

From: Sutherland, Ryan
Sent: 2017-08-02T18:39:55-04:00
Importance: Normal
Subject: Daily News Report - August 2
Received: 2017-08-02T18:40:06-04:00
[Daily News Report August 2.docx](#)

Attached is the daily news report for August 2.

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



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

UTAH – TOP STORIES – AUGUST 2 2017

1. **Did Emery sheriff's personnel harass wild horses?**

The Salt Lake Tribune, Aug. 2 | Brian Maffly

The Bureau of Land Management and the Emery County Sheriff have opened investigations into what a citizen reported as illegal hazing of wild horses by members of the sheriff's search and rescue team.

2. **In our opinion: Differences over land management not as cut and dried as some believe**

The Deseret News, Aug. 2 | Deseret News editorial board

As the Outdoor Retailers show packed up after its final visit to Salt Lake City, the same trade group leaders who chose to leave Utah in protest over public lands policy found themselves roundly applauding legislation co-sponsored by a Utah congressman to make it easier for people to recreate on federal lands. There's more than a little irony in this confluence of events, which reveal how the ideological differences over land management are not as cut and dry as some would believe.

3. **WATER POLLUTION: Utah joins legal fight over mine spill**

E & E News, Aug. 2 | Amanda Reilly

Utah has jumped into the legal battle over the massive 2015 Gold King abandoned mine spill.

The state on Monday filed a lawsuit in the U.S. District Court for the District of Utah alleging U.S. EPA contractors and the mine's owners and operators failed to take the proper precautions to prevent the Colorado spill.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

E&E/NATIONAL NEWS – TOP STORIES

1. **Amid monument review, a pro-energy Interior emerges**

High Country News, Aug. 1 | Tay Wiles

Interior Secretary Ryan Zinke is three months into a review of 27 national monuments to determine whether they should be shrunk, abolished, or left intact. Zinke's review comes as he continues to fill his department with pro-industry officials and amid a broader push at the Interior Department for increased energy development on public lands—something monument designations can work against.

2. **Legal scholars dispute whether monuments are permanent**

High Country News, Aug. 2 | Elizabeth Shogren

No president has ever abolished a national monument, and it has been more than 50 years since a president shrank one. Nor has Congress revoked any significant monuments. The high regard given these special places is part of what makes President Donald Trump's order to review all large monuments designated since 1996 so extraordinary. Courts have never decided whether a president has the legal authority to change or undo a designated monument, and now this uncertainty has sparked a clash of legal titans.

3. **Op-ed: Why won't Congress fight against slaughtering wild horses?**

The Hill, Aug. 2 | Suzanne Roy

The Americans are big fans of the wild horses roaming the nation's public lands, and have been pretty clear where they stand on their protection.

4. **COAL: Wyo. council rejects mine permit**

E & E News, Aug. 2 | Dylan Brown

The Wyoming Environmental Quality Council yesterday rejected a permit for the state's potential first major new coal mine in decades, saying more public outreach is needed.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

5. **NEVADA STANDOFF: Juror to remain despite receiving death sentence message**

E & E News, Aug. 2 | Jennifer Yachnin

LAS VEGAS, Nev. — Despite getting a text message demanding that she "pass [a] death sentence" against four men who participated in the 2014 armed standoff between ranchers and federal agents near Bunkerville, Nev., a juror does not need to be dismissed from the case, U.S. District Judge Gloria Navarro determined yesterday.

6. **INTERIOR: Enviros put spotlight on 'revolving door'**

E & E News, Aug. 2 | Michael Doyle

An environmental advocacy group with roots in Montana and Colorado is trying to make it easier to monitor Interior Department staffing, as seen through a distinctly critical lens.

7. **AIR POLLUTION: Court lets states intervene in ozone fight in setback for EPA**

E & E News, Aug. 2 | Sean Reilly

Dealing a blow to the Trump administration and business groups, a federal appeals court will allow California and a half-dozen other states to intervene in litigation to defend U.S. EPA's 2015 ground-level ozone standard.

8. **REGULATIONS: White House abandoned 131 Obama-era rules — report**

E & E News, Aug. 2 | Maxine Joselow

The Trump administration abandoned 131 Obama-era rules in its spring 2017 regulatory agenda, according to a new analysis by the Center for Progressive Reform.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

9. **INTERIOR: Zinke meets with sportsmen as some ask 'what happened' to him**

E & E News, Aug. 2 | Scott Streater and Jennifer Yachnin

Interior Secretary Ryan Zinke met today with sporting groups in a closed-door meeting in Washington, even as a national sportsmen's organization launched an ad campaign in Zinke's home state of Montana questioning his ongoing review of national monuments and his overall commitment to public lands.

10. **LAW: Republicans aim to block court reviews**

E & E News, Aug. 2 | Michael Doyle

Taking a page from an old but still controversial congressional playbook, authors of environmental bills covering everything from the gray wolf to forest management have declared that their legislative handiwork "shall not be subject to judicial review."



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

UTAH – FULL STORY

1. Did Emery sheriff's personnel harass wild horses?

The Salt Lake Tribune, Aug. 2 | Brian Maffly

The Bureau of Land Management and the Emery County Sheriff have opened investigations into what a citizen reported as illegal hazing of wild horses by members of the sheriff's search and rescue team.

The July 9 incident came to light after Laurie Kline, a Bicknell-based photographer, visited McKay Flat to photograph horses that roam the Muddy Creek Herd Management Area in the San Rafael Swell, south of Interstate 70.

She wound up photographing men on dirt bikes and an ATV apparently pursuing the horses in violation of federal law that protects free-roaming wild horses and burros. Kline's photographs show the sheriff's logo on the door of the truck that hauled vehicles to the site.

After Kline provided her video and still images to the BLM, the agency's law enforcement began investigating, according to spokeswoman Lisa Reid.

"That is not a BLM-approved activity. We did not know of the activity until we were notified by Ms. Kline," Reid said Friday.

A spokeswoman for Emery Sheriff Greg Funk confirmed on Monday that four search and rescue volunteers were in the area on July 9 after locating a lost father and his 13-year-old daughter, reported missing the day before by a ranger in Goblin Valley State Park.

Sheriff's spokeswoman Janalee Luke said in a statement that once the missing pair — found suffering from exposure and dehydration — had been safely evacuated via ambulance, the volunteers drove to McKay Flat, unloaded their dirt bikes and began exploring the Behind the Reef trail "in an attempt to see if they could find a faster alternative route into the area where they had located the missing persons."

That exploration, Luke said, brought them into proximity with the wild horses. "The horses just happened to be where they unloaded their motorcycles to look for the other road," Luke said Monday in an interview.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

Upon the volunteers' return, she said, one of the men reported to the sheriff that there might be a complaint about the incident.

The sheriff then launched an internal inquiry, notified BLM officials and has placed the four non-paid volunteers on suspension pending further investigation of the matter, she said. Emery County Sheriff's Capt. Kyle Ekker also had contacted Kline "to keep her informed and to assure her" the sheriff's office "is taking the complaint seriously," the statement said.

The incident comes amid heightened tensions over wild horses on Utah's public lands. Some county officials are chronically upset with the BLM for not removing wild horses from the public range fast enough and some have even threatened to round up horses even though they are protected under federal law. Each year, BLM removes thousands of horses from the Western ranges and holds many for life in corrals.

Although plenty of ranchers are frustrated with the presence of horses on their grazing allotments, Emery County has gotten along with the BLM over horses, according to Reid. Neither Emery County officials nor ranchers who graze Muddy Creek have complained to the BLM about horses recently, she said.

According to Kline, she was photographing the horses that Sunday when she saw a truck and trailer drive up and park nearby. A second truck, the one bearing the sheriff's logo, then arrived and five men unloaded dirt bikes and the ATV, she said. Her photographs show one man wearing a search-and-rescue tee-shirt wielding a hand-held radio transmitter.

Kline claimed she overheard one of the men say he didn't mind if they killed a few of the horses, she wrote the next day in a hand-written statement addressed to Reid and Gus Warr, who supervises the BLM's horse program in Utah.

"Four men commenced chasing and stampeding the eighty-three horses with foals," Kline wrote. "The herd vanished in a cloud of dust through the flat with the ATV rider in lead pursuit. The three dirt bikes flanking the roiling dust cloud spread out to one side climbing the hill through pinon and juniper in pursuit of the frantic horses."

Kline estimated the chase lasted at least a mile. She said she never spoke to the men before she left for a five-mile drive to find a cell-phone signal to convey what she had seen to a friend. She returned to find the men gone.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

Investigations by the sheriff and the BLM are continuing.

To settle a recent lawsuit filed by Utah, the BLM has agreed to target an area in the West Desert, known as the Bible Spring complex, for wild horse gathers and give the state greater say in management of the animals. That settlement also requires BLM to remove horses from McKay Flat every other year.

According to Reid, the agency this year is focusing on Bible Spring, where 100 horses are to be removed beginning on Aug. 15.

[BACK](#)

2. In our opinion: Differences over land management not as cut and dried as some believe

The Deseret News, Aug. 2 | Deseret News editorial board

As the Outdoor Retailers show packed up after its final visit to Salt Lake City, the same trade group leaders who chose to leave Utah in protest over public lands policy found themselves roundly applauding legislation co-sponsored by a Utah congressman to make it easier for people to recreate on federal lands. There's more than a little irony in this confluence of events, which reveal how the ideological differences over land management are not as cut and dry as some would believe.

Rep. Rob Bishop is co-sponsoring a bipartisan bill that would make it easier for outdoor recreationists to cut through red tape when applying to access public lands to ski, climb or run rivers. A representative of the Outdoor Industry Association reacted to news of the bill by saying, "Any good policy that gets more people outside and makes sure the lands can continue to provide recreation...is good for the recreation economy." The statement did not address the fact that the law carries the name of a congressman lumped into the category of Utah public officials once viewed as averse to promoting the outdoor recreational industry's values.

The bill, introduced in the Senate by Ron Wyden, D-Oregon, was in the works before the Outdoor Retailers' decision to discontinue its long relationship with Utah as the host of its two annual trade shows. It is exactly the kind of legislation the outdoors industry lobbies for. The fact that Bishop has signed on as House co-sponsor runs counter to the narrative that Utah officials



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

are united in their desire to elevate extractive industries over recreational and conservationist interests in the management of federal lands.

From the beginning, it was our opinion that members of the trade show organization were unreasonable in their relentless criticism of Utah's governor, legislature and congressional delegation over lands policy, particularly regarding the squabble over the designation of the Bear's Ears National Monument. The organization was unwilling to give credence to Utah's desire to encourage balance in the use of public lands and to ensure the state has more of a say in how those lands are managed. The state's support of a resolution to reconsider the size and manner of the Bear's Ears designation gave predisposed critics ammunition to elevate their concerns into a full-blown protest over Utah lands policy, which is more nuanced than critics would admit.

The Recreation Not Red-Tape Act is an example of a bipartisan effort to wipe away unnecessary federal regulations governing access to popular recreation areas under federal jurisdiction. It demonstrates that leaders of both parties are in agreement that lands policy can be improved upon when it comes to furthering the interests of outdoors enthusiasts.

Bishop deserves credit for pushing the measure, which should give pause to those in the outdoor retail world who have chosen to put up fences rather than build coalitions with Utah leaders interested in promoting conservation and recreation on public lands.

[BACK](#)

3. **WATER POLLUTION: Utah joins legal fight over mine spill**

E & E News, Aug. 2 | Amanda Reilly

Utah has jumped into the legal battle over the massive 2015 Gold King abandoned mine spill.

The state on Monday filed a lawsuit in the U.S. District Court for the District of Utah alleging U.S. EPA contractors and the mine's owners and operators failed to take the proper precautions to prevent the Colorado spill.

"Defendants knew or should have known that the conditions at the Gold King Mine presented a high risk of significant harm to the state of Utah and other downstream communities, but defendants acted in disregard of that risk," the [complaint](#) says.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

In August 2015, EPA contractors accidentally triggered the rupture at the Gold King site, sending 3 million gallons of toxin-laced water into the Animas and San Juan rivers, which then flowed through a corner of New Mexico into Utah.

New Mexico has already waged a fierce legal battle over the spill. The state sued EPA, contractors and the mine owners in federal district court in New Mexico, seeking to recover damages.

New Mexico also tried to file a lawsuit against Colorado in the Supreme Court, arguing that the state was responsible for employing a "risky strategy" by approving plugging abandoned mine shafts like Gold King with bulkheads to contain wastewater. Justices, though, declined to hear the case in June (Greenwire, June 26).

The Navajo Nation, whose reservation in the Four Corners region was among the hardest hit by pollution from the spill, has also filed suit. The New Mexico district court combined the litigation with New Mexico's claims.

Utah's lawsuit contains a variety of complaints, including that the mine cleanup team failed to measure the pressure of contaminated water at the site and did not install a secondary containment system or emergency response procedures in case of an accidental release of toxic wastewater.

The lawsuit argues that EPA contractors and mine owners were responsible for the spill and cleanup under the national hazardous waste statute.

While Utah did not ask the court for any specific dollar amount, the state's complaint claims it is authorized to receive costs to assess damages. The lawsuit says the state is still paying for remediation.

"Defendants acted with negligence, gross negligence, carelessly, recklessly, intentionally and wantonly in managing and disposing of contaminated wastewater in the Gold King Mine and other area mines," the lawsuit says.

Utah's suit does not name EPA, which has said it takes full responsibility for the spill. Instead, named as defendants are Environmental Restoration LLC, Harrison Western, Kinross Gold Corp., Kinross Gold U.S.A. Inc., Sunnyside Gold Corp. and Gold King Mines Corp. Some of the same defendants have sought to dismiss New Mexico's claims.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

EPA contractor Environmental Restoration has argued that it did not have control over any of the actions that caused the spill and that the hazardous waste law bars citizen suits over ongoing cleanup actions at EPA Superfund sites. EPA added the Gold King site to the Superfund National Priorities List in September 2016.

The mine's owners likewise have argued it was EPA's actions that caused the breach at the mine. The agency has also sought to dismiss New Mexico's lawsuit.

Last week, New Mexico Chief District Judge Christina Armijo ordered more briefing on the motions to dismiss the case.

[BACK](#)

E&E/NATIONAL NEWS – FULL STORY

1. **Amid monument review, a pro-energy Interior emerges**

High Country News, Aug. 1 | Tay Wiles

Interior Secretary Ryan Zinke is three months into a review of 27 national monuments to determine whether they should be shrunk, abolished, or left intact. Zinke's review comes as he continues to fill his department with pro-industry officials and amid a broader push at the Interior Department for increased energy development on public lands—something monument designations can work against.

A new report released Tuesday describes an Interior Department now mainly led by employees from extractive-industry backgrounds, marking clear priorities for Zinke that do not bode well for greater public land protections. The report, issued by the Western Values Project, a progressive organization, shows close ties between high-ranking staffers and industry. Of the known political hires to the Interior thus far, 21 come from resource extraction industries, while only three are from “conservation, outdoor recreation, or hunting and fishing backgrounds,” says Chris Saeger, executive director of Western Values Project.

For example, Scott Angelle, now the director of Zinke's Bureau of Safety and Environmental Enforcement, received donations from energy companies such as Chevron, Energy Transfer Partners (the company behind the Dakota Access Pipeline) and Occidental Petroleum Corporation, during political campaigns. In his new job, Angelle will inspect and regulate



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

offshore oil and gas production. Several Interior appointees have worked for Americans for Prosperity, a far-right advocacy group funded by the Koch brothers, known for their support of fossil fuel industries. Deputy Interior Secretary David Bernhardt is a former lobbyist for oil, gas and mining interests, the report points out.

Kathy Benedetto, who recently worked for Bioxy Research, which provides “services for the oil and gas, refining and chemicals, mining, agriculture and construction industries,” is now a special assistant to the secretary of Interior. For 13 years, Benedetto worked for a subcommittee of the House Natural Resources Committee, chaired by Congressman Rob Bishop, R-Utah. Benedetto is one of several new federal employees with ties to the Utah delegation — a group of lawmakers that has pushed to weaken conservation protections on public lands for years. A new hire at the Bureau of Land Management and Interior’s new deputy assistant secretary for land and minerals management also worked for House Natural Resources subcommittees under Bishop.

Kate Kelly, a former senior advisor at Obama’s Interior and now the public lands director at the Center for American Progress, says Bishop’s influence is beginning to take effect inside the Trump administration. “I think there are enough dots there that we can start to draw a line between the Utah delegation and their ideology and the Interior Department and what we’re starting to see come out of the agency,” she said in an interview. “(Bishop) is hostile to the concept of federal lands and the Antiquities Act. So the actions we’re seeing at the Interior Department take on that flavor.”

President Donald Trump even named Utah Sen. Orrin Hatch during the signing ceremony of the monument review: “(Hatch) would call me and call me and say, ‘you gotta do this.’ Isn’t that right, Orrin? You didn’t stop.” The president said he was ordering the monument review “in honor of” Hatch and Senator Mike Lee, R-Utah, who also pushed for the review.

Trump ordered the review in April. It encompasses monuments designated under the act that are at least 100,000 acres and were created by executive action since the year 1996. The order requires Zinke to consider the designations’ impact on economic development and on “the available uses” of the land, and whether the monuments exceed “the smallest area compatible with the proper care and management of the objects to be protected.” Zinke has since traversed the country, meeting with select stakeholders and drawing impassioned crowds — and criticism — from within the debate over public lands management. Zinke just finished a major swing



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

through Western states and must have recommendations for the monuments to Trump by Aug. 24.

The Antiquities Act allows presidents to deepen protections for federal public lands via executive proclamation. Monuments covered by Trump's order include designations made by former presidents Bill Clinton, George W. Bush, and Barack Obama, putting some of the West's most contentious monuments under review.

Zinke's tour started at perhaps the most controversial site: Bears Ears National Monument, in southeast Utah, which Obama created in December 2016, following years of negotiations with a vast array of parties, including a coalition of tribes for whom Bears Ears holds deep cultural and historical significance. In June, Zinke recommend shrinking Bears Ears, which encouraged Utahns who say the designation will have a negative impact on their livelihoods. On the other side of the debate, the threat to the monument has riled conservationists and tribal members who adamantly support protecting the landscape and ancestral sites.

Zinke has also visited Cascade-Siskiyou National Monument in southern Oregon, touring the area with Congressman Greg Walden, who was against Obama's January 2017 expansion. Last week, the secretary got a look at New Mexico's Organ Mountains-Desert Peaks National Monument, but gave few details on how it would fair in the review. During his one-day stop in Nevada this past weekend, Zinke canceled meetings with several conservation organizations who support Gold Butte and Basin & Range National Monuments, in order to make a cabinet meeting in Washington, D.C. The secretary did meet with the head of a local recreation and off-highway vehicle advocacy group. He also met with state Assemblyman Chris Edwards who contacted members of the Trump administration earlier this year to express criticism of Gold Butte.

Members of the public have submitted roughly 1.4 million comments on the monument review in recent months. In a recent study, the progressive advocacy group Center for Western Priorities selected 1,000 comments at random and found that 98 percent were pro-monument. Zinke has announced three monuments will remain unchanged by his review: Hanford Reach, in Washington; Craters of the Moon, in Idaho; and Canyons of the Ancients, in Colorado. He has said that Upper Missouri River Breaks, in his home state of Montana, created by Clinton in 2001, will likely be left untouched.

Still, Kelly thinks it's possible that multiple national monuments could end up being revoked or significantly altered as a result of Zinke's review. If that happens, pro-monuments groups will



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

sue the administration, and are already preparing for that possibility, she said. “A number of organizations are taking a serious look at what their legal strategy would be.”

[BACK](#)

2. Legal scholars dispute whether monuments are permanent

High Country News, Aug. 2 | Elizabeth Shogren

No president has ever abolished a national monument, and it has been more than 50 years since a president shrank one. Nor has Congress revoked any significant monuments. The high regard given these special places is part of what makes President Donald Trump’s order to review all large monuments designated since 1996 so extraordinary. Courts have never decided whether a president has the legal authority to change or undo a designated monument, and now this uncertainty has sparked a clash of legal titans.

A multitude of legal experts — including 121 law professors — argue that presidents lack the power to alter or revoke monuments. Meanwhile, a much smaller but no less adamant group asserts the opposite. These opponents are waging a tug of war in opinion pieces, blog posts, law journals, comment letters and at scholarly conferences. Both sides cite the 1906 Antiquities Act and decades of legal opinions and obscure congressional documents.

This arcane debate over presidential authority matters because the ultimate fate of any monuments Trump targets likely will lie with the courts. Building the legal case to abolish or reduce a monument would be a herculean task, says presidential historian Douglas Brinkley, but if a judge allows Trump to shrink even one, precedent would be set. “When you save national monuments, there’s a sanctity to it,” says Brinkley, a professor at Rice University. “If you’re allowed to start mauling and molesting the monuments, then every other national monument is in jeopardy.”

The Trump administration’s review focuses on 27 monuments, some land and others marine, designated by Barack Obama, George W. Bush and Bill Clinton. All but one of the land-based monuments are in the West and larger than 100,000 acres. In July, Interior Secretary Ryan Zinke ended reviews of Colorado’s Canyon of the Ancients, Idaho’s Craters of the Moon and Washington’s Hanford Reach, recommending no changes. But Zinke has proposed significant reductions to Utah’s Bears Ears, and further recommendations are due by Aug. 24.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

One of the most significant voices arguing on behalf of Trump's authority is John Yoo, who rose to prominence after 9/11, when, as a deputy assistant attorney general, he wrote memos used to justify torturing suspected terrorists. Yoo, a University of California, Berkeley law professor, is a frequent TV commentator on presidential authority, and doesn't always support Trump. On the monuments issue, he is partnering with Todd Gaziano, another former Justice Department lawyer and the executive director of the Washington center of the Pacific Legal Foundation, which often argues for property rights and against environmental protections.

The 121 professors were organized by Justin Pidot, a professor of natural resource law at the University of Denver. As an Interior deputy solicitor under Obama, Pidot worked on the designations of several monuments, including Bears Ears, and is passionate about the topic. He posted a six-page letter on Listservs and asked other law professors to sign on before he submitted it as a comment to Interior's review. He was surprised when 120 other professors joined. "We're in uncharted territory here. No president has ever done anything like this before: It's calling into question fundamental principles of public-lands law," Pidot told High Country News.

Their argument goes as follows: Under the Constitution, Congress has authority over public lands unless it explicitly delegates that power. The Antiquities Act gave the president authority "only to identify and reserve a monument, not to diminish or abolish one. Congress retained that power for itself," the scholars write. They cite a 1938 opinion by Franklin Roosevelt's attorney general, Homer Cummings, that concluded that the Antiquities Act "does not authorize (the president) to abolish (national monuments) after they have been established."

This includes altering monuments, they argue, according to Congress in the 1976 Federal Land Policy and Management Act, which dictates that the Interior secretary may not "modify or revoke any withdrawal creating national monuments." The professors add that the legislative history (a report from a House committee) makes it clear that Congress meant presidents, too. The bill would "specifically reserve to Congress the authority to modify and revoke withdrawals for national monuments created under the Antiquities Act," the House committee report reads.

Four prominent environmental law professors expand upon the FLPMA argument in a May Virginia Law Review article. One of them, University of Colorado law professor Mark Squillace, concedes it hasn't been tested in court, and a judge would have to accept that the committee report clarifies Congress' intentions. "If the court is willing to accept the legislative history, then I think it's game over," Squillace says.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

But their opponents, in an LA Times opinion piece, contend that FLPMA “is a separate statute, on a different subject, that did not alter the text or plain meaning of the Antiquities Act.” If that’s the best argument their opponents have, they say, “they should lose.”

Gaziano also scoffs at the scholars’ reliance on an “ambiguous” report from a congressional committee. The late Supreme Court Justice Antonin Scalia “famously would never look at a committee report,” Gaziano says. The reason he and Yoo are far outnumbered, he says, is that academics tend to be liberals who in this instance are swayed by politics, not law. When the Supreme Court weighs in, Gaziano says: “This isn’t going to be close. It’s going to be very embarrassing for them.”

Gaziano and Yoo argue that the power to designate a national monument implies the power to revoke one. They cite multiple examples where presidents weren’t explicitly given the power to undo something but nevertheless did so. For instance, though presidents weren’t given the right to cancel international treaties, federal courts have upheld their right to do so.

An even stronger case, they argue, can be made that presidents have the right to revoke any monument that was illegally designated, such as one that is overly large. The Antiquities Act specifies that presidents should preserve “the smallest area compatible with the proper care and management of the objects to be protected.”

Such reductions are permissible, they say, because presidents have done so repeatedly in the past. In 1915, President Wilson reduced Mount Olympus National Monument (now Olympic National Park) almost by half. Franklin Roosevelt shrank the Grand Canyon Monument (now a national park) under pressure from ranchers. Yoo and Gaziano offer advice for how Trump should proceed: “We think the courts are more likely to uphold significant reductions if the president could credibly include in his determination that the original designation was inappropriately large relative to the object to be protected or has become so with changed circumstances,” they write in a report for the conservative think tank American Enterprise Institute.

Which of these arguments, if any, will prove most persuasive to the courts is uncertain, especially given that Congress has been silent on the issue. It has twice amended the Antiquities Act — to ban presidents from designating future monuments in Wyoming or monuments larger than 5,000 acres in Alaska — without specifying whether their size could be limited elsewhere or if a president can change or revoke one. What is clear is that Trump has taken the nation into



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

uncharted territory when it comes to the future of the vast stretches of Western lands and waters preserved by his predecessors. Jim Rasband, a law professor and vice president of Brigham Young University, concludes in a paper he delivered at a July legal conference: “A new chapter in the meaning of the (Antiquities) Act may be about to be written. Depending on how the courts choose to read congressional silence, which is always a tricky proposition, national monuments may prove to be less permanent than once envisioned.”

[BACK](#)

3. **Op-ed: Why won't Congress fight against slaughtering wild horses?**

The Hill, Aug. 2 | Suzanne Roy

The Americans are big fans of the wild horses roaming the nation's public lands, and have been pretty clear where they stand on their protection.

In survey after survey, Americans have expressed overwhelming support for preserving these wild animals, which are long entrenched in our national memory, imagination, imagery and history. More than three decades ago, Congress unanimously passed the Wild Free-Roaming Horses and Burros Act of 1971 to great public acclaim, reinforcing the status and value of these national symbols.

Recent polls show that 80 percent of Americans support protecting wild horses on our public lands and oppose slaughtering them. Why, then, does the government keep pursuing efforts to eradicate them as if they were some sort of insidious infestation?

The latest death threat against these icons of the American West came earlier this year from the U.S. Department of the Interior, which has proposed budget language that would undo a ban on killing wild horses or shipping them to foreign slaughterhouses — all in the name of providing federal wildlife managers “more flexibility” in managing horse numbers on the range.

The House Appropriations Committee recently took up that language, and despite lawmaker after lawmaker standing up to say how much they loved horses, all supported the amendment that would lead to their widespread destruction.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

But let's be clear: No matter what label you put on it, you can't love horses and support the mass killing of more than 90,000 of them.

The arguments that advocates of slaughter consistently make are just as consistently flawed.

Up until now, the Bureau of Land Management has used an arbitrary system of so-called "Appropriate Management Levels" to determine how many horses may inhabit certain sections of public land. These levels have been criticized and disputed, but the bureau has ignored those complaints.

The National Academy of Sciences, in a 2013 report, said that it could find no scientific basis for these levels. A number of court cases in the West have questioned the validity of the bureau's management level system.

Nevertheless, the bureau has continued to entrench their recommendations in this arbitrary figure, with little explanation for their methodology. Even more troubling, slaughter advocates blindly repeat bureau statistics with little understanding of what they mean.

It is common sense that doing the research to demonstrate, soundly, how many horses can equitably share federal land should be required of the bureau before it proposes dire solutions like gunning down wild horses on the open range under the guise of euthanizing "excess" animals.

In recent years, Congress has been quick to solve all problems involving wild horses by jumping straight to slaughter. Congress should reject this return to barbarism. The American people have made it clear that they reject this inhumanity, and studies have shown that better options exist.

First, Congress needs to force the Interior Department to do its homework. Rather than implement a one-size-kills-all solution, the department should scientifically study how many wild horses and burros should roam the range, firmly keeping in mind that the American public wants them on public lands.

Congress should also call on the department and bureau to make increased use of fertility control to manage horses humanely on the range. Today, the bureau uses the PZP vaccine, a type of birth control administered by a dart injection, on an extremely limited basis to manage horse herds in several management areas. It should be expanding this successful work, rather than cutting the



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

budget for it. PZP is an efficient and cost-effective solution to manage fertility and herd size, while meeting the public's demand that wild horses be protected and preserved.

Polling has shown where the American people stand on this issue. It is not a return to brutal horse slaughter. Lawmakers must reject this inhumane answer and call for publicly-supported, long-term solutions for our wild horses. The House Appropriations Committee may have supported slaughter, but the full House of Representatives, along with the Senate, still have a voice that can protect our majestic wild horses. We hope they will do so.

Suzanne Roy is executive director of the American Wild Horse Campaign, an advocacy organization dedicated to preserving wild horses and burros in viable free-roaming herds. Roy has worked as an animal welfare professional for 25 years. During her career, she has worked to improve the plight of elephants, chimpanzees, marine mammals and other animals both in captivity and in the wild.

[BACK](#)

4. **COAL: Wyo. council rejects mine permit**

E & E News, Aug. 2 | Dylan Brown

The Wyoming Environmental Quality Council yesterday rejected a permit for the state's potential first major new coal mine in decades, saying more public outreach is needed.

The panel voted 4-1 to send Ramaco Carbon LLC's application for the Brook mine — the first part of its proposed coal-to-cars carbon fiber industrial park near Sheridan — back to the Wyoming Department of Environmental Quality (Greenwire, July 31).

Last year, state regulators deemed the permit complete, prompting a backlash from local residents, the conservation group Powder River Basin Resource Council and another coal company, Big Horn Coal Co., that owns surface rights near the proposed mine site.

During a protracted hearing over the last three months, critics argued the permit lacked baseline information on water quality, blasting, reclamation and subsidence — a key concern in an area with land stability issues from historic mining.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

Ramaco, citing the number of pages and hours spent on the permit, deferred to the expertise of state regulators.

Council members at yesterday's decision hearing not only sided against Ramaco but were "irritated" at the lack of public outreach on the part of the company and state officials, independent Wyoming news outlet WyoFile reported.

"It's not required, no laws have been broken. But I think common sense has been violated," Chairman David Bagley said.

In a statement, Ramaco CEO Randall Atkins said the company will work to fix the issues raised and remains "confident" the permit will ultimately be approved.

"We regard this overall project as a strong potential driver and benefit for the Sheridan and Wyoming economies and look forward to its future success," he said.

The statement made no mention of plans to engage local residents, who applauded yesterday's decision.

After "a trial-like hearing with intimidating cross examination," Powder River Basin Resource Council Chairman Bob LeResche said, "justice has been served."

Resident Joan Tellez added, "This process wasn't easy for us, but we felt we had to make our concerns heard, and we're glad that the EQC listened to us. We will continue working to make sure that our land and water remain preserved."

The fraught relationship between the two sides boiled over recently when Ramaco hailed a \$3.7 million grant awarded to the Western Research Institute as its own. The company is a partner in the Laramie, Wyo.-based laboratory's project to make carbon fiber for cars out of feedstocks like coal.

During the resulting press release skirmish, Ramaco spokesman Bill Bissett left a comment on the Powder River Basin Resource Council's Facebook page calling the group "stupid hippies." Bissett later apologized for the post, saying it was intended as a private message.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

[BACK](#)

5. NEVADA STANDOFF: Juror to remain despite receiving death sentence message

E & E News, Aug. 2 | Jennifer Yachnin

LAS VEGAS, Nev. — Despite getting a text message demanding that she "pass [a] death sentence" against four men who participated in the 2014 armed standoff between ranchers and federal agents near Bunkerville, Nev., a juror does not need to be dismissed from the case, U.S. District Judge Gloria Navarro determined yesterday.

Following brief testimony from the woman identified as "Juror No. 1," both federal prosecutors and defense attorneys urged Navarro to retain the juror, praising the woman's decision to immediately report the text to the court.

"The fact that she came to you shows she takes her duties as a juror very seriously," said acting U.S. Attorney for Nevada Steven Myhre.

According to Navarro, Juror No. 1 received a text message from a friend stating: "You have 2 hours more to pass death sentence on these prisoners."

In a brief conversation with Navarro and the attorneys, and without the other jurors present, Juror No. 1 said she had received the text Monday and then reported it to the court within about five minutes.

"I received a text and came in and talked to you," she told Navarro. She told the judge that she had not shown the text to her fellow jurors or discussed it with them.

Juror No. 1 also said she has subsequently blocked the sender of the text, who was not identified.

"I appreciate you letting us know right away," Navarro said.

The incident occurred on an otherwise routine day of testimony in the case, in which federal prosecutors are making their second attempt to jail four men who took part in the 2014 standoff. The confrontation was sparked when agents from the Bureau of Land Management tried to seize rancher Cliven Bundy's cattle over more than \$1 million in unpaid grazing fees.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

The first trial ended in April with the jury deadlocked over charges against four defendants: Richard Lovelien, Scott Drexler, Eric Parker and Steven Stewart.

Federal prosecutors allege the quartet conspired with Bundy and others to interfere with federal officers trying to carry out court orders to round up cattle.

In the current trial, which began July 10, federal prosecutors are also trying to tie Drexler, Parker and Stewart to other protests on public lands — such as the Sugar Pine mine in Josephine County, Ore., in April 2015 and the White Hope mine near Lincoln, Mont., in August 2015 — and highlight their participation in the Idaho III%, an anti-government militia group.

Attorneys for both sides spent much of yesterday's trial sparring over Facebook postings made by Parker, including comments he made on links to a social media page for the Northern Nevada Light Foot Patriots.

"Got a neighbor in some trouble down in Nevada ... What are you going to do when the shooting starts?" Parker wrote in one comment flagged by the prosecution.

Another Facebook status asked: "Does anyone know anybody in the Nevada militia?"

But Parker's defense attorney Jess Marchese repeatedly objected to federal prosecutors' attempts to include additional status updates written more than a year after the showdown in Nevada, arguing that such statements on the incident cannot be used to show Parker's state of mind in 2014.

"You can't go back in time to show what someone's intent was," Marchese said, responding to prosecutors' attempts to introduce a statement in which Parker said of the 2014 showdown: "The right time presented itself and we decided to stand."

Other documents introduced by federal prosecutors included a meme Parker posted to his Facebook account, featuring an image of a wolf baring its teeth with the words: "Never tread on someone who wants to die in battle."

"Low there do I see my family all the way back to the beginning. They call me to take my place amongst them," Parker commented on the meme.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

Yesterday's hearing was lightly attended by about a half-dozen spectators, including Parker's wife, Andrea Parker, as well as California resident Neil Wampler, who was acquitted last year for his role in the occupation of the Malheur National Wildlife Refuge (Greenwire, Oct. 28, 2016).

Andrea Parker, who publishes daily video updates on the trial along with Montana resident John Lamb, a supporter of the Bundy family, has criticized the Justice Department for what she calls efforts to damage her husband's defense.

"They had a mistrial the last time. They have doubled down. They have tripled down," Parker said in a video posted Monday. "They have thrown everything they've got at this. They have stacked the jury against us, they have prevented us from talking about the BLM's heavy-handedness, state of mind. They have taken any form of defense away from us."

[BACK](#)

6. **INTERIOR: Enviros put spotlight on 'revolving door'**

E & E News, Aug. 2 | Michael Doyle

An environmental advocacy group with roots in Montana and Colorado is trying to make it easier to monitor Interior Department staffing, as seen through a distinctly critical lens.

Through a new website, departmentofinfluence.org, the Western Values Project identifies what it calls "the revolving door between special interest lobbyists and political appointees at the Department of the Interior."

The site resembles a political opposition research book, replete with citations to assorted campaign filings, lobbying reports, public records and prior media accounts.

"This website is aimed at informing anyone who cares about the way Interior [manages] public lands [and] about the forces that are shaping those policy outcomes," Western Values Project Executive Director Chris Saeger said in an email yesterday.

Underscoring the website's theme, Saeger added that "the way Interior has been run for the last six months has been completely in favor of the special interests that produced the staff who overwhelmingly work there."



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

According to the researchers who compiled the Interior material, 21 appointees have "come from the resource extraction industries," while three "come from conservation, outdoor recreation, or hunting and fishing backgrounds" and 12 are "veterans of the Trump campaign."

Some of the identified workers have relatively obscure positions.

Hobart College graduate Thomas Baptiste, for instance, is identified as a former data manager for the Trump presidential campaign who is now serving as a special assistant to Interior Secretary Ryan Zinke.

Other officials have much higher profiles.

Deputy Secretary David Bernhardt, for instance, is a lawyer and former lobbyist for oil, gas and farming interests who was sworn in yesterday after overcoming Democrats' resistance to win Senate confirmation.

"I'm excited to have David Bernhardt here to help me lead the Department of the Interior," Zinke said yesterday, citing his deputy's "extensive experience serving under two secretaries of the Interior and his legal expertise."

[BACK](#)

7. AIR POLLUTION: Court lets states intervene in ozone fight in setback for EPA

E & E News, Aug. 2 | Sean Reilly

Dealing a blow to the Trump administration and business groups, a federal appeals court will allow California and a half-dozen other states to intervene in litigation to defend U.S. EPA's 2015 ground-level ozone standard.

A three-judge panel on the U.S. Court of Appeals for the District of Columbia Circuit granted the states' motion without comment in a one-page [order](#) released this morning

The seven Democratic-led states and the District of Columbia had made the request early last month, citing fears that EPA will no longer forcefully defend the 70-parts-per-billion threshold, which was set under the Obama administration.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

Business trade organizations and some Republican-led states are suing to overturn the standard on the grounds that it is unjustifiably strict. At EPA's urging, however, proceedings in the consolidated litigation have been on hold since April while the agency considers whether to change course.

Further alarming backers of the tighter limit was EPA Administrator Scott Pruitt's decision in June to postpone implementation of the standard by a year. Intervention was "the only way" to protect their interests, California and the other states said in making the request (Greenwire, July 7).

Opposing their bid were EPA and the business groups, which argued respectively that the states lacked legal standing to intervene and that the intervention request came too late (Greenwire, July 19).

Besides California, the states include Delaware, Massachusetts, New York, Rhode Island, Vermont and Washington. Yesterday, joined by eight other states, they also filed suit to block Pruitt's decision to delay implementation of the 2015 standard (E&E News PM, Aug. 1).

Ozone, the prime ingredient in smog, is linked to asthma attacks in children and added breathing difficulties for people suffering from emphysema and other chronic respiratory illnesses.

The previous standard, set in 2008, had been 75 ppb. Then-EPA Administrator Gina McCarthy tightened it to 70 ppb in October 2015, citing the Clean Air Act's requirement to protect public health based on updated research into ozone's effects.

[BACK](#)

8. **REGULATIONS: White House abandoned 131 Obama-era rules — report**

E & E News, Aug. 2 | Maxine Joselow

The Trump administration abandoned 131 Obama-era rules in its spring 2017 regulatory agenda, according to a new analysis by the Center for Progressive Reform.

Forty-nine of the rules were abandoned by U.S. EPA under Administrator Scott Pruitt, according to the analysis. By comparison, the Department of Labor and the Department of Transportation abandoned 17 rules each.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

A former legal foe of the agency, Pruitt moved to roll back an unprecedented number of environmental rules during his first four months in office. And he undertook months of behind-the-scenes efforts to convince President Trump to withdraw the United States from the Paris climate accord (Climatewire, June 2).

The White House released its biannual regulatory agenda late last month. Known under Trump as the Unified Agenda of Federal Regulatory and Deregulatory Actions, it consisted mainly of notices to withdraw or revise Obama-era regulations (Greenwire, July 20).

Trump has made dismantling federal regulations a top priority for his administration. In March, he issued a memo specifically directing agencies to prioritize deregulatory actions (E&E News PM, March 6).

"There are many, many rules that have hit the cutting-room floor," said Rena Steinzor, a member scholar at CPR who led the analysis. "Some of them have been in the news a lot. But some of them are very startling."

As an example of a noteworthy rule that hit the chopping block, Steinzor cited a proposed EPA rule to update standards for lead in drinking water.

Despite the public outcry prompted by the Flint, Mich., water crisis, EPA "actually had the temerity to drop an update of the lead in drinking water rule," Steinzor said.

"Who told them to do it? I don't know," she said. "But the big winners here are oil and gas, real estate developers, the chemical industry and automakers."

Other abandoned EPA rules include proposed new pollution controls on existing oil and gas operations on the Uintah and Ouray Indian Reservation in Utah and a final rule to tighten emission standards on grain elevators.

Steinzor said she expects other public interest groups to study CPR's analysis and weigh the possibility of legal action. "I'll tell you right now, every public interest group is poring over this list and contemplating lawsuits," she said.

[BACK](#)



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

9. **INTERIOR: Zinke meets with sportsmen as some ask 'what happened' to him**

E & E News, Aug. 2 | Scott Streater and Jennifer Yachnin

Interior Secretary Ryan Zinke met today with sporting groups in a closed-door meeting in Washington, even as a national sportsmen's organization launched an ad campaign in Zinke's home state of Montana questioning his ongoing review of national monuments and his overall commitment to public lands.

Zinke, who recently completed a tour of national monument sites in New Mexico and Nevada as part of his look into whether to alter them, hosted the private "Sportsmen's Summit" with dozens of organizations, including the Congressional Sportsmen's Foundation, Ducks Unlimited, the National Rifle Association, Safari Club International and the Theodore Roosevelt Conservation Partnership.

A former Republican congressman from Montana, Zinke said today on his Twitter account that the purpose of the summit is to "brainstorm ideas for increased access and collaborative conservation efforts."

Zinke introduced newly sworn-in Deputy Interior Secretary David Bernhardt at the summit, according to Zinke's Twitter feed. "They've known David for a long time & were happy to welcome him back," he wrote.

"Access to our public lands for hunting and fishing is at the heart of Secretary Zinke's agenda, which is why on day one he signed an order to look into areas to open up access," Interior spokeswoman Heather Swift told E&E news in an email. "Today's summit brought together more than 30 sportsmen's organizations and wildlife conservation organizations at the Department to talk about how we can all work together to achieve this mission."

Meanwhile, the ad campaign by Backcountry Hunters & Anglers specifically targets Zinke's review of 27 national monuments, underscoring growing concerns among some outdoors groups that Zinke has openly courted and that have largely supported the Trump administration.

The campaign takes shots at Zinke and his oft-stated desire to be like Theodore Roosevelt, who was the first president to use the Antiquities Act to designate national monuments, helping to earn him the title the "conservationist president."



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

The campaign features a 30-second television spot that asks: "What happened to Ryan Zinke?"

The spot features John Sullivan, BHA's Montana chapter chairman, who opens by saying public lands "are for everyone, whether you hunt, fish, camp or boat. It's our way of life."

Sullivan then asks, "So what happened to Ryan Zinke?" as the spot features shots of Zinke, including one of the secretary on horseback juxtaposed next to a photo of Roosevelt on horseback.

"He said he'd fight to protect public lands" and work "to be like Theodore Roosevelt," Sullivan says. "But since his Washington promotion, he's put our public lands at risk. Make no mistake: Zinke's national monuments review threatens our heritage and thousands of jobs."

He concludes, "Mr. Secretary, don't turn your back on Roosevelt now."

Swift did not respond to a request to comment on the BHA ad campaign.

A BHA spokeswoman said Land Tawney, BHA's president and CEO, talked to Zinke today about the group's new campaign but offered no details on the conversation. BHA representatives declined an invitation to attend today's Sportsmen's Summit, citing scheduling conflicts.

The public submitted more than 1.3 million comments to the Interior Department on the ongoing review that could include recommendations from Zinke to shrink or eliminate dozens of monuments (E&E News PM, July 10).

Zinke is expected to submit a final report to President Trump with his recommendations by Aug. 24.

The review has plenty of critics. The Center for Western Priorities launched its own ad campaign yesterday urging Zinke not to recommend any changes to the dozens of national monuments under review (Greenwire, Aug. 1).

The Backcountry Hunters & Anglers ad campaign reflects a growing uneasiness among sporting groups that Zinke may not be the Interior secretary he says he wants to be, Tawney said.

"Secretary Zinke likes to compare himself to Theodore Roosevelt, a visionary sportsman whose conservation achievements are unsurpassed," Tawney said in a statement.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

But he added: "Actions speak louder than words, and American hunters and anglers demand leadership from the secretary that upholds — and advances — Roosevelt's legacy. Our national monuments have stood the test of time, and the present review could trigger a game of political football, leaving some of our most cherished landscapes in limbo."

Tawney said the group is still hopeful, as it views Zinke "as potentially a strong ally of sportsmen and women."

But time is running out, Tawney said.

"Action has yet to be taken," he said, "but we trust he will honor Theodore Roosevelt."

[BACK](#)

10. **LAW: Republicans aim to block court reviews**

E & E News, Aug. 2 | Michael Doyle

Taking a page from an old but still controversial congressional playbook, authors of environmental bills covering everything from the gray wolf to forest management have declared that their legislative handiwork "shall not be subject to judicial review."

The judge-stiffing idea particularly resonates among conservatives, who have included the restrictive judicial review language in 28 House and Senate bills this Congress.

"Litigation is the biggest problem we have in almost every area that deals with land policy and water policy," Rep. Rob Bishop (R-Utah), the chairman of the House Natural Resources Committee, said in an interview.

Pressed further, Bishop offered an even more blunt rationale for cutting courts out of the equation.

"Because they've screwed up so much," Bishop said.

Tellingly, at least 13 of the 28 bills introduced this Congress with judicial review bans explicitly involve environmental issues. More of the same could be on the way, even as Democrats push back against what they consider a bad idea.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

"Not only is it heavy-handed, but we have three branches of government, and the courts act as an arbiter," Rep. Raúl Grijalva (D-Ariz.) said in an interview. "The legal challenge to something is important."

The senior Democrat on the House Natural Resources Committee, Grijalva added that litigation can be "one of the few redresses we have with an administration hellbent on undoing not only the Endangered Species Act, [and] the list goes on."

The expanding use of the ban on judicial review reveals itself in legislative language.

During the 93rd Congress that met between 1973 and 1974, the phrase "not be subject to judicial review" occurred in 16 bills, a search on Congress.gov shows. Its use then began escalating, and during the 114th Congress in 2014 and 2015, the phrase occurred in 73 bills.

Several recent legislative moves also exemplify the trend, which is consistent with broader GOP efforts to narrow the opportunities for environmental litigation (E&E Daily, July 28).

The Senate Environment and Public Works Committee last week approved a wildlife and conservation bill ([S. 1514](#)) that would bar courts from reviewing the removal of the Wyoming and western Great Lakes gray wolf populations from Endangered Species Act protection.

A Democratic move to strip the gray wolf language failed on a 10-11 vote, though the brief debate on the amendment focused only momentarily on the potential role of the courts.

"I believe that the rigors of judicial review are warranted," said Sen. Tom Carper of Delaware, the senior Democrat on the Senate panel.

The House's version of the fiscal 2018 Interior, Environment and Related Agencies Appropriations [bill](#) also would block judicial review of the decision to remove the gray wolf populations from ESA protections.

Similar prohibitions on judicial review populate myriad other environment-related measures this Congress.

Legislation authored by Sen. Jeff Flake (R-Ariz.) ([S. 368](#)) would block courts from reviewing removal of the Mexican gray wolf from ESA protections. Bills introduced in both the House and



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

Senate likewise would bar judicial review of a decision not to list the greater sage grouse under the ESA.

A bill ([H.R. 2134](#)) by Rep. Blaine Luetkemeyer (R-Mo.) would keep judges from second-guessing the bid to give states regulatory authority over endangered and threatened species found only within the state's own borders.

A forest management bill ([H.R. 2936](#)) by Rep. Bruce Westerman (R-Ark.) takes a slightly different approach and instead would set up an arbitration pilot program as an alternative dispute resolution process.

The arbitration decisions themselves would be final, and not subject to judicial review, under Westerman's proposed pilot program.

The phrase "shall not be subject to judicial review" occurs 112 times in the sprawling U.S. Code. It exempts from litigation, for instance, certain aspects of U.S. EPA's pesticide registration decision-making.

Nor do lawmakers always limit to environmental matters their efforts at blocking judges. During the 1950s, former Supreme Court Justice Sandra Day O'Connor noted in a 2006 speech, Southern representatives sought to strip courts of jurisdiction over desegregation cases.

Often, though, it has been the environment that spurs judicial restriction efforts, as in the 1973 bill authorizing construction of the Trans-Alaska Pipeline that specified that "the actions of federal officers ... shall not be subject to judicial review under any law." At the time, it still seemed to some a remarkable idea.

"I do not believe we can pass an amendment that bars the right of judicial review on these matters," Sen. Henry Jackson (D-Wash.) said during July 17, 1973, debate. "This is elementary law to me."

Alaska's Republican Sen. Ted Stevens countered, with language that could easily fit into today's debate.

"We are asking Congress to substitute its judgment for the judgment of the court in a case brought by extreme environmental groups, a small minority of our population, who say they will



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

use the courts by any means possible to delay the construction of the pipeline," Stevens said at the time.

[BACK](#)