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Attached is the daily news report for August 89.

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DAILY NEWS REPORT - UTAH

UTAH – TOP STORIES – AUGUST 9, 2017

1. Uncertainty as national monument review deadline nears

The Spectrum, Aug. 8 | David DeMille

Two weeks ahead of a Trump administration deadline to complete a review of 27 national monuments, including Utah's Bears Ears and Grand Staircase-Escalante, the status remains uncertain for most of them.

2. Op-ed: The positive effects of cows in Utah

The Deseret News, Aug. 8 | LuAnn Adams

All my life I've been surrounded by cows, and I've enjoyed it so much that I live on a ranch now. Raising my children and grandchildren on a ranch makes summer an exciting season filled with chores, fixing fences, family celebrations and barbecues. But as much as beef is delicious, cattle have a larger impact than just satisfying our hungry mouths. Utah's beef cattle benefit our state in many diverse ways, from our bank accounts (yes, even if you're not a rancher) to our beautiful landscapes.

3. Sage grouse conservation changes praised, provoke alarm

The Salt Lake Tribune, Aug. 8 | Mead Gruver and Matthew Brown, AP

Cheyenne, Wyo. • President Donald Trump's administration has opened the door to industry-friendly changes to a sweeping plan imposed by his predecessor to protect a ground-dwelling bird across vast areas of the West.

4. Trekking through history at Dead Horse Point

The Moab Sun News, Aug. 8 | Sharon Sullivan

Members of the Navajo Nation referred to the peaks as "the mountains whose name is missing," for they were unnamed until relatively recently – the 1870s – when the rugged, remote range southwest of Moab became known as the Henry Mountains.



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5. Outlook: Energy & Natural Resources

UtahBusiness.com, Aug. 8 | Dr. Laura Nelson, Michael Parker

A special thank you to Dr. Laura Nelson, executive director, Office of Energy Development, and Michael Parker, vice president of public policy for the Salt Lake Chamber, for moderating the discussion.

Participants: **Adrienne Bell**, Holland & Hart, LLP; **Dan Black**, Vivint Solar; **Josh Brown**, Rio Tinto Kennecott; **Cindy Crane**, Rocky Mountain Power; **Angela Franklin**, Holland & Hart, LLP; **Jerry Hascall**, Sunnyside Cogeneration Plant; **Mark Keim**, Big West Oil; **Christine Watson Mikell**, Enyo Renewable Energy; **Gary Takanaka**, Bronco Utah; **David Zimmerman**, Brahma Group

Discussion: Let's start by giving an overview of the outlook for your industry.

6. Former Utah Highway Patrol trooper charged with arson in wildfire

Fox 13 News, Aug. 8 | Ben Winslow

SALT LAKE CITY — The Utah Attorney General's Office has charged a former Utah Highway Patrol trooper with arson, accusing him of setting a wildfire.

7. Utah Seeking \$1.9 Billion From EPA Over Mine-Waste Spill

The Salt Lake Tribune, Aug. 8 | The Associated Press

SALT LAKE CITY, Utah (AP) – Utah officials have confirmed the state is asking the U.S. Environmental Protection Agency for \$1.9 billion in damages after the EPA inadvertently triggered a multistate spill from an old gold mine in Colorado.

8. Commentary: Slaughtering wild horses would be simplistic and cruel

The Salt Lake Tribune, Aug. 8 | Rob Hammer

Late last month, Utah's Chris Stewart introduced an amendment to the Interior Department's 2018 spending bill that would send thousands of America's wild horses to slaughterhouses. This action by my own congressman disturbs me deeply, as I run a public service website devoted to raising awareness of these majestic animals and their increasingly threatened habitats.



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9. Bible Springs Complex wild horse removal begins Aug. 15

The Deseret News, Aug. 8 | Press Release

CEDAR CITY — The Bureau of Land Management will be removing excess wild horses from areas within and outside the Bible Springs Complex in Iron and Beaver counties beginning Tuesday, Aug. 15.

10. Provo business partners with London artist for mural of endangered species in Utah

The Herald Extra, Aug. 9 | Shelby Slade Daily Herald

There's a little more color in downtown Provo now, thanks to a collaboration between Nu Skin and a London artist.

E&E/NATIONAL NEWS – TOP STORIES

1. Court strikes down Obama EPA's restrictions on Earth-warming gases

The Hill, Aug. 8 | Timothy Cama

A federal court on Tuesday struck down an Obama administration rule that banned certain uses of certain gases used in air conditioning and refrigeration.

2. Coal to dominate US electricity market over next two years

The Washington Examiner, Aug. 8 | John Siciliano

U.S. coal production will see a sustained boost over the next two years due to increased use at power plants and a rise in exports, according to the federal government's latest energy projections.



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3. The Trump Administration Delivers Much Needed Relief to the Coal Industry

JD Supra, Aug. 8 | Snell & Wilmer Law Press Release

During the first six months of the new Administration, President Trump has delivered much needed relief to the coal industry. The President and Congress have been particularly effective at rolling back policies proposed at the end of the previous Administration.

4. Greater sage-grouse: Interior's new sage grouse recommendations at a glance

High Country News, Aug. 8 | Tay Wiles

The Interior Department has finished a sweeping review of 98 West-wide sage grouse management plans, part of a broader effort to examine what President Donald Trump deems potential barriers to energy extraction on federal public lands.

5. Climate Reports May Slow Trump's Push to Undo Obama-Era Rules

Bloomberg News, Aug. 9 | Christopher Flavelle, Brian K. Sullivan

A pair of highly anticipated government studies, one of them due to be released this week, could complicate President Donald Trump's effort to roll back federal climate regulations, according to people on both sides of the debate over global warming.

6. EPA report shows economic growth, environmental rules can co-exist

USA Today, Aug. 8 | Ledyard King

WASHINGTON — The Trump administration's argument that "job-killing" environmental regulations are stifling U.S. economic growth is being undercut by ... the Trump administration.



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7. **The Interior Department could cost taxpayers at least \$60 million by rolling back Obama rule**

The Washington Post, Aug. 9 | Dino Grandoni

During his confirmation hearing for the job of running the Department of the Interior, Ryan Zinke told the Senate he wanted taxpayers to get “fair value” on resources extracted from public lands by private companies. But a recent move by him means taxpayers will get millions of dollars less from companies that extract oil and gas from public lands.

8. **NATIONAL MONUMENTS: Green group sues Zinke for review documents**

E & E News, Aug. 9 | Jennifer Yachnin

The Center for Biological Diversity announced today it has filed a lawsuit against Interior Secretary Ryan Zinke, asserting the Trump administration is "unlawfully withholding public records" in its ongoing review of dozens of national monuments.

9. **NATURAL GAS: U.S. emerging as powerful force in LNG trade**

E & E News, Aug. 9 | Nathaniel Gronewold

The United States is rapidly becoming a net exporter of natural gas for the first time in 60 years.

That's according to data from the Census Bureau and the U.S. Energy Information Administration. While imports of gas are flat or falling, exports continue to rise, and the data give weight to government analysts' conviction that the United States is on track to become a net energy exporter, possibly as soon as within a decade.

10. **FINANCE: Investors to Trump EPA: Don't freeze Obama methane rule**

E & E News, Aug. 9 | Benjamin Hulac

Investors managing hundreds of billions of dollars are pressing U.S. EPA to swiftly enforce a policy to limit the leaking of methane, the potent greenhouse gas.



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11. WIND: Prairie bird nests fine among turbines — study

E & E News, Aug. 9 | Adam Aton

In the air, spinning wind turbines chew up birds by the hundreds of thousands each year.

But on the ground, the situation might not be so bleak — at least for one species of prairie bird.

12. SUPREME COURT: States urge justices to take up landmark groundwater ruling

E & E News, Aug. 9 | Amanda Reilly

Ten states this week urged the Supreme Court to take up a recent landmark decision that found a tribe has a legal right to the groundwater below its reservation.

13. FEDERAL AGENCIES: Leakers take the risk despite crackdown

E & E News, Aug. 9 | Hannah Northey

Posters warning that "every leak makes us weak" and "Don't become the next insider threat" have cropped up in the halls of the Energy Department's headquarters in Washington in recent months.

14. LAW: After HFC ruling, some question EPA's authority on climate

E & E News, Aug. 9 | Amanda Reilly

Yesterday's court decision tossing out an Obama-era policy for addressing potent greenhouse gases has reignited a debate over U.S. EPA's authority to issue climate change regulations.

15. INTERIOR: Jewell headed to Harvard

E & E News, Aug. 9 | Dylan Brown

Former Interior Secretary Sally Jewell has accepted a fellowship at Harvard University.

The Institute of Politics at the Harvard Kennedy School announced today that the former REI Inc. CEO and petroleum engineer will teach students about an "economically successful and environmentally sustainable" future during the upcoming fall semester.



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16. **CLEAN POWER PLAN: Sidelined climate rule suffers another blow in the courtroom**

E & E News, Aug. 9 | Ellen M. Gilmer

Hopes for revival of the Obama administration's signature effort to address climate change slipped further from reach yesterday as a federal court extended its freeze of litigation over the Clean Power Plan.



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UTAH – FULL STORY

1. **Uncertainty as national monument review deadline nears**

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Two weeks ahead of a Trump administration deadline to complete a review of 27 national monuments, including Utah's Bears Ears and Grand Staircase-Escalante, the status remains uncertain for most of them.

Interior Secretary Ryan Zinke has already issued a preliminary recommendation to shrink the Bears Ears monument, and over the course of the past several weeks he has said that five others should remain monuments and go untouched.

But the details behind what might happen at Bears Ears and the fate of the 21 other monuments remain a question mark.

"What I've learned in the monument review is that every monument is unique," Zinke said last week during a visit to Gold Butte National Monument in Nevada.

A former Republican congressman from Montana, Zinke has conducted a series of visits to western states since April, when President Donald Trump ordered that he review every monument of more than 100,000 acres designated since 1996.

Referencing U.S. Sen. Orrin Hatch, a Utah Republican and longtime critic of monument designations in and around his home state, Trump argued during a signing ceremony that the ability of a president to create national monuments, created under the Theodore Roosevelt administration more than a century ago, had become "another egregious abuse of federal power" and referred to individual designation of Bears Ears as a "federal land grab."

Most of the land under designation was already federally-owned, but open to various other uses like mining, logging, grazing and road building, that are now limited under monument designation.

Recent polling suggests only tepid interest nationally in the idea of shrinking or eliminating monuments.



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A new poll released last week by the Western Values Project, a conservation advocacy group based in Montana, showed 75 percent of respondents agreeing that the monument lands should be protected rather than reviewed, with only 33 percent saying they supported Trump's monuments review order. The poll was conducted by Global Strategy Group and GarinHartYang, using a sampling of more than 1,000 voters, with a margin of error of 3.1 percent.

"Unlike President Trump and (Zinke), the vast majority of Americans see no reason to open up iconic landscapes to private development," said Chris Saeger, executive director of the Western Values Project. "This is another sign that this sham review is happening only to benefit a narrow range of special interests."

A Dan Jones & Associates poll of Utah voters conducted for the Salt Lake Tribune and Hinkley Institute in July found Utahns split on idea of shrinking Bears Ears, with 42 percent saying yes and 39 percent saying no, with the rest undecided. The poll also asked about whether Congress should consider amending the Antiquities Act to limit presidential authority in naming new monuments. Fifty-three percent said yes, with 37 percent saying no.

The Center for Western Priorities, another advocacy group, released an analysis of a random sampling of the nearly 1.7 million public comments submitted to the Interior regarding the review and reported that 98 percent expressed support for keeping or expanding national monument designations. Only 1 percent requested that monuments be rescinded or reduced in size.

"America has spoken loud and clear: Protect and enhance national monuments, don't eliminate them," the group's executive director, Jennifer Rokala, told reporters.

But western leaders, especially in Republican-heavy states like Utah, have for years pushed back against monument designations, many of which were created in the waning months of the Bill Clinton and Barack Obama presidencies with little support from GOP-dominated local and state governments.

A group of 14 members of Congress from Arizona, New Mexico, Colorado, California and Florida sent a letter in late June calling on the administration to eliminate or shrink many of the more controversial monuments.



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“Most people do not realize that west of the Mississippi there is very little private property ownership,” U.S. Rep. Paul Goslar, R-Arizona, said in a written statement. “Most of the land is instead owned by the federal and state government.”

National monuments have exacerbated the problem, he argued, calling recent designations “land grabs” that stunted economic activity in western states.

“The (Antiquities Act) has also become the catalyst for radical environmentalist groups seeking to prevent Americans from having access to the nation’s natural resources,” he said.

Zinke has shown some willingness to go against those requests though, already announcing that five monuments should remain untouched, including the Grand Canyon-Parashant National Monument one that was mentioned specifically in the letter.

The monument covers more than 1 million acres north of the Grand Canyon in Arizona, just south of the Utah state line, and Zinke said last week he saw it as too valuable to change.

“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,” he said.

No decisions have been announced for some of the more controversial monuments in and around Utah, however.

When Zinke announced in July he would recommend shrinking Bears Ears, the preliminary report was short on details, with Zinke unclear on how much of the monument he believed should be changed and passing off some of the work in making those determinations to Congress.

Monument backers at Bears Ears and nationally have suggested they would sue over any attempts to shrink or rescind monuments. Zinke says he is ready to fight them.

The Antiquities Act has no direct language giving presidents the power to rescind designations made by their predecessors, although some legal experts argue Trump could have an implied power to rescind or diminish any monument.



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Others argue there are no implied powers in the Antiquities Act, since it deals with public lands, over which only Congress was given Constitutional authority.

A report by the Congressional Research Service published in November found legal analyses going back to the 1930s concluding the president has no power to repeal a past designation.

Zinke is supposed to file reports on Bears Ears, Grand Staircase and 25 other monuments by Aug. 24

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2. **Op-ed: The positive effects of cows in Utah**

The Deseret News, Aug. 8 | LuAnn Adams

All my life I've been surrounded by cows, and I've enjoyed it so much that I live on a ranch now. Raising my children and grandchildren on a ranch makes summer an exciting season filled with chores, fixing fences, family celebrations and barbecues. But as much as beef is delicious, cattle have a larger impact than just satisfying our hungry mouths. Utah's beef cattle benefit our state in many diverse ways, from our bank accounts (yes, even if you're not a rancher) to our beautiful landscapes.

Beef cattle are the largest agricultural economic contributor and an enormous part of Utah's economy, not just the ranching community. According to data from the National Agricultural Statistics Service (NASS), Utah's beef cattle were valued at \$1.23 billion in 2016 and generated an annual economic value of more than \$1.7 billion between the production, sales, home consumption and income that they create. To put that in more comprehensible terms, the cows that you see on public land are generating an economic value of about \$100 per month for each cow. The money generated by beef cattle stimulates growth in Utah's rural counties, which are some of Utah's slowest-growing areas economically. Cattle create stable jobs and support businesses, bringing vital growth to rural Utah.

Aside from the money and economic growth that cattle create, they also serve a vital purpose in keeping Utah's rangelands healthy. Countless academic studies show how proper livestock grazing benefits rangeland by managing vegetative growth, fostering new growth in perennial and native plants, and preserving vital wildlife ecosystems. Many people don't realize that Utah's rangelands and forests would look much worse without the active vegetative management



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that cattle provide annually. Without proper grazing, we would see overgrown public lands that would burn with one spark or lightning strike. Cattle are effective in reducing fuel loads so wildfires are less intense and less dangerous. Grazing is an effective and inexpensive way of reducing wildfire risk.

In addition to the money and ecological benefits that cattle provide, Utah's culture also benefits enormously from the lifestyle this industry creates. The Western cowboy culture is appealing and attracts millions of visitors annually who come to experience Utah's beautiful landscapes and Western way of life.

But deeper than the tourist attraction of the West, the ranching culture brings values that are becoming less prevalent in society today. The ranching culture teaches self-sufficiency, hard work, familial ties to the land, love for community and a sense of responsible stewardship for the range. Although not everyone needs to be a rancher for society to flourish, it is an important culture that needs to continue teaching future generations its lessons and values.

These values are much needed in Utah today to help invigorate our state, foster economic growth and ensure that agriculture and livestock continue to be a vital part of Utah's economy and lifestyle.

Although these are just a few benefits that cattle bring to our wonderful state, they are extremely important, and we cannot thank the ranching community enough for all that they do for our economy, our rangelands and our culture here in Utah.

LuAnn Adams is the commissioner for the Utah Department of Agriculture and Food and a lifelong farmer/rancher.

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3. **Sage grouse conservation changes praised, provoke alarm**

The Salt Lake Tribune, Aug. 8 | Mead Gruver and Matthew Brown, AP

Cheyenne, Wyo. • President Donald Trump's administration has opened the door to industry-friendly changes to a sweeping plan imposed by his predecessor to protect a ground-dwelling bird across vast areas of the West.



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Wildlife advocates warn that the proposed changes would undercut a hard-won struggle to protect the greater sage grouse.

Representatives of the ranching and energy industries cheered the policy shift as needed to give states flexibility.

A document outlining the recommended changes was released Monday by Interior Secretary Ryan Zinke.

It recognized for the first time the importance of livestock grazing on sage grouse habitat, said Jim Magagna, executive vice president of the Wyoming Stock Growers Association.

It also backed away from requirements to keep rangeland grasses and shrubs at a prescribed minimum height, which ranchers had complained was arbitrary.

"I was very pleased with what I saw there in terms of the tone," Magagna said.

The ground-dwelling sage grouse has lengthy, pointed tail feathers and is known for the male's elaborate courtship display in which air sacs in the neck are inflated to make a popping sound.

Millions of sage grouse once populated the West but development, livestock grazing and an invasive grass that encourages wildfires has reduced the bird's population to fewer than 500,000.

States affected by the conservation plan are California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

Just how much Zinke intends to tinker with the plan that was years in the making remains to be seen.

It was hashed out under President Barack Obama and unveiled in 2015 as a solution to keeping the sage grouse off the endangered species list following a decade-long population decline caused by disease and pressure on the birds' habitat from energy development, grazing and wildfires.

The proposed changes, the result of a 60-day review of the plan by Zinke's agency, could give states wiggle room in areas such as setting population goals for sage grouse and drawing boundaries of recognized sage grouse habitat.



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Advocacy groups such as The Wilderness Society and National Wildlife Federation said the proposal was a backdoor attempt to allow unfettered oil and gas development that ignored previous scientific studies showing that drilling too close to sage grouse breeding areas would harm the birds.

“Wholesale changes to the plans are not necessary and could derail years of hard work,” National Wildlife Federation President Collin O’Mara said in a statement. “We cannot fall victim to the false dichotomy that pits wildlife conservation against the administration’s energy development goals.”

The birds inhabit parts of 11 states including large swaths of Wyoming, Utah, Idaho and Nevada — big ranching states that include areas with vast wind energy and gas drilling potential.

Wyoming has a larger number of greater sage grouse than any other state and keeping the bird off the endangered list remains a priority, Wyoming Gov. Matt Mead said.

“We’ve come a long ways to get to this point,” Mead said. “As we make changes — and certainly I think there’s room for improvement — we have to move cautiously because we don’t want to get to the point where the bird is listed.”

Wyoming officials are glad the Trump administration has been talking to them about sage grouse policy, and the proposed changes include improvements, Mead said.

Officials remain concerned, however, by how the administration wants to set population goals for sage grouse. The birds are difficult to count and their numbers can fluctuate significantly from year to year in response to weather patterns, Mead said.

“We want to move cautiously as to not disrupt the great work that has been done by so many over the many years,” Mead said.

Idaho Gov. Butch Otter said Zinke’s announcement marked an appropriate step toward giving the state more power to manage sage grouse. Idaho, along with Utah and Nevada, had filed a lawsuit challenging the Obama-era conservation plans for the birds.

“My staff and I stand ready to roll up our sleeves and work with the Department of the Interior to bring the federal plans into alignment with Idaho’s science-based conservation plan,” Otter said in a statement.



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The proposed changes drew a muted reaction from some other Western governors who had been heavily involved in crafting conservation plans for the birds.

Democrat Gov. John Hickenlooper of Colorado, who co-chaired a federal-state sage grouse task force established in 2011, was still reviewing Zinke's announcement, according to spokeswoman Jacque Montgomery.

In Nevada, Republican Gov. Brian Sandoval didn't have any immediate comment. Sandoval had worked closely with former Interior Secretary Sally Jewell to develop sage grouse protection plans for the state.

Sandoval, Mead and Hickenlooper met with Zinke in April and urged him to coordinate with states before changing the Obama-era plans.

Areas where sage grouse habitat and gas drilling overlap include the upper Green River Basin of western Wyoming, home of some of the biggest onshore natural gas fields in the U.S.

A third gas field, the Normally Pressured Lance field, could add another 3,500 wells in a 220-square-mile area. Drilling could begin next year if the U.S. Bureau of Land Management signs off.

Jonah Energy LLC, recognizes the existence of sage grouse winter range in the southern part of its proposed gas field about 200 miles (321.85 kilometers) northeast of Salt Lake City, said Paul Ulrich, government affairs director at the Denver-based petroleum company.

"From our perspective, that definitely presents challenges but also provides an opportunity to do what we've done from day one, which is follow the science," he said.

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4. **Trekking through history at Dead Horse Point**

The Moab Sun News, Aug. 8 | Sharon Sullivan

Members of the Navajo Nation referred to the peaks as "the mountains whose name is missing," for they were unnamed until relatively recently – the 1870s – when the rugged, remote range southwest of Moab became known as the Henry Mountains.



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“The Henrys were one of the last mountain ranges to be named,” said Saige Culbertson, a seasonal park ranger at Dead Horse Point State Park.

Almon Thompson, who was one of the founders of the National Geographic Society, named the mountains in honor of Joseph Henry, the first secretary of the Smithsonian Institution, Culbertson said. That’s just one of the many interesting tidbits that Culbertson discovered while researching the Moab area for a presentation she will give on Saturday, Aug. 5, at 8 p.m. at Dead Horse Point State Park.

Culbertson spent two months researching the different people and cultures that settled in the Moab area.

She said she will share stories about the original inhabitants – the Native Americans, as well as later arrivals, such as the Spaniards, and then the Mormons.

“I’ll talk about how they made this place their home, and what brought them here,” Culbertson said. “And how places got their names.”

As a member of the Cherokee Tribe, Culbertson said she was most interested in learning about the Ancestral Puebloans who lived in the area. The Utes continued to trade with one another after some of the tribe broke off from the original group, she said.

Native Americans, as a whole, banded together to resist the Spanish invasion, she said. People of the Mormon faith entered the area in the 1850s to establish settlements in Moab and other areas of southeastern Utah, Culbertson added.

Visitors can drive to and park at Dead Horse Point, where the ranger talk will take place. Culbertson recommends that attendees bring water, sunscreen and a camera.

“We’ll all be enjoying the sunset together – it’s a great view – after learning all this great history,” she said.

Dead Horse Point is a peninsula of rock atop sheer sandstone cliffs, located 2,000 feet above a gooseneck in the Colorado River. Ancient Indian hunters, and cowboys of the late 1800s, hung out in the area.



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Later this month, Saturday, Aug. 12, is Military Appreciation Day, when active-duty military and service veterans can enter Dead Horse Point and all other Utah state parks for free. Those currently serving as well as veterans will also get a 20 percent discount on any purchases at the visitor center gift shop.

“Military Appreciation Day is a statewide annual event that every state park celebrates in mid-August,” park manager Megan Blackwelder said. “It’s also our 60th anniversary.”

“While this is a day to celebrate those who served, it is also a chance to reflect on part of what they served for, something very prevalent in the Moab area, our public lands, including Dead Horse Point State Park,” Blackwelder noted.

A special flag-lowering ceremony will take place at 6 p.m. at the visitor center. Afterward, at 6:30 p.m., visitors are invited to join rangers for a mile-long, “easy hike” starting at the Dead Horse Point parking lot.

On the following evening, Sunday, Aug. 13, seasonal park ranger Brendan Westley will lead a 1-mile, approximately one-hour hike across “easy terrain,” starting at the visitor center.

“I’ll basically be talking about how plants and animals of Dead Horse Point are able to survive in desert conditions, through adaptations,” Westley said.

Participants are encouraged to bring a liter of water and wear sturdy shoes.

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5. Outlook: Energy & Natural Resources

UtahBusiness.com, Aug. 8 | Dr. Laura Nelson, Michael Parker

A special thank you to Dr. Laura Nelson, executive director, Office of Energy Development, and Michael Parker, vice president of public policy for the Salt Lake Chamber, for moderating the discussion.

Participants: **Adrienne Bell**, Holland & Hart, LLP; **Dan Black**, Vivint Solar; **Josh Brown**, Rio Tinto Kennecott; **Cindy Crane**, Rocky Mountain Power; **Angela Franklin**, Holland & Hart, LLP; **Jerry Hascall**, Sunnyside Cogeneration Plant; **Mark Keim**, Big West Oil; **Christine**



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Watson Mikell, Enyo Renewable Energy; **Gary Takanaka**, Bronco Utah; **David Zimmerman**, Brahma Group

Discussion: Let's start by giving an overview of the outlook for your industry.

CRANE: We're very optimistic. The industry is changing at an extremely rapid pace. And I see that as nothing but opportunity. It's opportunity for our business, but more importantly opportunity for our customers and our employees as well. It's allowing us to tap what would be looked at as a traditional utility culture and really change to more of an innovative culture. We're looking at innovative solutions for our customers. It's exciting for our business. And it's exciting for our customers, as well as our employees.

TAKANAKA: We are very excited to open this new operation in Utah. We feel there are opportunities for competition in the coal business in the Emery/Carbon Counties area. We're very excited to bring on new employees to help the economies in the area and hope to be in operation soon.

MIKELL: I've been in the renewable energy industry since 2001 when I started at the Utah Energy Office. At that time we were 98 percent natural gas, coal and oil. And I think as of the end of 2016, renewables make up 10 to 12 percent of our electricity mix. Which it's hard to believe. I've been in the industry for 15 or 16 years and it's taken that long. In 2004 I entered into the private sector and developed the Spanish Fork Wind Project, which was the first wind project in Utah. And the last 10 years I've spent working on developing two other wind projects that were sold to Rocky Mountain Power, the Latigo Wind Project, which was built by sPower. And then another project in Wyoming, called the Pioneer Wind Project. And both those projects were the only two wind projects to be built in either state in probably six years since the projects that Rocky Mountain Power put together. As you can tell, it takes a lot of time to get these kinds of projects developed.

A year ago my joint venture partner decided here were opportunities here in Utah, more in the solar space. So they decided to invest in the company. And now the company's called Enyo Renewable Energy, and we're developing solar and wind here in Utah. I do believe that we're at a tipping point. Last year there were more people in finance than there were projects to invest in. I think that's really telling of the market we're in. There are many companies that are looking to either move to Utah or are currently operating businesses in Utah that want renewable energy for



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their electricity. We are one of those companies that can support Rocky Mountain Power in those efforts to fulfill those customer needs.

BELL: We've seen a big uptick in interest from developers, national and international companies, looking for new opportunities. Utah has now come on the radar for a number of these companies that have been active on the coast, California in particular. Utah, Colorado, Wyoming—they're all looking for more renewable development as long as all of the pieces come together. So that's the puzzle to solve.

FRANKLIN: I teach a group of junior high aged girls every year. And my point to them is petroleum products are everything we touch and see basically. Unless it's been grown naturally, then it is a petroleum product that's involved in it. And I think it's a message that people need to understand: it's not just going into our cars, it is what we wear, what we touch, what we eat, aspirin, makeup, everything. So I am passionate about educating our young people about what a great industry this is and what it provides to our society.

KEIM: Since the '80s, I've seen the ups and downs in the refining industry. It seems like every decade we go through this. And so when people talk about the downside or the future of the oil industry, I just say, "You know, I've heard this for 30 years." It's been going on for 40, 50 years, where people say there's only so many barrels of oil out there that's recoverable. And every year, technology improves. People are smart, they're innovative; they come up with new ideas to get the oil out of the ground in an environmentally sensitive way. And so these negatives I've heard, you kind of just get used to it. And you ride through it.

There's been a downturn. This last year was really tough for the oil and gas industry in general. The rates dried up. We had one of our worst years from a refining standpoint. But we see a positive future. We see a slow growth. We don't really want the upswings. The consumer really gets hurt when we have swings of gasoline. It wasn't that long ago when gasoline was \$4 a gallon here and consumption really dropped off. Now that it's \$2.25, 2.30, people are buying bigger pickup trucks and driving more, taking more vacations. There's a sweet spot. There's a fair price for gasoline and diesel and petrochemicals. We just need to land on that fair spot.

The swings really hurt the industry. When there's a downturn, you have fewer engineering graduates, you have fewer people that go into the industry and look to it as a future. And in reality, if you look at the pay scale for probably all of our industries, we support middle-class



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families. Just at Big West, the average salary, with benefits and so forth, is about \$120,000. And that's not just for engineers. It's for operators, for maintenance people.

ZIMMERMAN: We look a little bit at our estimating department as a kind of bellwether for where the industry is going. I just sat in an estimating meeting yesterday where our estimating department manager said, "We're going full tilt. We're going as fast and as hard as we can to just look at all the different projects, the different opportunities."

We're looking at a significant number of solar energy projects. We see an uptick in our mineral projects. And, significantly, we see an uptick in some of our capital projects, which represent an increased investment by our customers in all of these aspects of energy and natural resources.

We see workforce as one of our constraints. We see an increased tension on our ability to hire and find qualified workers—welders, pipe fitters, millwrights—to do the work we need to do.

HASCALL: We provide a service in that we burn waste coal and convert it to energy. We sell all of our power through Rocky Mountain Power and hope to continue that in the future. We provide a lot of remediation. The waste coal that we burn, there are no other facilities in the state that can do that. So we feel we provide a very good service to Carbon and Emery Counties. And then also to the state of Utah when they want to reclaim some of the mine sites.

We are also able to burn alternative fuels, like the tire oil that's now being produced in Emery County. There's opportunity for the old site in Orem with some of the steel mill leftovers that they have. Being the only site left in the state provides an opportunity to partner with several industries in order to be a good environmental partner.

I, too, am passionate about our industry and what it provides the communities. Somehow we need to educate the public that we are conservationists and that we care about the future. And that we do provide very good-paying jobs. There's a lot of different high-paying jobs, whether it's a consulting firm or engineers or hydrologists or geologists. We have to be able to put our case forward in a more positive light. And then work on our partnerships to see whether we have synergies and can further our causes together.

BLACK: I work for one of the top three residential solar companies in the country. In the last couple of months we reached a pretty significant milestone. We installed our hundred thousandth residential solar unit. We have over 1,200 employees at our corporate headquarters in Utah, with over 3,000 across the country.



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I'm pretty bullish when it comes to the renewable sector. There's been plenty of shake ups in our industry. And I think there will continue to be this need to innovate. It's incredibly important for our industries to stay ahead of the innovation curve. As we look at our customer base, they really want the ability to choose their energy provider, or at least a portion of their energy. And they also want to be able to conserve and to be energy efficient. And, ultimately, control their energy future, to lock in their power prices with either a company like ours or to purchase solar for their roof top.

It's a new and amazing industry. It feels a little bit like the wild, wild west sometimes, especially as newer and smaller companies pop up over time. But it's going to be the future of how we develop and how we power our homes. The governor likes to talk about an all-of-the-above energy policy, and that that certainly is the case for Utah as we see distributed generation continue to grow, whether it's large commercial installations, like on the Vivint Smart Home Arena, or small, two kilowatt systems on a small home.

BROWN: As we do our opinion polling throughout the years, people accept and appreciate Kennecott being present in the valley. The governor often brings it up as being a very strong anchor point of Utah's economy. It's helped through the last recession. Copper prices were high at the time, which worked great for us. The last couple of years we've had commodity prices across the board drop quite substantially. And this has created this new world of mining. Everyone recognizes you always have to be more efficient. Resources are something we absolutely need to acquire, both human resources, as well as new technologies, and determine new ways to do it more efficiently, faster, cheaper.

Rio Tinto has really tackled the opportunity question that was posed: What does this new world create for us? There's a lot of opportunity. I think it is coming to a moderate center, giving balance to maybe things that have gone too far one way and things that are going the other way, and hopefully we can get to this ground where we can all win. We recognize both sides of the equation. We recognize that we have to be environmentally effective, have our footprint be as small as we possibly can to extract as much ore as we can. And at the same time, do it by improving air quality, improving the process in which we actually mine.

You then look at it on the global side. Rio Tinto is pretty much everywhere outside of Antarctica. And we recognize throughout our interactions with the rest of the world that there is a question of what does this new world bring? Are we going to have tariffs? Are we going to create issues coming into the United States? Are we going to have border taxes? We are actively engaged. We



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really try hard to get the opinions of both sides and work through what would be the best solution going forward.

There's a little bit of both optimism and uncertainty that's come with the change in the administration. What are your thoughts about regulatory changes or other things that you see shifting from an industry perspective?

CRANE: We're optimistic with the administration change from a standpoint of bringing balance back to the table and making sure we're looking at the total picture as we're approaching things. We think we've swung too far. We think there's balance to be achieved.

From a standpoint of general regulations, we're optimistic that it will come back to the states where it belongs. We think Washington has taken too much control of the country. And that's out of balance with the Constitution. So what we expect to see is more state deference. Because we're not the east. We're in the west. And even each state in the west is different. And the states know best. They know their economy. They're really in the best position to make those good regulatory, environmental, balanced decisions.

KEIM: The difficulty we've had over the last several administrations is just the whipsaw. Depending on the administration, it just goes from one extreme to the other. Somehow we need to get it back to a balanced system. We're not against regulations, but it needs to be science based, cost effective, smart energy growth policies that drive safe, reliable development of energy. Energy's going to be around for a long time—it's just so fundamental to how we live our lives. The problem is we've got so much partisanship that we can't agree on anything. So the current administration will put out executive orders and it'll drive us in one direction, and four years from now we could be driven in a completely different direction. And all of our companies, when we're making capital investments, it's long term. If we decide to do a project or something that's regulated, it takes us three or four years to get through all of the rigamarole. But we're making long-term investment decisions and trying to get capital deployed on things that are moving targets. From the oil and gas industry, from the refinery, we have a very hard time deploying capital smartly because the regulations keep changing.

I'm not sure if the current administration will get us there, not based on what I've seen lately. It's back to the same thing where it's so partisan that the decisions are made not based on science, it's just on edict. And I think we need to get that out of the mix altogether.



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What are the biggest challenges you're facing? What strategies are you employing to navigate or manage through those challenges?

BLACK: I echo what's been said, that there is a tendency—not just at the federal level, but also the state level—toward sweeping changes that create quite a bit of shock. And one of the most important things for our company is stability and understanding what the future legal or regulatory environment might look like, what the economic environment might look like—that's incredibly important for investors. It's also incredibly important for customers that are making an investment decision for power over 30 years. And when you have rhetoric, whether at the federal or the state level, where you're talking about border taxes or sweeping changes to net metering programs or any of those things, it really throws a wrench in.

The biggest challenge that lays ahead for solar, especially distributed solar, is reforms to net metering. We've been spending a lot of time in Utah looking at what the future of net metering would look like. And it's not unique to Utah. We see it across the country. California and New York have been going through substantial revisions to their net metering programs.

Fortunately, as much rhetoric and partisanship that we see when you talk about climate change, when you talk about renewable energy sources, this isn't a partisan issue. We found through polling at either the federal or state level, whether you're Republican or Democrat or Independent, people love renewable energy. And we saw that a couple years ago when the investment tax credit was extended. That was through a bipartisan process.

The same is true in Utah with the state tax credit. There was originally a bill that was drafted that would have been pretty draconian in the state tax credit. Instead, we got to the table and had discussions among the various stakeholders and worked out a solution that provided a glide path for Utah customers. That's the opportunity we have; whatever our positions may be, it seems that we can find common ground. Hopefully that becomes a playbook for the rest of the country—that in Utah, we can set aside our separate issues and partisanship and try to find a way to get the win-win-win.

CRANE: For us, one of the challenges is the bigger, broader market dynamics that are occurring in the west. What's happening in one state is having tremendous effects on power markets across the entire western United States. We looked at that and said, "How can we get involved with no risk and capture benefit for our customers?" So we created, working with the California ISO, the Energy Imbalance Market. It didn't cost a lot of money to do it, and there's little to no market



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risk associated with it. And with our large transmission system and our extremely diverse resource portfolio, it's just a phenomenal success story. It was just us and the California ISO. Now we happen to have the largest transmission system by line mile in the western U.S. And because of that we happen to have access to all power markets in the west. And that's why our customers have the benefit of the low rates. We just took that to a new level.

Everybody in the western U.S. is now joining. Every week we've got new announcements. It's not just the investor-owned utilities. We've got public power now joining. We've got Canada talking about joining. We've got Mexico talking about joining. It's just becoming a tremendous value proposition that we can tap into for our customers.

And it's enabled us to do some different things. Number one, and most importantly, it's enabled us to be able to capture value for investors, flex our resources, capture value through the market, and actually reduce our rates. So we've had the benefit of being able to announce rate reductions in all three of the Rocky Mountain Power states two years in a row.

But operationally, it's created its own set of challenges. We do have a large coal fleet in multiple states. And we do have some gas plants. We had to learn how to manage the fleet differently. And not just from a, "hey, here's how I'm going to dispatch you today," but it's literally at the operator level at a power plant. The first year, when the market dynamic hit, we literally just shut the fleet down. We shut down five coal units. We took transmission lines out of service here in the Salt Lake Valley, because we had to control the voltage on the system. But we got innovative and we got smart when we started learning and seeing how the market was going to move and how it was going to act. As we're now into the second year of that market dynamic, we're not shutting our coal fleet down. What we're actually doing is flexing our coal fleet like we've never flexed those assets before. We're dropping them to lower minimums than anybody ever thought we could. We've got computerized tools that our operators have in front of them that are showing what's going on in the market, what the forward-looking market dynamics are. And we've changed how we deal with our mills.

And so what looked like a really bad situation for the state of California, we've turned into just a phenomenal opportunity for essentially everybody in the west. And now we're tapping into that because we do have base load capacity, and we have the ability to flex that capacity based on what makes sense from an economic standpoint for our customers.



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HASCALL: Some challenges, like the regional haze issue, are going to affect you no matter what industry you're in. However, the regulations that are coming from the federal government are not based on sound science. Now, we can measure mercury in the parts per trillion, but according to the regulation they have a term that they call density. And I challenge anybody to read the definition of that. You can have a pH meter. You can read mercury, nitrous oxide, sulfur dioxide down to a very minute measurement. But there is not a device that measures the density. It's an arbitrary and capricious measurement. And it's putting all of our industries at risk. Somehow we have to be able to convey that.

There is common ground there. And we have to bring the environmental community in on that. It needs to be based on commonsense where we can reach common ground. No one's opposed to measuring it. But we have to know what the scientific measurement is. And then we can identify the individual contributors to the haze. If we don't do that, then the regulations are going to prevent us from making these investments that we need to make, especially past 2022 and 2030.

We've seen a considerable increase in attention to air quality concerns. Can you talk about what your industry is doing to address air quality?

CRANE: Air quality is absolutely paramount to our business, as well as our economy and way of life. We're focused on it from several dimensions. Certainly, the most visible one right now is our recently announced WestSmart EV program. Through our legislation, which was the Sustainable Transportation and Energy Plan, Senate Bill 115 that was passed in last year's session, this state has allocated through the regulatory commission process \$10 million that is going to be invested in electric vehicle infrastructure and promotion and education of electric vehicles.

We've also partnered with the universities and Laura's office and others to put together an application for a DOE grant, which we were awarded. So we've now added an additional \$4 million from that grant, which is going to allow us to build charging infrastructure on the interstate highway systems in Wyoming, Idaho and throughout Utah, and that's really going to get rid of that range anxiety issue. It's going to help facilitate education on electric vehicles. It's also going to help us work with you all and all of our business customers in our state to help you promote electric vehicle adoption with your employees, as well as the community. Because tailpipes are our single largest contributor to the air quality challenges here in the Wasatch Valley.



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BROWN: Air quality is consistently on our minds. We're a very large mine. We're a very large city. We recognize that it's our privilege to operate in the valley. We shut down three of our coal-fired power plants last year, with an agreement with Rocky Mountain Power, that takes that out of the air shed. And we continue to look for opportunities to improve our fleet vehicles with either natural gas or electric vehicles. We were very active in the don't idle your car campaign that Utah Clean Cities really pushed. We've taken that across the U.S. in a variety of different approaches, different industries.

BLACK: Distributed solar is not going to be the end all, be all when it comes to fixing air quality in the valley, but it's certainly a large piece of the puzzle. You couple that with EVs and other technologies, and I think we can take a big hit in our air quality. And it hits home for me. I have a six-year-old daughter with severe asthma. In the winter months, in January, she can't even go outdoors to recess. So to me, it's something we need to be focusing on and finding innovative solutions that reduce emissions in our gas burning cars, convert to EVs, and find ways that the Salt Lake Valley doesn't look like Beijing in the middle of January.

MIKELL: I see our company partnering with Rocky Mountain Power, as these new businesses—Facebook or Google or Apple—decide to come to Utah and are looking for new resources from renewables. We have projects all over the state. The benefit of utility solar is similar to rooftop solar. We could put solar in Tooele County, Box Elder County, Carbon County, Emery County, and we can create economic benefits for everybody in the state. And that's where I see our difference helping.

HASCALL: Sunnyside Cogeneration has worked with the state to achieve low-emitter status on a lot of our particulates. As we blend our fuels that we have, you know, the workforce knows what we're trying to achieve. The one thing that we can do better is letting the public know we're trying to be a low emitter.

ZIMMERMAN: I'd like to mention two things in particular. One is my solar group has been extremely innovative in the installation of solar facilities as part of the effort to drive down the overall price of those facilities. So as you drive that price down, obviously it makes it more available. The second is we're just in the business of installing a lot of pollution control equipment as well. We've got a couple of really fun projects that we're jumping into right now. So we're installing that equipment that will help clean the air as well.



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KEIM: Let me, first of all, give a plug to the governor. This is really high on his agenda. He has visited every one of the refineries. He came to all of our sites to talk about Tier 3 gasoline, ultra-low sulfur gas. It will make a big difference in the valley. The population is growing. And a big percentage of our environmental issues have to do with the gasoline. So I give him kudos for making the rounds, making the effort, certainly elevating it to the level he thinks is necessary.

I also want to give kudos to the legislators. They've passed two bills: one, the high infrastructure bill that was passed a couple of years ago, and then the recent refinery tax. They both are incentives for the refiners to produce Tier 3 gasoline. And it does help. It's a long way for paying for it all, but it certainly incentivizes each refiner to take a hard look at it. I mean, we're all going to be Tier 3 compliant. There's no question about that. It's just a question of how we get there. We live in the community. We're part of the community. We want to be part of the solution. We're just trying to find the right technology at the right cost to do it.

If you were to tell us one significant opportunity and one thing you want the broader business community to understand about both your industry and company, what would those two things be?

BLACK: The biggest opportunity for distributed solar is just the total addressable market that's still out there. Utah has been in the top six or so solar penetrating states—there's some big players in there, like California and Arizona and Hawaii—but we're minuscule in terms of number of households that have solar. You're talking in the 2 percent, maybe 3 percent range. We're less than 1 percent penetrated across the nation. And that's amazing given how much has happened with solar over the last five to six, maybe even 10 years.

HASCALL: One of the things the public needs to know is that coal drives a large portion of the economy in our state, especially in Carbon, Emery and Sanpete Counties. It touches all phases of life in those rural communities. And we need to put a good message forward to let them know that we have a future and that we need to maintain it.

FRANKLIN: The revolution of the oil and gas industry over the last 10 years has changed the security of this country. Our energy independence is critical to our position in the world and our safety and ability to perhaps not engage with foreign actors that we may have in the past. It is critical for our country's survival.



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BELL: The trajectory of the utility-scale solar industry is limitless, given the resources we have in the state. Once the industry can solve the issues of site selection, interconnection, transmission, and put all those pieces together, we could have tremendous development going forward, as other states have seen. We're just getting started and more, hopefully, will come.

CRANE: Utah is far more renewable than the citizens within the state truly understand. We are the largest provider of electricity in the state, we have the largest wind fleet, we're the largest wind owner and operator in the western U.S. and second-largest in the U.S. We were just recognized by Smart Electric Power Alliance as being in the top 10 nationally for solar installations in 2016. We were third for bringing on 760 megawatts of utility-scale solar. All of that in the state of Utah. And we have a few hundred megawatts that are still in the pipeline under construction that will come online this year as well.

We also have extensive hydro. So it's not just wind. It's solar and hydro. And we do have a little geothermal plant as well. All of that goes toward meeting the renewable energy goals, the sustainability goals that our customers and our cities and communities throughout Utah are putting in place as goals they want to achieve. And it's these larger-scale resources that are going to enable us to help them achieve their goals.

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6. **Former Utah Highway Patrol trooper charged with arson in wildfire**

Fox 13 News, Aug. 8 | Ben Winslow

SALT LAKE CITY — The Utah Attorney General's Office has charged a former Utah Highway Patrol trooper with arson, accusing him of setting a wildfire.

Rex Olsen was charged in Vernal's 8th District Court on Tuesday with arson, a second-degree felony; and wildland fire prevention violation, a class B misdemeanor. Law enforcement sources confirmed to FOX 13 late Tuesday that Olsen was a UHP trooper at the time of the fire.

According to an affidavit filed with the charges, Olsen admitted to starting the Maeser fire on June 9. An investigator with the Utah Division of Forestry, Fire and State Lands wrote in a probable cause statement the fire was sparked by "a delayed ignition device constructed to ignite a fire using the cigarette as a timed fuse."



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“I located and reviewed video evidence at a local gas station that showed

Rex Olsen (“Olsen”) purchasing the type of cigarette used at the scene to start the fire. I also obtained GPS based location data from Olsen’s patrol car that showed he was in the area where the fire began at the time the ignition device was placed and the fire was started,” investigator Jason Curry wrote.

“I conducted an in-person interview with Olsen. During this interview, Olsen stated and acknowledged that he alone was the person responsible for intentionally igniting the Maeser fire on June 9th, and that he did so because he wanted to feel the excitement of it.”

The wildfire burned approximately 1,000 acres and prompted evacuations in the tiny eastern Utah town in June.

In a statement, the Utah Department of Public Safety said it launched its own investigation and fired Olsen on July 1.

“Throughout the investigation, the Department of Public Safety has worked closely with investigators and will continue to do so. We regret when incidents happen involving our personnel which reflect negatively on our department,” agency spokeswoman Marissa Cote said in the statement.

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7. Utah Seeking \$1.9 Billion From EPA Over Mine-Waste Spill

The Salt Lake Tribune, Aug. 8 | The Associated Press

SALT LAKE CITY, Utah (AP) – Utah officials have confirmed the state is asking the U.S. Environmental Protection Agency for \$1.9 billion in damages after the EPA inadvertently triggered a multistate spill from an old gold mine in Colorado.

Dan Burton, a spokesman for the Utah attorney general’s office, said Tuesday the state filed the claim in February but never publicly announced it. Word of the claim first surfaced Friday when the EPA made a passing reference to it in a news release.



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Utah's claim is by far the largest stemming from the August 2015 spill from the Gold King Mine. Rivers in Colorado, New Mexico and Utah were polluted with heavy metals, and Indian lands were also affected.

The Navajo Nation filed a claim for \$162 million, and the state of New Mexico sought \$130 million.

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8. **Commentary: Slaughtering wild horses would be simplistic and cruel**

The Salt Lake Tribune, Aug. 8 | Rob Hammer

Late last month, Utah's Chris Stewart introduced an amendment to the Interior Department's 2018 spending bill that would send thousands of America's wild horses to slaughterhouses. This action by my own congressman disturbs me deeply, as I run a public service website devoted to raising awareness of these majestic animals and their increasingly threatened habitats.

Toward the end of the 19th century, nearly 400 years after Spanish explorers reintroduced horses to these lands of their evolutionary origin, an estimated one million mustangs roamed the American outlands. Seventy years later, slaughterhouse wranglers had reduced that number to just 17,000. The Wild Free-Roaming Horses and Burros Act of 1971 established defined herd areas on federal lands to protect these animals from complete annihilation, tasking the Bureau of Land Management with maintaining existing populations within prescribed levels — prescriptions they write themselves, often using debatable premises and data.

According to a recent Idaho Law Review article (Mara C. Hurwitt, Freedom vs. Forage, 2017), the herd areas defined in 1971 encompassed 53.8 million acres. Since then, the BLM has constricted these into smaller Herd Management Areas comprising just 31.6 million acres, reducing these habitats by over forty percent. Additionally, herds have been completely zeroed out in several areas, further reducing the dedicated acreage on which horses actually roam.

But these diminishing acres are not devoted exclusively to mustangs. Subsequent legislation mandates multiple use, including commercial grazing leases. Feed availability on open ranges is quantified by "animal unit month" (AUM), the amount required to sustain one cow-calf pair for one month (or one horse, or five sheep). According to Hurwitt's review of BLM documentation



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and grazing lease receipts, domestic cattle on public land currently outnumber mustangs 37 to 1, with ninety-seven percent of AUMs allocated to domestic stock.

Compounding the inequity, federal lease fees have been underpriced for decades, currently about one-tenth the private market rate for comparable rangeland. The BLM's grazing program generated \$14.5 million in 2015 with associated maintenance costs of \$36.2 million. In other words, American taxpayers subsidize a relative handful of ranchers producing less than three percent of our nation's beef at over \$20 million annually just to cover costs, and nearly \$110 million if we consider revenues lost to absurdly undervalued fees.

This small, heavily subsidized special interest group constitutes the loudest voice calling for removal of mustangs from federal land. Stewart's slaughter amendment is their latest, most threatening effort. They also perpetuate numerous myths about our mustangs, pushing the false argument that horses are an invasive and destructive presence on our public lands. (And just where did humans and cows evolve?) To date, I have visited 27 of Utah's 29 herd areas. I have frequently witnessed destruction caused by congregating herds of trampling cattle. I have yet to see a single instance of similar damage caused by our more mobile mustangs.

Clearly, the BLM's policy of managing herd areas by periodically removing "excess" populations creates more problems than it solves, including the current situation where nearly as many mustangs live in expensive holding facilities as roam free. Stewart believes destroying these animals, along with thousands still on the range, is the answer. He is wrong.

Mustang population growth is a complex problem requiring a thoughtful solution. Various wild horse advocacy groups propose comprehensive approaches that generally include some combination of administering long-acting birth control, retiring grazing leases, increasing lease fees, reapportioning AUM allotments, protecting large predators, returning herd areas to their original acreage and repopulating zeroed areas.

Congressman Stewart's proposal to simply slaughter these cherished symbols of our national heritage amounts to greed-driven cruelty and should be stripped from the Appropriations Bill before final Congressional approval.

Rob Hammer is proprietor of Wild Horse Tourist.

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9. Bible Springs Complex wild horse removal begins Aug. 15

The Deseret News, Aug. 8 | Press Release

CEDAR CITY — The Bureau of Land Management will be removing excess wild horses from areas within and outside the Bible Springs Complex in Iron and Beaver counties beginning Tuesday, Aug. 15.

The Bible Springs Complex encompasses the Four Mile, Tilly Creek and Bible Springs herd management areas. The current wild horse population estimate in the complex is approximately 619 animals, and the BLM plans to gather and remove 100 wild horses. Animals removed from the range will be available for adoption through a BLM program. Those that are not adopted will be cared for in long-term pastures.

The public is welcome to observe daily operations through BLM escorted tours — provided the safety of the animals, staff and observers are not jeopardized — and operations are not disrupted.

Observers must provide their own transportation, water and food. No public restrooms will be available. The BLM recommends weather appropriate footwear and neutral-colored clothing. Binoculars and four-wheel drive, high-clearance vehicles are also recommended.

Those interested in participating should meet at the Maverik, 220 N. Airport Road, where tours will depart at 5 a.m. Details will be announced daily on the BLM gather hotline at 801-539-4050.

Visitors and observers to the gather area should be aware that low-flying helicopters will be used as part of the operation. Flying drone near the Wah Wah and Indian Peak Mountain ranges will be prohibited during the gather. Brief road closures may also be needed to allow movement of horses during the operation.

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10. Provo business partners with London artist for mural of endangered species in Utah

The Herald Extra, Aug. 9 | Shelby Slade Daily Herald

There's a little more color in downtown Provo now, thanks to a collaboration between Nu Skin and a London artist.



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On the side of a wall near Nu Skin's office on Center Street, Louis Masai painted a group of Gunnison sage grouse, as part of his efforts to highlight the situation the endangered species and the planet are in.

The piece, which incorporates a lot of bright and vivid colors, also operates as a call to action, Masai said.

"We are inside the sixth extinction, which has been brought on by humans as opposed to a natural disaster, and I find that fascinating," Masai said. "But I also recognize that we are in a position we're we can rectify these problems but if people don't know about them how can we fix things and resolve things."

The mural, which was painted over the course of five days in mid-July depicts an adult male and female Gunnison sage grouse, an endangered bird native to southern parts of Utah and Colorado, as well as a baby bird.

The adult birds are painted in a colorful patchwork style, which Masai said denotes they are toys rather than the living bird.

"The point being that the patchwork is a toy and for me that raises this issue there is nothing left," he said. "There's just this souvenir and I'm posing a question to the audience: Is this really it? Is this really where you see things going? Does this not upset you, concern you? Do you not think we should do something about this?"

However, the baby is painted as a it really would look and is meant to convey hope for the future.

"Actually the baby is living for one reason: I wanted it to be a point of optimism and hope in that perhaps the species can continue because there is this one living baby, which means that if there is a baby of the other sex then the species can continue," he said.

Masai said his work often features endangered animals and he hopes that by bringing these animals to people's attention things can change.

"Other people have had different interpretations of it (the art), but that's what's good about art," Masai said. "I can have the reason why I've done it but that doesn't mean I'm going to get that



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same reaction from all of the audience. People will have different ideas, and to me, they are all valuable.”

“I think what I have achieved is that people globally know if I’m doing something there’s a reason behind it,” he added.

Leah Cadavona, vice president of global brand strategy for Nu Skin, said the mural brings some color and unique images to what was once a bare stretch of wall in the center of downtown Provo.

The mural came out of the company’s push for innovation and a routine, informal meeting they have to discuss ideas. When someone pitched the idea for a mural in that space, Nu Skin started looking into it and interviewing artists.

That’s where they found out about Masai and the unique work he does.

“He (Masai) does unique pieces; he never repeats anything,” she said. “His art will only be created one time and it will be unique for the area.”

Cadavona said they also worked with Masai to make sure the mural was able to be something the international visitors could connect with. Among the patchwork, are different scraps of patterns like Pac Man, watermelons and anchors — there’s always something to look at and connect to.

So far, they’ve already seen employees, community members and passers by stopping to look at the mural.

“Part of the reason we wanted to beautify the space was to have something not only for employees to look at and enjoy but also for the community. We were born and bred in Provo and we are loud and proud about that. We have always wanted to play an active part of that community.”

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E&E/NATIONAL NEWS – FULL STORY

1. Court strikes down Obama EPA's restrictions on Earth-warming gases

The Hill, Aug. 8 | Timothy Cama

A federal court on Tuesday struck down an Obama administration rule that banned certain uses of certain gases used in air conditioning and refrigeration.

The court said that the Environmental Protection Agency (EPA) cannot ban hydrofluorocarbons (HFCs) under a Clean Air Act provision meant to protect the ozone layer, since that section is meant only to stop ozone-depleting substances.

The U.S. Court of Appeals for the District of Columbia Circuit's 2-to-1 ruling puts a dent in a major piece of former President Obama's climate-change agenda.

When released into the atmosphere, HFCs are extremely potent greenhouse gases, with an Earth-warming potential up to 14,800 times that of the same volume of carbon dioxide. They break down in as little as 15 years, so phasing out the use of HFCs could bring quick results to greenhouse gas-cutting efforts.

The substances came into wide use in recent years, following the 1990 Clean Air Act, which sought in part to phase out the use of gases that depleted the ozone layer.

HFCs grew rapidly as a substitute, but since they are greenhouse gases the Obama administration wanted to phase them out as well, and it got industry support for its efforts.

The appeals court ruled Tuesday, however, that the EPA cannot invoke the same Clean Air Act provision used to phase out ozone-depleting substances for HFCs.

The agency relied in part on saying that the law allowed it to require companies to "replace" harmful substances continually, the judges said.

"EPA's current reading stretches the word 'replace' beyond its ordinary meaning," Judge Brett Kavanaugh wrote for the court, joined by Judge Janice Rogers Brown. Both were nominated to the court by former President George W. Bush.



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"EPA's authority to regulate ozone-depleting substances under Section 612 and other statutes does not give EPA authority to order the replacement of substances that are not ozone depleting but that contribute to climate change," the court said.

The judges ruled that the EPA can, however, remove HFCs from the list of acceptable substances for companies to use if they haven't already phased out ozone-depleting gases.

Judge Robert Wilkins, an Obama appointee, dissented with the majority's ruling on the HFC phaseout. He said that the EPA's interpretation of the Clean Air Act was acceptable.

In the case, *Mexichem Fluor Inc. v. EPA*, two companies that manufacturer HFCs sued to stop the regulation.

While the Trump administration has worked diligently to undo Obama's climate change policies, it nonetheless defended the HFC regulation in court and sent attorneys to argue the case in February.

The EPA declined to comment on the decision beyond saying that the agency is reviewing it.

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2. **Coal to dominate US electricity market over next two years**

The Washington Examiner, Aug. 8 | John Siciliano

U.S. coal production will see a sustained boost over the next two years due to increased use at power plants and a rise in exports, according to the federal government's latest energy projections.

"U.S. coal production is getting a boost in 2017 from higher coal exports and more coal-fired electricity generation," said Howard Gruenspecht, the Energy Information Administration acting administrator, as he released the agency's latest short-term energy outlook for the month of August on Tuesday.

"Coal-fired power plants are expected to be the leading source of U.S. electricity for the next two years, as the cost of coal is expected to rise by less than the cost of natural gas and renewable generation continues to grow," he added.



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The latest outlook showed coal's power plant output will rise from comprising 30 percent of the nation's electricity output last year to nearly 32 percent in the second half of 2017.

That could put coal ahead of natural gas power plants that have dominated the market over coal in the last few years.

The only problem is that electricity demand is expected to drop going for the third year in a row, according to the report. But for now, it looks like natural gas power plants will take the biggest hit from waning demand, mainly because natural gas prices are rising and milder temperatures will reduce the need for electric cooling in the fall compared to a year ago.

"U.S. electricity generation is expected to decline in 2017 for the third year in row, as forecast milder temperatures in the third quarter compared to the same period a year earlier reduces electric cooling demand," said Gruenspecht.

Nevertheless, Gruenspecht is confident that coal production will continue to remain high even with electricity demand dropping. Strong demand for U.S. coal exports overseas has a lot to do with that. Coal exports rose 60 percent in the first five months of 2017.

The rate of exports is supposed to "slow in the coming months," the agency said. But it will still be 17 percent higher than it was in 2016.

"The increase in coal exports contributes to an expected 58 [million short tons (MMst)] (8%) increase in coal production in 2017," according to the EIA short-term outlook. "In 2018, coal production is forecast to increase by 10 MMst," or 1 percent.

Natural gas will also benefit from increased demand for exports over the next two years, the report showed.

"U.S. natural gas production growth is expected to accelerate over the next two years with growth rates over 2% in 2017 and over 5.5% in 2018," said Gruenspecht. "Forecast record natural gas production in 2018 coincides with an expected rise in electricity generation from natural-gas fired power plants and a 23% increase in U.S. natural gas exports."

Meanwhile, renewable energy is also expected to see significant gains. "U.S. wind power, which provided 6% of total U.S. electricity in 2016, is expected to have a 9% generating capacity increase this year and another 16% in 2018," said Gruenspecht.



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"Solar power, which provided 1% of total U.S. electric generation in 2016, is expected to see the largest rate of growth in utility-scale electricity generating capacity of any energy source, increasing 36% this year and more than 10% in 2018," he said.

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3. **The Trump Administration Delivers Much Needed Relief to the Coal Industry**

JD Supra, Aug. 8 | Snell & Wilmer Law Press Release

During the first six months of the new Administration, President Trump has delivered much needed relief to the coal industry. The President and Congress have been particularly effective at rolling back policies proposed at the end of the previous Administration.

Half-way through this first year, a ban on federal coal leasing has been lifted, overly restrictive coal mining regulations regarding stream protection were revoked by Congress and, just yesterday, the Trump Administration published its repeal of coal valuation rules which were not finalized until January, 2017.

These policies and rules have the common thread of being overly burdensome and pushed to decision in the final year of the Obama Administration. The repeal of these measures comes as welcome relief to the beleaguered coal industry. Hope has returned to the industry, particularly for development of coal on public lands.

The coal industry in Utah, largely dependent on federal coal reserves, has seen significant results from these policy changes.

New Policy Directives

On March 28, 2017, President Trump signed Executive Order 13783, aptly titled, "Promoting Energy Independence and Economic Growth", announcing that "my administration is putting an end to the war on coal." The President stated that, "with today's executive action, I am taking historic steps to lift the restrictions on American energy, to reverse government intrusion, and to cancel job-killing regulations." Key among the restrictions addressed in the Executive Order was a moratorium on federal coal leasing imposed on January 15, 2016 by former Secretary of Interior Jewell under Secretarial Order 3338. Ostensibly, the leasing ban was to extend for three-years to



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allow for agency review of the Federal Coal Program under a programmatic environmental impact statement. Although the Department would lose federal lease revenue during the ban, Secretary Jewell reasoned that the current federal program needed examination primarily because the coal program had failed to generate a fair return to the taxpayers. This rationale was challenged by the coal industry as inconsistent with existing safe-guards. Notably, the current leasing program involves an above-board competitive bidding process. Under current federal rules at 43 CFR Subpart 3420, a bid for coal reserves cannot be accepted at a competitive lease sale unless the bid meets or exceeds fair market value, as independently determined by the agency. Further, prior to lease issuance, the current rules require an anti-trust investigation by the US Department of Justice.

Despite questions regarding the need for Federal Coal Program reform and over the objections of the coal industry, Secretary Jewell pushed to prepare a scoping report on the EIS published only days prior to the end of the Obama Administration. Similarly, on January 1, 2017, the Department of Interior, Office of Natural Resources Revenue finalized a controversial rule changing the manner in which production royalties are valued for oil, gas and coal leases on federal and Indian lands. Also late to the game, the Office of Surface Mining Regulation and Enforcement finalized its stream protection rule effective as of January 19, 2017, one day before the change in Administration. In its rush to finalize the rule, OSMRE failed to engage State agencies with primary regulatory authority under the Surface Mining Control and Reclamation Act. The coal industry viewed these rules as overly burdensome, a duplication of state regulations and as usurping State authority over their coal regulatory programs.

The Trump Administration and Congress promptly responded to these overly burdensome rules and policies proposed at the tail end of the Obama Administration. Well prior to taking action by Executive Order, on February 16, 2017, President Trump signed into law House Joint Resolution 38, passed under the Congressional Review Act ('CRA') to revoke OSMRE's stream protection rule. The CRA authorizes Congress to review and invalidate regulations promulgated during the last 60 days of the prior Administration upon joint resolution of disapproval. As the result of repeal of OSMRE's rule, the prior stream protection and hydrologic protection rules remain in place.

On March 29, 2017, within one day of the President's Executive Order 13783, new Secretary of Interior Zinke, lifted the moratorium on federal coal leasing, ceased the Federal Coal Program environmental review and reinstated the Federal Royalty Policy Committee. Secretary Zinke, critical of his predecessor's use of a programmatic EIS as the vehicle for policy reform, fully reinstated leasing under the Federal Coal Program and invited comment on the need for further



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regulatory reform. To further implement the President's Executive Order, on April 4, 2017, ONRR proposed to rescind the final Consolidated Federal Oil & Gas and Federal Indian & Coal Valuation Rule. 82 Fed. Reg. 16323. The final coal valuation rule was repealed yesterday by ONRR at 82 Fed. Reg. 36934 (August 7, 2017). ONRR also reinstated the valuation regulations that were in effect prior to January 1, 2017 and both the repeal and reinstatement will become effective in 30 days.

Impacts on the Utah Coal Industry

The actions of the Trump Administration, particularly the lifting of the coal moratorium, may have significantly helped the coal industry in Utah. Lifting the ban on leasing has the immediate effect of allowing the Alton Coal Tract Lease by Application ("LBA") to proceed to final decision by the Bureau of Land Management ("BLM"). The Alton Coal Tract includes some 3,581 surface acres and an estimated 44.9 million tons of recoverable coal located on federal lands within Kane County, Utah. Pending review since 2004, the LBA was in the final stages of environmental review in January, 2016 when the previous Administration imposed the lease moratorium. The BLM is now moving to complete the Final Environmental Impact Statement (EIS) and hopes to make a final leasing decision in early 2018. If the competitive lease is granted to Alton Coal Development it will extend the life of the Coal Hollow Mine and create additional jobs in rural Utah.

Even prior to lifting the federal lease moratorium, one of Secretary Zinke's first actions in office was to issue a competitive lease to Bowie Resources, Inc. for some 55 million tons of coal reserves within Utah located in the Fishlake and Manti-La Sal national forests. The Greens Hollow Federal Coal Lease issued in early March, 2017, allows for expansion of the Sufco Mine located on 6,175 acres in Sanpete and Sevier Counties. The competitive lease sale generated \$23 million in lease bonus revenues which, along with lease and production royalty, will be split equally between the State of Utah and the federal government. The lease will extend the life of the Sufco Mine which delivers coal to power the PacifiCorp's coal-fired plants in central Utah.

While the federal leases will benefit existing coal operations, a new coal mine started production in Emery County, Utah in June, 2017. Bronco Utah Coal Company purchased land and coal reserves at the site of the Consol Energy mine. Operating under a newly approved mine plan, Bronco has begun production near the town of Emery, Utah. At full production the Bronco Utah Mine will employ some 100 workers. Coal will be delivered to both the local steam coal market and to be exported.



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Looking to the future, federal coal reserves, locked up during the Clinton Administration may also become available for lease. By Executive Order issued on April 26, 2017, Secretary Zinke was directed to review national monuments created since 1996. Of particular interest to the Utah coal industry, Secretary Zinke has focused on narrowing the boundaries of the 1.88 million-acre Grand Staircase Escalante National Monument. The original proclamation issued in September, 1996 which created the national monument resulted in the cancellation of the Smokey Hollow Coal Mine which was on the verge of receiving a permit to operate. The Secretary has 120 days to report but is likely to propose that boundaries be re-drawn to allow the possible leasing and development of these federal coal reserves.

In sum, the coal industry in Utah continues to fuel more than 70 percent of the State's electrical energy. The industry is valued at over \$800 million and provides some 2,000 high-paying jobs and a significant portion of local tax bases. The actions of the Trump Administration during the past six months may be essential to allow leasing of needed federal coal reserves at fair market value. These actions allow the industry and regulators to return to the rules of the Federal Coal Program as applied prior the tail-end of the prior Administration.

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4. Greater sage-grouse: Interior's new sage grouse recommendations at a glance

High Country News, Aug. 8 | Tay Wiles

The Interior Department has finished a sweeping review of 98 West-wide sage grouse management plans, part of a broader effort to examine what President Donald Trump deems potential barriers to energy extraction on federal public lands.

The review, which took place across the 10 Western states with existing sage grouse plans, ended with a contentious report filed to Interior Secretary Ryan Zinke last week. A panel of federal officials authored the report, which was released to the public on Monday. The report suggests scaling back protections for the imperiled bird, in an effort to give states (and likely industry) more flexibility. Some governors and industry groups say the recommendations open the door to more development. Conservationists have responded with resounding criticism, saying the report



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prioritizes oil and gas over sage grouse and their habitat, undoing the work of existing plans, finalized in 2015 after a decade of study and negotiations.

Here are key takeaways from the new sage grouse report:

Changing boundaries

The report recommends the evaluation and potential elimination of “sagebrush focal areas,” or SFAs, which limit development in some of the bird’s most sensitive habitat. In current sage grouse management plans, some SFAs are more helpful to conservation than others. Brian Rutledge, director of the Audubon Society’s Sagebrush Ecosystem Initiative, says the loss of certain SFAs “might remove some expansion space for the grouse, but it wouldn’t be terminally detrimental to the plans.” He’s more concerned with what are called “priority habitat areas.” These limit development in core habitat, but they could also be changed, according to the report. The weakening of these priority areas could lead to more development and further habitat fragmentation, Rutledge says.

Population targets

The report recommends the use of population targets for helping to measure conservation success. That’s a thorny issue for many conservationists, who worry about a shift away from overall habitat health and greater reliance on captive breeding, a questionable method of conservation for sage grouse. Still, the report does not suggest getting rid of habitat conservation completely.

San Stiver, sagebrush initiative coordinator with the Western Association of Fish and Wildlife Agencies, says sage grouse population counts are tricky, “mainly because of large fluctuations in populations.” Stiver said in an interview he remains optimistic about the review, whose recommendations around population targets could in fact enhance the 2015 plans — “and we didn’t give up anything on the habitat end of it.”

Next steps

For now, lawsuits from Idaho, Nevada and Utah — states that disagreed with the 2015 plans — will remain in play. Meanwhile, Zinke has directed agencies to immediately implement the recommendations. Over the next two months, his Interior Department will continue to meet with



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stakeholders to discuss the report. Further recommendations for changes to the 2015 plans are expected in October or November and in early 2018.

Any or all of these recommendations have the potential to unravel delicate negotiations between the feds, the states, ranchers, developers and conservationists — not to mention further endanger the grouse. In a statement following the report's release, President and CEO for Defenders of Wildlife Jamie Rappaport Clark, said: "Interior's proposed changes could irreparably damage sage grouse habitat, jeopardizing an unprecedented, collaborative effort to conserve this iconic species."

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5. **Climate Reports May Slow Trump's Push to Undo Obama-Era Rules**

Bloomberg News, Aug. 9 | Christopher Flavelle, Brian K. Sullivan

A pair of highly anticipated government studies, one of them due to be released this week, could complicate President Donald Trump's effort to roll back federal climate regulations, according to people on both sides of the debate over global warming.

A National Oceanic and Atmospheric Administration-backed report summarizing the global effects of climate change in 2016 is scheduled for release Thursday. Its conclusion will be similar to previous years' versions, according to people familiar with the report: Climate change is real, it's man-made and it's dangerous.

That report dovetails with a broader National Climate Assessment, which is due next year from the administration. Drafts of the study, compiled by scientists from across the federal government, show the effects of climate change in the U.S. are severe.

Both reports are at odds with Trump's contention that climate change is a "hoax" and may hinder his moves to undo President Barack Obama's efforts to address the issue, analysts say. Revoking Obama's rules requires agencies to give a legally sound justification for the policy pivots -- such as arguing they are no longer necessary.

David Schnare, who worked on Trump's transition team at the Environmental Protection Agency and then advised EPA Administrator Scott Pruitt, said that both reports will make it harder for the agency to reverse the Obama administration's limits on carbon dioxide emissions from power



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plants, as well as the broader policy that defines those emissions as a danger to the public, called an endangerment finding.

"If the NCA comes out with an unflattering report on carbon dioxide, the only way EPA can change its endangerment finding is to reexamine all that science, and have a reasonable basis for rejecting" it, said Schnare, who left EPA in March. Once those reports become public, "it's hard to dodge," he said.

Opponents of Trump's climate policies agreed that the reports could slow his administration's repeal of Obama-era regulations.

"It will make it harder for them to justify," said David Hawkins, director of climate programs for the Natural Resources Defense Council. "It's yet another document that weighs against whatever claims Trump political appointees attempt to make about the state of the science."

Thursday's report, which was written by more than 450 scientists in the U.S. and abroad, will show that ice levels in Antarctica have set a record low, according to Keith Seitter, executive director of the American Meteorological Society. Antarctic ice levels had previously been increasing, a point highlighted by those who say climate change is a hoax.

The study will be released in the group's Bulletin of the American Meteorological Society.

Otherwise, the report doesn't contain many surprises, according to Seitter -- because the public has become accustomed to continually breaking temperature records. On Tuesday, NOAA reported that 2017 is so far the second-warmest year to date.

"As a standard practice, NOAA does not discuss leaked or draft reports," said Brady Phillips, a spokesman for the agency.

NOAA's willingness to publicize data about the threat of climate change presents a stark contrast with other agencies. The EPA has removed information about climate change from its website; Pruitt has said human activity isn't the primary contributor to global warming, as has Secretary of Energy Rick Perry. And the Interior Department reassigned dozens of employees, including one scientist who said his transfer to an office processing revenue was in retaliation "for speaking out publicly about the dangers that climate change poses to Alaska Native communities."



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An Interior spokeswoman declined to discuss specific personnel matters among the senior executive service and said the reassignments "are being conducted to better serve the taxpayer and the department's operations." The EPA didn't respond to a request for comment.

The difference, according to Schnare, reflects the fact that the Trump administration has yet to assign political appointees to NOAA, which has left the agency -- a division of the Department of Commerce -- with an unusual degree of independence. Nor has the administration filled key climate positions at the White House; the Office of Science and Technology Policy still has no confirmed director, preventing it from aligning policy across federal agencies.

"This administration has simply not gotten its coordinating process together," said Schnare.

Ross Gillfillan, a spokesman for the science office, declined to comment.

National Assessment

A test of that coordinating process will be the National Climate Assessment, which the White House is required by Congress to release every four years. The last report, in 2014, concluded that average global temperatures had increased more than 1.5 degrees Fahrenheit (0.8 Celsius) since 1880, and predicted as much as four feet of sea-level rise by 2100. A draft version of the 2018 report projects temperatures in the U.S. will rise as much as 12 degrees if emissions aren't reduced. The New York Times reported Tuesday that scientists involved were worried the Trump administration would suppress that study.

"The White House will withhold comment on any draft report before its scheduled release date," White House spokeswoman Sarah Sanders said in a statement referring to the New York Times story.

Hawkins, of the Natural Resources Defense Council, said the administration could in theory try to stop publication of the final report, which must be approved by 13 federal agencies; it could even go so far as to reassign or fire the scientists working on it. But, he added, those strategies are unlikely to do much good.

"Now that the current draft report is public knowledge, firing people isn't going to undermine the validity of what's written down," Hawkins said. "They can't prevent the understanding of the science anymore than Canute could hold back the seas."



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6. **EPA report shows economic growth, environmental rules can co-exist**

USA Today, Aug. 8 | Ledyard King

WASHINGTON — The Trump administration’s argument that “job-killing” environmental regulations are stifling U.S. economic growth is being undercut by ... the Trump administration.

A new report from the Environmental Protection Agency found that since Congress passed the Clean Air Act in 1970, the economy has more than tripled and the number of vehicle miles traveled every year has nearly doubled — all while the nation’s population and annual energy consumption has surged.

At the same time, the levels of six key air pollutants — carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter and sulfur dioxide — have declined dramatically.

The number of unhealthy air quality days annually in 35 of America’s largest cities has fallen significantly while the visibility at national parks across the country once shrouded in haze has improved substantially, the report said.

“The U.S. leads the world in having clean air and a strong economy due to implementation of the Clean Air Act and technological advancements from American innovators,” EPA’s Trends Report declares.

Environmentalists have seized on the report as evidence that efforts by President Donald Trump and EPA Administrator Scott Pruitt to roll back a slew of Obama-era rules designed to protect air, water and public health are grounded in flawed logic and should stop.

“Pruitt is selling an old line that the economy and the environment are in conflict. The data over the last 50 years shows it isn’t so,” said David Doniger, director of the climate and clean air program at the Natural Resources Defense Council. “You can have a cleaner environment and a strongly growing economy.”

It’s an argument that Pruitt himself made when he addressed EPA staff Feb. 21 shortly after he was sworn in.



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“I believe that we as an agency, and we as a nation, can be both pro-energy and jobs and pro-environment. But we don't have to choose between the two,” he said.

But Pruitt, with the fervent endorsement of Trump, has made it clear he wants to roll back several key Obama-era regulations and stop others from taking effect.

The former Oklahoma attorney general sued the agency he now runs more than a dozen times to halt the implementation of a number of regulations including one involving ozone.

Pruitt had announced plans in June to delay for an additional year an Obama-era rule requiring states to curb smog-causing emissions such as ozone. It was set to take effect this fall. But he withdrew the proposal last week, a day after 16 states supporting the new standards sued the agency over the move.

He's talked about revisiting auto emissions rules though he told Reuters recently that nothing is currently under review.

Pruitt also tried to suspend Clean Air Act limits on methane leaks from oil and gas facilities but a court rejected his argument.

The move on methane was part of a larger effort by Trump to roll back Obama's climate change initiative. So was the president's decision to begin rolling back the Clean Power Plan and opting out of the global treaty known as the Paris Accord to limit carbon dioxide emissions.

“I am taking historic steps to lift the restrictions on American energy, to reverse government intrusion and to cancel job killing regulations,” Trump said in March as he signed an order to undo the Clean Power Plan while members of his cabinet including Pruitt and a group of coal miners looked on.

Undoing climate change initiatives are aimed in part to help the ailing coal industry, seen as a major contributor to air pollution.

Ross Eisenberg, vice president of Energy and Resources policy for the National Association of Manufacturers, agrees the Clean Air Act has been instrumental in reducing pollution over the past 47 years. So too, he said, has been industrial innovation that has led to cleaner and more energy-efficient products.



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But the new smog rule, which would lower the concentration of ozone from 75 to 70 parts per billion, will hurt the nation's industrial sector because of the billions it will cost to implement especially in the West and Midwest where air quality has made compliance challenging, he said.

"We reduced ozone substantially over the past 40 years. The Clean Air Act has unquestionably worked," Eisenberg said. "But the problem is all of the big things you can do to reduce ozone pollution have been done. The marginal changes that you can make these days are going to cost a whole lot more than the low hanging fruit you could have done in the '80s and the '90s."

Those views were echoed by Howard Feldman, senior director for regulatory and scientific affairs for the American Petroleum Institute, a trade group representing the oil and gas industry.

He said the new smog rules would "needlessly (burden) the states and businesses with potentially enormous costs." And he pointed out the industry has spent more than \$321 billion since 1990 modernizing its facilities to reduce harmful emissions.

But Bill Becker, the former executive director of the National Association of Clean Air Agencies, said the EPA report should convince the administration to be more aggressive in improving air quality and public health.

"You don't take a successful program, recognize that it's been working in terms of reducing emissions with an expended economy and then somehow decide to retreat as the administration is suggesting," he said. "The Trends Report is reaffirming that it should be full speed ahead in the way we've been doing things because it's been working."

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7. The Interior Department could cost taxpayers at least \$60 million by rolling back Obama rule

The Washington Post, Aug. 9 | Dino Grandoni

During his confirmation hearing for the job of running the Department of the Interior, Ryan Zinke told the Senate he wanted taxpayers to get "fair value" on resources extracted from public lands by private companies. But a recent move by him means taxpayers will get millions of dollars less from companies that extract oil and gas from public lands.



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Five months into the job, Zinke has arrived at a final decision, to the consternation of environmental and fiscal critics, on exactly how Interior will define what is an appropriate value for oil, gas and coal taken from lands collectively owned by U.S. citizens.

On Monday, the Interior Department officially repealed an Obama administration rule that in effect required oil, gas and coal extractors to pay more in royalties to the federal government and states. The Trump administration stayed the rule in February, less than two months after it had taken effect.

Here's the backstory: In July 2016, as President Obama's term wound down, the Office of Natural Resources Revenue (ONRR) issued a rule closing a loophole in Interior policy that critics said allowed fossil-fuel companies to sell oil, gas and coal to subsidiaries for an artificially low price. The maneuver allowed the companies to pay less in royalties to the federal government -- calculated as a percentage of that sales price -- before the subsidiaries in turn sold the fuel at market value to the parties that ultimately refined or consumed it.

The original Obama policy "was not a terribly controversial rule at the time," said Greg Zimmerman, deputy director of the Center for Western Priorities.

But the energy industry -- along with Republican allies in Congress -- is deriding the Obama-era rule as, in the words of Rep. David B. McKinley (R-W.Va.), "just one in a series of barriers [the Obama administration] put up to hold back energy production on federal lands." In his statement accompanying the Interior Department's announcement, McKinley added the previous rule was poised to siphon revenue "from local community coffers and the U.S. Treasury."

But a June report from the U.S. Government Accountability Office said otherwise. The internal government watchdog agency found that while raising the royalty rate failed to increase the amount of onshore oil, gas and coal extracted -- one of the goals of Trump's "energy dominance" strategy -- local governments collected more money under that policy.

In its Monday notice posted to the Federal Register, the Interior Department suggested that it will address the issue at a later date. ONRR "expects to in the near future promulgate a new, revised valuation rule that will address the various problems that have been identified in the rule we are repealing."



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In a statement, Erik Milito of the American Petroleum Institute said, "It's important we continue working with the administration and Congress on forward-looking policies that support America's energy renaissance and help our nation meet its energy needs." The oil and gas lobbying group had signaled to Trump its interest in reversing the Obama rule by filing a lawsuit challenging ONRR one month after Trump's election.

But until the regulation is reformulated, the new rule is the old rule -- one that was originally installed in the 1980.

"The prior regulations they are putting back in place are ancient," said Bruce Pendery, a litigation and energy policy specialist at The Wilderness Society. "I don't see how that can be painted as a step forward."

The Interior Department acknowledged that the rescinding the rule will cost taxpayers between \$60.1 million and \$74.8 million annually.

"The Interior Department admits it is giving away up to \$750 million over a decade to private companies making profits on a public resource," Sen. Maria Cantwell (D-Wash.) said in a statement on Monday. "Suspending this rule was not lawful in the first place, and this repeal violates Interior's obligation to ensure a fair return to taxpayers."

During his confirmation hearing, Zinke assured Cantwell, the ranking member of the Senate Energy and Natural Resources Committee, that coal companies would make the proper royalty payments under his watch.

"You don't have an objection to taxpayers getting a fair value?" Cantwell asked in January.

"I think taxpayers should always get a fair value," Zinke said.

"Including on coal?"

"Including our coal, wind and all the above."

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8. NATIONAL MONUMENTS: Green group sues Zinke for review documents

E & E News, Aug. 9 | Jennifer Yachnin

The Center for Biological Diversity announced today it has filed a lawsuit against Interior Secretary Ryan Zinke, asserting the Trump administration is "unlawfully withholding public records" in its ongoing review of dozens of national monuments.

In a [lawsuit](#) filed in the U.S. District Court for the District of Columbia, the environmental group said that Interior has failed to respond to requests under the Freedom of Information Act.

"The Interior Department's refusal to release the communication records and schedules of its secretary, and its failure to provide Interior Department records generated in connection with its review of national monument designations, undermines FOIA's policy of government transparency," the lawsuit says.

CBD is seeking information in relation to Interior's review of 27 national monuments. President Trump ordered the review in late April, mandating that Zinke assess the boundaries of all monuments created since 1996 that encompass more than 100,000 acres.

To date, Zinke has declared that he will not recommend changes to at least five monuments — the Craters of the Moon National Monument and Preserve in Idaho, Hanford Reach National Monument in Washington state, Canyons of the Ancients National Monument in Colorado, Upper Missouri River Breaks National Monument in Montana and Grand Canyon-Parashant National Monument in Arizona — while calling for significant cuts to the Bears Ears National Monument in Utah.

A final report is due Aug. 24.

An Interior spokeswoman referred requests for comment on the lawsuit to the Justice Department, which declined to comment.

Although Zinke's daily schedules are available online from Interior, the documents do not necessarily offer details about the secretary's meetings.



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Dates for his visit to the Bears Ears and Grand Staircase-Escalante monuments in Utah in May, for example, indicate only that the secretary would visit the sites and did not detail his meetings with local officials or other stakeholders.

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9. **NATURAL GAS: U.S. emerging as powerful force in LNG trade**

E & E News, Aug. 9 | Nathaniel Gronewold

The United States is rapidly becoming a net exporter of natural gas for the first time in 60 years.

That's according to data from the Census Bureau and the U.S. Energy Information Administration. While imports of gas are flat or falling, exports continue to rise, and the data give weight to government analysts' conviction that the United States is on track to become a net energy exporter, possibly as soon as within a decade.

EIA noted in a report yesterday that during the first half of 2017, the United States exported more natural gas than it imported in three of the first five months.

New Census Bureau data show that, by value, the United States was again a net exporter in June 2017, selling about \$593 million worth of natural gas to the world while importing \$566 million via gas pipelines from Canada and as liquefied natural gas.

That means the United States sold more gas to foreign trade partners than it imported for four of the first six months of the year. With new pipeline and LNG export capacity coming online soon, the United States should close out 2017 as a net exporter of natural gas, a situation that hasn't been seen since 1957, according to EIA.

Pipeline gas exports to Mexico are climbing relatively quickly as Mexico moves toward more gas-fired power generation. But gas pipeline exports to Canada have risen, too, while Canadian exporters have struggled to increase sales to the United States ever since the shale gas revolution unlocked huge new volumes of U.S. gas reserves.

"While the United States remains a net importer of natural gas from Canada, U.S. exports to eastern Canada have been increasing steadily since 2000, when the Vector pipeline began service," EIA noted. "U.S. natural gas exports from Michigan, mainly through the Vector pipeline, make up most of the natural gas export volumes by pipeline to Canada."



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Imports from Canada enter primarily in the West.

Census Bureau trade data show the values of exports and imports of natural gas are about neck and neck so far this year in value, both at around \$4.2 billion each. LNG exports now dwarf imports, however. The data show \$1.7 billion in sales of U.S. LNG to the world for the first half of this year, while LNG importers bought \$346 million worth.

Cheniere Energy's Sabine Pass became the first major LNG exporting hub to commence shipments since the shale gas boom. That facility is now poised to expand export capacity. Freeport LNG south of Houston expects to begin liquefaction and shipments in late 2018 or early 2019. Dominion Energy's Cove Point LNG in Maryland will be in service by the end of this year, the company says. More projects are coming in Corpus Christi, Texas; elsewhere in the Gulf of Mexico region; and at Georgia's Elba Island.

Proponents of these investments say LNG and other gas exports will help alleviate the United States' gargantuan trade deficit. However, to date, there is little evidence that rising exports of fossil fuels are helping to reduce the deficit.

The Bureau of Economic Analysis reported on Friday that the trade deficit is now more than 10 percent larger than it was a year ago. Oil imports used to make up a major portion of the total trade deficit as the United States became heavily dependent on other nation's crude oil production. But that ceased being true around 2000. A huge goods trade deficit with the world and with China in particular now dwarfs any impact on the numbers from oil imports.

Though the data show U.S. energy exports are not alleviating the overall trade deficit, that could change over time as the nation becomes a net energy exporter, depending on the future value of oil and natural gas. So far this year, U.S. oil exports have more than doubled, while exports of refined fuels remain strong.

Rising sales abroad of U.S. crude oil, pipelined natural gas, LNG and refined fuels should combine to see the nation becoming a net energy exporter, but that transition is being led by fossil fuels trade. The United States has seen its domestic solar power manufacturing industry hammered by import competition; combined with wind power technology, the U.S. renewable energy industry's overwhelming dependence on foreign wind and solar technology will likely continue for a long time.



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10. **FINANCE: Investors to Trump EPA: Don't freeze Obama methane rule**

E & E News, Aug. 9 | Benjamin Hulac

Investors managing hundreds of billions of dollars are pressing U.S. EPA to swiftly enforce a policy to limit the leaking of methane, the potent greenhouse gas.

The agency last year finalized a rule requiring the oil and gas industry to rein in methane leaks from hydraulic fracturing and natural gas projects. But the Trump administration stayed the rule, which is now tied up in a federal court fight.

In [comments](#) sent yesterday, 66 investors representing \$270 billion of assets under management urged EPA to reinstate the rule.

Investors concerned about climate change often use their financial clout to negotiate with companies and governments on environmental issues. The practice has grown in popularity in recent years, though House Republicans are seeking to dismantle shareholder activism (Climatewire, June 9).

"As shareholders, we have a vested interest in the long-term success of the companies we are invested in," the authors wrote to Peter Tsirigotis, an official in EPA's air office. The comments were submitted in response to the Trump administration's plans to freeze the regulation's implementation for two years, after initially staying the rule for 90 days.

The stay of the rule and a jump in methane emissions "constitute a clear and measurable harm not only to the climate, but also to investors who have positioned their portfolios with these regulations in mind," they said. "We urge their implementation now."

The Interfaith Center on Corporate Responsibility, a shareholder advocacy group, organized the letter. And mutual funds, pensions and religious investment groups signed it.

Last month, a federal court in Washington, D.C., ruled against EPA and ordered it to enforce the rule after the Trump administration halted the implementation of the standard.



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Oil and gas industry lawyers filed court papers Friday at the U.S. Court of Appeals for the District of Columbia Circuit. They said the panel of judges on the court had erred in requiring EPA to enforce the methane rules and requested that the full 11-judge court consider the case (Energywire, Aug. 4).

Those behind the investor letter want quick EPA action.

"Despite real efficiency gains by some parts of the industry in regard to its methane emissions, investor concern about methane leakage has only grown since the EPA methane rules were first proposed," Jamie Bonham of NEI Investments, a Canadian firm and a signatory, said in a statement.

"The oil and gas industry is the leading industrial source of methane pollution," said Mary Minette of Mercy Investment Services. "If methane emissions are not addressed, they will undermine natural gas's reputation as a cleaner energy source."

Delaying the Obama administration's methane rules, the investors wrote, will waste natural gas that could be sold, put jobs at risk and flummox investors who planned for climate regulations, including those to slash methane leaks.

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11. **WIND: Prairie bird nests fine among turbines — study**

E & E News, Aug. 9 | Adam Aton

In the air, spinning wind turbines chew up birds by the hundreds of thousands each year.

But on the ground, the situation might not be so bleak — at least for one species of prairie bird.

The Midwest's wind energy boom has kept researchers racing to understand the ecological impact of thousands of spinning blades dotting the Great Plains. It's an especially pressing question for grassland birds, which are declining at the fastest rate of any avian group in North America.



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Among the species of concern is the greater prairie chicken. The bird's numbers have dwindled as farmland has expanded, shrinking from 20 states to limited areas in 11. One of its subspecies is already extinct.

A new study from the University of Nebraska might hold some good news for the remaining population.

The greater prairie chicken seems to nest around wind farms about as well as it does elsewhere, according to a [paper](#) published this week in *The Condor: Ornithological Applications*, the American Ornithological Society's peer-reviewed journal.

Roads, ranching and other human development disrupt the bird's habitat more than wind turbines or their transmission lines, according to two years of observations around a Nebraska wind project.

Scientists have spent years wondering how prairie chickens might react to wind projects. The ground fowl's main predators roost in high trees, so it's possible the birds might fear the tall wind turbines and power lines would be a roost for raptors. That extra stress could lead to more egg loss.

But researchers found that the birds didn't avoid the wind project. Some even nested among the turbines and along the transmission line. Furthermore, the wind facility seemed to have no impact on nest survival.

That aligns with past findings, the researchers said.

"There is no evidence, to date, to suggest that prairie-chickens nesting in proximity to wind energy facilities change their patterns of nest site selection or that wind energy facilities affect their nest survival," they wrote, pointing to a 2014 study with similar findings in Kansas.

The wind farm in the study comprised 36 turbines, and larger projects with more roads might affect the birds more.

Conservationists cautioned against reading too much into a single study — or missing the big picture.



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Turbines are estimated to kill more than half a million birds each year and even more bats, according to a 2013 study published in the journal *Wildlife Society Bulletin*.

Other research has shown big effects for prairie chickens — and even bigger ones for sage grouse, said Michael Hutchins, director of the American Bird Conservancy's Bird-Smart Wind Energy Campaign.

"There's data going both ways," he said, with the location of wind projects playing one of the largest roles in how many birds they affect. Turbines along migratory paths and bodies of water — especially the Great Lakes — can devastate species, he said. Projects in land already used for farming might be the least harmful.

"We're not anti-wind in any way, shape or form. But we look very hard at where they want to put them," he said. "There's some real, non-trivial environmental costs to renewable energy that people often don't take into account."

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12. **SUPREME COURT: States urge justices to take up landmark groundwater ruling**

E & E News, Aug. 9 | Amanda Reilly

Ten states this week urged the Supreme Court to take up a recent landmark decision that found a tribe has a legal right to the groundwater below its reservation.

Led by Nevada, the group of states filed a friend-of-the-court [brief](#) Monday in support of two California water agencies that are trying to overturn the decision.

The states said they were concerned that the ruling of the 9th U.S. Circuit Court of Appeals created uncertainty over groundwater rights.

"By filing this brief, my office encourages the Supreme Court to take the necessary steps to clarify the States' groundwater rights and to ensure Nevada's best interests are being protected



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from unnecessary and unwarranted federal interference," Nevada Attorney General Adam Laxalt (R) said in a statement.

In March, the 9th Circuit found that when the federal government established a reservation for the Agua Caliente Band of Cahuilla Indians in Southern California's arid Coachella Valley, it implicitly created a right to tap the water below.

The tribe has lived in the Coachella Valley since before California became a state in 1850. Its 31,396-acre reservation, laid out in a checkerboard pattern, was established by two executive orders in 1876 and 1877.

Beneath the valley is an aquifer that supports nine cities, 400,000 people and 66,000 acres of farmland.

The aquifer is the main source of water for the reservation, but the tribe doesn't directly pump it from the ground, relying instead on state water agencies.

Concerned about future availability of groundwater, the tribe filed a lawsuit in 2013, asserting reserved and aboriginal rights to water from the aquifer.

The 9th Circuit decision in favor of the tribe marked the first controlling opinion that the federal "reserved rights" doctrine applied to groundwater.

According to the doctrine, the United States intended to reserve water for tribes when it established reservations to the extent necessary to accomplish the purpose of the reservation.

"Survival is conditioned on access to water — and a reservation without an adequate source of surface water must be able to access groundwater," Judge Richard Charles Tallman wrote in the opinion for the court (Greenwire, March 8).

The Coachella Valley Water District and Desert Water Agency appealed to the Supreme Court, arguing in petitions last month that the ruling makes it harder to address water scarcity in the West and conflicted with prior rulings in two state courts (Greenwire, July 7).

According to the Nevada-led coalition of states, the 9th Circuit also disrupted settled expectations by ruling that the reserved rights doctrine pre-empts state-law regulations of water.



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The ruling may expose states to federal reserved water rights claims over groundwater basins that have been managed under state law, their brief said.

"By imposing federal reserved water rights over groundwater in nearly a fifth of our nation's states, Agua Caliente is literally a watershed opinion washing away the authority and control that states have traditionally exercised over groundwater resources," the states said.

Joining Nevada were Arizona, Arkansas, Idaho, Nebraska, North Dakota, South Dakota, Texas, Wisconsin and Wyoming.

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13. **FEDERAL AGENCIES: Leakers take the risk despite crackdown**

E & E News, Aug. 9 | Hannah Northey

Posters warning that "every leak makes us weak" and "Don't become the next insider threat" have cropped up in the halls of the Energy Department's headquarters in Washington in recent months.

The posters are tied to an Obama-era program focused on protecting classified information. They're unrelated to the Trump administration's focus on leaks from within the government.

But for one DOE career staffer who decided to share with the media an early draft of a high-profile study Energy Secretary Rick Perry requested on the electric grid, the coincidental placard displaying an American flag melting into a puddle of binary code symbolizes a warning shot — a reminder that employees could be blacklisted, fired or worse.

"I initially was extremely hesitant to share the document because I wanted the process to work," said the staffer, speaking to E&E News on the condition of anonymity. "As the days and weeks went on and comments to the draft rolled in, I began to hear about how the draft had to be completely scrapped. I then had the very real feeling that this draft wouldn't see the light of day."

The staffer added, "So I shared it, before the release, to show that smart people, who really care about getting this right, think that renewables aren't something we should be afraid of."



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A draft version of the report found renewables don't pose a threat to grid reliability (Energywire, July 21).

The DOE staffer isn't alone in leaking information. Last year, a questionnaire that President Trump's transition team circulated asking which staffers worked on climate change issues also made its way into the media's hands. Other leaks included information about early buyouts and possible layoffs as workers face potential budget cuts under Trump's fiscal 2018 proposal.

And yet the release of unclassified information is only a sliver of the larger debate in the Trump White House over leaks.

Attorney General Jeff Sessions, who leads the National Insider Threat Task Force program, which President Obama established in 2011 following WikiLeaks' dump of information to the media, last week denounced a "staggering number of leaks." He sent a foreboding [message](#) at a briefing, saying, "I have this warning for would-be leakers: Don't do it."

Other recent leaks have included transcripts of conversations between Trump and world leaders and draft studies, including a federal effort warning of the dire consequences from climate change featured in The New York Times this week (Climatewire, Aug. 8).

For career staffers who take the risk, the safety net around whistleblower protection is fraught with uncertainty.

According to a February report from the Congressional Research Service, federal employees cannot be retaliated against for leaks to the press if the information reveals a violation of the law, rules or regulations; gross mismanagement; an abuse of authority; or a danger to public health or safety.

And yet room for punishment exists. "Not every leak to the press is a federal crime," the CRS [wrote](#). "Nevertheless, federal employees who leak government information may be fired or otherwise disciplined."

While the law bars retaliation against federal scientists who challenge censorship or make disclosures related to the integrity of the scientific process, Liz Hempowicz, policy counsel at the nonprofit Project on Government Oversight, said protections get fuzzy around the fine line



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between "leaker" and a protected "whistleblower," especially when it comes to issues like climate change.

"The problem is there's not a lot of established case law around [climate change], and then counter to that, policy disagreements don't count as protected whistleblowing," she said. "There's this real gray area that practitioners and organizations like ours are struggling with because it's not clearly defined."

Focus on unions, 'deep state'

As the push to find "leakers" continues, union heads for agencies including DOE and U.S. EPA are increasingly finding themselves in the political crosshairs.

At DOE, for example, the conservative group America Rising LLC has filed a Freedom of Information Act request for all emails between Jeff Eagan, president of the National Treasury Employees Union Chapter 213, and members of the media.

And yesterday, conservative outlet Breitbart News Network published a story titled "Exclusive — Deep State Teams with Fake News: Email Evidence Proves New York Times Soliciting Anti-Trump Bureaucracy Leakers."

In the piece, Breitbart published snippets of emails between John O'Grady, a biochemist at U.S. EPA and president of the union representing the agency's 15,000 employees nationwide, and a reporter with The New York Times. O'Grady, according to the Breitbart story, forwarded the reporter's request to more than two dozen EPA employees.

"Sounds like good old fashioned espionage to me," wrote one commenter. "Life in prison or the gallows?"

But O'Grady in an interview yesterday made no secret of his willingness to share EPA staffers' concerns with the press, arguing that there's a lack of transparency at the agency and a continued rollback of regulations despite science showing negative effects on public health.

O'Grady charged that top officials are putting little down in writing. "Second, we're seeing the first steps in rolling back environmental protections in the name of cooperative federalism, in the name of the idea that EPA has reached too far; to me, these are absurd," he said.



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When asked about accusations of a "deep state" — efforts within the government to undermine the Trump administration — O'Grady bristled.

"Why would any decent American political official worry about the press getting ahold of something?" he asked. "Are they not desiring to be transparent? Are they trying to do something that borders on the illegal?"

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14. **LAW: After HFC ruling, some question EPA's authority on climate**

E & E News, Aug. 9 | Amanda Reilly

Yesterday's court decision tossing out an Obama-era policy for addressing potent greenhouse gases has reignited a debate over U.S. EPA's authority to issue climate change regulations.

The 2-1 U.S. Court of Appeals for the District of Columbia Circuit decision issued by Judge Brett Kavanaugh faulted EPA's interpretation of a section of the Clean Air Act for addressing ozone-depleting substances. The court found that EPA exceeded its authority with a rule that eliminated some uses for hydrofluorocarbons (HFCs) and approved certain replacements.

The decision is "significant" for what it says about climate regulation and EPA authority generally, wrote Nicholas Bryner, a fellow in environmental law and policy at the UCLA School of Law.

"Underneath the surface in this case is the ongoing question of what exactly executive branch agencies can do to control climate change," Bryner wrote in the blog Legal Planet. "Judge Kavanaugh offered a renewed warning shot in this debate."

At issue was a rule EPA finalized in 2015 calling for the phaseout of certain uses of HFCs, short-lived chemicals that are potent greenhouse gases. The rule was part of the Obama administration's broader plan to address climate change.

The legal question at the center of the lawsuit was whether EPA could use the Significant New Alternatives Policy (SNAP) Program, a Clean Air Act program geared toward phasing out ozone-depleting substances, to replace HFCs, which do not deplete the ozone layer of the Earth's stratosphere.



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Kavanaugh concluded that EPA only had authority to require the replacement once of ozone-depleting substances with non-ozone-depleting substance. The law does not, he said, allow EPA to later require companies to replace substitutes for ozone-depleting substances — such as HFCs — with alternatives based on climate change reasons (Greenwire, Aug. 8).

Much of Kavanaugh's opinion yesterday consisted of a discussion of the word "replace" and whether it connoted a one-time event or an ongoing process.

But the judge, who is one of the most conservative members of the court, also devoted ink in the opinion to a broader discussion of climate change.

"EPA's well-intentioned policy objectives with respect to climate change do not on their own authorize the agency to regulate," Kavanaugh wrote, adding, "Under the Constitution, congressional inaction does not license an agency to take matters into its own hands, even to solve a pressing policy issue such as climate change."

The "bedrock separation of powers principles" underlie the court's decision in the case: "Climate change is not a blank check for the president," Kavanaugh wrote.

Some experts saw yesterday's decision and Kavanaugh's remarks — which were joined by Judge Janice Rogers Brown, another George W. Bush appointee — as the court's questioning the ability of EPA to use the Clean Air Act to issue regulations aimed at addressing climate change.

"The D.C. Circuit's opinion ventures too close to establishing a different, more exacting standard for agency efforts to mitigate climate change," Bryner wrote, "and it may foreshadow negative results in other ongoing challenges to the Obama administration's climate policies."

Jane Montgomery, a Chicago-based partner at Schiff Hardin LLP, said the ruling highlights the difficulty of addressing greenhouse gas emissions using the Clean Air Act.

"EPA is having trouble fitting climate change into the Clean Air Act," Montgomery said. "It's one more signal that if climate change is going to be addressed, it has to be through an act of Congress."

Montgomery said she saw similarities to the Clean Power Plan, the Obama administration's rule requiring states to develop plans to lower carbon dioxide emissions from existing power plants.



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Dozens of parties challenged the rule in the D.C. Circuit, which held seven hours of arguments in front of the full court in September. The court has put the litigation on hold as the Trump administration has taken steps to get rid of the rule.

While it's unclear that the court will issue any opinion, Montgomery said she could see "the court lifting its own language to talk about the Clean Power Plan." Even though it's based in a different section of the Clean Air Act, the Clean Power Plan is another case of "fuzzy language getting adapted to a secondary purpose" of addressing climate change, she said.

But other experts saw yesterday's ruling as focused more narrowly on the meaning of the term "replace" in EPA's program for phasing out ozone-depleting substances and not questioning EPA climate change authority.

The Supreme Court has already ruled that EPA has the authority to address greenhouse gas emissions.

"The majority goes out of its way to say we're not revisiting broader issues about EPA's authority and duty to deal with climate change," said David Doniger, director of the Climate & Clean Air program at the Natural Resources Defense Council, which intervened in the case on behalf of EPA.

Still, Doniger said he was troubled about what the decision would mean for agency authority generally.

"What's at stake here is whether Congress can write legislation that gives agencies some broad remedial authority to address problems as they emerge," Doniger said.

Kavanaugh's opinion "really cramps the ability of not only EPA to react to new problems but Congress to arm agencies to react to new problems."

But Shannon Broome, an attorney at Hunton & Williams LLP who is representing challengers in another case over an Obama-era HFC rule, said the court was right in faulting EPA for reading too much into the Clean Air Act's provision on ozone-depleting substances.

The decision is good for the regulated community, she said, because the court ruled that a statute should be read "as saying what it means instead of what an agency might want it to mean."



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Next legal steps

It's unclear yet how the Trump administration will respond to the decision, though the Justice Department defended the rule in court in February. The air conditioning and heating industry has indicated it may turn to Congress to push a Clean Air Act fix to clearly give EPA the authority to phase out HFCs (Climatewire, Aug. 9).

Honeywell said in a statement yesterday that it was disappointed with the decision. With DuPont spinoff Chemours Co., Honeywell International Inc. intervened in the case on behalf of EPA. Both companies have spent hundreds of millions of dollars developing replacements for HFCs.

"We believe the EPA's regulation was well-supported by the law and was in the best interests of the public, industry and the environment," the company said. "We are closely reviewing the decision and are already taking steps to ensure that the accelerated transition to HFC alternatives continues."

Doniger said NRDC is "looking at all our options for seeking rehearing and appealing." He added that Judge Robert Wilkins' "strong dissent" could help boost the argument for rehearing the case.

Wilkins, an Obama appointee, wrote that Kavanaugh erred in finding that the word "replace" in the law only allowed for a one-time substitution of an ozone-depleting substance. The court should have deferred to the agency, since Congress was unclear on the subject and EPA's rule was reasonable, he said.

The court decision comes just weeks before Brown — the judge who joined Kavanaugh in the opinion — is set to retire from the court. Brown announced that she would step down Aug. 31 and not take senior status (Greenwire, July 11).

That means the court will lose one active conservative judge if and when it reconsiders the ruling.

"Maybe there will be some different views" on the case, Doniger said.

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15. **INTERIOR: Jewell headed to Harvard**

E & E News, Aug. 9 | Dylan Brown

Former Interior Secretary Sally Jewell has accepted a fellowship at Harvard University.

The Institute of Politics at the Harvard Kennedy School announced today that the former REI Inc. CEO and petroleum engineer will teach students about an "economically successful and environmentally sustainable" future during the upcoming fall semester.

"Sec. Jewell's experience across business, non-profit and public service sectors will provide students with invaluable insight into this highly topical issue of global and national concern," the institute's acting director, Bill Delahunt, said in a statement.

Jewell served as Interior secretary for President Obama's entire second term, replacing Ken Salazar in April 2013.

The institute hailed Jewell's "science-based, landscape-level, collaborative approach to natural resources management and to rebuilding a trusting, nation-to-nation relationship with indigenous communities."

In the same statement, Jewell said, "I am very, very interested in making a difference in the lives of young people and becoming a mentor as I have been mentored."

She added, "This fellowship affords me the opportunity to not only provide information and motivation, but to take what I learn from students and share it in other formal and informal settings."

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16. **CLEAN POWER PLAN: Sidelined climate rule suffers another blow in the courtroom**

E & E News, Aug. 9 | Ellen M. Gilmer

Hopes for revival of the Obama administration's signature effort to address climate change slipped further from reach yesterday as a federal court extended its freeze of litigation over the Clean Power Plan.

The U.S. Court of Appeals for the District of Columbia Circuit instituted a new 60-day abeyance of the long-running legal battle over the U.S. EPA regulation, which would require reductions of carbon dioxide emissions from the power sector.

The court's [decision](#) is a blow to Clean Power Plan supporters, who have repeatedly pushed the D.C. Circuit to issue a decision in the case, which was argued almost a year ago.

In legal briefs this spring, dozens of environmental groups, states and health organizations urged the court to answer core questions about Clean Air Act authority even as the Trump administration works to scrap the Obama administration rule (Energywire, May 16).

Yesterday's order — from all of the court's active judges except Chief Judge Merrick Garland — rejects that request, at least for now.

"It continues to be a temporary abeyance, so the court is going to take another look, presumably, if EPA hasn't acted," Sean Donahue, who is representing environmental groups in the case, told E&E News. "There's no chance that there will be a replacement rule in 60 days or a final rescission of this rule in 60 days."

Clean Power Plan opponents, meanwhile, praised the decision as continued relief for energy companies and states that saw the rule as a crippling regulatory overreach.

"We are pleased with the court's decision, which maintains the stay of this costly and controversial rule," said Stephen Bell, spokesman for the National Rural Electric Cooperative Association, one of many industry petitioners in the case. "This gives the administration time to consider whether and how to replace the rule and also protects electric co-ops while the review takes place."



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In the meantime, EPA must give monthly status updates. The agency's last report indicated that the draft rollback is in interagency review, but the Trump administration's broad regulatory agenda suggests a long timeline of more than a year for the rulemaking process (E&E News PM, Aug. 4).

EPA did not respond last night to a request for comment.

The Clean Power Plan's deep freeze

Yesterday's decision marks the second time the D.C. Circuit has put the Clean Power Plan litigation on hold; the first was in April at the Trump administration's request.

The freeze is particularly troubling to rule supporters because it maintains a Supreme Court stay that was instituted in February 2016 and was designed to last for the duration of the legal battle. As long as the case is on a court's docket — active or in abeyance — the Clean Power Plan cannot take effect.

Two D.C. Circuit judges acknowledged the tension in a concurrence yesterday, noting that EPA has a legal obligation to act on greenhouse gas emissions. But, they noted, arguments about the effect of the stay must be directed to the Supreme Court.

"Combined with this court's abeyance, the stay has the effect of relieving EPA of its obligation to comply with that statutory duty for the indefinite future," wrote Judges David Tatel, a Clinton appointee, and Patricia Millett, an Obama appointee. "Questions regarding the continuing scope and effect of the Supreme Court's stay, however, must be addressed to that Court."

Critics of the rule quibbled with the characterization of EPA's obligation but cheered the conclusion.

"The details of the EPA's obligation to curb greenhouse gas emissions under the Clean Air Act are debatable," Competitive Enterprise Institute General Counsel Sam Kazman said in a statement. "Nonetheless, the concurring judges are absolutely correct in recognizing that the Supreme Court is the ultimate arbiter of the scope of its stay."

Still, environmentalists took some comfort in the judges' statement.



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"The separate statement from two of the judges recognizes what this is all about in the end: that EPA has an obligation to act to protect society from this very serious and growing threat and that keeping things in flux indefinitely is in serious tension with that obligation," Donahue said.

"That's a point that we will continue to make."

Clean Power Plan supporters are expected to challenge the Trump administration's final decision, and environmentalists expect the court to scrutinize it closely.

"Nothing the court said today cast any doubt on its willingness to carefully review and scrutinize any final action that EPA takes," Donahue said.

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