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<http://bit.ly/2vG5De6>

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<http://bit.ly/2uiCq5o>

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

### **4. Trump admin revs up push for mining on public lands**

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<http://bit.ly/2vy80jI>

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

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<http://bit.ly/2vGj129>

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

### **8. Pipeline fight returns to where it started: Water**

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James Carlson of Polk County, Neb., is not a fan of the Keystone XL pipeline project.

<http://bit.ly/2uA2456>

### **9. TransCanada, government push back on environmental challenges**

Ellen M. Gilmer, E&E News reporter

Published: Monday, August 7, 2017

The Trump administration and TransCanada Corp. are urging a federal court to dismiss environmental challenges to the Keystone XL pipeline.

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

### **10. Democrats probe rule-killing panels**

Maxine Joselow, E&E News reporter

Published: Monday, August 7, 2017

Several prominent Democrats are accusing the Trump administration of secrecy and a lack of transparency in efforts to cut regulations and reform federal oversight.

<http://bit.ly/2vII5Gz>

### **11. Sullivan, McCaskill float 2 rule-busting bills**

Maxine Joselow, E&E News reporter

Published: Monday, August 7, 2017

Before adjourning for the monthlong August recess last week, a pair of senators introduced more legislation aimed at streamlining the regulatory process.

<http://bit.ly/2vxI4oj>

## **12. House Dems question Trump admin's enviro law waivers**

Debra Kahn, E&E News reporter

Published: Monday, August 7, 2017

House Democrats are asking the Department of Homeland Security to justify an "astonishingly broad" waiver of environmental laws along the U.S.-Mexico border intended to expedite construction of barriers.

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

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**1. Zinke exempts Grand Canyon-Parashant from review**

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The Interior Department will not downsize Arizona's Grand Canyon-Parashant National Monument, Secretary Ryan Zinke announced Friday, making it the fifth site to be exempted from the agency's sweeping review of the nation's national monuments.

The monument is home to "some of the most pristine and undeformed geological formations in North America, which show the scientific history of our earth while containing thousands of years of human relics and fossils," Zinke said in a statement outlining his decision.

Zinke has now exempted five monuments from the nationwide review. He also announced last week that he would not recommend changes to Upper Missouri River Breaks National Monument in Montana ([Greenwire](#), Aug. 3).

Zinke has, however, said he will recommend changes to the controversial Bears Ears National Monument, though it remains unclear how much land he will remove and whether the changes will pass legal muster.

Environmentalists were pleased with last week's decision in Arizona, but they remain critical of the broader review and are uneasily watching to see how it plays out elsewhere.

"We really are anxiously awaiting the decision on some of the more controversial monuments such as Bears Ears and Grand Staircase-Escalante," said Roger Clark, a program director with the Grand Canyon Trust (Altavena/Devoid, *Arizona Republic*, Aug. 4). — NS

<http://bit.ly/2vG5De6>

## 2. Jeers, cheers greet report proposing to alter Obama plans

Scott Streater, E&E News reporter

Published: Monday, August 7, 2017

Recommendations in a report released today by a team of researchers established by Interior Secretary Ryan Zinke that could fundamentally alter greater sage grouse management on federal lands drew cautious praise from some industry groups but scorn from many conservation leaders who warn that changing the Obama-era protections could doom the bird.

The **report** sent by the review team to Zinke on Friday suggests moving away from focusing on habitat protection and instead allowing states to develop "appropriate population objectives" for complying with the plans. It also recommends possibly removing or modifying the boundaries of so-called sagebrush focal areas (SFAs), which have been identified as the bird's most critical habitat and necessary to its survival.

"This document calls for policies that move away from best-science and needed conservation measures; collectively these changes are likely to put the grouse at great risk of further population declines and habitat loss," said Steve Holmer, vice president of policy for the American Bird Conservancy.

But recommendations calling for policy revisions that could broaden oil and natural gas development opportunities in areas designated in the Obama plans as "priority habitat management areas" drew applause from the industry. Currently, drilling activity is limited in these areas, with no surface occupancy requirements and other stipulations that the industry has said are unnecessary.

"We're glad to see that the [Interior] Department is moving forward with changes to the way the sage grouse plans are currently being implemented, but more importantly those plans themselves need to be amended," said Kathleen Sgamma, president of the Denver-based Western Energy Alliance.

But Sgamma also said she is concerned that Interior is not moving more quickly to tackle those long-term revisions, such as modifying the boundaries of the SFAs, which currently do not allow any energy development.

"At this point, the [Interior] secretary is not tackling that challenge," she said, noting the report calls only for "investigation of potential plan amendments."

"It will take many months if not years to amend the plans, and the sooner the Interior Department recognizes the need to do so and gets on with it will those plans effectively protect sage grouse without needlessly killing jobs and economic opportunities," she said.

Meanwhile, the report — conducted mostly by officials with the Bureau of Land Management, Fish and Wildlife Service and U.S. Geological Survey, along with representatives of a federal-state grouse task force of officials of numerous gubernatorial offices — lays out an explanation for changes to the federal plans finalized in September 2015.

The plans, which took years to develop and are considered one of the most ambitious conservation efforts ever undertaken by the federal government, amended 98 BLM and Forest Service land-use plans to include strong grouse conservation measures covering nearly 70 million acres in 10 Western states.

The focus of the plans was habitat conservation, limiting other uses of lands within prime sage grouse habitat and establishing buffers around sage grouse breeding grounds called leks. The federal plans were strong enough to convince the Fish and Wildlife Service not to list the grouse for protection under the Endangered Species Act.

But Zinke in June signed a secretarial order that established the team to review the Obama-era plans and suggest changes (*Greenwire*, June 7).

Many of the recommendations in the review team's 52-page report include development "of policies, clarification, memoranda of understanding (MOUs), and training, many of which can be completed within 6 months," the report says.

Zinke, in a memorandum dated Friday, directed Deputy Interior Secretary David Bernhardt "to ensure implementation of the recommendations" and to order BLM to work to "immediately begin implementing" the series of short- and long-term recommendations.

The report also proposes softening adaptive management mandates that require specific actions when a "hard trigger," such as a sudden population decline, is tripped. It recommends allowing for a "causal analysis" to determine why the hard or soft trigger was reached before actions are mandated.

The recommendations also call for altering mitigation requirements to better align stipulations in federal and state grouse management plans.

"Interior's proposed changes could irreparably damage sage-grouse habitat, jeopardizing an unprecedented, collaborative effort to conserve this iconic species," Jamie Rappaport Clark, the president and CEO of Defenders of Wildlife, said in a statement.

Chris Saeger, executive director of the Western Values Project, called the recommendations in the report "reckless" and "a clear giveaway to industry that undermines years of work by Western governors, communities and stakeholders."

"These irresponsible changes will not only put this species at risk, but will jeopardize access to public lands and the outdoor economy that Western communities rely on," he added. "Secretary Zinke's careless plan ignores bipartisan, science-based results and could well fast-track the greater sage grouse's listing as an endangered species."

Rebecca Riley, senior attorney with the Natural Resources Defense Council's Land and Wildlife program, echoed Saeger.

"The sage grouse protection plan was developed by governors, land managers, energy executives, and conservationists across the political spectrum," Riley said in a statement. "It struck the right balance for the sage grouse and land use. Secretary Zinke's decision to blow up this regionally-driven process is a mistake, and makes an Endangered Species Act listing for the sage grouse more likely."

<http://bit.ly/2uiCq5o>

### **3. Zinke review team calls for big changes to Obama-era plans**

Scott Streater, E&E News reporter

Published: Monday, August 7, 2017

A team of federal researchers directed by Interior Secretary Ryan Zinke to review Obama-era greater sage grouse conservation plans is recommending potentially fundamental changes, including moving away from a framework of habitat protection and allowing states to develop "appropriate population objectives" for complying with the plans.

The 52-page report, obtained today by E&E News and sent by the review team to Zinke on Friday, also recommends possibly removing or modifying the boundaries of so-called sagebrush focal areas (SFAs), which have been identified as the bird's most critical habitat and necessary to its survival.

The Interior Department is expected to release the sage grouse team report as early as today. E&E News obtained a memorandum sent by Zinke on Friday to Deputy Interior Secretary David Bernhardt directing him "to ensure implementation of the recommendations" and to direct the Bureau of Land Management to work to "immediately begin implementing" the series of short- and long-term recommendations.

The memo suggests BLM will explore making grouse population numbers, which are notoriously cyclical, the deciding factor over grouse health, as opposed to the federal plans that focus on protecting and restoring grouse habitat.

Some of the short-term recommendations could be addressed by a BLM instruction memorandum, or IM, while longer-term changes, such as revising or removing the boundaries of the SFAs, would require a land-use plan amendment that could take years to complete.

The report notes that "there is general consensus that all partners are committed to effective and durable measures to provide for the conservation of [sage grouse] to ensure there is no need to list [grouse] under the [Endangered Species Act] in the future."

But changes are needed, the report says.

The major recommendations call for:

- Modifying or issuing "new policy on fluid mineral leasing and development" within sage grouse habitat. These include "investigating opportunities to provide additional waivers, modifications, and exceptions" for activities in priority habitat management areas, "through policy or potential plan amendments."
- Working with states with grouse habitat "to improve techniques and methods to allow the States to set appropriate population objectives" for compliance with federal plans.
- Investigating "the removal or modification" of SFAs "in certain states."
- Possibly removing "hard triggers" in the management plans that call for action to be taken when certain conditions exist that demonstrate "catastrophic population or habitat losses."
- Increasing livestock grazing in grouse habitat.

The recommendations, if adopted, would represent a stark departure from the Obama administration plans finalized by the Interior Department in September 2015.

Those documents amended 98 BLM and Forest Service land-use plans to incorporate strong, state-by-state conservation measures covering nearly 70 million acres in 10 Western states. The plans focused on protecting grouse habitat, particularly the most important habitat, such as grouse breeding grounds called leks.

The federal plans were strong enough to convince the Fish and Wildlife Service that the bird does not warrant protection under the Endangered Species Act.

Federal, state and local leaders across the West worked together with industry groups and environmentalists in a coordinated effort to avoid an ESA listing. Many fear such a listing for a bird that occupies an 11-state range would have grave economic impacts, interfering with the region's energy, livestock and agricultural sectors.

Some fear abandoning the approach of the federal plans could lead the greater sage grouse to once again face the prospects of an ESA listing.

But Republicans in Congress have attached riders in federal spending bills prohibiting FWS from reversing its 2015 decision not to list the grouse.

Utah Sen. Mike Lee (R) has proposed an amendment to the fiscal 2018 National Defense Authorization Act that would forbid FWS from listing the species as endangered until at least 2027 (*E&E Daily*, Aug. 4).

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

#### **4. Trump admin revs up push for mining on public lands**

Published: Monday, August 7, 2017

The Trump administration has made a remarkable push to open up federal lands to coal mining.

Under Secretary Ryan Zinke, the Interior Department has worked to encourage more commercial opportunities on the 643 million acres of federally owned land.

The Interior Department today finalizes its rollback of an Obama-era rule affecting royalties from coal, oil and natural gas on federal and tribal lands (*Energywire*, Aug. 7).

The agency also temporarily lifted President Obama's coal leasing moratorium on public lands.

Not since the Reagan administration have companies with a financial stake in developing public lands — chiefly mining companies such as Cloud Peak Energy Inc. — held such a strong upper hand (Lipton/Meier, *New York Times*, Aug. 6). — **MJ**

<http://bit.ly/2vy80jI>

#### **5. Interior seeks input on making Alaska 'open for business'**

*Brittany Patterson*, E&E News reporter

Published: Monday, August 7, 2017

The Interior Department is asking for ideas about which public lands in Alaska should be offered for oil and gas development — including areas that were off limits under the Obama administration.

The Bureau of Land Management is taking comments and nominations on areas to offer for oil and gas development for a 2017 lease sale in the National Petroleum Reserve-Alaska (NPR-A), according to a notice published today in the *Federal Register*.

Industry and other interested parties have 30 days to weigh in on what areas of the 23.6-million-acre federal property in northwestern Alaska should be included in the upcoming annual lease sale, the **notice** states. BLM will also accept comments and nominations on acres currently off limits to leasing under the 2013 NPR-A integrated activity plan. The move is in line with Interior Secretary Ryan Zinke's May secretarial order designed to make Alaska "open for business" (*Climatewire*, June 1).

"This year, what we've done is explicitly asked for comments and nominations for the full NPR-A," said Wayne Svejnoha, chief of BLM Alaska's energy and minerals branch, noting that historically those comments would come in unsolicited.

"What we're doing is basically rolling out and being consistent with the secretarial order and directive as far as looking at that process and looking at making whatever lands are available open and available for leasing," he said.

Secretarial Order 3352, signed at the conclusion of the secretary's six-day trip in Alaska, tasked the agency with developing a schedule for revising the land management plan for the NPR-A.

The Obama administration's 2013 land management plan barred oil development on large swaths of oil-rich lands in the preserve, particularly a large piece of land around Teshekpuk Lake, a move Zinke has criticized.

Conservation groups supported the balance struck between protecting wildlife and habitats and offering lands for hydrocarbon extraction in the 2013 plan and expressed fear that rewriting the document will threaten fish and wildlife.

"Proposing to open more of the Western Arctic — the country's single largest wildland reserve and a stunningly beautiful wildlife paradise — to oil drilling shows how megalomaniac this administration's pursuit of global 'energy dominance' has become," Niel Lawrence, Alaska director and senior attorney for the Natural Resources Defense Council, said in an email. "Neither the public nor the courts should stand for turning over one additional acre to the industry."

As has happened in the past, Svejnoha said BLM hopes to hold the federal lease sale for the NPR-A simultaneously with the state of Alaska's North Slope lease sale.

The most recent lease sale, conducted in December of 2016, generated \$18.8 million, half of which goes into the state's coffers.

More than 600,000 acres was leased to five companies — the second-largest sale by acreage for Alaska since 1998 — which industry groups say indicates an increased level of interest in the NPR-A.

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

## **6. Legal future uncertain as Interior scraps valuation rule**

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

Published: Monday, August 7, 2017

As the Trump administration today finalizes its decision to repeal an Obama-era rule affecting royalties from federal fossil fuels, it remains unclear how legal challenges will play out.

The Interior Department's valuation rule — which aimed to reform how royalties are calculated for coal, oil and gas from public and tribal lands — has been caught in a swirl of litigation since the Office of Natural Resources Revenue unveiled it last year.

Several energy companies and industry groups sued to block the rule just before it was to take effect. Trump officials then delayed compliance requirements, attracting a separate lawsuit from rule supporters California and New Mexico.

The states' lawsuit questioned the agency's authority under Section 705 of the Administrative Procedure Act to suspend a rule that has already technically taken effect — an important legal question as the administration seeks to delay and roll back a number of Obama measures.

Now, the administration is formally rescinding the regulation and is expected to push a federal court to dismiss the states' lawsuit as soon as today. In previous filings to the U.S. District Court for the Northern District of California, government lawyers argued that the challenge would be moot once the repeal was finalized.

Lawyers for California and New Mexico, however, appear ready to fight the administration on the issue. In a brief filed Friday, the states failed to address the day's news that the final repeal was ready for *Federal Register* publication (*Greenwire*, Aug. 4).

But they did touch on the issue of "hypothetical future mootness," arguing that the court should still decide the merits of the case even after repeal. They say the case qualifies for an exception to the mootness doctrine under 9th U.S. Circuit Court of Appeals precedent because "the complained of activity may be repeated and yet evade review."

"Should the agency repeal the Rule before this court has an opportunity to rule on its use of Section 705, the duration of the challenged action will be too short to allow full litigation before it ceases," they wrote.

Plus, they argue, Interior's "misapplication of Section 705 of the APA" is likely to happen again. Interior used the same provision — which allows agencies to pause the effective dates of regulations that are caught in litigation — to relieve the oil and gas industry from requirements under a Bureau of Land Management rule to reduce methane emissions (*Energywire*, June 15).

"Without a ruling on the merits, nothing will prevent Defendants from continuing to misapply the APA in a manner that harms Plaintiffs," California and New Mexico told the court.

Representatives for the attorneys general in both states did not respond to requests for comment on how they plan to proceed in light of the finalized repeal.

Environmental groups, meanwhile, expressed uncertainty over whether they plan to sue over the repeal. The Powder River Basin Resource Council, which intervened to defend the original Obama rule against industry litigation earlier this year, said Friday that it was still evaluating Interior's decision and considering next steps.

Industry groups, meanwhile, are celebrating news of the repeal.

"Certainty and fairness in the leasing process is a critical part of ensuring consumers and businesses can benefit from domestic energy production, which is why we are pleased that ONRR recognizes the substantial burdens and potential legal flaws associated with this rule," the American Petroleum Institute's Erik Milito said in a statement.

<http://bit.ly/2vGj129>

## **7. Court approves Wyo. deal, but challenges remain**

Published: Monday, August 7, 2017

A deal to transfer a roster of Wyoming coalbed methane wells from the bankrupt Storm Cat Energy Corp. cleared a major hurdle last week, but the effort faces more challenges in the coming months.

Storm Cat is among the many companies that failed after natural gas prices plummeted. Since 2014, 4,681 wells have been left in the hands of the state and private landowners, with few having environmental cleanup plans.

Instead of adding to that list, Storm Cat has proposed to sell the wells that could still produce gas to Summit Gas Resources Inc. and leave only the exhausted sites on the orphaned well list.

"The only benefit we have to selling or assigning the assets over to Summit Gas is simply being able to sleep at night and not being a bad citizen by just kind of walking away from our remediation responsibilities," Chris Naro, Storm Cat's last remaining executive, said in May.

The deal got court approval last week, but Summit faces tight deadlines to hand over the \$2 million it promised for bonding as part of the agreement.

Opponents of the deal, meanwhile, are seeking cleanup, rather than continued production, at the wells that will eventually belong to Summit (Heather Richards, *Billings Gazette*, Aug. 6). — NS

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

## **8. Pipeline fight returns to where it started: Water**

Jenny Mandel, E&E News reporter Published: Monday, August 7, 2017

James Carlson of Polk County, Neb., is not a fan of the Keystone XL pipeline project. He and his wife own land along the route and have testified against the pipeline, fought pipeline developer TransCanada in court, and attended rallies and public meetings to speak against it and the effects it could have on Nebraska's water resources.

As the state's Public Service Commission launches into a formal hearing this week to determine the project's fate in Nebraska and, effectively, its ability to proceed at all, the question of how the pipeline could affect the famed Ogallala Aquifer looms large.

"Tar sands oil sinks" and can go into the aquifer, Carlson said outside a recent meeting where he and other members of the public testified on TransCanada Corp.'s application to cross the state, the last unpermitted stretch needed to connect the dots for the planned pipeline. Carlson said he stood to gain several hundred thousand dollars in payments from TransCanada for easements to cross his land. "I would have been all for it if I hadn't known what I know," he added.

Carlson's concern about the pipeline centers in large part on the potential for leaks of oil sands crude and carcinogenic additives that could seep into the ground, groundwater and, ultimately, aquifers underlying Nebraska's farmlands.

Folks in Nebraska are proud of their water and their position guarding the northern end of the Ogallala Aquifer, also known as the High Plains Aquifer, which underlies most of Nebraska as well as parts of Wyoming, Colorado, South Dakota, Kansas, Oklahoma, New Mexico and Texas.

What most people call the Ogallala Aquifer technically refers to several distinct formations of water-soaked rock, sand, clay and other below-ground material that stretch through the central part of the country at different depths and thicknesses, and feed into millions of farms, industrial applications and homes along that north-south line. But to most people in Nebraska, the whole subterranean water system is "the Ogallala" and the whole thing holds a special place in the collective consciousness.

That special status is not without good reason. As noted by the State Department's supplemental environmental impact statement on the Keystone XL pipeline plan, the Northern High Plains Aquifer stores about 3.25 billion acre-feet of water, amounting to 78 percent of the public water supply and 83 percent of irrigation water in Nebraska. Two-thirds of the Northern High Plains Aquifer is located within the state.

Since the Keystone XL line was first proposed a decade ago, local opposition has largely centered on concern for the Ogallala, and a series of public meetings held by Nebraska's Public Service Commission in recent months has stoked renewed fears.

"The aquifer will be more valuable than gold in the years to come," warned Judy King, the first "pipeline fighter" to testify at one such meeting, arguing that the commission should reject TransCanada's application and scuttle the project.

## **Understanding risks**

In the heat of the battle over KXL, the voices of those who know the most about the state's geology and water have not always been heard.

Matt Joeckel has served as state geologist since 2014 and has worked for the state's geological survey since 2000 as a professor at the University of Nebraska, Lincoln's School of Natural Resources.

"I'm neither pro- nor anti-pipeline. My job here is to deal with facts and to try to serve the public with science," Joeckel said in a May interview in his office, surrounded by stacks of end-of-term papers and neglected cactuses.

Joeckel said the state has never contacted him to provide input on the pipeline's potential impacts to Nebraska's groundwater. From observing the debate unfold, though, he felt it was clear that "there are a lot of people who are under the misconception that if there were a spill in the pipeline, it would contaminate a very large volume of the aquifer in short order."

That, he said firmly, is not physically possible.

First, Joeckel distinguished between the potential contamination of surface water from a pipeline and its risk to groundwater. If oil were to leak from a pipeline at a river crossing or other surface water body, it would move with that water and could quickly reach a large area. Such a spill could affect a large population and area, have long-lasting effects and rack up high cleanup costs.

One example of such a surface water spill is the disaster that unfolded in 2010 when an oil sands pipeline owned by Canadian energy company Enbridge Inc. burst, spilling into a tributary of the Kalamazoo River in Michigan. That spill, one of the largest inland oil spills in U.S. history, resulted in the closure of 35 miles of the river for more than two years and cost more than \$1.2 billion to clean up.

Because oil travels quickly when released into surface water, such spills are particularly hard to contain. As a result, companies go through special permitting and construction steps to reduce the risk of such incidents. They are unlikely, however, to percolate down through the earth to have an impact on groundwater or aquifers.

Risk related to groundwater is more linked to pipeline leaks away from surface water, where the oil might pass through superficial sand, rock and other layers to reach the water table.

Joeckel said weighing a pipeline's risk to groundwater requires considering numerous variables, especially the depth below the surface before water is reached, the depth of water-soaked material that makes up the water table, and the particular types of rocky materials that lie above, in and below it.

A long stretch of dry material between the surface and the local water table makes it harder for oil to flow and easier to scoop out contaminants during cleanup, for example, while a shallow water table makes it easier for oil to reach groundwater and potentially flow with it underground. Sand allows oil to percolate relatively easily through the subsurface, while clay deposits can act as a floor below which oil cannot reach.

Nebraska has one of the best public records of subsurface geology in the U.S., Joeckel said, making it easier to identify high-risk areas to avoid and lower-risk areas that the pipeline might be routed through. In 2011, TransCanada changed the planned route of the Keystone XL line to avoid Nebraska's Sand Hills region in the western part of the state, an ecologically sensitive area where the water table is particularly high and runs directly below sand dune formations in many areas, a combination that could be particularly vulnerable to spills (*Climatewire*, Nov. 15, 2011).

Fundamentally, Joeckel said, water travels slowly in subsurface conditions because it's moving through small pores in the geologic material. In the case of a spill or slow leak, the presence of oil would be confined mainly to those properties directly touched by or very close to the release.

"So people right along the pipeline would bear the brunt of it, and I have great empathy for them," Joeckel said, but the reach of a spill to affect water resources would be limited.

"Contaminating an entire aquifer over the area of an entire county by a single pipeline that is being maintained properly and the hazards of which are being mitigated correctly during a civilizational time scale — that is, hundreds of years — is very unlikely," he said. "However, the possibility of a contaminant plume affecting wells within a comparatively short distance — hundreds of meters — of an improperly maintained or incorrectly mitigated pipeline is much higher."

### **The weak link**



This map highlights the location of the Ogallala Aquifer. U.S. Geological Survey

Another expert who shares much of Joeckel's assessment is Jim Goeke, a research hydrogeologist who retired from the University of Nebraska, Lincoln, in 2011 and since then has largely dropped out of the Keystone XL debate. Goeke has previously spoken publicly in favor of the pipeline, which he sees as posing minimal risk to the state's water.

"I inserted myself into the debate because I was concerned about what was going on," Goeke recalls of his involvement in the early years of the Keystone XL debate. "I had tons and tons of questions" for TransCanada, "and every question I asked them, they had a good answer," he said.

Goeke agreed that the idea that a pipeline spill could pollute an entire aquifer is not grounded in science. "The reason that I got into this was that the opponents of the pipeline were saying that any leakage would contaminate the entire aquifer. And I contend that that's not the case; any damage from leakage would be very localized," Goeke said.

Still, he sees some weak points in the company's plan. Goeke pointed to the Platte Valley as one place where the 3-foot pipe, which is slated to be buried below 4 feet of surface material, could extend to a depth of 7 feet that gets close to a water table that runs as shallow as 10 feet below the ground in some areas.

"I think that's probably the weak link in the process," Goeke said, "because they're going to pull the pipeline under the Platte River, and I think they're supposed to put it 40 feet under the bottom of the Platte River. At that point, the Platte River Valley is very wide, so there's probably a number of miles where it's going to be close to the surface, close to the zone of saturation."

He also questioned why TransCanada has not disclosed the capabilities of its leak detection equipment. "I don't know what the limits of the detection are, but I'm sort of surprised that they didn't tell it," he said.

Also, despite the company's forthrightness on hydrogeology questions, he said he got no answer to one of the most frequently asked questions about the pipeline: why TransCanada has refused calls to place its expansion line within the right of way that it already controls for Keystone Mainline, a pipeline that it completed in 2010 with the same start and end points proposed for Keystone XL.

TransCanada did not respond to emailed questions for this story and did not follow up on questions asked in person.

Still, Goeke is generally satisfied with TransCanada's plans for the pipeline. "In my estimation, they've done everything they could do to absolutely minimize any leakage from the pipeline. That doesn't mean they couldn't have a spill. But even a bad spill, by any standards, would be minimized to a couple hundred feet from the pipeline, so even a bad spill would be something they could deal with, in my estimation," he said.

## Spill research

Scientists' understanding of how oil travels once it hits the ground has been helped enormously by a research site in Bemidji, Minn., home of the National Crude Oil Spill Research Site.

Bemidji was where, in 1979, a major pipeline rupture released 440,000 gallons of crude oil in sandy terrain quite similar to that found in central Nebraska. The pipeline owner cleaned up what it could using the methods common at the time, removing about three-quarters of the spilled oil, and the site eventually became home to a research center.

Today Enbridge Energy Partners LP, which bought the pipeline and took on responsibility for the cleanup site, provides some funding while the U.S. Geological Survey, Minnesota Pollution Control Agency and local county manage grants and site access.

Researchers say the Bemidji site is home to the most-studied oil spill in the world, with more than 200 papers written from observations made there and over 100 drill bores giving scientists peepholes into the subsurface geology to observe water and contaminant flows. Several years ago, there was a move to more aggressively clean the site using updated methods, but researchers made the case that it was more useful to preserve it for study.

Mark Toso is senior hydrogeologist for Minnesota's state pollution control agency and works on petroleum remediation and emergency response there. He said the Bemidji site has very sandy soil and relatively high groundwater flow rates, "kind of the ideal, worst-case scenario for studying groundwater in the environment."

Today about 100,000 gallons of crude remains at the research site, and "natural bioremediation" — basically, the process of allowing bacteria that eat petroleum and its derivatives to do their work — has slowly been cleaning up the site for years.

Toso said the Bemidji site shows that oil moves surprisingly little in the subsurface. The oil itself migrated only a total of 250 feet underground from where it was released decades ago, and the plume of contaminated water moved 500 feet from the release site, he said. While the oil and associated products initially spread through the subsurface, natural bioremediation quickly kicked in and eventually stopped the plume from advancing. At this point, the oil is being degraded by oil-eating microbes at basically the same rate it is spreading, holding the plume steady, he said.

"If you were to go to the site today, you really wouldn't be able to tell that there was a massive oil release there," Toso said. Most of the site appears to have fully recovered. In one area, the sandy soil has become hydrophobic, causing water to run off and making it impossible for most plants to grow. Toso said researchers are trying to figure out why that area responded differently, but he suspects it could be related to an effort to remediate the initial spill by burning crude on the surface, creating a soil condition that is also commonly seen immediately after forest fires.

"Crude oil is no different from any other petroleum derivative" in terms of its susceptibility to microbial remediation, Toso said. "We've known this from gas stations, [and] the [BP] Gulf oil spill showed that, too." But he says Bemidji was the first site where microbes were proved to be behind the natural cleanup.

If the Bemidji release happened today, Toso points out, the initial cleanup would not leave such significant volumes of oil in the ground. "These sites wouldn't happen today, at least as far as groundwater," Toso said. "We've gotten pretty good at cleaning up crude oil spills to groundwater."

He believes the spill site research shows that while there are legitimate concerns surrounding oil spills and groundwater, "I don't think they're of the magnitude that people believe them to be." In the Keystone XL context, he said, a worst-case scenario might be a leak near a municipal well that could contaminate the whole thing, but "it would have to be pretty severe for that to happen."

### **'Proper analysis' needed**

One of the most critical scientists to have weighed in on the aquifer question is John Stansbury, a civil engineer with the University of Nebraska, Lincoln, with a background in environmental impact assessment. He wrote a paper in 2011 arguing that TransCanada's approach to evaluating a worst-case spill from the proposed pipeline was deficient. In his review, Stansbury showed through rough calculations that a leak could look far worse than the company has said.

Today, Stansbury says his analysis was widely misunderstood and in some cases discounted on that basis. "My main point in my report was that [TransCanada] had not done a proper study of groundwater. In fact, they essentially did nothing. What they said about groundwater was, 'Don't worry about it,'" Stansbury said.

In his 2011 paper, Stansbury calculated a possible worst-case leak based on statements by TransCanada that a leak of less than 1.5 percent of the pipeline's total volume could go undetected for as long as 90 days. Extrapolating from that, he suggested a bad spill could pour nearly 6 million gallons of oil sands crude into the ground and pollute almost 6 billion gallons of groundwater with benzene and other chemicals.

For visualization purposes, Stansbury said in an interview, he equated that amount of water to a contamination plume 15 miles long. Some critics have jumped on that description as ridiculous and not based on real-life hydrogeological conditions, while pipeline opponents hold it up as evidence that a spill could be devastating. Stansbury said it is neither.

"The tree-huggers who came out and said this is going to ruin the entire aquifer, that's nonsense. It would ruin a small portion of the aquifer. But if that's your portion of the aquifer, that's a big deal," Stansbury said. "TransCanada should have done a groundwater model to figure out what the plume looked like. They didn't do that."

Stansbury maintains that since 2011, he has stayed largely out of the public debate because what he felt was his point of contribution — sharing his knowledge about the sufficiency of TransCanada's environmental impact assessment — was done. The issue still has not been resolved to his satisfaction, though. "Once they do a proper analysis, then the decisionmakers can step in and make a proper decision," he said.

### **Bold Nebraska**

As the Nebraskan public has weighed the pipeline's risk to their beloved aquifer, safety assurances and testimony from TransCanada and its representatives have failed to sway many critics.

In its public materials about the project, TransCanada boasts of "modern technology that will continuously monitor product flow," with corrosion-resistant materials and regular aerial and visual inspections. But the company is close-lipped about the technical capabilities behind those assurances.

Much of the on-the-ground organizing against the pipeline comes from Bold Nebraska, a group founded in 2010 as a progressive political voice in the state that quickly became all but synonymous with the anti-pipeline movement there.

Jane Kleeb, the founder of Bold Nebraska and one of the most prominent critics of the project, denied suggesting that the entire Ogallala Aquifer is at risk. "None of us has ever said that one leak would contaminate the entire Ogallala Aquifer," she said. "That's what TransCanada does, tries to paint us as extremists."

Bold Nebraska's website warns, "The route crosses the Ogallala Aquifer, which is one of the country's largest sources of freshwater," adding, "A spill in the Ogallala Aquifer threatens the drinking water of millions of Americans," but it does not delve into the specifics of those claims.

Kleeb said she worries about both surface water and groundwater contamination from pipeline development. "When you're talking about water contamination from pipelines, you have to talk about all water," she said. "TransCanada always says, 'Oh, the aquifer is just big layers of rocks, and there's no way you can contaminate it,' but that's just not true."

She pointed to uncertainty around the chemicals added to oil sands crude to make it flow through pipelines, which pipeline companies do not disclose, and said "numerous" hydrologists have testified before the Nebraska Legislature that the pipeline would bring risk and concern for the aquifer.

For Kleeb's cause of rallying opposition to the pipeline, the focus on water is understandable. If the Keystone XL line were built and leaked into surface water, there is broad agreement that the impacts could be severe. And some other arguments that have united pipeline opponents, like the outsize greenhouse gas profile of oil sands crude, have shown limited effectiveness in swaying lawmakers and decisionmakers in other phases of the project's development.

Nebraska's pipeline permitting system is tailored to shut out water concerns, though. The judicial-style hearing that takes place in Lincoln this week will weigh evidence under the state's Major Oil Pipeline Siting Act, enacted in 2011 to address KXL. Under the law, the PSC is sharply constrained in the issues it must weigh in determining whether a project is in the state's best interest.

Environmental impacts of installing the pipeline are within the scope, but the commission "shall not evaluate safety considerations, including the risk or impact of spills or leaks." Because this is the first use of the regulatory process spelled out under the law, it remains to be seen how its stipulations will play out in the hearing room.

As the drawn-out national debate over Keystone XL narrows down to whether opponents will be able to kill the pipeline in Nebraska, the question of water and the state's beloved aquifer continues to resonate in the state.

"Nebraskans identify with the Ogallala Aquifer as our water source," Kleeb said in explaining why conversations about the pipeline jump so quickly to the reservoir. "When you talk with Nebraskans about water, they will bring up the Ogallala Aquifer. It's something that's taught in schools, it's part of our cultural identity."

<http://bit.ly/2uA2456>

## **9. TransCanada, government push back on environmental challenges**

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

Published: Monday, August 7, 2017

The Trump administration and TransCanada Corp. are urging a federal court to dismiss environmental challenges to the Keystone XL pipeline.

In Friday briefs to the U.S. District Court for the District of Montana, government and pipeline lawyers reiterated their position that President Trump's approval of a critical cross-border permit for the oil project is not reviewable in court.

Though the permit was technically issued by the State Department, government lawyers say the decision was "based solely on the president's constitutional authority over foreign affairs and national security" and therefore not within the court's jurisdiction.

Environmental groups and tribal advocates have argued that State officials were required to comply with the Administrative Procedure Act and National Environmental Policy Act when they reviewed the permit application. They say the environmental impact statement for Keystone XL was insufficient and in violation of NEPA.

They also argued to the court last month that Trump's January memo directing the State Department to quickly review the project and bypass an interagency review process undermined the administration's position that the final decision qualified as a presidential action not subject to judicial review (*Energywire*, July 17).

Both the government and TransCanada pushed back last week, arguing that the memo did not cede any presidential authority but merely directed State "to implement the President's inherent constitutional powers."

The pipeline company wrote that environmentalists could not force the "purposes" of NEPA and the APA on the president because those laws apply only to actions by federal agencies.

"Laudable goals do not overwrite existing statutes," they told the court. "The existing statutes require that federal action be undertaken by an 'agency' or else NEPA does not apply. Similarly, if the 'final action' is performed by an entity other than a federal agency, the APA does not apply."

TransCanada also slammed the environmental groups for relying on a handful of court decisions that were "poorly reasoned and wrong," while ignoring a larger body of precedent that maintains that presidential permits for cross-border projects are not reviewable.

The legal wrangling comes as the proposed pipeline continues to face regulatory and economic hurdles. TransCanada needs state permits for the portion of its route that cuts through Nebraska (*see related story*). And executives have noted that they are still working to secure commitments from shippers to use the pipeline.

Opponents of the pipeline were also busy in court Friday, filing an updated complaint with new claims under the Endangered Species Act. According to the Sierra Club, the Natural Resources Defense Council and other groups, the State Department failed to ensure that the pipeline would not jeopardize endangered whooping cranes, interior least terns and threatened piping plovers.

"Had the State Department prepared a biological assessment for Keystone XL that complied with the ESA and APA, the agency would have concluded that the project is 'likely to adversely affect' these species, and would have been bound to engage in formal consultation with the [Fish and Wildlife] Service before issuing a cross-border permit," the amended complaint says, citing oil spills, habitat loss and fragmentation as likely impacts to the birds.

A court hearing on requests from the government and TransCanada to dismiss the litigation is set for Oct. 11 in Great Falls, Mont., before Judge Brian Morris, an Obama appointee.

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

## 10. Democrats probe rule-killing panels

Maxine Joselow, E&E News reporter

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Several prominent Democrats are accusing the Trump administration of secrecy and a lack of transparency in efforts to cut regulations and reform federal oversight.

A **letter** from House Oversight and Government Reform Committee ranking member Elijah Cummings (D-Md.), House Judiciary Committee ranking member John Conyers (D-Mich.), House Oversight and Government Reform Subcommittee on Government Operations ranking member Gerry Connolly (D-Va.), and House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law ranking member David Cicilline (D-R.I.) focuses on the regulatory reform task forces at different agencies.

The Democrats' letter to the White House expresses "alarm concerning the lack of transparency, accountability and independence" of the panels. They said, "We believe that the interests of the American public must be paramount when reviewing the worthiness of regulations."

President Trump's Executive Order 13777 tasked agencies with establishing the task forces to identify rules that could be rolled back, replaced or changed (*Greenwire*, Feb. 24).

The Democrats said "these Task Forces must have an effective and transparent guard against conflicts of interest, especially those in which industry lobbyists seek to overturn environmental and health protections for financial gain."

"It appears that the current Task Forces are already failing on this front," they said, "and instead are actively hiding their members and their meetings from public view."

The lawmakers said some agencies have reportedly refused to disclose the names of people serving on their regulatory task forces. Such refusal, they wrote, could violate the Freedom of Information Act.

The Democrats also said that nearly a third of appointees to regulatory task forces have conflicts of interest, according to reporting by *The New York Times* and ProPublica.

The outlets found that a task force appointee at U.S. EPA is married to a top lobbyist for the oil and gas company Hess Corp.

"Rather than 'drain the swamp,' these conflicts threaten to influence the outcome of the review process against hardworking Americans and in favor of regulated industries and agency staff," the lawmakers wrote.

The president has made rolling back federal regulations a top priority for his administration. He also issued a Jan. 30 executive order — commonly known as the "one in, two out" order — requiring two federal regulations be revoked for every new one (*Greenwire*, Jan. 30).

The Democrats' letter went to Office of Management and Budget Director Mick Mulvaney and Office of Information and Regulatory Affairs chief Neomi Rao, both of whom are on the front lines of the administration's anti-red-tape agenda.

The White House did not respond to a request for comment by in time for publication.

<http://bit.ly/2vII5Gz>

## 11. Sullivan, McCaskill float 2 rule-busting bills

Maxine Joselow, E&E News reporter

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Before adjourning for the monthlong August recess last week, a pair of senators introduced more legislation aimed at streamlining the regulatory process.

Sen. Dan Sullivan (R-Alaska) introduced S. 1756 on Thursday "to improve the processes by which environmental documents are prepared and permits and applications are processed and regulated by Federal departments and agencies." It's pending before the Environment and Public Works Committee.

Text for the bill is not yet available. Co-sponsors include Sens. Deb Fischer (R-Neb.), Shelley Moore Capito (R-W.Va.) and Joni Ernst (R-Iowa).

Separately, Sen. Claire McCaskill (D-Mo.) introduced S. 1734 last week to "improve the regulatory process." It's pending before the Senate Homeland Security and Governmental Affairs panel.

That committee has also been considering the "Regulatory Accountability Act," [S. 951](#), which would direct agencies to conduct cost-benefit analyses for proposed actions and find the most cost-effective regulatory option (*E&E Daily*, May 17).

The regulatory reform push on Capitol Hill coincides with strong actions from the Trump administration to cut red tape (*see related story*). Many Democrats and interest groups worry about hurting the environment and public health in the process.

<http://bit.ly/2vxI4oj>

## 12. House Dems question Trump admin's enviro law waivers

Debra Kahn, E&E News reporter

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House Democrats are asking the Department of Homeland Security to justify an "astonishingly broad" waiver of environmental laws along the U.S.-Mexico border intended to expedite construction of barriers.

Three Democratic members of the House Energy and Commerce Committee sent a **letter** Friday to DHS acting Secretary Elaine Duke asking for more information about why the agency is waiving water, air and hazardous waste laws and what health effects the agency expects to occur as a result.

"This action has the potential to block more than 30 laws that currently protect the people of San Diego and the delicate environment in the surrounding area," wrote Rep. Frank Pallone (D-N.J.), ranking member of the Energy and Commerce Committee, as well as Reps. Paul Tonko (D-N.Y.) and Scott Peters (D-Calif.), who represents San Diego. "Despite the serious public health risks posed by this action and the potential for permanent damage, it is not clear what analysis was done to establish that a waiver of numerous environmental laws is needed."

DHS issued a **waiver** last week covering a "variety of environmental, natural resource and management laws" along the border near San Diego as one of the first steps in the administration's bid to construct a wall along the U.S.-Mexico border, a pillar of President Trump's campaign last year.

The waiver exempts construction activities on border infrastructure projects near the U.S. Border Patrol's San Diego sector from requirements under the National Environmental Policy Act, Endangered Species Act, Clean Water Act, Migratory Bird Treaty Act, Solid Waste Disposal Act, Resource Conservation and Recovery Act, Wild and Scenic Rivers Act, and other environmental statutes (*Greenwire*, Aug. 1).

The Democrats asked Duke to explain how the Safe Drinking Water Act; RCRA; Comprehensive Environmental Response, Compensation and Liability Act; and Clean Air Act would apply to the projects but for the waiver, and how the enforcement of those laws would delay the projects.

They also asked for emails and other documents related to the timing of former DHS Secretary John Kelly's departure and the issuance of the waiver. Kelly was named White House chief of staff July 28.

DHS spokeswoman Joanne Talbot said the agency does not comment on congressional letters but will "respond to the members as appropriate."

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