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Attached is the daily news report for Feb. 14. Happy Valentines Day!

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DAILY NEWS REPORT - UTAH

UTAH – TOP STORIES – FEBRUARY 14, 2017

1. **Utah groups pushing greater local control of public lands, wildlife seeking \$4 million in state money**

The Salt Lake Tribune, Feb. 13 | Brian Maffly

Utah lawmakers are again considering several requests to fund legal and lobbying efforts directed at gaining greater state control over public lands and wildlife, including another \$2 million to an anti-predator activist on retainer with the state to lobby on wolf and sage grouse.

2. **Utah tourism promotes Bears Ears despite state opposition**

The Deseret News, Feb. 13 | Michelle L. Price and Brady McCombs, The Associated Press

SALT LAKE CITY — Utah tourism officials said Monday they are promoting the new Bears Ears National Monument on a state website despite a push by the governor and other leaders to have the designation rescinded.

3. **If the Outdoor Retailer shows leave Utah, Herbert bears part of the blame**

The Standard Examiner, Feb. 14 | The Standard Examiner Editorial Board

The Outdoor Retailer shows in Salt Lake City generate about \$45 million a year in direct spending. The two shows draw close to 30,000 attendees, according to the Deseret News.

And if the shows leave, Gov. Gary Herbert bears part of the blame.

4. **A Monumental Mistake: It's time to make the Antiquities Act a thing of the past**

The National Review, Feb. 14 | Shawn Regan

Government is the word we use for the things we choose to do together, as progressives like to say. But try telling that to Utah.

5. **Opinion: Outdoors industry should bring fight to Utah**

Gear Junkie, Feb. 13 | Jen Taylor

Last week, Patagonia and several other brands announced that they will withdraw from the Outdoor Retailer convention in political protest. This letter provides an alternative perspective.



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6. BLM considers withdrawing future mining claims to protect greater sage-grouse

The Tooele Transcript, Feb. 14 | Mark Watson`

The Bureau of Land Management will consider a proposal to disallow future mining claims on an estimated 10 million acres of land in six western states in an effort to protect the greater sage-grouse and its habitat, according to a BLM press release Wednesday. The six states are Utah, Idaho, Montana, Nevada, Oregon and Wyoming.

7. RECREATION & TRAVEL: New series explores Utah's historic places

The Sun Advocate, Feb. 14 | Steve Christensen

Utah is a unique place. You already knew that, but I'm betting there are things about Utah you don't know and there are historic places you haven't visited.

8. Outdoor Industry Issues Ultimatum To Utah Governor

Gear Junkie, Feb. 14 | Staff Post

Members of the Outdoor Industry Association today issued a strong rebuke of Utah's public lands policies in a letter to the governor of the state.

9. Paleontology of Bears Ears National Monument, Utah

PLOS.org, Feb. 12 | Sarah Gibson in Government, Guest Blogs, paleontology, Robert Gay

On December 28th, 2016, then-President Barack Obama, acting under the authority delegated to him by the Antiquities Act of 1906, created Bears Ears National Monument (BENM), located in southeastern Utah, United States. The impetus for BENM came from a coalition of numerous Native American tribes with prehistoric and historic cultural ties to the region. Indeed, the *raison d'état* for this monument was generally presented as a way to safeguard nationally significant cultural heritage from ongoing looting and damage, as well as to maintain the strong connection of modern tribes to the continuing cultural significance to the land.



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10. House endorses declaring Spiral Jetty as 'state work of art'

The Salt Lake Tribune, Feb. 14 | Lee Davidson

The Spiral Jetty in the Great Salt Lake is getting a second chance to become, possibly, Utah's official "state work of art," and also the first artwork to be declared a state symbol anywhere in the nation.

E&E/NATIONAL NEWS – TOP STORIES

1. Testimony begins in Bunkerville standoff trial in Las Vegas

The Las Vegas Review-Journal, Feb. 13 | Jenny Wilson

Defiant cattle rancher Cliven Bundy tossed a court order out the window of his truck and tried to pay grazing fees to Clark County instead of the federal government, a Justice Department lawyer testified Monday as prosecutors began to establish the chain of events that led to an armed standoff in Bunkerville in 2014.

2. Federal judge rejects request to block Dakota Access pipeline — for now

The Washington Post, Feb. 13 | Steven Mufson and Spencer S. Hsu

A District of Columbia federal judge on Monday turned down a request to temporarily block construction on the Dakota Access pipeline, saying there would not be any risk of immediate harm until oil starts flowing.

3. Second Oregon standoff trial: The defendants, the charges

The Oregonian/OregonLive, Feb. 14 | Maxine Bernstein

Jury selection begins Tuesday in the federal trial of the four remaining defendants in the armed takeover of the Malheur National Wildlife Refuge. They mark the second group of occupiers to go to trial in the case.



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4. **For Polluters, Congress Will Overturn an Environmental Rule for \$2.3 Million**

Center for American Progress, Feb. 14 | Matt Lee-Ashley and Jenny Rowland

In the 24 days since President Donald Trump's inauguration, the Republican-controlled Congress has already moved to overturn four major rules that the oil, gas, and coal industries spent millions of dollars fighting during the Obama administration. First, Congress eliminated the Stream Protection Rule, which would prevent toxic mine waste from being dumped in streams. Then Congress voted to get rid of a rule that limited bribery and corruption in oil operations around the world. And in the coming days, the U.S. Senate is scheduled to vote to overturn a rule that limits methane pollution when oil and gas companies drill on public lands and to eliminate a rule that increases public input in public lands management decisions.

5. **NEVADA STANDOFF: Testimony opens with aerial footage**

E & E News, Feb. 14 | Ken Ritter, AP/U.S. News and World Report

Jurors at the trial for six Cliven Bundy backers yesterday saw aerial footage of the beginning of the April 2014 armed standoff with federal agents.

6. **OREGON STANDOFF: Prosecutors hire jury consultant for 2nd trial**

E & E News, Feb. 14 | Maxine Bernstein, Portland Oregonian

A hired consultant will sit with federal prosecutors when jury selection starts Tuesday in the second trial of Malheur National Wildlife Refuge occupiers.

7. **BLM: Online leasing could be vulnerable to hacking — Grijalva**

E & E News, Feb. 14 | Scott Streater

Arizona Rep. Raúl Grijalva (D) wants the Government Accountability Office to assess whether the Bureau of Land Management's use of online oil and gas lease sales is secure from computer hackers, a move derided by an industry representative as a political ploy.

8. **DOE: Trump team asked about 'barriers' to coal research**

E & E News, Feb. 14 | Emily Holden

President Trump's transition team reached out to coal experts at the Department of Energy but gave no clues about policies the administration may consider to try to bolster the industry.



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9. COAL: Largest Western plant in U.S. to close, citing cheap gas

E & E News, Feb. 14 | Benjamin Storrow

The owners of the Navajo Generating Station voted yesterday to close the largest coal plant west of the Mississippi River, a dramatic development that underscored the painful economic landscape facing the coal industry nationally.

10. REGULATION: Who runs the grid? At Midwest PUCs, it's increasingly women

E & E News, Feb. 14 | Jeffrey Tomich

Grid parity is hardly a new term in the electric power industry.

But in the central United States, the term has a whole other meaning when you look at gender and the makeup of state regulatory commissions.

11. TECHNOLOGY: New companies hope dry coal can save the industry

E & E News, Feb. 14 | Heather Richards, Billings Gazette

Some new companies think they've landed on a secret that will save the coal industry. Its name is dry coal.

12. REGULATIONS: GOP's favorite bills could bolster Trump's 2-for-1 order

E & E News, Feb. 14 | Arianna Skibell

President Trump's executive order on regulatory reform could gain sharp teeth if Congress manages to pass a number of reform measures GOP lawmakers have been pushing for years.

13. PUBLIC LANDS: Mont. coalition urges Daines to protect federal tracts

E & E News, Feb. 14 | Jennifer Yachnin

In the wake of Montana Sen. Steve Daines' (R) assertion that he will seek a "balanced" approach to federal land management, a coalition of Montana businesses is urging the newly anointed Senate Western Caucus chairman to reject efforts to diminish the federal public lands portfolio.



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14. **APPROPRIATIONS: 200 groups urge robust funding for lands, resources**

E & E News, Feb. 14 | Jennifer Yachnin

A coalition of more than 200 national recreation and conservation organizations today called on congressional leaders to "support the strongest possible funding levels" for public lands and waters as well as cultural resources in fiscal 2018, while urging lawmakers to avoid potential cuts through sequestration.

15. **AIR POLLUTION: Pruitt seen as boon for utilities hit by EPA haze rule**

E & E News, Feb. 14 | Sean Reilly

Scott Pruitt hadn't long been Oklahoma's attorney general in 2011 when he sallied into his first public clash with U.S. EPA. The target: a proposed clampdown on power plant pollution clouding views at wilderness areas in three states.

16. **BLM agent tells Las Vegas jury that Bundy supporters posed threat**

The Las Vegas Review-Journal, Feb. 14 | Jenny Wilson

Supporters of Cliven Bundy posed a significant threat of violence to federal authorities who tried to impound the rancher's cattle, a Bureau of Land Management agent testified Tuesday in the trial of six men charged in the 2014 armed standoff in Bunkerville.



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UTAH – FULL STORY

1. **Utah groups pushing greater local control of public lands, wildlife seeking \$4 million in state money**

The Salt Lake Tribune, Feb. 13 | Brian Maffly

Utah lawmakers are again considering several requests to fund legal and lobbying efforts directed at gaining greater state control over public lands and wildlife, including another \$2 million to an anti-predator activist on retainer with the state to lobby on wolf and sage grouse.

Such requests entertained by the Natural Resources, Agriculture and Environmental Quality Appropriations Subcommittee totaled \$4.6 million. On this list was a \$500,000 request from a nonprofit called Foundation for Integrated Resource Management, or FIRM, that formed a few months ago to fight the Bears Ears monument designation, Recapture Canyon motorized restrictions and other federal land-use decisions that upset rural county leaders.

"Our organization is carrying out a mission to make sure that our public lands are open to integrated use and multiple use. We feel that it is best for the land itself and our economies," Johnnie Miller, FIRM's executive director, told lawmakers last week. "We are preparing legal actions as well, and assist our members, counties and non-profits and private corporation, to take legal action against federal agencies that put in place policies and procedures and implement actions that simply don't follow the law or the Constitution, as many of you know happens all too often."

Other funding requests include \$100,000 to help Duchesne County litigate a losing fight with the Ute Indian Tribe over jurisdictional matters; \$1.1 million to take over the management of wild horses and burros from the Bureau of Land Management; and \$1 million to support the state's ongoing lawsuit to overturn federal land-use plan revisions regarding sage grouse.

The subcommittee prioritized these requests Monday in its recommendations to the Executive Appropriations Committee, putting the FIRM grant second from the top.

As has been the case for the past several sessions, Big Game Forever (BGF) is shaping up to be a big recipient of taxpayer dollars. Rep. Mike Noel, R-Kanab, is seeking another \$2 million to fund the Department of Natural Resources' contract with BGF and its principal, Ryan Benson of Stag Consulting, but this time Noel was met with firm pushback from colleagues in his own



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party. Benson has been awarded \$5 million since 2011, but he has yet to divulge any details about how BGF spends this money in its reports to the Legislature.

"I have questions whether we have seen progress based on the investments we made. We have no way of knowing how this significant investment has been used," said Rep. Timothy Hawkes, R-Centerville.

On Monday, Noel defended these expenditures, but remained mum on particulars.

"Some of these matters are sensitive. This is not something to be discussed in public. I think we got our money's worth. I really do," Noel told colleagues. His request expanded the current BGF contracts to include "other endangered species, national monuments and other items identified by the state."

This catchall language troubled Rep. Brian Greene, R-Pleasant Grove.

"If we are dealing with things that aren't part of the original contract, we need a new contract," Greene said.

Other requests were not shrouded in confidentiality. To justify a \$100,000 appropriation for the Constitutional Defense Council, Sen. Kevin Van Tassell, R-Vernal, described difficulties Uinta Basin cities and counties face in defending claims brought by the Ute Indian Tribe. For decades the tribe has been returning to federal court asserting its jurisdiction over lands inside historic reservations covering Utah's share of the Uinta Basin. These reservation lands were opened up to white settlement a century ago, resulting in a confusing patchwork of cities, tribal lands and counties. Backed by numerous court rulings, the tribe claims jurisdiction over much of this 4-million-acre area.

The most recent ruling from the 10th Circuit Court of Appeals, penned by Supreme Court nominee Neil Gorsuch, forcefully rejected Myton's contention that the town's tiny footprint is not subject to tribal jurisdiction and removed District Judge Bruce Jenkins from the Ute case, which is still being actively litigated.

"We don't know if they will settle. Duchesne County and Myton have spent \$1 million and they are out of money. This has to do with city streets opened up at the time of settlement," Van Tassell said. "It is evident we might need to continue to litigate. Hopefully that can be avoided, but if not we need the money to continue."



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Noel is also behind the request for FIRM, which builds on \$250,000 the Legislature put up last year, according to Miller, who also serves as CEO of the Utah Counties Indemnity Pool. That earlier grant went to another nonprofit called the Rural Utah Alliance, ostensibly to defend county officials who get into legal trouble for standing up to federal land managers.

On Monday, Noel pared the request to \$400,000 and divvied it up into three separate grants: \$150,000 to FIRM; \$100,000 to the Rural Utah Alliance; and \$150,000 for "rural sovereignty" grants, used by counties to challenge cuts to grazing levels on public lands.

FIRM is similar to another Utah nonprofit, American Lands Council, but without the emphasis on land transfer. At the urging of rural county commissioners, Utah Rep. Ken Ivory founded ALC to help states gain title to public lands, but Ivory no longer runs the organization, whose membership is eroding.

FIRM, by contrast, focuses on changing policies to ensure public land can be used to support rural economies.

"Our dedicated members love the lands of their heritage and are watchdogs against government agencies that would use their bureaucratic powers to close off public lands to responsible use," states the group's website. "We use contributions obtained from our donors to file legal actions and communicate with the public in a bold effort to stand up for responsible access of these lands."

Suing over President Barack Obama's Bears Ears designation, which set aside 1.3 million acres in San Juan County, is a top priority, even though Utah Attorney General Sean Reyes has already pledged to file such an action, Miller said.

According to Miller, FIRM will recoup its costs under the Equal Access to Justice Act, which awards such costs to nonprofits should they prevail in a legal action against the federal government. States and counties are not eligible to recoup costs under this law, which conservation groups often invoke in their lawsuits to reverse land-use decisions made by BLM or the Forest Service.

"I consider this an investment in the future for the people of Utah," Miller said. "When the Attorney General or San Juan County brings that action against the Bears Ears, that is money that is lost. We are coordinating with both on Bears and Recapture now. If we bring the action we will recover those costs and save that money so that Utah residents aren't paying for that action."



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FIRM expects to sign up rural counties across the West to support its efforts to "educate" the Trump administration, lobby Congress and pursue lawsuits.

"To create standing in front of the courts, we need as many counties as members as possible. We keep the membership fees low so we can get as many as possible," Miller said. "We see chapters of FIRM throughout the Western United States and revenue coming from throughout the West so it is not just Utah bearing the brunt. ... We are asking for this appropriation to get us through this year so counties can put us into their budgets [next fiscal year]."

Box Elder County Commissioner Stan Summers chairs the FIRM board, which includes former U.S. Rep. Chris Cannon, former state Rep. Mel Brown, Kane County Commissioner Dirk Clayson and Duchesne County Commissioner Greg Todd.

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2. Utah tourism promotes Bears Ears despite state opposition

The Deseret News, Feb. 13 | Michelle L. Price and Brady McCombs, The Associated Press

SALT LAKE CITY — Utah tourism officials said Monday they are promoting the new Bears Ears National Monument on a state website despite a push by the governor and other leaders to have the designation rescinded.

Republican Gov. Gary Herbert signed a resolution earlier this month from the Legislature calling on President Donald Trump to repeal the designation by President Barack Obama during his final weeks in office.

Utah's congressional delegation, led by Sen. Orrin Hatch, is also pressuring Trump on the matter.

Herbert and others say they want to ensure the lands in southeastern Utah are used for a mix of purposes, including development, drilling and mining.

The outdoors industry sees that as a threat to the state's majestic outdoor areas and is pushing back.

The state had already been promoting some of the natural features of the area online, Utah Office of Tourism managing director Vicki Varela said. But Varela said the state can now be "more focused" because of the monument.



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The tourism office has a full webpage dedicated to the 1.35 million-acre national monument, along with subpages highlighting its various features.

The website calls the monument's landscape breathtaking while warning that it is rugged, wild and remote, without the services or facilities found at national parks in the state.

Varela said officials aren't sure yet how they'll promote the area since it's now more of a destination for serious outdoor enthusiasts.

She spoke to reporters Monday alongside Herbert about a new University of Utah report that shows tourism spending in Utah hit a record of \$8.17 billion in 2015.

That marked a 2 percent increase from the year before, putting tourism among the largest industries in the state, according to the report by the university's Kem C. Gardner Policy Institute.

The governor didn't know the state was promoting Bears Ears National Monument to tourists. Herbert said he and some Native Americans are concerned about attracting visitors who will trample on sacred lands.

"It's not like they want to put a neon sign out there saying, 'Come here and camp,'" Herbert said of the tribes.

The new tourism spending report comes amid heated debate over the state's role in management of Utah's iconic public lands. The discussions escalated after the designation of the Bears Ears monument in December despite staunch opposition from Herbert, the state's congressional delegation and other top leaders.

In protest over calls to rescind the designation, outdoor industry giant Patagonia and several other companies are vowing to boycott the semiannual Outdoor Retailer show, which brings \$45 million in annual spending to Utah.

REI and The North Face, however, are among companies saying they'll still attend shows in Utah.

Show organizers last week announced they are considering moving the event after two decades in Utah, in part because of the push to rescind Bears Ears.



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Varela said the Outdoor Retailer show is "a big part of Utah's brand" and a longstanding, important part of the state's economy that tourism officials would love to keep.

Herbert said he hopes a Thursday meeting with outdoor retailers will allow all sides to try to understand each other, reiterating his belief that Utah is the best place for the show.

"We need to just calm down," he said. "Let's see if we can find a common way to get to a goal we all want to share."

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3. **If the Outdoor Retailer shows leave Utah, Herbert bears part of the blame**

The Standard Examiner, Feb. 14 | The Standard Examiner Editorial Board

The Outdoor Retailer shows in Salt Lake City generate about \$45 million a year in direct spending. The two shows draw close to 30,000 attendees, according to the Deseret News.

And if the shows leave, Gov. Gary Herbert bears part of the blame.

Patagonia and Arc'teryx are already out of the show. So are Peak Designs and Polartec. Black Diamond Equipment wants the show moved out of Utah.

Why? Because the Utah Legislature passed a resolution calling on President Trump to remove national monument status for Bears Ears, and Herbert signed it.

The next day, Patagonia pulled out of the Outdoor Retailer shows.

"Because of the hostile environment they have created, and their blatant disregard for Bears Ears National Monument and other public lands, the backbone of our business, Patagonia will no longer attend the Outdoor Retailer show in Utah," President and CEO Rose Marcario said in a statement. "We are confident other outdoor manufacturers and retailers will join us in moving our investment to a state that values our industry and promotes public lands conservation."

Herbert responded in a column published by The Salt Lake Tribune, stating "rhetoric and posturing from both sides may have outpaced rational thought."

"We cannot force simplistic solutions to these complex issues through ultimatums, boycotts and press releases," Herbert wrote.



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Let's pause and consider that statement for a moment.

Utah legislators are preparing to spend \$14 million to argue in court they deserve control of all public lands in the state. They have introduced legislation this session that would gut public lands protections.

Patagonia announced it's boycotting the twice-annual Outdoor Recreation Show because of the Bears Ears resolution signed by Herbert and delivered in person to President Trump by U.S. Rep. Jason Chaffetz, R-Utah.

Rep. Mike Noel, a Utahn lobbying to be named director of the Bureau of Land Management, has advocated for decades that the entire agency be dissolved. Feb. 8, the day after Patagonia pulled out of the Outdoor Retailer shows, the Utah Senate passed Noel's resolution calling on Trump to shrink the Grand Staircase-Escalante.

In January, the U.S. House approved legislation sponsored by Utah's Rob Bishop, making it simpler to transfer federal lands to state control. Chaffetz followed up by introducing a bill to shift law enforcement responsibilities from the BLM and Forest Service to local sheriff's departments.

None of these moves could be described as anything other than "simplistic solutions" to complex issues.

Basically, it boils down to this: Utah lawmakers are using a chainsaw to perform a scalpel's job, and the outdoor recreation industry, feeling threatened, is ready to take its business elsewhere. All \$45 million a year.

And Herbert is allowing it to happen.

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4. **A Monumental Mistake: It's time to make the Antiquities Act a thing of the past**

The National Review, Feb. 14 | Shawn Regan

Government is the word we use for the things we choose to do together, as progressives like to say. But try telling that to Utah.

In December, in the final weeks of his presidency, President Obama single-handedly created the 1.35 million-acre Bears Ears National Monument in southeastern Utah, despite opposition from



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the state's governor, its congressional delegation, and the local elected officials that represent the area. Obama did so using his executive powers under the 1906 Antiquities Act, a Progressive Era law that allows presidents to unilaterally declare federal land off limits to most forms of development.

The local backlash was fierce. Representative Jason Chaffetz called the decision "a slap in the face to the people of Utah." Governor Gary Herbert said it "disregards the well-being and interests of rural Americans." And Senator Mike Lee vowed to "work tirelessly with Congress and the incoming Trump administration to honor the will of the people of Utah and undo this designation."

Earlier this month, Governor Herbert signed a resolution, approved by the state's legislature, calling on President Trump to rescind the Bears Ears designation. Utah has long fought against Washington's public-land policies, and in recent years has even called on the federal government to transfer most of its lands in Utah to the state. (In total, the federal government controls nearly two-thirds of the land in Utah.) The latest salvo in that battle centers on the Antiquities Act, whereby with the stroke of a pen, the president can bypass all of those pesky details of conventional lawmaking — the coalition-building, the endless compromises — and impose an unwanted preservationist agenda on far-away western communities, leaving them to deal with the consequences. It's a tool that Obama was especially fond of; he designated more national monuments than any other president.

Bears Ears was a particularly objectionable use of the Antiquities Act. In an interview with NPR just days before signing the monument declaration, Obama gave his successor the advice that "going through the legislative process is always better" than relying on executive powers — yet a multi-year legislative process was already underway to address Bears Ears. The Public Lands Initiative, spearheaded by Representatives Chaffetz and Rob Bishop, had sought a "grand bargain" in eastern Utah, preserving wilderness while opening other areas for resource extraction. The initiative involved years of deliberations with a diverse coalition of interest groups — all rendered moot in an instant by Obama.

Like many Progressive Era policies, the Antiquities Act is predicated on the notion that the expert judgement of Washington, D.C. is superior to that of local communities. Its defenders in this case have expressed contempt for Utah's desire to choose its own land policies. The outdoor industry has its recycled-polyester knickers in a bunch over the resolution signed by Governor Herbert. Patagonia announced last week that it will no longer attend the Outdoor Retailer trade show, a lucrative event held twice a year in Salt Lake City, and, along with Arc'teryx, is calling for the industry to move the event to another state that is more supportive of federal lands.



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Meanwhile, President Trump is reportedly “eager to work with” Republicans to undo the Bears Ears designation, though no president has ever undone a predecessor’s monument designation and it’s unclear Trump would have the authority to do so. Ryan Zinke, Trump’s nominee for secretary of the interior, has said he plans to visit Utah as his first order of business to address the Bears Ears controversy.

Obama is just the latest in a long line of presidents to create “midnight monuments” in the waning days of their administrations. At the end of the day, even modern progressives must admit that such monuments to presidential vanity are a bad thing. If government is the things we do together, then we should govern together. And if monument designations are truly good public policy, they shouldn’t require eleventh-hour executive actions that thwart the legislative process to become reality. It’s time to make the Antiquities Act a thing of the past.

— *Shawn Regan is a research fellow at the Property and Environment Research Center (PERC) in Bozeman, Mont.*

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5. **Opinion: Outdoors industry should bring fight to Utah**

Gear Junkie, Feb. 13 | Jen Taylor

Last week, Patagonia and several other brands announced that they will withdraw from the Outdoor Retailer convention in political protest. This letter provides an alternative perspective.

For background, several brands last week announced they will not attend the Outdoor Retailer show in Salt Lake City in response to a move made by Utah Gov. Gary Herbert.

Herbert signed a resolution urging the Trump administration to rescind the Bears Ears National Monument.

Others, however, say brands should instead bring the fight to Utah. This open letter, the opinion of Mountain Khakis Brand Manager and Director of Creative Development Jen Taylor, tells that side.

Note, this is Taylor’s opinion, and not necessarily that of Mountain Khakis brand or its other employees. It is addressed to Yvon Chouinard & Peter Metcalf, respectively the founders of Patagonia and Black Diamond Equipment.



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An open letter to Yvon Chouinard & Peter Metcalf:

Gentlemen, thank you for lending your voices to raise awareness toward devastating environmental issues and public lands conservation. Your stature within and beyond the ceiling of Outdoor Retailer represent the thousands of us who have built a rewarding life paying the outdoorist's lifestyle tax and finding our purpose in a landscape of corporations who recognize the growing relevance of our Industry's products and services.

Thank you also for composing several op-ed articles through the years – most especially in January of this year – regarding Outdoor Retailer's current and future 'state' in Utah.

"I say enough is enough. If Governor Herbert doesn't need us, we can find a more welcoming home." –Yvon Chouinard

"It's time for Outdoor Retailer to leave the state in disgust." – Peter Metcalf

With all due respect, I disagree with you both.

Is the Outdoor Industry not composed of anarchists, rebels and non-conformists? Our dirtbag heritage continues to be celebrated by scabbed-over industry founders such as yourselves, and altruistic newcomers alike. This fiery, dogmatic spirit is the foundation of our industry – your industry – that is now recognized by federal balance sheets.

I say, shouldn't our stance be – instead of threatening to leave the state of Utah – we should be threatening to stay in the state of Utah?

When the park rangers of Yosemite threatened to kick you out of Camp 4 so many years ago (I can only assume this happened several times), how did you react? Did you revolt and stay, or pack up and go? I'm guessing you rebelled, went off radar and continued bagging first ascents. Never succumbing to authority. Power to the people, stick it to the man.

When I read your threats of Outdoor Retailer abandoning its basecamp in Utah if Gov. Herbert, his politicos and policies don't start protecting public lands, it feels to me like we'd be rolling over. Bending over. Instead of threatening to pull out, shouldn't we be threatening to STAY? Shouldn't we take a stance and kick up so much dust that they threaten to KICK US OUT? That is a real story of having effect. That, to me, has the ring of revolutionary promise.

We should be such a burr in their saddle that the state of Utah makes every effort to ban the Outdoor Retailer trade show from their grounds.



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The outdoor industry is needed in Utah. There is no more important state for our brands, manufacturers, buyers, designers, reps, policy makers, media and investors to descend upon every six months; to insert our collective voice squarely in Utah's ear. Deep, like a Q-tip jamming into the eardrum. Their citizens need us. Their policy makers need us. Most importantly, their voiceless lands need us.

If we were to pull up our proverbial tent stakes and relocate to a state with policies more aligned with ours, wouldn't that be the easy way out? Wouldn't we be giving up, turning our back on the people, state and lands that need us most?

I say we hammer our titanium stakes into the ground with the swift strike of a rebel.

I say we step outside the walls of the Salt Palace Convention Center and rally with/for/against the community of Salt Lake City. Support the supporters, educate the critics, march on the lawns of the Capital and knock on the doors of the offices.

Let's consider it a shame if we continue to merely slide into Utah with our smoke and mirrors booths and sales pitches, our comfy hotel rooms, our entertaining overstuffed meals and our weeklong fist-pump critique of their archaic and devastating policies.

Let us rally for the weeks of Outdoor Retailer! Let us annoy the hell out of the policymakers and become real change makers in the face of an oppressive, threatening government who threatens to sell off and vaporize our beloved access to our beloved public lands.

Respectfully,

Jen Taylor

Mountain Khakis | Brand Manager, Director of Creative Development

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6. BLM considers withdrawing future mining claims to protect greater sage-grouse

The Tooele Transcript, Feb. 14 | Mark Watson

The Bureau of Land Management will consider a proposal to disallow future mining claims on an estimated 10 million acres of land in six western states in an effort to protect the greater sage-



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grouse and its habitat, according to a BLM press release Wednesday. The six states are Utah, Idaho, Montana, Nevada, Oregon and Wyoming.

During February, the BLM will hold public open houses in four of the states, with two open houses each for Nevada and Idaho. The Utah open house will be held in West Valley City on Wednesday from 5 to 7 p.m. at the BLM West Desert District Office, 2370 South Decker Lake Blvd, West Valley City. The proposal was published in the Federal Register on Dec. 30, 2016, and carries a 90-day public comment period that will end March 30, 2017.

The areas where future mining claims would be disallowed are called "withdrawal" areas by the BLM.

"There are proposed withdrawal areas in Box Elder and Rich counties managed by the BLM, with some areas in Cache County managed by the US Forest Service," BLM spokeswoman Kimberly Finch wrote in an email. "There are no proposed withdrawal areas in Tooele County."

She indicated the proposed withdrawal does not prohibit mineral leasing, and the withdrawal would not ban mining on all lands.

"The proposed withdrawal protects valid existing rights, and does not affect other BLM public land uses or National Forest System land uses such as grazing, recreation, timber harvest, mineral leasing, geothermal leasing or mineral material sales," Finch wrote.

The BLM press release states that the open houses are the next step in a process that started in September 2015 with the successful efforts of the BLM and its state and federal partners to prevent the greater sage-grouse from being listed under the Endanger Species Act.

The draft environmental impact statement analyzes five alternatives, ranging from no action to the withdrawal of approximately 10 million acres of federal locatable minerals in certain areas that are particularly crucial to the greater sage-grouse in the six states.

Locatable minerals, according to the General Mining Law of 1872, include metallic minerals and nonmetallic minerals. Metallic minerals include gold, silver, lead, copper, zinc, nickel and others. Nonmetallic minerals include fluorspar, mica, limestones, gypsum, copper, zinc, nickel and others.

Neither the segregation, nor any subsequent withdrawal, would prohibit ongoing or future mining exploration or extraction operations on valid pre-existing claims, according to the press release.



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To develop the proposal and its alternatives, the BLM held public meetings in November 2015 in the six states to gather information and comments about whether to withdraw these areas from the location of new mining claims for up to 20 years. The BLM also incorporated a mineral resource assessment prepared by the U.S. Geological Survey to help develop a reasonably foreseeable development scenario for the draft environmental impact statement.

Finch said greater sage-grouse are considered indicators of sagebrush habitat health. More than 350 species depend on the sagebrush ecosystem for their survival. A healthy economy and a healthy ecosystem are inextricably linked. The sagebrush habitat supports a vibrant ranching economy as well as extensive economic activity from outdoor recreational activities, she wrote

“Last summer the BLM signed a partnership agreement with Intermountain West Joint Venture to collaborate, share best practices, and build capacity to conserve sagebrush habitat for the greater sage-grouse. The BLM committed to funding \$5 million over five years that will be matched with partner funding,” Finch wrote.

The Intermountain West Joint Venture operates across all or parts of 11 western states and was established in 1994, according to its website. Its purpose is to conserve priority bird habitats through partnership-driven science-based projects and programs.

For further information about the proposal contact Mark A. Mackiewicz, BLM, by telephone at 435-636-3616, or by email at mmackiew@blm.gov.

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7. **RECREATION & TRAVEL: New series explores Utah’s historic places**

The Sun Advocate, Feb. 14 | Steve Christensen

Utah is a unique place. You already knew that, but I’m betting there are things about Utah you don’t know and there are historic places you haven’t visited.

Over the next several months I will take you on an arm-chair tour of some of these places, including two national conservation areas, two national recreation areas, three national wildlife refuges, ten national monuments/historic sites, and four national historic trails.

National conservation areas are Beaver Dam and Red Cliffs.

National Recreation areas include Flaming Gorge and Glen Canyon.



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The national wildlife refuges in Utah are Bear River, Fish Springs, and Ouray.

The national monuments and historic sites include Grand Staircase-Escalante, Bears Ears, Cedar Breaks, Dinosaur, Natural Bridges, Golden Spike, Hovenweep, Glen Canyon, Rainbow Bridge, and Timpanogos Cave.

National historic trails include Old Spanish, Pony Express, California, and Mormon Pioneer.

In addition to these places, there are five national parks in Utah. I've already written about four. Someday I'll get around to doing an article on Canyonlands National Park.

Since it's very difficult to physically follow (impossible for me) all the national historic trails, I will tell you what my research has revealed.

Crossroads of the West

Utah in historic terms is often referred to as the "Crossroads of the West." With the Great Basin sitting to the west of the area inhabited in Utah, it was a daunting thought to go on. Many people didn't, but rather chose to stop in Utah. That is the case with Mormon Pioneers, who chose to make Utah their home after fleeing religious persecution in the east.

Mormon Pioneer National Historic Trail

This is the story of the trail and the journeys of the people who made the 1300-mile journey from Nauvoo, Illinois to Salt Lake City in the 1840s. The story is told in a guide published by the National Park Service called National Historic Trails Auto Tour Route Interpretive Guide. The guide is available for download at www.nps.gov or you can get a printed copy by calling the National Park Service at 801-741-1012.

The first wagon trains left civilization for California in 1941. It was a daunting trip. There were no roads, trails, or makers, and they had no maps. To people of our generation it seems like an impossible trip. In fact, for us it probably would be. We are used to getting on an airplane in Salt Lake City and landing in Chicago two hours later. Those first trips took months. Sometimes many months. Some expeditions met with disaster. The worst might have been the Donner Party. Most people know of that story where people were stranded by winter in the Sierra-Nevada Mountains and were reduced to eating human flesh to survive.



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The first Mormon wagon trains arrived in Utah in 1847, thus the Days of '47 celebration held each summer. Brigham Young decreed the Salt Lake Valley as, "This is the Place." Today a park operated by the Mormon Church in Immigration Canyon celebrates this event.

California National Historic Trail

There is little difference between the Pioneer Trail and the California Trail until it reaches Utah. After all, a person couldn't get to California in the 1840s and 50s without passing through Utah. You still can't unless you go far south, nearly to the Mexico border.

From Utah to California, as the Donner Party found, was a cruel trek. There was no good route. The best route was extremely difficult. Today we go south on U.S. Highway 10, get on Interstate 70 which merges with Interstate 15 and there's not even a stop sign all the way to California. That was not the case in 1850. Wagons could barely get through the sagebrush, bogged down in wet areas, and they were faced with canyons that defy passage. And yet they did it. Somehow they did it.

Wagon traffic on the California Trail peaked in 1857, but dropped dramatically in 1858 due to the Utah War. Concerns over being caught between the United States military and the Mormons in Utah stopped many people from making the trek west.

Between 1841 and 1869 over 250,000 people made the journey from Missouri to California. The trip became somewhat easier as time went on. Trails and maps were developed and in one case a new route was found, shortening the route by 280 miles and 10 days. Today California is the most populous state in the United States with nearly 39 million people. All 39 million owe it to those first dedicated people who inched their way over impossible terrain to get to the West Coast.

The California Trail Interpretive Center in Elko, Nevada is dedicated to that arduous journey.

Wagon traffic nearly ended in 1869 by completion of the transcontinental railroad.

Pony Express National Historic Trail

Numerous books and movies have been made about the Pony Express. Everyone knows the legend. What you may not know is that the Pony Express only lasted 19 months. It was made obsolete by the completion of the transcontinental telegraph in 1861.



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Before the Pony Express it took months for a letter to reach the west coast. The Pony Express shortened that time to 10 days. Of course the telegraph made communication almost immediate and today you can make a phone call from nearly anywhere.

Traces of the trail continue to exist, but most of the route has been transplanted by modern highways. There is a museum in St. Joseph, Missouri dedicated to preserving the history of the Pony Express.

Old Spanish National Historic Trail

The other three trails mentioned here traverse the country east to west and existed over a relatively short time (1841-1869). The Old Spanish Trail is a trade route that runs from Santa Fe, New Mexico to Los Angeles, California. The first Spanish explorers used portions of the trail as early as the 16th century.

The trail is actually a series of trails connecting Southwest Colorado and Southeast Utah with Santa Fe and Los Angeles. There are portions of the trail as far north as the San Rafael Desert.

The route was very difficult. In fact, it has been called the “most arduous” trade route ever developed. It was mostly used for trains of pack mules, although it was also used for illicit purposes, such as stealing horses and slave trade.

Walkara, a Ute chief, is notorious for stealing hundreds, if not thousands of horses from ranches in California. He herded those horses along the Spanish Trail to locations in New Mexico, Colorado, and Utah.

Mexican traders and Indian raiding parties kidnapped Indian slaves and sold them into slavery in Mexico.

The Palace of the Governors in Santa Fe may be considered the home of the Old Spanish Trail. The Palace was built in 1610 and is the oldest continuously occupied governmental building in the United States. Today, the palace is a National Historic Landmark and a museum.

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8. Outdoor Industry Issues Ultimatum To Utah Governor

Gear Junkie, Feb. 14 | Staff Post

Members of the Outdoor Industry Association today issued a strong rebuke of Utah's public lands policies in a letter to the governor of the state.

On the heels of continued fallout from Governor Gary Herbert's resolution to rescind national monument status from Bears Ears, the outdoor industry came together today with a public ultimatum: Maintain federal protections or lose Outdoor Retailer.

The OIA released a brief official statement along with a letter to the Utah governor and legislators. It was signed by dozens of major brands. Read both below:

Statement From Outdoor Industry Association to Gov. Herbert

February 14, 2017

As our peers and colleagues in the outdoor industry continue voicing their opposition to the recent actions on public lands in Utah, Amy Roberts, Outdoor Industry Association executive director, is standing with outdoor leaders and endorsing a statement released by the industry today.

On Thursday (2/16/17) Amy, along with key leaders from outdoor industry companies, are scheduled to speak with Governor Herbert.

Official Statement: The Outdoor Industry Association is united with our member companies in opposition to the recent resolutions passed by the Utah legislature concerning monuments in Utah. On Thursday, February 16, Amy Roberts, OIA executive director, along with key leaders from outdoor industry companies will be speaking with Governor Herbert.

In the meeting, OIA and industry leaders will ask the governor to stop all efforts to rescind the Bears Ears National Monument through executive order, to stop efforts to gut the Antiquities Act and to support keeping our public lands public for all Americans to enjoy.

They will ask that Utah choose to embrace and actively support the outdoor recreation economy's role in the state and find ways to grow an economy that is generating more than \$12 billion in consumer spending, supporting 122,000 jobs in the state, paying \$3.6 billion in salaries and wages and contributing more than \$856 million in state and local tax revenue. Utah is at a



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crossroads. Political leadership has the opportunity now to change course and grow the outdoor recreation economy to the benefit of all Utah citizens.

If they are unable to reach agreement, OIA will continue to work with Outdoor Retailer to move the show as soon as possible.

Statement From Dozens Of Major Brands

Dear Governor Herbert,

Last month, just after the Outdoor Retailer Winter Market show ended, our industry trade group, OIA, released a letter signed now by over 200 of our member companies. In unambiguous terms, the letter stated that America's public lands are "a vitally important issue that affects the economic health of our industry, our local communities, and the lives of all Americans". It went on to say that "It is an American right to roam in our public lands. The people of the United States, today and tomorrow, share equally in the ownership of these majestic places. This powerful idea transcends party lines and sets our country apart from the rest of the world. That is why we strongly oppose any proposal, current or future, that devalues or compromises the integrity of our national public lands. This includes your recently signed proclamation to dismantle Bears Ears National Monument."

We are writing you and other members of Utah's political leadership to reinforce this message of principles, layout the foundation of our perspective, and to invite and challenge you to come to the table to meaningfully discuss a public policy that provides for the protection and stewardship of America's public lands.

As you know, Utah's public lands form the underpinnings of the state's great competitive advantage – an unmatched quality of life unique to much of America that has attracted the best and brightest companies and their employees to the state. For the same reasons, Utah now has one of the largest concentrations of outdoor recreation companies in the country as well as the twice a year Outdoor Retailer (OR) trade shows. The outdoor recreation industry has had meteoric growth in Utah over the past 20 years, becoming one of Utah's largest economic sectors. Today, the outdoor industry in Utah generates nearly \$12 billion in GNP activity with over 120,000 jobs. In addition, the twice annual OR show brings in over \$40 million in direct spending to Utah which boosts the prosperity of many small businesses and the state's tourism economy.

Many of Utah's state leaders have stated that "there is no all-out assault against Utah's public lands." We wholeheartedly disagree. While we appreciate your more recent public statements



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and willingness to engage in a discussion, we have watched the state's political leadership spend years championing a set of policies that we interpret to be a state and national attack on the sanctity of public lands, public access and ownership of them, and how our nation manages and protects them.

Our view on Utah's attack on the sanctity of public lands has been further informed and strengthened by recent actions taken by Utah's top elected officials, including the resolutions to rescind Bears Ears and shrink Grand Staircase Escalante National Monuments, statements calling to starve funding from Federal land management agencies, Congressional efforts to gut the Antiquities Act, proposed legislation that shifts law enforcement from the BLM and Forest Service to local sheriff departments, and expensive lawsuits aimed at moving public lands to state ownership. We see all of these actions as an existential threat to the vibrancy of Utah and America's outdoor industry as well as Utah's high quality of life.

Specifically, we are requesting that you and Utah's top elected officials reverse course on your stated strategy and proclamation to take down our newest national monument, Bears Ears; shrink Grand Staircase Escalante; gut the Antiquities Act; starve funding from Federal land management agencies; and transfer our country's public lands to state ownership where the state can dispose of and prioritize extractive use over all others.

Well protected, stewarded, and managed public lands play an integral role in Utah's vibrant economy and they make the state a great place to live, work, and play. Four of Utah's five iconic national parks, which are the economic engines of their regions, were created through use of the Antiquities Act – as was Bears Ears National Monument.

The undersigned are asking you to champion these critical policies that are integral to the state's and our industry's vibrant sustainable future. If that is something you are unwilling to do, we are publicly and emphatically urging our trade group's leadership to have our show depart with the expiration of the current contract in 2018. If you are willing to stand up for our industry, and the public lands that are so critical for our success, then we will stand with you and advocate to keep the Outdoor Retailers Show in Utah, a state that we all love. We believe strongly that our twice-yearly show should celebrate and reward states that are championing and implementing policies simpatico with the values and policies advocated by our industry.

Sincerely,
Peter Metcalf
Founder, Black Diamond Equipment



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Rose Marcario
President and CEO, Patagonia

Jerry Stritzke
CEO, REI

Scott Baxter
President, The North Face Group

Kim Miller
CEO, SCARPA North America, Inc.

Kevin Boyle
Co-Founder, KUHL

Eric Greene
Division Vice President, Exxel Outdoor Performance Group
Kelty, Sierra Designs, Ultimate Direction

Jim Pisani
President, Timberland

Ted Manning
CEO, Ibex Outdoor Clothing

Ron Steele
President, Group Rossignol North America

Dan Nordstrom
CEO, Outdoor Research

Danny Giovale
President, Kahtoola, Inc.

Nazz Kurth
President, Petzl America

Rob BonDurant
VP Product Marketing, Osprey Packs

John Sears
VP of Development, Gregory Mountain Products

Willie Ford
Managing Director, POC



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Bill Gamber
Co-Founder, Big Agnes

Jonathan Lantz
President, La Sportiva North America

Gary Smith
CEO, PolarTEC

Ken Meidell
CEO, DAKINE

Travis Campbell
President, Smartwool

Steve Munn
President, JanSport

Scott Kerslake
CEO, prAna

Aldo Radamus
President, ASSOS USA LLC

Shawn Hostetter
President, Katadyn North America

Thomas Laakso
President, Mountain Hub

Doug Phillips
CEO, Metolius Climbing

Jon Hoerauf
President and GM, Arc'teryx Equipment

Mike Sinyard
CEO & Founder, Specialized Bicycle Components

Brian Mecham
Salewa/Dynafit North America

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9. Paleontology of Bears Ears National Monument, Utah

PLOS.org, Feb. 12 | Sarah Gibson in Government, Guest Blogs, paleontology, Robert Gay

On December 28th, 2016, then-President Barack Obama, acting under the authority delegated to him by the Antiquities Act of 1906, created Bears Ears National Monument (BENM), located in southeastern Utah, United States. The impetus for BENM came from a coalition of numerous Native American tribes with prehistoric and historic cultural ties to the region. Indeed, the *raison d'état* for this monument was generally presented as a way to safeguard nationally significant cultural heritage from ongoing looting and damage, as well as to maintain the strong connection of modern tribes to the continuing cultural significance to the land.

Bears Ears National Monument is big. Really big. At 1.35 million acres, it is one of the largest such protected areas within the United States. Spanning a stretch of rugged southeastern Utah from the San Juan River to the soaring slopes of the Abajo Mountains, the Monument takes in a wide range of geography. Even the detractors of the BENM proposal, like members of Utah's congressional delegation Rob Bishop and Jason Chaffetz, agreed that the area was special, significant to local tribes, and needed to be protected. But there was something else that had gone unmentioned by both sides of the issue: the startling naked geology on display in the BENM area and surrounding lands provides an astonishing look into the Late Paleozoic and Early Mesozoic eras. The paleontological resources of the area are staggering, and yet just barely beginning to be explored systematically. The lack of any specific protections for paleontology would seriously hurt the science. Without explicit recognition of the paleontological value of the lands, whether in the form of a National Conservation Area (NCA) or a National Monument, paleontologists would have a difficult time continuing ongoing research and obtaining new permits to work within the region.

As a paleontologist who works on Upper Triassic rocks in the region, this was concerning to me. As time went on I realized that my polite mentions on social media about the importance of paleontology to the region were getting nowhere. No one else was speaking out on the issue; if something was going to be done it looked like I needed to step up and do it myself. I made a nuisance of myself; I visited town hall meetings, conservation meetings, wrote representatives, and finally was approached by several conservation groups to address the paleontological significance of BENM. I was disheartened that none of the politicians on the side working towards an NCA (against a National Monument) ever contacted me back, though they were in contact with several other paleontologists. The final NCA language, presented in Rob Bishop's bill, "Utah's Public Lands Initiative," essentially ignored the advice of those scientists who were consulted, however.



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One thing that seemed to surprise both the conservation groups working towards a National Monument and the agencies in Washington D.C. is the sheer amount of paleontological resources present within BENM. I compiled a bibliography of fossil resources in the Monument area and the number of peer-reviewed and publicly presented abstracts, guidebooks, and field trip guides overwhelmed the folks tasked with analyzing the non-cultural resources of the area. One such person even commented to me that the combined geological and paleontological bibliographies of the BENM area were more extensive than those for the cultural aspects. This may be due to a publishing lag in archaeology, but is nonetheless impressive considering the monument was proclaimed for those cultural resources.

The paleontological resources of BENM are special in that they are not concentrated on a single portion of geological time. The boom of paleontological research in nearby Grand Staircase-Escalante National Monument (GSENM), proclaimed 20 years earlier, has almost exclusively focused on its Late Cretaceous animals. In BENM, at least three distinct and important slices of time are represented in the rock record.

Several areas within the Monument preserve amazing Paleozoic fossils, showing ecosystem turnover from the Carboniferous into the Permian. Lobe-finned and ray-finned fish, large amphibians similar to Eryops, and relatives of the fin-backed Dimetrodon are present in deposits from both the southern and northern edges of BENM. The Valley of the Gods, in the southern portion of BENM, has many of these interesting fossil deposits that shed light on some of the evolutionary transitions between these groups, while further north at Indian Creek, Upper Permian rocks show how terrestrial life diversified in the time before the devastating End-Permian Extinction Event.

The second major geological slice of time has been the focus of much of my research in and around the Bears Ears region for more than a decade. This is the Triassic–Jurassic boundary, the time that saw dinosaurs go from minor components of terrestrial ecosystems to being the dominant form of life on land. Not only have I been focusing my work on this region and time period for a while, but others are very active in research within and around BENM looking at this same group of rocks. Teams from the St. George Dinosaur Discovery Site and the Natural History Museum of Utah are looking at the Triassic–Jurassic boundary in Indian Creek and Beef Basin to the west, to tie in with earlier work done to the northeast near Moab. My work since 2013–2014 has focused on Comb Ridge and more recently Fry Canyon. Joint teams from Appalachian State University and the Museum of Moab are beginning to work in Red Canyon, an area just barely excluded from the Monument’s boundaries, that was initially explored in the 1970s and 1980s. A group from the Natural History Museum of Los Angeles County (NHMLA) is gearing up to do work within the monument as well, also looking at this same rock unit.



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Within the last decade, this relatively unknown portion of the Chinle, Wingate, and Kayenta formations has gone from neglected to the subject of intense and systematic surveys. New taxa from across the vertebrate tree of life are being uncovered and described, helping to fill in crucial gaps in our paleobiogeographical map of the Late Triassic Period.

The third geological span of time that has started to yield important fossils is the Late Jurassic Morrison Formation. Ubiquitous for its grey-blue striped badlands across the American West, the Morrison Formation is well studied and has yielded some of the most iconic dinosaurs ever named. Animals such as Apatosaurus, Allosaurus, Brontosaurus, Barosaurus, Ceratosaurus, and Stegosaurus were originally named from this rock group elsewhere in the West. But in BENM, little work has been done in this formation. Initial surveys, conducted with joint crews from the Bureau of Land Management and Utah Geological Survey, turned up numerous looted fossil sites, with bones smashed, destroyed, and stolen. This section of the Morrison Formation has never been formally surveyed; it is unknown what data have been lost by this poaching. All that is known for sure is that data have been lost. Considering the unexplored nature of those outcrops (and the fundamentally different nature of the Morrison itself in BENM – something brought to my attention by Utah State Paleontologist Jim Kirkland) it would be unsurprising if novel taxa or occurrences of organisms had been looted. Hopefully strong work in the region by Monument law enforcement, coupled with renewed efforts by the Utah Geological Survey and the NHMLA, will both halt damage and begin to expand our knowledge of the Late Jurassic on the margins of the large salt lake and playa that existed just to the south, 152 million years ago.

This isn't to say that other fossil resources are not present. Fossil traces are found in both the Permian Cedar Mesa Sandstone and the Early Jurassic Navajo Sandstone. Pleistocene megafauna and microfauna both have been recovered from atop Cedar Mesa. And the Cretaceous Burro Canyon Formation has yielded important fossils from just outside the Monument boundaries. The above is to highlight the major work that has been done in the monument already.

After compiling evidence, I also enlisted the help of our professional society, the Society of Vertebrate Paleontology (SVP). Through the Society's Government Affairs Committee (and eventually through the Executive Committee), my colleagues and I could draft up a letter to the administration supporting strong protection for the fossil resources in the Bears Ears area. This, along with the bibliographies, summaries, and in-person visits to Washington D.C., made the case overwhelming in support of paleontology. Once both conservation groups and the land management agencies in Washington D.C. realized the significance of the fossil resources of the then-proposed Monument, it was only a matter of deciding wording and boundaries. I have covered elsewhere the problems of including areas with little scientific documentation, but I am



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proud to say that a fair portion of the monument's proclamation language came from the executive summary and other documents I provided to the administration.

As the readers are probably well aware, since Bears Ears National Monument was proclaimed, there have been serious pushbacks, from both local groups and Utah politicians. Representative Chaffetz introduced a bill in late January that would have 'disposed' of thousands of acres of BLM-administered land within San Juan County alone. This land was tagged in the bill's supporting documents as having paleontological resources, the only-such mention for any county covered under the bill. Although Chaffetz later withdrew the bill under protest from both Utahns and others from across the country, its accompanying legislation, H.R. 622 would abolish the BLM's law enforcement wing. Considering the looting of sites in Bears Ears National Monument, such a move would completely undermine the protections that BENM is supposed to have in place for these resources. More insidious is the Utah Legislature passing a resolution asking President Donald Trump to 'undo' BENM, along with shrinking GSENM. The current legal opinion is that the President lacks the authority to do so. Then-President Obama was acting under the authority delegated to him by congress in the Antiquities Act. As such, any authority not explicitly delegated to the Office of the President is implied to be retained by the Congress. Legal tests of other presidential decisions have supported this interpretation of the law. Having said that, however, it is clear that Utah's congressional delegation (especially Representatives Bishop and Chaffetz) have no problem introducing bills to reduce, undercut, or eliminate public lands programs. The Utah Legislature's move may in fact be a sign to these representatives that introducing a bill to Congress to eliminate BENM and slash the size of GSENM is expected of them. There have been some repercussions to the State of Utah's stance, however. The economically important Outdoor Retailer Show, held every year in Salt Lake City, has lost two major retailers in the space of a week (Patagonia, followed quickly by Arc'teryx). Additionally, a town hall meeting held by Chaffetz was overflowing with BENM supporters, to his apparent surprise. It seems likely at this point that the designation of BENM will end up in court and it seems likely that science, especially paleontology, may end up playing a role in whether BENM remains a going concern or whether it vanishes the way of Fossil Cycad National Monument. Either way, the story is not over yet.

For more information about coalitions supporting BENM, and how you can get involved, follow the links below:

<http://utahdinebikeyah.org/>

<http://bearscoalition.org/>

<http://wilderness.org/monument-designation>



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<https://www.friendsofcedarmesa.org> – Robert Gay will be speaking about Bears Ears Paleo at the annual Celebrate Cedar Mesa meeting March 3–5! Find more information on their website!

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10. **House endorses declaring Spiral Jetty as ‘state work of art’**

The Salt Lake Tribune, Feb. 14 | Lee Davidson

The Spiral Jetty in the Great Salt Lake is getting a second chance to become, possibly, Utah's official "state work of art," and also the first artwork to be declared a state symbol anywhere in the nation.

The House voted 48-23 to pass HB211, and sent it to Senate. It had passed the House last year, but failed to win final approval.

"We have something here in our midst, something that is internationally recognized as one of the top 10 land art features in the entire world," said Rep. Becky Edwards, R-North Salt Lake, the bill's sponsor. "I think the time is right for us to designate that and recognize and celebrate this beautiful work of art."

The sculpture was made in 1970 by Robert Smithson. It is a 1,500-foot-long, 15-foot-wide counterclockwise coil jutting from the shore — somewhat near the Golden Spike National Historic Site.

Meanwhile, a separate bill, SB171 by Sen. David Hinkins, R-Orangeville, seeks to declare Native American rock art as the state "works of art." Edwards said they complement each other, and both help to promote unique features in the state.

Among current official Utah symbols are an emblem (beehive), bird (sea gull), animal (elk), flower (sego lily), cooking pot (Dutch oven) and even a gun (Browning model 1911).

Others are: state folk dance (square dance), fossil (allosaurus), fish (Bonneville cutthroat trout), fruit (cherry), vegetable (Spanish sweet onion), historic vegetable (sugar beet), gem (topaz), grass (Indian rice grass), insect (honeybee) and mineral (copper).

Still others include the state motto (industry), rock (coal), tree (quaking aspen), winter sports (skiing and snowboarding), song ("Utah This is the Place) and hymn ("Utah We Love Thee").

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E&E/NATIONAL NEWS – FULL STORY

1. Testimony begins in Bunkerville standoff trial in Las Vegas

The Las Vegas Review-Journal, Feb. 13 | Jenny Wilson

Defiant cattle rancher Cliven Bundy tossed a court order out the window of his truck and tried to pay grazing fees to Clark County instead of the federal government, a Justice Department lawyer testified Monday as prosecutors began to establish the chain of events that led to an armed standoff in Bunkerville in 2014.

Justice Department lawyer Terry Petrie took the witness stand Monday in the federal trial of six people accused of conspiring with Bundy to block the Bureau of Land Management from impounding the rancher's cattle.

Petrie testified that several months before the cattle roundup, Bundy told him that "if the federal government showed up to impound his cattle ... he would then physically respond."

"He said he would be soliciting the assistance of his neighbors, his friends and his supporters," Petrie said.

Petrie read from court documents dating to the early '90s that detail Bundy's various attempts to flout federal court orders regarding his livestock. The testimony provided jurors a snapshot of the legal saga that resulted in the politically charged, armed confrontation.

In response to a mid-1990s court ruling, Bundy accused the BLM of harassing him, threw the court order out the window of his truck and drove away, Petrie testified. He said Bundy's son then picked up the order, tore it into pieces and threw it on the ground.

Petrie testified that the rancher mailed a check for nearly \$2,000 to Clark County in 1995. The amount, if paid to the proper agency, would have covered one year of grazing fees. But Bundy, who previously has said that the county sheriff has jurisdiction over the federal lands, refused to pay the federal government. Clark County returned the check to Bundy, Petrie said.

Ethics Accusations



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Earlier in the day, a defense attorney representing one of the men on trial announced he recently received an unredacted version of a report that accuses a BLM agent of several conduct violations, including using his position to obtain sold-out Burning Man tickets in 2015.

Todd Leventhal, who represents defendant Scott Drexler, previously had cited suspicions that the federal agent targeted in the report is the same person who oversaw the cattle impoundment in Bunkerville.

“The unredacted version is quite scary, your honor,” Leventhal said.

The attorney said five or six other government witnesses were mentioned in the report, in addition to the special agent who is targeted. That agent was not named in open court Monday, but court filings suggest that defense attorneys believe it is Special Agent in Charge Dan Love.

U.S. District Judge Gloria Navarro did not immediately rule on the issue. BLM Agent Rand Stover, who testified Monday, is among the people whom Leventhal indicated he would like to ask about the report, but court adjourned before defense lawyers had a chance to cross-examine the witness.

In questioning Stover Monday, First Assistant U.S. Attorney Steven Myhre tried to chip away at defense contentions that federal authorities restricted protesters’ First Amendment rights to freely assemble when they created a designated First Amendment area near the cattle roundup.

Stover testified under direct examination that the public lands were closed during the impoundment operation to ensure safety.

He said the “First Amendment area,” which was marked with orange cattle tape, was intended to create a safe place for the public “where they could see what was going on.”

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2. **Federal judge rejects request to block Dakota Access pipeline — for now**

The Washington Post, Feb. 13 | Steven Mufson and Spencer S. Hsu

A District of Columbia federal judge on Monday turned down a request to temporarily block construction on the Dakota Access pipeline, saying there would not be any risk of immediate harm until oil starts flowing.



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But U.S. District Judge James E. Boasberg, while denying a request by two Native American Lakota tribes for a temporary restraining order, ordered the pipeline company to provide weekly updates about when it expected oil to begin flowing, leaving open the possibility of further court intervention. He set a date of Feb. 27 for a hearing on whether to issue a preliminary injunction at that time.

“Because there is no immediate harm because oil is not going to flow immediately, I deny the” temporary restraining order, Boasberg said from the bench after an hour-long hearing.

David Debold, an attorney for Dakota Access, said that oil could start flowing in 30 days or even earlier, a much faster schedule than other company representatives have given. Debold said “the company is moving as quickly as it can to complete the pipeline, to make up for lost time over the last few months.”

The case is an early test of the power of President Trump’s executive orders. The president has been trying to speed up the pipeline’s completion, while the tribes and environmental groups have argued that the administration’s actions violate administrative procedure and treaty obligations.

Jan Hasselman, an attorney for the environmental group Earthjustice and an adviser to the Standing Rock Sioux Tribe, said the tribes expect to file a new, broader motion in the next couple of day seeking partial summary judgment under the National Environmental Policy Act, Clean Water Act and Administrative Process Act.

The motion Boasberg rejected Monday was based solely on religious freedom grounds, with the Standing Rock Sioux and the Cheyenne River Sioux arguing that the Missouri River and Lake Oahe are integral parts of their sacred rights and beliefs. The pipeline, they said, would “desecrate the Tribe’s sacred waters” and pose “plain irreparable harm.”

The tribes, part of the Lakota people, said in their filing that the Lakota people believe that “the pipeline correlates with a terrible Black Snake prophesied to come into the Lakota homeland and cause destruction.”

A new filing would probably raise very different legal questions, Boasberg said.

The Dakota Access pipeline, which would carry crude oil about 1,170 miles from western North Dakota across four states to the refineries and pipeline networks in Illinois, has been the focus of legal maneuvering and protests for months. In an area near Cannonball, N.D., the company would drill underneath Lake Oahe, a measure designed to prevent any leak into the lake and the



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Missouri River. The company's defenders assert that there are four other oil pipelines that cross the Missouri River north of the Dakota Access site.

The Standing Rock Sioux say the pipeline disturbs sacred burial grounds and archaeological sites and still endangers water supplies.

In late 2016, then-President Barack Obama ordered the Army Corps of Engineers, which controls the river and lake, to ask the pipeline company, Energy Transfer Partners, to submit environmental impact statements on alternative routes. But then Trump on Jan. 24 ordered the Army Corps of Engineers to speedily issue the final easement the company needed to finish construction in the national interest. On Feb. 8, the Army said it no longer needed an environmental impact statement and issued the easement.

"We will ask the judge to declare that the Trump administration's actions in approving this project were illegal, arbitrary and capricious," Hasselman told reporters outside the courthouse after the hearing on Monday.

"We're disappointed with today's ruling denying a temporary restraining order against the Dakota Access pipeline, but we are not surprised. We know this fight is far from over," said Chase Iron Eyes, a member of the Standing Rock Sioux tribe and lead counsel in a group defending Lakota rights.

Iron Eyes said the tribes would continue to pursue legal remedies and push for the completion of a full environmental impact statement.

"It tells you they're overlooking our role as a tribal government, as a sovereign nation," said Frank White Bull, a member of the Standing Rock Sioux Tribal Council. "Of course it's disappointing, but it is not the end of the fight. Our fight is perpetual as long as the Lakota people are in existence."

Harold Frazier, chairman of the Cheyenne River tribe, headquartered at Eagle Butte, S.D., said he was disappointed in the ruling, saying "time is of the essence," but adding "we'll just have to regroup and try to fight harder and hope his honor reaches a different conclusion" later.

Iron Eyes said that the Standing Rock Sioux would continue to urge protesters to "resist this pipeline on the ground, peacefully and prayerfully."

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3. **Second Oregon standoff trial: The defendants, the charges**

The Oregonian/OregonLive, Feb. 14 | Maxine Bernstein

Jury selection begins Tuesday in the federal trial of the four remaining defendants in the armed takeover of the Malheur National Wildlife Refuge. They mark the second group of occupiers to go to trial in the case.

DEFENDANTS

Jason S. Patrick, 43, of Bonaire, Georgia

Duane L. Ehmer, 46, of Irrigon, Oregon

Darryl W. Thorn, 32, of Marysville, Washington

Jake E. Ryan, 28, of Plains, Montana

CHARGES

Felony counts

All four are charged with conspiracy to impede employees of the U.S. Fish & Wildlife Service or U.S. Bureau of Land Management from doing their work at the refuge through intimidation, threat or force.

Three of them - Jason Patrick, Jake Ryan and Darryl Thorn -- are charged with possessing a firearm in a federal facility.

Misdemeanor counts

All four are charged with trespassing and tampering with government vehicles and equipment.

Patrick also is charged with destruction and removal of public property.

Ehmer is also charged with removal of government and private property.

THEIR ROLES



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Jason Patrick: Prosecutors allege he was one of the organizers of the occupation. On the day of the takeover, Patrick went building to building with a rifle in his hands, they say. He's also accused of using a government Dodge Durango on the refuge and helping cut and remove part of a barbed-wire fence on the refuge boundary.

Duane Ehmer: He was often seen riding his horse on the refuge property with a pistol on his waistband. He did guard duty and is accused of using a government excavator to dig a trench on the refuge. He's also accused of taking a maroon pouch that held cash and checks from the Friends of the Malheur National Wildlife Refuge as well as refuge gas cards.

Darryl Thorn: He was photographed in the refuge watchtower and pictured at other times with an assault rifle with a bayonet and a double-barrel magazine. He's also accused of using a refuge front-end loader and ATV during the occupation.

Jake Ryan: A video shows him using an excavator to help dig trenches on the refuge. Ryan told FBI agents he took four guns to the refuge and acquired three more firearms and a tactical vest while at the refuge.

THE CASE

- The jury will issue verdicts on the felony charges.
- U.S. District Judge Anna J. Brown will issue verdicts on misdemeanors.

Two of them - Duane Ehmer and Jake Ryan - are charged with depredation of government property.

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4. For Polluters, Congress Will Overturn an Environmental Rule for \$2.3 Million

Center for American Progress, Feb. 14 | Matt Lee-Ashley and Jenny Rowland

In the 24 days since President Donald Trump's inauguration, the Republican-controlled Congress has already moved to overturn four major rules that the oil, gas, and coal industries spent millions of dollars fighting during the Obama administration. First, Congress eliminated the Stream Protection Rule, which would prevent toxic mine waste from being dumped in streams. Then Congress voted to get rid of a rule that limited bribery and corruption in oil operations around the world. And in the coming days, the U.S. Senate is scheduled to vote to overturn a rule



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that limits methane pollution when oil and gas companies drill on public lands and to eliminate a rule that increases public input in public lands management decisions.

Of the more than 40 Obama administration environment and energy-related rules that anti-environment advocates have identified for Congress to consider for elimination under the Congressional Review Act, or CRA, why have Republican leaders in Congress chosen these four as their first targets? More broadly, what is the methodology that Republican leaders in Congress are using to decide which Obama administration environmental rules to overturn under the CRA?

According to Speaker of the House Paul Ryan (R-WI), Republicans in Congress are using their “precious time” to overturn Obama administration rules that they consider to be “excessive regulations that are killing jobs in America.” Yet, economists have found that the rules that Congress is targeting would either have negligible costs, minimal or positive effects on jobs, or large net economic benefits. The government’s economic analysis of the U.S. Bureau of Land Management’s, or BLM’s, rule to reduce methane waste, for example, shows that the cumulative net benefits of the rule will be between \$740 million and \$1.2 billion over a 10-year period.

Though congressional leaders’ philosophical opposition to certain environmental rules and standards is, without question, a factor in determining which rules are being targeted, a CAP analysis finds that an industry’s or a company’s political contributions and political connections to members of Congress appears to have an oversized, but underreported, role in influencing Congress’s prioritization of its CRA attacks. In fact, the legislative procedure through which CRA resolutions are considered makes this area of legislative activity particularly vulnerable to influence from campaign contributions and behind-the-scenes lobbying activities.

Which environmental rules is Congress scrapping—and why?

We examined each of the four CRA resolutions that have received votes by at least one chamber in this new Congress to better understand special interests’ role in pushing for their repeal. Below is a summary of our findings:

The Stream Protection Rule: Issued by the U.S. Department of the Interior to better protect communities downstream of coal mining operations whose drinking water is at-risk from toxic pollutants.

- **Benefits:** Will protect or restore 22 miles of intermittent and perennial streams per year; will yield water quality improvements in 263 miles of streams per year downstream of



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mine sites; will result in an estimated gain of 280 jobs; \$57 million in benefits per year from reduced carbon emissions.

- **Costs:** Industry compliance costs would average \$81 million per year, which is 0.1 percent or less of annual industry revenues; could result in an estimated 124 jobs lost.
- **Following the money:** According to data available at MapLight.org, mining industry opponents of the rule have donated \$1,200,781 to members of Congress sponsoring the resolution to repeal the rule. Leading the charge against the rule is Robert Murray, CEO of Murray Energy Corporation, a fundraiser for President Trump on the campaign trail and an outspoken critic of Obama administration policies

The rule to end corruption in oil operations: Formally known as the Disclosure of Payments by Resource Extraction Issuers Rule, this regulation from the Security and Exchange Commission limits international corruption and bribery by requiring oil and gas companies to disclose payments they make to foreign governments to purchase drilling rights.

- **Benefits:** Combats global corruption and helps to promote accountability, thereby potentially improving governance in resource-rich countries around the world; potential positive economic effects cannot be “quantified with any precision.”
- **Costs:** Initial industry compliance costs: \$54.7 million to \$574.7 million.
- **Following the money:** According to data available at MapLight.org, oil and gas industry opponents of the rule have donated \$2,321,165 to the members of Congress who sponsored the resolution to repeal the rule. Leading the charge against the rule is Exxon Mobil, who was led by then-CEO and current Secretary of State Rex Tillerson. The company has fought this rule from the outset and has been investigated on more than one occasion for dubious financial payments to secure access to oil in foreign countries. Exxon Mobil has challenged these claims and argues that the company follows American anti-bribery and anti-corruption law when operating abroad.

The Methane and Waste Prevention Rule: Issued by the BLM to limit venting, flaring, and leaking of methane from oil and gas operations on public land to curb waste of taxpayer dollars and cut air pollution.

- **Benefits:** Net benefits range from \$46 million to \$204 million per year. Over 10 years, cumulative net benefits range from \$740 million to \$1.2 billion; emissions of smog-forming volatile organic compounds will be reduced by 250,000 to 267,000 tons per year,



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thereby reducing the release of toxic air pollutants, such as benzene—a known carcinogen.

- **Costs:** Cost to industry of implementing the rule over the next 10 years will be \$110 million to \$279 million per year.
- **Following the money:** According to data available at MapLight.org, oil and gas industry opponents of the rule have donated \$4,969,080 to members of Congress sponsoring the resolution to repeal the rule. Leading the charge against the rule is The American Petroleum Institute, which represents the three companies that have the most to gain from the rule's repeal: Exxon Mobil and its subsidiary XTO, Devon Energy, and Encana Energy.

The Planning 2.0 rule: Issued by the BLM and aimed at protecting the voice of local communities in public lands management decisions.

- **Benefits and Costs:** No definitive costs or benefits: “[T]he final rule affects the procedures used to develop resource management plans, but would not directly affect the land management decisions themselves. As a result, none of the changes will result in direct monetary impacts on any individual or group.”
- **Following the money:** According to MapLight.org, mining, livestock, and oil and gas industry opponents of the rule have donated \$802,507 to members of Congress sponsoring the resolution to repeal the rule. Among the most vocal opponents of the rule is the Western Energy Alliance, a trade association representing oil and gas companies in the West, which opposed nearly every land management and energy reform initiative of the Obama administration.

The striking commonality among these rules is the scale of the campaign contributions and the political connections of the affected industries to the sponsors of the legislation. Thus far, industries that have succeeded in having Congress overturn an environmental rule have donated an average of \$2.3 million to the sponsors of the CRA resolutions in both chambers.

How the CRA turns Congress into an auction house for special interests

This column, of course, is not the first piece of analysis to conclude that campaign contributions and lobbying muscle influence outcomes in Congress. What is new, however, is the extent to which special interests are able to game the parliamentary procedures associated with the CRA. In essence, oil, gas, and coal companies are purchasing the deletion of environmental rules through political contributions.



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Congress's vulnerability to financial influence under the CRA is rooted in the law's obscure procedure for overturning regulations. Since its passage in 1996, the CRA has given Congress the power to overturn any regulation within 60 legislative days of it being issued by an executive branch agency. To successfully overturn a rule, both chambers of Congress must pass, by majority vote, a resolution of disapproval and then have the president sign it. On a practical level, however, it is only after a change of administration—and only if the new president and a new Congress both wish to undo actions taken by the previous administration—that CRA resolutions become likely to pass. Before this year, Congress had only used the CRA successfully to overturn a single regulation: a Clinton administration rule to establish ergonomics standards in the workplace.

For Senate Majority Leader Mitch McConnell (R-KY) and Speaker Paul Ryan, the CRA provides opportunities and limitations that are different than other types of legislation. Notably, the CRA gives the new Congress only 60 legislative days to overturn rules issued by the Obama administration, and those rules must have been finalized within 60 legislative days of the end of the last Congress. According to the Congressional Research Service, 61 "major" rules and regulations—the U.S. government defines major rules as those that would have an annual effect on the economy of at least \$100 million—that the Obama administration finalized after June 13, 2016, are eligible to be overturned by Congress using the CRA. The CRA, however, can be used to overturn any rule—regardless of the scale of its economic benefits or costs—that was finalized in this period. By one lobbying firm's count, more than 2,300 rules are currently eligible to be overturned under the CRA.

The parliamentary procedures prescribed by the CRA, however, create practical limits on how many rules Congress can overturn. In the Senate, for example, each CRA resolution is allocated up to 10 hours of debate, meaning that—even if the Senate worked around the clock for its first 60 days—it would only be able to overturn a small fraction of the rules that are eligible to be challenged.

Therefore, Majority Leader McConnell and Speaker Ryan must decide which CRA-eligible rules from the Obama administration they most want to repeal. They have to prioritize. Unlike a normal piece of legislation that would require 60 votes to pass the Senate, however, Majority Leader McConnell and Speaker Ryan do not have to worry about which CRA resolutions might garner bipartisan support. They can overturn any CRA-eligible rule through simple majority votes in both chambers.

For special interests, these circumstances are a windfall. They simply need to persuade leadership in the House and Senate to put their favored CRA-resolution at the top of the stack.



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Through political contributions, lobbying, and insider connections, oil, gas, and coal companies have been working feverishly since November 8 to convince Congressional leaders to prioritize the dismantling of their chosen rules. Exxon Mobil and Chevron, for example, were among the largest corporate donors to the inauguration festivities that Congress hosted in January, giving a reported half a million dollars each. Congressional lobbying disclosure forms also reveal that, in the fourth quarter of 2016, Exxon Mobil increased the size of its contract with a key anti-regulatory lobbyist and directed her to target her work on the BLM methane waste reduction rule.

Which environmental rules will Congress sell out next?

With the clock ticking on Congress' ability to scrap rules and standards issued in the final months of the Obama administration, Republican leaders in the House and Senate have yet to confirm all of the CRA resolutions on environment and energy rules they will bring to the floor.

Will the Senate overturn restrictions on killing hibernating bears and on hunting wolves from helicopters in Alaska's national wildlife refuges? Will the House weaken protections against the poaching of African elephants? Or will congressional leaders seek to eliminate the Environmental Protection Agency's recent update to ozone pollution standards?

Based on the early pattern of CRA votes, which rules stay and go may ultimately be decided over fundraising receptions, dinners, and ski trips in the coming weeks. In these venues, with members of Congress as their audience, corporations and lobbyists will compete with each other to win coveted time for their targeted rule in Congress. Will the American Petroleum Institute's push to roll back air pollution protections beat out Safari Club International's campaign to resume the importation of elephant tusks? Will the National Mining Association's desire to allow coal companies to dodge royalties triumph over the Western Energy Alliance's wish to curtail public input on public land management decisions?

This frenzy over the CRA will be unseemly and unsavory—a grim form of March Madness in which some industries' lobbyists will win, some lobbyists will lose, and every American will be saddled with the costs of more pollution and weaker consumer protections.

Matt Lee-Ashley is a Senior Fellow at the Center for American Progress. Jenny Rowland is the Research and Advocacy Manager for the Public Lands Project at the Center.

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5. NEVADA STANDOFF: Testimony opens with aerial footage

E & E News, Feb. 14 | Ken Ritter, AP/U.S. News and World Report

Jurors at the trial for six Cliven Bundy backers yesterday saw aerial footage of the beginning of the April 2014 armed standoff with federal agents.

FBI Special Agent E.J. McEwen recorded video while in a Cessna airplane nearly 12,000 feet above the developing standoff, he said in the trial's first day of testimony. His images show roughly 200 people gathering on foot and on horseback, facing two dozen armed federal agents and Bureau of Land Management employees.

The dispute was over about 400 of Bundy's cattle that were rounded up by land management officials.

The standoff ended with no shots fired or injuries, but the six defendants — Gregory Burleson, Orville Scott Drexler, Todd Engel, Richard Lovelien, Eric Parker and Steven Stewart — are charged with conspiracy, firearm offenses and assault on a federal officer.

Bundy, his sons and a handful of others will be tried at two separate trials, one starting in May and the other in August.

Last week, prosecutors showed photos of the six first defendants with rifles, telling the jury that they committed a felony by using guns to threaten the lives of federal law enforcement officers.

Defense attorneys denied their clients threatened anyone and portrayed the six as citizens protesting government heavy-handedness (Ken Ritter, AP/U.S. News and World Report, Feb. 13).

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6. OREGON STANDOFF: Prosecutors hire jury consultant for 2nd trial

E & E News, Feb. 14 | Maxine Bernstein, Portland Oregonian

A hired consultant will sit with federal prosecutors when jury selection starts Tuesday in the second trial of Malheur National Wildlife Refuge occupiers.



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The highly unusual presence of the consultant is a vestige of what happened in the first trial: the dismissal of a juror after questions about his impartiality arose and then across-the-board acquittals of the armed takeover's key figures just several hours later.

Current and former federal prosecutors and defense lawyers who have worked in federal court in Oregon for nearly 30 years can't recall a single criminal case when a consultant has helped prosecutors pick jurors.

"Obviously they had that one experience that was very bad for them, and they've wised up and said they could use some help," said Jeffrey T. Frederick, director of jury research services for the National Legal Research Group.

Assistant U.S. Attorney Ethan Knight alerted the judge last week of the government's decision to seek out the advice of a consultant, but didn't say who it will be.

It's one of several notable differences in what is expected to be a more low-key trial compared to the long and contentious trial of occupation leader Ammon Bundy and some of his top followers.

Four men face trial this time - Jason Patrick, 43, of Bonaire, Georgia, identified by prosecutors as an organizer of the 41-day seizure over land rights - and three more minor players - Duane Ehmer, 46, of Irrigon, Darryl Thorn, 32, of Marysville, Washington, and Jake Ryan, 28, of Plains, Montana.

None of the defendants are in custody, so that means fewer U.S. marshals in the courtroom.

The defense attorneys also are all from Oregon this time and may be less likely to risk offending the judge like Ammon Bundy's lawyer, Marcus Mumford of Utah, did in the first trial by constantly challenging her rulings and drawing a threat of contempt of court.

Only one of the four men, Patrick, is representing himself. That's a significant change from the first trial when three of the seven defendants represented themselves and often questioned witnesses themselves.

Even U.S. District Judge Anna J. Brown expects less fireworks. She denied a prosecution request to keep the defendants in line by ordering them not to make improper arguments, pose irrelevant questions or present improper evidence to the jury.

"There is not any indication that such tactics will recur," she said.

Jury selection



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But the proof will come as the trial begins with selection of 12 jurors and four alternates.

The process is expected to take at least two days from a pool of about 100 prospective jurors from across the state who will answer questions submitted by attorneys on both sides, though the judge will do the actual questioning.

The jury will decide felony charges against the four men - all face a conspiracy count of impeding federal employees from carrying out their work at the refuge through intimidation, threats or force. A combination of other defendants face other felony counts, including depredation of government property.

The judge, not the jury, will decide misdemeanor charges, including trespassing and tampering with government vehicles and equipment.

Defense lawyers also hired an out-of-state jury consultant to help them draft questions for the jury selection, but the defense consultant isn't expected to be in court.

The government's consultant likely will already have helped research the backgrounds of the prospective jurors, examining their online posts and likes on Facebook, for example. The consultant will take notes on their answers and carefully watch the body language, demeanor and tone of each potential juror.

It's rare to see a jury consultant on the prosecution side, legal experts say, pointing to a criminal conviction rate of 97 percent for the 3 percent of cases that go to trial in federal court. Jury consultants can be expensive - in the tens of thousands of dollars depending on their involvement - and are more commonly used in civil cases or by defense lawyers in capital murder cases.

But then, the occupation is an unusual case, Frederick and others said.

The protesters seized the refuge headquarters on Jan. 2, 2016, after a rally in nearby Burns to support father-and-son ranchers who were ordered to return to prison to serve out five-year arson sentences for setting fire to public land. It quickly became a stand against federal authority over public land.

"Your conservative kind of juror with a military background has been the kind of juror who has been more conviction prone," Frederick said. "But when you have a case where the issues may involve state's rights, or protests of the Bureau of Land Management, and where the defendants tend to be fairly conservative, the analysis must change. There really is a strong anti-government sentiment now existing in the conservative community."



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The government's decision was no doubt spurred by the surprising circumstances that developed in the first trial when one juror questioned another juror's impartiality in a note to the judge during deliberations, citing the other juror's past work for the federal Bureau of Land Management.

Brown ended up dismissing the juror who was the target of the note and replaced him with an alternate juror. Soon after, the reconstructed jury returned the acquittals. The dismissed juror later said publicly that he favored convicting Bundy and some of the others.

Margaret L. "Margie" Paris, a University of Oregon law professor and former dean of the university's law school, said it makes sense for the prosecutors to seek help.

"Not just because of what happened with the first trial, but because attitudes about the government in the Pacific Northwest are kind of complicated, and given the times we're in, I'm not surprised," Paris said.

But bringing in a consultant is by no means a slam-dunk, as it's portrayed on television, said Cornell University Law Professor Valerie Hans.

"In contrast to the new TV drama 'Bull,' in real trials it's often quite challenging to anticipate how specific prospective jurors will respond to the witnesses and evidence as the case develops during trial," Hans said. "So, 'the jury's out' on whether they will be able to help in selecting a favorable group of jurors that will see it the prosecution's way this time around."

Prosecution case

Opening statements by prosecutors and defense attorneys are set to begin next week after the Presidents Day holiday, if all goes as planned.

Prosecutors intend to present similar evidence as in the first trial, but have streamlined testimony significantly and plan to take just five trial days for their case in chief.

They may alter their arguments in relation to the federal conspiracy charge against the defendants, since jurors in the first trial felt the government failed to prove that the occupiers' intent was to block federal employees from coming to work.

They likely will stress that a large conspiracy can include several "subgroups of conspirators," with no formal agreement to conspire required, according to their trial memo.



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They will argue that the defendants were, in varying degrees, participants in the larger conspiracy by turning the refuge headquarters into their "flophouse," replacing refuge signs with their own signs and stationing armed guards at the refuge tower and entry gates.

Evidence also will be directed more at the specific roles of the four defendants in the takeover, including testimony about allegations that some of them dug trenches and used refuge trucks and other equipment.

Defense case

Defense lawyers will counter that the occupation didn't result from a formal agreement and that none of the four specifically thought about keeping federal employees from returning to work at the refuge.

They'll argue that the takeover was an "organic, evolving" event, with people from disparate backgrounds who showed up for their own reasons.

Ehmer arrived, for example, to check out for himself what was going on at the refuge, then left to retrieve some tools at home before returning to do repair work at the refuge headquarters, he and his lawyer contend. Ryan told the FBI that he went to the refuge to find out what Bundy and others were teaching about the U.S. Constitution and responded to Bundy's call for support.

They'll also argue that they weren't violent.

The judge

The judge has made it clear to the new defendants and their lawyers that she won't tolerate certain things that went on during the first trial.

Ammon Bundy, for instance, can't testify for three days this time. The defense team has indicated that he'll be on the stand at most two days.

"If an objection is sustained, it's sustained," Brown also told the lawyers involved. "If you don't understand my ruling, ask. I can't have here what happened there. ... If I overrule you, please just accept the ruling so we can move on."

The judge noted that defendants in the first trial "repeatedly made improper arguments to the jury or asked questions to which the Court had previously sustained objections," forcing the government to object "over one thousand times."



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She said she doesn't anticipate that happening in this trial.

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7. **BLM: Online leasing could be vulnerable to hacking — Grijalva**

E & E News, Feb. 14 | Scott Streater

Arizona Rep. Raúl Grijalva (D) wants the Government Accountability Office to assess whether the Bureau of Land Management's use of online oil and gas lease sales is secure from computer hackers, a move derided by an industry representative as a political ploy.

Grijalva, ranking member of the House Natural Resources Committee, also requested in a [letter](#) to Comptroller General Gene Dodaro that GAO assess the potential of online lease sales to increase public revenue, versus in-person lease auctions.

"Online sales have the potential to generate greater competition and higher bonus bids by making participation easier; i.e., bidders do not have to travel to a central location," he wrote in the two-page letter.

"However, based on recent revelations that individuals from Russia hacked the computer system of the Democratic National Committee in order to obtain information about Democratic candidate Hillary Clinton and influence the outcome of the 2016 Presidential Election, I am concerned that foreign or domestic actors could manipulate online lease sales to their own benefit and to the detriment of the American people," he wrote.

BLM under the Obama administration began the move to online leasing, which was authorized by Congress in the [2015 National Defense Authorization Act](#) as a way to save money, streamline transactions and increase transparency.

The agency held its first online lease sale last year in Mississippi (E&E News PM, July 25, 2016). Subsequent online lease sales have been conducted for parcels in Colorado, Montana and Utah.

Specifically, Grijalva wants GAO to assess what "safeguards are in place to ensure that online lease sales are protected from hacking, and are there lessons learned or best practices from other online auctions that could be used to increase lease sale security."



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He also asks GAO to examine any "challenges" BLM has faced so far "in ensuring that the benefits of online auctions are realized in terms of increased competition for leases and reduced administrative costs."

Representatives with BLM could not provide a comment on this story by publication time.

But Kathleen Sgamma, president of the Denver-based Western Energy Alliance, dismissed request to GAO, noting that computer hacking "is a general threat to all government systems."

"Singling out one system that has no national security implications just reveals this to be a politically motivated request," Sgamma said in an emailed statement to E&E News. "GAO should address this after the hundreds of other more pressing issues that have real implications for Americans."

She also noted that the contractor assisting BLM in the online auctions — Amarillo, Texas-based EnergyNet.com Inc. — has overseen a number of online lease sales for states, "without security issues."

The transition to online lease sales came as activists of the so-called keep-it-in-the-ground movement were protesting at numerous oil and gas lease auctions over the past two years.

BLM postponed several lease sales last year in response to growing numbers of protesters seeking to stop the agency from issuing new federal mineral leases.

Grijalva alluded to the protests in a separate statement he issued today concerning this GAO request.

"Any leasing system has to be cost-effective and respect the public desire to know how our resources are being managed," he said. "If there are problems, we need to know about them now, and if there are fixes, we need to implement them now. Being good stewards of our public resources means not leaving these questions to chance."

Thus, a GAO assessment of the online lease sale process is a good idea, said Jeremy Nichols, Climate and Energy Program director for WildEarth Guardians.

The group last summer submitted a Freedom of Information Act request to BLM for numerous records associated with the move to online leasing. Among the records the groups says it requested, and still has not fully received, are those associated with steps to ensure the online leasing process is secure, Nichols said.



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"It's really unclear how the BLM is sustaining the integrity of the oil and gas leasing process," he said.

"Hacking is a concern, but overall, the integrity of the process is at question," he added. "When it's open to the public, it makes for a more secure setting. How is BLM, whoever is making the bids, ensuring that they know who they are? I think that's a real concern here."

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8. **DOE: Trump team asked about 'barriers' to coal research**

E & E News, Feb. 14 | Emily Holden

President Trump's transition team reached out to coal experts at the Department of Energy but gave no clues about policies the administration may consider to try to bolster the industry.

Joseph Giove, the agency's coal business operations director, told state electric regulators that Trump liaisons asked about obstacles his division faces in promoting coal research and development.

Giove said after a panel discussion at a meeting of the National Association of Regulatory Utility Commissioners that the transition team had an in-person briefing with DOE staff about three weeks ago.

"What does all this mean? Well, what it means is that what you're going to see is something different," he said. "What does that mean? None of us know."

"We have met with the transition team. The transition team has asked some very good questions. We've explained to them what we already have underway. They've asked questions like 'What barriers have you encountered that would be helpful to not have for the work that you do?'" Giove said.

He then gave a presentation that included quotes from Trump and Vice President Mike Pence, who have said they want to "end the war on coal."

Giove described four carbon capture facilities that could be operational in the United States in the coming months. High-profile projects, like the coal-fired Kemper County Energy Facility in Mississippi, have run past deadline and are far over budget.



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He also briefed state officials on a report DOE recently sent to Congress about rare earth elements that companies could mine in light of coal's decline.

Giove said he would not speculate about what changes the administration might pursue at DOE.

"As civil servants, we serve who's in power, so we're waiting for those directions as to where to go and what changes might be coming, and we're as eager to have answers to those as you are," Giove said.

State regulators who are members of NARUC participate in committees and subcommittees. Giove spoke to the Subcommittee on Clean Coal and Carbon Management, which typically asks agencies to present on research into carbon capture technology. The tone was more optimistic this year, as Trump has promised to breathe life into the dying coal industry. But regulators noted that the markets will likely be against coal no matter what Trump does. Inexpensive natural gas makes it difficult for coal to compete.

"I am not sure we will see any revival of coal under Trump," said Tim Echols, a member of the Georgia Public Service Commission who is a Republican. "But I do expect the federal hostility to end, and that will allow coal plants to stay open and mines continue to operate."

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9. **COAL: Largest Western plant in U.S. to close, citing cheap gas**

E & E News, Feb. 14 | Benjamin Storrow

The owners of the Navajo Generating Station voted yesterday to close the largest coal plant west of the Mississippi River, a dramatic development that underscored the painful economic landscape facing the coal industry nationally.

As a result of the vote, the plant will shut down at the end of 2019.

Coal plant closures have become common in recent years. In 2015, the last year for which complete data are available, coal accounted for roughly 80 percent of all U.S. power plant retirements nationally.

The Navajo Generating Station's (NGS) closure was not unexpected. The Salt River Project, the plant operator, had openly raised the prospects of shuttering the facility in recent months (Climatewire, Jan. 9).



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But even by those standards, yesterday's vote represented a remarkable turn of events.

The move means NGS will close 25 years early, upending roughly 800 jobs, both at the plant and at the coal mine that serves it, and eliminating one of the country's largest emitters of carbon dioxide. NGS has emitted a half-billion tons of carbon since it came online in the 1970s, according to Sierra Club estimates.

It also means the Central Arizona Project, which provides drinking water to the cities of Phoenix and Tucson, will need to find a new power supply. NGS's electricity powers the pumps that transport water from the Colorado River to Arizona's largest metropolitan areas.

The vote highlighted how falling natural gas prices have dramatically altered the U.S. power sector. As recently as 2015, Central Arizona Project officials projected that it was not economical to pursue the diversification of the project's power supply. But in a recently released white paper, they estimated that the Central Arizona Project would have saved \$38.5 million by purchasing power on the open market in 2016.

"The electric market has fundamentally changed over the last few years to the point that NGS is now significantly more expensive than other energy alternatives," Central Arizona Project Deputy General Manager Thomas McCann said in a release. "CAP understands and cannot disagree with the owners' decision based on this economic reality."

A blow to the region's economy

The four utilities that own a stake in the plant cited falling gas prices as the reason for their vote.

"SRP has an obligation to provide low-cost service to our more than 1 million customers, and the higher cost of operating NGS would be borne by our customers," said Mike Hummel, a deputy general manager at the Salt River Project.

It remained unclear whether the federal government could step in to save the plant from closure. The Bureau of Reclamation owns a 24.3 percent stake in the three-unit, 2,250-megawatt facility. The Salt River Project, Arizona Public Service Co., Tucson Electric Power and NV Energy own the remaining 75.7 percent. The four utilities all backed the plant's closure; the government opposed a shutdown.

David Palumbo, deputy commissioner for operations at the Bureau of Reclamation, cited the plant's importance as an economic driver in Arizona and for the Navajo Nation, where it is located.



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"Before discussing the possibility of a permanent shutdown, we would like to see if we can find a path forward that meets the needs of multiple NGS stakeholders," he said.

SRP, in its release, noted that the government would have three years to identify a way to continue operating the plant. However, it added that none of the utilities now with an ownership stake in the Navajo Generating Station will participate with its operation.

Conversely, it remains possible that the plant will shut down this year. SRP's lease to operate NGS ends in 2017. A new lease will need to be negotiated to ensure the plant's continued operation through 2019, the utility said.

Greens cheer closure

The plant's closure was welcomed by environmentalists and local activists, who said it represents an opportunity to address climate change as well as pollution resulting from the plant's operations.

"Coal plants like Navajo Generating Station are increasingly a burden for customers across the West as cheaper sources of power push coal out of the market," said Bill Corcoran, the Western director of the Sierra Club's Beyond Coal Campaign.

That message was echoed by local activists, who have long complained that the plant and associated coal mine have polluted local air and water supplies. They called on government officials to focus efforts on cleanup and turn their attention to developing renewable energy sources.

"Now it's time for the Navajo Nation's president to send a loud and clear signal that we are open for business — the business of cleaning up Navajo Generating Station and the business of developing our vast renewable energy resources," said Percy Deal of Diné Citizens Against Ruining Our Environment.

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10. **REGULATION: Who runs the grid? At Midwest PUCs, it's increasingly women**

E & E News, Feb. 14 | Jeffrey Tomich

Grid parity is hardly a new term in the electric power industry.

But in the central United States, the term has a whole other meaning when you look at gender and the makeup of state regulatory commissions.

Of the 14 states that make up the Mid-America Regulatory Conference (a regional affiliate of the National Association of Regulatory Utility Commissioners), nearly half of the members — 22 of 51 — are women. Each commission has at least one female member. What's more, half of the commissions are led by women, and women make up the majority at four of them — Texas, Iowa, Michigan and Arkansas.

Not surprisingly, achieving gender diversity on state utility commissions has taken decades. In most states, it wasn't until the 1970s, and sometimes the 1980s, that the first women were appointed or elected to commissions. And while women are well-represented today, there remains work to be done, especially when it comes to improving racial and ethnic diversity.

"I think there is absolutely still a way to go," said Illinois Commerce Commissioner Sherina Maye Edwards. "I think we've seen great progress for sure, but there's still a way to go."

Edwards was the youngest appointee to the ICC when she was named in 2013 and is only the second black woman to serve on the five-member panel. Illinois Gov. Bruce Rauner (R) appointed Sadzi Martha Oliva, who would be the state's first Latina commissioner, in January. She is still awaiting Senate confirmation.

"That was 2013, it is now 2017, and we're still talking about first and second. I just think that's insane," Edwards said.

Whether it's race, gender or ethnicity, commissioners interviewed by E&E News said it's incumbent on states and utility commissions to reflect the people they serve.

"The consumers served by utilities aren't homogeneous, so there's no reason why utility regulatory commissions or utilities themselves should be homogeneous," said Sarah Freeman, who was appointed to the Indiana Utility Regulatory Commission in September.



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"I think diversity of any type, including of course gender diversity, is of great benefit in the workplace," she said. "Anytime an individual can walk into someplace like our commission and find someone there they can identify with it makes it a much more comfortable space."

Diversity in decisionmaking

Whether it's gender, race or their professional background, more diverse groups translate into better, more informed decisions, commissioners said.

"Bringing that different perspective and experience brings a different viewpoint," said Angela Weber of the Indiana commission. "Each come at an issue from a different angle."

Weber came to the IURC having been a prosecutor and later an administrative law judge for the commission. Before that, she served as a Russian linguist/voice-intercept operator in the Army.

Many other commissioners came to the job after having served in state legislatures (EnergyWire, Sept. 13, 2016).

"I think it's important from a variety of standpoints, whether it's diversity in terms of gender or ethnicity, skill sets, employment backgrounds, whatever knowledge you bring," said Iowa Utilities Board member Elizabeth "Libby" Jacobs.

While many states require political diversity on utility commissions, Iowa takes it a step further by requiring most boards and commissions to be balanced according to gender and political affiliation.

Jacobs, who served in the Iowa House for 14 years, said she shared the statute with several peers in other states but they couldn't get their respective legislatures to adopt it.

'Commissions should serve as an example'

Diversity on state commissions can help translate into more opportunities for women and minorities at the staff level. It also sends a message to the utilities they regulate.

Edwards, who leads NARUC's Subcommittee on Supplier and Workforce Diversity, credits ICC Chairman Brien Sheahan — the only white male on the commission — with leading the push to establish the commission's Office of Diversity and Community Affairs in 2014.



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In doing so, the ICC became the only Illinois agency with its own diversity office, which does outreach to help local communities and businesses understand how energy and telecommunications procurement works.

Edwards wanted to have a diversity office at the commission. She approached Sheahan about it during his first week on the job in 2014, and he agreed to take it on "without hesitation," she said.

"He used a lot of political capital," he said. "So you have to have the leadership to want to have change."

The Illinois Legislature also passed a bill in 2014 requiring large regulated utilities to report all procurement goals and actual spending for small businesses and businesses owned by women, minorities and veterans as well as their plan for implementing goals for the following year.

"Because large public utilities must report their annual activities to increase diversity to their regulators, commissions should serve as an example," Oliva said.

While there's no requirement by utilities to report on diversity, Edwards said having a diverse commission (the ICC has three Latino commissioners, a black commissioner and two women) brings credibility.

"We're getting to a place now where we can ask about their workforce diversity and they'll share that with us," she said.

"We tell our utilities all the time: 'It is important that they look like the demographic they serve,'" Edwards said. "And how can we possibly hold our utilities to that standard if we're not practicing what we preach?"

Jacobs, of the Iowa Utilities Board, said diversity needs to remain on the minds of state officials and utility executives, especially as changing demographics translate into a competition for the best and brightest.

"It always needs to be on the radar," she said. "The industry, as well as state government, is struggling a little bit with the retirement of baby boomers. So just trying to fill jobs in this economic environment where the unemployment rate is fairly low, particularly in these professions ... it's just hard to find people."

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11. **TECHNOLOGY: New companies hope dry coal can save the industry**

E & E News, Feb. 14 | Heather Richards, Billings Gazette

Some new companies think they've landed on a secret that will save the coal industry. Its name is dry coal.

Made using dehydration technology, dry coal weighs less and therefore carries lower transportation costs. Its popularity has ebbed and flowed in the past due to issues with spontaneous combustion and durability.

Bruce Brusco, president of CBA Environmental Services, has emerged as one of the loudest voices advocating dry coal after the downturn that eliminated thousands of coal mining jobs and decimated coal prices.

"If you want to save the coal industry, you need to look at technology that is real, common sense," Brusco recently wrote to Senate Majority Leader Mitch McConnell (R-Ky.).

Brusco and others see dry coal as a saving grace for the industry in Wyoming and Montana's Powder River Basin in particular.

Coal from this region tends to be wetter, softer and ultimately less valuable than coal dug from the Appalachian Mountains. But the drying technique can boost its value by helping it sustain more heat.

Still, dry coal has its critics. They point to the fact that earlier dehydration technologies made the coal prone to reabsorbing moisture or spontaneously combusting.

"The problem with earlier drying technologies is the coal would simply reabsorb moisture once it got wet again, like a sponge," said Jason Begger, executive director of the Wyoming Infrastructure Authority. "The breakthrough will be when companies figure out how to keep it from reabsorbing moisture and do it economically" (Heather Richards, Billings Gazette, Feb. 12)

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12. **REGULATIONS: GOP's favorite bills could bolster Trump's 2-for-1 order**

E & E News, Feb. 14 | Arianna Skibell

President Trump's executive order on regulatory reform could gain sharp teeth if Congress manages to pass a number of reform measures GOP lawmakers have been pushing for years.

The order directs agencies to toss two rules for every new one to offset costs, and it establishes a regulatory budget through which the president can cap how much is spent on rulemaking each year. But even then, its full and practical effect is not altogether clear.

"Nothing in [the order] is intended to supplant the law or tell agencies they have to go against anything within existing law," said Jerry Ellig, senior research fellow at the free-market Mercatus Center at George Mason University.

"If the law changed, however, then the executive order might apply to some regulations it doesn't currently apply to."

Trump ran on an explicitly anti-regulation platform, with Cabinet picks who reflect his vision, which is why his Jan. 30 [order](#) left some analysts confused.

"This executive order is going to largely apply to new regulations that agencies have complete discretion about developing," Cary Coglianese, director of the University of Pennsylvania Law School's Penn Program on Regulation, said in a recent interview.

"I wouldn't have thought this administration would be planning to issue many discretionary rules."

Trump's executive order has all kinds of caveats that narrow its impact.

[Guidance](#) from the Office of Management and Budget clarifies the order only applies to "significant" rules and excludes independent agencies; it cannot stop agencies from issuing statutorily mandated regulations; and it cannot force agencies to take cost into consideration for rules whose underlying laws prohibit it.

For example, under the Clean Air Act, U.S. EPA may not consider costs when establishing national ambient air quality standards for ozone, soot and other air pollutants. EPA is required to



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update those standards every five years. This means the executive order would have little to zero impact on the National Ambient Air Quality Standards.

Likewise, the Mine Safety and Health Administration may not reduce miner safety protections when issuing new ones, and the National Highway Traffic Safety Administration is not required to weigh cost when issuing new vehicle safety standards.

"If the Trump administration wants to alter these laws, it cannot do it by executive order," the Center for Progressive Reform wrote in its [comments](#) submitted to OMB on the order and guidance.

"Congress will need to pass new legislation in the bright light of public scrutiny."

While amending the Clean Air Act or the Clean Water Act is sure to elicit public input, legislation to reform the rulemaking process often garners less attention, analysts say.

"The trick with those sorts of bills is they seem pretty innocent, just tweaking the process, but what they're intended to do is slow or stop the process altogether," Lisa Gilbert, director of Public Citizen's Congress Watch division, said in a recent interview.

Sam Batkins, director of regulatory policy at the American Action Forum, a center-right think tank, said the executive order "is not going to do much" when it comes to air quality standards.

"But if they do pass the 'Regulatory Accountability Act,' that would effectively amend the law," he said.

The "Regulatory Accountability Act" ([H.R. 5](#)), which passed the House last month and bundles six rules the House has passed a number of times, would require EPA and other agencies to consider the impact of proposed regulations on jobs, economic competitiveness and low-income populations and choose the cheapest option.

Among other ramifications, that could affect EPA's ability to set air quality standards under the Clean Air Act, experts say.

The measure essentially "overturns" the Supreme Court's 2001 ruling in the case of *Whitman v. American Trucking Associations Inc.*, which affirmed that the act bars EPA from considering compliance costs in setting standards for ozone and other pollutants, said John Walke, clean air director for the Natural Resources Defense Council (E&E Daily, Jan. 9).



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Batkins said the "RAA" and the "Searching for and Cutting Regulations That Are Unnecessarily Burdensome (SCRUB) Act of 2017" appear to be Congress' top regulatory priorities.

"They would give far more force to the executive order going forward," he said.

While the "RAA" would require agencies to choose the least costly rule, the "[SCRUB Act](#)" would establish a nine-member body and authorize an appropriation of up to \$30 million to independently assess which regulations are outdated or unnecessarily burdensome. Agencies would be required to toss rules the board identified as "unnecessary" before issuing new ones.

"In a sense, it would sort of codify the executive order," Watkins said.

The "RAA" would effectively amend a number of underlying statutes to require consideration of financial costs, but it's unclear whether the measure could clear the 60-vote threshold in the Senate, where Republicans hold a 52-48 voting majority.

"I do think the executive order would probably have more teeth if the 'Regulatory Accountability Act' passes. Maybe that's why it's regulatory reform priority No. 1," Watkins said.

"What changes they make to try to get eight Democrats on board, I don't know."

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13. **PUBLIC LANDS: Mont. coalition urges Daines to protect federal tracts**

E & E News, Feb. 14 | Jennifer Yachnin

In the wake of Montana Sen. Steve Daines' (R) assertion that he will seek a "balanced" approach to federal land management, a coalition of Montana businesses is urging the newly anointed Senate Western Caucus chairman to reject efforts to diminish the federal public lands portfolio.

Business for Montana's Outdoors — which counts more than 130 businesses including outdoor equipment retailers and manufacturers, as well as a variety of companies from investment firms to breweries — issued a letter to the senator on Friday congratulating him on his ascension to the head of the Western Caucus (E&E Daily, Feb. 6).

"As Montana business owners who represent a diverse profile of jobs in tech, manufacturing, retail and tourism, we are acutely interested in the policy areas and issues championed by this caucus," says the letter, which points to an Outdoor Industry Association estimate that shows



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Montana's outdoor economy creates \$403 million in state and local tax revenue while supporting 640,000 jobs in the state.

The letter goes on to urge Daines to take a position counter to that of the former caucus chairman, Sen. John Barrasso (R-Wyo.), who has publicly supported the disposal of public lands, either to their respective states or via private sale.

"As Chairman of the Senate Western Caucus, you are in a unique position to set a gold standard for how Congress values our federal public lands. As Montana's voice on this caucus, we ask that you lead your colleagues in standing firm against selling our public lands to the highest bidder," the letter says.

It concludes: "Keeping public lands in public hands is a bipartisan Montana value that we ask you to champion as you take on this new role."

Daines is only the second lawmaker to lead the Western Caucus since its founding by Barrasso in 2009. The group is made up of lawmakers from Western and rural states and generally has an all-Republican membership.

A Daines spokeswoman did not respond to an inquiry about whether the senator had received the letter yesterday or responded to it.

But following a vote by House lawmakers last month on a new rules package that would permit the chamber to consider federal land transfers cost-free and budget-neutral — a move that critics say clears the path to disposal of public lands, while House Natural Resources Chairman Rob Bishop (R-Utah) describes it as an accounting change — Daines did object to land transfers generally.

"I continue to strongly oppose the transfer of federal lands to the states while fighting to improve the management of those lands," Daines said last month (Greenwire, Jan. 5).

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14. **APPROPRIATIONS: 200 groups urge robust funding for lands, resources**

E & E News, Feb. 14 | Jennifer Yachnin

A coalition of more than 200 national recreation and conservation organizations today called on congressional leaders to "support the strongest possible funding levels" for public lands and



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waters as well as cultural resources in fiscal 2018, while urging lawmakers to avoid potential cuts through sequestration.

The national members of America's Voice for Conservation, Recreation and Preservation issued their plea in a letter today to Senate Majority Leader Mitch McConnell (R-Ky.), Senate Minority Leader Chuck Schumer (D-N.Y.), House Speaker Paul Ryan (R-Wis.) and House Minority Leader Nancy Pelosi (D-Calif.).

"We encourage you, as our leaders in Congress, to work with the Budget and Appropriations committee chairs and ranking members, as well as White House leadership and staff, to identify a path forward that will sustain our outdoor and cultural heritage," the letter states.

The organizations, including groups like the Conservation Fund, the Nature Conservancy, the Theodore Roosevelt Conservation Partnership and Trout Unlimited, urged increasing the share of federal spending dedicated to "Function 300" — the section of the federal budget dedicated to natural resources and the environment, including the departments of Agriculture, Commerce, the Interior and Transportation; the Army Corps of Engineers; and U.S. EPA.

"This portion of the budget is steadily declining and was sequestered as a result of the Budget Control Act of 2011. Federal funds dedicated to Function 300 support national parks, wildlife refuges, cultural resources, forests and recreation sites; working lands such as farmland and ranches; safe and plentiful water resources; marine and coastal ecosystems; urban restoration; naturally occurring infrastructure, such as marshes and wetlands that clean our water and protect our communities from storms and droughts — all of which have large and quantifiable economic benefits," the letter states.

The coalition noted that outdoor recreation generates more than \$646 billion in economic activity on public and private lands annually, while those activities along with conservation and historic preservation also support more than 9.4 million domestic jobs.

"America's outdoor heritage belongs to all of us, and protecting it should enjoy broad bipartisan support in Congress," National Wildlife Federation President and CEO Collin O'Mara said in a statement. "In this time of political polarization, focusing on expanding outdoor recreational opportunities and conserving wildlife could help restore confidence that Republicans and Democrats can come together and advance shared priorities."

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15. **AIR POLLUTION: Pruitt seen as boon for utilities hit by EPA haze rule**

E & E News, Feb. 14 | Sean Reilly

Scott Pruitt hadn't long been Oklahoma's attorney general in 2011 when he sallied into his first public clash with U.S. EPA. The target: a proposed clampdown on power plant pollution clouding views at wilderness areas in three states.

It turned into a testy legal showdown that fizzled three years later when the Supreme Court refused to hear Oklahoma's appeal of a lower-court ruling in EPA's favor. But with Pruitt, a Republican, now poised to lead the agency he has often sued, his views on what's known as the regional haze program remain unchanged, recent statements suggest.

As EPA administrator, he could offer relief to power companies that cumulatively face billions of dollars in cleanups for older coal-fired plants.

"We're very concerned," said Michael Shea, senior policy associate at HEAL Utah, an environmental group backing EPA's plan to require two 1970s-era plants in the state to install new curbs on nitrogen oxides (NOx). The plants' owner, PacifiCorp, pegs the price tag at \$700 million; together with Utah state officials, the firm is suing to void the federal plan in favor of a less stringent state alternative. Should Pruitt win confirmation to head EPA, he could pull the agency out of the lawsuit or roll back enforcement of the plan, Shea said.

Meanwhile, utilities and their allies in state government are buoyed by the possibility of a federal about-face. In a statement, Utah Attorney General Sean Reyes (R) said he hoped EPA would reconsider and accept the state plan.

It is a similar story in Arkansas, where Attorney General Leslie Rutledge (R) and Entergy Arkansas are suing to block EPA from requiring new pollution controls at several plants with total costs estimated at \$1 billion or more. Last week, Rutledge asked the 8th U.S. Circuit Court of Appeals to stay the EPA blueprint. In a news release, she voiced hope that Pruitt would scrap it (E&ENews PM, Feb. 8).

The stakes may be highest in Texas, where state leaders and power companies have already forced EPA to retreat on a haze plan that would force seven coal-fired plants to install or upgrade sulfur dioxide scrubbers.



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No state's power sector spews more sulfur dioxide (SO₂) than that of Texas, which in 2015 released some 260,000 tons of the acrid pollutant, according to the latest official figures. "The regional haze rule would cut that by more than half," said Dan Cohan, an associate professor of environmental engineering at Rice University, who in an [op-ed](#) in The Hill dubbed it "the most important pollution rule you've never heard of."

But the Texas plan carries a projected \$2 billion price tag. After the 5th U.S. Circuit Court of Appeals froze implementation last July, EPA is now seeking to voluntarily remand the plan but has infuriated state officials by advancing a fresh proposal that would require controls on many of the same plants under another provision of the haze program (Greenwire, Dec. 12, 2016).

At the Competitive Enterprise Institute, a conservative think tank deeply critical of EPA's approach, Senior Fellow William Yeatman called it "inconceivable" that Pruitt would allocate resources toward an EPA plan for Texas "that makes no sense."

Enforcement results

The heated polemics are a testament to the belated impact of the regional haze program, created by Congress four decades ago but seriously enforced only in the last few years.

The program's overall purpose is to return pristine views to 156 national parks and wilderness areas — most of them in the West — by 2064.

Lawmakers acted out of alarm that man-made air pollution was besmirching the Grand Canyon and other cherished landmarks; nitrogen oxides and sulfur dioxide are major contributors to the problem. The program has proved to be an unexpectedly powerful backstop for forcing cleanup of older coal-fired plants that had managed to skirt installation of up-to-date pollution control equipment under other EPA programs. The key lever — and the biggest flashpoint — is a requirement that power producers adopt "best available retrofit technology" (BART) for plants that launched operations between 1962 and 1977.

Nationally, the haze program's impact is difficult to gauge because EPA leaves implementation up to its regional offices and makes no apparent attempt to keep tabs on either total costs or benefits. But in a 2014 paper, researchers concluded that requirements already in place would slash SO₂ emissions from 35 power plants and other industrial facilities by some 85 percent from a starting figure of 590,000 tons. NO_x releases from a slightly larger set of plants would tumble by two-thirds, from 430,000 tons to 130,000 tons, the paper projected. A separate study



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published the same year found that visibility had improved significantly in many remote parts of the United States since the early 1990s.

At the Four Corners Power Plant in New Mexico, once the nation's single largest source of NOx, regional haze regulations prompted the 2013 retirement of three generating units and requirements for tough new controls on the remaining two.

That work, which carries a projected \$630 million price tag, is already under way. Once it's complete, annual NOx emissions, which had run as high as 38,000 tons earlier this decade, are in line to plummet to 3,000 tons, according to Annie DeGraw, a spokeswoman for Arizona Public Service Co., the plant's operator.

More recently, a tentative court settlement with the owners of the Laramie River Station, a 1,710-megawatt plant in Wyoming, could also curb combined NOx and SO2 releases by thousands of tons per year (Greenwire, Jan. 5).

And only last month, EPA signed off on a [draft haze plan](#) for Nebraska that would require new controls on the Gerald Gentleman Station, the state's largest source of SO2. That proposal is now caught in a broader Trump administration freeze on new regulations. It must still be published in the Federal Register and put out for public comment, a step "which could result in revisions, withdrawal or full implementation," David Bryan, a spokesman for EPA's Region 7 office, said in an email.

Fierce opposition

The Senate Environment and Public Works Committee approved Pruitt's nomination earlier this month; the full Senate could vote on it as early as this week.

If confirmed to head EPA, Pruitt would not have unfettered freedom to reverse course. Any attempt to undo haze rules already on the books, for example, would have to go through public notice and comment procedures. Environmentalists are already vowing to fight him every step of the way.

In general, "I think we're most likely to see delays, we'll likely see lower stringency required, and I think we'll likely see cost considerations take a much larger role," said Julie Domike, a former EPA enforcement attorney who is now a partner in the Washington, D.C., office of the firm Haynes and Boone LLP.



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The backlash from utilities and elected officials has been fierce. Under the Obama administration, they charged, EPA used the haze program as a pretense for slapping new pollution controls on coal-fired power plants — even if the result was little or no visibility improvement. They also say that federal regulators are sidestepping Congress' intent by repeatedly substituting their own cleanup strategies for state plans.

The Obama EPA had "run roughshod" by imposing 15 regional haze federal implementation plans (FIPs), Yeatman said at a congressional hearing last March. That number far outstripped the number of FIPs employed by the three preceding presidential administrations combined under all facets of the Clean Air Act, he said.

No one from EPA testified at the hearing, held by the House Science, Space and Technology's Environment Subcommittee. In an interview late last year just before stepping down, Janet McCabe, the agency's acting air chief, acknowledged that there were situations "where we just couldn't approve the" state implementation plans.

In some cases, McCabe noted, EPA was under the gun from court-ordered deadlines, but she praised the haze program for delivering a "remarkable" amount of pollution reduction at a reasonable cost.

"That's one of the things that's really notable about it, is that for sources that were uncontrolled, there's available technology, NOx controls and SO2 controls, that are very cost-effective that make a huge difference," McCabe said.

To environmental groups that have repeatedly sued to goad EPA into action, federal intervention is a crucial counterweight to the electric industry's political might.

"In state after state, utilities and operators of larger coal-fired power plants have intimidated and persuaded and sometimes colluded with state regulators," said Al Armendariz, the former head of EPA's Region 6 office in Dallas, which pushed the Oklahoma haze plan. "The result has been that plant owners have been able to go decades without installing modern pollution controls." Armendariz is now with the Sierra Club's Beyond Coal campaign.

Pruitt's fight

At his confirmation hearing last month, Pruitt criticized EPA's handling of the haze program in the context of a broader pattern of trampling on state prerogatives.



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"It shows an attitude of indifference," Pruitt said in response to a question from Sen. John Boozman (R-Ark.), "an attitude of trying to be dictatorial in some respects toward the state's role or manipulative of the state's role in a way that's, I think, counterproductive for air quality." He struck a more conciliatory note in replying to follow-up written questions from committee Democrats, saying he would consider all matters "with an open mind."

But Pruitt's pugnacious side was on full display in March 2011. He had been Oklahoma's attorney general for just two months when EPA officials disapproved a state haze plan on the grounds that it didn't do enough to cut SO₂ emissions wafting into parts of Oklahoma, Arkansas and Missouri.

"Let the EPA be put on notice, as attorney general, I plan to do all that I can to protect and preserve the state's authority and responsibility under the Clean Air Act to craft and implement solutions for our state," Pruitt said in a news release.

Three months later, he took those objections into federal court, arguing that the EPA plan could raise power rates for Oklahoma consumers by as much as 20 percent over three years. The suit was the first of many he has brought against the agency; the reams of legal filings furnish a window into the tensions between state and federal regulators about compliance with BART mandates.

The state, in concert with Oklahoma Gas & Electric Co., argued that requiring the company to burn low-sulfur coal was enough. Pruitt also complained that EPA was eviscerating the state's authority and that requiring scrubbers at two OG&E plants would cost more than \$1.2 billion.

EPA fired back with a suggestion that the state was credulously accepting inflated cost estimates from OG&E. "Far from the empty, rubber-stamping role" urged by Pruitt, the Clean Air Act affords EPA "a critical oversight" position, agency lawyers wrote in one brief.

When the time came for oral arguments before the 10th U.S. Circuit Court of Appeals, Pruitt personally shouldered the job of presenting the state's case. In a 2-1 decision, the court in 2013 ruled in EPA's favor; the litigation sputtered to an end the next year when the Supreme Court declined to take Pruitt's appeal.

"Oklahoma ratepayers will bear billions of dollars in costs for an onerous federal regional haze plan," he said in a statement at the time.



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To date, however, the effect has been limited. OG&E ultimately agreed to install scrubbers on two coal-fired generating units and convert another two to natural gas. The company has also cut its anticipated compliance costs from \$1.2 billion to about \$700 million.

Because OG&E has not yet sought to recover those expenses through higher rates, there has so far been no effect on electricity prices, Thomas Schroedter, executive director of Oklahoma Industrial Energy Consumers, said in an email this week. For Public Service Co. of Oklahoma, a smaller power producer also covered by the haze plan, rate hikes have averaged about 5.5 percent, Schroedter said.

As attorney general, Pruitt has accepted some \$15,000 in campaign contributions from OG&E, according to the National Institute on Money in State Politics, a research clearinghouse. Pruitt was not available for comment, but a Trump administration spokesman said such contributions have never affected his work.

"To suggest otherwise is a politically motivated attack that should not be considered real news," the spokesman, John Konkus said, also by email. "As Mr. Pruitt stated time and again during his confirmation hearing, and as his record indicates, every decision he has made in public life has been based on what is best for the American people."

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16. **BLM agent tells Las Vegas jury that Bundy supporters posed threat**

The Las Vegas Review-Journal, Feb. 14 | Jenny Wilson

Supporters of Cliven Bundy posed a significant threat of violence to federal authorities who tried to impound the rancher's cattle, a Bureau of Land Management agent testified Tuesday in the trial of six men charged in the 2014 armed standoff in Bunkerville.

"I heard statements of 'go home,' 'F you,' 'give us back our cattle,' 'you have no authority,' 'cattle thieves,' 'this is our land,'" BLM Special Agent Rand Stover said.

Stover was referring to the April 12, 2014, exchanges between the armed cowboy protesters and the federal agents who were executing a court order to seize Bundy's cattle.

"In my opinion, their emotions were high, and they were using strong language to challenge our authority," Stover testified Tuesday.



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In hours of testimony Monday and Tuesday, Stover talked about the menacing nature of Bundy's supporters. He was asked about specific details, such as the presence of a gas mask attached to one protester's belt, in an effort to convince the jury that law enforcement officers felt threatened and feared for their lives.

The six men on trial are accused of conspiring with Bundy to block federal agents from rounding up the cattle from a federal grazing allotment near Bundy's ranch in Bunkerville.

"The cattle were left there," Stover said, after telling jurors how the armed protesters compelled federal agents to abandon their operation and leave the cattle

Defense lawyers portrayed the interactions between protesters and the government in a different light when it was their turn to cross-examine Stover on Tuesday. In questioning the witness, they played videos to support their claims that law enforcement authorities were the aggressors against a peaceful group of protesters exercising their constitutional rights.

Attorney Richard Tanasi, who is representing defendant Steven Stewart, played a video of law enforcement officers using a stun gun on one of Bundy's sons in the days before the standoff. Tanasi also played a video of skirmishes between law enforcement officers and protesters prior to the day of the standoff.

Stover was still on the witness stand when court broke for lunch recess Tuesday.

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