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Attached is the daily news report for Jan. 28 30.

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DAILY NEWS REPORT - UTAH

UTAH – TOP STORIES – JANUARY 28-30, 2017

1. **'No space, no light between shoulder-to-shoulder opposition' on Bears Ears**

The Deseret News, Jan. 27 | Amy Joi O'Donoghue

SALT LAKE CITY — Utah's GOP legislators pressed the accelerator on a pair of anti-monument resolutions that ask President Donald Trump to rescind the 2016 Bears Ears National Monument designation and Congress to drastically shrink the Grand Staircase-Escalante monument declared 20 years ago.

2. **Public Land For Sale! Here Are Some of the 3.3 Million Acres Being Eyed for "Disposal"**

The Men's Journal, Jan. 27 | Ryan Krogh

Back in 1997, then Secretary of Interior Bruce Babbitt was required by Congress to "examine their holdings" — basically to rank public lands that the government could sell off to support an Everglades restoration project.

3. **Hickenlooper argues Colorado is a better home for Outdoor Retailer trade show**

The Denver Post, Jan. 30 | Jason Blevins

Gov. John Hickenlooper doesn't poach.

He doesn't urge companies or trade shows to abandon their home states for Colorado. But if, say, leaders in one of the nation's most vibrant and influential industries started elevating Colorado as a better home for their semi-annual trade shows, the governor is happy to advocate.

4. **'Legacy to draw on': Climate group talks social justice with art at USU**

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Two giant hand-drawn old colonial style images that took artists a decade to make captured the attention of Cache Valley residents of all ages on Friday night in the Taggart Student Center.



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5. My view: Optimizing Public Land

The Deseret News, Jan. 30 | Brett Sutteer

The economy in southeastern Utah has changed dramatically over recent decades. Like most Western states, Utah was reliant on fossil fuels and energy development as the drivers of our economy throughout the 20th century. Our elected officials and our public lands policy paid a great deal of attention to those industries and did a lot to ensure that they would continue to thrive.

6. 'Political insiders' expect President Trump to take action on Bears Ears

Utah Policy, Jan. 29 | Bryan Schott

Utah Republicans are mounting a full-court press on President Trump, asking him to either reduce the size of or eliminate entirely, the new Bears Ears National Monument in Southern Utah.

7. Capitol hosts 'Utah Drawn,' showcasing state's history in maps

The Deseret News, Jan. 29 | Ryan Morgan

SALT LAKE CITY — To the casual observer, the maps show a progression of redrawn lines and name changes. But when Stephen Boulay presents them, the story of Utah's complicated history emerges.

8. House Republicans try to pull a fast one over Bears Ears

Utah Policy, Jan. 30 | Bob Bernick

House Democrats had some staffers working overtime this past weekend, trying to figure out if what the House Rules Committee did last Friday was legal.

Well, it wasn't.



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E&E/NATIONAL NEWS – TOP STORIES

1. Misdemeanor charges against second round of Oregon standoff defendants will go before a judge, not jury

The Oregonian/OregonLive, Jan. 27 | Maxine Bernstein

The misdemeanor charges filed against the second round of Oregon standoff defendants will be tried before a judge.

2. Crowd of 500, including some Oregon standoff defendants, salute Robert 'LaVoy' Finicum

The Oregonian/OregonLive, Jan. 28 | Maxine Bernstein

JOHN DAY -- Caravans of trucks with American flags and "Don't Tread on Me" banners rolled into town over several days to gather Saturday night for a conclave that was part memorial, part reunion and part religious revival.

3. REGULATIONS: House plans votes to kill 5 Obama rules

E & E News, Jan. 30 | Arianna Skibell and Dylan Brown

House Republicans are beginning the process this week of throwing several landmark Obama administration rules into the fire. And the Senate could follow suit within days.

4. OIL AND GAS: As House moves to kill methane regs, Colo. asks why

E & E News, Jan. 30 | Brittany Patterson

House Republicans today will begin to scrap an Interior Department directive to cut methane from oil and gas wells on federal lands, calling it a "bad rule" and "regulatory overreach."

5. DOE: Mounting anxiety for climate research at national labs

E & E News, Jan. 30 | Umair Irfan

Scientists are concerned that climate change research may be in the crosshairs at the Department of Energy under the Trump administration.



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6. EPA: Trump team actions 'perfectly normal' — acting chief

E & E News, Jan. 30 | Kevin Bogardus

Acting U.S. EPA Administrator Catherine McCabe is seeking to calm career employees' nerves as President Trump's team takes over the agency.

7. METHANE: GOP lawmakers move to block BLM rule

E & E News, Jan. 30 | Pamela King

Republican lawmakers are calling on state leaders and the energy industry to craft alternative methane rules for oil and gas operations on public lands.

8. BLM: Agent got tickets, access for family at Burning Man — IG

E & E News, Jan. 30 | Corbin Hiar

A top law enforcement official in the Bureau of Land Management's Salt Lake City office violated federal ethics laws by abusing his position to obtain special access to the Burning Man festival for his family and pressured subordinates to hire his friend, according to a watchdog report released today.

9. INTERIOR: Zinke details ethics, energy, public lands positions

E & E News, Jan. 30 | Corbin Hiar, Geof Koss and Marc Heller

Ahead of the Senate Energy and Natural Resources Committee's vote tomorrow on Interior secretary nominee Ryan Zinke, the Montana Republican lawmaker disclosed to the committee that a super political action committee he was once affiliated with is under investigation and reaffirmed his opposition to turning federal lands over to states.

10. INTERIOR: Bush-era official seen as front-runner for No. 2 slot

E & E News, Jan. 30 | Robin Bravender

A high-ranking George W. Bush administration Interior Department lawyer could soon be making a comeback as the agency's No. 2 official.



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11. **SUPREME COURT: Scalia's take on EPA rule could haunt Trump's border plan**

E & E News, Jan. 30 | Amanda Reilly

A Supreme Court decision written by Justice Antonin Scalia that upended the Obama administration's mercury standards for power plants in 2015 may well hinder President Trump's grand plans to build a wall along the U.S.-Mexico border, legal experts say.



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UTAH – FULL STORY

1. 'No space, no light between shoulder-to-shoulder opposition' on Bears Ears

The Deseret News, Jan. 27 | Amy Joi O'Donoghue

SALT LAKE CITY — Utah's GOP legislators pressed the accelerator on a pair of anti-monument resolutions that ask President Donald Trump to rescind the 2016 Bears Ears National Monument designation and Congress to drastically shrink the Grand Staircase-Escalante monument declared 20 years ago.

Members of the House Rules Committee met Friday, voting 6-2 along partisan lines to move [HCR11](#) and [HCR12](#) directly to the floor for debate.

House Speaker Greg Hughes, R-Draper, said the resolution on rescinding Bears Ears is unique in that instead of Utah lawmakers jockeying for the attention of the congressional delegation, the delegation asked for the measure.

"There is a concerted effort to show that there is no space, no light between the shoulder-to-shoulder opposition to the designation that took place between our federal delegation, our legislative leaders and our legislative bodies, as well as our counties and our county commissioner," said Hughes, who is sponsoring the resolution.

"We're in real time. We have a brand new administration that's getting on the ground. We have 100 days of a brand new president's administration, and if you look back at the times when that happens, there's a lot of momentum, there's a lot of decisions that are made in that short window of time of a new administration's service. We're in that time now," he said.

The 1.35 million-acre monument in southeast Utah was designated Dec. 28, 2016, in the waning days of President Barack Obama's administration. The designation came after more than a year of intense lobbying by supporters and opponents who pressed their case in Washington, D.C., stumping for the media in multiple press conferences and tossing about any number of competing polls with varying "public opinion" results.

On one side, the Native American leaders of the Bears Ears Inter-Tribal Coalition said tribal support was united to protect land sacred to them, their ancestors and home to rich and vast archaeological treasures.

They cited looting, vandalism and pending natural resource development that threatened the remote and rugged region, pleading for the Obama administration to give them equal say in the management of the land.



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The group was joined by multiple environmental organizations in the cause, leading critics to say it was co-opted by a steady stream of cash from out-of-state, inorganic foundations with no vested ties to the land.

San Juan County Commissioner Rebecca Benally reiterated Friday before the Rules Committee that "local" Navajos remain opposed to the monument and feel betrayed.

"There is no co-management," she said, adding that ultimately any governance at Bears Ears lies at the discretion of the Bureau of Land Management.

Benally said tribes may have thought they were getting a show horse but got a feral horse instead.

Gavin Noyes, executive director Utah Dine Bikeyah, a nonprofit Native American advocacy organization supportive of the monument, said Interior Secretary nominee Ryan Zinke and President Trump should refrain from making any decisions before speaking to the tribes and understanding the significance of the landscape.

"Most of the delegation has not met with the tribes and do not know the landscape," Noyes said.

Davis Filfred, a member of the Navajo Nation Council, said a lot of work went into establishing the monument, and the years of work should not be undone.

"I wish the new secretary of the interior and the Trump administration would come down and listen to what we have to say," Filfred said. "We just want to be heard. ... I wish they would come out and see the land."

The resolution by Rep. Mike Noel, R-Kanab, asks Utah's delegation to support legislative action to shrink the boundaries of the Grand Staircase-Escalante National Monument designated in 1996 by then-President Bill Clinton.

Noel believes the appropriate size of the monument should be no more than 500,000 acres and that multiple laws exist on the books to protect Native American artifacts and paleontological resources.

Critics such as Garfield County Commissioner Leland Pollock rejected assertions that public land protections like national parks or monuments yield dollars for surrounding communities.

At the monument's creation, he said, there were 140 children in grades 7-12 at the local school. By 2016, that number had dropped to 51.

"You don't lose that many kids in a boom town," Pollock said.

Reps. Carol Spackman Moss, D-Holladay, and Rebecca Chavez-Houck, D-Salt Lake City, voted against the resolutions. Both stressed their constituents, along with many people in Utah, who remain in favor of the Bears Ears National Monument designation and the creation of the Grand Staircase monument.



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Scott Groene, executive director of the Southern Utah Wilderness Alliance, said lawmakers would be better served addressing problems in the region such as health care and education.

"It is a disappointment that once again the state Legislature is wasting time pounding its chest instead of trying to solve Utah's real problems," Groene said.

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2. **Public Land For Sale! Here Are Some of the 3.3 Million Acres Being Eyed for "Disposal"**

The Men's Journal, Jan. 27 | Ryan Krogh

Back in 1997, then Secretary of Interior Bruce Babbitt was required by Congress to "examine their holdings" — basically to rank public lands that the government could sell off to support an Everglades restoration project.

The list, which is hosted here on Jason Chaffetz's (R-UT) Congressional Website, offers up a whopping 3.368 million acres in 10 states — specifically Arizona, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, and Wyoming. While the exact land for sale is not identified, the counties where the land is held (190 in total) is. Connecting the dots isn't too hard to do to see which areas, and communities, will be affected. And it's clear that some of this so-called "disposal land" is far from worthless — especially for hunters, anglers, hikers, and bikers.

Why does this matter now? With public land sales back on the docket (H.R. 621, introduced by Chaffetz), this 1997 document is a sort of wish list of lands for sale (you can find another version on BLM's site). But even in 1997 this document was far from airtight: "Please note many lands identified appear to have conflicts which may preclude them from being considered for disposal or exchange," wrote then Assistant Secretary Bonnie Cohen. "Conflicts include high disposal costs, critical natural or cultural resources and habitat, mineral claims and leases, and hazardous conditions." Many of the lands are home to endangered species, like the desert tortoise and Mexican gray wolf. Twenty years later, many of the potential conflicts have become more problematic, thanks to new National Monuments, newly identified species, and, let's not forget, outdoorsmen, who have always made use of the land — our land.

Below are some examples of land that could be on the auction block if Chaffetz's bill is passed. Get your checkbook ready!

State: Wyoming



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County: Sheridan

The Potential Land: 35,200 acres of BLM-managed land in the Powder River Basin, which is just east of the Bighorn Mountains, popular with hikers, campers, horseback riders, and hunters.

State: Wyoming

County: Park

The Potential Land: 27,300 acres surrounding the Shoshone River, a popular fly-fishing stream in northern Wyoming. Most of the BLM-managed land in Park County is downstream of the town of Cody, which sits between the Big Horn, Owl Creek, Bridger, and Absaroka mountain ranges. Tourism is the town's primary industry.

State: Oregon

County: Harney

The Potential Land: 44,000 acres in a county that's home to Steens Mountain, a 9,733-foot peak that's popular with campers and hunters, and Malheur National Forest.

State: New Mexico

County: Catron

The Potential Land: 25,000 acres that contain "cultural resources," meaning it's probably home to pueblo ruins. The land is most likely a giant tract southwest of the town of Quemado, and some of the land abuts the Gila National Forest, home to the endangered Mexican gray wolf, the Gila trout, and some of the best elk hunting in the U.S.

State: Colorado

County: Montrose

The Potential Land: 2,105 acres that is home to endangered species and "historic/cultural resources." The surrounding area contains the Gunnison Gorge, famous for its rafting and fly-fishing trips, and Uncompahgre National Forest, which is home to elk, mule deer, bighorn sheep, and mountain goat.

State: Nevada



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County: Elko

The Potential Land: 208,900 acres that contains endangered species, historic resources, and is home to “wetlands/floodplain.” BLM-managed land makes up a giant percentage of land in Elko County, but exactly what land is up for consideration is unclear, or what the effects might be.

State: Arizona

County: Mohave

The Potential Land: 23,525 acres with mining claims and historic resources. A comment attached to the description notes that the land is “classified as habitat for the Desert Tortoise (a sensitive species).”

Total Acres That Could Be Up For Sale, By State:

Arizona: 453,950
 Colorado: 93,741
 Idaho: 110,022
 Montana: 94,520
 Nebraska: 6,615
 Nevada: 898,460
 New Mexico: 813,531
 Oregon: 70,308
 Utah: 132,931
 Wyoming: 694,200

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3. **Hickenlooper argues Colorado is a better home for Outdoor Retailer trade show**

The Denver Post, Jan. 30 | Jason Blevins

Gov. John Hickenlooper doesn't poach.

He doesn't urge companies or trade shows to abandon their home states for Colorado. But if, say, leaders in one of the nation's most vibrant and influential industries started elevating Colorado as a better home for their semi-annual trade shows, the governor is happy to advocate.

“We are always going to make the argument ‘Here's why Colorado is better,’ ” he said.



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Ski and snowboard industry leaders — who gathered in recent days at the Colorado Convention Center for the Snowsports Industries America annual Snow Show — know Colorado is better. The Snow Show just upped its contract to stay in Denver through 2030.

But as attendees of the twice-annual Outdoor Retailer trade show in Salt Lake City grow increasingly irked by Utah's push to sell federal public lands, Hickenlooper's record of celebrating public lands as "spiritual and economic assets" has boosted Colorado's potential as a better host for that show, too. Outdoor Retailer for two decades has drawn more than 20,000 people a year to Salt Lake City, delivering \$45 million in annual economic impact.

Technological adaptation to evolving manufacturing cycles and retailer purchasing schedules has made trade shows less transactional, transforming gatherings like the SIA Snow Show and Outdoor Retailer into rallies of like-minded advocates. Competitors meet to address important issues and identify trends and, Black Diamond founder Peter Metcalf said, often "come together to help make a difference."

Metcalf supports Outdoor Retailer leaving his home state of Utah for Colorado, citing what he calls Utah's "assault on public lands."

"The trade show in and of itself should be to celebrate and award, as well as show disapproval," said Metcalf, who notes he is speaking as an individual with nearly 30 years' experience at the helm of Black Diamond and dozens of roles on outdoor industry boards and organizations.

The last time the Outdoor Retailer trade show studied a potential move, citing both a lack of space in Salt Lake City and Utah's recreation and public lands policies, Utah Gov. Gary Herbert responded by creating the nation's first office of outdoor recreation. Hickenlooper followed two years later with the nation's second office of outdoor recreation.

But Metcalf said more recent moves by elected officials — like the bill offered last week by Republican Utah Rep. Jason Chaffetz directing the Secretary of the Interior "to sell certain federal lands in Arizona, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah and Wyoming previously identified as suitable for disposal" — warrant denunciation by the outdoor industry.

"Utah is the birther state of the most anti-stewardship, anti-public-lands policy in the country and, conversely, I would say Colorado ranks very highly as the opposite," Metcalf said. "If we can't affect policy by staying, then the next step is leaving."



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Hickenlooper isn't throwing snowballs at his friend Herbert. The moderate yet liberal-leaning Democrat Hickenlooper and the conservative Republican Herbert "agree on 80 percent of everything," Hickenlooper said.

"But this is one place that we really don't agree," Hickenlooper said. "As much as I admire him, I think we need more public land, not less."

Hickenlooper's political legacy will include a bear-hug embrace of the recreation and outdoor industries. His Colorado Beautiful initiative will inventory all of Colorado's public lands, from municipal pocket parks to Forest Service wilderness and national parks, as a way to identify gaps and segments that are hindering public access. His \$100 million plan to develop trails across the state aims to make Colorado the most bike-friendly state in the nation.

The recent passage of the bipartisan Outdoor Recreation Jobs and Economic Impact Act — which will include the economic impact of the outdoor industry in the federal government's annual accounting of gross domestic product — will "allow Colorado to make a really compelling case to the outdoor industry," Hickenlooper said.

It's the same case Hickenlooper made in 2010 to land the Snow Show, securing what remains as the largest convention booking in Denver's history. The show lures more than 18,000 attendees a year who stir a \$35 million annual economic impact.

"Part of the argument we made to SIA and the Outdoor Industry Association is that we are a better place to hold these kinds of conferences because we already have that crucial mass," Hickenlooper said.

In his keynote speech at the Outdoor Industry Association Rendezvous in Denver last fall, Ken Gart, the former retail magnate who serves as the governor's bike boss in charge of developing trails, called Utah's public lands policy "dead wrong and frankly an insult to our industry."

"Utah has declared war on public lands. Those are the very lands the outdoor industry has depended upon. I would like to see the OR Show speak loudly with one voice in opposition to these policies. If they continue, we should openly explore moving the trade show to a state that does support the core values of our community," Gart said, drawing a standing ovation from industry leaders at the conference.

There's a lot of overlap between the SIA Snow Show and Outdoor Retailer. About 40 percent of the nearly 1,000 brands exhibiting at the SIA Snow Show also attend the Outdoor Retailer winter



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show, SIA chief Nick Sargent said. About the same ratio of Snow Show's gear-perusing retailers attend the show in Salt Lake City.

But the shows' ownership structures are not similar. Emerald Expositions — one of the country's largest trade-show organizers — owns Outdoor Retailer. The members of the not-for-profit SIA own the Snow Show. And those members love Denver, Sargent said.

"It's pretty rad to say that your industry trade show is in a state that has an amazing environmental record and an amazing record of investing back in the outdoor economy," Sargent said.

When Outdoor Retailer studied Denver as a potential new home in 2012, the Colorado Convention Center was too small. Outdoor Retailer needs about 900,000 square feet of space. But the city of Denver's audacious \$1.1 billion plan to grow the National Western Center into a sprawling complex capable of hosting large events, businesses and conferences, elevates Denver as a viable host. Logistics like the available meeting space, the number of affordable hotel rooms, the range of flights into a nearby airport and the ease of transportation are important factors for the Outdoor Retailer trade shows, which next year will move to a four-show-a-year model.

That calendar shift prompted paddlesports manufacturers and retailers to leave Outdoor Retailer and create their own show, which will be held in Wisconsin in September. That means Outdoor Retailer's summer shows might not need as much space as once required.

Denver could be a better fit now, said Amy Roberts, the executive director of Boulder's Outdoor Industry Association, which has 1,245 manufacturer, retailer and associate members. OIA sponsors the Outdoor Retailer trade show, but owner Emerald Expositions will make the call on any new location. The company surveys members — its customers, really — to guide decisions.

"We are listening to what our members are saying and their concerns around the congressional delegation in Utah and the statements they have made and the actions they have taken in support of transferring public lands," Roberts said. "That definitely has the attention of our industry."

Richard Scharf, the head of Visit Denver, which courts and books conventions at the Colorado Convention Center, said his team has not been approached by Outdoor Retailer about moving to Denver.

Hickenlooper isn't looped in on all the logistical issues. But he's still pitching Colorado as a great home for Outdoor Retailer.



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“Competition is healthy,” he said. “Even if we make our argument for why we think Colorado is a better home for that show, I guarantee you Gov. Herbert is going to have a pretty compelling argument for that show to stay in Utah.”

But Metcalf thinks any argument will be overshadowed by Utah’s push to reduce the amount of federal public lands in the West.

It is certainly a competition, Metcalf said.

“And may the best state win,” he said.

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4. **'Legacy to draw on': Climate group talks social justice with art at USU**

The Herald Journal News, Jan. 27 | Kevin Opsahl

Two giant hand-drawn old colonial style images that took artists a decade to make captured the attention of Cache Valley residents of all ages on Friday night in the Taggart Student Center.

Volunteers with Wasatch Rising Tide, a Salt Lake City-based all-volunteer group fighting against climate change and land issues, and The Beehive Design Collective, a Maine-based artistic educational organization, used the artwork “Mesoamérica Resiste” to spur a discussion about struggles with and resistance to industrialization and globalization.

“We're taught we can only resist the dam by, you know, 'Call your representative,’” Easton Smith, a volunteer with Wasatch Rising Tide, told attendees at USU. “What we want to show is, for centuries and centuries, people have been resisting from the grassroots level. We have a strong legacy to draw on when we're trying to take power into our own hands.”

Last year, Wasatch Rising Tide made headlines by joining with protesters in Salt Lake City to urge then-President Barack Obama to stop leasing fossil fuels on public lands and waters; and joining protesters in downtown Salt Lake City at the Wells Fargo building to urge Obama to stop construction of the Dakota Access Pipeline — something President Donald Trump recently issued an executive order to resume.

The Beehive Design Collective is made up of activists, storytellers and artists “telling the big-picture stories of our time” through massive works of art, according to a YouTube video the organization posted.



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The Collective doesn't have a copyright on its images, intending for other organizations, like WTR, to use for educational purposes.

“Take it and run with it any way you can use it to educate people,” Smith told attendees.

“Mesoamerica Resiste,” the artwork the WRT volunteers showed, “illustrates stories of resistance, resilience, and solidarity from Mexico to Colombia,” according to description of the project on The Beehive Design Collective's website.

The website further describes the work this way: “A map drawn in old colonial style depicts the modern invasion of mega-projects planned for the region... and opens to reveal the view from below, where communities are organizing locally and across borders to defend land and traditions, protect cultural and ecological diversity, and build alternative economies.”

Natascha Deininger, a volunteer with Wasatch Rising Tide, brought the idea of “frontline communities,” like the ones depicted in the artwork, home to valley residents attending the event.

“People aren't just frontline communities in Latin America — they're right here,” Deininger said.

Becca Johnson, a nontraditional student majoring in psychology going for a master's in social work, said she attended the event Friday night because she cares about social justice and the environment; she's also an artist.

“I like how they use art as a tool to get the message across,” Johnson said. “Art can touch your heart in a way that words can't.”

Johnson said the discussion with valley residents and members of Wasatch Rising Tide on Friday night gave her hope in what she sees as a charged political environment.

“I'm really distressed by the current state of politics and the things President Donald Trump is doing,” she said. “The stories of people resisting environmental ravaging and being successful at it, the idea that ordinary people, if they band together, can make a big difference.”

In an interview, Smith said he wanted people who attended the discussion at USU to understand that our struggles are very connected.

“There's issues of Native American sovereignty and water rights that are very similar to issues going on in Utah with the public lands initiative,” Smith said. “We want people to understand



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that, and also, that other communities, historically, have fought against these issues and used a variety of tactics.”

Madeline Smith, a student intern at the Access and Diversity Center who helped organize the event, talked about what she hoped people learned from Wasatch Rising Tide.

“My hope is people come away with a lot more awareness of art; specifically, how art has a lot of different meanings,” Madeline Smith said. “There's the phrase 'A picture is worth a thousand words,' but I think unless you're given an opportunity and a platform to really evaluate art and its meaning, that the phrase is not as meaningful.”

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5. **My view: Optimizing Public Land**

The Deseret News, Jan. 30 | Brett Sutteer

The economy in southeastern Utah has changed dramatically over recent decades. Like most Western states, Utah was reliant on fossil fuels and energy development as the drivers of our economy throughout the 20th century. Our elected officials and our public lands policy paid a great deal of attention to those industries and did a lot to ensure that they would continue to thrive.

In recent years, the economy in Utah has diversified. Outdoor recreation now brings in \$12 billion in direct revenue and plays a key role in attracting all types of other industries to our state. Businesses like mine, and hundreds of others in Southern Utah, are built around healthy public lands in their natural state.

Yet while the economy has moved beyond total dependence on oil and gas, the processes by which we make decisions about our public lands and resources have not kept up. For a long time, we have remained stuck with the same decision making process about public lands that existed when fossil fuels were the main driver of our economy.

Public land decisions were dominated by broad brush conflicts over public land philosophies. This system endangered key places and important non-oil and gas resources like drinking water, hunting and fishing areas, and recreation of all types. This creates investment uncertainty for both recreation-related business and oil and gas operators. Without more detailed zoning, both parties are all at risk of future lawsuits and protests which will derail everyone's plans.



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To address this problem, a new process for managing the multiple uses of our public lands was developed a few years ago and is just now coming to fruition in Utah — the Master Leasing Plan for Moab. This process has been an enormous improvement for the businesses in our community, like mine, who need to know that our public lands will continue to provide high-quality recreation experiences. The Moab MLP brings certainty to all the businesses that make up our modern economy.

The specifics of the plan regarding where we need to drill and where we don't, include an unprecedented amount of specific local input. The Bureau of Land Management worked from the start to bring together everyone with an interest in these lands to the table — from businesses like mine to oil and gas companies, community members, elected officials and advocates for conservation. The different viewpoints within our community were engaged early in the process, and lent their voices to nine public meetings, a community workshop attended by all stakeholders, and thousands of comment letters. This level of detailed discussion and public engagement led to a well designed plan that optimizes the public land around Moab.

The Master Leasing Plan process has been efficient, effective and generated a result that works for businesses across the diverse sectors of our 21st century economy. It has ensured that the voices of the people of our community and throughout Utah were heard and their needs were met. Businesses like mine as well as energy companies can now operate with a level of certainty that did not previously exist in Southern Utah.

It is my hope that Moab can now be seen not only as home to some of the nation's finest public lands, but also as a model for how we manage public lands throughout the West. We have improved a previously burdensome government process and come up with a plan that works for businesses in a variety of industries. This plan for our nearby federal lands has the support of both our county and our city councils. Going forward, the Moab Master Leasing Plan should be a model for other public land communities across the West.

Brett Sutteer is director of Moab Cliffs and Canyons.

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6. 'Political insiders' expect President Trump to take action on Bears Ears

Utah Policy, Jan. 29 | Bryan Schott

Utah Republicans are mounting a full-court press on President Trump, asking him to either reduce the size of or eliminate entirely, the new Bears Ears National Monument in Southern Utah.

A clear majority of our "Political Insiders" expect President Trump to act on this request sometime soon.

73% of the Republicans on our panel, 80% of the Democrats and 69% of our readers say Trump will take steps to alter or eliminate the national monument established by President Obama in the final days of his presidency.

Sen. Orrin Hatch says he spoke with President Trump last week, and that Trump is "eager to work with" Republicans on a plan to undo the Bears Ears Monument.

Obama's order protected 1.35 million acres under the Antiquities Act. While Congress has the power to change national monuments, it's uncommon for a president to take action on them. A 1938 legal opinion from the U.S. Attorney General said the president could establish a monument under the Antiquities Act, but it does not give the president the power to eliminate one.

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7. Capitol hosts 'Utah Drawn,' showcasing state's history in maps

The Deseret News, Jan. 29 | Ryan Morgan

SALT LAKE CITY — To the casual observer, the maps show a progression of redrawn lines and name changes. But when Stephen Boulay presents them, the story of Utah's complicated history emerges.

Every year, a new display is curated in the halls of the Utah Capitol. This year, 40 rare maps line the halls of the Capitol, a collection showing the history of North America from the first vague outlines by European explorers to the shape of modern America.

"Utah Drawn: An Exhibition of Rare Maps" is Boulay's passion project that details how Utah became a territory and then the 45th state.



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Boulay studied at Colgate University in New York, where he became fascinated with history and collecting historic maps. He has been collecting maps for 35 years, with Utah becoming his focus when he moved to the state some 30 years ago.

"Paper is easy to move, and you find stuff all over the world," Boulay said, noting that he's found maps in places as far away as Russia and England.

"A lot of times people don't know what they have," he said. "There was one that I found at a shop in London, which is on original linen, which is for a mining claim in Little Cottonwood Canyon, and I paid five bucks for it."

Boulay estimates the value of his collection at \$200,000, and it continues to expand through connections he's made with maps and antiquities dealers around the world.

The maps on display at the Capitol tell an ever-shifting story of U.S. and Utah history.

"You find things that tell the story of new geographic understanding of what's there: 'There's a river, there's a lake, there's a mountain'; and then political expression: 'We are part of Mexico, we are part of Spain, we are part of Colorado, we are next door to Missouri,'" Boulay said.

The maps of Utah span a stretch of history from its earliest explorers to its pioneer settlement and throughout a continuous process of appeals to the nation to achieve statehood. The maps showcase disputes between Spain and Mexico, as even other territories in the young American nation.

"One of the maps has all the original (Native American) names of the creeks coming into the valley," Boulay said. "I want to get a copy of the treaty map at the end of the Mexican-American War."

Boulay detailed the history of Stockton as a mining hub created with the intent of being removed from Mormon influences of Salt Lake City, and how the earliest plans for the area projected it would become a major commercial center.

Stockton even became the first city in Utah with electric lighting, he said, and experienced a brief boom before settling back down.

Boulay detailed how the lines continued to be redrawn, with Nevada at one point gaining a large portion of Utah territory to prevent Utah and The Church of Jesus Christ of Latter-day Saints from gaining control of a large silver deposit.



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Boulay describes the display as one of great educational value.

"I was pretty active in my kids' school. I used to pull together six or seven of the most interesting maps and show them to kids in sixth and seventh and eighth grades," he said. "Kids know what Utah looks like, and then when you show them this, a kid never ever forgets this."

After spending years showing his collection of map at his children's schools, Boulay set up a display at the University of Utah. It was through his connections with the chairman of the university's history department that he met members of the Utah Division of State History. He reached out to state officials to present his collection on display at the Capitol.

"Utah Drawn" features Boulay's collection, as well as the Utah State Historical Society, LDS Church History Department, L. Tom Perry Special Collections at BYU, and the University of Utah's J. Willard Marriott Library and American West Center.

The exhibit will be on display at the Capitol through late summer.

For more information, visit history.utah.gov/utahdrawn.

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8. **House Republicans try to pull a fast one over Bears Ears**

Utah Policy, Jan. 30 | Bob Bernick

House Democrats had some staffers working overtime this past weekend, trying to figure out if what the House Rules Committee did last Friday was legal.

Well, it wasn't.

But it doesn't really matter, either, as the Rules Committee – dominated by majority Republicans – had the power to fix the oversight on Monday.

And then the majority Republicans in the House as a whole voted to overrule the objecting Democrats and place two resolutions on the floor calendar for debate (and certain passage) Tuesday.

Get ready for some confusing internal legislative rules:



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Last week, House Rules Committee Chairman Mike Noel, R-Kanab, and House Speaker Greg Hughes, R-Draper, introduced their [HCR12](#) and [HCR11](#), respectively.

Noel, unfortunately for him, decided that the Rules Committee, acting as a standing committee, would hear the bills and give the public a chance to comment.

That meeting was held Friday afternoon – a whole of folks from Southern Utah showed up to say they want President Donald Trump to rescind the Bears Ears National Monument (Hughes' resolution) and reduce the size of the Grand Staircase National Monument (Noel's resolution).

But, folks, the House Rules Committee can only meet as a standing committee to take public comment on proposed RULES changes – not on bills or resolutions that don't deal with how the House runs itself.

Thus, Friday's hearing was out of order – and according to House rules didn't take place at all (even though it did).

The House Democrats saw their opening.

They knew they couldn't defeat the two resolutions – they will both go to Trump's desk via Sen. Orrin Hatch et al.

But they could call foul!! – the rules were being broken to overturn Democratic presidential national monument designations – in the case of Bears Ears by Barack Obama in late December, in the case of the staircase, by Bill Clinton way back in 1996.

And, perhaps, the House Democrats' constituents would see how badly Utah lawmakers run over them year after year in the Legislature.

Well, after debates in both the Rules Committee and on the floor Monday, the House Republicans did run over the Democrats, suspended the rules to put the two resolutions on the top of the 3rd Reading Calendar, to be debated (and passed, for sure) on Tuesday.

That is unless the Democrats can figure out some other way to postpone the inevitable – as both of the resolutions will now go to the Utah Senate.

Don't expect the same kind of shenanigans when the resolutions get to the Senate.

Senate President Wayne Niederhauser, R-Sandy, said they would likely send the bill to the Natural Resources Committee when the time comes.



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"We don't plan on changing the process," he said.

Sen. Stuart Adams, R-Layton, said any abuse of the process should land squarely on the shoulders of former President Obama.

"He did this at the end of his administration with a stroke of a pen," said Adams. "There are a lot of people who feel that process is not the proper one."

Senate Minority Leader Gene Davis, D-Salt Lake City, says he's confident that his Republican colleagues in the Senate will do the right thing.

"As long as the public has input on this, the process is fine," said Davis.

The real question remains: Will Trump kill Obama's Bears Ears monument; will he reduce the size of the staircase?

And how long will it take for the U.S. Supreme Court to decide these issues – for either or both will likely be appealed to the courts should the new president act like the GOP-controlled Utah House and Senate wish.

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E&E/NATIONAL NEWS – FULL STORY

1. Misdemeanor charges against second round of Oregon standoff defendants will go before a judge, not jury

The Oregonian/OregonLive, Jan. 27 | Maxine Bernstein

The misdemeanor charges filed against the second round of Oregon standoff defendants will be tried before a judge.

Because the charges of trespass, tampering with vehicles or equipment and destruction of property are Class B misdemeanors and considered petty offenses, the defendants don't have a right to a jury trial, U.S. District Judge Anna J. Brown ruled.

The judge also cited the "significant uncertainty in the law" as to whether she has discretion to allow a jury trial for such offenses.



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"Simply put, the Court declines to exercise discretion to take an action when it is not at all clear that the Court has such discretion in the first place," Brown wrote in her ruling Thursday.

Even if she had the authority to grant a jury trial, Brown said she wouldn't.

"The Court notes Congress explicitly intended the trial of petty offenses to be tried to the court, and expressly permitted magistrate judges to conduct such trials in order to facilitate their efficient resolution without the process associated with a jury trial," Brown wrote.

Twenty-six people faced federal conspiracy charges stemming from the 41-day occupation of the Malheur National Wildlife Refuge in southeastern Oregon. Bundy and six co-defendants were found not guilty of conspiracy, weapons and other charges after a five-week trial last fall. Eleven others pleaded guilty to the conspiracy charge. Prosecutors dismissed charges against another.

The remaining seven are set for trial on Feb. 14, on both felony conspiracy and weapons charges and additional misdemeanor charges.

Brown said she plans to hear evidence on the misdemeanor charges filed against the seven as a jury hears evidence on their felony conspiracy and weapons charges. If there's additional evidence on the misdemeanor charges, the judge will hear it while the jury deliberates on the felonies, Brown said.

Defense lawyers have indicated that they'd ask a federal magistrate judge instead to hear the misdemeanor charges because that's the typical procedure for such offenses, said attorney Jesse Merrithew, who represents Jake Ryan.

Brown suggested that would be a waste of resources.

Defense lawyers may also ask to have another district judge hear the misdemeanor charges instead of Brown because she presided over the initial trial and has ruled on all pretrial motions for both trials.

Brown said she doesn't believe that's a basis to preclude her from deciding on the misdemeanors. But if defense lawyers seek her recusal, they must file a motion to by Monday and the matter will be referred to Chief Judge Michael W. Mosman.

Defendants and their lawyers were dismayed by the ruling.



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Andrew Kohlmetz, standby lawyer for defendant Jason Patrick, said, "It's very important for Mr. Patrick to have a jury of his peers make those decisions. He's frankly not happy."

Matthew McHenry, who represents defendant Sean Anderson, argued in court papers that a jury verdict that "reflects the judgment of the public and the defendants' peers" would provide a "more satisfactory and acceptable resolution" to defendants and the public.

He also argued that one jury trial would be more efficient, and that prosecutors are trying to avoid a repeat of the across-the-board acquittals in the first trial.

"Finally, the defendants believe the government's strong desire for a bench trial stems in large part from the jury acquittals in the first trial. The government should not be aided by this Court as it attempts to take this case out of the hands of a jury of the defendants' peers," McHenry wrote.

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2. **Crowd of 500, including some Oregon standoff defendants, salute Robert 'LaVoy' Finicum**

The Oregonian/OregonLive, Jan. 28 | Maxine Bernstein

JOHN DAY -- Caravans of trucks with American flags and "Don't Tread on Me" banners rolled into town over several days to gather Saturday night for a conclave that was part memorial, part reunion and part religious revival.

A crowd of more than 500 people grew still as Jeanette Finicum took the microphone.

"They silenced one man's voice," she said, speaking of husband Robert "LaVoy" Finicum, an Arizona rancher shot and killed by police as he and others occupying the Malheur National Wildlife Refuge were traveling north to this eastern Oregon town of about 1,700.

"But in doing so," she said, "they created 13 more very loud voices" - Jeanette Finicum herself and the couple's 12 children.

A year ago on Jan. 26, LaVoy Finicum and other protest leaders had planned to speak at a community meeting here, but never made it when their trip ended with his death and the arrest of the armed takeover's key figures. On this night, the meeting finally happened.



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Jeanette Finicum said the year has been difficult, but the love and support she's received, plus her faith in God, have helped her family endure. They're submitting a notice of a claim with the FBI before filing a federal wrongful death lawsuit against Oregon State Police and the FBI, she said.

"It is a long road, but it is a road that we, our family, is willing to make," she said.

Thirty minutes before the start of the gathering, a line of people stretched outside the Grant County Fairground's Trowbridge Pavilion waiting to get in, coming from Utah, Nevada, Idaho, Washington and California. Finicum's daughters greeted them at the door and inked black stamps of LaVoy Finicum's cattle brand "LVF" on their hands.

They paid \$15 to hear a slate of speakers and balanced plates full of spaghetti on their laps as they listened to critiques of federal government regulations that restrict farmers and ranchers.

The speeches mocked mainstream media, the prosecutors who tried occupation leader Ammon Bundy and his followers and the judge who presided over their trial.

"The not guilty verdict was the most amazing verdict of the century!" Kate Dalley, host of a radio talk show on a Fox News affiliate, cried out from the stage. She drew rousing applause from the crowd, filling more than 25 rows of folding chairs that stretched from one end of the pavilion to the other.

Four of the seven defendants who were acquitted last fall -- Jeff Banta, Shawna Cox, Kenneth Medenbach and Neil Wampler - were together again. They slapped each other on the back and hugged each other.

Cox, who came from her home in Utah, stood by a table, selling and signing copies of her book, "Last Rancher Standing: The Cliven Bundy Story a Close-Up View."

"This is the first time I ever got to John Day," said Cox, a back-seat passenger in Finicum's truck when he sped off from a traffic stop on U.S. 395 and then crashed into a snowbank at a police roadblock. State police shot him after they say he emerged from his truck and reached at least two times into his jacket to grab what police suspected was his gun. He had a loaded 9mm gun on him at the time, police later said.

On her way to John Day, Cox said she drove by the spot where Finicum was killed. "I didn't think it was going to be that tough," she said.



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In the three months since she was acquitted in the federal conspiracy case, Cox said she's been "so busy trying to help the other people" -- the seven other defendants set to face trial next month, as well as Ammon Bundy, his brother, Ryan Bundy, and their father Cliven Bundy, who await trial in Nevada in the 2014 standoff with federal agents near the elder Bundy's ranch.

Jeff Banta, who also was acquitted last fall, said he drove 14 hours from Nevada to attend the meeting. "It's great to be here," he said. "It's great to be a free man."

Since the October verdict, Neil Wampler, who served as a cook at the refuge during last winter's occupation, said he's been happy staying out of the limelight, back at his home in Los Osos, California.

"I hardly even go anywhere," he said. "But I couldn't miss this meeting."

Strangers kept coming up to Wampler, introducing themselves and shaking his hand. "It's kind of overwhelming because I have so many friends here and a certain degree of fame now, not that I ever wanted it," he said.

One local woman on Twitter expressed concern about a social media post that Medenbach placed on Facebook this week, contending the Grant County Public Forest Commission, nullified by a Circuit Court judge, "HAS POWER TO BUY, SELL AND TRADE PUBLIC LANDS IN GRANT COUNTY, OREGON."

He also posted a photo of a white van plastered with a sticker that read, "Grant County Resource Center," a takeoff on the "Harney County Resource Center" stickers that refuge occupiers plastered on U.S. Fish & Wildlife Service trucks at the bird sanctuary.

Medenbach, wearing "Not Guilty" and "Justice for LaVoy" buttons on his shirt, smiled and said his probation officer contacted him and told him to "tone it down." Medenbach is on probation for unlawfully occupying and camping on federal public land in Josephine County in May 2015.

Supporters could choose from an array of memorabilia to buy: black "LVF" caps that said "It Matters How You Stand," bumper stickers declaring "Liberty Rising" and "In God We Trust," shirts with the words "Defend the Constitution" and "Original Intent" printed around a picture of an eagle and LaVoy Finicum's book, "Only By Blood and Suffering."

Lawrence Arata of Colfax, Washington, said he drove 300 miles to John Day. He was angry about the treatment of Harney County ranchers Dwight Hammond Jr. and Steven Hammond, sent back to prison to finish serving five-year sentences for setting fire to public land.



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Liz Pettibone of Heppner said she supports the Bundys and believes it's unfair that federal prosecutors are pursuing trespass charges against the remaining refuge defendants. "How could they say trespass if it's public land?" she asked.

The defendants are accused of entering and occupying the refuge without authorization.

Toward the back of the crowd, Bob Salinger of the Audubon Society of Portland stood quietly. "Public lands are under assault," Salinger said.

He said he came to the meeting "out of curiosity and to understand the threat."

The wives of Ammon Bundy and his older brother, Ryan Bundy, were there to support the Finicum family. Finicum's parents, David and Nelda Finicum of Arizona, said they were comforted by the large turnout.

Robert Finicum, LaVoy Finicum's son, said he drove to the site where his father died on his way from Utah to John Day. It was the first time he had seen it.

He wishes his father would have come home during the refuge takeover, but said: "He was passionate about his cause."

Bryce Poulsen of Utah said he was impressed by the crowd. "I just hope it will keep growing bigger and bigger, and people see that we're not violent."

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3. **REGULATIONS: House plans votes to kill 5 Obama rules**

E & E News, Jan. 30 | Arianna Skibell and Dylan Brown

House Republicans are beginning the process this week of throwing several landmark Obama administration rules into the fire. And the Senate could follow suit within days.

The House Rules Committee has scheduled meetings for today and tomorrow to discuss debate parameters for resolutions to void several energy and environment rules.

First up on the chopping block are the Department of the Interior's Stream Protection Rule and the Securities and Exchange Commission's regulation to require publicly traded resource extraction firms to report payments to governments. Lawmakers will also move forward with killing the Bureau of Land Management's venting and flaring rule.



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Congressional Republicans intend to use the [Congressional Review Act](#), which allows members to review and revoke individual regulations issued within the last 60 legislative days. Each rule requires its own "resolution of disapproval" that can pass with a simple majority.

"Perhaps no aspect of America's economy has been as overregulated as energy," House Majority Leader Kevin McCarthy (R-Calif.) said last week (Greenwire, Jan. 25).

While Freedom Caucus members have urged the GOP to use the CRA to roll back as many as 300 Obama rules, analysts predict Congress will only have time for a few.

"Each one of those is entitled to 10 hours of debate in the Senate. So if you have five of them, you've taken up a week," said Bill Kovacs, senior vice president for the environment, technology and regulatory affairs at the U.S. Chamber of Commerce (E&E Daily, Jan. 3).

"That's difficult because [the Obama administration was] pumping out rules like you pump gas," he said. "It's going to be very hard for many of those rules to be reviewed."

Because a president is unlikely to kill a regulation promulgated under his or her authority, the CRA has the best chance of being signed following a transfer of power.

The law has only been used successfully once, when Congress and President George W. Bush overturned a Clinton administration rule setting ergonomic standards in the workplace.

If a regulation is terminated by the CRA, federal agencies are prohibited from reissuing it or drafting a similar rule in the future, leaving a lasting and uncertain impact on the regulatory system.

Public interest groups across the spectrum, including scientific and research groups, will be fighting against CRA attacks, Earthjustice President Trip Van Noppen said, warning members of Congress that they will be held accountable.

"Voters didn't vote against clean air or clean water in the last election," Van Noppen said Friday.

Stream Protection Rule

Topping the list of CRA repeals is the federal Office of Surface Mining Reclamation and Enforcement's Stream Protection Rule.



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A [resolution](#) from Reps. Bill Johnson (R-Ohio), Evan Jenkins (R-W.Va.) and David McKinley (R-W.Va.) would block the new water quality and monitoring standards for streams and groundwater near coal mines that took the entire Obama presidency to finish.

"The combination of unnecessary government overreach, regulatory duplication and harm done through this rule meets every test for CRA action," National Mining Association CEO Hal Quinn said in a statement.

Many of NMA's member companies say the rule will eliminate one-third of coal jobs, but OSMRE analysis found it would actually create them. The agency said it was simply modernizing 30-year-old regulations.

Environmentalists had demanded even stricter standards for coal mining pollution linked to health impacts downstream, particularly in struggling Appalachia. Last week, 73 national and local groups urged Congress to preserve the rule (E&E News PM, Jan. 25).

"Republicans' corporate favoritism is going to sicken and kill the very people Donald Trump falsely promised to help," House Natural Resources ranking member Raúl Grijalva (D-Ariz.) said in a statement.

"Unless they cover the health costs of every American who stands to be hurt by this rollback," added Grijalva, "they will have American lives on their conscience."

The United Mine Workers of America, however, sided "wholeheartedly" with the repeal effort in a letter today. The nation's largest miners union has sided with coal operators, its traditional adversary, in blaming Obama regulations for sweeping coal layoffs.

UMWA President Cecil Roberts noted opioid abuse, departing businesses and teacher shortages in the coal fields of Appalachia.

"The basic structure of society is quite simply crumbling," Roberts wrote. "This cannot go on, especially when it is fostered by government regulations like the SPR."

Methane

House Natural Resources Chairman Rob Bishop (R-Utah) has his name on a [resolution](#) to slash BLM's action to curb methane emissions from oil and gas flaring, venting and leakage on public and tribal lands.



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Many energy industry advocates, including the Koch brothers, have backed Congress axing a rule they condemn as more unnecessary executive overreach. They say it runs afoul of the Mineral Leasing Act and is too burdensome.

On a conference call Friday, Bishop called the stream and methane rules "probably the most egregious of all the rules that we can think of."

Companies that work to detect and repair gas leaks, however, argue that increased oversight will yield economic benefits.

"If you're trying to create good, blue-collar manufacturing jobs that can never be exported, this seems like a home run," said Allison Sawyer, CEO of Rebellion Photonics, a company that creates tools to pinpoint leaks (Energywire, Jan. 27).

Jason Libersky, co-founder and CEO of the engineering and analytics firm Quantigy, said collecting and selling methane, rather than allowing the gas to escape to the atmosphere, also saves one client about \$2 million a year. Companies, however, say the process is not always economical for them.

Climate advocates, energized by a growing body of research that highlights the significant warming effect that the potent greenhouse gas has on the planet, urged the Obama administration for the regulations.

If Congress kills the rule, groups like the Sierra Club and Environmental Defense Fund have signaled they will continue to focus on local emissions standards, better ways to find leaks and more cost-effective ways to contain them.

Grijalva and other Natural Resources Democrats are planning a forum on the rule this week as part of their opposition to Bishop's resolution.

SEC payment rule

The House will also take up Michigan Republican Rep. Bill Huizenga's [resolution](#) to eliminate new Securities and Exchange Commission rules requiring publicly traded drilling and mining companies report any payments to governments (E&E News PM, Dec. 11, 2015).

Sen. Ben Cardin (D-Md.) and former Sen. Dick Lugar (R-Ind.) tacked Section 1504 onto the Dodd-Frank Wall Street Reform and Consumer Protection Act in the name of increasing transparency and reducing corruption worldwide (E&E Daily, Oct. 20, 2015).



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The disclosure standards took years to finalize, particularly because the petroleum industry sued, arguing the disclosures crippled publicly traded companies trying to compete with foreign or state-run companies.

Advocacy groups, however, sued to force the SEC into finalizing a second iteration of the rule. They said the U.S. was falling behind other countries that have since introduced their own reporting standards.

Separately, this week the House will also take up resolutions disapproving of a federal acquisition rule for the Defense Department, General Services Administration and NASA, and the Social Security Administration's National Instant Criminal Background Check System Amendments Act.

Schedule: The Rules meeting on the stream and SEC payment rules is Monday, Jan. 30, at 5 p.m. in H-313 Capitol.

Schedule: The Rules meeting on the methane rule is Tuesday, Jan. 31, at 3 p.m. in H-313 Capitol.

Schedule: The Democrats' forum is Wednesday, Feb. 1, at 12:30 p.m. in HVC-201 Capitol.

Witnesses: TBA.

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4. **OIL AND GAS: As House moves to kill methane regs, Colo. asks why**

E & E News, Jan. 30 | Brittany Patterson

House Republicans today will begin to scrap an Interior Department directive to cut methane from oil and gas wells on federal lands, calling it a "bad rule" and "regulatory overreach."

But just a few years earlier, oil and gas companies sat down with environmentalists in Colorado to develop first-in-the-nation regulations for the potent greenhouse gas. Those rules were considered so comprehensive that both the Interior Department and U.S. EPA borrowed from them when they crafted their own federal rules.

Despite having been in effect just a few years, proponents of the rule say Regulation No. 7, or Reg. 7 as it's called, has both reduced methane leaks and created economic growth for Colorado. It's a pattern many in the state expected to see go nationwide when federal rules were promulgated.

Now supporters — which include both industry and environmentalists — say the GOP move to claw back similar federal methane regulations could stifle the growth of the budding methane



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mitigation industry in Colorado and upend the ability of the United States to lead a growing field.

"There seems to be an ideological opposition to federal regulations by industry that trumps just about everything else," said Dan Grossman, national director of state programs for the Environmental Defense Fund's Oil and Gas Program. "What the Colorado case study has demonstrated is that methane mitigation is highly cost-effective and it certainly does not impede operators' ability to stay competitive and produce oil and gas."

Federal efforts to roll back the Bureau of Land Management's venting and flaring rule are supported by industry, which has called the Obama-era regulations duplicative and costly. But with House Natural Resources Chairman Rob Bishop (R-Utah) poised to introduce a resolution of disapproval to overturn the rule, analysts say the experiences of Colorado can be helpful in understanding both the challenges and opportunities of curbing methane.

New businesses created in detection

Reg. 7 was drafted in 2013 between EDF and some of the biggest players in Colorado's oil and gas industry, including Anadarko Petroleum Corp., Noble Energy Inc. and Encana Oil and Gas Corp. It requires operators to find and fix leaks and install devices to capture 95 percent of methane emissions.

In a sign that things seem to be working, oil and gas companies operating in Colorado haven't sued to block the Colorado rule. That's despite state estimates that the methane regulation, in conjunction with two other ozone rules, was likely to cost the oil and gas industry, conservatively, about \$42 million per year.

According to data submitted to Colorado's Air Quality Control Commission, the number of leaking oil and gas facilities has dropped by 75 percent since the rule went into effect.

"Colorado has really set the tone, not only here for our state, but also nationally," said Mark McMillan, stationary sources program manager for the Colorado Air Pollution Control Division. "There are four or five really good regulatory things that have come from this."

One of those things, supporters say, is new jobs.

Under Reg. 7, operators must inspect their oil and gas wells often, and if a leak is detected, they must fix it. To do that, operators can use technologies like infrared cameras to identify leaks.



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Many larger companies took the plunge and purchased the cameras, which cost thousands of dollars, and created in-house teams to comply.

"These are blue-collar, high-paying jobs program that are impossible to export," said Allison Lami Sawyer, CEO and co-founder of Rebellion Photonics, a gas imaging company based in Houston.

Industry yearns for more flexibility

Yet some concerns remain. The Colorado rule includes a compliance pathway for new leak detection technologies, but people creating those new technologies say they haven't seen the benefits yet.

Apogee Scientific, based in Englewood, Colo., for example, offers a non-camera detection system that finds not only leaks of methane but all hydrocarbons that are present, as well as carbon dioxide, and it can measure the concentration of those components in the leaked gas.

But Jim Armstrong, president of Apogee Scientific, said that when the company applied for a permit to be certified under Colorado's regulation, it was denied because it could not prove its technology catches 100 percent of leaks, despite its being used by utilities and the state to measure other chemical leaks from things like coal seam mining facilities and power plants.

"My concern is we have a lot of people trying to innovate new technologies, but if they hit the wall of having to find every leak, they're going to run into a problem," he said. "Nobody is going to find every leak, and regulators know that."

To date, the state has approved just one new technology for use under Reg. 7.

The oil and gas industry, while sharing the concerns voiced by methane mitigation companies worried that Colorado's rule may not be flexible enough to spur innovation, has been largely supportive.

"You're seeing emissions reductions and seeing leaks that are caught through this program and fixed," said Andrew Casper, director of legal and regulatory affairs for the Colorado Oil and Gas Association (COGA).

Grossman, who helped craft the rule, said he recognizes that the new technology bar is hard to meet, but said it was set intentionally high. He also sees evidence that Colorado's rule has created



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a blueprint for both federal agencies and states for methane regulation. As that practice becomes standard, Grossman argued, it opens the door for new technologies to join the field.

The Center for Methane Emissions Solutions, a business group formed to represent companies targeting methane emissions, estimated that in 2015, there were at least 72 companies working on methane mitigation headquartered in the United States.

The government has also seen the high potential of methane mitigation technologies. In 2014, the Department of Energy's Advanced Research Projects Agency-Energy, which funds early-stage startups that could have a high impact in the clean technology field, gave out \$30 million to support 11 projects focused on developing low-cost, highly sensitive systems to detect methane leaks from oil and gas wells.

It 'made sense'

Warren King, an energy specialist at the Wilderness Society, said repealing EPA's and BLM's federal rules could have impacts beyond just on the amount of methane, a greenhouse gas 25 times more potent than carbon dioxide, that is released into the atmosphere.

"We've seen how these requirements have impacted Colorado for the better both in terms of reducing emissions and also increasing jobs and creating new jobs," he said. "I think because of the way both the BLM rule and EPA rule were structured and the similarities between them and the Colorado rule, nationwide we would have seen similar impacts on the economy."

COGA's Casper called Colorado a leader in regulations, with one of the most stringent air-quality rules in the country. Of Reg. 7, he said, "I think one of the benefits you're seeing is decreased emissions despite increased production."

If the BLM methane regulation is overturned through the use of the [Congressional Review Act](#), not only will the methane regulation be invalidated, but the agency will be barred from crafting a similar replacement rule.

Bishop said he would like Congress to take up some of regulatory issues in the BLM rule, but isn't clear yet about which parts.

For King, who used to work in oil and gas regulation at Colorado's Air Pollution Control Division, repealing federal regulations is a loss on many levels.

"To me, it's surprising that if you have this buy-in from other states and companies that are saying the Colorado regulations made sense and they agreed to those, yet they don't support



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federal regulations, and that just doesn't make sense," he said. "I understand the argument against duplicative regulations, but EPA and especially BLM did a terrific job in allowing for compliance if state regulations were met."

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5. **DOE: Mounting anxiety for climate research at national labs**

E & E News, Jan. 30 | Umair Irfan

Scientists are concerned that climate change research may be in the crosshairs at the Department of Energy under the Trump administration.

Reports that agencies like U.S. EPA and the Department of Agriculture are facing communications restrictions, along with recent proposals from the Trump transition team for drastic cuts in environmental science in federal agencies, have some researchers at DOE's venerable national laboratories worried that they might be next.

"[Climate change research] does seem particularly vulnerable because this administration has not given us any indication that they take it seriously as an issue affecting us and affecting the world," said Hansi Singh, a postdoctoral research fellow at DOE's Pacific Northwest National Laboratory in Richland, Wash.

Last month, Singh co-signed a letter to President Trump with more than 800 other researchers encouraging him to continue the fight against climate change and support the research behind it.

"During your campaign, you said that your 'administration will ensure that there will be [scientific] transparency and accountability without political bias,'" the letter said. "Uphold these standards by appointing scientific advisors, Cabinet members, and federal agency leaders who respect and rely on science-based decision-making."

Trump's nominee to lead the Energy Department, former Texas Gov. Rick Perry (R), described climate change in his book as a "contrived, phony mess" but walked back his comments slightly during his confirmation hearing earlier this month, saying some of the changing climate is due to human activity and some is due to natural causes (Climatewire, Jan. 20).

Singh, who researches the sensitivity of Arctic and Antarctic regions to atmospheric levels of carbon dioxide, said scientists need to be more vocal in making the case for their work rather than counting on job security through obscurity.



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"I definitely hear this often from scientists that work for the different agencies that 'my science is highly insulated.' I think that is not the correct approach," she said. "If they're coming for one of us, they're coming for all of us."

Born of the Manhattan Project, the Department of Energy's 17 national labs operate the world's most powerful lasers, run the fastest supercomputers in the country and maintain the most devastating weapons arsenal known to humanity.

Perry called the national labs the "crown jewel of this country from an intellectual and certainly scientific standpoint."

Unlike scientists at other federal agencies, researchers at 16 of the 17 national labs are employed by contractors, while the labs themselves are owned by the government, an arrangement known as GOCO (government-owned, contractor-operated). At the remaining lab, the National Energy Technology Laboratory (NETL), with facilities in Pennsylvania and West Virginia, the scientists are government employees.

Asked whether NETL scientists are concerned about the Trump administration's attitudes toward climate change, a spokeswoman for the lab wrote in an email that "NETL's role is to focus on research and therefore NETL is not in the position to discuss policy."

DOE did not respond to a request for comment.

'We're all feeling pretty low'

A climate modeler at DOE's Los Alamos National Laboratory, who asked not to be named due to fear of employer retaliation, said he is concerned about the rhetoric from members of the Trump administration, particularly the "vast exaggeration of uncertainty" in climate change.

"There's a pretty overt pattern of them denying basic scientific facts, in this case regarding what the planet is doing and why it is doing it," he said.

Trump has described climate change as a "hoax," and his transition chief for EPA, Myron Ebell, has suggested cutting that agency's workforce by two-thirds (Greenwire, Jan. 26). Proposals from the Trump transition team also suggested scrapping several research and development offices at DOE and cutting funds for nuclear physics and advanced computing, according to a [report](#) published in The Hill.



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These attitudes from the highest levels of the administration have started to wear on the morale of scientists at national labs.

"It's a real bummer, of course," said the Los Alamos researcher. "We're all feeling pretty low, especially when you have basic scientific facts used as a political football."

Scientists at the national labs insist that they are merely reporting their findings and that the politicization of their work, particularly climate science, is out of their hands. "We provide the data, and the policy and the decisions are in the hands of federal officials," said David Keim, a spokesman for Oak Ridge National Laboratory in Tennessee. "We don't do policy. We do science."

Nonetheless, researchers said they would resist any attempts to meddle with their work or their findings, and Energy secretary nominee Perry vowed to defend the scientists in his charge from assaults on their integrity.

"I am going to protect the men and women of the scientific community from anyone that would attack them, no matter what their reason may be, at the Department of Energy," Perry told lawmakers.

It's all about the budget

But the bigger threat to climate science at DOE may be the budget.

Rep. Mick Mulvaney (R-S.C.), the nominee to lead the White House Office of Management and Budget, which sets funding levels for agencies, has been circumspect on his views on climate change.

In a since-deleted Facebook post in response to a funding request for the Zika virus outbreak last year, he questioned the need for government funding of scientific research.

"Some people want me to pass a 'clean' bill (which I suppose means not paying for it with spending reductions elsewhere)," Mulvaney wrote. "Other folks want us to fund more research if we can find a way to pay for it. No one has written me yet, though, to ask what might be the best question: do we really need government-funded research at all."

In his confirmation hearing last week, Mulvaney said, "I challenge the premise" of Sen. Tim Kaine's (D-Va.) question as to whether climate change is driven by human activity and is a huge risk (E&E Daily, Jan. 25).



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"If you don't believe in climate change, you won't be proposing budgetary allocations to deal with it," Kaine said.

Rep. Bill Foster (D-Ill.), a former researcher at DOE's Fermi National Accelerator Laboratory and the only physicist in Congress, said the agency's budget rather than political pressure may be the biggest hurdle for climate science under Trump.

"That's one thing I'm extremely concerned about," said Foster, whose district near Chicago encompasses DOE's Argonne National Laboratory. "Building up a scientific effort in an area takes years or decades, and it can be destroyed in a single budget cycle."

Even for researchers in GOCO labs who don't answer directly to the federal government, their work is imperiled if they don't get the funds to pursue their work. "Nothing saves you if the budget is cut," Foster said.

'Curiosity and interest'

Though members of the Trump administration have disavowed a questionnaire sent to DOE last month asking for names of personnel who attended climate change meetings, some lawmakers say their constituents are still anxious about budget cuts in climate research in order to fulfill Trump's promises to reduce the size of government.

"This is exactly what all of us fear," said Rep. Eric Swalwell (D-Calif.), whose district includes Sandia National Laboratories and Lawrence Livermore National Laboratory. "For anyone who said that you can't take President Trump seriously, he is doing exactly what he said, so we should continue to be concerned."

"I represent about 10,000 scientists who work at our national labs," he said. "They're worried."

However, Swalwell said he spoke to Perry at the inauguration and said that he looks forward to working with him. "My problem is not with Rick Perry. My problem is with his boss," he said.

Other lawmakers with DOE labs in their districts said they hadn't heard any specific concerns about climate science from their voters. A spokesman for Rep. Ben Ray Lujan (D-N.M.), who has Los Alamos National Laboratory in his district, said he "remains concerned about the seriousness with which the Trump administration views climate science research across the board, particularly at our nation's leading research facilities."



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A spokesman for Rep. Dan Newhouse (R-Wash.), who represents PNNL, said in an email that "[t]he Congressman is proud to represent Pacific Northwest National Laboratory and is looking forward to ensuring that the success of the laboratory will continue."

Rep. Barbara Lee (D-Calif.), whose district encircles Lawrence Berkeley National Laboratory, did not respond to a request for comment.

There haven't been any overt signals from DOE as to what's in store for climate research, though an anonymous worker told "This American Life" that agency employees scrubbed climate change references from documents so that certain projects wouldn't draw the ire of the new leadership (E&E News PM, Jan. 26).

"In this case, right now, DOE is not issuing a lot of things," said Greg Koller, a spokesman for PNNL. "It's business as usual here for us."

The laboratory has not received any directives for its social media and outreach efforts, but Koller said there is a lot of uncertainty as to where this administration will go in climate science.

"In general, what we're hearing is curiosity and interest in knowing what the incoming priorities will be," said Koller, who has been through three presidential transitions at the laboratory. "There's always, with a transition, some changes that happen."

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6. **EPA: Trump team actions 'perfectly normal' — acting chief**

E & E News, Jan. 30 | Kevin Bogardus

Acting U.S. EPA Administrator Catherine McCabe is seeking to calm career employees' nerves as President Trump's team takes over the agency.

In a [video message](#) posted on YouTube on Friday, McCabe said there was nothing unusual about the transition. Further, Trump and his aides have issued governmentwide orders and have not targeted EPA, she said.

"This week, you have also seen or heard both communications and reports in the press concerning some other interim actions directed by the new administration. Much of what you are hearing is perfectly normal for a new administration," McCabe said.



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McCabe said the Trump administration has issued governmentwide directives to freeze hiring and regulations. She also discussed the agency limiting its activity on social media and interaction with the press.

"Because we have so many more established routes of communication with the public, this has been particularly challenging and noticeable," McCabe said.

"Other than the governmentwide directives in hiring and regulations, the administration has not issued any additional written directives specifically to EPA," she said.

McCabe also noted the agency's review of grants and contracts, saying it should be finished shortly, and clarified that environmental program and state revolving loan fund grants should proceed. "And they are proceeding as normal," McCabe said.

McCabe made similar comments in an agencywide email obtained by E&E News. "As of today, we have completed review of our grant programs. All grants are proceeding normally, and nothing has been delayed," she said.

"The review of contracts is nearly complete, with very few contracts still under review. We are moving forward with contracts supporting agency infrastructure (e.g., facilities, IT, systems), implementation of our core programs, and science."

Career employees have grown worried during the transition period. Trump has nominated Oklahoma Attorney General Scott Pruitt (R), a vocal EPA critic, to lead the agency, while top transition aides have proposed deep budget cuts.

There have been leaks to the press from within EPA over many of the directives McCabe discussed. In addition, resistance to the Trump administration has gained traction on social media and in protests (Greenwire, Jan. 26).

In her video message, the acting administrator said she understood that this was "a time of anxiety" for career employees and it was important for agency officials to keep them informed. McCabe asked for their support during the transition process and said it was critical they stay focused on their work.

"I know I can count on you to do that," said McCabe, thanking them for their patience and dedication. "We are one EPA."

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7. **METHANE: GOP lawmakers move to block BLM rule**

E & E News, Jan. 30 | Pamela King

Republican lawmakers are calling on state leaders and the energy industry to craft alternative methane rules for oil and gas operations on public lands.

GOP legislators today will begin the process of repealing a pair of Interior Department regulations, House Natural Resources Chairman Rob Bishop (R-Utah) said on a Friday conference call with reporters (Greenwire, Jan. 27). One of the two rules in the crosshairs is the Bureau of Land Management's methane venting and flaring rule, which requires oil and gas operators to use existing technologies to curb release of the primary constituent of natural gas.

Bishop expects to introduce a joint resolution today that would use authority granted under the [Congressional Review Act](#) to undo federal regulations enacted within the last 60 legislative days. Using the CRA to stop the BLM rule would pre-empt the agency from weighing in on methane control in the future.

"It is our responsibility to act," Bishop said.

Montana Rep. Ryan Zinke (R), President Trump's choice to lead Interior, has said he would support efforts to strike down the methane rule but lamented waste of a lucrative resource. The gas could be captured and transported for sale if the industry had a better network of pipelines and gathering lines in place, Zinke told the Senate Energy and Natural Resources Committee during his nomination hearing (Greenwire, Jan. 18).

Methane leakage can be managed at the state level, as demonstrated by Colorado, Wyoming and North Dakota, said Kathleen Sgamma, president of the Western Energy Alliance. Flaring, the practice of burning escaped gas, declined more than 20 percent in North Dakota in the two years after state regulators promulgated a restriction in 2014, the U.S. Energy Information Administration [wrote](#) in June 2016.

"They worked together with industry," Sgamma said.

Wyoming last year approved a rule requiring producers to report how much and what type of gas they vent or burn from well sites (Energywire, Feb. 11, 2016). Environmental groups raised concerns over the regulation because it still allows venting, which directly releases gas to the atmosphere.



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At the federal level, green groups are calling for BLM to remain involved in methane regulation because of the agency's role as a trustee of natural gas extracted from public lands.

"CRA is not just a death penalty for the rule," said Mark Brownstein, vice president of climate and energy for the Environmental Defense Fund. "It's a death penalty for the agency coming back with anything that's newer or better."

Lawmakers who favor regulatory reform should approach BLM to take steps to tailor the rule to better accommodate industry and state input, Brownstein said. Invoking CRA removes that option.

"You're taking a chain saw to a problem that might better be fixed with a scalpel," he said.

Calling on states to share their regulatory strategy implies a recognition that free-market forces are not enough to spur emissions reductions, Brownstein said.

"The problem these states are facing can't be solved simply by relying on industry to address this issue through voluntary measures," he said.

Bishop would not say whether he planned to introduce legislation directing BLM to rewrite the rule if the CRA invocation is successful.

"I can't tell you exactly what I plan on doing right now," he said.

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8. **BLM: Agent got tickets, access for family at Burning Man — IG**

E & E News, Jan. 30 | Corbin Hiar

A top law enforcement official in the Bureau of Land Management's Salt Lake City office violated federal ethics laws by abusing his position to obtain special access to the Burning Man festival for his family and pressured subordinates to hire his friend, according to a watchdog report released today.

Some of the unethical behavior by the unnamed supervisory agent at the annual desert festival had been known but not reported by the director of BLM's Office of Law Enforcement and Security, Salvatore Lauro, the [Interior's IG also found](#).



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The supervisor obtained three tickets to the 2015 Burning Man by contacting an attorney with Black Rock City LLC (BRC), a for-profit company that helped to organize the event in the BLM-managed Black Rock Desert. The festival was already sold out at the time, but the attorney told the IG "that he was happy to offer the tickets" at full price because the company keeps extras for "unique situations."

The supervisor, however, also asked a BRC official for "three special passes so that his family could watch the Man Burn, the high point of the Burning Man event when an effigy is burned at the temple," the report said. "The passes, which have no face value but which are not available to the public, gave access to the inner perimeter" on the night of the event.

Entry to the inner perimeter was "considered a privileged location, reserved primarily for BRC, pyrotechnics, and emergency services staff," the IG wrote. Passes into that area "had never before been provided to a BLM employee's family members," the report said.

Although the BRC official said the request "seemed 'a little strange,'" the BLM supervisor claimed that he didn't consider the passes "a special privilege," the IG wrote.

The supervisor also directed five of his on-duty subordinates "to drive, escort and provide security for his family" at Burning Man, the report said. That included a three-hour tour of art and music areas of the festival.

He also allowed his girlfriend to stay with him in government lodging and ordered a subordinate to book a hotel room for his father and family friend.

At one point during the festival, the supervisor and a ranger chauffeuring his boss' girlfriend, father and family friend met up with Lauro, the head of BLM law enforcement.

Lauro acknowledged that driving government vehicles for personal use and allowing one's girlfriend to stay in BLM's trailers "might be considered 'technical' violations," the report said.

But he told the IG that "the 'reality' is we 'regularly drive non-government people'" and claimed that "he did not feel the Supervisory Agent's family received preferential treatment."

That year, the festival almost failed to happen due to a permitting dispute between BLM and BRC. The agency initially demanded a new VIP compound with "flushing toilets to be cleaned daily by Burning Man staff, a laundry with washers and dryers, on-demand hot water, air conditioning, vanity mirrors, refrigerators and couches," but backed down after the request sparked congressional outrage (Greenwire, Aug. 10, 2015).



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Hiring manipulation

The supervisor also "intervened in the hiring process by increasing the number of candidates that would be interviewed" after a friend and former colleague's resume scored poorly in an initial evaluation.

That applicant for a BLM special agent position ranked 23rd out of 121 people who applied. As a result, the supervisor allegedly expanded the number of candidates who would be offered an interview from 15 to 30.

Officials involved in the interview process "sensed that the Supervisory Agent's friend had been given the questions ahead of time, based on the way he responded." Even with that aid, the friend finished fourth out of the candidates who were interviewed.

But the supervisor's subordinates picked their boss' friend for the job because he had made it very clear that he wanted that candidate to get the offer, they said.

One agent involved in the process said that although he disagreed with his boss, "he ultimately selected the Supervisory Agent's friend for the position because 'that's how life is ... and it's his program,'" the report said.

The IG also found that, during the course of the investigation, the supervisor attempted to influence his employees and learn details of their interviews.

He told one contracting officer that "if you're not on my ship you're going to sink ... so I suggest you get on my ship," the report said.

And a BLM state ranger "said that the Supervisory Agent told him that saying 'I don't recall' was a valid answer," the report said. The same ranger said the supervisor called him after he spoke with the IG and asked, "Do I still have a job or did you get me fired?"

The report was provided to Interior's assistant secretary for land and minerals management "for any action deemed appropriate."

BLM spokesman Michael Richardson said the agency "takes allegations of misconduct seriously" but didn't indicate if anything has been done in response to the report. "This is an internal personnel matter, under review by the BLM and we have no additional information to provide at this time," he said in an email.



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9. INTERIOR: Zinke details ethics, energy, public lands positions

E & E News, Jan. 30 | Corbin Hiar, Geof Koss and Marc Heller

Ahead of the Senate Energy and Natural Resources Committee's vote tomorrow on Interior secretary nominee Ryan Zinke, the Montana Republican lawmaker disclosed to the committee that a super political action committee he was once affiliated with is under investigation and reaffirmed his opposition to turning federal lands over to states.

Zinke also told Sen. Debbie Stabenow that he supports transferring the Forest Service from the Agriculture Department to Interior — a position that he noted the Michigan Democrat had "concerns" with when they met privately. He pledged "further discussions" with Stabenow.

Zinke, a former Navy SEAL who is expected to be easily confirmed for his Cabinet post, also elaborated on his views on energy development, climate change and science, fire management, endangered species, and other hot-button issues in his responses to questions for the record submitted by committee members.

Below are some key passages from the [55-page document](#), which was obtained by E&E News.

Ethics

Although well-publicized ethical issues surrounding Zinke's SEAL service didn't come up at his confirmation hearing, ranking member Maria Cantwell (D-Wash.) asked him about his ties to the Special Operations for America super PAC.

Zinke said he has severed ties to the group, which a 2014 Federal Election Commission complaint alleges made improper contributions to his congressional campaign.

"I do not know all the actions the FEC has taken on that matter, but I do understand it remains under review," he added.

Zinke also pledged to abide by the committee's recusal policy and "step down from my position" with SEAL PAC, his leadership political action committee.

Public lands

Zinke said he's been willing to buck his own party's leadership to boost the Land and Water Conservation Fund and pledged to look for additional sources of funding if confirmed. In



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Congress, he said, he has co-sponsored legislation to reauthorize the program and has voted against the GOP leadership in the interests of the program.

But he also said that while he supports LWCF, "that does not mean it is perfect." He added that the process for choosing projects "should be streamlined."

Zinke disputed that he had supported legislation that would have transferred more than 2 million acres of forestland to states for what Sen. Bernie Sanders (I-Vt.) characterized as "sale to private interests." Zinke noted that he was the only Republican on the House Natural Resources Committee to oppose the bill in committee.

Asked by Sen. Al Franken (D-Minn.) to detail the circumstances under which he would support or oppose the transfer of public lands to state governments, Zinke responded that he "generally" opposes such sales or transfers and noted that President Trump does so, as well.

"There are some circumstances in which commitments have previously been made, inholdings need to be swapped or exchanged, or land banks are well-situated to address the needs of growing urban areas, where limited transfer is appropriate," he wrote. Zinke added that he would wait to evaluate specific legislative proposals but said he's "inclined to oppose legislation that would transfer 'large sections of public lands to the states.'"

However, he also told Franken that he would support allowing state and local governments to manage public lands.

"I believe that federal ownership and land management can provide the proper balance among interests and be a viable model for management of certain federal lands," he wrote.

Energy

Zinke made a series of commitments to lawmakers on fossil fuel energy development. He promised Chairwoman Lisa Murkowski (R-Alaska) that he would help to develop a plan to refill the Trans-Alaska Pipeline and work to expedite the cleanup of all remaining wells in the National Petroleum Reserve-Alaska.

On venting and flaring natural gas, he said he has "concerns about the current rules" but also "will commit to a review of the oil and natural gas leasing program in order to evaluate whether any further regulation is appropriate."



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On the programmatic review of the coal leasing program, he promised to "examine the scoping document and visit with the Bureau of Land Management and determine the appropriate next steps to be taken as part of the [National Environmental Policy Act] process."

Zinke offered less concrete responses on renewable energy development.

"I have not been fully briefed on the regulatory regime in place for permitting renewable projects on federal lands, but I do believe that the NEPA process is a critical component of any federal permitting decision," he told Sen. Ron Wyden (D-Ore.). "If confirmed, I will review the process for evaluating these projects and ensure that all of the Department's actions are appropriate."

The Montana Republican also weighed in on the Dakota Access pipeline, which Trump has signaled support for.

"The current situation with regard to the Dakota Access Pipeline is very challenging and unfortunate," Zinke said. "This country needs to build and operate infrastructure, and the permitting process for infrastructure needs to comply with all laws and regulations and be relatively predictable so that companies and individuals undertaking infrastructure projects can reasonably estimate costs and schedules."

But he added that "we must also be sensitive to tribal issues. Our great Indian nations deserve respect, and, if confirmed, I will work to rebuild the trust that comes from mutual respect. I believe that, if we build and then maintain mutual trust, we can build relative consensus around infrastructure siting issues."

Science, staff

Zinke deflected questions about scientific integrity at Interior by saying he had not yet reviewed the policy but planned to do so if confirmed. "I value sound science," he said.

Zinke didn't directly answer questions about how the U.S. Geological Survey should approach climate change, after Sen. Mazie Hirono (D-Hawaii) said USGS lists climate change and land use as a top mission area. He said he believes domestic energy production can help the nation's energy independence and benefit the environment but didn't say whether he would take climate change off the key mission areas.

Zinke declined to offer an opinion on the Holman Rule, which allows members of Congress to offer amendments to spending bills targeting individual federal employees. The House voted to



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include the change in its rules package earlier this month. In his response to Sanders, Zinke said only that he would express his views on specific bills to the president.

Asked whether he would support Congress targeting the salaries of department employees, Zinke said he recognized Congress' "power of the purse under the Constitution."

Zinke said he would order a "100-year review" of the Interior Department's organization and structure. "I don't know what conclusions that review will reach," he said.

In response to a question on the national parks' maintenance backlog and staffing needs, Zinke told Stabenow that he will be "an advocate for on-the-ground personnel."

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10. **INTERIOR: Bush-era official seen as front-runner for No. 2 slot**

E & E News, Jan. 30 | Robin Bravender

A high-ranking George W. Bush administration Interior Department lawyer could soon be making a comeback as the agency's No. 2 official.

David Bernhardt, who served as the department's top attorney under Bush and worked on the Trump transition team, is the front-runner to become Interior's next deputy secretary, according to a source close to the Trump administration.

Bernhardt is chairman of the natural resources department at the law firm Brownstein Hyatt Farber Schreck. He was in charge of Trump's Interior transition team for a short time after the November presidential election but was replaced as that team's leader later that month by Doug Domenech, another Bush-era Interior Department staffer (Greenwire, Nov. 21, 2016).

Bernhardt served in several top jobs at Interior, working under secretaries Gale Norton and Dirk Kempthorne. Bernhardt was solicitor from 2006 until 2009 and deputy solicitor from 2005 until 2006. He also served as counselor and deputy chief of staff to Norton and as director of the Office of Congressional and Legislative Affairs.

He also worked on Capitol Hill as legal counsel to the House Rules Committee and aide to former Rep. Scott McInnis (R-Colo.).

Bernhardt has gone through the Senate confirmation process before.



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He was ultimately confirmed unanimously to be Interior's solicitor in 2006, although he faced some hurdles.

Then-Sen. Jeff Bingaman (D-N.M.) said that year that he believed Bernhardt was not a good pick, claiming the nomination is "not in keeping with the level of qualifications most people would expect for the Interior solicitor" (E&E News PM, March 15, 2006).

Sen. Ron Wyden (D-Ore.) then slowed down his confirmation with a procedural move, citing concerns about a rural schools grant program (E&E Daily, Sept. 11, 2006).

If he's nominated and confirmed to be Interior's No. 2, Bernhardt will be tasked with offering Trump's Interior secretary-designee — Montana Republican Rep. Ryan Zinke — guidance about the inner workings of the department. Zinke hasn't previously worked in the department that oversees about 70,000 staff around the country.

David Hayes, who previously served in the job during both the Obama and Clinton administrations, described the No. 2 post at Interior as "particularly important because only the secretary and the deputy secretary have statutory line authority and responsibility over the entirety of the sprawling Interior Department and the 10 major — and often culturally independent — bureaus that together make up the department's 70,000 employees."

The deputy secretary is also "the department's chief operating officer, and his or her fingerprints typically are on every major policy and management decision made by the department," Hayes added.

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11. **SUPREME COURT: Scalia's take on EPA rule could haunt Trump's border plan**

E & E News, Jan. 30 | Amanda Reilly

A Supreme Court decision written by Justice Antonin Scalia that upended the Obama administration's mercury standards for power plants in 2015 may well hinder President Trump's grand plans to build a wall along the U.S.-Mexico border, legal experts say.

In *Michigan v. EPA*, the high court ruled 5-4 that EPA failed to consider regulatory costs when it determined it was "appropriate and necessary" to limit power plants' emissions of hazardous air pollutants.



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For authority to build the wall, legal scholars say, the Trump administration may tap a 2006 law that uses the language "necessary and appropriate," similar to the phrase EPA used in its toxic emissions rule. So foes of Trump's wall could argue that the administration must show the project's final benefits outweigh its costs — estimates have varied wildly from about \$8 billion to more than \$25 billion.

"It's possible that the president would come up with a cost-benefit analysis that shows more good than harm, but we're deeply skeptical of that claim," said Jonathan Masur, a professor at the University of Chicago Law School. "There's a clear legal pathway that has real grounding in existing Supreme Court precedent" for challenging the proposed wall.

Masur and two colleagues from the University of Chicago Law School presented their argument last week in an opinion piece in *The New York Times*. They're releasing a paper shortly on the broader impacts of the high court's mercury ruling.

"The paper sprang out of *Michigan v. EPA*," Masur said. "We realized when the wall became a topic of conversation that the statute the president was citing contained language that was very similar to *Michigan v. EPA*."

In the case, more than 20 states led by Republican governors and various industry groups challenged EPA's 2011 mercury and air toxics standards, or MATS, for power plants. They argued that the \$9.6 billion in compliance costs far outweighed the benefits.

Scalia — who died in February — agreed in his 2015 decision with challengers that EPA failed to act rationally in its interpretation of "appropriate and necessary" under Section 112 of the Clean Air Act.

"The agency gave cost no thought at all, because it considered cost irrelevant to its initial decision to regulate," the justice wrote in the 15-page opinion.

"It is unreasonable," Scalia added, "to read an instruction to an administrative agency to determine whether 'regulation is appropriate and necessary' as an invitation to ignore cost" (*Greenwire*, June 29, 2015).

The Supreme Court remanded the rules to EPA, which issued a supplemental finding reaffirming its original decision. EPA found the benefits of the standards "far outweigh the costs." Litigation over that finding is pending in the U.S. Court of Appeals for the District of Columbia Circuit.



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Like the Clean Air Act, the 2006 Secure Fence Act — which authorized the construction of hundreds of miles of fencing along the U.S.-Mexico border — contains the phrase "necessary and appropriate" as a threshold consideration.

Trump cited the law in his executive order last week on border security as a potential source of authority for building a wall between the United States and Mexico.

The University of Chicago professors say it would be difficult to show that the benefits of the wall exceed the costs if the Trump administration is held to *Michigan v. EPA*. Trump says the wall would cost \$8 billion, but other estimates show it could be as high as \$15 billion to \$25 billion.

The professors say that there's no evidence the wall would keep out undocumented immigrants or lower crime and that the economic effects "would quite likely be zero or negative" given the contribution of illegal immigrants to the nation's economy.

"No court could reasonably hold that it is 'necessary and appropriate' to spend billions of dollars to achieve benefits this doubtful," they wrote.

'Flypecking the balance sheet'

Amy Sinden, a law professor at Temple Law School who generally supports more progressive policies than the authors of the op-ed, praised them for making a "good argument."

"What's happened in the Trump era is that his ideas are so far out on the fringe that suddenly, when you're talking about normal policy, people who would disagree now agree," she said.

Sinden has argued that federal agencies have a variety of ways to consider costs as part of their decisions and that *Michigan v. EPA* shouldn't be seen as holding agencies to a specific manner of quantifying costs and benefits.

The wall would likely fail regardless of the type of analysis, she said.

"When you're talking about costs that are grossly disproportionate, you don't even need to waste time trying to discern the exact dollar figure," she said.

John Walke, director of the climate and air program at the Natural Resources Defense Council, said he believes *Michigan v. EPA* was wrongly decided but likewise said the professors had raised a "very logical case" against the border wall.



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Emily Hammond, a law professor at George Washington University who also believes that courts shouldn't impose strict cost-benefit analysis requirements on agencies, said challenging the plans to build a wall would likely still be difficult given the deference courts typically give to federal agencies.

"Typically, we would expect a court to be deferential to an agency's assessment," she said. "You wouldn't expect a court to get involved with flyspecking the balance sheet."

Michigan v. EPA has yet to appear in many court cases since the Supreme Court issued the opinion in 2015. But the University of Chicago professors argued that it could have a much more sweeping impact "beyond the wall" given that many other statutes contain similar "necessary and appropriate" language.

"While the legal details are arcane, Justice Scalia's ghost may also block Mr. Trump's efforts to eliminate climate regulations and deregulate the financial industry," the professors said.

At a recent law conference in Washington, Lisa Heinzerling, a professor at Georgetown Law and a former EPA official in the Obama administration, said Michigan v. EPA was among three "power canons" that Supreme Court justices have embraced to keep power in the courts rather than in the administration.

Michigan v. EPA could be "the most influential and the most destructive" of the three, she said, given that the word "appropriate" appears more than 8,000 times in the U.S. code.

Walke of NRDC said that, in a twist, it could come back to bite conservative politicians who have previously called for stricter cost-benefit analyses by agencies in a bid to kill environmental regulations with benefits that are difficult to monetize.

"I think applying cost-benefit analysis in the way that Republicans have called for when they wanted to trash environmental regulations and worker safety regulations is going to turn around and bite them when it's applied to their own agenda," he said.

"I think this is a case of be careful what you ask for," Walke added.

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