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Attached is the daily news report for April 4.

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DAILY NEWS REPORT - UTAH

UTAH – TOP STORIES – APRIL 4, 2017

1. BLM Quarantines Axtell Wild Horse Corrals

The Horse.com, April 3 | Press Release

The Bureau of Land Management (BLM) and the Axtell Contract Off-Range Corrals have issued a voluntary quarantine of wild horses at the facility due to an outbreak of upper respiratory tract infection.

2. Fate of pottery collection is ‘a can of worms’ for Navajos

The Salt Lake Tribune, April 3 | Brian Maffly

Nearly 40 years ago, Utah's Edge of the Cedars State Park Museum received its inaugural collection of artifacts as a loan from the Utah Navajo Development Council, a now-dormant nonprofit set up to use tribal money on community-building projects.

3. Op-ed: How environmentalists could do more for Bears Ears

High Country News, April 4 | Jim Stiles

I’m not a native-born Utahn, but I came here 40 years ago and made it my home. One of my first views of this remarkable land was of the Bears Ears area of southern Utah. It is sacred territory to me.

4. Outdoors companies mobilize hikers in multimillion-dollar battle over public lands

The Albuquerque Journal, April 4 | Stuart Leavenworth / McClatchy Washington Bureau

CORTEZ, Colo. — Two generations ago, they were often written off as a bunch of hippies making backpacks and climbing gear for niche markets. But in recent decades, companies such as Patagonia and REI have become consumer powerhouses and political players, increasingly eager to influence decisions over public lands.



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E&E/NATIONAL NEWS – TOP STORIES

1. **Judge makes key ruling on defense witnesses in Nevada standoff trial**

The Oregonian, Oregon Live, April 3 | The Associated Press

LAS VEGAS -- A jury might hear from just one or two defense witnesses and only one of the six men accused of wielding guns against federal agents during a 2014 standoff involving Nevada cattleman and states' rights advocate Cliven Bundy, following a judge's decision Monday limiting the scope of remaining testimony.

2. **INTERIOR: Executive order has broad implications for oil regulation**

E & E News, April 4 | Pamela King

President Trump last week laid out a wide-ranging strategy to reduce the regulatory burden on companies extracting fossil fuels from public lands.

3. **SAGE GROUSE: Court ruling fuels uncertainty over conservation plans**

E & E News, April 4 | Scott Streater

A federal judge in Nevada has determined the Obama administration did not give Nevada residents time to review and comment on a controversial proposal to withdraw critical greater sage grouse habitat from new mining claims, a decision that opponents of the federal plans say is a major victory for their side.

4. **REGULATIONS: Trump could target Antiquities Act in executive order**

E & E News, April 4 | Jennifer Yachnin and Emily Yehle

President Trump could soon unleash a new round of executive orders, including a measure targeting the Antiquities Act, which allows the commander in chief to designate national monuments, a former administration official said today.



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5. **ENDANGERED SPECIES: Greens sue Interior over use of 'predator poisons'**

E & E News, April 4 | Scott Streater

A coalition of environmental groups is suing the Trump administration for what it says is the failure to protect endangered species from cyanide traps and other "predator poisons" used to kill coyotes and other livestock predators.

6. **COAL: Audit faults federal oversight on state reclamation spending**

E & E News, April 4 | Dylan Brown

The federal Office of Surface Mining Reclamation and Enforcement isn't doing enough to oversee state spending on coal mining cleanups, the Interior Department's inspector general said in an audit released yesterday.

7. **NATIONAL PARKS: Greens worry after Zinke vows 'aggressive' land management**

E & E News, April 4 | Corbin Hiar

Conservation groups are raising concerns about recent comments by Interior Secretary Ryan Zinke that suggest he may be open to increasing logging and grazing in national parks.

8. **METHANE: Blue states ready to battle Pruitt over emissions**

E & E News, April 4 | Hannah Hess

Democratic attorneys general from eight states and the District of Columbia yesterday urged U.S. EPA to reconsider its decision to stop collecting certain emissions information from oil and gas operators, and hinted at a legal battle.



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UTAH – FULL STORY

1. **BLM Quarantines Axtell Wild Horse Corrals**

The Horse.com, April 3 | Press Release

The Bureau of Land Management (BLM) and the Axtell Contract Off-Range Corrals have issued a voluntary quarantine of wild horses at the facility due to an outbreak of upper respiratory tract infection.

Individual infected animals are being tested for the exact cause, but the BLM said early results suggest the infection appears to be strangles, a highly contagious disease caused by *Streptococcus equi*.

BLM officials have notified the Utah State Veterinarian of the outbreak, who visited the facility. Coordination is also occurring with Utah Veterinary Diagnostic Laboratory for testing of the infected horses.

Facility staff began seeing signs of strangles on March 27, mostly in younger animals that had weakened or immature immune systems. No horses have died as a result of the localized outbreak.

The quarantine will delay the adoption of horses from the Sulphur and Frisco Herd Management Areas scheduled to take place at facilities across the country.

“The BLM takes the health of every wild horse and burro seriously and the Axtell facility horses will be monitored closely by facility staff,” said Gus Warr, Utah wild horse program manager. “After all signs of infection have passed, the horses will be scheduled for transfer to Oklahoma, Illinois, Arizona, Nevada, Colorado, California, and within Utah for adoption to qualified individuals.”

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2. Fate of pottery collection is 'a can of worms' for Navajos

The Salt Lake Tribune, April 3 | Brian Maffly

Nearly 40 years ago, Utah's Edge of the Cedars State Park Museum received its inaugural collection of artifacts as a loan from the Utah Navajo Development Council, a now-dormant nonprofit set up to use tribal money on community-building projects.

It was a cache of Anasazi pottery that would be considered one of the most important assemblages of Ancestral Puebloan artifacts — except that they were probably illegally excavated and their provenance remains a mystery.

The loan may turn into a donation under a proposal now under consideration by the Utah Navajo Trust Fund, which "inherited" the pottery collection from the council years ago in the wake of an audit that excoriated the council's accounting practices and investments that did little to benefit local Native Americans.

The latest deal would transfer title of the so-called Shumway Collection, whose value is both priceless and worthless since the rare objects could never be sold in a legitimate market, to the state of Utah.

The status of the 960 pieces — largely intact ladles, pots, pitchers, bowls and other vessels — wouldn't change much. The pots would remain on display in the Blanding museum, which would have more options for sharing them with the public and researchers should it own the collection outright, according to Utah State Treasurer David Damschen, who by law heads the trust fund board.

Damschen noted that the fund is meant to promote the health, education and general welfare of Navajos living in San Juan County.

"Here we have this pottery collection that doesn't contribute to that in a clear way," Damschen said. "We think there are beneficial aspects to donating the collection to the museum."

The 1975 purchase of the artifacts was fraught with controversy that resonates to this day as Navajo tribal leaders debate what to do with the collection, which has been safely ensconced in the Edge of the Cedars State Park Museum since it opened in 1978.



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Nearly all the pieces are on display in what museum officials call "visible storage."

Some feel donating the collection is the best option since it wouldn't cost the trust fund anything, while preserving the pottery in its present state. But others believe it should be moved to tribal headquarters in Window Rock, Ariz., to be placed in the care of the Navajo Historic Preservation Department, or displayed in a manner that would generate revenue for Utah Navajo communities.

One official said the debate has "opened a can of worms" for the Utah Navajo Trust Fund (UNTF) because the collection is so burdened with spiritual and political baggage, as well as competing ownership claims, that a resolution could be hard to reach.

The collection is named for an old Blanding family long involved with Puebloan artifacts, but these pots have little if anything to do with the most infamous member of the family. The target of a federal investigation in the 1980s, Earl Shumway looted archaeological sites without remorse and amassed an illegal trove, some of which is also held in the Blanding museum.

Rather, the collection came from Earl's uncle, a uranium miner named Eugene Shumway, and two of Eugene's brothers-in-law, one-time County Commissioner Jerry Holliday and Tim Perkins. The men never divulged to archaeologists where they found the pots, despite overtures from federal prosecutors that disclosure would not be used against them.

Documents indicate the items all came from San Juan County and date from A.D. 500 to 1300, the period when Ancestral Puebloan culture thrived then vanished from Cedar Mesa, now part of Bears Ears National Monument. It is assumed the items were removed from graves, where the Anasazi, the ancestors of today's Puebloan tribes, deposited treasured pottery with their dead. Few pots that were not buried survived intact through the centuries.

In 1975, Shumway, Perkins and Holliday sold their collections to the UNDC for \$45,000 in a deal orchestrated by the then-executive director Cleal Bradford, a longtime local official. The idea was to lend the artifacts to the Utah Division of State Parks and Recreation for the museum under development on the west edge of Blanding. A contract requires the museum to display the pieces and not move them without permission from UNDC.



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Officials justified the deal under the presumption that tourist traffic to the museum would promote economic development, in turn, benefiting Navajos. But a 1991 legislative audit concluded this arrangement along with a host of other UNDC deals were either a waste or solely beneficial to San Juan County's non-Navajo population.

Because the Utah Navajo Trust Fund provided the money to buy the collection, the public entity took ownership when the UNDC went belly up. The two now equally share ownership, according to Damschen.

The trust fund, whose assets now exceed \$70 million, invests royalties and other revenue from oil and gas leases on the Utah portion of the Navajo Reservation. The fund's three-member board takes its cues from a tribal advisory panel with representation from each of the Navajo Nation's seven Utah chapters.

While the panel largely favors donating the pottery, opinions are mixed. Some believe the items have healing powers and shouldn't be on display, while others contend they hold negative spiritual energy that can sicken anyone who is exposed.

At a recent meeting of the advisory committee, one member suggested that the pottery was sacred and should be returned to the Earth.

"Why can't you put it back?" asked the woman, unidentified in an audio recording of the proceedings, conducted partly in Navajo. She told the committee her grandson, who was having frightening visions and wasn't eating, was cured by a traditional healer after drinking from such a vessel.

"It's not only history. It's who I am. It's my color," the woman said. "I tell my kids you are the same color as the Mother Earth because that's where we come from."

But other committee members noted the pottery was created not by Navajo ancestors, but by the nemesis they called Anasazi, and said the tribe should shed the collection once and for all.

Because of its negative connotations, the term Anasazi is offensive to many Zuni, Hopi and other Puebloan tribal members.



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Meanwhile, Davis Filfred, a delegate representing some Utah chapters on the Navajo Nation Council, says the Navajo Utah Commission should have a say and perhaps the collection should be under the care of historic preservation officials in Window Rock, Ariz.

"If they want it, they should take it," said Filfred, who argued that would allow for adequately preserving the collection. "That is our culture. You are talking about heritage."

But Curtis Yanito, a Bluff artist who now serves as executive director of the Utah Navajo Development Council, has different ideas. He wants the council to retain ownership of the pottery, which he contends belonged to Navajo ancestors. Yanito is interested in displaying some artifacts at a facility proposed for Mexican Water, where visitors can be charged to see them.

"If we give it away," he said, "we won't have access to them."

But Damschen sees that idea as a financial dead end.

"The cost of constructing and maintaining a facility," he said at a March 23 meeting of the trust fund board, "would far outstrip any revenue potential."

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3. **Op-ed: How environmentalists could do more for Bears Ears**

High Country News, April 4 | Jim Stiles

I'm not a native-born Utahn, but I came here 40 years ago and made it my home. One of my first views of this remarkable land was of the Bears Ears area of southern Utah. It is sacred territory to me.

Had I not lived here all these decades but simply viewed the recent debate over the Bears Ears from afar, I'd probably be an enthusiastic supporter of its recent designation as a national monument. But I've been involved in these kinds of issues for decades, and the preservation of the Bears Ears is far more complicated than the monument's architects will admit. I think there is a better way to protect the Bears Ears than its new monument designation, and a more honest way to still empower the Native Americans who deserve an integral role in protecting this landscape's future.



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Environmentalists declared that former President Barack Obama's proclamation would safeguard the area's 100,000 archaeological sites, via the 1906 Antiquities Act. But that implies that those sites were previously unprotected. All federal lands are already safeguarded by the Archaeological Resources Protection Act (ARPA) of 1979, which specifically addresses inadequacies in the original Antiquities Act legislation.

Environmentalists also warned that energy development — even on the Bears Ears — was imminent and inevitable without monument designation. Yet even the Bureau of Land Management's studies note a low potential for commercially recoverable oil beneath the monument. There are indeed 2,000-plus active wells in San Juan County, but none of them currently lie under Bears Ears. Energy potential is distributed unevenly. The overwhelming number of producing wells can be found outside the monument, where production has continued for 60 years.

Finally, environmentalists ballyhooed that "the proclamation elevates the voices of the Native Americans." Leaders of Diné Bikeyah had expected that they "would actively co-manage these lands side-by-side with federal agencies." But the proclamation reveals otherwise. It is the secretaries of Agriculture and Interior who "shall manage the monument through the U.S. Forest Service and the Bureau of Land Management." A Bears Ears Commission "will provide guidance and recommendations on the development and implementation of management plans." Another advisory panel.

The government added, "The (BLM) and Forest Service will retain ultimate authority over the monument." It's impossible to recount all the broken promises made by the U.S. government to Native Americans — going back centuries — but this sounds like yet another deception. Native Americans have no legal authority to implement their preferences for the monument's management.

The unspoken threat to the monument, of course, is the impacts caused by developed tourism. Environmental organizations like the Southern Utah Wilderness Association and the Grand Canyon Trust haven't dealt with this threat in two decades, although in 1998, the Trust's Bill Hedden warned, "Everywhere we looked, natural resource professionals agreed that industrial-strength recreation holds more potential to disrupt natural processes on a broad scale than just about anything else."



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Runaway tourism was once a serious concern to environmentalists, but the issue was dropped to pursue alliances with the recreation industry. The tourism nightmare that now defines Moab still doesn't raise the ire of Utah environmentalists. Last year, when overflow crowds lined the highway and forced Arches National Park to close its entrance station, most green groups failed to comment.

SUWA recently asked its members: "Which threats to the Red Rock worry you the most? The choices were "Utah's land grab?" "Mining and drilling?" "Off-road vehicle abuse?" "Road proliferation?" The impacts from industrial tourism were not even listed as an option.

Do the remaining wildlands of southeast Utah deserve protection? Yes, absolutely. Are there other options to do the job besides the creation of a national monument? Consider these:

- Strictly enforce the archaeological protection law. A monument might generate more funding for increased staff, but only if it experiences massive increases in visitation and damage. So instead of building extravagant visitor centers and costly "improvements," create an "ARPA Protection Unit" of trained rangers from the Inter-Tribal Coalition, the BLM and Forest Service. The new rangers could target the areas most vulnerable to vandalism and protect Native American practices and rituals.
- Seek honest and enforceable ways to empower Native Americans. Toothless advisory panels are an insult.
- Withdraw all oil and gas leases that are commercially marginal within the monument boundaries. End a pointless argument.
- Demand that Utah environmentalists sever their ties to the relentless recreation economy. Tourism can be as devastating to natural values as energy development, and both must be scrutinized. Be consistent.

Unless environmentalists address these issues, we may someday discover — too late — that monument designation has helped to destroy the very qualities its supporters want to protect. Protecting the Bears Ears region is an absolute necessity. Turning it into a marketing tool to be packaged and sold is a sacrilege. Bear Ears deserves better.

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4. **Outdoors companies mobilize hikers in multimillion-dollar battle over public lands**

The Albuquerque Journal, April 4 | Stuart Leavenworth / McClatchy Washington Bureau

CORTEZ, Colo. — Two generations ago, they were often written off as a bunch of hippies making backpacks and climbing gear for niche markets. But in recent decades, companies such as Patagonia and REI have become consumer powerhouses and political players, increasingly eager to influence decisions over public lands.

A sign of that clout came this year, when the outdoor industry decided to pull its twice-yearly trade show from Salt Lake City, where it been based since 1996. The shows injected tens of millions of dollars into the Utah economy, but industry leaders decided to pull out after Gov. Gary Herbert and other Utah Republicans started lobbying President Donald Trump to roll back the Bears Ears National Monument, a 1.35-million-acre conservation area in south Utah that Native Americans and environmentalists have championed for years.

Industry leaders said they had mixed feelings about leaving Salt Lake but felt compelled to make a move after Herbert refused to reconsider his position.

“Outdoor recreation is a huge economic driver in Utah and Colorado, and we felt it wasn’t being respected,” said Sam Mix, outdoor marketing manager for Osprey Packs, which is headquartered in southwest Colorado. “Public lands are where our customers go to recreate. Without these big wide-open spaces, we’d have no business and no reason to exist.”

Made up of 1,200 companies, the Outdoor Industry Association is based in Boulder, Colo., with an outreach office in Washington, D.C. The group estimates that consumers spend about \$120 billion on outdoor recreation products each year, ranging from apparel to tents, bicycles and camping gear.

Since 1989, dozens of leading outdoor companies have paid into a mechanism to support public lands and environmental causes. With membership dues based on a company’s annual revenues, the industry’s Conservation Alliance has doled out more than \$15 million in grants.

Compared with oil companies and others with a commercial interest in public lands, the outdoor industry isn’t much of a lobbying force. Recreational Equipment Inc. — REI — spent \$210,000



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on lobbying last year. Patagonia spent \$90,000. By contrast, Exxon spent more than \$11 million, according to the Center for Responsive Politics.

Yet because of its unique customer base, the industry has learned it can mobilize thousands of dedicated outdoors people through digital campaigns. Over the last three years, for instance, Patagonia alone says it has invested \$1.7 million in grants and videos to promote Bears Ears, an expanse of red rock canyons, forests and Native American antiquities spread out south of Canyonlands National Park.

Patagonia, a private company with roughly \$800 million in annual sales, has a long history of supporting conservation causes. In recent years, Bears Ears has been its signature issue. In 2015, it produced a lavish video — “Defined by the Line” — that introduced many outdoors enthusiasts to this region. If you click now on the company’s main website, the first image that pops up is a photo of the area’s red-rock mesas, superimposed with a message, “Defend Bears Ears.”

Top Patagonia executives became interested in Bears Ears because of their rock-climbing employees, according to Hans Cole, whose company title is “director of environmental campaigns and advocacy.” Patagonia employees, he said, brought back stories of challenging, picturesque climbing sites such as those at Indian Creek. It was only later that Patagonia learned about the cultural significance of the area, which is filled with ancient rock art and cliff dwellings considered sacred by local tribes.

When Cole paid his first visit to Bears Ears in the fall of 2014, he recalls hiking to the top of Comb Ridge and “standing on the lip of this mind-blowing landscape” while meeting tribal elders worried about the future of the area.

“We were at a point at Patagonia where we wanted to encourage our audience to get even more involved,” said Cole, who has worked eight years at the company. “We were looking for a place where there was an overlap — incredible climbing and yet a need for conservation and land protection. ... Bears Ears was it.”

In late December, President Barack Obama used his authority under the Antiquities Act to designate Bears Ears a national monument. In announcing the decision, the White House noted the inability of Utah’s U.S. lawmakers to protect the area’s artifacts and habitats through public lands legislation.



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Even so, the Utah delegation lashed out at what they called Obama's "midnight monument." By February, the state legislature passed a resolution asking Trump to undo the new national monument. Herbert signed it, along with a resolution asking Trump also to rescind the Escalante-Grand Staircase National Monument, designated by President Bill Clinton in 1996.

Outdoor industry officials had warned Utah leaders not to take such action. Days after Herbert signed the resolution, Outdoor Retailer announced it would move its trade shows out of Utah after its contract with Salt Lake City ended in 2018. "We've been listening to the concerns from the industry and agree that it's time to explore our options," said Marisa Nicholson, show director for the trade group.

Some Utah opponents of the Bears Ears monument say they couldn't care less about the trade show's exit. Leaders of livestock and mining businesses oppose the monument, fearing that such designations will limit how and where they can earn their livelihoods in the future.

"Let them go!" said Sandy Johnson, a rancher whose family has raised cattle on federal land near Bears Ears since the 1920s. "You start bending to those kind of people and you become a hostage."

For Salt Lake City, though, the industry's announcement was a bombshell. According to a University of Utah economic report, nearly 32,000 people visited Salt Lake County because of Outdoor Retailer's summer show last year, spending \$32 million and generating \$3.1 million in local taxes. Another 21,000 visitors and \$20 million in economic impact was expected from January's winter show.

In addition, Outdoor Retailer had recently signed a nonbinding letter of intent to expand from two to five shows yearly.

Salt Lake City and Gov. Herbert urged the industry to stay in town. But top executives at REI, the North Face and Patagonia were disappointed in Herbert's overtures during a Feb. 16 telephone call. The outdoor industry says it continues to seek a home outside Utah for the shows in 2019, with possible bids coming from Denver, Portland, Ore., and other cities.

In a recent interview with McClatchy, Herbert acknowledged the industry has "had a great run in Utah" and made a case for the trade shows staying in the state.



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“We have 15 million more acres of public land” than Colorado, he said. “I still hope we have opportunities to reconcile some differences and let them understand we have spent hundreds of millions of dollar on providing the best outdoor recreational opportunities in America.”

Industry officials say the decision is done. “Utah is a great outdoor state,” said Mix, the Osprey Packs executive. But too many of the state’s elected leaders “are representing a vocal, small minority — the sagebrush rebellion contingent.”

Mix said Osprey and others in the industry would continue to support land conservation efforts in Utah, even with the trade show’s departure.

The industry is gearing up for whatever decision Trump might make on Bears Ears, said Corley Kenna, communications director for Patagonia. If Trump tries to rescind the monument, something the law makes no provision for, “We will use every tool available to speak out and fight it,” she said.

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E&E/NATIONAL NEWS – FULL STORY

1. Judge makes key ruling on defense witnesses in Nevada standoff trial

The Oregonian, Oregon Live, April 3 | The Associated Press

LAS VEGAS -- A jury might hear from just one or two defense witnesses and only one of the six men accused of wielding guns against federal agents during a 2014 standoff involving Nevada cattleman and states' rights advocate Cliven Bundy, following a judge's decision Monday limiting the scope of remaining testimony.

After nearly two months of testimony by more than three dozen prosecution witnesses, defense attorneys were knocked off a plan to call most of about 10 witnesses.

Chief U.S. District Judge Gloria Navarro ruled that any testimony should focus on the standoff itself, not incidents preceding it.



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Defense attorney Todd Leventhal, representing Orville Scott Drexler of Idaho, said the ruling crippled the defense and ensured the jury won't hear from most of the witnesses that defendants' attorneys intended to call.

Richard Tanasi, lawyer for defendant Steven Stewart of Idaho, said the defense team would have to regroup and figure out a strategy.

The ruling appeared to put the case on track for closing arguments as early as this week.

The six are the first of 17 defendants to stand trial on conspiracy, weapon and assault on a federal agent charges that could get each up to 101 years in prison in the confrontation that ended a roundup of Bundy cattle from public land in southern Nevada.

Trials for Cliven Bundy and four adult sons are scheduled in coming months.

Defense lawyers originally wanted to call more than 30 witnesses, including Daniel Love, a U.S. Bureau of Land Management supervisor from Salt Lake City who headed the ill-fated roundup of Bundy cattle from public land in southern Nevada.

Leventhal said he and the others are now precluded from calling Love to the stand.

Love was recommended for possible disciplinary action this year by the bureau's Office of Inspector General for accepting tickets to a sold-out Burning Man festival in northern Nevada in 2015, for having agents provide transportation for his family at the event, and for allegedly manipulating a hiring process so a friend could get a job.

Investigators also reported that Love asked employees to "scrub" emails and delete documents before responding to a congressional records request.

A federal land management agent who was wearing a body camera might be called to the stand Tuesday, and defense attorney Jess Marchese said his client, Eric Parker of Idaho, also plans to testify.

Attorneys for Gregory Burleson of Arizona, Richard Lovelien of Oklahoma and Todd Engel of Idaho said their clients had not decided whether to take the stand.



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Bundy maintains that states' rights supersede federal land policy, and the Bureau of Land Management has no authority to prevent him from letting his cows graze on public land near his ranch, about 80 miles northeast of Las Vegas.

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2. Interior moves swiftly after Trump's climate order

E & E News, April 4 | Pamela King

President Trump last week laid out a wide-ranging strategy to reduce the regulatory burden on companies extracting fossil fuels from public lands.

Yesterday, the Interior Department took a first step toward implementing that plan by announcing a review of an oil, gas and coal valuation rule promulgated by its Office of Natural Resources Revenue. The agency has proposed to repeal amendments made to the rule this year. An advance notice of proposed rulemaking to revisit the original regulation will appear in today's Federal Register.

"Developed by Interior's ONRR, the original intent behind the 2017 Valuation Rule was to offer greater simplicity, certainty, clarity and consistency and product valuation and reporting for mineral lessees," the news release says. "ONRR has since identified several areas in the rule that warrant reconsideration to meet policy and implementation objectives."

Interior previously announced plans to delay the ONRR rule's implementation and to stay litigation related to the regulation (Energywire, March 27).

The review follows the release of [executive](#) and [secretarial](#) orders last week calling to review and potentially rescind four Interior rules on oil and gas extraction on federally controlled lands (see sidebar).

The ONRR regulation does not appear in those orders.

Section 2 of the executive order indicates that the regulatory scrubbing will go far beyond the rules the president and Interior have explicitly pinpointed.

"The heads of agencies shall review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that potentially



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burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. ... For purposes of this order, 'burden' means to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources," the order says.

Luke Johnson, a former deputy director of policy and programs at the Bureau of Land Management under President George W. Bush, called the use of the word "burden" in the executive order "significant language."

"This reaches deeper than the rules that are cited," he said.

Beyond the ONRR rule and the four regulations noted in the orders, BLM's onshore orders 3, 4 and 5 could be on the chopping block. Also in the crosshairs are nearly 30 guidance documents and rules related to climate mitigation, according to Western Energy Alliance President Kathleen Sgamma.

"It's very important and fairly far-reaching the reorientation of Interior away from spending so much time analyzing and mitigating speculative impacts from climate change," she said.

Broadly axing Interior's oil and gas rules would cripple the agency, said Alexandra Teitz, former counselor to the BLM director under President Obama.

"It would severely inhibit the BLM's ability to ensure that they're receiving a fair return on the extraction of public resources," she said. "BLM wouldn't be able to require accurate measurement of production, they wouldn't be able to limit waste, and ultimately the American public would not receive the royalties they are owed."

Teitz questioned Interior's approach on the ONRR rule, calling it a "knee-jerk" opposition to Obama-era rules, regardless of their merit.

"Your car dies, you take it to the shop, they work on it for days and replace a bunch of parts," she said. "Now the car runs, but it backfires. So do you fix this by ripping out all of the brand-new parts and starting over? Of course not — you try to pinpoint the source of the new problem and fix just that."



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"Here, we had a broken royalty system and a rule that at least partially fixed it," she said. "But the new administration is throwing out all of the fixes, going back to the broken system, and will then consider making new fixes to that system, including the fixes they will have just thrown out."

Nada Culver, senior counsel and director of the Wilderness Society's BLM Action Center, said she will be watching how Interior moves forward following the executive order.

"It sets a tone of looking to accommodate instead of looking to regulate," Culver said. "But their responsibility is to regulate."

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3. **SAGE GROUSE: Court ruling fuels uncertainty over conservation plans**

E & E News, April 4 | Scott Streater

A federal judge in Nevada has determined the Obama administration did not give Nevada residents time to review and comment on a controversial proposal to withdraw critical greater sage grouse habitat from new mining claims, a decision that opponents of the federal plans say is a major victory for their side.

U.S. District Court Judge Miranda Du's [order](#), issued Friday, directs the Bureau of Land Management and Forest Service to supplement their yearslong analysis of the grouse plans to include information and opportunities for public comment on the plan's proposal to withdraw 2.8 million acres of the most critical sage grouse habitat in Nevada from new mining claims.

Specifically, BLM and the Forest will need to conduct a supplemental environmental impact statement (SEIS) on the so-called sagebrush focal areas in Nevada, which were not included in draft versions of the EIS.

The order affects only the 2.8 million acres in Nevada, which is part of the overall proposal to withdraw up to 10 million acres of sagebrush focal areas in six Western states.



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"We are pleased that the Court is requiring the Agencies to go back to the drawing board on some of the most critical problems" with the federal grouse plans, Laura Granier, a Reno, Nev.-based attorney, said in an emailed statement to E&E News.

Granier represents a coalition of Nevada counties and mining companies that in 2015 filed a federal lawsuit challenging approval of the federal grouse plan for the Great Basin region, which covers all or parts of Nevada, Idaho, Oregon, Utah, California and Montana. They later filed a motion asking the court to issue a preliminary injunction barring BLM and the Forest Service from implementing the plans in Nevada until the legal issues are resolved (Greenwire, Sept. 29, 2015).

"We believe this [order] calls into significant question the mineral withdrawals proposed on approximately 10 million acres of lands in the West given that those withdrawals were based on the very Sagebrush Focal Areas the Court found were improperly identified in violation" of the National Environmental Policy Act, Granier said.

But Du, in her order issued Friday, denied the preliminary injunction request. And she also determined that the state of Nevada, two mining companies and all but three of the nine counties challenging the plans in federal court do not have legal standing to challenge the case.

Thus, Du's decision to require an SEIS is at best a "narrow victory" for the plaintiffs that will have little impact on the overall grouse plans, said Pat Parenteau, senior counsel at the Environmental and Natural Resources Law Clinic at Vermont Law School.

"I think she threw them a bone," Parenteau said of Du's decision to order the SEIS.

"She kicked out the state and threw out the mining industry," Parenteau said. "They lost far more than they won here."

Still, some grouse plan supporters privately worry that the Trump administration could use the SEIS process to make other changes to the plans, and not just in Nevada.

President Trump has moved to eliminate regulations that he considers barriers to domestic energy development on public lands. The grouse plans, among other things, include restrictions on when and where mining activity and oil and gas development can occur.



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Interior Secretary Ryan Zinke, who as a Montana congressman was a vocal critic of the federal plans, last week told members of the Public Lands Council, "You'll be happy with the changes that are going to come on sage grouse" (E&E News PM, March 28).

Other Interior observers, including some former senior agency officials, have said they fear that the Trump administration will try to stop full implementation of the plans (Greenwire, Feb. 23).

That's why Nada Culver, senior counsel and director of the Wilderness Society's BLM Action Center, took heart from portions of Du's order upholding "the authority of the agencies to create" the plans, and only taking issue with the process used to establish the sagebrush focal areas.

"This ruling is sending a message that the plans are valid and important components of conserving the greater sage grouse," she said. "The court is directing the agencies to correct an error it found in their procedures and to seek more public input."

Complicated issues

The sagebrush focal areas today are seen by some stakeholders as one of the most significant aspects of the groundbreaking federal grouse plans finalized in 2015 that amended 98 BLM and Forest Service land-use plans to incorporate grouse protection measures across 67 million acres of federal land in 10 Western states.

But they were only recommended in the federal grouse plans. Former Interior Secretary Sally Jewell a short time later agreed to temporarily segregate a total of 10 million acres of sagebrush focal areas in the six states while BLM conducted an ongoing EIS to determine whether all, part or none of the focal areas are permanently withdrawn.

That decision has been controversial and is a major focus of the lawsuit at the center of Du's latest order.

Du, an appointee of President Obama, agreed that three of the nine Nevada counties — Eureka, Humboldt and Washoe — have legal standing to challenge the designation of the sagebrush focal areas, by virtue of the fact that they can show they have been negatively affected by the decision.



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In the case of Eureka County, officials contend that the federal grouse plan habitat map for Nevada "incorrectly identifies lands as sage-grouse habitat, specifically developed areas where land use restrictions are 'nonsensical,'" Du wrote.

What's more, the seasonal restrictions on the use of a 7.5-acre gravel pit in grouse habitat for six months out of the year will deny the county access to "a longstanding source of materials [needed] for necessary road repairs."

"Specifically, the inability to access materials needed for repairs during this time will leave damage to washouts, drainage crossing, culverts and cattleguards, making the roads unsafe as the roads in the area are heavily traveled and the County often needs gravel material during the prohibited months," the order says.

In Humboldt County, restrictions would preclude a badly needed expansion of a landfill unless the county could show the expansion "would provide a net conservation gain to the sage grouse."

Du also agreed with the counties that argued the designations violated NEPA because they were not discussed in the draft EIS, but only in the final EIS issued just weeks before the plans were finalized in a record of decision.

"The Court agrees with Plaintiffs that the designation of 2.8 million acres as Focal Areas in Nevada amounts to a substantial change relevant to environmental concerns, requiring the Agencies to prepare an SEIS," Du wrote.

She also ruled that Eureka and Humboldt counties have legal standing to pursue claims in the lawsuit that BLM violated the Federal Land Policy and Management Act by not coordinating on the sagebrush focal areas with local counties and local land-use plans.

"It is clear to the Court that this provision of the statute protects local governments from over encroachment by the federal government and aims to balance conservation with communities' sustained use of the environment," Du wrote.

She also ruled the Forest Service may have violated the National Forest Management Act for similar reasons.



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The sagebrush focal areas were based on "new information" from the Fish and Wildlife Service, Du's order says.

That new information resulted in "low priority habitat and non-habitat" for grouse being designated in the final plans as sagebrush focal areas. In doing so, BLM and the Forest Service "failed to explain" to the public why some "already developed areas" were suddenly reclassified as priority grouse habitat in the final EIS, and subject to surface occupancy and other restrictions.

"The public should have had an opportunity to review FWS's determinations and comment on the decision to change or add new designations," Du wrote. "In fact, the public could not have 'reasonably anticipated' the Agencies to be considering developed areas as priority habitat or transforming low priority habitat and non-habitat into" sagebrush focal areas.

As an example, she noted that one designation change from the draft to the final EIS "resulted in the apparently erroneous and undisputed designation of the town of Eureka" as a priority habitat management area.

"The [draft] EIS would not have alerted the County or the public that the Agencies would designate these developed areas as [priority habitat] and, in turn, did not allow for intelligent public participation in the EIS process," she concluded.

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4. **REGULATIONS: Trump could target Antiquities Act in executive order**

E & E News, April 4 | Jennifer Yachnin and Emily Yehle

President Trump could soon unleash a new round of executive orders, including a measure targeting the Antiquities Act, which allows the commander in chief to designate national monuments, a former administration official said today.

MWR Strategies founder Mike McKenna told attendees at the Energy Bar Association's annual meeting in Washington that the Trump administration could push a new round of executive actions.



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"I don't think we're quite done with the executive orders," said McKenna, an energy lobbyist who previously led Trump's Energy Department transition team.

During his remarks, McKenna suggested new executive orders could include "offshore energy development" and "probably something clarifying where we are going with Antiquities," but he did not offer additional details.

"I expect the administration will ultimately do something on monument designations," McKenna told E&E News this afternoon, adding that he could not offer specifics on timing or content.

House Natural Resources Chairman Rob Bishop (R-Utah) has voiced his desire to see Trump undo the recently created Bears Ears National Monument in southeast Utah.

President Obama used the Antiquities Act to designate the 1.35-million-acre site in his final weeks in office over the objections of GOP state and congressional lawmakers.

The 1906 law allows presidents to designate public lands for the protection of cultural, historic or scientific interests.

Republicans including Bishop repeatedly criticized Obama for issuing protections for more lands and waters than any other president.

While Congress can opt to eliminate a monument, it has done so fewer than a dozen times since the law's creation, more often opting to convert areas to national parks.

But Bishop has asserted that Trump could utilize the Antiquities Act to undo the actions of his predecessor, something that no commander-in-chief has ever attempted. Bishop has highlighted the actions of past presidents to reduce the boundaries of existing monuments.

Conservationists say, however, that a move to eliminate or reduce any national monument would prompt legal challenges (Greenwire, March 20).

It also remains to be seen what the Trump administration would pursue in an order on offshore drilling.

The administration has indicated it plans to change a five-year oil and gas leasing plan finalized last year under Obama (E&E Daily, March 27).



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Trump could also try to undo Obama's withdrawal of most Arctic waters and some Atlantic Ocean areas from future oil drilling — but it's unclear whether the courts would uphold such a reversal. Obama used an obscure provision in the Outer Continental Shelf Lands Act that does not explicitly give presidents the power to undo such "permanent" withdrawals (E&E News PM, Dec. 20, 2016).

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5. **ENDANGERED SPECIES: Greens sue Interior over use of 'predator poisons'**

E & E News, April 4 | Scott Streater

A coalition of environmental groups is suing the Trump administration for what it says is the failure to protect endangered species from cyanide traps and other "predator poisons" used to kill coyotes and other livestock predators.

Specifically, the [lawsuit](#) filed today in the U.S. District Court for the District of Montana demands that the Fish and Wildlife Service complete a formal consultation with U.S. EPA to ensure that M-44 "explosive cyanide devices" and Compound 1080 — both used to kill coyotes, foxes and other nuisance animals — are not also harming animals listed for protection under the Endangered Species Act.

EPA in February 2011 began an in-depth analysis in consultation with FWS to evaluate the potential impacts to protected wildlife from the use of sodium cyanide in the M-44 devices, as well as Compound 1080 — an odorless and colorless poison EPA banned in 1972 but reauthorized under limited circumstances in 1985 for livestock protection.

But that analysis was never completed, according to the 23-page complaint filed by the Center for Biological Diversity, WildEarth Guardians, the Humane Society of the United States and the Fund for Animals.

The result is that Fish and Wildlife has not fully analyzed sodium cyanide and Compound 1080 for their impacts to wildlife since a 1993 biological opinion, said Anna Frostic, a senior wildlife attorney with the Humane Society.



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EPA "reinitiated" consultation with FWS in 2011, the complaint says, because the "grizzly bear, gray wolf, Canada lynx, Mexican spotted owl and southwestern willow flycatcher" had been listed for ESA protection since that 1993 biological opinion.

All these animals "have habitats in areas" where M-44s and Compound 1080 are used, according to the complaint.

"More than six years have passed since EPA reinitiated consultation to ensure that the two predator poisons will not cause jeopardy to endangered wildlife or adversely modify their habitats. FWS has not completed either of the reinitiated consultations," the complaint says. "The agency's delay in completing the required consultations allows deadly poisons to continue to harm protected wildlife and contaminate their habitats."

The coalition wants the court to order Fish and Wildlife "to complete the reinitiated consultations by a date certain." In the meantime, it also wants the court to place "restrictions on use of the poisons at issue to prevent jeopardy to protected wildlife until consultation is completed."

The complaint names as defendants Interior Secretary Ryan Zinke, the Fish and Wildlife Service, and its acting director, Jim Kurth.

An Interior Department spokeswoman could not be reached for comment. Representatives with Fish and Wildlife also could not be reached for comment on this story.

Interior typically does not comment publicly on matters related to pending or ongoing litigation.

The federal lawsuit comes just weeks after a 14-year-old boy in Idaho was injured, and his yellow Labrador killed, after the dog accidentally triggered a cyanide trap that was intended for coyotes (Greenwire, March 22).

The incident has focused attention on the Wildlife Services program, within the Department of Agriculture, and its use of these devices to control predators.

Oregon Rep. Peter DeFazio (D) cited the Idaho incident last week in introducing a bill, [H.R. 1817](#), seeking to ban the use of cyanide devices and other "lethal poisons" to kill predators (E&E Daily, March 31).



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Under DeFazio's bill, co-sponsored by fellow Oregon Rep. Earl Blumenauer (D), anyone who uses sodium cyanide or Compound 1080 "in a predator control device" could be fined or sentenced to a jail term not to exceed two years.

Also last week, a coalition of 20 environmental groups, including the Center for Biological Diversity, filed a formal petition demanding that USDA stop the use of cyanide devices to kill livestock predators in Idaho (E&E News PM, March 28).

The petition specifically targeted Wildlife Services, which is tasked with destroying animals that are deemed a threat to crops and livestock.

Wildlife Services placed the M-44 device that injured the Idaho boy and killed his dog. Wildlife Services told E&E News last week that the "unintentional lethal take" of the dog was "a rare occurrence."

But the environmental groups involved in today's lawsuit released a map with the press release announcing the legal action that shows hundreds of "Unintentional M-44 animal deaths" between 2010 and 2016 — including 882 animals in Texas, 635 in West Virginia, 336 in Virginia and 315 in New Mexico.

"Through this lawsuit, we intend to spur [FWS] to recommend additional measures to protect endangered wildlife, such as restricting the use of the pesticides where imperiled animals live," Frostic said in a statement.

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6. **COAL: Audit faults federal oversight on state reclamation spending**

E & E News, April 4 | Dylan Brown

The federal Office of Surface Mining Reclamation and Enforcement isn't doing enough to oversee state spending on coal mining cleanups, the Interior Department's inspector general said in an audit released yesterday.

The department watchdog's [report](#) found hundreds of millions of dollars spent on non-coal projects and hundreds of thousands more diverted from reclamation efforts.

OSMRE accepted the report's 11 recommendations.



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The Surface Mining Control and Reclamation Act (SMCRA) makes states the primary coal regulators but tasks OSMRE with enforcing national baseline standards.

The IG says the agency is failing to crack down when it comes to five of the 25 states that get grants from the Abandoned Mine Land fund.

The fund comprises fees charged on every ton of U.S. coal for cleaning up mine sites abandoned by companies before the law was signed in 1977. OSMRE tracks eligible projects with the Abandoned Mine Land Inventory System (e-AMLIS).

States are "certified" once regulators determine that all eligible coal sites have been reclaimed. Only five states are certified: Louisiana, Mississippi, Montana, Texas and Wyoming.

SMCRA requires states to give top priority to projects that address coal issues.

According to the IG's report, "OSMRE has allow Wyoming, Montana and Texas to continually spend significant portions of their AML grant money on non-coal projects while hazardous coal projects remain unfunded."

Wyoming, the nation's biggest coal state, has an inventory of \$90 million in unfunded reclamation. Its inventory is growing as the state spends on non-coal projects.

From 2013 to 2016, Wyoming spent \$214 million on non-coal projects and \$166 million on reclamation.

Texas still has more than \$1 million in outstanding reclamation work but has spent \$16.1 million on non-coal sites.

Mississippi and Louisiana spend all their AML grant money on administrative costs.

Certified in 2014, Mississippi has yet to complete any reclamation work, but it has spent \$68,000 on administrative costs, including a \$20,000 consulting contract with the state's former program director even though the program made "little or no reclamation progress during his tenure."

Since 2008, Louisiana has spent over \$500,000 in AML grants solely on administrative costs, and has not completed any reclamation projects.



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The report says OSMRE is failing to enforce the state reclamation plans that outline the relationship between federal and state regulators.

According to the report, e-AMLIS is ineffective.

"OSMRE is unaware of the full extent of eligible reclamation inventories faced by certified States," the report says.

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7. NATIONAL PARKS: Greens worry after Zinke vows 'aggressive' land management

E & E News, April 4 | Corbin Hiar

Conservation groups are raising concerns about recent comments by Interior Secretary Ryan Zinke that suggest he may be open to increasing logging and grazing in national parks.

"Look at the condition of our forests. There's trees down everywhere," Zinke said yesterday in an address to North America's Building Trades Unions, a coalition of labor groups. "We have to be active managers of our public lands."

Those remarks echoed a longer response that the former Montana congressman offered last week to a rancher concerned about the size of the bison population in Yellowstone National Park.

"We're going to manage the buffalo to whatever the carrying load is," Zinke said at the legislative conference of the Public Lands Council, a ranching advocacy group. "And to your point, a lot of what we face is this fundamental difference in philosophy. You have ... one side that wants to manage on 'natural regulation.'"

Zinke recounted seeing downed trees "everywhere" on a recent visit to Glacier National Park, near his hometown of Whitefish, Mont. (Greenwire, March 9).

"So why aren't we cleaning up the forests anymore? Well, it's natural regulation," he said, shaking his head. "If we're going to manage our public lands in natural regulation, I don't need a Park Service. I don't need biologists, I don't need rangers, I don't need the foresters — I don't need any of them. I just need a person to take a ticket at the front door."



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Zinke then hinted at a new philosophy for NPS.

"We're going to aggressively manage our properties just the same way you manage your lands," he said to cheers from the council members.

"We've got to do a pivot and manage our parks and manage our [Bureau of Land Management] lands and look at the grazing, what the [animal month units] should be and manage to it," the secretary said, referring to the metric for determining how many livestock animals per month a given area can sustain.

At his confirmation hearing, Zinke had offered praise for the founder of the Sierra Club and for wilderness areas.

"I fully recognize and appreciate that there are lands that deserve special recognition and are better managed under the John Muir model of wilderness, where man is more of an observer than an active participant," he told members of the Senate Energy and Natural Resources Committee (E&E News PM, Jan. 17).

Conservation groups are troubled that the secretary now seems to be equating NPS areas and BLM lands, which are governed by different laws and regulations.

"The Secretary's remarks are disturbing in that he appears to confuse National Parks with multiple use lands, ignoring their overarching conservation mission," Peter Nelson, a senior policy adviser for public lands at Defenders of Wildlife, said in an email.

"The national parks are to be managed to conserve their remarkable scenery and natural and historic value for the enjoyment of future generations," Nelson wrote. "The rhetorical suggestion that national parks may require 'aggressive management' is totally counter to the mission of the National Parks and if put into action would certainly lead to legal challenge. More than anything the Secretary's remarks offer a glimpse of his vision for management of National Parks and other public lands: more aggressive development and less conservation."

The Wilderness Society argues that timber harvesting and grazing have no place in most parks.



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"We resolved that debate over a hundred years ago when we established the Park Service and America's national parks as places set aside for nature," said Paul Spitler, the group's director of wilderness campaigns.

"It's the threat of commercial exploitation that led to the creation of the Park Service," he said. "We don't believe that we need to turn the clock back 100 years and increase commercial exploitation of our parks."

The Organic Act that created NPS in 1916 allowed the Interior secretary to permit limited logging and grazing in every park other than Yellowstone (Greenwire, Aug. 25, 2016).

But regulations issued in the century since then have further constrained the secretary's ability to allow such activities, except in cases where it is necessary to provide access to trails and prevent fire or the spread of disease.

As a result, park advocates doubt that it'd be possible for Zinke to significantly increase logging or grazing in the system without new legal authorities.

"My sense is that they are not talking to attorneys over there about whether or not they could actually do something like this," said Kristen Brengel, vice president of government affairs at the National Parks Conservation Association. "People put thoughts out there for sure without legal grounding, so, in a way, it doesn't surprise me. But they'll find out soon enough that you can't get away with some of this stuff under current law and policy."

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8. **METHANE: Blue states ready to battle Pruitt over emissions**

E & E News, April 4 | Hannah Hess

Democratic attorneys general from eight states and the District of Columbia yesterday urged U.S. EPA to reconsider its decision to stop collecting certain emissions information from oil and gas operators, and hinted at a legal battle.



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Massachusetts Attorney General Maura Healey (D) and the top lawyers from California, Illinois, Maryland, Maine, New York, Rhode Island and Vermont sent a [letter](#) to Administrator Scott Pruitt asking him to reissue information requests initiated by the Obama administration.

They also noted that EPA is legally required under the Clean Air Act to control oil- and gas-sector methane emissions from both new and existing sources.

The information request was part of the previous administration's plan to crack down on releases from existing oil and gas facilities as part of its broader Climate Action Plan. President Trump's "energy independence" executive order directed EPA to review the mandate.

In a [notice](#) appearing in today's edition of the Federal Register, EPA formally announces that it will review and, "if appropriate, will initiate reconsideration proceedings to suspend, revise or rescind this rule."

Healey and the other attorneys general wrote that their states would "strongly oppose" any such effort "and will vigorously pursue legal action" to ensure EPA complies with its legal obligation to regulate releases.

An EPA spokeswoman said the agency will "determine the best path to meet our obligations under the Clean Air Act through a thoughtful and deliberative process."

"We will work with all impacted stakeholders and look forward to engaging concerned parties," Liz Bowman wrote in an email yesterday to E&E News.

Eleven Republican state leaders, led by Texas Attorney General Ken Paxton, sent a letter in early March urging Pruitt to toss the information request (Energywire, March 2).

When Pruitt announced the controversial decision a day later, environmental groups decried the action as evidence the former Oklahoma attorney general was catering to outside influence. The Environmental Defense Fund and Natural Resources Defense Council have requested all documents related to the decision.

"The public had no window into the basis for your decision, and no understanding of how it relates to EPA's obligation to protect public health and the environment," the attorneys general wrote, noting they too were "troubled" by the timing.



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"Your arbitrary action demonstrates a disregard on your part for the mechanisms that ensure public participation in important governmental decision-making processes," the letter states.

Democrats on Capitol Hill have also criticized EPA for doing a favor to polluting companies despite the importance of the information to climate and air quality policy.

Reps. Raúl Grijalva (D-Ariz.) and Alan Lowenthal (D-Calif.), top Natural Resources Committee lawmakers, sent Pruitt a letter urging him to reissue the request (E&E News PM, March 8).

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