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### 1. Key Dem asks Zinke for Bears Ears comments, meetings info

Jennifer Yachnin and Kellie Lunney, E&E News reporters

Published: Tuesday, June 13, 2017

Arizona Rep. Raúl Grijalva, the top Democrat on the House Natural Resources Committee, is pressing Interior Secretary Ryan Zinke to release the details of individual meetings he held in Utah following his recommendation to President Trump to shrink the state's Bears Ears National Monument.

<http://bit.ly/2rsA0yV>

### 2. Utah lawmakers in no rush to file Bears Ears legislation

Jennifer Yachnin, E&E News reporter

Published: Tuesday, June 13, 2017

Though Interior Secretary Ryan Zinke's recommendation to shrink the Bears Ears National Monument hinges on legislative follow-up, Utah lawmakers indicated yesterday they aren't teeing up to file related bills right away.

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

### **3. Advocates go to court as Trump unwinds climate policy**

Ellen M. Gilmer, E&E News reporter

Published: Tuesday, June 13, 2017

In a platter of pending challenges to fossil fuel development on public lands, environmentalists in the West see an opportunity to corner the Trump administration into taking a closer look at climate impacts.

<http://bit.ly/2s6TGKY>

### **4. Law pros urge court to continue fracking rule case**

Ellen M. Gilmer, E&E News reporter

Published: Tuesday, June 13, 2017

Dozens of law professors are urging a federal court to move ahead with a legal battle that calls into question the federal government's authority to regulate hydraulic fracturing.

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

### **5. Alaska wants hundreds of unused wells closed**

Published: Tuesday, June 13, 2017

Alaska inspectors want oil and gas companies to close hundreds of unused wells across the state.

Alaska Oil and Gas Conservation Commission Chairwoman Cathy Foerster said the agency has sometimes been lax about requiring the permanent closure of the old wells that stopped producing long ago.

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

### **6. Gas industry unveils campaign to counter activist 'assaults'**

Hannah Northey, E&E News reporter

Published: Tuesday, June 13, 2017

The natural gas industry has launched a national campaign beginning in Connecticut and Virginia to counter a growing "keep it in the ground" grass-roots movement aimed at halting the spread of gas production, infrastructure and exports.

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

## **7. Colo. may tighten pipeline testing, impose other requirements**

Mike Lee, E&E News reporter

Published: Tuesday, June 13, 2017

Colorado oil and gas regulators are considering tougher pipeline testing rules, a mapping requirement and leak surveys using drones or ground vehicles in the wake of an oil-field-related explosion that killed two people.

<http://bit.ly/2sYq1na>

## **8. Key habitat rarely overlaps with energy potential — report**

Jennifer Yachnin, E&E News reporter

Published: Tuesday, June 13, 2017

A new analysis of greater sage grouse habitat across seven Western states shows little overlap with areas with the potential for energy development, according to a report released today by Backcountry Hunters & Anglers.

<http://bit.ly/2ti2gG3>

## **9. 1. Shutdown may be 'right outcome' — Mnuchin**

George Cahlink, E&E News reporter

Published: Tuesday, June 13, 2017

The Trump administration is not ruling out closing federal agencies this fall if it can't reach a spending accord with Congress.

<http://bit.ly/2sp0vdt>

## **10. Dems ask IGs to review record keeping**

Kevin Bogardus, E&E News reporter

Published: Tuesday, June 13, 2017

Senior Democrats in the Senate are requesting that agency watchdogs across the government review the Trump administration's preservation of federal records.

<http://bit.ly/2s7e9yZ>

#### **11. 100,000 comments roll in on how to revamp executive branch**

Arianna Skibell, E&E News reporter

Published: Tuesday, June 13, 2017

The public has submitted more than 100,000 comments on reforming or eliminating executive branch programs, according to the White House.

<http://bit.ly/2rXe6rm>

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### **1. Key Dem asks Zinke for Bears Ears comments, meetings info**

Jennifer Yachnin and Kellie Lunney, E&E News reporters

Published: Tuesday, June 13, 2017

Arizona Rep. Raúl Grijalva, the top Democrat on the House Natural Resources Committee, is pressing Interior Secretary Ryan Zinke to release the details of individual meetings he held in Utah following his recommendation to President Trump to shrink the state's Bears Ears National Monument.

In a letter to Zinke, Grijalva also asked the Interior leader to detail public comments submitted about Bears Ears to Regulations.gov, including a "tally of positive and negative submissions."

After a 45-day review, Zinke recommended Saturday that the White House slash the size of the 1.35-million-acre monument and urged Congress to redesignate some of that land to either national conservation or national recreation areas (*E&E News PM*, June 12).

But Zinke did not provide specifics on how much land should be removed from the monument, stating he will do so when a review of 26 other monuments is due for submission Aug. 24.

"As you prepare to make recommendations on the future of beloved national monuments, the American public deserves to know and understand the basis for your decisions," Grijalva wrote. "I look forward to your response."

The Arizona lawmaker requested Zinke provide a detailed itinerary and list of meetings from his visit to Utah in early May (*Greenwire*, May 11).

He also sought Zinke's view on the more than 100,000 submissions made on the website Regulations.gov. Conservation groups have reported those comments leaned heavily in favor of retaining the Bears Ears monument that President Obama created in the final weeks of his presidency (*Greenwire*, May 26).

Interior did not respond to a request for comment by publication time.

In a separate statement, Grijalva said he sought House Natural Resources Chairman Rob Bishop's (R-Utah) signature on his letter, given that the White House has reportedly told its agencies to ignore oversight requests from Democrats.

"If this 'review' process is about transparency and public accountability, let's see some transparency and public accountability from the Interior Department," Grijalva said in the statement. "Secretary Zinke hasn't even spent two months on this, and he's already urging the president to redraw Bears Ears National Monument. ... If he wants to claim public support for this poorly thought-out scheme, he should explain what public comments have actually been submitted, what the ratio of support to opposition is for Bears Ears, and tell us who he's spoken with in advance of this recommendation."

Bishop told E&E News today, however, that he was unaware Grijalva had invited him to sign the missive. The Democratic lawmaker's staff acknowledged the request was submitted to Bishop's aides.

"I didn't know there was a letter," Bishop said. "They never talked to me about a letter."

He noted that such missives are common political tactics for either party when in the minority of the House, noting that past Democratic administrations had likewise ignored his requests.

"It happened to me when I was in the minority. Hell, I didn't get any responses from [former Obama administration Interior Secretary] Sally Jewell," Bishop said. "The kinds of things we got were always slow, always late, always redacted. So I understand that, I get that."

Nonetheless, Bishop said the administration should respond to members of both parties, so long as requests are not merely a "fishing expedition."

"There's a better way of interacting between the administration and the legislative body, but there's a whole level of activities where that interface should be better," Bishop said. "The agencies should come to the Congress with the rules before they actually implement them, too."

<http://bit.ly/2rsA0yV>

## **2. Utah lawmakers in no rush to file Bears Ears legislation**

Jennifer Yachnin, E&E News reporter

Published: Tuesday, June 13, 2017

Though Interior Secretary Ryan Zinke's recommendation to shrink the Bears Ears National Monument hinges on legislative follow-up, Utah lawmakers indicated yesterday they aren't teeing up to file related bills right away.

The Beehive State's all-GOP congressional delegation told E&E News that it was either still reviewing Zinke's report to President Trump or waiting for a final assessment of dozens of national monuments due in late August.

Molly Block, a spokeswoman for House Natural Resources Chairman Rob Bishop (R-Utah), said the chairman would wait to see the final report, given that the five-page document Zinke provided to the White House did not include specific maps or acreages.

But she added, "We're confident in the likelihood of passage due to commitments from the entire Utah delegation, tribes and the Trump administration.

"As the interim report says, Congress will designate lands within original footprint as either national conservation areas or national recreational areas after the monument has shrunk," Block added.

In his report to Trump, Zinke encouraged the president to use the "appropriate authority" under the Antiquities Act to reduce the 1.35-million-acre monument's boundaries by an unspecified amount (*E&E News PM*, June 12).

In addition, Zinke asked Congress to create "more appropriate conservation designations" by establishing either national recreation or national conservation areas on some of the same land. He also asked Congress to clarify management practices.

Lastly, Zinke called on Congress to create tribal co-management of cultural areas within the shrunken monument.

In a press conference with reporters yesterday, Zinke appeared most confident of legislation to create a new co-management template for the monument, suggesting such a bill could be moved before he is finished with his review in August.

"At the end of it, what I expect is, I expect to have a bill that's at least agreed upon, perhaps even through committee and then a commitment by Congress on both sides of the aisle," Zinke said.

He later added: "Between now and final report we'll provide some clarity, and the final report will be much more detailed and it will give a kind of holistic approach."

Although Congress has previously failed to pass legislation protecting the Bears Ears area via the Utah Public Lands Initiative, Zinke remained certain that it could do so in the current session, noting that Trump would exert pressure on lawmakers.

Block said that Bishop, who sponsored the PLI with retiring Rep. Jason Chaffetz (R-Utah), is also confident about reaching a legislative solution.

Bishop "remains committed to ensuring protections and allowing tribes the ability to co-manage the land. Any legislation on Bears Ears will first and foremost be about co-management," Block said.

Chaffetz, who will leave the House at the end of this month, praised Zinke's proposed reductions but did not indicate he would seek to introduce legislation or urge his successor to do so before leaving Capitol Hill.

"A locally driven, legislative approach is the best way to strike a balance among the people who love and use the vast acreage surrounding the Bears Ears," Chaffetz said. "Now it is up to Congress to find a win-win solution that will create a balance between conservation and use."

Utah Rep. Chris Stewart (R) urged Zinke to find a balance of "conservation, recreation and economic development" as he reviews more than two dozen monuments, but likewise did not immediately offer to introduce the needed legislation.

"Secretary Zinke's recommendation takes major steps to reach this conclusion and to correct the actions of the previous administration. This is a win-win scenario for the region," Stewart said.

A spokesman for Utah Sen. Mike Lee (R) told E&E News the lawmaker would not be introducing legislation before the White House completes its review.

"But we definitely look forward to working on the issue once we know what the final order is," said spokesman Conn Carroll.

Meanwhile, Sen. Orrin Hatch (R-Utah) called the proposed changes an "unquestionable victory" but did not respond to requests for comments on the necessary legislation.

Utah Rep. Mia Love (R) did not respond to a request for comment.

### **'Divorced from reality'?**

Congressional Democrats in Western states immediately vowed to fight any efforts to amend the monument or the Antiquities Act of 1906, which allows presidents to designate federal lands as monuments to protect areas of historical, cultural or scientific significance.

"House Republicans can probably pass whatever they want as long as they keep the tea party satisfied, but this national monuments efforts is so divorced from reality that it's going to run out of steam," said Adam Sarvana, a Democratic spokesman for the House National Resources Committee.

He pointed to the Trump administration's struggle to find legislative success during the first few months in office, adding, "The president will probably be as helpful on this as he has been in repealing the Affordable Care Act or getting an infrastructure bill together."

Critics of the monument review have also highlighted the failure to move to the PLI, including the fact that it was not introduced in the Senate.

New Mexico Sen. Tom Udall, the ranking Democrat on the Senate Interior Appropriations Subcommittee, disparaged efforts to roll back the monument as "deeply disrespectful and insulting."

"The administration doesn't value the Bears Ears, the tribes or the million-plus people who wrote in to support it," Udall said.

He added that Trump lacks the authority to reduce the monument under the Antiquities Act, a point that Democrats and conservationists have regularly highlighted in recent months, although a minority of conservative legal scholars have said a president may do so.

"This decision will be challenged in court, and if they put this plan before Congress, I will fight him every step of the way," Udall said.

He also accused the Trump administration of working to privatize public land, an accusation that Zinke has repeatedly disputed during his tenure at Interior.

"I won't stand by and let the Trump administration open the door to selling our public lands off to the highest bidder," Udall said.

*Reporter Kellie Lunney contributed.*

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

### **3. Advocates go to court as Trump unwinds climate policy**

Ellen M. Gilmer, E&E News reporter

Published: Tuesday, June 13, 2017

In a platter of pending challenges to fossil fuel development on public lands, environmentalists in the West see an opportunity to corner the Trump administration into taking a closer look at climate impacts.

A trio of lawsuits backed by the small but aggressive Western Environmental Law Center target oil and gas leases in Wyoming, Colorado and Utah, as well as land-use plans for the resource-rich Colorado River Valley and Powder River Basin (*see sidebar*).

Along with claims that the Interior Department's Bureau of Land Management failed to take a hard look at the impacts of its leasing and planning decisions, the lawsuits argue that the agency never weighed the climate effects of projects within the larger context of other BLM-approved plans for land development.

"We have all these individual data points, but they're not being aggregated in a way that is meaningful for the decision-maker on individual projects, or for the public to really understand the scope of what these emissions mean on our public lands to the broader climate crisis," said Kyle Tisdel, who leads WELC's Climate and Energy Program.

Going a step further, the lawsuits invoke the Paris accord, outlining emissions thresholds set under the international climate deal that President Trump decided the United States will start a process of exiting.

In the Colorado River Valley lawsuit, for example, the Colorado-based Wilderness Workshop and other environmental groups represented by WELC argue that the agreement "codified" the scientific understanding that climate change is an urgent threat and determined a global carbon budget designed to limit catastrophic temperature increases.

Now, the groups argue, BLM must consider climate impacts within the context of those Paris targets.

"These cumulative emissions should be measured against the remaining carbon budget, thereby providing BLM and the public the necessary context for understanding the significance of BLM's decisionmaking," the lawsuit says, pointing to environmental analyses that suggest fossil fuel development on public lands could account for more than 20 percent of U.S. greenhouse gas emissions.

Tisdel notes that although the three lawsuits were filed while President Obama was still in office, they now provide an opportunity to push the Trump White House toward meeting Paris climate targets even as the federal government works to withdraw the U.S. from the agreement.

"The Trump administration is whittling away climate policies," he said. "There are a lot of things that are happening top-down to put their thumb on the scale in terms of further fossil fuel extraction. What this legal theory does is it holds the federal government to the climate science and to the carbon budgets from the ground up."

#### **'Tens of millions of dollars'**

The goal: a line of fresh case law emphasizing a government obligation to consider the cumulative climate impacts of its decisions.

Hogan Lovells attorney Hilary Tompkins, Interior's top lawyer during the Obama administration, said WELC's approach is likely to be repeated as courts play an "increasingly important role" in determining the proper scope of federal climate analysis.

- *WildEarth Guardians v. BLM*, U.S. District Court for the District of Columbia: Filed in August 2016, this lawsuit challenges hundreds of oil and gas leases in Wyoming, Colorado and Utah. WildEarth Guardians and Physicians for Social Responsibility say the Bureau of Land Management failed to identify climate impacts at multiple levels: direct greenhouse gas emissions, indirect downstream emissions and cumulative emissions when combined with existing and future development.
- *Wilderness Workshop v. BLM*, U.S. District Court for the District of Colorado: Filed in July 2016, this lawsuit challenges a resource management plan and related environmental impact statement finalized by BLM's Colorado River Valley field office. The EIS addressed direct greenhouse gas emissions from oil and gas drilling activity in the area. It also acknowledged that greenhouse gas emissions in the area would contribute to cumulative climate impacts but concluded that quantifying those impacts was beyond the scope of BLM's review.
- *Western Organization of Resource Councils v. BLM*, U.S. District Court for the District of Montana: Filed in March 2016, this lawsuit challenges two resource management plans from BLM field offices that anticipate increased coal, oil and gas production in the resource rich Powder River Basin. The plans acknowledged that fossil fuels would ultimately be used for combustion but did not address impacts from that use.

"There is no doubt that environmental groups will continue to push for broader NEPA analysis of climate change impacts in the courts," she said. "This is not a new strategy, but Trump's recent announcement on the Paris Agreement and rollback of Obama's climate-friendly policies bring to the fore the courts' role in determining the level of climate change review for major federal actions."

And while the approach's prospects and merits are fiercely debated among experts, most agree that a win for environmental groups has the potential to transform fossil fuel development on public lands.

Michael Burger, executive director of Columbia Law School's Sabin Center for Climate Change Law, said a ruling for the groups would be significant.

"Even if the agency is going to remain deaf, dumb and blind to it, it would provide the public with a clearer sense of how these fossil fuel policies relate to our overall situation and how they relate to our overall need to address climate change," Burger said.

BLM declined to comment on the issue, citing the pending litigation.

To be sure, fossil fuel producers and their allies have taken notice of environmentalists' latest legal tack. While some in the drilling and mining industries have derided the challenges as "frivolous," their legal teams are actively working to fight them.

Powerful oil and gas groups including the American Petroleum Institute, Western Energy Alliance and Petroleum Association of Wyoming have all joined to fight the broad WildEarth Guardians case that challenges leases in Wyoming, Colorado and Utah. Coal producers Cloud Peak Energy Inc., Peabody Energy Corp. and BTU Western Resources Inc. have intervened in the Powder River Basin lawsuit.

In court filings last year, the Western Energy Alliance and the Petroleum Association of Wyoming argued that the litigation had the potential to derail big investments and drastically reduce income to federal, state and local governments receiving revenue from leasing, severance taxes and royalties.

"The Associations' members hold federal oil and gas leases on the federal lands at issue in this case-leases in which member companies have invested tens of millions of dollars," the industry groups told a district court. "Clearly, these valid existing rights and economic interests are significantly and legally protectable interests."

States that depend on revenue from oil and gas development on public lands are also taking notice. Colorado, Wyoming and Utah have intervened in the WildEarth Guardians case. Wyoming also joined the Powder River Basin suit.

Western Energy Alliance President Kathleen Sgamma said a win for the environmental groups would dramatically change the way agencies comply with the National Environmental Policy Act.

"There would be no sideboards to NEPA, which could be used to speculatively analyze any impact along the whole value chain," she said, adding that extensive climate analysis at the leasing stage would be unreliable because many leases are never actually developed.

"It's impossible to know at the leasing stage how many wells will be developed on the lease, if any," she said. "In fact, many leases are not developed, so the government could waste significant time analyzing speculative impacts that never come to fruition. Of course, the environmental lobby knows this and is perfectly happy wasting government resources on futile effort because the goal is stopping oil and natural gas development."

### **NEPA and carbon budgeting**

The conservation groups' legal approach hinges on NEPA, a bedrock environmental law that requires decision-makers to weigh the impacts of major federal actions.

Federal regulations instruct agencies to include direct, indirect and cumulative impacts in their NEPA analyses. The recent public lands lawsuits argue that BLM dropped the ball on the latter two requirements.

In particular, the environmental groups say the agency shrugged off climate impacts as minimal because it viewed them only in the context of individual projects. The agency concluded that quantifying cumulative climate impacts was beyond the scope of the reviews.

"That's problematic because the nature of climate change is that emissions come from millions of different sources and together all of that makes up a very significant chunk of emissions and actually leads to the climate catastrophe that we're in the midst of," Tisdell said.

The lawsuits push the global carbon budget imagined under the Paris accord — an estimated emissions cap for keeping global temperature rise below 2 degrees Celsius — as a simple tool for weighing the impacts of fossil fuel development.

The budget is not a mandatory target under the climate accord, and moreover, the United States has announced plans to exit the agreement. But advocates say the system offers the clearest science-backed approach to weighing the broader impacts of individual development approvals.

**What this legal theory does is it holds the federal government to the climate science and to the carbon budgets from the ground up.**

*Kyle Tisdell, Western Environmental Law Center*

Environmental groups and many researchers have backed a similar tool, the "social cost of carbon" calculation, even after President Trump used his "energy independence" executive order in March to scrap the Obama-era metric.

"It's data, it's information," said University of Colorado Law School professor Mark Squillace. "It's at least the best we have in terms of what the climate effects of decisions are, and I think it's likely that courts are going to continue to use that information to see whether the government has properly considered the impacts of climate change."

If, for example, an agency conducts a cost-benefit analysis that emphasizes economic impacts but ignores costs associated with climate change — despite having calculation tools available — its decision could be legally vulnerable, Squillace said.

Critics have pushed back on environmentalists' approach, arguing that the groups are effectively asking a land management agency like BLM to act as a climate science agency.

"To expect an agency to become a climate specialist agency like [the National Oceanic and Atmospheric Administration], for example, is to bark up the wrong tree," Bracewell LLP attorney Kevin Ewing said. "They don't have that expertise, they're not supposed to have that expertise, they cannot be held to the expectation of having the expertise, and it is deeply misguided to require them to perform analyses as though they did have that expertise."

Ewing says such analysis by a nonexpert agency would undermine the two purposes of NEPA: to inform the decision-maker and to inform the public.

"Is this analysis so probative and reliable that it justly should inform the agency's decision?" he asked. "If it is not because you don't have the expertise to do the analysis or you don't have enough facts to do the analysis or the interrelation of facts is so speculative, then it is neither probative nor reliable, and therefore it should not — and under NEPA it does not — influence the decision of the agency."

## **Courtroom challenges**

Environmental law experts note that the plaintiffs will face some hurdles in the courtroom.

For one, said the Sabin Center's Burger, agencies are entitled to wide deference on the scope of their NEPA analyses, so the groups will have to persuade a court that BLM was unreasonable in the way it carried out its environmental reviews.

Courts have weighed similar questions about climate impacts before. In a series of cases against the Federal Energy Regulatory Commission in recent years, the Sierra Club and other groups argued that regulators were required to consider the indirect climate impacts of liquefied natural gas exports.

Environmentalists lost those cases, with federal judges ruling that the Department of Energy, not FERC, had final jurisdiction over gas exports. Sierra Club lawyers followed with a new line of claims against DOE, and the appellate court handling the cases has not yet ruled.

Climate litigation focused on public lands has been moving forward on its own track, yielding some wins for the environmental community in cases dealing with indirect impacts of coal development.



Western Energy Alliance President Kathleen Sgamma. @KathleenSgamma/Twitter

"Courts have been pretty receptive to the indirect impacts claims, and I could see them being receptive to cumulative impacts claims," Sabin Center attorney Jessica Wentz said.

Burger and Wentz wrote in a recent *Harvard Environmental Law Review* article that since 2014, district courts have found four times that federal regulators needed to take a closer look at the indirect emissions that result from burning coal produced on public lands. Government officials behind those decisions had countered that they did not have to consider downstream emissions because federal production would not increase coal consumption, or that emissions "were too speculative to be forecasted."

"The courts have disagreed, finding that there is a sufficient causal connection between the extraction of coal and the downstream greenhouse gas emissions from the end use of the extracted coal," Burger and Wentz wrote.

Oil and gas is a bit trickier. While most coal produced on public lands is destined for combustion, it's tougher to draw a direct line from oil volumes to their various potential end uses, making it more difficult to quantify emissions. Natural gas presents another complexity: The fuel is often used as a cleaner-burning replacement for coal at power plants, leading some agencies to conclude that gas production has a net benefit for the climate.

Further complications can arise in the public lands context. Tompkins, the former Interior lawyer, noted recent traction for the "perfect substitute" theory, which asserts that federal fossil fuel development will not increase consumption because any foregone production would simply be replaced by development on private land.

A federal court in Colorado rejected the argument in a 2014 case dealing with coal production, but a court in Wyoming accepted the theory in a similar case the following year. The Wyoming case was appealed to the 10th U.S. Circuit Court of Appeals, which has not yet issued a decision.

Western Energy Alliance's Sgamma said the same claims apply to the oil and gas development challenged in the latest cases.

"Without those sales and ensuing development, U.S. energy demand would be met by production on private lands or imports from overseas," she said in an email. "The relatively small amount of greenhouse gas emissions from production on federal lands would merely be shifted elsewhere."

### **'Bête noire of energy development'**

Burger weighs the likelihood of success for the recent climate lawsuits from two angles: the "purist/doctrinal" outlook and the legal realist outlook.

From the doctrinal perspective, he said, courts' tendency to defer to agency discretion on these types of reviews puts the environmental groups at a disadvantage. But realistically, he added, judges concerned about the Trump administration's rapid unraveling of environmental regulations might be more open to the groups' arguments.

"From the legal realist bent, you have to look at the political, cultural and socioeconomic context and the environmental context in which these decisions are being made," he said. "We currently have an administration that is hell-bent on doing nothing about climate change, and judges are certainly going to be aware of that."

Wentz added, however, that a legal victory in any of the cases may be short-lived.

"I can certainly imagine district court decisions that might come out in favor of these plaintiffs," she said. "But then at the appellate level, you might see a reversal."

Industry attorneys put long odds on the environmental groups prevailing on any level.

Norton Rose Fulbright's Bob Comer, an attorney for Interior from 2002 to 2010, says courts are likely to recognize environmentalists' position as a mere policy preference that is "unworkable" from a practical standpoint. BakerHostetler attorney Mark Barron, who is not involved in these cases but frequently represents oil and gas operators, agreed, noting that WELC, WildEarth Guardians and the other groups are taking a risk by pushing NEPA so aggressively.

"Throwing your eggs in the NEPA basket is a flawed approach because NEPA doesn't mandate any particular policy outcome," he said. "All the courts could say is that the decision-makers need to be more explicit about the climate consequences of the particular development. The courts can't force the executive branch to adopt any specific climate policy."

But Tisdell and others say an increase in government analysis of climate impacts is essential even if the administration approves fossil fuel development anyway. That's because NEPA is designed to inform both decision-makers and the public — plus, it can guide other agencies, including state- and local-level policymakers.

"NEPA is the bête noire of energy development," said Lewis & Clark Law School professor Michael Blumm, an expert in public lands issues. "They call it red tape because they don't like it, but it's really the only way the public gets an idea what's going on in a lot of these leasing decisions and what the real effects of them are."

<http://bit.ly/2s6TGKY>

#### **4. Law pros urge court to continue fracking rule case**

*Ellen M. Gilmer, E&E News reporter*

Published: Tuesday, June 13, 2017

Dozens of law professors are urging a federal court to move ahead with a legal battle that calls into question the federal government's authority to regulate hydraulic fracturing.

In a friend-of-the-court **brief** submitted yesterday, more than two dozen energy, public lands and environmental law experts urged the 10th U.S. Circuit Court of Appeals to continue weighing a case stemming from the Obama administration's rule for fracking on public and tribal lands.

A Wyoming district court tossed the rule last summer, ruling that fracking is beyond the federal government's authority. The decision is on appeal at the 10th Circuit, but the case was sidetracked earlier this year when the Trump administration announced plans to reconsider the rule.

Twenty-nine law professors urged the court to continue the case and issue a decision reversing the lower court. They argued that freezing the case now — which the Trump administration has requested — would leave on the books a fundamentally incorrect decision.

"The Order contains fundamentally erroneous legal principles of statutory interpretation and administrative law," their brief said. "Yet under an abeyance and potentially drawn-out new rulemaking, the Order would remain extant and could solidify further incorrect precedent in other cases even if it were ultimately vacated and rendered moot."

They noted that litigants in an unrelated mining case have already used the lower court's fracking decision as ammunition against a regulation issued under the Surface Mining Control and Reclamation Act.

Most of the same professors filed a similar brief last summer, arguing that the Wyoming judge misapplied relevant federal laws in the fracking rule case (*Energywire*, Aug. 18, 2016). The court ruled that the Safe Drinking Water Act and Energy Policy Act of 2005 effectively remove fracking from the jurisdiction of federal agencies, leaving regulation of the oil and gas production technique to the states.

The group includes many prominent environmental law scholars, including Vermont Law School's Patrick Parenteau, Columbia Law School's Michael Burger and many others. Hannah Wiseman, a Florida State University professor who wrote a law review article that was cited in the Wyoming decision, helped organize the effort.

A group of former Interior Department officials also filed a friend-of-the-court brief yesterday urging the 10th Circuit to continue the case (*Energywire*, June 12).

Interior is expected to issue a proposed rulemaking to consider whether to rescind or revise the fracking rule today.

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

## **5. Alaska wants hundreds of unused wells closed**

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Alaska inspectors want oil and gas companies to close hundreds of unused wells across the state.

Alaska Oil and Gas Conservation Commission Chairwoman Cathy Foerster said the agency has sometimes been lax about requiring the permanent closure of the old wells that stopped producing long ago.

The agency is now initiating a two-part effort to get the permanent shutdown of some wells and requirements for bigger surety bonds to protect the state if the wells aren't properly covered in cement before they're abandoned.

There are 725 unused wells more than a year old that have not been permanently closed, according to the state agency. That number is up from 516 in 2007.

The expenses of dealing with each well can vary. Closing some wells will cost millions of dollars, while others could cost \$100,000 (Alex DeMarban, *Alaska Dispatch News*, June 12). — CS

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

## **6. Gas industry unveils campaign to counter activist 'assaults'**

Hannah Northey, E&E News reporter

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The natural gas industry has launched a national campaign beginning in Connecticut and Virginia to counter a growing "keep it in the ground" grass-roots movement aimed at halting the spread of gas production, infrastructure and exports.

The American Gas Association kicked off "Your Energy," a consumer education push about the benefits of natural gas.

The industry group on its website claimed a need to strike back at activists opposed to gas development and infrastructure and to tell the "truth" about gas.

"Your Energy was created to speak out against a misguided movement that assaults our way of life," the group wrote. "This movement is based on the simplistic belief that keeping our natural resources in the ground is the only solution to climate change. This isn't just false — it's dangerous to our quality of life, economy and energy security."

The website casts natural gas as the primary driver of emission reductions in the United States.

AGA's website also urges visitors to join its "movement" supporting natural gas.

"We have to fight back against those who want to deprive us of clean, affordable energy," the website says. "That's why we have Your Energy. Join us to support natural gas — the clean energy that makes our way of life possible."

The campaign, for which AGA declined to provide a cost, is first being launched in Virginia and Connecticut, two states where residents are facing the construction of natural gas pipeline projects that have drawn the ire of some landowners and made for tricky political footing in upcoming gubernatorial elections (*E&E Daily*, April 26).

AGA said that the campaign will include "community outreach, social media engagement, advertising, and other promotions" and that "resources for policy makers, elected officials, the media and consumers will also be made available via specific state based programming that will highlight the positive impact natural gas can have for families, communities and state economies throughout the country, beginning in Connecticut and Virginia."

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

## **7. Colo. may tighten pipeline testing, impose other requirements**

Mike Lee, E&E News reporter

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Colorado oil and gas regulators are considering tougher pipeline testing rules, a mapping requirement and leak surveys using drones or ground vehicles in the wake of an oil-field-related explosion that killed two people.

The April 17 explosion in Firestone, Colo., was caused by a flow line that had been cut off just a few feet from a newly built home. The Colorado Oil and Gas Conservation Commission (COGCC) has already issued an

emergency order requiring energy companies to verify the location of their flow lines and take other steps by the end of June (*Energywire*, May 3).

Those steps should prevent recurrences of incidents like the one in Firestone, and the state agency is considering other ideas to provide further protection, Director Matt Lepore said during a meeting of the commission.

The state already requires flow lines to be pressure-tested every year, but it exempts certain low-pressure lines. That exemption is one of several changes the COGCC is considering, Lepore said.

"Mapping the flow lines has been kind of foremost on everyone's minds," Lepore told the commission during its monthly meeting.

"We talked about drones, we talked about driving surveys, then you have to talk about resources and figure out which neighborhoods get to go first."

Lepore stressed that the incident was caused by an unusual combination of circumstances and there's no widespread danger to other homes. Colorado is one of only two oil-producing states that require periodic testing of flow lines, which are used to move oil, gas and waste fluids from well sites to storage tanks and other equipment (*Energywire*, May 5).

At the same time, Firestone, about 35 miles north of Denver, is one of several communities that were built near and around existing oil fields. The area has seen both a homebuilding boom as Denver's population grows and an oil boom as companies use the existing sites to drill into the Niobrara Shale.

The pipeline in Firestone was built to serve a gas well, known as the Coors V 6-14Ji, which was drilled in 1993. The well has had three previous owners and was acquired by Anadarko Petroleum Corp. in 2014.

Beginning in about 1999, a subdivision grew up in the same area, and records show that the pipeline was scheduled to be removed, Lepore said.

The pipeline was likely cut as streets and utilities were built, Lepore said.

"You have these sewers being put in; probably the line is being cut as those happen," he said.

The National Transportation Safety Board, along with police in Firestone, is still investigating how and when the pipe was cut. An NTSB spokesman said the pipeline will be tested in the agency's laboratory and that it's too soon to determine the cause.

In 2015, a home was built 178 feet from the Coors well, and the pipeline was cut off a few feet from the home's basement. The pipeline may have avoided the pressure-test requirement because the well was shut down during 2016, a COGCC spokesman said.

The cutoff pipe was still connected to the Coors well when the well returned to service this year. Investigators said gas from the severed line seeped into the soil, then into the home's basement.

The explosion killed Mark Martinez and his brother-in-law, Joey Irwin, who were in the home's basement. Martinez's wife, Erin, was severely injured, and the couple's 11-year-old son was blown through a second-floor window but escaped serious injury, Lepore said.

<http://bit.ly/2sYq1na>

## **8. Key habitat rarely overlaps with energy potential — report**

Jennifer Yachnin, E&E News reporter

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A new analysis of greater sage grouse habitat across seven Western states shows little overlap with areas with the potential for energy development, according to a report released today by Backcountry Hunters & Anglers.

The sportsmen's group released its new survey, prepared by Western EcoSystems Technology, in the wake of Interior Secretary Ryan Zinke's decision last week to open a review of federal sage grouse conservation plans.

The Trump administration wants to determine whether the Obama-era changes are hindering energy production on public lands (*Greenwire*, June 7). The Interior and Agriculture departments finalized their greater sage grouse plans in 2015 — covering grouse habitat across 70 million acres in 10 Western states — including amendments and revisions to 98 Bureau of Land Management and Forest Service land-use plans.

The BHA analysis compared energy development leases from BLM with sage grouse priority habitat management areas in Colorado, Idaho, Montana, Nevada, Oregon, Utah and Wyoming.

The sage grouse conservation plans also include California, North Dakota and South Dakota, but the study excluded those lands that comprise less than 4 percent of the priority habitat areas.

Among the seven states studied, the BHA survey found 71 percent of federal lands or minerals that are rated as having medium to high development potential fall outside of sage grouse priority habitat areas.

Additionally, within the priority habitat areas, 79 percent of federal lands and minerals have a zero to low assumed development potential.

"Energy development is an appropriate and necessary use of our public lands, particularly in the West, yet it must be pursued responsibly and in the right places," BHA Conservation Director John Gale said in a statement. "Our report shows that the vast majority of greater sage grouse habitat is ill-suited to energy development of any kind, now or in the future — and that more than three-quarters of areas potentially suited to energy production [are] located outside areas important to sage grouse."

The report also found a 4 percent overlap between sage grouse habitat and existing coal or oil and gas leases on federal land.

[Click here](#) for the full report.

<http://bit.ly/2ti2gG3>

## **9. Shutdown may be 'right outcome' — Mnuchin**

George Cahlink, E&E News reporter

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The Trump administration is not ruling out closing federal agencies this fall if it can't reach a spending accord with Congress.

Treasury Secretary Steven Mnuchin today declined to take a government shutdown off the table in upcoming negotiations, saying it might be the "right outcome."

"At times there could be a good shutdown, at times there could not be a good shutdown," Mnuchin said at a Senate Budget Committee hearing this morning. He stressed the Trump administration's "primary objective" is not to force a government shutdown.

Mnuchin's remarks came in response to a question from Sen. Tim Kaine (D-Va.), who referenced a tweet from President Trump earlier this year that "our country needs a good shutdown."

Those comments sparked bipartisan criticism, and the White House eventually softened them, suggesting Trump was using the threat as leverage for upcoming budget talks.

Congress will need to have new fiscal 2018 spending in place when the fiscal year begins Oct. 1, or most federal agencies would be forced to shut down.

Mnuchin stressed the administration would "never" allow for a shutdown of "critical government infrastructure" but did not define what agencies and operations that would cover. In the past, national security and federal emergency work has continued during government funding lapses.

Additionally, Mnuchin reiterated his earlier view that Congress should raise the debt ceiling before August recess but also said the nation won't reach its borrowing limit until the end of September. He said acting sooner rather than later would avoid unsettling global markets.

<http://bit.ly/2sp0vdt>

## 10. Dems ask IGs to review record keeping

Kevin Bogardus, E&E News reporter

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Senior Democrats in the Senate are requesting that agency watchdogs across the government review the Trump administration's preservation of federal records.

In letters sent to 24 inspectors general, Sens. Tom Carper (D-Del.) and Claire McCaskill (D-Mo.) requested they look into their agencies' record-keeping practices as well as the departments' responses to lawmakers' requests on Capitol Hill.

"Various public reports raise questions about whether Trump Administration officials are intentionally skirting compliance with federal record keeping requirements," the senators wrote. They cited press stories of White House aides using an encrypted messaging app, Confide, to talk to each other.

In addition, the senators noted that agencies under the Trump administration have been slow to respond to congressional letters. Lawmakers have been pushed back against a recent Justice Department legal opinion that found that agencies didn't have to respond to requests from members of the minority party on Capitol Hill (*E&E Daily*, June 7).

"While it might be reasonable to attribute some delay in responding to Congressional requests to the presidential transition process, recent reports suggest that the Trump Administration's lack of transparency and responsiveness may be by design," Carper and McCaskill said.

The senators gave the IGs a deadline of July 6 to respond to several questions, including how their agencies comply with federal record-keeping laws and answer congressional requests.

Carper is ranking member on the Senate Environment and Public Works Committee while McCaskill is ranking member on the Senate Homeland Security and Governmental Affairs Committee.

IGs at U.S. EPA as well as the departments of Energy and the Interior received letters from the senators. [Click here](#) to see all the letters Carper and McCaskill sent to the IGs.

<http://bit.ly/2s7e9yZ>

## **11.100,000 comments roll in on how to revamp executive branch**

Arianna Skibell, E&E News reporter

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The public has submitted more than 100,000 comments on reforming or eliminating executive branch programs, according to the White House.

The window for the public to submit comments on President Trump's March executive order to reorganize the executive branch closed yesterday.

"Americans came together and submitted more than 100,000 suggestions and ideas to eliminate burdensome regulations, remove red tape and get government out of the way of government," a statement on the White House website reads.

"With your help, we're making America great again!"

Trump's order began the process of what he called "a long-overdue reorganization" of the executive branch's departments and agencies.

The order directs agency heads to submit recommendations for programs to eliminate or merge but also required a public comment period.

In April, Office of Management and Budget Director Mick Mulvaney asked the public to participate in the comment period through a video, in which he decried Obama-era regulations and said Trump has asked him to "fix" the bloated regulatory system.

"If you've had good stories or bad stories about how the federal government has served you or failed to serve you, or just ideas that you might have generally about how we can fix things," Mulvaney says, and points to a stack of papers that reach up to the ceiling, "this needs to be fixed."

Trump has said his administration will work with Congress to implement the recommendations to reorganize government resulting from the order.

The White House said the comments may be made public.

The Competitive Enterprise Institute circulated an email yesterday listing its priorities for the executive order. The conservative group recommended that Trump direct Cabinet secretaries to stop using guidance documents that evade notice and comment requirements.

The group recommended that Trump abolish at least one entire Cabinet-level agency, preferably the Department of Commerce. And lastly, CEI recommended Trump assert his authority over the Consumer Financial Protection Bureau and fire Director Richard Cordray.

James Goodwin, senior policy analyst with the Center for Progressive Reform, said his nominees for elimination are the Office of Information and Regulatory Affairs and the Small Business Administration's Office of Advocacy.

Goodwin noted, however, that when he first looked at the OMB survey, these agencies were not among the options listed. He did not participate in the survey.

Now that the comment window has closed, Mulvaney has 180 days to send Trump a proposed plan to reorganize the executive branch.

According to the executive order, Mulvaney should include recommendations to eliminate "unnecessary agencies, components of agencies, and agency programs, and to merge functions."

<http://bit.ly/2rXe6rm>