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Attached is the daily news report for May 2.

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DAILY NEWS REPORT - UTAH

UTAH – TOP STORIES – MAY 2, 2017

1. **Tribes near Utah national monument press U.S. official for meeting**

Reuters, May 1 | Valerie Volcovici

The Native American tribes that help manage the Bears Ears national monument in Utah raised concerns on Monday that the interior secretary has not responded to requests for a meeting ahead of his visit to Utah next week to review its monument designation.

2. **NATIONAL MONUMENTS: Utah land swaps could foil a Trump bid to strip protection**

E & E News, May 2 | Jennifer Yachnin

If the latest partisan battle over the fate of national monuments feels a bit like déjà vu, there's a good reason for that.

E&E/NATIONAL NEWS – TOP STORIES

1. **INTERIOR: 'We have to restore trust,' Zinke tells industry**

E & E News, May 2 | Nathaniel Gronewold

HOUSTON — A decision on reorganizing or possibly merging the government's two principal offshore energy regulatory agencies could arrive by the end of the summer, Interior Secretary Ryan Zinke told reporters here yesterday.

2. **PUBLIC LANDS: Enviros make case against Chaco-area drilling**

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Two years after conservation groups sued over oil and gas development near New Mexico's Chaco Canyon, they're now formally making their case in court.



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E & E News, May 2 | Jennifer Yachnin

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E & E News, May 2 | Kellie Lunney

The top Democrat on the Senate Energy and Natural Resources Committee indicated yesterday that the White House pick for Interior deputy secretary could face an uphill battle for confirmation on Capitol Hill.

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GOP lawmakers from Colorado today filed bills that would move the Bureau of Land Management's headquarters to one of 12 Western states where most of the nearly 250 million acres the agency manages are located.

7. **CLEAN WATER RULE: Greens, states back industry in jurisdictional fight**

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States, trade groups, electric utilities and environmentalists are backing the National Association of Manufacturers' argument to the Supreme Court that challenges to the Obama administration's Clean Water Rule belong in federal district courts.



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UTAH – FULL STORY

1. Tribes near Utah national monument press U.S. official for meeting

Reuters, May 1 | Valerie Volcovici

The Native American tribes that help manage the Bears Ears national monument in Utah raised concerns on Monday that the interior secretary has not responded to requests for a meeting ahead of his visit to Utah next week to review its monument designation.

U.S. Interior Secretary Ryan Zinke said in Houston that he will visit the Bears Ears national monument in Utah next week to get input from "stakeholders" on whether to change the site's monument designation, which President Barack Obama made in his last weeks in office in December.

"I'm going to ride a horse, like Teddy Roosevelt, and see the land and talk to the Navajo and the nations of tribes," Zinke said at Offshore Technology Conference in Houston, where he signed an order to review existing offshore drilling bans.

An Interior Department representative said she did not know whether Zinke planned to meet with the inter-tribal coalition.

Zinke said he will be in Utah all week, and has 45 days to make a recommendation to President Donald Trump on which designations should be lifted or resized.

The five tribes that form the Bears Ears Inter-Tribal Coalition said they have not heard back from Zinke or his staff after a dozen attempts to set up a meeting with him.

"We want a sit-down meeting so we can seriously have a conversation about Bears Ears and how it came to be," said Natasha Hale, lead representative for the coalition.

Bears Ears has been home to Hopi, Navajo, Ute Indian tribe, Ute Mountain tribe and Zuni. The tribes say the 1.3 million acres that are protected with the monument designation contains 100,000 archaeological and cultural sites.

They said proclamation ordering the designation finally gave tribes "a strong voice in how these lands are managed."



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"If Secretary Zinke truly believes that 'sovereignty should mean something,' as he had said, we hope he will finally respond to the Tribes' multiple requests to meet with him," said Davis Filfred, a Navajo Nation council delegate.

Rebecca Benally, commissioner for Utah's San Juan County and an opponent of the monument designation for Bears Ears, said she will meet on Tuesday with Zinke in Washington. Benally is a member of the Navajo Nation.

Utah's governor and congressional delegation have opposed the Bears Ears monument designation, saying it restricts too much land from economic and resources development.

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2. NATIONAL MONUMENTS: Utah land swaps could foil a Trump bid to strip protection

E & E News, May 2 | Jennifer Yachnin

If the latest partisan battle over the fate of national monuments feels a bit like déjà vu, there's a good reason for that.

A Democratic commander-in-chief used the Antiquities Act to protect a large swath of land, and a new Republican administration called for a review of recently designated monuments. Congress raised the specter of curtailing the 1906 law that allows presidents to declare such sites, and a legal battle royal loomed.

That was two decades ago.

But President Trump's executive order last week mandating a review of dozens of sites created by his predecessors doesn't just raise a series of striking parallels. In at least one case, it actually is the same monument back on the chopping block: Grand Staircase-Escalante National Monument, which includes 1.87 million acres of southern Utah desert.

And those past disputes — and the resulting covenants — over that monument could complicate the Trump administration's hopes for making any new changes via executive fiat.

"It's hard to un-ring the bell," said Conservation Lands Foundation acting Executive Director John Wallin.



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The Utah monument has served as a flashpoint in the debate over control of public lands for more than 20 years following President Clinton's designation of the site in late 1996.

The Clinton administration's decision to protect the site was made in near-total secrecy, at least in part to lock up a massive coal deposit in the area's Kaiparowits Plateau while preserving cliffs, slot canyons and sandstone arches (Greenwire, July 13, 2016).

That process prompted Congress to adjust the monument's boundaries in 1998 — excluding four small towns and adding nearly 400,000 acres of state lands acquired in an exchange with Utah, while handing over about 145,000 acres to Utah state officials, including lands now within the Kodachrome Basin State Park.

Congressional lawmakers also paid \$50 million to Utah in the exchange negotiated by then-Interior Secretary Bruce Babbitt and Utah Gov. Mike Leavitt (R), who would later serve as U.S. EPA administrator.

"A lot of water has already gone under the bridge with Grand Staircase-Escalante," said Earthjustice attorney Heidi McIntosh. She said the land exchange and payment made to Utah's state government would create an "enormous complication" in any effort to undo the site's current status.

"How do you unwind all of that as you attempt to roll back the Grand Staircase-Escalante National Monument?" she said.

McIntosh disagrees with the assertion that Trump could utilize the Antiquities Act to revoke any monument's status — something no commander-in-chief has attempted in the law's 110-year history, but that Republicans like House Natural Resources Chairman Rob Bishop (R-Utah) argue could be done. She asserted that the boundary adjustments approved by Congress could further confound any effort to do so for Grand Staircase-Escalante.

"It seems like it would be really impossible for them to do that legally," McIntosh said, noting that Congress approved the monument's boundaries and has subsequently ratified the site by funding the Bureau of Land Management's management plan.

She added: "The president has no authority to amend an act of Congress."



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A White House spokeswoman declined to discuss whether Trump has the authority to alter a monument previously amended by Congress, directing all inquiries to the Interior Department.

University of Colorado Natural Resources Law Center Director Mark Squillace, who has studied the Antiquities Act, echoed that argument.

"Congress has weighed in," Squillace said, noting that the 1998 boundary adjustments actually added some acreage to the site. "I do think it's going to be more challenging."

He added: "It's hard for me to see a significant boundary adjustment that would come through on Grand Staircase. ... It's been done already, and there's not much more to do."

Utah deal

Given that nearly two decades have passed since land exchanges related to the Utah monument's designation were executed, several legal observers agreed that any changes to the monument's status or boundaries would not trigger any mandatory reversal of those deals.

Moreover, the Utah School and Institutional Trust Lands Administration — the state agency whose lands were exchanged in the negotiations over the Grand Staircase-Escalante boundaries — has voiced no desire to give up the property it gained in the transaction.

"The exchange that was negotiated in 1998 was fully and fairly negotiated, and I don't see that we would try to trade back into it," John Andrews, Utah SITLA's associate director and chief legal counsel, told E&E News last week.

He added of the lands the state gained in Carbon and Emery counties, which include oil, gas and coal production: "The land exchange that was completed in 1998 has ... had a great result for the school trust."

According to an account summary provided by Andrews, those lands have produced nearly \$341 million for the state as of late April.

Since 2007, when the state began issuing proceeds generated from fossil fuel leases, rents and royalties on those lands directly to counties, Emery County has received nearly \$25 million, and Carbon County has received more than \$17 million. Other top beneficiaries include Kane and



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Sevier counties, which received nearly \$8 million each, and San Juan County, which has received \$2.4 million.

The state owns the profitable land thanks to the monument designation and ensuing swap, McIntosh noted. She suggested that should Congress or Trump dismantle Grand Staircase-Escalante, leaving those benefits in place could amount to an "an incredible act of banditry."

"The legal term for that is unjust enrichment," she said.

'Congress has done nothing'

Despite that 1998 agreement — and the benefit it has created for the state's school fund — resentment over the monument lingered into the administration of President George W. Bush and prompted then-Interior Secretary Gale Norton to conduct her own inquiry of monuments created by the previous administration.

"I certainly disapprove of the process by which those monuments were generally created," Norton told the Los Angeles Times in 2001, a few weeks before she issued a letter to governors, state and congressional lawmakers and local officials opening a review of designations issued in the final years of Clinton's presidency.

"The Interior Department is also dedicated to listening to all people to develop real results, instead of focusing on conflict and divisiveness," Norton said in a statement issued at that time. She had earlier told the Los Angeles Times, however, that she would not seek to repeal any of the sites.

Similarly, then-House Resources Chairman James Hansen (R-Utah) urged his congressional colleagues to introduce legislation opposing any monuments they objected to within their own states.

But ultimately, opponents of the Antiquities Act backed away from pursuing major changes to the law that has resulted in the creation of more than 150 national monuments — many of which have been converted into national parks, and less than a dozen of which have been eradicated by Congress.



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Conservationists point to that lack of action over a 20-year period to suggest that Interior Secretary Ryan Zinke's current review of monuments could ultimately result in the same lack of changes that Norton's review did in the early 2000s.

"It's been quite a long time and Congress has done nothing. ... It would be an incredibly delayed reaction to this designation that's been working in southern Utah," said Kristen Brengel, vice president of government affairs at the National Parks Conservation Association. She pointed to continued grazing in the monument as well as off-highway vehicle use. "Access is certainly robust in the monument."

Brengel suggested that the continued push by Utah lawmakers, including Sen. Orrin Hatch (R), whom Trump credited with pressuring him to sign last week's executive order, is the result of an "anti-federal" stance.

"It's not to protect access," Brengel said. "It's a fact that many politicians in Utah don't like the federal government and don't want the federal government to continue to control its land."

Still, she said she remains hopeful about the monument's survival given that the Trump administration did not attempt to immediately rescind its status.

"It says a lot that they're doing the review and didn't do a revocation of anything," she said. "I think they're dipping their toe in the water, and I think they're going to find the public doesn't like it."

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E&E/NATIONAL NEWS – FULL STORY

1. **INTERIOR: 'We have to restore trust,' Zinke tells industry**

E & E News, May 2 | Nathaniel Gronewold

HOUSTON — A decision on reorganizing or possibly merging the government's two principal offshore energy regulatory agencies could arrive by the end of the summer, Interior Secretary Ryan Zinke told reporters here yesterday.

And a designated leader for one of them, the Bureau of Safety and Environmental Enforcement (BSEE), may be named before the month is out. The delay in naming a new director is due to



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background checks and ethics reviews underway on the possible nominees to head BSEE and its sister agency, the Bureau of Ocean Energy Management (BOEM).

"The White House has approved a list. It's just going through the Office of Ethics, which has been really, really slow," Zinke said. "But we'll have our name out for BSEE, I'm pretty confident, within 30 days."

On potentially recombining BSEE and BOEM, Zinke said he'll take the summer to consider it, mindful of all the potential pros and cons. The two agencies were created from splitting apart the former Minerals Management Service during the aftermath of the 2010 Gulf of Mexico oil spill.

Zinke spoke to reporters at the Offshore Technology Conference, which is an annual gathering of oil and gas executives and employees to assess the latest in marine ocean exploration and production technologies.

Zinke and his staff traveled to Houston to tout President Trump's recent executive order launching a review of BOEM's five-year offshore leasing plan and review of a slew of regulations put on offshore drilling during the Obama administration. The previous administration had rescinded plans to auction off drilling rights to portions of the Atlantic and Arctic oceans. The new review ordered by Trump is likely to relist those areas for offshore drilling consideration.

But Zinke insisted that the review he'll undertake, which he said could take up to two years, will be done in a measured and considerate way that takes into account the interests and desires of local coastal communities. Some may want to see offshore drilling and some may not, he noted, and Zinke pledged to take their thoughts into consideration. He said that approach aligns with Trump's desire to see more power and authority taken out of Washington, incorporating more local interests into decisionmaking.

"There are areas that are appropriate for offshore exploration, and there are areas that aren't," Zinke noted. "We're going to look at it in a very pragmatic, scientific practices effort, and take also the local voice into consideration, as we should."

"The president has made a good point that Americans haven't had a voice, so what we're trying to do is a pivot and give Americans and the community a voice," he added.



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On the conference sidelines, Zinke participated in a signing ceremony directing Interior to begin its review of the five-year offshore leasing plan. He signed the order surrounded by employees of Talos Energy LLC and Fieldwood Energy LLC, and leadership of the Consumer Energy Alliance. The photo opportunity was meant to underscore that Trump's Interior would be more cooperative with an industry that had fought the Obama administration on access to onshore and offshore federally controlled energy resources.

He lamented that many people, particularly in the Mountain West, distrusted the agencies under Interior. Hailing from Montana, Zinke said he planned to tour the nation to try to regain the trust of local communities. He insisted that the interests of the economy and the environment can be balanced and pledged to take a "Teddy Roosevelt" approach to lands management that seeks to balance development and conservation.

"We have to look at ourselves, too, and make sure we're streamlined and our regulations aren't arbitrary," Zinke said during his speech. "We have to restore trust."

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2. PUBLIC LANDS: Enviros make case against Chaco-area drilling

E & E News, May 2 | Ellen M. Gilmer

Two years after conservation groups sued over oil and gas development near New Mexico's Chaco Canyon, they're now formally making their case in court.

A coalition of groups Friday filed their opening brief in litigation over drilling in the area, which is home to 1,000-year-old tribal artifacts and modern Navajo communities. The case had been stalled by a preliminary injunction battle environmentalists ultimately lost.

The tribal group Diné Citizens Against Ruining Our Environment, the Natural Resources Defense Council, the San Juan Citizens Alliance and WildEarth Guardians say the Bureau of Land Management is relying on an outdated resource management plan (RMP) to guide oil and gas permitting decisions in the area surrounding Chaco Culture National Historical Park.

The park itself is off-limits to development, but groups are concerned that new interest in the Mancos Shale is moving wells too close to the park and other cultural sites and harming nearby members of the Navajo Nation.



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BLM has been using an RMP from 2003 that does not consider the effects of horizontal drilling and high-volume hydraulic fracturing. The agency announced in 2014 that it would prepare an amended plan to account for new Mancos Shale development. That was in part because of revised estimates for the number of wells likely to be drilled in the area. In 2003, it estimated that nearly 10,000 vertical wells would be drilled. A 2014 analysis added nearly 4,000 Mancos Shale wells to the projection.

While the RMP amendment process is ongoing, BLM has prepared individual environmental assessments that tier to the 2003 RMP.

"The Federal Defendants have approved 362 individual Mancos Shale wells on a piecemeal basis and without first taking a hard look at the cumulative impacts to the environment, cultural resources, and people from horizontal drilling and multi-stage fracturing," the groups told the U.S. District Court for the District of New Mexico in their [brief](#).

The groups say that the approach violates the National Environmental Policy Act by failing to consider impacts from higher levels of development in the region.

During the preliminary injunction stage, the district court and later the 10th U.S. Circuit Court of Appeals seized on the well projection numbers, noting that development of vertical wells had not yet exceeded the agency's projections. Even with increased Mancos Shale drilling, the overall impacts would still be within the levels anticipated in the earlier review, the courts said (Energywire, Oct. 28, 2016).

The environmental groups, represented in part by the Western Environmental Law Center, pushed back on that position in the recent brief, arguing that "the challenged Mancos Shale wells are in addition to, not in lieu of, the vertical wells contemplated in 2003," so the total foreseeable impacts still exceed the levels BLM previously considered.

Government lawyers have until June 9 to respond.

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3. **PUBLIC LANDS: Enviros ready challenge to Ohio national forest leasing**

E & E News, May 2 | Ellen M. Gilmer

Environmental groups are making good on their promise to sue the federal government over oil and gas development plans in Ohio's only national forest.

The Center for Biological Diversity and other groups will file a [lawsuit](#) today challenging federal decisions to expand drilling in the Wayne National Forest in southeast Ohio.

They're especially concerned about the anticipated use of hydraulic fracturing. While older oil and gas wells dot the forest, BLM in December issued leases for 670 acres where drillers are expected to use fracking and horizontal drilling to target the Utica and Marcellus shale formations that lie beneath. Industry has expressed interest in a total of 18,000 forest acres that could be leased in the future.

CBD — joined by the Sierra Club, the Ohio Environmental Council and Heartwood — says the Bureau of Land Management and the Forest Service violated the National Environmental Policy Act by failing to take a "hard look" at the development's potential impacts on the forest and several species listed under the Endangered Species Act.

"We're suing to stop this dangerous fracking plan because drinking water safety and public lands should come before corporate profits," CBD public lands campaigner Taylor McKinnon said in a statement. "The Ohio and Little Muskingum rivers provide precious water to millions of people in Ohio and downstream states. Pollution from fracking would be disastrous for the people who depend on this water."

They note that the Wayne was established in 1934 under the Weeks Act to restore lands and watersheds damaged by years of logging operations — a process they say would be undermined by wide-scale modern oil and gas development.

"The Wayne National Forest is already so small and fragmented, but it's all Ohioans have left," Heartwood's Tabitha Tripp said in a statement. "We will fight like hell to protect it and the waters that run through it."



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The new leasing was approved under a 2006 resource management plan for the Wayne and a 2012 "supplemental information report" that considered potential surface disturbance from well pads and infrastructure related to fracking and horizontal drilling and concluded that no additional analysis was needed (Energywire, Sept. 4, 2012). The report was not open for public comment.

BLM last year issued an environmental assessment finding that leasing up to 40,000 acres of federal minerals in the forest did not qualify as a major federal action for purposes of NEPA and would not significantly harm the environment.

The environmental groups also plan to challenge the agencies' reliance on a 2005 biological opinion from the Fish and Wildlife Service that considers impacts of development on protected species. They have called the report "woefully outdated" for the protection of the Indiana bat, two types of mussels and several other species (Energywire, Jan. 27).

They're asking the U.S. District Court for the Southern District of Ohio to set aside BLM's environmental assessment and invalidate the recently issued leases, requiring BLM and the Forest Service to undertake a broad environmental impact statement to analyze the effects of new oil and gas leasing.

BLM and the Forest Service did not respond to requests for comment.

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4. **NATIONAL MONUMENTS: 400 groups urge Zinke to keep sites unchanged**

E & E News, May 2 | Jennifer Yachnin

More than 400 conservation groups urged Interior Secretary Ryan Zinke today to not recommend changes to any of the dozens of national monuments now under review by the Trump administration, asserting that any changes would be viewed as a first step toward stripping protections for those protected sites.

The Wilderness Society timed its missive, which was also sent to President Trump and Commerce Secretary Wilbur Ross, for release ahead of today's House Natural Resources Subcommittee on Federal Lands hearing on the Antiquities Act.



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Last week, Trump issued an executive order mandating a review of at least two dozen national monuments, including those created since 1996 that incorporate more than 100,000 acres.

But Zinke will also be permitted to review monuments of any size, if he deems that past presidents did not seek sufficient public input before issuing a designation (E&E News PM, April 26).

In addition, the Natural Resources subcommittee is set to hear testimony today on the impact of sites created under the Antiquities Act of 1906, which allows presidents to designate federal lands as national monuments to protect areas of cultural, historical or scientific interest.

In their letter — which is also signed by the Conservation Lands Foundation, Earthjustice, GreenLatinos and the League of Conservation Voters, among others — the environmental groups praised the Antiquities Act as "one of our nation's most critical conservation tools."

"Our national parks and monuments and other protected public lands and waters unite all Americans by protecting our shared American heritage for future generations to enjoy," the letter states.

"The sheer diversity of historic, cultural, and natural treasures that have been protected by the Antiquities Act is the reason why hundreds of groups representing sportsmen, cultural heritage organizations, evangelicals, conservation, recreation businesses, historic preservation, social justice, and many others all oppose efforts to undermine our national monuments and view an attack on any one national monument as an attack on them all," the letter says.

The letter goes on to oppose any potential reductions or eliminations of national monuments under review.

"We are concerned that this review is a pretense to advance efforts to undermine or strip protections for current national monuments," the letter states.

According to the president's executive order mandating the review, the Interior Department will have just 120 days, or until late August, to complete its work. An interim report is due in June and must address the needs of the Bears Ears National Monument in southeast Utah. President Obama designated that 1.35-million-acre site in the final weeks of his presidency despite objections from Utah Republicans.



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Arizona Rep. Raúl Grijalva, the top Democrat on the Natural Resources panel, plans to criticize today's hearing shortly before it is scheduled to begin at 10 a.m. EDT.

Grijalva has criticized the review of national monuments, arguing the short review period does not provide ample time to allow for public input.

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5. **INTERIOR: Top Dem 'gravely concerned' about deputy nominee**

E & E News, May 2 | Kellie Lunney

The top Democrat on the Senate Energy and Natural Resources Committee indicated yesterday that the White House pick for Interior deputy secretary could face an uphill battle for confirmation on Capitol Hill.

Sen. Maria Cantwell (D-Wash.) expressed concern over the nomination of David Bernhardt, a former lobbyist who ran President Trump's Interior transition team, to be the department's second-highest-ranking official.

"I am gravely concerned about Mr. Bernhardt's record of working on behalf of corporations at the expense of the environment, and his history at the Department of the Interior during years plagued by ethical scandals," Cantwell said in a statement.

"The committee must do its job in closely scrutinizing his record and any conflicts of interest that run contrary to protecting the public interest and upholding the stewardship responsibilities entrusted to the department, on behalf of the American people," she said.

It's not clear when the committee will hold a hearing on Bernhardt's nomination, but it could be soon, given hand-wringing over White House delays in moving nominations through the Senate confirmation pipeline. Both Cantwell and committee Chairwoman Lisa Murkowski (R-Alaska) have expressed worry over the slow political appointments process at Interior and other agencies under their purview.



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Bernhardt, who most recently served as chairman of the natural resources department at the law and lobbying firm Brownstein Hyatt Farber Schreck, has worked on Capitol Hill and at Interior during the George W. Bush administration (Greenwire, April 28).

He also was a staffer early in his career to former Rep. Scott McInnis (R-Colo.).

The Western Values Project, a government watchdog group based in Interior Secretary Ryan Zinke's hometown of Whitefish, Mont., is suing the agency to obtain documents related to Bernhardt's tenure as the department's solicitor. During that time, the agency was hit by several scandals involving doctored scientific reports and disgraced lobbyist Jack Abramoff.

Dale Hall, who served with Bernhardt as Fish and Wildlife Service director, called him "a man with personal and professional integrity that is beyond reproach and has always advocated for the proper implementation of the law." Hall is now the CEO of Ducks Unlimited, a waterfowl conservation group.

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6. **BLM: Colo. lawmakers' bill would move agency out West**

E & E News, May 2 | Scott Streater

GOP lawmakers from Colorado today filed bills that would move the Bureau of Land Management's headquarters to one of 12 Western states where most of the nearly 250 million acres the agency manages are located.

Sen. Cory Gardner and Rep. Scott Tipton filed identical legislation in both chambers that they say would make the agency more responsive to issues facing Western states by relocating its headquarters out of the Washington, D.C., area to either Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington or Wyoming.

"Moving BLM's headquarters West is a commonsense solution that Coloradans from across the political spectrum support," Gardner said in a statement.

It would help local communities with large tracts of federal land, he said, by "having the decision-makers present in the communities they impact." That, he added, "will lead to better



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policy. Coloradans want more Colorado common sense from Washington and this proposal accomplishes that goal."

Gardner has publicly discussed the idea of moving BLM's headquarters out of Washington (Greenwire, March 24). He asked Interior Secretary Ryan Zinke about the idea during his confirmation hearings in late January.

"I think they should be close to the land," Zinke said of BLM administrators. "I think the bottom line is, the decisions are oftentimes better on the front line."

Zinke did not promise to move BLM headquarters but said he was "committed to look at our organization across the board."

Colorado Gov. John Hickenlooper (D) has said he supports the idea of moving the agency headquarters West.

"It is critical that land management decisions impacting the West are made by the people who know the land best," Tipton said in a statement. "Moving the BLM's headquarters to a Western state would help ensure that federal agencies have a full understanding of the ways their decisions impact our families and communities."

The bill is likely to get some traction from GOP leaders in Congress, particularly in Western states. A common refrain from Western congressional leaders during the Obama administration was that decisions on the use and management of federal lands were too Washington-centric.

Gardner took the opportunity during today's Senate Energy and Natural Resources hearing to pitch his proposal to his colleagues.

"With so many county commissioners and officials in the room, I would just ask you for your consideration on an effort I'm leading on moving the BLM headquarters to the western United States," he said.

"This is an effort that I think is important. We have around 9,000 BLM employees across the country. Unlike the Forest Service, where there are actually East Coast forests within the system, the BLM, of the nearly 250 million acres in the BLM system, 99.9 percent of those acres are West of the Mississippi River," he said.



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He said he is sponsoring the legislation in an effort to help make BLM decisions "based out of Washington a little bit less Washington and more representative of the communities and the counties you represent."

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7. **CLEAN WATER RULE: Greens, states back industry in jurisdictional fight**

E & E News, May 2 | Amanda Reilly

States, trade groups, electric utilities and environmentalists are backing the National Association of Manufacturers' argument to the Supreme Court that challenges to the Obama administration's Clean Water Rule belong in federal district courts.

In briefs filed late last week, all the entities said they agreed with NAM — which brought the case to the Supreme Court — that the 6th U.S. Circuit Court of Appeals erred when it found last year that it had jurisdiction to hear challenges.

Like NAM, they all argued that the plain language of the Clean Water Act means district courts, not appeals courts, are the correct legal venue.

The Clean Water Act's text "resolves this case," a coalition of agricultural interests and trade groups told justices.

The Obama administration's Clean Water Rule — which is also known as Waters of the United States, or WOTUS — aimed to clarify which wetlands and streams receive automatic protection under the Clean Water Act.

A wide array of industry and state opponents characterized the rule as regulatory overreach and challenged it in federal courts. Environmentalists, on the other hand, thought it was too weak and filed their own litigation.

In all, parties filed 18 lawsuits in district courts and 22 petitions for review in federal appeals courts seeking to strike down the rule. The National Association of Manufacturers and other rule opponents sought to keep the litigation in local district courts, while the Obama administration argued that challenges should be heard by appellate courts.



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In February 2016, the 6th Circuit, which earlier put the rule on hold nationwide, found it had jurisdiction to hear challenges.

NAM petitioned the Supreme Court to review the ruling, and in January justices agreed to take up the issue. Last month, they denied the Trump administration's motion to pause their review while U.S. EPA and the Army Corps of Engineers reconsider the joint rule.

Last week, NAM filed its opening brief in the high court case, arguing that the rule didn't fit into the categories that the Clean Water Act says fall in the jurisdiction of appeals courts.

Under the law's judicial review provisions, appeals courts have jurisdiction over challenges to "any effluent limitation or other limitation," as well as permit approvals or denials.

WOTUS is a definitional rule that "does not fit within" those categories, NAM said (E&E News PM, April 27).

The choice of court also affects the resources needed to litigate challenges, sets the statute of limitations for filing lawsuits and helps determine whether actions can be challenged in subsequent civil or criminal proceedings.

Led by Ohio, state opponents of the Clean Water Rule urged justices to side with NAM. Like the group, the states said Congress intended for judicial review provisions to create "simple" rules for deciding which courts have jurisdiction.

In the Clean Water Rule litigation, "the agencies' reading muddies a relatively straightforward jurisdictional issue," the states said.

By arguing that challenges belong in appeals courts, the agricultural interests and other trade groups said, the agencies are in effect "rewriting the act."

Environmentalists likewise argued that the plain language of the statute "seems simple enough."

"On its face the rule merely defines a statutory phrase, albeit a critically important one," a coalition of environmental groups said in their brief. "It imposes no effluent limitation or other limitation directly upon any discharger, nor does it issue or deny any permit."



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The brief, led by the Waterkeeper Alliance, was joined by the Center for Biological Diversity, the Center for Food Safety, the Sierra Club, and local waterkeeper and restoration groups.

The environmental groups noted that they don't always agree with NAM. Unlike that group, they believe the Obama administration's waters rule didn't encompass enough bodies of water.

But "on the limited issue of whether the courts of appeals have jurisdiction," their brief said, "NAM is correct that these cases belong in the district courts."

Like more than 100 parties in the litigation, the environmental groups filed lawsuits in both district courts and appeals courts. "No prudent litigator would make that 'either/or' choice," the environmentalists explained to the Supreme Court.

The Waterkeeper Alliance said the confusion over the correct legal venue "uniquely affects" it alone among challengers to the rule because it also alleged violations of the Endangered Species Act and the National Environmental Policy Act. Cases brought under those laws are typically heard first in district courts.

In its brief, the Utility Water Act Group, a coalition of electric utilities and their trade organizations, argued that keeping the litigation in district courts would allow for a "full opportunity" to examine the broad impacts and implications of the rule.

Consolidating all the challenges into an appellate review would foreclose the "type of review that is critical for such a sweeping and important rule," the utility interests said.

The Supreme Court's ruling in this case would potentially prevent "confusion, inefficiency and a waste of judicial resources" in challenges to future Clean Water Act rulemakings, they also argued.

The Trump administration has yet to file its opening brief in the case. Oral arguments in front of the nine-member Supreme Court will likely take place in the fall.

[Click here](#) to read the brief filed by agricultural interests and other trade groups.

[Click here](#) to read environmentalists' brief.



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