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Attached is the daily news report for August 5-7.

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DAILY NEWS REPORT - UTAH

UTAH – TOP STORIES – AUGUST 5-7, 2017

1. Leavitt to rural leaders: Be proactive to prevent future monuments

The Deseret News, Aug. 4 | Amy Joi O'Donoghue

CEDAR CITY — Former Utah Gov. Mike Leavitt told a crowd of rural leaders to be proactive to protect public lands yet preserve their utilization to temper future national monument designations that undoubtedly await Utah.

2. Utah commission: Keep 'Negro Bill Canyon' the same

KSL News, Aug. 5 | Brady McCombs - Associated Press

SALT LAKE CITY — A Utah state panel has voted to recommend retaining the name of Utah's Negro Bill Canyon after receiving conflicting opinions about whether it is offensive.

3. Director of Utah's School Children's Trust resigns

KSL News, Aug. 6 | Marjorie Cortez

SALT LAKE CITY — Tim Donaldson, director of Utah's School Children's Trust since 2013, has resigned. The Utah State Board of Education accepted his resignation late Friday afternoon.

4. EPA chief to reconsider paying claims over mine waste spill

St George News, Aug. 6 | The Associated Press

SILVERTON, Colo. (AP) — The Environmental Protection Agency will reconsider whether to pay farmers, business owners and others in three states for economic losses caused by a mine waste spill that government crews accidentally triggered in 2015, the agency's leader said Friday during a visit to the site.

5. Lawmakers to take up new fireworks proposals — including a statewide ban

The Salt Lake Tribune, Aug. 7 | Lee Davidson

When fireworks start booming every July, state Rep. Marie Poulson says upset people bombard her with letters, emails and phone calls.



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E&E/NATIONAL NEWS – TOP STORIES

1. **Ryan Zinke scratches Grand Canyon site off Trump's list of monuments**

The Washington Examiner, Aug. 4 | John Siciliano

Interior Secretary Ryan Zinke scratched a site adjacent to the Grand Canyon off his list of national monuments that President Trump had directed him to review and decide whether or not to scale back.

2. **Trump's coal rollbacks face opposition from ranchers and tribal leaders**

Newsweek, Aug. 6 | Claire Shaffer

A new report by the New York Times outlines the Trump administration's support of the coal industry, which previously withered under President Obama and his Interior Department, and the battle over public lands that has ensued as a result.

3. **Under Trump, coal mining gets new life on U.S. lands**

The New York Times, Aug. 6 | Eric Lipton and Barry Meier

DECKER, Mont. — The Trump administration is wading into one of the oldest and most contentious debates in the West by encouraging more coal mining on lands owned by the federal government. It is part of an aggressive push to both invigorate the struggling American coal industry and more broadly exploit commercial opportunities on public lands.

4. **LAW: Legal future uncertain as Interior scraps valuation rule**

E & E News, Aug. 7 | Ellen M. Gilmer

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



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5. KEYSTONE XL: Pipeline fight returns to where it started: Water

E & E News, Aug. 7 | Ellen M. Gilmer

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

6. Travis Cox called his refuge occupation 'hasty decision by an arrogant and ignorant young man'

The Oregonian/OregonLive, Aug. 7 | Maxine Bernstein

A federal judge Monday sentenced Oregon refuge occupier Travis Cox to two years probation, including two months home detention, for conspiring to impede federal workers during the occupation of the Malheur National Wildlife Refuge last year.

7. SAGE GROUSE: Zinke review team calls for big changes to Obama-era plans

E & E News, Aug. 7 | Scott Streater

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

8. DOE: Companies slam 'shameful' attack on loan program

E & E News, Aug. 7 | Christa Marshall

Sixteen companies are warning Congress that axing the Department of Energy's loan guarantee program could undermine the aim of reaching "energy dominance" and force them to lose "tens of millions of dollars." Sixteen companies are warning Congress that axing the Department of Energy's loan guarantee program could undermine the aim of reaching "energy dominance" and force them to lose "tens of millions of dollars."



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9. **COAL ASH: Judge rules against TVA in win for enviros**

E & E News, Aug. 7 | Ahillen/Lowary, Nashville Tennessean

In a major victory for environmentalists, a federal judge last week ruled that the Tennessee Valley Authority violated the Clean Water Act by storing coal ash in unlined ponds.

10. **FOREST SERVICE: 'Oops' is no defense, court says in nixing horse decision**

E & E News, Aug. 7 | Amanda Reilly

A federal court on Friday tossed out the Forest Service's attempts to correct a decades-old map error that expanded wild horse territory in a California national forest.

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

E & E News, Aug. 7 | Maxine Joselow

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

12. **OIL AND GAS: Interior seeks input on making Alaska 'open for business'**

E & E News, Aug. 7 | Brittany Patterson

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

13. **SUPREME COURT: Mich. utility asks justices to take up air permitting fight**

E & E News, Aug. 7 | Amanda Reilly

A Michigan utility has asked the Supreme Court to take up the legal battle over air permitting at one of the nation's largest coal-fired power plants.



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14. **SAGE GROUSE: Jeers, cheers greet report proposing to alter Obama plans**

E & E News, Aug. 7 | Scott Streater

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



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UTAH – FULL STORY

1. **Leavitt to rural leaders: Be proactive to prevent future monuments**

The Deseret News, Aug. 4 | Amy Joi O'Donoghue

CEDAR CITY — Former Utah Gov. Mike Leavitt told a crowd of rural leaders to be proactive to protect public lands yet preserve their utilization to temper future national monument designations that undoubtedly await Utah.

"This is a very important lesson from history," he said, noting Utah's scenic landscapes will tempt action from future "left-leaning" Democratic U.S. presidents to carve out substantial blocks of land for new monuments over the next 75 years.

Leavitt, speaking Friday at the 30th annual Utah Rural Summit in Cedar City, was Utah's governor in 1996 when he learned from a Washington Post article that the Grand Staircase-Escalante National Monument was in the making by then-President Bill Clinton.

"It is a story of something that shouldn't happen in our country. The truth of the matter is, the federal government made a decision to use the Antiquities Act to take a piece of land in secret about the size of three states in the Northeast," he said.

Leavitt said he flew to Washington, D.C., where he was "stonewalled" but finally got a meeting with Clinton's chief of staff.

He waited in his hotel room late into the evening for a phone call from the White House, and about 1:45 a.m. it came.

Leavitt said he spent 30 minutes on the phone with the president, who told him the decision on designation was nonnegotiable.

Clinton announced it later that day from Grand Canyon National Park in Arizona.

In hindsight, Leavitt said there should have been a more aggressive approach to create a "national eco-region" called the Canyons of the Escalante. Had that proven successful, there may have been a better outcome, he added.



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"If we had initiated action, we might have been much more successful in being able to carve out a management plan for that land that would have been better for the land, better for the economy and better for democracy. Now we've seen a repeat on Bears Ears," he said.

Earlier Friday, a pair of public policy experts said controversial monument designations in Utah and the recent departure of the Outdoor Retailer trade shows from Salt Lake City may make it look like residents are divided on public lands, but they are not.

LaVarr Webb, publisher of UtahPolicy.com, political consultant and former managing editor of the Deseret News, said he doesn't believe the public lands feud over monuments is creating a "divide" between urban and rural Utah.

"I think the issue with Bears Ears and other national monuments can be resolved reasonably," he told participants at the summit.

"I don't understand why any reasonable person wouldn't support some reduction in size" at Bears Ears, he added.

Frank Pignanelli, a Democrat who spent 10 years in the Utah Legislature — six of those years as minority leader — said Utah is the best-managed state in the country, but leaders have not done a good job of getting the message out about their environmental stewardship.

"Most people don't even know where the hell Bears Ears is, but they want it protected," Pignanelli said.

If asked the question if the region should be protected, Pignanelli said people will say yes, but respond with a resounding no if it means the federal government should have total control.

On the flip side, Pignanelli said environmental groups have "done a good job of convincing people" that Bears Ears will be "pillaged" should it not remain a monument.

"We have to do a better job of messaging," he said.

The two were among featured speakers at the closing day of the rural summit at Southern Utah University, where they talked about Washington politics, the 3rd District congressional race, a possible retirement for Sen. Orrin Hatch, R-Utah, and ballot initiatives.



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In a question-and-answer period afterward, the controversy of Utah's public lands came up, and specifically if the views of urban and rural Utah were set on a collision course due to monuments and the state's rift with the Outdoor Industry Association.

The group pulled out of Utah because of widespread political condemnation over the recent Bears Ears Monument designation and continued opposition to the Grand Staircase-Escalante Monument.

Webb predicted the state will shrug off the economic impacts of the trade show's departure, adding his own view was "don't let the door hit you on the way out."

While a "disconnect" may exist between the urbanized Wasatch Front and the rest of Utah, Webb said he doesn't believe the public lands controversy is contributing to widening division between the regions.

Pignanelli said since 90 percent of Utah residents now live in cities, they understandably want outdoor regions protected, but they have a continuing distrust of the federal government built into their DNA.

The summit attempts to broker solutions to unique challenges facing rural regions of Utah, particularly federal land ownership and pressures on natural resource extractions and grazing.

Steven Styler, co-chairman of the Utah Governor's Rural Partnership Board, detailed ongoing funding challenges to address struggling areas of the state in a synopsis of a report to summit participants.

The Industrial Assistance Fund, which sat at \$15.9 million in fiscal year 2015, has dwindled to \$6 million this fiscal year.

The fund provides grants to create high-paying jobs in the state, including the Rural Fast Track program specifically aimed at rural areas.

An electronics engineering and consulting business started in Manti several years ago built a warehouse and boosted its number of employees with assistance from the grant program.



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The summit marked the official statewide rollout of Utah Gov. Gary Herbert's rural jobs initiative, which seeks to create 25,000 jobs in 25 counties off the Wasatch Front over four years.

On Thursday, Herbert announced he wants to convene a statewide rural summit in Salt Lake City to hammer out additional ways to help Utah's rural economies.

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2. **Utah commission: Keep 'Negro Bill Canyon' the same**

KSL News, Aug. 5 | Brady McCombs - Associated Press

SALT LAKE CITY — A Utah state panel has voted to recommend retaining the name of Utah's Negro Bill Canyon after receiving conflicting opinions about whether it is offensive.

The Utah Committee on Geographic Names said Friday that a lack of consensus from minority groups led to its 8-2 vote Thursday about a canyon that is home to a popular hiking spot in the eastern city of Moab, the gateway to stunning massive red rock formations.

The commission's recommendation next goes to the U.S. Board on Geographic Names, which is expected to make a final decision on the canyon's name later this year.

The local and national branches of the NAACP told the commission the name is not offensive and preserves the history of a canyon named for black rancher and prospector William Grandstaff, whose cattle grazed there in the 1870s.

Jeanetta Williams, president of NAACP's tri-state conference area of Idaho-Utah-Nevada, said the word "negro" may make some people feel uncomfortable but that there's nothing wrong with it. Other groups still use "negro" in their names, she said, citing the National Council of Negro Women.

"To sanitize it destroys the history and the background of what it is," Williams said. "It's a word we often use in history, it's in titles. ... It's no more uncomfortable saying the word negro than it is saying African-American or black."

But the decision drew strong rebuke from a member of the Utah Martin Luther King Jr. Commission, which sent a letter proposing a name change to "relegate such blatant racism to the annals of history."



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"It is inexplicable to me that today in the 21st century that reasonably intelligent people who I know have kindness in their hearts found it acceptable to allow this name to continue to exist," said Jasen Lee, who said he was speaking for himself and not the entire commission nor for the Deseret News, where Lee works as a reporter.

The canyon southeast of Salt Lake City and the unique red-rock landscapes in nearby national parks lure tourist from around the world.

The Utah Martin Luther King Jr. Commission said in its letter that the word negro is a "racially offensive descriptor" and that it was time to finally make the change and "relegate such blatant racism to the annals of history."

"To remove the racially offensive descriptor from the official title of the popular geographic feature would express to the world that Utah has progressed to a place where such flagrant insensitivity is no longer tolerated or acceptable in our community," they wrote.

After the decision was issued, the commission said in a statement that it's disappointed in the decision.

The canyon's name has long been debated and a proposed name change in 1999 failed at the state and federal levels after receiving no support from Utah counties and state and federal land management agencies, the state geographic names committee said in a statement.

Spurred by complaints from tourists, the Grand County Council voted in January to change the canyon's name after refusing to do so in 2013 and 2015, said Councilwoman Mary McGann.

Last September, the federal Bureau of Land Management administratively changed the signs at the "Negro Bill" trailhead to read instead "Grandstaff Trailhead."

The decisions by the county council and the land management prompted the geographic names committee to take up the name change issue. It was difficult for the panel to reach a decision because of the conflicting opinions, said member Dina Blaes.

"It's really not the committee's job to pick winners and losers, it's not our job to decide, 'Oh, you're more credible or you're less credible,'" said Blaes, the CEO of the Exoro Group, a public affairs firm and also chairwoman of the State History Board. "We did not come to this decision easily."

Lee called the lack of consensus justification a lame excuse. He said he remembers when he was a boy in the 1970s and people stopped calling black people negroes. He thinks that should stay in the past.



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"You can't name something using that descriptor today," said Lee, 51. "It's hurtful to people like myself who are of a certain age that they know what this means. It speaks poorly of our state, of which I'm a proud resident."

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3. Director of Utah's School Children's Trust resigns

KSL News, Aug. 6 | Marjorie Cortez

SALT LAKE CITY — Tim Donaldson, director of Utah's School Children's Trust since 2013, has resigned. The Utah State Board of Education accepted his resignation late Friday afternoon.

In a statement issued late Friday, the State School Board thanked Donaldson for his expertise "and recognizes the service he has contributed to the program."

The board, as part of its regular meeting, conducted a lengthy executive session early Friday afternoon. The agenda had three items to be considered in the closed-door session, including one that said: "Notice of action pursuant to U.C.A. 53A-16-101.6 regarding a vote on the possible removal of the Director of the School Children's Trust Section."

After emerging from executive session, the board acted on teacher licensure matters but State School Board Chairman Mark Huntsman did not address the trust land director except to say much later in the meeting that the board had accepted Donaldson's resignation. Huntsman then asked staff to pull the related executive session agenda item regarding the director from the agenda.

Donaldson did not return telephone messages seeking comment.

There were other indications Friday that Donaldson's status was in flux.

Early the day, Peter Madsen, director and chief investment officer of the Utah School and Institutional Trust Funds Office, addressed the State School Board regarding his experiences with Donaldson.

Madsen credited Donaldson for his support and guidance as the Utah School and Institutional Trust Funds Office, which is an independent team of investors, got off the ground. Donaldson's



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work on statutes and protocols greatly enhanced the work of creating the office and gave it the latitude it needs as it invests school trust land funds on behalf of schoolchildren, Madsen said.

"I understand Mr. Donaldson has a reputation for upsetting the occasional politician, board member, other individuals, but I've never had such an experience with Mr. Donaldson. I've seen his quick mind and wit in action," Madsen said, speaking during the public comment segment of the meeting.

The School Children's Trust section is "a watchdog of what we do," Madsen explained.

"I've never been upset or felt his demeanor to be of concern. I can say with confidence my staff would echo this sentiment," he said.

The School Children's Trust Section administers the School LAND Trust Program statewide. The section is within the offices of the Utah State Board of Education. The section oversees activities of the land management and fund investment trustees. It also is responsible for training and supporting school districts and schools as they train of school community councils.

Prior to the state board moving into executive sessions, David Ure, as director of the Utah School and Institutional Trust Lands Administration, visited the executive offices of the Utah State Board of Education. The trust section works independently of the trust lands administration.

Earlier this year, a bill that sponsor Rep. Mike Noel, R-Kanab, said was intended to give the director of the School Children's Trust Section greater autonomy passed in the House but was not voted on by the Utah Senate.

HB291 contemplated that the director would serve a six-year term, with the option for additional terms.

The legislation was opposed by the State School Board over concerns it was written to protect individuals rather than the position, a spokeswoman said at the time.

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4. EPA chief to reconsider paying claims over mine waste spill

St George News, Aug. 6 | The Associated Press

SILVERTON, Colo. (AP) — The Environmental Protection Agency will reconsider whether to pay farmers, business owners and others in three states for economic losses caused by a mine waste spill that government crews accidentally triggered in 2015, the agency's leader said Friday during a visit to the site.

EPA Administrator Scott Pruitt, who toured Gold King Mine with Colorado lawmakers on the eve of the disaster's second anniversary, said he told people to resubmit claims rejected under the Obama administration. It's not clear if the agency could pay on its own or how much of the potential payouts would need to be approved by Congress.

The spill sent 3 million gallons (11.3 million liters) of tainted wastewater from the old gold mine into rivers in Colorado, New Mexico and Utah, causing an estimated \$420 million in economic damages. The EPA has designated the area a Superfund site to pay for a broad cleanup.

Stretches of waterways turned an eerie orange-yellow, and the rivers were temporarily off-limits for agriculture and water utilities, as well as fishing and boating — important contributors to the area's recreational economy. The EPA has said water quality has returned to the conditions before the spill.

Native American reservations along the rivers also were affected.

Pruitt, who had promised to visit the mine during his confirmation hearing earlier this year, said he has sent letters to people whose claims were rejected by former President Barack Obama's EPA.

In January, the agency said federal law prevented it from paying claims because of sovereign immunity, which prohibits most lawsuits against the government.

The "EPA should be held to the same standard as those we regulate," he said in a statement. "The previous administration failed those who counted on them to protect the environment."

It's uncertain whether the White House and Congress, both controlled by Republicans, are willing to pay for any of the economic losses, although the GOP has been most vocal in demanding the EPA make good.



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It's not clear how much money would be at stake in a new round of claims.

Claims for \$1.2 billion in lost income, property damage and personal injuries were initially filed with the EPA, but attorneys for some of the larger claimants later reduced the amounts they were seeking. A review by The Associated Press estimated the damages sought at \$420 million.

The EPA has spent more than \$31.3 million on the spill

The EPA has spent more than \$31.3 million on the spill, including remediation work, water testing and payments to state, local and tribal agencies.

The agency said last year it would pay \$4.5 million to state, local and tribal governments to cover the cost of their emergency response to the spill, but it rejected \$20.4 million in other requests for past and future expenses, again citing federal law.

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5. **Lawmakers to take up new fireworks proposals — including a statewide ban**

The Salt Lake Tribune, Aug. 7 | Lee Davidson

When fireworks start booming every July, state Rep. Marie Poulson says upset people bombard her with letters, emails and phone calls.

"I hear from veterans with PTSD," the Cottonwood Heights Democrat said. "People say their pets go crazy with the noise. Some are concerned about air quality."

Poulson and some of her constituents hate the too-often 2 a.m. blasts that ruin sleep.

"But the final straw came this year when one of my neighbors lost about half of their house, and 25 acres were burned" from a fire caused by aerial fireworks, Poulson said.

So she opened a bill file to draft legislation to revise fireworks laws, as have several colleagues. Proposals under consideration range from a total ban to cutting back on how many days — and hours — fireworks are allowed, types that are permitted and possibly giving cities clear power to ban them.



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Even Rep. Jim Dunnigan — the Taylorsville Republican who sponsored the bill that legalized aerial fireworks in 2011 — is looking at reworking laws after concerns during this year's sometimes-destructive fireworks season amid dry conditions.

But he opposes a total fireworks ban that Poulson and others say is now on the table.

"Many people like to celebrate the independence of our nation and the founding of our state" around July 4 and July 24, Dunnigan said. "Even if we ban fireworks entirely, people will still drive to our neighboring state [of Wyoming] and acquire them and bring them back."

He said while "I've received a number of concerns about the number of days" fireworks are allowed — two full weeks in July — "I've also heard from people who like their fireworks and they are saying, 'Don't change anything.'"

Rep. Joel Briscoe, D-Salt Lake City, who also opened a bill file on fireworks but says he will follow Poulson's lead on the issue, said, "My impression is the public doesn't want to do away with fireworks, but they want to have a serious dialogue about when and how to allow them."

Time restrictions

All lawmakers who are currently drafting fireworks legislation say they are considering cutting back on how many days Utahns can legally shoot them off.

When aerial fireworks were legalized in 2011, they could be used during the entire month of July. After complaints, Dunnigan scaled that back to three days before and three days after the Independence Day and Pioneer Day holidays, which is still two full weeks.

"Why do we have to allow fireworks on so many days to celebrate two holidays?" asks Sen. Jani Iwamoto, D-Holladay, another lawmaker who is drafting fireworks legislation.

She said she is told that one of every nine or 10 veterans in the state suffers from post-traumatic stress disorder and exploding fireworks make it worse. "Shortening the time that fireworks are allowed could help them."



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Dunnigan said he is considering cutting back on the number of days allowed and is talking to a variety of stakeholders about that. But, he said, “We’re still determining what policy change should be made.”

Poulson also is concerned about the hours that fireworks are allowed. They are permitted from 11 a.m to 11 p.m. on most days in the period and extended to midnight on July 4 and July 24. They are allowed from 11 a.m. on New Year’s Eve to 1 a.m. on New Year’s Day.

Outside of holidays, “It seems a little late when people have to work the next day,” Poulson said, adding many people also ignore the deadlines anyway and set them off in early-morning hours.

Local power

Another possible revision that all lawmakers working on the issue say is a likely change is giving cities more power to restrict or even ban fireworks.

The city council in Cottonwood Heights, where Poulson lives, voted to ban aerial fireworks after the fire that burned the home in her neighborhood — but the city attorney warned the move could draw lawsuits because of state law.

“They could use the fire marshal to ban fireworks in certain areas based on conditions,” Poulson said, but under current state law a city council cannot clearly “make the decision to abandon fireworks or not.”

Briscoe agrees. “The way the law is written, it’s a tightrope. The fire marshal has to go in and draw or describe by street or creek bed where people cannot set off fireworks” because of dry conditions.

Poulson adds, “I am looking at giving those local communities the power to make their own decisions. In our Legislature, we talk about local control all the time, and then we make decisions that tie the hands of those communities. Every city is not the same, and every year is not the same.”



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She pointed to polls to show support. A Salt Lake Tribune/Hinckley Institute of Politics poll last month showed 91 percent of Utah voters favor allowing cities to ban fireworks in times of extreme fire danger.

Dunnigan also says he is considering changes to give cities “more authority on where they can ban fireworks” — and has had discussions with the state fire marshal, state forester, the governor’s office and local fire authorities.

Fireworks types

“I’m sure we’ll have a discussion on the types of fireworks” allowed, Dunnigan said.

Poulson said she is especially concerned about use of aerial fireworks in dry conditions, when those who launch them are not sure where they will land. That happened in the recent instance when 25 acres and some homes were burned in her neighborhood.

“We’ve been extremely lucky” more homes haven’t been destroyed, said Iwamoto. “But this year there was a lot of damage,” and it’s time to talk again about whether it is wise to allow aeriels and other fireworks.

In addition to fire danger, there are pollution concerns.

During a month that already is a bad one for air quality and people with poor health are warned to stay inside, the state allows fireworks on top of it, said Briscoe. “To me, it’s crazy.”

Statewide ban?

Poulson says a statewide ban should be discussed, although she figures it has little chance of passage.

“It’s not off the table, but mostly what I am looking at is allowing local communities to make their own decisions,” she said.

“I’m not really optimistic that a statewide ban is something that could pass the Legislature,” she said, in part because many politicians want to protect the sales tax revenue that fireworks generate.



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Iwamoto said concern over fireworks “seems to grow every year” — and could lead to a total ban over time if problems are not solved.

Dunnigan said many people just want to preserve the fun and entertainment of appropriate fireworks, and doubts a total ban would pass or is wise — but says reasonable limitations are needed.

The Tribune-Hinckley poll last month showed that a small majority of Utahns — by a 53-46 margin — still favor the current fireworks law.

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E&E/NATIONAL NEWS – FULL STORY

1. **Ryan Zinke scratches Grand Canyon site off Trump's list of monuments**

The Washington Examiner, Aug. 4 | John Siciliano

Interior Secretary Ryan Zinke scratched a site adjacent to the Grand Canyon off his list of national monuments that President Trump had directed him to review and decide whether or not to scale back.

"Today I'm announcing that Grand Canyon-Parashant National Monument's review process has concluded and I am recommending no changes be made to the monument," Zinke said.

The monument borders the Grand Canyon National Park in Northwest Arizona. The National Park Service touts the Parashant for its solitude and pristine wilderness, where visitors are invited to "journey into the wild."

"The land has some of the most pristine and undeformed geological formations in North America, which show the scientific history of our Earth while containing thousands of years of human relics and fossils," Zinke said, who is a trained geologist as well as a former Navy SEAL commander.

The Parashant National Monument was designated in 2000 and encompasses more than 1 million acres. The Interior Department's Bureau of Land Management and National Park Service share management of the monument.



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Friday's announcement followed another that Zinke made this week on the Missouri Breaks monument as he appears to be ramping up the pace of the review process. The president initiated the review in an April executive order.

Zinke has been charged to review each presidential monument decision made since 1996, including the controversial expansion of the Bears Ears Monument in Utah under former President Barack Obama late last year.

An interim report on Bears Ears was submitted in June, proposing to massively scale back the monument. But five monuments, including Missouri Breaks and Parashant, have been removed from review.

Zinke is charged with reviewing 27 monuments.

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2. **Trump's coal rollbacks face opposition from ranchers and tribal leaders**

Newsweek, Aug. 6 | Claire Shaffer

A new report by the New York Times outlines the Trump administration's support of the coal industry, which previously withered under President Obama and his Interior Department, and the battle over public lands that has ensued as a result.

There are currently 643 million acres of federally-owned land in the United States. In an effort to battle against climate change, the Interior Department under Obama temporarily banned new coal leases on public lands and forced mining companies to pay higher royalties, sparking protests from members of the industry. Now, the Trump administration is drawing up plans to reduce wilderness and historic areas protected by the government, in the hopes of revitalizing coal production across the U.S.

According to the Times report, 85 percent of coal extracted from federal lands comes from the Powder River Basin in Wyoming and Montana. After a production decline in the Basin last year, both coal production and exports to coal-burning power plants in Asia are on the rise.

The administration's rollbacks have not been without opposition. In March, ranchers in the Basin, concerned that mining would poison local reservoirs, joined the Cheyenne tribe in a



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lawsuit challenging a rollback on a moratorium for federal coal leasing. The Cheyenne have historically opposed coal production and industry expansion, citing its environmental damage. In 2013, members of the Crow Indian reservation signed an agreement allowing Cloud Peak to extract coal on tribal lands, promising \$10 million in payments for a tribe stricken by poverty and unemployment. But the Cheyenne, worried about coal mining's irreparable damage to their lands, have since fought back against the industry.

As one tribe member put it, "We don't have money. But we have land, water and air. Snuff that out and we are gone."

"You know our nation can't run on pixie dust and hope, and the last eight years showed that," Interior Secretary Ryan Zinke said before Trump signed the executive order permitting the rollback. However, earnings reports show that companies focused on coal deposits below federal lands, such as Cloud Peak Energy Inc. (cited in the Times article), have enough coal reserves on existing leases to last more than 17 years.

It is estimated that 10 to 24.5 percent of the United States' greenhouse gas emissions are a result of coal burning. Additionally, while coal companies are required to pay a minimum 12.5 percent tax on sales of coal mined on public lands, the Times reports that companies have been known to pay far less—as little as 2.5 percent in some cases.

Zinke previously served as a U.S. representative for Montana's at-large congressional district. His campaign finance disclosures reveal that he received \$14,000 in donations from the parent company of BNSF railway, the chief transporter of coal in the Powder River Basin. He also received a total of \$26,000 from three of the nation's largest coal companies.

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3. **Under Trump, coal mining gets new life on U.S. lands**

The New York Times, Aug. 6 | Eric Lipton and Barry Meier

DECKER, Mont. — The Trump administration is wading into one of the oldest and most contentious debates in the West by encouraging more coal mining on lands owned by the federal government. It is part of an aggressive push to both invigorate the struggling American coal industry and more broadly exploit commercial opportunities on public lands.



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The intervention has roiled conservationists and many Democrats, exposing deep divisions about how best to manage the 643 million acres of federally owned land — most of which is in the West — an area more than six times the size of California. Not since the so-called Sagebrush Rebellion during the Reagan administration have companies and individuals with economic interests in the lands, mining companies among them, held such a strong upper hand.

Clouds of dust blew across the horizon one recent summer evening as a crane taller than the Statue of Liberty ripped apart walls of a canyon dug deep into the public lands here in the Powder River Basin, the nation's most productive coal mining region. The mine pushes right up against a reservoir, exposing the kind of conflicts and concerns the new approach has sparked.

"If we don't have good water, we can't do anything," said Art Hayes, a cattle rancher who worries that more mining would foul a supply that generations of ranchers have relied upon.

During the Obama administration, the Interior Department seized on the issue of climate change and temporarily banned new coal leases on public lands as it examined the consequences for the environment. The Obama administration also drew protests from major mining companies by ordering them to pay higher royalties to the government.

President Trump, along with roundly questioning climate change, has moved quickly to wipe out those measures with the support of coal companies and other commercial interests. Separately, Mr. Trump's Interior Department is drawing up plans to reduce wilderness and historic areas that are now protected as national monuments, creating even more opportunities for profit.

Richard Reavey, the head of government relations for Cloud Peak Energy, which operates a strip mine here that sends coal to the Midwest and increasingly to coal-burning power plants in Asia said Mr. Trump's change of course was meant to correct wrongs of the past.

The Obama administration, he said, had become intent on killing the coal industry, and had used federal lands as a cudgel to restrict exports. The only avenues of growth currently, given the shutdown of so many coal-burning power plants in the United States, are markets overseas.

"Their goal, in collusion with the environmentalists, was to drive us out of the export business," Mr. Reavey said.



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Even with the moves so far, the prospect of coal companies operating in a big way on federal land — and for any major job growth — is dim, in part because environmentalists have blocked construction of a coal export terminal, and there is limited capacity at the port the companies use in Vancouver.

Competition from other global suppliers offering coal to Asian power plants is also intense.

But at least for now, coal production and exports are rising in the Powder River Basin after a major decline last year.

Opponents of the Trump administration's direction have already gone to court. New Mexico and California sued in April to undo the rollback in royalties that coal mines pay, while ranchers like Mr. Hayes and the Cheyenne tribe joined a lawsuit in March challenging the repeal of a year-old moratorium on federal coal leasing.

"If we hand over control of these lands to a narrow range of special interests, we lose an iconic part of the country — and the West's identity," said Chris Saeger, executive director of the Montana-based environmental group Western Values Project, referring to coal mining and oil and gas drilling that the Interior Department is moving to rapidly expand.

Mr. Trump's point man is Ryan Zinke, a native Montanan who rode a horse to work on his first day as head of the Interior Department. A former member of the Navy SEALs and Republican congressman, Mr. Zinke oversees the national park system, as well as the Bureau of Land Management, which controls 250 million acres nationwide, parts of which are used to produce oil, gas, coal, lumber and hay.

In late June, Mr. Zinke visited Whitefish, Mont., to attend a meeting of Western governors, where he vowed to find a balance between extracting commodities from federal lands and protecting them.

"Our greatest treasures are public lands," Mr. Zinke said in a speech. "It is not a partisan issue. It is an American issue."



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Afterward, protesters from the Sierra Club and other groups held a rally in the town square against the actions taken by Mr. Zinke during his first months on the job, chanting "Shame!" and "Liar!" and carrying signs opposing his policies.

But Mr. Zinke was not in public view. Just before the rally started, he was inside a nearby building, meeting with Bill Cadman, a vice president of Whiting Petroleum, a company that drills on federal lands.

Until recently a state legislator in Colorado, Mr. Cadman has lobbied the Interior Department to repeal a rule that limits methane emissions from oil and gas sites on federal land. As he left the brief gathering, Mr. Cadman said he was only catching up with Mr. Zinke, whom he has known for decades, on family-related matters. He also acknowledged that Mr. Zinke wielded a lot of power over the energy industry.

"We are all affected by this constant regulatory quagmire," Mr. Cadman said.

Seeing a Liberal Attack

Cloud Peak Energy had been preparing for several years to seize upon the arrival of an industry-friendly administration in Washington. But it was also prepared to fight without one.

At a gathering of a coal industry trade group in 2015, Mr. Reavey, the company's chief lobbyist, left no doubts about the company's determination to defend mining in the Powder River Basin, which includes operations here in Decker.

Mr. Reavey likened the industry's existential crisis to that of tobacco companies in the 1990s. The coal industry, he told executives, had been targeted by a liberal conspiracy of environmental groups, news organizations and regulators. Coal would suffer the same fate as cigarettes, he warned, unless the industry stood its ground.

He showed a PowerPoint slide that outlined the strategy of the industry's opponents. They sought to diminish coal's "social acceptability," the slide showed, while also cutting "profits through massive increase in regulation" and reduced "demand/market access." He equated the situation to a scene in the film "Independence Day" in which the American president asks the alien invaders, "What is it you want us to do?" An alien replies, "Die."



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During President Barack Obama's second term, the coal industry's chief antagonist was Sally Jewell, a former oil industry engineer appointed Interior secretary in 2013. Ms. Jewell, an avid hiker, had also served as chief executive of the outdoor gear company REI.

She saw mining companies as a particular problem because they too often left behind polluted mine pits and paid too little for coal leases on federal land.

Starting two years ago, Ms. Jewell took a series of steps to change the relationship between coal companies and the federal government. She imposed a moratorium on new federal coal leases while beginning a three-year study of the industry's environmental consequences. More than 40 percent of all coal mined in the United States comes from federal land, and when burned it generates roughly 10 percent of the country's total greenhouse gas emissions.

In addition, she called for greater transparency in the awarding of coal leases, and she backed an increase in the royalty payments made to operate coal mines on public lands.

"The corruption in the coal sector is just so rampant," she said in an interview.

A central problem, she said, was the lack of competitive bidding for mining leases: Only 11 of the 107 sales of federal coal leases between 1990 and 2012 received more than one bid, according to a report by the Government Accountability Office. A second study, by a nonprofit think tank, estimated that the practice had shortchanged taxpayers tens of billions of dollars.

Another hot-button issue was how much to charge in royalties, which generate about \$1 billion a year for the federal government.

Under federal rules adopted in 1920, coal companies are required to pay "not less than" 12.5 percent on sales of surface coal mined on federal lands. But for years, studies indicate, the companies paid far less — as little as 2.5 percent of the ultimate sale price — because they often negotiated large royalty discounts with sympathetic federal officials. Companies also often sell coal first to a corporate affiliate at a sharply reduced price, before reselling it to the intended customer, costing the government a chunk of its royalties, according to the Government Accountability Office study. The technique was particularly popular among mines with foreign buyers.



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To eliminate the loophole, the Interior Department adopted a rule last year requiring that the payment be calculated on the first arm's length transaction, meaning sales to corporate affiliates would not count. Such a change would be a blow to the bottom lines of companies mining in the Powder River Basin, which accounts for about 85 percent of all coal extracted from federal lands, with a growing share headed to Asia.

The coal industry was bent on killing the rule, sending executives to plead its case to the White House and filing a federal lawsuit to block it. "They are liars, and they know it," Mr. Reavey, the Cloud Peak lobbyist, said of those who suggested the industry was not paying its fair share in royalties.

Mr. Zinke, then a freshman congressman from Montana, stepped up as an important industry ally, trying unsuccessfully to derail the rule on at least four occasions. He raised objections during a budget hearing with Ms. Jewell at the witness table, signed two letters in opposition and sought to introduce language in a House appropriations bill to prohibit the agency from enforcing the rule.

The alliance between Mr. Zinke and the coal industry is well documented in his campaign finance disclosures.

Elected to the House in 2014, Mr. Zinke received \$14,000 in campaign donations from the company that owns BNSF Railway, the chief transporter of coal in the Powder River Basin, as well as a total of \$26,000 from Cloud Peak, Arch Coal and Alpha Natural Resources, three of the nation's largest coal companies. Several of the donations arrived just as Mr. Zinke pushed in Congress to block the new royalty rule, campaign finance records show.

Finishing the Job

What Representative Zinke started, Secretary Zinke and his team were poised to finish.

In February, even before the Senate confirmed Mr. Zinke to his new post, Mr. Reavey of Cloud Peak was meeting at the Interior Department headquarters in Washington with President Trump's political appointees. Among them was Kathy Benedetto, who was temporarily overseeing the division in charge of coal leases.



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“We made clear that we thought this rule was bad and they had an opportunity to stop this process from going forward,” he said of the change in royalty payments.

Cloud Peak and other mining industry giants also put their objections in writing, asking the department to delay the rule until the industry’s lawsuit was resolved. Within days, they got their wish. The agency, reversing its position during the Obama presidency, froze the rule and told Cloud Peak and other industry lawyers that they had “raised legitimate questions.”

By late March, after Mr. Zinke was sworn in, the rollback continued. Mr. Zinke repealed Ms. Jewell’s moratorium on new coal leases, and canceled further work on the study she had ordered. The first part — 1,378 pages examining 306 active federal coal leases — had been issued in January.

“Costly and unnecessary,” Mr. Zinke said in announcing that the study was, in essence, being thrown in the trash.

The decisions caused an uproar among Democrats in Washington, but the tensions they unleashed were also on display this summer at an extreme sporting event on the Crow Indian reservation, not far from the coal mines here in Decker.

Hundreds of people, including members of both the Crow and neighboring Cheyenne tribes, had gathered for an annual competition known as the Ultimate Warrior. The event consists of a mile run to a river, a mile of canoeing, seven more miles of running and then a nine-mile bareback horse race.

Cloud Peak is a sponsor of the event. In 2013, the Crow had signed an agreement giving the company the right to extract up to 1.4 billion tons of coal on the tribe’s lands. The industry-friendly approach of the Trump administration had leaders feeling optimistic that Cloud Peak would move forward, as the project still needs many permits from the federal government.

The tribe estimates the Cloud Peak operations could generate \$10 million in payments for a community where the unemployment rate in June was 19.4 percent, five times the state average. “Coal, for us, is the ticket to prosperity,” said Shawn Backbone, the tribe’s vice secretary, who attended the warrior competition. “We are rich in coal reserves. But we are cash poor.”



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But the Cheyenne are not happy. They have historically opposed coal mining and worry Cloud Peak's expansion would irrevocably damage the environment. They have joined the lawsuit by the nearby rancher, Mr. Hayes, challenging the decision to lift the moratorium on new coal leases.

"We are wealthy in life here," said Donna Fisher, a Cheyenne who lives along the Tongue River and who attended the warrior competition with her grandson. "We don't have money. But we have land, water and air. Snuff that out and we are gone."

Friends in High Places

As he walked on stage at the governor's gathering in Whitefish, Mr. Zinke exuded confidence. The United States, he argued, can and should expand energy production from its federal lands, with money earned from leases going toward repairs to roads and bridges, and at national parks.

"As Interior secretary, I am looking at both sides of our balance sheet," Mr. Zinke said. "There is a consequence of not using some of our public land for the creation of wealth and jobs."

It was a decidedly familiar venue, and Mr. Zinke was relaxed. Whitefish is where he played guard on the high school football team and where as a Boy Scout he had built a rope-and-pole footbridge over the river.

"I think I am probably the only person who has played trombone on this stage," he joked in his opening remarks.

The top sponsors of the event were familiar, too. They included Anadarko Petroleum and BP, oil and gas companies, as well as Barrick Gold and Newmont, mining companies. BNSF, the railroad, was also represented, as were major coal-burning utilities like Southern Company.

Most of them had a keen interest in the Interior Department and Mr. Zinke's new stewardship of it. Barrick's Cortez mine, for example, has a pending application to expand open pit mining in Nevada, while Newmont is seeking approval for the environmental cleanup of a Nevada mine.

Conrad Anker, a mountaineer and author, took the stage after Mr. Zinke. He said in an interview that organizers had instructed him not to mention climate change, or its effect on the glaciers at



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Glacier National Park. According to a federal study, the glaciers have lost as much as 85 percent of their mass over the past 50 years.

There was no such restraint on the nearby town square, where protesters flashed signs with slogans like “Zinke Sells Soul to Big Oil” and “What Would Teddy Do?” — a reference to Mr. Zinke’s statements that he admired President Theodore Roosevelt, a conservationist who helped set aside millions of acres as public land.

Next to the square, at a pizza restaurant, a once-powerful Washington couple reflected on the frustration of those opposed to the administration’s new direction.

Jennifer Palmieri, a senior adviser in the Obama White House and later a top campaign aide to Hillary Clinton, was eating with her husband, Jim Lyons, an Interior official during Mr. Obama’s second term.

Both had expected senior administration roles had Mrs. Clinton won. Now, Mr. Lyons was in Whitefish trying to salvage the rules on oil, gas and coal that he had helped develop just a few years ago. He was holding sessions with governors hoping to enlist them to pressure Mr. Zinke and others.

“Instead of driving change, we are searching for ways to continue to be an influence,” Mr. Lyons said. “Frustration is an understatement.”

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4. **LAW: Legal future uncertain as Interior scraps valuation rule**

E & E News, Aug. 7 | Ellen M. Gilmer

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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5. **KEYSTONE XL: Pipeline fight returns to where it started: Water**

E & E News, Aug. 7 | Ellen M. Gilmer

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

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

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



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

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

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

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

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

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

Understanding risks

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



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

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

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

That, he said firmly, is not physically possible.

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

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

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

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

Joeckel said weighing a pipeline's risk to groundwater requires considering numerous variables, especially the depth below the surface before water is reached, the depth of water-soaked



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material that makes up the water table, and the particular types of rocky materials that lie above, in and below it.

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

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

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

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

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

The weak link

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



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

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

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

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

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

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

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

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



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minimized to a couple hundred feet from the pipeline, so even a bad spill would be something they could deal with, in my estimation," he said.

Spill research

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

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

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

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

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

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

Toso said the Bemidji site shows that oil moves surprisingly little in the subsurface. The oil itself migrated only a total of 250 feet underground from where it was released decades ago, and the plume of contaminated water moved 500 feet from the release site, he said. While the oil and associated products initially spread through the subsurface, natural bioremediation quickly



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kicked in and eventually stopped the plume from advancing. At this point, the oil is being degraded by oil-eating microbes at basically the same rate it is spreading, holding the plume steady, he said.

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

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

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

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

'Proper analysis' needed

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



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

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

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

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

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

Bold Nebraska

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

In its public materials about the project, TransCanada boasts of "modern technology that will continuously monitor product flow," with corrosion-resistant materials and regular aerial and



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visual inspections. But the company is close-lipped about the technical capabilities behind those assurances.

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

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

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

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

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

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

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



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sharply constrained in the issues it must weigh in determining whether a project is in the state's best interest.

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

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

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

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6. Travis Cox called his refuge occupation 'hasty decision by an arrogant and ignorant young man'

The Oregonian/OregonLive, Aug. 7 | Maxine Bernstein

A federal judge Monday sentenced Oregon refuge occupier Travis Cox to two years probation, including two months home detention, for conspiring to impede federal workers during the occupation of the Malheur National Wildlife Refuge last year.

Prosecutors had urged Cox be given four months home detention, representing two months off from a sentencing guideline of six months for the nearly two months Cox served in custody pending trial.

Cox, now 22, was the youngest of the occupiers to face indictment, and among the least culpable of the group, according to prosecutors.

Cox's lawyer Paul Hood sought no home detention and one year of supervised release, arguing that the 51 days that Cox already spent in jail after his arrest was sufficient punishment.



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"In fact, fifty-one days in custody should generally be regarded as a greater punishment and deterrence than six months of home detention," Hunt wrote in a sentencing memo. "Mr. Cox made a mistake. It was a significant mistake, and Mr. Cox knows that. He has accepted responsibility for his conduct, and he has worked and continues to work to move forward on a better path."

Cox, who lives with his mother in Redmond, signed in at the refuge on Jan. 9, 2016 and stayed until the night of Jan. 26, 2016. He regularly performed armed guard duty at the refuge.

The government has a photo of Cox performing armed guard duty at the refuge with a rifle slung over his shoulder, and a video showing him with a handgun on his hip in a refuge bunk room, Gabriel said.

A search of the refuge by an FBI evidence response team in mid-February turned up a Remington .308-caliber rifle that Cox had bought in September 2015, the prosecutor said.

On the night of Jan. 26, 2016, Cox posted on his Facebook page, "let it be known, that free men stood against tyrants. If I die here, I go with love in my heart, and brothers by my side."

He was arrested several months later, surrendering to federal authorities on an arrest warrant on April 12, 2016 in Cedar City, Utah.

Cox was 20 at the time of the refuge occupation. The federal conspiracy case marks his first felony conviction.

Cox's mother Diane Cox and his fiancée Emily Brenholdt were called by his lawyer to vouch for Cox's character. His mother took the witness stand and described Cox's participation in the armed takeover of the refuge as a "small blip in Travis' life." He's worked for a pizzeria, and most recently a construction company and is engaged to be married next August.

He had been engaged for about two weeks when he went to the refuge in early January 2016.

"Imagine the conversations," quipped U.S. District Judge Anna J. Brown.

But it was Cox's words that seemed to have the greatest impact on the judge.



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"If I could go back, I wouldn't do it again," Cox said, standing beside his lawyer. "It was just a hasty decision by an arrogant and ignorant young man who didn't respect the law...I would never do something like this again. It has been a very difficult learning experience for me."

Brown said she believed Cox had matured and now realized there are other ways to resolve disputes, other than amassing large amounts of firepower.

"I think it's important to note, if my memory is correct, you're the first person who's acknowledged this was a mistake," the judge said.

Cox's participation at the refuge takeover came shortly after a significant disruption in his life, the sudden divorce of his parents after 29 years of marriage in June 2015, his lawyer noted in a written sentencing memo.

When he entered his guilty plea, Cox told the court, "I went there to support what they were doing," he said. "I figured that was my role to help to make sure nothing bad happened."

On Monday, Cox described his reasoning that prompted him to go to the refuge as "convoluted."

As conditions of his probation, he must not occupy, reside in or camp on any federal land, and he's prohibited from entering any land owned by the U.S. Bureau of Land Management, the U.S. Fish and Wildlife Service, the U.S. Park Service or U.S. Forest Service without prior written approval of his probation officer.

Eleven people pleaded guilty to the felony of conspiring to impede federal employees through intimidation, threat or force from doing their work. Sentences for those who enter guilty pleas to the felony are expected to range from home detention and probation to three years and five months in prison, Gabriel said.

Cox and four others, Geoffrey Stanek, Wesley Kjar, Eric Lee Flores and Jason Blomgren, are considered "low-level defendants" facing similar probationary sentences. Stanek received six months home detention; Flores got five months home detention. Kjar and Blomgren have sentencing dates later this year.

The government will recommend Ryan Payne receive three years and five months in custody, the longest sentence of those who entered guilty pleas to conspiracy, Gabriel said.



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Occupation leaders Ammon Bundy, his older brother Ryan Bundy and five co-defendants who went to trial last fall were acquitted of all charges. Two other defendants, Jason Patrick and Darryl Thorn, who went to trial this year, were found guilty of conspiracy and other misdemeanor charges. Jake Ryan and Duane Ehmer were found guilty of depredation of government property and other misdemeanor charges.

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7. **SAGE GROUSE: Zinke review team calls for big changes to Obama-era plans**

E & E News, Aug. 7 | Scott Streater

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

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

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

"I'm thankful to all of the [Interior] team members as well as the bureau staff and the state partners who put in the hard work and time to develop this report," Zinke said in a statement.

"I've directed Deputy Secretary David Bernhardt to begin implementation of the recommendations and to direct the Bureau of Land Management, in coordination with the U.S. Fish and Wildlife Service, the U.S. Geological Survey, and other offices in the Department, to immediately follow through on the short- and long-term recommendations," he added.



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

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

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

But changes are needed, the report says.

The major recommendations call for:

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

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

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



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

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

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

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

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

The revisions concern Nada Culver, senior director of agency policy and planning with the Wilderness Society.

"The evaluation report and recommendations direct a reevaluation of habitat protection that could fundamentally undermine the structure and goals of these plans," Culver said in a statement. "The recommendations are a sideways attempt to abandon habitat protection in favor of unfettered oil and gas development and discredited, narrow tools like captive breeding and population targets. Gutting the structure of these plans puts the entire landscape at risk."

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8. **DOE: Companies slam 'shameful' attack on loan program**

E & E News, Aug. 7 | Christa Marshall

Sixteen companies are warning Congress that axing the Department of Energy's loan guarantee program could undermine the aim of reaching "energy dominance" and force them to lose "tens of millions of dollars."



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Signers of a new letter include CEOs from advanced fossil, nuclear, vehicle and grid technology companies with pending or planned loan applications. Killing the loan program would not only cause the loss of thousands of jobs, they said, but also block the administration's goals to improve infrastructure and stay ahead of countries like China in the energy race.

"Our companies have hired engineers, acquired land, complied with environmental reviews, and negotiated power purchase or other off-take agreements. Eliminating funding at this late stage would literally pull the rug out from underneath new and existing projects, just when we are ready to move forward with the [Loan Programs Office]," states the [letter](#) to Senate Majority Leader Mitch McConnell (R-Ky.), House Speaker Paul Ryan (R-Wis.), Senate Minority Leader Chuck Schumer (D-N.Y.) and House Minority Leader Nancy Pelosi (D-Calif.).

One of the signers, Michael Darcy, CEO of the D'Arcinoff Group, said his company could lose about \$1 million in application fees and have to cancel plans to build a facility that would employ 170,000 people.

The multibillion-dollar facility — which was in the final stages of a loan guarantee application — would have produced a synthetic jet fuel to meet purchase agreements with corporations, he said.

"It will take me 10 years longer to reach full commercial scale," he said.

While Darcy can apply for financing from banks, they would only be willing to finance a much smaller pilot project, he said. The company would survive because of backup funds, but would lose its advantage on a product that could produce six times the amount of fuel that is typical from a given amount of biomass, according to Darcy. Plans to eliminate the loan program are "shameful," he said.

The Trump administration proposed eliminating the loan office in its "skinny" budget plan this spring.

Appropriations bills moving in the House and Senate for fiscal 2018 would prevent DOE from announcing new conditional commitments for the Title 17 loan program after Oct. 1. The loan office is one of the few DOE programs targeted by Trump that are receiving little funding in appropriations legislation from Congress.



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The Title 17 program currently has \$12.5 billion in authority for advanced nuclear projects, \$8.5 billion for advanced fossil, and \$4.5 billion for renewable energy and efficiency initiatives.

The spending bills would allow projects with a conditional commitment to move forward, which would cover the world's first methanol facility using carbon capture technology in Lake Charles, La. Current legislation also would not immediately rescind authority for the Advanced Technology Vehicles Manufacturing program, which provided loans to companies including Tesla Inc.

During hearings last month, Sen. Lamar Alexander (R-Tenn.), chairman of the Appropriations subcommittee with jurisdiction over energy and water, said lawmakers had to make tough choices in making cuts. Savings from eliminating the "lower priority" Title 17 loan program were needed to fund science and energy research, he said.

An amendment from Dianne Feinstein (D-Calif.) to restore the loan program failed.

"While some may question whether we should have a loan program at DOE, the fact is that has successfully loaned more than \$30 billion in innovation energy and vehicle projects," Feinstein said.

DOE's loan program developed a public relations problem after solar company Solyndra filed for bankruptcy in 2011 after receiving a more than \$500 million loan. Critics said it demonstrated how government tries to pick winners and losers.

At a hearing earlier this year, House Science, Space and Technology Chairman Lamar Smith (R-Texas) said President Obama's political allies like Solyndra were fast-tracked "with little consideration for project merit or benefits to the taxpayer."

Dan Reicher, executive director of the Steyer-Taylor Center for Energy Policy and Finance at Stanford University, said Solyndra "has become sort of a rallying cry for eliminating the federal government's ability to back innovative energy projects."

Reicher, a supporter of the program, told Congress earlier this year that the program pays for itself, and that interest payments from DOE loan guarantees exceed losses (E&E Daily, Feb. 16, 2016).



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"It's hard to see how this isn't a net positive," he said.

DOE added in a report last year that its loan guarantee office supported the first five utility-scale solar projects in the United States larger than 100 megawatts. When Obama took office, there were no large-scale solar photovoltaic projects of that size in the United States.

In a separate [letter](#) last month, the Nuclear Energy Institute, the Bipartisan Policy Center and other groups said rescinding loan guarantee authority would substantially affect the long-term viability of the U.S. nuclear sector.

Darcy said many of the affected jobs would be in areas like Michigan and Texas that supported Donald Trump in the presidential election. But he said he blames Congress just as much as the president for not pushing back.

"People on the Hill hate Solyndra so much, they are willing to throw the baby out with the bathwater," he said.

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9. **COAL ASH: Judge rules against TVA in win for enviros**

E & E News, Aug. 7 | Ahillen/Lowary, Nashville Tennessean

In a major victory for environmentalists, a federal judge last week ruled that the Tennessee Valley Authority violated the Clean Water Act by storing coal ash in unlined ponds.

The ruling comes after a lawsuit filed earlier this year by the Southern Environmental Law Center alleged that TVA knew for years that its coal ash ponds had been contaminating the Cumberland River (Energywire, Jan. 30).

"This is an absolute win for us and our clients and the people of Tennessee who deserve to have clean water," said Beth Alexander, lead attorney for the SELC.

TVA said there was no link between the coal ash — a byproduct of coal-fired power plants that contains heavy metals like arsenic — and the river. But environmentalists said TVA's own testing suggests otherwise.



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Under the ruling, issued by U.S. District Court Chief Judge Waverly Crenshaw, TVA will be required to excavate its contaminated ponds and store the ash in lined landfills (Ahillen/Lowary, Nashville Tennessean, Aug. 4).

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10. **FOREST SERVICE: 'Oops' is no defense, court says in nixing horse decision**

E & E News, Aug. 7 | Amanda Reilly

A federal court on Friday tossed out the Forest Service's attempts to correct a decades-old map error that expanded wild horse territory in a California national forest.

In 2013, the agency redrew the wild horse territory in Modoc National Forest, removing a middle section that had been added inadvertently in a Forest Service map in the 1980s.

But the U.S. Court of Appeals for the District of Columbia Circuit found that the agency unlawfully "swept under the rug" two decades of forest management policy that included the middle section and failed to adequately consider the environmental impacts of its decision.

"There is no 'oops' exception to the duty of federal agencies to engage in reasoned decisionmaking," Judge Patricia Millett wrote for the court.

The federal government has protected and managed wild horses in the Devil's Garden section of Modoc National Forest in Northern California since 1975. Originally, the wild horse territory in the forest consisted of two separate tracts of land totaling 236,000 acres.

But sometime in the 1980s, the Forest Service issued a map that added in a 23,000 tract of land between the two sections, linking them into a 258,000-acre contiguous territory.

For more than two decades after the "cartographic confusion," as Millett wrote, the service managed the territory as a single tract. Notably, the service in 1991 adopted a forest management plan for the area that included the middle section.

Then, in 2013, the agency declared that the expansion in the 1980s was an administrative error and that it would go back to managing the wild horse territory as two separate tracts.



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Wild horse advocates arrayed under the American Wild Horse Preservation Campaign sued, arguing that the agency violated a number of environmental laws and failed to justify its decision to abruptly cut out the middle section from its management policies.

The U.S. District Court for the District of Columbia had granted summary judgment in favor of the federal agency, which said it wasn't taking any new action, merely fixing a past mistake.

A three-judge panel of the D.C. Circuit on Friday reversed the ruling.

"The Service's attempt to slam shut the barn door after the horse already bolted is not sufficient," Millett, an Obama appointee, wrote in the opinion for the court.

According to the court, the service's decision was arbitrary and capricious in part because it bucked Supreme Court precedent that says an agency must, at a minimum, acknowledge it is changing a policy and offer a reasoned explanation.

The court also found that the Forest Service was required to consider whether to prepare an environmental impact statement under the National Environmental Policy Act in 2013 when it changed the boundaries of the wild horse territory.

The service's argument that nothing changed with the 2013 remapping "flatly defies the plain text of the official 1991 Forest Plan, repeated official agency statements, and two decades of agency practice," Millett wrote. "Blinders may work for horses, but they are no good for administrative agencies."

And the service's argument that the inclusion of the middle section must be ignored because it lacked legal authority to add it in the 1980s "never even leaves the starting gate," Millett wrote.

Even if the Forest Service never intended to expand the territory, "after-the-fact claims about agency intentions do not work when agency actions evince the opposite," the judge said.

Judges David Tatel and Robert Wilkins, both also Democratic appointees, heard the case with Millett.

Bill Eubanks, a partner at Meyer Glitzenstein & Eubanks LLP who represented the wild horse campaign in the case, called the decision a "stinging rebuke" and a "pretty clear message" that



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federal agencies have to give compelling reasons when they divert from past public lands practices.

"You can't just make these decisions off the cuff," Eubanks said in an interview Friday. "There's a planning process, you have to go through public comment. I think it has some far-reaching consequences for the intensifying public lands debate."

[Click here](#) to read the court's decision.

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

E & E News, Aug. 7 | Maxine Joselow

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

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

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

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

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

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



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12. **OIL AND GAS: Interior seeks input on making Alaska 'open for business'**

E & E News, Aug. 7 | Brittany Patterson

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

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

Industry and other interested parties have 30 days to weigh in on what areas of the 23.6-million-acre federal property in northwestern Alaska should be included in the upcoming annual lease sale, the [notice](#) states.

BLM will also accept comments and nominations on acres currently off limits to leasing under the 2013 NPR-A integrated activity plan. The move is in line with Interior Secretary Ryan Zinke's May secretarial order designed to make Alaska "open for business" (Climatewire, June 1).

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

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

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

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



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

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

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

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

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

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13. **SUPREME COURT: Mich. utility asks justices to take up air permitting fight**

E & E News, Aug. 7 | Amanda Reilly

A Michigan utility has asked the Supreme Court to take up the legal battle over air permitting at one of the nation's largest coal-fired power plants.

DTE Energy Co. filed a petition July 31 seeking to overturn an appeals court's decision that favored U.S. EPA in the long-running fight.

In its 2-1 decision in January, the 6th U.S. Circuit Court of Appeals agreed with EPA that upgrades at DTE's Monroe power plant were "major modifications" that should have triggered additional regulations.

DTE warned of "disastrous consequences" if the Supreme Court lets the decision stand.



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"It injects even greater uncertainty — indeed, incoherence — into a regulatory scheme that is hardly known as a model of clarity," the company said in its [petition](#).

The 3,300-megawatt Monroe plant is at the edge of Lake Erie in southeastern Michigan. Litigation over the planned upgrade dates back to 2010 and centers on the overhaul of a generating unit.

As part of the Clean Air Act's New Source Review program, a utility must make a projection of whether a proposed upgrade to an existing facility will increase emissions. That projection helps determine whether the upgrade is a major modification.

DTE had argued that the upgrade at the Monroe plant was routine maintenance and didn't require a New Source Review permit. The company also said that emissions at the plant actually decreased after the projects.

EPA disagreed with DTE's projections and sued the company. A district court initially sided with the utility in a summary judgment ruling.

But the 6th Circuit overturned the decision, finding that EPA had a right to challenge the company's preconstruction emissions forecast and that the actual emissions that occurred after the project's completion were irrelevant to the case (Greenwire, Jan. 11).

The ruling was the second time that the 6th Circuit sided with EPA over authority to challenge DTE's emissions projections for the upgrade (E&E News PM, March 28, 2013).

In its petition last week, DTE argued to the Supreme Court that the New Source Review provisions apply only to major modifications that cause a significant increase in actual emissions.

"Left standing, the decision below threatens to paralyze substantial maintenance projects throughout the nation," DTE's petition says.

DTE has predicted that there's a "reasonable probability" that the Supreme Court will take up the case, partly because of a "wide variance" in interpretations in the 6th Circuit on permitting requirements (E&E News PM, May 9).

It takes the votes of four justices for the Supreme Court to hear a case. The 6th Circuit has



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14. **SAGE GROUSE: Jeers, cheers greet report proposing to alter Obama plans**

E & E News, Aug. 7 | Scott Streater

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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