

To: Scott Foss[sfoss@blm.gov]
From: Bilbao, Anita
Sent: 2017-03-20T18:48:19-04:00
Importance: Normal
Subject: Fwd: Daily News Report - March 18-20
Received: 2017-03-20T18:49:37-04:00
Daily News Report March 18-20.docx

Nice article, Scott! Hope 2017 is treating you well. Anita

----- Forwarded message -----

From: Sutherland, Ryan <rrsutherland@blm.gov>
Date: Mon, Mar 20, 2017 at 4:19 PM
Subject: Daily News Report - March 18-20
To: BLM UT All <blm_ut_all@blm.gov>

Attached is the daily news report for March 18 20.

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

--

Anita Bilbao
Associate State Director
Utah State Office
Bureau of Land Management
801-539-4010



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

UTAH – TOP STORIES – MARCH 18-20, 2017

1. Interior Leases 1st of 14 U.S. Coal Strips Not Under Moratorium: 55M Tons in Utah Ntl. Forest

EnviroNews, March 17 | Julia Travers

Washington D.C. — On March 15, 2017, U.S. Department of the Interior (DOI/Interior) Secretary Ryan Zinke announced the approval of a multimillion-dollar coal lease in Utah for the Greens Hollow tract, which lies under lands in the Manti-La Sal and Fishlake National Forests near Salina, Utah.

2. Op-ed: I'm banking on Zinke keeping our Bears Ears promises to Indians

The Salt Lake Tribune, March 18 | Stephen Trimble

I fear we are headed down an old and familiar path at Bears Ears. We promise Indian people that we will honor treaties, that we will recognize their rights to lands they have called home for millennia. We, the United States of America, make promises. Then, we break them.

3. PUBLIC LANDS: Smaller Bears Ears monument could trigger legal battle

E & E News, March 20 | Jennifer Yachnin

While opponents of the fledgling Bears Ears National Monument in southeastern Utah would like to see its status fully rescinded, many acknowledge a secondary option: asking President Trump to trim back the boundaries of the site's 1.35 million acres.

4. COAL: Lease foes vow to be 'scrappier than ever' post-moratorium

E & E News, March 20 | Dylan Brown

Interior Secretary Ryan Zinke last week issued the first of what he hopes will be many new leases to allow mining companies to extract federal coal reserves.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

5. PLU alumnus Scott Foss '91 serves as top paleontologist for the federal government

Pacific Lutheran University, March 20 | Zach Powers

Washington, D.C. (March 20, 2017)- When Scott Foss '91 enrolled at Pacific Lutheran University, he dreamed of becoming a paleontologist and pursuing a career outdoors conducting research. Now, he's the most senior paleontologist in the federal government. Foss serves as a policy adviser and resource director in Washington, D.C., 30 years after his dream began.

E&E/NATIONAL NEWS – TOP STORIES

1. Guns in America: The debate over lead-based bullets

Newsweek, March 17 | Michele Gorman

One of the last actions Barack Obama took during his last full day as president was to quietly enact a ban on lead-based ammunition and fishing tackle, which the White House said would protect animals and fish from poisoning. An order signed on January 19 by the director of the U.S. Fish and Wildlife Service (FWS) called for a phase-out by 2022 of the use of toxic lead on federal lands, such as national parks and wildlife refuges.

2. Scott Pruitt isn't the first administrator hostile to the EPA's mission

High Country News, March 20 | Cally Carswell

On March 25, 1983, business was booming at Harry's Liquor, Wine & Cheese, near the Environmental Protection Agency's Washington, D.C., headquarters. EPA employees were in the mood to party. The agency's top lawyer had just resigned, the latest casualty in a purge of political appointees.

3. Letter: Don't imperil protection of public lands

Bend Bulletin, March 20 | Tim Palmer

A bill introduced on Feb. 13 by Rep. Jason Chaffetz of Utah would "terminate law enforcement functions" of the U.S. Forest Service and Bureau of Land Management.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

4. The Corporate Money Behind Our Country's Anti-Public-Lands Politicians

The Pacific Standard, March 20 | Jimmy Tobias

A wrecking crew is hard at work on Capitol Hill.

By way of bill writing, budgetary sabotage and the Congressional bully pulpit, the wrecking crew wants to dismantle our country's proud tradition of protecting natural resources.

5. INTERIOR: Meet one satellite Trump's budget didn't kill

E & E News, March 20 | Brittany Patterson

Nobody really knows why the Landsat 9 satellite was saved.

6. DAKOTA ACCESS: Court rejects tribe's plea as oil looms

E & E News, March 17 | Ellen M. Gilmer

Opponents of the Dakota Access pipeline failed to persuade a court to block oil from flowing through a contested area as scheduled this week.

7. SUPREME COURT: Tribal advocates optimistic about Gorsuch record

E & E News, March 20 | Ellen M. Gilmer

Supreme Court nominee Neil Gorsuch will bring an uncommon skill set to the bench if confirmed: broad experience in American Indian law.

8. FEDERAL AGENCIES: Panel to examine open-government bills

E & E News, March 20 | Kevin Bogardus

Snow beat sunlight, but only for about a week.

The House Oversight and Government Reform Committee rescheduled a hearing for Thursday to discuss legislation dealing with transparency.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

9. **NATURAL RESOURCES: Hearings to spotlight critical and conflict minerals**

E & E News, March 20 | Dylan Brown

Lawmakers on two committees will confront distinct challenges related to one question: the source of minerals needed for numerous products and technologies.

10. **PUBLIC LANDS: Lawmakers to discuss infrastructure priorities**

E & E News, March 20 | Kellie Lunney

The Senate Energy and Natural Resources Committee will hold a hearing tomorrow on infrastructure issues related to federal lands and recreation.

11. **INTERIOR: Justices decline agency deference case**

E & E News, March 20 | Amanda Reilly

Supreme Court justices today decided not to take up a case that asked them to rethink a legal doctrine under which courts give deference to agency interpretations of rules.

12. **AIR POLLUTION: Appeals court sides with EPA in 2 Navajo coal plant cases**

E & E News, March 20 | Sean Reilly

A federal appellate court handed U.S. EPA a double win today in rulings on legal challenges to the agency's blueprint for bringing an Arizona coal-fired power plant into compliance with regional haze requirements.

13. **LAW: Greens gird for Trump admin assault on social cost of carbon**

E & E News, March 20 | Hannah Hess

Environmentalists are expecting the White House to zero out the government's estimate of the cost of global damage caused by the release of an additional ton of carbon dioxide into the atmosphere.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

14. **FINANCE: U.S. opts out of transparency effort for oil, coal firms**

E & E News, March 20 | Dylan Brown

The United States will not participate under President Trump in an international effort to promote transparency in oil, gas and coal extraction.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

UTAH – FULL STORY

1. Interior Leases 1st of 14 U.S. Coal Strips Not Under Moratorium: 55M Tons in Utah Ntl. Forest

EnviroNews, March 17 | Julia Travers

Washington D.C. — On March 15, 2017, U.S. Department of the Interior (DOI/Interior) Secretary Ryan Zinke announced the approval of a multimillion-dollar coal lease in Utah for the Greens Hollow tract, which lies under lands in the Manti-La Sal and Fishlake National Forests near Salina, Utah.

Canyon Fuel Company, LLC, a subsidiary of Bowie Resource Partners, LLC (Bowie), won the lease with a \$22,850,000 bid at the auction held January 4, 2017. Zinke also announced Bureau of Land Management (BLM) careerist Michael Nedd will be the new BLM acting director.

Greens Hollow Tract Coal Lease

The Greens Hollow tract is 6,175 acres and holds an estimated 55 million tons of coal. The U.S. Forest Service (USFWS) manages the surface of this area and BLM holds the subsurface minerals. The Interior explains an environmental analysis began with a Greens Hollow Lease by Application (LBA) in 2005. In 2015, the USFWS presented their Record of Decision and letters of Consent to Lease to the BLM.

In Jan. of 2016, the Interior Department initiated a much-debated moratorium on new coal leases, pending a comprehensive review of the coal-leasing program. The Interior’s preliminary analysis for the coal-lease report, which was released in Jan. of 2017, “calls for major changes to the federal coal program, which has not been significantly updated since 1979,” according to the Center for Biological Diversity.

WildEarth Guardians Climate and Energy Program Director Jeremy Nichols explained to EnviroNews that the Greens Hollow lease was exempted from the moratorium because it required not only BLM approval, but USFS approval, “allowing the lease to be issued underneath the Manti-La Sal and Fishlake National Forests. When the leasing moratorium was issued, it explicitly exempted any lease where an approval had been issued by another agency.” This exception is referred to by environmental groups as the “Greens Hollow Loophole” because it only applies to this lease. While there are other exemptions being considered, this is the “only lease to be fully approved and issued under an exemption to the moratorium,” Nichols continued.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

Additionally, according to the BLM, the Greens Hollows permit harbors another exemption, being also excluded from the nationwide pause because the leasing decision occurred in 2015, before the moratorium took hold. DOI told EnviroNews in an email that Greens Hollow is one of 14 leases currently not subject to the moratorium.

While the Interior described this coal lease sale as “competitive,” EnergyWire contradicted that by saying it was a single-bidder auction. The sale underwent a 30-day antitrust review by the U.S. Department of Justice. Bowie also owns the Southern Utah Fuel Co (SUFCO) mine adjacent to the Wasatch Plateau Known Recoverable Coal Resource Area, where the Greens Hollow tract is located. SUFCO is the largest coal mine in the state of Utah and “has been mining coal continuously since 1941,” according to the Salt Lake Tribune.

Zinke said mining for coal on public lands can potentially create jobs and economic opportunity and, “we have the technology available to responsibly mine coal and return our land to equal or better quality after.”

Environmental groups warn the lease, if exercised, would produce more than 120 million metric tons of carbon pollution that would further destabilize Earth’s climate, according to EnergyWire. Bowie also exports Utah coal overseas from California ports. Nichols shared that Bowie has been pushing for a new, and hotly-contested, coal export facility in Oakland to be supplied by the SUFCO mine, which the new Greens Hollow lease would expand. The Oakland City Council later voted unanimously to ban that plan, noting climate, air, water and other environmental concerns.

Paul R. Ross, Senior Public Affairs Specialist for the Interior, told EnviroNews, “The Department of Interior looks forward to continuing its work identifying comprehensive solutions that balance conservation while allowing for responsible development of oil, natural gas, coal and renewable energy on public lands and offshore waters where appropriate.”

In January, Nichols said, “BLM is selling out the American public for pennies on the dollar. What’s worse is they’re giving away coal at the expense of our climate, our clean air and our clean energy future.”

Along with WildEarth Guardians, the Center for Biological Diversity, the Grand Canyon Trust and the Sierra Club managed to gain a temporary delay on the Greens Hollow auction, but their stay petition was later denied by the Interior Board of Land Appeals.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

Zinke described the deal as “a sign of optimism for the Trump Administration and the pro-energy and pro-growth economic policies to come,” while the conservationists who fought the lease consider it a disaster.

Regarding the adjoining SUFCO mine, the Sierra Club’s Environmental Law Program wrote:

[The] SUFCO mine has been a disaster for public lands, fish, and wildlife. The mine has caused major subsidence in the area, fracturing the ground, causing springs to disappear, toppling trees, triggering rock slides, and draining local streams. Imperiled species, including the sage grouse (*Centrocercus urophasianus*), Colorado River cutthroat trout (*Oncorhynchus clarki pleuriticus*), and Colorado pikeminnow (*Ptychocheilus lucius*) have been driven to the brink of extinction in the area. More mining and coal combustion pollution threatens to push these imperiled species to the point of no return.

Appointment of Michael Nedd as BLM Acting Director

Since 2007, Michael Nedd was BLM’s assistant director for energy, minerals and realty management. He has served the BLM in various roles since 1991 and previously spent more than eight years on active military duty. Zinke described Nedd as “an energy guy” and the Interior explained that “his selection signals the Secretary’s focus on elevating responsible energy development on public lands where appropriate.”

[BACK](#)

2. Op-ed: I’m banking on Zinke keeping our Bears Ears promises to Indians

The Salt Lake Tribune, March 18 | Stephen Trimble

I fear we are headed down an old and familiar path at Bears Ears. We promise Indian people that we will honor treaties, that we will recognize their rights to lands they have called home for millennia. We, the United States of America, make promises. Then, we break them.

The Bears Ears National Monument proclamation isn't a treaty, but the president's words have the weight of law, granting new protections for a swath of public lands "profoundly sacred to many Native American tribes." And now Utah's office-holders are asking a new president to rescind the monument, to once again default on our legal agreements with Native nations.

The monument exists because the Bears Ears Inter-Tribal Coalition documented their people's spiritual, historic and working relationships with this land. Over seven years, in dozens of



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

interviews, the Inter-Tribal Coalition mapped indigenous connections to nearly two million acres in these stunning canyons. To adequately preserve the cultural sites surrounding the Bears Ears — its "objects," in the words of the Antiquities Act — the monument could have been even bigger.

President Obama understood this relationship with the land. He listened to the tribes. He waited until the Public Lands Initiative failed. And then he asked federal and Inter-Tribal Coalition representatives to create something "bold and new."

If Gov. Gary Herbert wished to demonstrate this same respect for Native people, he would have honored their proposal and avoided the loss of the Outdoor Retailer shows. He would have vetoed the resolution calling for the monument's withdrawal sent to him by the Utah legislature. His signature on this misguided resolution will cost Utah tens of millions of dollars in lost income.

Newly confirmed Secretary of the Interior Ryan Zinke just may be the most headstrong individual in our rambunctious corral of western Republicans. In his opening letter to America as the cabinet member in charge of both the Bureau of Land Management and the Bureau of Indian Affairs, he names tribal sovereignty as one of his three top priorities, taking a robust stand in support of this fundamental doctrine in the nation's law. The new secretary tells us, "I will do everything in my power to ensure respect to the sovereign Indian Nations and territories."

If he means what he says, Zinke will work with the tribes — and all stakeholders — to plan a visionary future for America's Bears Ears National Monument.

If he truly respects tribal sovereignty, Zinke will remind "official Utah" that San Juan County Commissioner Rebecca Benally holds no elected position within the Navajo Nation. She speaks against the monument, but she speaks for no tribal government.

If he means to ensure tribal sovereignty, Zinke will celebrate the Navajo Nation council's unanimous support for the national monument. All five sovereign tribes in the Inter-Tribal Coalition have passed equally strong resolutions. The secretary can tally support for the monument from 30 tribal governments with ties to the Bears Ears and from more than 500 federally recognized tribes represented by the National Congress of American Indians. Such unanimity comes rarely in Indian Country.

Indigenous writers and leaders identify respect, responsibility and reciprocity as the keys to understanding the Native relationship to land. The dominant society — epitomized by Herbert



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

and the Utah Legislature and congressional delegation — sees land as commodity, capital and property.

I'm banking on our new secretary of the interior, who's proud to be an adopted member of Montana's Assiniboiné-Sioux tribe, to bridge this divide and push back against the likes of Rep. Rob Bishop, Sen. Orrin Hatch and Herbert, who demand we do away with Bears Ears National Monument. With Ryan Zinke's leadership, this time let's keep our promises.

Stephen Trimble, writer, photographer and conservationist, teaches in the University of Utah honors college.

[BACK](#)

3. **PUBLIC LANDS: Smaller Bears Ears monument could trigger legal battle**

E & E News, March 20 | Jennifer Yachnin

While opponents of the fledgling Bears Ears National Monument in southeastern Utah would like to see its status fully rescinded, many acknowledge a secondary option: asking President Trump to trim back the boundaries of the site's 1.35 million acres.

Proponents of erasing or reducing the Utah monument point to past examples of commanders-in-chief amending protected lands — something that has occurred 20 times since the creation of the Antiquities Act of 1906, which allows presidents to designate lands for the protection of cultural, historic or scientific interests.

House Natural Resources Chairman Rob Bishop (R-Utah) has pointed in particular to President Taft's reduction of the Navajo National Monument in 1912 — from 102,400 acres to 360 acres, a more than 99 percent decrease — as an example of the president's authority.

"The area of actually shrinking the boundary of a monument has been done repeatedly," Bishop said in a recent KUER-FM interview. "It's done by precedent — what takes place in the future will be done by precedent, as well."

But supporters of the Bears Ears National Monument suggest that precedent is legally tenuous at best, and should Trump attempt a reduction of the Utah site — or of the state's Grand Staircase-Escalante National Monument — it would likely trigger a battle in federal court.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

"The Antiquities Act was really a one-way designation authority that allows the president to designate monuments, but it doesn't grant the president any authority to reverse the designations of his predecessors," said Earthjustice attorney Heidi McIntosh.

McIntosh noted that the president doesn't have any power to manage public lands under Article II of the Constitution, adding that that responsibility lies exclusively with Congress.

The Antiquities Act delegated "a little bit" of Congress' power to the president to designate monuments, she added, a declaration that carries the force of law.

"When he exercises his power, he's standing in the shoes of Congress," McIntosh said. "In the same way a president can't, on his own, mend or revoke acts of Congress, he can't go back and amend or revoke monuments, either."

Nonetheless, prior changes to monuments, like a trio of reductions to the Olympic National Monument or Grand Canyon II National Monument, have never been challenged in court. And no president has amended a monument in more than 50 years, since President Kennedy issued a declaration reducing the Bandelier National Monument in New Mexico by 4,000 acres while adding 2,900 acres to the site at the same time.

"There's no case law on that issue," McIntosh added. "It's never actually been approved and upheld, and so we think that the argument that the president lacks the authority is strong."

In addition, McIntosh noted that federal courts have previously rejected challenges to monuments like Jackson Hole National Monument (now part of Grand Teton National Park) in Wyoming and Grand Staircase-Escalante National Monument.

"No court has ever overturned a monument designation," she said. "The courts are even reluctant to question the president's discretion when it comes to the values that need to be protected."

Conservationists also argue that Bishop's comparison of a potential reduction of Bears Ears to sites like the Navajo monument are also inconsistent. Much of the original 160-square-mile Navajo site in Arizona had yet to be surveyed at the time it was designated in 1909.

President Obama created the Bears Ears monument in the final weeks of his presidency, overriding objections from Utah state and congressional Republicans who wanted the state to manage the area and retain the ability to develop nearby fossil fuel resources.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

Chris Krupp, public lands guardian for WildEarth Guardians, asserted that reducing the size of the monument — if not outright eliminating it — would contradict the Trump campaign's repeated promises to support public lands.

"The move would be a blatant political favor for Utah's congressional delegation that would certainly be challenged in court," Krupp said. "The Obama administration thoroughly studied and supported the scope of the national monument designation. Trump would be violating the law by drastically reducing its size as a political favor to Bishop."

Zinke vows to visit Utah

Although Interior Secretary Ryan Zinke has vowed to visit the Bears Ears site and meet with local and state officials before issuing any recommendations on its future status, Trump has not indicated whether he would wait for that meeting to occur before issuing his own declarations.

A White House spokeswoman did not respond to a request for comment for this article.

Zinke acknowledged in his confirmation hearing in January that the question of whether Trump could rescind a monument outright is "legally ... untested" — no commander-in-chief has ever sought to undo a monument created by one of his predecessors — but did not discuss the possibility of major reductions (E&E Daily, Jan. 17).

An Interior spokeswoman said Zinke still plans to visit the Beehive State in the near future, but he has yet to officially schedule that trip.

"Secretary Zinke is committed to responsible management of federal lands for multiple uses like recreation, energy development and conservation, and he is opposed to selling federal lands," Interior spokeswoman Heather Swift told E&E News in an email. "He has signaled his support for the creation of monuments when there is consent and input from local elected officials, the local community and tribes prior to monument designations."

She added: "While monuments often provide valuable local benefits, careful consideration is required before designating significant acreage out of reach of valuable tax revenue to fund community facilities and improvements. The Secretary remains committed to traveling to Utah and other states as he referenced in his confirmation hearing and making recommendations to the President."



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

Utah legislators and Gov. Gary Herbert (R) have urged Congress to rescind the monument via a resolution approved earlier this year, while also asking Trump to rein in the Grand Staircase-Escalante boundaries (Greenwire, Jan. 24).

Although Congress may abolish monuments, it has done so fewer than a dozen times; it has more often converted national monuments to national parks or preserves (Greenwire, Feb. 8).

Tribes oppose any reduction

Sen. Martin Heinrich (D-N.M.) echoed calls Friday from tribal officials in Utah for Zinke to meet with the newly established Bears Ears Commission.

The commission represents the five tribal nations with ancestral ties to Bears Ears and issued a letter Friday urging Zinke to confer with Native American representatives (E&E News PM, March 17).

In the letter, the Bears Ears Commission said that any decisions by the Trump administration to eliminate or reduce the monument site would be "absolute tragedies."

Late Friday evening, Heinrich, who sits on the Energy and Natural Resources Committee, expressed his solidarity with the commission members.

"During his confirmation, Secretary Zinke committed to me that he would meet and work with tribes and tribal communities whose ancestral lands and sacred sites are protected by Antiquities Act national monuments before making any decisions about them," Heinrich said.

"The Bears Ears region, a spectacular landscape with its big skies and red rocks east of the Colorado River and south of Canyonlands National Park, includes thousands of historic and cultural sites with deep meaning to numerous tribes. Bears Ears is sacred ground, and the tribes must have a say in the stewardship and management of it," he added.

[BACK](#)

4. COAL: Lease foes vow to be 'scrappier than ever' post-moratorium

E & E News, March 20 | Dylan Brown

Interior Secretary Ryan Zinke last week issued the first of what he hopes will be many new leases to allow mining companies to extract federal coal reserves.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

The former Montana congressman wrapped up paperwork on the Obama administration's January sale of nearly 56 million tons in Utah to Bowie Resource Partners LLC.

"The Greens Hollow lease sale is a sign of optimism for the Trump Administration and the pro-energy and pro-growth economic policies to come," Zinke said in a statement.

Because the process was already underway, the Greens Hollow action — which environmentalists opposed vigorously for years — managed to bypass the current moratorium on most leasing.

President Trump is poised to scrap those limits, despite several delays in his expected executive order. But nobody involved in the leasing debate — coal miner or environmentalist — sees many major new leases in the pipeline. And environmentalists plan to continue their anti-mining crusade.

Shannon Anderson, an attorney with the Powder River Basin Resource Council, which often opposes lease sales, said cheap natural gas and shrunken demand mean "absolutely nothing that will change on the ground here in Wyoming."

The federal government has not leased a single ton of coal in the Cowboy State — the nation's top coal producer — since 2012.

A Bureau of Land Management [list](#) updated Feb. 28 shows 44 pending applications for leases or lease modification nationwide. They add up to nearly 3 billion tons.

Roughly two-thirds of that coal is tied to applications put on hold — not by Interior but by coal companies themselves trying to weather the mining downturn.

Industry leader Peabody Energy Corp. is still restructuring. Rival Arch Coal Inc. exited bankruptcy last year but postponed asking to lease 467.6 million tons next to its Black Thunder mine until late 2018 due to "poor market conditions."

Contura Energy Inc., an Alpha Natural Resources Inc. post-bankruptcy spinoff, has not indicated to BLM whether it will pursue 253 million tons for its Belle Ayr mine.

Last year's moratorium did not affect 14 pending leasing applications. But BLM only ended up closing the deal on Greens Hollow (Greenwire, Jan. 17).

Cloud Peak bucks trend



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

Bucking the trend and evading bankruptcy, however, Cloud Peak Energy Inc. is actively pursuing leases totaling nearly 1 billion tons at its three mines.

The Antelope mine, the Cordero Rojo mine and the Spring Creek mine are all in the Powder River Basin of Montana and Wyoming — the source of 85 percent of all federal coal and just less than half of all American coal.

"Is there going to be grand rush to go out and lease vast quantities of new lands to start new mines? I doubt it right now," Cloud Peak spokesman Richard Reavey said.

"But," Reavey added, "the suggestion that nobody needs a lease is as uniformed as the imaginary 20 years of reserves."

When issuing the moratorium, Interior argued that companies had two decades of coal already under lease. But mining firms not only disputed that claim but said it ignored the need for so-called maintenance leases to keep mines operating.

Industry says permitting and review timelines — more than a decade for Greens Hollow — require them to think long-term.

House Natural Resources Chairman Rob Bishop (R-Utah) hailed the end of "bureaucratic purgatory" for the Utah lease, which will help expand a mine with 660 workers.

At one point during the Obama administration, Interior and its BLM approved a trove of long-pending leases. Even though major lease sales may not be commonplace again, Cloud Peak still has big plans.

"Our next major new lease is probably unlikely to be on BLM land and is probably more likely to be on the Crow reservation," Reavey said, referencing the Montana Native American tribe, which has an estimated 14 billion tons of Powder River Basin coal.

'Missed opportunity'

Zinke, who was a vocal advocate of the Crow Nation's coal ambitions during his time in Congress, called federal coal a "missed opportunity."

"The United States has more coal than any other nation on Earth, and we are lucky to be at a time in our history that we have the technology available to responsibly mine coal and return our land to equal or better quality after," he said.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

A commitment from the likes of Zinke to "balancing" coal and conservation, however, did little for environmentalists who spent years fighting leases and demanding the moratorium.

Canyon Fuel Co. LLC, a Bowie subsidiary, this year bid \$22.85 million — \$3,700.17 per acre — to expand its Sufco mine, Utah's largest.

Jeremy Nichols, climate and energy program director for Colorado-based WildEarth Guardians, said the lease sale amounted to 41 cents a ton when Utah coal is selling for nearly \$40 per ton.

"Literally, a penny on the dollar is what the American public is getting," he said. "It shows that this administration is not going to be about defending the public interest; it's going to be about putting the coal industry first."

Interior maintains that the sale was based on "fair market value" and that Bowie will use underground mining methods to extract the coal, "which helps ensure the vital water, aesthetic, and archaeological resources are protected."

Taxpayers' return on investment was a central goal of the federal coal program review the Obama administration launched in tandem with the moratorium.

The past administration also released a scoping report that vindicated environmentalists over concerns about coal fees and climate impacts (Greenwire, Jan. 12).

"Independent analyses found that raising coal royalty rates would both reduce emissions and increase revenue to taxpayers," said Jayni Hein, policy director at the Institute for Policy Integrity, who has reviewed potential reforms to Interior's leasing program.

"Every penny you miss in revenue translates to millions of dollars because of the size of these leases," Anderson said. "It was so important to just pause the program, take a step back, do that broad level review, find a way forward before we lock in decades of more coal leasing."

'Not one more ton'

Companies counter that no other commodity gives taxpayers back as much as coal — 40 cents out of every dollar, according to a [National Mining Association report](#).

Cloud Peak's Reavey called it "patent nonsense" that coal doesn't pay its fair share, as his company leads the industry charge against the moratorium.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

"This was one of the last gasps of the throw-spaghetti-at-the wall strategy of the Obama administration that was 'Let's just see anything we can do to screw the coal industry,'" Reavey said.

Cloud Peak has likened the scoping process to a "Soviet-style show trial" in which the Obama administration's verdict was never in doubt.

"We would absolutely, positively oppose continuation of the [programmatic environmental impact statement] as currently defined, lined out and as shaped by the scoping document," Reavey said.

The NMA report says the Obama administration review relied on "incomplete and manipulated data" from anti-coal advocacy groups.

"The moratorium was never about a fair return to taxpayers, and all about capitulating to the demands of the 'keep-it-in-the-ground' movement," NMA wrote in a blog post.

Unapologetically in the movement's vanguard, WildEarth Guardians challenges coal leases at every turn. And those aggressive legal and administrative tactics are unlikely to change.

"Our goal for the next four years ... is not one more ton of coal leased under the Trump administration," Nichols said.

He said the group has no plans to let the new administration ignore the deficiencies identified by the scoping report.

"If Zinke thinks he's just going to summarily give away coal to the coal industry and all of sudden take the wind out of our sails, he's dead wrong," Nichols said. "If anything, we're going to be scrappier than ever."

[BACK](#)

5. PLU alumnus Scott Foss '91 serves as top paleontologist for the federal government

Pacific Lutheran University, March 20 | Zach Powers

Washington, D.C. (March 20, 2017)- When Scott Foss '91 enrolled at Pacific Lutheran University, he dreamed of becoming a paleontologist and pursuing a career outdoors conducting



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

research. Now, he's the most senior paleontologist in the federal government. Foss serves as a policy adviser and resource director in Washington, D.C., 30 years after his dream began.

"Working on the bureaucratic side we call ourselves 'paleocrats' because we're actually interpreting the science for government," Foss said. "Field research was what I always wanted to do, but a big part of what I do now is coordinate everything that goes on in the field."

Foss earned his research and resource management chops on the American West, serving as a National Park Service paleontologist and museum curator at the John Day Fossil Beds National Monument in Oregon, and later as a regional paleontologist with the Bureau of Land Management headquartered in Utah. Along the way, he earned a Ph.D. in biological sciences from Northern Illinois University.

In 2012, Foss relocated to Washington, D.C., to assume his current role, one he likens to an orchestra conductor. "I don't get to play an instrument anymore, but I'm right there for everything that happens," Foss said. "I know about every fossil that's being discovered before it hits the news. I know who is working where and on what. That's the excitement of it, being on the edge of everything going on in paleontology."

Foss juggles a variety of hats in an average week at the office, ranging from policy expert to public relations officer.

"I spend a lot of time helping to develop policy as well as reviewing other proposed policy, thinking about how it could affect paleontological resources," Foss said. "We work on and review a lot of environmental impact statements and assessments, making sure they are adequate for paleontology."

"We're also really big in the planning and management process of public lands. If there is going to be a pipeline, right-of-way or an energy corridor that may affect a lot of paleontological resources, I get involved and explain how it will affect those resources or not affect them."

A natural maven, Foss' role in D.C. has also required him to play the role of connector. "If we need to know something about paleontology here in Washington I know the person in the field who has that information," Foss said.

He's also developed a rapport with a wide range of media members. "After a new discovery, I'll get a lot of calls from news services and connect them with the right expert to talk to," he said.

Foss regularly fields inquiries from unlikely sources, as well. "I get a ton of calls from producers in Hollywood," he said. "They'll call me up and say (for example) 'I need to know all about



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

tyrannosaurus rex.' I'll ask them if they need to know North American or Asian T-Rex, and from there we'll narrow it down and figure out who in the field they should talk to."

Foss is passionate about his work in D.C. and enjoys living with his family in nearby Virginia. Yet, as it did throughout his PLU schooldays, his heart often pangs for the outdoors and the great expanse of the Pacific Northwest and Mountain West regions.

"It's very exciting here basically all of the time, but I miss the field tremendously," said Foss, who still owns and frequents a small vacation home in rural Oregon. "My life is in the West, and I'll be back there again someday."

[BACK](#)

E&E/NATIONAL NEWS – FULL STORY

1. **Guns in America: The debate over lead-based bullets**

Newsweek, March 17 | Michele Gorman

One of the last actions Barack Obama took during his last full day as president was to quietly enact a ban on lead-based ammunition and fishing tackle, which the White House said would protect animals and fish from poisoning. An order signed on January 19 by the director of the U.S. Fish and Wildlife Service (FWS) called for a phase-out by 2022 of the use of toxic lead on federal lands, such as national parks and wildlife refuges.

Six weeks later, Ryan Zinke, on his first day as secretary of the interior, revoked the regulation, saying it "was issued without significant communication, consultation or coordination with affected stakeholders." His action came after gun rights advocacy groups, including the National Rifle Association and the National Shooting Sports Foundation (NSSF), had called for the Trump administration to immediately reverse the order.

The battle over lead began more than 25 years ago. In 1991, the FWS banned the use of lead in ammunition used to hunt water birds (a ban that was not affected by the Obama or Zinke actions), but its use in ammunition for upland hunting, shooting sports and in fishing remained widespread, according to the National Wildlife Health Center. For years, environmental groups, scientists, doctors and public health experts have asked the federal Environmental Protection Agency to, at a minimum, limit lead in the manufacturing of bullets and shotgun pellets for hunting or recreation. After all, they argued, lead has been nearly eliminated in other products, like paint and gasoline.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

Below, we break down how states handle lead-based ammunition and fishing tackle, and what each side of the debate thinks about the use of the soft and dense metal.

What Are the Laws?

Because of its mass and malleability, lead has long been the primary metal used for ammunition. In the United States, 95 percent of all ammunition is traditional, meaning it's made with a lead component, according to the NSSF. But there are some localized restrictions on lead ammunition and fishing tackle. Some states have limited the use of lead ammunition in areas where hunters pursue upland birds, including quail and pheasants, while others have restricted the use of lead fishing weights and hooks. In New Hampshire, for example, the law prohibits the use of certain sizes of lead fishing weights and hooks in all of the state's fresh waters. And an order that took effect there in June 2016 bans the use and sale of lead weights and hooks weighing an ounce or less.

California soon will become the first state to completely ban hunting with lead bullets, under a bill approved by legislators and signed by the Democratic governor in 2013. The state is now in the process of phasing out such ammunition by 2019, after lawmakers sought less toxic alternatives for hunting, including copper or steel.

State officials in 2008 also banned lead ammunition in counties where the iconic California condors fly and feed. The birds, which also visit Arizona and Utah, are among the largest and rarest in North America. After they identified that lead poisoning was a leading cause of death in California condors, state officials in both Arizona and Utah implemented voluntary non-lead ammunition programs by supplying hunters with alternative bullets if they hunt in condor territory.

What Critics Say About Obama's Ban

Gun rights advocates and hunting groups immediately criticized the Obama administration's order as an attack on outdoors types. Lawrence Keane, senior vice president of the NSSF, tells Newsweek he had several issues with the Obama ban, namely the timing of its rollout and the administration's lack of advance dialogue with sportsmen or conservation groups. "The timing of the order, on literally the last day of the administration," he says, "tells you everything you need to know about the political nature of the order." The NSSF is the trade association for the firearms and ammunition industry.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

At the state level, many were upset—and even offended—that the Obama administration took top-down action on ammunition and tackle without first consulting local authorities across the country, and thus breached a long tradition of working in partnership, says Greg Sheehan, director of the Utah Division of Wildlife Resources and chairman of the Lead and Fish and Wildlife Health Working Group. Among their tasks in managing most wildlife species, state authorities establish hunting and fishing seasons and the methods and means by which those activities can occur.

States are against putting unnecessary restrictions on American hunters, preferring to examine the threats and risk at certain local habitats in searching for community-based solutions. “To sort of throw a blanket across America and say, ‘Here is the direction we need to move’ isn’t really based on science,” Sheehan tells Newsweek. “We’re supportive of taking limited action, but not just saying, ‘Here, we found an eagle who died in Mississippi who died from some lead contamination, so no more lead ammunition in America.’”

That’s not all: Keane and others also say the lead ban would have caused ammunition prices to skyrocket and argue there isn’t scientific evidence to defend the Obama administration’s order. Ultimately, they say, the hunter should decide the type of ammunition he or she uses, because the sport is a critical management tool for populations.

“The science of wildlife management is premised on managing populations; you don’t manage to prevent harm to individual animals in a species. If that is what wildlife management is about, then you have just made the argument to ban hunting, which is a vital wildlife management tool and widely accepted in America even by nonhunters,” Keane says.

The answer to the question about whether fears about the use of lead are science-based, or whether lead is even a health risk to animals and humans, depends on whom you ask. Keane argues there is neither scientific evidence nor a public health risk for hunters consuming wild game harvested with lead-based ammunition.

What Supporters Say About Obama’s Ban

Meanwhile, environmentalists, scientists and public health experts view lead bullets as harmful to the environment and say lead can be toxic to humans and animals. They viewed the Obama administration’s ban as a small but important step in minimizing lead damage to wildlife, because lead-based bullets can fragment into hundreds of pieces and then be easily ingested by scavenging animals or incorporated into meat processed for human consumption. A 2013



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

University of California study found that lead-based ammunition substantially increases environmental lead levels, especially in areas of concentrated shooting activity.

Jonathan Evans, environmental health legal director and senior attorney for the Center for Biological Diversity, argues there are safer, more cost-effective options on store shelves today. Switching to non-lead ammunition, he says, is a minor cost increase for hunters and fishers when you take into effect other expenses associated with the activities, such as transportation.

Supporters of California's statewide lead ban hope other states will also take action to reduce their perceived threat. "If this wasn't such a politically charged issue," Evans says, "we would have phased out lead years ago."

[BACK](#)

2. **Scott Pruitt isn't the first administrator hostile to the EPA's mission**

High Country News, March 20 | Cally Carswell

On March 25, 1983, business was booming at Harry's Liquor, Wine & Cheese, near the Environmental Protection Agency's Washington, D.C., headquarters. EPA employees were in the mood to party. The agency's top lawyer had just resigned, the latest casualty in a purge of political appointees.

Weeks earlier, EPA Administrator Anne Gorsuch Burford had also resigned amid a ballooning controversy over her management of the Superfund program. Agency staff celebrated by springing for eight cases of champagne and six ounces of Russian caviar from Harry's. One employee even took vacation time to sell commemorative T-shirts to his colleagues. They read: "I Survived the Ice Queen's Acid Reign."

The EPA was only a decade old when Gorsuch, as she was then known — she married Bureau of Land Management Director Robert Burford in 1983 — became its first female administrator. Gorsuch, a conservative state legislator from Colorado, promptly embroiled the agency in a political fight for its life. Even though Congress had recently expanded the EPA's workload, Gorsuch and the Reagan White House cut its budget and staff. Gorsuch derided the agency's approach to environmental protection as "bean counting," saying it measured success by the number of enforcement actions it took or regulations it issued rather than by what they achieved. She claimed that the agency could do more for the environment with fewer resources by giving states broader autonomy to decide how to curb pollution. But many career employees,



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

environmentalists and congressional representatives didn't buy it, seeing Gorsuch's philosophy as window dressing for an industry-friendly agenda to neuter environmental laws.

The debate surrounding the EPA's future is strikingly similar today as Scott Pruitt assumes command. The former Oklahoma attorney general made a name for himself by fighting what he termed the "activist agenda" of former President Barack Obama's EPA. Pruitt filed 14 lawsuits against the agency, including suits to block its efforts to clear smog from national parks and wilderness areas and to cut carbon emissions from power plants. Like Gorsuch, Pruitt thinks the EPA needs to relinquish more power to the states.

Some pro-environment Republicans agree, and hope Pruitt can empower the states to come up with innovative solutions to environmental problems. But many in the environmental community regard Pruitt's arrival at the EPA as a hostile takeover, and fear that the Trump administration's real goal is to dismantle the agency. Donald Trump said as much during the campaign, and in early March, the White House reportedly drafted a proposal to cut the EPA's staff by 20 percent and its budget by 25 percent.

"For someone like myself, it's like, 'Oh my God, do we really have to do this again?' " says Pat Parenteau, a Vermont Law School professor who was an environmental advocate in D.C. in the early 1980s. Trump's budget proposal mirrors the approach Gorsuch and the White House took during President Ronald Reagan's first years in office. Ultimately, they failed to dramatically transform the EPA, and federal environmental laws have mostly survived subsequent attacks. But the political winds have shifted since Reagan's time, in Congress as well as within the Republican Party. As Pruitt told the Conservation Political Action Conference last month, "The future ain't what it used to be."

This is how The New York Times described the EPA shortly before Gorsuch resigned: "Once noted for its efficiency and esprit, the agency is now demoralized and virtually inert."

Gorsuch and Reagan cut the agency's budget by about a quarter and its workforce by nearly 20 percent. Gorsuch also adopted a relaxed attitude toward enforcement: When a New Mexico oil refinery complained in a private meeting that it couldn't afford to comply with regulations requiring it to produce gasoline with lower lead levels, Gorsuch told the company it wouldn't be penalized for flouting the rules. The White House declined to discipline Gorsuch, but the incident contributed to the perception that Gorsuch was too cozy with polluters.

The issue came to a head over the Superfund program. Gorsuch took charge shortly after Superfund was created to clean up dangerously polluted places such as Love Canal, New York, a community built on top of a toxic waste dump whose residents suffered unusual illnesses and



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

high rates of birth defects and miscarriages. The agency was supposed to develop a priority list of polluted sites and either force companies to clean them up or use money from the fund to do so itself.

Environmentalists and congressional Democrats believed that the cleanup progress was inexcusably slow, with penalties on polluters too light. At a defunct chemical waste processing facility in Indiana, for instance, Gorsuch's EPA allowed a company to pay only a third of the cost of cleaning up aboveground pollution, and then granted it immunity from liability for belowground waste. A couple years in, the agency still hadn't set up a registry to track health problems associated with hazardous waste pollution, as required by law.

Accusations of mismanagement led to multiple congressional investigations, and the FBI also investigated the agency for shredding documents related to the Superfund probes. Rita Lavelle, the Gorsuch deputy who headed Superfund, came under fire for accepting expensive dinners from industry and striking sweetheart deals with those companies. She later served time in jail for lying to Congress about a conflict of interest involving a former employer. Gorsuch herself was cited by Congress for contempt after refusing to turn over documents during the investigations. By Gorsuch's own admission, the resulting political meltdown paralyzed the agency, preventing it from getting any actual work done. Gorsuch resigned in 1983 after learning the Justice Department wouldn't defend her on the contempt charge. It was just two years into Reagan's presidency.

"The Reagan people came into office with the same kind of fervor for rolling back environmental regulations that we're seeing now," says Richard Ayres, an environmental lawyer who headed the Natural Resources Defense Council's air quality programs at the time. But their success was limited, partly due to the Superfund controversy, which emerged quickly and inhibited the administration's ability to aggressively pursue its deregulation agenda. Their efforts also ran up against a moderate Republican Senate and a House controlled by Democrats, which worked doggedly to expose industry favoritism at EPA and keep accusations about mismanagement in the public eye. After Gorsuch left, the White House decided the rewards of waging war on environmental laws weren't worth the political price.

"Reagan was anti-regulation," Parenteau says, "but he didn't have a deep hostility or resentment about environmental laws." Reagan replaced Gorsuch with William Ruckelshaus, a moderate known for his integrity. Ruckelshaus, who was respected on both sides of the aisle, helped restore the agency's credibility.

The Republican presidents since Reagan — George H.W. Bush and George W. Bush — mostly chose EPA administrators who were experienced environmental professionals, consistent with



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

the Ruckelshaus model. Pruitt, on the other hand, appears to have been selected for his deep distrust of the agency.

In today's Republican Party, he's not an outlier. "It's probably best to see the Pruitt EPA not as a special Donald Trump twist on the EPA, but as the latest evolution in a larger conservative attack on the agency," says Paul Sabin, a Yale University environmental historian. Gorsuch and her ideological brother James Watt, who was Reagan's Interior secretary until 1983, were part of the vanguard of the conservative resistance to the landmark environmental laws passed in the 1970s, which vastly expanded the federal government's role in protecting air, water and biodiversity. Since then, the tactics for undermining these protections have grown more sophisticated and been widely embraced by the Republican Party, Sabin says. Today, a formidable network of think tanks and right-wing media pushes deregulation at the state and federal level, and critics attack the science that underlies environmental regulation. "A major shift in the party was with the '94 election and the Gingrich revolution," Sabin says. "That's when the party gets more purified in its hostility toward environmental regulation."

That hostility has reached an apex in the current Congress, which is unlikely to be the check on EPA inaction that it was with Gorsuch, leaving the job primarily to environmental attorneys and the courts. Some House Republicans are intent on pursuing their own deregulatory agenda, with a recently introduced bill to abolish the EPA altogether, as well as talk of repealing and replacing the Endangered Species Act and a recent vote to block EPA rules to protect streams from pollution from coal mines.

Pruitt, for his part, declined to name a single EPA regulation he supports during his confirmation hearing. He also refused to promise to continue to allow California to enact its own strict clean-car standards, despite his stated commitment to states' rights. The priorities he's highlighted since include rolling back Obama-era clean water rules and carbon regulations, though he has also promised to promote Superfund cleanups, water infrastructure improvements and compliance with existing air-quality standards.

"The idea that he will just slash and burn the agency, I think, is mistaken," says Brent Fewell, a D.C. water lawyer and philosophical conservative who served in the number-two spot in the EPA's Office of Water under George W. Bush. "It's not that he hates the EPA. He hates overreach." There are gray areas in the Clean Air and Water acts that the EPA has tried to fill in over time, and Fewell thinks Pruitt has a legitimate point that it's sometimes gone too far.

Environmentalists tend to hear calls for state rights as code for fewer constraints on industry and more pollution. But Fewell says those outcomes aren't inevitable. He's optimistic about states assuming an expanded role in environmental protection. States already shoulder a lot of



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

responsibility for implementing federal environmental regulations, but Fewell says the EPA tends to micromanage them, not giving them much freedom to devise their own methods of meeting clean air or water standards. That breeds resentment: “There’s a lot of fighting. I believe if the states are incentivized to be more creative, we could see more environmental protection.”

Of course, it’s possible that while, in theory, a more restrained EPA could inspire states to become more proactive, in practice some states will step up and others will step back. Gorsuch’s tenure didn’t last long enough to let that experiment play out. If Pruitt’s does, we may soon learn how closely theory and practice align.

[BACK](#)

3. **Letter: Don’t imperil protection of public lands**

Bend Bulletin, March 20 | Tim Palmer

A bill introduced on Feb. 13 by Rep. Jason Chaffetz of Utah would “terminate law enforcement functions” of the U.S. Forest Service and Bureau of Land Management.

This bill ironically comes as the second set of trespassers are on trial for the armed takeover and 40-day standoff against federal law enforcement officials at Malheur National Wildlife Refuge.

The bill calls for unspecified “block” grants to go to states for law enforcement on federal land — a specious directive at best. President Donald Trump has announced plans to severely cut domestic spending — not add to it. And, if you want to see what happens to federal money for local Western needs, consider funds to counties under the Secure Rural Schools Act, which have dried up.

National “security” is the mantra these days. Should we feel secure knowing that law enforcement on federal land, constituting half of Oregon, would become an unfunded mandate of the State Police? They’re already \$32 million short of annual needs, according to an Oregonian report.

That means the job would revert to sheriffs of rural counties. But these are at the brink of bankruptcy. My own county, Curry, has cut sheriff’s staff to the bone and considered closing the jail while somehow outsourcing the inmates. How would counties like this assume new enforcement duties on 33 million acres of Oregon?

The need, for federal land, is to improve enforcement by federal agencies, not eliminate it.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

Undermining law and order is not expected from any politician. So what's Chaffetz's goal? Well, just before he introduced HR 622, he introduced 621, requiring the federal government to give 3.3 million acres to state governments. It's clear that such transfers would soon end in private hands; consider Oregon's decision last month to sell Elliott State Forest to the timber industry. And Oregon is a state where support for public land is strong.

Facing angry opposition from sportsmen who know the value of public land, Chaffetz withdrew HR 621. But 622 remains, with intent that can only be surmised as cynical: If federal employees can be prevented from doing their jobs, then the federal presence in the West will fail, and the path will be cleared for public property to be turned over first to states and then to oil, gas, and coal industries waiting, literally, in state capitals across the West.

Here's the other outcome: Local officers would enforce only the laws they like, or only the ones they have time to tend. In some parts of the West this would give Bundy-type anarchists a free pass in their gun-toting quest to claim our public land as their very own, just like they did at Malheur and at BLM property in Nevada earlier.

Most Westerners appreciate and use our public acreage for hunting, fishing, recreation of all kinds, sustainable resource jobs, sources of clean air and water, and open space out the back door, altogether making our communities livable, desirable, and attractive as both home and real estate.

HR 622 would serve only to make law enforcement on that land a sham, and would open the world's greatest public estate to the forces of lawlessness, thugs and criminals. Vandalized outhouses, dumped garbage, and pirated timber will rank among the lesser crimes destined to become commonplace across the landscape we love.

Oregon Democrats oppose this proposal. The public affairs director for our one Republican congressman, Greg Walden, says he has not yet taken a position on the bill.

— *Tim Palmer, who lives in Port Orford, is the author of "Rivers of Oregon" and other books about natural resources in the West.*

[BACK](#)



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

4. The Corporate Money Behind Our Country's Anti-Public-Lands Politicians

The Pacific Standard, March 20 | Jimmy Tobias

A wrecking crew is hard at work on Capitol Hill.

By way of bill writing, budgetary sabotage and the Congressional bully pulpit, the wrecking crew wants to dismantle our country's proud tradition of protecting natural resources.

It wants to do away with federal lands. It wants to weaken conservation law. It wants to make you believe that land agencies like the United States Forest Service are corrupt, inept, tyrannical, or all three at once. It wants to undermine America's great outdoors.

Perhaps you already know the politicians that compose this small but powerful anti-public-lands cohort. Perhaps you're familiar with Representative Rob Bishop of Utah, the firebrand chairman of the House Committee on Natural Resources. Perhaps you recognize Mark Amodei, a Congressman from Nevada who brings to his work a tireless disdain for the federal domain. Perhaps you've heard of Representative Jason Chaffetz, another Utah Republican, who recently attempted to dispose of three million acres of public land across the West. But in case you're not acquainted with these people and their conservation-averse colleagues, the Center for Biological Diversity released a report last week that lists the top 15 "public lands enemies" operating in the U.S. House of Representatives and Senate.

Together the individuals named in the report have proposed or co-sponsored more than 100 anti-public-lands bills in Congress in the last six years alone, including legislation to gut the 110-year-old Antiquities Act, to transfer millions of acres of national land to state control, and to remove conservation protections for sage grouse and other imperiled species. Together they have polarized, even poisoned, the public debate around federal land management.

The wrecking crew's members, including Senator Jeff Flake of Arizona, Senator Orrin Hatch of Utah, and Representative Steve Pierce of New Mexico, have a number of things in common: They're mostly white, they're mostly men, and they're on the older side of the age spectrum. Their most essential shared trait, however, is this: Each and every one of them has received enormous campaign contributions from oil and gas corporations, mining companies, or other powerful extractive industry interests.

These politicians, in other words, are the embodiment of how our corrupt campaign finance system results in regressive policies that harm the American people and threaten the landscapes they love.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

This dynamic was on display last week at a House Natural Resources Committee oversight hearing on marine conservation. During the George W. Bush and Obama administrations, the executive branch invoked its legitimate authority under the Antiquities Act of 1906 to protect large tracts of ocean habitat by declaring them marine national monuments. President Barack Obama, for instance, created the Atlantic Ocean's first such monument shortly before leaving office.

These monuments, however, have upset certain anti-conservation congressmen. During the hearing last week, for example, Representative Don Young of Alaska, who ranks No. 7 on the public lands enemy list, railed against the use of established law to protect federally managed ocean parcels.

"I will tell you Mr. Chairman I don't believe the Antiquities Act should ever have been applied to oceans," he said, adding later that, "this is an attempt, very frankly, to control again the sea beds...." Young particularly criticized marine monuments for precluding oil exploration and commercial fishing. He also plugged his MAST Act, a bill that would strip future presidents of their power to independently protect marine areas using the Antiquities Act.

It's possible, I suppose, that Young maintains these sentiments as a matter of political principle. It's also possible that Young's opposition to marine monuments has something to do with the more than \$180,000 in campaign contributions he has received over the course of his career from Edison Chouest Offshore. The company, which is Young's second largest overall campaign benefactor, is a major player in servicing offshore oil drillers.

The legislative activities of Alaska Senator Lisa Murkowski, public lands enemy No. 12, tell a similar story. The powerful chairwoman of the Senate Committee on Energy and Natural Resources, Murkowski has received more than \$1 million in career oil and gas industry campaign contributions. In turn, she's been an outspoken advocate for fossil-fuel interests, pushing to open up oil and gas drilling in the Arctic National Wildlife Refuge and promoting legislation to increase oil production on Alaska's federal lands by as many as 500,000 barrels a day by 2026. She has also been one of the Senate's leading proponents of the land transfer movement.

There's a very real case to be made that the anti-conservation crusade taking shape today on Capitol Hill would simply not exist without the huge quantity of corporate cash influencing our elections. According to a recent bipartisan poll conducted by Colorado College, voters in seven Western states overwhelmingly support this country's national monuments while most oppose the land transfer movement. Yet somehow many of the leading Western politicians in Congress



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

hold the opposite view. They are ardent opponents of federal land conservation. What, besides corporate electioneering, explains this gulf between public sentiment and political representation?

Oil drillers, strip miners, agricultural conglomerates—they want something for the cash they dole out. The U.S. Congress, for its part, knows how to deliver.

[BACK](#)

5. **INTERIOR: Meet one satellite Trump's budget didn't kill**

E & E News, March 20 | Brittany Patterson

Nobody really knows why the Landsat 9 satellite was saved.

While many federal agencies overseeing climate change programs braced last week for the Trump administration's proposed budget to slash or eliminate their funding, the Department of the Interior's science agency breathed one sign of relief. The Landsat 9 ground system was specifically named as one of the U.S. Geological Survey's "essential science programs" and deemed investment-worthy.

Peter Doucette, associate program coordinator with the Land Remote Sensing Program at the USGS, said it was difficult to speculate why President Trump's "skinny" budget embraced the mission. But he noted the satellite's development is a joint mission with NASA.

"Because we do have NASA's marching army moving forward, there may have been some concerns about if there was going to be discussions about delaying or reducing the ground segment that's a huge impact to NASA," he said. "I think it was to alleviate those concerns."

Landsat data plays a key role in studying how climate change is affecting the Earth, for example tracking deforestation and glacial recession. It also provides key data for decisionmakers across the globe in myriad other sectors. The first Landsat satellite was launched in July 1972, and since then the program, run jointly by USGS and NASA, has been collecting near-real-time images of Earth, making it the longest-running satellite imagery program in history.

NASA assembles the actual satellites and launches them into space. USGS flies the satellite once it's safely in orbit, making minute adjustments and steering the system around space junk. The agency also runs the "ground segment," or back end of the system. The USGS Earth Resources Observation and Science center in Sioux Falls, S.D., receives, processes and distributes the data obtained by Landsat.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

Today, two Landsat satellites scan the Earth in tandem. Landsat 7, launched in 1999, and Landsat 8, launched in 2013, each circles the globe every 16 days and together revisit their respective starting points every eight days, providing a full body scan of Earth.

Landsat 7 is coming to the end of its life, with its fuel supply likely to run out in 2020 or early 2021, and Landsat 9 is set to take its place, Doucette said.

"The further we go out beyond [2020] without a replacement for [Landsat] 7, means there's now a gap of what used to be eight days of revisit coverage will be 16 days," he said. "If you drop that back to 16, that's going to impact a lot of users."

Forestry and drought and flood monitors are just a few of the sectors that rely on the consistency of images generated by the system. Landsat is especially valuable to the agricultural community, which can use the images to help forecast crop yields because the system's infrared sensors are good at monitoring plant growth and seeing things like pests or disease, sometimes hard to pick up with the naked eye.

Doucette said there was debate about what Landsat 9 should or could look like, especially as technology shifts. The Obama administration greenlit Landsat 9 as it stands now, and NASA began building the new satellite a few years ago.

In order to prepare for Landsat 9 going online, USGS will be able to tap into much of the existing infrastructure here on Earth, but the agency will apply updates to its software among other things.

Other satellite missions within NASA were not as lucky. The president's budget blueprint cut \$102 million from NASA's Earth science program and would "terminate" four key satellite missions and low-orbit space research that provides data for the study of climate change (Climatewire, March 17).

[BACK](#)

6. **DAKOTA ACCESS: Court rejects tribe's plea as oil looms**

E & E News, March 17 | Ellen M. Gilmer

Opponents of the Dakota Access pipeline failed to persuade a court to block oil from flowing through a contested area as scheduled this week.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

The U.S. Court of Appeals for the District of Columbia Circuit on Saturday rejected the Cheyenne River Sioux Tribe's request for an emergency injunction that would bar Dakota Access from introducing oil into the almost-complete pipeline.

Company lawyers have said the pipeline could be ready for oil as soon as today.

A lower court rejected a similar request from the tribe earlier this month, prompting the appeal to the D.C. Circuit. While the appeals court will still review the lower court's decision, it will not grant Cheyenne River's request to stop the flow of oil in the meantime.

The tribe's efforts are based on Religious Freedom Restoration Act (RFRA) claims. Tribal lawyers say the presence of oil beneath Lake Oahe, a dammed section of the Missouri River, will render the water ritually impure for Lakota sacraments.

The U.S. District Court for the District of Columbia ruled two weeks ago that the tribe had raised the religious claims too late in the process, violating what's known as the "laches" doctrine. Further, it ruled that the federal government's approval of the Lake Oahe crossing likely did not amount to a RFRA violation (Greenwire, March 7). The tribe then appealed to the D.C. Circuit.

Saturday's decision means pipeline activities can continue uninterrupted while the appeal moves forward. In a customary short order, the court noted that the tribe "has not satisfied the stringent requirements for an injunction pending appeal."

Judge Patricia Millett, an Obama appointee, wrote a short memo concurring with the decision but adding that she would reject the emergency request on procedural grounds because the district court has not yet accepted Cheyenne River's updated legal complaint that incorporates the RFRA claims.

She also raised concerns about the timeliness of the tribe's argument.

"While not dispositive by itself — and without endorsing in any way the district court's laches ruling — in my judgment the Tribe's untimeliness weighs against an exercise of this court's equitable authority," she wrote.

The other judges handling the appeal are Judge Brett Kavanaugh, a George W. Bush appointee, and Judge Robert Wilkins, an Obama appointee.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

While the religious freedom appeal proceeds, the Cheyenne River and Standing Rock Sioux tribes are pushing forward with broader environmental and treaty claims in the district court (Energywire, Feb. 15).

[BACK](#)

7. **SUPREME COURT: Tribal advocates optimistic about Gorsuch record**

E & E News, March 20 | Ellen M. Gilmer

Supreme Court nominee Neil Gorsuch will bring an uncommon skill set to the bench if confirmed: broad experience in American Indian law.

A federal appellate judge since 2006, Gorsuch has heard scores of cases involving many of the 73 tribes within the jurisdiction of the 10th U.S. Circuit Court of Appeals, including disputes involving energy and natural resources.

"I think it's fair to say he's probably had more Indian law experience than any other Supreme Court nominee in modern history," said Michigan State University law professor Matthew Fletcher, who leads the Indigenous Law and Policy Center. "It's probably not even close."

Tribal groups are hopeful that Gorsuch's background will bode well for future cases involving Indian Country. Some advocates have announced support for his nomination, and others have submitted proposed questions to the Senate Judiciary Committee ahead of confirmation hearings that begin today.

In a memo last week, Native American Rights Fund attorney Richard Guest noted that Gorsuch's record on Indian law questions is mixed, but his background is encouraging.

"Judge Gorsuch has significant experience with federal Indian law, appears to be attentive to detail, and respectful to the fundamental principles of tribal sovereignty and the federal trust responsibility," he wrote.

If confirmed, Gorsuch will be the first Supreme Court justice to have served on the 10th Circuit. While he has the East Coast education common among justices, he also has strong Colorado roots and a decade of experience considering Indian law questions that don't arise as often in other circuits. He even attended an National Congress of American Indians (NCAI) meeting in 2007 to learn about legal issues affecting tribes.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

"It's interesting to see a guy with that kind of experience coming into the Supreme Court," said NCAI counsel John Dossett. "We haven't seen a Supreme Court justice with experience in federal Indian law, not in our lifetimes."

Thomas Fredericks, senior partner at Fredericks Peebles & Morgan, which exclusively handles tribal issues, endorsed Gorsuch in a letter to the Judiciary Committee last week, noting that he could help turn the tide after a series of Supreme Court decisions over the past 30 years that have been unfavorable to tribes.

"At least with Judge Gorsuch, I believe that tribes will receive fair consideration and respect," he wrote.

Energy impacts

Gorsuch's experience in Indian law could have implications for the energy world, as tribal lawsuits frequently intersect with energy and natural resources issues. Recent tribal rights battles, for example, have dealt with pipelines, federal oil and gas leasing, and oversight of hydraulic fracturing.

While those particular cases are unlikely to land before the Supreme Court, any major action on Indian law issues by the justices will shape the landscape for tribes' future claims. Fletcher, the Michigan State professor, noted that Gorsuch could push the court to take up a few more cases involving tribes.

"It's very possible that Judge Gorsuch's experience in [Indian law] would give him an extra inclination to recommend a grant in a particular case," he said.

Fredericks Peebles & Morgan attorney Jeffrey Rasmussen, who represents tribes in a variety of legal disputes, agreed, noting that Gorsuch will have a better eye for novel legal questions in that area.

Gorsuch's broader legal perspectives also hint at how he might rule on tribal issues. For example, he is a vocal critic of Chevron deference, a legal principle in which judges typically defer to agencies' reasonable interpretations of ambiguous laws.

"I know he's going to apply that to tribal lands and tribal interests just like he applies it to these others," Rasmussen said. "And there's an awful lot the United States is doing to regulate tribes where they're really pushing the envelope on what they've been authorized to do."



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

Fletcher said he's encouraged by Gorsuch's respect for legal precedent.

"The biggest positive, in addition to the fact that he's had so much experience hearing these cases, is that he's respectful of precedent," he said. "Sometimes you get, for lack of a better word, an activist judge who ideologically doesn't like what he sees in Indian law," he said. "They tend to just ignore the precedents or do what they can to distinguish them, and I don't see that in him."

Indian law record

A recent Indigenous Law and Policy Center outline shows that Gorsuch has handled 60 cases involving tribes over the past decade, though half were appeals of criminal convictions. Tribes saw uneven success on direct Indian law questions.

"From the Indian Country perspective, Judge Gorsuch has ruled against Indian tribes, but he has also ruled frequently in favor of tribes," said University of New Mexico law professor Kevin Washburn, who served as assistant secretary for Indian affairs at the Interior Department during the Obama administration.

Washburn pointed to a recent Gorsuch opinion involving the Ute Indian Tribe of Utah that was hailed across Indian Country. Writing for a panel, Gorsuch slammed a Utah city for attempting to "relitigate" reservation boundaries. In another land dispute, however, Gorsuch authored a majority opinion vacating a U.S. EPA determination that a mining parcel in New Mexico qualified as "Indian land" for purposes of environmental permitting.

A detailed Native American Rights Fund review of Gorsuch's cases zeroes in on 28 disputes that directly involved Indian law or tribal interests. Of those, Gorsuch voted in favor of tribal interests 16 times and against them nine times (with three other cases classified as "draws").

In a questionnaire submitted to the Judiciary Committee in February, Gorsuch selected a case involving tribal religious rights as one of the 10 most significant decisions of his career. His 2014 opinion in *Yellowbear v. Lampert* found that prison officials violated an American Indian prisoner's religious rights when they barred him from using a sweat lodge for Northern Arapaho religious practice.

Notably, the ongoing battle over the Dakota Access pipeline features similar legal issues, as an American Indian tribe argues that the government's approval of the project will infringe on religious rights. Lawyers for the tribe have pointed to Gorsuch's *Yellowbear* opinion as support for their argument.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

[BACK](#)

8. **FEDERAL AGENCIES: Panel to examine open-government bills**

E & E News, March 20 | Kevin Bogardus

Snow beat sunlight, but only for about a week.

The House Oversight and Government Reform Committee rescheduled a hearing for Thursday to discuss legislation dealing with transparency.

The meeting was originally planned for last week to coincide with the annual celebration of open government and freedom of information, Sunshine Week.

Committee leaders, however, postponed the hearing after lawmakers were struggling to travel to Washington because of a snowstorm.

The panel helped move through legislation last Congress to bolster the Freedom of Information Act, adding a provision that requires agencies have a presumption of openness for requests.

Also under the bill, lawmakers banned agencies from using FOIA's "deliberative process" exemption for documents created 25 or more years ago. President Obama signed the bill into law last June.

Last week, Senate Judiciary Chairman Chuck Grassley (R-Iowa), ranking member Dianne Feinstein (D-Calif.), and Sens. John Cornyn (R-Texas) and Patrick Leahy (D-Vt.) sent letters to [the Justice Department](#), [the Office of Government Information Services](#) and [the Office of Management and Budget](#) to check on implementation of that law.

FOIA may be strengthened yet again. House Oversight and Government Reform Chairman Jason Chaffetz (R-Utah) and ranking member Elijah Cummings (D-Md.) have said they plan to work on new legislation this Congress.

The lawmakers said they would pursue "additional efforts" to update FOIA and the Federal Records Act in letters sent to dozens of agencies earlier this month (Greenwire, March 9).

Schedule: The hearing is Thursday, March 23, at 9 a.m. in 2154 Rayburn.

Witnesses: TBA.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

[BACK](#)

9. **NATURAL RESOURCES: Hearings to spotlight critical and conflict minerals**

E & E News, March 20 | Dylan Brown

Lawmakers on two committees will confront distinct challenges related to one question: the source of minerals needed for numerous products and technologies.

The House Natural Resources Subcommittee on Energy and Mineral Resources will take a broad look at the barriers to domestic mining during an oversight hearing tomorrow.

Then the Senate Foreign Relations Subcommittee on Africa, Global Health, Global Human Rights and International Organizations will get an update Wednesday on how the United States is cracking down on minerals from conflict zones.

In the House, lawmakers will examine the value of raw materials to infrastructure. The hearing comes as the Trump administration works on a \$1 trillion spending package to revamp American roads, bridges and airports.

The projects will require large amounts of copper, steel and countless other minerals. And Jean-Sébastien Jacques, CEO of London-based mining giant Rio Tinto PLC, said in Fox Business editorial that dependence on imports for many commodities "should set off alarm bells in the White House and Congress."

According to the U.S. Geological Survey, foreign countries provide 100 percent of 20 key minerals, including rare earth elements vital to advanced military and energy technologies.

While the country is an exporter of gold, iron and zinc, it leans on overseas mines for copper, platinum and other materials, raising national security concerns.

"President Trump and Congress should examine ways to speed up permitting of new U.S. mines and smelters, eliminate duplicative regulations and support policies that encourage resource and materials innovation," Jacques wrote.

Republicans have already answered that call with legislation, including Nevada Rep. Mark Amodei's [H.R. 520](#) to impose permitting deadlines and California Rep. Duncan Hunter's [H.R. 1407](#) to create a dedicated critical minerals loan program (Greenwire, March 16).



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

On the regulation front, GOP lawmakers have already rallied behind industry's opposition to new U.S. EPA requirements to boost Superfund reclamation insurance requirements. And they continue to express concerns about the Army Corps of Engineers' dredge-and-fill permits (Greenwire, Jan. 25).

Separately, when it comes to conflict minerals, a leaked draft of a White House executive order indicated Trump was looking to repeal a Dodd-Frank Wall Street Reform and Consumer Protection Act provision requiring companies to declare whether their products came from war-torn regions (Greenwire, Feb. 8).

Trump and GOP allies have attacked the 2010 financial reform law from various angles, already repealing a related rule requiring oil, gas and mining companies to disclose payments to foreign governments (E&E News PM, Feb. 14).

Schedule: The critical minerals hearing is Tuesday, March 21, at 10 a.m. in 1324 Longworth.

Witnesses: TBA.

Schedule: The conflict minerals hearing is Wednesday, March 22, at 2:30 p.m. in 419 Dirksen.

Witnesses: Rick Goss, senior vice president for environment and sustainability, Information Technology Industry Council; Dominic Parker, assistant economics professor, University of Wisconsin, Madison; and Arvind Ganesan, business and human rights director, Human Rights Watch.

[BACK](#)

10. **PUBLIC LANDS: Lawmakers to discuss infrastructure priorities**

E & E News, March 20 | Kellie Lunney

The Senate Energy and Natural Resources Committee will hold a hearing tomorrow on infrastructure issues related to federal lands and recreation.

It's the second meeting the panel has held in less than a month on infrastructure, one of the hottest topics of debate on Capitol Hill this year.

Witnesses and lawmakers will discuss "opportunities to improve and expand infrastructure important to federal lands, recreation, water, and resources," according to the committee website.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

The panel earlier this month held a hearing on energy infrastructure with researchers, industry leaders and labor advocates (E&E Daily, March 13).

This week's discussion will come less than a week after the White House released its "skinny budget," which proposed a 12 percent cut for the Interior Department and to reduce land acquisition funding by more than \$120 million (Greenwire, March 16).

That budget also unveiled cuts to various agencies with infrastructure programs as a way to help pay for a massive infrastructure package the Trump administration wants lawmakers to begin crafting this session.

That package will likely include projects to improve the country's roads, bridges, airports and transit systems, as well as create jobs.

The "America First" budget also vows to "streamline permitting processes and provide industry with access to the energy resources America needs, while ensuring taxpayers receive a fair return from the development of these public resources."

Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska) last month told E&E News that she anticipated the committee compiling its own list of energy-related infrastructure priorities around the country.

ENR is one of the main panels that will decide what that infrastructure package ultimately looks like. Tomorrow's hearing will likely focus on outdoor recreation needs and the National Park Service's nearly \$12 billion maintenance backlog.

Earlier this month, Rep. Paul Gosar (R-Ariz.), who sits on the House Natural Resources panel and is chairman of its Subcommittee on Energy and Mineral Resources, said the relevant panels were coordinating their efforts on infrastructure.

"More details on this infrastructure package will be revealed in the coming weeks," said Gosar at the time (E&E Daily, March 10).

Schedule: The hearing is Tuesday, March 21, at 10 a.m. in 366 Dirksen.

Witnesses: Marcia Argust, director of the Restore America's Parks campaign, Pew Charitable Trusts; Bob Bonar, president of Snowbird Ski & Summer Resort and chairman of the National Ski Areas Association Public Lands Committee; Jill Simmons, executive director of the Washington Trails Association; David Spears, state geologist, Virginia Department of Mines,



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

Minerals and Energy; Chris Treese, external affairs manager for the Colorado River District; and Brad Worsley, president of Novo Power LLC.

[BACK](#)

11. **INTERIOR: Justices decline agency deference case**

E & E News, March 20 | Amanda Reilly

Supreme Court justices today decided not to take up a case that asked them to rethink a legal doctrine under which courts give deference to agency interpretations of rules.

The case centered on an order issued by the Interior Department's Bureau of Safety and Environmental Enforcement forcing Noble Energy Inc. to permanently plug and abandon a well off the coast of central California.

Noble's well at issue was under a lease that the federal government breached when it imposed new restrictions on operations. Though the contract was breached, Interior decided that its regulations still applied and required Noble to close and plug the well.

The U.S. Court of Appeals for the District of Columbia Circuit upheld the order last year.

In its petition to the Supreme Court, Noble argued that the D.C. Circuit improperly applied the so-called Auer doctrine.

Unlike the more common Chevron legal doctrine, in which judges defer to agencies' interpretations of law if Congress is silent or ambiguous on an issue, Auer applies to how government agencies describe and enact their own regulations.

Noble asked the court to consider whether to eliminate Auer. President Trump's Justice Department, on the other hand, urged justices to pass on the case (Greenwire, Feb. 20).

While there has been an active debate in administrative law circles over the future of Auer, the Supreme Court has recently passed on other petitions asking it to reconsider the doctrine (Greenwire, Jan. 9).

The court today also declined to take up a whistleblower retaliation claim against Interior. Leslie Kerr, a former Fish and Wildlife Service employee, claimed she was ultimately fired for reporting alcohol abuse by employees at the Kodiak National Wildlife Refuge.

[BACK](#)



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

12. **AIR POLLUTION: Appeals court sides with EPA in 2 Navajo coal plant cases**

E & E News, March 20 | Sean Reilly

A federal appellate court handed U.S. EPA a double win today in rulings on legal challenges to the agency's blueprint for bringing an Arizona coal-fired power plant into compliance with regional haze requirements.

In one opinion, a three-judge panel on the 9th U.S. Circuit Court of Appeals unanimously upheld EPA's freedom to effectively waive a key deadline for the Navajo Generating Station to implement "best available retrofit technology," or BART, to slash emissions of nitrogen oxides (NOx) that are clouding views at the Grand Canyon and other national parks.

While the Clean Air Act prescribes a five-year timetable for putting BART controls into place, EPA's 2014 federal implementation plan for the plant extended the cutoff for meeting NOx reduction targets until 2023 under what was described as a "BART alternative designation."

Federal regulators also gave the 2,250-megawatt facility an emissions "credit" for previously installed NOx controls. Both steps were taken on the grounds that flexibility was needed "because of the important economic and water issues" tied to the Navajo station's future, according to the opinion.

The plant and an associated coal mine together employ about 800 people, the bulk of them members of the Navajo and Hopi tribes. Electricity from the station also powers a water distribution system that meets more than 20 percent of Arizona's water demands.

But local and national environmental groups challenged EPA's decision, partly on the grounds that the federal government — through the Interior Department's Bureau of Reclamation — has an almost 25 percent ownership stake in the plant.

The 9th Circuit panel was unpersuaded, writing that EPA has no "self-serving" interest in the plant's continued operation and that the agency still deserves deference in its interpretation of Clean Air Act regulations. And because the EPA plan in fact included a "better than BART" alternative, the five-year deadline did not apply in this case, the opinion said.

The regional haze program, dating back in its current form to 1999, aims to restore natural views to 156 national parks and wilderness areas by 2064.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

In a separate [opinion](#), the same three-judge panel rejected a Hopi Tribe lawsuit alleging that EPA managers had unlawfully excluded it from a technical working group that developed the haze plan, which calls for the Navajo station to close by 2044.

The Hopis, who collect royalties on coal burned by the plant, objected that their tribe was not adequately consulted. But the record shows that EPA invited the Hopis to group consultations, held a public hearing on their reservation and was fully aware of the tribe's economic stake in keeping the plant open, according to today's opinion.

"Therefore, regardless of the scope of enforceability of any duty to consult on part of the EPA, the EPA surely complied," the panel wrote.

The practical relevance of the two rulings, however, hinges on the Navajo station's wobbly long-term prospects.

Since the 9th Circuit held oral arguments on the litigation last November, the four utilities that jointly hold the rest of the plant's ownership have voted to shut it down by the end of 2019, or long before the federal haze plan would fully take effect.

The utilities cited low natural gas prices as evidence the plant is no longer economical to run. Navajo Nation leaders last month appealed to the Trump administration for help; Interior officials have pledged to "turn over every rock" in hopes of keeping the plant open (Climatewire, March 2).

[BACK](#)

13. **LAW: Greens gird for Trump admin assault on social cost of carbon**

E & E News, March 20 | Hannah Hess

Environmentalists are expecting the White House to zero out the government's estimate of the cost of global damage caused by the release of an additional ton of carbon dioxide into the atmosphere.

President Trump is reportedly ready to use his executive power to target the Obama administration's calculator of the social cost of greenhouse gases.

At issue is the estimate of roughly \$40 per ton of CO₂ in the cost-benefit analysis of federal rules and regulations.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

Ben Longstreth, senior attorney for the climate and clean air program at the Natural Resources Defense Council, said Trump's attack on the social cost of carbon is akin to instructing federal agencies to "blindfold themselves" to the toll CO2 emissions take on Americans' health and the economy.

Erasing the calculation completely wouldn't be an easy lift legally, environmentalists warn.

In 2008, a federal appeals court remanded a rule from the National Highway Traffic Safety Administration in part because the agency failed to account for the climate-related benefits of anticipated emission reductions in its regulatory impact analysis.

So agencies started to use their own calculations with differing values for the social cost of carbon until 2009, when an interagency working group recommended a set of values to improve consistency across regulations. Since then, agencies have begun using similar estimates for the benefits of reducing emissions of other greenhouse gases, including methane and nitrous oxide.

In 2016, a federal court of appeals struck down the most significant legal challenge so far to the calculation. Zero Zone Inc. and industry groups filed lawsuits that raised concerns about the Department of Energy's new energy conservation standards, based on the social cost of carbon (Greenwire, Aug. 9, 2016).

The Air-Conditioning, Heating and Refrigeration Institute has called on Trump to withdraw the latest update to the social cost of carbon, arguing several rules affecting its members have not adequately considered higher equipment costs for consumers or energy, production costs, and job losses for manufacturers (E&E News PM, Jan. 26).

But advocates of the metric have reams of evidence about the toll taken by greenhouse gas emissions, ranging from damage to agriculture activity to property damage from severe weather, thanks to the work of a National Academies of Sciences, Engineering and Medicine panel (Greenwire, Jan. 11).

"The Trump administration will have the challenging task of finding support for such a drastic change to the current U.S. government estimates, while evidence points in the opposite direction," World Resources Institute economist Noah Kaufman wrote in a recent [post](#) analyzing implications of gutting the social cost of carbon.

Kaufman cited a [December 2015 report](#) by New York University School of Law's Institute for Policy Integrity that polled 1,103 experts on the economics of climate change. It found 69 percent said the current estimate was too low.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

Axing the use of the social cost of carbon in federal rulemaking "would ignore the recommendations of the country's top experts and push the Trump administration into a court battle that it has a high likelihood of losing," Kaufman concluded.

Benefits 'magically disappear'

Trump previewed his opposition to the social cost of carbon during the campaign in a survey conducted by the industry group American Energy Alliance and again in a leaked DOE transition team memo.

AEA President Thomas Pyle has called the social cost of carbon calculation "low-hanging fruit" (Greenwire, Nov. 11, 2016).

Congressional Republicans have also targeted the metric. Witnesses testified to a House Science, Space and Technology Committee panel earlier this month about revisiting the "discount rate" used in the estimate, and whether carbon dioxide emissions should be treated as a global problem (E&E Daily, March 1).

Longstreth noted members of Congress and the Trump administration are getting bolder about rejecting the scientific consensus around climate change.

One example is EPA Administrator Scott Pruitt's claim in a recent television interview that carbon dioxide isn't the primary contributor to global warming, which NRDC is probing (Greenwire, March 13).

"This statement is totally out of step with the science of climate change. But if you deny the science, then you can make the benefits of controlling carbon pollution magically disappear," Longstreth wrote.

[BACK](#)

14. FINANCE: U.S. opts out of transparency effort for oil, coal firms

E & E News, March 20 | Dylan Brown

The United States will not participate under President Trump in an international effort to promote transparency in oil, gas and coal extraction.

The Interior Department told stakeholders this month the United States won't comply with the standards of the Extractive Industries Transparency Initiative, watchdog groups said.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

Since the initiative launched in 2003, the U.S. government has supported the campaign by industry and civil society groups to confront the "resource curse" — when natural resources in poor nations fund corruption, dictators and war.

The United States was among 51 countries implementing voluntary requirements that companies report payments made to government for drilling or mining.

An Interior official said on a March 9 phone call that the United States was not pursuing EITI validation and cancelled all future meetings of the advisory panel created to implement the standards, according to groups involved in the effort.

Last month, Trump signed legislation repealing a Securities and Exchange Commission rule codifying almost identical standards.

Under those repealed standards, starting in 2018, any company whose stock is traded on a U.S. exchange would have had to report all payments to the United States and foreign governments (Greenwire, Feb. 3).

Republicans argued the 2010 rule would have undercut American companies' ability to compete abroad with state-owned enterprises.

The American Petroleum Institute had objected to the SEC rule requiring disclosures for individual projects.

Secretary of State Rex Tillerson actively lobbied against the rule during his time as CEO of Exxon Mobil Corp.

Watchdog groups say most major companies are already reporting the same information in other countries to no ill-effect, but Exxon and fellow American oil giant Chevron Corp. now have a leg up on their competition abroad (E&E Daily, Feb. 1).

Industry broadly supports EITI but opposes the SEC rule despite it forming the basis for EITI's project-level reporting requirements.

The federal watchdog group Project On Government Oversight is petitioning EITI to drop API for that reason.

Sen. Ben Cardin (D-Md.), ranking member of the Senate Foreign Relations Committee, and former Sen. Dick Lugar (R-Ind.) accused Trump of forsaking the U.S. leadership role in fighting global corruption.



BUREAU OF LAND MANAGEMENT

DAILY NEWS REPORT - UTAH

They sponsored an amendment to the 2010 financial reform law requiring the SEC to issue the transparency rule.

"What will those countries, or countries planning to join [EITI], say now at this American retreat away from transparency and accountability?" Cardin and Lugar said today in a joint statement. "Such a retreat is a retreat from our values, which give America its strength and its moral leadership in the world."

The Congressional Review Act gives lawmakers 60 legislative days to review and possibly overturn new rules. Once the president signs off, agencies are prohibited from reissuing the rule or offering a "substantially similar" one.

Congress used the Congressional Review Act, which forbids an agency reissuing a "substantially similar" rule, but the rule is mandated by the 2008 Dodd-Frank Wall Street Reform and Consumer Protection Act, setting the stage for an unprecedented legal fight (E&E Daily, Feb. 10).

[BACK](#)