

**To:** BLM\_UT\_All[blm\_ut\_all@blm.gov]  
**From:** Sutherland, Ryan  
**Sent:** 2017-02-13T18:05:14-05:00  
**Importance:** Normal  
**Subject:** Daily News Report - Feb. 11-13  
**Received:** 2017-02-13T18:14:36-05:00  
Daily News Report February 11-13.docx

Attached is the daily news report for Feb. 11 13.

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## BUREAU OF LAND MANAGEMENT

### DAILY NEWS REPORT - UTAH

#### UTAH – TOP STORIES – FEBRUARY 11-13, 2017

1. **Herbert: Utah loves its public lands, and I will partner more closely with outdoor industry**

*The Salt Lake Tribune, Feb. 10 | Governor Gary Herbert*

If you have followed the news and social media this week, you know the issue of public lands management has once again taken center stage in Utah.

2. **Bishop Talks Bears Ears, Immigration With Utah Legislature**

*KUER News, Feb. 10 | Lee Hale*

Republican Congressman Rob Bishop addressed Utah lawmakers at the State Capitol Friday during his annual visit to the legislature.

3. **Tourism Brings \$1.15 Billion in Tax Revenues to Utahns**

*Utah Business, Feb. 10 | Press Release*

Salt Lake City—Tourism has emerged as one of the key drivers in Utah’s diverse economy, with travelers spending \$8.17 billion in 2015, and contributing \$1.15 billion in total state and local taxes, the Utah Office of Tourism announced Friday.

4. **Op-ed: Tribes worked patiently for Bears Ears Monument, and it should endure**

*The Salt Lake Tribune, Feb. 11 | Alfred Lomahquahu*

The past few weeks have been troubling for our tribes (Hopi, Navajo, Ute, Mountain Ute and Zuni), which are formally joined in a union of governments as the Bears Ears Inter-Tribal Coalition. President Trump's issuance of a presidential memorandum to proceed with the Dakota Access pipeline over the objections of the Standing Rock Sioux Tribe disregards treaty rights and threatens tribal sovereignty, and we pray that it is not a sign of things to come for Utah.

5. **About Utah: One economic sanction deserves another**

*The Deseret News, Feb. 12 | Lee Benson*

SALT LAKE CITY — After due deliberation and consideration, and some anguish, I have decided to announce that I will no longer be buying gear from Black Diamond and Patagonia.



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#### 6. BLM Concludes Sulphur Wild Horse Gather, Removal and PZP Treatment

*KCSG News, Feb. 11 | Lisa Reid, BLM*

CEDAR CITY, Utah - The Bureau of Land Management Cedar City Field Office concluded the gathering and removing of excess wild horses from within and outside the Sulphur Wild Horse Herd Management Area (HMA) in western Utah on Jan. 31.

#### 7. Trump, Congress should repeal Bears Ears decision

*The Spectrum, Feb. 13 | Brad Last, Utah State House*

Legislating is hard work. At the midway point of the Utah legislative session, I can attest the days are long and it takes a lot of energy to keep making forward progress.

#### 8. PUBLIC LANDS: BLM delays offering lease parcels near Zion

*E & E News, Feb. 13 | Scott Streater*

The Bureau of Land Management has decided to pull two parcels near Zion National Park from a planned June oil and gas lease sale, in part to allow the National Park Service to conduct more analysis on possible impacts to Utah's most-visited national park.

#### 9. PUBLIC LANDS: BLM delays offering lease parcels near Zion

*Utah Policy, Feb. 12 | Bryan Schott*

Rep. Rob Bishop says he thinks a lot of the anger at public meetings held by Republican lawmakers is being organized by outside elements.

#### 10. Utah family's lawsuit against BLM agent hits another wall

*The Salt Lake Tribune, Feb. 13 | Brian Maffly*

A three-judge panel on Monday upheld the dismissal of a Utah family's lawsuit against a Bureau of Land Management agent blamed for the suicide of Blanding physician James Redd, saying the agent was entitled to "qualified immunity" and his conduct did not violate Fourth Amendment prohibitions against excessive force.



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#### 11. \$300,000 Available in Cooperative Agreements for Heritage Resources Preservation in Utah

*Targeted News Service, Feb. 13 | Myra Tugade*

WASHINGTON, Feb. 14 -- The U.S. Department of the Interior's Bureau of Land Management announced that it expects to award up to eight cooperative agreements for heritage resources preservation programs and projects in Utah.

#### E&E/NATIONAL NEWS – TOP STORIES

#### 1. With Bundy trials opening, tension high at Gold Butte forum

*The Reno Gazette-Journal, Feb. 10 | Lucas Thomas*

If Thursday night's Gold Butte National Monument forum is any indication, the Bureau of Land Management has a difficult task ahead in devising a management plan in Gold Butte that satisfies all interested parties.

#### 2. Outdoor rec industry defends public lands

*High Country News, Feb. 10 | Tay Wiles*

While the Bundy family's exploits in Nevada and Oregon have drawn attention recently as trials proceed, the Sagebrush Rebellion has been advancing steadily on another front in Utah. Over the past few years, the state's congressional representatives have spent over \$500,000 studying the viability of transferring federal lands to state control, promoted a \$14 million lawsuit to try to force transfer, and introduced a slew of bills to gut federal oversight and protections of public lands. Now, a battle is brewing between two of the state's most powerful forces: its conservative political leadership, which harbors a century-old distrust of federal land agencies, and its massive outdoor recreation industry, which depends on those same public lands for its survival.

#### 3. Oregon standoff defendants seek Pete Santilli testimony to impeach government witness

*The Oregonian/OregonLive, Feb. 13 | Maxine Bernstein*

Defense lawyers for the four Oregon standoff defendants set for trial this week want Pete Santilli, who awaits prosecution in Nevada, to be flown to Oregon to testify on their behalf and to impeach another co-defendant, Blaine Cooper, now expected to be a government witness.



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#### 4. **GOP begins public land overhaul**

*The Hill, Feb. 12 | Devin Henry*

Conservatives, industry groups and reformers pushing to overhaul public land policy say there's a lot to like from the first month of GOP control in Washington.

#### 5. **Sportsmen Stand Up to Defend BLM 2.0**

*Public News Service, Feb. 13 | Eric Galatas*

DENVER -- A coalition of sportsmen and conservation groups is standing up for the Bureau of Land Management's new land-use planning policies after the U.S. House invoked a rarely used rule to roll back the initiative. The Senate is expected to vote on eliminating the rules as early as this week.

#### 6. **REGULATIONS: Senate weighs CRA on methane; more reforms on tap**

*E & E News, Feb. 13 | Arianna Skibell*

Congress will return its attention this week to killing off Obama-era rules and pushing through regulatory reform measures.

#### 7. **INTERIOR: Climate change is in the crosshairs of BLM rule repeal**

*E & E News, Feb. 13 | Brittany Patterson*

When the Interior Department unveiled a sweeping final plan in September to develop renewable energy across the California desert while protecting species like the Mohave ground squirrel from climate change, many hailed it as setting a new standard in federal land management policy.

#### 8. **REGULATIONS: Interior energy rules land in CRA crosshairs**

*E & E News, Feb. 13 | Pamela King*

Resolutions to kill a pair of signature Obama-era Interior regulations are just the tip of the iceberg for Republican lawmakers seeking to loosen the federal government's grip on energy development on public lands.



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9. **RENEWABLE ENERGY: Bipartisan coalition presses Trump on wind and solar**

*E & E News, Feb. 13 | Christa Marshall*

The leaders of a 20-state coalition are urging the Trump administration to support wind and solar energy and emphasize grid upgrades in any infrastructure package.

10. **DAKOTA ACCESS: Standing Rock joins easement challenge**

*E & E News, Feb. 13 | Ellen M. Gilmer*

The Standing Rock Sioux Tribe is joining the latest flurry of legal action against the Dakota Access pipeline.

11. **COAL: Stream rule's demise revives old standards, litigation**

*E & E News, Feb. 13 | Dylan Brown*

Congress has primed President Trump's pen to kill the Stream Protection Rule in the name of jobs, but environmentalists haven't given up hope on curbing mine pollution in coal country.



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#### UTAH – FULL STORY

##### 1. **Herbert: Utah loves its public lands, and I will partner more closely with outdoor industry**

*The Salt Lake Tribune, Feb. 10 | Governor Gary Herbert*

If you have followed the news and social media this week, you know the issue of public lands management has once again taken center stage in Utah.

Obviously there are differences of opinion on this matter. But let me be clear about where there is full agreement: Utahns love our exceptional public lands.

We love their grandeur and beauty. We love the opportunities they create for solitude and recreation. We agree that these lands must be protected.

Let there be no mistake. Our criticisms of federal land management and policies should not be interpreted as a critique of the need, value, or merit of public lands. In fact, just the opposite.

In recent days, Utah lawmakers have conveyed to the new administration in Washington our principled concerns about the negative impacts of the most recent use of the Antiquities Act for our state. Correspondingly, leaders in outdoor recreation, whose enterprises rely heavily on well managed and accessible public lands, have raised principled concerns about Utah's commitment to caring for them.

This spirited debate demonstrates both the important role public lands play in the lives of Utahns, and that there are still many unanswered questions about the best way to care for and manage our resources. And because these lands belong to the people, it is appropriate that these concerns ultimately play out through public policy processes established by the people.

Utah's elected officials value our outdoor recreation businesses. They are growing and thriving. They are a vital part of our economy, our identity, and our culture, and have contributed more than \$12 billion in direct and indirect economic benefit to our state's economy. Their passionate commitment to preserving and protecting the most stunning landscapes in the world contribute to making Utah the best place to live, work and play.

But as governor, I cannot ignore the challenges Utah sometimes faces due to federal practices that too often ignore meaningful local input. Policies change from administration to



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administration, creating inconsistent federal lands management practices. There are instances where federal inattention to looters, invasive species and pests has harmed these precious lands.

Over the years, we as a state have done a good job of identifying the problems of federal land management. Perhaps what we have not done as well is to talk about the many positive aspects of public lands.

I will be the first to admit that we can and need to do a better job of letting people know how much Utah values its public lands heritage. We need to talk more about the efforts by state government to promote conservation, access and partnerships with all stakeholders. We need to reiterate clearly that Utah is and always will be a public lands state.

I encourage those who question whether Utah supports its public lands to look at the record.

Look at how the State of Utah and our conservation partners spend nearly \$14 million every year protecting, enhancing, and promoting our public lands with the largest active watershed and wildlife habitat restoration program in the United States.

Look at our commitment to 43 state parks, many of which rival the splendor of our national parks.

Look at our creation of the first state office of outdoor recreation in the country, whose primary purpose is to create, preserve, and promote access to our public lands.

Look at our annual three million dollar promotion of Utah's National Parks.

Look at how we actively facilitated access to outdoor recreation opportunities on public land, even amidst a federal government shutdown.

Look at the tens of millions of dollars Utah and its partners spend to improve habitat, eliminate invasive species and improve the range for thriving herds of bighorn sheep, bison, deer, elk and pronghorn.

Look at our efforts to establish conservation easements on private land in sensitive areas under threat of development. The Wilcox Ranch near Nine Mile Canyon is a prime example of this.



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Each of these investments has yielded an outdoor experience that is unparalleled in the continental United States, and each shows that we are absolutely committed to the preservation and enhancement of our public land heritage for all.

Yes, there are meaningful differences of opinion about best land management practices and uses. But I believe we can find the optimal balance.

When we face challenging and complex issues and emotions are high, I believe the best way to move forward is to take a deep breath — and in this case maybe two or three deep breaths — then sit down and engage in constructive dialogue.

This latest controversy about Utah's commitment to our public lands is one where rhetoric and posturing from both sides may have outpaced rational thought, productive discussion and civility. We cannot force simplistic solutions to these complex issues through ultimatums, boycotts and press releases.

Consequently, I have invited and will meet as soon as possible with leaders in the outdoor recreation community to listen to their concerns.

When I first became governor, I promised that Utah would discover unlimited opportunities through unprecedented partnerships. I look forward to partnering more closely with our outdoor recreation community in order to discover the best opportunities for the preservation and access to Utah's singular, and singularly important public lands.

*Gary R. Herbert is the 17th governor of Utah.*

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## 2. Bishop Talks Bears Ears, Immigration With Utah Legislature

*KUER News, Feb. 10 | Lee Hale*

Republican Congressman Rob Bishop addressed Utah lawmakers at the State Capitol Friday during his annual visit to the legislature.

Before being elected to Congress, Rob Bishop served in the Utah House for 16 years and was Speaker of the Utah House in the early nineteen nineties.



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He spent part of his annual address discussing the importance of the federal government listening to the states. He said state legislators often do a better job than congress and deserve more of a say in U.S. policy.

He also fielded some questions from the representatives. Touching on Trump's recent immigration ban. Bishop said he's been talking about that a lot these days.

"And it creates a whole lot of very emotional behavior," Bishop said. "That has to be brought down a notch."

Once the country gets past the "angst," Bishop said there should be a focus on process. And that he wouldn't comment further until after the current federal court proceedings—which have lifted the temporary ban—are concluded.

He also reaffirmed his view that the Bears Ears monument needs to be overturned and redone.

"What will happen in the future is to simply take that area and do it the right way," said Bishop. "So you confine Bears Ears area to just what is Bears Ears area."

And give deciding power to the Native Americans who live there. Bishop said it's probably time Utah is treated more like Wyoming. A state exempt from the Antiquities Act which cleared the legal path for establishing the Bears Ears National Monument.

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### 3. **Tourism Brings \$1.15 Billion in Tax Revenues to Utahns**

*Utah Business, Feb. 10 | Press Release*

Salt Lake City—Tourism has emerged as one of the key drivers in Utah's diverse economy, with travelers spending \$8.17 billion in 2015, and contributing \$1.15 billion in total state and local taxes, the Utah Office of Tourism announced Friday.

"State sales tax revenue generated by travelers helps fund a variety of Utah priorities, including education, public safety, health and human services, road construction and maintenance," said Governor Gary R. Herbert. "Tourism significantly bolsters the economy and strengthens our tax base."



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Income taxes from tourism related jobs contributed more than \$100 million to Utah schools in 2015, according to the Kem C. Gardner Policy Institute. Motor fuel tax revenue (gas taxes), from travelers contributed more than \$100 million to Utah's transportation and infrastructure. An additional \$200 million in state sales tax revenue went to Utah's General Fund where it was used to pay for essential services in Utah including health and human services, corrections, courts and the justice system, public safety and economic development. 2015 tax contributions from tourists amount to the equivalent of each Utah household paying an additional \$1,235 into the state.

"Utah is establishing our reputation as a recreation destination for tourists from all over the world," said Vicki Varela, managing director of Tourism, Film and Global Branding. "A decade ago, people credited our red-rock wonders to Arizona and the Greatest Snow on Earth to Colorado. Today, telling people you're from Utah stirs stories of amazing vacation memories."

Following the success of Utah's Mighty 5 marketing campaign, the Utah Office of Tourism is encouraging visitors to get off the beaten path and experience The Great American Road Trip on some of the state's 27 scenic byways. Fly fishing, OHV riding and road cycling are all featured in 2017's affinity-based digital campaigns.

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#### **4. Op-ed: Tribes worked patiently for Bears Ears Monument, and it should endure**

*The Salt Lake Tribune, Feb. 11 | Alfred Lomahquahu*

The past few weeks have been troubling for our tribes (Hopi, Navajo, Ute, Mountain Ute and Zuni), which are formally joined in a union of governments as the Bears Ears Inter-Tribal Coalition. President Trump's issuance of a presidential memorandum to proceed with the Dakota Access pipeline over the objections of the Standing Rock Sioux Tribe disregards treaty rights and threatens tribal sovereignty, and we pray that it is not a sign of things to come for Utah.

Utah's GOP congressional delegation, state Legislature and governor are threatening our sovereignty as well by calling upon the president to undo Bears Ears National Monument. We are dismayed that such actions are being discussed without consulting us, before our new secretary of interior has even been confirmed.

The relationships that govern Native American tribes and the federal government seem not to be understood by some among Utah's Republican politicians. There are three sovereignties in the



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United States, as clearly stated in the U.S. Constitution — the federal government, the states and Native American tribes.

The state of Utah represents one sovereignty, and though its opinions are valid, through our coalition, we represent the official action of five sovereignties. Joining us are the sovereign actions of 26 other tribal governments who have all passed resolutions in support of protection of Bears Ears. Beyond that, the more than 250 additional tribes of the National Congress of American Indians have resolved to protect Bears Ears as well.

Further, the federal government has a trust relationship to tribes. It is responsible for protecting Native American tribal interests, among those interests are our ancestral lands. The Bears Ears cultural landscape, which bears the signs of our habitation, migration and care for countless generations is vital to all of us for the preservation of our culture and our history.

In an act of unprecedented solidarity between our tribes, we set aside our differences to advocate for the designation of Bears Ears National Monument. The Obama administration honored our tribes by meeting with us repeatedly to understand our connections to Bear Ears, but they protected half a million fewer acres than we requested and, in that act, left out countless sacred sites.

The boundaries of Bears Ears as protected also closely match Rep. Rob Bishop's failed Public Lands Initiative legislation, so we are left wondering why he objects to Bears Ears National Monument so strenuously. To cut the boundaries further would add insult to the injury of the injustices visited upon us in the recent past.

According to the trust relationship and the government-to-government relationship, consultation with tribes must occur before sweeping decisions are made. For a newly confirmed interior secretary to recommend any action diminishing Bears Ears would be a superlative dishonor to both the trust relationship and the government-to-government relationship, and would position the Department of Interior for some very rough going in Indian Country.

We have asked Interior Secretary-designate Ryan Zinke to meet with us when he comes to Utah, and we hope that he will hear our concerns. After all, he has more experience with Indian Country than most politicians, and has earned praise for reaching out to Montana's tribes. In his Senate confirmation hearing, he said:

"I love Teddy Roosevelt's idea that we should think bold and big, and prepare for the future... I have great respect for the Indian Nations... and we need to listen to that voice... Sovereignty



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should mean something... The duty of the Department of Interior is to make sure we have broad consensus on what we're doing."

Mr. Zinke, despite the cries of some politicians in Utah, there is no broad consensus to undo or to shrink Bears Ears National Monument. The recent Conservation in the West poll found 80 percent of Westerners favor keeping our national monuments for our future. Bears Ears, as the first tribally proposed national monument and the first to recognize Native American traditional knowledge as a resource to be protected by the monument, is exactly the kind of big and bold thinking Teddy Roosevelt spoke about.

Our tribes have learned great patience with the federal government despite its abuses done to our people. We are as committed to defending Bears Ears National Monument as we were to its designation. Our cultures take the long view, and we hope Zinke will take the next step in the long history of Bears Ears with us, not against us.

Thank you – Elahkwa, Ahéhee', Tog'oiak', Kwakwhay.

*Alfred Lomahquahu serves as Hopi Vice Chairman and Co-Chair of the Bears Ears Inter-Tribal Coalition.*

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#### 5. **About Utah: One economic sanction deserves another**

*The Deseret News, Feb. 12 | Lee Benson*

SALT LAKE CITY — After due deliberation and consideration, and some anguish, I have decided to announce that I will no longer be buying gear from Black Diamond and Patagonia.

I regret this decision, given a long relationship with these companies that I'm assuming was as enjoyable for them as it was for me.

I'm neither the world's most avid nor least avid outdoors guy. I never climbed Everest, but I have summited Lone Peak. I never ran Lava Falls, but I've made it through Cataract Canyon. Twice. I drive a Subaru.

Over the years I've bought my share from Black Diamond and Patagonia. The first pair of Scarpa boots I purchased, back during my telemark-skiing phase, was from Black Diamond. During my surfing phase, when I lived in California and tried to catch waves at C-Street, I used



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to walk across the freeway to the original Patagonia Store in Ventura and watch the shapers make longboards. I'd have bought one if they hadn't been so expensive.

There's plenty of Patagonia apparel in my closet, including the parka I wore just yesterday. For Christmas a couple of years ago, I was given a copy of Patagonia founder Yvon Chouinard's book, "Let My People Go Surfing." In 2010 I watched the documentary "180 Degrees South" about the journey Chouinard took to the Patagonia Andes in 1968, a trip that not only gave him the name for his company but shaped him as an environmentalist.

I'm aware that Black Diamond also traces its roots back to Chouinard and that in its new configuration the company moved to Utah in 1991 to be closer to the mountains.

In my view, these are cool companies with cool origin stories that make cool gear. That's not my issue.

My issue is that Black Diamond and Patagonia are leading the charge to remove the annual Outdoor Retailer conventions from Utah because Utah politicians are fighting against having the Bears Ears National Monument here.

In December, just before leaving office, President Barack Obama designated a huge portion of Utah land – some 1.35 million acres – as Bears Ears National Monument. In response, Gov. Gary Herbert and other state leaders want to see if the new president, Donald Trump, can somehow reverse Obama's edict.

The reaction by the state is reminiscent of 20 years ago, when President Bill Clinton created the Grand Staircase-Escalante National Monument – at 1.9 million acres even larger than Bears Ears – just before he left office. In response, a coalition of Utah counties challenged the action in federal court – and lost. The judge ruled that the president was well within his constitutional rights to do what he did. (Full disclosure: I followed that case with added interest because my brother Dee was the judge).

Since challenging the monument in court didn't work, this time officials are looking to the executive branch, hoping that a new chief executive can undo something ordered by the old chief executive. (The fact that it's never happened before doesn't make the odds look all that favorable).

It's not hard to see why the state doesn't want to lose control over land within its boundaries, especially when such huge chunks are being taken out of play that could be useful to help with future energy needs. (How big are we talking? At a combined 3.25 million acres, Grant Staircase-Escalante and Bears Ears make up about six percent of the entire state; the two



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monuments cover more territory than all of Salt Lake, Utah, Davis, Weber and Ogden counties – the entire Wasatch Front. Added together, Utah’s “Big 5” National Parks – Zion, Arches, Canyonlands, Capitol Reef and Bryce Canyon – are only a fourth the size of the two national monuments).

It’s also not hard to see why the outdoors industry people want to see the land preserved in its native condition. Not only is that good for future generations, it’s good for their bottom line.

So what we have here are differing points of view about what to do with the land, something that’s been going on at least since the Mayflower.

But it’s unsettling when disagreement leads to disrespect. If everyone bolted when they didn’t agree with the politicians, there wouldn’t be anybody left.

There’s just something irritating about companies boycotting the state’s largest convention and urging its relocation (the winter and summer Outdoor Retailer shows bring in some \$40 million annually), particularly when they’re already winning.

Since the Outdoor Retailer gathering first came to Utah in 1996, 3.25 million acres have been set aside, much of it prime terrain for their gear. Things haven’t gotten worse on the environmental front. They’ve gotten much, much better.

So that’s it. No more Patagonia and Black Diamond for me. One economic sanction deserves another. It’s one thing, being a bad loser; it’s another, being a bad winner.

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#### 6. **BLM Concludes Sulphur Wild Horse Gather, Removal and PZP Treatment**

*KCSG News, Feb. 11 | Lisa Reid, BLM*

CEDAR CITY, Utah - The Bureau of Land Management Cedar City Field Office concluded the gathering and removing of excess wild horses from within and outside the Sulphur Wild Horse Herd Management Area (HMA) in western Utah on Jan. 31.

The BLM gathered a total of 655 horses, of those gathered 433 were permanently removed from the range. Due to the high number of horses that were concentrated along Utah State Route 21 and the safety concern of wild horse vehicle collisions, the first 200 horses captured near the highway were straightway removed.



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This was done to prevent those animals from immediately returning to the areas along the highway if released. A total of 192 horses were selectively chosen and returned to the HMA to ensure the historic colonial Spanish type horse remains in the area, this includes 80 mares treated with the fertility control vaccine porcine zona pellucida -22 (also known as PZP-22).

Due to extremely harsh winter circumstances and many horses that were captured in very thin or poor condition, the gather was concluded sooner than anticipated.

Deep snows were encountered that hampered the gather crew's ability to access much of the southern reaches of the HMA. It's anticipated that a higher than normal winter loss of horses may occur in portions of the Sulphur HMA. This same loss is expected in other Utah HMAs in western Iron County, Utah.

The Sulphur HMA is located in western Iron, Beaver, and Millard counties, Utah, approximately 50 miles west of Milford, Utah in the Indian Peak and Mountain Home mountain ranges. The Sulphur HMA contains approximately 265,675 acres.

Animals removed from the range were shipped to the Axtell Contract Off-Range Corrals and will be made available for adoption through the BLM Wild Horse and Burro Adoption Program. Those that are not adopted will be cared for on off-range pastures, where they retain their protection under the 1971 Wild Free-Roaming Horses and Burros Act.

Gather information is posted at: <http://bit.ly/SulphurGather> To learn more about the wild horse and burro program or to obtain an adoption application, visit the BLM National Wild Horse and Burro website at: <http://on.doi.gov/2h11IDS> .

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#### 7. **Trump, Congress should repeal Bears Ears decision**

*The Spectrum, Feb. 13 | Brad Last, Utah State House*

Legislating is hard work. At the midway point of the Utah legislative session, I can attest the days are long and it takes a lot of energy to keep making forward progress.

I'm not looking for sympathy; after all, I signed up for this job and after 14 sessions, I'm fairly familiar with the legislative process. Two things I have learned — it takes longer than you think to get things done and you never get everything you want.



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For example, I believed in the UpStart pre-kindergarten learning program and the way it would improve educational outcomes for low-income students. The first year I proposed a bill to fund the program, it nearly died from lack of funding support and, in the end, I had to accept a small pilot program rather than the full roll-out I had envisioned.

However, nearly a decade later, the program is fully funded and showing tremendous results for students. Evidence like this sustains my belief in the process, that though the wheels of government grind slowly, good people working together can make progress, find compromise and achieve positive outcomes.

Perhaps this is why I am so frustrated and disappointed about the designation of the Bears Ears National Monument.

This was not a robust collaborative effort. This was one person imposing his will over the top of a state, over the people that live in the area, and over the locally elected leaders. I believe the use of the Antiquities Act should be an incredibly rare thing and employed with complete transparency. Rule by fiat doesn't inspire trust, confidence or support for the action imposed. It is human nature to find acceptance of something if you've had an opportunity for input.

I am admittedly a fan of the Public Land Initiative (PLI) process championed by Reps. Rob Bishop and Jason Chaffetz for finding the right balance on Bears Ears. After all, you can bridge competing views and land use desires through a robust dialogue and keeping everyone at the table.

I see that happen at the State Capitol all the time on a variety of issues. I'm sure groups have petitioned for the quashing of the opposition so their side could prevail and "win."

However, at the end of the day, groups that started the process as mortal enemies can often stand side by side and declare a proposal is a fair compromise worthy of support and praise ... if they all played a role.

I fundamentally believe that the Bears Ears National Monument will be a bone of contention like its neighbor, the Grand Staircase-Escalante National Monument, because they were born through proclamation rather than through the give-and-take of the legislative process.

We will chaff against these national monuments forever because the origin story will always be one of imposition by an outside force. Utahns from all persuasions weren't there to work on the rough edges of the proposal so that it would ultimately integrate seamlessly into our psyche and sense of self.



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This is why I'm supporting HCR 11 and HCR12 to ask President Trump and Congress to repeal the designation of these monuments and use the legislative process to make better land use policy.

*Brad Last represents House District 71, which covers portions of Iron and Washington counties. He is participating, along with other members of the state legislature from Southern Utah, in a rotating weekly column for The Spectrum & Daily News during the annual legislative session.*

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#### 8. **PUBLIC LANDS: BLM delays offering lease parcels near Zion**

*E & E News, Feb. 13 | Scott Streater*

The Bureau of Land Management has decided to pull two parcels near Zion National Park from a planned June oil and gas lease sale, in part to allow the National Park Service to conduct more analysis on possible impacts to Utah's most-visited national park.

BLM is still evaluating whether to offer the industry-nominated parcels — covering a total of 2,800 acres about 1 mile north and east of Zion in southwest Utah — at a planned Sept. 14 lease sale, said Ryan Sutherland, a BLM spokesman in Salt Lake City.

But BLM decided to pull the parcels from the June sale at the request of the National Park Service, which has concerns about the possible impacts of drilling near the park. Zion National Park Superintendent Jeff Bradybaugh formally requested that BLM grant a public comment extension in a Feb. 3 letter to the agency.

The decision follows BLM's release last month of a draft [environmental assessment](#) (EA) analyzing the two parcels, and a third parcel 5 miles from the park, covering a total of 4,730 acres just north and northeast of St. George, Utah (Greenwire, Jan. 16).

As part of the decision to remove the parcels from consideration in the June 15 lease sale, BLM extended the public comment period on the draft EA by 30 days, until March 9.

Sutherland said that in addition to concerns raised by the Park Service, the extension decision was made after BLM officials attended a Feb. 2 public meeting in Virgin, Utah. The meeting was attended by more than 100 people, he said, "many of whom had questions about the leasing process and how they could weigh in on the decisionmaking process."



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According to the draft EA, the two parcels near Zion are in areas designated as "open to leasing with special stipulations."

But there are no active BLM leases or active drilling wells in Washington County, where the parcels are located, and only a handful of parcels managed by the Utah School and Institutional Trust Lands Administration that have been leased for oil and gas development near the park.

Washington County's three-member commission last week voted unanimously to approve a resolution opposing drilling near the park and asking BLM "to exercise caution" and ensure that any leases near the park "be conducted in a way that will not negatively impact tourism, traffic flow, or water resources in the area."

The two parcels were nominated for lease by Utah Drilling and Exploration LLC, according to an article published in The Salt Lake Tribune.

Jeff Reber, a St. George businessman and the company's principal, told the Tribune that his interest is in drilling for groundwater, but that he needs the leases to protect the company's investment should it strike hydrocarbons while drilling for water.

The decision to hold off offering the leases was welcomed by conservation groups, which have been critical of the possibility of allowing oil and gas drilling near the national park.

The National Parks Conservation Association and Southern Utah Wilderness Alliance released a statement last month, when the draft EA was released, saying they were "stunned" that BLM was even considering offering the two parcels.

"BLM should not threaten one of the nation's most iconic landscapes with pump jacks and drill rigs," said Landon Newell, a staff attorney with the Southern Utah Wilderness Alliance.

At the least, the Park Service needs more time to fully analyze the impacts of drilling on Zion's air quality, viewsheds and soundscapes, said Cory MacNulty, NPCA's senior Utah program manager.

In addition, it's important for members of the public to use the longer period to tell BLM what they think about leasing parcels near the national park, she said.

"The extra time also gives BLM more time to hopefully go through the substantive comments they receive and really look at impacts to air quality, scenic views and other impacts," MacNulty said. "We really do hope people will weigh in."



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#### 9. **PUBLIC LANDS: BLM delays offering lease parcels near Zion**

*Utah Policy, Feb. 12 | Bryan Schott*

Rep. Rob Bishop says he thinks a lot of the anger at public meetings held by Republican lawmakers is being organized by outside elements.

Bishop spoke briefly with UtahPolicy.com during his visit to the Utah State Capitol to talk to legislators on Friday. We asked him about the rowdy meeting held by Rep. Jason Chaffetz last week. He speculated Chaffetz might have been the victim of outside agitators.

"I don't know. I wasn't there. We have had indications in other districts that a lot of these town hall type of events are being coordinated and organized by outside people, so there is a coordinated effort to try and be as disruptive as possible," said Bishop. "I have no clue if that was the case, but it is consistent with what happened in other places in the nation."

Bishop also spoke about the newly created Bears Ears National Monument, saying he hopes President Donald Trump and incoming Interior Secretary Ryan Zinke will take steps to undo the monument designation so that the area can be protected the right way.

"I do anticipate them to consider that particular issue because it's not just Utah, it's other states are asking for that same consideration. If indeed, it were to be rescinded, then we would go to work and try and make it the right way," he said. "With a monument designation, you don't know what the land management plan is yet. If you do that ahead of time and work that out prior to that and do it in statute, which is what we want to do, then we can do it the right way and come up with something that can really be a benefit to those people, and they will have the assurity that it's how it will be handled in the future. That would be my goal."

Bishop says, with Congress unified under Republican control and a Republican in the White House, there's a window where some real progress could be made on public lands issues in the West.

"I hope so, but I'm also realistic to understand that I don't want to be too overly optimistic and I don't want to overpromise what can and can't take place. The Senate will always be a difficult obstacle. It may be even more contentious than it has been the last two years and the Senate seems to move very slowly, which is their only positive quality anyway, but they move very



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slowly on stuff. I don't want people to be over-anticipating what will take place, but there is the hope and the opportunity that we can actually move forward."

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#### 10. **Utah family's lawsuit against BLM agent hits another wall**

*The Salt Lake Tribune, Feb. 13 | Brian Maffly*

A three-judge panel on Monday upheld the dismissal of a Utah family's lawsuit against a Bureau of Land Management agent blamed for the suicide of Blanding physician James Redd, saying the agent was entitled to "qualified immunity" and his conduct did not violate Fourth Amendment prohibitions against excessive force.

Redd and his wife Jeanne were among those arrested in a controversial sting operation targeting Four Corners-area residents suspected of trafficking in artifacts looted from ancient Native American graves and other archaeological sites. Special Agent Dan Love coordinated the undercover Operation Cerberus, which led to the suicides of two others involved.

The Redds alleged that under Love's direction, the BLM and Federal Bureau of Investigation used excessive force in deploying numerous agents, equipped with tactical gear, to the doctor's home on the morning of the 2009 raids.

Love subjected Redd to a prolonged and humiliating interrogation, triggering his suicide the next day, the suit alleged.

Unless the Redd family asks for reconsideration, Monday's ruling should put the contentious lawsuit against Love to rest, although the Redd family has an appeal pending in separate suit against the federal government. U.S. District Judge Ted Stewart dismissed that case last year.

While the Redd litigation winds down, Blanding residents' resentment toward the BLM has not begun to fade.

Redd was a pillar of the community and the 2009 raid was seen by some as unnecessary and thuggish invasion into the homes of law-abiding citizens. Since then tensions have only escalated in San Juan County following the conviction of a county commissioner for leading a protest ride into Recapture Canyon and the controversial designation of the Bears Ears National Monument.



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But as for Love, his conduct remained within the confines of the U.S. Constitution, despite the presence of as many as 22 federal officers at his home at the time of his arrest, according to Monday's opinion written by Judge Gregory Phillips of the 10th Circuit Court of Appeals.

Many of the officers were called in to help catalogue hundreds of artifacts found in the Redd home and extra security was needed in the face of threats, Love and other federal witnesses testified. Agency policies required that officers wear armor and firearms in situations where confrontations could be expected.

"Agent Love's conduct — deploying twenty-two agents wearing soft body armor and carrying firearms in compliance with agency policy — was not objectively unreasonable under the circumstances," Phillips wrote in the opinion that upheld a lower court ruling by U.S. District Judge Robert Shelby.

The Redd family alleged far more than 22 officers came to the home, but the evidence never determined how many were there at one time or even how many Redd would have seen. He was being processed in and out of jail during much of the time his home was searched.

After the Blanding raids, the BLM promoted Love to special-agent-in-charge for Utah and Nevada. In that role, he repeatedly upset rural sheriffs, county commissioners and lawmakers for what they alleged said was his refusal to cooperate with local law enforcement. Love has since been re-assigned.

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#### **11. \$300,000 Available in Cooperative Agreements for Heritage Resources Preservation in Utah**

*Targeted News Service, Feb. 13 | Myra Tugade*

WASHINGTON, Feb. 14 -- The U.S. Department of the Interior's Bureau of Land Management announced that it expects to award up to eight cooperative agreements for heritage resources preservation programs and projects in Utah.

The estimated total program funding available was cited as \$300,000 with a ceiling of \$200,000 for each award in the program. The agency said the grant was associated with natural resources.

This funding opportunity is open to state, county, city, township and special district governments; Native American tribal governments and organizations; institutions of higher



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education; Historically Black Colleges and Universities; Tribally-Controlled Colleges and Universities; non-profits; for-profits; small businesses; eligible agencies of the federal government; and faith-based or community organizations.

The agency description of the grant states: "Public lands in Utah are home to many thousands of unique and irreplaceable archaeological, historical, and paleontological resources that represent Utah's 13,000 year human history and millions of years of biological prehistory. The Bureau of Land Management (BLM) administers approximately 23 million acres of public land in Utah with eleven local field offices, which are coordinated by the BLM Utah State Office in Salt Lake City. BLM-Utah State Offices' Cultural Resources Management and Paleontology Programs coordinate the management, preservation, and outreach efforts for these resources.

Cultural and Paleontological Resources Management Program manages and preserves the archaeological and historical locations, structures, and objects that represent a unique component of our national heritage. This program also engages with Native American tribes and the public as stakeholders in these resources. BLM-Utah Paleontology Program manages and preserves paleontological resources as a fragile, nonrenewable scientific record and an important component of America's natural heritage.

These programs manage these archaeological, historical, and paleontological resources, or heritage resources, for educational, scientific, cultural, and recreational values. The BLM Utah State Office's Cultural Resource Management and Paleontology Programs are seeking to establish partnerships to collaboratively encourage the public to learn about and engage with heritage resources in Utah, increase volunteer opportunities, increase engagement with Native American tribes, and encourage studies on public lands."

The funding opportunity number is L17AS00028 (CFDA 15.224). It was posted on Feb. 9 with an application closing date of June 30.

For more information, contact Melanie Beckstead, 801/539-4169, [mbeckstead@blm.gov](mailto:mbeckstead@blm.gov).

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#### E&E/NATIONAL NEWS – FULL STORY

##### 1. **With Bundy trials opening, tension high at Gold Butte forum**

*The Reno Gazette-Journal, Feb. 10 | Lucas Thomas*

If Thursday night's Gold Butte National Monument forum is any indication, the Bureau of Land Management has a difficult task ahead in devising a management plan in Gold Butte that satisfies all interested parties.

In the same week trials for the 2014 Bunkerville standoff began in Las Vegas, the glaring trust issues stemming from that incident were on full display Thursday night in Mesquite as the BLM's Southern Nevada office held a public forum at the city hall chambers in Mesquite.

The 300,000 acres of land that comprise the newly designated Gold Butte National Monument, near Mesquite and between Lake Mead and the Arizona border, was the site of the Cliven Bundy-led standoff against the Bureau of Land Management in 2014. While conservationists affectionately describe Gold Butte as Nevada's piece of the Grand Canyon, Bundy's supporters and others in the fight for public lands believe the federal government has overstepped its boundaries.

The tone of the evening was set from the moment the floor was opened to questions.

"These guys are going to go back and tell everybody that the community is for this," said one woman in opposition to the designation. "Well, I'm here right now to say that our community is greatly in opposition to this. This is our community, it does not belong to the federal government of the United States."

Some in attendance attempted to shout her down. Others said to stay on the topic or sit down, as she referenced the 2014 Bunkerville standoff.

The next woman to take the microphone retorted: "We have been sitting across the table from people like that young lady for decades. Gold Butte is here. It's a national monument. We won; you lost. Let's get rid of the cows. When is that going to happen? That is my question."

"You haven't seen anything yet, lady," one man shouted from the other side of the room.



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BLM Southern Nevada District Office manager Tim Smith said there are two court orders, but no immediate plans to gather the cattle currently roaming Gold Butte. Any decision to do so, he said, would come from the Washington, D.C. office.

The next comment came from a man who referred to the BLM as “dictators” for shutting down access to land without public input. BLM officials assured attendees that any decisions made to close routes would be done with public consultation.

“If we do have to look at route designations again for any reason, if we have to look at individual roads, we will take all of that back to the public it will go back to a public process again,” answered Gayle Marrs-Smith, BLM Las Vegas Field Office manager. “But for right now, we are leaving the designation the way it is with 600 plus miles of routes open. They are open right now, and they will remain that way.”

During the forum, the process of choosing an advisory committee for Gold Butte was outlined. Smith said a federal registry notice will be sent out sometime “hopefully in the next several months.” The advisory committee is comprised of 12-15 local stakeholders, including an elected official, a state official, a member of the public at large, a member of the hunting community, a member of the recreation community, and a member of the Moapa Band of Paiutes.

Nominees for the advisory committee will be vetted by the state and governor’s office. After that, nominees must be approved by the Secretary of the Interior in Washington, Smith said.

Marrs-Smith, Smith, and acting monument manager Lee Kirk, said the focus of the forum was strictly to discuss details of the proclamation, but many in attendance had other ideas.

“Are you going to make it so miserable for people that they can’t live anymore?” one woman asked.

One man informed BLM officials that feelings haven’t changed since the 2014 standoff in Bunkerville and the 2016 occupation of the Malheur National Wildlife Refuge in Oregon.

“I’m going to tell you what: I’m an honorary member of seven militias — one in Southern Utah and one in Southern Nevada. This dog and pony show, I promise you, is not going to happen. It’s not going to happen. You might as well leave and get out of here,” he said.

The Southern Paiute voice was also heard Thursday night, cautioning BLM officials about mismanaging the land. For instance, one Paiute member said a trail in Gold Butte currently runs



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through a petroglyph site which tells the story of his people. He also addressed the several heated exchanges between the opposing factions.

“To hear all this going back and forth about the land, why don’t you just give it back to us then?” he said to a loud applause.

Thursday night’s meeting showed how significant the level of distrust is that many locals have toward the BLM. Despite assurances that the planning process will be conducted transparently and publicly, one woman addressed a question asked earlier about paving the road leading in to Gold Butte.

“This is how they’re going to pave the roads,” she said. “They’re going to shut you out of the land, not let you access it, and then they’re going to make you pay to get in it. Then, if you step off of the paved path, they’re going to fine you for it, and that’s how they’re going to get the money to pay for your paved road to get there.”

Marrs-Smith attempted to reassure skeptics that “we are going to keep roads open.”

“Who is we?” a man asked.

“The Bureau of Land Management,” she answered.

“No, it’s the people who own the land, not you,” he said.

While opposition to the designation was well represented, support for it was also prevalent. During perhaps the most heated exchange of the evening, one man shouted to a protester to let someone else speak because they’d already said enough.

“You’re the one standing up,” the man protesting responded.

The other man said he was standing up “so I can look down on you, trash.”

The forum was so heavily attended that an extra room was opened to seat all the attendees. Throughout the meeting, as some people were asking questions, several smaller arguments persisted in the background between supporters of the designation and opponents.

As the forum was winding down, one woman offered a small step toward a possible resolution during the final comment of the evening.



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“Some of the people who are against this, maybe they need to sit on the committee,” she said. “Maybe they need to be in with you, and try to hear everybody’s side, and try to save our beautiful land.”

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## 2. Outdoor rec industry defends public lands

*High Country News, Feb. 10 | Tay Wiles*

While the Bundy family’s exploits in Nevada and Oregon have drawn attention recently as trials proceed, the Sagebrush Rebellion has been advancing steadily on another front in Utah. Over the past few years, the state’s congressional representatives have spent over \$500,000 studying the viability of transferring federal lands to state control, promoted a \$14 million lawsuit to try to force transfer, and introduced a slew of bills to gut federal oversight and protections of public lands. Now, a battle is brewing between two of the state’s most powerful forces: its conservative political leadership, which harbors a century-old distrust of federal land agencies, and its massive outdoor recreation industry, which depends on those same public lands for its survival.

In the past six weeks, the Utah delegation has proposed legislation to roll back public-lands protections in unprecedented ways, rattling the conservation community nationwide. On Dec. 29, the day after President Barack Obama announced the designation of Bears Ears National Monument under the 1906 Antiquities Act, U.S. Sen. Mike Lee, R-Utah, said he would do everything in his power to “undo” the decision. Lee didn’t stop there: “I am then going to do what I can to repeal the Antiquities Act so that future President Obamas can not do this to rural communities ever again,” he wrote in a blog post. In January, Republican state representatives also went after national monuments — Gregory Hughes introduced a resolution to rescind Bears Ears, and Mike Noel proposed shrinking Grand Staircase-Escalante, which President Clinton created in 1996.

On its first day back in session this year, the House passed a package of rules with a provision spearheaded by Rep. Rob Bishop, R-Utah, that makes it easier to transfer federal lands to state control. Later in January, Rep. Jason Chaffetz, R-Utah, introduced a bill to do away with the law enforcement arms of both the Bureau of Land Management and the Forest Service and require the Interior Department to provide grants to state and local government agencies to enforce federal laws themselves. To top it off, Noel, R-Kanab, is reportedly angling to become head of the BLM. Noel advocates defunding large parts of the agency and has long derided it for putting too much emphasis on conservation.



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Outdoor industry leaders have joined conservationists nationwide who see this series of events as an all-out attack on public lands. But whether the outdoor industry can help tilt the scales toward federal lands protections, especially given the Utah delegation's stance, may be a major test of its emerging political clout. "We've struggled for a long time to be heard in Washington," says Alex Boian, vice president of government affairs for the Outdoor Industry Association (OIA), a major trade group based in Boulder, Colorado, and Washington, D.C. "When I first started (13 years ago), we'd go to town, meet with an intern in the hallway, they'd dutifully write down our issues and they'd get filed away. Now, we are meeting with senior advisors to the president and members of Congress."

One of the ongoing signs of the industry's current pushback in Utah is its threat to move the renowned Outdoor Retailer trade show out of the state. The show, held twice yearly in Salt Lake City, is a gearhead's wonderland, where buyers and outdoors fanatics ogle the latest products; the largest gathering of outdoor manufacturers and retailers in the country, it brings tens of millions of dollars to Utah annually. Industry luminary Peter Metcalf, founder of Salt Lake-based gear company Black Diamond, recently renewed his call for the trade show to be moved to another state.

The first time Metcalf suggested moving the OR show was in 2003, when then-Gov. Mike Leavitt made a deal with then-Interior Secretary Gale Norton to remove 2.6 million acres of the state's public lands from consideration for wilderness protections; Leavitt also pushed a plan to give counties control over thousands of miles of roads through wild areas. After meeting with Metcalf, though, Leavitt walked back his roads plan — and OR stayed.

Since the threat of yanking the trade show hasn't yet been fulfilled, "there's an unfortunate belief by many in the state that this is just a charade," Metcalf told High Country News. But the only reason he and others didn't follow through on the first or second attempt, he says, was that they managed to find common ground with the governor's office and other representatives. In 2013, Utah Gov. Gary Herbert created the nation's first state Office of Outdoor Recreation to help the state plan development of activities like hiking, mountain biking and skiing. (Colorado has since formed a similar office and other states have taken steps to do so.)

This time around, no one knows how responsive Utah leadership will be. Patagonia founder Yvon Chouinard recently penned his own angry critique of Utah's public-lands direction. "Politicians in the state don't seem to get that the outdoor industry — and their own state economy — depend on access to public lands for recreation," Chouinard wrote. In early February, Patagonia announced it was pulling out of the OR show in response to Gov. Herbert's signing of the resolution to overturn Bears Ears. Arc'teryx, a Canadian outdoor clothing



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company, textile manufacturer Polartec, San Francisco-based gear company Peak Design, Kokopelli Packraft, Power Practical and Bedrock Sandals followed suit, while Vermont-based Ibex Outdoor Clothing announced it would reduce its presence at the show in protest. Kevin Boyle, co-founder of outdoor clothing company KÜHL, also says he'll consider pulling out of the trade show as a way to make a stand on public lands.

“Whenever somebody like a Peter Metcalf or Yvon Chouinard expresses their values, we pay attention,” says Boian. The Outdoor Industry Association helped sponsor a full-page advertisement in the Washington Post in January criticizing the attack on Western public lands, signed by 100 leaders of outdoor-gear companies. On Feb. 6, Outdoor Retailer announced it will look for a new location for the show after its Salt Lake City contract ends in 2018, in a state that “upholds our industry’s core values around the importance of America’s public lands system.” (Politicians in both Colorado and New Mexico have informally volunteered to host it.) For now, Boian says the association is working through other channels — lobbying politicians and supporting pro-public lands campaigns — to get its message across.

Much of the outdoor recreation industry’s growing influence stems from its economic impact. Utah’s outdoor recreation companies employed 122,000 people and brought \$12 billion into the state each year. Nationwide, according to the Outdoor Industry Association, it generates \$646 billion in consumer spending each year, plus 6.1 million jobs. In December, Congress unanimously passed a law to finally require the federal Bureau of Economic Analysis to measure outdoor recreation’s contribution to the national gross domestic product.

In recent years, recreation interests have gotten a seat at the table for legislation, such as with the 2016 Public Lands Initiative, a failed proposal for the future of eastern Utah led by Reps. Bishop and Chaffetz, Boian says. The industry association marked up a draft of the initiative, criticizing a provision that could have prohibited presidents from using the Antiquities Act to create national monuments in several Utah counties. In the later proposal, that part had been removed — though it popped up in a separate bill introduced at the same time. In early 2016, outdoor representatives were also part of the creation of the BLM’s master leasing plan to manage 800,000 acres near Moab. Brad Petersen, the first director of Utah’s Office of Outdoor Recreation, was invited to scrutinize the state’s response to the BLM. “It was the first time that recreational interests had been officially requested and included in a legal response by a state agency,” Petersen says. “The initial rhetoric and tone of the state’s legal response went from being ... energy-development-centric to neutral, with increased support for the benefits of Utah’s recreation economy.”

But despite the industry’s growing political muscle, Petersen and Metcalf say the Office of Outdoor Recreation still isn’t effective enough in giving it a voice on public policy. “Ultimately,



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the Office of Outdoor Recreation works for the governor,” Petersen said. And while Utah’s governor has been known to compromise on public lands to a greater degree than most of the state’s congressional delegation, he signed the Transfer of Public Lands Act in 2012 and now supports rescinding Bears Ears National Monument.

It’s unclear how far Utah’s delegation can take its anti-federal lands vision; reversing monument designations doesn’t have much of a precedent. And Rep. Chaffetz recently withdrew a bill to transfer 3.3 million acres of Western public land to state control, after his proposal received harsh criticism from constituents. An in-depth report endorsed by 11 Western attorneys general last year concluded that Utah’s legal arguments for a large-scale land transfer are deeply flawed. (Neither Bishop or Chaffetz would respond to HCN’s requests for comment on this story.)

As its next step, Metcalf told High Country News, the outdoor recreation industry should become more heavily involved with state elections — making public lands an issue on which voters base their choice of candidates at all levels. “We need to make (public lands) a high-profile binary issue,” he said.

In 2015, Metcalf stepped down from his CEO role at Black Diamond. Today, as CEO-emeritus, his focus is on advocacy through groups like the Conservation Alliance, which gives grants to environmental organizations. Recently, he’s been reading up on how the National Rifle Association and conservative pro-life groups gained the powerful political influence they have. Could the outdoor industry do the same? “You can make a difference in an off-year election,” he says. “We can prove whether we can affect an election in two years.”

*This story has been updated to reflect additional outdoor gear companies that have also pulled out of this year's OR show in response to Governor Herbert signing the resolution to rescind Bears Ears National Monument. Associate Editor Tay Wiles writes from Oakland, California.*

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### **3. Oregon standoff defendants seek Pete Santilli testimony to impeach government witness**

*The Oregonian/OregonLive, Feb. 13 | Maxine Bernstein*

Defense lawyers for the four Oregon standoff defendants set for trial this week want Pete Santilli, who awaits prosecution in Nevada, to be flown to Oregon to testify on their behalf and to impeach another co-defendant, Blaine Cooper, now expected to be a government witness.



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Jury selection starts Tuesday morning for the remaining four defendants accused of federal conspiracy, weapons and depredation of government property charges stemming from the 41-day seizure of the Malheur National Wildlife Refuge last winter.

U.S. District Judge Anna J. Brown already has issued orders for occupation leaders Ammon Bundy, who was acquitted of all charges, and Ryan Payne, who has pleaded guilty to a conspiracy charge, to be flown from Nevada to Oregon to testify for the defense.

The defendants' request for Santilli was filed on Sunday, after defendants learned that Cooper, who pleaded guilty to the conspiracy charge in the refuge case last summer, is expected to testify for the prosecution.

The defense team estimated that Santilli's testimony would last about half a day, and the lawyers have requested he be transferred to Oregon in early March. Santilli has agreed to testify, as long as his lawyer in Nevada can be present in court with him.

"Peter Santilli is a journalist who reported on the protest at the refuge from its inception, and has extensive personal knowledge of events relevant to these proceedings," defense lawyer Jesse Merrithew wrote in his Sunday motion. "He was close to Blaine Cooper throughout the events at issue. Defendants intend to call Mr. Santilli to impeach the testimony of Blaine Cooper, who the government recently disclosed will testify as a government witness."

Both Santilli and Cooper are in custody in Nevada. Santilli is awaiting trial in connection with the April 2014 armed standoff with Bureau of Land Management officers near the Bundy Ranch in Bunkerville, Nevada.

Cooper, of Humboldt, Arizona, in August pleaded guilty to conspiracy and assault on a federal officer in the Nevada case, and is set to be sentenced in mid-March. Prosecutors are expected to recommend a six-year sentence, but he can argue for less time.

In the Oregon refuge takeover case, 26 people were indicted on federal conspiracy, weapons and other charges stemming from the occupation of the federal wildlife sanctuary outside of Burns in eastern Oregon. Seven people were acquitted of the charges after a five-week trial in Portland last fall. Eleven people have pleaded guilty to a conspiracy charge, and three others have pleaded guilty to a misdemeanor trespassing charge.

Santilli had all charges dismissed against him on the eve of the fall trial. He never stayed overnight at the federal wildlife refuge, and his defense attorney in Oregon argued that much of



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the material he broadcast on his YouTube channel was protected speech under the First Amendment.

Cooper was part of the first convoy of people to drive to the refuge in Harney County on Jan. 2 from a demonstration in Burns, where he was protesting the return to federal prison of father and son ranchers Dwight Hammond Jr. and Steven Hammond.

Cooper, who has registered a film company called Third Watch Media, carried a camera while co-defendants armed with firearms cleared the refuge buildings that day, a prosecutor said at his plea hearing. Cooper also was seen driving government trucks on the refuge.

On Jan. 3, Cooper appeared on a video with occupation leader Ammon Bundy, in which Bundy promised to make the refuge a base for patriots to live and stay for several years, according to prosecutors. Cooper introduced himself on the video, and urged those who come to the refuge to, "Bring your arms!" Cooper left the refuge on Jan. 26 or 27, and was arrested in Utah on Feb. 11.

In the Nevada case, a Facebook exchange Cooper had with Santilli on April 8, 2014, was cited in court documents, in which Cooper wrote to Santilli that it was time to stop "all this huffing and puffing" over the microphones and "go down and do what we got to do" in Nevada. Prosecutors in Nevada described Cooper as a mid-level leader and organizer in the 2014 standoff there.

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#### 4. **GOP begins public land overhaul**

*The Hill, Feb. 12 | Devin Henry*

Conservatives, industry groups and reformers pushing to overhaul public land policy say there's a lot to like from the first month of GOP control in Washington.

Lawmakers have passed several bills undoing Obama-era regulations that conservatives opposed, arguing they give the federal government too much control over lands issues.

Reform proponents hope that previews a broader overhaul once President Trump is able to put his energy and environment teams in place.

"There are so many different groups that are looking for some relief after the last eight years that Congress and the administration are kind of drinking from the firehose at this point," said Ethan



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Lane, the executive director of the Public Lands Council and National Cattlemen's Beef Association, which has advocated for federal land reform.

Drillers, miners and conservatives in the West — which has most of the federal government's land holdings — have long pushed back against the more liberal land management approach pursued by the Obama administration, which focused on conservation and stricter rules on fossil fuel and mineral development.

They see an opening under Trump, who has promised to expand fossil fuel production on public lands and ease Obama-administration rules that critics call burdensome.

“We’re looking for someone who understands that there’s a balance on public lands and that the vast majority of the mineral estate is working landscapes,” Kathleen Sgamma, the president of the Western Energy Alliance industry group, said of potential appointments to public land positions.

In the last two weeks, the House has passed several Congressional Review Act resolutions undoing Obama-administration environmental regulations, including several opposed by industry groups and land reformers.

One of those resolutions ends a Bureau of Land Management rule restricting venting and flaring at natural gas drilling sites on public land. The rule would limit methane pollution, but industry groups say it would be duplicative, unnecessary and costly.

“The oil and gas industry is and should be heavily regulated, but what we saw at the end of the Obama administration was not about reasonable regulations, it was about using regs to drive companies off of public,” Sgamma said. “The GOP is moving in a different direction.”

But that’s not reformers’ only win.

Rep. Ryan Zinke (R-Mont.), Trump’s pick to lead the Interior Department, has a moderate streak on public land ownership. But he, too, has been a foe of Obama-era energy rules and seems primed to step back from an Obama administration overhaul of the coal royalty program that Democrats hoped would lead to higher fees for mining.

The House also blocked a BLM land planning rule, finalized in December, that foes said gave too much power to the federal government. Both that and the methane measure are awaiting a vote in the Senate and have the White House’s support.

House debate over the planning rule was a microcosm of the broader fight over public lands.



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Public land policy — from resource regulations to federal ownership — has been a major concern for many conservatives, who want to distribute more power over lands to states and private entities.

Rep. Liz Cheney (R-Wyo.), who introduced the bill undoing the planning rule, said the GOP has its chance to change the course set by Obama.

“It is hugely important for us, as we go forward here, to make sure that we have done everything we can to roll back regulations that are really killing our jobs, that are preventing people in our local communities from being able to make a living, from being able to consistently graze, for example, on these public lands,” she said during a floor debate on Tuesday.

Democrats, though, have called the GOP approach an assault on public land ownership.

“It's time to face the facts: congressional Republicans do not value our nation's public lands the way everyday Americans do,” Rep. Raúl Grijalva (D-Ariz.) said Tuesday.

“The American public does not support erasing the planning rule and they certainly don't support the broad anti-public land agenda being pushed by Republicans.”

Environmentalists and conservation supporters oppose several of the GOP's early moves.

“I think it's gone pretty poorly, and it's a question of where you draw the line,” said Chris Saeger, the director of the Western Values Project.

Activists pushing their allies to hold the line against the GOP are working to kick up grassroots opposition to public land changes, an effort that they say has had at least some success so far.

Conservationists blistered a House rule change in January that makes it easier for the government to shed its public land holdings. And, earlier this month, Rep. Jason Chaffetz (R-Utah) was forced to rescind a bill to sell off millions of acres of federally owned land after a backlash from sportsmen's groups.

“I'm a proud gun owner, hunter and love our public lands,” Chaffetz wrote alongside a rustic Instagram post of himself in hunting camouflage, holding a dog.

“The bill would have disposed of small parcels of lands Pres. Clinton identified as serving no public purpose but groups I support and care about fear it sends the wrong message,” he added.



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Public lands advocates hope to exert similar public pressure as Trump and the GOP move forward.

“The sportsmen community has been woken up: you poked that bear and that bear came out,” said Land Tawney, the head of the Backcountry Hunters and Anglers.

“The pushback was very welcoming to see, and I hope it sets a precedent for anybody else who wants to push these bills forward.”

Environmentalists and conservationists are gearing up a Senate showdown on the methane rule, making an economic case — that methane leak restrictions lead to more gas sales and tax revenue — that they hope will attract some Republicans to support the regulation.

They’re also bracing for a broader public lands fight when the Senate confirms Zinke.

Saeger noted, for instance, that Chaffetz used a meeting with Trump this week to slam an Obama-administration designation of a national monument in his state. That means officials soon might be pushed to consider making high-profile decisions deeply opposed by conservation groups or environmentalists.

That will be a test for Zinke and Trump’s stated support for public lands.

“That is a pretty low bar to cross: to say that we are not going to sell off our public lands is not saying much,” Saeger said.

“The rubber hits the road when oil companies knock on their door and ask for permission to drill on those lands.”

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#### 5. **Sportsmen Stand Up to Defend BLM 2.0**

*Public News Service, Feb. 13 | Eric Galatas*

DENVER -- A coalition of sportsmen and conservation groups is standing up for the Bureau of Land Management's new land-use planning policies after the U.S. House invoked a rarely used rule to roll back the initiative. The Senate is expected to vote on eliminating the rules as early as this week.



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Suzanne O'Neill, executive director at the Colorado Wildlife Federation, said the rules ensure public input from the get-go on the multiple uses of public lands and benefit oil, gas, timber and outdoor recreation industries alike.

"This is good for everybody," O'Neill said, "because under the rule, everyone can participate in identifying potential conflicts - or real conflicts - and then roll up our sleeves and try to figure out what are the options for resolving them."

If the Senate follows the House's lead and overturns what has been called BLM 2.0, the Congressional Review Act prohibits the bureau from issuing similar rules in the future. O'Neill said that would undermine years of work by industry, outdoor enthusiasts and conservation groups to improve the bureau's operations.

With the nation's attention fixed on a flurry of actions taken by the White House, O'Neill said it's important to keep an eye on what's happening in Congress and in state legislatures.

"People who care about keeping our public lands public need to pay attention," she said, "because otherwise these sorts of bills will continue."

Last week's move by the House to eliminate BLM 2.0 came on the heels of a rule change that could pave the way for states to take control of publicly owned lands, and a measure - introduced by Utah Representative Jason Chaffetz - that would remove law enforcement authority from both the BLM and the U.S. Forest Service.

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#### 6. **REGULATIONS: Senate weighs CRA on methane; more reforms on tap**

*E & E News, Feb. 13 | Arianna Skibell*

Congress will return its attention this week to killing off Obama-era rules and pushing through regulatory reform measures.

The Senate — after a strained week of Cabinet confirmations — may take up a House-passed resolution of disapproval to nix an Interior Department regulation limiting oil and gas methane emissions.



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House lawmakers used the Congressional Review Act this month to scrap the Bureau of Land Management regulation that seeks to limit natural gas flaring, venting and leakage on public and tribal lands (Greenwire, Feb. 3).

While industry groups like the American Petroleum Institute have urged the Senate to follow the House's lead, environmentalists and other opponents argue repealing the rule would waste taxpayer resources and threaten to exacerbate climate change.

The League of Conservation Voters last week sent a [letter](#) to members voicing its opposition.

"The BLM's Methane Rule updates outdated standards for oil and gas production on public and tribal lands by requiring companies to deploy readily available, cost-effective measures to reduce methane lost through venting, flaring, and leaks," the group wrote.

"This commonsense approach will begin to decrease the over \$300 million in natural gas that is wasted each year from our public and tribal lands, reducing the loss of a valuable natural resource and providing up to \$800 million in royalty revenues to states, tribes, and federal taxpayers over the next decade."

Senate Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska) told reporters she hopes the Senate will also take up a resolution to trash a BLM rule updating the agency's process for designing land use plans.

The House voted to kill the rule last week by a 234-184 vote, mostly along party lines. Four Democrats voted in favor and four Republicans against (E&E Daily, Feb. 8).

Still, Senate Republicans have limited time to consider resolutions while also trying to confirm President Trump's Cabinet nominees, a large number of whom are still waiting (see related story).

House lawmakers may also take up a new resolution, introduced by Rep. Don Young (R-Alaska). [H.J. Res. 69](#) aims to trash an Interior rule that amends regulations for all National Wildlife Refuges in Alaska. The rule prevents so-called predator control on these refuges unless necessary to meet certain standards.

Young has also introduced a new resolution of disapproval, [H.J. Res. 70](#), which seeks to undo an Interior rule requiring tougher safety measures for oil and gas drilling in the U.S. section of the Arctic.



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The House Oversight and Government Reform Committee is expected tomorrow to mark up a number of regulatory reform bills, including the "Federal Intern Protection Act of 2017" ([H.R. 653](#)).

The measure, introduced by Rep. Elijah Cummings (D-Md.), would extend federal employee protections to unpaid interns.

The panel is also expected to mark up the "Searching for and Cutting Regulations that are Unnecessarily Burdensome (SCRUB) Act of 2017," the "Regulatory Integrity Act of 2017," and the "OIRA (Office of Information and Regulatory Affairs) Insight, Reform and Accountability Act."

The "[SCRUB Act](#)," which passed the House last year, would establish a nine-member body and authorize an appropriation of up to \$30 million to independently assess which regulations are outdated or unnecessarily burdensome.

The "[Regulatory Integrity Act](#)," which also passed the House last year, would require agencies to disclose actions about their pending rules along with their public communications about those rules. It would also prohibit agencies from using those communications to lobby the public for support of their rules.

House lawmakers additionally continue to introduce reform measures. Most recently, Reps. Jason Smith (R-Mo.) and Kyrsten Sinema (D-Ariz.) introduced legislation that would aid in regulatory review, long a bipartisan effort.

Sinema's measure, H.R. 978, would establish an independent advisory committee to review rules. The proposal of an advisory committee is something lawmakers and scholars have toyed with for years (E&E Daily, Feb. 7).

Smith's bill, H.R. 998, would also establish a process for the review of regulations and sets of rules.

**Schedule:** The Oversight and Government Reform Committee markup is Tuesday, Feb. 14, at 10 a.m. in 2154 Rayburn.

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#### 7. INTERIOR: Climate change is in the crosshairs of BLM rule repeal

*E & E News, Feb. 13 | Brittany Patterson*

When the Interior Department unveiled a sweeping final plan in September to develop renewable energy across the California desert while protecting species like the Mohave ground squirrel from climate change, many hailed it as setting a new standard in federal land management policy.

Now that type of planning, which the Bureau of Land Management calls its Planning 2.0 rule, is about to unravel, and activists say the implications for climate change are serious.

"I do think climate change adaptation becomes more difficult, the smaller the planning area," said Robert Fischman, a law professor at the Indiana University Maurer School of Law. "The old planning rule, which would revive if Congress overturns Planning 2.0 ... does not prohibit the BLM from doing that. But it doesn't particularly facilitate landscape-scale planning either."

The Planning 2.0 rule, finalized in December and which the BLM incorporated in its Desert Renewable Energy Conservation Plan for California, involves bringing the public into the process early and often, planning across large regional landscapes, and using the best available science. It replaces the agency's more than 30-year-old process for creating land-use plans.

The House last week voted to strike it down using the Congressional Review Act. The effort now awaits action in the Senate.

The rule's expected repeal comes as the GOP-controlled Congress, with a Republican in the White House, sees its first chance in eight years to successfully roll back Obama-era environmental regulations.

Experts said scuttling Planning 2.0 would likely diminish the stature of climate change across roughly 160 resource management plans covering millions of acres of federal lands, although its direct impacts to the atmosphere will be less than repealing other regulations using the CRA, like BLM's methane waste rule, they said.

#### **Oil and gas industry objections**

In recent years, Interior has increasingly turned to landscape-level — or regional — planning, and Planning 2.0 solidified that approach.



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By looking past arbitrary land boundaries, proponents of landscape-level planning say the process can both help balance federal land managers' multiple-use mandate and reduce conflicts and litigation on proposed projects. The same can be said of the new planning rule's directive that there be early coordination among federal, state and local governments, said Robert Keiter, director of the Wallace Stegner Center of Land, Resources, and the Environment at the University of Utah.

"By looking at larger landscape, that enables the agency to take account of the fact that the resources the agency is responsible for — water, wildlife habitats, recreational activities — take place not only within BLM boundaries, but have implications outside of those boundaries," he said. "Climate change is one of those things."

Republicans sharply criticized the planning rule, saying it allows BLM to bypass coordinating with local and state officials, who in some cases in the past have shared a special relationship with the federal agency because they are directly impacted by how resource management plans are drafted. Under Planning 2.0, environmentalists say the rule leveled the playing field, and outdoor enthusiasts, hunters and fishers would have an equal voice with ranchers, loggers and extractive industries in how BLM manages over 245 million acres of federal lands.

Industry groups say the regulation could place oil and gas producers at a disadvantage (Energywire, Feb. 8).

"Planning 2.0 presents multiple challenges that will prejudice multiple-use interests with a bias against oil and gas resources on public lands," the Independent Petroleum Association of America and the Petroleum Association of Wyoming said in a letter to House Speaker Paul Ryan (R-Wis.).

Rep. Liz Cheney (R-Wyo.), who sponsored the resolution of disapproval under the CRA, [H.J. Res. 44](#), said the rule is "yet one more example of Obama-era federal government overreach."

The Senate version of Cheney's legislation, [S.J. Res. 15](#), was introduced by Sen. Lisa Murkowski (R-Alaska). Bogged down by Senate Democrats slow-walking President Trump's Cabinet nominees, the Senate has yet to take up the resolution, but could this week.

#### **Reacting to, not planning for, warming**

BLM said in its 2011 strategic plan that an update to the planning rule was needed.



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The nation's public lands face a host of challenges, including population growth and urbanization in the West, the document says. And "the proliferation of landscape-scale environmental change agents such as climate change, wildfire, and invasive species create challenges that require the BLM to develop new strategies and approaches to effectively manage the public lands."

Keiter said the last planning rule was written before climate change was even a part of the vocabulary — in the mid-1980s.

"The rule itself, among other things, indicates the agency will use best available science, which today it's widely accepted would include climate science," he said. "Looking to the old rule, there's no certainty that any particular bits of information would be included and no certainty that the agency would have some modest obligation to familiarize with the best available science."

In the [Federal Register notice for Planning 2.0](#), Interior notes the rule is in line with a series of secretarial orders and agency and executive actions directing BLM to incorporate climate change into its actions. Those could easily be undone by Interior Secretary-designate Ryan Zinke.

Fischman said it remains to be seen if and how BLM will continue to plan for climate change, which stands to increasingly affect land management. If Planning 2.0 is repealed, the agency still has the ability to incorporate things like wildlife corridors into resource management plans or create a plan at a landscape level. Planning 2.0 just made that the rule rather than an option.

"Going forward, agency leadership will be the key determining factor for whether the BLM will get ahead of environmental changes and plan for resilience," he said. "Without leadership, the BLM will be reacting to problems with little strategic vision for getting the most out of the resources it is charged with stewarding."

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#### 8. **REGULATIONS: Interior energy rules land in CRA crosshairs**

*E & E News, Feb. 13 | Pamela King*

Resolutions to kill a pair of signature Obama-era Interior regulations are just the tip of the iceberg for Republican lawmakers seeking to loosen the federal government's grip on energy development on public lands.



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A group of GOP lawmakers representing Western states has proposed to repeal at least eight rules related to oil and gas extraction on federally controlled lands and waters, using powers granted under the Congressional Review Act (CRA).

The House has already passed two of those measures: to repeal the Bureau of Land Management's methane and Planning 2.0 rules. A third, which would block a revision of the Office of Natural Resources Revenue's (ONRR) mineral valuation rule, is expected to be introduced today by Rep. Scott Tipton (R-Colo.).

"Preventing oil and gas production was the Obama administration's motive, and that's why a lot of these rules were so flawed," said Jeff Small, executive director of the Western Caucus. "They were direct attacks on affordable energy."

The caucus is targeting 13 rules President Obama introduced during his last months in office. Not all of the regulations listed affect oil and gas operations, and some — like Planning 2.0 — are not specific to the industry, but affect oversight of productive uses of public lands.

Opponents of the rule repeals are sounding the alarm that Congress is conforming too closely to the oil industry's demands.

"This campaign to destroy the Obama administration's rational environmental protections only benefits the modern-day pirates who raid public lands for short-term profit and leave wastelands for the community to clean up. It's incredible to me that after all this time, the Republican playbook is still limited to corporate cronyism, trickle-down economics and empty promises," Rep. Raúl Grijalva (D-Ariz.) said in an emailed statement.

The regulatory slim-down offers a lifeline for small producers who are struggling to continue to operate in a low-price environment, said Katie Brown, spokeswoman for the industry research group Energy In Depth.

"Many of these rules would dramatically decrease production on federal lands, hurting small producers the most," she said. "The venting and flaring rule, for instance, requires that even low-production wells — which have negligible emissions — install expensive technology."

It makes sense that the oil and gas industry would oppose the rules the Western Caucus has lined up for the guillotine, said Tyson Slocum, energy program director for the advocacy group Public Citizen.



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"These rules establish basic minimum standards," he said. "Complying with that is going to add some costs. If you are in the energy business, you want to cut costs as much as possible."

But repealing regulations is unlikely to have more than a marginal impact on increasing federal mineral extraction, Slocum said.

"The driving force of domestic energy production is the market price of the commodity," he said.

While BLM's venting and flaring requirements were known to be controversial, pushback against some of the rules on the caucus's list is puzzling, said Alexandra Teitz, former counselor to BLM Director Neil Kornze.

"These rules are a series of actions to try and do a better job of overseeing oil and gas activities on public lands, and Congress is running roughshod over rules that were developed over years of work, through open public processes, with tens or hundreds of thousands of commenters," she said.

The items on the caucus list ensure that oil and gas production occurs in a safe, environmentally responsible manner, Teitz said. The rules do not constrain the quantity of hydrocarbons that can be withdrawn from federal tracts.

"Absent this truncated CRA process, these are not the types of rules Congress would normally get involved in," she said. "They're just not that controversial, that costly."

#### **ONRR valuation up next**

Two major oil and gas industry associations — the American Petroleum Institute and Western Energy Alliance — have joined mining groups, wool growers and other interests to back a resolution blocking revision of ONRR's mineral production valuation rule.

The change, which was adopted after a five-year rulemaking process, provides a mechanism for calculating royalties that better reflects changes in the oil, gas and coal industries, according to a June 30 Interior news release. The government's valuation regulations were last updated in the 1980s, the agency said.

Tipton's resolution to kill the rule requires the support of a simple majority to pass the House and Senate.



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"The Office of Natural Resources Revenue's (ONRR) new rule ostensibly sought to simplify and clarify the process for valuing oil, gas, and coal production on federal and Indian lands in order to provide 'certainty' to industry and to ensure all royalties due to ONRR have been paid," the Western Caucus wrote. "In fact, it did the opposite."

Striking down the ONRR rule could allow producers to sell their minerals at an artificially low rate, circumventing their royalty obligations, according to [RulesatRisk.org](http://RulesatRisk.org), a project by Public Citizen to oppose use of the CRA.

"The rule simply makes economic and environmental sense. It ensures that royalties are paid on the first arm's-length transaction of a sale so that coal companies can no longer use their affiliates to dodge royalty payments," the website says. "Repealing the rule would cheat Americans out of a fair return for taxpayer-owned resources on public lands."

#### **Onshore Order 3**

Also on deck is BLM's Onshore Order 3, one of a series of rules the bureau crafted in response to a Government Accountability Office [report](#) finding that the agency's system for measuring oil and gas production on public lands was inadequate.

The Western Caucus said the order would have "little to no measurable impact" on the accuracy of BLM's accounting.

"The BLM tried to justify these extreme changes by claiming they needed to act to ensure the correct amount of royalty is paid to the U.S. government," the caucus wrote. "However, these changes will only decrease federal revenues by pushing production off federal lands."

Benefits of the measurement adjustment cut both ways, said Dylan Fuge, former counselor to Kornze. The correction ensures not only that the government collects the royalties it is due, but also that companies do not pay more than they owe.

"I know the oil and gas industry has expressed concerns about the costs," Fuge said. "We heard the concerns about costs. We responded to them directly" after the draft version of the order was released.

"I think if folks went back and took a careful look, they'll see we addressed those concerns in the final rule," he added.

#### **Mitigation**



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A third rule on the caucus's wish list for repeal is the Fish and Wildlife Service's Compensatory Mitigation Policy (CMP).

GOP legislators say the policy was born from an "overreaching" Obama administration memorandum directing agencies to set a net benefit, or at least a no-net-loss, goal for important, scarce or sensitive natural resources when possible.

The CMP creates "regulatory confusion" for many industries and activities on public lands, including energy production, the caucus wrote.

The CMP's repeal would again send federal regulations back to the 1980s, said Natural Resources Defense Council attorney Katie Umekubo.

"All that we've learned about mitigation and conservation science in that time was put into this policy," she said.

The CMP allows for advanced mitigation planning that lets developers reduce impacts at a landscape level, rather than project by project. That approach is a key element of industry's critique of Planning 2.0 (Energywire, Feb. 8).

By using CRA to eliminate the CMP, "we not only lose that consistency and clarity, we also lose the ability for the service to redo it," Umekubo said.

#### **Will any CRA-eligible rules be spared?**

Republicans in Congress appear to be ushering to the chopping block most rules Obama's Interior passed after June 13, 2016, the cutoff date for use of the CRA.

The Western Caucus has also proposed repeal of the Bureau of Safety and Environmental Enforcement's Arctic drilling rule, the National Park Service's oil and gas rule, and FWS's oil and gas refuge rule.

Small said caucus members support some of the last administration's public lands rules but did not offer examples of which regulations he thought should stand. Because the clock runs out on CRA this spring, lawmakers have been laser-focused on the rules they can reverse, he said.

"Our members do support common-sense regulations that protect the environment, but there needs to be a balance. The Obama administration took it the other way," Small said. "Our



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members would like to see it get back to a balanced approach that still protects our communities and our citizens."

Legal experts have questioned the extent to which the government could revisit regulations CRA is being used to scrap (Energywire, Feb. 1). The act provides that an agency cannot reintroduce a rule in "substantially the same form."

That won't be a problem, since reissuing laws should be the job of Congress — not the administration, Small said.

"If there's a need for a new rule or a new regulation or for this process to be more clear, Congress can pass a law and set parameters and define how this process should work," he said. "We're not fearful at all that utilization of the CRA would affect any type of balance in the future."

Use of the CRA seems to turn on its head conventional understanding that future administrations will take a second look at rules passed by their predecessors, said Alan Rowsome, the Wilderness Society's senior director of government relations for lands.

"It's an extensive list," he said. "It would say a lot about the oil and gas industry's ability to wield power over the congressional schedule if the House and Senate are prepared to use a significant amount of time and taxpayer dollars to go through each and every one of these Congressional Review Act issues."

The Senate could vote on BLM's methane and Planning 2.0 regulations this week.

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#### 9. **RENEWABLE ENERGY: Bipartisan coalition presses Trump on wind and solar**

*E & E News, Feb. 13 | Christa Marshall*

The leaders of a 20-state coalition are urging the Trump administration to support wind and solar energy and emphasize grid upgrades in any infrastructure package.

In a [letter](#) today, Govs. Sam Brownback (R) of Kansas and Gina Raimondo (D) of Rhode Island said renewable energy growth "is an American success story built on federal research and development, state policy leadership, private sector investment and ingenuity."



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They wrote, "Last year, the country's solar industry employed over 200,000 and added 31,000 new jobs. Most of the installations are in rural areas and have provided landowners another income option."

Brownback and Raimondo are heads of the Governors' Wind & Solar Energy Coalition, a bipartisan group of chief executives that includes states ranging from Hawaii to Virginia.

Kansas generates about a quarter of its power from wind, and Rhode Island is home to the nation's first offshore wind project, which came online last year on Block Island.

The group is asking for passage of new offshore wind legislation, increases in wind and solar research at the Department of Energy, long-term extension of investment tax credits to help offshore wind, grid modernization funding, and collaboration on addressing "unworkable wildlife regulations."

Without continued federal research to lower costs of wind and solar, the United States will "cede leadership" to nations like China that are making investments, the governors wrote.

The coalition also calls for a state-federal task force, possibly in conjunction with the Federal Energy Regulatory Commission and the national labs, to streamline regulations affecting grid upgrades.

"Improving the regulatory framework will stimulate private sector and utility investments in a resilient electric system that is capable of withstanding security threats and delivering low cost electricity to every region of the nation," the governors said.

Theoretically, the United States could install 86 gigawatts of offshore wind power by midcentury, according to DOE. Europe currently has about 11 GW of offshore wind.

The National Renewable Energy Laboratory projects that the recent extension of the production and investment tax credits will not help offshore wind because the ITC phases out by 2020.

For that reason, the governors are pressing for a long-term extension and support for legislation from Sens. Tom Carper (D-Del.) and Susan Collins (R-Maine) that would allow the first 3,000 megawatts of offshore wind to qualify.

The letter is one of many sent to the Trump administration from groups representing everything from the coal industry to oil interests.



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President Trump's views on renewable energy remain nebulous, though, considering the sector isn't mentioned at all on the White House's energy plan page.

At his nomination hearing, Trump's pick for DOE secretary, former Texas Gov. Rick Perry (R), said he supported renewables, but it remained unclear whether he would support existing levels of federal research on wind and solar across the board (E&E Daily, Jan. 20).

Separately, the coalition sent a [letter](#) to governors highlighting activity to increase or protect state renewable production standards that exist in 29 states.

Recent actions include the signing of legislation in Illinois to set the RPS at 25 percent by 2025 and the increase of the Michigan RPS from 10 to 15 percent by 2021.

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#### 10. **DAKOTA ACCESS: Standing Rock joins easement challenge**

*E & E News, Feb. 13 | Ellen M. Gilmer*

The Standing Rock Sioux Tribe is joining the latest flurry of legal action against the Dakota Access pipeline.

The tribe, whose reservation sits a half-mile south of where the pipeline would cross the Missouri River, on Friday filed an updated legal complaint challenging the Trump administration's decision last week to issue final federal approval for the project.

The Army Corps of Engineers also last week scrapped an in-depth environmental impact statement promised by the Obama administration. The agency's decision instead relies on a less detailed environmental assessment completed last year, which found no significant impact from the project.

According to the Standing Rock Sioux, the agency failed to justify its latest decision. While the corps pointed to several agency documents compiled last year, including an October technical and legal analysis, it did not fully address a December [legal opinion](#) prepared by the Interior Department's solicitor general, which found that the pipeline could interfere with tribal treaty rights.

"The Corps' decision to reverse course fails to offer a reasoned explanation for dismissing the Solicitor's formal legal opinion which supported the prior decision not to grant the easement



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without first preparing an EIS and fully assessing its impacts on Treaty rights," the new complaint says.

The complaint also includes religious freedom claims similar to those raised by the Cheyenne River Sioux Tribe last week (Energywire, Feb. 10).

The tribes, which have both been involved in litigation against the project since last summer, say the pipeline would desecrate water that tribal members depend on for religious ceremonies. They say the pipeline approval amounts to a violation of the Religious Freedom Restoration Act, which limits the federal government's ability to "substantially burden" religious practices.

"An inability to engage in sacred ceremonies would devastate the Standing Rock Sioux Reservation and its people, substantially burden the exercise of religion, and cause irreparable harm to the Tribe and its people," the complaint says.

The tribe has asked to join in the Cheyenne River Sioux's request for a temporary restraining order and preliminary injunction blocking construction. A hearing on the restraining order is set for 2 p.m. EST today.

#### **New players in the courtroom**

The Trump administration's approval of the final easement for the oil pipeline has also triggered a wave of interest from new parties in the courtroom.

Tribal Historic Preservation Officer Steve Vance, of the Cheyenne River Sioux, on Friday moved to intervene in the lawsuit on the tribes' side. As a "sincere practitioner of the traditional Lakota faith," Vance says he will be personally affected by construction of the pipeline across Lake Oahe, a portion of the Missouri River.

"Mr. Vance believes that the siting of the Dakota Access Pipeline under Lake Oahe will desecrate the waters such that they will be rendered unsuitable for use in the sacraments required by his religious faith," lawyers for Vance told the court.

A group of tribal chairmen, meanwhile, weighed in with a "friend of the court" brief supporting the Sioux tribes. The Great Plains Tribal Chairman's Association characterized the Dakota Access approval as "the latest in a long line of harms inflicted upon the Indian tribes of the Great Plains contributing to historical trauma and psychological distress."

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#### 11. **COAL: Stream rule's demise revives old standards, litigation**

*E & E News, Feb. 13 | Dylan Brown*

Congress has primed President Trump's pen to kill the Stream Protection Rule in the name of jobs, but environmentalists haven't given up hope on curbing mine pollution in coal country.

When Trump signs the Congressional Review Act resolution eliminating the Obama administration's new water quality and monitoring requirements, the nation's mine operators and regulators will revert to the 1983 Stream Buffer Zone Rule (E&E News PM, Feb. 2).

The federal Office of Surface Mining Reclamation and Enforcement spent the entire Obama presidency trying to update the Reagan-era regulation. A federal judge in 2014 struck down President George W. Bush's attempt (Greenwire, Feb. 21, 2014).

Environmentalists find some solace in the 1983 rule as written.

It states, "No land within 100 feet of a perennial stream or an intermittent stream shall be disturbed by surface mining activities" unless specifically authorized by a regulatory authority.

An exemption requires regulators to show that mining will comply with the Clean Water Act or, most critically, "not adversely affect the water quantity and quality or other environmental resources of the stream."

It's language environmentalists generally like, but a perennial problem re-emerges: enforcement.

"It's only more protective the way it was literally written, not the way it was being applied in most states," said former Obama OSMRE Director Joe Pizarchik, who shepherded the new stream rule only to see it die.

States are the primary coal mining regulators under the 1977 Surface Mining Control and Reclamation Act, which created OSMRE as the enforcer of national baseline standards.

The law left it up to regulators to define what constituted "material damage to the hydrologic balance outside the permit area."

States have regularly granted exemptions, even for major mountaintop removal mines — the focal point of environmental controversy. The practice involves blasting the tops of hills and mountains to reach coal seams. Companies then dump debris as valley fills.



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Environmentalists say mountaintop removal has buried more than 2,000 miles of streams in Appalachia and polluted water well beyond permit areas.

Critics point to the substance of a 1999 U.S. District Court for the Southern District of West Virginia decision finding no "principled rationale" for allowing valley fills.

"Because there is no stream, there is no water quality," Judge Charles Haden wrote.

In 2001, the 4th U.S. Circuit Court of Appeals reversed Haden, delivering a blow to environmentalists but opening the door to more litigation (Greenwire, July 15, 2015).

The Stream Protection Rule would not have banned valley fills. The Army Corps of Engineers, U.S. EPA and states regulate them under the Clean Water Act. Still, OSMRE said its new standards would have reduced damage to waterways.

#### **Stronger buffer?**

Coal industry advocates say SMCRA intended a balance between mining and environmental concerns. They point to steady improvement in reclamation and pollution cleanup, routinely acknowledged in annual federal reports on state oversight.

But it was new science on previously little-studied pollutants like the chemical element selenium that spurred the Obama administration to develop the Stream Protection Rule. And OSMRE would finally define what amounted to "material damage outside the permit area."

Essentially, the agency designed the rule to make sure companies returned streams to pre-mining conditions. Before, critics said, streams that were home to trout became nothing more than ditches.

To determine pre-mining conditions, the Stream Protection Rule required companies to collect baseline data, accounting for pollutants like selenium.

Coal companies recoiled at what they considered a costly, near-impossible standard to meet. The rule "was not designed to protect streams; instead, it was an effort to regulate the coal mining industry out of business," said Rep. Bill Johnson (R-Ohio), lead sponsor of the repeal resolution.

"The combination of unnecessary government overreach, regulatory duplication and harm done through this rule meets every test for CRA action," National Mining Association CEO Hal Quinn said.



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Beyond action in Congress, 14 states have sued OSMRE over the rule, saying it tramples on their rights and other federal laws, like the Clean Water Act.

The rule would undoubtedly put some coal out of reach, but how much remains a central disagreement. Companies say it would not only cripple mountaintop mining but effectively ban longwall mining underground.

Longwall mining uses sophisticated machinery to extract large amounts of coal efficiently. It also often creates immediate surface effects, including subsidence and stream dewatering.

OSMRE said the impact on both techniques would have been limited. For longwall, permits would simply depend on various factors, including the distance from the top of a coal seam to the bottom of stream.

Pizarchik, now out of office and more free to speak his mind, said Congress could easily simplify the regulatory framework.

"The simple solution is stay out of the streams and stay far enough away you don't cause water pollution or intercept the stream's water," he said.

A 100-foot buffer is a good start, but Pizarchik said contemporary science points to putting at least 300 feet between mining and streams, depending on site geology.

Either way, enforcement of the 1983 rule is set to become a legal battleground for environmentalists and coal companies.

Groups like the Sierra Club, Earthjustice and Appalachian Mountain Advocates have been suing companies and regulators for years. Their crusade may intensify under Trump.

#### **Biological opinion**

The pending rule repeal would also undermine updated guidance about the risk coal mining poses to wildlife protected by the Endangered Species Act. A new biological opinion from the Fish and Wildlife Service to OSMRE accompanied the Stream Protection Rule.

The previous opinion from 1996 was at the heart of why U.S. District Court for the District of Columbia Senior Judge Barbara Rothstein ruled against the Bush-era Stream Buffer Rule.



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FWS said in 1996 that the incidental take — protected animals killed — associated with surface mining would not put "in jeopardy" any listed species or destroy designated critical habitats.

But Rothstein said that wasn't a "rational conclusion" based on "clear evidence that habitats within stream buffer zones are home to threatened and endangered species and that mining operations affect the environment, water quality and all living biota."

So the Stream Protection Rule outlined a process of increased collaboration between agencies to reduce incidental take. When Trump signs its repeal, the new biological opinion could provide ammunition for litigation.

The FWS document says its predecessor isn't valid "given the contribution of surface coal mining to the decline of some species and the new listing of species that previously did not require protection under the ESA, and evidence that the technical assistance process outlined in the 1996 Biological Opinion is not being followed."

The National Mining Association said it "does not share the view that the 1996 biological opinion suffers from the flaws alleged."

The coal trade group argues that the ESA applies only to federal agency actions and that states are in charge of regulating coal mining.

"No biological opinion can remove SMCRA permitting authority from state SMCRA regulators and give it to [FWS]," the coal trade group said in a statement.

But Jane Davenport, senior attorney at Defenders of Wildlife, argued that any entity, including states, can be held liable for incidental take.

The Stream Protection Rule, she said, did not require consultation with FWS, just a demonstration that the ESA was not being violated.

"It corrected this mistake that had allowed regulatory authorities and mining operators to shirk their obligations for the last 30 years," Davenport said.

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