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From: Sutherland, Ryan
Sent: 2017-03-29T18:25:49-04:00
Importance: Normal
Subject: Daily News Report - March 29
Received: 2017-03-29T18:26:02-04:00
[Daily News Report March 29.docx](#)

Attached is the daily news report for March 29.

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DAILY NEWS REPORT - UTAH

UTAH – TOP STORIES – MARCH 29, 2017

1. **Judge puts hold on Indian Creek ATV trail in Bears Ears NM borders**

The San Juan Record, March 28 | Staff Writer

A 6.4 mile loop trail for ATV use in Indian Creek Canyon is threatened after a ruling by a federal judge.

2. **Herbert: Trump's rollback of Clean Power Plan step in the right direction**

KSL News, March 28 | Amy Joi O'Donoghue

SALT LAKE CITY — President Donald Trump signed the Energy Independence Executive Order Tuesday, rolling back the controversial Clean Power Plan and killing a three-year moratorium on federal coal leases.

3. **Kanarraville Falls trail closing for 3 days**

ABC 4 News, March 29 | Kierra Dotson

KANARRAVILLE, Utah (ABC4 Utah)- Attention hikers! If you're planning on hitting the Kanarra Falls trail next week...well...plan again.

4. **NATIONAL MONUMENTS: Legal experts argue Trump has power to abolish sites**

E & E News, March 29 | Jennifer Yachnin

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E&E/NATIONAL NEWS – TOP STORIES

1. **Will The Trump Administration Spur US Oil & Gas Development?**

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2. **BORDER WALL: 'Electronic measures' might be best in some areas — Zinke**

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Interior Secretary Ryan Zinke endorsed President Trump's plans for building a wall along the U.S.-Mexico border but cautioned that in some areas — such as the rugged terrain along the Rio Grande — "electronic measures" will be more appropriate than a physical barrier.

3. **SENATE: Committee to vote on major energy, land bills**

E & E News, March 29 | Christa Marshall and Kellie Lunney

The Energy and Natural Resources Committee has scheduled a markup on numerous energy and public land bills, including a package from Sens. Rob Portman (R-Ohio) and Jeanne Shaheen (D-N.H.) to overhaul energy efficiency policies across multiple federal agencies.

4. **ENDANGERED SPECIES: Court rebuffs landowners, restores prairie dog protection**

E & E News, March 29 | Amanda Reilly

A federal appeals court today restored a federal prohibition on harming the Utah prairie dog on private property in a closely watched case on the constitutional limits of the Endangered Species Act.

5. **ENERGY POLICY: Zinke ends coal ban, creates panel to review royalties**

E & E News, March 29 | Dylan Brown

Interior Secretary Ryan Zinke today ordered that coal leasing be restarted in the United States but announced that his agency will continue reviewing whether federal royalty rates need to be raised.

6. **WHITE HOUSE: President's bid to recrown King Coal meets industry headwinds**

E & E News, March 29 | Peter Behr and Rod Kuckro

President Trump's sweeping renunciation of the Obama administration's environmental policies yesterday reduced the world's largest economy to one idea: Coal, burned cheaply and cleanly, will fuel American prosperity this century.



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7. PUBLIC LANDS: Trump order could reduce drilling oversight in parks, refuges

E & E News, March 29 | Emily Yehle

Thousands of oil wells in wildlife refuges and national parks could see less oversight under President Trump's executive order on "energy independence."

8. CLIMATE: Killing NEPA guidance won't stop lawsuits over impacts

E & E News, March 29 | Amanda Reilly

Even when the Trump administration revokes a guide for considering the climate impacts of federal actions, legal experts say agencies likely still will be held liable in court for analyzing greenhouse gas emissions.

9. INTERIOR: Trump EO reopens coal leasing, targets oil and gas rules

E & E News, March 29 | Brittany Patterson

The White House targeted key Interior Department rules in a sweeping executive order yesterday, setting up what is likely to be a protracted battle between the agency and environmental groups' interpretation of energy policy on America's public lands.

10. INTERIOR: Grijalva bemoans 'gag order' at FWS

E & E News, March 29 | Jennifer Yachnin

Arizona Rep. Raúl Grijalva, the top Democrat on the House Natural Resources Committee, criticized the Interior Department today for "an ongoing lack of communication and transparency," citing the recent discovery of a gag order at the Fish and Wildlife Service.

11. REGULATIONS: The big announcement is over. What happens now?

E & E News, March 29 | Niina Heikkinen and Evan Lehmann

President Trump never uttered the words "climate change" yesterday as he snuffed out former President Obama's plans to curb greenhouse gas emissions.



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12. **INTERIOR: Zinke kills mitigation policy, orders review of energy rules**

E & E News, March 29 | Corbin Hiar

Interior Secretary Ryan Zinke revoked the department's policy on offsetting the development impacts on natural resources and ordered a review of all its rules on climate change, mitigation and energy development.



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UTAH – FULL STORY

1. Judge puts hold on Indian Creek ATV trail in Bears Ears NM borders

The San Juan Record, March 28 | Staff Writer

A 6.4 mile loop trail for ATV use in Indian Creek Canyon is threatened after a ruling by a federal judge.

Silvia M. Riechel, of the Interior Board of Land Appeals, stated this month that the trail is in violation of the proclamation that created the new Bears Ears National Monument. The trail is within the monument boundaries.

The ruling stops construction or use of the trail until after a lawsuit by environmental groups is settled.

The trail had recently been approved by the Bureau of Land Management (BLM) in December, 2016 after an exhaustive 12-year process.

BLM approval of the trail was made on December 15, 2016, nearly two weeks before the December 28 declaration of the Bears Ears National Monument.

The declaration specifically states that it does not impact valid rights within the monument borders that existed before the designation. The BLM and San Juan County argue that the trail was approved before the designation and was a valid existing right.

The environmental groups that filed the appeal state that the trail was not yet valid because the 30-day appeal period was still in effect when the designation was made.

They claim the proclamation also states that any additional roads or trails designated for motorized use are restricted to those necessary for public safety or protection of objects covered by the proclamation.

Judge Riechel ruled favorably on the arguments of the environmental groups. The Grand Canyon Trust, Great Old Broads for Wilderness and the Utah Chapter of the Sierra Club filed the appeal.

In 2005, San Juan County initiated a process to connect a number of trails in the Indian Creek Canyon area with existing routes in Lockhart Basin and Davis Canyon.



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The trail approved by the BLM includes areas near the Hamburger Rock and Creek Pasture campgrounds. The BLM had assumed responsibility for the construction and maintenance of the trail.

The BLM had approved the project in 2015, but that decision was appealed. The new decision includes several new features, including a revised Environmental Assessment, more documentation of potential effects on cultural resources along connecting routes, a better explanation regarding riparian resources and mitigation, and an expanded noise analysis.

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2. **Herbert: Trump's rollback of Clean Power Plan step in the right direction**

KSL News, March 28 | Amy Joi O'Donoghue

SALT LAKE CITY — President Donald Trump signed the Energy Independence Executive Order Tuesday, rolling back the controversial Clean Power Plan and killing a three-year moratorium on federal coal leases.

The move continues the president's efforts to dismantle a slew of Obama-era regulations under fire from energy rich states like Utah that produce coal and are home to oil and gas fields.

Utah Gov. Gary Herbert called the executive order a step in the right direction.

"Utah and many public land and energy producing states think that the Clean Power Plan was a significant overreach. It was really designed to kill off carbon-based fuels, and particularly coal," he said. "The standards that they were trying to put in place, there is not even technology that allows you to meet those standards."

Utah was among multiple states across the country that sued the federal government over the landmark rule designed to cut greenhouse gas emissions from the nation's existing power plants. The plan would have impacted 11 power plants in Utah, including five coal-fired power plants.

Because an executive order can't directly overturn a regulation, Trump directed the U.S. Environmental Protection Agency to review the Clean Power Plan and other emissions regulations. The plan has been on hold pending a federal court's review of challenges brought by Utah and other coal-friendly states.



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Herbert was also among Western states leaders who met with Trump Monday and witnessed the repeal of the Bureau of Land Management's Planning 2.0 rule, another regulation under fire from multiple states in the West.

"Some of these (environmental rules) take five, six, seven years," Herbert said. "Why does it take so long? Why is the federal government so slow?"

Herbert said permits for oil and gas development on private land take a few months, while states with public lands are put at a disadvantage because of the long review process.

"States like Utah or Wyoming can't compete with the North Dakotas of the world," he said.

Local activists and national conservation and environmental organizations said Trump's "anti-environment" agenda puts people and the planet in jeopardy.

"Each section of this executive order threatens human health, wastes taxpayer dollars and undermines critical protections for our nation's clean air and water," said Christy Goldfuss, vice president of energy and environment policy at the Center for American Progress.

Matt Pacenza, executive director of HEAL Utah, said the new executive order will do little to help save coal jobs because the marketplace favors cleaner sources of energy.

"President Trump and his allies have to choose between pretending they can bring coal back — or getting to the hard work of actually figuring out how to help rural communities suffering from major economic shifts," Pacenza said.

"Axing the Clean Power Plan won't lead to more coal jobs, but sadly it might raise the hopes of workers who policymakers show little interest in except for when they want to score cheap political points," he added.

But Herbert pointed to the state's own 10-year energy plan which is built around the robust platform of an "all of the above" energy strategy that keeps options diverse, sustainable and affordable.

That plan includes a mix of coal, natural gas, wind, solar and geothermal.



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"We can come together and find ways to be rational and reasonable stewards of our public lands," he said. "We ought to be responsible developers of energy on our public lands, and we can do that."

David Smaldone, president of Friends of Coal West, said the public may believe the executive order constitutes a free for all for the coal industry, but he stressed Trump's actions do nothing to alter existing regulations on coal mines.

"All the existing coal regulations remain in place," he said.

Mark Compton, president of the Utah Mining Association, added his applause to Trump's repeal of the moratorium.

"One of the stated reasons for the moratorium was to make sure the public receives a fair return for the coal resources developed on federal lands. However, the policies under consideration by the previous administration were, in fact, designed to simply keep coal in the ground."

The Sierra Club — a staunch critic of coal and other fossil fuels — said Trump's executive order is contrary to the clean energy momentum playing out in multiple areas of Utah.

The organization pointed out that Salt Lake City, Park City and Moab have all committed to being powered by 100 percent clean energy by 2032.

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3. **Kanarraville Falls trail closing for 3 days**

ABC 4 News, March 29 | Kierra Dotson

KANARRAVILLE, Utah (ABC4 Utah)- Attention hikers! If you're planning on hitting the Kanarra Falls trail next week...well...plan again.

The trail will be closed from April 3rd to April 6th.

Officials with the Bureau of Land Management say erosion from weather and hikers has exposed a pipeline along the trail. They say falling rocks pose a hazard to the sections of the pipeline.

That pipeline supplies drinking water to the community of Kanarraville.



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For details on the closure [click here](#).

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4. **NATIONAL MONUMENTS: Legal experts argue Trump has power to abolish sites**

E & E News, March 29 | Jennifer Yachnin

President Trump could move to abolish national monuments — including the recently created Bears Ears site in southeastern Utah — if his administration determines the areas are "illegally large," according to a new analysis of the Antiquities Act unveiled today by conservative scholars.

The Pacific Legal Foundation's Todd Gaziano and American Enterprise Institute legal scholar John Yoo are scheduled to review their new paper, "Presidential Authority to Revoke or Reduce National Monument Designations," at an event in the Dirksen Senate Office Building tonight.

In the 26-page [analysis](#), Yoo and Gaziano also seek to break down past legal advisories that found that while the Antiquities Act of 1906 permits presidents to designate national monuments to protect scientific or historic artifacts, it does not allow commanders-in-chief to revoke the status of monuments.

"An attorney general opinion in 1938 concluded that the statutory power granted to the president to create national monuments does not include the power to revoke prior designations," the duo wrote. "We think this opinion is poorly reasoned; misconstrued a prior opinion, which came to the opposite result; and is inconsistent with constitutional, statutory, and case law governing the president's exercise of analogous grants of power."

Echoing a Wall Street Journal op-ed the pair wrote in late December, just days after President Obama established the 1.35-million-acre Bears Ears National Monument, Yoo and Gaziano assert that the president maintains a "general discretionary revocation power."

"The Antiquities Act of 1906 grants the president the power to designate national monuments in order to protect historic landmarks and structures," the pair wrote. "We are confident that, pursuant to this power to designate, a president has the corresponding power to revoke prior national monument designations, although there is no controlling judicial authority on this question."



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In their conclusion, the pair added: "This power is at its height when prior designations were made illegally or in contravention of the act's mandate that designations be reasonable in size."

Although past presidents have reduced the size of some monuments, no commander-in-chief has ever sought to repeal the designation of one of his predecessors.

Utah Rep. Rob Bishop (R), chairman of the House Natural Resources Committee and a vocal opponent of the Bears Ears monument who has urged Trump to rescind its status, has highlighted the reduction of the Navajo National Monument in 1912 as an example of the president's authority (Greenwire, March 20).

But conservationists have argued that even though older reductions, such as cuts in the size of the Olympic National Monument or Grand Canyon II National Monument, have never been challenged in court, a move by Trump to do so would likely spur legal action.

Yoo and Gaziano argue, however, that even if a president does not have a "general discretionary revocation power," Trump could seek to revoke monuments by declaring them overly large.

"The Congress that enacted the Antiquities Act did not intend monuments of that size to be established by presidential designation," the pair wrote, asserting that early monuments tended to be 5,000 acres or less.

They later added: "If a president makes a credible determination, based on the facts and a reasonable interpretation of the act, that some former monuments are illegally large relative to the original 'object' supposedly being protected, he could declare that the initial designation was void, especially if there is no easy way to make it lawful by severing discrete parcels of land."

But Arizona Rep. Raúl Grijalva, the top Democrat on the House Natural Resources panel, offered a pre-emptive rebuttal to Yoo and Gaziano's arguments yesterday, pointing to an analysis published earlier this month by the firm Arnold & Porter.

"The Antiquities Act and subsequent legislation reserved to Congress, which has Constitutional authority over public lands, the sole power to revoke such a designation," the [analysis](#) says (E&E Daily, March 29).

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E&E/NATIONAL NEWS – FULL STORY

1. Will The Trump Administration Spur US Oil & Gas Development?

Forbes, March 29 | Anna Mikulska and Michael Maher

Whether you believe that the recent U.S. oil and natural gas boom happened because or in spite of former President Barack Obama's policies, one thing cannot be disputed: it happened.

The question is whether President Donald Trump, whose campaign promised a pro-fossil agenda, will actually provide a boost to U.S. oil and gas production above the policies of the Obama administration.

Over the last eight years, U.S. oil production grew more than 85 percent. At the end of 2015, it was the highest it had been since 1972, reaching 9.4 million barrels per day (MBD) (not including 3.3 MBD of natural gas liquids [NGLs]). Shale and tight oil accounted for 4.9 MBD in 2015, compared to 0.82 MBD in 2010. The Energy Information Administration (EIA) projects that this source will continue to make up the majority of U.S. oil production increase into 2040. The total natural gas production also increased drastically, as the volume of shale gas produced in the United States shot from 2.1 billion cubic feet (BCF) in 2008 to 15.2 BCF in 2015.

This unprecedented growth happened in an environment in which a distinctive mix of policy measures was implemented by the Obama administration. Some of those measures have been arguably the most pro-oil and gas policies of the last several decades, such as putting an end to the ban on oil exports (initially opposed by the Obama administration) and providing a process for approval of LNG export terminals. Moreover, despite heavy environmental protection rhetoric, thousands of acres of public land were auctioned for oil and gas drilling, as the administration shifted to online auctions for O&G drilling on federal properties and 119 million acres of offshore drilling leases opened up in the Gulf of Mexico. The Obama administration also allowed drilling in the Arctic Ocean and did little to limit offshore oil and gas activity after the Deepwater Horizon disaster. Lastly, the Obama administration did not adopt drilling rules that pre-empted the traditional oil and gas regulatory role of the states on non-federal lands.

Interestingly, the Clean Power Plan (CPP) championed by the Obama administration and the environmental lobby would actually have been advantageous for natural gas producers by forcing sizable coal power capacity into early retirement over the coming decade or so. Even without the CPP, other EPA air pollution regulatory initiatives, probably less susceptible to removal by the Trump Administration, will require increased capital and operating expenditures



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at coal power plants and will encourage the faster retirement of old coal-fired plants near the end of their economic life. That, too, would be a boost for natural gas use in the power sector.

On the other hand, environmentalists were also able to claim a win when the Obama administration blocked the sale of new permits for O&G drilling in the Chukchi and Beaufort Seas and did not allow leasing on Cook Inlet off of the Alaskan coast. Obama also introduced rules against methane leakage and proposed drilling regulations for shale development on federal lands, and a 2012 Environmental Protection Agency rule required shale companies to use “green completion” equipment. Vetoing the Keystone XL pipeline and stopping development of the Dakota pipeline (though with the intention of rerouting a small portion and not prohibiting the entire line) have also been seen as anti-oil and gas.

Whether there would be more growth under an “oil and gas-friendly” president (beyond what market forces and technological innovation would bring forward) is difficult to say, as with all counterfactual speculations. But when we look closely at the Obama years, we see international supply and demand as the main factor that spurred the growth in shale, save only for the technological advancement needed to start the hydraulic fracturing revolution.

On the supply side, Obama’s decision to sign off on ending the oil export ban and his support for liquefied natural gas (LNG) exports were and will continue to be a boost to U.S. shale development, as these policies opened the U.S. oil and gas industry to global consumers. At the same time, the most limiting factor to the industry’s growth post-2015 has not been policy but price. At over \$100/bbl, oil prices were supportive of strong growth, and domestic policies did do little to stunt that growth. The slump in oil prices over the last several years also reflects international geopolitics and economics and not U.S. energy policy.

Enter President Trump and his campaign promises to the oil and gas industry into the equation. Will they materialize into a significant boost in the development of U.S. shale resources over Obama’s policies?

President Trump proposes domestic-level actions that would increase the domestic market supply of U.S. oil and gas, including cutting restrictive environmental regulations and scrapping the CPP, encouraging pipeline development, eliminating rules on methane releases from oil and gas operations and rescinding BLM’s proposed drilling rules on federal lands, and increasing the leasing of federal lands, for example. However, these will have only marginal impacts on the oil and gas sector. Ending BLM rules will still leave in place state regulations and states may themselves regulate methane releases (e.g., Colorado). Also, given that private lands with vast amounts of shale resources are often situated closer to refining and export facilities than federal



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acreage, increased leasing of federal lands is unlikely to have a significant impact on US supplies over the next four to eight years.

At the same time, while easing the regulatory burden, these actions are not significant enough to stimulate the necessary oil and gas demand for U.S. supply to grow much more than under the rules that Trump inherited. They either have no influence on the demand that is needed to generate supply or actually work directly against such demand. For example, eliminating the CPP will probably lead to a slower retirement of coal-fired power plants and, in effect, slower natural gas demand growth in the U.S.

The biggest problem with these declarations is their inward-looking, U.S.-centric focus. This is not enough. With the real demand growth concentrated in the developing world and away from the U.S. and other member countries of the Organization for Economic Co-operation and Development (OECD), the marginal barrel of U.S. oil and refined products will have to feed into the world market. The same holds for American natural gas, as the globalization of the natural gas market via LNG is becoming reality.

Meanwhile, on the international demand side, the Trump administration's decisions may do more harm than good for the interests of U.S. oil and gas producers who are seeking to sell their products globally. This includes the president's take on trade. A "war" over a border wall combined with a possible border tax on Mexican imports may become an issue for U.S. oil and gas producers considering that in 2016, the U.S. energy export value to Mexico was more than twice the value of energy imports from Mexico. US natural gas pipeline exports to Mexico grew by 2.7 MCF/D from 2008 to 2016.

While in theory, changes in relative exchange rates under a corporate tax would keep incentives for US exports and imports to the US unchanged, other nations may still view the border-tax adjustments as protectionary and retaliate against US exports with border taxes. The U.S. LNG industry could find its competitiveness in Asia harmed if countries such as China retaliate against the rumored U.S. import or border adjustment taxes. On the oil side of the equation, similar retaliations may take place on the part of countries that are currently seen as possible consumers of the U.S. sweet light crude and/or U.S. refined product exports.

In general, to the extent that U.S. trade policies move away from WTO rules and other countries follow suit, there could be a negative impact of such policies on global economic growth – the main driver for growth in global oil and gas demand.



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Additionally, dropping out of the global climate agreement could lead to import fees on U.S. energy exports, a measure that was recently proposed by Nicolas Sarkozy, the former president of France and until very recently a candidate to retake that office. It is not difficult to imagine other countries heeding the suggestion.

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2. **BORDER WALL: 'Electronic measures' might be best in some areas — Zinke**

E & E News, March 29 | Jennifer Yachnin

Interior Secretary Ryan Zinke endorsed President Trump's plans for building a wall along the U.S.-Mexico border but cautioned that in some areas — such as the rugged terrain along the Rio Grande — "electronic measures" will be more appropriate than a physical barrier.

Zinke briefly talked about the border wall in a news conference with reporters to discuss Trump's order to end the Obama administration's moratorium on new coal leases on federal land (see related story).

Reiterating remarks he made at a meeting of the Public Lands Council in Washington yesterday, Zinke acknowledged the president's proposal to build a structure along the 2,000-mile border could be challenging but at the same time endorsed the scheme (E&E News PM, March 28).

"The wall is complex in some areas, but I think at the end of the day, what's really important is the security and to make sure we have a border," Zinke said. "Without a border, a nation can't exist."

He described his role in the border wall construction as a "supporting position" to Homeland Security Secretary John Kelly, who previously predicted the project could be completed within as little as two years (Greenwire, Feb. 21).

"The president has directed that we build a wall," Zinke said, referring to the project estimated to cost as much as \$25 billion. "I am a supporting commander in that role. My job is to help Secretary Kelly, for instance, with consultations with the tribes who are on the border."

The Interior Department manages nearly 800 miles of border territory, or about 40 percent of the border across California, Arizona, New Mexico and Texas.



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In addition, within 100 miles of the boundary, Interior oversees more than 25 million acres of public lands, including six wildlife refuges, lands held in trust for four American Indian tribes, a half-dozen national parks and Bureau of Land Management districts.

"I pointed out some of the challenges on it yesterday," Zinke said.

He noted that in some areas, the border is in the middle of the Rio Grande and raised the question of on "what side do you put the wall," suggesting Kelly would decide whether "electronic measures" are more appropriate in those areas.

He also suggested new walls may not be needed in areas with natural boundaries, such as steep cliffs in some national parks.

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3. **SENATE: Committee to vote on major energy, land bills**

E & E News, March 29 | Christa Marshall and Kellie Lunney

The Energy and Natural Resources Committee has scheduled a markup on numerous energy and public land bills, including a package from Sens. Rob Portman (R-Ohio) and Jeanne Shaheen (D-N.H.) to overhaul energy efficiency policies across multiple federal agencies.

Similar language passed the Senate last year but stalled during negotiations over a major energy reform package. Portman and Shaheen have been pushing their efficiency legislation for half a decade.

Their S. 385 calls for new efficiency initiatives in schools, companies and the federal government.

It would strengthen national model building codes, establish new job training programs and implement a program at the Department of Energy called "SupplySTAR" to highlight companies with efficient supply chains (E&E Daily, Feb. 15).

Another bill from Portman on the markup agenda, S. 226, would exempt power supplies for LED lighting from a DOE efficiency rule. LED industry backers say the measure is necessary because the standard was not designed with light-emitting diodes in mind. Parallel legislation passed the House in January.



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The committee also will consider two bills from Sen. Cory Gardner (R-Colo.) — S. 190 and S. 239 — that would exempt safety alarms and surveillance systems from an efficiency standard and encourage use of performance contracting in federal facilities.

Nuclear

The Energy and Natural Resources panel will also consider S. 97, a bipartisan measure that would boost the research and development of advanced nuclear reactor designs.

The bill is from Republican Sens. Mike Crapo of Idaho, Jim Risch of Idaho and Orrin Hatch of Utah; Chairwoman Lisa Murkowski (R-Alaska); and Democratic Sens. Sheldon Whitehouse of Rhode Island and Cory Booker of New Jersey.

It would amend DOE's civilian nuclear energy research and development mission to ensure the agency enables the private sector to partner with national laboratories for the purpose of developing novel reactor concepts.

The bill would also authorize DOE to leverage its supercomputing infrastructure to accelerate nuclear energy R&D capabilities for advanced reactor technologies.

A bipartisan companion bill, H.R. 431, is also moving through the House.

Hydro

The committee will consider six bills to extend deadlines for beginning construction on hydroelectric projects involving the Gibson Dam in Montana, the Clark Canyon Dam also in Montana, the Jennings Randolph Dam in Maryland, the W. Kerr Scott Dam in North Carolina, the Gathright Dam in Virginia, the Flannagan Dam also in Virginia and the Cannonsville Dam in New York.

S. 214 and S. 215 from Murkowski would expand a hydropower project at Terror Lake in Alaska and authorize the Federal Energy Regulatory Commission to continue a stay on the license for the Mahoney Lake hydroelectric project.

Murkowski's S. 724, which she introduced earlier this week, would amend the Federal Power Act to modernize authorizations for hydropower approvals.



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S. 216 from Sen. John Barrasso (R-Wyo.) would require the Interior Department to submit a report to Congress on the Bureau of Reclamation's management of its infrastructure assets.

Public lands

Legislation to protect and boost opportunities for recreational hunting, fishing and shooting, S. 733, is a top priority for Murkowski. She has for years worked on passing such legislation.

The panel also will mark up Murkowski's S. 346 to create a National Volcano Early Warning and Monitoring System.

The legislation, co-sponsored by ranking member Maria Cantwell (D-Wash.) and Sen. Mazie Hirono (D-Hawaii), would unify the five volcano observatories the federal government operates with help from states and universities (E&E Daily, Feb. 14).

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4. **ENDANGERED SPECIES: Court rebuffs landowners, restores prairie dog protection**

E & E News, March 29 | Amanda Reilly

A federal appeals court today restored a federal prohibition on harming the Utah prairie dog on private property in a closely watched case on the constitutional limits of the Endangered Species Act.

A three-judge panel of the 10th U.S. Circuit Court of Appeals found that the Constitution's Commerce Clause authorized the rule.

The decision overturns an unprecedented lower-court ruling that said the regulation violated the clause because the prairie dog lives only in Utah — mostly on private land — and does not affect interstate economic activity.

"Piecemeal excision" of species that live purely in one state "would severely undercut the ESA's conservation purposes," appeals court Judge Jerome Holmes, a Republican appointee, wrote in the opinion. Judges Carolyn McHugh and Nancy Moritz, both Democratic appointees, joined the decision.

Today's ruling will likely be appealed to the Supreme Court, but the 10th Circuit's decision may make it less likely that the high court takes up the issue.



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That's because the 10th Circuit, rather than splitting from other courts, joins at least three other federal appellate courts in saying the Endangered Species Act applies to single-state species.

Case history

The Fish and Wildlife Service issued the rule in question in 2012 to prohibit the "take" of the Utah prairie dog without a permit. The species is found in the southwestern part of the state, and about 70 percent of the population lives on private land.

In the 1920s, the species had a population of 100,000, but by the 1970s it had fallen to 3,300. The population currently numbers around 40,000.

People for the Ethical Treatment of Property Owners, a group composed of more than 200 owners and "other persons and entities subject to overly burdensome regulations," challenged the rule (Greenwire, June 8, 2015).

It argued that Congress couldn't authorize any take of the species because of the Commerce Clause. And in November 2014, the U.S. District Court for the District of Utah agreed (Greenwire, Nov. 7, 2014).

"Although the Commerce Clause authorizes Congress to do many things," Judge Dee Benson wrote, "it does not authorize Congress to regulate takes of a purely intrastate species that has no substantial effect on interstate commerce."

The Fish and Wildlife Service and the group Friends of Animals appealed the decision to the 10th Circuit.

'Substantial relationship'

In the opinion today, Holmes first rejected the argument raised by Friends of Animals that PETPO didn't have legal standing to bring the case.

When it comes to the broader issues, Holmes based his analysis on the test the Supreme Court created in a 1995 firearms case. The high court struck down a federal statute on the grounds that lawmakers exceeded Commerce Clause powers.

Using that test, Holmes noted that Congress has the power to regulate "purely local activities" that are part of a larger economic "class of activities" that substantially affect interstate commerce.



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The Utah regulation, he wrote, is part of the larger Endangered Species Act regulatory scheme that, in the aggregate, has a substantial effect on interstate commerce.

"The substantial relationship between the ESA and interstate commerce is patent," Holmes wrote.

For one, he said, regulating the take of species is "directly related" to economic development and commercial activity. Part of Congress' purpose in creating the ESA was to conserve species by restricting commerce, he wrote.

The third way the Endangered Species Act has affected interstate commerce, said Holmes, is through the creation of an illegal market that generates up to \$8 billion annually.

"The regulation on nonfederal land of take of a purely intrastate species, like the Utah Prairie dog, under the ESA is a constitutional exercise of congressional authority under the Commerce Clause," Holmes wrote.

[Click here](#) to read the opinion.

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5. **ENERGY POLICY: Zinke ends coal ban, creates panel to review royalties**

E & E News, March 29 | Dylan Brown

Interior Secretary Ryan Zinke today ordered that coal leasing be restarted in the United States but announced that his agency will continue reviewing whether federal royalty rates need to be raised.

Zinke followed through on President Trump's executive order yesterday tasking him with taking "all steps necessary and appropriate" to end the three-year ban on new coal leasing imposed by President Obama in January 2016.

Hailing Trump's "bold stroke" to promote energy production and jobs at home, Zinke signed a [secretarial order](#) ending the coal moratorium today at a ceremony in Interior headquarters.

He also declared that an Obama-ordered review of the federal coal program is dead. But Zinke will re-establish a federal advisory committee made up of states, tribes and other advocacy groups to study whether Americans are getting a fair return on coal as well as oil and natural gas.



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"All of us as taxpayers and citizens have a stake in making sure we get value from our resources," Zinke said.

Just days before Trump's inauguration, Interior published a report on the scope of its programmatic environmental impact statement (PEIS) studying the federal coal program. The document, panned by industry and welcomed by environmentalists, said royalty rates should be raised to generate more revenue and mitigate coal's climate impacts (Greenwire, Jan. 12).

Zinke scrapped the PEIS today, calling it "costly and unnecessary" in light of existing National Environmental Policy Act reviews of lease sales.

Zinke said Interior officials have not made up their minds about whether royalties need to be raised.

Industry maintains that it pays far more than its fair share for leasing, but environmentalists say royalties should be raised, citing previous reports from the Government Accountability Office and Interior's inspector general (E&E Daily, July 10, 2013).

Neither critics nor the industry, however, sees a major increase in coal leasing on the horizon.

According to the Bureau of Land Management, lease or lease modification applications for nearly 3 billion tons have been filed, but roughly two-thirds of that coal is tied to applications put on hold by coal companies trying to weather the mining downturn (Greenwire, March 20).

Zinke said that while market forces hurt coal, so did "an uncertain regulatory environment."

"We don't favor one energy source over another," he said. "The goal is to be energy independent, not to be dependent on foreign sources of energy, and have the ability to export with added infrastructure to do so. ... We'll see where the market goes. We'll be ready to process them as we open up the areas for lease."

Trump's executive order also targeted four other Obama-era Interior regulations on oil and gas development (Climatewire, March 29). But Zinke didn't directly comment on his plans to address those rules during a call with reporters.

Enviros challenge

A coalition of environmental groups responded today by announcing a federal lawsuit challenging Trump's order to lift the leasing ban.



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Earthjustice will file the complaint along with the Center for Biological Diversity, Citizens for Clean Energy, Defenders of Wildlife, the Montana Environmental Information Center, the Sierra Club and WildEarth Guardians.

The groups' announcement noted that the Northern Cheyenne Tribe is filing its own challenge to Trump's action.

"No one voted to pollute our public lands, air or drinking water in the last election, yet the Trump administration is doing the bidding of powerful polluters as nearly its first order of business," Earthjustice attorney Jenny Harbine said in a statement.

She added: "Our legal system remains an important backstop against the abuses of power we've witnessed over the course of the past two months. That's why we're going to court to defend our public lands, clean air and water, and a healthy climate for all."

They also are challenging the end of the Obama-ordered review of the coal program.

"This reckless action is an ill-advised attempt to prop up our dirtiest form of energy. Lifting the coal moratorium opens the floodgates of potential harm to wildlife from pollution and habitat destruction," said Defenders of Wildlife Vice President of Landscape Conservation Mark Salvo. "The president's decision short-sells our natural heritage; threatens our lands, water, wildlife and climate; and puts our children's future at risk."

Sen. Ed Markey (D-Mass.) also introduced a bill, [S. 737](#), that would mandate the changes outlined in the scoping report.

"This executive order is one massive giveaway to big oil and coal corporations at the expense of taxpayers and decades of progress on climate change, clean energy and public health protections," Markey said in a statement.

But Trump's move to promote the coal industry drew praise from congressional Republicans and mining companies.

"This order begins the reversal of a number of harmful and ideologically driven policies," said House Natural Resources Chairman Rob Bishop (R-Utah). "We will work with the president to add statutory permanence to prevent future administrations from resurrecting this harmful regulatory agenda."



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National Mining Association CEO Hal Quinn said, "The moratorium was never about a fair return to the taxpayer, and all about capitulating to the demands of the 'keep-it-in-the-ground' movement."

Cloud Peak Energy Inc., one of the most outspoken critics of the moratorium, has active applications for nearly 1 billion tons of federal coal to expand its mines.

"The American people receive roughly 40 percent of the selling price of the vast and overwhelming volume of federally leased coal in taxes, fees and royalties, making it among the highest-taxed commodities in the world," said Rick Curtsinger, spokesman for Cloud Peak Energy Inc., which has active applications for nearly 1 billion tons of federal coal to expand its mines.

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6. WHITE HOUSE: President's bid to recrown King Coal meets industry headwinds

E & E News, March 29 | Peter Behr and Rod Kuckro

President Trump's sweeping renunciation of the Obama administration's environmental policies yesterday reduced the world's largest economy to one idea: Coal, burned cheaply and cleanly, will fuel American prosperity this century.

Despite the president's message, there's ample evidence to the contrary.

Coal, which electric power plants relied on for much of the last century as a cheap and abundant fuel, has a competitor in cheaper and cleaner-burning natural gas.

Coal isn't "clean." It's only a clean source of energy if aging coal-fired power plants invest billions of dollars in upgrades to scrub coal's toxic emissions, and then spend billions more to bolt on carbon capture technology.

There's little to support the revival of coal mines closed this century or depleted last century. Automation has made tens of thousands of coal jobs obsolete.

Court orders that compel U.S. EPA to enforce public health regulations aren't going away. And coal is the largest power-sector contributor to climate change, which also isn't going away.



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Still, Trump's presidential campaign promised the resurgence of American manufacturing. It would be built on cheap coal-based power, corporate tax cuts, buy-America commitments, and increased oil and gas production. That policy cornucopia, according to the White House, would mean U.S. energy independence.

At yesterday's rollout of a White House executive order to undo President Obama's regulations on energy producers, Trump shared the stage with a cluster of coal miners in the Map Room at EPA headquarters in Washington. EPA Administrator Scott Pruitt welcomed Trump to the federal agency that bore the brunt of his campaign attacks on the capital's "swamp" of regulators.

The president's entourage of Cabinet members, agency critics and big Republican donors filled the room, squeezing out EPA employees.

"Our incredible coal miners," Trump said. "We love our coal miners."

"The miners told me about the attacks on their jobs and their livelihoods," Trump continued. "I made them this promise: We will put our miners back to work."

Introducing the president, Vice President Mike Pence said: "The war on coal is over." The reference teed up Trump's order to shelve EPA's Clean Power Plan, with its mandatory cutbacks in power plant carbon emissions, and other environmental regulations affecting energy development and output.

The executive order directs EPA and other federal agencies to review all actions "that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources."

It explained that "'burden' means to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources."

Awash in gas

Rick Manning, president of Americans for Limited Government, hailed the action, saying his organization "is confident that such a review will provide ample basis for revising and rescinding these regulations, ensuring that utility prices can come down for consumers."



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The coal industry praised the president's executive order as a lifeline against further losses. The White House yesterday cited a forecast by the National Mining Association that the Clean Power Plan would cause coal production to fall by 242 million tons.

With his recommitment to coal, however, a president who prides himself on being a hard-nosed businessman put himself at odds with transformations in the freewheeling energy markets, and particularly those affecting the coal industry, whose production has steadily slipped since 2001 as its employment plummeted.

The U.S. Energy Information Administration reported that nearly 15,000 megawatts of coal-fired power plant capacity was retired in 2015. The Trump administration actions may slow that trajectory, said Thad Huetteman, head of EIA's electricity analysis team, but not reverse it.

"What we're going to see is that coal assets in particular, which would have been put out to pasture, may hang around longer because of this," he said.

But it won't be a coal renaissance, said Francis O'Sullivan, director of research for the Massachusetts Institute of Technology's Energy Initiative.

"The message is very simple," he said. "We are awash in relatively low-cost natural gas in the United States. I don't see that changing dramatically anytime soon."

Even as the Clean Power Plan was being drafted inside EPA at the start of Obama's second term and eventually put on hold by the Supreme Court, many of the largest electric power companies were turning away from coal.

Shortly after the November election, a pair of leading utility CEOs, Tom Fanning of Southern Co. and Bob Rowe of NorthWestern Energy Corp., said the election results provided no reprieve for coal, nor would they alter their industry's drive to replace coal plants that weren't working economically or required major upgrades.

"That's done and gone," Nick Akins, the CEO of American Electric Power Co., told E&E News in November of 2015, referring to the days of building central station generation fueled by coal.

A more consequential impact of Trump's actions is the shift in decisionmaking on energy, environment and climate policy from Washington to the states, said Sue Kelly, president and chief executive of the American Public Power Association, which represents the nation's municipal utilities. "I took a lot of comfort in those statements" made by Trump and his Cabinet members at EPA yesterday, she said.



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While the "staging" of Trump's announcement was built around coal, Kelly said the executive order "goes way beyond that" because it inherently allows more flexibility "to do what we think is best" at the state and local levels.

But what's best for states may not also be best for the coal industry, she indicated. "In all cases, that may not be to continue to operate coal plants," she said, noting that power plant operators in Kentucky and Florida have recently announced new coal plant closures.

"It's important that we make the decisions we need to make about those plants and not have our hand forced by federal regulation," she said.

Jim Matheson, Kelly's counterpart at the National Rural Electric Cooperative Association, represents a far-flung assortment of electric cooperatives, many of which rely on relatively new coal plants that still carry debt and have years to go before they can be retired.

Markets can't keep uneconomical coal plants open, said Matheson, a former Democratic congressman for Utah. "That's happened," he said, citing the recent closure of a coal plant in eastern North Dakota because of excess and inexpensive wind power capacity.

"Market conditions and prices are going to be what help us decide the best way to provide both affordable and reliable power," Matheson said.

Red state, blue state

Moving away from federal leadership also portends an even deeper political split among "red" and "blue" states, with clouded implications for the country as a whole.

"States can still decide the direction they will take," Barclays Commodities Research analysts noted yesterday. "Immediately following Trump's announcement, California and New York reaffirmed their commitment to exceeding CPP targets."

Attorneys general from New York, California, Connecticut, Delaware, Hawaii, Iowa, Illinois, Maine, Maryland, Massachusetts, New Mexico, Oregon, Rhode Island, Vermont, Virginia, Washington and the District of Columbia, along with chief legal officers of Boulder, Colo.; Chicago; New York City; Philadelphia; and South Miami and Broward County, Fla., also issued a statement: "We won't hesitate to protect those we serve — including by aggressively opposing in court President Trump's actions that ignore both the law and the critical importance of confronting the very real threat of climate change."



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In his remarks yesterday, Trump criticized the Obama Clean Power Plan as "a crushing attack on American industry" and "a theft of American prosperity."

He spoke of cheaper power to come. EPA's Pruitt said in an interview on ABC News' "This Week" that the planned executive order would lower electricity rates.

According to data kept by EIA, however, the real average retail price of electricity is lower than it was in 1960. And since the Obama administration issued the proposed Clean Power Plan in June of 2014, retail electricity rates for all sectors were lower at the end of 2016 than they were in June of 2014.

Further, U.S. natural gas drilling continues to churn in the nation's shale basins. EIA data show that fracking operations are producing more and at a lower cost. As coal gets a leg up from Trump, drillers keep finding ways to pump more gas to replace coal.

If his objective was helping hard-hit coal communities, Trump should have looked elsewhere, said Mark Muro, senior fellow with the Brookings Institution's metropolitan policy program.

"When you turn to employment, job creation and economic development in coal communities, the plan won't really change what is a very dim future for coal. There is simply no way around it," Muro said.

The gas glut delivered by hydraulic fracturing has brought gas even with coal in price as a fuel for electricity generation. Coal also faces increased competition from wind and solar power, which have gotten cheaper and in some states have undercut coal and gas as the least expensive way to make electricity.

'Keep it in the ground'

Eastern coal mined underground has lost out competitively to Western coal, taken from surface mines, where automation has boosted productivity and profitability but not job growth.

"There are massive changes in how coal is extracted that may be an even more severe negative influence on employment," Muro said. Coal employment went from about 240,000 workers in 1980 to fewer than 100,000 today, he noted, but output per person has skyrocketed, from nearly 2 short tons per miner-hour in 1980 to 6 short tons per miner-hour.

Trump's actions could aid producers' profitability, if not their output. [An order](#) last year from former Interior Secretary Sally Jewell halted new mining industry activity on federally controlled



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land as the government assessed whether its leasing program offered sufficient taxpayer return and environmental protection (Greenwire, Jan. 15, 2016).

Lifting the moratorium — which was originally expected to span three years — is not expected to have an immediate impact on market conditions that have suppressed coal extraction, according to a Feb. 23 note from FBR & Co. But it could be a plus for producers in the coal-rich Powder River Basin, the note says.

"We view the move as positive for PRB [Powder River Basin in Wyoming and Montana] names in the long term because it alleviates future constraints and staunches what would likely have been an effort to significantly increase royalty rates," the note says. "Some suggestions would have raised royalties from 12.5 percent to 18.75 percent.

"Additionally, the move is a symbolic step against the 'keep it in the ground' movement and a sign of optimism for fossil fuel industry regulation."

The order instructs Interior Secretary Ryan Zinke to review and ultimately suspend, revise or rescind four rules related to oil and gas development on public land. Three of those regulations, including the Bureau of Land Management's Methane and Waste Prevention Rule, have been targeted by Republican lawmakers for repeal under the Congressional Review Act. The effort to strike down BLM's methane rule has been stalled in the Senate as GOP legislators attempt to gather the support of a simple majority in the chamber (Energywire, March 8).

The administration also pinpointed BLM's fracking rule as a target for review. The 10th U.S. Circuit Court of Appeals this month delayed proceedings on the regulation following indications that Trump's Interior Department was planning to rescind the rule (Energywire, March 17).

Conservation groups decried the Trump administration for prioritizing fossil fuel development over other uses.

"This executive order sends a signal that fossil fuel production is the top order of business for public lands, and that special interests will continue to trump viable and essential environmental safeguards," said the Wilderness Society President Jamie Williams.

"Very obviously, today's action is based on a desire to deliver on that campaign promise to that particular constituency," MIT's O'Sullivan said.

The economic consequences of unchecked climate change are much more dramatic, he added. "A more thoughtful approach would have been to step back and cast a more analytical eye on



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outcomes and ask critical questions about that, given the economic priorities and national security priorities this administration has," he said.

Rather than heralding a rebound in manufacturing employment, coal's eclipse reflects continuing pressure at U.S. factories to automate and cut labor costs, Brookings' Muro said.

"Trump deserves credit for understanding the importance of manufacturing," he said. "He deserves credit for acknowledging and speaking to disrupted local and regional economies, whether it is coal or Rust Belt communities.

"The policy response then misses the mark," Muro added. "What's really needed is a very serious coal country disruption focus, more effort to stabilize communities, to help workers reposition or move, or helping some simply retire in a dignified way, and more to help communities."

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7. **PUBLIC LANDS: Trump order could reduce drilling oversight in parks, refuges**

E & E News, March 29 | Emily Yehle

Thousands of oil wells in wildlife refuges and national parks could see less oversight under President Trump's executive order on "energy independence."

The order directs Interior Secretary Ryan Zinke to decide whether to "suspend, revise, or rescind" two recent updates to the rules that govern oil and gas production in refuges and parks. The National Park Service beefed up its so-called 9B rules on Nov. 3; the Fish and Wildlife Service released its own rule a week later to increase oil and gas oversight.

It's unclear how or if Zinke will change the rules. The order directs Zinke to reconcile them with a broader policy to not "unduly burden" the development of domestic energy resources.

The National Parks Conservation Association has sounded the alarm, calling it "inconceivable" that Trump would target rules the group considers balanced.

"These commonsense rules do not prohibit development but simply ensure that national parks continue to receive the highest possible level of protection," Nicholas Lund, the group's senior manager for landscape conservation, said in a statement. "We hope Interior Secretary Ryan Zinke, who is now tasked with reviewing the 9B rules, recognizes how important they are to the health of our national parks and their visitors and leaves these important measures in place."



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Oil and gas companies currently drill in 12 parks, operating a total of 534 wells. NPS has said that another 30 parks could see drilling in the future.

Such parks are "split estates," where NPS only owns the surface land and others retain the rights to minerals underneath. The 9B rules stretch back to 1978, with the aim of protecting national parks from the impacts of drilling.

The November update closed a loophole that prevented the agency from regulating 60 percent of the wells in parks. It also enabled NPS to better ensure that oil and gas producers could afford a potential cleanup, among other changes (E&E News PM, Nov. 3, 2016).

The FWS rule affected far more wells. Almost 1,700 wells actively produce oil and gas in more than 100 wildlife refuges around the country. Hundreds more are plugged or abandoned — and many threaten habitat and water, posing a major challenge for FWS.

The updated rule set tough new standards for everything from waste management to unused infrastructure. It requires companies to obtain permits from FWS to modify wells and drill new ones, and it clarifies that well operators are liable for the costs of removing the wells and returning the environment to its previous state (Greenwire, Nov. 10, 2016).

Neither the FWS nor the NPS rule applies to Alaskan parks and refuges.

Both rules are already targets in Congress, where Republicans are considering using the Congressional Review Act to repeal them.

A press release earlier this year from the Congressional Western Caucus characterized both rules as job killers.

The lawmakers called the FWS rule duplicative and accused the agency of not having the expertise to implement the new permitting system. For the NPS rule, they asserted that the agency did not have the right to impose regulations on non-federal mineral rights.

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8. **CLIMATE: Killing NEPA guidance won't stop lawsuits over impacts**

E & E News, March 29 | Amanda Reilly

Even when the Trump administration revokes a guide for considering the climate impacts of federal actions, legal experts say agencies likely still will be held liable in court for analyzing greenhouse gas emissions.

As part of his executive order yesterday, President Trump ordered the White House Council on Environmental Quality to rescind Obama administration guidance on how to account for climate change in National Environmental Policy Act reviews.

But several courts have already ruled that NEPA's requirement for agencies to assess indirect effects of a project extends to climate impacts, legal experts said.

Agencies would be "smart" to continue to assess climate impacts, said Jayni Hein, policy director at the New York University School of Law's Institute for Policy Integrity.

"Whenever greenhouse gases are significant or rise from the project, either directly or indirectly," she said, "almost regardless of what the executive order says — if an agency doesn't do the proper analysis under NEPA, it could be subject to litigation."

Environmentalists are already vowing to bring lawsuits against federal agencies if they take the executive order to mean climate change shouldn't come into their calculations.

"I do think this is one of the areas in which the president's order is more bark than bite, because analysis of climate is plainly required under NEPA and other governing laws," said Abigail Dillen, Earthjustice's vice president of litigation for climate and energy.

Also likely to lead to increased litigation is the Trump administration's decision to revoke the social cost of carbon, a metric created by the Obama administration to measure the economic costs of greenhouse gas emissions.

At the very least, the actions announced yesterday — which Trump said will bring in a "new era of energy" and help coal miners — will likely cause uncertainty as the courts deal with lawsuits, predicted Robert Verchick, a professor at the College of Law at Loyola University New Orleans and president of the Center for Progressive Reform.



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"I think that what this does is create an atmosphere conducive to more and more litigation, and ultimately, that's not going to help anybody, including the companies he's hoping to help, because they are just going to be in a more uncertain legal environment," Verchick said.

The Obama CEQ's guidance formally instructed agencies to consider "indirect" climate effects of major federal actions. It specifically cited the combustion of coal from a federal lease sale as an example of an indirect effect that is reasonably foreseeable under NEPA.

While the guidance was finalized only in August 2016, it followed a series of court rulings addressing the issue of greenhouse gases and NEPA (Greenwire, Aug. 5, 2016).

More than a dozen lawsuits in the past five years have challenged federal reviews of fossil fuel extraction and infrastructure projects because of failure to consider upstream and downstream emissions, according to Columbia University's Sabin Center for Climate Change Law.

In those cases, courts have mostly ruled that "indirect" effects under the law include downstream greenhouse gas emissions from fossil fuel activities. They've specifically found that agencies need to assess the indirect effects of greenhouse gas emissions when it comes to extraction of coal.

In 2003, for example, the 8th U.S. Circuit Court of Appeals found that the Surface Transportation Board had failed to consider the combustion of coal that would be transported on rail lines servicing Wyoming's Powder River Basin.

In 2014, the U.S. District Court for the District of Colorado found that environmental impact statements assessing road construction for coal-related activities and the addition of newly opened lands to existing coal leases lacked a necessary analysis of greenhouse gas emissions.

"There are some instances where courts have said quite clearly that entities have to look at downstream emissions from extraction operations, from coal leasing in particular," said Michael Burger, executive director at the Sabin Center. "That's what the statute requires."

There's less existing case law around upstream emissions and projects involving transmission lines and oil and gas export facilities. Several cases challenging the Department of Energy's approval of liquefied natural gas terminals are pending in the U.S. Court of Appeals for the District of Columbia Circuit.

'Muddying the waters'



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Outside of fossil fuel extraction, at least one federal appeals court has ruled that NEPA compels an analysis of climate change impacts.

Environmentalists successfully argued in the 9th U.S. Circuit Court of Appeals in 2008 that the National Highway Traffic Safety Administration had failed to take a requisite "hard look" at the greenhouse gas implications of automobile fuel efficiency standards for light trucks and SUVs.

In that same case, the court also found that the agency couldn't give greenhouse gas emissions a value of "zero" in a cost-benefit analysis.

To be sure, a few district courts have ruled against requiring the consideration of climate change under NEPA, Hein said. But on the whole, they have asserted that the language of NEPA means agencies must take climate change into account.

The Trump order calling for rescinding the CEQ guidance is "muddying the waters," Hein said.

"What the Obama administration guidance did," Hein said, "was simply make crystal clear that under NEPA, agencies are supposed to analyze these greenhouse gases."

Verchick, who was involved in the development of the CEQ guidelines during the Obama presidency, said the Obama administration wanted to ensure, in light of the court decisions, that agencies were approaching greenhouse gas analyses in a uniform way in NEPA reviews.

Getting rid of the guidance "opens the door for more litigation," he said.

"To retract those guidelines — that's something that CEQ can definitely do. And when it does, there will no longer be any instructions on how to look at climate impacts," he said. "But that doesn't mean that those impacts doesn't have to be studied and that other courts will require that."

Burger said he expects environmentalists not only to sue agencies that don't consider greenhouse gases in NEPA reviews, but also to challenge the ways agencies that do look at greenhouse gases actually analyze the impacts.

Coal leasing could be a particular target of litigation under the Trump administration, he predicted, given the case law involving coal extraction.

Under Trump, Burger said, "they'll do some kind of analysis and come out with an analysis that makes a number of assumptions that results in a lower number. That'll be an aspect in a lawsuit."



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Dillen of Earthjustice highlighted some of the case law and said agencies are still legally obligated to consider the climate consequences of their actions.

"I like our chances in court when this administration tries to ignore climate change," she said.

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9. **INTERIOR: Trump EO reopens coal leasing, targets oil and gas rules**

E & E News, March 29 | Brittany Patterson

The White House targeted key Interior Department rules in a sweeping executive order yesterday, setting up what is likely to be a protracted battle between the agency and environmental groups' interpretation of energy policy on America's public lands.

"You know our nation can't run on pixie dust and hope, and the last eight years showed that," Interior Secretary Ryan Zinke declared at the signing ceremony for the "energy independence" order at U.S. EPA headquarters. "Today, President Trump took bold and decisive action to end the war on coal and put us on track for American energy independence."

The order — known in Washington-speak as an EO — laid out a substantial list of possible reforms at Interior, including reviewing and possibly rescinding four final oil and gas rules, as well as giving Zinke the option to review or cancel the agency's comprehensive review of the federal coal program.

As expected, Trump also ordered Interior to lift the three-year moratorium on coal leasing on federal lands put in place in January 2016 by former Interior Secretary Sally Jewell.

The order directs Zinke to take "all steps necessary and appropriate to amend or withdraw Secretary's Order 3338." In addition to kicking off the leasing moratorium, S.O. 3338 tasked Interior's Bureau of Land Management with conducting a top-to-bottom review of the federal coal program, the first in more than 30 years.

Jessica Wentz, a staff attorney and associate research fellow with Columbia University's Sabin Center for Climate Change Law, said that although the language of the EO does not explicitly call for an end to the program review, or programmatic environmental impact statement, she suspects it is as good as dead.



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"Given the overall tone set by the administration and this order, I think there's a good chance that DOI will indeed take steps to terminate the environmental review process," she said. "And then there will be a lawsuit."

4 oil and gas rules also up for review

Rolling back the federal coal moratorium has long been a priority for Trump.

Experts say it is unclear if opening up federal coal leasing will have any effect. Federal coal accounts for 40 percent of all U.S. coal production. It is primarily sourced from the Powder River Basin of Wyoming and Montana, and the data show that companies weren't leasing before the moratorium went into effect. The federal government has not leased a single ton of coal in Wyoming — the nation's top coal producer — since 2012 (Greenwire, March 20).

A BLM list updated Feb. 28 shows 44 pending applications for leases or lease modification nationwide. They add up to nearly 3 billion tons. Roughly two-thirds of that coal is tied to applications put on hold — not by Interior but by coal companies themselves trying to weather the mining downturn. Many of the major coal companies have declared bankruptcy in recent years.

"While coal companies may take advantage of this to lock up some additional acres of public land at below-market prices, lifting the leasing pause won't change the economic reality for coal — natural gas and efficiency cost less — which means this will not create a single job," said Alexandra Teitz, who was counselor to former BLM Director Neil Kornze.

The EO also identified four Interior oil and gas rules for review. Similarly to what the order requests EPA to do regarding the Clean Power Plan, the EO also tasks Interior with reviewing the rules already on the books and says the agency, "if appropriate, shall, as soon as practicable, suspend, revise, or rescind the guidance."

BLM's high-profile and much litigated fracking rule, which sets new requirements for well construction, wastewater management and chemical disclosure for fracked wells on tribal and public lands, is identified by the order.

The fracking rule, released in March 2015, was immediately challenged in court by states, industry and tribes. A district court in Wyoming struck it down, and government lawyers and environmental groups appealed that decision to the 10th U.S. Circuit Court of Appeals. Earlier this month, after the 10th Circuit agreed to put the case on hold, Trump administration lawyers



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notified the court this week that Interior is launching an effort to rescind the regulation (Energywire, March 17).

Back to the drawing board with methane

Also up for reconsideration is a rule by the National Park Service that increases oversight of oil and gas operations in and around the National Park System, except in Alaska. It closed a loophole that had previously allowed 60 percent of oil and gas operators to drill without oversight (E&E News PM, Nov. 3, 2016).

The EO also targets a similar rule promulgated by the Fish and Wildlife Service that increases oversight of thousands of oil and gas operations in national wildlife refuges outside of Alaska and requires companies that want to modify wells or drill new ones in wildlife refuges to obtain permits from FWS. It also sets tough new standards across much of the drilling operation (Greenwire, Nov. 10, 2016).

Finally, the EO puts BLM's methane waste rule back into the line of fire. Prior to being included in the executive order, the rule was the subject of a stalled Congressional Review Act effort to repeal it by Congress.

The regulation requires oil and gas operators to adopt best practices and technologies to limit the amount of natural gas that is released into the atmosphere or burned off, also known as flaring. Venting, or releasing natural gas into the atmosphere, is prohibited almost entirely.

Minutes after it was released, industry groups filed suit, charging that BLM was engaging in overreach by regulating methane across the roughly 100,000 wells on public lands (Greenwire, Nov. 15, 2016).

In cases in which a rule is being litigated, the EO directs the attorney general to take action, including asking the court for a stay.

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10. INTERIOR: Grijalva bemoans 'gag order' at FWS

E & E News, March 29 | Jennifer Yachnin

Arizona Rep. Raúl Grijalva, the top Democrat on the House Natural Resources Committee, criticized the Interior Department today for "an ongoing lack of communication and transparency," citing the recent discovery of a gag order at the Fish and Wildlife Service.

In a letter to Interior Secretary Ryan Zinke, Grijalva said FWS's Office of Congressional and Legislative Affairs has recently informed Democratic committee aides that it is unable to discuss "hearings where administration witnesses will not be present."

"It is critical that the flow of information to the Congress and the public be improved as soon as possible," Grijalva wrote in the letter. He said his staff was informed of the prohibition during preparation for a recent hearing on the Endangered Species Act. A statement from Grijalva referred to it as a "gag order."

He also wrote: "It is my hope that this is a miscommunication and I would appreciate clarification. ... Refusing to answer questions about the Interior Department's laws and policies on the pretense that no administration witness will be present at a given hearing calls into question the office's very reason for existing."

Grijalva also complained that the Interior Department has broadly refused to respond to correspondence from Democratic members of his panel.

"Further, my repeated requests for an in-person meeting with you have been ignored since January," he wrote.

Interior did not respond to a request to comment on the [letter](#).

"Transparency is a core value of our democracy," Grijalva concluded. "This is the opposite of transparency. It speaks of a desire to limit the ability of Congress and the public to understand your Department's position on issues of great public interest."

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11. **REGULATIONS: The big announcement is over. What happens now?**

E & E News, March 29 | Niina Heikkinen and Evan Lehmann

President Trump never uttered the words "climate change" yesterday as he snuffed out former President Obama's plans to curb greenhouse gas emissions.

Speaking at U.S. EPA headquarters, flanked by coal executives and their employees, Trump said the "energy independence" executive order would usher in a "new era of energy" that would eliminate federal overreach, shower the country with wealth and put miners back to work. The president singled out the Clean Power Plan, Obama's rule to curb emissions from the power sector, as the greatest regulatory threat to coal miners.

"We are going to have clean coal, really clean coal. We are going to cancel job-killing regulations — by the way, regulations not only of this industry but every industry. We are going to have safety, clean water and clean air, but so many [regulations] are unnecessary, and so many are job-killing," Trump said.

"You know what this is?" Trump asked the miners as he prepared to sign the order. "You are going back to work. Ready?"

That neither Trump nor EPA Administrator Scott Pruitt, Vice President Mike Pence, Energy Secretary Rick Perry or Interior Secretary Ryan Zinke, nor any of the two dozen lawmakers or industry leaders in the EPA Map Room mentioned climate change yesterday was not a coincidence. The executive order is the latest and most sweeping step in the administration's unabashed effort to weaken or eliminate federal efforts to study climate science, curb carbon and protect vulnerable parts of the United States from flooding and sea-level rise.

In addition to rolling back the Clean Power Plan, the order targets EPA and Bureau of Land Management regulations on methane emissions from the oil and gas sector. It reopens BLM regulations on hydraulic fracturing, eliminates Obama's Climate Action Plan and cuts down federal calculations of the social cost of greenhouse gas emissions. The Department of Energy, Trump said, will have a role in fostering employment in the energy sector.

"Together, we will create millions of American jobs, also so many energy jobs, and really lead to unbelievable prosperity all throughout our country, and Rick Perry is going to have a lot to do with that," he said.



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'People need to see mines reopening'

The order stands to reinforce the idea that Trump is deeply suspicious of climate science, even as his advisers seek to soften his past statements about its being a conspiracy by the Chinese and Democrats.

White House press secretary Sean Spicer was asked yesterday during the White House daily briefing if Trump still believes that climate change is a hoax. Spicer didn't dispute it. Instead, he said the president would talk about "the climate and what he believes" when he signed yesterday's order. That didn't happen.

"He does not believe that, as I mentioned at the outset, that there is a binary choice between job creation, economic growth and caring about the environment," Spicer said. "I think, at the end of the day, where we should be focusing on is making sure that all Americans have clean water, clean air, and that we do what we can to preserve and protect our environment."

The president's focus on coal yesterday harked back to promises he had made for more than a year to reopen coal mines and put workers in hard hats and reflective stripes back to work. The order yesterday began a countdown to making those promises real. Announcing the end of a rule, which miners detest, is one thing. Putting them back to work is another.

Many experts say there's no easy way to resuscitate Appalachian coal towns, which face bigger challenges than government regulations, like plentiful and cheap natural gas. Spicer said yesterday that the administration hasn't estimated how many jobs might be created by rolling back the Clean Power Plan.

Earlier this week, a senior administration official acknowledged that several pressures "conspire" to affect the coal industry, with regulations being just one of them. The president doesn't influence all of them, but he will do his part to make government a better friend to coal, the official said.

The question is whether that's enough. Miners were happy yesterday, but if they continue to feel as if the dice are weighted against them, some of them might begin to see Trump as just another Washington politician.

"I think people need to see mines reopening," said Glen Bolger, a Republican pollster. "There's risk in everything in politics. You can't deliver on everything. But you have to deliver enough things."



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States plan to fight

Actually rolling back the Clean Power Plan will likely be a multi-month process, blighted by legal challenges if EPA tries to get rid of the rule without putting in a replacement. That is because the agency is under a legal obligation to act, first because greenhouse gases are an air pollutant, and second because those greenhouse gases endanger public health and welfare, said Steven Silverman, a former EPA attorney under President Obama.

"Leaving nothing in place I don't think is a legal option, so long as the endangerment finding stands," said Silverman.

He noted that EPA has a lot of discretion to weigh cost, feasibility and lead time while writing regulations but would still have to account for facts already compiled in the administrative record that were used to justify the creation of current regulations.

"There would be legal ways to adopt significantly less stringent standards to pass legal muster. I can think of some, but I don't want to tell them," Silverman said.

Though the Trump administration has singled out the Clean Power Plan as a main culprit in killing coal jobs, Silverman pointed out that the Obama administration saw at least the new source standard for power plants as a "lifeline, not an albatross," for the coal industry.

"It's a technology that captures emissions, it can put those CO2 captured emissions to product use, for enhanced oil recovery for example, or safely sequestered. It's a way for that industry to coexist with a world that is trying to cope with climate change," he said.

New York Attorney General Eric Schneiderman (D) said his office would oppose efforts by Trump's Department of Justice to freeze the case currently residing in the U.S. Court of Appeals for the District of Columbia Circuit, as instructed by the executive order.

"We intend to oppose any effort to hold in abeyance the litigation to defend the Clean Power Plan and any effort to roll it back," Schneiderman told reporters yesterday.

Predictable reactions from right and left

In the hours before Trump made his first appearance at the agency, EPA headquarters closed its shades in preparation for the president's arrival, as heightened security patrolled the grounds. Staff mulled the consequences of the administration's recent actions on the agency.



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"People are just keeping their doors shut. The president coming here is a deliberate stick in our eye," said one employee, who worked in enforcement of the Clean Water Act but declined to give his name.

"Keep calm and carry on is the mantra," said another EPA staffer. "Hopefully, everything will get straightened out," she added.

Fossil fuel leaders cheered the order.

"Today's action by President Trump calls on his administration to review existing federal agency policies that have held back American energy production, rescinding rules that have limited our economic growth with little benefit," Independent Petroleum Association of America President Barry Russell said in a statement.

The reactions on Capitol Hill, meanwhile, underscored the partisan divisions on climate change. Republicans in energy-rich states celebrated the administration's hands-off approach to fossil fuel development. They represent industries that for years have suggested that Obama's actions symbolize a social prejudice against oil and coal.

"After eight years of radical environmental policies from the White House, we now have a president focused on bringing coal jobs back," said Rep. Evan Jenkins (R-W.Va.).

Democrats argued that Trump's move would only introduce uncertainty into the business environment and would do nothing to create an economic boost. Sen. Sheldon Whitehouse (D-R.I.) predicted that the regulatory rollback would be unlikely to survive court challenge, particularly as Pruitt plans to keep the Obama-era endangerment finding for carbon intact.

"I don't think he has a lot of real running room rather than to delay for a bit and wait for that litigation," said Whitehouse. "They're playing with fire here, and I think they're going to find that they'll be burning their fingers."

In the evening, scores of environmental activists gathered in front of the White House to condemn the executive order. Holding up signs demanding clean air and climate justice, they criticized the administration for rolling back clean energy initiatives that boosted both local economies and health, saying that the order provided businesses with a green light to pollute.

Sen. Ed Markey (D-Mass.), who also attended the rally, encouraged the public to fight Trump and the "Big Oil cartel."



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"Today, Donald Trump did not sign an executive order. He signed a declaration of war against a clean energy revolution, against climate change as a science," he said, adding that the order was a symptom of climate denial, rather than a step toward energy security.

"[W]e know what his formula is on climate change: Deny, delay, defund — and it will create a disaster for the entire planet," said Markey.

Laura Anderko, director of Georgetown University's Mid-Atlantic Center for Children's Health and the Environment, said that the Clean Power Plan would have saved 300,000 sick days a year if implemented through 2030, as well as prevented 90,000 asthma attacks in children on an annual basis.

"We need to help the administration understand that clean air means good health," she said.

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12. **INTERIOR: Zinke kills mitigation policy, orders review of energy rules**

E & E News, March 29 | Corbin Hiar

Interior Secretary Ryan Zinke revoked the department's policy on offsetting the development impacts on natural resources and ordered a review of all its rules on climate change, mitigation and energy development.

His actions and directions for future action are outlined in a [secretarial order](#) on "American Energy Independence." It's intended to implement a broader executive order that President Trump signed yesterday.

Zinke's secretarial order also calls for a "reexamination of the mitigation policies and practices across the Department of the Interior ... in order to better balance conservation strategies and policies with the equally legitimate need of creating jobs for hard-working American families."

"Energy production is an absolute boon to the economy, supporting more than 6.4 million jobs and supplying affordable power for manufacturing, home heating, and transportation needs," Zinke said in a statement. "In many communities coal jobs are the only jobs."

Trump's directive struck down President Obama's orders on climate change and mitigation. It also requires that agencies take steps to reverse related actions, such as former Interior Secretary Sally Jewell's mitigation policy (E&E News PM, March 28).



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Under Jewell's directive, Interior sought to avoid, minimize and, if necessary, offset the impacts of development on its lands while maximizing predictability for companies (Greenwire, Dec. 13, 2013).

Obama's executive order on mitigation followed Jewell's and set a higher "net benefit" conservation goal for projects funded or permitted by the federal government (Greenwire, Nov. 3, 2015).

But Zinke's "energy independence" order revoked Jewell's mitigation directive, ordering each bureau and office to "reconsider, modify, or rescind" related policies on mitigation or climate change.

Furthermore, Zinke's implementing order directs the Bureau of Land Management to "expeditiously" rescind its hydraulic fracturing regulations and gave BLM 21 days to review the methane flaring rule to determine whether it's "fully consistent" with Trump's order (Climatewire, March 29).

The secretary also gave the directors of the National Park Service and Fish and Wildlife Service three weeks to reconsider two other oil and gas rules cited in the president's order (Greenwire, March 29).

Finally, Zinke gave all bureaus and offices 21 days to identify regulations that potentially burden the "development or utilization of domestically produced energy resources, with particular attention to oil, natural gas, coal and nuclear resources." The deputy Interior secretary then has six days to produce a plan to comply with Trump's energy order.

Zinke signed the "energy independence" directive this morning with an order ending Interior's moratorium on issuing new coal leases, but the text of the documents wasn't publicly available until this afternoon (Greenwire, March 29).

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