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### **1. Court to decide fate of federal fracking authority — or not**

Ellen M. Gilmer, E&E News reporter  
Published: Friday, July 28, 2017

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<http://bit.ly/2w6uJzX>

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Industry and environmental groups pushed ahead last night in separate legal battles over Obama-era standards for methane emissions from the oil and gas sector.

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

### **3. If Trump topples designations, lawsuits, confusion may reign**

Jennifer Yachnin, E&E News reporter

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Critics of the Antiquities Act like to argue that presidents can effectively lock up millions of acres of land or ocean into national monuments with the stroke of a pen — but what exactly will happen if President Trump attempts to erase the work of his predecessors?

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

### **4. Senators hope tour sways Zinke to take N.M. donation**

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Interior Secretary Ryan Zinke is set to saddle up for a tour of the Sabinoso Wilderness in northeastern New Mexico tomorrow with Democratic lawmakers, in a trip that conservation advocates hope will persuade the Trump administration to accept a donation to create public access for the landlocked site.

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

### **5. Partisanship clouds hearing on coal, mining, climate bills**

Dylan Brown, E&E News reporter

Published: Friday, July 28, 2017

Some recent common ground on the House Natural Resources Subcommittee on Energy and Mineral Resources evaporated yesterday with a hearing on three bills bent on dissolving Obama administration climate, coal and mining policies.

<http://bit.ly/2h9w06y>

### **6. Former politician looks for 'niche plays' in Permian**

Published: Friday, July 28, 2017

Former Texas Lt. Gov. David Dewhurst (R) is looking to capitalize on the state's booming Permian Basin.

<http://bit.ly/2tKk2SG>

## **7. FERC faces constitutional challenge over Mountain Valley project**

Ellen M. Gilmer, E&E News reporter

Published: Friday, July 28, 2017

A controversial Appalachian natural gas project is facing a new legal assault that takes aim at the standard federal process for pipeline approvals.

<http://bit.ly/2v59FwK>

## **8. Gas production tax approved but faces strong opposition**

Mike Lee, E&E News reporter

Published: Friday, July 28, 2017

Pennsylvania state senators narrowly approved a budget plan yesterday that would impose a tax on natural gas production, while reducing some environmental regulations, as part of a compromise intended to break a three-week-old stalemate.

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

## **9. GOP capitalizes on Trump admin to push legal reform bills**

Amanda Reilly, E&E News reporter

Published: Friday, July 28, 2017

Republicans are taking advantage of a new administration that's likely to be friendlier to their efforts to push a number of bills aimed at reforming the legal system.

<http://bit.ly/2tQtW9F>

## **10. House Democrats seek probes into Zinke health care calls**

Geof Koss, E&E News reporter

Published: Friday, July 28, 2017

Key House Democrats are seeking investigations into Interior Secretary Ryan Zinke's calls to

Alaska's senators this week, during which he allegedly threatened there would be policy consequences for Sen. Lisa Murkowski's vote against proceeding to debate on health care legislation.

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

#### **11. Wildfire-scorched ranchers ask Zinke to allow refuge grazing**

Published: Friday, July 28, 2017

The Lodgepole Complex of fires has burned more than 270,000 acres of Montana land in recent weeks, devastating pasture that ranchers depend on for grazing cattle.

<http://bit.ly/2veFPq3>

#### **12. Scientists fly straight into smoke to measure pollutants**

Published: Friday, July 28, 2017

To measure how the massive plumes of smoke produced by wildfires affect the environment and public health, scientists have to fly into the thick of the blaze.

<http://bit.ly/2v4PfUN>

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# 1. Court to decide fate of federal fracking authority — or not

Ellen M. Gilmer, E&E News reporter Published: Friday, July 28, 2017

DENVER — A panel of judges spent yesterday morning grappling with a major legal issue affecting federal oversight of oil and gas development: Does the government have authority to regulate hydraulic fracturing?

But whether the court will ever issue an opinion on the matter remains an open question.

In an unusual twist of legal procedure, the 10th U.S. Circuit Court of Appeals heard oral arguments in litigation that it may decide to put on ice.

At issue is the Obama administration's rule for fracking on public and tribal lands. A lower court found that the federal government lacks authority to regulate fracking, and the question has been on appeal at the 10th Circuit since last year. Now, the Trump administration is rolling back the rule and wants to freeze the case in the meantime.

The judges yesterday heard arguments on both the fundamental authority question and the procedural issue of whether the case should be paused.

All three judges on the panel expressed skepticism about freezing the case indefinitely while BLM goes through a new rulemaking process to roll back the regulation (*E&E News PM*, July 27).

"What's the incentive to move quickly?" asked Judge Harris Hartz, a George W. Bush appointee. He noted that if the case is paused, it could be years before the question of BLM's fracking authority is answered.

Government lawyers stressed that unwinding the fracking rule is a Trump administration priority, so BLM will work "expeditiously" to complete its rollback. BLM maintains that the lower court's ruling was incorrect but says any merits decision at this time would be judicially inefficient and would interfere with the new rulemaking process.

Greenberg Traurig LLP attorney Paul Seby, representing North Dakota, agreed, arguing that a merits decision would function as an advisory opinion.

Judge Mary Beck Briscoe, a Clinton appointee, repeatedly pushed back on that claim and appeared to be strongly in favor of resolving the question now.

"Isn't that issue ripe, and don't we have the duty to decide?" she asked, answering herself later: "We have an underlying decision that is on the books that is ripe for review."

At this point, the 10th Circuit may opt to put the case on hold, issue a merits decision or — less likely — dismiss the case and vacate the lower court's ruling that the government has no fracking authority.

Judge Jerome Holmes, a George W. Bush appointee, noted that the last option could allow the 10th Circuit to address concerns about the impacts of the lower court's ruling without inserting itself into BLM's ongoing regulatory process.

## Whose authority is it, anyway?

The judges appeared eager to delve into the merits of the case yesterday, extending argument time for several parties to allow for more discussion of the government's jurisdiction.

The winning argument in last year's district court decision was put forth by states challenging the rule. Wyoming, Colorado, North Dakota and Utah say the Safe Drinking Water Act (SDWA) gave U.S. EPA exclusive authority over fracking, and the Energy Policy Act of 2005 then removed that power and left it to state regulators.

Hartz questioned the breadth of the so-called fracking exemption. Noting that he was still grappling with the issue, he put forth a narrower potential reading of the statutes, musing that the SDWA may prevent agencies other than EPA from regulating fracking for water protection purposes, but may not necessarily preclude other agencies from regulating fracking to address, say, seismicity or wildlife concerns.

Wyoming Deputy Attorney General James Kaste responded that the SDWA unambiguously delegated all fracking authority to EPA. BakerHostetler attorney Mark Barron, representing the Independent Petroleum Association of America and Western Energy Alliance against the rule, noted that BLM has routinely deferred to other EPA authorities under the SDWA.

NOVEMBER 2010 Interior announces plans to consider disclosure rules for fracking

MARCH 2015 After considering two draft versions, Interior finalizes fracking rule for public and tribal lands; industry groups file suit, followed by states and tribes

SEPTEMBER 2015 Wyoming district court issues preliminary injunction freezing rule

JUNE 2016 Wyoming district court strikes down rule; Interior and environmental groups appeal to 10th Circuit

JANUARY 2017 10th Circuit pushes planned oral arguments to March

MARCH 2017 Interior announces plans to roll back rule; court delays oral arguments

JULY 2017 Trump administration formally begins process to rescind fracking rule; 10th Circuit hears oral arguments

"They cannot now escape the same conclusion when it comes to non-diesel hydraulic fracturing," he said.

Justice Department attorney Andrew Mergen and Earthjustice attorney Mike Freeman maintained that the fracking rule was promulgated under distinct BLM authority to manage public lands under the Mineral Leasing Act and Federal Land Policy and Management Act.

They argued that EPA's SDWA authority over injection is not exclusive. Congress would have been explicit if it intended to remove the issue from BLM's purview, they said. Mergen noted that EPA itself supported BLM's efforts to regulate fracking when it began promulgating the rule during the Obama administration several years ago.

### **'There's no case law on this'**

Tribal issues that have been largely overshadowed by the broader fracking authority question throughout the case also gained traction in court yesterday.

The Ute Indian Tribe and several others have taken issue with the fracking rule since its inception, complaining that it treats tribal lands the same as public lands. They argue that BLM lacks rulemaking authority on tribal trust lands (*Energywire*, July 11, 2016).

Hartz slammed government and environmental lawyers for failing to address the tribal law questions in their most recent briefs, suggesting they may have conceded the argument. Freeman argued that because the district court never issued a final decision on the tribal law issues, the 10th Circuit should avoid weighing in on them and should instead remand those issues to the lower court.

Fredericks Peebles & Morgan LLP attorney Jeffrey Rasmussen, who argued for the Utes, said he thinks the 10th Circuit is poised to decide the matter.

An answer from the appeals court would be a major development in federal Indian law. While tribes have long raised the argument that BLM lacks rulemaking authority tribal trust land, courts have not yet issued clear direction on the issue, Rasmussen said.

"There's no case law on this, so this would be a very good one for us," he said after arguments.

### **What's next**

A decision from the court could come down in a matter of weeks or months, depending on what issues the judges decide to tackle.

Barron, the BakerHostetler lawyer, argued that "there's no urgency to decide" because there's no likelihood BLM will attempt to exercise any authority over fracking in the near future.

"One thing that's abundantly clear from today's hearing is elections have consequences," Western Energy Alliance President Kathleen Sgamma said after arguments.

Supporters of the fracking rule stressed that a court decision reaffirming federal authority over fracking is critical to ensuring public safety and environmental protection.

"Communities living near oil and gas facilities on public lands, both now and in the future, stand to lose if the Trump administration gets its way in the 10th Circuit," Earthworks policy advocate Aaron Mintzes said in a statement. Earthworks is one of several environmental intervenors in the case.

Florida State University law professor Hannah Wiseman, whose 2008 law review article discussing the limits of federal authority over fracking was used by opponents of the rule, said a 10th Circuit decision will help guide BLM's ongoing regulatory process.

"No matter what new rule BLM crafts to replace the Obama administration's rule that it proposes to rescind, the process must start from a clear baseline understanding as to what the BLM has the authority to regulate — that question will permeate any rulemaking process," said Wiseman, who has argued that her article was taken out of context by fracking rule opponents and the lower court.

"Further," she added, "the district court opinion sets erroneous precedent that could block the BLM's duties in many areas — not just the fracking area — and already is being cited in other cases."

For now, supporters and critics of the fracking rule will be busy dealing with the next stage in the process: submitting comments on BLM's proposal to rescind the regulation.

The agency published its proposal earlier this week, kicking off 60 days of public comment.

"IPAA is eager to turn our attention to the regulatory process as we engage with the new Administration on this issue," Dan Naatz, senior vice president for government relations and political affairs at the industry group, said in a statement.

<http://bit.ly/2w6uJzX>

## **2. Enviros, industry wrestle over fate of standards in court**

Ellen M. Gilmer, E&E News reporter

Published: Friday, July 28, 2017



Industry and environmental groups pushed ahead last night in separate legal battles over Obama-era standards for methane emissions from the oil and gas sector.

In late-night court filings yesterday, industry groups urged a Washington, D.C., court to reinstate a U.S. EPA stay of emissions restrictions for new oil and gas sources.

Meanwhile in California, environmental groups pressed another court to reject the Trump administration's attempt to freeze separate Bureau of Land Management standards for oil and gas operations on public and tribal lands.

The legal filings are the latest in what has become a tumultuous battle over the Obama administration's attempts to slash greenhouse gas emissions from the industry. Agency officials have been working to pause and ultimately undo the rules to meet President Trump's domestic energy production priorities.

The Trump administration's deregulatory efforts suffered a blow earlier this month when a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit struck down EPA's attempt to temporarily delay the standards to review petitions from the oil and gas industry (*Greenwire*, July 3).

As expected, industry groups last night asked the D.C. Circuit to reconsider the case before all active judges. They argued that the court lacked jurisdiction to review EPA's postponement of the methane standards because it was not a final agency action.

"The panel's decision violates Supreme Court and D.C. Circuit caselaw because it entailed review of non-final agency actions: EPA's decision to grant administrative reconsideration and EPA's three-month stay," the groups told the court.

EPA has not filed a similar motion for reconsideration.

Agency lawyers earlier this month said they were considering whether to seek rehearing. Two weeks ago, they successfully persuaded the court to give the agency two weeks to consider its legal options before enforcing the methane standards at issue (*E&E News PM*, July 13).

## **BLM's rule**

Environmental groups, meanwhile, find themselves fighting the opposite battle in district court in California.

Last night, they asked the court for summary judgment reversing BLM's attempt to indefinitely pause a regulation to cut methane emissions on public and tribal lands.

BLM moved to pause the standard last month under a provision of the Administrative Procedure Act that allows agencies to postpone the effective date of rules that are facing litigation. California, New Mexico and a large coalition of environmental groups quickly filed suit.

Now, they're asking the California court for a swift decision in their favor. They say the APA does not allow postponement of a rule that is already in effect and that Interior Secretary Ryan Zinke is attempting to scrap a rule without proper public notice and comment.

"While a new administration may seek to change the policies of previous ones, no federal agency has authority to change the compliance dates in a duly promulgated effective rule without first providing notice and an opportunity for public comment, thoroughly explaining its decision, and pointing to facts in the record to support the change, pursuant to the Administrative Procedure Act," the groups told the court.

California and New Mexico made a similar request in the same court on Wednesday. BLM lawyers, meanwhile, are pushing to have the case transferred to a federal district court in Wyoming.

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

### **3. If Trump topples designations, lawsuits, confusion may reign**

Jennifer Yachnin, E&E News reporter

Published: Friday, July 28, 2017

Critics of the Antiquities Act like to argue that presidents can effectively lock up millions of acres of land or ocean into national monuments with the stroke of a pen — but what exactly will happen if President Trump attempts to erase the work of his predecessors?

The answer is unsurprisingly complex and dependent on a range of factors, including whether Trump will move to eradicate any of the 27 national monuments included in a review underway by Interior Secretary Ryan Zinke.

"It really depends on the individual recommendations for individual monuments," said Pacific Legal Foundation attorney Jonathan Wood, who specializes in environmental and constitutional law.

"When [Zinke] issues his recommendation, there's really no legal effect immediately," Wood added. "The legal effect will come into play if and when the president issues an executive order acting on the recommendation."

A final report is not due until Aug. 24, although Zinke has already dismissed three monuments from any changes, suggested he will leave a fourth unaltered and stated recently that he plans to cull from the list before the final deadline (*Greenwire*, July 24).

But should Zinke call for some monuments to be reduced — as he has already indicated he will endorse for the 1.35-million-acre Bears Ears National Monument in Utah — and the White House executes those recommendations, it would trigger immediate changes on the targeted land, according to several legal observers.

Among the most significant changes for any public lands that lose monument status would be to open those sites immediately to new mining claims.

"Each monument is unique, and so the impacts will likely vary from monument to monument. None of the impacts are going to be good," said Earthjustice attorney Heidi McIntosh.

She added: "Prospectors can once again enter into monument land and begin to prospect for a variety of minerals. In Bears Ears, it would reopen the door to uranium prospecting and mining, an activity that has damaged the land for decades."

While prohibitions on new oil and gas leases would also be lifted on lands that lose monument status, that development could take longer to occur given requirements for environmental assessments and public comment. Master leasing plans that govern some areas could also continue to prohibit oil and gas development.

McIntosh also noted that former monument lands would be removed from the Bureau of Land Management's National Conservation Lands program, which aims to conserve and protect wilderness areas, conservation areas, monuments and other public lands with cultural, ecological or scientific values.

"The land managers are going to go back to treating these really spectacular places as if they were just garden-variety public lands with no special attributes," McIntosh asserted.

Former Interior Department Deputy Solicitor for Land Resources Justin Pidot, who is now an associate professor at the University of Denver Sturm College of Law, also warned that altering the status of newer monuments — those which have yet to finalize their own management plans — could erase prohibitions on activities like fishing in certain marine monuments.

Pidot pointed to the 3-million-acre Northeast Canyons and Seamounts Marine National Monument, established in 2016 off the New England coast, as an example.

"The only limitation on activities in that area are through the text of the proclamation itself, so all of those limits would be lifted," he said.

Boundary changes could also lead to confusion in established monuments, as federal agencies determine how to realign management plans to address lands that have reverted to a previous status.

While such changes are feasible given time, should the Trump administration move to execute changes immediately in the wake of Zinke's recommendations, it could leave some public lands in limbo.

"You'd be in a situation where you have no rules whatsoever for the management of those lands," Pidot warned.

An Interior Department spokeswoman referred inquires about when Trump could act on the August report to the White House.

A White House spokesperson noted that the Trump administration does not comment on legal advice, adding: "Once the president receives the report from Secretary Zinke, he will consider its recommendations and determine the best path forward."

But even with a waiting period of sorts between any recommended changes and their actual execution, Pidot suggested that confusion could lead to incidents like illegal off-road vehicle use or other activity on potentially sensitive lands.

"There may be a disconnect between what is the legal reality and what people will expect because they'll see the triumphalism of Trump slashing away a monument and think now these lands are up for any use we want, but it probably won't be true," he added.

### **Litigation likely**

Barring the least likely of conclusions — in which Zinke opts not to recommend changes to any of the sites under assessment — Pidot said there is one certainty about the outcome of the review: "There's going to be some litigation almost no matter what the outcome is here."

That's in part because if Zinke advises the president to erase any of the national monuments, Trump could become the first chief executive to attempt to undo a designation made by one of his predecessors.

Republicans and Democrats on Capitol Hill have split over whether the Antiquities Act of 1906 gives the president the ability both to create and dismantle monuments, or whether only Congress can unravel a monument once it has been created (*E&E News PM*, March 29).

Although past presidents have reduced the size of some monuments, no White House occupant has done so since President Kennedy modified the boundaries of the Bandelier National Monument in New Mexico in 1963.

Conservationists point to the Federal Land Policy and Management Act, created in 1976, for the end to that practice, asserting that the law eliminated the president's ability to reduce a monument's boundaries.

"The administration should expect to see a broad, powerful, swift reaction from the public when it takes action to reduce these monuments, and that includes litigation," McIntosh said, vowing "litigation that challenges [Trump's] authority to take an ax to these monuments, and it will include opposition to every single future action ... that would create harm to these monuments."

Challenges to the White House would likely rely, at least in part, on the 1938 opinion issued by then-Attorney General Homer Cummings to President Franklin Roosevelt.

Cummings wrote that Roosevelt could not abolish a monument created by President Coolidge, noting that because designations are equivalent to an act of Congress, only lawmakers could abolish a monument.

Pidot said that should Trump attempt to abolish a monument, he would need to seek a new opinion from the Justice Department's Office of Legal Counsel (OLC), or at least a new memo withdrawing Cummings' stated position.

A Justice Department spokeswoman did not respond to a request for comment on whether the OLC will produce a new opinion on the president's powers under the Antiquities Act.

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

#### **4. Senators hope tour sways Zinke to take N.M. donation**

Jennifer Yachnin, E&E News reporter

Published: Friday, July 28, 2017

Interior Secretary Ryan Zinke is set to saddle up for a tour of the Sabinoso Wilderness in northeastern New Mexico tomorrow with Democratic lawmakers, in a trip that conservation advocates hope will persuade the Trump administration to accept a donation to create public access for the landlocked site.

Democratic New Mexico Sens. Tom Udall and Martin Heinrich are set to lead Zinke on the ride through the remote, cliff-lined canyons, according to a source familiar with the trip who spoke on the condition of anonymity.

The *Santa Fe New Mexican* newspaper first disclosed the location of the trio's venture Wednesday, reporting that a Udall aide confirmed the trip in San Miguel County.

The 16,000-acre wilderness, designated by Congress in 2009, is the only unit within the National Wilderness Preservation System that remains inaccessible to the public.

Although the Carbondale, Colo.-based nonprofit Wilderness Land Trust announced its purchase of a 4,176-acre private parcel in early 2016, the land — meant to help provide access — has yet to be transferred to the federal government (*Greenwire*, Jan. 29).

During a Senate Energy and Natural Resources Committee hearing last month, Heinrich urged Zinke to accept the donation, which consists of ranchland known as Rimrock Rose Ranch.

"We have the potential to have access to that area," Heinrich said. "We have an opportunity to change that with an agreement that is literally sitting in your lap in time for this year's hunting season."

Heinrich pointed to support for the addition of the ranchlands from groups like the Theodore Roosevelt Conservation Partnership and local officials on the San Miguel Board of County Commissioners.

He added: "We're finally at the finish line in an effort that has taken well over a decade. Can I go back and tell New Mexicans they can look forward to hunting in the Sabinoso Wilderness this year?"

### **'Don't yield to pressure'**

But Zinke has objected to the terms of the donation, which would require the Rimrock Rose Ranch to be designated as wilderness.

"It doesn't meet the standard of what a wilderness typically is," Zinke said, adding that he is supportive of creating public access to the land. "I think where the rub is, is do we take it in as a wilderness, or do we take it in as something that provides a little more access?"

Zinke noted that the wilderness status would prohibit the use of mountain bikes or vehicles. He later argued that the site should also have "amenities like a parking lot."

But Heinrich dismissed those concerns, noting that the existing wilderness would not allow any kinds of mechanized travel.

"It's easy enough to provide a parking lot under this arrangement, but you're not going to be able to provide mechanized access to the area that is designated as wilderness," Heinrich said.

"I'm all for additional access for mountain bikes, for other forms, but this isn't the place. Have you been there? The canyon walls go straight up on either side. There's no place to go to unless you're willing to put a pack on."

During the exchange, Heinrich also emphasized that unless the donated land is designated as wilderness, the Wilderness Land Trust will not turn the acreage over to the government.

"They're not willing to make the donation under separate terms from that. Let's be clear, if you don't accept the donation, the reality is we're back to square one," he added. "There's no Plan B for this."

Zinke responded: "I don't yield to pressure, only higher principle."

### **'A win'**

On the same day, Zinke wrote on social media that he had accepted an invitation from Heinrich to tour New Mexico.

"I thank @MartinHeinrich for the invitation to see #NewMexico on horseback. Looking forward to it," Zinke stated on his official Twitter account.

Both Backcountry Hunters & Anglers and the New Mexico Wildlife Federation have urged Zinke to accept the land donation, noting that the wilderness area is valued by hunters for its mule deer, turkey, elk and other species.

"The outdoor economy and our hunting and fishing heritage is based on access, and here is wilderness that was once accessible 40 years ago and has not been since then," BHA President Land Tawney told E&E News. "This couldn't be a better situation to add access that New Mexican hunters are aching for."

Tawney pointed to a secretarial order Zinke signed on his first day in office that directed agencies and bureaus to identify areas for expanded recreation, hunting and fishing, asserting that accepting the donated land would be "a win to really bolster that secretarial order."

Zinke is in New Mexico this week to hear from residents about two national monuments in the Land of Enchantment: the Organ Mountains-Desert Peaks and the Rio Grande del Norte national monuments.

The Trump administration is in the midst of a review of 27 national monuments to determine whether any of those sites should be rescinded, be reduced or have changes made to their management plans.

Zinke is expected to continue to Nevada next week, where he will review both the Gold Butte and the Basin and Range national monuments (*Greenwire*, July 27).

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

## 5. Partisanship clouds hearing on coal, mining, climate bills

Dylan Brown, E&E News reporter

Published: Friday, July 28, 2017

Some recent common ground on the House Natural Resources Subcommittee on Energy and Mineral Resources evaporated yesterday with a hearing on three bills bent on dissolving Obama administration climate, coal and mining policies.

"They are bills that subvert thoughtful policy decisions beneath short-term giveaways for the oil, coal and hardrock mining industries," ranking member Alan Lowenthal (D-Calif.) said.

But Chairman Paul Gosar (R-Ariz.) and Republicans countered that it was the Obama administration that had undercut the U.S. economy with policies like using the social cost of carbon metric for analyzing regulations.

Rep. Evan Jenkins (R-W.Va.) testified in support of his H.R. 3117, the "Transparency and Honesty in Energy Regulations Act," that would prohibit federal agencies from considering carbon, methane and nitrous oxide impacts in regulatory cost-benefit analyses, unless they were based on previous Office of Management and Budget guidance that domestic costs and benefits should be the primary factor.

"This is critically important legislation designed to bring back predictability," Jenkins said, "to take out the goofy estimates that so many use to try to drive a policy agenda."

Heritage Foundation policy analyst Nick Loris, a frequent committee witness, disputed the credibility of the models created by the Obama Interagency Working Group that President Trump has disbanded. The social cost of carbon, currently \$40 per ton, and other gases were used in the cost-benefit analysis of more than 150 proposed and final rules (*Climatewire*, March 10).

"They rely on rather arbitrary and subjective assumptions," Loris said.

For the Clean Power Plan, for instance, benefits drop from \$20 billion to \$6.4 billion by 2030 if the discount rate — the value of benefits now versus benefits later — is raised from 3 percent to 5 percent.

Loris said even the U.S. eliminating emissions would only have a marginal impact on global temperature, but poorer families and countries would be hardest hit.

Duke University professor Drew Shindell countered that data since the models were created have actually shown the discount rate should be lower and the social cost of greenhouse gases higher.

"This does hurt some vested interests, but the economy as a whole prospers and employment grows," he said.

Shindell, who favors a carbon tax, said the U.S. needs to start catching up to the rest of the world on renewable energy and combustion-free vehicles.

"Acting sooner is less expensive than acting later — that's what the science says, and that's the big picture we should have in mind when considering the issues raised in this bill," he said.

Gosar argued "the science isn't settled," citing a record high daily temperature in Los Angeles this month that broke a 131-year-old record as proof the climate is always changing.

But Shindell said, "Scientists no longer study if and when climate change might come, but instead how bad the impacts will become and how best we can reduce them."

## **Coal moratoria**

Climate was also a point of contention in the debate over H.R. 1778, from Wyoming Republican Rep. Liz Cheney.

The bill would prohibit any administration from imposing a moratorium on federal coal leasing like the one that the Trump administration recently lifted.

"This ban was devastating, and was imposed for no reason and with no justification," said Cheney, whose state produces far and away the most coal of any other — the vast majority of it on public land.

The Obama administration put the three-year moratorium in place in 2016 in order to review whether federal coal leasing adequately accounted for climate impacts and provided taxpayers a fair return. According to the Interior Department, 20 years' worth of coal was already under lease and no new federal coal has been leased in Wyoming since 2012 (*Greenwire*, March 20).

The bill "is misguided and simply ensures a leasing system that is unfair to the taxpayers ... gets perpetrated," Lowenthal said.

A preliminary federal analysis concluded that coal fees and royalties should be raised, but Cheney said the industry already pays more than its fair share (*Greenwire*, Jan. 12).

"No president, no matter the party, ought to be in a position where the executive branch can unilaterally impose such a ban," she said.

Cheney and Jenkins have both seen their respective states languish during coal's recent decline.

"While there were multiple causes for the downturn, a lot of it had to do with the energy and environment regulations of the prior administration," Jenkins said.

Rep. Darren Soto (D-Fla.) acknowledged anger in coal states but said blaming rules is a charade.

"Recognize what's really happening," he said. "It's the free market — cheaper, cleaner natural gas."

## **Minn. mining**

Finally, lawmakers sparred over a discussion draft of a bill from Rep. Tom Emmer (R-Minn.) that would require congressional approval of a mineral withdrawal or monument designation on national forest lands in northern Minnesota.

Rejecting a lease for the controversial Twin Metals copper-nickel mine project last December, the Obama administration started a two-year review that could result in a 20-year mining ban across 234,000 acres in the Superior National Forest.

The Forest Service said the move was to protect "irreplaceable resources" of the Boundary Waters Canoe Area Wilderness, located just north of the withdrawal and within the same watershed.

But the move was a "grave injustice" to most in the longtime mining communities of the Iron Range, said Nancy Norr, chairwoman of Jobs for Minnesotans.

The committee played a short video put together by her nonprofit group created by the Minnesota Chamber of Commerce and the Minnesota Building and Construction Trades Council.

"We know how to mine," she said. "And we will protect the region where we live, work and play, and draw our drinking water."

After decades in decline, mining interest has piqued in recent years with exploration of the Duluth Complex, a metal deposit reportedly more than 4 billion tons that is among the nation's largest supplies of copper, nickel and other metals.

"We are simply recognizing the rights of Minnesotans to exercise their mineral rights if any proposed mining can satisfy all of our stringent environmental requirements," Emmer said.

Norr said the Obama administration "caved to political pressure," but Rep. Don Beyer (D-Va.) said it was protecting a resource from a type of mining with a track record of pollution.

"Why do we keep coming back to a political motivation rather than somebody's well-intentioned, thoughtful attempt to preserve this irreplaceable asset for generations to come?" he asked.

<http://bit.ly/2h9w06y>

## **6. Former politician looks for 'niche plays' in Permian**

Published: Friday, July 28, 2017

Former Texas Lt. Gov. David Dewhurst (R) is looking to capitalize on the state's booming Permian Basin.

For the last 36 years, Dewhurst has been at the helm of Houston-based energy business Falcon Seaboard Resources LLC.

Now, the former politician is seeking outside investors for the first time to lease or buy land throughout West Texas.

The goal is to identify "contrarian niche plays" in overlooked areas of the Permian, including land that has already been drilled but may still have value, Dewhurst said.



"That niche small play works," he said. "It has higher returns, I think, and it's easier to compete than going into bidding wars" (Jordan Blum, *Houston Chronicle*, July 26) — MJ

<http://bit.ly/2tKk2SG>

## 7. FERC faces constitutional challenge over Mountain Valley project

Ellen M. Gilmer, E&E News reporter

Published: Friday, July 28, 2017

A controversial Appalachian natural gas project is facing a new legal assault that takes aim at the standard federal process for pipeline approvals.

A group of Virginia landowners yesterday asked a district court to block the Federal Energy Regulatory Commission from allowing the Mountain Valley pipeline to use eminent domain for the 300-mile line to cross from northern West Virginia to southern Virginia.

Their **lawsuit**, in the U.S. District Court for the Western District of Virginia, is a sweeping challenge to FERC's standard process for granting pipeline operators the power of eminent domain for projects that receive a "public convenience and necessity" stamp of approval.

Gentry Locke attorney Justin Lugar, representing the landowners, says FERC's eminent domain process is unconstitutional and overdue for judicial review.

"Today marks an important day not only for landowners in the path of the Mountain Valley Pipeline but for all Americans, for every citizen in Virginia, West Virginia, and across the United States that values our constitutional right to be secure in our property," the Roanoke, Va.-based lawyer said in a statement.

The plaintiffs are seeking a preliminary injunction from the district court that would block FERC from granting any eminent domain powers to Mountain Valley Pipeline LLC and would block the company from attempting to use any such power.

"Without boundaries from Congress, FERC has run wild in the years since, and has unconstitutionally subdelegated the power of eminent domain to private parties seeking private profits," the complaint says.

Lugar argues that FERC's "public convenience and necessity" standard to determine whether to greenlight a pipeline and give the builder eminent domain power falls short of the constitutional standard for using eminent domain because it doesn't actually analyze whether a pipeline serves a public use or purpose.

"FERC doesn't have lawful power of eminent domain," he told E&E News. "Congress never gave it an intelligible set of principles."

A similar lawsuit is moving forward involving the 255-mile Nexus pipeline in Ohio, where landowners have argued that the pipeline will transport natural gas destined for export and therefore does not serve a public use or purpose.

"What's unusual is that you have these two challenges to a door that everybody thought was closed after *Kelo*," said Southern Methodist University energy law professor James Coleman, referring to the 2005 *Kelo v. City of New London* decision, in which the Supreme Court upheld the use of eminent domain for a private redevelopment project in Connecticut.

Coleman also noted that if the eminent domain arguments gain traction in the courtroom, the outcome could have big implications for other infrastructure, including electric transmission.

Pipeline backer EQT Corp. said it was reviewing the complaint.

"We are aware of the complaint and will, of course, review," spokeswoman Natalie Cox said in an email. "As this is pending litigation; however, we are unable to provide additional information at this time."

FERC does not comment on pending litigation.

<http://bit.ly/2v59FwK>

## 8. Gas production tax approved but faces strong opposition

[Mike Lee](#), E&E News reporter

Published: Friday, July 28, 2017

Pennsylvania state senators narrowly approved a budget plan yesterday that would impose a tax on natural gas production, while reducing some environmental regulations, as part of a compromise intended to break a three-week-old stalemate.

The state Legislature approved the spending portion of Pennsylvania's \$32 billion 2017-18 budget in June but has yet to come up with a revenue plan to pay for it. The Senate approved a tax plan 26-24 yesterday that would raise an additional \$1.8 billion over current projections and balance the budget ([Energywire](#), July 12). The **proposal** immediately drew fire from both the gas industry and an environmental group. It now goes to the state House of Representatives, where Speaker Mike Turzai (R) has consistently opposed any new taxes on the gas industry.

State Sen. Jake Corman (R), the majority leader, defended the plan yesterday, saying it's time for the state to stop relying on one-time revenue sources to pay for its annual operations.

"It's not our job to sit at home and do nothing," Corman said. "Our job is to govern."

Democratic Gov. Tom Wolf has asked for a so-called severance tax since he was elected in 2014. The Legislature has rejected the idea twice ([Energywire](#), Feb. 8).

Pennsylvania has become the second-biggest gas-producing state in the country in the last 10 years, thanks to hydraulic fracturing, or fracking, in the Marcellus Shale formation.

Most other oil-and-gas-producing states impose a direct tax on energy production, but Pennsylvania has relied since 2012 on a flat impact fee that is imposed on each shale well. The revenue is largely used to pay for road damage and other side effects of drilling.

The Senate plan would impose a variable tax on Marcellus Shale wells, equal to about 2 cents per thousand cubic feet in 2017-18. Some of the revenue would be sent to local communities to augment the impact fee; the rest would go to general state spending.

In exchange, the state Department of Environmental Protection would be required to speed up permitting for gas drilling projects and allow third-party contractors to review some permits. The bill would also establish a seven-person committee, with four members appointed by Republicans in the Legislature, to review the DEP's proposed methane regulations.

The severance tax would produce about \$80 million for the general fund in its first year, according to state figures. Most of the budget gap would be closed by borrowing \$1.2 billion against future income from a tobacco litigation settlement.

The Marcellus Shale Coalition said it was still opposed to the severance tax and implied that it would work to block the idea.

"As the budget process moves forward, we remain committed and focused on fostering a meaningful dialogue with lawmakers and others about common sense policies and solutions that can help create good-paying jobs for Pennsylvanians," MSC President David Spigelmyer said in an emailed statement.

The Environmental Defense Fund savaged the regulatory proposals, saying the plan trades important air and water protections for a tax that won't cover the state's budget needs.

"Gov. Wolf was elected after promising to get serious about protecting Pennsylvanians from the impacts of natural gas drilling," Dan Grossman, EDF's state programs director, said in a statement. "Instead of fulfilling that promise, he continues to bargain away clean air and water protections in exchange for pitiful concessions from industry."

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

## **9. GOP capitalizes on Trump admin to push legal reform bills**

Amanda Reilly, E&E News reporter

Published: Friday, July 28, 2017

Republicans are taking advantage of a new administration that's likely to be friendlier to their efforts to push a number of bills aimed at reforming the legal system.

Much of the push has taken place in the House Judiciary Committee. The panel has held a number of hearings on the subject and approved several bills that would spell big changes in how lawsuits are brought and resolved, and in the amount of money that attorneys can recover.

But outside of Judiciary, conservative lawmakers in both chambers have also introduced bills targeting specific issues in the environmental arena, such as endangered species and clean water. Many would altogether block judicial review of controversial agency actions.

Supporters see the bills as a much-needed crackdown on abuse in the judicial system.

There are "long-standing problems" with the courts, said Matt Webb, senior vice president of legal reform policy at the U.S. Chamber of Commerce, ticking off class-action suits, frivolous lawsuits, forum-shopping and "over-enforcement" in civil environmental litigation.

"There has been an effort to use litigation as a way to regulate in the environmental space and other areas," Webb said. "And unfortunately the litigation system is not designed to do or handle large-scale regulatory problems. It's designed to address discrete issues."

But environmentalists and progressives see a broad, troubling effort by the GOP — hidden behind innocuous-sounding names like the "Lawsuit Abuse Reduction Act" and the "Discouraging Frivolous Lawsuits Act" — to make it harder for citizens to access the courts and resolve litigation.

Environmental groups that frequently sue the government on behalf of citizens have upped their advocacy on the issue.

"We view each of these as being a piece of this broader tapestry that's all about chilling and discouraging members of the public from bringing cases to vindicate their rights in court," said Patrice Simms, vice president of litigation at Earthjustice.

Bills to reform the judicial system or restrict judicial review of agency actions are hardly a new phenomenon in Congress.

Several of the bills proposing changes in the broader legal system, in fact, passed the House mostly along party lines during the Obama administration but stalled in the Senate and never made it to the president's desk.

"They just didn't pass the Senate because it's harder to pass things in the Senate," said Pamela Gilbert, a partner at Cuneo Gilbert & LaDuca LLP who has advocated on behalf of consumers in Congress since the mid-1980s. "And everybody knew or assumed that President Obama would veto them. So the Senate didn't want to waste its time."

Though the Senate has yet to seriously consider any of the legislation pushing broader changes in the legal system, supporters see an opening with President Trump in the White House.

### **Goodlatte leads the charge**

Judiciary Chairman Bob Goodlatte (R-Va.) has led the effort on the House side (*E&E Daily*, Feb. 2). In the past half year, his committee has approved at least 10 pieces of litigation under a judicial reform agenda.

The legislation includes bills that would impose mandatory sanctions on attorneys who file "baseless" lawsuits, set restrictions on groups of people who can file class-action lawsuits, bar settlement dollars from going to third parties and move certain cases against corporations from state to federal courts.

The Judiciary chairman scored a key victory in June when Attorney General Jeff Sessions issued a memo prohibiting the Justice Department from requiring parties to give money to third-party, nongovernmental entities as part of settlements.

Most recently, the Judiciary Committee approved **H.R. 469**, a bill that's aimed at countering the "sue and settle" phenomenon in which GOP critics say special interests sue friendly agencies in order to force them to issue new regulations.

"Although the Trump administration is delivering regulatory relief, without the help of statutory reform, relief may only be temporary, not permanent," Goodlatte said of the need to enact legislation.

So far, the full House has passed at least seven of the bills or included similar language as part of larger pieces of legislation.

Several are top priorities of the Chamber of Commerce's Institute for Legal Reform. The institute, which is celebrating its 20th anniversary next year, has long pushed reforms at the state level. In 2005, it achieved a major victory on the federal level with the enactment of the Class Action Fairness Act, which gave federal courts more power over class-action claims and increased scrutiny of class-action settlements.

"What these bills are designed to do is restore a sense of fairness in the legal system," Webb said.

But Democrats have slammed the bills both individually and broadly.

The GOP is pushing legislation that would make it "harder and more expensive for Americans to use the courts to compel government agencies to uphold and comply with the law," Rep. Val Demings (D-Fla.) said at a hearing earlier this week in the House Oversight and Government Reform Committee on "sue and settle."

And critics say that imposing mandatory sanctioning on attorneys for frivolous lawsuits, one of the pieces of the GOP reform package, has failed in the past.

Mandatory sanctioning was in place from 1983 to 1992 but was repealed after it was shown to increase nonmeritorious lawsuits. In short, courts became overburdened by having to deal with motions relating to sanctions.



GOP lawmakers are moving to limit judicial reviews on resources and Endangered Species Act bills, including on gray wolves. National Park Service/Flickr

Returning to mandatory sanctions as **H.R. 720** would require "will have a disastrous impact on the administration of justice" by chilling lawsuits that raise novel legal arguments, said Rep. John Conyers (D-Mich.), the ranking member of the House Judiciary Committee.

While the bills considered by the Judiciary Committee seek broad changes in the judicial system, other legislation — including bills introduced in the Senate — narrowly targets lawsuits involving specific environmental issues.

**H.R. 2693**, introduced by Rep. Bruce Westerman (R-Ark.), for example, would send certain legal disputes over forest management actions to third-party arbitration, rather than to court, as well as limit the ability of courts to issue preliminary injunctions halting agency forest management activities.

The House Natural Resources Committee approved the bill in June. Sen. John Barrasso (R-Wyo.) has introduced legislation in the Senate that includes a similar arbitration provision.

A provision in a bill introduced by Rep. Tom Rice (R-S.C.), **H.R. 1179**, would require that losers in Clean Water Act citizen suits pay most of the legal expenses of the winners.

And a class of bills would completely bar judicial review of natural resources and endangered species actions. Most recently, the Senate Environment and Public Works Committee this week approved **S. 1514**, by Barrasso, which would bar judicial review of wolf delisting in Wyoming and the Great Lakes region.

### **A chilling effect?**

Environmentalists and progressives say they're worried that the bills are designed to chill citizens' willingness to bring claims against the government and against corporate polluters under environmental laws.

The loser-pays provisions, such as the one in the Rice bill, are "really nefarious," said Simms of Earthjustice, which often files litigation pro bono on behalf of citizens groups.

They would mean that citizens groups could potentially be on the hook for paying the legal expenses of big corporations that employ "multiple big Washington law firms who are charging \$600 an hour for their representation," said Simms.

"What does that mean for the community group when we say, 'Here's what you need to consider for initiating this case'?" Simms said. "Well, what it means in most instances is they're going to say we can't take this. And that case simply isn't going to happen."

On the other hand, Republican critics have long charged that environmental groups frequently bring lawsuits against the government and settle in order to line their pockets with attorneys' fees. That concern is motivating at least some of the action in the House.

"Following an agreement, taxpayers' hard-earned dollars usually goes to paying for the environmental group's attorneys' fees," Judiciary Committee member Blake Farenthold (R-Texas) said recently. "These expenses can total into hundreds of thousands of dollars per settlement."

Farenthold is the sponsor of a measure included in the Judiciary Committee reform agenda that would put victims of asbestos-related disease who bring claims into a public database. The language was added to Goodlatte's class-action bill that passed the House.

None of the bills, said Webb of the Chamber of Commerce, would bar "a legitimate claim."

"The ones that have a problem with this are the folks in the trial bar who want to engage in speculative litigation and use the power of the court system to force settlements even if real harm hasn't been done," he said. "If you have a legitimate case, we've never had a problem with folks having access to the courts."

## **Groups gird for the new order**

Both supporters and opponents have sent a flurry of letters to Congress about the measures.

And in April, Earthjustice brought on Coby Dolan, who previously directed legislative affairs at NOAA and worked as a senior staffer for Rep. Debbie Wasserman Schultz (D-Fla.), to work on access-to-courts and deregulatory issues.

Dolan said that Earthjustice's heightened focus on the issue came out of "soul-searching" that the group did after the November election.

"We felt like there's a need to push back and point out that this isn't just a one-off kind of bill or two or three," Dolan said. "It's more of a broad effort to go after the way that people can access justice through the courts. I think you see more sophisticated attacks happening."

Dolan said that the group's advocacy has consisted of meetings with lawmakers and joining coalitions with other progressive groups that are concerned about maintaining access to the courts.

"On the House side, from 2007 to 2015, we noticed an uptick but didn't pay too much attention because this wasn't going anywhere. It didn't seem urgent," Dolan said. "All of that changed on Jan. 20."

The Center for Biological Diversity, a group that has so far filed more than two dozen lawsuits opposing the Trump administration's deregulatory moves, has also recently taken on more of an advocacy role.

Last week, the group registered as a lobbying organization and listed on [H.R. 3131](#), a bill by Rep. Bill Huizenga (R-Mich.) that would adjust hourly attorneys' fees in Endangered Species Act litigation ([Greenwire](#), July 25).

Joanne Doroshow, who heads the Center for Justice and Democracy at New York Law School, said that groups should pay attention not only to bills in the environmental arena but in other issue areas — such as efforts to kill a Consumer Financial Protection Bureau rule that makes it easier to bring class lawsuits against banks — because it's a "slippery slope."

"Congress sometimes just tries to get its foot in the door in a certain issue area, establish precedent and then do more damage to the laws that exist," Doroshow said. "So it's a dangerous thing to establish any kind of precedent."

## Eyes turn to the Senate

Advocates on both sides are starting to turn their attention to the Senate. While the Senate Environment and Public Works Committee has acted on natural resources legislation, the upper chamber has yet to take up any of the broader judicial reform bills that have passed the House.

"The only thing preventing a lot of this stuff from becoming law is the legislative filibuster in the Senate," Dolan said.

Webb of the Chamber of Commerce said that there's a "real interest" in the Senate to look at legal reform issues.

But up to now, the upper chamber Judiciary Committee has been consumed by nominations for the Supreme Court, lower federal courts and the Justice Department.

"The broader legislative agenda has probably been a little bit slower," Webb said, "but it's not for lack of interest or desire to look at these types of issues."

Earlier this year, Senate Judiciary Chairman Chuck Grassley (R-Iowa) introduced a companion bill to the House's sue-and-settle legislation.

Gilbert, whose current clients include the American Association for Justice, said that there's a "very big learning curve" in the Senate, though, when it comes to judicial reform and access to courts because the upper chamber didn't have to deal with these types of bills for the past eight years.

"This isn't an issue of are we going to fund Medicaid, which is going to give health care to the poor," Gilbert said. "What we're talking about are legal procedures which, unless you're a lawyer who practices in that area, you have no idea even exists."

In the House, she added, "a lot of them end up passing because they're so narrowly focused, and honestly they sound like mom and apple pie."

Bill	Sponsor	Description	Status
H.R. 725, "Innocent Party Protection Act"	Rep. Ken Buck (R Colo.)	Moves certain cases against business from state to federal courts	Passed House 235 185
H.R. 720, "Lawsuit Abuse Reduction Act"	Rep. Lamar Smith (R Texas)	Imposes mandatory sanctions on lawyers who file "baseless" suits	Passed House 233 184
H.R. 985, "Fairness in Class Litigation Act"	Rep. Bob Goodlatte (R Va.)	Sets limits on classes that can file suit	Passed House 220 201

H.R. 2936, "Resilient Federal Forests Act"	Rep. Bruce Westerman (R Ark.)	Sends forest management cases to binding arbitration, restricts preliminary injunctions	Passed House Natural Resources Committee
H.R. 732, "Stop Settlement Slush Funds Act"	Rep. Bob Goodlatte (R Va.)	Bars settlement money from going to third parties	Passed House Judiciary Committee
H.R. 469, "Sunshine for Regulations and Regulatory Decrees and Settlements Act"	Rep. Doug Collins (R Va.)	Prevents same day filing of complaints and settlements, sets reporting requirements on settlements	Passed House Judiciary Committee
H.R. 1179, "Discouraging Frivolous Lawsuits Act"	Rep. Tom Rice (R S.C.)	Requires losers in Clean Water Act cases to pay legal fees	Introduced
H.R. 2693, to amend the Clean Water Act	Rep. Duncan Hunter (R Calif.)	Limits attorneys' fee recovery in Clean Water Act suits	Introduced
S. 879, "National Forest Ecosystem Improvement Act"	Sen. John Barrasso (R Wyo.)	Sends forest management cases to binding arbitration	Introduced
S. 375, to amend the Endangered Species Act	Sen. John Cornyn (R Texas)	Changes intervention rules for ESA cases, encourages "loser pays," limits settlements	Introduced

<http://bit.ly/2tQtW9F>

## 10. House Democrats seek probes into Zinke health care calls

Geof Koss, E&E News reporter

Published: Friday, July 28, 2017

Key House Democrats are seeking investigations into Interior Secretary Ryan Zinke's calls to Alaska's senators this week, during which he allegedly threatened there would be policy consequences for Sen. Lisa Murkowski's vote against proceeding to debate on health care legislation.

Reps. Frank Pallone (D-N.J.) and Raúl Grijalva (D-Ariz.) last night jointly asked the Government Accountability Office and the Interior Department's inspector general whether top Trump administration officials, including Zinke, "are part of a larger effort within the Administration to advocate for health care proposals pending before Congress." Zinke called Murkowski and Sen. Dan Sullivan on Wednesday to complain about Murkowski's "no" vote.

Pallone and Grijalva, who respectively are the top Democrats on the Energy and Commerce and Natural Resources committees, additionally want a formal determination on whether Zinke's actions violated any laws.

"Yesterday's phone calls by Secretary Zinke occurred shortly after President Trump's tweet expressing displeasure with Senator Murkowski, and just one day after DOE Secretary [Rick] Perry generated concerns of impropriety with an editorial weighing in on the health care debate," Pallone and Grijalva **wrote** to Interior Deputy Inspector General Mary Kendall. "The close timing of these actions suggests an apparent pattern and organized effort within the Trump Administration involving the use of federal resources to advance partisan legislation. We request your office investigate whether such a pattern or organized effort exists, whereby Secretary Zinke is advocating for health care proposals pending before Congress."

A similar **letter** was sent to GAO, which Pallone separately this week asked to conduct a similar inquiry over an op-ed Perry wrote urging a replacement of the Affordable Care Act. The op-ed was later retweeted by an official government Twitter account (*E&E Daily*, July 27).



The letters follow an *Alaska Dispatch News* report from Wednesday in which Sullivan said Zinke had delivered a "troubling message" that "strong economic growth, pro-energy, pro-mining, pro-jobs and personnel from Alaska who are part of those policies are going to stop."

Murkowski declined to discuss her private conversation with Zinke, but told E&E News yesterday that it was "a difficult call." She spoke on Tuesday with Trump, who wanted her to support the motion to proceed. "It was not a very pleasant call," she said of that conversation with the president (*Greenwire*, July 27).

House Natural Resources Chairman Rob Bishop (R-Utah) said yesterday that he was unfamiliar with the details of the calls, but said such pressure from the executive branch was "not unprecedented."

The Democrats' letters seek a legal opinion on whether Zinke's actions raise legal or ethical issues, citing a number of federal statutes, including the Anti-Lobbying Act and Antideficiency Act.

The Interior Department did not respond to a request for comment last night.

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

## **11. Wildfire-scorched ranchers ask Zinke to allow refuge grazing**

Published: Friday, July 28, 2017

The Lodgepole Complex of fires has burned more than 270,000 acres of Montana land in recent weeks, devastating pasture that ranchers depend on for grazing cattle.

Thousands of animals are displaced, wandering the burned prairie in search of grass and water.

Now ranchers are pushing the Interior Department to open protected areas like the Charles M. Russell National Wildlife Refuge to grazing. The CMR refuge, a former ranch that was owned by a casino magnate, has not been grazed for decades and contains several water sources.

"There's 90 square miles of grass that hasn't had cattle on it in at least 20 years," rancher Taylor Brown said.

Local ranchers decided to put in a request to refuge managers, but farm equipment dealer Sarah Swanson sent a letter straight to Interior Secretary Ryan Zinke, a former Montana Republican congressman whose contact info she still had. Montana Republicans Sen. Steve Daines and Rep. Greg Gianforte yesterday also urged Zinke to open the refuge to grazing.

The problem is immediate for cattle owners. Some have started selling livestock or paying feedlots to house cattle (Tom Lutey, *Billings Gazette*, July 28). — **NB**

<http://bit.ly/2veFPq3>

## **12. Scientists fly straight into smoke to measure pollutants**

Published: Friday, July 28, 2017

To measure how the massive plumes of smoke produced by wildfires affect the environment and public health, scientists have to fly into the thick of the blaze.

Wildfire smoke is rife with a variety of pollutants that can affect everything from human lungs to the global climate.

The Forest Service runs a lab in Montana to study how different types of fuel might burn differently. But to capture the diverse portfolio of a real fire, scientists have developed planes repurposed for the task.

During the Rim Fire, which ripped through Yosemite National Park in 2013, scientists flew through the smoke in an Dassault/Dornier Alpha fighter jet and a repurposed Douglas DC-8. Both were equipped with special sensors and lab equipment.

Scientists are hopeful that data from the sky can help them make more accurate assessments of wildfire pollutants.

"We're really optimistic that our data can provide sort of truth, so they can continue improving their models," said Laura Iraci, a NASA chemist (Menaka Wilhelm, *Wired*, July 26). — NS

<http://bit.ly/2v4PfUN>