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Published: Monday, June 19, 2017

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Office of Management and Budget Director Mick Mulvaney plans to rescind or modify OMB memos. C-SPAN

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1. Zinke, Perry on Hill this week as spending talks advance

George Cahlink and Kellie Lunney, E&E News reporters

Published: Monday, June 19, 2017

Energy Secretary Rick Perry and Interior Secretary Ryan Zinke are due on Capitol Hill this week to defend their fiscal 2018 budget request as House Republicans scramble to set in motion a plan to pass a spending package before summer recess.

GOP leaders have been eyeing packaging all 12 annual spending bills in a single omnibus before the five-week break. That would allow the House to focus on tax reform in the fall and strengthen its hand in final spending talks with the Senate.

But lawmakers first will need to adopt a budget — or a substitute deal — to set domestic and defense discretionary spending levels. Without an accord, it would be much harder to move the omnibus.

"You can't have the cart get before the horse, you have to have the [budget] number," Rep. Jim Jordan (R-Ohio) said.

Negotiations have gone on for weeks in the House, but the Budget Committee has yet to schedule a markup — something usually done in April or May. The administration's delay in delivering its spending plan affected the panel's planning.

Rep. Ken Calvert (R-Calif.), chairman of the House Interior and Environment Appropriations Subcommittee, said last week the GOP is grappling with how to deal with strict budget caps set by the 2015 budget deal.

Calvert suggested there is broad support within the party for increasing defense spending, but he says doing so by cutting domestic accounts — as some conservatives want — would be "untenable."

If Congress does not raise the budget caps, overall discretionary spending would be cut by about \$5 billion next year, according to the 2015 deal.

The House Appropriations Committee already signaled its interest in going beyond those caps by approving a fiscal 2018 military construction and veterans affairs spending bill that includes \$6 billion more than last year's figure. That bipartisan bill is the first — and so far only — spending measure to surface this year.

Freedom Caucus

House conservatives, particularly members of the hard-right Freedom Caucus, are among those pressing for deep cuts in mandatory spending programs, like welfare, in exchange for any domestic boost in 2018.

Those conservatives likely have the votes to block any fiscal 2018 spending bills if they do not win funding reductions.

Rep. Tom Cole (R-Okla.), a member of the Interior and Environment Appropriations Subcommittee, said the House would need a budget or spending framework this month to make its plans work.

But Democrats in both the House and Senate are already worried about the impact of delays in adopting a budget.

"Until you have a budget resolution, until you know what the allocation of the overall discretionary dollars are, you have no idea frankly what the ramifications of \$6 billion extra" for military construction and veterans affairs are, said House Minority Whip Steny Hoyer (D-Md.) last week.

Hoyer warned that appropriators could slash programs in upcoming spending bills to make up the difference. "You give more to one, you've got to take more from another," he noted.

Democrats in the Senate have the same concerns.

"You bet I'm worried," Sen. Patty Murray told E&E News last week. The Washington Democrat sits on both the Budget and Appropriations committees.

"We are way late in this process, we are running fast into a September deadline, [and] putting ourselves in jeopardy with Trump already saying he wants to shut down government."

In early May, just after the government averted a shutdown, President Trump tweeted that the country could use a "good shutdown" in September, when the current fiscal year ends.

While there's talk of the House putting an omnibus spending bill on the floor before the August recess, Sen. Tom Udall (D-N.M.), ranking member of the Interior and Environment Appropriations Subcommittee, said he hasn't yet heard of a similar plan for the Senate.

"I think our plan right now is to either have individual appropriations bills or small minibuses at this point," he said.

Interior

Zinke, who will be defending his agency's \$11.7 billion fiscal 2018 budget request, will likely receive a friendly reception from lawmakers, despite expected pushback from Democrats and Republicans on proposed cuts to popular programs, including the Land and Water Conservation Fund and payments in lieu of taxes (*E&E Daily*, May 26).

Questions about the administration's preference for more energy development over new federal land acquisition are a safe bet.

Democrats, including Cantwell and Rep. Raúl Grijalva of Arizona — ranking members of the Natural Resources panels in the Senate and House — will likely seize on Zinke's recent secretarial order directing a review of sage grouse policies, as well as his review of 27 national monuments.

Zinke, a former Montana congressman, released his interim report on Bears Ears last week, recommending a to-be-determined reduction of the Utah monument's 1.35-million-acre footprint (*E&E News PM*, June 12). Another flashpoint: the Bureau of Land Management's announcement last week that oil and gas companies don't have to comply with the Obama-era rule on methane venting, flaring and leaking on public and tribal lands, pending judicial review (*Greenwire*, June 14).

Senate Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska) will no doubt ask Zinke about the department's proposal to open up a portion of the Arctic National Wildlife Refuge in Alaska to drilling, a route she has long championed.

On the other side of the Capitol, House Natural Resources Chairman Rob Bishop (R-Utah) will likely seek answers on how Congress can work with the executive branch to reform the 1906 Antiquities Act and shrink Bears Ears.

The Alaska Wilderness League will hold a media conference today, ahead of the budget hearings, to oppose drilling in ANWR (*E&E Daily*, May 24).

Energy

Energy Secretary Perry, who will be defending his agency's \$28 billion budget request, is facing questions over proposed cuts, like scrapping the Advanced Research Projects Agency-Energy and slashing the Office of Energy Efficiency and Renewable Energy by 70 percent, from \$2.1 billion to \$636 million.

Supporters of the president's plan say the Department of Energy has shifted too far away from its core mission and needs rebalance. In budget documents, the administration said, "The private sector is better positioned to finance disruptive energy research."

But critics say independent analyses, such as one this month from the National Academies of Sciences, Engineering and Medicine on ARPA-E, show DOE funding plays a unique and needed role.

Lawmakers also are likely to press Perry on how the administration's stated goals — such as support for the national laboratories and coal technology — mesh with the budget proposal.

Under the request, research and development at the Office of Fossil Energy — which oversees carbon capture and storage research — would see its budget cut by more than half, from \$668 million to \$280 million. Funding at the Office of Science, which oversees the majority of the labs, would fall by about 17 percent, to \$4.5 billion.

Also likely to come up is the administration's plan to eliminate the mixed oxide fuel fabrication facility in South Carolina, a program with GOP backing (*E&E Daily*, May 24).

One of the project's most vocal supporters, Sen. Lindsey Graham (R-S.C.), sits on the Senate Energy and Water Development Appropriations Subcommittee, which is hosting Perry this week.

The Energy chief might also face questions about nuclear waste, mainly the agency's proposed \$120 million to work on resuming the licensing process for the controversial Yucca Mountain repository in Nevada.

Reporters Manuel Quiñones, Christa Marshall and Sam Mintz contributed.

Schedule: The House Energy and Water Development Appropriations Subcommittee hearing on the Energy budget is Tuesday, June 20, at 1 p.m. in 2359 Rayburn.

Witness: Energy Secretary Rick Perry.

Schedule: The Senate Energy and Natural Resources Committee hearing on the Interior budget is Tuesday, June 20, at 10 a.m. in 366 Dirksen.

Witness: Interior Secretary Ryan Zinke.

Schedule: The House Financial Services and General Government Appropriations Subcommittee hearing on Office of Management and Budget spending is Wednesday, June 21, at 2 p.m. in 2359 Rayburn.

Witness: Office of Management and Budget Director Mick Mulvaney.

Schedule: The Senate Interior and Environment Appropriations Subcommittee hearing on the Interior budget is Wednesday, June 21, at 9:30 a.m. in 124 Dirksen.

Witnesses: Zinke; Olivia Barton Ferriter, deputy assistant Interior secretary for budget, finance, performance and acquisition; Denise Flanagan, director of Interior's Office of Budget.

Schedule: The Senate Defense Appropriations Subcommittee hearing on the Air Force budget is Wednesday, June 21, at 10:30 a.m. in 192 Dirksen.

Witnesses: Air Force Secretary Heather Wilson, Air Force Chief of Staff Gen. David Goldfein.

Schedule: The Senate Energy and Water Development Appropriations Subcommittee hearing on the Energy budget is Wednesday, June 21, at 2:30 p.m. in 138 Dirksen.

Witness: Perry.

Schedule: The House Natural Resources Committee hearing on the Interior budget is Thursday, June 22, at 9:30 a.m. in 1324 Longworth.

Witnesses: Zinke, Ferriter and Flanagan.

Schedule: The Senate Energy and Natural Resources Committee hearing on the Energy budget is Thursday, June 22, at 10 a.m. in 366 Dirksen.

Witness: Perry.

<http://bit.ly/2rvmQC3>

2. House to vote on bill to ease clearing for rights of way

Marc Heller, E&E News reporter

Published: Monday, June 19, 2017

The House this week will take up Republican-backed legislation to speed the clearing of vegetation around electric rights of way in federally owned forests.

Backers of the legislation say it is needed to reduce the risk of wildfires that can start when trees fall on transmission lines. It would allow for expedited approval of routine maintenance projects to keep electric rights of way clear and protect "categorical exclusions" from extended environmental reviews under the National Environmental Policy Act.

The bill, **H.R. 1873**, sponsored by Rep. Doug LaMalfa (R-Calif.), picks up on efforts Interior Secretary Ryan Zinke made in 2015 when he represented Montana in Congress.

The House Natural Resources Committee marked up the legislation in April, and the Rules Committee takes up the bill tomorrow.

According to a Natural Resources Committee **report** accompanying the bill, the Forest Service reported 113 and 232 wildfires in 2013 and 2012, respectively, caused by contact between power lines and trees on its lands. In addition, 14 federal land agencies have been subject to criticism for not allowing utilities to carry out vegetative management policies, the committee said.

The legislation, called the "Electricity Reliability and Forest Protection Act," applies to lands overseen by the Forest Service as well as the Bureau of Land Management. The Forest Service has about 18,000 miles of such rights of way, and BLM has more than 71,613 miles of electricity transmission and distribution, the committee reported.

The Western Governors' Association supports the legislation. Some supporters of pollinators have said keeping rights of way clear helps provide habitat for bees and butterflies.

Democrats on the Natural Resources Committee said the measure doesn't do much for coordination between federal agencies and utilities, given that up-front planning for maintenance of rights of way would remain optional, rather than mandatory. They complained that Republicans pushed the measure through the committee rather than consider changes Democrats would offer.

Broadly, Democrats said in the report, they support better coordination to keep rights of way clear of overgrown vegetation.

In addition, they said, the bill would shift liability for wildfire damage from utilities to the government, costing taxpayers.

Schedule: The Rules Committee meeting is Tuesday, June 20, at 5 p.m. in H-313 Capitol.

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

3. Great Plains blazes have more than tripled since the '80s

Published: Monday, June 19, 2017

Large wildfires in the Great Plains have more than tripled in the last three decades, according to new research.

The average number of large wildfires per year in the region grew from about 33 to 117 between 1985 and 2014, according to a study in the journal *Geophysical Research Letters*.

"This is undocumented and unexpected for this region," said Victoria Donovan, the lead author of the study and a researcher at the University of Nebraska, Lincoln. "Most studies do document these shifts in large wildfires in forested areas, and this is one of the first that documents a shift, at this scale, in an area characterized as a grassland."

The increase in grassland fires is likely related to climate change as well as an increase in invasive plant species, which could be providing extra fuel, Donovan said.

But it is difficult to directly attribute causes to the uptick, said Vrije Universiteit Amsterdam scientist Guido van der Werf, who was not involved in the study.

"These grassland fires are somewhat different than the forest fires we are probably more used to, and follow-up research is needed to better understand what the drivers of the upward trends were," he said. "Agricultural abandonment could be one, wetter conditions later in the record another one (leading to higher and more continuous fuel beds), climate change leading to warmer temperatures, etc."

The increase in fires has led to higher costs for authorities, leading to "fire borrowing," the phenomenon in which the U.S. Forest Service takes resources from other programs because it needs them to fight fires.

"This shift could potentially strain wildfire management resources in the future," Donovan said (Chris Mooney, *Washington Post*, June 16). — SM

<http://bit.ly/2stuSg4>

4. Lawmakers move to facilitate helium production

Dylan Brown, E&E News reporter

Published: Monday, June 19, 2017

Helium is vital to military, medical and other technologies, but a strained global market has Congress once again examining ways to increase supply.

The House Natural Resources Subcommittee on Energy and Mineral Resources will review a discussion draft of the "Helium Extraction Act" at a Wednesday hearing.

The one-paragraph bill would allow a company to lease public land for extracting helium the same way it would for oil or natural gas. Currently, helium is only a byproduct of drilling for other commodities.

In 1920, the Mineral Leasing Act set aside all helium on federal land for government use in the Federal Helium Reserve, a natural geologic reservoir located northwest of Amarillo, Texas.

Gradually, the stockpile has been sold to refiners and wholesalers, making the U.S. the world's top supplier and source of roughly one-third of the planet's helium.

The government is in the midst of selling off the entire reserve, which is scheduled to close in 2021. The deadline has sparked concerns about global supply of an irreplaceable part of MRI machines and missile systems.

A group of Arab states cutting ties with Qatar in recent weeks highlighted fears. Qatar is the world's second-largest helium supplier.

Reuters reported that Qatari state-owned RasGas Co. Ltd. closed its two helium production plants after Saudi Arabia closed their shared border.

Lawmakers are also looking to increase U.S. production as geologists scour the globe for gas deposits (Greenwire, June 28, 2016). Senate Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska) proposed similar legislation in the previous Congress, S. 1226.

Schedule: The hearing is Wednesday, June 21, at 10 a.m. in 1324 Longworth.

Witnesses: TBA.

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

5. Marcellus gas industry battles state plan to regulate methane

Mike Lee, E&E News reporter

Published: Monday, June 19, 2017

Almost 18 months after it was announced, Gov. Tom Wolf's plan to curb methane emissions from Pennsylvania's natural gas industry is moving slowly.

A permit system designed to reduce emissions from gas wells, compressors and other installations has been delayed for months amid pushback from trade groups and the Republican-controlled Legislature. And the state

Department of Environmental Protection hasn't submitted a formal proposal for a key part of the plan — regulations to deal with emissions from existing oil and gas wells.

It's important because Pennsylvania is the second-biggest natural gas producer after Texas. And state-led programs to reduce greenhouse gases are likely to take on more importance as the Trump administration retreats from plans to combat climate change (*Energywire*, June 1).

Any further delays could push the process into 2018, when the Democratic governor is expected to run for re-election. That could mean more delays, and it could also put a final decision on the package in the hands of a new administration, said Rob Altenburg, director of the Energy Center at the environmental group PennFuture.

"If we don't see something start until the fall, it's very possible it doesn't get finalized until after the election anyway," Altenburg said.

Methane, the main component of natural gas, traps more heat than carbon dioxide in the atmosphere, and environmental groups have worried that the United States and other countries can't control rising global temperatures without addressing methane leaks.

Colorado, Wyoming, Ohio and California have also enacted state-level methane controls (*Energywire*, May 11).

Pennsylvania's gas **production** has grown thirtyfold in the last 10 years, since drilling began in the region's Marcellus Shale. The DEP estimates that leaks from well sites, compression stations and other equipment have tripled since 1990.

In January 2016, Wolf and then-DEP Secretary John Quigley announced a plan to reduce methane emissions. At the time, Wolf and Quigley expected the permit system for new wells to be in place by the end of 2016 and estimated it would take 18 months to submit the regulations for existing sources to the state Environmental Quality Board, which approves new regulations (*Energywire*, Jan. 20, 2016).

Wolf was elected in 2014 after promising to tax gas producers and clean up the industry's environmental problems. Since taking office, though, he's been unable to convince the Legislature to pass a gas tax, and he's replaced some of the stronger environmental advocates in his Cabinet.

Quigley, who formerly worked for PennFuture, resigned last year and was replaced by Patrick McDonnell, a longtime DEP employee (*Energywire*, Sept. 22, 2016).

The permit system would allow gas drillers to get a standardized permit, known as a general permit, if they agreed to use the best available technology to control emissions from wellheads, compressor stations, storage tanks and pipelines. It would replace a system that allows companies to avoid applying for an emissions permit for some wellheads and equipment if they agree to periodically check for and repair leaks.

A group of Republican state senators sent a three-page **list** of questions to the DEP asking, among other things, whether the agency had an adequate legal basis for controlling methane emissions, why it singled out the shale gas industry and whether the agency conducted a cost-benefit analysis.

The DEP **replied** that coal beds produce almost as much methane as the oil and gas industry, 30.3 percent of the total compared to 30.5 percent. The state opted not to impose controls on coal mines because there aren't any corresponding federal regulations in place and there's limited technology to reduce methane from mines. The federal Clean Air Act and Pennsylvania law allow for the regulation of methane, according to the DEP response. And cost-benefit **studies** from both Colorado and Pennsylvania show it's cost-effective to use leak-detection and repair programs, along with other emissions control methods.

The Marcellus Shale Coalition, which represents 220 companies in the shale gas industry, said the DEP overlooked its own statistics. Methane emissions from the gas industry haven't grown nearly as fast as the industry itself, and they decreased slightly between 2009 and 2013.

The industry group also argued that the permit system, which requires companies to reduce emissions from some types of equipment by 98 percent, amounts to a de-facto regulation and said the DEP should have gone through a formal rulemaking process.

More broadly, the industry group questioned whether methane qualifies as a form of pollution under state law. The DEP has said its primary goal for the methane program is to reduce greenhouse gas emissions, but the state Air Pollution Control Act defines pollution as substances that affect human or animal health or that deprive people of the use of their property.

"The available evidence demonstrates that reducing methane emissions from sources in Pennsylvania to combat global climate change would have no measurable impact on the citizens of Pennsylvania or their environment," the coalition wrote.

The DEP hasn't yet responded to the coalition's comments. Meanwhile, the agency extended the comment period for the permit system by three months to June 5. About 10,000 comments poured in, many of them form letters urging the department to "cut methane pollution from fracking by closing loopholes in the final proposal."

A spokesman for the DEP said it's taking all the comments seriously and hasn't determined when it will finalize the permit system.

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

6. Pipeline backer urges court to ditch lawsuits

Ellen M. Gilmer, E&E News reporter

Published: Monday, June 19, 2017

Keystone XL backers are urging a federal court to toss environmental challenges to the recently revived oil pipeline.

In Friday **filings** in the U.S. District Court for the District of Montana, lawyers for TransCanada Corp. argued that a crucial pipeline permit issued by President Trump in March is not within the court's jurisdiction.

Several environmental and tribal groups went to court earlier this year to try to block the pipeline. They say the Trump administration relied on an outdated environmental review when greenlighting the project, in violation of the National Environmental Policy Act.

TransCanada's position echoes one taken by the Trump administration in similar filings a week earlier. Both argue that while the State Department issued Keystone XL's cross-border permit to pass from Canada to the United States, the agency did so under presidential authority that is not reviewable in court (*Energywire*, June 12).

Company lawyers also note that the permit was issued pursuant to a 2004 executive order that governs certain energy infrastructure border crossings, and the order does not create a private right of action for would-be challengers to go to court.

"Simply put, the issuance of the Presidential Permit and the Department's compliance with NEPA are unreviewable Presidential actions," the company told the court.

A collection of recent case law supports TransCanada's position. Federal district courts in Minnesota; South Dakota; and Washington, D.C., have all rejected challenges to presidential permits for other pipelines, ruling that the permits are not subject to judicial review.

The previous administration cited the same cases last year when defending President Obama's decision to deny a presidential permit for Keystone XL.

Environmental and tribal groups' responses are due next month.

<http://bit.ly/2sIJz0S>

7. Peabody fights lawsuit over 2013 arrests of protesters

Published: Monday, June 19, 2017

Peabody Energy Corp. is fighting a lawsuit that claims it colluded with police in the unlawful arrest of protesters at its 2013 shareholder meeting in Wyoming.

The allegations by Thomas Asprey and Leslie Glustrom, along with a handful of other legal actions against Peabody, have been on hold since the coal company filed for bankruptcy last spring.

"They weren't climbing on buildings, they weren't turning over cars," said their lawyer, Darold Killmer. "They just wanted to have their voices heard, and they got arrested for that and got taken to jail."

Peabody says it was not involved in the arrests and is not liable for any damages.

But in the lawsuit, Asprey and Glustrom claim the company "reached agreements" with Gillette College campus police on how security would be handled and had "considerable influence" over local law enforcement.

Their arrests, which police said were for blocking traffic, have been ruled unlawful by a state circuit court judge (Jonathan Randles, *Wall Street Journal*, June 16). — **SM**

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

8. Mulvaney eliminates dozens of directives dating to 1997

[Arianna Skibell](#), E&E News reporter

Published: Monday, June 19, 2017

Office of Management and Budget Director Mick Mulvaney plans to rescind or modify OMB memos. C-SPAN

Office of Management and Budget Director Mick Mulvaney has rescinded, paused and modified dozens of White House directives dating back to 1997 in an attempt to streamline executive branch activity.

Among the eliminated memorandums are four directives requiring identification and cost documentation of the 2010 BP PLC Deepwater Horizon oil spill in the Gulf of Mexico, which left 11 workers dead and dumped hundreds of thousands of gallons of crude oil.

The budget hawk said these reporting requirements were eliminated because the key purpose for tracking and collecting that data was rendered unnecessary with the settlement of related litigation.

Mulvaney announced late last week that his staff is undertaking efforts to identify and address low-value, duplicative and arcane management requirements. The initial overhaul is the first step in a yearlong review process, he said.

"From administration to administration, agencies have been asked to respond to hundreds of guidance documents related to management areas," he wrote in a memo to department and agency heads.

"Too often, burdensome tasks had piled up without consideration of whether the requirements collectively make sense. In many cases, agencies are asked to spend more time and resources complying with low-value activities versus allocating taxpayer dollars to meet their core agency mission."

Information technology requirements make up the largest chunk of rescinded memorandums, with at least 25 repeals.

For example, five homeland security public reporting directives were eliminated because they were issued before the enactment of the Federal Information Security Modernization Act of 2014, which superseded OMB guidance, Mulvaney said.

Mulvaney also eliminated "project labor agreement" reporting requirements for federal construction projects. In 2009, President Obama issued an executive order that required agencies to submit quarterly reports to OMB identifying all contracts awarded for large-scale construction projects and connected labor agreements.

The "project labor agreement" section of the order was intended to bolster collective bargaining and was considered a huge boon for unions. In Mulvaney's memo, he writes, with no further explanation, "The reporting requirement on the use of project labor agreements is eliminated."

Agency managers, Mulvaney said, are best equipped to manage operations, adopt best practices and find ways to reduce costs.

He said rolling back OMB memorandums is the first phase of an extensive review process. Over the next year, the administration plans to identify obsolete requirements and, when applicable, work with Congress to modify them.

The White House will work with the Office of Personnel Management and the General Services Administration to identify and reduce "burdensome, low-value compliance activities," Mulvaney said.

The administration will also review OMB guidance to agencies to see where the process could be better coordinated and to ensure elements like sunset provisions when necessary.

And OMB will develop a long-term solution for reviewing and revoking guidance.

The full list of eliminated, modified and paused directives is outlined in Mulvaney's memo.

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