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Attached is the daily news report for April 28 - May 1.

Ryan Sutherland
Bureau of Land Management Utah
Public Affairs Specialist
rrsutherland@blm.gov
801 539 4089



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DAILY NEWS REPORT - UTAH

UTAH – TOP STORIES – APRIL 28 – MAY 1, 2017

1. Interior Secretary Zinke, Utah delegation meet to discuss next steps on Bears Ears

The Deseret News, April 28 | Amy Joi O'Donoghue

SALT LAKE CITY — Interior Secretary Ryan Zinke met with members of Utah's congressional delegation and Gov. Gary Herbert to lay out the next steps in the review of monument status for the Bears Ears region in southeast Utah.

2. Video shows massive waste, air pollution at oil & gas sites on public lands

Earthworks, April 28 | Earthworks Staff Writer

Vernal, UT -- Earthworks released a video taken April 25 showing massive amounts of otherwise invisible air pollution on public lands in Utah, just west of Grand Junction, Colorado. The video comes right as Senate leaders say they will vote on whether to use the Congressional Review Act to permanently revoke the Bureau of Land Management's natural gas waste rule that would significantly reduce this pollution in January 2018.

3. The Beaver: Helping Keep Water On Drying Lands on Wild About Utah

Utah Public Radio, April 28 | Shauna Leavitt

Beginning as early as the 17th century, beavers have struggled to find safe places to build their homes. Initially, hunters trapped beaver extensively to keep up with the popular beaver fashions in Europe. Then as settlers began moving west, they considered the beavers annoying because of their tendency to cause flooding and damage trees – so the trapping continued.

4. Op-ed: Hatch doesn't tell the truth about Bears Ears

The Salt Lake Tribune, April 29 | Harry Holland

As has been said: "If you repeat a lie often enough, people will believe it."



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5. UDOT plans \$5 million overpass for wildlife at Parleys Summit

The Salt Lake Tribune, April 30 | Luke Ramseth

Interstate 80 near Parleys Summit has long been among the deadliest stretches of road in Utah for big game.

Between Lambs Canyon and Kimball Junction — a 13-mile stretch — cars killed 122 mule deer, 13 moose, four elk and three mountain lions in the past two years, according to the Utah Department of Transportation (UDOT). A handful of drivers suffered minor injuries dating back to 2008.

6. Op-ed: Trump threatens geological marvels

Newsday, April 30 | Michael Dobie

The river was cool. The canyon walls were tall, more than a thousand feet high.

We were hiking upstream, wading against a swift current. The farther we went, the more the walls closed in, seeming to grow taller as they narrowed — 100, 50, 30 feet across.

7. Gehrke: Trump's review of monuments a cynical charade to exploit Utah treasures

The Salt Lake Tribune, May 1 | Robert Gehrke

Everyone, according to Gov. Gary Herbert, wants to protect the natural and historic treasures of Bears Ears.

8. In Utah, How You Tread Through This Canyon Matters

NPR News, April 29 | Kirk Siegler

Phil Lyman cared so much about what he sees as his right to drive all-terrain vehicles into Recapture Canyon, he went to jail for it.



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E&E/NATIONAL NEWS – TOP STORIES

1. Trump's EPA: Cuts, infighting and no talk of climate change

Good4Utah, April 29 | Miranda Green

WASHINGTON (CNN) - President Donald Trump made a campaign trail promise to eliminate the Environmental Protection Agency -- a department once looked to as an important national force tackling climate change -- and during his first 100 days in office has held true to his word, taking swift strides towards dismantling the agency and rolling back regulations.

2. Prosecutors struggle to prove conspiracy in Bundy cases

The Las Vegas Review-Journal, April 29 | Jenny Wilson

Federal prosecutors throughout the West have struggled recently to win conspiracy convictions against groups of loosely organized individual rights activists who identify with an anti-government movement best known for staging armed protests on federally managed land.

3. Navajo Nation Exploring Wild Horse Management Plan

The Horse, May 1 | Pat Raia

In an effort to control the population of unbranded free-roaming horses competing for resources on tribal lands, the Navajo Nation announced it would consider allowing permitted hunters to harvest the animals. But, according to Gloria Tom, Navajo Nation Department of Fish and Wildlife (NNDFW) director, hunting is just one strategy the nation is investigating to manage the herds.

4. EPA: Agency scrubs climate information from website

E & E News, May 1 | Niina Heikkinen

U.S. EPA's climate change webpage disappeared Friday just as tens of thousands of marchers prepared to descend on the nation's capital in defense of climate science.



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5. ENERGY TRANSITIONS: Coal industry pushes market reforms to aid ailing plants

E & E News, May 1 | Benjamin Storrow

Coal interests are stepping up calls to reform competitive energy markets to better support ailing power plants.

6. PUBLIC LANDS: ENR hearing to focus on county payment programs

E & E News, May 1 | Scott Streater

The Senate Energy and Natural Resources Committee is scheduled this week to take up the thorny issue of helping compensate local communities with large tracks of tax-exempt public lands.

7. NATURAL RESOURCES: Lawmakers drill into Antiquities Act in wake of Trump order

E & E News, May 1 | Jennifer Yachnin

The House Natural Resources Subcommittee on Federal Lands is set to hold an oversight hearing tomorrow on the Antiquities Act, less than a week after President Trump ordered the Interior Department to review the status of dozens of national monuments created by his White House predecessors.

8. FEDERAL AGENCIES: Panel to consider whistleblower bills

E & E News, May 1 | Kevin Bogardus

The House Oversight and Government Reform Committee is set to consider a raft of legislation to expand whistleblower protections in federal agencies.

9. CLEAN POWER PLAN: Litigation's fate still uncertain as enviros chart options

E & E News, May 1 | Ellen M. Gilmer

A federal court's decision to pause a legal battle over U.S. EPA's Clean Power Plan has many advocates parsing the order's language and scoping for more.



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10. **APPROPRIATIONS: Omnibus boosts most Interior programs but cuts LWCF**

E & E News, May 1 | Kellie Lunney

Most of the Interior Department's programs would receive more money under the fiscal 2017 omnibus funding bill lawmakers released earlier today, with one notable exception: the Land and Water Conservation Fund.

11. **SUPREME COURT: Justices take up Interior land fight, decline polar bear case**

E & E News, May 1 | Amanda Reilly

The Supreme Court today agreed to take another look at a long-running dispute between a landowner and the Interior Department over a 147-acre tract in Michigan that the government is holding in trust for a native tribe.

12. **COAL: Omnibus would trim regulatory agencies, boost research**

E & E News, May 1 | Dylan Brown and Christa Marshall

The omnibus government funding deal unveiled overnight would trim mining regulatory agencies but boost funding for coal power research and keep some existing policy riders.

13. **CLIMATE: In blow to Trump admin, judge wants kids' case in lower court**

E & E News, May 1 | Amanda Reilly

A federal judge today recommended rejecting the Trump administration's bid to have a federal appeals court step into a climate change case brought by youth plaintiffs before the district court even holds a trial.

14. **INTERIOR: Zinke creates energy policy post for former PAC treasurer**

E & E News, May 1 | Corbin Hiar

Interior Secretary Ryan Zinke this afternoon appointed the treasurer of his former political action committee and a George W. Bush-era Energy Department veteran to a newly created energy advisory post.



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15. As coal burns out, the race for natural gas is on

The Washington Examiner, May 1 | John Siciliano

Appalachian coal country may have helped President Trump win the Oval Office, but it's not clear whether coal will have much to do with winning the future of the region.



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UTAH – FULL STORY

1. Interior Secretary Zinke, Utah delegation meet to discuss next steps on Bears Ears

The Deseret News, April 28 | Amy Joi O'Donoghue

SALT LAKE CITY — Interior Secretary Ryan Zinke met with members of Utah's congressional delegation and Gov. Gary Herbert to lay out the next steps in the review of monument status for the Bears Ears region in southeast Utah.

Rep. Chris Stewart, R-Utah, said the Thursday morning meeting went well.

"It was very good, very positive," he said. "For one thing, he (Zinke) understands the issues and the enormous impact it has had on my district, the 2nd Congressional District, among others. He described the president as being understanding and wanting to help, so I was quite encouraged."

Stewart said the group discussed both Bears Ears, at 1.35 million acres, and Grand Staircase-Escalante, at nearly 1.9 million acres.

"This is not just about national monuments. This is about families and the impacts this has had on rural communities, schools and families," Stewart said. "Every one of us, and I really mean it, I don't know of a single person who does not want to preserve these antiquities and doesn't want to preserve these incredibly beautiful vistas. The challenge is to do it in within the right scope."

The meeting came a day after President Donald Trump signed an executive order directing Zinke to conduct a review of monument designations of more than 100,000 acres dating back to 1996. In issuing the order, Trump said the abusive use of the presidential power needs to stop, citing 265 million acres that were set aside as monuments under his predecessor, President Barack Obama.

Stewart said Thursday's meeting focused on the process of designating monuments under the 1906 Antiquities Act, the intent of the law and how it has been used over the years — particularly in presidential proclamations that envelop millions of acres of land or water.

With Grand Staircase-Escalante, established in 1996 by then-President Bill Clinton, Stewart said the monument's designation went beyond an intent to preserve antiquities and instead aimed to keep vast coal reserves off-limits.



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"There are very few antiquities in that 1.8 million acres, but what there is are meaningful coal reserves, and it is clean coal," he said.

At the very least, Stewart said, boundaries at Grand Staircase-Escalante need to be adjusted.

"We want to look at redefining the boundaries and making some of these resources available, while at the same time protecting habitat and some of these antiquities that are truly worthy of protection," he said.

Sen. Orrin Hatch, R-Utah, praised Wednesday by Trump for his doggedness on the monument issue, hosted Thursday's meeting to discuss implementation of the review process.

"I'm grateful that the president listened and that he even took time after the signing ceremony to meet privately with me and the vice president to discuss next steps on Bears Ears," Hatch said.

Environmental groups, conservation organizations and Democrats are blasting the executive order, decrying it as the first step in a presidential assault on public lands that will leave landscapes vulnerable to oil and gas development, mining, logging and grazing.

Bears Ears National Monument, with the exception of school trust lands and some private property, is already managed by the federal government and occupies land mostly controlled by the Bureau of Land Management. Any rescission of its monument status altogether or a modification of its boundaries will not change its status as federal public lands.

Obama's monument proclamation acknowledges existing uses such as grazing, hunting, fishing and access to water rights, and monument designations don't trump current mineral or oil and gas leases. BLM officials describe its oil and gas potential as "low to moderate," and a proposed uranium mine expansion lies outside its boundaries.

Critics, however, fear monument restrictions will erode access and required travel plans for motorized vehicles will jeopardize off-roading in the region.

Zinke has been thrust into the middle of the long, contentious fight over the region's destiny. He has said he will visit Utah and meet with a variety of people in his review of the Bears Ears designation, but a Native American tribal coalition that pushed for the new monument said they have heard nothing from the new interior secretary.



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"Our letters to your office from each of our tribal nations, the Bears Ears Inter-Tribal Coalition, and the Bears Ears Commission requesting meetings from you have gone unanswered. It seems illogical that letters sent nearly 100 days ago have not been answered, yet there will be a review of Bears Ears within the next 45 days," said a letter sent by coalition leaders to Zinke on Wednesday.

"Please do not forget — our tribes are the original inhabitants of the West long before the United States was a nation, and we do not view Bears Ears National Monument as an abuse," the letter continued.

The letter invites Zinke to the next meeting of the Bears Ears Commission in mid-May.

Another group, the Stewards of San Juan County, is also hoping to get some ear-time with Zinke.

"This monument was designated in order to appease outside special interest groups, and the voices of life-long residents and local tribal members who have loved and cared for this land the most were blatantly ignored," their statement said. "Bears Ears National Monument was done to us, not with us, and we deserve to have our voices heard."

Zinke is expected to visit the region in May.

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2. **Video shows massive waste, air pollution at oil & gas sites on public lands**

Earthworks, April 28 | Earthworks Staff Writer

Vernal, UT -- Earthworks released a video taken April 25 showing massive amounts of otherwise invisible air pollution on public lands in Utah, just west of Grand Junction, Colorado. The video comes right as Senate leaders say they will vote on whether to use the Congressional Review Act to permanently revoke the Bureau of Land Management's natural gas waste rule that would significantly reduce this pollution in January 2018.

"We cannot afford to risk our clean air and climate by revoking basic anti-pollution safeguards," said Lauren Pagel, Earthworks Policy Director. "The Congressional Review Act is a dangerous tool that if invoked would ensure this pollution could go unchecked, forever."



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The video was taken by a certified thermographer with an industry standard Optical Gas Imaging camera, the FLIR GasFinder 320. The \$100,000 camera is specially tuned to detect methane and other volatile organic compounds (VOCs), not heat, and is used by industry and regulators for that purpose. Methane is a climate pollutant 86 times worse than carbon dioxide. Oil and gas VOCs often include health hazards like benzene, a carcinogen.

The Bureau of Land Management's natural gas waste rule would require leak detection and repair (LDAR) using optical gas imaging.

“If Congress repeals the natural gas waste rule the American taxpayer loses,” said Bruce Baizel, Earthworks Energy Program Director. “Americans lose because our clear air is poisoned. Americans lose because our natural resources are wasted. And Americans lose because our climate is polluted. When it comes to our energy future, we must protect our anti-pollution laws in order to win.”

Earthworks has made public video evidence of pollution from over 375 oil and gas facilities in 16 states, both on public and private land. All Earthworks infrared videos are filmed by ITC certified thermographers.

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3. **The Beaver: Helping Keep Water On Drying Lands on Wild About Utah**

Utah Public Radio, April 28 | Shauna Leavitt

Beginning as early as the 17th century, beavers have struggled to find safe places to build their homes. Initially, hunters trapped beaver extensively to keep up with the popular beaver fashions in Europe. Then as settlers began moving west, they considered the beavers annoying because of their tendency to cause flooding and damage trees – so the trapping continued.

However, today in many parts of the American West, the beaver's 400-year-old struggle is fading, because of their ability to keep water on dry land in an efficient manner.

While beavers may not be welcome in most city limits, ranchers and wildlife managers are re-introducing them to rural areas where the benefits of their dams far outweigh the inconveniences.



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One such place is the Della Ranches in west Box Elder County, where the Tanner family has been ranching for six generations. The ranch is located in a remote part of the state and has some of the best intact sagebrush habitat in Utah with strong populations of sage grouse and mule deer.

Most of the precipitation on the ranch, which averages less than 12 inches a year, comes as snow during winter and rain in April and May. By the end of the summer, the majority of the streams have dried up.

Having a sustainable water supply is an ongoing concern for the Tanners. They are searching for ways to keep water on the land throughout the summer.

Jay Tanner explains, "I considered building a reservoir or pond but it would be expensive, require quite a bit of maintenance, and permits. Beaver dams on the other hand are inexpensive, sustainable, and self-maintained."

Kent Sorenson, habitat biologist from the Utah Division of Wildlife Resources described the financial benefit of the beavers, "[When beaver manage the dams] our operation and maintenance costs go to zero — they do all the work. They are 24/7 – 365-day maintenance crews that do not require a Corps of Engineers 404 permit.

When Jay Tanner learned of the potential benefit of beavers, he drove to Utah State University and met with scientists and researchers who had experienced success in restoring beavers in the west.

Eric Thacker, Rangeland Management Extension Specialist at USU said, "A beaver dam provides a buffer or mitigation for drought."

Once the dams are established, they keep the water on the land. This is beneficial to fish, wildlife and livestock.

Sage-grouse hens like to gather with their chicks in the wet meadows by beaver dams, where they can find plenty of insects and vegetation for their chicks.



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After further discussions with USU, the Tanners entered into a multi-year partnership with the Quinney College of Natural Resources and Utah Division of Wildlife Resources to reintroduce beaver to their ranch.

Currently, all involved are working to make the streams and surrounding area appropriate for new beaver families. Once the areas are ready and the correct permits are in place, UDWR will capture a beaver pair, keep them in quarantine for the appropriate amount of time then introduce the beavers to a stream on the Tanner Ranch

Reintroducing a beaver couple instead of a single beaver is essential for the success of the project. They are social critters. Beaver will leave the location and go searching for a partner if they are not re-introduced with one.

In an established beaver dam, you will likely find monogamous parents with their babies called "kits", their yearlings, and extended families.

Joseph Wheaton, Associate Professor in the department of Watershed Sciences and Principal Investigator on the project said, "If [this] project is successful, the implications are huge for instream and riparian restoration throughout the state of Utah as beaver are potentially an extremely cost-effective form of restoration..."

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4. **Op-ed: Hatch doesn't tell the truth about Bears Ears**

The Salt Lake Tribune, April 29 | Harry Holland

As has been said: "If you repeat a lie often enough, people will believe it."

So on April 24, Sen. Orrin Hatch stood before the U.S. Senate and lied about the collaborative process that led to the creation of the Bears Ears National Monument.

Hatch said, "As evidence of his disdain, President Obama issued this declaration with no open debate, no public hearing and no vote in Congress."

I personally know that's not true.



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On July 16, 2016, Interior Secretary Sally Jewell, along with other federal officials, visited Utah to hold a hearing about the future of the area that would become Bears Ears National Monument. The trip ended with a public hearing in the remote town of Bluff, Utah.

I attended that hearing, along with almost 2,000 others, in the sweltering heat of the Bluff Community Center. Speakers included a representative from Gov. Gary Herbert's office, Native Americans from the nearby Ute and Navajo reservations, officials from San Juan County, residents from nearby towns and citizens from cities hundreds of miles away.

This meeting was only one day in three years' worth of work, led by Jewell, to find the best way to protect the area that is now Bears Ears National Monument.

In fact, a cache of documents recently released shows that since 2013 the Obama Administration consulted with locals, Native American tribes and the Utah delegation to find a solution to the issue of how to protect Bears Ears.

Ironically, these documents were requested from the Department of Interior by Rep. Jason Chaffetz, a critic of Bears Ears who sought evidence that the monument designation was a one-sided sneak attack. Actually, the official papers show the opposite.

In one email, Herbert's office praises Jewell saying: "I have to compliment you on a wonderful trip. Your team orchestrated a comprehensive, balanced, well-run and effective trip of southeast Utah. I also have to compliment you on the listening session on Saturday (in Bluff) ... it went off brilliantly. Kudos to you and your team!"

Another email shows the willingness of the Interior Department to work with Chaffetz and Rep. Rob Bishop on their Public Lands Initiative. It states: "the Interior Department would like the opportunity to work with (PLI) bill sponsors (Bishop and Chaffetz) ... to improve manageability and ensure protection of natural, cultural and other resources."

The proposed monument's boundaries were pared down by the Obama administration so that the monument boundaries nearly mirror those of Bishop and Chaffetz's Public Lands Initiative. That fact alone should attest to the collaboration between the federal government and Utah. But now,



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we have the thousands of Interior Department documents that show the extent to which the Interior Department worked with Utah officials.

In this day of "alternative facts," the truth gets buried. But as shown in the trove of documents released by the Interior Department, we know that the true story of the birth of Bears Ears National Monument is one of transparency and professional respect between the Obama administration and Utah officials the Utah delegation and the governor's staff.

The new Bears Ears National Monument stands as a testimony to the collaboration between diverse groups, from an unprecedented coalition of Native American tribes to dedicated government employees. If the monument is reduced or rescinded because of lies broadcast by Hatch and the Utah delegation, the real losers will be the American people — especially Native Americans to whom this region is more than a place to seek beauty and solitude. It's a place of ancestral connection and continuity. For it to be destroyed by deceitful politicians would be a heartbreaking travesty.

Harry Holland is a husband, father, small business owner and environmentalist who lives in southern Utah, a couple of hours away from Bears Ears.

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5. UDOT plans \$5 million overpass for wildlife at Parleys Summit

The Salt Lake Tribune, April 30 | Luke Ramseth

Interstate 80 near Parleys Summit has long been among the deadliest stretches of road in Utah for big game.

Between Lambs Canyon and Kimball Junction — a 13-mile stretch — cars killed 122 mule deer, 13 moose, four elk and three mountain lions in the past two years, according to the Utah Department of Transportation (UDOT). A handful of drivers suffered minor injuries dating back to 2008.

UDOT says it has a solution: an overpass built just for wildlife.



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Officials recently announced the \$5 million project at a packed public meeting at Jeremy Ranch Elementary School. For years, residents in the Jeremy Ranch area have pushed for better fencing and other measures to reduce wildlife collisions.

The bridge is one of several improvements planned for I-80 near Parleys Summit. Additional wildlife fencing is to be erected on both sides of the freeway. Also planned is a semitrailer lane on the westbound climb to the summit and fresh asphalt from Lambs Canyon to Jeremy Ranch.

Concerns over animal deaths on the freeway — and the danger posed to drivers — led to the 2015 formation of Park City nonprofit Save People, Save Wildlife. The group's first big success was in raising about \$50,000 for a mile-long wildlife fence between I-80 and Jeremy Ranch last year, organization President Ralph Hottinger said.

UDOT matched the group's funds and put up the fence in the fall. The agency had previously installed several miles of the 7-foot-6-inch fence along the freeway on the west side of the summit.

The fences have worked — to an extent. The number of crashes in Parleys Canyon dropped after the barriers were installed. But officials realized animals often traveled along the fences until they terminated, effectively "pushing collisions farther down the road," said Matt Howard, a Utah Division of Wildlife Resources biologist.

With several more miles of fencing to plug gaps, officials hope they can instead funnel animals over the new bridge.

While the design hasn't been finalized, the bridge is expected to be 45 feet wide and 345 feet long, crossing the freeway just west of the Parleys Summit interchange. Officials still are considering whether it should be filled with vegetation to blend in with the environment or remain barren to allow wildlife to easily see the other side.

John Montoya, a UDOT project manager, said the location made sense for several reasons. Wildlife collisions were concentrated near the summit, a popular crossing point, he said, and a watershed area on both sides of the proposed bridge is protected from development. The bridge also will be placed on a cut slope on either side of the freeway.



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Officials considered an underpass. But they realized moose and elk would be unlikely to pass through a dark 400-foot-long tunnel, Montoya said.

"The biggest thing that matters to us is to build a bridge that works, that the larger animals will use," he said.

Wildlife overpasses built elsewhere have been successful. On the Trans-Canada Highway in Banff National Park, wildlife collisions decreased 80 percent after overpasses and other mitigation measures were installed. Several new overpasses in Colorado also had immediate mortality reductions.

The I-80 project will be the first wildlife overpass of its size in Utah — and the first built by UDOT specifically for wildlife, officials said. Howard said the DWR plans to place cameras on both sides, to study how many animals use it.

The biologist said he expects that in the first few years, migrating wildlife will continue to congregate along fences near the freeway, attempting to cross in their normal manner.

But the animals will adapt and start traveling directly to the bridge, he said.

Construction on the \$5 million bridge and on \$17 million worth of other projects — all federally funded — is scheduled to begin in early 2018.

Hottinger said the bridge and additional fencing are exactly what Save People, Save Wildlife pushes for. The group formed after two moose calves were killed on an on-ramp, which captured the community's attention, he said.

And there have been other high-profile wildlife incidents on the freeway. Earlier this year, I-80 closed in Parleys Canyon for nearly an hour after 12 elk wandered into the median. In 2001, an effort to move moose away from the freeway with a helicopter led to the chopper crashing into Mountain Dell Reservoir; all three men on board died.

Save People, Save Wildlife has kept its own tally of dead wildlife in the area, Hottinger said, and has kept pressure on state officials to build additional fencing and the bridge.



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"I'm really pleased with UDOT," Hottinger said. "They've stepped forward. We see UDOT as our partners."

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6. **Op-ed: Trump threatens geological marvels**

Newsday, April 30 | Michael Dobie

The river was cool. The canyon walls were tall, more than a thousand feet high.

We were hiking upstream, wading against a swift current. The farther we went, the more the walls closed in, seeming to grow taller as they narrowed — 100, 50, 30 feet across.

Every twist and turn brought changing views of fantastically sculpted rock, its colors shifting with the passage of the sun. Tight crevices branched off into wildness, teasing the imagination.

That trek up the Virgin River, in a section of Utah's Zion National Park known as The Narrows, is a sublimely inspiring hike in a part of the country whose rugged and austere beauty has inspired millions of people for generations.

Part of that region is now under threat. President Donald Trump has ordered a review of national monuments created since Jan. 1, 1996. Some could be reduced in size or eliminated. It's the latest front in the raging battle over public lands in the West.

While the move also applies to monuments created by presidents Bill Clinton and George W. Bush, the driving force behind it was Barack Obama's designation in December of the 1.35-million-acre Bear Ears National Monument in southern Utah.

Critics paint the usual picture: By preserving Bear Ears Obama destroyed jobs, given the land's potential for oil and gas drilling, mining and other development. Elected officials in Utah were outraged. Trump, with typical apocalypticism, called it a "massive federal land grab" — though the federal government already owned the land.

But the story of Bear Ears, and other national monuments, is more complicated. Because many Utahns supported Obama's action. Because pitting environmental protection against economic



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development is a false choice. And because there are all kinds of economic success stories. This is one, too — but it's not an oil and gas story.

First, about the wonders of Bear Ears: It's another of Utah's jaw-droppingly beautiful geological marvels, and it contains countless artifacts, relics, dwellings, petroglyphs and pictographs from ancient residents. Many of the more than 150 monuments designated by presidents since 1906 have later been made national parks by Congress. That's what happened with Zion.

Interior Secretary Ryan Zinke, who must carry out Trump's order, said it would give states a "meaningful voice" in the process. But the process that led to Bear Ears included seven years of public debate. And whose voice is meaningful? Officials, miners and drillers? What about environmentalists, Indians to whom much of Bear Ears is sacred, and the outdoors industry, which pulled its biggest trade show out of Utah because of the campaign to rescind Bear Ears' designation?

In 1996, Clinton created Grand Staircase-Escalante National Monument in the same region in Utah, thwarting plans for a coal mine. Devastating, elected officials said. Not so fast, the locals say.

In Garfield County, home of the monument, per capita income has risen faster than the rest of Utah. Property values are up. In Escalante — the town abutting the monument — hotels, restaurants and outfitters are thriving, new homes are rising, and a hardware store, dentistry practice and health clinic have opened.

Utahns, by nearly a 2-to-1 margin, think creating Grand Staircase-Escalante was a good idea. And a research firm recently determined that Western counties with protected public lands have grown faster than those with none.

Reversing Bear Ears' designation is not about boosting the economy. It's about picking who is going to succeed, and at whose expense.

I'll pick to preserve the land, for the people who live there and the people who come to hike its canyons and discover its culture.

Inspiration has no price.



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Michael Dobie is a member of Newsday's editorial board.

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7. Gehrke: Trump's review of monuments a cynical charade to exploit Utah treasures

The Salt Lake Tribune, May 1 | Robert Gehrke

Everyone, according to Gov. Gary Herbert, wants to protect the natural and historic treasures of Bears Ears.

Nonetheless, there he was, along with Utah's congressional delegation, grinning behind Donald Trump as the president signed an executive order, directing a review of Utah's newest national monument, as well as other monuments created under the Antiquities Act in the past two decades, including the Grand Staircase-Escalante National Monument.

The motivation seems clear as the Utah delegation has been aggressively pushing Trump to rescind Bears Ears.

You have to hand it to these guys. They continually profess their love for Utah's wildlands while furiously working to gut any protections for them.

The word "disingenuous" doesn't do their actions justice.

You have Sen. Orrin Hatch trotting out a chart labeled "Executive Overreach At Its Worst," showing 290 million acres tied up by President Barack Obama's monument designations, while conveniently leaving out the 219 million acres of monuments created by President George W. Bush.

You get Herbert complaining that Obama created the monument without input from Utah elected officials, only to have a paper trail of hundreds of pages showing the extent of the administration's consultation.

It included an email from a senior Herbert staffer praising an Obama Interior Department official. He wrote: "I'm not kidding when I say you're an amazing example of a public servant," for the time she had spent working with Utah leaders.



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Or you have Hatch on the Senate floor spouting the falsehood about how San Juan County's "schools have been strapped for cash ever since the Bears Ears Monument designation rendered these lands useless." Those schools spend about \$12,500 per student, \$5,000 more than the state average.

And the monument designation hasn't made even the tiniest dent in that.

Why?

Because despite all the Trumped up (pun intended) outrage, the reality is that the simple act of designating a national monument has changed almost nothing on the ground in Bears Ears.

Oil and gas drilling — even though there has been none really to speak of for decades — can continue on existing leases; existing roads remain open; and existing mining claims are valid, although the boundaries of the monument were carefully drawn to exclude some uranium deposits.

Because, you know, consideration for the locals.

Essentially, it's status quo on the ground while the Forest Service and Interior Department — which, if you have forgotten, are run by Trump appointees — design a management plan that will govern the new monument.

It took more than three years to prepare the management plan for the Grand Staircase, plenty of time, one would think, for Congress to act.

Which brings us to Rep. Rob Bishop and the Public Lands Initiative (PLI). This legislation has been years in the making. According to the email record, the White House, out of deference to the Utah delegation, held off on designating Bears Ears to give Bishop & Co. a chance to get the PLI through Congress.

The White House patterned the Bears Ears footprint after the conservation area proposed in the PLI, only about 50,000 acres smaller.

But here's the thing: There is one surefire way to rescind a national monument, and it's not to have the new president try to undo the declaration. That's something that has never been done, is almost certainly unconstitutional and would absolutely be tied up in court for years.



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The solution is for Congress to pass the PLI. And lawmakers likely have at least three years to get it done while the monument-management plan is being prepared.

If Bishop can't get his supposedly consensus bill through in three years, you have either a lousy bill or a lousy congressman.

It looks, however, like Trump, Hatch and Interior Secretary Ryan Zinke have something else in mind. Zinke says he'll be in Utah in a few weeks to visit southern Utah, and there will be recommendations, not just on Bears Ears but on potential changes to Grand Staircase.

Maybe they'll get it right. Maybe they'll leave the monument alone and let Congress do what Congress is supposed to do.

Maybe they'll surprise us, and Trump, who said of Bears Ears, "I hear it's beautiful," will figure out a way to build his next hotel in the monument and make it the Western White House.

Don't count on it.

This whole exercise looks to be just as cynical and politically motivated as the rhetoric that has surrounded the Bears Ears opposition. It's nothing more than a charade to manufacture an excuse to undo one of Obama's final actions, and to strip away the limited measures preserving a landscape that, as the governor said, we all want protected.

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8. In Utah, How You Tread Through This Canyon Matters

NPR News, April 29 | Kirk Siegler

Phil Lyman cared so much about what he sees as his right to drive all-terrain vehicles into Recapture Canyon, he went to jail for it.

"Going into this, you know, I've said a number of times, I'm a foot soldier," the San Juan County, Utah, commissioner says. "I'm not a captain. I'm not a general. I'm willing to die on a battlefield for a good cause."

Lyman's battlefield is an old jeep trail near his home in Blanding, Utah, that's become a flash point in the struggle by rural counties that want control of federal public land. The Bureau of



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Land Management temporarily closed the trail more than a decade ago. Recapture Canyon is prized for its sensitive Native American cultural sites, and ancient artifacts were being damaged and looted.

Three years ago, with the closure still enforced, a frustrated Lyman led an off-road vehicle brigade deep into the canyon.

Then, protesters kicked up dust as their tires traveled across land considered sensitive to indigenous people while they waved American flags. This caused a stir on reservations and in cities, while Lyman became a darling of the far right movement in the rural West.

Today, Lyman is still on probation. A federal judge sentenced Lyman to 10 days in jail for that protest ride, but today, he's feeling vindicated.

This month the BLM partially lifted the ban on off-roading in Recapture Canyon. Some of the canyon floor itself where the protest happened is still closed. But BLM is promising to build a new network of ATV trails on the rim and partway down the canyon.

"I don't know if I won; I hope ultimately that we win," Lyman says.

He says he's encouraged by the timing of this announcement under the new administration, which he thinks will give a friendlier ear to his cause.

"After an 11-year wait, to me, that signals, 'Hey, we hear you,' " he says.

The new Secretary of the Interior, Ryan Zinke is using the Recapture Canyon plan as a model for how to increase access to U.S. public lands for all users, motorized or not.

But in the canyon, BLM's Lisa Bryant is hesitant to describe this plan as a big policy shift.

The decision to temporarily ban off-roaders in the canyon happened during the George W. Bush administration. The impacts to cultural sites had become a big issue, she says, and it took time to come up with the right balance.

"In the canyon bottom itself, we haven't authorized motorized access but prefer people to visit on horseback or on foot, much the way their ancestors did," Bryant says.



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But hiking down toward one of the Anasazi cliff dwellings — the canyon is dense with them — you can still see illegal motorcycle tire tracks in the mud.

Environmentalists say one of the biggest unknowns of this plan is whether there will actually be funding to enforce the closure, let alone rehabilitate some of the damaged cultural sites. Yet they too are declaring a partial victory here. Neal Clark of the Southern Utah Wilderness Alliance says Lyman's protest ride went nowhere because ATVs are still banned from the most sensitive areas.

"It's sending a clear signal that illegal activity as a means to forward your agenda for public land uses is not going to be tolerated by the federal agencies," Clark says.

So it's one of those rare moments in the fiery debate over federal public lands in which both sides seem willing to stand down — for now.

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E&E/NATIONAL NEWS – FULL STORY

1. **Trump's EPA: Cuts, infighting and no talk of climate change**

Good4Utah, April 29 | Miranda Green

WASHINGTON (CNN) - President Donald Trump made a campaign trail promise to eliminate the Environmental Protection Agency -- a department once looked to as an important national force tackling climate change -- and during his first 100 days in office has held true to his word, taking swift strides towards dismantling the agency and rolling back regulations.

Alongside EPA Administrator Scott Pruitt, a former Oklahoma attorney general who once worked tangentially with the fossil fuel industry to oppose Obama-era regulations, the Trump administration has so far issued a flurry of EPA-focused executive orders, proposed employee buyouts, handed down a social media gag order and is proposing significant cuts to the EPA budget.

Pruitt and Trump alike have touted their new agency agenda as a win for economic growth and those who work with businesses in the oil and gas industry have likened the atmosphere to finally having their voices heard.



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"We were looking forward to a new admin that was not going to be openly hostile to us," said Kathleen Sgamma, president of the Western Energy Alliance. "So our expectations going in were optimistic thinking at least we have somebody who talks about encouraging oil and natural gas development. What we didn't expect was such a comprehensive understanding of the ways that red tape is being used to stop not just our industry but economic growth and job growth in other industries."

The White House is also highlighting its EPA regulation roll-backs through use of the Congressional Review Act as one of the brightest moments so far. Speaking to reporters Tuesday, White House Legislative Affairs Director Marc Short called the actions the "biggest legislative achievement" of Trump's first 100 days in office, next to the confirmation of Supreme Court Justice Neil Gorsuch.

The GOP Congress used the law to nullify almost a dozen rules issued in the final months of Obama's presidency, including the Stream Protection Rule and an Interior Department methane rule that requires oil and gas companies using public lands to control air pollution.

However, the administration still remains in the beginning stages of enacting the changes it wants to see within the agency. Many of Trump's executive orders lack formal backing in policy and there remains a long process ahead to formalize any de-regulations.

Fulfilling his promise from the start

From the start, the White House made efforts to change the EPA's regulatory authority. Through a series of executive orders, some a mere days after Trump took office, the administration made clear its intention to support what it views as economic growth over environmental protections -- a maneuver it routinely calls cutting red tape.

In February, Trump issued an executive order asking the EPA to repeal and replace the Clean Water Rule, also known as the Waters of the US rule.

In March he introduced another sweeping executive order to look into ways to roll back regulations on a number of Obama-era policies pertaining to climate change, that included emissions rules for power plants, limits on methane leaks, a moratorium on federal coal leasing, and the use of the social cost of carbon to guide government actions.



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Additionally, the EPA granted a number of industry petitions to reconsider or delay the implementation of EPA rules that were previously passed under Obama, including delaying the implementation of a chemical storage rule that aimed to tighten safety requirements for companies. The regulation was crafted following a 2013 fertilizer plant explosion in Texas that killed 15 people.

In April, Pruitt has told oil and gas industry leaders that the agency will reconsider its methane emissions rule following a petition from industry leaders, a 90-day delay.

"Sometimes you hear politicians who talk about that but you wonder if they will have people in place who understand how to effectively cut through the red tape," said Sgamma. "I did not expect that the Trump administration would be fairly sophisticated in countering that and willing to do so quickly in the first 100 hundred days."

"There is no way to sugarcoat this, President Trump has taken a wrecking ball to environmental protection in the US," said Ken Kimmell, president of the Union for Concerned Scientists. "Frankly I didn't think this would happen with the severity with this is happening. We have had changes in powers before. Different presidents strike a different balance. But this is a severe attack that we didn't expect."

Hiring freeze and job cuts

One of Trump's initial executive orders placed a blanket hiring freeze across government departments and agencies. It left 350 positions at the EPA unfilled including more than 100 scientists in specialties like environmental science, life science, and physical science.

Documents released through a Freedom of Information Act request by the Sierra Club and reviewed by CNN, showed the hiring freeze affected an additional 140 people internally chosen for jobs or, in some cases, offered jobs but could not be finalized.

"That's about one-third of the total number of positions hiring was frozen for, so we are seeing high skilled people being held up from working at the agency," Sierra Club global climate policy director John Coequey told CNN.



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The positions impacted by the government-wide hiring freeze include more than 70 scientists and engineers in areas like the environment, physical science and life science -- and at least six law enforcement officers.

Additionally, the EPA is planning to reduce its workforce through buyouts and an early retirement program, according to an internal memo obtained by CNN. The memo also said the agency plans to continue its hiring freeze, with "very limited exceptions," even as the government-wide freeze expires. The internal memo said the agency hopes to complete the buyout program by the end of the fiscal year.

In a March budget blueprint the Trump administration proposed additional budget cuts that would significantly impact the EPA. Under it, the EPA would lose 3,200 jobs -- in addition to the number already left unfilled and lose more than 30 percent of its budget -- about \$2.6 billion. The budget also aims to eliminate funding entirely for the Great Lakes Restoration Initiative, Chesapeake Bay funding, and other regional programs.

Next step: Court

While both environmentalists and oil and gas businesses agree that the administration has so far put in a great deal of effort when it comes to laying out its environmental and energy plans, they also know getting them implemented will be a long -- and likely rocky -- road.

Several sources outlined to CNN three feuding factions within the agency: firm conservatives who want to see a more aggressive pullback of the agency's regulatory footprint; career employees, many of whom are concerned the new administration is hostile to environmental and climate concerns; and Pruitt's inner circle, who are reluctant to go along with some of the most unpopular rollbacks that are controversial even among moderate Republicans.

"Pruitt shares the ideology that excessive EPA overreach and over regulation does need to be rolled back, but he's resistant to some regulatory action for fear some of the more unpopular actions could harm his future political career," said another source close to the administration who is concerned about Pruitt's first month on the job.



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Most expect that the arguments over regulations will ultimately end up in court. Groups like the National Resources Defense Council plan to fight back through a range of tools including legal measures, legislative action and public opposition.

"As we expected, the Trump administration has launched an unprecedented set of attacks on a wide range of environmental protections on air, water and land. But in most cases, because he has been constrained by law, he hasn't actually been able to effect much so far," said David Goldston, director of government affairs at NRDC. "We think we will be able to successfully block much of what he's trying to do."

Goldston continued, "Presidents are limited by law and the law requires consistency with science and he is not in a strong position on those."

Industry leaders are equally gearing up for a legislative challenge in hopes to make permanent any of the changes that may occur under the Trump administration.

"If there's one thing everyone learned from the previous admin, if you live by executive fiat you die by executive fiat," said Christopher Guith, senior vice president of the Chamber of Commerce. "So the goal here is to not just get rid of things by the stroke of the pen like Obama created them, it's to do it in a durable way so that the next person in the oval office can't just do away with it."

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2. Prosecutors struggle to prove conspiracy in Bundy cases

The Las Vegas Review-Journal, April 29 | Jenny Wilson

Federal prosecutors throughout the West have struggled recently to win conspiracy convictions against groups of loosely organized individual rights activists who identify with an anti-government movement best known for staging armed protests on federally managed land.

The first blow for the federal government came in the fall, when Ammon and Ryan Bundy, sons of notorious anti-federalist rancher Cliven Bundy, were acquitted along with several others of charges that they conspired to intimidate employees out of doing their jobs at an Oregon national wildlife refuge.



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Then, last week, in the first test of how a Nevada jury would view the armed standoff in Bunkerville three years ago, jurors deadlocked on conspiracy charges against six men accused of helping the Bundys use force to get their cows back from authorities.

In order to prove conspiracy, the government must convince jurors that two or more people shared the same criminal objective.

Conspiring to protest

Defense attorneys in the first Bunkerville standoff trial argued that their clients were protesters who exercised their constitutional rights to freely assemble and to bear arms. Eric Parker, one of the defendants who testified at trial, told jurors: "I didn't care about the cows."

"You had an overlap of constitutional rights — First and Second Amendment rights — with the government's allegations of assault," said Las Vegas criminal defense attorney Kathleen Bliss, a former federal prosecutor who is not involved in any of the Bundy cases. "From the constitutional standpoint, to stepping over the line into a criminal purpose and agreement ... it just sounds like those lines were too blurred for the jury to make a decision that the evidence proved that beyond a reasonable doubt."

Parker testified that he drove to Bunkerville from Idaho after seeing online videos of federal agents using stun guns and police dogs against protesters. Parker's friend, Scott Drexler, said he went to Bunkerville with a "help your neighbor" mindset. Both men were photographed pointing guns at federal agents through a crack in the Jersey barrier on a highway overpass. The jury could not reach a unanimous verdict on any of the 10 counts against either man.

"The problem here is that, unlike drugs, or fraud, or really almost any federal crime you can conceive of, these are not people acting in their self-interest," Oregon defense attorney Matthew Schindler said.

Schindler represented Ken Medenbach, a man acquitted with the Bundy brothers in the fall.

"There's an element that's inherent in protest that makes the nature of proving an agreement more difficult," he said.

During the 41-day takeover of Oregon's Malheur National Wildlife Refuge in 2016, "people had all kinds of different motivations for being there," Schindler said.



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He said that in his 20 years as a criminal defense attorney, Medenbach's trial was the first conspiracy case he successfully defended. He attributed that to the fact that it was difficult for the government to prove a unified objective among protesters.

Last week's verdict, in federal court in Las Vegas, revealed that at least some of the jurors in Nevada thought the same could have been true of the April 2014 standoff near Bundy's ranch.

According to evidence highlighted at trial, some defendants were restless members of militia groups who jumped at the chance to take arms against the federal government. Others said they acted under the belief that unarmed protesters needed protection against a heavily armed police force. And Cliven Bundy himself — who is accused of recruiting militia groups when the Bureau of Land Management started rounding up his cattle — said at a morning rally before the standoff that he wanted to see his cows released, and the federal park police disarmed.

Federal prosecutors maintain that the object of the conspiracy was to extort federal agents into abandoning roughly 400 cows they seized from Bundy, who for 20 years let his cattle roam freely on public land without paying for grazing permits. The standoff ended when authorities released the cattle and left Bunkerville.

The rural-urban rift

In both Nevada and Oregon, bustling metropolitan areas sit in stark contrast to wide swaths of sparsely populated rural land. Complex economic and social factors have generated deep divisions between rural and urban communities.

The rift was apparent in last fall's presidential election, when a wave of support in rural America propelled Donald Trump to victory over Hillary Clinton, who carried the vote in cities. The lenses through which people from different areas view issues of national importance also could divide juries. In the West, federal juries tend to comprise people from both rural and urban parts of the state or district.

Bliss, who previously served as a federal prosecutor in Oklahoma and Nevada, said traditionally Western values can seep into deliberations in these sorts of politically charged trials.

"This was about individual rights. That's the core. That's the soul of the West — this whole idea of rugged individualism," she said. "And people are ready to protect that. That's why people



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moved to the West — for the spirit, and the freedom, and the open land and sky and opportunity.”

Bliss said rural Western cultures also tend to place a higher value on gun rights as a cornerstone of a free and democratic society. That line of thought often drives the sorts of loosely organized groups that responded to Bundy’s call for arms.

“A lot of these paramilitary, militia, sovereign citizen-type groups — I think for them, they seem to be more bound to guns as the linchpin of the Constitution,” she said.

Those sentiments align much better with the national political landscape than was the case in 2014 when the standoff occurred — one year after then-President Barack Obama launched an ultimately unsuccessful campaign to enact stricter federal gun laws.

Trump, in a keynote speech on Friday at the National Rifle Association’s annual convention, told the nation’s largest gun lobbying arm: “No longer will the federal government be trying to undermine your rights and freedoms as Americans.”

During jury selection, defense attorneys asked potential jurors extensive questions about their views on guns and protests, anticipating that people’s opinions on those issues could swing the case one way or another.

After five days of deliberations, jurors described themselves as “hopelessly deadlocked.” Two men were convicted of some of the counts, but not the conspiracy charges.

Federal prosecutors still have not said which, if any, men they plan to retry. The U.S. attorney’s office declined to comment for this story.

Twelve unsure people

The verdict form in the first Bunkerville standoff trial suggested confusion and indecision among jurors on the two conspiracy charges.

Jurors marked “not guilty” on the first two conspiracy counts, and then subsequently crossed out the check marks before submitting the verdict form to the court. U.S. District Judge Gloria Navarro declared a mistrial in the case on Monday, after jurors deadlocked on 50 of the 60 counts against the six men on trial.



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Jurors could not reach a unanimous verdict against any of the men on the first two conspiracy charges, but they convicted Arizona resident Gregory Burleson of eight other counts and Idaho resident Todd Engel of two. The jury hung on all 10 counts against the four other defendants.

The conspiracy charges represented the central dispute of the trial. During deliberations, jurors asked the judge multiple times to clarify her legal instructions on those two charges.

Conspiracy calls

First Oregon trial: All defendants acquitted of conspiracy.

Second Oregon trial: Split verdict; two of four defendants convicted of conspiracy.

First Bunkerville trial: Mistrial; jury hung on conspiracy charges against all defendants.

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3. Navajo Nation Exploring Wild Horse Management Plan

The Horse, May 1 | Pat Raia

In an effort to control the population of unbranded free-roaming horses competing for resources on tribal lands, the Navajo Nation announced it would consider allowing permitted hunters to harvest the animals. But, according to Gloria Tom, Navajo Nation Department of Fish and Wildlife (NNDFW) director, hunting is just one strategy the nation is investigating to manage the herds.

Tom said an independent 2016 survey underwritten by a Bureau of Indian Affairs grant revealed that about 48,000 feral horses reside on the nation's 18 million-acre reservation spanning Arizona, New Mexico, and Utah. Those horses compete with elk and deer for dwindling rangeland resources, she said.

"We've had a lot of overpopulation issues with horses," Tom said. "Forage is an issue, and water is always a concern."

Previously the nation used gathers to help stem herd growth, but the tactic was not highly successful, Tom said. Now the NNDFW has established a team charged with studying a multi-faceted approach to keeping the number of feral horses in check.



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"We're looking at direct sales, adoptions that include the vetting of prospective adopters, and an outreach and education program for our young people," Tom said. "The hunt is just one thing we're considering."

She said such a hunt would involve harvesting horses for use according to tribal custom.

"In the past we ate horses, we used their meat for medicinal purposes, and we used their hides," Tom said.

The task force is also examining how an outreach program aimed at teaching young people about the Navajo horse culture can help prevent unbranded horses from being turned out into the feral herd.

"We used horses for herding and riding, but the young people don't know the horse's role in our culture," Tom said. "This would work because ... our young people are interested in it."

While the task force ponders its options, at least one wild horse advocacy group is offering to train selected tribal members to inoculate feral mares with immunocontraceptive porcine zona pellucida. Tom said the nation is considering the assistance, so long as financial assistance is also available.

"We are open to that; it has been proposed in the past, but past the suggestion did not come with funding.," Tom said. "We need to have the funding, otherwise it's a lot for the nation's government to bear."

Simone Netherlands, president of the Salt River Wild Horse Management Group, said financial assistance could be available.

"We are working with our coalition partner the American Wild Horse Campaign and others such as the Humane Society of the United States, the American Society for the Prevention of Cruelty to Animals, and the Animal Welfare Institute to come up with a plan to help the Navajo Nation manage its wild horse humanely," Netherlands said.

Meanwhile, Tom believes the nation can effectively manage its feral horses over the long term.



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"Our herds are smaller than those managed by the Bureau of Land Management, and we have the interest of our young people," Tom said. "We can do it."

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4. **EPA: Agency scrubs climate information from website**

E & E News, May 1 | Niina Heikkinen

U.S. EPA's climate change webpage disappeared Friday just as tens of thousands of marchers prepared to descend on the nation's capital in defense of climate science.

The agency says it is changing the page to "eliminate confusion" and "reflect the agency's new direction" under the new administration. That means first changing content to reflect President Trump's "energy independence" executive order and specifically updating language about the Clean Power Plan, which the new administration is planning to roll back. EPA is also "reviewing" the past administration's language on regulations and climate change. As of Sunday, the webpage had not yet returned online.

Late Friday afternoon, people began reporting on social media that the webpage was no longer online. By the evening, the agency released a statement explaining why the page had been temporarily removed.

J.P. Freire, EPA's associate administrator of public affairs, said in an email that the timing of the website update the day before the Peoples Climate March was a coincidence.

"Our plan is to carefully review the pages to ensure a focus on a clean environment and a strong economy. It won't be overnight, but ultimately the public will be able to see the work we are doing on regulatory reform, partnering with states, and getting results for human health and the environment," he wrote.

Freire pointed out that the public can still access archived information on the Jan. 19 snapshot page. EPA said it would work to follow agency guidelines for properly archiving online content from the previous administration.



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"The book burning has commenced," said John O'Grady, president of American Federation of Government Employees Council 238, in reaction to the website change Friday. AFGE represents over 9,000 EPA employees.

"Something appears to be very wrong with this Administration's position on global climate change, and this impacts all Americans, especially the poor and marginalized," O'Grady wrote in a statement.

Meanwhile, the Twitter account Rogue EPA Staff used the website change as a call for action to preserve EPA research. Yesterday, the account tweeted out a link to thenationalgood.com, which provides a toolkit for how to advocate for climate research at the agency.

Concerns about changing content on websites have abounded since the very beginning of the new administration, when a climate change page disappeared from the White House's website on the day of Trump's inauguration.

Activists and EPA staff have been especially concerned about potential changes at EPA, which has led federal government action on climate change. Administrator Scott Pruitt has cast doubt on the causes of climate change during a television interview, even as the EPA website continued to describe human activity as the leading cause of recent global warming.

"Over the past century, human activities have released large amounts of carbon dioxide and other greenhouse gases into the atmosphere. The majority of greenhouse gases come from burning fossil fuels to produce energy, although deforestation, industrial processes and industrial practices also emit gases into the atmosphere," EPA's website read.

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5. ENERGY TRANSITIONS: Coal industry pushes market reforms to aid ailing plants

E & E News, May 1 | Benjamin Storrow

Coal interests are stepping up calls to reform competitive energy markets to better support ailing power plants.



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The move comes as coal plants struggle in the competitive wholesale power markets that cover much of the eastern United States and amid calls from the Trump administration to study the rapid retirement of aging baseload facilities.

"Numerous changes are necessary in order to create a level playing field among resources, improve market efficiency, and enhance the reliability and resilience of the electricity grid," American Coalition for Clean Coal Electricity (ACCCE) President Paul Bailey wrote in recently submitted comments to the Federal Energy Regulatory Commission.

FERC will hold a technical conference today and tomorrow to discuss generation subsidies. The gathering is being closely monitored by industry observers for clues into how wholesale power markets will tackle persistently low electricity prices and growing calls from states to support struggling nuclear and, to a lesser degree, coal facilities.

The fight over the future of legacy baseload plants has been particularly intense in the PJM Interconnection, the country's largest grid operator. Few regions have witnessed a more dramatic shift from coal to natural gas in recent years.

A Moody's analysis predicts the region will install some 20 gigawatts of new natural gas capacity by 2020, or roughly 10 percent of the grid operator's current capacity generation. At the same time, power companies have retired 121 coal units in the 13-state region and have announced plans to shutter 23 more, according to an ACCCE tally.

PJM has sought to downplay concerns over grid reliability, releasing a report late last month that said the growing reliance on natural gas and renewables did not compromise the grid's resilience.

The grid can accommodate unprecedented levels of renewables, PJM said, noting that facilities that have the ability to ramp up and down will become increasingly valuable. That counts as a strike against baseload facilities like coal and nuclear, and a positive for natural gas.

Coal interests, by contrast, say the system is becoming too reliant on natural gas. In a conference call with financial analysts Friday, FirstEnergy Corp. CEO Charles Jones said PJM's natural gas infrastructure lacks the redundancies of the traditional baseload-backed electric grid.



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"I clearly believe we are making a mistake as a country if we continue to let these fuel-secure assets close as rapidly as they are, both nuclear and fossil," Jones said.

Reforms won't move quickly

Coal represents 56 percent of the Akron, Ohio-based utility's generation mix, but the company's coal facilities have struggled to compete against natural gas in PJM's wholesale market.

The trend has caught the attention of the Trump administration. Energy Secretary Rick Perry has called for a study into how renewable energy subsidies have affected baseload generation. And in remarks to an energy summit last week, Perry suggested Washington may need to pre-empt state renewable portfolio standards, arguing that the preservation of baseload facilities is a matter of national security.

The remark prompted an immediate backlash from greens and some industry observers, who questioned the federal government's legal authority to override state energy policy.

"At the end of the day, the market is sending a signal that there is a more cost-effective way to meet our energy needs through low-cost natural gas, renewables and energy efficiency," said J.R. Tolbert, vice president of state policy at Advanced Energy Economy, a green business group. "That's how the market works."

But beyond the legal questions, there is also the matter of time. Even if PJM were to move on market reforms, they would need to come quickly, American Electric Power Co. Inc. (AEP) CEO Nicholas Akins told financial analysts last week.

"But I wouldn't bet on a lot of major changes there that would be particularly timely, particularly for nuclear and certainly for coal, as well," he said.

Atkins famously called for the re-regulation of Ohio's power sector last year, a move that would have allowed utilities to earn a guaranteed rate of return on their operations and preserved their coal fleet. AEP has since backed away from that proposal, selling most of its generation fleet in Ohio.



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Atkins told analysts that the company is now backing a legislative proposal in Columbus to guarantee financial terms for a coal-reliant subsidiary, Ohio Valley Electric Corp. The utility is also considering a second proposal to guarantee a return for investments in future generation capacity. He nonetheless stopped short of calling for full-fledged re-regulation, saying, "That went out the door when we sold generation and took the write-downs last year."

But if AEP has backed away from the idea, others have not. Bailey, in his comments to FERC, argued that re-regulation of competitive markets would ensure certainty to investors and price stability to power companies and consumers.

Ohio lawmakers are now considering a plan to provide subsidies to two FirstEnergy nuclear plants, following on the heels of similar payments granted to nuclear facilities by lawmakers in New York and Illinois. Whether such efforts would extend to coal plants remains to be seen.

FirstEnergy has also pursued the sale of its Ohio generation fleet, but Jones indicated that the company could reconsider that push based on the results of the Department of Energy study.

"If the DOE study does what I believe it should do, then we will take a pause and see how that evaluates," Jones said.

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6. **PUBLIC LANDS: ENR hearing to focus on county payment programs**

E & E News, May 1 | Scott Streater

The Senate Energy and Natural Resources Committee is scheduled this week to take up the thorny issue of helping compensate local communities with large tracts of tax-exempt public lands.

Much of the debate at tomorrow's hearing is expected to center on the popular payments-in-lieu-of-taxes (PILT) program, which for more than four decades has compensated counties with large tracts of federal lands that do not pay property taxes. The program is administered by the Interior Department.



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The PILT program has become a concern after President Trump last month released his "skinny budget" proposal that called for scaling back support for the program and only supporting it at a "reduced level" (E&E Daily, March 28).

That concerns the nearly 1,900 local governments that received \$452 million in 2016. The federal government since 1977 has paid out more than \$7.5 billion in PILT funds.

Republicans and Democrats alike do not want to see deep cuts. Last month, 34 senators, including nine Republicans, sent a [letter](#) to the chairman and ranking member of the Appropriations Committee asking them to fully fund PILT in the fiscal 2018 budget.

"Without full funding for the PILT program ... counties across the nation will be unable to provide essential services such as law enforcement, education, search and rescue, road maintenance and public health to their residents and millions of federal lands visitors," the letter read.

Another county payment program that will be discussed at the hearing is the Secure Rural Schools program, which was designed specifically to help compensate counties with large blocks of national forestlands.

The Secure Rural Schools and Community Self-Determination Act, authored in 2000 by Sen. Ron Wyden (D-Ore.) and former Sen. Larry Craig (R-Idaho), had been a financial lifeline for counties hammered in the last two decades by the loss of timber sales and logging and milling jobs.

But Congress allowed the SRS program to expire in 2015, forcing these counties to revert to a century-old law that entitles them to 25 percent of revenues from national forests — a pittance compared to SRS.

The money from the SRS program went to rural schools, roads and emergency-response programs in more than 700 counties.

Lawmakers from both parties have cheered reviving the SRS, though Republicans have long argued it should be phased out in favor of reviving timber harvests on federal forests.



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Indeed, Senate Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska) has blamed the Forest Service in the past for failing to allow enough harvest activity to support local communities without the SRS program.

Studies have shown that logging on federal lands would have to increase more than fivefold to replace the SRS program.

Sen. Maria Cantwell of Washington, the committee's ranking Democrat, has argued that the federal government needs to chip in and help rural communities through the SRS and PILT programs.

"We cannot claim to be saving money for an infrastructure package by taking away from the infrastructure funding of states," Cantwell said of both programs at a committee hearing last month. "Whether it's counties that are working to maintain or improve their schools or doing roadwork in rural communities, we need to work together to resolve these problems."

Schedule: The hearing is Tuesday, May 2, at 10 a.m. in 366 Dirksen.

Witnesses: Olivia Barton Ferriter, deputy assistant secretary for budget, finance, performance and acquisition, Interior Department; Glenn Casamassa, associate deputy chief, Forest Service; David Landis, mayor, Ketchikan Gateway Borough, Alaska; Gordon Cruickshank, county commission chairman, Valley County, Idaho; Mike Manus, county commissioner, Pend Oreille County, Wash.; Mark Haggerty, Headwaters Economics; and Mark Whitney, president, Utah Association of Counties, National Association of Counties.

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7. **NATURAL RESOURCES: Lawmakers drill into Antiquities Act in wake of Trump order**

E & E News, May 1 | Jennifer Yachnin

The House Natural Resources Subcommittee on Federal Lands is set to hold an oversight hearing tomorrow on the Antiquities Act, less than a week after President Trump ordered the Interior Department to review the status of dozens of national monuments created by his White House predecessors.



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The subcommittee, chaired by California Rep. Tom McClintock (R), will hear testimony on "Examining the Consequences of Executive Branch Overreach of the Antiquities Act."

The 1906 law allows presidents to designate federal lands as national monuments to protect areas of cultural, historic or scientific interest.

Trump signed an executive order last week directing the Interior Department to review all monuments created since 1996 that exceed 100,000 acres, or those that Secretary Ryan Zinke deems did not receive sufficient public input prior to their creation (E&E News PM, April 26).

Utah Republicans have urged the White House to examine two designations in their state in particular: the 1.35-million-acre Bears Ears National Monument, created by President Obama, and the 1.7-million-acre Grand Staircase-Escalante National Monument, created by President Clinton.

But the review could also include the Katahdin Woods and Waters National Monument in Maine. Maine Gov. Paul LePage (R) has lambasted that 88,000-acre monument's creation.

LePage indicated last week that he will be among the hearing's witnesses tomorrow.

Schedule: The hearing is Tuesday, May 2, at 10 a.m. in 1324 Longworth.

Witnesses: Maine Gov. Paul LePage (R); Utah Public Lands Policy Coordinating Office Director Kathleen Clarke; Elliotsville Plantation President Lucas St. Clair, from Portland, Maine; and Murphy Timber Investments Vice President of Resources Knox Marshall from Elma, Wash.

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8. **FEDERAL AGENCIES: Panel to consider whistleblower bills**

E & E News, May 1 | Kevin Bogardus

The House Oversight and Government Reform Committee is set to consider a raft of legislation to expand whistleblower protections in federal agencies.

Tomorrow, the panel is scheduled to mark up three bills that will bolster the federal government's whistleblower office, as well as give more court access to whistleblowers.



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On the docket is Rep. Steve Russell's (R-Okla.) [H.R. 2196](#), which would expand the Office of Special Counsel's jurisdiction to protect all whistleblower disclosures made by agency employees.

In addition, the panel will consider [H.R. 2195](#), known as the "OSC Access Act." Offered by Rep. Rod Blum (R-Iowa), the bill would give OSC access to all records to investigate allegations of wrongdoing.

The committee will also discuss [H.R. 2229](#), the "All Circuit Review Act," introduced by Rep. Elijah Cummings (D-Md.). The legislation would allow all federal appeals courts to hear whistleblower retaliation claims.

Also on the agenda is [H.R. 2227](#). Rep. Will Hurd's (R-Texas) bill would have agencies set up capital funds to modernize their information technology systems and look for cost-saving IT projects.

Schedule: The markup is Tuesday, May 2, at 10:30 a.m. in 2154 Rayburn.

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9. **CLEAN POWER PLAN: Litigation's fate still uncertain as enviros chart options**

E & E News, May 1 | Ellen M. Gilmer

A federal court's decision to pause a legal battle over U.S. EPA's Clean Power Plan has many advocates parsing the order's language and scoping for more.

The U.S. Court of Appeals for the District of Columbia Circuit on Friday agreed to temporarily freeze proceedings over President Obama's signature effort to address climate change while the Trump administration considers scrapping the rule.

Many state and industry challengers of the Clean Power Plan framed the order as a big win, but other court watchers warn that the case's fate is still far from certain.

"Far from reading this order as any sort of victory for petitioners or for EPA, I would say it is the court grappling with the consequences of: What if this case is held in abeyance?" said Sierra Club attorney Joanne Spalding, who is helping to defend the rule in court.



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Friday's order does not give Clean Power Plan foes exactly what they asked for: an indefinite hold on the case while EPA decides a path forward. Instead, the order holds the case in abeyance for 60 days and directs both sides to submit briefs this month that address whether the court should keep the case on hold or close it and remand the issue to EPA.

Hanging in the balance is an existing Supreme Court stay of the rule. The high court decided in February 2016 to freeze implementation of the Clean Power Plan while litigation plays out.

If the D.C. Circuit agrees to put the litigation on hold indefinitely, the Supreme Court stay would remain in effect during that time. If the D.C. Circuit decides to remand to EPA and close the case, the stay would be lifted, Spalding said.

"It's speculation to try and say what's going on behind the scenes and what specifically this order means," she said. "But to me, it's at least clear that the court is still considering its options and it wants additional insight from the parties."

Remand or abeyance

Environmental groups aren't thrilled at the idea of remand or indefinite abeyance, but they're likely to most strongly oppose the latter. They've already vehemently opposed a long-term hold on the case in filings to the court over the past month (Energywire, April 6).

"The problem with holding it in abeyance is that it gives [EPA] the practical effect of having ended the rule for as long as they just sit on their heels," Natural Resources Defense Council attorney David Doniger said. "And I think the reason this order is written the way it is is that the en banc panel understands the consequences of going one way or the other."

Rejecting the long-term abeyance request would mean EPA can't "hide behind" the Supreme Court stay and drag out the rulemaking process for scrapping or rewriting the regulation, he added.

Spalding noted that D.C. Circuit judges have granted abeyance in several other cases involving regulations the Trump administration is rethinking. In those cases, however, many of the rules at issue are in effect.

"If the court wanted to grant this motion for abeyance, it would have just granted it," she said. "They clearly have some concerns about that. They understand the difference between this case



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and all the other rules that they are holding the litigation in abeyance, and they're trying to figure out a solution."

While environmental intervenors are firmly against indefinite abeyance, the other option — remand — could also be a tough pill to swallow.

The parties are still weighing how to move forward, but environmental attorney Sean Donahue, who is helping to defend the rule, said it would be difficult to watch the litigation come to an end without any substantive resolution.

"The idea that you would remand it at this point after seven months-plus, that seems a gratuitous waste of resources and also a way of reopening issues that the court is poised to provide guidance on," he said.

A third option

Many Clean Power Plan supporters see a third potential option: The D.C. Circuit could still address the case's meaty legal questions.

"The terms of the ruling don't take issuing a decision off the table," Spalding said. "It's saying, 'We're thinking about remanding this rule. Tell us whether we should do that.' If it gets information where it looks like neither abeyance or remand seems satisfactory, it might just decide, 'We should just decide the case.'"

NRDC's Doniger is less optimistic. "They didn't ask us to brief three possibilities: decide, abeyance or remand," he said. "They asked us to brief two possibilities, so I think there's something of a clue in there."

Still, he added, "I don't know. Everything's unpredictable."

Indeed, the case has seen a number of unexpected twists since it began, including the Supreme Court stay, the 2016 death of Justice Antonin Scalia, the D.C. Circuit's decision to skip panel consideration and hear the case en banc last year, and the Trump administration's recent moves to unravel the regulation.

Donahue said environmental intervenors will continue pushing for answers on the legal questions at stake.



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"I don't think it's at all clear how the court is viewing this, so we'll obviously want to address the question they posed, but we'll continue to be hopeful that they would issue a merits decision," he said.

Spalding argued that critics of the regulation should be eager for a D.C. Circuit ruling themselves.

"If they have so much confidence in their claims, they should be anxious for the court to make its decision because EPA could go through a whole rulemaking and [the court] could decide that EPA doesn't have the authority," she said.

Indeed, some opponents of the Clean Power Plan have acknowledged slight disappointment about not getting a court ruling that delves into the merits.

"Speaking for myself, I have a certain sense of wistfulness about not getting a definitive judicial disposition of [the rule's] commandeering and coercion problems," said BakerHostetler attorney David Rivkin, who represents Oklahoma and argued constitutional questions at the D.C. Circuit.

"I have the utmost confidence that we would've prevailed," he added. "But the important thing is that an unconstitutional rule wouldn't remain in place."

Unanswered questions

Advocates insist there are crucial legal questions that must be answered for EPA to do its job.

Topping the list: What does EPA have the power to do? The bulk of oral arguments last year dealt with whether the Clean Power Plan exceeds the agency's authority under the Clean Air Act.

Challengers took multiple lines of attack, including an argument that EPA cannot use Section 111(d) of the act to regulate a source that has already been regulated under Section 112. States and industry had argued that the Clean Power Plan was illegal under the "Section 112 exclusion" because EPA already regulates power plants for mercury under Section 112.

Seemingly dueling versions of Clean Air Act amendments have created confusion over whether the Section 112 exclusion bars the agency from redundantly regulating a source or a pollutant, and Obama's EPA argued last year that it was entitled to deference in its interpretation.



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Some court watchers have noted that current EPA Administrator Scott Pruitt could dispose of the rule more easily by reinterpreting the Section 112 exclusion (Energywire, Feb. 10).

Richard Revesz, director of the Institute for Policy Integrity at New York University School of Law, said a D.C. Circuit ruling resolving that uncertainty would head off further courtroom wrangling over the issue.

"There is no compelling reason for the D.C. Circuit to delay facing those issues for years, with the serious negative consequences that would entail, when it is likely to already have decided them," he said, noting that the judges have probably already drafted opinions on the issue.

Rule challengers also argued last year that Obama's EPA relied on an overly broad interpretation of "best system of emission reduction" in formulating state-level goals to cut emissions from across the power sector. Previous EPA regulations focused on actions taken at individual power plants, while the Clean Power Plan looks "beyond the fence line" (Energywire, Sept. 28, 2016).

UCLA School of Law professor Ann Carlson said that same question will arise if a future administration attempts to revive the Obama administration's approach.

"So if Trump loses in 2020 to a Democrat or suddenly finds religion on climate change, it would be really helpful to know whether an approach like the Clean Power Plan is valid," she said, adding that a ruling would also guide the Trump administration in its review of the rule by clarifying whether the court thinks emissions cuts beyond power plants are the "best system" under the Clean Air Act standard.

One thing Friday's order crystallizes is that the legal battle over the Clean Power Plan is not over yet. Both sides will file briefs in two weeks, and the court will decide where to go from there. The Trump administration's ultimate efforts to pull back the rule will also face certain challenges.

"[The decision] gives EPA an early chance to demonstrate whether they will have an adequate substitute, and they'll almost certainly come up short," said Michael Gerrard, director of the Sabin Center for Climate Change Law at Columbia University. "The only thing assured by the decision is further litigation."

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10. **APPROPRIATIONS: Omnibus boosts most Interior programs but cuts LWCF**

E & E News, May 1 | Kellie Lunney

Most of the Interior Department's programs would receive more money under the fiscal 2017 omnibus funding bill lawmakers released earlier today, with one notable exception: the Land and Water Conservation Fund.

The \$1 trillion spending package would provide \$12.3 billion for Interior, \$42 million more than enacted levels, for the remaining five months of fiscal 2017, which ends Sept. 30.

The Bureau of Land Management, National Park Service and Fish and Wildlife Service all would see more money under the bill, which included few policy riders for the agencies.

But the spending package would cut the LWCF, which has broad bipartisan support and is set to expire in fiscal 2018. The bill would fund it at \$400 million, \$50 million less than the fiscal 2016 enacted level. Interior Secretary Ryan Zinke has repeatedly called for full funding for LWCF. The program briefly expired in late 2015 before Congress agreed to reauthorize it for three years as part of a \$1.15 trillion omnibus spending package for fiscal 2016.

The Trump administration's fiscal 2018 "skinny budget" would reduce land acquisition funding by more than \$120 million, seeking to use its budget to maintain existing parks, refuges and public lands. At the same time, the White House plan said it would leverage "taxpayer investment with public and private resources through wildlife conservation, historic preservation, and recreation grants."

Cameron Witten, government relations and budget specialist for the Wilderness Society, said the group was still reviewing the 2017 bill but was "pleased" that Interior's funding remained intact and that "almost all poison pill riders were removed, including riders which would have undermined the integrity of the Wilderness Act and threatened sage grouse conservation efforts."

However, Witten said the cuts for LWCF were "disappointing," adding that the public is "counting on Congress to continue to support strong funding for and protection of our public lands."

Several potential policy riders related to Interior were left out, including construction of an emergency road through the Izembek National Wildlife Refuge in Alaska, a priority for top



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appropriator Sen. Lisa Murkowski (R-Alaska), chairwoman of the Energy and Natural Resources Committee.

But the package does include a measure that maintains the current prohibition on reviewing or protecting the greater sage grouse under the Endangered Species Act.

The bill would boost the popular payment-in-lieu-of-taxes program, which requires the federal government to pay localities that have public lands within their boundaries to offset financial losses (E&E Daily, March 28). The omnibus would provide \$465 million in discretionary funding for PILT, \$13 million more than the fiscal 2016 enacted level. The \$465 million figure fully funds the program.

Here's a rundown of how natural resources agencies fare under the omnibus:

Bureau of Land Management

Appropriators settled on \$1.25 billion for BLM, a slight increase of \$15.7 million above the enacted level. That money includes increases for on-the-ground sage grouse habitat improvement activities, improved rangeland and multiple-use management, and responsible natural resource development activities, according to a summary from the Senate Appropriations Committee.

Among the highlights, the bill proposes \$67.5 million for oil and gas management — a \$7.9 million increase over enacted levels — and keeps funding for renewable energy flat at \$29 million.

It would also increase "recreation resources management," a major issue with the Trump administration, to \$53.4 million — an increase of \$2.2 million over enacted levels. It would boost overall wildlife management by \$13.9 million over enacted levels — to \$103.2 million from \$89 million.

"We're pleased to see Congress acknowledging that BLM has important functions other than just supporting the wish list of the oil and gas industry," said Nada Culver, director of the Wilderness Society's BLM Action Center. "Conserving the greater sage grouse, protecting BLM's conservation lands and supporting renewable energy development are also vital parts of the agency's mission that will continue to get needed funding under this budget."



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The bill proposes increasing funding for greater sage grouse "conservation activities" to \$68.9 million — \$8.9 million above enacted levels — and directs that the money "be used for on-the-ground conservation measures."

That's a direct reference to the ongoing BLM efforts to implement sweeping grouse conservation measures covering nearly 70 million acres of grouse habitat on federal lands in 10 Western states.

"We take the funding increase for sage grouse as a sign that Congress wants the administration to move forward with the plans as written," said Chris Saeger, executive director of the Western Values Project.

But the grouse conservation plans have been controversial, and Zinke has indicated changes could be coming soon.

The bill, as has been the case in previous spending bills, adopts a provision that none of the money in Interior's budget can be used to write a rule that would list the grouse as endangered or threatened under the Endangered Species Act, said Mark Salvo, the vice president of landscape conservation at Defenders of Wildlife.

"In other words, status quo for greater sage grouse," he said.

Parks, Fish and Wildlife, forests

NPS would get \$2.91 billion under the omnibus, \$81 million more than current levels. That figure includes money for its construction and maintenance backlog, as well as new park units created by the 2015 National Defense Authorization Act.

The package also would provide \$77 million for Centennial Initiative programs, to celebrate the Park's Service 100th anniversary, as well as \$13.5 million for competitive grants to preserve the sites and stories of the Civil Rights Movement.

Appropriators also specifically directed Interior to report to Congress on NPS efforts to combat and prevent workplace harassment. "The committees believe all federal employees have the right to a harassment-free workplace and continue to be deeply concerned about reports of harassment and hostile work environments at some of the agencies funded through this Act, especially the



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long-term pattern of unacceptable behavior at several national park system units," the committee report on the omnibus said.

The package would provide \$1.52 billion for FWS, \$11 million above current spending levels, which includes funding for the North American Wetlands Conservation Act as well as money to maintain fish hatcheries. The money is prioritized "to reduce the endangered species delisting backlog and maintenance backlog, to fight invasive species, to prevent illegal wildlife trafficking, and to prevent the closure of fish hatcheries," House GOP appropriators said in a summary statement.

The Forest Service would receive \$5.6 billion for the rest of fiscal 2017. The legislation proposes an additional \$25 million for hazardous fuels management, such as downed trees and brush, in the national forests. It would fully fund the 10-year average of wildland fire costs. Total funding for wildland fire management and prevention would be \$4.2 billion.

"The bill also includes a provision prohibiting the Forest Service or BLM from issuing new closures of public lands to hunting and recreational shooting, except in the case of public safety, and a provision prohibiting the Department of Interior from administratively creating new wilderness areas," said a summary from the House Appropriations Committee. "The bill includes several reforms to the Forest Service's accounting, budgeting, and management practices to improve transparency and accountability."

The Agriculture Department's Natural Resources Conservation Service would see an increase of \$864 million, even as overall discretionary spending for agriculture would fall by \$623 million to \$20.9 billion for the fiscal year. The omnibus would boost funding by \$10 million for written conservation plans and program delivery for USDA's conservation technical assistance.

Office of Surface Mining, USGS

The omnibus would fund the Office of Surface Mining Reclamation and Enforcement at \$253 million, roughly the same as the fiscal 2016 enacted level. That total includes \$105 million to continue a pilot program to accelerate the reclamation of abandoned mine lands. Republicans have sought to cut agency funding amid the mining downturn.

"The legislation also continues state regulatory grants at \$68 million, and rejects the president's proposal to impose additional and duplicative federal oversight over the program," said a summary from the House Appropriations Committee majority.



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The U.S. Geological Survey would receive a \$23 million boost in the omnibus.

The federal science agency would see \$1.1 billion, funding its natural hazard program, mapping, and stream gauge and groundwater monitoring networks.

The bill also would set aside \$10 million for an earthquake early warning system and fully fund USGS's satellite program providing land-use data for agriculture, forestry, energy and water resource management.

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11. **SUPREME COURT: Justices take up Interior land fight, decline polar bear case**

E & E News, May 1 | Amanda Reilly

The Supreme Court today agreed to take another look at a long-running dispute between a landowner and the Interior Department over a 147-acre tract in Michigan that the government is holding in trust for a native tribe.

David Patchak, who lives 3 miles from the disputed property in Wayland Township, Mich., brought the [petition](#) to the Supreme Court. He has long argued that he would be harmed by the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians' plans to build a casino on the site.

This is the second time the case has made its way up to the high court. In 2012, the Supreme Court ruled that Patchak could proceed with his claims and sent the case back to the district court. Since then, however, Congress passed a law requiring courts to dismiss pending litigation over the plot of land.

Patchak had asked the Supreme Court to review the constitutionality of the law, arguing that it violated both the separation of powers in the Constitution and his due process rights. The court today granted review of Patchak's claims that the law posed separation of powers concerns.

While granting the Patchak case, justices today declined to review the Obama administration's critical habitat for the polar bear and to take up a case involving Clean Water Act permit violations. It takes the votes of four justices for the Supreme Court to hear a case.



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The land-in-trust case has a complex history. The Interior Department recognized the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians — also known as the Gun Lake Tribe — in 1998. On April 18, 2005, the Interior Department invoked authority under the Indian Reorganization Act to take the 147-acre plot of land in trust for the tribe.

Patchak sued in 2008 in the U.S. District Court for the District of Columbia, asserting that the acquisition of the property wasn't authorized under the Indian Reorganization Act because the tribe was not recognized when the law was enacted in 1934.

While the case was pending, the Supreme Court ruled in a separate case that the Indian Reorganization Act does, in fact, limit Interior's authority to taking land into trust for tribes that were under federal jurisdiction in 1934.

The D.C. district court, however, never applied that ruling to Patchak's claims, instead finding that he lacked legal standing to sue.

Patchak appealed that ruling, and the Supreme Court in 2012 found that his claim could proceed over the federal government's objections that permitting such suits would create significant barriers to tribes' ability to promote investment and economic development on their lands taken into trust.

Michigan lawmakers stepped in, and in 2014 Congress passed the Gun Lake Trust Land Reaffirmation Act, which said any pending or future cases related to the property at issue "shall be promptly dismissed." The courts followed the direction and dismissed Patchak's claims.

Patchak took his case to the Supreme Court again in November, arguing in a petition that the 2014 law stripped him of the right to sue even though the high court previously said his case could proceed.

"It is difficult to imagine a more direct invasion of the judicial power than occurred here," he said.

The law "sets a dangerous precedent" by allowing Congress "to encroach upon and exercise powers reserved for the judiciary," Patchak said.

If the law were upheld, he warned, there would be no limit on Congress' ability to effectively review and eliminate legal decisions "it finds inconvenient or with which it disagrees."



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At first, the federal government declined to respond to the suit in the Supreme Court, but justices requested a response from the Justice Department in a signal of their interest in the case.

In a March brief, the Trump administration urged the court to decline the petition.

Congress, DOJ argued, has broad power to define and limit the jurisdiction of federal courts. There's "nothing inherently suspect" in what Congress did in this case, DOJ attorneys said.

The Gun Lake Act "is a statute of limited reach and does not present a question of nationwide importance," the government unsuccessfully argued.

Polar bear, water permit cases

Justices today declined requests by Alaska and oil and gas interests to review the Obama administration's critical habitat designation for the polar bear.

In 2010, the Fish and Wildlife Service designated a 187,000-square-mile area as critical habitat for the endangered species. That habitat was made up of three units — sea ice, dens on land and barrier island territory — with sea ice making up nearly 96 percent of the total area.

The 9th U.S. Circuit Court of Appeals in February 2016 unanimously upheld the designation, reversing a lower-court ruling that threw out the rule (E&E News PM, Feb. 29, 2016).

The state of Alaska, the Alaska Oil and Gas Association, and the American Petroleum Institute each petitioned the Supreme Court to review the 9th Circuit ruling. They argued that the designation was unjustifiably large and would pose burdensome costs.

In March, Trump's Justice Department had asked the Supreme Court to take a pass on the case. The administration argued that the basis for the Supreme Court petition was faulty and that the case might become irrelevant given legal battles over a suite of controversial changes the Obama administration made in February 2016 to critical habitat rules (Greenwire, March 29).

Justices today also declined to review a landowner's citizen enforcement claims under the Clean Water Act. The landowner, Louis Paolino, alleged that stormwater runoff from a neighboring lot was contaminating his property in Rhode Island and that the neighboring lot lacked a valid water discharge permit.



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Among the legal questions the Supreme Court petition posed was whether a facility violated the Clean Water Act by operating under a discharge permit that was issued to the landowners but not to the operator of the facility itself.

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12. **COAL: Omnibus would trim regulatory agencies, boost research**

E & E News, May 1 | Dylan Brown and Christa Marshall

The omnibus government funding deal unveiled overnight would trim mining regulatory agencies but boost funding for coal power research and keep some existing policy riders.

The federal Office of Surface Mining Reclamation and Enforcement, the country's top coal mining overseer, would receive more than \$121 million for regulation and technology, a slight decrease from previous years.

The omnibus, however, would maintain \$68 million for regulatory grants. The Obama administration repeatedly sought to cut them but encountered strong resistance from states.

Lawmakers are proposing not only to continue funding the \$90 million coal mine reclamation and economic development pilot program, but to increase funding to \$105 million.

The Abandoned Mine Lands Economic Revitalization effort uses Treasury money to speed up cleanups with a stated goal of stimulating growth in places where the recent coal industry downturn has hit hardest, namely Appalachia (Greenwire, Aug. 5, 2016).

The omnibus does tweak the program formula. Last year, Congress gave \$90 million to three Appalachian states with the most outstanding AML work — Pennsylvania, West Virginia and Kentucky.

This year, those states would split \$75 million equally among them, while the next three neediest states — Virginia, Ohio and Alabama — would divide \$30 million.

'Declining need'



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The omnibus would also, much like OSMRE, trim spending at the Department of Labor's Mine Safety and Health Administration, which saw increases after the 2010 Upper Big Branch explosion.

MSHA, which received \$376 million in each of the last two years, would see funding drop to \$373.8 million in fiscal 2017, far less than the \$397 million requested by the Obama administration.

"The funding level reflects the declining need for various MSHA activities because of decreased mining across the country," the House Appropriations Committee GOP majority stated.

Under the omnibus, \$2 million would be reserved for mine rescue and recovery activities, and not less than \$10.5 million would be set aside for state assistance grants.

The bill would allow coal operators that "demonstrate financial need" to use funds to purchase and maintain new monitoring equipment that miners must wear as required by 2014 regulations aiming to reduce coal dust exposure.

Separately, the omnibus would set aside \$20 million to help retrain laid-off coal miners and coal-fired power plant workers for new jobs.

The funding, authorized under the Workforce Innovation and Opportunity Act, mirrors a bipartisan House bill, [H.R. 663](#) (E&E News PM, Jan. 25).

'Transformational' technologies

The omnibus would keep much of the Department of Energy's funding intact for the Office of Fossil Energy, the main federal arm supporting carbon capture and sequestration research.

In a memo last month, the Trump administration called for cutting the office's funding by more than \$340 million, or more than half of its budget, for the remainder of the fiscal year.

Instead, the omnibus would actually increase funding for the overall fossil energy office from \$632 million to \$668 million for fiscal 2017. Within that, funding for CCS specifically would largely match levels from fiscal 2016 and surpass \$420 million.



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The deal would also support roughly equivalent funding at the National Energy Technology Laboratory for coal research and development.

The package includes \$50 million for a new solicitation for two large-scale pilots focusing on "transformational" coal technologies that can improve plant performance, efficiency and the cost of electricity. That could include efforts that help capture CO₂ from coal generators, like chemical looping, according to the text.

The legislation would also grant \$6 million for engineering and design work on retrofitting an existing coal-fired plant with CO₂-grabbing equipment at commercial scale.

It further requests that DOE give the Appropriations committees a cost estimate of needed funds to "fully retrofit" such a coal generator.

Riders, other agencies

Congress also disregarded President Trump's idea to eliminate several agencies that disproportionately help regions where he promised a coal renaissance.

The Appalachian Regional Commission and the Economic Development Administration would actually see funding increase under the omnibus.

Funding for the independent commission would increase from \$146 million last year to \$152 million, with the additional money funding infrastructure improvements in distressed counties in central Appalachia.

The Department of Commerce's EDA would receive an additional \$15 million, bringing the total available for grants to "help to boost economically recovering communities" to \$276 million.

Elsewhere, in the U.S. EPA section of the bill, lawmakers included a legislative provision to impose "a reporting requirement on the backlog of mining permits awaiting approval."

And they reiterated a prohibition on changing the definition of fill material under the Clean Water Act, which could restrict mining activities.



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The omnibus would maintain Congress' override of Obama-era restrictions on investment in coal projects abroad by the Overseas Private Investment Corp., the Export-Import Bank of the United States and the World Bank.

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13. **CLIMATE: In blow to Trump admin, judge wants kids' case in lower court**

E & E News, May 1 | Amanda Reilly

A federal judge today recommended rejecting the Trump administration's bid to have a federal appeals court step into a climate change case brought by youth plaintiffs before the district court even holds a trial.

Allowing the 9th U.S. Circuit Court of Appeals to enter the case at this point would "put the cart before the horse," said Magistrate Judge Thomas Coffin of the U.S. District Court for the District of Oregon.

"The current posture of the case is such that any appeal would be premature," Coffin wrote in a 16-page [court document](#) outlining his findings.

Aided by the group Our Children's Trust, 21 youth plaintiffs brought the lawsuit against the federal government over its alleged role in causing and enhancing the danger of climate change. The lawsuit alleges that federal agencies have known for five decades that burning fossil fuels would disrupt the climate system, harming future generations.

In November, Oregon U.S. District Court Judge Ann Aiken, a Clinton appointee, rejected motions by the government and industry groups to dismiss the children's claims. Her order affirmed an earlier decision by Coffin to greenlight the case (Greenwire, Nov. 11, 2016).

Coffin's findings now will go to Aiken. Parties have 14 days to formally object to the recommendation.

The lawsuit was initially brought against the Obama administration, but — as with all pending litigation against the government — it now names the Trump administration as defendant.

In March, the Justice Department filed a motion for the district court to certify the November order, a step toward appealing the order in the 9th Circuit.



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The 9th Circuit, DOJ argued, should be allowed to weigh in on "controversial" issues, specifically the issue of legal standing and whether the children stated viable claims under the Due Process Clause and the public trust doctrine.

DOJ also pointed to the likely "burden" of pre-trial discovery activities, including depositions of federal witnesses, if the case does move forward.

An appeal in the 9th Circuit, DOJ said, "could avoid litigation that is unprecedented in its scope and in its potential to be protracted, expensive, and disruptive to the continuing operation of the United States government" (E&E News PM, March 9).

In his recommendation today, Coffin noted that requests for appeal of non-final court orders are reserved for "exceedingly rare circumstances."

He rejected all of the government's arguments, as well as those raised by intervening industry groups, for moving forward with an appeal now.

The discovery and trial proceedings that DOJ and industry are seeking to avoid should be completed before any appeal goes forward, Coffin wrote.

As the case stands now, Coffin wrote that the government seeks to bring "a hypothetical question to the court of appeals bereft of any factual record or any record at all beyond the pleadings."

A trial would answer such factual questions as "is climate change occurring" and "if so, to what extent is it being caused by fossil fuel production?" he said.

Coffin also found that the youth plaintiffs had raised arguments that form appropriate grounds for a lawsuit.

"If anything," Coffin also wrote, the children's due process claim has been "enhanced" since the November order because the government has since "admitted that human-induced climate change threatens the public health and welfare of current and future generations."

Coffin also wrote that the plaintiffs could bring their claims under the public trust doctrine, which states that resources should be preserved for public use. DOJ had argued that the doctrine has never been applied in such a way to the federal government.



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"The implications of this forsaking of a federal public trust doctrine by the government are staggering," Coffin wrote.

Coffin also slammed industry's argument that the topic of "climate change" is a political issue that doesn't belong in the courts. The National Association of Manufacturers, American Fuel & Petrochemical Manufacturers and American Petroleum Institute have intervened in the case on behalf of the government.

Whether climate change is occurring, Coffin wrote, is "quintessentially" a scientific subject, "not solely political debate." The judiciary branch, he said, is "well-suited" for resolving factual disputes.

Coffin likewise rejected the industry argument that a ruling in the children's favor would be disrespectful of the steps that the executive and legislative branches have taken to address climate change.

That argument is an "unprecedented effort" to "prevent a court from determining whether the federal government has violated a plaintiff's constitutional rights so long as the government has taken some steps to address the damage," Coffin said.

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14. **INTERIOR: Zinke creates energy policy post for former PAC treasurer**

E & E News, May 1 | Corbin Hiar

Interior Secretary Ryan Zinke this afternoon appointed the treasurer of his former political action committee and a George W. Bush-era Energy Department veteran to a newly created energy advisory post.

Vincent DeVito will serve as counselor to the former Montana congressman on energy policy, a role Zinke established in a secretarial order that he signed as part of a speech at the Offshore Technology Conference in Houston.

A second, related order that Zinke signed there contains instructions for implementing the executive order President Trump issued Friday that reversed a ban on drilling in much of the Arctic (Greenwire, April 28).



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DeVito's role at Interior will consist of advising the secretary and his deputy, chief of staff and assistant secretaries on all aspects of energy policy and ensuring policy coordination among the nine bureaus with energy responsibilities within the department.

"Like President Trump and myself, Mr. DeVito recognizes that American energy resources create jobs and revenue and that we can both promote responsible energy development and protect traditional multiple use through responsible stewardship of our treasured public lands for future generations to come," Zinke said in a statement.

The incoming counselor is currently a partner at the Massachusetts-based law firm Bowditch & Dewey LLP.

DeVito "represents utilities, corporations, investors and entrepreneurs in the energy, power generation and technology sectors in the United States and abroad," his Bowditch & Dewey [profile](#) says. "He is experienced in issues involving energy development and corporate governance, disclosure, and compliance matters."

During the 2016 election cycle, DeVito was the treasurer of two Republican political action committees: Zinke's Supporting Electing American Leaders PAC, the acronym of which is a nod to his time as a Navy SEAL, and former Massachusetts Sen. Scott Brown's (R) New Hampshire for Scott Brown PAC.

Prior to joining Bowditch & Dewey, DeVito spent four years during the Bush administration at DOE working on issues related to climate change, renewable energy and clean energy technologies, according to his profile on the social networking site LinkedIn. He served as acting assistant secretary for both policy and international affairs and held a variety of other top positions. He also has experience working as a state energy regulator in Massachusetts.

DeVito is the second person Zinke has hired to a top policy position at Interior who worked on his previous campaigns. Last month, he appointed his former campaign manager to the second-highest job at the Bureau of Reclamation (E&E News PM, April 20).

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15. **As coal burns out, the race for natural gas is on**

The Washington Examiner, May 1 | John Siciliano

Appalachian coal country may have helped President Trump win the Oval Office, but it's not clear whether coal will have much to do with winning the future of the region.

Economic developers in the region are instead betting on natural gas as the primary driver of the energy economy in Pennsylvania, Ohio, Kentucky and West Virginia.

Even former regional coal companies, such as Consol Energy, have sold off their mining assets to focus on natural gas, as the trend toward fracked natural gas doesn't appear to be wavering.

"Consol is actually a good example of the shift away from coal to natural gas," said Laura Fisher, senior vice president of workforce development for the Allegheny Conference on Community Development, a large business development group focused on the economic longevity of the region that has everything to do with fracking and little to do with mining.

The company celebrated its 150th anniversary last year, said Fisher, noting that until very recently it had been a coal company since its inception. "It is now a majority natural gas company. It still has some coal assets, but most of them have been sold," she said.

As a large Southwest Pennsylvania-based company, Consol shifted its business model from one based on coal mining in the Pennsylvania-Ohio-West Virginia tri-state region to one in which natural gas is the fuel of choice. It still operates one of two coal export terminals on the East Coast, but other than that there are few remnants of its coal mining past, as it has become a major player in the Marcellus Shale region that stretches from Eastern Ohio, through Pennsylvania, to New York.

"Coal is still part of the mix, and we anticipate that it will be," Fisher explained. "But we anticipate the natural gas between the Marcellus and Utica [shale regions] is so prolific that it really dwarfs other energy sources. And what we've really been putting our attention to is harnessing that resource."

The federal government has a similar take on the future of the region. Although it may not specifically have natural gas in mind, it does support the industries that natural gas is fixed to spawn.



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Washington still supports coal communities, but the focus has been on transitioning the workforce from coal to something else under the POWER Initiative established under the Obama administration. The POWER Initiative continues to function, even as Trump looks to roll back regulations on the coal industry to help boost employment, which the administration blames on Obama's "war on coal."

Meanwhile, Fisher's group, which represents 10 counties in Southwestern Pennsylvania, formed a collaborative with West Virginia and Ohio to focus on developing shale, she said.

The large oil and gas company, Chevron, is a partner with Fisher's group to catalyze the workforce required to go hand-in-hand with that development.

Chevron, which owns drilling assets in the fracking fields of Pennsylvania, is also working to improve the skills it sees as beneficial to the energy industry in the states, as well as the new manufacturing and technology jobs that the fracking boom is attracting to the region.

Trip Oliver, the company's head of policy for the Appalachian region, explained that Chevron acquired a company called Atlas Energy just over six years ago, which began its foray into the Marcellus and Utica shale areas of Pennsylvania, Ohio and West Virginia.

Oliver said they are supportive of the federal government's getting involved, but they also feel "it's important for a private company, for business, to take leadership role in this region."

He said that was the one message they heard consistently from regional groups "is that we really need a corporation to step up and really put their name behind a major initiative here in order to address this challenge that we have regionally with the technical skills in the workforce."

Chevron is acting to be a "catalyst for change," he said.

Surviving bankruptcy

Many of the nation's coal producers, both in the East and the West, have been undergoing major debt restructuring due to a downturn in demand for coal and legacy costs. Peabody Energy, one of the largest coal firms worldwide, recently emerged from bankruptcy along with other companies, and some hiring of miners is occurring.

But analysts see that as most likely short-lived.



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"I'm not sure that's an intelligent thing for the coal companies to do, and I'm not sure if those jobs are stable, but it looks like they're there," said Tom Sanzillo, director of finance at the Institute for Energy Economics and Financial Analysis, which seeks a diverse energy economy. "So, there may be some new employment there. But the growth in the energy sector are natural gas, wind and solar."

The Energy Information Administration, the Energy Department's independent analysis arm, projects coal mining to increase around 3 percent this year and next, primarily in response to natural gas prices rising. At the same time, federal data has consistently showed wind energy has added more turbines to the grid than any other energy resource. For the first time in history, wind surpassed hydropower as the nation's leading form of renewable energy.

The wind energy industry isn't letting that fact go by the wayside. Officials with the American Wind Energy Industry, the industry's lead trade group, is quick to tout that it is one of the only parts of the energy industry, outside of natural gas, which is actually growing jobs in coal country, pointing out that Ohio has become a key hub for wind energy components manufacturing in the country.

As for coal, in the "very best case" scenario, "the demand will remain flat for a long time," Sanzillo said. "And in the more likely case, we're going to see a steady decline. And that's a function of natural gas prices remaining low. It's a function of wind and solar energy taking competitive positions away from coal in several areas around the country."

Coal plant retirements

On top of waning demand for coal, coal power plants are retiring, Sanzillo and many others point out.

Sanzillo's group and other research firms have issued briefs in recent weeks detailing coal plant closures this year, with the prospect of being replaced by natural gas power plants.

"They may do a little better this year. Natural gas prices are a little higher. And they are coming out of bankruptcies," Sanzillo said. But the question remains: "Is the price of coal they can get on the market sufficient to cover operating expenses, reinvestment and profit? And the answer is no."



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He explained that prices have come back somewhat for coal, but they are insufficient to meet those three fundamental objectives of any industry. Simply put, there are "too many companies, mining too much coal, with too few customers. In the U.S. and it's also worldwide," he said.

The president's strategy is focused on eliminating environmental regulations without examining the market. "Are the elimination of those regulations going to be sufficient to induce utilities to invest in new coal plants? The answer is no," Sanzillo said. The principal factor is profitability amid increased competitiveness from natural gas and wind, he said.

Low fuel prices dictate what utilities build, what the state commissions that regulate the utilities will allow to be built, and what resources dominate the large restructured markets that the government oversees.

A recent brief by the institute showed 46 coal plants are either slated to be closed or refurbished to burn natural gas through 2018.

The decline in demand is expected to have ripple effects on mining firms from Utah to Appalachia. Many of the plants looking to retire extend from West Virginia, Kentucky, and through the Tennessee Valley. The plant closures listed in the report represent a conservative estimate, excluding some plant closures in Ohio and Texas.

"Our analysis is conservative in that it considers only those plants and units seen either certain or all but certain to close by the end of 2018," read the brief. It also excludes the closure of the Navajo Generating Station in Arizona, which is the largest coal-fired power plant in the country. The Trump administration is in talks with the power plant's owners and the tribes that lease the land it sits on to find a way to extend its life. The plant's owners blame the market, and low natural gas prices for the power plant's decline.

The brief explained that the shift away from coal is "likely to continue as intense cost competition from renewables and natural gas continues."

Bill Johnson, the CEO of the largest public utility in the country, the Tennessee Valley Authority, said coal plants it chose to close are not going to reopen under Trump. The authority operates as an independent nonprofit utility, but is essentially federally owned as a Depression-era solution to supplying poor, rural communities with electricity and light.



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"Our statutory duty is to produce electricity at the lowest feasible rate," Johnson told the Associated Press in a recent interview. "And when we decided to close the [five] coal plants, that was the math we were doing," he said, adding that it had nothing to do with President Obama's climate change agenda or regulations.

"We weren't trying to comply with the Clean Power Plan or anything else. What's the cheapest way to serve the customer? It turned out to be retiring those coal plants."

Johnson acknowledged that Trump could seek to reverse the agency's choices in the budget. He said there have been no talks with the administration over the authority's direction.

North Carolina-based Duke Energy, once one of the largest coal utilities in the country, said last month that it can no longer support using higher amounts of coal, despite Trump's push to revive the industry.

"We have to look through the changes of administration, the changes in politics and set our vision on where we want our company to be and what strategy we are pursuing," said CEO Lynn Good at a gathering last month. "So when I think about administrations, the only person running Duke Energy for 2025, 2030 and 2035 is Duke Energy," Good said.

She explained that the economics of using coal are "really challenged" and that the company's focus should be on maintaining the current fleet of power plants, which includes 11 nuclear reactors along with new natural gas power plants. Much of the utility's coal fleet is being transitioned from coal to natural gas. Based on 2016 figures, the company has closed about half of its coal-fired power plants in just its home state alone. It functions across much of Appalachia.

The Gulf of Appalachia

Fisher, of the Allegheny Conference on Community Development, said the effort is meant to attract new businesses to the region, including the petrochemical industry and a new investment by Shell to build a "cracker" facility in Beaver County, Pa., to turn natural gas into high-value chemicals used in manufacturing. Crackers are the principal part of a refinery used to separate a range of different products from both natural gas or ethane. At an oil refinery, it's the device that is able to produce gasoline and diesel from the same barrel of crude.



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Polymer and plastics are other industries the region wants to attract, as well as a range of chemical companies that are always looking for cheap supplies of natural gas and its liquid derivative, ethane. It is attracting investment as far away as Thailand, Fisher said.

"It's an ethane cracker from a Thailand company [called PTT] looking to set up in Eastern Ohio," said Chris Ziegler, executive director for the American Petroleum Institute's Ohio branch. "That's what's needed here in the state or in this Appalachian Basin," he added, saying new natural gas refining facilities would create more demand for the vast quantities of ethane that exist in Ohio.

Fisher and the Allegheny Conference want nothing less than the tri-state region to become like the states along the Gulf Coast where the oil and gas industry is very mature.

She still sees coal having a role in the energy future of the region, but primarily through investments in research and development at the National Energy Technology Laboratory in West Virginia and the federal lab's hub in Pittsburgh, which is the principal federal research center for fossil fuel advancement. Fisher sees the quest to make clean coal technologies commercial as the future of the region's coal industry.

Grid battles

At the same time, merchant companies continue to take advantage of the low-cost natural gas being produced in the region in deciding to build new efficient natural gas-fired power plants in the states, Ziegler said. Approximately 10,000 megawatts of new gas capacity is slated to come online this year and next, he said. A typical coal plant produces roughly 550 MW of electricity at full capacity. That amount does not count plans by individual utilities to transition coal to gas in the state.

At the same time, the oil and gas industry is fighting utility companies whose nuclear power plants have become uncompetitive due to the abundance and low cost of natural gas. The American Petroleum Institute, which represents the oil and gas industry, doesn't want state legislatures to approve subsidies for ailing nuclear plants, which will end up tacking fees onto consumer's energy bills, said Ziegler, who is fighting such an effort in Ohio.

The same position would likely be taken by natural gas interests if coal plant owners tried to do something similar. API and others want the market to dictate the generation mix, not artificial incentives.



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The coal industry group American Coalition for Clean Coal Electricity is also responding to the high penetration of natural gas in the region. It has begun making the argument that coal plants should be valued for the added resilience they provide to the grid and that natural gas plants have their limitations.

The coal group made the argument in a letter in response to the grid operator for the region, PJM Interconnection, saying natural gas could provide up to 86 percent of the power grid's needs.

"PJM flat out said increased natural gas generation will not hurt regulatory reliability at all," said Ziegler. "Our response would be let the market determine the best generation for a state, a region, whatever it may be," he added.

"Time and time again, consumers, especially here in Ohio, have been asked to prop up generation assets, or other folks in the utility industry, to the detriment of consumer bills ... [and] with no apparent benefit," Ziegler said.

That fight is also occurring in the courts as natural gas power generators sue New York for implementing billions of dollars in incentives to keep nuclear power plants afloat.

The issue is also being reviewed in Washington by the Federal Energy Regulatory Commission. "However, as you know, FERC presently lacks a quorum to act on this or other contested matters," said John Shelk, president of the Electric Power Supply Association, representing the natural gas power companies. The federal agency, which regulates both the electric grid and the interstate natural gas industry, lacks at least three commissioners to be able to make decisions and rules.

Shelk said the coal group's proposal is interesting, but he said the devil would be in the details. "On resilience, depends how they do it," he said. "PJM is looking at options, and per the Federal Power Act, anything has to be on a nondiscriminatory basis," Shelk said. "If it isn't fuel-neutral — meaning define needed attributes and let everyone compete — we would have concerns."

Shelk noted that while most his members' assets are gas, "we have significant nuclear, coal and renewables too — so we look at these things across fuels."

Trump has not appointed new nominees in the months since FERC was forced to put in place emergency orders placing senior staff in charge of its day-to-day operations, while shelving major decisions.



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Shelk said all of the contested issues will be "central to the FERC technical conference May 1-2 on the interrelationships between federal regulation of wholesale markets and state actions such as the ... nuclear subsidies." Technical conferences are for information-gathering, although in the past they have been used as a backdrop to vet future decisions. With the lack of the quorum, commissioners will likely observe, but engagement on the issues and discussion of future decisions will be limited.

Perry's grid gambit

Also at the federal level, Energy Secretary Rick Perry is conducting his own review of the grid that seems to track with the coal industry's desire to see its power plants deemed a necessary part of the power system to make it more resilient.

A number of groups and sectors are seeking ways to influence and keep tabs on Perry's analysis, although it is not clear how they will be doing that.

Perry said in a memo to senior staff last month that experts have "highlighted the diminishing diversity of our nation's electric generation mix and what that could mean for baseload power and grid resilience." Baseload power plants are able to provide electricity around the clock, with limited interruptions. In contrast, wind and solar power are deemed intermittent because they are unable to provide electricity without interruption in a single 24-hour period.

The 60-day review would look at how changes in the baseload power supply are changing and affecting resilience and reliability. He named coal, natural gas, hydropower and nuclear as baseload power plants, excluding solar and wind as intermittent resources.

Coal state lawmakers praised Perry's effort, which they see as part of Trump's push to keep coal a vital part of the electricity grid while also supporting natural gas and renewables that are growing in states such as West Virginia. Sen. Shelley Moore Capito, R-W.Va., a Trump advocate, did her best to appear fuel-neutral when responding to Perry's memo.

"If we are going to have affordable, reliable energy that powers our economy and advances our quality of life, we must maintain an adequate supply of base load electricity that is always available when it is needed," Capito said in a statement. "There is a role for multiple energy sources, including our own West Virginia coal and natural gas, as well as nuclear and renewables.



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"But there is a clear difference between intermittent energy sources and base load power," she said. "A diversity in fuel sources and technologies is essential for a reliable and properly functioning electric grid."

Wind industry advocates plan to respond formally to the Perry study, especially the fact that Perry's memo does not acknowledge the benefits of their industry to the grid. Now more than ever, wind energy possesses the attributes to be considered something akin to baseload power, according to senior wind energy officials.

"We hope that in the course of doing this study that the Department of Energy goes out and talks to the utilities and other grid operators who are reliably operating the power system with large amounts of wind and solar energy today," said Michael Goggin, senior director of research at the American Wind Energy Association.

The grid operator in Perry's home state of Texas, he pointed out, is a great example of how to successfully integrate wind on a massive scale. PJM and the Southwest Power Pool that run the markets under FERC are all integrating high amounts of wind while also running conventional power plants, he added.

"We think that markets are working, and we think wind is making really valuable contributions to electric reliability," Goggin said. "And that's one of the most interesting things here," he said, referring to Perry's memo. "We think there are some out-of-date notions about the abilities of wind and solar to provide grid reliability services."

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