the legislation, which is sponsored by Rep. Paul Gosar (R-Ariz.), is for wind and geothermal power to receive the same focus as solar energy. The bill has 36 co-sponsors, including Natural Resources Committee ranking member Raúl Grijalva (D-Ariz.). Gosar introduced similar legislation in 2013.

Among other things, the legislation establishes a royalty system for renewables that gives 25 percent of royalties to states and 25 percent to counties. It also establishes a renewable energy resource conservation fund that would be used to protect habitat and improve access to federal lands.

Gosar's latest version of the bill is particularly noteworthy given that the Trump administration and Congress have emphasized expanding fossil fuels development on public lands.

The panel this week will also take up **H.R. 2199**, sponsored by Rep. Kevin Cramer (R-N.D.), which requires the Interior secretary to develop "a single, uniform database" listing all "federal real property." The bill, co-sponsored by Rep. Ron Kind (D-Wis.), aims to identify "inaccurate, duplicate, and out-of-date federal land inventories."

Another bill on the docket is Utah Republican Rep. Chris Stewart's **H.R. 2423**, which directs the Bureau of Land Management to grant rights of way approvals for a 4-mile transportation corridor and related utilities in the Red Cliffs National Conservation Area in southern Utah. The bill is designed to address traffic congestion and a growing population in St. George, Utah.

Stewart and other GOP allies, including Natural Resources Chairman Rob Bishop (R-Utah), have noted that the corridor through the NCA in Washington County, Utah, was included in the massive Omnibus Public Land Management Act of 2009 and that it mandated BLM approve the corridor.

The agency has yet to do so eight years after the legislation was approved, in part due to concerns about impacts to the federally protected desert tortoise.

This sparked fierce debate last spring during a Natural Resources Subcommittee on Federal Lands hearing on the bill (*E&E Daily*, May 24).

While Republicans said the legislation is necessary to fulfill the "broken promises" of the Obama administration, Democrats on the subcommittee insisted that the omnibus package only directed the Interior secretary and BLM to evaluate the road and utilities corridor.

Other bills scheduled for the markup are:

- **H.R. 873**, from Rep. Mike Gallagher (R-Wis.), to authorize the creation of the Global War on Terrorism Memorial in Washington, D.C.
- **H.R. 2083**, the "Endangered Salmon and Fisheries Predation Prevention Act," offered by Rep. Jaime Herrera Beutler (R-Wash.), to amend the 1972 Marine Mammal Protection Act to reduce predation on endangered Columbia River salmon and other nonlisted species.
- **H.R. 3279**, from Rep. Paul Cook (R-Calif.), to amend the 1920 Mineral Leasing Act to ensure that extraction of helium from gas produced under a federal mineral lease shall maintain the lease as if the helium were oil and gas.
- **H.R. 3281**, the "Reclamation Title Transfer and Non-Federal Infrastructure Incentivization Act," from Rep. Doug Lamborn (R-Colo.), which would authorize the Interior secretary to facilitate the transfer to nonfederal ownership of appropriate reclamation projects or facilities.
- **H.R. 1074**, from Rep. Rod Blum (R-Iowa), to repeal the act entitled "An Act to confer jurisdiction on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation."
- **H.R. 965**, from Rep. Ann Kuster (D-N.H.), to redesignate the Saint-Gaudens National Historic Site as the Saint-Gaudens National Historical Park.
- **H.R. 1418**, from Rep. Don Young (R-Alaska), aimed at amending the 1971 Alaska Native Claims Settlement Act to provide that Alexander Creek, Alaska, is and shall be recognized as an eligible Native village under that law.
- **H.R. 1491**, from Rep. Doug LaMalfa (R-Calif.), to reaffirm the action of the Interior secretary to take land into trust for the benefit of the Santa Ynez Band of Chumash Mission Indians.
- **H.R. 1547**, from Rep. Martha McSally (R-Ariz.), the "Udall Park Land Exchange Completion Act," to allow the unencumbering of title to nonfederal land owned by the city of Tucson, Ariz., for purposes of economic development.
- **H.R. 2075**, from Rep. Greg Walden (R-Ore.), to adjust the eastern boundary of the Deschutes Canyon-Steelhead Falls Wilderness Study Area in Oregon to facilitate fire prevention and response activities to protect adjacent private property.
- **H.R. 2316**, from Rep. Glenn Thompson (R-Pa.), to amend the Mineral Leasing Act and the 1992 Energy Policy Act to repeal provisions relating to the Allegheny National Forest.
- **H.R. 2371**, from Gosar, to require the administrator of the Western Area Power Administration to establish a pilot project to provide more transparency for customers.
- **H.R. 2374**, from Rep. Ruben Kihuen (D-Nev.), to facilitate certain pinyon-juniper-related projects in Lincoln County, Nev., to modify the boundaries of certain wilderness areas in the state, and to fully implement the 2006 White Pine County Conservation, Recreation and Development Act.
- **H.R. 2582**, from Rep. Mia Love (R-Utah), that would authorize Utah to select certain lands available for disposal under the Pony Express Resource Management Plan to be used for the support and benefit of state institutions.
- **H.R. 2611**, from Rep. French Hill (R-Ark.), to modify the boundary of the Little Rock Central High School National Historic Site.
- **H.R. 2615**, from Rep. Steven Palazzo (R-Miss.), to authorize the exchange of certain land located in the Gulf Islands National Seashore in Jackson County, Miss., between the National Park Service and the Veterans of Foreign Wars.
- **H.R. 2768**, from Rep. Scott Tipton (R-Colo.), to designate certain mountain peaks in Colorado as "Fowler Peak" and "Boskoff Peak."

- **H.R. 3115**, from Rep. Richard Nolan (D-Minn.), to provide for a land exchange involving federal land in the Superior National Forest in Minnesota acquired by the Agriculture secretary through the Weeks Act.  
**Schedule:** The markup begins Tuesday, July 25, at 4 p.m. in 1324 Longworth and continues Wednesday, July 26, at 10 a.m. in 1324 Longworth.

<http://bit.ly/2elfMk5>

## 5. Industry lawyers track Trump admin's evolving policy changes

Ellen M. Gilmer, E&E News reporter

Published: Monday, July 24, 2017

SANTA FE, N.M. — As the Trump administration works to bolster domestic energy production, legal and regulatory certainty for the oil and gas industry remains out of reach for now.

That's a recurring message here at the annual Rocky Mountain Mineral Law Institute, where nearly 900 lawyers from industry, academia and the public sector have gathered to unpack a year of legal developments in their field and work to navigate changes on the horizon.

Industry lawyers are antsy for broad reforms promised by Trump officials, including expedited environmental reviews and permitting, but their current focus is on deregulatory efforts moving forward in federal agencies and courts.

Bryan Cave LLP attorney Ivan London noted during a conference session that the regulatory landscape is in flux in part because of President Trump's "energy independence" order, which aims to boost U.S. energy production.

Among regulations on the chopping block are Interior Department and U.S. EPA rules for greenhouse gas emissions from the oil and gas industry, along with restrictions on hydraulic fracturing and changes to royalty calculations. All of the rollbacks are facing legal challenges.

London noted that EPA Administrator Scott Pruitt, in particular, is aggressively pushing for states to take a leading role in environmental oversight, while the federal government steps back.

"We can expect that as his tenure unfolds, there will be a rebalancing — arguably the pendulum might swing the other way, past rebalancing toward states' rights for environmental regulation," he said.

London added that EPA and other agencies will have to provide clear justifications for their actions or face Administrative Procedure Act challenges — many of which are already in motion.

WildEarth Guardians attorney Samantha Ruscavage-Barz said increased citizen suits from individuals and environmental groups will also play a role in pushing back on the administration's agenda.

"Originally, citizen suits were intended to supplement, rather than supplant, agency enforcement actions, but what we're going to be seeing more is that citizen suits are going to be the primary vehicle for enforcing environmental laws," she said during a separate session.

## Planning

Federal land-use planning also faces an uncertain future. The Obama administration's "Planning 2.0" rule, an update to 34-year-old planning procedures, was scrapped via the Congressional Review Act earlier this year.

The regulation was aimed at increasing public involvement and reducing the amount of time needed to craft resource management plans for public lands, but critics said the final version didn't adequately involve state and local interests.

Speaking at the conference, University of Utah law professor John Ruple said it's unclear what's next for planning reforms, but the administration's ultimate approach will have a major effect on the oil and gas industry and others.

Ruple, who previously worked as a public lands policy analyst for then-Utah Gov. Jon Huntsman (R), noted that states have long been frustrated with the Bureau of Land Management's existing planning process.

"We need to find a better, viable path forward that allows states and local governments and the federal government and constituents to have some voice in the planning process that allows the process to proceed in a faster, more efficient way," he said.

Now BLM will have to go back to the drawing board to figure out how to make that happen without running afoul of the CRA's prohibition on the agency drafting a rule that is "substantially the same" as the scrapped regulation, he said.

Interior Secretary Ryan Zinke has already directed the agency to begin crafting a new rule to streamline the planning process ([Greenwire](#), July 5).

How different must the new rule be to avoid CRA violations? "We're not going to know until they get sued," Ruple said, adding later: "Maybe eventually we'll find out what 'substantially the same' actually means."

Many experts here noted that future administrations will likely reduce the number of late-term regulations they issue to avoid similar CRA complications.

## Local control

Meanwhile, several states and local governments are still dealing with their own power struggles when it comes to oil and gas development.

Liskow & Lewis attorney April Rolen-Ogden noted that the past year has featured regulatory tug-of-wars between local officials who want to restrict fracking and state officials who say they alone have that authority.

Boulder County, Colo., for example, was forced to back away from its drilling moratorium after the state attorney general sued. Across the country, Maryland's Republican Gov. Larry Hogan approved a statewide fracking ban. Rolen-Ogden said she expects to see litigation after the ban takes effect later this year.

As for traditional legal questions affecting everyday oil and gas operations, she said courts over the past year have repeatedly "reaffirmed the basic tenets of oil and gas law."

"So while issues may change or morph over time, especially in an evolving oil and gas market, it's refreshing to see that the fundamentals remain the same," she told conference attendees.

## Dakota Access

The legal gathering also touched on one of the year's most dramatic stories in energy: the Dakota Access pipeline conflict.

Modrall Sperling attorney Walter Stern told a crowd of hundreds of lawyers, many of whom represent energy companies, to be aware of growing tribal engagement on projects that affect their land or water resources.

"There is a real possibility that one or more tribes may step forward to assert a cultural connection to the lands that may be disturbed or implicated by a federally approved or supported project and seek consultation," said Stern, who represents businesses working on public and tribal lands. "And this is more likely now after DAPL, particularly if there are water resources that may be impacted."

University of New Mexico law professor Jeanette Wolfley, an expert in federal Indian law, recommended that energy companies start their own conversations with potentially affected tribes before the federal consultation process begins.

"I believe the divide can be bridged and an energy company certainly has a role to play in this whole process, should it decide to do so," she said. "And I would urge companies to do so and not necessarily sit along the sidelines and watch the consultation process between the federal government and Indian tribes."

Wolfley outlined a number best practices for pipeline operators and others working on or near tribal lands, including holding early informational workshops with tribal leadership, hiring a tribal member to work as a liaison and considering reclamation projects on reservation land to offset potential project impacts.

<http://bit.ly/2tEqgFS>

## 6. Coal, carbon and Minn. mining bills get hearing

[Dylan Brown](#), E&E News reporter

Published: Monday, July 24, 2017

House lawmakers will take up bills this week to block coal leasing moratoria, the social cost of carbon metric and attempts to ban mining in Minnesota.

The House Natural Resources Subcommittee on Energy and Mineral Resources will review a trio of bills Thursday during an oversight hearing.

Wyoming Republican Rep. Liz Cheney's **H.R. 1778** would require that Congress sign off on any future moratorium imposed by the Interior Department on federal coal leasing (*E&E Daily*, March 31). Wyoming is the country's top coal mining state.





Rep. Liz Cheney (R Wyo). @Liz\_Cheney/Twitter

The Obama administration enacted such a moratorium while Interior reviewed the leasing program to make sure it was a benefit to taxpayers. In March, the pro-coal Trump team lifted the halt. Subcommittee Chairman Paul Gosar (R-Ariz.) is a H.R. 1778 co-sponsor.

Another vestige of the Obama administration that Republicans want to do away with is the consideration of the social cost of carbon, methane or nitrous oxide in federal decision-making.

President Trump earlier this year instructed agencies to stop considering the social cost of carbon as part of his larger effort to roll back the Clean Power Plan.

Rep. Evan Jenkins (R-W.Va.) sponsored **H.R. 3117** to make sure future administrations don't shift course (*E&E Daily*, June 30).

"The Obama administration used biased estimates like the social cost of carbon to push through its anti-coal regulations," Jenkins said in a statement.

His "Transparency and Honesty in Energy Regulations Act" is a companion to **S. 1512**, from Sen. James Lankford (R-Okla.).



Rep. Evan Jenkins (R W.Va.). Congress/Wikipedia

The final piece of legislation on the docket will be a **discussion draft** from Rep. Tom Emmer (R-Minn.) to require congressional approval of any mineral withdrawal or monument designation on national forest lands in Minnesota.

A firestorm has surrounded two copper-nickel projects proposed in the northern part of the state. Last year, the Obama administration rejected a lease for Twin Metals' project in the watershed of the Boundary Waters Canoe Area Wilderness.

The Forest Service is currently conducting an environmental impact study to see whether a 20-year ban on new mining is justified in the Superior National Forest.

At the nearby PolyMet Mining Corp. site, environmentalists have sued to block a federal land transfer that local Rep. Rick Nolan (D-Minn.) wants to accelerate (*Greenwire*, July 6).

**Schedule:** The hearing is Thursday, July 27, at 10 a.m. in 1324 Longworth.

**Witnesses:** TBA.

<http://bit.ly/2uthqd7>

## 7. Deputy secretary nominee has history battling department

Michael Doyle, E&E News reporter

Published: Monday, July 24, 2017

The nominee for the No. 2 slot at the Interior Department has a history of suing the agency he's now poised to join.

The Senate is expected to approve David Bernhardt's nomination to be Interior's deputy secretary this evening (*E&E Daily*, July 24).

One suit remains active, involving a Wisconsin tribe unhappy over the department's rejection of a gaming compact amendment. Another suit, while closed, raised some still-unresolved irrigation drainage issues in California's San Joaquin Valley. A third, also closed, challenged decisionmaking by the department's Fish and Wildlife Service.

Taken together, the litigation record underscores the kind of policy as well as recusal challenges that will face Bernhardt as the Interior deputy secretary (*E&E News PM*, July 20).

"I'm not suggesting that just working for the private sector disqualifies someone, but when you have a wide range of issues that you have worked on in the private sector and now you are going to be on the other side of the table, it brings up concerns," Sen. Maria Cantwell (D-Wash.) said on the Senate floor Thursday.

An attorney with the firm Brownstein Hyatt Farber Schreck LLP, Bernhardt has assured senators he would "not participate personally or substantially in any particular matter involving" his former clients or "specific parties in which I know the firm is a party or represents a party" for two years, unless he receives permission.

While much of the debate over Bernhardt's nomination has revolved around his work as a registered lobbyist for California's Westlands Water District and other interests, he has also been active as a litigator on behalf of parties at odds with Interior.

In 2012, for instance, court records show Bernhardt represented a California-based group called the Center for Environmental Science, Accuracy & Reliability (CESAR) in a lawsuit against FWS over delays in making an Endangered Species Act decision on the American eel.

"CESAR, its staff and its members are greatly concerned about the steep decline of the American eel and have various interests in the American eel, including aesthetic, educational, recreational, and scientific interests," Bernhardt and a colleague, Ryan Smith, wrote in the 14-page complaint.

But the group is not a standard-issue environmental organization.

CESAR's website identifies its executive director as Craig Manson, a former Interior official and general counsel for the Westlands Water District between 2010 and 2015. Several prominent San Joaquin Valley farmers were members of the board of directors in 2015, as was Bernhardt, according to an IRS filing.

The group's chairman, Jean Sagouspe, is a former Westlands board president.

The lawsuit was subsequently settled, with FWS agreeing to meet a deadline for an American eel decision and the Justice Department agreeing to pay Bernhardt's law firm \$8,000 in costs and fees, court records show.

In Congress, some of Bernhardt's Republican allies are now pushing legislation to limit Endangered Species Act-related lawsuits, as well as the amount in fees that attorneys can receive. Interior and FWS could play key roles in future negotiations over the bills (*Greenwire*, July 19).

Another component of Bernhardt's future Interior turf was targeted in a separate lawsuit he filed in 2015 on behalf of the Wisconsin-based Forest County Potawatomi Community.

The lawsuit, which remains active in the U.S. District Court for the District of Columbia, challenges Interior's 2014 rejection of the tribe's gaming compact amendment. The lawsuit also underscores some vital controversies facing Interior officials.

"The issues in this case have the potential to bring into question the facts and circumstances under which the Department of Interior has approved or disapproved compacts and compact amendments in dozens of states," U.S. District Judge Colleen Kollar-Kotelly noted last year.

On behalf of Westlands, Bernhardt was part of the legal team that in 2012 filed a \$1 billion lawsuit against the federal government in the U.S. Court of Federal Claims. The suit sought damages for the Bureau of Reclamation's failure to build an irrigation drain serving the Westlands-area farmers.

A judge dismissed the lawsuit in 2013, and Westlands and Obama administration officials subsequently reached an agreement. The controversial irrigation drainage settlement is now the subject of legislation authored by Rep. David Valadao (R-Calif.), whose district includes Westlands.

"The United States and Westlands continue to believe that implementation of the Westlands Settlement is in the public interest, as well as in the interests of Westlands and its landowners, and American taxpayers," attorneys jointly stated Friday in a related case.

Bernhardt's fellow Colorado native, Republican Sen. Cory Gardner, noted Thursday that "there have been other nominees ... who practiced private law from the time between their public service appointments at the Department of the Interior and the time they would come back to the administration."

"Mr. Bernhardt has taken the same steps these nominees did in order for his nomination to move forward," Gardner said.

<http://bit.ly/2uQ6tFg>

## 8. Senate to approve Interior No. 2 today

*Manuel Quiñones*, E&E News reporter

Published: Monday, July 24, 2017

The Senate will vote this evening to confirm David Bernhardt for Interior Department deputy secretary, after senators voted to move forward with his nomination on a 56-39 vote last week.

Bernhardt served as solicitor at Interior during the George W. Bush administration. He later went on to advocate for corporate interests, a point of contention for his critics (*E&E News PM*, July 20).

Bernhardt, a native of Colorado, was a member of President Trump's transition team for Interior. Defenders have pointed to his extensive public policy experience.

Democratic Sens. Martin Heinrich of New Mexico, Heidi Heitkamp of North Dakota, Joe Manchin of West Virginia, Joe Donnelly of Indiana, Brian Schatz of Hawaii and Michael Bennet of Colorado voted with the Republican majority last week to advance the pick.

<http://bit.ly/2tv2JF6>

## 9. Yellowstone mining ban, water rights bills on panel's agenda

*Dylan Brown*, E&E News reporter

Published: Monday, July 24, 2017

The Senate Energy and Natural Resources Committee will review a slew of natural resources bills this week, including a permanent ban on mining near Yellowstone National Park.

Sen. Jon Tester (D-Mont.) sponsored S. 941, the "Yellowstone Gateway Protection Act," which would cement the 20-year mining withdrawal that the Obama administration imposed last year on roughly 30,370 acres of national forest just north of the park's only year-round entrance (*E&E Daily*, April 26).

While existing mining claims would not be affected, the bill would quash hopes for developing two potential metal mines. Mining dates back more than a century in the area, but hundreds of local businesses argue new activity threatens the new recreation and tourism economy (*Greenwire*, Aug. 3, 2016).

The other Montana senator, Republican Steve Daines, sits on the committee. He has expressed concerns about mining so close to the park but advocated for letting the National Environmental Policy Act review run its course.

"We urge the committee to continue progress to permanently protect the doorstep to Yellowstone by advancing this legislation," Yellowstone Gateway Business Coalition Community Director Karrie Kahle said in a statement.

The committee will also take up S. 32, from Sen. Dianne Feinstein (D-Calif.).

The "California Desert Protection and Recreation Act" would create five Bureau of Land Management wilderness areas spanning 230,000 acres while also permanently establishing 142,000 acres of off-highway-vehicle access. Feinstein hopes the bill can be a compromise between environmental and recreation interests (*E&E Daily*, Jan. 6).

A bill from Sen. Martin Heinrich (D-N.M.), S. 436, will also be on the docket.

The "San Juan County Settlement Implementation Act" would permit a coal company to give up a coal lease in New Mexico and therefore the Navajo Nation to potentially pursue renewable energy. Like Rep. Ben Ray Lujan's (D-N.M.) H.R. 2402, the companion bill would allow Arch Coal Inc. to relinquish a coal lease overlapping sacred Navajo sites and land where the tribe has also expressed interest in a solar energy project (*E&E Daily*, May 10).

The following bills will also be considered at the hearing:

- S. 90, the "Red River Gradient Boundary Survey Act," from Sen. John Cornyn (R-Texas), to survey the gradient boundary along the Red River in Oklahoma and Texas.
- S. 357, the "Santa Ana River Wash Plan Land Exchange Act," from Feinstein, to exchange 327 acres of federal land in San Bernardino County, Calif., to the San Bernardino Valley Water Conservation District in return for

310 acres of nonpublic land. A companion bill, H.R. 497, from Rep. Paul Cook (R-Calif.), passed the House last month (E&E Daily, June 28).

- S. 467, the "Mohave County Federal Land Management Act," from Sen. Jeff Flake (R-Ariz.), to sell at least 6,000 acres of public land in northwestern Arizona to boost the rural area's economy (E&E Daily, March 2).
- S. 468, the "Historic Routes Preservation Act," from Flake, to establish a procedure for resolving disputes over rights-of-way claims on federal lands for roads constructed prior to the 1976 Federal Land Policy and Management Act.
- S. 614, the "Recreation and Public Purposes Act Commercial Recreation Concessions Pilot Program Act," also from Flake, to establish a pilot program for commercial recreation concessions on certain BLM land.
- S. 785, the "Alaska Native Veterans Land Allotment Equity Act," from Sen. Dan Sullivan (R-Alaska), to provide for the equitable allotment of land to Alaska Native veterans.
- S. 837, the "Southern Utah Open OHV Areas Act," from Sen. Orrin Hatch (R-Utah), to convey certain land to Washington County, Utah, and exchange federal land and nonfederal land in Utah.
- S. 884, the "Small Miners Waiver Act," from Chairwoman Lisa Murkowski (R-Alaska), to give a small miner waiver recipient 60 days to correct defects or pay the claim maintenance fee.
- S. 1149, from Murkowski, to repeal a limit on exporting timber harvested on Kake Tribal Corp. land.
- S. 1271, the "Fowler and Boskoff Peaks Designation Act," from Sen. Michael Bennet (D-Colo.), to designate certain mountains in Colorado as Fowler Peak and Boskoff Peak.
- S. 1230, the "Water Rights Protection Act," from Sen. John Barrasso (R-Wyo.), to prohibit the conditioning of any permit, lease or other use agreement on the transfer of any water right to the United States.
- S. 1548, the "Oregon Wildlands Act," from Sen. Ron Wyden (D-Ore.), to designate wilderness and national recreation areas as well as additional wild and scenic river designations in Oregon.

**Schedule:** The hearing is Wednesday, July 26, at 10 a.m. in 366 Dirksen.

**Witnesses:** TBA.

<http://bit.ly/2eICDfg>

## 10. Hundreds of amendments likely for first House 'minibus'

George Cahlink, E&E News reporter

Published: Monday, July 24, 2017

House Republican leaders are anticipating hundreds of amendments to a package of four security-related spending bills due on the floor this week that will include funding for the Energy Department and Army Corps of Engineers water projects.

"We assume that there will be hundreds of amendments," said Majority Leader Kevin McCarthy (R-Calif.) on the House floor Thursday afternoon when outlining his expectations for the "minibus" package that will contain the fiscal 2018 defense, military construction-veterans affairs, energy-water development and legislative affairs bills.

Additionally, the bill is expected to provide \$1.6 billion to pay for a wall along the U.S.-Mexico border, a top priority for the White House that could generate strong Democratic opposition.

Rep. Mike Simpson (R-Idaho), chairman of the House Energy and Water Development Appropriations Subcommittee, said he expected both funding and policy amendments to his \$37.6 billion portion bill, which is \$203 million less than fiscal 2017 enacted levels but \$3.2 billion more than requested by President Trump.

Simpson said any changes in funding are unlikely to fly given the bill meets tight spending caps backed by GOP leaders. He said the bill's national security and corps accounts were increased, and he doubts lawmakers would cut those programs to reverse reductions in areas like DOE science research.

Additionally, Simpson predicted amendments, similar to those offered in committee by Democrats, that would try to strip out environmental riders. He said the minority may target a provision to exempt the Trump administration's repeal of the Clean Water Rule, also known as the Waters of the U.S., or WOTUS, rule, from the Administrative Procedure Act and allow firearms on Army Corps property.

### **'Disappointed and frustrated'**

Simpson and other appropriators blasted GOP leaders for moving only a four-bill minibus rather than a broad package with all 12 annual measures, including those that fund U.S. EPA and the Interior and Commerce departments.

Appropriators processed all the bills, but chamber leaders worried they might not have enough support to move the package if it contained large domestic bills, too.

"We did what they asked us to do, and then they did not give us a chance. That's frustrating for us," said Simpson.

Rep. Ken Calvert (R-Calif.), chairman of the Interior and Environment Appropriations Subcommittee, said he too is "disappointed and frustrated" his panel's bill did not make the package. Calvert said he had "no idea" when or if it would come to the floor before the new fiscal year begins on Oct. 1.

Appropriators believe the most likely outcome is for all 12 bills to be cobbled together late in the year into an omnibus package assembled by House and Senate leaders. They said if the House had passed all 12 bills this month it would have had a stronger hand in negotiations with the Senate.

The upper chamber has yet to approve any bills and is moving at a slower pace, but the Senate Appropriations Committee is set to advance two more spending bills this week.

Rep. Hal Rogers (R-Ky.), the chairman of the State and Foreign Operations Appropriations Subcommittee, said leaders were "premature" in backing off a 12-bill omnibus that he believes could have passed the House.

Rogers said having the domestic bills paired with the more popular national security bills would have allowed the often-contentious measures to win support across the GOP conference.

Meanwhile, House Republican leaders have not said when they will take up the chamber's fiscal 2018 budget resolution that passed committee last month. It matches the funding levels in the spending bills but also would make it easier to move tax reform legislation and make about \$200 billion in mandatory cuts.

House Budget Vice Chairman Todd Rokita (R-Ind.) said he believes the budget could advance if it's sold as a "gateway to tax reform." He said the spending plan could move in September if it does pass before the House departs for its summer recess at the end of this week.

GOP leaders so far have not appeared to bridge a split between moderates, who oppose many of the mandatory cuts, and conservatives, who want even deeper reductions and are not fully on board with the tax plan.

### **Agenda**

The House Rules Committee will meet later this evening and again tomorrow to decide which amendments will move forward to the floor for the natural-security-focused minibus.

The Senate Appropriations Committee has set votes on measures to fund the Transportation, Commerce and Justice departments, as well as science programs. They will release those bills tomorrow, and the full committee plans to advance them Thursday.

Senators will likely show an even greater split on transportation spending from the Trump administration than their House counterparts, who have already rejected many of the deep cuts.

Sen. Susan Collins (R-Maine), chairwoman of the Transportation, Housing and Urban Development Appropriations Subcommittee, called the White House's proposal to slash funds to popular road and transit grants and rural airports and trains a "mistake" (*E&E Daily*, July 14).

The House Commerce, Justice and Science Appropriations Subcommittee spending bill includes cuts for climate research programs. Also, there is a provision that would bar the Justice Department from entering into settlement agreements that require donations to third parties.

**Schedule:** The House Rules meeting is Monday, July 24, at 5 p.m. in H-313 Capitol, and continues Tuesday, July 25, at 2 p.m. in H-313 Capitol.

**Schedule:** The Senate Transportation, Housing and Urban Development Appropriations Subcommittee markup is Tuesday, July 25, at 11 a.m. in 192 Dirksen.

**Schedule:** The Senate Commerce, Justice and Science Appropriations Subcommittee markup is Tuesday, July 25, at 2:30 p.m. in 192 Dirksen.

**Schedule:** The Senate Appropriations Committee markup is Thursday, July 27, at 10:30 a.m. in 106 Dirksen. Reporter Camille von Kaenel contributed.

<http://bit.ly/2eICZ5A>

## 11. Panel takes up conservation bill amid gray wolf conflict

Michael Doyle, E&E News reporter

Published: Monday, July 24, 2017

A bipartisan conservation and wildlife bill that's nonetheless raised some Democratic hackles is set for approval by the Senate Environment and Public Works Committee on Wednesday.

Introduced June 29, and the subject of a committee hearing last week (*E&E Daily*, July 20), the 63-page package dubbed the "Hunting Heritage and Environmental Legacy Preservation for Wildlife Act" comes loaded with lures for members of both parties.

It also holds what some critics consider a poison pill.

For one Democratic co-sponsor, Sen. Ben Cardin of Maryland, the legislation includes reauthorization of the Chesapeake Bay Program for an additional five years.

"Less pollution means more oysters and crabs, healthier farmland, more boats and tourism on the water, and more jobs," Cardin said.

For lawmakers of both parties, **the package** reauthorizes other programs including the North American Wetlands Conservation Act and the National Fish and Wildlife Foundation Establishment Act.

And for the hunting and fishing crowd, the bill includes provisions meant to protect the use of lead tackle and to promote the building and expansion of public target ranges for recreational shooting, among other measures.

"This bill is another example of how we can work together, Democrat and Republican," Sen. John Barrasso, the Wyoming Republican who chairs the Senate committee, said at the hearing last week.

More than 50 organizations have endorsed the legislation, including the National Wildlife Federation, Trout Unlimited, and the Association of Fish and Wildlife Agencies. Three Democrats and one independent who

caucuses with the Democrats, Sen. Angus King of Maine, have joined five Republicans in co-sponsoring Barrasso's bill.

But not everyone shares the enthusiasm.

While the bill authorizes programs, it does not guarantee funding. The Trump administration's fiscal 2018 budget, for instance, eliminated Chesapeake Bay cleanup funds. The bill authorizes \$90 million a year for the program.

In a similar vein, the Trump budget proposed an 11 percent cut in the North American Wetlands Conservation Act. The bill authorizes \$50 million a year for the program.

The bill's most controversial provision effectively removes federal Endangered Species Act protection for the Wyoming and western Great Lakes gray wolf populations. The provision also blocks judicial review of that delisting action.

"The idea of intervening in the current science-based, publicly informed species management process to legislatively delist a species gives me great pause," said Sen. Tom Carper of Delaware, the committee's ranking Democrat, adding that lawmakers "must consider the strong support across this nation for wolf protection."

At the same time, Carper noted that "most of us" have supported what he called "sportsmen's bills" in the past, and he specifically joined Cardin in praising the bill's Chesapeake Bay provisions.

With Republicans enjoying an 11-10 majority on the committee, and with one committee Democrat already signed on as a bill co-sponsor, a high hurdle confronts any potential amendment to eliminate the gray wolf provisions that are particularly important to the committee's Wyoming-residing chairman.

**Schedule:** The markup is Wednesday, July 26, at 10 a.m. in 406 Dirksen.

<http://bit.ly/2tvaifr>

## 12. Committee to consider workforce, regulations bills

Nick Bowlin, E&E News reporter

Published: Monday, July 24, 2017

The Senate Homeland Security and Governmental Affairs Committee will hold a markup Wednesday of several agency and federal workforce measures.

On the regulatory front, S. 288, from Sen. Steve Daines (R-Mont.), would define a "longstanding interpretive rule" in the Administrative Procedure Act as a rule that has been in effect for at least a year. Such rules are subject to general notice for proposed rulemaking, comment and other APA provisions.

Other measures on the agenda are:

- H.R. 1293, from Rep. Dennis Ross (R-Fla.), would amend the U.S. Code to require the Office of Personnel Management to compile annual reports on time use by federal employees while on duty. The report would be submitted to Congress.
- S. 873, the "Thrift Savings Plan Modernization Act of 2017," from Sen. Rob Portman (R-Ohio), would make it easier for federal employees to withdraw funds from the TSP.



- **S. 938**, the "Procurement Fraud Prevention Act," from Sen. Gary Peters (D-Mich.), would require the General Services Administration to include information about cost-free procurement technical assistance to any small business that files a concern in a procurement system with an agency.
- **H.R. 1117**, from Rep. Vicky Hartzler (R-Mo.), would direct the Federal Emergency Management Agency to report to Congress its protocols for guiding disaster relief funding applicants during a crisis, record-keeping during staff transitions, and easing bureaucratic burdens on applicants and grantees. The report would include updates on new methods of partnering with state, local and tribal governments, as well as private entities.
- **H.R. 1679**, the "FEMA Accountability, Modernization and Transparency Act of 2017," from Rep. Tom Graves (R-Ga.), would direct FEMA to modernize its grant systems, including an online portal for applicant materials and improvements to information sharing among federal, state, local and tribal governments to avoid duplicate applications.
- **H.R. 195**, the "Federal Register Printing Savings Act of 2017," from Rep. Steve Russell (R-Okla.), would bar government offices, including congressional personnel offices, from receiving free printed copies of the *Federal Register*, with a few exceptions.

**Schedule:** The markup is Wednesday, July 26, at 10 a.m. in 342 Dirksen.

<http://bit.ly/2vCqJrl>

### 13. GOP lawmakers gear up for repeat attack on 'sue and settle'

Amanda Reilly, E&E News reporter

Published: Monday, July 24, 2017

A House panel this week will hold its second hearing of the year on the so-called sue-and-settle phenomenon that Republican lawmakers say has occurred in environmental law over the last several years.

The joint hearing will take place tomorrow in the House Oversight and Government Reform Subcommittee on Intergovernmental Affairs and Subcommittee on Interior, Energy and Environment. The committee has yet to announce witnesses.

GOP critics have long argued that a small number of special-interest groups frequently file litigation using citizen suit provisions to force friendly federal agencies to issue new regulations.

In May, the Oversight subcommittees held an initial hearing on the topic to drum up support for legislation that aims to prevent "sue and settle" lawsuits.

A key target of Republicans' ire has been a sweeping 2011 settlement the Fish and Wildlife Service entered into with WildEarth Guardians and the Center for Biological Diversity, compelling the agency to make decisions on whether to list 252 species under the Endangered Species Act.

"There's a legitimate role for consent decrees and private suits," said Rep. Gary Palmer (R-Ala.), chairman of the Intergovernmental Affairs Subcommittee, at the first hearing in May. "But I think we're currently in a situation where we're outside what would be acceptable" (*E&E Daily*, May 25).

The House Judiciary Committee has since approved legislation along party lines that would require agencies to publicly post and report to Congress any information on lawsuits, consent decrees or settlement agreements.

The bill, sponsored by Rep. Doug Collins (R-Ga.), would also prohibit same-day filing of complaints and pre-negotiated settlements (*E&E Daily*, July 13).

U.S. EPA Administrator Scott Pruitt also earlier this year issued an "oral directive" instructing the agency to limit the practice (*Greenwire*, July 3).

Democrats and environmental groups say "sue and settle" is a made-up phenomenon pushed by foes of regulation.

The Government Accountability Office in 2011 and 2014 released reports finding no evidence that such a practice was occurring at EPA.

**Schedule:** The hearing is Tuesday, July 25, at 10 a.m. in 2154 Rayburn.

**Witnesses:** TBA.

<http://bit.ly/2uQSJtY>

## **14. State mandates have 'diminished' in importance      report**

Christa Marshall, E&E News reporter

Published: Monday, July 24, 2017

State mandates have driven half of U.S. growth in renewables since 2000, although declining costs have made such standards less important than they used to be, said a new report from Lawrence Berkeley National Laboratory.

The lab concluded that 44 percent of renewable capacity additions last year resulted from state renewable standards, down from about 60 to 70 percent before 2014.

"Nationally, the role of [renewable portfolio standards] has diminished over time," said the report, which was released today.

Corporate purchases of renewable energy production systems, along with declining costs for wind and solar generally, are contributing to the diminished role of RPSs in relative terms, said report lead author Galen Barbose, a research scientist at Lawrence Berkeley. Utility-scale solar has also grown in non-RPS markets, the report said.

The study results don't mean RPSs are leading to fewer megawatts, Barbose cautioned, but that other factors are growing in importance.

The trends differs dramatically by region. In areas outside the wind hubs of the Midwest and Texas, RPS standards may still be driving as much as 70 to 90 percent of new capacity because of higher costs in those areas, researchers said.

The importance of RPSs for wind in particular has declined. Historically, wind was the "dominant" generation source tied to state standards, but in 2016, only 21 percent of wind additions resulted from RPSs. That compares with 59 percent for solar, which benefited from new state carve-outs.

Wind is benefiting from "a combination of growing demand from corporate procurement and relatively attractive economics" outside of RPSs, said Barbose.

Currently, RPS standards exist in 29 states and Washington, D.C., and cover about 56 percent of electricity sales. They generally exclude large-scale hydropower and require states to meet a percentage of electricity with alternative energy.

There have been attempts in some states to roll back or freeze the mandates, including a failed push in Ohio last year to make them optional (Greenwire, Dec. 27, 2016).

In all, state lawmakers around the country introduced 41 bills in 2016 and 2017 to weaken standards, according to the report.

However, there were about 85 introduced bills — twice the amount — in the same time frame to strengthen standards. That's a marked shift from earlier years, when the balance between pro- and anti- bills was about even, said Barbose. And the report noted that bills that actually passed since 2016 all expanded or strengthened standards.

"Part of that is motivated by the fact that many of these states were starting to approach their final RPS target year," Barbose said. That prompted states to expand requirements.

Michigan, for example, increased its RPS to 15 percent by 2021, and Maryland expanded requirements to 25 percent renewable energy by 2020. Massachusetts created a new carve-out for offshore wind.

Overall, lab researchers estimated that RPS standards around the country will drive about a 50 percent increase in renewable generation by 2030.

"To meet future RPS demand, total U.S. renewable generation will need to reach 13 percent of electricity sales by 2030," the report said.

<http://bit.ly/2uS5luZ>